

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Party to Optional Protocol?	Other core treaties ratified
1985	None	Yes	ICCPR, ICESCR, CAT, CRC, ICERD, CMW, CRPD

NGO Briefing

A number of national NGOs held a lunch-time briefing for CEDAW Committee members to voice their concerns and highlight key issues before the review. The issues they emphasized were: the placement of female juvenile offenders in adult women's prisons; the need for a comprehensive gender-sensitive strategy in German health care and medical research; the reform of the German law on transsexuals; the implementation of gender mainstreaming and gender budgeting throughout the German federal structure; violence against women; inequality in the labour market, horizontal and vertical segregation in employment, and unequal pay;

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

inequalities in family policy; and migrant women's rights and their particular susceptibility to discrimination, violence, and unequal treatment.

Opening remarks by the delegation

The delegation of Germany was led by Ms Eva Maria Welskop-Deffaa, Director General of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. She was supported by a delegation from the same Ministry, consisting of Ms Renate Augustein, Deputy Director General, Ms Waltraud Dahs, Head of Division, Dr Volker Berger, Head of Division, and Ms Gabriele Wölk, Desk Officer, as well as a large number of unnamed experts. Mr Konrad Max Scharinger, Deputy Permanent Representative of the Permanent Mission of Germany in Geneva was also present briefly at the beginning of the examination and made a short introduction before leaving to attend the Universal Periodic Review of Germany which was taking place simultaneously.

During the German delegation's opening remarks, Ms. Welskop-Deffaa spoke at length on new developments since the submission of the report. Her statement highlighted the issues of the status of the CEDAW Convention in Germany, successes in combating gender stereotypes, women's political participation and challenges combating inequality in the labour market, measures to combat violence against women, the effects of the new German Prostitution Law, and efforts to address the problem of forced marriage. Some of these expanded upon the written responses to the list of issues provided by delegation. On the whole, the presentation was detailed and specific. It was also balanced in its acknowledgment of areas needing improvement and its description of positive achievements.

Overview of key issues

The German delegation took its reporting duties seriously and appeared sincere in its desire to work cooperatively with the Committee in answering all of the questions asked. For the most part, the responses provided by the delegation were detailed and on point, however the delegation did not manage its time well and this meant that there was very little time for follow-up questions. The delegation acknowledged certain problems but seemed to be in denial about others, never challenging the Committee on the facts, but rather disagreeing about their interpretation or significance. In its concluding observations, among the most important themes raised by the Committee were:

Constitutional and legislative framework for the implementation of the Convention

In its concluding observations:

'The Committee urges the State party to place greater emphasis, in its efforts to eliminate discrimination against women, on the Convention as a legally binding and directly applicable human rights instrument. It also calls upon the State party to take proactive measures to enhance awareness of the Convention and its Optional Protocol at all levels – federal, länder, and municipal - in particular among the judiciary and the legal profession, political parties, Parliament and Government officials, including law enforcement officials, as well as to the general public, in order to strengthen the use of the Convention in the development and implementation of all legislation, policies and programmes aimed at the practical realization of the principle of equality between women and men. The Committee encourages the State party systematically to promote knowledge and understanding of the Convention and its Optional Protocol and gender equality through its training programmes. It further requests the State party to ensure that the Convention and its Optional

*Protocol, as well as the Committee's general recommendations and the views adopted on individual communications and enquiries, are made an integral part of educational curricula, including legal education and training of the judiciary.'*²

As mentioned above, the head-of-delegation Ms Welskop-Deffaa expressed her regret in her opening statement that CEDAW is not better known in Germany. The topic came up frequently during the review. Ms Simonovic asked about Germany's plans to increase awareness of CEDAW, particularly in the judiciary, and also about the applicability of CEDAW on the private sector. Ms. Augustein of the German delegation responded that CEDAW is actually much more visible in Germany now than several years ago and that individual court rulings take CEDAW into account and that judges must deal with CEDAW when lawyers refer to it.

Ms Ameline asked about the current debate on gender equality in Germany, whether it is at the forefront of the national debate and whether the notion of gender equality has been incorporated into German economic recovery plans and family policies. The delegation did not respond directly to this.

