
Advance version

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**Report of the Working Group on the Universal Periodic
Review***

Germany

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document is being issued without formal editing.

1. Germany welcomes the recommendations made during its Fourth Universal Periodic Review on 9 November 2023. Following the review, the Federal Government held meetings with civil society representatives and the German Institute for Human Rights.
2. Germany has carefully examined all 346 recommendations. All relevant federal government ministries, government commissioners and the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder were involved.
3. Germany considers that in a number of cases, current German law and practice – partially or as a whole – already reflect the content of recommendations made. Therefore, Germany does not see the need for additional action in all cases in which it supports the recommendations. In some of these, additional information has been provided. This also applies to recommendations that have been supported, with parts of them noted.
4. Recommendations were noted if Germany accepts the objective of a recommendation, but cannot commit to implementing the measures proposed, or if no additional measures are planned. Some recommendations contain inaccurate assumptions or assertions. Explanations are provided alongside the response to the recommendation.

Responses to the recommendations

A. Support

140.23–140.28

140.29

Germany is committed to combatting racism, racial discrimination, xenophobia and other related intolerance and therefore supports this recommendation. Germany's legal framework is sufficient in this regard, new legislation not necessary.

140.30–140.31

140.33

Germany supports the recommendation to step up training of law enforcement officials. Regarding a comprehensive review refer to 140.32.

140.34–140.37

140.39

Germany is committed to protecting and advancing universal human rights, at home and abroad, ensuring that policy decisions are taken in a comprehensive and objective manner. In this sense, Germany supports the spirit of the recommendation.

140.40–140.43

140.46–140.57

140.59

140.60

Refer to 140.29.

140.61–140.63

140.65–140.69

140.70

Germany has been taking and continues to take various measures to address racism and discrimination and to promote tolerance, respect and rights of others in schools. Germany does not support the notion of “structural racism and discrimination in schools”, as this would imply a system-wide scope. Germany therefore notes this part of the recommendation.

140.71–140.79

140.81–140.82

140.85

140.88-140.89

140.91

With regard to the facts on which the Advisory Opinion is based (construction of a wall in the West Bank), the Federal Government agrees with the statements made by the International Court of Justice regarding the right to self-defence.

140.92

140.93

Germany supports the notion of enhancing the dialogue with the Treaty on the Prohibition of Nuclear Weapons framework in addressing the humanitarian consequences of nuclear weapons. Germany notes the part of the recommendation on considering joining the Treaty.

140.96

Germany supports calling for adherence to international law by all parties.

140.97–140.98

140.102–140.109

140.113

Germany supports the prosecution of perpetrators of hate speech and hate crimes.

Regarding the reference to Islamophobia, Germany takes note of this part of the recommendation for the following reasons: Islamophobia is the fear of, hatred of, or prejudice against the religion of Islam or Muslims. It can be the motive for hate speech and hate crime (and has of course to be taken into account), but is not a criminal offence in itself. Thus, “Islamophobia” (or any other fear) as such can neither be perpetrated nor prosecuted.

140.114

140.116–140.122

140.128–140.131

140.133–140.135

140.137–140.138

140.140–140.145

140.146

While we fully support the aim of ensuring equal pay between all sexes, we would like to point out that there are more than two sexes. Refer also to 140.136.

140.147–140.165

140.167–140.170

140.171

Germany has addressed structural inequalities in the education system for many years and will continue to do so, taking into account also the wider context of inequalities in society.

140.172–140.174

140.176–140.191

140.194

140.196–140.198

140.199

Refer to 140.86.

Germany's Supply Chain Due Diligence Act covers activities of companies with at least 1.000 employees in Germany. The Act puts enterprises under its scope under an obligation to exercise due regard for the human rights due diligence obligations in their supply chains, independently of the place, where the risks of human rights violations occur, including in areas of conflict or situations of war and occupation. Implementation of the Act is monitored by a governmental authority.

140.200

Refer to 140.199.

140.201–140.202

140.203

Refer to 140.86.

140.204

140.206–140.210

140.213–140.228

140.229

Germany supports this recommendation and notes the part concerning criminalising femicide. The intentional killing of a woman can already be punished and may, depending on the circumstances of the individual case, constitute murder under specific aggravating circumstances.

140.230–140.261

140.262

The recommendation is supported on the understanding that training and service in arms is reserved for soldiers over the age of eighteen.

140.263–140.275

140.277

140.279–140.295

140.296

Germany supports the recommendation regarding measures against antisemitism and the prevention of racial profiling. Germany considers the part of the recommendation that alleges a “worsening practice of racial and ethnic profiling” unsubstantiated and notes this part of the recommendation.

