



Submission of the German Institute for Human Rights to the Committee on the Elimination of Discrimination against Women (CEDAW) on the occasion of the preparation of a list of issues by the Committee

Berlin, June 2016

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I. Preliminary remarks

The German Institute for Human Rights (GIHR) is Germany's independent national human rights institution. It is accredited under the United Nations Paris Principles (A status). The institute's tasks include policy advice, human rights education, information and documentation, applied research into human rights issues and cooperation with international organisations.

In the following, the German Institute for Human Rights addresses a number of selected fields of implementation that it suggests the CEDAW Committee take up in its examination and take into account in its preparation of a list of issues in July 2016.

The proposals concern those thematic areas related to women's human rights in which the GIHR has worked, gathered information and gained expertise during the past years. They focus on ensuring equal human rights for the most vulnerable among them.

II. Suggested topics to be taken into account for the preparation of a list of issues

1. Protection from gender-based violence in refugee shelters, Articles 2, 5

The rapid rise in the numbers of refugees in the past two years has exposed deficiencies in the protection from violence in refugee accommodations.¹ In 2015, one third of those seeking asylum were female.

Under German immigration law, some asylum seekers and tolerated persons have to live in collective housing, in some cases for multiple years. They are subject to legal restrictions on their freedom of movement there: They are required to live in an initial reception facility for a period of up to six months and are not allowed to leave a certain territory, e.g. a city, without permission from the competent authority (*Residenzpflicht*). For the duration of the asylum procedure, they are not entitled to choose their place of residence freely (*Wohnsitzauflage*). Provisions currently under consideration by Parliament stipulate that even persons who have been formally recognised as entitled to asylum would not be entitled to freely choose their place of residence. Although the legislation in question does provide for exemptions, gender-based violence is not designated as constituting grounds for exemption, either in the legislation itself or in the guidelines for interpreting the laws.

This means that the possibilities available to women to obtain protection in cases of violence, including intimate partner violence, are limited. For instance, a woman who flees during the night to a women's shelter in another city or to relatives in another federal state without first obtaining permission from the authority may be committing an administrative offence. Women who request the immigration authority to reassign them to another, safe shelter may face quite a wait: a reassignment of this kind often requires the approval of two separate authorities, and there is no standardised procedure in place for the authorities to follow in cases involving violence. The competent authorities are not set up to respond to the need to provide protection to women at short notice in such cases.

GIHR recommends that the CEDAW Committee request the State Party to:

explain how it will ensure that women who leave an initial reception facility without the permission from the competent authority in cases of acute or impending violence do not face negative legal consequences,

explain how it will ensure that immigration authorities act swiftly to provide protection in cases of gender-based violence and to reassign women within a few days in a manner providing legal certainty, as well as to explain whether, in the State Party's view, this will require interpretation guidance for immigration authorities.

2. Refugee women's access to the labour market, Article 11

Initial studies on the integration of persons entitled to asylum and recognised refugees have clearly shown that women face particularly great obstacles to social participation in Germany.² One example is the edition of the Federal Office for Migration and Refugees

¹German Institute for Human Rights (2015): <http://www.institut-fuer-menschenrechte.de/publikationen/show/policy-paper-nr-32-effektiver-schutz-vor-geschlechtsspezifischer-gewalt-auch-in-fluechtlingsun/>.