Ms Jaising and Ms Simonovic asked about whether CEDAW applies automatically in Germany or whether it needs to be separately legislated. Ms Jaising also asked the delegation to explain how the German guarantee of equality can be reconciled with the fact that it does not apply to the private sector and to non-state actors and whether any such cases have been brought before the European Court of Human Rights. In response, Ms. Welksop-Deffaa assured the Committee that CEDAW is directly applicable in Germany but explained that, because some of CEDAW's articles are judicial and others political, not all can be directly invoked. Concerning private sector equality, she said that Germany does not have any plans for a private sector equality act but that they are interested in making changes and have commissioned surveys.

Equality before the law, marriage and family relations

*'The Committee encourages the State party to step up its efforts to assist women and men in striking a balance between family and employment responsibilities, inter alia, through further awareness-raising and education initiatives for both women and men on adequate sharing of care of children and domestic tasks as well as ensuring that part-time employment is not taken up almost exclusively by women. The Committee urges the State party to step up its efforts to improve the availability, affordability and quality of care places for school-age children to facilitate women's re-entry into the labour market. It also recommends that the State party assess the current legal provisions on the taxation of married couples ('splitting') and its impact on the perpetuation of stereotypical expectations for married women.'*³

Family policy and balancing work and home life was also a prominent feature of the review. Mr. Flinterman asked how the Government integrates its equality policy into its family policy. Ms Welskop-Deffaa explained that these policies were viewed to be anachronistic and Ms Augustein responded that the *länder* have to implement foreign agreements but they have their own constitutions and laws and that the coordination is very complicated.

Ms Gabr expressed concerns about parental leave and about the fact that women disproportionately bear the burden of child-rearing and that few men take parental leave and most women are employed part-time. She asked about measures in place to overcome gender stereotypes in this regard. Ms Kaddari emphasised the need to change gender stereotypes and family roles. She explained that while much is to be commended in Germany, the tax system and pension requirements have had the unintended consequence of reinforcing the stereotype of men as breadwinners and have created a disincentive for women to engage in full-time employment. She also criticised the change in the system of post-divorce maintenance in Germany.

² CEDAW/C/DEU/CO/6, paragraph 22, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws43.htm>.

³ Ibid. at paragraph 30.

In response to the criticisms of the tax system, Ms Welskop-Deffaa explained that starting in January 2009 Germany established a new legislative basis to allow couples to use the same tax brackets and benefit from the same tax savings. Concerning the criticism of unequal pay, she explained that the Government is introducing more transparency about pay differentials. Another delegate explained that the pension system is contribution based and that therefore men draw more but that there has been a change of policy and that now there are new policies aimed at non-benefit receivers.

Another delegation member explained that the federal Government's family policy is not only focused on improving financial benefits for women but on a whole range of measures that have to do with work-life balance, such as childcare. She explained that the Scandinavian approach to childcare is controversial in Germany because it results in children being cared for at home, but that it will be re-evaluated in 2013. She added that as regards maintenance laws, women are not disadvantaged and that there is equality in almost all legal fields. The only deficits are in tax law and in banking law but still, she said, the situation is quite positive compared to other countries.

National machinery for the advancement of women

*'The Committee recommends the adoption of proactive measures to encourage more women to apply for high-ranking posts, particularly in academia, and encourages the State party to adopt temporary special measures in accordance with article 4, paragraph 1, of the Convention, and the Committee's general recommendation No. 25, in order to accelerate the realization of women's de facto equality with men in all areas. It also recommends that the State party further include in its gender equality legislation provisions to mandate the use of temporary special measures, including goals or quotas, enhanced by a system of incentives, in both the public and private sectors. The Committee requests the State party to monitor developments with regard to women's participation in top management positions with a view to further supporting such participation through legislative or policy initiatives and to ensure that the representation of women in political and public bodies reflects the full diversity of the population. It further requests the State party to provide information on results achieved, including relevant disaggregated statistical data.'*⁴

The Committee was concerned about the lack of national machinery for the advancement of women in Germany. Ms Neubauer was troubled by the lack of awareness or understanding in Germany of gender mainstreaming and emphasized the need to apply it. Ms Patten also asked if the Government is considering an equality bill for the private sector and whether quotas or temporary special measures have been discussed in this regard. Ms Welskop-Deffaa explained that previously there was resistance to the term in Germany due to misunderstanding but that that resistance is decreasing. Ms Augustein explained further that Germany is trying to define a better strategy than gender mainstreaming as it developed in German society. At the end of the review, Ms Welskop-Deffaa added that the Equality Commissioner will be issuing a report on this in 2010.

