



GERMANY

**List of Issues – TERRITORIAL OBLIGATIONS
submitted by Forum Menschenrechte**

**in response to the 6th Periodic Report of the Federal German Government
on the implementation of the International Covenant on Economic, Social and
Cultural Rights (ICESCR)**

Berlin, July 2017

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.

The following organizations of the Forum Menschenrechte contribute to the List of Issues 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
- FIAN Deutschland: FoodFirst Information and Action Network; www.fian.de
- ISL: Interessenvertretung Selbstbestimmt Leben in Deutschland e.V. ('Disabled Peoples' International - DPI Germany".); www.isl-ev.de
- GMS: Gemeinschaft für Menschenrechte im Freistaat Sachsen (Association of Human Rights in the Free State Saxony); www.gms-dresden.de
- KOK: Bundesweiter Koordinierungskreis gegen Menschenhandel (KOK - German NGO network against trafficking in human beings); www.kok-gegen-menschenhandel.de
- LSVD: Lesben- und Schwulenverband Deutschland (Lesbian and Gay Federation in Germany), www.lsvd.de
- National Coalition Germany – Network for the implementation of the UN Convention on the Rights of the Child
- NMRZ: Nürnberger Menschenrechtszentrum (Nuremberg Human Rights Center); www.menschenrechte.org
- tdh: terre des hommes; www.tdh.de
- TERRE DES FEMMES; www.frauenrechte.de
- AG Kinderrechte im Forum Menschenrechte (FMR Working Group on the rights of the child): Apart from the member organizations (such as tdh and International Physicians for the Prevention of Nuclear War, IPPNW), guest organizations, such as JUMEN (German NGO for Legal Human Rights Work in Germany, www.jumen.org), also collaborated within the Working Group to compile this List of Issues.

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I. Preface

In its List of Issues below, the Forum Menschenrechte (FMR) only deals with a number of select problem areas. This list 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 Lists of Issues provided by other organizations, with which the FMR has consulted in part, should also be referred to for complementary information.

II. List of Issues – TERRITORIAL OBLIGATIONS

(1) ISSUE: Dissemination of the Concluding Observations (FIAN)

ICESCR: General issue

Concluding Observations of the previous report: Recommendation No. 38

QUESTION:

Please provide information on how the Concluding Observations of the CESCR on the 5th state report have been disseminated and discussed with State officials, the judiciary and parliament.

EXPLANATORY NOTE:

In its state report, the State Party does not report on efforts to disseminate the concluding observations of 2011.

(2) ISSUE: Application of the Covenant in German courts (NMRZ, FIAN)

ICESCR: General issue

Concluding Observation of the previous report: Recommendation No. 7

QUESTIONS:

- Please provide an overview of the cases in which German courts have invoked the ICESCR during the reporting period.
- Are there any examples to prove that German courts recognize the direct applicability of the rights ensuing from the ICESCR?

EXPLANATORY NOTE:

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." However, the UN Covenant on Economic, Social and Cultural Rights receives little attention from the German courts – apart from during 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. The small number of court cases can be partially put down 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*. In 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 (pls. refer to the Federal Social Court ruling of 15.10.2014).

(3) ISSUE: Ratification of the Optional Protocol to the ICESCR (NMRZ, FIAN)

ICESCR: General issue

Concluding Observations of the previous report: Recommendation No. 36

QUESTIONS:

- How much time does the State Party need to examine the possibility of ratification of the Optional Protocol to the ICESCR?
- Which objections does the government raise regarding the ratification of the OP – particularly, 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?

EXPLANATORY NOTE:

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.” 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). In the case of other UN human rights treaties containing ESCR rights (UN Convention on the Rights of Persons with Disabilities, UN Convention on the Rights of the Child etc.), similar communication procedures were accepted.

