

# State Reporting to United Nations Human Rights Bodies: The Experience in Germany<sup>1</sup>

*Wolfgang S. Heinz* \*

## INTRODUCTION

For states, ratification of human rights instruments entails the necessity to report to international expert bodies on the implementation of their international legal obligations, usually every 4-5 years. Let me focus in my contribution on the role of state reporting to UN human rights expert committees, the so-called treaty (monitoring) bodies

## 1. STATE REPORTING

Usually State reporting focuses on the description of relevant constitutional provisions, laws, and administrative orders etc, sometimes supported by relevant statistics. Reports often give an idea of what is the legal framework for an issue area, rather than what is actually the case say, what is the real

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<sup>1</sup> Collective international responsibilities in the full realisation of human rights through international co-operation, The dynamics with and within UN mechanisms and regional systems

\* Dr. Wolfgang S. Heinz, German Institute for Human Rights. [Heinz@institut-fuer-menschenrechte.de](mailto:Heinz@institut-fuer-menschenrechte.de).

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situation regarding respect for the rights of children in a given country. To get a good grasp on the actual situation, research would be necessary into the actual conditions of target groups as well as the possibilities and limits of state action in the field. In other words, it should be about real life. It could even involve pinpointing deficits, especially of a more structural type, which would probably require changes in government policies, e.g. educational and family policies, including progress in law and administrative practice.

The Office of the UN High Commissioner on Human Rights (OHCHR) has announced on its website that under its programme it regularly organizes training activities for government officials responsible for the reports due under international human rights treaties to which their state is a party. Such assistance is provided at national and regional levels. The fellowship programme facilitates participation in the training, which includes workshops with experts from various treaty-monitoring bodies, as well as specialized OHCHR staff. An OHCHR Manual on Human Rights Reporting has been produced, and visits to observe meetings of treaty bodies are being organized.<sup>(1)</sup>

## **2. GERMANY'S STATE REPORTING TO THE UN**

Germany has signed six out of seven major UN human rights conventions - the exception is the Convention on the Rights of Migrants and their families. No Western European country has ratified this convention.

Right from the beginning, let me make a small but important clarification: Being reviewed by an international organ using language of "human rights" and even "human rights violations" might be a bit difficult for the country and government concerned. In the public discussion in Germany, the term human rights violation is not commonly used for the domestic German situation, rather it is considered a useful term for a severe pattern of violation abroad, perhaps also in the sense of an intentional policy violating human rights. However, politicians and public have learned over time that also our country is and has to be internationally monitored and encouraged to take very seriously its obligations under international. Still, at

times there remains some “resistance” to grapple with – human rights violations in a democracy with a functioning judicial system.

In 2004, Germany's state reports have been discussed in four different UN expert committees, i.e. CEDAW, CRC, HRC and CAT. In all cases, reports by Germany were welcomed in a broad sense, to begin with. At the same time, certain weaknesses in the implementation were criticized and the German government was asked to take action and report back to the UN expert committees.

Some key issues addressed by the UN Human Rights Committee for example were:

“13. While the Committee appreciates progress made in practice in the area of equality for men and women in the public service, it notes with concern that the number of women in higher positions is still very low. It is also concerned about wide disparities, in the private sector, of remuneration between men and women (articles 3 and 26 of the Covenant).

The State party should ensure equal treatment of men and women at all levels of the public service. Furthermore, it should continue to take necessary measures so that women enjoy equal participation in the labour market, particularly in terms of equal wages for work of equal value.

14. The Committee notes with concern the persistence of domestic violence despite legislation adopted by the State party (articles 3 and 7 of the Covenant).

The State party should reinforce its policy against domestic violence and, in this framework, should take more effective measures to prevent it and assist the victims of such violence.

15. While the Committee notes with satisfaction that the use of firearms by the police is restricted, by law, to measures of coercion in extremis, and that the number of persons killed or injured by the use of such force has declined in recent years, it is concerned that in some of these cases the use of firearms might not have been justified (Article 6 of the Covenant).

(a) The State party should ensure prompt, thorough and impartial investigation of all cases of persons killed or injured as a consequence of the use of firearms by police forces; bring to justice those responsible for violations of the law; and grant full reparation, including fair and adequate compensation, and rehabilitation, to victims and their families.

(b) The State party should also provide training in methods allowing police to control difficult situations without using firearms.

16. While appreciating the reduction of the number of complaints made public in recent years, the Committee expresses its concern about continuing reports of ill-treatment of persons by the police, including of foreigners and members of ethnic minorities. It is concerned that, despite the previous concluding observations of the Committee, the State party has not found ways to monitor the situation effectively and still lacks the necessary statistical information on police misconduct (article 7 of the Covenant).

(a) The State party should subject all allegations of police ill-treatment to prompt, thorough and impartial investigation and, where appropriate, bring those responsible to justice.

