

ICESCR PRE-SESSION GERMANY 2017

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Mitglied im Europäischen Armutsnetzwerk EAPN



LIST OF ISSUES

in response to the 6th Periodic Report of the Federal German Government on the implementation
of the International Covenant on Economic, Social and Cultural Rights

prepared for the 61st session of the Pre-Sessional Working Group
of the Committee on Economic, Social and Cultural Rights

The German Anti Poverty Network (Nationale Armutskonferenz / NAK) is a confederation made of national welfare associations, self-help organizations and the German Trade Union Confederation (DGB). The NAK was founded in 1991 as the German section of the European Anti Poverty Network. Member organizations are:

Arbeiterwohlfahrt Bundesverband – AG Schuldnerberatung der Verbände – Armutsnetzwerk - Armut und Gesundheit in Deutschland – BAG Schuldnerberatung – BAG Soziale Stadtentwicklung und Gemeinwesenarbeit – BAG Wohnungslosenhilfe – BAG der Landesseniorenvertretungen – BBI wohnungsloser Menschen – Bundesverband Deutsche Tafeln – Deutscher Bundesjugendring – Deutscher Caritasverband – Deutscher Gewerkschaftsbund – Diakonie Deutschland – Gesundheit Berlin-Brandenburg – Paritätischer Wohlfahrtsverband – Zentralwohlfahrtsstelle der Juden in Deutschland

Issue 1:	Working Poor / Combating Poverty
Art. of ICESCR:	Art. 7, Art. 9, Art. 11
Concluding Observation of previous report:	No. 24
QUESTION	What measures is the federal government taking to combat poverty among the employed and to contain the low-wage sector? Which groups of people will be at the focus? To what extent does the federal government plan to raise the minimum wage in order to ensure a livelihood for anyone working?
EXPLANATORY NOTE	<p>Overall, the rate of poverty risk in Germany has risen considerably over the past years. According to records from the Federal Statistical Office, it was 12.7% in 2005 and it was 16.7% in 2014. Despite good macroeconomic developments and the unemployment rate falling over the past few years, the relative poverty risk could not be reduced. The cause lies in the ever-expanding low-wage sector. Job growth in Germany is to a great extent a result of an increase in minor, part-time jobs that do not provide a living wage, in other abnormal employment conditions and in the low-wage sector as a whole. Reductions of welfare benefits and stricter rules for eligibility have increasingly put pressure on unemployed individuals to take low-skilled and low-paid jobs. According to a study from the Hans-Böckler-Stiftung, poverty among the employed doubled between 2004 and 2014. The proportion of the working poor among all working people between the ages of 18 and 64 rose in this period from 4.8% to 9.6%. Although they work regularly, these people must live on less than 60 per cent of the median income.</p> <p>Source: Dorothee Spannagel, Daniel Seikel, Karin Schulze Buschoff, Helge Baumann: Aktivierungspolitik und Erwerbsarmut in Europa und Deutschland , WSI-Report No. 36, July 2017 https://www.boeckler.de/pdf/p_wsi_report_36_2017.pdf</p> <p>Lebenslagen in Deutschland: Der fünfte Armuts- und Reichtumsbericht der Bundesregierung. Teil C: die Kernindikatoren – Entwicklung seit dem 4. ARB und Erweiterungen, Page 501 ff. For the rate of poverty risk according to the SOEP, see Page 553. http://www.armuts-und-reichtumsbericht.de/DE/Bericht/Der-fuenfte-Bericht/fuenfter-bericht.html</p>

