



# **Implementation of ICESCR in Germany: Parallel Report of Forum Menschenrechte (Territorial Obligations)**

complementing the 6<sup>th</sup> Report of the  
Federal Republic of Germany on the  
International Covenant on Economic,  
Social and Cultural Rights (ICESCR)

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## 1. Preface

Forum Menschenrechte (FMR) is a network of more than 50 German non-governmental organizations (NGOs) who are committed to better and more comprehensive protection of human rights – worldwide, in specific regions of the world, individual countries as well as the Federal Republic of Germany. The Forum was established in 1994 following the International Human Rights Conference in Vienna.

In its Parallel Report, FMR only deals with a number of select problem areas. This report does not claim to address all the problems resulting from the implementation of the International Covenant on Economic, Social and Cultural Rights in Germany. The Parallel Reports by other organizations should also be referred to for complementary information.

The following organizations of Forum Menschenrechte contributed to the Parallel report on territorial obligations:

- BAfF: Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer (German Association of Psychosocial Centers for Refugees and Victims of Torture); [www.baff-zentren.org](http://www.baff-zentren.org)
- FIAN Deutschland: FoodFirst Information and Action Network; [www.fian.de](http://www.fian.de)
- ISL: Interessenvertretung Selbstbestimmt Leben in Deutschland e.V. (Disabled Peoples International – DPI Germany); [www.isl-ev.de](http://www.isl-ev.de)
- GMS: Gemeinschaft für Menschenrechte im Freistaat Sachsen (Association of Human Rights in the Free State Saxony); [www.gms-dresden.de](http://www.gms-dresden.de)
- JUMEN: Juristische Menschenrechtsarbeit in Deutschland (German NGO for Legal Human Rights Work in Germany); [www.jumen.org](http://www.jumen.org)
- KOK: Bundesweiter Koordinierungskreis gegen Menschenhandel (German NGO network against trafficking in human beings); [www.kok-gegen-menschenhandel.de](http://www.kok-gegen-menschenhandel.de)
- LSVD: Lesben- und Schwulenverband Deutschland (Lesbian and Gay Federation in Germany); [www.lsvd.de](http://www.lsvd.de)
- NC: National Coalition Germany – Network for the implementation of the UN Convention on the Rights of the Child; [www.netzwerk-kinderrechte.de](http://www.netzwerk-kinderrechte.de)
- NMRZ: Nürnberger Menschenrechtszentrum (Nuremberg Human Rights Center); [www.menschenrechte.org](http://www.menschenrechte.org)
- tdh: terre des hommes; [www.tdh.de](http://www.tdh.de)
- AG Kinderrechte im Forum Menschenrechte (FMR Working Group on the rights of the Child)

## **Salvatorian Clause**

The statements and demands expressed in this report are supported by the NGOs sustaining the report according to their respective assignments and objectives. The participating NGOs are united by the aim of a joint report from the perspective of civil society. Notwithstanding, not all of the participating NGOs are able to support every single opinion and recommendation expressed here.

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## 2. Application of the Covenant in German courts (NMRZ)

**Article of ICESCR:** General issue

**Concluding Observations of the previous report:** Recommendation No. 7

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory Note*

1. In its state report, the Federal Government claims that "... it is possible for parties to German court proceedings to expressly invoke international conventions before the court at any time. The court may also draw on these conventions directly in interpreting national law or closing any legal loopholes."<sup>1</sup> However, the International Covenant on Economic, Social and Cultural Rights (ICESCR) receives little attention from the German courts – apart from legal proceedings dealing with the legitimacy of student fees, which took place during the period 2006 to 2010. In the specialized legal databases (juris), only very few cases can be found in which – often upon the initiative of the plaintiff – reference is made to the ICESCR. Admittedly, the small number of court cases can be partially attributed to the well-developed labor and social law system in Germany, which make invoking the ICESCR appear unnecessary. It is also the result, however, of the lack of familiarity on the part of the judges and lawyers with the provisions of the ICESCR as well as the *General Comments* and *Concluding Observations* of the *Committee on Economic, Social and Cultural Rights*. As far as the courts actually invoke the ICESCR in their decisions, these are not always appropriately interpreted. Occasionally, ESCR in general are viewed as not being directly applicable, even where discriminatory offenses are involved.<sup>2</sup>

### *Recommendations*

2. We recommend that the Committee urges the State party to

- provide an overview of the cases in which German courts are invoked the ICESCR in further reports,
- take further measures to ensure the provisions of the Covenant are applied before national courts, including by raising awareness of the treaty obligations among judges, lawyers and other officials involved in law enforcement,
- take full account of the justiciability of the treaty provisions in judicial training. It should avoid any *a priori* assumption that treaty provisions are not capable of being applied by courts without further elaboration (self-executing).