²Worbs, Susanne; Bund, Eva (2016): Asylberechtigte und anerkannte Flüchtlinge in Deutschland: Qualifikationsstruktur, Arbeitsmarkteteiligung und Zukunftsorientierungen. BAMF-Kurzanalyse, Federal Office for Migration and Refugees.

publication *Kurzanalyse* evaluating data reported by 2,805 people from six countries with status as recognised refugees or persons entitled to asylum, approximately one third of whom were women, with a particular focus on the respondents from Afghanistan, Iraq and Syria (1,541 respondents). The majority of the female respondents were married and lived with a husband in one household, frequently together with children. Women from the three countries specified reported considerably lower levels of education and vocational training than men from those countries did. This applies in particular in the case of women from Iraq: 35.1 percent of them had had no schooling and 82 percent had not (yet) acquired any vocational qualification. There was also a significant difference in the extent of economic activity among men and women with status as recognised refugees or persons entitled to asylum. Women were active in the labour market to a far lesser extent (11.5 percent vs. 49.8 percent); this was particularly true for women from the countries at the focus of the analysis, less than 10 percent of the women from each of those three countries were economically active.

GIHR recommends that the CEDAW Committee request the State Party to:

explain what specific measures have been and are being taken to meet the identified needs for promotion with regard to school education and vocational education and training,

what measures are being taken, e.g. childcare, where appropriate single-gender offerings, to ensure that women are genuinely able to take part in relevant programmes and measures.

3. Human trafficking, Article 6

In the past two years, a number of legal and structural measures has been taken to combat human trafficking. Yet collection of data on trafficking in women remains very rudimentary. There are no statistical studies or reliable estimates concerning the real scale of human trafficking in Germany. Collection of data on trafficking in women and girls is currently confined to the criminal justice system. Not even simple quantitative information is available on how the State ensures the rights of the persons concerned – in relation to social or health services, relevant provisions of immigration law or the right to compensation, for instance.

It is not known whether the measures and legislation that have been put in place to protect victims and prosecute criminals have been effective, and if so, to what degree.

The lack of data, criticised by CEDAW on multiple occasions, also forms the context for Germany's legal obligation to establish a national rapporteur or equivalent mechanism in the field of human trafficking under Article 19 of the EU directive on preventing and combating human trafficking. This obligation has yet to be discharged.

GIHR recommends that the CEDAW Committee request the State Party to:

provide information on how it will generate information on the effects of the legislation and measures put in place and whether, where and when a rapporteur or equivalent mechanism for a human-rights oriented monitoring of prevention and combating of human trafficking will be established.

4. Genital mutilation in girls

Female genital mutilation (FGM) became a separate criminal offence in September 2013, with the aim of raising public awareness of the injustice inherent in every act of FGM. However, the reliable statistical data that CEDAW has called for (CEDAW/C/DEU/CO/6, para. 46), which would reveal how many girls and women living in Germany have suffered or at risk of suffering genital mutilation, are still not available.

Despite CEDAW's requests and the more extensive requests from the CRC calling for training on combating FGM to be provided to all relevant professional groups and for further awareness raising and educational programmes and the incorporation of measures aimed at ending FGM within international cooperation programmes, Germany has not acted.

GIHR recommends that the CEDAW Committee request the State Party to:

explain how Germany will fulfil to the repeated, urgent requests from CEDAW and the Committee on the Rights of the Child for data, training, awareness raising and further educational programmes in Germany and for the incorporation of measures within its international cooperation programmes aimed at ending female gender mutilation.

5. Protection from inhuman treatment, harmful practices and violence, and respecting the right of intersex people to self determination

Intersex infants and children, who do not have distinctly male or female sexual characteristics at birth, are often subjected to medically unnecessary surgical procedures or other medical procedures in an attempt to bring their physical appearance in line with the binary gender stereotypes - in the majority of cases with the female stereotype. As a rule, the medical procedures in question are irreversible, and they can cause serious long-term physical and mental suffering. Purely cosmetic or supposedly psychosocial procedures of this kind are performed on intersex children before the children are able to provide their informed consent, solely on the basis of consent issued by those with parental custody, who are acting in the exercise of their duty and right to care for their child under §1626 of the German Civil Code (BGB).³ This occurs despite the fact that the decision involved is a highly personal one that no one can make on another's behalf, and thus one to which a parent cannot consent.⁴ The UN Committee on the Rights of the Child has expressed concern about cases of unnecessary surgical or other medical procedures being performed on intersex children before the children are able to provide their informed consent, most recently in January 2016, in the context of its Concluding Observations on Ireland's periodic reports.⁵ In the absence of the full, free and informed consent of the person directly concerned, these procedures can violate individual rights, including the right to bodily integrity and self determination, as well

