

Translation

German Federal Ministry of
Labour and Social Affairs

Dr. Annette Niederfranke
State Secretary

Chairperson of the Committee on
Economic, Social and Cultural Rights
Mr. Ariranga Govindasamy Pillay
UNOG-OHCHR
1211 Geneva 10
Switzerland

Berlin, 31 January 2012

Dear Mr. Chairperson,

The Government of the Federal Republic of Germany supports the UN mechanisms to check the worldwide implementation of human rights and attaches great importance to them. The Federal Government has taken the deliberate decision to face the reporting procedure and is, in principle, also prepared to be at the receiving end of criticism. It would like to express its thanks for the hearing in May 2011 before the Committee on Economic, Social and Cultural Rights where the German delegation could give comprehensive and detailed replies to the questions asked by the Committee.

The Federal Government is pleased that the Committee appreciated the high quality of both the fifth report submitted by Germany and the replies given to its additional questions about the report. It regrets, however, that some of the information provided in the context of the hearing is not or only incompletely reflected in the concluding observations of the Committee. It also regrets that it was not given the possibility to comment on some of the statements made in the chapter dealing with concerns. The Federal Government is concerned about the resulting inaccurate presentation of facts that has become public through the concluding observations. In the following, some of these presentations are dealt with by way of example.

On item 7:

As Federal law, the Covenant is part of the German legal system. Therefore, it can be invoked before the German courts at any time. That it hardly appears in the daily work of the courts is also due to the fact that in German law, many of the guarantees of the Covenant are covered by special technical laws which then serve as legal bases for the relevant rulings.

On item 11:

The Federal Government does not know of any reports that provide evidence of a violation of the economic, social and cultural rights caused by the development cooperation of the Federal Government in Cambodia. Rather does the German Federal Ministry for Economic Cooperation and Development support its cooperation countries in the gradual implementation of economic, social and cultural rights. Especially in the cooperation with Cambodia, the realization of the economic, social and cultural rights in the land sector is being pursued in a demonstrable way. This orientation of the cooperation was confirmed in December 2011 with the Cambodian Government, together with an agreement that was reached on further concrete steps that will help to implement the economic, social and cultural rights in the context of the land sector reforms.

On item 18:

The health and safety of "prisoners" at their respective workplaces, whether they are engaged in activities in prisons or in external activities in the context of open conditions, is protected in Germany to the same extent as the health and safety of other employees. It is true that prisoners are not employees in accordance with section 2 of the Occupational Safety and Health Act but the safety and health and accident prevention provisions have to be observed also in these cases in accordance with section 149 (2), second sentence, of the Prison Act.

On item 21:

In accordance with the requirements laid down by the Federal Constitutional Court on 9 February 2010, the Federal Government has calculated the standard rates of basic income support in a transparent procedure precisely, fairly and justly. Together with these standard rates, the costs of accommodation including heating energy, supplements for additional needs, if appropriate, and the contributions to the health and long-term care insurance schemes, it guarantees the socio-cultural subsistence level. Children and young persons whose parents draw benefits from the two welfare systems under Book Two and Book Twelve of the Social Code receive benefits from the education and participation package but also children and young persons whose parents are granted child supplements or housing allowances receive such benefits. In this way, the Federal Government provides targeted support for 2.5 million children and young persons. To conclude from this that the benefits are not adequate fails to recognize that any benefit increase and/or extension of the scope of entitled persons would lead to a rise

in the number of beneficiaries. Besides, under section 28 of Book Twelve of the Social Code, the Federal Government is legally obliged to newly determine the level of the standard rates at regular intervals.

On item 24:

Numerous research findings and international comparisons have shown that more employment is the decisive key to the fight against poverty. Therefore, with its activating labour market and social policy, the Federal Government pursues the aim to (re)integrate as many persons who are able to work into the labour market and maintain or restore employability. In this way, the State party has succeeded in raising the employment rate continuously over the last few years. In 2010, it reached 74.9 per cent in the group of those aged 20 to 64. Presently, Eurostat shows a rate of 76.6 per cent for the third quarter of 2011. The continuous increase benefits also and particularly women and older persons aged between 55 and 64. Analogous to the rise in employment the number of unemployed persons is going down in Germany. With a rate of 5.3 per cent in November 2011 Germany has one of the lowest rates in the European Union. Besides, the indicator has been named at-risk-of-poverty rate and not poverty rate which is meant to make clear that the possibility of a poverty risk - especially if persons remain on such low incomes for longer periods of time - could but need not necessarily exist.

On item 27:

A priority area of the long-term care policy of the Federal Government are measures that maintain and, where necessary, raise the quality of the care to be provided by nursing homes and care services and that make the results more transparent for all those concerned. Since the beginning of 2011 all licensed care institutions are checked once a year without prior notice. In addition, the results of the examination reports that are drafted on the basis of these quality checks have to be published since 2009 in accordance with certain criteria in a comprehensible and consumer-friendly way. This enables persons in need of care and their relatives to get a differentiated picture of the quality of an institution; at the same time, it acts as an incentive for more quality-oriented efforts in institutions. Similarly, it is an important objective of the Federal Government to further improve working conditions in the care sector.

On item 28:

The statement that "25 per cent of pupils go to school without breakfast and are thereby at risk of malnutrition" cannot be understood. Neither does the State party know where this figure comes from nor is any reference figure recognizable, for example to what group of pupils of what age this statement is meant to refer. Studies dealing with the breakfast habits of German children and young persons assume that the vast majority of all children and young persons have breakfast at home. Moreover, according to information provided by the survey of the Federal Statistical Office "EU-SILC / Leben in Deutschland" (EU-SILC / Living in Germany) for

2009, 95 per cent of all children in Germany have three meals per day; 86 per cent of all children have a meal including meat, fish or a high-value vegetarian meal at least once per day; 87 per cent of all children have fresh fruit and vegetables once per day. Against the backdrop of the figures available the Federal Government assumes that children in Germany are well nourished and not at risk of malnutrition.

On item 32:

The members of the national minorities in Germany (Danes, Friesians, German Sinti and Roma) are organised in civil society associations that are grouped together in umbrella organisations. The Federal and state governments maintain regular contacts with these organisations: The Federal Government has appointed a Commissioner for National Minorities who serves as their permanent contact. For three of the four national minorities, Advisory Committees have been set up with the German Federal Ministry of the Interior (including representatives from the Federal and state governments, Members of Parliament and representatives from the minority organisations) where Federal policy issues that are of relevance to the respective minority are being discussed. Furthermore, the German Federal Ministry of the Interior organises annual implementation conferences where the implementation of the Framework Convention of the Council of Europe for the Protection of National Minorities and of the European Charter for Regional or Minority Languages is being discussed. The organisations of the national minorities receive regular financial support from the Federal and state governments a large share of which is used to preserve the minority cultures. In all these matters it is of no relevance to know the precise number of the members that belong to the national minority and who belongs to it in personam.

The Federal Government hopes that the Committee will take account of the points that have been raised in the further reporting procedure and looks forward with great interest to a constructive dialogue with the Committee. Efforts should be made to address *all* issues that have been judged in a critical way by the Committee, either in writing or at the latest during the hearing. The Federal Government hopes that this will also help to avoid, to the largest extent possible, any ambiguities and misunderstandings in future.

Yours sincerely,

signed: Dr. Annette Niederfranke