

**Contribution to the Development of the List of Themes
for the Review of the Combined 23rd to 26th State Reports
of the Federal Republic of Germany
at the 111th Session of the
UN Committee on the Elimination of Racial Discrimination
(CERD)**

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Submitted by the Following Organizations

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5. Armut und Gesundheit in Deutschland e.V.
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7. Berliner Initiative gegen Gewalt an Frauen e.V.
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12. Condrobs e.V.
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27. Jesuiten-Flüchtlingsdienst Deutschland / Jesuit Refugee Service Germany
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The undersigning organizations submit this briefing for the consideration by the UN Committee on the Elimination of Racial Discrimination (CERD) of Germany's combined 23rd to 26th periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), due at the 11th session of CERD (20 November 2023 - 08 December 2023). The aim of this briefing is to inform the development of the list of themes guiding Germany's state report review session and the subsequent formulation of the Concluding Observations by CERD.

Executive Summary

In Germany, several groups of non-nationals are *de jure* excluded from effective healthcare coverage mechanisms on account of their national origin and residency status and, thus, do not have equal and adequate access to healthcare.

Asylum seekers, amongst others, are only entitled to limited medical care as specified in Section 4 of the Act on Benefits for Asylum Applicants (ABAA), according to which their access to healthcare is restricted to instances of acute disease or pain, healthcare related to pregnancy and childbirth, vaccinations and medically required preventive check-ups for the first 18 months of their stay in Germany. Their entitlement is considerably lower than the service package defined as ‘necessary’ in the statutory health insurance. The period of restricted access can be extended depending on their cooperation in the asylum-seeking process. Other provisions of asylum legislation (reduced social benefits, restrictions on movement, replacement of cash benefits by benefits in-kind) also have detrimental effects on asylum seekers’ health. The limitations in access to healthcare under ABAA constitute a discriminatory distinction between nationals and non-nationals.

Recently, Germany has introduced an improvement for some persons seeking protection: The submitting organizations expressly welcome the rapid and unprecedented measures taken by the EU and Germany to ensure the protection and integration of those fleeing the Russian aggression in Ukraine. These provide them with access to social services, including full healthcare coverage. Yet, all other asylum seekers are excluded from these measures, thus remaining severely limited in their access to healthcare. The current situation thus constitutes differential treatment of persons seeking protection according to their national origin, which also manifests itself in unequal entitlements to healthcare.

The restriction in access and entitlement to healthcare of persons seeking protection based on their national origin violates their human right to health as well as Germany’s responsibilities under ICERD and is untenable in the face of the grave consequences the lack of access to medical care bring about.

Ärzte der Welt and the undersigning organizations thus urge the Committee to include the differential treatment of persons seeking protection in its list of themes. Moreover, we appeal to the Committee to call upon the German Government to:

- **Repeal the restrictions under ABAA so as to respect to the human right to health of asylum seekers and to comply with its responsibilities under Article 5 (e) (iv) ICERD to ensure the equal right of everyone, “without distinction as to race, colour, or national or ethnic origin” to the enjoyment of public health and medical care.**
 - **Specifically, abolish the restrictions on entitlement to healthcare coverage under Sections 4 and 6 ABAA and grant access to health care equivalent to the statutory health insurance benefits catalogue from the beginning of their stay in Germany, without subject to privileges or restrictions on access based on national origin.**
 - **Abolish other regulations under asylum legislation, which include obligations to remain in shared accommodation structures, restrictions on movement, reductions of benefits or the replacement of cash benefits by benefits in kind, as they constitute crucial determinants of ill health.**

0. Introduction

This briefing focuses specifically on the perpetual violation of Germany's responsibility under Art. 5 (e) (iv) ICERD to eliminate racial discrimination and guarantee equal access to public health and medical care. It seeks to elucidate Germany's discriminatory practices against non-nationals – persons seeking protection in particular - which entail limitations in access to healthcare based on national origin and differential treatment according to their national origin.

This submission is informed by *Ärzte der Welt's* long-standing project experience: In cooperation with partners, *Ärzte der Welt* runs clinics with voluntary healthcare staff in Germany, providing free and anonymous medical care and social support for people with no or limited access to healthcare. Clients include inter alia asylum seekers and undocumented migrants. *Ärzte der Welt* has been advocating the right to healthcare for these groups of people for years, seeking reforms in Germany's legal system in order to realize everyone's right to access medical care without distinction on any grounds.

