

**NGO Joint Parallel Report on the Government of Germany's
Seventh Report on the Implementation of the
International Covenant on Economic, Social and Cultural Rights**

*Submitted to the
UN Committee on Economic, Social and Cultural Rights
for consideration in the formulation of the
List of Issues during the 78th Pre-Sessional Working Group (8 September 2025 - 3 October 2025)*
by:

Science for Democracy

Rue Ducale 41,
1000 Bruxelles, Belgium

Contact: Dr. Laura Convertino
laura.errans@gmail.com

*International Human Rights Center
Loyola Law School, Los Angeles*

919 Albany Street
90015, Los Angeles, CA, USA

Contact: Prof. Cesare Romano
cesare.romano@lls.edu

and

Fertility Europe
Clos de la Ballade 11
1140 Evere
Belgium
Contact: Anita Fincham
anita@fertilityeurope.eu

PURPOSE OF THIS PARALLEL REPORT.....	2
ABOUT THE AUTHORS OF THIS REPORT AND SOURCES.....	3
BACKGROUND.....	3
BY FAILING TO PROMOTE AND PROTECT SEXUAL AND REPRODUCTIVE RIGHTS, GERMANY FAILS TO FULFIL ITS INTERNATIONAL OBLIGATIONS UNDER THE COVENANT	9
I) Abortion: Criminalization and burdensome requirements	9
II) Assisted Reproductive Technology: Illegality of surrogates, restrictions on IVF	12
RECOMMENDATIONS.....	13

PURPOSE OF THIS PARALLEL REPORT

(1) The purpose of this parallel report is to assist the Committee on Economic, Social and Cultural Rights (the Committee) in the formulation of the List of Issues during the 78th Pre-Sessional Working Group (8 Sept. 2025 - 3 Oct. 2025), leading to the discussion of the Government of Germany's Seventh Periodic Report on the implementation of the Covenant on Economic, Social and Cultural Rights ("CESCR" or "Covenant"). Germany ratified the Covenant on 17 December 1973.¹

(2) The report focuses on burdensome regulations on IVF, the prohibition of surrogacy and the restrictive abortion laws, issues that come under the purview of the Covenant (Articles 3, 12 and 15).

(3) Although Germany's Seventh periodic report brings attention to numerous important issues, it fails to mention abortion, surrogacy, maternal health, assisted reproductive technologies or sexual and reproductive health.² While Germany's Common core document mentions abortion, the mention is made only to report the number of medically indicated abortions in 2014.³

(4) This report complements Germany's report to enable this Honorable Committee to get a clearer picture of how Germany is discharging its obligations under Articles 3, 12 and 15 of the Covenant.

¹ International Covenant on Economic, Social and Cultural Rights, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en [last accessed 24 Sept. 2024].

² CESCR, *Seventh periodic report submitted by Germany under articles 16 and 17 of the Covenant, due in 2023*, 12 June 2024, E/C.12/DEU/7, para.

³ International Human Rights Instruments, *Common core document forming part of the reports of States parties*, 14 Dec. 2016, HRI/CORE/DEU/2016, para. 22.

ABOUT THE AUTHORS OF THIS REPORT AND SOURCES

(5) This report has been prepared by Megan Mars (Science for Democracy), and by Abby Martin (JD Candidate 2025) of the International Human Rights Center of Loyola Law School, Los Angeles, working under the supervision of Professor Cesare Romano, and in collaboration with Fertility Europe.

(6) Science for Democracy is a Brussels-based NGO that promotes the right to science as a structural component of liberal democracies through dialogue between the scientific community and decision-makers all over the world.⁴

(7) The International Human Rights Center of Loyola Law School, Los Angeles is committed to achieving the full exercise of human rights by all persons and seeks to maximize the use of international and regional political, judicial, and quasi-judicial bodies through litigation, advocacy, and capacity-building.⁵ Loyola Law School, Los Angeles is the school of law of Loyola Marymount University, a Jesuit university.

(8) Fertility Europe is a European umbrella organization representing over 30 national patient associations in the field of (in)fertility.⁶ It is the Pan-European organization representing patients' associations dedicated to infertility, enabling a network for those concerned with fertility problems, patient empowerment, engaging other stakeholders and the media.⁷

BACKGROUND

(9) Assisted Reproductive Technology (ART) encompasses medical techniques designed to help individuals and couples achieve pregnancy by addressing infertility and other reproductive challenges.⁸ These procedures involve manipulating eggs, sperm, or embryos outside the human body to facilitate conception.⁹ The most common form of ART is In Vitro Fertilization (IVF), where eggs are fertilized by sperm in a laboratory before being implanted into the uterus.¹⁰ Other methods include intracytoplasmic sperm injection (ICSI), where a single sperm is directly injected into an egg, and the use of donor eggs or sperm when one or both partners cannot provide viable gametes.¹¹ ART also includes egg and embryo freezing (cryopreservation) to preserve fertility and surrogacy, where a surrogate carries a pregnancy on behalf of individuals unable to do so

⁴ <https://sciencefordemocracy.org/> [accessed 24 Sept. 2024].

