

## **List of Issues**

**submitted by the Alliance for Economic, Social and Cultural Rights in  
Germany**

**in response to the 5<sup>th</sup> Periodic Report of the Federal German  
Government on the implementation of the**

**International Covenant on Economic, Social and Cultural Rights**

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## **The following organisations are members of the Alliance for Economic, Social and Cultural Rights in Germany:**

- Amnesty International
- Ban Ying e.V.
- Behandlungszentrum für Folteropfer Berlin (bzfo)
- BPE e.V. (Federal Organisation of (ex-) Users and Survivors of Psychiatry in Germany)
- Berliner Rechtshilfefonds Jugendhilfe e.V. (BRJ)
- Bund demokratischer WissenschaftlerInnen (BdWi)
- Deutscher Gewerkschaftsbund (DGB)
- Diakonisches Werk der EKD/Brot für die Welt
- FIAN Deutschland e.V.
- Forum Menschenrechte
- Frauenhauskoordinierung e.V.
- Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde (GBM)
- Gewerkschaft Erziehung und Wissenschaft (GEW)
- GEW Landesverband Bayern
- Humanistische Union e.V.
- Intersexuelle Menschen e.V.
- IPPNW Deutschland
- KOK e.V. (Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess)
- Lesben- und Schwulenverband in Deutschland (LSVD) e.V.
- Unter Druck – Kultur von der Straße e.V.
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**All statements and claims expressed in this report are supported by the organizations involved according to their respective assignments and aims.**

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## **Preface**

The organisations mentioned above have formed an ad-hoc alliance to write a parallel report to the information submitted by the government of Germany in its 5<sup>th</sup> state report on the current status of implementation of the economic, social and cultural rights in Germany. The alliance is currently collecting information from different organisations for the planned report. The attached list of questions is a first product from that alliance. It is based on a collection of inputs from different organisations. The final parallel report is still in progress and may include additional themes and information.

The current text relates to each article of the Covenant giving a short summary of major facts followed by a list of potential questions.

## **Article 2 and 3**

### **Non-discrimination**

The Government of Germany has adopted a law to combat discrimination (AGG = Allgemeines Gleichbehandlungsgesetz), which focuses only on eight reasons for discrimination, excluding for example discrimination based on language, national or social origin, on reasons of difference in wealth at birth or passed on political and social opinion.

#### **Question**

- How is Germany making sure that the non discrimination law (AGG) will cover all forms of discrimination, including discrimination based on language, national or social origin, on reasons of difference in wealth at birth or passed on political and social opinion, such as membership in trade unions etc.?

### **Gender Pay Gap**

In its state report the government reports that on average women are earning 22 percent less than men for comparable jobs.

#### **Question**

- What does the German government intend to undertake in order to combat the very obvious “Gender Pay Gap” in Germany?

### **Protection of trafficked persons**

The federal government has undertaken welcomed steps towards the protection of trafficked persons including trafficked women. Nevertheless, essential measures and clear regulations are still missing. In the area of education and training of government authorities, there is a lack of compulsory training and clear concepts that deal with the topic of human trafficking in all its forms. Care and support for trafficked persons, including their accommodation, is another area in which there are significant deficiencies and ambiguities regarding where financial responsibilities lie.

Numerous gaps are particularly found in the regulations regarding the right of residence of trafficked persons originating from countries outside of the EU, and there is no uniform manner in granting residence permits and government subsidies.

Non EU nationals as well as persons without legal residence status have the right according to the law to invoke the courts and to claim their rights e.g. to wage and compensation. In actuality, access to the courts is almost impossible. One reason is the lack of residence permits which are required for such a proceeding. In addition, the courts are required to inform the Foreigners' Authority if, during the proceedings, they learn that the plaintiff does not possess a residence permit.