(4) ISSUE: Homophobia and transphobia, including violence against LGBTI (LSVD)

ICESCR: Art. 2 para. 2

Concluding Observations of the previous report: No recommendation

QUESTIONS:

The most extreme expression of homophobia and transphobia is violence. How does Germany intend to deploy a combined program at federal and state level to prevent and combat hate-motivated acts of violence, and to pass hate crime legislation that does not exclude victims,

but makes explicit reference to homophobia and transphobia in the text of its Criminal Code (Section 46, § 130 StGB [German Criminal Code])?

EXPLANATORY NOTE:

An entire raft of measures to combat homophobic and transphobic acts of violence is necessary, with steps to ensure offenses are recorded more effectively and rendered more visible. Also necessary are prevention measures, appropriate training and professional development in the police force and judiciary, designated contact persons to engage with the concerns of LGBTI in the federal police force, and specific inclusion of homophobic and transphobic motives in hate crime legislation. Homophobia and transphobia must be articulated clearly and penalized in the Criminal Code (Section 46 para 2 StGB). This will raise awareness within the state authorities and provide the victims with greater support. There should be no hierarchy in acts of hostility against specific groups.

(5) ISSUE: Breaking down role stereotypes (LSVD)

ICESCR: Art. 2 para. 2 and Art. 3

Concluding Observations of the previous report: Recommendation No. 16

QUESTIONS:

- How does the Federal Government intend to contribute to eliminating gender stereotypes?
- How should policymakers and legislation be explored to identify the disincentives originating from them?
- How should investigations be carried out to ascertain whether such disincentives potentially contribute to reinforcing gender stereotypes?

EXPLANATORY NOTE:

In Germany, gender-specific role stereotypes persist unchanged. Mainstream views and ideas are still tied to binary gender and are intertwined with other categories of social difference. The media also contribute significantly to upholding traditional gender stereotypes. There is little proactive, sustainable endeavor from government institutions to break down these stereotypes. Instead, a policy of disincentives continues.

(6) ISSUE: Low labor participation of women with disabilities (ISL)

ICESCR: Art. 6 and Art. 2 (2)

Concluding Observations of the previous report: Recommendation No. 17

QUESTIONS:

- The State Party is asked to provide data reflecting the situation on the labor market for persons with disabilities, disaggregated by sex.

- Furthermore, the State Party is asked to report the labor force participation rates of men with disabilities, women with disabilities, men without disabilities and women without disabilities.

EXPLANATORY NOTE:

As women and girls with disabilities are subject to multiple discrimination (CRPD, Art. 6), they are often excluded from the labor market. Data from 2009 (micro census 2009) indicate that the labor force participation rates of women with disabilities are significantly lower than those rates of women without disabilities and men with disabilities. Therefore, it is not sufficient to provide data referring to the participation of persons with disabilities without disaggregation by sex.

(7) ISSUE: Leased labor (GMS)

ICESCR: Art. 6, 7

Concluding Observation of the previous report: No recommendation

QUESTIONS:

- How high is the number of leased male and female workers in the Federal Republic of Germany?
- How does the State Party ensure that neither male nor female leased workers are discriminated against in comparison to regular employees that do the same work - and that their income allows them to live in dignity?

EXPLANATORY NOTE:

The number of leased workers has significantly increased during the past few years. Leased workers have been proven to earn considerably less than permanent employees. Additionally, their risk of becoming unemployed again is much higher.

(8) ISSUE: Right to work, gender pension gap and gender pay gap (LSVD)

ICESCR: Art. 6, 7, 9 and Art. 2 (2)

Concluding Observations of the previous report: Recommendation No 16

QUESTIONS:

- How does the Federal Government intend to ensure that gender-specific discrimination in wages and salaries – a direct impact of which is lower pensions – is eliminated, and that all the requirements of the General Equal Treatment Act are transposed into labor law?
- What is the Federal Government doing to combat the discrimination of lesbians and gays by the church in the role of employer?

EXPLANATORY NOTE:

With regard to access to work, the ICESCR in Article 6 articulates the right to work, which gives everyone the opportunity to earn their living through work which they freely choose or accept, and obliges the States Parties to take all necessary steps to safeguard these rights. Article 7 sets out the right to fair working conditions, in particular, fair wages, and the principle of equal pay for equal work, safe and healthy working conditions, and advancement opportunities.