Issue 2:	Determination of unemployment benefits / A Humane Minimum Level of Subsistence
Art. of ICESCR:	Art. 9, Art. 11
Concluding Observation of previous report:	No. 21, No. 24
QUESTION	<p>What measures is the federal government taking to honor the rights of people living in Germany to a decent standard of living and to a secure social and cultural minimum level of subsistence without compromise, and to ensure that those living in poverty do not face existential threats? Why is it possible to reduce the humane minimum level of subsistence through penalties? Does the federal government recognize the effects of the penalties on those on whom they are imposed?</p> <p>How does the federal government wish to truly ensure that children are fully provided with the funds needed for school supplies and lunch? Which measures will the federal government take in order to improve safety in housing for those living in poverty?</p>
EXPLANATORY NOTE	<p>Those affected by poverty in Germany can apply for basic social benefits. They consist of a standard allowance and the reimbursement of housing costs. The current method for determining the standard allowance guarantees neither the minimum social and cultural level of subsistence nor a decent standard of living. The statistical comparison group for determining basic benefits is based on a sample survey of expenditure of the lowest income groups. In a second step, the necessary expenditures determined for these households are being reduced without explanation regarding items: for example Christmas trees, houseplants, insurance, bags. The sum of reductions amounts to 150 euros. For children's school supplies, a lump sum of 100 euros per school year is granted – yet a study by Diakonie (the welfare organization of Protestant churches in Germany) assessed the actual costs to be approximately 200 euros. The standard allowance grants approximately 50 cents per month as a contribution toward school lunch, yet 1 euro per school day must be covered by those receiving benefits.</p> <p>Furthermore, the minimum level of subsistence is not secure: a failure to cooperate in the eyes of the authorities can incur penalties that lead to benefits ultimately being denied. A large proportion of the penalties imposed are in violation of the law: 40 per cent of all lawsuits and objections are successful.</p> <p>The reimbursement of housing costs also fall short of the actual costs. Criteria for determining need are based on comparable rents for existing tenancy agreements but not for newly agreed upon contracts. Should those receiving benefits not find a suitable living space according to these criteria, they must then make up the difference themselves with the standard allowance. Deposits must also be paid for with the standard allowance.</p>

	<p>For the determining of the minimum level of subsistence, Diakonie Deutschland has presented an alternative rubric for calculations: https://info.diakonie.de/fileadmin/user_upload/Diakonie/PDFs/Pressmitteilung_PDF/PressemappeRegelsatzneuberechnungPressegesprach.pdf The discrepancy regarding the allowance for school supplies is found in the following study: https://www.siekd.de/download/Brosch._Schulbedarf_05.pdf</p>
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Issue 3:	Access to the Job Market for Asylum Seekers
Art. of ICESCR:	Art. 2(2), Art. 6
Concluding Observation of previous report:	No. 13
QUESTION	What measures is the federal government taking to ensure that asylum seekers in every state in the republic, in accordance with international norms, enjoy equal treatment regarding access to the job market? How can access to the job market be provided free of discrimination?
EXPLANATORY NOTE	The federal government refers to its measures to improve access to the job market, education and active labour market policy assistance only for asylum seekers with supposedly good prospects of remaining in the country and therein maintains institutional obstacles blocking the integration of refugees from other countries of origin into the job market. Differentiating between asylum seekers with good and bad prospects of remaining is inappropriate and in effect discriminatory because, despite the overall grading of a specific country of origin, there are in many cases individual grounds for approving asylum or subsidiary protection that would lead to long-term or permanent residence in Germany. Furthermore, even in the event of a rejection of asylum, deportation is frequently impossible for practical or legal reasons. For these reasons, and also due to the long duration of the approval procedures, all asylum seekers should have access to all integration services as early as possible.

Issue 4:	A Decent Standard of Living for Asylum Seekers (Benefits for Asylum Seekers Act)
Art. of ICESCR:	Art. 11, Art. 12
Concluding Observation of previous report:	No. 13
QUESTION	How does the federal government ensure the equal treatment of asylum seekers regarding access to non-contributory social security systems? Which measures is the federal government taking to halt the worsening of living standards and the minimum social and cultural level of subsistence for asylum seekers and persons with exceptional leave to remain for humanitarian reasons?
EXPLANATORY NOTE	<p>The Benefits for Asylum Seekers Act represents a worsening of conditions for asylum seekers and persons with exceptional leave to remain for humanitarian reasons. The benefits granted do not ensure a decent standard of living as per Art. 11 of the ICESCR. They undercut the minimum social and cultural level of subsistence, which should be ensured by basic social benefits. The rules that were established by the federal government and were already reduced to below the costs determined to be necessary for the minimum level of subsistence are even lower for asylum seekers.</p> <p>In communal living spaces, some material donations or vouchers can be provided to meet personal needs. The increased use of such donations or vouchers limits the possibility for self-actualisation and living autonomously. Furthermore, the statistics-based, flat-rate calculation of the minimum level of subsistence guaranteed by the Constitution is merely an objective estimate that must take individual lives into account. In this system, it is assumed that the individual needs of those concerned are varied in regard to expenditures and must be individually compensated in the statistically calculated total budget. However, should a high number of benefits come in the form of material donations or vouchers, then this approach will be taken.</p>

