



THE UPR PROJECT AT BCU

Submitted by:

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About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. There are nine core international human rights treaties,¹ of which Germany is a party to eight, albeit with the attachment of reservations, understandings, and declarations (RUDs).² In this submission we encourage Germany to commit to improving its human rights protection and promotion by engaging meaningfully with the fourth cycle of the UPR in 2022. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Germany accepts, and actively engaging with civil society throughout the process.
2. This Stakeholder submission focuses upon the human rights issue of domestic abuse. There is currently no statutory definition of domestic abuse in Germany, although the Council of Europe's Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') defines it as being "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim."³
3. Domestic abuse in Germany is a pervasive human rights concern, particularly for women. In November 2022, the German government reported that "[t]he number of domestic violence victims in Germany has increased by 3.4% in the last five years and the overwhelming majority of them [over 80%] are women."⁴
4. This Stakeholder Report refers to 'domestic abuse' throughout, in recognition of the fact that domestic abuse includes much more than just violence. However, domestic abuse is also referred to as 'domestic violence' or 'intimate partner violence' and is also included under the broad umbrella terms 'violence against women and girls' and 'gender-based violence.'

A. Normative and Institutional Framework of Germany

5. The Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW')⁵ is key when considering the protection of women from domestic abuse. In particular, General Recommendation 19 passed in 1992 provides that:

'The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.'⁶

6. General Recommendation 35 from 2017 updated General Recommendation 19 to provide “further guidance aimed at accelerating the elimination of gender-based violence against women.”⁷ Germany has been a party to CEDAW since 1985.⁸
7. There are a number of other international human rights agreements and policies related to domestic abuse, in particular the Declaration on the Elimination of Violence Against Women 1993.⁹ Also pertinent are the Beijing Declaration and Platform for Action 1995,¹⁰ the UN Commission on Human Rights Resolution 1994/945,¹¹ and the Commission on the Status of Women.¹²
8. The Istanbul Convention is also directly relevant to Germany. It opened to signatories on 11th May 2011 and entered into force on 22nd April 2014.¹³ Germany became a State Party to the Istanbul Convention in 2017 and the Convention entered into force domestically on 1st February 2018.¹⁴ In 2022, the Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) provided its first report on Germany’s engagement with the Istanbul Convention and specifically domestic abuse, as discussed below.
9. Germany has a federal system of government, which is relevant to domestic abuse in terms of how police data and criminal prosecution statistics are captured.¹⁵ Whilst there is no statutory definition of domestic abuse, Germany has multiple criminal laws relevant to perpetrators, including the German Criminal Code, which covers bodily injury,¹⁶ sexual assault,¹⁷ stalking¹⁸ etc., the Violence Protection Act,¹⁹ and the Police Act.²⁰ Federal states also have their own police powers covering domestic abuse, including the General Law for the Protection of Public Safety and Order in Berlin, Law on the Tasks and Powers of the Bavarian State Police, and Police Law of North Rhine-Westphalia.²¹ It would be prudent for Germany to seek to codify a statutory definition of domestic abuse alongside these laws and protections.

B. Implementation of Recommendations from Cycle Three in 2018

10. In 2018, Germany received 259 recommendations. Of these, 11 were made regarding domestic abuse or a related issue, such as violence against women and girls. All but one were accepted and below is a consideration of the action taken on each recommendation.

Combat Violence Against Women and Girls (VAWG) and Gender-Based Violence (GBV)

11. Four recommendations were made in relation to the broad categories of VAWG and GBV. **Japan** (para. 155.195) recommended to “[c]ontinue efforts to strengthen measures for eliminating violence against women” and **Nepal** (para. 155.40) made reference to domestic abuse when recommending that Germany should “[c]ontinue measures...to combat domestic and gender-based violence against women.”

