

# The German Institute for Human Rights

Beate RUDOLF (Berlin)

## 1. Introduction

The *German Institute for Human Rights* (*Deutsches Institut für Menschenrechte*) is the independent National Human Rights Institution (NHRI) for Germany.<sup>1</sup> It was established in March 2001 following a unanimous motion of the German federal parliament. In setting up a NHRI, Germany followed the example of many states, and heeded the recommendation made by the UN General Assembly in 1993.<sup>2</sup> The German Institute for Human Rights is one of the few NHRIs that is organized as an institute, i.e. an institution with a focus on academic research. In its ten years of existence, the German Institute has acquired an excellent reputation, both domestically and internationally.

## 2. National Human Rights Institutions

The central purpose of National Human Rights Institutions is to help states comply with their obligations arising from international human rights law. NHRIs have been set up gradually in a number of countries since the early 1950s. The 1993 *World Conference on Human Rights* in Vienna brought new momentum to this development, emphasising the valuable contribution that NHRIs have made and can continue to make to promoting and protecting human rights on the national level. The UN General Assembly took up this idea; in its recommendation to the States, it incorporated the “*Paris Principles*”, a set of rules developed by academic experts that define NHRIs and the conditions for ensuring their independence.<sup>3</sup>

The *Paris Principles* provide that NHRIs must have a broad mandate to promote and protect human rights. The mandate must extend to all human rights treaties, even those not (yet) ratified by the state, and to all future human rights treaties drafted within the UN or regional organizations. Moreover, NHRIs must be free to choose the topics to work on and must be free to decide on their working methods. They contribute to “promoting” human rights by furthering the implementation of human rights treaties on the national level. They contribute to “protecting” human rights through all activities aimed at providing redress in specific cases of human rights violations. NHRIs may have the power to handle individual cases with the

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1 Website: <http://www.institut-fuer-menschenrechte.de>.

2 UN General Assembly Resolution 48/134 of 20 December 1993; last affirmed by Resolution 64/161 of 18 December 2009.

3 The *Paris Principles* are contained in the annex to GA Resolution 48/134, supra note 2.

aim of resolving a dispute, e.g. through mediation or by bringing cases before domestic or international courts. If an NHRI is not empowered to handle individual cases, it may afford protection through investigation, public reports, or intervention in court proceedings by submitting expert opinions (“amicus curiae briefs”).<sup>4</sup>

NHRIs must be independent of the state – institutionally, personally, and financially. For this reason, the *Paris Principles* require a legal basis for NHRIs and transparent and participatory appointment procedures for its members and staff that with the aim of ensuring pluralism within the institution. Moreover, the state must provide for adequate funding; its financial control must be carried out in a way that does not interfere with the independence of the NHRI.

Compliance with the *Paris Principles* is verified through an accreditation process carried out through the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC), the organization created by NHRIs worldwide. The SCA, in which NHRIs from all world regions are represented, performs a rigorous peer review. Upholding the strict standards of the *Paris Principles* is a collective interest that is, in fact, taken seriously and not subject to political horse-trading within the SCA. Only NHRIs fully in compliance with the *Paris Principles* are accorded “A”-status.<sup>5</sup> Institutions that either do not have a broad mandate or whose independence is not fully guaranteed receive “B”-status. NHRIs must apply for re-accreditation every five years. In case of alleged serious non-compliance with the *Paris Principles* that endanger the NHRI’s independence, the SCA undertakes a special review. The UN recognize the seriousness of the accreditation process by granting observer status and special participation rights to A-accredited NHRIs only. Thus, the “A”-status confers a strong mark of reliability upon an institution.

### 3. The Work of the German Institute for Human Rights

#### 3.1 General

The German Institute for Human Rights has been granted A-status since 2002. It is organized as an association under private law, thus excluding government interference with its internal decision-making. It is headed by a director and a deputy director, who are elected by the board of trustees after a public call for applications. In line with the Institute’s character as an academic institution, the board has come to choose scholars as directors after the short initial phase.<sup>6</sup> For the position of deputy director, it selected human rights activists with broad management experience.<sup>7</sup> The board of trustees consists mainly of representatives of civil society, including academia, with a proven record of human rights related work, two members of the

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4 For a comparison of the powers of NHRIs see AICHELE 2010, <http://www.institut-fuer-menschenrechte.de>; and European Agency for Fundamental Rights (FRA), National Human Rights Institutions in the EU Member States, 2010, <http://fra.europa.eu>.