Issue 5:	Healthcare for Refugees
Art. of ICESCR:	Art 12 (1), Art. 12 (2d)
Concluding Observation of previous report:	No. 13

QUESTION	What measures is the federal government taking to ensure that unauthorized immigrants be aware of their right to medical treatment without having to fear being reported to the immigration authorities and deported? Which measures is the federal government taking to give refugees safe access to the healthcare system?
EXPLANATORY NOTE	<p>Unauthorized immigrants formally have the right to medical treatment according to the Benefits for Asylum Seekers Act. Most, however, do not exercise this right due to the threat of being reported to the immigration authorities and deported when using social services. In order to give unauthorized immigrants safe access to the healthcare system in accordance with the Benefits for Asylum Seekers Act, public facilities managing healthcare and medical bills, and social services institutions in particular, must be exempt from the obligation to report in § 87 paragraph 2 of the Residence Act.</p> <p>Asylum seekers also face legal obstacles to access and services. According to the Benefits for Asylum Seekers Act, asylum seekers do not have access to the complete catalogue of services offered by public health insurance. The catalogue of services offered by public health insurance defines medically necessary services. The limited access of asylum seekers to these services violates Art. 12(1) of the ICESCR. Access to healthcare is furthermore limited because no funding for interpreters or translators has been made available.</p>

Issue 6:	Child Poverty
Art. of ICESCR:	Art. 9
Concluding Observation of previous report:	No. 21, No. 24
QUESTION	Which measures is the federal government taking to facilitate access to social and family services for poor households? Which measures is the federal government taking to remove errors in the family compensatory allowance that lead to higher subsidies for high-income households and make it difficult to provide need-based assistance that combats poverty?
EXPLANATORY NOTE	Child poverty is stagnating in Germany at a high level. Every fifth child either lives in poverty or is at risk for living in poverty. Thus far, applications for many social and family services must go through different offices or authorities. The varying rules for applications and calculations for different services for the same child (the child benefit, the child tax credit, the supplementary child benefits for low income earners as well as services from the

	<p>Educational Package) are difficult to understand and impede the use of these services by families considerably. For this reason, social and family services go unused by many of those eligible for them. This is the case for 40% of those eligible for the Educational Package and for a large proportion of those eligible for the supplementary child benefits for low income earners. Furthermore, the minimum level of subsistence for children is not evenly secured. The net return through tax deductions is greatest for high-income households, smaller for low-income households and lags far behind for all households above the level of entitlement to social services. This results from the contradictory regulations for the child tax credit, the child benefit and the supplementary child benefits for low income earners. Households living just above the entitlement to social services have, at 194 euros, the lowest amount of support. Top-income households receive a total return of more than 280 euros.</p>
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Issue 7:	The Threat of Poverty for Single Parents
Art. of ICESCR:	Art. 6, Art. 11
Concluding Observation of previous report:	-
QUESTIONS	What measures is the federal government taking to improve the situation of single parents? Which improvements in the family compensatory allowance is the federal government planning in order to reduce the risk of poverty for single-parent households?
EXPLANATORY NOTE	<p>The rate of the risk for poverty in Germany has increased in the past years. According to the Federal Statistical Office, it was 12.7% in 2005 and 16.7% in 2014. Those in single-parent households are most at risk (33.7%). Despite the measures listed in the State report (paragraph 26f) in regard to the work prospects for single parents and women, the particular risk of poverty for single parents has thus far not been solved by the federal government. In this case, one cannot view inadequate integration into gainful employment as the sole cause. Errors in the family compensatory allowance are also responsible for the increased risk of poverty for single parents.</p> <p>The tax deductions at the centre of the family compensatory allowance apply to married couples, but not single parents. Furthermore, the special assistance for single parents in the basic income support scheme is regulated in Book II of the Social Code and provides a supplement for single parents receiving benefits. Consequently, 40% of all single parents live with basic social support. Single parents who cannot fully provide a livelihood for themselves and their children can then fall directly into dependence on welfare.</p>