12. Whilst such recommendations are welcomed, it is crucial that they remain specific and measurable in order to assess the level of implementation. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.²² It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²³ In particular, when referring to VAWG, Member States should specify the type of violence they are referring to and the key action the State should take.²⁴
13. **Peru's** (para. 155.16) recommendation was more specific, asking Germany to “[s]trengthen the assessment of the human rights impact of the arms export licensing system to prevent them from being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.” **Some steps have been taken to implement this recommendation.** Germany has put in place “better end-use controls,” which include stricter regulation of small arms through the creation of post-shipment controls. This involves an inspection of whether the small arms are still in the possession of the end-user in the country of destination, with the aim of preventing the arms being passed to others.²⁵ Moreover, in October 2022, the German government set out its ‘draft key points’²⁶ for a suggested ‘German Arms Export Control Act,’ which has an improved human rights focus including consideration of GBV.²⁷ However, there is still action to be taken by the government to pass such a law and ensure this recommendation is implemented.
14. **Honduras** (para. 155.50) suggested Germany should “[a]dopt a national gender equality strategy that includes concrete and effective measures, to eliminate the structural factors perpetuating inequality and gender-based violence in society.” **This recommendation has been implemented.** In 2020, the German government launched its national ‘Gender Equality Policy,’ involving a nine-stage plan including tackling VAWG.²⁸ The government should now turn its attention to ensuring that the Policy is implemented in practice, fully achieving its targets.

Migrant Women

15. A recommendation from **Paraguay** (para. 155.196) suggested that Germany should “[g]rant the right to reside to foreign women independently to that of their husbands so that victims of domestic violence can report without the fear of being affected.” This is a significant issue that affects migrant women across the world and is an important point to address. However, **the recommendation was noted** by the German government, seemingly because it directly advocated for providing a right to reside. In noting the recommendation, the government clarified that:

“Other measures to protect women exist outside the realm of residence law; following the expiry of a three-year marriage period, residence permits are extended even if the marriage is terminated due to domestic violence; in addition, a discretionary decision on whether to grant a residence permit is possible already

prior to the expiry of the three-year marriage period in the event of domestic violence.”

Despite this, in early 2023 the German government removed its reservation to Article 59 Istanbul Convention, related to the right to residence for migrant women who are victims of domestic abuse.²⁹ However, whilst this is a step in the right direction, action must now be taken by the German government to implement Article 59 in practice.

16. Similarly, **Peru** (para. 155.197) recommended that Germany “[s]trengthen efforts to eradicate domestic violence and to support victims, especially foreign women” and **Czechia** (para. 155.192) suggested a way to protect women from violence by “promoting security staff training on gender issues and countering negative images and stereotyped portrayals of ethnic minority women.” Unlike the recommendation from Paraguay, these two recommendations were accepted. **The recommendations on migrant women’s experiences of domestic abuse have been implemented in part.** Whilst steps have been taken regarding ensuring residence for migrant women, in its 2022 report, GREVIO recommended that Germany should provide further support in relation to the intersectional experience of migrant women who experience violence.³⁰
17. In any event, these recommendations from Paraguay, Peru, and Czechia demonstrate an important nuance, taking an ‘intersectional approach,’³¹ in that they make clear the experience of migrant women is unique and must be treated as such.

Awareness Raising Campaigns and Prosecutions

18. **Montenegro** (para. 155.123), **Estonia** (para. 155.194), and **Belgium** (para. 155.193) all recommended that Germany should provide awareness-raising campaigns in relation to domestic abuse and/or VAW. **Regarding awareness campaigns, the German government has taken steps towards implementing these recommendations.** For example, working with non-governmental organisations, campaigns such as ‘What’s Your Number?’ have been implemented, which provided statistics on the number of women who experience domestic abuse across 22 cities in Germany aimed at showing the general public how prevalent domestic abuse is.³²
19. However, Montenegro’s recommendation also suggested that Germany should “ensure that all reported cases are effectively investigated and perpetrators duly prosecuted” and Estonia’s recommendation asked Germany “to bring perpetrators to justice.” Equally, **Israel** (para. 155.127) asked Germany to “[t]ake further steps to ensure cases of gender-based violence are reported and properly prosecuted.” The German government is encouraged to provide statistics regarding investigations and prosecutions of domestic abuse cases across the country during the Fourth Cycle.