⁵ <https://www.lls.edu/academics/centers/internationalhumanrightscenter/> [last accessed 24 Sept. 2024].

⁶ <http://fertilityeurope.eu> [accessed 5 Dec. 2024].

⁷ *Ibid.*

⁸ Jain M, Singh M. Assisted Reproductive Technology (ART) Techniques. [Updated 2023 Jun 7]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2025 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK576409/> [accessed 29 Jan 2025].

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

themselves.¹²

(10) There are many benefits to ART, one of the most significant being its ability to overcome infertility, providing individuals and couples with an opportunity to have biological children. In a report published by the World Health Organization (WHO) in 2023 it was estimated that 1 in 6 people globally are affected by infertility, meaning that this is an incredibly prevalent world-wide health challenge.¹³ ART is especially helpful for those facing challenges due to medical conditions, advanced age, or unexplained infertility.¹⁴ ART also expands family-building options for single individuals and LGBTQ+ couples who wish to have children.¹⁵ Egg, sperm, or embryo freezing also offers the ability to preserve fertility for future use for people undergoing medical treatments like chemotherapy.¹⁶

(11) ART also enables genetic screening, allowing for preimplantation genetic testing (PGT) to identify and reduce the risk of passing on inherited genetic disorders.¹⁷ This advancement contributes to healthier pregnancies by enabling the selection of embryos that are free of certain genetic conditions.¹⁸ Additionally, improvements in ART techniques have significantly increased success rates, providing renewed hope to many who previously found conception impossible.¹⁹ These procedures also reduce the risk of complications associated with multiple births by enabling more precise embryo selection.²⁰

(12) ART provides invaluable solutions for individuals and couples seeking to overcome infertility, preserve fertility, or build families inclusively. By addressing both medical and social challenges, ART has transformed reproductive healthcare and empowered individuals to take control of their reproductive futures.

(13) The Embryo Protection Act (*Embryonenschutzgesetz, ESchG*) regulates research on human embryos and ART in Germany.²¹ It came into force in January 1991. Overall, the Act establishes strict regulations to ensure the ethical application of reproductive technologies.²² Under the ESchG, several ART procedures and diagnostic options are prohibited, including egg cell donation, surrogate motherhood, and elective single embryo transfer.²³

Section 1 of the Act restricts ART by prohibiting the transfer of another woman's unfertilized egg, fertilizing

¹² *Ibid.*

¹³ <https://iris.who.int/bitstream/handle/10665/366700/9789240068315-eng.pdf?sequence=1> [accessed 30 Jan. 2025].

¹⁴ Pfcla. (2025, January 10). What is Assisted Reproductive Technology (ART)? | PFCLA Fertility Blog. *PFCLA Fertility Blog*. <https://www.pfcla.com/blog/what-is-assisted-reproductive-technology> [accessed 4 Feb. 2025].

¹⁵ *Ibid.*

¹⁶ *Assisted Reproductive Technologies patient education booklet*. (n.d.). ReproductiveFacts.org. <https://www.reproductivefacts.org/news-and-publications/fact-sheets-and-infographics/assisted-reproductive-technologies-booklet/> [accessed 29 Jan. 2025].

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Bundestag. (1990). Act for Protection of Embryos. *Federal Law Gazette*, 2746. <https://bilimakademisi.org/wp-content/uploads/2016/04/EmbryoProtectionAct.pdf>

²² *Ibid.*

²³ *Ibid.*

eggs for non-pregnancy purposes, and transferring more than three embryos.²⁴ Violations can result in up to three years' imprisonment or fines.²⁵ Notably, sperm donation is not addressed in the ESchG, and the donation of embryos is permitted, provided that the assisted reproduction was not undertaken specifically for this purpose.²⁶ Section 1 prohibits also surrogacy, both commercial and altruistic.²⁷ Surrogacy arrangements are not legally recognized, and the woman who gives birth is considered the legal mother under German law.²⁸ The Act imposes criminal sanctions on clinicians who inseminate or transfer an embryo to a woman intending to relinquish the child to a third party after birth.²⁹

