Deutsches Institut
für Menschenrechte

Submission

Parallel Report

by the German Institute for Human Rights to the Committee on the Elimination of Discrimination against Women (CEDAW)

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Contents

1 Preliminary Remarks

The German Institute for Human Rights (GIHR) is the independent national human rights institution of Germany. 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 organizations. It was also specifically mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established monitoring bodies for these purposes.

In the following parallel report, the German Institute for Human Rights addresses a number of selected fields of implementation of women's human rights in and by Germany. The report covers 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.

2 Domestic Obligations

2.1 Protection from violence

2.1.1 Women in refugee shelters

Situation

Deficits in the protection against violence in refugee shelters have become visible in the past two years due to the rapid rise in the numbers of refugees.[1] One third of those who sought asylum in 2015 were female. There are no reliable figures on the prevalence of violence against women among refugees. However, professionals who work with women and/or refugees have reported extensively about various forms of sexualised and domestic violence directed against women by their partners, shelter staff or security staff.

Under German immigration law, some asylum seekers and tolerated persons are required to live in collective housing, in some cases for multiple years. These persons are subject to legal restrictions on their freedom of movement: they must live in an initial reception facility for up to six months and are not entitled to leave a certain area, e.g. a city, without permission from the authority (*Residenzpflicht* - residency requirement). They are not accorded the freedom to choose their own place of residence for the entire duration of the asylum procedure (*Wohnsitzauflage* - condition restricting place of residence). In some cases, this restriction with respect to place of residence continues to apply even after an individual has been recognised as entitled to asylum.

Assessment

Although the legislation in question does provide for exemptions, neither in the legislation itself nor in the guidelines for interpreting the laws is gender-based violence designated as constituting grounds for exemption.

Women who request the immigration authority to reassign them to another, safe shelter can sometimes face a wait of multiple months: a reassignment of this kind often requires the approval of two separate authorities, and the authorities do not have

[1] German 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/.

a standardised procedure in place for 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, and fiscal concerns and immigration law considerations play a central role in their decision-making.

Recommendation

The German Government should, by enacting legislative amendments or issuing binding guidelines to the immigration authorities, clearly communicate that protection from violence takes priority over immigration law considerations and that the immigration authorities must take prompt action to provide protection in cases of gender-based violence, by reassigning women to a safe shelter for instance.

2.1.2 Women with disabilities in residential institutions

Situation

Women with disabilities are exposed to violence of various forms two to three times more often than the average member of the female population as a whole, as a representative study, commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), has shown.[2] Inside institutions, the risks of violence against women are exacerbated due to a lack of self-determination and privacy and inadequate protection of the private sphere.

Currently more than half of the persons with disabilities who draw benefits in Germany live in some form of residential institution. Ninety-one percent of them have intellectual or psychosocial disabilities; forty percent are women. Thus, in 2014, circa 85,000 women with disabilities lived in residential institutions, where they were exposed to a high risk of violence.[3] As many as two thirds of the women in residential institutions reported experiencing psychological violence or injurious treatment there. One in three had experienced sexual violence or harassment, and more than half of the women with intellectual disabilities reported having been the victim of one or more physical assaults.[4] Non-governmental organisations have been calling for years for improved protections against violence for women in institutions for disabled persons.[5]

In 2015 the Committee on the Rights of Persons with Disabilities recommended that Germany provide a comprehensive and effective strategy with adequate funding to ensure the protection of women and girls with disabilities from violence. In this context, the treaty body recommended that Germany designate or establish one or more independent authorities in line with Article 16(3) of the UN CRPD to effectively monitor facilities and programmes for persons with disabilities with the aim of preventing violence and abuse.[6]

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[2] Schröttle, Monika et al. (2012): Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland - Kurzfassung. Berlin: Federal Ministry for Family Affairs, Seniors Citizens, Women and Youth (BMFSFJ).

[3] Con_sens (2016): Kennzahlenvergleich Eingliederungshilfe der überörtlichen Träger der Sozialhilfe 2014, Münster: Federal Association of Regional Social Assistance Agencies (BAGüS).

[4] Schröttle, Monika et al. (2014): Gewalterfahrungen von in Einrichtungen lebenden Frauen mit Behinderungen – Ausmaß, Risikofaktoren, Prävention – Endbericht, Berlin: BMFSFJ.

[5] Alliance of German Non-Governmental Organizations Regarding the UN Convention on the Rights of Persons with Disabilities (2013): For Independent Living, Equal Rights, Accessibility and Inclusion! pp. 37-41; State Coordination Agency under Art 33 UN-BRK (2012): Frauen und Mädchen mit Behinderung besser vor Gewalt schützen, position paper, Berlin 14 Sep.2012.