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<sup>1</sup> UN Doc. E/C.12/DEU/6, 16 March 2017, para. 10

<sup>2</sup> Pls. refer to the Federal Social Court ruling of 15.10.2014

### **3. Ratification of the Optional Protocol to the ICESCR (NRMZ)**

**Article of ICESCR:** General Issue

**Concluding Observations of the previous report:** No. 36

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

#### *Explanatory Note*

3. In its state report, the government claims that: “Given the Covenant’s far-reaching implications, the process of examining its ratifiability is a complex task and is not yet complete”.<sup>3</sup> However, for many years now, Federal Governments have been pointing out that ratification is undergoing intensive examination – but without having brought the examination procedure to a close. Since the adoption of the UN Optional Protocol, respective announcements with almost identical wording are to be found in all the Federal Government’s human rights reports (2010, 2012, 2014, 2016) as well as the Federal Government’s human rights action plans attached thereto (2010-2012, 2012-2014, 2014-2016, 2016-2018). According to the coalition agreement, the current government aims at ratifying the Optional Protocol. In view of the fact that the State Party has accepted the communication procedures of other UN human rights treaties that include economic, social and cultural rights, the state party should overcome any objections regarding the ratification of the OP.

#### *Recommendation*

4. We recommend that the Committee urges the State party to ratify the Optional Protocol to the ICESCR in a timely manner.

### **4. Hate Crime Legislation: LGBTQI\* (LSVD)**

**Article of ICESCR:** Art. 2 (2)

**Concluding Observations of the previous report:** -/-

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 8

**Reply to the List of Issues:** Para. 35ff.

#### *Explanatory Note*

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<sup>3</sup> UN Doc. E/C.12/DEU/6, 16 March 2017, para 14.

5. The Lesbian and Gay Federation in Germany (LSVD) has long demanded improvements to hate-crime legislation. In 2015, a reform came into force with the amendment of Section 46 (2) Sentence 2 of the Criminal Code (“Strafgesetzbuch”, StGB). The amendment’s aim was to ensure that hate motivation would play a greater role in determining penalties, and that public prosecutors would examine perpetrators’ hate motives better and earlier in investigations. We welcomed the objectives pursued by the amendment, also the fact that an express reference is made in the Criminal Code to racist motivation. However, the Federation was also strongly critical of the fact that other forms of hate crime are treated only as “other hate-motivated grounds”. The LSVD considers the omission of homophobic- and transphobic-motivated crime from the amended Section 46 (2) Sentence 2 of the Criminal Code to be a deliberate, structural exclusion. Offenders who make hate-motivated attacks on LGBTIQ\* persons are aiming to drive them out of the public space and render them invisible. We regret that the Government invisibilized homophobia and transphobia in the wording of the law. Massive criticism of this selective approach was voiced in the expert hearing on the draft bill in the Bundestag Committee on Legal Affairs. Unfortunately, in March 2015 the Federal Government and the Bundestag parties in the government ignored the objections of experts and of civil society organizations.

6. It is urgently required for Section 46 (2) Sentence 2 of the Criminal Code to explicitly reference LGBTIQ\*-hostile motives. The same also applies for the concurrent amendment of No. 15 of the Instructions on Criminal Procedure and Administrative Fines (“Richtlinien für das Strafverfahren und das Bußgeldverfahren”, RiStBV). Our experience shows that if homophobic and transphobic hate crime are not expressly cited in the law, little attention is paid to these grounds in investigations by police and public prosecutors, and therefore also in criminal proceedings. A mention in the explanatory memorandum to the law will effect little change. There are also fears that education and training of the police and judiciary – which is eminently important – will fail to engage appropriately with manifestations of hate crime that are not explicitly referenced in the law. We see a comparable problem in the crime of incitement to hatred against certain groups (Section 130 of the Criminal Code). This section expressly highlights national, racial or religious groups or groups defined by their ethnic origins as potential targets. LGBTIQ\* persons are not mentioned, nor are people with disabilities. There are very few cases in which LGBTIQ\*-hostile incitement has led to a conviction under Section 130 of the Criminal Code. Here also, further clarification is required.

### *Recommendations*

7. We recommend that the Committee urges the State Party to

- further improve hate crime legislation and expressly include hate crimes committed on the bases of sexual orientation and gender identity and

expression and sex characteristics in Section 46 (2) Sentence 2 of the Criminal Code,

- make express reference to LGBTIQ\* persons, and also to persons with disabilities, as possible victims in the law on incitement to hatred against certain groups (Section 130 of the Criminal Code).

## 5. National Action Plan: LGBTIQI\* (LSVD)

**Article of ICESCR:** Art. 2 (2)

**Concluding Observations of the previous report:** -/-

**List of issues in relation to the 6th periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory Note*

8. In July 2016, the LSVD, together with the Trans\* Federal Association BVT\* (Bundesvereinigung Trans\*) and many other civil society organizations, presented the “Cornerstones for Extending the National Action Plan against Racism to include Homophobia and Transphobia”. It is important that **measures to combat hostility against lesbian, gay, bisexual, trans\*, inter\* and queer people are not isolated** – instead, they should be adopted in the context of preventing and combating other manifestations of hostility against particular groups.

9. With the “National Action Plan Against Racism – Positions and Measures for Tackling Ideologies of Inequality and Related Discrimination”, presented in May 2017, the Federal Government passed up on the opportunity to extend the anti-racism action plan to cover homophobia and transphobia.