(14) Section 2 outlaws the improper use, disposal or development of human embryos outside the body and states that this is also punishable by up to three years' imprisonment or a fine.³⁰ Section 3 prohibits sex selection during fertilization unless it is to prevent serious genetic diseases and limits preimplantation genetic testing unless medically necessary.³¹ Sections 4-7 criminalize unauthorized fertilization, altering human germline cells, cloning, and creating hybrids or chimeras with penalties ranging from fines to imprisonment of up to five years.³² Finally, sections 9-11 prohibit non-licensed physicians from carrying out procedures like fertilization, embryo transfer, or genetic testing.³³ Violations may lead to fines or imprisonment.³⁴

(15) In 2010, the German Federal Court of Justice ruled that Preimplantation Genetic Diagnosis (PGD) could be used in exceptional cases.³⁵ In 2011, the Bundestag passed a law permitting PGD under specific circumstances, such as a high likelihood of passing on a genetic disease or a significant risk of stillbirth or miscarriage.³⁶

(16) With the exception to PGD, Germany's ART laws have remained largely unchanged since the enactment of the Embryo Protection Act in 1990. Despite societal changes, including the introduction of civil partnerships for same-sex couples in 2001 and same-sex marriage in 2017, the laws governing assisted reproduction have not been updated to reflect these developments.³⁷ As a result, certain ART procedures remain inaccessible to

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Trappe, H. (2017). Assisted Reproductive Technologies in Germany: A review of the current situation. *Demographic Research Monographs*, 269–288. https://doi.org/10.1007/978-3-319-44667-7_13 [accessed 29 Jan. 2025].

²⁷ Talk, F. (2024, November 6). *The fertility talk*. Untitled. https://www.thefertilitytalk.com/the-talk/fertility-law-germany?utm_source=chatgpt.com [accessed 29 Jan. 2025].

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Bundestag, *supra* note 21.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Bock von Wülfigen B. Contested change: how Germany came to allow PGD. *Reprod Biomed Soc Online*. 2016 Dec 13;3:60-67. doi: 10.1016/j.rbms.2016.11.002. PMID: 29774251; PMCID: PMC5952673.

³⁶ *Ibid.*

³⁷ Whittle, H. (2024, February 18). Women in Germany demand better access to fertility treatment. *dw.com*. <https://www.dw.com/en/women-in-germany-demand-better-access-to-fertility-treatment/a-68199876> [accessed 4 Feb. 2025].

specific groups, highlighting the need for ongoing discussions about potential reforms to align the legal framework with contemporary societal needs and the international legal framework.³⁸

(17) Health insurance restrictions also severely limit German citizens access to infertility treatment.³⁹ Insurance covers infertility treatment only for married couples.⁴⁰ Singles have limited or no options.⁴¹ One single woman describes in an interview how during her first appointment with a fertility doctor she was shockingly told to “just go out and sleep with lots of people.”⁴² She goes on to describe the injustice of paying health insurance and taxes for years for her health care but only having access to support for fertility treatment if she was to marry.⁴³ After two years of paying out of pocket for her fertility treatments she has yet to conceive and is now €13,000 in debt and looking for solutions outside of those available to her in Germany.⁴⁴

(18) Even married couples in Germany seeking to conceive through ART face barriers, as insurance covers only 50% of the cost, for a maximum of three rounds of treatment.⁴⁵ After that, couples are on their own in financing treatment. Additionally, there are restrictive age limits for when these resources are available. Women must be between 25 and 40 and men between 25 and 50.⁴⁶ Married female same-sex couples may go through fertility treatment with donor sperm, but married male same-sex couples, of which there are currently over 4,000 in Germany, have no fertility treatment options as egg donation and surrogacy are illegal.⁴⁷

(19) Additionally, Germany’s prohibition on freezing embryos, as outlined in the Embryo Protection Act, creates significant medical and ethical challenges for individuals undergoing IVF.⁴⁸ Without the ability to freeze embryos, patients are often pressured into transferring multiple embryos at once to maximize their chances of pregnancy, which increases the risk of multiple births and associated health complications for both the parent and the children.⁴⁹ Alternatively, patients may be forced to undergo multiple ovarian stimulation cycles to create fresh embryos for each attempt, leading to greater physical, emotional, and financial burdens.⁵⁰ International best practices indicate that embryo freezing—especially at the blastocyst stage (five-day-old embryos)—

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Statista. (2025, January 13). *Number of same-sex marriages in Germany 1991-2023*. [https://www.statista.com/statistics/1459116/same-sex-marriages-germany/#:~:text=In%202023%2C%20there%20were%20around,same%2Dsex%20marriages%20in%20Germany.](https://www.statista.com/statistics/1459116/same-sex-marriages-germany/#:~:text=In%202023%2C%20there%20were%20around,same%2Dsex%20marriages%20in%20Germany.;); *Kinderwunschzentrum Dortmund, Siegen, Wuppertal: Family planning in same-sex couples*. (n.d.). <https://www.kinderwunschzentrum.org/en/dortmund/services/family-planning-in-same-sex-couples/> [accessed 4 Feb. 2025].