Owing to the gender pay gap which accompanies them throughout their working lives – and also leads to lower pensions – women are at serious risk of poverty in old age. This lessens opportunities for self-determination and to participate fully in society. Women are potentially doubly affected: By the gender pay gap on the one hand and the pension gap on the other.

The Roman Catholic Church is one of the largest employers in Germany. Many lesbians and gays are employed by the Church. If they wish to marry, they run the risk of having their employment terminated. The legislator must not allow the Roman Catholic Church in its role of employer to remain exempt from the prohibition of discrimination anchored in the Constitution and the General Equal Treatment Act.

(9) ISSUE: Equitable access to land for farmers (FIAN)

ICESCR: Art. 7 and Art. 11

Concluding Observations of the previous report: No Recommendation

QUESTIONS:

Which actions have been undertaken by the State Party to decrease the discrimination against young/prospective as well as smaller/poorer farmers with regard to equitable access to land?

EXPLANATORY NOTE:

It is increasingly recognized that land governance in Europe and Germany has a human rights dimension. One problem is the high level of concentration of land in the hands of a few. Also, despite the fact that one of the overarching aims of Germany's land policy is to support a broad distribution of land ownership, land concentration is still on the rise.

The combination of biased public support for larger farms (e.g. the Federal Renewable Energy Act, common agriculture policy), increased economic pressure due to low farm gate prices (e.g. milk price) and the influx of investment companies/non-farmer investors into the land market strongly supports the drift towards an even more inequitable and discriminatory access to land. Today, only 1.5 percent of the working population is active in agriculture - with the number of people entering farming continuing to drop as it has become almost impossible for young prospective farmers to survive.

(10) ISSUE: Combat poverty in Germany (FIAN)

ICESCR: Articles 9 and 11

Concluding Observations of the previous report: Recommendation No. 21 and 24

QUESTIONS:

- Please provide more detailed information on the German Government's plans to systematically combat poverty in Germany.
- How does the German Government guarantee that its anti-poverty measures are in line with the obligations enshrined in the ICESCR?

EXPLANATORY NOTE:

During the reporting period, poverty rates in Germany remained high despite economic growth. For many years, German welfare organizations, such as "Diakonie" (the social welfare organization of Germany's Protestant churches), and other players, such as child rights organizations, have observed and criticized that those living in poverty have not seen their situation improve, and have presented respective policy proposals. In its sixth state report, the German Government does not mention the on-going debates in Germany. It only states that the number of those at risk of poverty is equivalent to the European average. The question as to why Germany is not doing better in its fight to combat poverty remains unanswered. Poverty affects many different groups of German society. Among them are elderly people, single mothers, migrants, large families and, therefore, children and youngsters in general (see additional question concerning child poverty below).

(11) ISSUE: Children living below the poverty line (terre des hommes)**ICESCR: Art. 9 and Art. 13****Concluding Observations of the previous report:** Recommendation No. 24**QUESTIONS:**

How will the State Party address the rising level of poverty among children and the related problems, especially the lack of access to quality education for all children, school dropout and failure rates, as well as the lack of materials and equipment and social disadvantages?

EXPLANATORY NOTE:

Despite the strong economic situation, child poverty is on the rise in Germany. In 2015, 14.7 percent of children in Germany under the age of 18 were growing up in families that were receiving social assistance for long-term unemployment (Hartz IV). Compared to 2011, this is an increase of 0.4 percent. Children with only one parent or two or more siblings are more likely to be affected by poverty. Many children whose parents receive Hartz IV live in a permanent state of poverty. 57 percent of the youngsters aged seven to 15 years of age affected by poverty have received state support under Book II of the Social Code (SGB II) for three years or more.

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

(E/C.12/DEU/6, 16.03.2017), 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". From a civil society perspective, the existing system is not sufficient to address the problem of child poverty adequately.