The other undersigning organizations share this aim and direct their efforts to ensuring adequate access to healthcare for all, working either directly in the provision of health services or engaging in advocacy work.

Ärzte der Welt and the undersigning organizations, therefore, appreciate the opportunity to address the Committee and to draw its attention to the following instances of Germany's non-compliance with ICERD:

1. Discrimination Against Non-Nationals in their Access to Healthcare

- Article 5 (e) (iv) ICERD

- Cf. Paragraph 178 German State Report

The Federal Republic of Germany has signed numerous international treaties that recognize the human right to health and non-discriminatory access to healthcare for all.¹ Under Art. 5 (e) (iv) ICERD, Germany is obliged to ensure the equal right of everyone, “without distinction as to race, colour, or national or ethnic origin” to the enjoyment of public health and medical care.

Yet, several groups of non-nationals in Germany are *de jure* excluded from effective coverage mechanisms on account of their national origin and residence status, thus, do not have equal and adequate access to healthcare.²

¹ Article 5 (e) (iv) International Convention on the Elimination of All Forms of Racial Discrimination (1965); Article 12 International Covenant on Economic, Social and Cultural Rights (1966); Article 12 Convention on the Elimination of All Forms of Discrimination against Women (1979); Article 24 Convention on the Rights of the Child (1989); Article 25 Convention on the Rights of Persons with Disabilities (2006); European Convention on Human Rights (1950)

² There are also several *de facto* exclusions of healthcare related to national origin and differential treatment related to residence status, one being the lack of cost coverage for language mediation. Mutual understanding is essential for receiving adequate healthcare. While the cost of language mediation can be covered for asylum seekers according to ABAA Section 6 and people receiving social benefits according to Social Code XII (Section 73) under the condition that it is essential for the treatment and no other possibility of translation exists, this option is not available for other persons in need of translation. While this is not the focus of this submission, German government should legally enshrine the entitlement for cost coverage of language mediation for all persons in need.

1.1. Restrictions on the Access to Healthcare of Persons Seeking Protection

1.1.1. The Legal Status-Quo

Asylum seekers, amongst others³, are entitled to limited medical services only, as specified in Section 4 Act on Benefits for Asylum Applicants (ABAA), according to which their access to healthcare is restricted to instances of acute disease or pain (Section 4(1)), healthcare related to pregnancy and childbirth (Section 4(2)), vaccinations and medically required preventive check-ups (Section 4(1)) for the first 18 months of their stay in Germany. The timeframe of 15 months indicated in the state report⁴ is not up to date as ABAA has been amended in 2019, extending the time during which access to healthcare is restricted to 18 months.⁵

The limited healthcare benefits during the first 18 months can be extended to further services when they are indispensable for the health of the individual concerned (Section 6(1) ABAA). However, any extension of medical care or further services beyond the limited entitlements laid down in Section 4 ABAA can only be granted through often complicated and lengthy individual case decisions, during which authorities who oftentimes lack medical expertise decide whether to grant further medical care on a case-by-case basis. There is, moreover, no explicit catalogue conclusively defining what these indispensable services may include, and there is no entitlement to receive the optimal level of care needed.⁶ As a result of the lack of clarity and the great degree of discretion, authorities commonly employ a rather restrictive interpretation of what the entitlements under Section 6(1) may include.⁷ Consequently, medical care and especially the treatment of chronic and mental illnesses are subject to long waiting periods and a high risk of them being refused. Even medically prescribed services such as physiotherapy after a stroke may not be approved.⁸ Similarly, psychotherapy is also often refused despite medical indications.⁹

After 18 months, beneficiaries of ABAA may receive ‘analogous benefits’ according to Section 2(1) ABAA which entitles them to full access to healthcare equivalent to regular healthcare provided to the general population in need of welfare services under Social Code Book XII. These include full access to healthcare services equal to benefits under the statutory health insurance. Once legally recognised as entitled to asylum or protection, beneficiaries also have full access to healthcare under the regular social security system. The initial restrictions on healthcare benefits may, however, apply for more than 18 months when the respective individual has unlawfully extended the duration of their stay (Section 2(1) ABAA). The legal practice establishes that acts which inter alia include reporting a false nationality, omitting having had another nationality, not providing (accurate) information on one’s identity or ethnicity or filing two asylum applications after having re-immigrated amount to an

³ Persons obliged to leave the country (i.e. undocumented migrants and migrants in possession of a tolerated stay permit)

⁴ Combined twenty-third to twenty-sixth reports submitted by Germany under article 9 of the Convention, due in 2018. June 29, 2020. CERD/C/DEU/23-26, paragraph 178.