⁴⁸ Bundestag, *supra* note 21.

⁴⁹ Medical Advisory Secretariat. In vitro fertilization and multiple pregnancies: an evidence-based analysis. *On Health Technol Assess Ser.* 2006;6(18):1-63. Epub 2006 Oct 1.

⁵⁰ Bundestag, *supra* note 21.

improves both clinical outcomes and patient well-being by allowing for single embryo transfers and reducing the need for repeated hormone stimulation and egg retrieval procedures.⁵¹

(20) Overall, Germany could do much better to ensure the right of each of its citizens to access ART and the exercise of reproductive choices. In 2024, Germany reached only 66.3% of the recommended fertility treatment policies, falling short in all three categories in the European Atlas of Fertility Treatment Policies.⁵² The Atlas is built by Fertility Europe together with the European Parliamentary Forum for Sexual and Reproductive Rights. It evaluates to what degree 49 States in Europe ensure equitable, safe, and efficient fertility treatments using data on the policies collected by the European Society of Human Reproduction and Embryology (ESHRE).⁵³ It ranks countries in their percentage of achieved standards broken up into three main categories of legislation, public funding/reimbursement and patient perspective.⁵⁴ Germany falls considerably short in all three categories.⁵⁵

(21) A second problematic issue regarding sexual and reproductive rights and health-related concern in Germany is abortion. Abortion is still a crime in Germany.⁵⁶ Within the first twelve weeks, abortion *may* be permitted for individuals who meet specific standards and can overcome a series of obstacles.⁵⁷ Counselling

⁵¹ Alteri, A., Arroyo, G., Baccino, G., Craciunas, L., De Geyter, C., Ebner, T., Koleva, M., Kordic, K., Mcheik, S., Mertes, H., Pavicic Baldani, D., Rodriguez-Wallberg, K., Rugescu, I., Santos-Ribeiro, S., Tilleman, K., Woodward, B., Vermeulen, N., & European Society of Human Reproduction and Embryology. (2023). Number of embryos to transfer during IVF/ICSI - Guideline of European Society of Human Reproduction and Embryology. *ESHRE*. <https://www.eshre.eu/Guidelines-and-Legal/Guidelines/Embryo-transfer>

⁵² EPERT, G., Dr Carlos Calhaz-Jorge, Hon. Morgana Daniele, Neil Datta, Marta Diavolova, Anita Fincham, Dr Veerle Goossens, Dr Nathalie Kapp, Klaudija Kordic, & Dr Cristina Magli. (2024). EUROPEAN ATLAS OF FERTILITY TREATMENT POLICIES. In *EUROPEAN ATLAS OF FERTILITY TREATMENT POLICIES*. https://fertilityeurope.eu/wp-content/uploads/2024/11/FERTIL-Atlas_EN-2024-no-month.pdf [accessed 29 Jan. 2025].

⁵³ Fertility Europe. (2025, January 6). *European Atlas of Fertility Treatment Policies 2024 - Fertility Europe*. <https://fertilityeurope.eu/atlas2024/> [accessed 29 Jan. 2025].

⁵⁴ EPERT, *supra* note 52.

⁵⁵ *Ibid.*

⁵⁶ German Criminal Code, *Section 218: Abortion*. “(1) Whosoever terminates a pregnancy shall be liable to imprisonment not exceeding three years or a fine. Acts the effects of which occur before the conclusion of the nidation shall not be deemed to be an abortion within the meaning of this law; (2) In especially serious cases the penalty shall be imprisonment from six months to five years. An especially serious case typically occurs if the offender: 1. acts against the will of the pregnant woman; or 2. through gross negligence causes a risk of death or serious injury to the pregnant woman; (3) If the act is committed by the pregnant woman the penalty shall be imprisonment not exceeding one year or a fine; (4) The attempt shall be punishable. The pregnant woman shall not be liable for attempt.” Translation of Criminal Code in the version published on 13 November 1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 22 November 2021 (Federal Law Gazette I, p. 4906).