(12) ISSUE: Calculation of basic unemployment benefits (FIAN)

ICESCR: Articles 9 and 11

Concluding Observations of the previous report: Recommendation No. 21 and 24

QUESTIONS:

- How does the German Government guarantee the adequateness of basic unemployment and social benefits despite the remaining flaws in the statistical calculation method?
- Which role do the obligations of the ICESCR and its related documents, e.g. the General Comments on the right to adequate food or the right to social security, play in the calculation of basic security benefits?

EXPLANATORY NOTE:

The calculation of basic benefits, which constitute the subsistence level or existential minimum, was re-structured in the Basic Needs Calculation Act (*Regelbedarfs-Ermittlungsgesetz*) in 2011, as part of Book XII of the Social Code. The calculation affects the cost of living of all those that are beneficiaries according to Books II and XII of the Social Code. These beneficiaries include all unemployed persons between the age of 15 and 64 and all those unable to earn an income and who need assistance. The reason for this re-structuring was a ruling of the Federal Constitutional Court in 2010 which not only stated that the method of calculation was not in line with constitutional rights but which also "created" a new fundamental right – the fundamental right to the guarantee of a dignified minimum existence. In its Concluding Observations of 2011, the Committee on Social, Cultural and Economic Rights referred to the Federal Constitutional Court ruling as well as the policy response of the German government. The Committee showed its concern that the new method of calculation of the subsistence level "does not ensure an adequate standard of living for the beneficiaries". The international experts, therefore, urged the State Party "to review the method and criteria applied to determine the level of benefits and to monitor the adequacy criteria regularly (...)". In its state report, the government claims that "The Federal Social Court already reviewed this assessment method in 2012 and deemed it lawful and the FCC confirmed the 2014 annual increase as reasonable and constitutional." However, the government fails to report that the Federal Constitutional Court (FCC) also stated that "This does not mean, however, that the legislature may simply ignore serious objections pointing to actual risks of underfunding and continue to update on the same basis; rather, when carrying out the periodic reassessment of

standard needs, it is required to deal with objections that have arisen in the meantime and correct any inadequate steps in the calculations.¹”

As demonstrated by many civil society and social work players, the existing calculation method does not guarantee an existential minimum which would be enough for an adequate standard of living in Germany. The benefits are not sufficient to fulfill the basic needs of the beneficiaries. Many welfare organizations, unions and self-organized associations for the unemployed – for example the “Alliance for a dignified minimum existence” (*Bündnis für ein menschenwürdiges Existenzminimum*) – are demanding fundamental changes in the calculation method. The main problem is that the calculation is based on a sample survey of the income and expenditure of the lowest income groups in Germany. This already questionable statistical model is then “manipulated” further by cutting certain elements of expenditure out of the calculation. In the end, the final amount of money calculated fails to reflect the actual subsistence level in Germany and disregards the individual needs of those concerned.

(13) ISSUE: Sanctions in the unemployment support system under Book II of the Social Code (FIAN, GMS)

ICESCR: Articles 9 and 11

Concluding Observations of the previous report: No Recommendation

QUESTIONS:

- Please provide information on the number of sanctions applicable to the recipients of unemployment benefits in Germany. This statistical data should also be disaggregated by age group and gender.
- How does the German Government justify the cutting of the subsistence level for regulative reasons in the light of the obligations of the ICESCR?
- How does the Government justify the even stricter sanctions for claimants under 25 years of age in the light of the general human rights principle of non-discrimination and the German General Act on Equal Treatment?