[6] UN Committee on the Rights of Persons with Disabilities (2015): Concluding observations on the initial report of Germany, UN Doc. CRPD/C/DEU/CO/1, 17 May 2015, para. 35–36.

Assessment

Various steps have been taken at the federal level and in the Länder to protect women and girls with disabilities against violence.[7] In the view of the GIHR however, the policy responses implemented thus far have not done enough to address the findings of the BMFSFJ study on violence against women and girls with disabilities. In particular, the appointment of one or more independent authorities to watch over protections against violence and abuse in institutions is necessary, given the scale and urgency of the problem.

The inspection of residential institutions for persons with disabilities in Germany is currently performed by the *Heimaufsichten* (residential home supervisory authorities) at the level of the Länder or local governments. A GIHR survey from 2015 revealed that the protection of persons with disabilities from violence is not a major focus of the inspection activities of these authorities. The GIHR survey also pointed to a very low level of awareness of the issue on the part of the staff.[8] That the current structures for monitoring of violence and abuse are not sufficiently effective is evident, not least in the high level of exposure to violence among women in residential institutions depicted in the BMFSFJ study.

When asked who, in their view, currently discharges the duties of independent monitoring authorities (Article 16(3) of the UN CRPD), Germany's Federal Government and the Länder have named a number of different bodies (including the *Heimaufsichten*, the women's representatives at residential institutions, nursing care services, school authorities, Commissioners for Matters relating to Disabled Persons and the national preventive mechanism under Article 3 of the Optional Protocol to the UN CAT).[9] The breadth of the spectrum of actors and offices cited in these responses reveals that none of these bodies has a clear mandate to act as a human rights monitoring authority whose mission is to ensure the prevention of violence and abuse directed against persons with disabilities. Moreover, the lack of suitability exhibited by the bodies for the tasks involved is striking. Two examples should serve to illustrate this: in about half of the 16 Länder, supervision of residential facilities (the *Heimaufsicht*) falls within the scope of the mandate of local governments. These local governments are also responsible for paying out housing benefits though and, in some cases, are themselves the operators of residential institutions. Conflicts of interest are thus inevitable, with the result that there can be no assurance of independent monitoring. The women's representative at residential institutions is an organ for the self-representation of female residents and as such cannot be understood as an independent authority intended to ensure protection against violence either.

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[7] Federal Ministry of Labour and Social Affairs (BMAS) (2016a): National action plan 2.0 of the Federal Government on the UN CRPD, "Unser Weg in eine inklusive Gesellschaft", Berlin, pp. 97–104.

[8] German Institute for Human Rights / Federal Government Commissioner for Matters relating to Disabled Persons (2016): Documentation of the CRPD follow-up conference on 24 June 2015, "Prüfung abgelegt – und nun?" Forum 8: Gewaltschutz in Einrichtungen, pp. 61–65.

[9] BMAS (2016b): Response to paragraph 36 of the Concluding Observations of the Committee on the Rights of Persons with Disabilities; BMAS (ed.) (2016c): Response to paragraph 36 of the Concluding Observations of the Committee on the Rights of Persons with Disabilities from the standpoint of the German *Länder*.

Recommendations

The German Government should

- develop a process encompassing both the federal level and the Länder that will lead to the designation or establishment of one or more independent authorities to monitor violence and abuse in institutions for disabled persons. This authority should receive a human rights mandate and be provided with adequate funding;

- guarantee participation of civil society, disabled persons' organisations (DPOs)and the National Human Rights Institution in this process as members of a board.

2.1.3 Sexualised violence

Situation

On 10th November 2016, after about two years of debate, a fundamental change in the German law relating to sexual offences entered into force.[10] In conformance with human rights, the will of the person affected is of central importance in the newly enacted §177 of the Criminal Code, which criminalises sexualised violence against adults: if one person says "no" to sexual behaviour and another person disregards this, the latter is committing a criminal offence. Thus the requirements set out in CEDAW decisions have been implemented.[11] Whether the change in the law will be accompanied by a change in social values will become apparent over the next few years. Myths about rape along the lines of "a person who is not willing would defend him- or herself" are still very much a part of discussions both at the specialist level and in online forums and in printed media. The signals coming from some of the German respondents in an EU Commission survey marking the International Day for the Elimination of Violence against Women Day are not very encouraging either: in 2016, 23% of the German respondents to this survey still believed that having sexual intercourse without consent could be justified if the woman engaged in certain forms of behaviour, e.g. alcohol consumption or wearing revealing clothing. It is true that the survey population in Germany, at 1,585 persons, was quite small, but nonetheless the implementation of awareness raising measures designed to underline the intention of the legislature, i.e. that one "no" marks the boundary for a criminal sexual offence, seems advisable.