Issue 8:	Poverty Among Elderly Women
Art. of ICESCR:	Art 2(2), Art. 9, Art. 11
Concluding Observation of previous report:	-
QUESTION	What measures will the federal government take to specifically combat poverty among elderly women?
EXPLANATORY NOTE	According to projections by the German Institute for Economic Research and the Centre for European Economic Research, poverty among the elderly will continue to rise if the pension system is not drastically reformed. Consequently, 20% of senior citizens entering retirement could be living in poverty by 2036. According to the study, the percentage among elderly women could even rise from 16% in 2015 to 28% in 2036. Poverty in old age is manifested in gender-specific ways. While the rate of risk for poverty for elderly men remains below the average of the general population, the rate of risk for women is already above the average. This is due in particular to lower payments into future retirement pensions during time spent providing childcare and other forms of care, and due to low-income employment, which coincides with such periods and leads to non-existent pensions.

Issue 9:	Working Conditions of Central and Eastern European Caregivers Providing Round-the-Clock Care („Live-Ins“)
Art. of ICESCR:	Art. 7(d), Art. 15 (1)
Concluding Observation of previous report:	-
QUESTION	Is the federal government aware of the working conditions for Central and Eastern European caregivers providing so-called round-the-clock care? How does the federal government guarantee that the conditions for this workforce are fair and in doing so guarantee an appropriate limit on work hours?
EXPLANATORY NOTE	The current gap in home care is being filled by approximately 200,000 Central and Eastern Europeans. The extremely long work day of so-called round-the-clock care leads to a serious restricting of economic, social and

	cultural rights. Apart from very short breaks, most live-in caregivers are available to their employers 24 hours a day, 7 days a week with specific housekeeping or care duties, supervision duties and time spent on standby. Consequently, opportunities for a social life are severely limited.
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Issue 10:	Missing Data on Homelessness and Housing Shortages
Art. of ICESCR:	Art. 11
Concluding Observation of previous report:	No. 25
QUESTION	The absence of nationwide statistics on the extent and causes of homelessness was criticised in the concluding remarks in 2011. When will the federal government present a report on the extent of homelessness and the housing shortage in Germany?
EXPLANATORY NOTE	In Germany, homelessness is the responsibility not of the federal government, but of the municipalities. Because no official, nationwide statistics on the extent of homelessness in Germany exist, the federal government builds upon approximations from the National Association on Homelessness (BAG W), which are based on estimates from 1994 and therefore are very outdated. In its state report, the Federal Government states that it “will commission a feasibility study to look into alternative (particularly methodological) approaches to estimating the level of homelessness. In addition, the possibility of national data collection at Länder level is being investigated with the Länder.”

Issue 11:	The Right to Freely Choose An Occupation
Art. of ICESCR:	Art. 6, Art. 9
Concluding Observation of previous report:	No. 19

QUESTION	How does the federal government guarantee that support for the unemployed leads to attaining stable employment and a living wage?
EXPLANATORY NOTE	Thus far, unemployed persons entitled to benefits in accordance with Book II of the Social Code must take any sort of reasonable job, provided that there is no important factor opposing it (e.g. child care, other types of care), which the unemployed person is obliged to name. Unfavourable work conditions or tasks below the person's level of qualification are still considered reasonable work. Consequently, these people must take jobs that fail to provide a living wage out of fear of being penalised. For this reason, poverty and reliance on social benefits cannot be overcome.

Issue 12:	Citizens of other EU member states: access to Social services, healthcare
Art. of ICESCR:	Art. 9, Art. 11, Art. 12
Concluding Observation of previous report:	-
QUESTION	Which measures are taken by the state party to assure that some groups of EU citizens are not excluded from access to social services, including necessary healthcare, if they are not willing to return to their country of origin?
EXPLANATORY NOTE	Citizens from other countries of the European Union legally residing but without formal employment in Germany do not have access to healthcare if they cannot prove their insurance in their country of origin. A recent law (from 22.12.2016, enacted since 1.1.2017) has worsened the situation by excluding certain groups of EU citizens from social services (criteria are: origin from new EU member states, residence less than five years in the country, being unemployed, without financial means or acquiring their residence permit through their children). Also healthcare and even emergency healthcare is affected. Only if they show willingness to leave the country they are provided with so-called transitional money for a maximum of four weeks.