EXPLANATORY NOTE:

As regulated in Book II of the Social Code, the unemployment benefit amount can be reduced by 30-100 % of the basic unemployment benefit. 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 or deadlines at the job center or refusing to participate in qualification programs. Young unemployed people have to face even stricter sanctions. If they fail to fulfill the requirements of the authorities only twice, they may lose all their entitlements to unemployment benefits, even their benefits for housing and heating. They might then only receive non-cash vouchers from the job centers as

¹ BVerfG, Order of the First Senate of 23 July 2014 - 1 BvL 10/12 - paras. (1-149), http://www.bverfg.de/e/ls20140723_1bvl001012en.html

a voluntary service. This “educational measure” must be regarded as a punitive element of the unemployment system in Germany. Such sanctions are not in compliance with Articles 9 and 11 of the ICESCR. Many of those affected, especially young unemployed persons due to the stricter rules applying to them, end up in severe poverty - or even homelessness. Reliable data about what happens to people who have to face 100 % sanctions does not exist. There is only proof that such punishment does not actually have the desired effect on behavior that the legislator intended. Those “sanctioned” do not earn an income faster. On the contrary, many simply drop out of the system of unemployment support completely.

Furthermore, the use of sanctions in different parts of Germany seems to vary severely. In some municipalities, sanctions affect up to nearly 7 % of all beneficiaries, in others the number is well below 1 %. In addition, the average percentage of the reduction differs greatly. This could be an indicator for an arbitrary use of these measures by officials working at the job centers.

(14) ISSUE: Violence against women (KOK, TERRE DES FEMMES, JUMEN)

ICESCR: Article 10

Concluding Observations of the previous report: Recommendation No. 23

QUESTIONS:

- What measures will be taken in Germany to combat all forms of violence against women and girls as a whole, including domestic violence and trafficking in human beings, and to ensure the nationwide protection of women affected by violence?
- To what extent is it taken into account that special measures are required for particularly vulnerable groups, e.g. persons affected by trafficking in human beings, women with disabilities and female migrants and refugees?
- How will Germany systematically examine existing measures throughout the country for their effectiveness?

EXPLANATORY NOTE:

In Germany, the occurrence of different forms of violence against women is still high. A study 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. The last nationwide study on unreported cases from 2004 showed that every fourth woman has experienced domestic violence at least once in her lifetime. Unfortunately, there are no updated figures as data is not collected systematically - apart from police statistics (reported cases).

At federal level, different measures to protect women from violence exist. However, most of the measures to combat violence against women and/or to support persons affected by violence are carried out at the level of the 16 federal states. As a result, the existing support system is structured differently within the individual regions – leading to protection gaps. These gaps are partially pressing as women seeking help are having to be rejected and those affected by individual forms of violence are unable to find specialized support. One example

is Thuringia, where there are no counselling centers for persons affected by trafficking in human beings.

All in all, there is a lack of an overall strategic approach to combat violence against women and a lack of a uniform and adequate funding of the support system. Measures taken to protect women against violence and approaches to support women affected by violence are neither being systematically evaluated nor are they accompanied by a continuous monitoring process at federal level.

(15) ISSUE: Family reunification (National Coalition, terre des hommes, JUMEN)

ICESCR: Art. 10 and Art. 2 (2)

Concluding Observations of the previous report: No Recommendation

QUESTIONS:

- Please provide information on restrictions on family reunification for persons living in Germany, especially for unaccompanied minors with refugee status or subsidiary protection and other persons with subsidiary protection.
- What measures are being taken to ensure that the situation in Germany is in compliance with the principle of non-discrimination and the obligation to ensure the protection of the family?
- How does Germany ensure that unaccompanied minors can reunite not only with their parents, but also with underage siblings that were cared for by the parents?

EXPLANATORY NOTE:

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 restricting family reunification for persons with subsidiary protection status (section 104 para. 13 of the German Residence Act). In 2015, 1,707 persons were granted subsidiary protection status (0.5% of all decisions on asylum); in 2016, 153,700 persons were granted this status (22%). For the period from March to December 2016, 2,662 of these individuals were unaccompanied minors. The law stipulates a suspension of family reunification for two years (until March 2018). However, in many cases, the families have already been separated for more than 2 years. It is possible to apply to be recognized as a case of hardship under the existing regulations ("Härtefallklausel"). However, in administrative practice, no cases of hardship have so far been recognized (as of May 26, 2017).