Mr Flinterman asked about the Federal Anti-Discrimination Agency and its public profile, its durability, its resources, and its effectiveness thus far. Ms Welskop-Deffaa explained that it is a new body, now fully staffed and workable. Many citizens turn to it for advice but mostly it is being used for ethnic discrimination claims. Currently it is undergoing evaluation.

Ms Neubauer asked about cooperation between ministries with regard to the situation of women in Germany. According to the *Federal Equality Act*, she noted, each ministry is required to adopt an action plan, and she asked the delegation if that has been happening and to whom the ministries report on the plan's implementation. She also posed a question regarding steps taken to implement gender budgeting. Ms Welskop-Deffaa said little in response to this question other than to affirm that there are structures in place whereby ministries share information.

⁴ Ibid. at 32.

Employment

*'The Committee emphasizes that realization of women's de facto equality with men in the labour market, including in the private sector, so as to achieve compliance with article 11 of the Convention, is an obligation of the State party under the Convention. The Committee calls upon the State party to adopt policies and take all necessary measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation 25, with time-bound targets, to eliminate occupational segregation, both horizontal and vertical. The Committee calls upon the State party to assess the impact on women of the Fourth Law for Modern Services in the Labour Market and undertake corrective measures, including the review of the "needs unit" construct. It encourages the State party to mainstream the issues of immigrant women, who may suffer multiple discrimination, and women with disabilities into its employment policies and programmes. The Committee also recommends that the State party continue its efforts to ensure reconciliation of family and professional responsibilities and for the promotion of equal sharing of domestic and family tasks between women and men, including by increasing the incentives for men to use their right to parental leave. The Committee calls on the State party to examine ways to review the current pension system so as to increase the percentage of women eligible for full benefits. It invites the State party to include, in its next periodic report, information on the extent of use and impact of temporary special measures in the private sector, and information on measures taken to improve the situation of women in the labour market and their impact.'*⁵

Most questions and responses were devoted to the issue women and employment during Germany's examination. Ms Hayashi expressed concern about underrepresentation of women in higher levels of public life. She also reminded the delegation that previously the Committee called upon Germany to intensify its efforts to increase women's access to employment and she expressed concern that NGO alternative reports indicate that quotas are still considered illegal in the private sector by many lawyers in Germany. She asked what the State plans to do regarding temporary special measures.

In response, Ms Welskop-Deffaa explained that in the federal public sphere, international comparison shows Germany to be doing quite well. Political parties have freely chosen quota regulations. For other sectors, Germany is in the middle and is working to improve. The *Federal Equality Act* has been successful so far, she added, but the Government recognizes that there are not enough women in leadership positions and will monitor everything closely and try to come up with intelligent special measures. Also, the Government is attacking the problem of part-time work and gives an award for the father of the year. Another delegate added that the level of participation of women at the *länder* level is satisfactory but that the Government does have a plan to combat the low level of women's participation at the municipal level. Yet another delegate explained that affirmative action is lawful and Germany has used quotas but this is not a panacea. She confirmed that Germany is working on combating stereotypes. She also said that Germany can be proud because the share of women in managerial and executive positions are increasing.

Ms Bailey informed the delegation that she was concerned about some outstanding issues. Her concerns focused on the underrepresentation of girls in vocational training and the clustering of women in socially approved areas. She mentioned specifically the under-representation of women at the professorial level in German universities.

Ms Patten also brought up the issue of gender stereotypes in employment. She appreciated that the delegation's oral presentation acknowledged the persistent horizontal and vertical segregation of the labour market, but asked for further information regarding new programmes to ensure gender sensitive career guidance, and other measures to ensure the participation of women in non-traditional fields. Finally, she

⁵ Ibid at 38.

expressed concern about the spread of part-time employment among women and asked about the Government's efforts to facilitate women's entry into full-time work.

Ms Welskop-Deffaa explained in response that the Government has held eight 'Girls' Days' aimed at encouraging girls in scientific and mathematic occupations. Another delegation member added that all labour policy has been specifically reoriented towards overcoming gender-based discrimination and that all job-counselling materials have been revised to focus on breaking down gender barriers in employment.