⁵ Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht, 15. August 2019. Bundesgesetzblatt Jahrgang 2019 Teil I Nr. 31, issued on August 20, 2019.

⁶ Wissenschaftliche Dienste des Deutschen Bundestags 2016: Sachstand. Sanktionen im Leistungsrecht für Asylbewerber und Flüchtlinge. Asylbewerberleistungsgesetz, Zweites und Zwölftes Buch Sozialgesetzbuch. Retrieved from: <https://www.bundestag.de/blob/424068/2d082f9f6274714874df1bea2a673c3c/wd-6-053-16-pdf-data.pdf>.

⁷ Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer – BaFF e.V.: Versorgungsbericht zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland. http://www.baff-zentren.org/wp-content/uploads/2017/02/Versorgungsbericht_3-Auflage_BAFF.pdf

⁸ ibidem

⁹ ibidem

unlawful extension of one's stay.¹⁰ In these cases the law foresees that the individual shall remain subject to the limited healthcare benefits under Section 4 and 6 ABAA. The withdrawal or denial of full entitlements to health care is thus a mechanism to impose 'sanctions' during the asylum procedure, as also noted by the Research Service of the German Parliament.¹¹

Besides restrictions on entitlements to healthcare, asylum legislation stipulates further limitations and regulations for asylum seekers, which include obligations to remain in shared accommodation structures, restrictions on movement, reductions of benefits or the replacement of cash benefits by benefits in kind.¹² Section 3(2) establishes that for asylum seekers in state-level reception facilities, cash benefits are to be replaced by benefits in kind. Moreover, benefits may be reduced when asylum seekers fail to cooperate in the asylum procedures (Section 1a ABAA). With the introduction of the new Asylum Act, which entered into force on October 20, 2015, authorities are allowed to retain asylum seekers in state-level reception centres for up-to 18 months before transferring them to accommodation centres in districts and communes (Section 47 Asylum Act). The obligation to remain in shared state-level accommodation structures is accompanied by a restriction to not move outside of the area of the city or district in which they are accommodated (Section 56 Asylum Act).

These restrictions have a detrimental impact on the health of asylum seekers, functioning as crucial determinants of ill health. They often increase the need for medical treatment which, however, remains restricted under ABAA.

1.1.2. Consequences of Restricted Access to Healthcare

The restrictions on access to healthcare under ABAA have far-reaching consequences. The entitlements are lower than the catalogue of minimum services of the statutory health insurance,¹³ even though the benefits thereunder are already defined in such a way as to not exceed 'the extent of what is necessary' (Section 12 Social Code Book V). The limited entitlements of asylum seekers during the first 18 months of their stay are lower and accordingly do not ensure the necessary level of healthcare. This leads to an inadequate provision of medical care, especially in the area of preventive services, chronic diseases and mental health. The denial of comprehensive healthcare can cause diseases to become chronic or lead to irreversible harm. Restrictions in healthcare lead to higher costs, as inpatient and emergency treatment may become necessary in the absence of timely and adequate previous treatment.¹⁴

¹⁰ Further reasons to deny or withdraw full access to healthcare services are if an asylum application has been filed to avoid deportation and if the asylum application was rejected and the person has an immediate obligation to leave the country. Wissenschaftliche Dienste des Deutschen Bundestags 2016: Sachstand. Sanktionen im Leistungsrecht für Asylbewerber und Flüchtlinge Asylbewerberleistungsgesetz, Zweites und Zwölftes Buch Sozialgesetzbuch. <https://www.bundestag.de/blob/424068/2d082f9f6274714874df1bea2a673c3c/wd-6-053-16-pdf-data.pdf>.