In October/November 2016, the opposition parties filed a petition to revoke the law restricting family reunification for persons with subsidiary protection status. However, a decision by the German Bundestag on the opposition parties' petition has been repeatedly adjourned and is not possible anymore because of the end of the legislative period (July 2017). The law is supposed to expire in March 2018. The German government is still debating whether to extend or renew the restrictions on family reunification under German law. At the same time, the German government is envisaging engaging in a restriction of family reunification under European law.

As to unaccompanied minors with refugee status: For under-aged siblings who want to enter the country together with their parents, it is requested that subsistence and accommodation are secured for the whole family. This leads to an increased number of rejected applications for family reunification in this context. At the same time, the conditions for accepting minor siblings as cases of hardship are very strict (e.g. insufficient reason: a minor sibling is currently living alone abroad). In practice, parents often have to decide whether they want to reunite with their child in Germany or whether they stay with their child or children in the country they are currently residing.

Another problem is family reunification for 2.000-3.000 persons in Greece who have the uncontested right under the EU Dublin III Regulation to family reunification in Germany, but who are still in Greece waiting for their transfers to Germany even after the six-month deadline according to the Regulation. The delays in transfers will lead to a significant postponement amounting to a de facto denial to family reunification, to integration and to protection of a big number of asylum seekers including unaccompanied minors. There seems to be an arrangement between Germany and Greece, which exact content is not known.

(16) ISSUE: Food insecurity in Germany (FIAN)

ICESCR: Article 11

Concluding Observations of the previous report: No Recommendation

QUESTIONS:

- Please provide information on food insecurity in Germany. The statistical data should be disaggregated by age group and gender.
- What concrete measures is the German Government undertaking concerning the fulfillment of the right to food in Germany?

EXPLANATORY NOTE:

Despite the fact that it is obviously impossible to compare the situation in Germany to that in many countries in the global South, it is by no means self-evident that the right to food is currently being fully implemented in Germany. As the Committee on Economic, Social and Cultural Rights (CESCR) already claimed in its General Comment No. 11 in 1999, the right to food contains much more than the obligation of the states to ensure the mere survival of its residents. It also means that everybody must have access to adequate food without having to choose between existing rights, and that states are obliged to guarantee that no one is discriminated against because of her or his national origin, residential or economic status.

Evidence of the return of food insecurity to Germany is provided by the considerable increase in the number of food banks throughout the country. The most well-known organization running food banks is the "Tafel" organization. The number of food banks run by the "Tafel" has skyrocketed. Around 15 years ago, these food banks only existed in the larger cities; nowadays they can also be found in smaller cities and communities. The number has risen to over 900 and, as the organization claims itself, these banks now provide 1.5 million people with food and drink. Of these people, 25 % are children and youngsters, 53 % people with a

migration background and 23 % older people - also ones who receive a pension. The distributed food is collected from what is left over at a number of supermarket chains and restaurants. Through these activities, the “Tafel” and other food supply organizations have de facto taken on to a major extent the state’s responsibility to guarantee food security for all residents. The right to food is no longer seen as a basic and human right that the state has to guarantee, but has become more a question of the voluntary relief system.

In response to a parliamentary question in 2015², the government stated that the Tafel organizations (food banks) are neither a means of poverty alleviation nor of implementing the guarantee of a dignified minimum existence (which was recognized as a fundamental right by the Federal Constitutional Court in 2010). According to the government, the function of the Tafel organizations is to supplement - not replace - the social guarantees.

(17) ISSUE: Statistical recording of homelessness (NMRZ)

ICESCR: Art. 11

Concluding Observations of the previous report: Recommendation No. 25

QUESTIONS:

- What is the government doing to record the extent and causes of homelessness and lack of shelter in Germany – both in general and disaggregated, e.g. by age, gender, region etc.?