10. The plan adopted by the Federal Government is not forward-looking or sustainable. In many instances, it is no more than a review packaged in euphemistic terms. It marginalizes LGBTIQ\* by its title alone, fails to offer any specific measures and remains non-committal. The LSVD and BVT\* therefore view this as a disappointing breach of the coalition agreement, which pledged to expand the “National Action Plan against Racism, Xenophobia and Anti-Semitism” to cover homophobia and transphobia. Given current developments within society, the need for such an addition appears even more pressing. Religious fundamentalists, right-wing populists and the extreme right are mounting an energetic and increasingly well-networked attack to continue to deny LGBTIQ\* persons equal rights and opportunities, and to drive them out of the public space. LGBTIQ\*-hostile attitudes and actions can be encountered far beyond this spectrum – also in the very middle of society. Structural and institutional barriers still stand in the way of full participation of LGBTIQ\* persons in society, preventing LGBTIQ\* individuals from fully asserting and enjoying their human rights. Especially in a changing society, with an increasingly



globalized economy and the challenges of immigration, there is a need to continually re-affirm fundamental human rights in everyday life, such as the prohibition of discrimination and the right to equal treatment regardless of sex, age, religion, and social affiliation, the presence of disability, sexual orientation, or gender identity.

### *Recommendations*

11. We recommend that the Committee urges the State Party to

- present a sustainable National Action Plan that effectively counters homophobia and transphobia and, in particular, provides clear targets with defined timeframes, tenable self-commitments by state authorities, and appropriate resources to prevent and combat homophobia and transphobia.

## **6. Leased Labour (GMS/NMRZ)**

**Article of ICESCR:** Art. 6, 7

**Concluding Observation of the previous report:** -/-

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 11

**Reply to the List of Issues:** Para. 58ff.

### *Explanatory Note*

12. The number of leased workers has significantly increased during the past few years. According to the Federal Labour Office (Bundesagentur für Arbeit) there was an average of around 1 million leased workers between July 2016 and June 2017. Leased workers have been proven to earn considerably less than permanent employees. Additionally, their risk of becoming unemployed again is much higher.

13. Due to the 2017 reform of the employee lending law (“Arbeitnehmerüberlassungsgesetz”, AÜG), the hiring business in principle has to guarantee similar working conditions and payment both to leased workers and to permanent workers. However, exceptions are possible. For instance, in the first nine months of employment, the hiring business can deviate from the principle of equal pay. Since approximately three quarters of leased workers work continuously less than nine months in the same company, they do not benefit from the equal pay rule.

14. At the same time, the AÜG reform prohibits in principle that one and the same leasing worker of one and the same temporary employment agency works longer than 18 months with one and the same hiring company. It is obvious that this regulation can easily be undermined by exchanging different leased workers on the same working place. This contradicts the law’s aim to prevent the substitution of permanent workers with leased workers.

15. The new regulation, thus, does not solve either the problem of unequal treatment or of discrimination of leased workers or the problem of substitution of permanent workers with leased workers.

#### *Recommendations*

16. We recommend that the Committee urge the State Party to

- take further measures in order to effectively implement the principle of “equal pay for equal work” for leased workers,
- take further measures in order to reduce the number of leased workers and to create permanent working contracts.

## **7. Low labour participation of women with disabilities (ISL)**

**Article of ICESCR:** Art. 6 in conjunction with Art. 2 (2)

**Concluding Observations of the previous report:** Recommendation No. 17

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 10

**Reply to the List of Issues:** Para. 48ff.

#### *Explanatory Note*

17. As women and girls with disabilities are subject to multiple discrimination (CRPD, Art. 6) they are often excluded from the labour market. Data from 2009 (Mikrozensus 2009) indicate that the labour force participation rates of women with disabilities are significantly lower than those rates of women without disabilities and of men with disabilities. Therefore it is not sufficient to provide data referring to the participation of persons with disabilities without disaggregation by sex. And it is not sufficient to provide data of disabled woman and men who are employed: more crucial are the labour force participation rates because only these figures indicate the severe disadvantages of disabled women in the labour market.

#### *Recommendations*

18. We recommend that the Committee

- urges the State Party to take appropriate measures towards an inclusive labour market, especially to create employment opportunities in accessible workplaces, in particular for women with disabilities
- and, especially, calls on the State Party to provide labour force participation rates of men with disabilities, of women with disabilities, of men without

disabilities and of women without disabilities as well as all data reflecting the situation on the labour market disaggregated by sex.

## **8. Low labour participation of persons with disabilities (ISL)**

**Article of ICESCR:** Art. 6

**Concluding Observations of the previous report:** Recommendation No. 17

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para.10

**Reply to the List of Issues:** Para. 48ff.

### *Explanatory Note*

19. Although there is a mandatory employment system in Germany that obliges employers to employ persons with severe disabilities, the number of obliged employers who employ not a single person with severe disabilities is increasing. Nowadays, more than 40.000 obliged employers are acting against the law.

### *Recommendation*

20. We recommend that the Committee urges the State Party to increase the compensatory levy up to an average monthly wage for obliged employers who don't employ one single man or woman with severe disabilities.

## **9. Increasing number of employees in sheltered workshops (ISL)**

**Article of ICESCR:** Art. 6-8 in conjunction with Art. 2 (2)

**Concluding Observations of the previous report:** Recommendation No. 17 in conjunction with the CRPD Concluding Observation No. 50 (b)

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 10 (c)

**Reply to the List of Issues:** Para. 51ff.

### *Explanatory Note*

21. Ca. 300.000 persons with disabilities are working in sheltered workshops with increasing tendency. They do not get the legal national minimum wage and they do not have the same workers' rights as other working persons in Germany.