Recommendation

The German Government should launch awareness raising measures and trainings for professionals nationwide to illustrate the intention of the legislature.

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[10] Fiftieth Act amending the Criminal Code –Improving the protection of sexual self-determination, Bundesgesetzblatt [Federal Law Gazette] (BGBl) 2016 part 1 no 52 of 9 Nov. 2016.

[11] E. g. CEDAW, Views of 16 Jul. 2010, Communication no 18/2008, *Karen Tayag Vertido v. the Philippines*.

2.2 Human trafficking: Improvement in data collection

Situation

Several legal and structural measures have been taken in Germany to combat human trafficking in the past two years. Collection of data on trafficking in women has remained very rudimentary. Neither statistical studies nor reliable estimates about the real scale of human trafficking in Germany exist. The collection of data on trafficking in women and girls is currently restricted to the area of criminal prosecution. It is impossible to obtain even simple quantitative information on how the state ensures the rights of the persons concerned – social or health services, relevant provisions of immigration law or the right to compensation. It is not known whether or to what extent the measures and legislation put in place to protect victims and prosecute criminals have been effective.

The lack of data, criticised on multiple occasions by CEDAW and by GRETA, the committee responsible for monitoring the Council of Europe's Anti-Trafficking Convention,[12] also forms the backdrop for the legal obligation in Article 19 of the EU Anti-Trafficking Directive to establish a national rapporteur or equivalent mechanism in the field of human trafficking. This obligation has not yet been discharged in Germany.

Recommendation

The German Government should, with the participation of civil society, establish a body that is independent of the executive branch that has a human rights mandate, collects and analyses data and also evaluates state measures, with the aim of supporting effective anti-trafficking policy.

2.3 Intersex people: Protection against inhumane treatment, harmful practices and violence, and respecting the right to self determination

2.3.1 Medical procedures on intersex children

Situation

Intersex infants and children, who do not have distinctly male or female sexual characteristics at birth, continue to be subjected to medically unnecessary surgical procedures or other medical procedures in an attempt to bring their physical appearance and physical function in line with the binary gender stereotypes – in the majority of cases with the female stereotype. As a rule irreversible, the medical procedures in question can cause serious long-term physical and mental suffering.[13] 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

[12] Council of Europe, Group of Experts on Action against Trafficking in Human Beings (2015): Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, GRETA(2015)10, para 85 et seq.

[13] E. g. Krämer/ Sabisch/ Woweries (2016): Varianten der Geschlechtsentwicklung, in Kinder- und Jugendarzt, pp. 2248 ff; Ulrike Klöppel (2016): Zur Aktualität kosmetischer Operationen “uneindeutiger” Genitalien im Kindesalter, https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloeppel-2016_zur-aktualitaet-kosmetischer-genitaloperationen.

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). That this is common practice in Germany was most recently confirmed in a study released in December of 2016, which found that the relative frequency of these procedures remained essentially unchanged between 2004 and 2014.[14]

Assessment

In the view of the German Institute for Human Rights, the decision to consent to procedures of this kind that are not absolutely necessary from a medical standpoint is a highly personal one that no one can make on another's behalf, and thus not a decision that can be made through the issue of consent by a parent.[15] 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 as the right to a life free of torture and abuse and protected from violence and harmful practices; of no little concern are well are the risk to the priority of the best interests of the child (Article 3 of the Convention on the Rights of the Child / UN CRC) and the risk to the right of children to have their views taken into account (Article 12 of the UN CRC). Human rights bodies initially pointed this out (CEDAW and Children's Rights committees) and criticised Germany accordingly in their concluding observations (Committee against Torture (CAT) and UN CRPD Committee).[16] Procedures not absolutely necessary from a medical standpoint that are performed on intersex infants or children before they are able to issue their informed consent are harmful practices in the meaning of CEDAW, and they must be put to an end. Existing recommendations from medical clinicians[17] 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. Another crucial question is who has the authority to define and decide when medical grounds making a procedure absolutely necessary exist. Malta provides an interesting example: there, the decision-making in such cases is transferred by law to an interdisciplinary advisory body that arrives at an agreement with the parents.[18]