EXPLANATORY NOTE:

Today, there are still no official federal statistics available as to the question of homelessness and the number of persons without shelter. In this context, the government refers to estimates provided by an NGO, namely the Federal Working Community for Assistance to Homeless People. The latter estimates that in 2018, approximately 540,000 people in Germany will have no proprietary rights or rights according to tenancy law securing their own living space – a figure which is on the rise.

(18) ISSUE: Accommodation for refugees (NMRZ)

ICESCR: Art. 11 and Art. 2(2)

Concluding Observations of the previous report: Recommendation No. 13

QUESTION:

- How does the State Party ensure that – despite the competences of the federal states (*Bundesländer*) and municipalities pertaining to providing accommodation for refugees – uniform human rights standards are applied with regard to the accommodation for asylum seekers?
- How many offenses directed at refugee accommodation and those living within are actually officially reported – and what is the State Party doing to combat this?

² <http://dip21.bundestag.de/dip21/btd/18/060/1806011.pdf>

EXPLANATORY NOTE:

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 (non-binding) “Minimum standards to protect refugees in refugee domiciles”. Previously – and depending on the federal state in question – the standards and practices had varied considerably.

The state report provided no information on the question of offenses directed at refugee domiciles and those living within. The right to adequate housing also incorporates the protection of living space, which includes emergency and refugee shelters.

(19) ISSUE: Limited access to health care for asylum-seekers (NMRZ, BAfF)**ICESCR: Art. 12. and Art. 2 (2)****Concluding Observation of the previous report:** Recommendation No. 13**QUESTION:**

How does the State Party justify (also from the perspective of non-discrimination) the restrictions in access to health care for asylum seekers (within the first 15 months) to a level below that included in the catalog of minimum services provided by statutory health insurance organizations?

EXPLANATORY NOTE:

According to the Asylum Seekers Benefits Act (AsylbIG), asylum seekers and tolerated persons only have a right to the treatment of acute illnesses and conditions of pain, vaccinations and medical and nursing care for expectant mothers and new mothers during the first 15 months of their stay. The treatment of chronic illnesses is completely ruled out unless this involves pain or is linked to an acute illness. Additional services may be granted in individual cases when these are crucial to the health of the individual concerned. These decisions are made by the authorities (and by the courts in appeal cases). In practice, medical care is often only granted on a restrictive and reserved basis. However, even in cases where these rules are generously interpreted – which some official bodies and courts aim to do – the level of care is way behind that provided to other social aid beneficiaries. The right to health care matching that provided to those covered by the statutory health insurance schemes only applies once the 15-month period has lapsed. This is further complicated by the lack of support provided to the sick in the form of qualified interpreters.

(20) ISSUE: Access to psychological treatment for asylum seekers (BAfF)**ICESCR: Art. 12 and Art. 2 (2)****Concluding Observation of the previous report:** Recommendation No. 13**QUESTION:**

How does Germany guarantee access to psychological treatment among asylum seekers, including covering interpreter costs?

EXPLANATORY NOTE:

Due to the limited access to the health care system granted to asylum seekers within the first 15 months of their stay in Germany, psychological treatment can only be granted in cases where treatment is indispensable. In most parts of Germany, the social administration is responsible for deciding whether to accept applications for psychological treatment. Due to a lack of regulations limiting the processing times within the social administration (like those that apply to the health insurance organizations), decisions on the applications often take longer than six months. In practice, in 33 % of the cases the applications are rejected – this percentage is 10 times higher than that applying to members of the health insurance system. One of the main obstacles is the absence of a law that enforces Art. 19 II of the Reception Conditions Regulation (2013/33/EU) which grants vulnerable asylum seekers access to essential psychological treatment.

Furthermore, even where psychological treatment is granted, interpreter costs are not necessarily covered. This applies to asylum seekers where the cost of an interpreter may be covered by § 6 Asylum Seekers Benefits Act, but also in cases where the asylum process has been positively concluded and membership to a health insurance scheme granted. Health insurance organizations reject 100 % of the applications to cover interpreter costs. In most cases, the social administration also rejects such applications due to the lack of a binding law.