³ Krämer/ Sabisch/ Woweries (2016): Varianten der Geschlechtsentwicklung, in Kinder- und Jugendarzt, pp.2248 ff; German Ethics Council (2012): Stellungnahme Intersexualität, pp. 66 ff; Association of Intersexual People (Verein Intersexuelle Menschen e.V.) (2008): Shadow Report to the 6th National Report of the Federal Republic of Germany on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

⁴ This type of limitation of parental custody is not alien to German law: cf. the sterilisation prohibition in §1631c BGB.

⁵ The Committee recommended that the State Party ensure, among other things, that no one be exposed to unnecessary medical or surgical treatment in infancy or childhood, guarantee the physical integrity, autonomy and self-determination of those concerned and ensure that appropriate counselling and support be offered to families of intersex children, [CRC / IRL / CO / 3-4, para. 39/40](#). See also [CRC / C / FRA / CO / 5, para. 47/48](#).

as the right to a life free of torture and abuse and protected from violence and harmful practices; moreover, the risk to the priority of the best interests of the child (Art. 3, Convention on the Rights of the Child / UN CRC) and the risk to the right of children to have their views taken into account (Art. 12 UN CRC) are of no little concern.⁶ Existing or forthcoming recommendations from medical clinicians urging that these procedures be avoided on principle are not legally binding and are not, on their own, suited as a means of ensuring adequate protection in individual cases.⁷

GIHR recommends that the CEDAW Committee request the State Party to:

explain how Germany will ensure that procedures are not performed on intersex children in the absence of their express and informed consent in cases where the procedures are not absolutely necessary from a medical standpoint and can be postponed until such time as the child is able to express its views on the subject and be involved in the decision,

explain what steps will be taken to ensure that parental custody is not given primacy over the child's right to self-determination.

In cases where irreversible procedures were performed in the past, the individuals concerned frequently have no real access to effective remedies, including restitution and compensation. This is in part due to the brevity of the periods prescribed for the assertion of claims, to challenges associated with the provision of evidence and to missing or inaccessible documentation.⁸ In cases where consent has been issued by the persons with custody, no liability or legal duty to pay compensation arises in the first place. To date, it is not clear how such cases should be treated. International human rights and national bodies, such as the German Ethics Council and the Committee of Independent Experts set up by the Federal Anti-Discrimination Agency, have repeatedly issued calls for solutions and proposed ways to address this issue, one of which involves the establishment of a state compensation fund to provide financial assistance as a form of compensation and recognition of the suffering endured.⁹

GIHR recommends that the CEDAW Committee request the State Party to:

explain how Germany will ensure effective access to justice for persons who have been subjected to these procedures and whether Germany will respond to the calls to establish a compensation fund.

⁶ E.g. in [A/HRC/29/23](#), para. 53; see also OHCHR (Sept. 2015): Fact Sheet Intersex, Free & Equal campaign; Council of Europe Commissioner for Human Rights (2015): Human rights and intersex people, issue paper, p. 10.. On Germany with the assessment as inhuman treatment see [CAT / C / DEU / CO / 5, para. 20 ff](#) or [CRPD / C / DEU / CO / 1, para. 37/38. 37/38](#).

⁷ Recommendations such as those of the German Medical Association and the Association of the Scientific Medical Societies in Germany (Arbeitsgemeinschaft der Wissenschaftlichen Medizinischen Fachgesellschaften e.V.), slated for publication in July 2015.