140.297–140.317

140.319–140.320

140.321

Article 3(1) of the German constitution, which enshrines the general principle of equal treatment, stipulates that “all persons shall be equal before the law” and protects against discrimination, including discrimination based on sexual orientation. Article 3 (3) sentence 1 of the German constitution further specifically protects against discrimination based on gender. This provision also prohibits discrimination based on the fact that someone cannot be classified solely as male or solely as female. Nevertheless, the Coalition Agreement states that the special principle of equal treatment (Article 3 (3) of the German constitution) should be supplemented with a ban on discrimination on the grounds of sexual identity.

140.322

The Federal Government's Coalition Agreement stipulates: “We will establish a compensation fund for trans and inter persons who have endured physical harm or forced decisions on the basis of former legislation.”

140.323–140.345

B. Note

140.1

Germany has undertaken a pre-ratification evaluation and has concluded that the concerns regarding the definition applied, which also encompasses migrants without legal status, remain.

The human rights of migrant workers are already protected by international human rights law and International Labour Organization conventions, ratified by Germany.

140.2

Regarding the CMW refer to 140.1.

Regarding the Convention relating to the Status of Stateless Persons, there are no current plans to withdraw the reservations.

140.3–140.19

Refer to 140.1.

140.20–140.21

Refer to 140.2.

140.22

A child who does not meet the requirements for acquiring German citizenship at birth can be naturalised after five years of residence in the country with almost no requirements in accordance with Article 2 of the Law to Reduce Statelessness. This corresponds to Article 1 of the 1961 UN Convention on the Reduction of Statelessness.

140.32

There is no need for further revisions of the existing legal framework. Racial profiling is prohibited under the German constitution; racial profiling is not an element of standard police practice. The training and further education for all police authorities in Germany includes instruction on applying the relevant laws. Human rights, fundamental rights, the prohibition of discrimination, the prohibition of abuse and torture, the UN Charter, the European Convention on Human Rights, and intercultural competence are addressed on a regular basis. All training on these subjects is constantly being improved and is underpinned by common standards for police work. The Federal Government aims to generally raise awareness among public sector employees of all forms of racist marginalisation and discrimination.

140.38

Racial profiling is prohibited under German law. Racial profiling is not an element of standard police practice. Therefore, Germany notes this recommendation, while supporting measures to prevent unintentional racial profiling (refer to 140.35).

140.44

In line with the OHCHR recommendations on national mechanisms for reporting and follow-up (NMRF), the coordination of these tasks is assured by the Federal Foreign Office. Germany thereby fulfils all its obligations in this area.

140.45

Refer to recommendation 140.44.

140.58

Germany has a comprehensive and non-discriminatory social protection system and is committed to addressing social inequalities. In this sense, Germany supports the recommendation.

140.64

Germany does not support the notion of “structural racism in its institutions”. Germany takes numerous measures to address racism on all levels.

140.80

Germany’s legal framework provides for the right of peaceful demonstration. Possible limitations stem from the prohibition of incitement to violence. Police authorities have the task to help enforce these laws while protecting people who want to exercise their fundamental rights. Measures taken have to be proportionate. Any possible misconduct by law enforcement officials is subject to prosecution.

140.83

Refer to 140.80.

140.84

Torture is already covered by several criminal offences in the German Criminal Code and can be punished adequately.

140.86

Germany strongly supports universal adherence to international human rights and international humanitarian law, including for Palestinians.

140.87

Germany fully supports the State of Israel’s right to exist and the establishment of a future Palestinian state as part of a two-state solution negotiated between the parties to the conflict.

140.90

Germany supports a sustainable ceasefire in Gaza rather than an immediate one.

140.94

Germany does not support a recommendation singling out Israel for alleged war crimes and crimes against humanity.

140.95

Refer to 140.90.

140.99

Germany has ratified the Non-Proliferation Treaty and the Arms Trade Treaty, fulfils their requirements, fully implements both and is strongly engaged internationally in improving their full implementation by all ATT and NPT parties respectively.

140.100

Refer to 140.94.

140.101

Germany takes the fight against terrorism very seriously and invests considerable resources in the fight against PKK and DHKP-C, which are officially listed as terrorist organisations. The Gülen movement is not designated a terrorist organisation in the EU. Germany welcomes close cooperation between security authorities and on matters of extradition. At the same time, any cooperation has to meet the requirements of German law, particularly with regard to the human rights of the individuals concerned.

