

Development of the human rights situation in Germany July 2018 - June 2019: report to the German Federal Parliament in accordance with section 2 (5) of the act on the legal status and mandate of the German Institute for Human Rights; executive summary

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German Institute
for Human Rights

Executive Summary

Development of the human rights situation in Germany July 2018 – June 2019

Report to the German Federal Parliament
in accordance with section 2 (5) of the Act
on the Legal Status and Mandate of the
German Institute for Human Rights

About the report

Each year, the German Institute for Human Rights submits a report on the developments in the human rights situation in Germany to the German Bundestag, in accordance with section 2 (5) of the Act on the Legal Status and Mandate of the German Institute for Human Rights (DIMRG: Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, of 16 July 2015). The report is presented on the occasion of International Human Rights Day on 10 December. The Act on the Legal Status and Mandate of the German Institute for Human Rights provides that the German Bundestag should respond to the report. The 2018/2019 report, the fourth such report to be issued, covers the period from 1 July 2018 through 30 June 2019.

By requesting an annual report on developments in the human rights situation in Germany, the Federal Parliament and the Federal Council have emphasised that respecting and realising the human rights of all persons in Germany is an ongoing responsibility for all public authorities, as new challenges continually arise. This is why the Basic Law (Grundgesetz), Germany's constitution, demands that the impacts of legislation on human rights be reviewed regularly and that adjustments be made when needed, through legislation or by changing administrative practices. Moreover, political and societal changes, international or domestic developments, and scientific and technological progress can give rise to new challenges to human rights. Recognising such challenges and developing human rights-based solutions to them is crucial. This report is intended to contribute to both: the assessment of the human rights impact of laws and the identification of new human rights challenges and the identification of areas where new human rights risks demand a political response.

All documents and further information about the report are available at www.institut-fuer-menschenrechte.de/menschenrechtsbericht2019

The Institute

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

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Content

Introduction	4
<hr/>	
1 Germany within the System of International Human Rights Protection	5
<hr/>	
2 Homelessness: Provision of Accommodation by Municipalities	5
<hr/>	
3 Human Rights Education: Quality Criteria for the Training of Early Childhood Education Professionals	7
<hr/>	
4 Non-judicial Remedy for Persons Affected by Business-Related Human Rights Abuses Abroad	8
<hr/>	
5 Developments in Issues Covered in Previous Reports	10
<hr/>	

Introduction

Human rights underpin the protection of fundamental rights in Germany. The results of international processes for the review of Germany's human rights record are therefore presented in the first section of this report. The German Institute for Human Rights has taken the anniversaries of the Basic Law (70th), of the International Convention on the Elimination of All Forms of Racial Discrimination (50th) and of the UN Convention on the Rights of Persons with Disabilities (10th) as an occasion to present an overview of the evolution of human rights protection in Germany.

The human rights report then turns to three areas in which there is a need for action on human rights that have not received sufficient attention in the public debate. Section 2 addresses the situation of homeless persons. Persons who have lost their homes and are unable to find alternative accommodation are provided with accommodation by their local municipality, in line with its obligation under police and public order law (Polizei- und Ordnungsrecht). Though intended as a short-term solution, some of these persons remain in this accommodation for years. The report describes the human rights requirements this kind of accommodation must satisfy. These relate to housing conditions and facilities, protection against violence and the provision of support.

In a society with divides that are growing larger, the state's education mandate is more important than ever. Children should receive support aimed at helping them to develop into self-reliant individuals capable of taking their place as members of their communities and to internalise society's shared core values – from early childhood onwards. Section 3, therefore, examines the extent to which human rights education is reflected in the requirements for programmes qualifying early childhood education professionals.

Where states are weak, there are no consequences for private enterprises that abuse human rights. For this reason, the UN Guiding Principles on Business and Human Rights reaffirm the duty of states to ensure that persons affected by business-related human rights abuses have access to judicial and non-judicial remedy. Section 4 is devoted to the central German non-judicial grievance mechanism, the National Contact Point for the OECD Guidelines for Multinational Enterprises. The question posed in this section: Can persons whose rights have been harmed obtain effective remedy through this mechanism or is it simpler for them to use a non-judicial mechanism in their own countries?

In its final section, the report presents recent developments and findings relating to a selection of issues examined in earlier reports. The inclusion of such sections makes it possible for the annual human rights reports, when read together, to provide a good overview of the developments of the human rights situation in Germany over multiple years.

To inform this report, the Institute conducted qualitative studies involving interviews of experts and persons affected by the issues concerned; it also evaluated publicly available data, statistics, documents and studies, including documents of the German Bundestag and of the parliaments of Germany's federal states. We would like to express our thanks to all of those we interviewed in the course of our research for this report.