⁸ Successful actions are the exception in this area; only two cases are known: Higher Regional Court of Cologne, judgment of 3 Sep. 2008, ref. 5 U 51/08 and Regional Court of Nürnberg-Fürth, judgment of 17 Dec. 2015, ref. 4 O 7000/11 (not yet final).

⁹ Committee of Independent Experts of the Anti-Discrimination Agency of the Federal Government (2015): Gleiche Rechte – gegen Diskriminierung aufgrund des Geschlechts, pp. 28f.; German Ethics Council (2012): Stellungnahme Intersexualität, pp.164ff; [CAT/C/DEU/CO/5, para. 20ff](#).

6. Elimination of gender based stereotypes in educating (Article 5, Article 10c)

Education plays a key role in the dismantling and elimination of stereotyped concepts of gender roles. This requires the revision of textbooks and school programmes and the adaptation of teaching methods, in addition to appropriate forms of education.¹⁰

School textbooks continue to contain stereotyped assumptions about female and male persons that could restrict the individual possibilities for action and development. Although some progress has been made in the area of the representation in text and imagery of gender diversity in school textbooks, the consistent avoidance of stereotypes, including those of a more subtle nature, has not yet been achieved. The use of gender-inclusive language has not yet been implemented in teaching materials across the board. Overcoming normative ideas about gender also requires an emphasis on individual self-determination and thus that school textbooks also depict other lifestyles, which do not adhere to the binary image of genders, as normality. This has not yet been implemented to an adequate degree. As a rule, gender is construed as a binary category in school textbooks; the existence of trans* and inter* is depicted only sporadically.

The subjects of structural inequality associated with gender stereotypes and sexual diversity, and of the anti-discrimination discourse and normative standards related to gender and sexual diversity are not discussed in a consistent and coherent manner.¹¹

GIHR recommends that the CEDAW Committee request the State Party to:

explain how it will ensure that school children are not confronted with the reproduction of stereotyped gender roles in the classroom but instead learn about gender and sexual diversity and acquire the knowledge and skills that will enable to subject social role expectations to careful scrutiny and to recognise and challenge structural discrimination based on gender or sexual orientation.

7. Reduction of the poverty risk for women (Article 11e)

Women face an increased risk of poverty due to the fact that their careers are frequently interrupted, for instance by responsibilities requiring them to care for children or elderly relatives. Moreover, rising numbers of women are engaged in only part-time work, which, as it reduces the level of the pensions they will ultimately be entitled to, is one reason that they are also increasingly affected by poverty in old age. The fact that childcare services are not yet available in sufficient scope is one underlying factor. The gender pay gap is another. Single mothers, migrant women and women with disabilities are particularly affected by an increased risk of poverty.¹² Persons who have to manage with less than 60% of the median income for the population as a whole are considered to be at risk of poverty.¹³

Women with disabilities engage in part-time work with above-average frequency in Germany, and they receive lower hourly wages than men and women without disabilities in gainful employment. They are more likely to be affected by unemployment and to rely on basic benefits than people without disabilities. The economic activity rate of women with disabilities

¹⁰Cf. CEDAW, Article 10(c).

¹¹ See Bittner, Melanie (2011): Geschlechterkonstruktionen und die Darstellung von Lesben, Schulen, Bisexuellen, Trans* und Inter* (LSBTI) in Schulbüchern. Frankfurt: GEW, p. 75 – 81.

¹² Federal Ministry for Family Affairs Seniors Citizens, Women and Youth (BMFSFJ) (publ.) (2011a): Neue Wege – [Gleiche Chancen. Gleichstellung von Frauen und Männern im Lebensverlauf. Erster Gleichstellungsbericht.](#)

¹³By many, Federal Ministry of Labour and Social Affairs (BMAS) (2015), <http://www.armuts-und-reichtumsbericht.de/DE/Indikatoren/Armut/Einkommensverteilung-Armut/einkommensverteilung-armut.html>.

in 2010 was only 58% (compared to 83% and 75%, respectively, for men and women without disabilities).¹⁴

The risk of poverty associated with retirement age is higher for women than it is for men. In 2013, for instance, 17% of women aged 65 or older in Germany were at risk of poverty, while the figure for men of the same bracket was just under 13%.¹⁵ The difference in retirement provisions is a key factor in this.