C. Further Points for Germany to Consider

COVID-19 and Domestic Abuse

20. The COVID-19 pandemic has been disastrous for those experiencing domestic abuse. The UN Special Rapporteur on Violence Against Women (SRVAW) found that it was women from already marginalised backgrounds who suffered the most in terms of domestic abuse during the lockdowns of the pandemic, including “minorities, indigenous, Afrodescendant, migrant and rural communities, older women, women and girls with disabilities, homeless women, and women deprived of liberty and victims of trafficking.”³³ Gerd Muller, Germany’s Minister for Development, acknowledged “the negative impact of the pandemic on women’s safety” and provided an additional €15 million of funding support, to be provided “mostly to local women’s rights organizations.”³⁴
21. The World Health Organization (WHO) has found that “[v]iolence against women tends to increase during every type of emergency.”³⁵ The WHO has stated that governments “must include essential services to address violence against women in preparedness and response plans for COVID-19, fund them, and *identify ways to make them accessible in the context of physical distancing measures.*”³⁶ Therefore, thought must be given to how the German government can best deal with the effects of a national emergency, such as the COVID-19 outbreak and lockdowns, on domestic abuse victims. This should be raised during Germany’s Fourth Cycle UPR and other Member States could share best practice on how they dealt with this issue.
22. UN Secretary-General, António Guterres, specifically mentioned the “horrifying global surge” of domestic abuse during the pandemic, noting that “[h]ealthcare providers and police are overwhelmed and understaffed” and “local support groups are paralyzed or short of funds. Some domestic violence shelters are closed; others are full.”³⁷ This is a particular issue in Germany currently, as uncovered by GREVIO in its 2022 report. GREVIO found that “the availability of shelter places varies significantly across the country, and that in many regions it is far from sufficient” especially for rural communities.³⁸ GREVIO also identified further intersectional issues specific to accessing shelters, noting that “certain groups of women face difficulties in being admitted to shelters, in particular women with sons above a certain age, women with many children, women with disabilities, women fleeing violence related to “honour”, asylum-seeking women and those with an insecure residence status.”³⁹

D. Recommendations for Action by Germany

We recommend that the Government of Germany should:

- i. Fully engage with the recommendations made during the UPR regarding domestic abuse, providing clear responses to recommendations and setting out specific plans for implementation.
- ii. Codify, through legislation, a statutory definition of domestic abuse in Germany, to include all relevant factors (not just violence) including but not limited to, controlling and coercive behaviour, financial abuse etc.
- iii. Provide up-to-date and accurate statistics regarding investigations and prosecutions of domestic abuse cases across the country during the Fourth Cycle, to allow Member States and civil society to fully assess the implementation of domestic abuse recommendations.
- iv. Ensure that the ‘Gender Equality Policy’ is implemented in practice, ensuring targets are met, particularly in relation to VAWG.
- v. Implement plans to create a ‘German Arms Export Control Act,’ which should include proposed strategies to strengthen its human rights considerations, with a particular focus on gender-based violence.
- vi. Address the intersectional abuse suffered by migrant women, firstly by putting laws and policies in place to ensure that migrant women who suffer domestic abuse perpetrated by their husbands are granted the right to reside independently of their abuser.
- vii. Properly fund healthcare and support services, to allow victims of domestic abuse to access support shelter and refuges, as well as any relevant treatment. The German Government should provide a publicly available action plan on how it will achieve this.

¹ UN OHCHR, ‘The Core International Human Rights Instruments and their Monitoring Bodies’ <www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

² See, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force on 27 January 1980) 1155 UNTS 331; 8 ILM 679 (1969) Article 2(1)(d).

³ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014, ISBN 978-92-871-7990-6.

⁴ Associated Press, ‘Domestic Violence in Germany Increases over Last 5 Years (24 November 2022)’ <<https://apnews.com/article/europe-violence-germany-berlin-domestic-2b7b1ce4c139c401af312862c78bc6b5>>.

⁵ UN General Assembly, ‘Convention on the Elimination of All Forms of Discrimination Against Women’ (18 December 1979) UNTS vol 1249.

⁶ Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No. 19: Violence against women’, Eleventh session (1992), contained in A/47/38, para 2.

⁷ Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 35 on gender-based violence against women, updating General Recommendation 19’ (14 July 2017), CEDAW/C/GC/35.

⁸ Convention on the Elimination of All Forms of Discrimination: Reservations <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#24> accessed 31 March 2023.

⁹ Declaration on the Elimination of Violence Against Women 1993.

¹⁰ Beijing Declaration and Platform for Action 1995, Art 124-b.

¹¹ UN Commission on Human Rights Resolution 1994/945.

¹² Commission on the Status of Women.

¹³ Council of Europe CAHVIO, ‘Negotiations’ www.coe.int/en/web/istanbul-convention/cahvio.

