

# List of issues and questions

with regard to the consideration of the Combined Seventh and Eighth Periodic Report of the Federal Republic of Germany on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

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## **CEDAW 2016 – List of Issues and questions**

### **General Act on Equal Treatment (AGG)**

The General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz* – AGG) has not been adequately developed in some key areas, especially those relevant to affected persons, and remains behind the specifications in the EU directives. Its definition of discrimination does not meet the full scope of that in the CEDAW. It is imperative to amend the AGG so as to expand its range of application, to include the right to action by anti-discrimination organizations and the federal Anti-Discrimination Agency (*Antidiskriminierungsstelle* – ADS), to extend the period in which claims against discrimination can be made, and to reverse the burden of proof in claims brought by affected persons.

#### Question

Does the Federal Government intend to evaluate the now 10-year-old AGG by commissioning and funding an independent study to assess its application, scope and effectiveness? Will the Federal Government use this study as the basis for corresponding legislative measures?

### **Anti-Discrimination Agency (ADS)**

Ten years after the General Act on Equal Treatment (AGG) came into effect, there are anti-discrimination agencies in only six of the 16 German Länder. Without independent agencies that have the appropriate resources, affected persons cannot receive counselling about their rights and the corresponding support. The programmes indicated in Germany's Combined Seventh and Eighth Periodic Report to promote implementation of the AGG are insufficient and can only have a supplementary effect.

#### Question

- What measures is the Federal Government planning to help the remaining ten German Länder in order to establish anti-discrimination agencies and offices in accordance with Article 2 CEDAW?

### **Stereotypical gender roles**

Germany still does not have any comprehensive policy aimed at all areas of society to combat stereotypical gender roles. It only has a policy of disincentives, criticized on multiple occasions by the CEDAW Committee. Moreover, no positions have been taken by the federal government, government leaders, or major parties on the growing anti-genderism movement in Germany.

At schools, widespread mobilization can be observed against curriculums that promote acceptance of LGBTIQ rights and question gender roles and norms.

## Questions

1. When, as also called for by the UN Human Rights Council,<sup>1</sup> will existing laws and regulations on federal and Länder levels be screened for their effect on gender stereotyping?
2. Are there plans on federal and Länder levels for country-wide educational measures against gender stereotyping and LGBTIQ discrimination?
3. When will the Federal Government take a position against the anti-genderism movement and thereby strengthen the structures that oppose discrimination against women and support existing equality measures?

## **Gender-just public funding for sport**

Public funding for sport, which benefits men more than women, does not take equality perspectives into account. Leadership positions in organized sports are dominated by men. Media reports on sport perpetuate gender stereotypes.

## Questions

1. Will federal, Länder and municipal governments collect data on the effects of public funding for sport?
2. Are there plans to establish binding quotas for leadership positions in sport to ensure gender-equitable representation?
3. Are binding agreements being considered to ensure that sport reporting incorporates gender perspectives?

## **Differences between East and West Germany**

Decades after German reunification, the effects of family policy in the German Democratic Republic (GDR) can still be felt.<sup>2</sup> In some respects Eastern policy was more modern than its Western counterpart, which has created an ever more urgent need for modernization in the present-day Federal Republic of Germany. Marriages with stay-at-home wives are still largely non-existent in the East, and many East Germans recall the modern aspects of GDR family law that safeguarded the individual rights of each family member.<sup>3</sup> What is needed: a definition of family such that the middle generation is not compelled to care simultaneously for the generations before and after it, a tax system that promotes individual economic security in both the present and future, and a school system that supports modern families (full-day supervision).

## Questions

1. Why does the German government ignore the experience and knowledge of East Germans with respect to family development, and therefore also the “different family philosophy” that they continue to hold?
2. Why does the German government fail to fully integrate East Germans in this regard and thereby gain them as allies for the upcoming task of integrating refugees?

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<sup>1</sup> Summary report A/HRC/27/73

<sup>2</sup> Allmendinger et al 2013.