### **Questions**

- Which steps is the government taking at the federal level to ensure adequate care and support as well as the protection of the rights of trafficked persons through sustainable support structures, clear financial responsibilities and the safeguarding of specialized counseling centers?
- Which measures – particularly with regard to the duty of the courts to report illegal residency status as well as missing residence permits for civil and labor court proceedings – will the Federal Government take at the federal level in order to regulate the enforcement of the rights of trafficked persons of any form of trafficking to claim e.g. outstanding or insufficient wages in a labor court?

### **Freedom of movement of asylum seekers**

Asylum seekers are substantially restricted to the area where they are placed to live. They are not allowed to leave the living area (city council of region) without former permit and often it is not easy to get such permits. This situation hinders them from meeting with family members or friends living outside the allowed area, and they cannot visit doctors or treatment facilities outside. Some federal states ("Länder") liberalized their rules in October 2010. Civil society groups are demanding to end these substantive forms of restrictions of the freedom of movement (Residenzpflicht) for asylum seekers.

### **Question**

- Which steps is the German government planning to take in order to make sure that asylum seekers have free access to public services, including cultural offers, without discrimination?

## **Article 6 / 7 / 8**

### **Minimum wages**

The government of the Federal Republic of Germany is ignoring serious problems in its report regarding the implementation of its contractual obligations according to Article 7. A guaranteed minimum income to cover living costs is completely unresolved and necessary changes are not evident. The attempts to solve the problems of equalizing the income and living conditions in the east and west of Germany, which committees of the UN have repeatedly urged Germany to do, have been unsatisfactory because

they are not realistic and are merely palliating the symptoms. The level of unemployment is still close to double as high in the east as in the west. While there are also hotspot areas in the west, the per average data is clear. Current developments are going in opposite directions and the government's will for change is not obvious.

### **Question**

- Which reasons does the German government give, in contrast to governments in other countries, to defeat the demand for general minimum wages, thus contributing to the equalization of living conditions in all federal states in Germany?

### **Irregular migrants**

Irregular (so called "illegal") immigrants and other "people without papers" often face very exploitative forms of employment, particularly in the construction industries, as farm workers, working as domestic workers and in the sex-industry. A problem for people working in the "shadow economy" is that particularly people without papers cannot claim workers' rights in court because courts must then inform the immigration administration about these people and most of them would be sent back to their country of origin.

### **Question**

- What is Germany currently doing to overcome exploitative form of jobs particularly for irregular migrants? Which instruments are available to detect such forms and to help end such exploitation? What needs to be done to offer these people access to recourse in labor rights without the threat of deportation?

### **Right to strike**

Another unsolved problem is the issue of officials' (Beamte) right to strike. The ILO has demanded a change in legislation in Germany several times, but the government has not done anything.

### **Question**

- How is Germany responding to the ILO calls to allow officials (Beamte) the right to strike?

## **Article 9**

### **Social security scheme**

In 2001 the CESCR already voiced its concern in its concluding remarks to Germany that the planned reform of the social security scheme would not adequately serve the

needs of most vulnerable groups. Bureaucratic obstacles often make it hard for many people to gain access to the social security system, e.g. employment center. The application forms are formulated in a difficult language and cannot be easily understood. The centers are understaffed, the waiting time is often very long and a lot of people report that they are sometimes treated like parasites and not as citizens with rights.

### **Questions**

- What is the government doing to reduce the bureaucratic hurdles which complicate or prevent the access to the social security systems in the FRG?
- How is the staff of employment centers etc. (“Jobcenter”), which is in charge of application, examination and granting of the social protection requests, prepared and trained in order to guarantee an implementation of article 9 of the ICESCR?

### **Low-wage labour market**

The income distribution in Germany has become worse during the last years. The percentage of income from regular salaries has gone down compared to the percentage of incomes coming from assets and companies' gains. This is linked to the trend of an increasing number of jobs with low salaries (Niedriglohnsektor). Due to the labor market reforms at the beginning of the decade, there is a trend of replacing regular jobs with low-paid, precarious jobs.

### **Question**

- Which steps is the government taking in regard to the increasing number of full-time employees who are unable to live on their salaries and therefore depend on additional social benefits?