### *Recommendation*

22. We recommend that the Committee requests the State Party to phase out sheltered workshops by enforceable exit strategies and timelines.

## **10. Equitable access to land for farmers (FIAN)**

**Articles of ICESCR:** Art. 7, 11

**Concluding Observations of the previous report:** -/-

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory note*

23. It is increasingly recognised that land governance in Europe and Germany has a human rights dimension.<sup>4</sup> One issue in this regard is the high level of concentration of land in the hands of a few. Despite the fact that an overarching aim of Germany's land policy is the support for a fair land distribution ("breite Eigentumsstreuung"), land concentration is high and further rising. This impedes the enjoyment of economic, social and cultural rights – especially for members of smaller family farms and young prospective farmers.

24. Since its last reporting to the Committee in 2010, the overall number of farms in Germany dropped from 299,100 to 269,800.<sup>5</sup> 10 percent or 29,300 farms had to be closed, whereby almost exclusively smaller farms were affected (28,170).<sup>6</sup> Today only 1,4 percent of the working population is active in agriculture. Moreover, entering into farming becomes almost impossible for young prospective farmers due to rapidly rising land and land rental prices, among others. In only 13 years the price for farmland in Germany increased by 143 percent.<sup>7</sup>

25. Of special concern are efficacious public policies that are biased towards support for larger farms, especially the EU Common Agricultural Policy (CAP). Farm subsidies are dominantly based on their size: the larger, the more subsidies. This discriminates small scale farmers and supports land concentration, as highlighted

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<sup>4</sup> See for example the European Parliament resolution of 27 April 2017 on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers (2016/2141(INI)): "...whereas access to land is essential for the realisation of a number of human rights, and has an impact on the Charter of Fundamental Rights of the European Union" or the Concluding observations concerning the fourth periodic report of Belgium to the CESCR, which states: "The Committee is concerned by reports of difficulties encountered by small farmers, especially young farmers, in Belgium, which can impede their enjoyment of economic, social and cultural rights (art. 11)."

<sup>5</sup> Data from 2010 to 2017. Statistisches Bundesamt, at <https://www.destatis.de>. In addition, a large, not quantifiable share of farms below 5 hectares is excluded from the statistics.

<sup>6</sup> Less than 50 hectares

<sup>7</sup> Data from 2003 to 2016. BMEL (2018): Daten und Fakten, p.6

among others by a resolution of the European Parliament.<sup>8</sup> This has also a dramatic impact on territorial cohesion, one of the main principles of the Lisbon Treaty.

26. The Committee explains that “Each signatory state to the International Covenant on Economic, Social and Cultural Rights (ICESCR) must create a favorable environment as far as it is possible, including trade policy, so that domestic small farmers can market their produce and earn an income sufficient to feed their families”.<sup>9</sup> Since 2012 states have profound guidance on human rights based land governance through the unanimously adopted UN Land Tenure Guidelines.<sup>10</sup> This also refers to the issues addressed above for the German context.

27. While discussions have indeed been started in the Government on issues like impacts of the influx of non-agricultural investors, related gaps in existing legislation to regulate legal persons (e.g. companies and holdings; so called “share deals”) and the discrimination of young prospective farmers, Germany is still hesitating to apply the UN Land Tenure Guidelines for its land policy.

28. Since 2006 land policy in Germany has been transferred from the national to the federal state level. Article 28 of the Covenant defines that all of its provisions “shall extend to all parts of federal States without any limitations or exceptions”.

### *Recommendations*

29. We recommend that the Committee calls on the State party to

- undertake a careful assessment – in close consultation with the most affected groups of the population and based on the UN Land Tenure Guidelines – of existing policies, programs and budget allocations with a view to **identify and address existing legal and economic discrimination** of small scale family farmers’ and young prospective farmers’ access to land. This should include:
  - Human rights based assessment of the impact of CAP and the renewable energy law (“Erneuerbare-Energien-Gesetz”), among others, on access to land;
  - Assessment of legal gaps related to regulating land transaction of legal persons and their possibility to evade land transfer tax (“Grunderwerbsteuer”),
- undertake systematic and public **monitoring** (observatory) of larger land transactions, with a special view to assess land concentration processes,
- undertake a broad and inclusive process to establish a common vision for a “good agrarian structure” in line with the UN Land Tenure Guidelines.

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<sup>8</sup> See Footnote 4

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights (CESCR) (1999): *General Comment 12, The Right to adequate Food (Art. 11)*. Twentieth Session. Para.25, emphasis in the original.

<sup>10</sup> See <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

## **11. Sanctions in the unemployment support system under Book II of the Social Code (GMS, NMRZ)**

**Article of ICESCR:** Art. 9 and 11

**Concluding Observations of the previous report:** -/-

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory Note*

30. In 2018, an average of around 4.2 million people who are able to work get unemployment benefit II (the social financial security for employable persons). As regulated in Book II of the Social Code, the unemployment benefit II amount can be reduced by 30-100%. The reasons are manifold: declining an “acceptable” job offer (which itself was critically commented on by the CESCR with respect to possible violations of Articles 6 and 7 of the ICESCR), missing appointments at the job centre or refusing to participate in (often ineffective) qualification programs. Young unemployed persons have to face even stricter sanctions. If they fail to fulfil the requirements of the authorities just twice, they may lose all their entitlements to unemployment benefits, including benefits for housing. In 2017, job centres imposed 953,000 sanctions against 421,000 persons. 34,000 persons did not get benefits at least for three months. Given the fact that unemployment benefit II is low, such sanctions may severely compromise basic needs (such as healthy food, health, housing, participation in society) and, thus, are not in compliance with Articles 9 and 11 of the ICESCR. Reliable data about the living conditions of persons affected by these sanctions do not exist. The Social Welfare Court in Gotha has considered the sanctions as unconstitutional. In 2016, it referred the matter to the Federal Constitutional Court, where the file is still pending.