¹¹ *ibidem*

¹² In a landmark decision on July 18, 2012, the Federal Constitutional Court declared the then amount of basic benefits under Section ABAA to be unconstitutional, as they were manifestly insufficient to guarantee the constitutionally protected minimum subsistence standard. Germany's highest court thereby clearly rejected the idea of using reductions of social benefits to deter asylum seekers: 'Human dignity, guaranteed in Article 1.1 of the Basic Law, may not be modified in light of migration-policy considerations.' In March 2015, the legislature then fundamentally reformed ABAA in order to implement the requirements of the Federal Constitutional Court. Since then, however, far-reaching restrictions have again been adopted in several amendments. Federal Constitutional Court. Judgment of the First Senate of July 18, 2012, 1 BvL 10/10. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2012/07/1s20120718_1bv1001010en.html

¹³ Wissenschaftliche Dienste des Deutschen Bundestags 2016: Sachstand. Sanktionen im Leistungsrecht für Asylbewerber und Flüchtlinge. Asylbewerberleistungsgesetz, Zweites und Zwölftes Buch Sozialgesetzbuch. <https://www.bundestag.de/blob/424068/2d082f9f6274714874df1bea2a673c3c/wd-6-053-16-pdf-data.pdf>

¹⁴ Bozorgmehr K, Razum O. Effect of Restricting Access to Health Care on Health Expenditures among Asylum-Seekers and Refugees: A Quasi-Experimental Study in Germany, 1994-2013. PLoS One 2015; 10(7): e0131483.

While failing to respect the human right to health of asylum seekers, the German Government violates the principle of non-discrimination by introducing this discriminatory distinction between nationals and non-nationals. All non-nationals seeking protection or asylum in Germany generally fall under ABAA during the asylum procedures until a decision on their case is reached. Consequently, they are restricted in their right to healthcare during the first 18 months of the asylum procedure because of their national origin which in their case necessitates undergoing asylum procedures upon entering Germany in search of protection/asylum. Under ICERD, any restriction and distinction based on national origin constitutes racial discrimination.

1.2. Germany's Legal Obligations Towards Asylum Seekers

While Article 1 ICERD provides for the possibility of differentiating between citizens and non-citizens, CERD General Recommendation 30 states that any differential treatment of non-nationals must take place within the bounds of proportionality and be pursuant to a legitimate aim (paragraph 4). It affirms that state parties are obliged to guarantee equality between nationals and non-nationals in the enjoyment of human rights 'to the extent recognised under international law' (paragraph 3).¹⁵

International law itself clearly establishes the states' obligation to respect the human right to health of all equally, without subject to restrictions based on residency status or nationality. The right to health is enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) specifies that states 'are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including [...] asylum-seekers and illegal immigrants, to preventive, curative and palliative health services' (paragraph 34).¹⁶ CESCR General Comment No. 14 therein underpins Art. 5 (e) (iv) ICERD and CERD's General Recommendation 30 paragraph 36.

Since the CESCR affirmed the obligation of states to ensure equal access to healthcare to all, including to non-nationals like asylum seekers, Germany has been repeatedly criticised by the Committee for its violations of Article 12. The German Government has been urged to review ABAA to ensure that asylum seekers enjoy equal access to healthcare (Concluding Observations CESCR 2011 and 2018).¹⁷ In the course of the last state report review session under ICERD in 2015, CERD, too, has drawn the attention of Germany to the incompatibility of the restricted access to healthcare under ABAA with ICERD.¹⁸ Yet, since CERD has called upon Germany to ensure that asylum seekers are able to enjoy their right to healthcare without restrictions, Germany has even extended the timeframe during which entitlements to healthcare are restricted under ABAA from 15 to 18 months in 2019.¹⁹

Subjecting asylum seekers to restrictions on healthcare for whatever timeframe is unlawful under international law and violates Germany's responsibilities under Article 5 (e) (iv) ICERD. It constitutes a heavy interference with the right to health of the persons concerned, with grave consequences for their health and life. Lacking a legitimate aim and proportionality, it proves incompatible with Germany's responsibilities under ICERD as it introduces a distinction in access to healthcare on the grounds of national origin.

¹⁵ United Nations. Committee on the Elimination of All Forms Racial Discrimination. 2004: General Recommendation 30 - Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGEC%2F7502&Lang=en

¹⁶ United Nations. Committee on Economic, Social and Cultural Rights. 2000: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No.14 (2000) – The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4 https://digitallibrary.un.org/record/425041/files/E_C.12_2000_4-EN.pdf

¹⁷ United Nations. Committee on Economic, Social and Cultural Rights. July 12, 2011: Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant – Concluding observations of the Committee on Economic, Social and Cultural Rights – Germany, E/C.12/DEU/CO/5, <https://www.refworld.org/docid/52d664a24.html> & United Nations. Committee on Economic, Social and Cultural Rights. November 27, 2018: Concluding observations on the sixth periodic report of Germany, E/C.12/DEU/CO/6, https://digitallibrary.un.org/record/1653881/files/E_C-12_DEU_CO_6-EN.pdf?ln=en

¹⁸ United Nations. Committee on the Elimination of Racial Discrimination. June 30, 2015: Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany, CERD/C/DEU/CO/19-22, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FDEU%2FCO%2F19-22&Lang=en

¹⁹ Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht, 15. August 2019. Bundesgesetzblatt Jahrgang 2019 Teil I Nr. 31, issued on August 20, 2019.