⁵⁷ German Criminal Code, *Section 218a, Exception to liability for abortion*. “(1) The offence under section 218 shall not be deemed fulfilled if: 1. the pregnant woman requests the termination of the pregnancy and demonstrates to the physician by certificate pursuant to section 219(2) 2nd sentence that she obtained counselling at least three days before the operation; 2. the termination of the pregnancy is performed by a physician; and 3. not more than twelve weeks have elapsed since conception. (2) The termination of pregnancy performed by a physician with the consent of the pregnant woman shall not be unlawful if, considering the present and future living conditions of the pregnant woman, the termination of the pregnancy is medically necessary to avert a danger to the life or the danger of grave injury to the physical or mental health of the pregnant woman and if the danger cannot reasonably be averted in another way from her point of view. (3) The conditions of subsection (2) above shall also be deemed fulfilled with regard to a termination of pregnancy performed by a physician with the consent of the pregnant woman, if according to medical opinion an unlawful act has been committed against the pregnant woman under sections 176 to 179, there is strong reason to support the assumption that the pregnancy was caused by the act, and not more than twelve weeks have elapsed since conception. (4) The pregnant woman shall not

and an authorization are required, and there is a mandatory three-day waiting period before the procedure can be carried out. These requirements only limit the criminal consequences for women obtaining an abortion or doctors performing the abortion under these circumstances but still leave them at risk of being criminally investigated.

(22) An abortion *may* be permitted on medical grounds after 12 weeks, but only if the life of the woman is in danger, or her physical or mental health is threatened by the pregnancy (it must be proven that the danger to the woman can only be averted by a termination), or where there is known or anticipated damage to the unborn child due to chromosomal disorders or similar issues. Abortion on criminal grounds (i.e. because pregnancy is the consequence of rape) must take place within 12 weeks of conception. Abortion due to rape or for medical reasons *after* the first trimester is a crime.

(23) In October 2024, a new model law was introduced by German civil society organizations and experts to encourage and promote specific ways to modernize abortion regulations in Germany.⁵⁸ The proposal called for the removal of abortion regulation from the Penal Code and the expansion of legalization (on request) to 22 weeks. The model law further recommended repealing the mandatory counseling and mandatory three-day waiting periods currently in place for abortion on request.

(24) Polling in Germany suggests strong public support for decriminalizing abortion with one poll finding 74% of Germans are in favor of abortion being both accessible and legal in the first three months of pregnancy.⁵⁹ A left-wing cross-party initiative was launched at the end of 2024 to decriminalize abortion in early pregnancy. Unfortunately, while the three-day wait would be removed, the requirement for mandatory counseling would remain.⁶⁰

(25) In the following sections we will explain how, by criminalizing abortion, prohibiting surrogacy and imposing burdensome restrictions on IVF, Germany is failing to fulfill its obligations under the Covenant, specifically concerning Articles 3, 12 and 15.

be liable under section 218 if the termination of pregnancy was performed by a physician after counselling (section 219) and not more than twenty-two weeks have elapsed since conception. The court may order a discharge under section 218 if the pregnant woman was in exceptional distress at the time of the operation.” Translation of Criminal Code in the version published on 13 November 1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 22 November 2021 (Federal Law Gazette I, p. 4906).

⁵⁸ Profamilia, *In accordance with the Basic law, human rights and international health evidence: 26 professional associations present a bill on the new regulation of abortion*, 17 Oct. 2024, https://www.profamilia.de/news-detail?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=2205&cHash=79ea6cb5b9575c03420a350d7ca60e73; Entwurf eines Gesetzes zur Neuregelung des Schwangerschaftsabbruchs (Draft law), 17 Oct. 2024, https://www.profamilia.de/fileadmin/profamilia/pressemitteilungen/Gesetzentwurf_Schwangerschaftsabbruch_Zivilgesellschaft_Wapler_Wersig_Woerner_17.10.2024.pdf.

⁵⁹ Julie Gregson, DW, *Abortion in Germany: Preelection push for liberalization*, 2 Dec. 2024, <https://www.dw.com/en/abortion-in-germany-preelection-push-for-liberalization/a-70922840> [accessed 7 Jan. 2025].

⁶⁰ *Ibid.*

BY FAILING TO PROMOTE AND PROTECT SEXUAL AND REPRODUCTIVE RIGHTS, GERMANY FAILS TO FULFIL ITS INTERNATIONAL OBLIGATIONS UNDER THE COVENANT

1) Abortion: Criminalization and burdensome requirements

(26) Abortion is a crime in Germany, punishable by up to three years in prison. In Germany, the Penal Code regulates the abortion laws and exceptions in the State, allowing for abortions by way of offering non-punishment in certain, specific circumstances. This prohibition of abortion affects women and their reproductive health decisions and obstructs the enjoyment of their human rights. Criminalizing abortion and imposing burdensome barriers to obtain an abortion violates multiple international human rights standards including the right to health (Art. 12), the right to equal enjoyment of rights enshrined in the covenant (Art. 3), and the right to enjoy the benefit of scientific progress (Art. 15).⁶¹