Seventy years ago, the Basic Law placed human beings and human dignity at the centre of Germany's constitutional order. To this day, it is to the protection of the rights of those in situations of vulnerability or powerlessness that we look when assessing the effectiveness of human rights protection in and by Germany. We hope that this report will contribute to this protection and that the Federal Government and the federal states will address the needs for action identified in its pages.

1 Germany within the System of International Human Rights Protection

In its constitution, the Basic Law (Grundgesetz) and through its ratification of numerous international and European human rights treaties, Germany has committed to upholding fundamental and human rights.

Several **fundamental rights and human rights anniversaries** fell within the reporting period (1 July 2018–30 June 2019): the Basic Law was adopted 70 years ago, the International Convention on the Elimination of All Forms of Racial Discrimination entered into force in Germany 50 years ago and the UN Convention on the Rights of Persons with Disabilities did so 10 years ago. The report presents timelines showing milestones in the evolution of rights and freedoms brought about by the Basic Law and these human rights treaties.

In the period from 1 July 2018 to 30 June 2019, the following **international and European treaty bodies** presented their assessments of the status of implementation and their recommendations to Germany:

- The UN Committee on Economic, Social and Cultural Rights
- The UN Committee against Torture
- The European Committee of Social Rights of the Council of Europe
- The Group of Experts on Action against Trafficking in Human Beings of the Council of Europe
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe

This report summarises the observations and recommendations made by these treaty bodies; the original documents are available at the website of the German Institute for Human Rights.

2 Homelessness: Provision of Accommodation by Municipalities

The precise number of homeless persons in Germany is not known. There are two recent estimates, both of which have a reference date in 2018. One puts the number of homeless persons between 313,00 and 337,000, the other at 542,000. Homeless persons are defined as persons who do not have housing secured by a tenancy agreement or own residential property.

Homelessness is closely linked to a shortage of affordable housing. Persons living on low incomes are hit hardest by the growing shortage of affordable housing; they are threatened by or affected by homelessness to a high degree. **A variety of factors contribute to homelessness:** in most cases, rent arrears play a critical role – often in combination with other risk factors such as low or unsteady income, intimate-partner violence, or illness. Sometimes, a person is unable to find or cannot afford housing upon release from psychiatric care, addiction treatment clinic, or a child/youth institution. The result is that men, women and even children are living in the streets, in temporary structures like barracks or caravans, or staying temporarily in the homes of friends or relatives. Homeless persons experience various forms of stigmatisation, discrimination and violence in public spaces. To avoid having to live rough on the streets, it is not uncommon for women, in particular, to enter into shared living arrangements in which they are subjected to sexual exploitation and violence.

Persons who are unable to find a place to stay and do not want to live rough are defined as “involuntarily homeless” under German police and public order law (Polizei- und Ordnungsrecht). **Municipalities have a legal obligation to provide shelter for such persons;** this is known as “accommodation provided under law on police and public order” (ordnungsrechtliche Unterbringung). Tens of thousands of homeless persons were provided with such municipal temporary accommodation in Germany in 2018: 30,736 in North Rhine-Westphalia (as of 30 June 2018); 12,681 in Bavaria (as of 30 June 2017). And the

numbers are rising. A case in point: the figure for Berlin nearly tripled between 2014 (9,615) and 2016 (30,718). Federal-state (Länder) statistics make it clear that accommodation provided under police/public-order law, originally intended as an emergency solution and short-term measure – for a few days or weeks – is increasingly one for the longer term. **Around one third of those provided with accommodation in this manner remain there for more than two years.**

This prompted the German Institute for Human Rights to take a closer look at accommodation provided under police and public order law. One part of this section is devoted to a legal analysis, examining the requirements for this category of accommodation that arise from the state's duty to protect fundamental and human rights. There follows an empirical analysis of the realities of accommodation provided under police/public-order law. To inform this analysis, the Institute conducted qualitative interviews with 28 experts (homeless persons, government authorities, non-profit homeless services providers) and evaluated studies and information from the federal states and municipalities.

The aim of the right to housing as formulated in the International Covenant on Economic, Social and Cultural Rights is that states ensure that adequate housing is available to everyone in their respective countries. A state may do so, for instance, through a policy of investing in social housing or through statutory tenant protections or social benefits; providing short-term emergency shelter is another means. **Under the current jurisprudence in Germany, a very simple minimum standard of housing and the availability of facilities and services are deemed to be sufficient for accommodation provided under police/public-order law.** However, from a fundamental and human rights perspective, standards which suffice for short-term housing may not be adequate in the case of housing used for longer-term accommodation. In light of the fact that accommodation provided under police/public order law in Germany is now de facto being used for longer term accommodation, **the right to adequate housing** – which applies to accommodation in this category in Germany just as it does for other forms of housing and shelter – **demands**

more than the minimum standards that currently apply.