2. Differential Treatment based on National Origin - Article 5 (e) (iv) ICERD

In 2022, German government has introduced specific entitlements for persons displaced from Ukraine, including entitlement to full healthcare coverage. This is an improvement related to the right to health. However, it introduces a discrimination on the basis of national origin and underscores the need for full healthcare coverage for all displaced persons.

2.1 The Legal Situation: EU Temporary Protection Directive and German Transposition

On March 4, 2022, the Council of the European Union adopted Council Implementing Decision (EU) 2022/382²⁰ establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC²¹ and having the effect of introducing temporary protection. It entered into force on the same day.

The EU activated this so-called Temporary Protection Directive (TPD) to provide immediate protection in EU countries for people displaced by the Russian invasion of Ukraine on February 24, 2022. The Directive requires the EU Member States to give a residence permit to all persons who are granted temporary protection based on a Council Implementing Decision. The directive has been transposed into German law by means of Section 24 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act) which stipulates that a temporary residence permit (for the duration of the temporary protection) is to be given to all persons who are granted temporary protection on the basis of the Council decision. Under the Decision, all Ukrainian nationals who resided in Ukraine before 24 February 2022 as well as their family members are entitled to a temporary residence permit (Council Decision 2022/382, Article 2(1)). Germany additionally specifies that Ukrainian nationals who had already been staying in Germany by February 24th and whose residence permit is about to expire are entitled to temporary protection. Granting temporary protection pursuant to Section 24 Residence Act has replaced complex individualised asylum procedures with generalised status acquisition, primarily by means of entitlement based on Ukrainian nationality and residence.

Third-country nationals other than Ukrainians are in certain cases also entitled to temporary protection, given they fulfil predetermined criteria. Stateless persons and nationals of non-EU countries other than Ukraine who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022 as well as their family members are granted temporary protection (Council Decision 2022/382, Article 2(1)). The same applies to stateless persons, and third-country nationals, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit, and who are unable to return in safe and durable conditions to their country or region of origin (Council Decision 2022/382, Article 2(2)). Subject to the same prerequisites of inability to return home and legal residence in Ukraine, Germany extends the entitlement to temporary residence to further third-country nationals who were in Ukraine for purposes other than a short-term stay (this applies to students, for example, with a stay of more than 90 days).²²

²⁰ Council of the European Union 2022: Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection. Official Journal of the European Union; 71: 1–6. http://data.europa.eu/eli/dec_impl/2022/382/oj

²¹ Council of the European Union 2001: Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Official Journal of the European Union; 212: 12-23. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055>

²² Bundesministerium für Inneres und für Heimat: Umsetzung des Durchführungsbeschlusses des Rates zur Feststellung des Bestehens eines Massenzustroms im Sinne des Artikels 5 der Richtlinie 2001/55/EG und zur Einführung eines

2.2 Section 24 German Residence Act – Access to Healthcare

Beneficiaries of temporary protection pursuant to Section 24 Residence Act are equipped with a number of rights and entitlements. With regard to the right to healthcare, they were beneficiaries of ABAA until May 31, 2022, and therein subject to the limitations in access to healthcare outlined in Section I of this report. Having reached an agreement with the *Länder* Governments on 7 April 2022, the Federal Government of Germany adopted a Law in May 2022²³ which allows all persons with a temporary residence permit pursuant to Section 24 Residence Act (or a proof of the application for such) to switch to regular social support schemes, laid down in Social Code Books II and XII. The switch of legal regime – from ABAA to basic social benefit schemes – has had far reaching implications, especially in the context of healthcare coverage. Being entitled to regular social assistance at an early stage equals earlier and more privileged access to healthcare: As of 01 June 2022, all persons having fled Ukraine and been granted temporary protection who are destitute have been entitled to comprehensive healthcare coverage (either under Social Code Book II or XII). This entails access to the full range of services of the catalogue of healthcare benefits of the statutory health insurance. Those who are not in need of assistance are granted the right to join the statutory health insurance voluntarily. Alternatively, they are insured in the statutory health insurance once they take up a remunerated employment - a privilege resulting from their access to the labour market and entitlement to work.