(b) The State party should protect persons who bring complaints of ill-treatment against police officers against intimidation, and provide full reparation, including fair and adequate compensation, and rehabilitation to victims and their families.

(c) The State party should improve monitoring of police misconduct by designating a central governmental agency to maintain and publish comprehensive statistics about ill-treatment and other relevant misconduct, including racist abuse, and measures taken in such cases and results of investigations and disciplinary or penal proceedings. Furthermore, the State party should establish independent bodies throughout the territory of the State party for the investigation of complaints of ill-treatment by the police.

17. The Committee notes the vulnerable situation of elderly persons placed



### **3. REGIONAL DIMENSION - EUROPEAN PROTECTION OF HUMAN RIGHTS**

The Council of Europe with its 45 member states has five mechanisms in place on human rights monitoring

- Individual complaints referring to the European Human Rights Convention are presented to the European Court of Human Rights who issues legally-binding verdicts.

- European Committee for the Prevention of Torture (CPT) members visit countries regularly, inspecting prisons, psychiatric hospitals, and other locations. Reports are made public only with the consent of the government concerned which is given however in most of the cases.

- The European Commission against Racism and Intolerance (ECRI), founded in 1993, also visits countries. Its last report on Germany was published in 2004.

- The European Committee on Social Rights under the European Social Charter of 1988 (revised in 1996) receives state reports and experts formulate recommendations.

- Regarding minorities, a small expert committee – the Committee on the Framework Convention for the Protection of National Minorities proclaimed in 1995 - reviews developments and formulates recommendations.

Under the new European Constitution of the EU additional avenues for a better protection of human rights are to be expected for the 25 EU member states.

### **4. UN TREATY BODY'S CONCLUDING OBSERVATIONS: THE FOLLOW UP PROCESS**

There is sometimes a tendency that after a country has been dealt with by an UN expert body who has then issued his concluding observations, very little happens until the next report is due.

In the German case, we have discussed with ministries, members of parliament and NGOs. Various efforts are undertaken to seek to help bring UN discussions to a broader auditorium.

Regarding some treaties, so-called alternative reports or shadow reports to the official state report were written and then circulated among members of UN expert committees before its official meeting with the German delegation (e.g. in the cases of CEDAW, HRC). Reports were authored by specialized non-governmental organizations of human rights defenders who are working for many years in the specific area. Often these reports were successful: In their questions expert committee members took up critical issues raised by NGOs.

Secondly, in the future NGOs and other professional bodies might be invited by the government to comment on the draft state report already in the preparatory phase, thereby facilitating expert input from civil society. Naturally, responsibility for the state report remains with the federal government.

## 5. CHALLENGES AHEAD

Reporting to UN bodies is a fairly complicated procedure, not easily accessible to the wide public. It is more an issue for specialized lawyers, ministries, human rights defenders, parliamentarians and a few journalist experts on the UN human rights system. Notwithstanding these limits, various actors in Germany attempt to broaden the knowledge about the interaction on human rights issues between the German government and UN expert bodies:

- The German Foreign Office publishes a bi-annual report on the place of human rights in German foreign policy and other policy areas in response to a request by parliament. The 6<sup>th</sup> report was published in 2002 (360pp.), the 7<sup>th</sup> report will be published probably by the end of 2004. It deals comprehensively with UN and European human rights as well as bilateral relations.<sup>(3)</sup>

- Both foreign and justice ministries make available on their websites Germany's reports, concluding observations of UN expert bodies and some times the German response to them; in the past, some state reports have been published as brochures.<sup>(4)</sup>

- Sometimes concluding observations of UN expert bodies have been discussed in the German Parliament - for example CEDAW conclusions in 2003 - , but here is still a lot of room for improvement.

- The German Institute for Human Rights has published two briefing papers on German state reporting to the UN and to European human rights institutions.<sup>(5)</sup> The Institute is planning four follow up meetings on the concluding observations this year, inviting representatives from government, parliament, NGOs and academia. We consider this as a crucial step because as I mentioned often there is an element of “bureaucratic pause” after concluding observations were formulated on a state report. Only three or four years later they are taken up when the next state report must be written up for the UN expert committee in question. ❖

## NOTES:

1. Source: <http://www.unhchr.ch/html/menu2/areas.htm#reporting>
2. CCPR/CO/80/DEU, HUMAN RIGHTS COMMITTEE, Eightieth session, UNEDITED VERSION, Consideration of reports submitted by States parties under article 40 of the Covenant, Draft Concluding observations of the Human Rights Committee, Germany
3. Auswärtiges Amt 2002.
4. Foreign Ministry: [www.auswaertiges-amt.de](http://www.auswaertiges-amt.de); ministry of justice: [www.bmj.de](http://www.bmj.de)
5. See studies by Mihr in the select bibliography. The institute has also published results on a workshop on the reform discussion of the UN Commission on Human Rights (Motte/Heinz 2004).

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