Recommendations

The German Government should

- ensure, through legislative provisions, such as clear-cut prohibitions and the introduction of further mechanisms providing protection – e.g. the introduction of additional mechanisms providing protection, such as requirements for judicial approval – 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 could be postponed until the child is able to express its views on the subject and be involved in the decision;

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[14] Ulrike Klöppel,op cit.
[15] This type of limitation of parental custody is not alien to German law: cf. the sterilisation prohibition in §1631(c) of the German Civil Code (BGB).
[16] CAT/C/DEU/CO/5, para 20 ff, CRPD/C/DEU/CO/1, para 37/38.
[17] E.g. German Medical Association, statement of 30 Jan 2015, "Versorgung von Kindern, Jugendlichen und Erwachsenen mit Varianten/Störungen der Geschlechtsentwicklung (Disorders of Sex Development, DSD)" [Treatment of children, adolescents and adults with variations/disorders of sex development]; German Association of Scientific Medical Societies (AWMF), S2k Guideline "Varianten der Geschlechtsentwicklung" [Variations of sex development], released in July 2016.
[18] Cf. Art. 14, Gender Identity, Gender Expression and Sex Characteristics Act (Malta).

- establish and expand appropriate advising and support for families of intersex children, including but not limited to services provided by intersex associations (in the form of peer-to-peer advising for instance);

- provide initial and continuing training to medical professionals about gender diversity and the consequences for intersex children of unnecessary medical procedures and ensure that medical professionals are aware of the current medical standards (s2k guidelines)[19] and apply them.

2.3.2 Access to justice and reparation

Situation

In cases where irreversible procedures have been performed, the individuals concerned frequently do not have access to effective remedies, including restitution and compensation. This is due in part to the time limits imposed for the prosecution of the relevant criminal offences and the assertion of claims for damages, and also due in part to the requirements with respect to evidence that will stand up in court, which are exacerbated by missing or inaccessible documentation.[20] In cases where the persons who had custody issued their consent, no liability or legal duty to pay compensation arises on the part of hospitals or medical doctors in the first place. To date, it is not clear how such cases should be treated. International human rights bodies 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 such proposal involves the establishment of a state compensation fund to provide financial assistance as a form of compensation and recognition of the suffering endured.[21]

Assessment

In the view of the GIHR, it is imperative to ensure effective access to restitution, including compensation, for persons who have been subjected to these procedures without their informed consent. The entitlement to restitution and appropriate and fair compensation, required by human rights, should be anchored in the legal order. One possibility that has often been called for is the establishment of a compensation fund. In addition, limitation periods should be extended and more robust requirements for record-keeping by doctors should be introduced.

Recommendation

The German Government should ensure that persons who have been subjected to these procedures without their informed consent have effective access to justice and in particular possibility for appropriate and fair compensation.

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[19] AWMF, S2k Guideline "Varianten der Geschlechtsentwicklung" [Variations of sex development], released in July 2016.

[20] Successful lawsuits are the exception in this area: only two cases are known so far: Higher Regional Court (OLG) of Cologne, ruling of 3 Sep. 2008, ref. no 5 U 51/08, Regional Court (LG) of Nürnberg-Fürth, ruling of 17 Dec. 2015, ref. no 4 O 7000/11 (not yet res judicata).

[21] Committee of Independent Experts of the Federal Anti-Discrimination Agency (2015): Gleiche Rechte – gegen Diskriminierung aufgrund des Geschlechts, p 28f; German Ethics Council (2012): Stellungnahme Intersexualität (BT-Drs. 17/9088), p 55ff; CAT/C/DEU/CO/5, para 20ff.

2.4 Breaking down stereotypes through education

Information

Education plays a key role in breaking down and eliminating 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.[22] Qualitative studies have pointed to a need in Germany to revise textbooks and programmes with respect to various dimensions of heterogeneity, including in relation to gender and sexual diversity.[23]

A recent study of education acts, selected education plans and teaching and learning materials[24] revealed that they failed to adequately address topics of human rights and discrimination – including in relation to gender. Ten of the education acts mention the promotion of equal rights as an educational aim in the context of gender, whereby gender is often understood as a binary concept.[25]

The study examined education plans for all types and levels of schools in five German Länder.[26] Included in the analysis were plans focussing on cross-curricular competences, as well as the plans for the subjects of science/social studies (*Sachkunde*), political science/education, and the social sciences. A total of 75 documents were examined; in aggregate they contain 33 sentences/passages of relevance to gender as a prohibited basis of discrimination. The topic of sexual orientation is mentioned in 11 places; wording relevant to trans* and inter* persons is present in two places in each case. References to the topics of discrimination, equal rights and stereotypes in the context of human rights are rare in the education plans that were examined. Human rights, when mentioned, are usually not linked to these topics, and the fact that forms of discrimination constitute violations of human rights is not discussed. The analysis of the education plans revealed that discrimination, equal rights and stereotypes are frequently considered at the level of educational didactics, but educational content contains very little about possibilities to take action to combat discrimination and break down stereotypes.[27]