<sup>3</sup> cf. GDR Family Code (*Familiengesetzbuch der DDR*), § 10.

## **Gender equity in the social care system**

Germany's system of caregiving is based on work provided by family members, a situation that is especially disadvantageous to women. Women do the majority of home care in general, are hugely underpaid as professional caregivers, quickly slide into poverty as family caregivers, and face extremely high health risks in both forms of work.<sup>4</sup>

### Questions

1. What is the Federal Government doing to establish a gender-equitable caregiving system, which sees care as a societal responsibility and provides quality care for everyone regardless of their financial and/or social situation?
2. What concrete measures is the Federal Government taking against the threat of poverty faced by family members currently providing home/nursing care? What new care/supervision structures will it put into place?

## **Non-exclusionary, non-discriminatory maternity rights**

Germany's form of maternity protection is obsolete. When put into practice at workplaces, it tends to have an exclusionary effect. Prohibitions on work are presented as the means of choice for protecting the health of women and their children. Instead, what is needed is to reorganize workplaces and jobs in such a way that health protection is compatible with non-discriminatory continued employment. The Federal Government is seeking to achieve this by revising its maternity protection law and thereby complying with key EU directives.

### Questions

1. What general model will the Federal Government base its maternity protection law on and how will it enshrine this model in law?
2. Which aspects of its maternity protection law does the Federal Government think need to be changed to achieve EU conformity?
3. How should maternity protection be integrated into the German dual occupational/health safety system in order to make it a completely normal responsibility for employers – one that prevents occupational health risks and therefore promotes participation in the workforce – for pregnant women, new mothers and nursing mothers just as for other employees with special vulnerabilities?

## **Gender-equitable occupational health and safety as a basic element of women's equality in the workforce**

For years now there have been increasing calls to take a gender perspective on health-related employment issues, and to place it on the agendas for both equality policy and occupational health and safety. Gender-specific data from a range of reports on work conditions and especially on work

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<sup>4</sup> Public funding for care accounted for 0.82% of the German GNP in 2010, which is extremely low compared to Sweden (approx. 3%), Denmark (approx. 2.5 %) and Norway (over 2.5%), cf. Cornelia Heintze 2013.

stress, also on work-related illness, absenteeism and early retirement, show a substantial need for gender-equitable analysis and prevention of occupational health risks. This also applies expressly to the need for an LGBTIQ-sensitive and non-discriminatory work environment. The annual Länder conferences of Ministers of Equal Rights and of Family Affairs (GFMK) and the Ministers of Labour and Social Affairs (ASMK) have produced analyses and reports and also passed resolutions on these issues.

### Questions

1. What importance does the Federal Government attach to gender-sensitive findings from the fields of occupational science, medicine and health, and from health promotion at the workplace? Does it see the need for improvement in these areas?
2. What is its position on the resolutions passed by the Länder conferences of Ministers in 2011 and 2012? What has it done in response to the demands addressed to different departments of the federal government?
3. What initiatives of its own is it planning?

### **Independent livelihoods for women throughout their lives**

Lengthy career breaks, insignificant (and brief) part-time work, and low wages in sectors dominated by women have led to the fact that women's earnings and therefore their entitlement to social benefits often fail to ensure independent means of subsistence over the course of their lives. Tax and social policies (e.g. *Ehegattensplitting*, i.e. the option for married couples to select different tax classes for different income levels to the pension-related detriment of the lower earner; also free health insurance coverage for spouses) combine with so-called "mini-jobs" (maximum 400 euros/month without social benefits) to provide incentives for a traditional division of labour that prevents women from taking jobs that would ensure an independent livelihood. At the same time, post-divorce maintenance obligations no longer provide security either. Moreover, these financial structures are not linked to the provision of care work, but rather to the institution of marriage as such (regardless of the presence of children or relatives in need of care). They provide no benefit to single parents or non-married parents or care providers.