While expressly welcoming the aforementioned measures which result in full entitlements to comprehensive healthcare, the submitting organizations worryingly witness how all other asylum seekers remain excluded from these measures, thus staying severely limited in their access to healthcare.

Asylum seekers of national origins other than Ukraine (except for the few instances of third country nationals who are also entitled to temporary protection pursuant to Section 24 Residence Act), are subject to different entitlements and treatment. These differences are not a direct result of the different residence permit mechanism following from the activation of the EU Temporary Protection Directive. Instead, they have been specifically provided for with the adoption of a new law²⁴ by the German Government, which introduces the switch to social security schemes for persons displaced from Ukraine only. Their privileges are, hence, not a consequence of the European Union act which Germany is bound to implement but result from the decision of the German Government to grant this group of persons seeking protection more entitlements – thereby introducing a differential treatment along the lines of national origin.

As CERD notes in General Recommendation No. 32, discrimination is constituted not only by an unjustifiable ‘distinction, exclusion or restriction’ but also by an unjustifiable ‘preference’ (paragraph 7).²⁵ Although the switch from ABAA to regular income support schemes is in itself an improvement regarding the right to health, it leads to separate rights for different groups of persons seeking protection, based on national origin. CERD states that ‘to treat in an equal manner persons or groups

vorübergehenden Schutzes. March 14, 2022. Retrieved from https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/ukraine/beschluss-4-maerz-2022-ukraine.pdf;jsessionid=5B5B72B3AE13F4CF321978FB83CB10DD.1_cid332?_blob=publicationFile&v=6

²³ Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze, 23.05.2022. Bundesgesetzblatt Jahrgang 2022 Teil I Nr. 17, issued on May 27, 2022.

²⁴ ibidem

²⁵ United Nations. Committee on the Elimination of All Forms Racial Discrimination. 2009: General Recommendation 32 - The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination, CERD/C/GC/32, https://adsdatabase.ohchr.org/IssueLibrary/CERD_Recommendation%20No32.pdf

whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same' (General Recommendation No. 32 paragraph 8), the latter of which is happening in the present case. All persons seeking protection except for those displaced from Ukraine continue to be subjected to the illegitimate restrictions on healthcare under ABAA which deny them their right to health.

Given this differential treatment of persons seeking protection, it proves even more necessary to abolish all restrictions on healthcare German law subjects to persons seeking protection. Including persons displaced from Ukraine in regular social security schemes and granting them full access to healthcare is testimony to the acknowledgment of the illegitimacy and grave consequences of restrictions on access to healthcare, which, however, all other asylum seekers continue to suffer from.

Many asylum seekers are highly aware of this differential treatment. Asked for their needs, two women from Afghanistan replied in the context of a health promotion workshop in a reception centre carried out by *Ärzte der Welt*:

'I want to be accepted like a refugee from Ukraine and have the possibility of a normal, human life.'

'We wish that as much would be done for us as for Ukrainians. We are also just like them, people who are fleeing war in their homeland. It is unfair that we are treated so differently despite being in the same situation.'

Against this background, *Ärzte der Welt* and the undersigning organizations urge the Committee to take up the differential treatment of persons seeking protection in its list of themes guiding Germany's state report review session in November/December this year. Moreover, we appeal to the Committee to call upon the German Government to:

- **Repeal the restrictions under ABAA so as to respect to the human right to health of asylum seekers and to comply with its responsibilities under Article 5 (e) (iv) ICERD to ensure the equal right of everyone, “without distinction as to race, colour, or national or ethnic origin” to the enjoyment of public health and medical care.**
 - **Specifically, abolish the restrictions on entitlement to healthcare coverage under Sections 4 and 6 ABAA and grant access to health care equivalent to the statutory health insurance benefits catalogue from the beginning of their stay in Germany, without subject to privileges or restrictions on access based on national origin.**
 - **Abolish other regulations under asylum legislation, which include obligations to remain in shared accommodation structures, restrictions on movement, reductions of benefits or the replacement of cash benefits by benefits in kind, as they constitute crucial determinants of ill health.**