¹⁴ Council of Europe, ‘Istanbul Convention: Germany’ <www.coe.int/en/web/istanbul-convention/germany> accessed 31 March 2023.

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- ¹⁵ Improdova, ‘Data and Statistics in Germany’ <<https://training.improdova.eu/en/data-and-statistics/data-and-statistics-in-germany/>> accessed 31 March 2023.
- ¹⁶ German Criminal Code (Strafgesetzbuch (StGB)) § 223.
- ¹⁷ *ibid* § 177.
- ¹⁸ *ibid* § 238.
- ¹⁹ Violence Protection Act (Gewaltschutzgesetz (GewSchG)) § 1.
- ²⁰ Police Act (PolG) § 34a.
- ²¹ See here for copies of the laws, available in German only: <<https://resourcehub.bakermckenzie.com/en/resources/fighting-domestic-violence/europe/germany/topics/illegal-provisions>> accessed 31 March 2023.
- ²² Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ (2020) 4(1) RSIL Law Review 126, 153; Alice Storey, ‘Challenges and Opportunities for the UN Universal Periodic Review: A Case Study on Capital Punishment in the USA’ (2021) 90 UMKC L Rev 129, 148-49.
- ²³ See UPRinfo, ‘For impact on the ground the UPR needs SMART recommendations’ <<https://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations>> (21 October 2015).
- ²⁴ Alice Storey, ‘Improving Recommendations from the UN’s Universal Periodic Review: A Case Study on Domestic Abuse in the UK’ forthcoming Spring 2023, Pace International Law Review.
- ²⁵ Federal Ministry for Economic Affairs and Climate Action, ‘A Restrictive, Responsible Policy on the Export of Military Equipment’ (29 January 2019) <www.bmwk.de/Redaktion/EN/Dossier/export-controls-for-military-equipment.html>.
- ²⁶ See here, available in German only: <www.bmwk.de/Redaktion/DE/Downloads/P-R/eckpunkte-ruistungsexportkontrollgesetz-entwurf.pdf?__blob=publicationFile&v=6> accessed 31 March 2023.
- ²⁷ *ibid*.
- ²⁸ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth ‘Gender Equality Policy in Germany’ (11 June 2020) <www.bmfsfj.de/bmfsfj/meta/en/equality/gender-equality-policy>; DW, ‘Germany Unveils Sweeping Gender Equality Plan’ (7 August 2020) <www.dw.com/en/gender-equality-germany/a-54086234>.
- ²⁹ DaMigra, ‘Finally, the Istanbul Convention Applies without Reservation!’ (1 February 2023) <www.damigra.de/en/meldungen/endlich-gilt-die-istanbul-konvention-vorbehaltlos-nun-auf-zur-vollstaendigen-umsetzung-wenn-nicht-jetzt-wann-dann/>.
- ³⁰ GREVIO, ‘Baseline Evaluation Report: Germany’ (24 June 2022), part C(2)(3)(a).
- ³¹ See, generally, Kimberlé Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’ (1991) 43 Stan L Rev 1241. While Crenshaw coined the term itself, the notion of intersectionality has been considered by women across the world for centuries.
- ³² The Drum, ‘German Government Counted Cost of Domestic Violence with ‘What’s your Number?’ Campaign’ (1 October 2021) <www.thedrum.com/news/2021/10/01/german-government-counted-cost-domestic-violence-with-what-s-your-number-campaign>.
- ³³ UNGA, ‘Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences’ (24 July 2020) A/75/144, para 8. The LGBTQ+ community has also suffered greatly during the pandemic, as discussed in this report.
- ³⁴ DW, ‘German Coalition Faces Calls to Curb Violence Against Women’ (25 November 2021) <www.dw.com/en/germany-incoming-government-faces-calls-to-tackle-violence-against-women/a-59928464>.
- ³⁵ WHO, ‘COVID-19 and Violence Against Women’ (7 April 2020) <<https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf>>.
- ³⁶ *ibid*. Emphasis added.
- ³⁷ United Nations, ‘UN Chief calls for Domestic Violence ‘Ceasefire’ amid “Horrible Global Surge”’ *UN News* (6 April 2020).
- ³⁸ GREVIO (n 30) para 33.
- ³⁹ *ibid* para 172.