### *Recommendations*

31. We recommend that the Committee urges the State Party to

- analyse the effects of sanctions on the concerned persons,
- lift sanctions against people getting unemployment benefits II, particularly if these sanctions increase situations of poverty and lead to homelessness.

## **12. Children living below the poverty line (terre des hommes)**

**Article of ICESCR:** Art. 9 and 11

**Concluding Observations of the previous report:** Recommendation No. 24

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory Note*

32. Despite the strong economic situation, child poverty is on the rise in Germany. In 2015, 19.7 percent of children in Germany,<sup>11</sup> about 2.55 Mio., under the age of 18 were growing up in families that were receiving social assistance for long-term unemployment (“Hartz IV”). Compared to 2014, this is an increase of 0.7 percent.<sup>12</sup> The rise of child poverty can be partly attributed to the high number of minor refugees who have come to Germany in 2015.

33. Children with only one parent or two or more siblings are more likely to be affected by poverty.<sup>13</sup> Many children whose parents receive state support under Book II of the Social Code (SGB II / Hartz IV) live in a permanent state of poverty.<sup>14</sup> In 2015, 57 percent of the youngsters aged seven to 15 years affected by poverty have received state support under SGB II for three years or more.<sup>15</sup>

34. Growing up in poverty is linked to many problems – lack of education, dropping out of school, academic failure, lack of family protection, neglect, physical and psychical violence, deficits in language development and the fear of living on the fringe of society. Children living in poverty are underequipped with material goods and socially disadvantaged. In its state report, Germany indicates that "a comprehensive institutional network of legal provisions and individual legal rights tailored to various personal circumstances and needs is already in place".<sup>16</sup> From a civil society perspective, the existing system is not sufficient to address the problem of child poverty adequately.

### *Recommendations*

35. We recommend that the Committee urges the State party to

- develop a comprehensive Action Plan to secure the livelihood of children sustainably and combat child poverty. The Action Plan needs to be well-

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<sup>11</sup> WSI Verteilungsmonitor: WSI-Kinderarmutsbericht: Kinderarmut & Flüchtlingskrise, Hans-Böckler-Stiftung, April 2017; Menschenwürde ist Menschenrecht, Bericht zur Armutsentwicklung in Deutschland 2017, Der Paritätische Gesamtverband, p.20.

<sup>12</sup> WSI Verteilungsmonitor: WSI-Kinderarmutsbericht: Kinderarmut & Flüchtlingskrise, Hans-Böckler-Stiftung, April 2017

<sup>13</sup> WSI Verteilungsmonitor: WSI-Kinderarmutsbericht: Kinderarmut & Flüchtlingskrise, Hans-Böckler-Stiftung, April 2017, p.8

<sup>14</sup> Menschenwürde ist Menschenrecht, Bericht zur Armutsentwicklung in Deutschland 2017, Der Paritätische Gesamtverband, p.26.

<sup>15</sup> Armutsfolgen für Kinder und Jugendliche: Erkenntnisse aus empirischen Studien in Deutschland, Bertelsmann Stiftung, September 2016, p. 7

<sup>16</sup> UN Document E/C.12/DEU/6, 16.03.2017, para. 162.

resourced and accepted by society. The sectors of labour, family and education as well as health, social politics, urban development and housing need to interact for this purpose,

- ensure that single parent, parents who receive state support and refugee families have access to labour that enables them to secure their livelihood and to prevent them from falling below the poverty line.

### **13. Family reunification (NC, JUMEN, terre des hommes)**

**Article of ICESCR:** Art. 10 in conjunction with Art. 2 (2)

**Concluding Observations of the previous report:** -/-

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 18

**Reply to the List of Issues:** Para. 88ff.

#### *Explanatory Note*

36. In 2015, the number of persons seeking protection from prosecution and war increased worldwide – also in Germany. This led to a set of new laws, including a law suspending the right to family reunification for persons with subsidiary protection status (section 104 para. 13 of the German Residence Act [“Aufenthaltsgesetz”, AufenthG]) which had just been introduced in August 2015. Six months after entering into force, the law was suspended twice consecutively (in March 2016 and in March 2018).

37. In 2015, 1.707 persons were granted subsidiary protection status (0.6% of all decisions on asylum); in 2016, 153.700 persons were granted this status (22%), and 98.074 in 2017 (16.3 %).<sup>17</sup> For the period from March to December 2016, 2.662 of these individuals were unaccompanied minors. Initially, the law has stipulated a suspension of family reunification for two years (until March 2018) which has been extended to July 2018. In June 2018, a new law on family reunification (“Familiennachzugsneuregelungsgesetz”) has been passed by the German Bundestag that grants the authorities the discretion to issue visas for the family of persons living in Germany with subsidiary protection status from August 2018 onwards. The number of visa issued is limited to 1.000 per month.