### Questions

1. What model is the Federal Government using as the basis for its equality policy and for its family and social policy? What importance does it attach to making sure women have an independent means of subsistence throughout their lives?
2. How has the Federal Government anchored this model (*Leitbild*) in an integral way?
3. What social policy, employment policy and tax measures are being taken by the Federal Government to promote independent livelihoods for women throughout their lives?

### **Gender budgeting**

Gender mainstreaming and gender budgeting are only being implemented slowly at federal, Länder and municipals levels in Germany. The discriminatory effects of taxes and other public funding have thus far been ignored despite the requirement in place since 2001 to examine legislation for its

effects on equality. Undemocratic gender relations are perpetuated as a result. This is due in part to insufficient scientific support and consulting to facilitate this difficult reform work. A good approach would be to set up an Institute for Gender Equality, with very good funding and staffing to handle the corresponding demands placed upon it. In addition to general research, this institute would be charged with developing effective methods to implement, evaluate and further develop measures to achieve gender equality, and with advising public and private institutions on successful gender policy. It would also need to develop a corresponding Internet portal.

#### Questions

1. How will the Federal Government ensure that gender budgeting is put promptly into practice, with a view to both income (especially taxation and the structure thereof), and spending?
2. Will the Federal Government establish an Institute for Gender Equality?

#### **Reform of law on sexual offenses**

Germany is still deficient in providing protection against sexualized violence. Its laws and legal practice do not conform to CEDAW requirements. Neither the legislative nor judicial system ensures that (lack of) consent is the main factor in prosecuting sexual assault and rape. Even under current laws, a woman's lack of physical resistance is still commonly viewed as consent to unwanted sexual interaction.

#### Question

- When will the Federal Government produce draft legislation on sexual offences that brings its penal code and judicial system into conformity with CEDAW guidelines?

#### **Support for women affected by violence – legal foundations and funding**

In its 2009 recommendations, the CEDAW Committee criticized the lack of sustainable funding for women's shelters and counselling centres as well as the lack of free, income-independent access to shelters for all women and children in all the German Länder and the lack of specially equipped shelters, e.g. for women with disabilities. In addition, the Committee called upon Germany to ensure the requisite structures for a support system as well as appropriate funding on a joint federal, Länder and municipal basis.

#### Questions

1. What has Germany done to provide a sustainable support system in all its Länder that ensures access for all women affected by violence and their children at all times and independently of income, residence status, country of origin, social status, health limitations or disabilities, and that also ensures access to protection and support at shelters and specialized counselling centres in other Länder and municipalities if needed?
2. What steps has Germany taken to legally ensure sufficient funding for women's shelters and specialized counselling centres?

## **Systematic development of a comprehensive strategy to protect women and girls with disabilities against violence**

According to a study by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) from the year 2012,<sup>5</sup> women with disabilities are two to three times more likely to experience sexualized violence and twice as likely to experience physical violence (inside and outside institutions) than the average female population, and are therefore even less adequately protected against physical, sexual and psychological violence.

In its Concluding Observation No. 36 on Germany's Initial Report on the Convention on the Rights of Persons with Disabilities (CRPD), the CRPD Committee recommends that Germany provide a comprehensive, effective and adequately funded strategy to ensure effective protection against violence for women and girls with disabilities.<sup>6</sup>

### Question

- What measures for a comprehensive strategy are planned by the Federal Government and how will they be funded?

## **Trans and intersex rights**

In Concluding Observation No. 62 on Germany's Sixth Periodic Report, the CEDAW Committee called on the Federal Government to enter into dialogue with NGOs for intersex and transsexual people in order to gain a better understanding of their concerns and take effective measures to protect their human rights.

### Question

- What are the findings from the dialogue between the Federal Government and intersex people and what measures has the Federal Government taken to meet its obligation to protect intersex children from unnecessary surgical, pharmaceutical and medical interventions connected with a loss of reproductive capacity?