A qualitative study on constructions of gender and the depiction of lesbian, gay, bisexual, trans* and inter* (LSBTI) persons in school textbooks found that biology textbooks do not mention the discourse about gender as a social construct and that gender and sexual diversity is touched upon only as a side issue.[28] While the depiction of female and male persons was numerically balanced in the English textbooks examined, the portrayals of individuals were strongly aligned with gender

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[22] Cf. CEDAW, Art.10, para. c.
[23] E.g. Federal Government Commissioner for Migration, Refugees and Integration (pub.) (2015): Schulbuchstudie Migration und Integration. Berlin: Federal Government Commissioner for Migration, Refugees and Integration; Bittner, Melanie (2011): Geschlechterkonstruktionen und die Darstellung von Lesben, Schwulen, Bisexuellen, Trans* und Inter* (LSBTI) in Schulbüchern. Frankfurt: GEW; Georg-Eckert-Institut für internationale Schulbuchforschung (2011): Keine Chance auf Zugehörigkeit? Schulbücher europäischer Länder halten Islam und modernes Europa getrennt. Braunschweig: GEI.
[24] Cf. Niendorf, Mareike; Reitz, Sandra (2016): Das Menschenrecht auf Bildung im deutschen Schulsystem. Was zum Abbau von Diskriminierung notwendig ist. Berlin: German Institute for Human Rights.
[25] Cf. Niendorf/Reitz (2016), p. 50.
[26] The five Länder in the focus of the study were: Bavaria, Berlin/Brandenburg, Bremen, North Rhine-Westphalia and Thuringia.
[27] Cf. Niendorf/Reitz (2016), pp. 57-61.
[28] Cf. Bittner, Melanie (2011), p. 78.

stereotypes.[29] None of the textbooks examined consistently used gender inclusive language.[30]

Assessment

The topics of human rights and discrimination have not yet been broadly integrated into education acts, education plans or teaching and learning materials. Particularly with respect to stereotypes, discrimination and structural inequality, the extent to which topics of gender and sexual diversity are placed within a human rights framework is not sufficient.

In addition to the dissemination of knowledge and reflection, breaking down stereotypes in society as a whole requires that people learn the skills that enable them to take action to successfully challenge stereotypes and combat forms of discrimination.[31] So far, this level of action is not being addressed to any great extent. Therefore, in addition to avoiding discriminatory wording and images, it is necessary to raise teacher awareness and strengthen the focus on gender stereotypes, including in relation to the level of action.

Recommendations

The Governments of the German Länder should

- integrate the topics of equal rights, discrimination and stereotypes in all education acts and education plans. In this context, the human rights aspect of the issues should be considered, and the skills needed to break down stereotypes and combat forms of discrimination should be taught;

- review teaching and learning materials to determine whether they convey stereotyped concepts with respect to gender roles and reflect gender diversity, including but not limited to the language used in them;

- strengthen teachers' skills in the area of discussing role attributions and gender clichés.

2.5 Non-discrimination legislation

Situation

Ten years after the entering into force of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz - AGG*), the Federal Anti-Discrimination Agency presented the results of an evaluation of the legislation.[32] The evaluation found barriers to effective enforcement for people experiencing discrimination, namely the time limit of two months for discrimination claims and the lack of a right of representative action for anti-discrimination association.

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[29] Cf. Bittner (2011), pp. 35-38.
[30] Cf. Bittner (2011), p. 74.
[31] See UN General Assembly (2011): United Nations Declaration on Human Rights Education and Training. A/RES/66/137, Art. 2(2).
[32] Büro für Recht und Wissenschaft GbR mit wissenschaftlicher Begleitung von Prof. Dr. Christiane Brors (2016): Evaluation des Allgemeinen Gleichbehandlungsgesetzes; http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/AGG_Evaluation.pdf?__blob=publicationFile&v=14.

The evaluation also found gaps in the protection from sexual harassment, which is only prohibited at the workplace, but not where it originates e.g. from landlords, in shops or in education.

Recommendation

The German Government should consider amending the General Equal Treatment Act taking into account the findings of the evaluation, thereby ensuring effective enforcement and enhanced protection from sexual harassment in all spheres of life covered by the Act.