(21) ISSUE: Right to health – HIV-AIDS (LSVD)

ICESCR: Art. 12

Concluding Observations of the previous report: No Recommendation

QUESTIONS:

- How does Germany intend to ensure that LSBTI have access to gender-appropriate and diversity-aware health care that is aligned to their needs?
- How can social policy be guaranteed to be in alignment with the lives of people with HIV and AIDS and accord them dignity when they become elderly?
- How does Germany intend to commit support to an LSBTI health report and step up research on the health attitudes and health care of LSBTI?
- How does Germany intend to take action against “reversal” or “conversion” therapies in the country?

EXPLANATORY NOTE:

The historical stigmatization and pathologizing of LSBTI, which continues to the present day, has lasting psychosocial impact on those affected. This is especially true for people with HIV who continue to face considerable discrimination and stigmatization. The fields of psychology and medicine, and all individuals, organizations and institutions active in the health care

sector, must engage with LSBTI without prejudice. If LSBTI have to fear negative reactions or even medical violence from their health care providers, this will have a huge negative impact on health care. There has been little study or research into health attitudes and the health care of LSBTI. Reversal and conversion therapies, which are offered mainly by religious fundamentalist organizations, devalue homosexuality and transsexuality and aim to change sexual behavior, sexual orientation or gender identity. These are particularly injurious to young people.

(22) ISSUE: Right to education (LSVD)

ICESCR: Art. 13 and Art. 2(2)

Concluding Observations of the previous report: No recommendation

QUESTION:

How does the Federal Government intend to ensure that appropriate education on different sexual orientations, gender identities and family forms takes place in schools and other educational institutions so that LGBTI* and children from “rainbow families” are spared the experience of early exclusion and discrimination?

EXPLANATORY NOTE:

It is part of the educational remit of schools to prepare children and young people for the diversity of society and to counteract discrimination, including discrimination within the schools themselves. Religious fundamentalists and right-wing populists are mounting a widespread battle, with considerable intensity, to make information about lesbian and gay life taboo within schools and routinely level hate-filled tirades against diversity education. However, engaging with LSBTI issues at school is a fundamental part of educating young people on democracy and human rights. Diversity education must be established in the curricula when planning education within all of Germany’s federal states.

(23) ISSUE: Inclusive education (ISL)

ICESCR: Art. 13 and Art. 2(2)

Concluding Observations of the previous report: Recommendation No. 29 and 34

QUESTIONS:

- Can the State Party explain why the number of pupils who are excluded from the inclusive education system remains at such a high level?
- What strategies is the State Party following with regard to ensuring a high-quality, inclusive education system?

EXPLANATORY NOTE:

Germany has a well-developed system of special schools. With the ratification of the CRPD, Germany confirmed its commitment to an inclusive education system. Although inclusion

rates are increasing, the percentage of pupils that are excluded from regular schools continues to remain high. At the same time, inclusive schools are not being adequately equipped with financial and human resources to be able to guarantee a high-quality education aligned to the needs of those concerned.

(24) ISSUE: Equal opportunities for all levels of education independent of social background (GMS)

ICESCR: Art. 13

Concluding Observation of the previous report: No Recommendation

QUESTION:

Where is the requirement not to leave children from socially-disadvantaged families behind on the road to a good education expressed in educational legislation and the educational policy of the federal states?

EXPLANATORY NOTE:

In Germany's tripartite school system (intermediate, secondary modern and grammar) which follow on from elementary school, many more children from better-situated families are recommended to attend grammar school than from socially deprived families. Such education recommendations at this very early stage in a child's life are linked to a social selection that often decides upon the child's later professional development. Generally, the number of children who drop out from the school system is roughly twice that of those who continue to climb the ladder. Due to an acute shortage of teachers, too little effort is made and too few opportunities available to enable a differentiated promotion and support of children and young people from poorer backgrounds. Educational opportunities at state and communal level are very unequally distributed.

III. Contact

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