38. However, in many cases the families have already been separated for almost three years. Successfully applying for a status due to hardship (§22 Residence Act - “Härtefallklausel”) is rare: in practice, since the right to family reunification was

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<sup>17</sup> BAMF: Das Bundesamt in Zahlen 2017, p.35.



suspended in 2016, only 160 visas have been granted out of 1.768 applications that were submitted between.<sup>18</sup>

39. As to siblings of unaccompanied minors with refugee status: For under-aged siblings who want to enter the country together with their parents, subsistence and accommodation must be guaranteed for the whole family. This leads to an increased number of rejected applications for family reunification, as the minor residing in Germany is not able to guarantee subsistence and accommodation. At the same time, the conditions for accepting minor siblings as cases of hardship are very strict (e.g. a minor sibling currently living alone abroad is an insufficient reason). In practice, parents often have to decide whether they reunite with their child in Germany or stay with their child or children in the country in which they currently reside. Consequently, families are not reunited.

### *Recommendations*

40. We recommend that the Committee urges the State party to

- enable family reunification swiftly for persons with subsidiary protection status and not limit the numbers of visas to 1.000, as provided for by the new Residence Act §36a. The right to family unity must not be limited by a contingent,
- implement a transparent procedure for applications under the new law as well as due to hardship and to establish a practical procedure to appeal a rejection,
- ensure family reunification in accordance with the jurisprudence of the European Court of Justice, including cases in which the unaccompanied minor in the host country turned 18 years during the procedure,
- enable family reunification for siblings of unaccompanied minors with subsidiary protection together with their parents in a swift and un-bureaucratic way and adapt the law accordingly,
- ensure the consequent application of a clear and transparent procedure to determine the best interest of a child as part of the assessment for family reunification.

## **14. Violence against women (KOK)**

**Article of ICESCR:** Art. 10

**Concluding Observations of the previous report:** Recommendation No. 23

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<sup>18</sup> Answer of the Federal Ministry of Foreign Affairs to the questions of the party “Die Linke” for the month of March 2018, 05.04.2018.

## List of issues in relation to the 6<sup>th</sup> periodic report of Germany: -/-

### Reply to the List of Issues: -/-

#### *Explanatory Note*

41. In Germany, the occurrence of different forms of violence against women is still high. The most recent study for Germany, conducted by the European Union Agency for Fundamental Rights (FRA) in 2015, showed that 35% of women in Germany have experienced physical and/or sexual violence at least once.<sup>19</sup>

42. Access to justice and protection in cases of violence against women can generally be difficult, it is however particularly a problem for women with irregular residence status or those with a residence permit depending on their spouse. For women staying in Germany irregularly it is hardly possible to report violence perpetrated against them to the police. In doing so, they risk that their personal data is being shared with immigration authorities, which might trigger immigration enforcement procedures. In Germany, the obligation of public authorities to report undocumented migrants is provided in article 87 section 2 German Residence Act.<sup>20</sup> A separation of access to services and justice from immigration law enforcement by a so-called “fire wall”, as recommended by the European Commission against Racism and Intolerance (ECRI) only partially exists in Germany.<sup>21</sup>

43. Also for women, whose residence status depends on their spouse, looking for protection from domestic violence can be difficult. A minimum of three years of marital cohabitation is prerequisite in order for the spouse to obtain an independent right of residence. This precondition can be waived in order to avoid particular hardship, for example domestic violence. However, to prove the violence is often very difficult and fear of losing the right to remain in the country stops women from reporting the violence.

44. Germany has no comprehensive system in place to identify particularly vulnerable groups among refugees, such as victims of sexual violence or trafficking, which are often female. This may lead to much needed support during the asylum procedure not being offered.

45. In addition, women in reception centers for refugees are insufficiently protected from violence. In July 2016 a joint initiative agreed on „Minimum Standards for the Protection of Children, Adolescents and Women in Refugee Accommodation

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<sup>19</sup> European Union Agency for Fundamental Rights (2014): Violence against women – an EU-wide survey; <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>

<sup>20</sup> German Residence Act, Art. 87; [https://www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p1537](https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p1537)

<sup>21</sup> European Commission against Racism and Intolerance (2016): ECRI General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, Recommendation 3 and 4; <https://reliefweb.int/sites/reliefweb.int/files/resources/REC-16-2016-016-ENG.pdf>

Centres“.<sup>22</sup> While this is an important step, the problem remains that these standards are not binding and do not guarantee sufficient protection.

### *Recommendations*

46. We recommend that the Committee

- encourages the State party to update the national plan of action against violence against women and to implement specific measures to end violence against women and increase access to protection particularly among some ethnic groups and refugee women,
- encourages the State party to implement measures to allow for individuals without regular residence status to report crimes committed against them and to improve access to protection, without risking immigration enforcement procedures.