### **Asylum seekers**

Asylum seekers and other refugees who are allowed to stay due to humanitarian reasons (“Geduldete”) do not get social security under the same scheme as Germans do, but rather following a special regulation for asylum seekers (Asylbewerberleistungsgesetz = AsylbLG). The social security level and payments are approx. 38 percent lower than the money paid in the regular social security scheme. The payments of the AsylbLG were fixed in the early nineties and have not been adjusted since. The amount is still fixed in German Marks (DM) instead of Euro in the law. Asylum seekers do not have access to the normal health regulation. During the first 48 months they are only eligible for emergency treatment and not regular health services. For asylum seekers most of the social transfers are given in kind or with vouchers. This can have negative impacts on the access to sufficient and culturally acceptable food.

## **Question**

- How does the state party account for the fact that social benefits for asylum seekers have remained static since 1993 and today fall approx. 38% short of the standard social benefit rate?
- How does the state party make sure that social transfers in kind or with vouchers are cultural acceptable to the recipient?

## **Article 10**

### **Discriminatory policies**

Particularly disadvantaged children, young people and uncommon family constellations, as well as socially marginalised families are largely neglected by the German federal government's family and social policies. There are three examples of the impact of this discrimination:

1. There are no independent ombudsmen for children, young people and families who, due to the particular difficulties of their circumstances, want to avail themselves of legal educational support. Therefore children, young people and families have insufficient opportunities to assert their legal claim to youth welfare services, as they have no information about their legal rights.
2. Same-sex parents are systematically discriminated in terms of founding families. Same-sex couples living in registered partnerships with children are not granted equal rights, so that mainly children and teenagers in so-called rainbow families are victims of discrimination.
3. Refugee children, particularly unaccompanied underage refugee children, are not being guaranteed sufficient protection and support. Deportation detention of underage refugees must be abolished and proceedings appropriate to children must be introduced.

The federal government of Germany is urgently called upon to introduce and advance family and social-political measures so that disadvantaged children, young people and families are guaranteed sufficient and proper protection.

### **Questions**

- What actions is the federal government taking to support independent ombudsmen centres in order to guarantee the legal claims to youth welfare services that children, youth and families have?
- What steps will it take to grant registered partnerships and rainbow families (LGBT families) fully equal rights?

## **Article 11**

### **Calculation of social benefits**

Social assistance is paid after it has been calculated by the employment centers. The income and expenditure of the poorest 15-20 percent of the population serve as a calculation basis for the socio-cultural subsistence level. Vulnerable groups are often households headed by single mothers with children. Approximately 2.5 million children in Germany live below the poverty line. The daily amount of money for meals and drinks is only between 2.76 and 3.68 Euro, depending on the age of the child. In February 2010 the Federal Constitutional Court made clear that the social benefits for children have to be calculated according to children's needs and in the best interest of child. In October 2010 the federal government introduced their new concept, which didn't lead to an increase of the social benefits for children. In addition, many of the payment calculations are done incorrectly by the administration. There is an increasing number of court cases in which affected people challenge the payment calculation. These calculations prove to be wrong (i.e., too low) in one third of the cases when legally challenged in court.

#### **Questions**

- How does the state party justify that it does not calculate the socio-cultural subsistence level according to real living costs, but instead uses a random sample without checking whether the wages of the poorest 15-20 percent of the population are actually sufficient to live of (calculation of October 2010)?
- How can the state party make sure that the social benefits for children are sufficient for an adequate standard of living, especially to ensure the right to food, for every child in Germany without discrimination?
- How does the government explain the high number of inaccurate calculations? What measures are taken to reduce the high rate of flawed calculations?

### **Cancellation of benefits**

For unemployed people social benefits are sometimes fully cancelled for up to three months (cf. Art. 31 SGB II). There are various reasons for this cancellation, e.g. not applying for a job that had been offered.