Until the 2011 decision by the Federal Constitutional Court (BVerfG), trans\* persons had to have themselves sterilized in order to change their civil status in accordance with §8 of the Transsexuals Act (*Transsexuellengesetz* – TSG). Discussion of and reparations for this violation of the rights to bodily integrity and to having a family, which could have affected up to 15,000 people from 1981 to 2011, have not taken place in Germany. On 27 April 2016 the Swedish government announced a legal initiative to compensate forcibly sterilized trans\* persons.

### Question

- How is the Federal Government planning to compensate persons forcibly sterilized in accordance with the "Transsexuals Act" as applied from 1981 to 2011?

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<sup>5</sup> Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), 2013: *Lebenssituation und Belastungen von Frauen mit Behinderungen und Beeinträchtigungen in Deutschland – Langfassung* <http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste,did=199822.html> (accessed 19 May 2016)

<sup>6</sup> <http://www.lag-bw.de/PDF2015/United%20Nations.pdf> (accessed 19 May 2016)

## **Custody and access rights in the context of domestic violence**

Experiencing domestic violence can have harmful effects on children. The consequences of access rights for the violent parent must be recognized for both the child and the affected woman. An ongoing threat to the mother from such access can also place the child's welfare at risk. Legal decisions must take this into account.

### Questions

1. What is the Federal Government doing to ensure that the investigative requirement in §26 of the Family Proceedings Act (FamFG) is taken seriously in right-of-access cases that involve domestic violence? This requirement specifies that all decision-related matters must be investigated.
2. How can the Federal Government ensure this is done, and also that signs of violence are investigated with the requisite care even if women do not report them openly? How will the Federal Government improve coordination among the strategies to protect women and children in accordance with the CEDAW and the UN Convention on the Rights of the Child?

## **Beijing Platform for Action**

Like with CEDAW, twenty years after the UN World Conference on Women in Beijing in 1995 Germany still does not have a national action plan to systematically and verifiably implement the Beijing Platform for Action and provide the corresponding resources. The Federal Government is not seeking to distribute the Beijing Declaration and Platform for Action or the CEDAW document in relevant languages to all parts of the population and to institutions, or to mobilize participation to implement them.

### Question

- Will the Federal Government produce an action plan to implement the CEDAW *and* the Beijing Platform for Action within a national framework, with binding deadlines and framework conditions that enable relevant participation by NGOs?

## **Development cooperation**

In its reply to Recommendation No. 64 by the CEDAW Committee, the Federal Government did not address the special vulnerability and risk of poverty faced by women in rural areas arising from the government's violation of its extraterritorial obligations. Many cases of displacement have been documented resulting from the investment of German development funds into large-scale agriculture. This violates especially the rights of women. Given their responsibilities to care for their families, they have fewer opportunities than men to compensate for the loss of natural resources. Affected women also report that higher levels of poverty due to displacement also lead to higher levels of domestic violence by men and to higher rates of early pregnancy in girls.

### Question

- What strategy is the Federal Government pursuing to make CEDAW General Recommendation No. 34 on the Rights of Rural Women a systematic and integral part of its development cooperation?



### **Inclusion of NGOs**

In its reply to Recommendation No. 64, the Federal Government also did not address the need to include NGOs in its development cooperation.

#### Question

- What strategy is the Federal Government pursuing to strengthen civil society actors in the global North and South, especially regarding institutional and financial support for cooperation with (international) women's organizations?

### **UN Convention on the Rights of All Migrant Workers**

Regarding the Federal Government's replies to Recommendation 65 by the CEDAW Committee, it should be noted that the only one of nine major international human rights instruments that Germany has not ratified is the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Families. This convention addresses rights guaranteed in other human rights treaties already ratified by Germany, and defines them more clearly for the specific situation of migrants, both female and male.

#### Question

- When does Germany intend to finally sign and ratify the International Convention on the Rights of all Migrant Workers and Members of Their Families of 1990, which will significantly help to strengthen the rights and current situation of migrants, both female and male, living in Germany and eliminate existing deficits in the protection of human rights?