GIHR recommends that the CEDAW Committee request the State Party to:

explain what special measures were put in place during the reporting period or are currently under preparation to ensure improved labour market integration and thus to reduce the risk of poverty for women with disabilities, migration women and single mothers,

explain what special measures have been introduced to combat poverty in old age for women with migration backgrounds and women with disabilities.

8. Implementation of the 2030 Agenda for Sustainable Development

The Federal Government adopted the 2030 Agenda for Sustainable Development in September 2015 as a member of the UN General Assembly. It sees itself as a pioneer when it comes to Agenda 2030 implementation and reporting. The Federal Cabinet decided in November 2014 that the existing National Sustainable Development Strategy should constitute a key framework for implementation of the Sustainable Development Goals in and through Germany. To this end, the government is in the process of adapting the National Sustainable Development Strategy by autumn 2016. With regard to development cooperation, the current National Sustainability Strategy only contains an indicator on Official Development Assistance (ODA) as a share of gross national income. It does not yet measure the realisation of women's rights through development cooperation. For the national level, thus far the sustainable development strategy contains an indicator measuring the pay gap between women and men.

GIHR recommends that the CEDAW Committee query the State Party about:

- Indicators: What indicators relating to women's rights have been developed for the National Sustainable Development Strategy and which of the existing Concluding Observations of the Committee are reflected in these indicators?
- Implementation: How and where are data about gender equality that allow progress to be measured made publicly available?
- Reviewing: How are civil society and Federal Parliament (Bundestag) involved in the review of the National Sustainable Development Strategy? In which section of this year's progress report on the National Sustainable Development Strategy will the Committee's earlier Concluding Observations be discussed?

¹⁴ BMAS (2013), Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen. Teilhabe – Beeinträchtigung – Behinderung. Berlin: BMAS, p. 130.

¹⁵<https://www.destatis.de/Europa/DE/Thema/BevoelkerungSoziales/SozialesLebensbedingungen/Altersarmut.html>.

Systematic integration of human rights and gender policy guarantees in development cooperation management, reporting and evaluation

The Federal Ministry for Economic Cooperation and Development (BMZ) has been committed to a human rights approach since 2004 and to gender mainstreaming since the 1990s.¹⁶ Nonetheless, the state party report Germany submitted to the CEDAW Committee contains no information on the extent of implementation or on the status of the systematic integration into the ministry's instruments, procedures and approaches, but instead merely cites random examples of individual projects. According to the 2015 OECD DAC Peer Review,¹⁷ the BMZ currently has only one and one-third full-time equivalent staff dedicated to gender issues. The report goes on to say that the BMZ lacks the management skills, resources and tools necessary to systematically integrate gender equality and other cross-cutting issues and is unable to adequately oversee its implementing agencies or learn from past experiences. The BMZ released its second gender action plan in early 2016, without having made the evaluation of the first plan public.

GIHR therefore recommends that the CEDAW Committee ask the State Party:

how many full-time employees at the BMZ work on human rights and gender issues, and in what ways, what powers these employees have to subject projects to human rights reviews, and where women can turn within the BMZ if their human rights have been violated by projects supported by German development money.

where the human rights and gender impact assessments of individual projects, which are to be performed before the programme begins according to BMZ human rights / gender guidelines, are published,¹⁸ how far in advance of the project start date these assessments must be published and what language versions they are available in.