The Federal Government noted the inadequacy of conditions of accommodation provided under police/public-order law in some regions of Germany in its Report on Poverty and Wealth (“Armut- und Reichtumsbericht“) back in 2017. Nonetheless, a national discussion about standards for municipal temporary accommodation provided to homeless persons under police/public-order law has still not been held.

The empirical analysis conducted by the German Institute for Human Rights reveals **large differences across municipalities in accommodation provided under police/public-order law;** access to accommodation is largely determined by whether the municipality in question has sufficient accommodation places available, but the municipality's understanding of its obligation to provide accommodation also plays a role. Accommodation facilities vary greatly, **ranging from “normal housing” (flats) to multi-bed dormitories in collective accommodation facilities, from impeccable hygienic conditions to bordering on squalor.** The fact that, in some cases, persons are now remaining in accommodation for the homeless for multiple years changes the requirements for this category of accommodation: **the federal and Länder governments should develop a set of recommendations for minimal standards.** Legal provisions clarifying that the mandate to provide accommodation under police/public-order law applies irrespective of the residence status and nationality of the person concerned are also needed.

For a variety of reasons, the transition from homelessness back into a home of one's own is a difficult one. An adequate supply of affordable housing is essential in this respect, but there is also a need for sufficient counselling by a qualified social worker to be made available at accommodations provided under police/public-order law. **Certain groups of persons, e.g. persons who suffer from addiction, persons with mental impairments or long-term care needs, may be unable to gain access to assistance appropriate to their needs** – such as therapy, an assisted living group or out-patient care services. Without these

services, these persons end up in accommodation under police/public-order law (in the better case scenario), in emergency shelters (these are open only at night and admission is restricted to a few days per month) or out on the streets. In these circumstances, their condition deteriorates further. There should be better communication between and closer integration of homeless services, on the one side, and other services, on the other side – such as psychiatric care, addiction care, nursing care or child and youth services.

Raising the standards of municipal temporary accommodation provided under police/public-order law is only one of many elements necessary to improve the living conditions of homeless persons in conformance with human rights. **The primary aim of state action on homelessness – at the federal, Länder and municipal level – should be to overcome the problem completely by bringing and keeping all persons out of homelessness.** In addition to the effective organisation of all assistance services at the municipal level, achieving this aim will require the availability of an adequate housing supply in the municipalities, particularly for households with low incomes or no incomes, and that homeless persons and those at high risk of losing their homes receive priority in the allocation of that housing.

3 Human Rights Education: Quality Criteria for the Training of Early Childhood Education Professionals

Childcare centres play a part in enabling children to realise educational opportunities and other opportunities in life. Increasing numbers of children are attending childcare centres, from a younger and younger age, as a result of the introduction of legal entitlements and efforts to increase the number of childcare places available. This is coupled with a **heightened awareness of the importance of the quality of early childhood education in the political arena and in society at large.** One result of this is the federal legislation known as the “Good Childcare Act” (Gute-Ki-Ta-Gesetz) which entered into force in 2019 and is intended to promote improvement in the quality of early childhood education. Fostering the development of all children into self-reliant individuals capable of taking a place as a member of their communities is part of the state’s education mandate according to section 1 of Book 8 of the Code of Social Law (SGB VIII).

The field of early childhood education is not immune to the effects of societal challenges like social inequality, violence, or discrimination. Children, therefore, need educators who will protect them from discrimination, will enable them to experience the sense of their own dignity and respect for others, will allow them to gather their first experiences of democracy and will empower them to stand up for their own rights and for the rights of others.

It is vital that the training of early childhood professionals should prepare them for these important responsibilities. **Human rights education must form an essential part of the training of education professionals.** The Institute therefore analysed the extent to which vocational education and training as well as academic programmes for early childhood education professionals (Erzieher_innen and Kindheitspädagog_innen) are oriented towards human rights. It examined, for instance, the extent to which these programmes are aimed at imparting knowledge about human rights

standards and values and whether the structure of learning environments and methods reflect human rights considerations, e.g. whether inclusive language is used, whether participation is possible in instruction and whether training materials reflect learner diversity.

