

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT

UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Germany, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Germany, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

GERMANY REVIEW

Justice System

➤ *Quality of justice*

In its 2019 concluding observations, the UN Committee against Torture noted with concern that in practice, detained persons do not always enjoy all the fundamental legal safeguards from the outset of their detention, including the receipt of information on their rights in writing, in a language that they understand. The Committee recommended Germany to ensure that detainees enjoy the benefits of all fundamental safeguards in practice from the outset of their deprivation of liberty, in accordance with international standards, including, in particular, the right to receive legal assistance at any time and without delay; and the right to be informed of the reasons for their detention and the nature of the charges against them in a language that they understand ([CAT/C/DEU/CO/6](#), para 11, 12).

In its 2018 concluding observations, the UN Committee on Economic, Social and Cultural Rights expressed concern over the practical obstacles impeding access to justice in the State party by non-nationals whose rights have allegedly been violated by German companies abroad, despite the fact that German law provides for their access to justice and to legal aid. The Committee recommended Germany to take measures, including the provision of enhanced legal assistance for victims and the introduction of collective redress mechanisms in civil proceedings, criminal liability of corporations and disclosure procedures, to guarantee

that the victims of human rights abuses by companies domiciled in Germany or under the country's jurisdiction have access to effective remedies and compensation in Germany ([E/C.12/DEU/CO/6](#), para 9, 10).

In February 2021, UN Human Rights experts called on 57 countries, including Germany, to repatriate women and children from camps in northeast Syrian camps. The experts expressed concern that people held in the camps were exposed to violence, exploitation, abuse and deprivation in conditions and treatment that may well amount to torture or other cruel, inhuman or degrading treatment or punishment under international law, with no effective remedy at their disposal. The experts recalled the urgent need for justice, truth and reparation for all of the victims of the very serious violations of human rights and humanitarian law that have occurred in the region. In that context, the continued detention, on unclear grounds, of women and children in the camps was a matter of grave concern and undermines the progression of accountability, truth and justice. (See at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730>).

In its 2019 concluding observations, the UN Committee against Torture noted with concern the lack of detail provided by Germany on cases in which the Convention has been invoked and directly applied before the domestic courts. It recommended that Germany disseminate the Convention to all public authorities, including the judiciary, thus facilitating invocation and direct application of the Convention before domestic courts, both at the federal and Länder levels ([CAT/C/DEU/CO/6](#), para 57, 58).

At its 2018 Universal Period Review, Germany accepted several recommendations relating to training of justice professionals, including to systemize human rights education and training for professionals, including judiciary, to provide specialized training to prosecutors and judges and key actors in the criminal justice system about hate crimes and racist offences, and to implement comprehensive training and awareness-raising on the elimination of racial discrimination for police, judicial and administrative authorities ([A/HRC/39/9](#) and [A/HRC/39/9/Add.1](#), recommendations 155.124, 155.125 and 155.96).

➤ **Other**

In its 2019 concluding observations the UN Committee Against Torture expressed serious concern about the fact that Germany was refusing to extradite persons suspected of crimes of torture in Chile, but was also reluctant to investigate these allegations and prosecute those responsible, on the grounds that those crimes were barred by the statute of limitations provided for in criminal law. The Committee was concerned that this situation would give rise to impunity and recommended that Germany either extradite alleged perpetrators of torture and ill-treatment to a State with jurisdiction over the offence or to an international criminal tribunal, according to its international obligations, or prosecute them, in compliance with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT/C/DEU/CO/6](#), para 19, 20).

On 24 February 2021, the higher regional court of Koblenz, Germany sentenced a former member of President al-Assad's security services, Mr. Eyad al-Gharibto for aiding and abetting crime against humanity in the form of torture and deprivation of liberty in Syria. The Office of the UN High Commissioner for Human Rights [commended](#) the ruling as a major step forward

considering that with no international process under way, fair national courts can and should fill accountability gap for such crimes, wherever committed.

In its 2019 concluding observations, the UN Committee against Torture expressed serious concern that in many Länder, solitary confinement may be imposed as a disciplinary measure for up to four weeks for adult prisoners, and two weeks for juveniles and young adults. The Committee recommended Germany to ensure that solitary confinement remains a measure of last resort, imposed for as short a time as possible and under strict supervision and judicial review with clear and specific criteria for its use. It further recommended Germany to abolish solitary confinement of juveniles and young adults and bring its legislation and practice into line with international standards ([CAT/C/DEU/CO/6](#), para. 32, 33).

In its 2019 concluding observations, the UN Committee against Torture expressed serious concern over Germany's increasing reliance on "pre-emptive justice". It recommended Germany to monitor and detain individuals suspected of terrorism only on the basis of a prior, individualized risk assessment, and that the detention of individuals suspected of terrorism be in accordance with the requirements of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Nelson Mandela Rules. It reminded that individuals suspected of terrorism should have adequate access to legal representations and effective complaint mechanisms ([CAT/C/DEU/CO/6](#), para. 41, 42, 43, 44, 45, 46, 47).

Other institutional issues related to checks and balances

➤ *Independent authorities*

In its 2019 concluding observations, the UN Committee against Torture welcomed the establishment of the German Institute for Human Rights as Germany's national human rights institution in accordance with the Paris Principles. However, the Committee regretted that the Institute is not designated to monitor Germany's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Committee also welcomed the establishment of ombudspersons in several Länder to facilitate the independent and impartial investigation of allegations of criminal conduct by police officers, but remained concerned about the lack of such mechanisms in other Länder and at the federal level. It encouraged Germany to establish, at the federal and Länder levels, independent bodies to investigate all complaints of police misconduct and ensure that such complaints are promptly and thoroughly investigated. (See [CAT/C/DEU/CO/6](#), para 17, 18, 37, 39). At its 2018 Universal Periodic Review, Germany supported a recommendation to create an independent mechanism to investigate torture and abuse by the police and to ensure independent, impartial and effective investigations and prosecutions in cases of alleged police violence ([A/HRC/39/9/Add.1](#), 155.122, 155.126).

While welcoming the decision of the Ministers of Justice of the Länder to increase the funds for the National Agency for the Prevention of Torture, the Committee further recommended that Germany provide the said Agency with sufficient human, financial, technical and logistical resources, to enable it to carry out its functions effectively and independently, in accordance with the Optional Protocol to the Convention and guidelines of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The

Committee also recommended that the Agency be given greater authority in the way it carries out its mandate in both public and privately-run institutions ([CAT/C/DEU/CO/6](#), para 13-18).

➤ ***The enabling framework for civil society***

In her February 2021 global update to the Human Rights Council, the UN High Commissioner for Human Rights expressed concern about measures restricting the work of organizations that protect migrants' rights and deliver life-saving assistance. She noted that criminal or administrative proceedings had been initiated in Germany against humanitarian actors involved in search and rescue in the Mediterranean

(www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26806&LangID=E).