9. Protection and promotion of the rights of lesbians, bisexual, intersex and transgender people and trans women in development cooperation

Development programmes frequently fail to address the needs of lesbians, bisexual, intersex and transgender people and trans women. HIV/AIDS programmes that include gay men but sideline lesbians, transgender people and trans women serve as one example of this.¹⁹

¹⁶ Federal Ministry Economic Cooperation and Development (BMZ) (2011), "Human Rights in German Development Policy - BMZ Strategy Paper",

http://www.bmz.de/en/publications/archiv/type_of_publication/strategies/Strategiepapier305_04_2011.pdf

Federal Ministry Economic Cooperation and Development (BMZ) (2014), "Gender Equality in German development cooperation - BMZ Strategy Paper",

http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier340_02_2014.pdf

BMZ (2016), "Entwicklungspolitischer Aktionsplan zur Gleichberechtigung der Geschlechter 2016-2020",

https://www.bmz.de/de/mediathek/publikationen/reihen/strategiepapiere/Strategiepapier361_02_2016.pdf

¹⁷ OECD Development Co-operation Peer Reviews: Germany 2015 (2015): http://www.keepeek.com/Digital-Asset-Management/oecd/development/oecd-development-co-operation-peer-reviews-germany-2015_9789264246133-en

¹⁸ Federal Ministry Economic Cooperation and Development (BMZ) (2013), "Guidelines on Incorporating Human Rights Standards and Principles, Including Gender, in Programme Proposals for Bilateral German Technical and Financial Cooperation",

https://www.bmz.de/en/zentrales_downloadarchiv/themen_und_schwerpunkte/menschenrechte/Leitfaden_PV_2013_en.pdf

¹⁹ Andrea Kämpf (2015), "Just head-banging won't work" - How state donors can further human rights of LGBTI in development cooperation and what LGBTI think about it, p. 42, German Institute for Human Rights, <http://www.institut-fuer->

Programmes aimed at preventing gender-based violence do not take these groups into account to any significant degree either.²⁰ The BMZ made commitments to contribute towards the protection and promotion of the human rights of LGBTI in its human rights strategy in 2011,²¹ in its gender concept in 2014,²² and again in its gender action plan in 2016.²³

GIHR therefore recommends that the CEDAW Committee ask the State Party :

what projects, in which countries and to what extent, have specifically supported the needs of lesbians, bisexual, intersex and transgender people and trans women since 2010, and what specific measures are being taken to ensure that the people affected, their organisations and/or civil society organisations that champion the rights of lesbians, bisexual, intersex and transgender people, and trans women locally are involved in the planning, implementation and monitoring of programmes.

[menschenrechte.de/fileadmin/user_upload/Publikationen/Studie/DIMR_Study_How_state_donors_can_further_human_rights_of_LGBTI_in_development_cooperation_and_what_LGBTI_think_about_it.pdf](https://www.menschenrechte.de/fileadmin/user_upload/Publikationen/Studie/DIMR_Study_How_state_donors_can_further_human_rights_of_LGBTI_in_development_cooperation_and_what_LGBTI_think_about_it.pdf)

²⁰ Violence against Women and Girls (VAWG) & World Bank et al. (2015) “Brief on violence against sexual and gender minority women”, pp. 10ff,
http://www.vawgresourceguide.org/sites/default/files/briefs/vawg_resource_guide_sexual_and_gender_minority_women_final.pdf

²¹ Federal Ministry Economic Cooperation and Development (BMZ) (2011), “Human Rights in German Development Policy - BMZ Strategy Paper”,
http://www.bmz.de/en/publications/archiv/type_of_publication/strategies/Strategiepapier305_04_2011.pdf

²² Federal Ministry Economic Cooperation and Development (BMZ) (2014), “Gender Equality in German development cooperation - BMZ Strategy Paper”,
http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier340_02_2014.pdf

²³ BMZ (2016), “Entwicklungspolitischer Aktionsplan zur Gleichberechtigung der Geschlechter 2016-2020”,
https://www.bmz.de/de/mediathek/publikationen/reihen/strategiepapiere/Strategiepapier361_02_2016.pdf