In its analysis, the German Institute for Human Rights evaluated key documents providing guidance on education policy for training programmes. It also conducted 44 interviews with instructors and students at universities and universities of applied sciences and with representatives of bodies in five Länder. The conclusion: **the guidance documents do not yet sufficiently frame human rights education as an explicit responsibility of education professionals.** However, there are aspects that could serve as starting points for structuring the training around children's rights and human rights, e.g. in relation to the question of how future practitioners develop a professional attitude or how they can implement inclusion and opportunities for participation.

The interviews convey a glimpse of day-to-day training practice. In the view of those who were interviewed, the combination of knowledge, methods, reflection on one's own values, and development of the capacity to educate and the willingness to (further) develop professionalism as an educator should make up a central aspect of the training. One context in which children's and human rights are discussed is that of instruction on the legal framework governing work in child-care centres.

The bottom line: The role and significance of human rights education for the further development of the concept of quality in early childhood education should be clearly anchored both in the documents providing guidance for these training programmes and in teaching within the programmes. Education work structured around human rights should be part of improving the quality of early childhood education, an aim stated in the coalition agreement, for human rights are a standard for equal participation, inclusive and non-discriminatory relationships, and for supporting the strengths and resources of individuals.

4 Non-judicial Remedy for Persons Affected by Business-Related Human Rights Abuses Abroad

A multinational ousts Cambodian families from their land because it wants to set up a sugar plantation. No compensation is paid to the families. Or: an international hotel chain destroys a temple of indigenous peoples in Peru in connection with the construction of a new hotel. Or: A discount clothing retailer from Germany ignores fire safety deficits at the foreign factories that produce its goods.

While companies can contribute to economic and infrastructural development through their **business activities in other countries**, they **can also have adverse impacts on human rights**, as these examples demonstrate. When companies contribute to human rights violations, the state must ensure access to remedy (i.e., payment of compensation to victims or that the company is required to stop a certain activity, e.g. polluting the water supply). This is true under international law and is stated in the UN Principles on Business and Human Rights. Thus, as part of its obligation to protect human rights, Germany, like other states, must ensure that persons from other countries who suffer human rights abuses (if caused by German companies) have access to effective judicial or non-judicial remedy mechanisms.

The Federal Government committed itself to the implementation of the UN Guiding Principles in the National Action Plan for Business and Human Rights (NAP) that it adopted in 2016. These UN principles are based on three pillars: the state duty to protect human rights (first pillar), the corporate responsibility to respect human rights (second pillar) and access to effective remedy when human rights abuses occur (third pillar). The NAP is focussed predominantly on the first two pillars.

For this reason, the German Institute for Human Rights has taken up the question of non-judicial remedy in Germany and abroad. In concrete terms: **To what extent is it possible for per-**

sons who believe that their rights have been abused through the actions of a German company in another country to raise grievances with state-based non-judicial mechanisms?

Can such persons obtain remedy through the central German non-judicial grievance mechanism, the National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP), or is it easier for them to use a non-judicial mechanism in their own country, in which the company is active and the abuse occurred?

The Institute's analysis makes it clear that **the NCP is not a "central grievance mechanism"**, though this is the role assigned to it in Germany's NAP. Aggrieved individuals need the help of non-governmental organisations to overcome the high barriers to access associated with the NCP, which start with its lack of visibility. Between 2003 and 2018, the German NCP handled a total of 30 cases, a number reflecting only a fraction of those in which persons in other countries feel that their human rights have been harmed by a German company.

Such persons must seek remedy locally, i.e. in the countries in which the companies committed the abuses, many of which have serious deficits with respect to rule of law, e.g. corruption.

The Institute therefore examined **mechanisms for remedy and compensation in two countries, India and Uganda**. An exploratory look – by way of qualitative expert-interviews – reveals that, whether the issue is the rights of workers or protections against forced relocation, existing non-judicial remedy mechanisms are not very helpful to those whose human rights have been harmed locally as the result of the activities of foreign companies in their countries. Experts from civil-society describe the difficulties faced by persons seeking remedy at the Ugandan Equal Opportunities Commission and India's National Human Rights Commission as follows: In their experience, these commissions **are not accessible to large portions of the population** (especially in the cases of rural populations and illiterate persons) and **have neither the financial nor the personnel resources necessary to enable them to fulfil their mandate adequately**. Moreover, when a determination is made that an adverse human

rights impact has occurred, the state in question often fails to help in executing recognised claims or may ignore claims to compensation that it itself should pay. Thus, **it is not possible to enforce recognised claims to compensation payments or other forms of remedy**.