## **15. Recording of homelessness (NRMZ)**

**Art. of ICESCR:** Art. 11

**Concluding Observation of the previous report:** Recommendation No. 25

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 21

**Reply to the List of Issues:** Para. 116

### *Explanatory Note*

47. Today, there are still no official federal statistics available as to the question of homelessness, including the number of persons without shelter (people living in rough). The only available estimations are provided by an NGO, namely the Federal Working Community for Assistance to Homeless People (Bundesarbeitsgemeinschaft Wohnungslosenhilfe, BAG W). This NGO estimates that the number of homeless people (including those living temporarily with family and friends due to lack of housing) raised from 284.000 (2012) to 420.000 (2016). Out of them approx. 52.000 are living in rough. According to the estimation, there are another 440.000 recognized refugees without permanent housing. In sum, 860.000 persons in Germany have no proprietary rights or rights according to tenancy law securing their own living space – a figure, which is on the rise. BAG W estimates that 2018 1.2 Mio. persons lack permanent housing in Germany.

48. In the previous concluding observations (2011), the Committee reiterated its recommendation calling on the State party to report on the extent and causes of

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<sup>22</sup> Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2016): Minimum Standards for the Protection of Children, Adolescents and Women in Refugee Accommodation Centres; <https://www.bmfsfj.de/blob/jump/121372/minimum-standards-for-the-protection-of-refugees-and-migrants-in-refugee-accommodation-centres-data.pdf>

homelessness and to take concrete measures to combat it.<sup>23</sup> In the list of issues related to the sixth report of Germany, the State party was asked to indicate whether it intends to consolidate information on homelessness, including the scale and reasons for homelessness.<sup>24</sup> According to the government reply, currently, “the Federal Government is examining ways to introduce nationally standardised statistics on the lack of permanent accommodation.” Furthermore, it provides grant-based funding to research projects on the “origins, course and structure of the lack of permanent accommodation and strategies for prevention and eradication”.<sup>25</sup>

### *Recommendation*

49. We recommend that the Committee urges the State party to intensify its measures to record the extent and causes of homelessness in Germany immediately.

## **16. Affordability of housing / social housing (NRMZ)**

**Art. of ICESCR:** Art. 11

**Concluding Observation of the previous report:** Recommendation No. 25

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** Para. 21

**Reply to the List of Issues:** Para. 108pp.

### *Explanatory Note*

50. “In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases”.<sup>26</sup> Due to high rent increases, for an increasing number of persons, particularly in German metropolitan areas, housing costs are at such a level that the satisfaction of other basic needs is compromised. Taken measures to protect tenants against high rent increases are not effective up to now. At the same time, “there is general lack of sufficient publicly-subsidised and affordable privately financed housing for home-seeking households on a low income” (government reply to the List of Issues).<sup>27</sup> Despite all efforts, the promotion of social housing is insufficient as compared to the needs. As a result, the waiting period to obtain social housing is increasingly long.

### *Recommendations*

51. We recommend that the Committee urges the State party to

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<sup>23</sup> UN Doc. E/C.12/DEU/CO/5, 12. July 2011, para. 25

<sup>24</sup> UN Doc. E/C.12/DEU/Q/6, 13 October 2017, para. 21

<sup>25</sup> UN Doc. E/C.12/DEU/Q/6/Add-1/31721, para. 116

<sup>26</sup> CESCR, General Comment No. 4, para 8 c

<sup>27</sup> UN Doc. E/C.12/DEU/Q/6/Add-1/31721, para. 114

- take effective measure to protect tenants against unreasonable rent levels and rent increases,
- urgently intensify its measures to overcome the lack of affordable housing, particularly for low-income households.

## **17. Electricity costs and electricity cuts (NRMZ)**

**Art. of ICESCR:** Art. 11

**Concluding Observation of the previous report:** -/-

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory Note*

52. The availability of household energy is a fixed component of the right to adequate housing. A recent study of the Consumer Organization of North Rhine Westphalia (“Verbraucherzentrale Nordrhein-Westfalen”) shows, however, that recipients of unemployment benefit II and social assistance (“Hartz IV”) does not regularly get enough money to cover the household energy costs. As an effect, poor households pay their energy costs at the expense of satisfying other basic needs (healthy diet etc.) or they place themselves in debit with energy providers. Debts (over 100 Euro) may lead to energy cuts by public or private energy suppliers. According to the Federal Network Agency (Bundesnetzwerkagentur), in 328.000 cases in 2016 households unable to cover the energy costs were disconnected from electricity. (In six million cases, households were threatened with such power shutdowns). This may affect not only the right to adequate housing, but also other human rights (e.g. food, health, education), particularly in households with children, single parents and elderly people.

### *Recommendations*

53. We recommend that the Committee urges the State party to

- ensure that the standard payment under Hartz IV covers the real household energy costs,
- intensify its advisory services for debtors of energy costs,
- avoid/stop power shutdowns for households, especially those affecting vulnerable groups.

## 18. Accommodation for refugees (NRMZ)

**Art. of ICESCR:** Art. 11 in conjunction with Art. 2(2)

**Concluding Observation of the previous report:** Recommendation No. 13

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

### *Explanatory Note*

54. According to coalition agreement, asylum seekers may be obliged to stay in reception centers for a maximum duration of 18 months, eventually in the Federal States (Länder) even up to 24 months, although families with minor children generally 6 months. Such a long stay in large reception centers may have a negative impact on human rights, particularly of women and children (e.g. rights to housing, privacy, education). This is even more true since no uniform human rights standards are applied with regard to the accommodation for asylum seekers throughout Germany. In 2017, co-ordinated by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSJ) and UNICEF, numerous associations and NGOs collaborated on the very first initiative to compile “Minimum standards to protect refugees in refugee domiciles”. However, these standards are non-binding. Finally, according to the government, there have been 1906 offenses against refugees and 313 offenses against refugee accommodations in 2017, including arson and bomb attacks in some cases.<sup>28</sup>

### *Recommendations*

55. We recommend that the Committee urges the State party to

- ensure that Asylum seekers leave large reception centers as soon as possible,
- ensure that uniform human rights standards are applied with regard to the accommodations if asylum seekers are obliged to stay in large reception centers,
- intensify its measures both to combat and to prosecute violence against refugees and refugee accommodations.