(27) Article 3 of the Covenant requires States Parties to ensure men and women enjoy all economic, social, and cultural rights, equally.⁶² States should not criminalize medical procedures that are only needed by women.⁶³ Limiting safe and legal abortion access results in less economic and educational opportunities for women and can trap women in unsafe relationships.⁶⁴ In March 2024, this Committee urged Iraq in the concluding observations on its fifth periodic report to “amend parts of the domestic legal and institutional framework to ensure that women and girls who undergo abortions and the doctors or others who attend them are not subject to criminal penalties.”⁶⁵ Denying women abortions denies them their autonomy and their right to make decisions about whether or not to have a child, or when to have a child, essentially forcing motherhood on women and girls.⁶⁶

(28) Further, Article 12 of the Covenant recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁶⁷ The right to health includes a right to sexual health,

⁶¹ Covenant on Economic, Social, and Cultural Rights (CESCR), Art. 3., Art. 12, Art. 15.

⁶² CESCR, Art. 3.

⁶³ WHO, *Abortion care guideline*, Chapter 2. Abortion regulation including relevant recommendations: Law & Policy Recommendation 1: Criminalization (2.2.1), <https://srhr.org/abortioncare/chapter-2/recommendations-relating-to-regulation-of-abortion-2-2-law-policy-recommendation-1-criminalization-2-2-1/> [accessed 1 Feb. 2025].

⁶⁴ World Health Organization, *Abortion*, 25 Nov. 2021, <https://www.who.int/news-room/fact-sheets/detail/abortion> [last accessed 18 Apr. 2024]; Eirliani Abdul Rahman, *Abortion bans trap victims in a cycle of domestic violence*, Harvard Public Health, 22 July 2022, <https://harvardpublichealth.org/equity/how-abortion-bans-trap-victims/> [last accessed 18 Apr. 2024].

⁶⁵ CESCR, *Concluding observations on the fifth periodic report of Iraq*, 14 March 2024, E/C.12/IRQ/CO/5, para. 49.

⁶⁶ HRC case found that Ecuador and Nicaragua violated the human rights of three girls who were denied access to abortion care, Feb 2025.

⁶⁷ CESCR, Art. 12.

including abortion care.⁶⁸ In General Comment 22, this Committee noted that access to reproductive health must not be denied or limited by the State through laws criminalizing reproductive health services.⁶⁹

(29) The denial of abortion services often leads to maternal mortality and morbidity and this Committee has recognized the role that unsafe abortion plays in contributing to these medical conditions, particularly for women without adequate financial resources.⁷⁰ Germany's abortion law is not only unaligned with this Committee's guidance, but it threatens dangerous outcomes for women.

(30) This Committee has acknowledged the effect that criminalizing abortion can have on mental health. In the concluding observations on the third periodic report of Bolivia, it urged Bolivia to "ensure that women who seek abortions are not held criminally responsible..." and recognized that criminal legislation that prohibits abortion is incompatible with "women's rights, including the right to life and to physical and mental health."⁷¹

(31) Women may face mental health challenges following an unsafe abortion or forced pregnancy. One study found a "strong and persistent relationship between having an unwanted pregnancy resulting in a live birth and poorer later-life mental health outcomes."⁷² For example, women with unwanted pregnancies are more likely to experience a serious depressive episode.⁷³

(32) Criminalization of abortion also contributes to dangerous abortion stigma which is harmful to women's mental health.⁷⁴ As the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health recognized in a 2011 report, "[i]n some cases, women have committed suicide because of accumulated pressures and stigma related to abortion."⁷⁵

(33) Article 15.1.b of the Covenant recognizes "the right of everyone to enjoy the benefits of scientific progress and its applications." Prohibiting abortion early in pregnancy infringes on the enjoyment of the scientific progress in the field of reproductive health because abortion is medically safe when performed legally.⁷⁶ Unfortunately, the current penal code is impacting health workers and the availability of abortion. Medical students are not typically taught how to perform a surgical abortion in Germany and the number of doctors

⁶⁸ CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), E/C.12/2000/4, 11 Aug. 2000, para. 8.

⁶⁹ CESCR, *General Comment No. 22: on the right to sexual and reproductive health* (Art. 12), 2 May 2016, E/C.12/GC/22, para. 38 & 40.

⁷⁰ CESCR, *General Comment No. 22: on the right to sexual and reproductive health* (Art. 12), E/C.12/GC/22, 2 May 2016, para. 10 & 28.

⁷¹ CESCR, *Concluding observations on the third periodic report of the Plurinational State of Bolivia*, E/C.12/BOL/CO/3, 5 Nov. 2021, para. 54-55.