5 Information on the accreditation status of NHRIs is available at <http://nhri.ohchr.org>.

6 From 2003 to 2009, the director was the philosopher Prof. Dr. Heiner BIELEFELDT, who now holds the chair for human rights at Nuremberg University. In 2010, he was also appointed Special Rapporteur for freedom of religion or belief by the UN Human Rights Council. Since 2010, the present author, a law professor specialized in international, European and constitutional law, holds the position of director of the Institute.

7 From 2001 to 2010, the deputy director was Frauke SEIDENSTICKER, former secretary-general of the Swiss branch of Amnesty International. Since 2011, the position is held by Michael WINDFUHR, formerly head of the human

federal parliament and – without voting rights - representatives of the financing ministries (justice, foreign affairs, development cooperation, labour and social affairs). Presently, the institute has about 40 staff members. The academic staff presently consists of jurists, political scientists, ethnologists, pedagogues, historians, and academically-trained social workers.

### *3.2 Territorial Focus: Germany*

As a national institution, the Institute focuses on Germany, i.e. the conduct of German authorities inside and outside Germany. The larger part of its work relates to human rights questions within Germany; its international department deals with the promotion of human rights through Germany's foreign policy, development cooperation, and defence policy. For this reason and like most other NHRIs, it did not set up units dealing with particular countries or regions; however, in the course of its activities, it gained knowledge and developed expertise for specific countries, such as the Middle East and North Africa (MENA region). All departments regularly interact with the international and European level, e.g. with UN human rights bodies, the European Agency for Fundamental Rights (FRA), or the Council of Europe.

### *3.3 Research-Based and Human Rights-Oriented Policy Advising*

In order to promote human rights in Germany, the Institute provides policy advice geared towards the full implementation of Germany's human rights obligations. It does so on request or on its own initiative. In addition, it promotes the ratification of international and European human rights treaties by Germany. Finally, it aims at strengthening human rights institutions in Europe and on the international level.

As an independent institution, the Institute considers itself a bridge between the government and civil society, i.e. human rights NGOs, academia, charitable, faith-based or migrant organizations, or self-help groups, to name but a few. It fulfils this role by serving as a forum bringing together these different actors and by challenging them to engage in a human-rights oriented interaction on specific topics. These topics may relate to issues on which the Institute has produced a scholarly publication or intends to do so, or to recommendations addressed to Germany by international bodies. Through a rigorous internal review, the Institute aims at the highest academic quality of its publications. At the same time, the publications aspire at bridging theory and practice. For this reason, they regularly include recommendations on how to implement international legal requirements into national law and practice. In this respect, the Institute also serves as a bridge between the international and the national level. It is this focus on practical implementation and its expertise in international human rights law based on first-hand experience in, and contribution to the work of human rights bodies that distinguish the Institute from academic institutions.

Moreover, publications only serve as a starting point for intensive policy advising activities. Its addressees are government officials, members of parliament on the federal or state level, and civil society actors. In all these activities, the objective is to familiarize these actors with the normative requirements set up by international or European human rights law. As an independent and hence politically neutral institution, the Institute must refrain from taking a

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rights team of *Brot für die Welt* ("Bread for the World"), the development cooperation agency of the Protestant churches in Germany.

stance where human rights law leaves leeway to the State. However, it has to clearly delineate the limits that human rights set to the state's actions and to call attention to the non-fulfilment of human rights obligations through law or practice.

Beyond human-rights based policy advising, the Institute aims at promoting a public debate on human rights issues in Germany and at strengthening the cooperation among human actors in the country.

### 3.4 International Cooperation

The Institute's particular expertise in human rights law is continuously reinforced by its cooperation with human rights bodies of the United Nations, the European Union, the Council of Europe, and the Organisation for Security and Cooperation in Europe (OSCE). The Institute not only follows their activities closely, but also contributes to them, e.g. by participating in the negotiation of new human rights treaties, by submitting statements in monitoring procedures such as the state reporting procedure under UN human rights treaties or the Universal Periodic Review of UN member states by the UN Human Rights Council. Moreover, the Institute engages in an exchange with human rights bodies on their interpretation of human rights, as expressed in the treaty bodies' General Comments or General Recommendations.<sup>8</sup>

In addition, the Institute cooperates with other national human rights institutions, especially in Europe, e.g. through statements or third-party interventions in cases before the European Court of Human Rights. A particular strength of the Institute is its expertise in EU law, including the formal and informal policy-making procedures within the EU. Beyond the EU, the Institute is active in the Arab-European dialogue of NHRIs, and it has carried out training projects for NHRIs in the MENA region or the CIS states. Here, it can draw also on the expertise gained by its staff through membership in the European Committee on the Prevention of Torture (CPT) and the Advisory Council of the UN Human Rights Council.