140.110

There is no general ban on headscarves in Germany for public sector employees. Restrictions are only permitted in very limited exceptional cases, when the employee’s duty of neutrality could be threatened.

140.111

Refer to 140.110. On the part of the recommendation regarding students: In general, the laws regarding higher education institutions do not include regulations on religious expression (on campus). This is true also if a “ban on veiling” exists, as such bans are formulated in a religion-neutral manner and apply to all forms of concealment.

140.112

Refer to 140.110.

140.115

Refer to 140.80.

140.123

There is no general ban on pro-Palestinian demonstrations in Germany. Germany’s legal framework provides for the right of peaceful demonstration. Possible limitations stem from the prohibition of incitement to violence. Refer to 140.80.

140.124

Measures to protect people and property from Islamophobic and xenophobic crimes are constantly being taken and improved where necessary in Germany. This includes the protection of mosques. There is an ongoing discussion in Germany on how to best address challenges relating to discrimination. Germany does not consider a comprehensive review of the police force and justice system to be necessary and therefore takes note of the recommendation.

140.125

Refer to 110.123.

140.126

There is no discrimination against pro-Palestinian activists by the police or authorities in Germany. Refer also to 110.123.

140.127

The rights of these groups, as well as the rights of all demonstrators, are guaranteed by the police within the framework of the law in Germany. Refer also to 110.123.

140.132

In Germany, legislation governs the use of information technology investigation or surveillance tools, which may interfere with the IT systems of the persons affected such as smartphones or personal computers, in particular for the purpose of prosecuting serious crimes and detecting and averting threats to higher legal interests, for example from international terrorism. There is a strict legal framework within which the competent law enforcement and security authorities work.

The Federal Government, for reasons of national security, does not provide any information regarding further details of tools or IT monitoring tools or capabilities that are operational/available or not operational/not available in Germany, as public disclosure of such information could jeopardise the operability of these tools.

140.136

Germany supports a diverse and inclusive notion of families.

140.139

Refer to 140.136.

140.166

The prevailing legal opinion is that the introduction of an obligation to attend a day-care centre for early education would interfere disproportionately with the parental rights specified in Article 6 (2) sentence 1 of the Basic Law.

140.175

Because education is decentralised in Germany, there is no federal educational legislation. Human rights are, however, part of all school laws of the Länder. The Länder adopted recommendations to raise awareness of minorities in classrooms. Higher education institutions are responsible for the curricula of the individual degree programmes. The approach in higher education also includes human rights and democracy education. Therefore, Germany supports the notion that human rights education and racial diversity should be key elements in education.

140.192

EU sanctions are consistent with international law, including the obligations arising from humanitarian international law and human rights norms. They do not target a country's civilian population, and where sanctions target particular economic sectors and/or individuals and institutions of a third country, the fundamental rights of the population are safeguarded in the formulation and application of the EU sanctions.

140.193

Refer to 140.192.

140.195

Germany pursues a restrictive policy on the export of military equipment, has ratified the Arms Trade Treaty and fulfils its requirements. Germany also implements the EU's Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

140.205

The Federal Government has set up a commission of experts to examine, inter alia, whether and, if possible, how abortion can be regulated outside the Criminal Code, particularly taking into account the requirements of the Basic Law. The Commission's final report, due in April 2024, remains to be seen. The draft bill to prevent so-called "sidewalk harassment" in the immediate vicinity of counselling centres for pregnant women and abortion clinics aims to protect women from this unacceptable harassment occurring increasingly in Germany.

140.211

Refer to 140.205.

140.212

Such acts are already covered by the German Criminal Code (Offences against physical integrity) and can be punished adequately.

140.276

The Länder organise inclusive education under their own sovereignty. By adopting a Recommendation on Inclusive Education of Children and Young People with Disabilities in Schools in 2011, they created a common basis for the highest level of equal participation for people with disabilities at schools. The Länder also still have the aim of ensuring that children and young adults with and without disabilities learn together, participating fully and effectively, and pursue this aim e.g. by adopting and implementing action plans on the UN CRPD.

140.278

Refer to 140.276.

The higher education sector is also represented in the action plans of the Länder, which contain measures specific to it. Some higher education institutions have also developed their own action plans, action concepts and guidelines that include the goals of the UN CRPD.

140.318

The draft law on self-determination of the gender entry requires parental consent or in the event of a refusal of the parental consent a court decision for the change of the gender

entry. This requirement results from the parental rights specified in Article 6 (2) sentence 1 of the Basic Law.

140.346

The birth of every child in Germany is registered regardless of the residence or documentation status of the parents. Therefore, there is no need to establish any further procedures.

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