⁷² Pamela Herd, Jenny Higgins, Kamil Sicinski, Irina Merkurieva, *The Implications of Unintended Pregnancies for Mental Health in Later Life*, Am. J. Public Health, March 2016, 106(3):421-429. doi: [10.2105/AJPH.2015.302973](https://doi.org/10.2105/AJPH.2015.302973); <https://pmc.ncbi.nlm.nih.gov/articles/PMC4815713/#:~:text=Women%20with%20unwanted%20pregnancies%20have,experienced%20a%20serious%20depressive%20episode>. [accessed 7 Feb. 2025].

⁷³ *Ibid.*

⁷⁴ U.N. General Assembly, *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/66/254, 3 Aug. 2011, para. 36.

⁷⁵ *Ibid.*

⁷⁶ CESCR, Art. 15.1.b.

who are willing to provide an abortion has halved since 2003.⁷⁷ These drastic changes in Germany directly limit women's ability to enjoy the right to scientific progress in the field of abortion care.

(34) Preconditions women must fulfill before being granted access to a legal abortion are extremely problematic and significantly limit women's access to abortion. In Germany, the mandated three-day waiting period and mandatory counseling deter many women from even attempting to get an abortion. Despite the government's claim that these burdensome requirements are to advance the health of women, no evidence-based research supports beneficial outcomes for women seeking an abortion.⁷⁸

(35) In the Concluding Observations on the second periodic report of Indonesia, this Committee expressed its concern about "obstacles faced by women in obtaining access to safe abortion, even in cases in which it is legally permitted" and recommended the State to "decriminalize abortion and expand the circumstances in which it is legally permitted."⁷⁹ In Germany, mandated obstacles to obtain an abortion further exacerbate the barriers criminalization already inherently creates. The requirements of mandatory three-day waiting periods and mandatory counseling before being authorized to get an abortion are obstructions women must unnecessarily navigate when seeking an abortion, even when it is legal.

(36) Mandatory counseling, when mandated by law, often include misinformation that deter women from seeking a safe abortion.⁸⁰ This impacts women's ability to use accurate, supported scientific information to make informed decisions for themselves.⁸¹ Further, these requirements suggest that the decision to get an abortion will cause negative mental health outcomes or result in regret, yet scientific evidence is nearly conclusive that abortions do not increase a risk of mental illness later in life.⁸² Mandatory counseling further reinforces stigma surrounding abortion, and depicts abortion as the "wrong" choice to make, often pushing women to travel to get an abortion (if they can afford it), birthing against their will, or getting an unsafe "shadow" abortion.

(37) Decriminalizing abortion is a necessary part of legalizing abortion and would eliminate or minimize delayed access to abortion, burdensome costs, distress, and stigma. In brief, we ask this Committee to remain consistent with its position on abortion and to invite Germany to decriminalize abortion and remove the unnecessarily burdensome requirements to obtain an abortion legally.

⁷⁷ Julie Gregson, *supra* note 59.

⁷⁸ Luchuo Engelbert Bain, *Mandatory pre-abortion counseling is a barrier to accessing safe abortion services*, Pan. Afr. Med. J., 35:80. doi: [10.11604/pamj.2020.35.80.22043](https://doi.org/10.11604/pamj.2020.35.80.22043) 19 March 2020, [accessed 6 Feb. 2025].

⁷⁹ CESCR, *Concluding observations on the second periodic report of Indonesia*, 14 March 2024, E/C.12/IDN/CO/2, para. 58-59.

⁸⁰ Luchuo Engelbert Bain, *supra* note 78.

⁸¹ CESCR, Article 15(1). Misinformation when receiving mandatory counseling denies women the use of scientific progress and studies to make decisions about their health and bodies.

⁸² Luchuo Engelbert Bain, *supra* note 78.

II) Assisted Reproductive Technology: Illegality of surrogates, restrictions on IVF

(38) In General Comment No. 22, the Committee acknowledged that the “failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as medication for abortion, assisted reproductive technologies and advances in the treatment of HIV and AIDS, jeopardizes the quality of care.”⁸³

(39) Article 12 of the ICESCR obligates States to ensure the highest attainable standard of physical and mental health for all individuals. This includes providing access to healthcare services without discrimination.⁸⁴ Germany’s ART laws fail to fully realize the right to health for individuals and couples facing infertility, particularly LGBTQ+ individuals, single people, and women who require donated eggs or surrogacy to conceive. Restrictions, such as the prohibition of egg donation and surrogacy, limit access to necessary reproductive healthcare services. These barriers disproportionately affect marginalized groups and may result in individuals seeking unsafe or unregulated services abroad, exposing them to greater health risks.⁸⁵

(40) Furthermore, the inability to freeze embryos in Germany ultimately limits access to safer and more effective reproductive healthcare, raising concerns about the country’s compliance with Article 12 of the ICESCR, which guarantees the right to the highest attainable standard of health.