3 Extraterritorial Obligations

3.1 Textile sector and land rights

Situation

Land grabbing affects women differently and in some cases more severely than it does men. This is especially the case in several regions of Africa, where women are generally more involved in agriculture and thus more dependent on land. Land that is "grabbed" is often land used for subsistence agriculture, meaning that women disproportionately depend on it. The gendered impacts of land grabbing can be attributed to a number of different factors. Some cases involve a move to large-scale cultivation of a crop traditionally cultivated only by women. When these "women's crops" gain commercial value, responsibility for them is seized by men. In most land-grabbing cases, men conduct the negotiations and are often the only ones to obtain compensation.[33] Women are also often the victims of gender-specific violence, including threats in the context of conflicts over land.[34]

The link to Germany arises through financial sector activities and, to some degree, through German and European development policy. Multiple German specialized mutual funds, private equity-funds and businesses have ties to agricultural investments outside of Germany.[35] Land grabbing is recognised as a problem in German development cooperation.[36] However German development cooperation has been criticised for failing to combat the problem and is seen by some to be supporting land grabbing.[37] The control mechanisms and financing criteria of the state-owned DEG (Deutsche Investitions- und Entwicklungsgesellschaft mbH: German Investment

[33] https://www.oxfam.org/en/grow/policy/promises-power-and-poverty; http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf.
[34] http://www.osisa.org/buwa/economic-justice/zimbabwe/impacts-large-scale-land-deals-rural-women-farmers-africa; http://cchrcambodia.org/index_old.php?title=Cambodia-s-Women-in-Land-Conflict&url=media/media.php&p=report_detail.php&reid=116&id=5&lang=eng.
[35] http://www.fian.org/fileadmin/media/publications/2010_12_GermanInvestmentFunds_LandGrabbing.pdf.
[36] http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Study_Human_Rights_Assessment_of_the_German_Cambodian_Land_Rights_Program.pdf.
[37] http://www.spiegel.de/international/business/foreign-companies-are-taking-farmlands-away-from-cambodians-a-935801.html.

and Development Corporation) have also come under fire,[38] and the EU trade initiative "Everything but Arms" has been accused of promoting land grabbing.[39]

The particular concerns relating to the human rights of women and girls in the textile industry arise in the first instance from the high proportion of female workers in the sector in conjunction with the human rights violations in the textile industries of many countries.[40] Human rights concerns about this sector also focus on women and girls in particular because they make up the cheaper labour force and are seen as more loyal and easier to discipline. Asia is the chief focus of concern,[41] though Central American and Africa are also affected.[42] The main points of criticism are the poor working conditions, low health and safety standards, long hours, exploitation, human trafficking, forced labour and child labour.

The link to Germany arises through German businesses that import the textiles. In addition, the German inspection and certification body TÜV Rheinland performs auditing activities in association with the textile industry.[43]

Recommendations

The German Government should address the gendered impact of human rights violations in international supply chains that include German actors by adopting, in full consultation with civil society organizations, national legislation and policies that

- strengthen judicial and non-judicial remedy mechanisms that have the authority to handle complaints against German actors from affected people abroad, such as the OECD National Contact Point and German civil courts, and ensure that these mechanisms have the ability to award remedies that constitute genuine and adequate responses that directly benefit the people who have suffered harm;

- clearly communicate to importers and auditors in international supply chains that gender aspects are expected to form part of the non-financial reporting, human rights impact assessments, and human-rights certification processes that are supported by the German government, such as the Partnership for Sustainable Textiles.

3.2 Arms exports

Situation

According to the Stockholm International Peace Research Institute, Germany ranks as the world's fifth-largest weapons exporter, behind the U.S., Russia, China and France.[44] German weapons exports reached a record high in 2015 and have

[38] https://www.euractiv.de/section/entwicklungspolitik/news/finanzspritze-fur-land-grabbing-bundesregierung-in-der-kritik/.
[39] https://www.euractiv.de/section/entwicklungspolitik/news/finanzspritze-fur-land-grabbing-bundesregierung-in-der-kritik/; https://www.fian.de/fileadmin/user_upload/dokumente/shop/landwirtschaft/2014_casedossier_Cambodia_dt_screen_final.pdf.
[40] http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf.
[41] https://www.ecchr.eu/de/unsere-themen/wirtschaft-und-menschenrechte/arbeitsbedingungen-in-suedasien/bangladesch-lidl.html; https://www.ecchr.eu/de/unsere-themen/wirtschaft-und-menschenrechte/arbeitsbedingungen-in-suedasien/pakistan-kik.html.
[42] http://library.fes.de/pdf-files/iez/00061.pdf.
[43] https://www.ecchr.eu/de/unsere-themen/wirtschaft-und-menschenrechte/arbeitsbedingungen-in-suedasien/bangladesch-tuev-rheinland.html.
[44] http://books.sipri.org/files/FS/SIPRIFS1602.pdf.