Local remedy mechanisms must be strengthened in order to ensure that persons who suffer business-related human rights harms can enforce their right to effective remedy: they **must really be accessible, both physically and in terms of procedures, and their decisions must be executed by the state**. However, it must also be possible for petitioners who cannot obtain effective remedy locally to raise their grievances with a mechanism in Germany. This requires that **the NCP in Germany becomes more accessible and its visibility in other countries is increased**. German development cooperation projects could contribute to this through their local projects, and Germany's embassies abroad could do so as well: They could smooth the way for petitioners, facilitating access to the NCP, and they could support them in raising their grievances, just as they support German companies in Germany and abroad in their implementation of NAP provisions.

5 Developments in Issues Covered in Previous Reports

The final section of this report discusses developments relating to four of the issues examined in previous years' reports. Progress can be reported in two areas – the exclusion from voting rights of persons with disabilities and the situation of children with imprisoned parents. This can, in part, be traced to the earlier reports and the activities of the Institute.

Exclusions of persons with disabilities from voting rights

In the 2016 report, the Institute pleaded for a swift end to the exclusions from voting rights at the federal and Länder level, pointing out that persons with disabilities have the unqualified right to vote and be elected on an equal basis with others under article 29 of the UN Convention on the Rights of Persons with Disabilities. The period under report saw **fundamental improvement in the legal situation in Germany** in this respect. At both the federal and the Länder level, voting rights exclusions were largely eliminated for two groups of persons with disabilities: those placed under full, non-temporary guardianship and those confined by judicial order in a psychiatric hospital after having committed an offence for which they were exempt from criminal responsibility.

The basis for this change was **an order of the Federal Constitutional Court of January 2019 declaring the federal voting rights exclusions unconstitutional**. The offending provisions were subsequently repealed by the German Bundestag as of 1 July 2019. To date, eleven federal states have repealed Länder law provisions containing voting rights exclusion. Relevant draft provisions are currently under discussion in the parliaments of two of the other five federal states.

Family reunification

The issue of family reunification was addressed in the 2016, 2017 and 2018 reports. Following a period in which blanket suspension of family

reunification applied for beneficiaries of subsidiary protection, the possibility of reunification was re-introduced, within narrow bounds, in August 2018. Since then, issuance of **visas to family members** of beneficiaries of subsidiary production is **subject to a numerical limit of 1,000 visas per month**. Initially, implementation of the new rule was very slow, with only 2,612 visas issued over the first five months since it was in force (August-December 2018). Since January 2019, around 1,000 visas have been issued each month. It must be said, though, that this new provision has not fundamentally changed the difficult situation of many refugees who are waiting to be reunited with their immediate family members. Recent studies have shown that waiting for family members results in feelings of uncertainty and lack prospects and ultimately **makes integration in Germany more difficult**.

Children of prisoners and their right to personal contact

The right of the child to personal contacts with a parent who is being held in prison was one of the focus themes of the 2017 human rights report.

There are many signs that positive change is underway in this area. **There is now recognition both at the European and at the national level of the difficulties that the children of prisoners face:** The Council of Europe issued a recommendation in 2018 reaffirming the obligation of its member states to ensure that children with an imprisoned parent have personal and direct contacts with both parents on a regular basis. In Germany, the Länder Justice Ministers' Conference has also taken up the issue of the situation of children of imprisoned parents and intends to prepare recommendations on this issue for the justice enforcement system, probably in 2020.

A national "Children of prisoners" network ("Kinder von Inhaftierten") was established in March 2018, with an initial project term of two years. Previously, networking among specialised institutions and prisons had been only sporadic or confined to the regional level.

Arms exports

German licensing policy for arms exports was one of the focus themes of the 2018 report. The Institute's analysis determined that the Federal Government's policy regarding the export of military equipment to the states that have been engaged in the conflict in Yemen since 2015 was not consistent with its own "Political Principles for the Export of War Weapons and Other Military Equipment".

Licensing practice changed during the period under report in response to the murder of journalist Jamal Khashoggi in October 2018: no licenses were issued for the export of military equipment to Saudi Arabia between October 2018 and March 2019. However, Germany continued to issue licenses for the export of military equipment to other states involved in the intervention in Yemen (Jordan, the United Arab Emirates, Egypt), despite an undertaking to the contrary in the coalition agreement.

In June 2019, the Federal Government revised its arms export guidelines ("Political Principles Adopted by the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment"): the Institute welcomes the prohibition, in principle, of the export of small arms to countries that are not members of NATO or Europe. Such exports continue to be possible in individual cases, however. **A more far-reaching human rights reform of the "Political Principles" was not achieved.** The human rights situation in the country of destination of arms exports remains only one among several criteria considered in decisions on the authorisation of the export of military equipment.

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An executive summary of the report is also available in English, German and Plain German language: <https://www.institut-fuer-menschenrechte.de/en/human-rights-report/human-rights-report-2019/>

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