(41) The restrictive approach to PGD denies many prospective parents the ability to avoid passing on serious genetic conditions.⁸⁶ This not only limits their reproductive choices but also potentially impacts their mental health, as individuals are forced to grapple with uncertainty and anxiety about future pregnancies. By failing to ensure equitable access to comprehensive reproductive healthcare, Germany violates its obligation to respect, protect, and fulfill the right to health under Article 12.

(42) Article 15 of the Covenant recognizes the right of everyone “to enjoy the benefits of scientific progress and its applications.”⁸⁷ People who experience infertility or for personal or health reasons and seek ART assistance have a right to benefit from scientific advancements. As this Committee acknowledged in General Comment No. 25, the Covenant requires States parties to ensure access to “modern and safe forms of... assisted reproductive technologies...on the basis of non-discrimination and equality.”⁸⁸ A gender-sensitive approach is necessary alongside the access to “up-to-date scientific technologies necessary for women.”⁸⁹

(43) The right of everyone “to enjoy the benefits of scientific progress and its applications”, protected under

⁸³ CESCR, *General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, 2 May 2016, para. 21.

⁸⁴ CESCR, Art. 12.1.

⁸⁵ Whittle, *supra* note 37.

⁸⁶ Bock von Wülffingen B. Contested change: how Germany came to allow PGD. *Reprod Biomed Soc Online*. 2016 Dec 13;3:60-67. doi: 10.1016/j.rbms.2016.11.002. PMID: 29774251; PMCID: PMC5952673.

⁸⁷ CESCR, Article 15(1)(b).

⁸⁸ CESCR, *General Comment No. 25 (2020) on science and economic, social and cultural rights (article 15(1)(b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/25, 30 April 2020, para. 33.

⁸⁹ *Ibid*.

Article 15.1.b of the Covenant includes ensuring that advancements in reproductive technologies, such as ART, are accessible to all without discrimination. Germany's Embryo Protection Act does not reflect contemporary advancements in reproductive science and societal changes. For example, prohibitions on egg donation and surrogacy prevent individuals from benefiting from technologies that are widely available and safely regulated in other countries. These restrictions suggest an unwillingness to adapt legal frameworks to align with scientific progress, undermining the covenant's requirement to foster the diffusion of scientific advancements for the betterment of society.

(44) Additionally, the narrow conditions under which PGD is permitted inhibit individuals from fully utilizing available technologies to make informed reproductive choices. By maintaining such restrictive laws, Germany fails to ensure equal access to the benefits of reproductive technologies, particularly for those with medical or social vulnerabilities, and, therefore, violates Article 15 of the Covenant.

(45) Lastly, Germany's restrictive ART framework disproportionately impacts vulnerable groups, including women, LGBTQ+ couples, and individuals with genetic predispositions to serious illnesses.⁹⁰ These groups face systemic barriers to exercising their rights under Articles 12 and 15, exacerbating inequalities and undermining Germany's obligations to ensure non-discrimination and equality in access to healthcare and scientific benefits.

RECOMMENDATIONS

(46) We respectfully recommend this Honorable Committee include at least one of the following questions in the List of Issues it will prepare for Germany.

- i. Considering Germany's international obligations under Article 12 of the ICESCR, what steps is Germany taking to evaluate and potentially reform its legal framework on surrogacy to provide safe, ethical, and regulated access for individuals and couples who cannot carry a pregnancy to term?**
- ii. What steps has Germany taken to align its IVF regulations with scientific advancements and evolving international best practices, particularly regarding embryo transfer policies and access to treatment?**
- iii. What steps is Germany taking to address its limiting public health insurance coverage for IVF and other ART procedures to only married heterosexual couples, excluding unmarried individuals and same-sex couples, in light of the right to non-discriminatory access to healthcare under Article 12 of the ICESCR?**
- iv. What steps is Germany taking to ensure equitable access to Assisted Reproductive**

⁹⁰ Whittle, *supra* note 37.

Technology (ART) for all individuals, including single persons, LGBTQ+ couples, and individuals with infertility?

- v. How does Germany justify the continued prohibition of egg donation and surrogacy in light of the right to health under Article 12 of the ICESCR?
- vi. What will Germany do to address restrictions on Preimplantation Genetic Diagnosis (PGD) that disproportionately impact individuals with genetic conditions who seek to make informed reproductive choices?
- vii. What steps has Germany taken to review and update the Embryo Protection Act (1990) to reflect scientific progress and evolving societal needs?
- viii. What steps has Germany taken, or intends to take, to decriminalize abortion?
- ix. What specific plans does Germany have to remove three-day waiting periods and mandatory counseling for women obtaining abortions?