Ms De la Vega was also concerned about the waste of resources in having so many women employed part-time and asked about plans to make the *Equal Treatment Act* line up with European objectives. She emphasized that the private sector in Germany is not going to implement such a law on its own and expressed concern about pay gaps between men and women. In response, Ms Welskopp-Deffaa defended part-time employment, explaining that part-time employees can still advance to managerial positions. She offered herself up as proof, explaining that she had worked part-time for a long time and is now Director General. Another delegate added that the share of men working part-time has doubled and that part-time work has positive effects on work-life balance. Another delegate responded to Ms De la Vega's question on the *Equal Treatment Act* and explained that the delegation was unable to speak on its implementation due to an infringement procedure by the European Commission currently underway.

Women in vulnerable situations

*'The Committee urges the State party to intensify its efforts to eliminate discrimination against immigrant, refugee, asylum-seeker and minority women. It encourages the State party to be proactive in its measures to prevent discrimination against those women, both within their communities and in society at large, to combat violence against them, and to increase their awareness of the availability of social services and legal remedies as well as to familiarize them with their rights to gender equality and non-discrimination. The Committee also urges the State party to take effective measures to integrate them into the German labour market. In addition, the Committee calls upon the State party to conduct regular and comprehensive studies on discrimination against immigrant, refugee, asylum-seekers and minority women, to collect statistics on their situation in employment, education and health and on all forms of violence that they may experience, and to submit such information in its next periodic report.'*⁶

The rights of minority and refugee women were a major concern of the Committee. Ms. Rasekh asked questions regarding the laws that exist to protect refugee women and girls from violence, the access of asylum seekers to shelter, and restrictions on their movement. Another delegation member defended the restrictions by explaining that the Government is trying to guarantee an even distribution of asylum seekers throughout the country to avoid over-burdening certain areas. She also asserted that the European Court of Human Rights affirmed the legality of this in 2007 and explained that in cases of domestic violence, women are accepted regardless of their residence status.

Ms Zou expressed concern about the lack on information provided on migrant, asylum seeker, and minority women in the report. She also requested more information on the Government's provision of healthcare to these women. In response, Ms Welskop-Deffaa offered that the Government has had great success in its measures aimed particularly at girls of migrant background to reduce the rate of involuntary pregnancies and cited some statistics on this but did not explain the lack of statistics generally.

Ms Bailey asked a question about refugee girls' school attendance and expressed her concern that these girls stay away from school because refugee centres are too far from schools or because the girls are afraid of being deported. In response Mr. Berger differentiated between refugees with fixed resident status and those without. There is no plan for non-resident children, he explained, because it is assumed that they will be in

⁶ Ibid at 60.

Germany only temporarily. However, all children whether or not they have legal status may go to school and do, he insisted. He added that Germany's national integration plan is currently focusing on education achievement levels of students of migrant background and is committed to bringing these up to national levels.

Other issues

The issues on transgender women's rights, minority and refugee rights, and girls in prisons were the focus of numerous shadow reports and NGO events. Minority and refugee women's rights were featured prominently in the dialogue but the other issues were not. Committee members posed several questions on these issues but the delegation did not offer very substantial responses and seemed disinclined to engage in much dialogue on these topics, particularly the issue of transgender women. In spite of the lack of dialogue, the Committee issued strong recommendations on these topics.⁷

Conclusions and next steps

The German delegation thanked everyone in its final remarks and reiterated its promise to 'fully and strongly implement CEDAW'. The final remarks were quite brief due to the delegation's lengthy responses to the questions posed during the dialogue.

In the concluding comments by the Committee, Ms Gabr expressed appreciation for Germany's 'excellent' report, its oral report, and the promises it made. She also expressed her hope that all the future work of implementing the promises and recommendations would be done in tandem with the *länder*. She informed the delegation that the Committee would look forward to pipeline studies on early marriage and transsexuals, to a more major role being played by national machinery, to a better place for migrant women, and to a greater communication with civil society.

In its concluding observations, the Committee commended Germany for its delegation and for the frank and open constructive dialogue. It also noted a number of positive achievements by Germany as regards its adoption of numerous legislative acts and amendments to its Penal Code promoting and protecting women's rights. The Committee expressed regret, however, that civil society was not consulted in the preparation of the State report and that a number of recommendations made by the Committee after the consideration of Germany's fifth report had been insufficiently addressed.

Committee invited Germany to submit a combined seventh and eighth periodic report in September 2014.

Last revised and updated: 15 April 2009.

⁷ Ibid. at 58, 62, and 67.

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