continued to rise since. The aggregate value of individual arms export transactions authorised in 2015 was 7.86 billion euros, compared with 3.97 billion euros worth of arms exports in 2014. The total value of licensed small arms export transactions decreased by 15 million euros.[45]

The export and proliferation of conventional arms, especially small arms, including arms diverted from the legal trade, can have a direct or indirect effect on women, as victims of conflict-related gender-based violence, as victims of domestic violence and also as protestors or actors in resistance movements.[46]

After due assessment of the circumstances, the German Government exercises its own discretion in decisions on the issuance of licenses to export war weapons or other military equipment, taking into account the "Political Principles Adopted by the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment" (hereinafter Political Principles)[47], Council Common Position 2008/944/CFSP of the EU and the Arms Trade Treaty (ATT).[48] The Political Principles require that special weight be attached to respect for human rights in the country of final destination when assessing whether war weapons and other military equipment can be exported. The EU Common Position ("clear risk of internal repression") and the ATT ("potential of goods being used to commit or facilitate a serious violation of international human rights law") contain similar and complementary requirements. While neither the Political Principles nor the EU Common Position address the risk of the exported goods being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children, Article 7(4) of the ATT requires the exporting State Party to take these risks into account in the assessment it must carry out before authorising an export transaction. It is unclear though whether the Government carries out gender-sensitive human rights impact assessments.

The German Government claims that applications are not approved when there is "sufficient suspicion" that the military equipment will be misused for internal repression or other ongoing and systematic violations of human rights. According to the Government, "the assessment of the human rights situation in the recipient country is an important factor to be considered" in this context.[49] The German Government has promised to take a more restrictive approach to licensing arms exports in general, and with regard to the Middle East in particular. As part of the efforts the Government adopted the "Small Arms Principles". In addition, it introduced post-shipment controls on a pilot basis to prevent weapons from being resold by their official buyers after delivery.

In practice, the human rights criterion contained in the Political Principles and the EU Common Position is only one among several interests that the licensing authorities consider when exercising their discretionary powers. German law does not require the German Government to disclose information on how the authorities have carried out

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[45] http://www.bmwi.de/DE/Themen/Aussenwirtschaft/ruestungsexportkontrolle.
[46] General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW/C/GC/30), http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf
[47] See pp. 32–35 of the English translation of the arms exports report for the English version of the Political Principles: http://www.bmwi.de/English/Redaktion/Pdf/ruestungsexportbericht-2015,property=pdf,bereich=bmwi2012,sprache=en,rwb=true.pdf.
[48] https://www.bmwi.de/EN/Topics/Foreign-trade/export-controls-for-military-equipment.html.
[49] http://www.bmwi.de/English/Redaktion/Pdf/ruestungsexportbericht-2015,property=pdf,bereich=bmwi2012,sprache=en,rwb=true.pdf.

their assessments or what conflicting interests they weighed against each other. The Government's reports on its policy on exports of military equipment contain no information on the assessment of individual countries with respect to the criteria for approval of export transactions (preservation of peace, security and stability and the upholding of human rights). Consequently, it is difficult to verify whether they attached special weight to the human rights situation in the recipient country in any given case. Also unclear are the circumstances under which the Government would conclude that there is "sufficient suspicion" and/or a "clear risk" that the exported goods would adversely affect human rights.

A review of decisions taken by German arms export authorities from a human rights perspective reveals that the current control regime is deficient. The authorisations of arms exports to Saudi Arabia and Mexico clearly show that in some cases the authorities are attaching disproportionate weight to interests other than human rights.