### 3.5 Human Rights Education

In line with the *Paris Principles*, another major task of the Institute is human rights education. It develops training materials for professional groups, state authorities, and schools, and it conducts train-the-trainer seminars to spread the knowledge about how to use these materials. Human rights trainings for journalists and librarians are offered by the Communications Department and the Institute's Library, respectively. As the national focal point for human rights education, the Institute helps human rights instructors share knowledge and experience, and it aims at ensuring high standards for human rights education in Germany by engaging both with human rights educators in Germany and by participating in the pertinent work of international organizations, in particular the UN, the FRA and the Council of Europe. The Institute also carries out advanced education seminars for experts in development cooperation, police and the armed forces.

A persisting challenge is to incorporate human rights education into professional and academic curricula. In this respect, one often encounters a lack of insight into the cross-cutting nature of human rights, which reach beyond the law-applying professions into, e.g., medical

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<sup>8</sup> The Institute also published a German translation of these documents so as to promote their use in Germany, see *Deutsches Institut für Menschenrechte* 2005.

and care professions, economics (as the area concerning the realization of economic and social rights), or sociology (as the discipline through which information indispensable for the effective implementation of human rights for all societal groups can be generated).

### *3.6 Information and Documentation*

Finally, National Human Rights Institutions are mandated with providing information and documentation on human rights. For this reason, the Institute's human rights library is open to the public and thus permits access to publications often not available at other libraries in Berlin or beyond. Specialized library staff provides additional information and research support on request. The library also makes accessible international human rights documents as well as electronic publications through its website.

### *3.7 Examples of Thematic Areas of Work*

Since its founding, the Institute has worked towards upholding fundamental human rights standards and their applicability to security policy and anti-terrorism measures. It has defended the absolute character of the prohibition of torture, which was called into question in diverse fields. Examples are common military operations and cooperation with the secret service and police of other states, viz. with respect to combating Al-Qaida in Afghanistan, and a highly publicized criminal law case in Germany concerning the threat of torture by a deputy police chief against a presumed kidnapper of a child aiming at saving the child's life.

Another major area of the Institute's activity is protection against discrimination: The Institute developed numerous proposals for a coherent policy of non-discrimination and worked towards a better understanding that freedom and equality are not conflicting concepts, but that non-discrimination serves to ensure for everyone freedom of action. The Institute has focused particularly on racism and is promoting a modern understanding of racism, as developed in particular by sociology and critical race studies and taken up by international human rights bodies. According to this understanding, racism denotes not only theories based on alleged genetic features, but all approaches by which immutable and inescapable characteristics are ascribed to a group with the result of excluding these persons as "others" from equally belonging to the collective "us."

Because of the fundamental importance of the prohibition of discrimination and the principle of equal enjoyment of all human rights, the full inclusion of persons with disabilities has become an important issue for the Institute. It supported the process of drafting a UN Convention on the Rights of Persons with Disabilities, which replaced the medical, deficit-oriented concept of disability by a social concept focusing on barriers set up by society through structures and prejudices. In 2008, the Institute was denoted the independent monitoring body for the implementation of that Convention in Germany. It engages in dialogue with state and academic institutions on how to generate data on the situation of persons with disabilities in Germany. It also contributes to establish human rights-based indicators for the realization of the rights of persons with disabilities.

The Institute contributed significantly to the recognition, in Germany, of economic, social and cultural rights as rights, i.e. as individual legal entitlements, not just state obligations or mere aspirations, a view long held by constitutional scholars. These human rights require a change of perspective: Their realization must be an integral part of economic and social

policies and hence determine legal and policy priorities in these areas. They constitute the normative yardsticks for the relationship between a patient and medical or care personnel, or for determining the conditions of social security benefits and the calculation of their amount.

#### 4. National Human Rights Institutions and National Academies of Sciences

National Human Rights Institutions and National Academies of Sciences share the task of providing independent policy advice. They differ in their focus, but both may well benefit from increased interaction. NHRIs have expertise in human rights under international law, European law, and German constitutional law, which they could contribute to the deliberations of National Academies. Conversely, National Academies often bring together more disciplines than are represented within NHRIs and thus can contribute additional scientific knowledge to the work of the latter. Moreover, NHRIs are engaged in a continuous exchange with political actors, and National Academies may well benefit from these lines of direct communication with the competent governmental departments. Thus, both types of institutions will be able to even better realize their responsibility towards society – to ensure that scientific knowledge is available to policy-makers in a way that enables them to take decisions serving the realization of human rights.

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Prof. Dr. iur. Beate RUDOLF  
Director  
German Institute for Human Rights  
Zimmerstraße 26/27  
10969 Berlin  
Germany  
Phone: +49 30 25935923  
Fax: +49 30 25935959  
E-Mail: info@institut-fuer-menschenrechte.de