#### **Questions**

- Is the state party of the opinion that the cancellation of all social benefits (including rent and health insurance) of people who are entitled to receive social benefits are consistent with the state parties obligations that occur from the ICESCR?
- How does the state party ensure that the anchored rights on sufficient food, clothing and accommodation are guaranteed for people who are affected by

the cancelation of all social benefits? (In December, 2009 approx. 10,000 people were affected)

## **Article 12**

### **Coercive psychiatric treatment of people with or without disability**

The Fifth State Report of Germany does not mention the quickly growing number of people in psychiatric treatment. Neither does it take into consideration the rising mortality rate (since 1970) of patients with a psychiatric diagnosis that were treated with antipsychotic medication by coercion or without informed consensus.

The German government is aware of the strategy of the WHO (see p. 58 E/C.12/DEU/5), but considers these issues as part of the responsibilities of the Ministry of Health.

The German government reports further that the population's access to water is secured accross the country (see p. 61 E/C.12/DEU/5), but forgets the small but growing group of people treated with fixation or seclusion, for whom this unrestricted access cannot be secured.

The report on psychiatric coercion of the Bundesverband Psychiatrie-Erfahrener (BPE) e.V. (Federal Organisation of (ex-) Users and Survivors of Psychiatry in Germany) deals with children, adolescents, adults and elderly people. It is primarily concerned with people without disabilities, who are temporarily mentally handicapped or who have been and still are diagnosed wrongly. It is further concerned with people with long term mental disabilities, that they might have additional physical or intellectual disabilities.

In the light of new findings from independent pharmaceutical studies and epigenetics, and considering the high suicide rate and how long-term pharmaceutical treatment probably increases the mortality rate of patients, the medicinal benefit has to be questioned. The current legislation has to be assessed and adapted, alternatives for coercive psychiatric treatment have to be established nationwide.

### **Questions**

- Which measures are being taken by the German government to secure the highest attainable standard of physical and mental health all over the country?
- What does the German government undertake in order to combat the increasing number of mental disorders at workplaces and of unemployed people.

### **Refugees, including people in need of particular protection**

According to the guideline 2003/9/EG of the Council of 27<sup>th</sup> January 2003, the right to health applies particularly to people who are in need of special protection, for example, accompanied or unaccompanied minors, the disabled and elderly, pregnant women, single parents with underage children and people who have suffered torture,

rape or other severe forms of psychological, physical or sexual violence, e.g. traumatized refugees and asylum-seekers. The necessary medical and other assistance should be made available to them. Currently, people who are in need of special protection are not being identified at an early stage, or have not been adequately identified as such in the procedure granting the right to asylum. Medical treatment of refugees is limited to acute or painful disorders according to § 4 AsylLG and to treatments absolutely necessary to the maintenance of health according to § 6. In addition, the psycho-social, medical, psychological counseling and treatment, especially in rural areas is inadequate in the federal states of the former East Germany.

### **Questions**

- What is the Federal Government undertaking to assure that asylum seekers who belong to the vulnerable groups are identified and receive necessary protection, safety and access to healthcare including medical and psychotherapeutic treatment with interpreters when necessary?
- How does the federal government intend to stop that the asylum seeking procedure itself, the social situation during this period and repatriation acts contribute to the worsening of the health condition of vulnerable groups?

## **Article 13**

### **Discrimination in the educational system**

The educational system in Germany has insufficient resources and it promotes ethnical and social segregation. This leads to discrimination on several levels. There is correlation between migrant or social background and educational achievements. The classification process at a very early stage is one example for these discriminatory practices. Another feature is the fact that a lot of migrant students and students with disabilities are taught at special schools. As a consequence, these students face major disadvantages in their living conditions. Among others, the Special Rapporteur on the right to education, Vernor Munoz, made that clear in his report about his visit in Germany in 2006. It is unacceptable that his recommendations are not even mentioned in the Fifth periodic report of Germany to the Committee on Economic, Social and Cultural rights. A detailed assessment of the report of Vernor Munoz is necessary.

### **Question**

- What steps is the German government taking to eradicate discriminatory practices within the educational system and to increase its public expenses for education up to 7% of the gross domestic product, as already decided in 2008?
- How does the German government guarantee that students with disabilities have access to inclusive education?