## 19. Access to mental health care for asylum seekers (BAfF)

**Art. of ICESCR:** Art. 12 in conjunction with Art. 2 (2)

**Concluding Observation of the previous report:** Recommendation No. 13

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<sup>28</sup> BT Drs. 19/889, 23 February 2018

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany: Para. 22**  
**Reply to the List of Issues: Para. 123ff.**

*Explanatory Note*

56. Different surveys show that between 20 and 40 percent of asylum seekers and refugees are suffering from a posttraumatic stress syndrome.<sup>29</sup> These people are often in urgent need of psychological treatment. But yet, access to psychological treatment in Germany is very problematic and particularly burdensome for asylum seekers.

57. Within the first 15 months of their stay in Germany, asylum seekers have a very restricted access to German health care system, including psychological treatment. Health care is limited to acute illness and pain.<sup>30</sup> Additionally, health care can be granted in cases where certain treatment is indispensable.<sup>31</sup>

58. In most parts of Germany, the social administration is responsible for deciding upon applications for psychological treatment. There are no binding time frames for the administration to process the application and therefore often it takes longer than 6 months<sup>32</sup> to receive a decision – in 33 % of the cases the decision will be negative.<sup>33</sup> The rate of rejection is 10 times higher than for members of the health insurance system and often show legal deficiencies. Appealing against the negative decision can take another 6 months or even longer. Within this time frame, asylum seekers often do not receive the treatment that is needed.

59. One of the main obstacles is the absence of a law that implements Art. 21, 22 and 19 II of the EU Reception Conditions Directive (2013/33/EU).<sup>34</sup> Many traumatised asylum-seekers and their special reception needs are not assessed and therefore they do not receive the appropriate mental health care even if needed. When deciding upon applications for psychological treatment, authorities often do not take these rules into consideration.

60. Furthermore, even where the psychological treatment is granted, the coverage of cost for interpreters is not secured. This applies to asylum seekers,<sup>35</sup> but also after

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<sup>29</sup> Alpak et al. (2015): Post-traumatic stress disorder among Syrian refugees in Turkey: a cross-sectional study. *International Journal of Psychiatry in Clinical Practice*, 19 (1), 45–50.

<https://doi.org/10.3109/13651501.2014.961930>; Niklewski, Richter & Leheld (2012): *Abschlussbericht im Verfahren Az.: Z2/0272.01-1/14 für „Gutachterstelle zur Erkennung von psychischen Störungen bei Asylbewerberinnen und Asylbewerber - Zirndorf“*. Nürnberg: Klinikum Nürnberg.

<sup>30</sup> § 4 Asylum Seekers Benefits Act (ASBA).

<sup>31</sup> § 6 ASBA.

<sup>32</sup> § 88 Social Courts Act.

<sup>33</sup> BAfF, Versorgungsbericht – Zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland, 3rd edition, 2016, page 119. [http://www.baff-zentren.org/wp-content/uploads/2017/02/Versorgungsbericht\\_3-Auflage\\_BAfF.pdf](http://www.baff-zentren.org/wp-content/uploads/2017/02/Versorgungsbericht_3-Auflage_BAfF.pdf)

<sup>34</sup> Directive 2013/33/EU of the European Parliament and of the council of 26 June 2013: Laying down standards for the reception of applicants for international protection (recast).

<sup>35</sup> The costs could be covered according to § 6 ASBA, but are often rejected.

the positive conclusion of the asylum process and the membership in a health insurance. Health insurances reject 100 % of applications for interpreters.

#### *Recommendations*

61. We recommend that the Committee

- requests the State Party to grant asylum seekers access to the health insurance system without restrictions,
- urges the State Party to implement the provisions for vulnerable persons according to the Reception Conditions Directive,
- encourages the State Party to pass a law on coverage of interpreter's costs.

## **20. High rates of pupils with disabilities excluded from inclusive education (ISL)**

**Article of ICESCR:** Art. 13 in conjunction with CRPD Art. 24

**Concluding Observations of the previous report:** Recommendation No. 29, No. 34 in conjunction with the CRPD Concluding Observation No. 46

**List of issues in relation to the 6<sup>th</sup> periodic report of Germany:** -/-

**Reply to the List of Issues:** -/-

#### *Explanatory Note*

62. In Germany there exists a well-developed system of special schools. With the ratification of the CRPD Germany has obliged itself to an inclusive education system. Although the inclusion rates are increasing the percentage of pupils that are excluded from regular schools remains steadily high.

#### *Recommendations*

63. We recommend that the Committee urges the State Party to develop immediately a strategy to realize a high-quality inclusive education system, to dissolve the special schools and to ensure the required financial resources.