The authorisations of arms exports to Mexico in recent years provide cause for considerable doubt as to whether the authorities gave adequate consideration to the specific human rights situation of women in that country. Between 2000 and 2007, Germany issued licenses for the export of assault rifles, machine guns and components for small and light weapons to Mexico, with complete disregard for the overwhelming evidence of human rights risks and without being in a position to verify the end use of the equipment. When these exports licensing decisions were made, the German Government must have been aware of the serious human rights crisis the country was undergoing due to high militarization, the presence of criminal structures and insufficient control and regulation of weapons.[50] Among other things, Germany's obligations under CEDAW should have ensured that it consider the risks of that the firearms would be used to perpetrate femicides, the high numbers of killings of women involving firearms and the general risk faced by women face when their families and communities are armed.[51]

The example of **arms exports to Saudi Arabia** also shows that exports are authorized in spite of clear risks for human rights, and particularly those of women and girls. In 2015 and 2016, German authorities continued to licence exports which can be used in air strikes even after the Saudi-led military intervention against Yemen had begun. This intervention caused the severe injury and death of thousands of civilians and has exacerbated an already severe humanitarian crisis.[52] Women and girls often suffer disproportionately in such situations due to forced displacement, sexual violence, trafficking, lack of access to health care (including sexual and reproductive health) and lack of access to victim and survivor assistance.[53] Further, the German Government clearly ignored the risk that the exported goods would be used for internal repression. It must have been obvious since 2011 that small arms and light weapons are frequently used in Saudi Arabia in the repression of minorities and human rights activists, including women. Nevertheless, it was not until 2015 that the Government stopped approving applications for the export of small arms to Saudi

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[50] Inter-American Commission on Human Rights, Informe de país: México, situación de derechos humanos, 2015.
[51] Femicidio en México, aproximaciones, tendencias y cambios, ONU Mujeres México, Instituto Nacionales de las Mujeres, 2014.
[52] http://reliefweb.int/report/yemen/situation-human-rights-yemen-report-office-united-nations-high-commissioner-human.
[53] Committee on the Elimination of Discrimination against Women, General Recommendation 30 on women in conflict prevention conflict and post conflict situations.

Arabia and prevented the delivery of tanks previously licensed for export. Moreover, no substantial change has been introduced to the arms export control regime that could prevent decisions disproportionately influenced by interests other than human rights. Currently, the future of the German arms export system is being discussed in a consultation process initiated by the Ministry of Economic Affairs and Energy. The proposal to enact new legislation to control the export of weapons will be one of the issues debated in this process.

Assessment

Counter to the obligations under the Convention that require State parties to focus on the prevention of conflict and all forms of violence, the German arms export control regime does not provide a robust and effective system to regulate the arms trade. There is no evidence that the German Government systematically integrates gender aspects into its assessments. Unfortunately, there is no possibility of public scrutiny of the assessments. Also, Germany does not have sufficient controls in place to prevent the further circulation of exported arms and ensure that they are not used to commit or facilitate serious acts of gender-based violence.

Recommendations

The German Government should, in full consultation with civil society organizations, address the gendered impact of international transfers of arms, especially small and illicit arms, by adopting national legislation and policies that

- ensure comprehensive and transparent assessments of the impact of arms exports on women's rights before approving export licenses, particularly in the case of exports to countries where arms may be used directly or indirectly to violate the rights of women and girls;

- ensure the disclosure of information to the Bundestag and to the public relating to how and on what basis gender-sensitive assessments are carried out and how potential violations of the rights of women and girls are weighed against other interests.

3.3 German development cooperation: Violence against women

Situation

The Federal Ministry for Economic Cooperation and Development issued a gender equality action plan in late 2015. The plan and the associated road map for 2016 include goals and measures aimed at eliminating violence against women and girls, including harmful practices. The main measures involve supporting German civil society and multilateral organizations like UNFPA and IPPF and to the UN Women Trust Fund to End Violence against Women.

While implementing development cooperation through multilaterals and civil society organizations is an important part of German cooperation, there are very few programmes in and with partner countries addressing violence against women. A flagship programme "Elimination of violence against women in Latin America (ComVoMujer)" ended in 2016. Two other programmes, one small regional initiative

against FGM and one on access to justice for women in Cambodia, are scheduled to end in 2018 and 2017 respectively.[54]

Unfortunately, it appears possible that Germany, which actively lobbied for the introduction of a new OECD DAC purpose code for violence against women, will have decreasing ODA flows to report under this code in the future. More importantly, while support to civil society initiatives is crucial for empowering women and men to take action to eliminate violence against women, in-country programmes that engage state and non-state actors at different levels and build their capacities, including capacities to carry out legal, judicial and social reforms, is also necessary to support partner countries in fulfilling their human rights obligations under CEDAW.

Recommendations

The German Government should

- introduce an ambitious spending target (*Zielgröße*) for combating violence against women in the budget of the Ministry for Economic Cooperation and Development, as is the practice with other key issues, such as climate change;

- increase political dialogue with partner countries on their obligations under CEDAW to eliminate violence against women and offer targeted support through state development cooperation.

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[54] Data according to https://www.giz.de/projektdaten/index.action.