



# Economic and Social Council

Distr.: General  
12 July 2011

Original: English

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## Committee on Economic, Social and Cultural Rights

Forty-sixth session

Geneva, 2-20 May 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

1. The Committee on Economic, Social and Cultural Rights considered the fifth report of Germany on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/DEU/5) at its 9th to 11th meetings, held on 6 and 9 May 2011 (E/C.12/2011/SR.9-11), and adopted, at its 29th meeting held on 20 May 2011, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the fifth report of Germany, which provides information on the implementation of the previous recommendations of the Committee. The Committee also welcomes the written replies to its list of issues (E/C.12/DEU/Q/5/Add.1), as well as the detailed statistical data supplied therein.

3. The Committee appreciates the opportunity for dialogue with the State party and welcomes the attendance by a high-level delegation which included representatives from relevant ministries.

#### B. Positive aspects

4. The Committee notes with appreciation the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol (24 February 2009) and of the International Convention for the Protection of All Persons from Enforced Disappearance (24 September 2009). The Committee also welcomes the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (4 December 2008) as well as the two Optional Protocols to the Convention on the Rights of the Child, namely on the involvement of children in armed

conflict (13 December 2004) and on the sale of children, child prostitution and child pornography (15 July 2009).

5. The Committee welcomes a number of measures taken by the State party aimed at improving the enjoyment of social, economic and cultural rights, in particular:

- (a) The reforms to the labour market which have made it possible to reduce unemployment to its lowest level in the past 20 years;
- (b) The adoption of objectives to ensure the effective implementation of the National Integration Plan;
- (c) The introduction of universal health insurance coverage under the 2007 Health Reform;
- (d) The implementation of the 2007 National Plan of Action to Combat Violence against Women;
- (e) The measures taken to protect children from abuse and violence, such as the network of hotlines, the services provided by the child protection centres, and the free counselling services for children and teenagers; and
- (f) The policy of promotion and support for long-term care at home.

### **C. Principal subjects of concern and recommendations**

6. The Committee is deeply concerned that many of its previous recommendations adopted after the examination of the third and fourth periodic reports of the State party have not been implemented, as referred to in the present concluding observations.

**The Committee urges the State party to take all necessary measures to address its previous recommendations as reiterated in the present concluding observations.**

7. The Committee remains concerned that the provisions of the Covenant have not been invoked before the national courts of the State party.

**The Committee urges the State party to take all appropriate measures to ensure effective applicability of the provisions of the Covenant in national courts, including by raising awareness of this obligation and the provisions of the Covenant among judges, lawyers and other officials involved in law enforcement. In this regard, the Committee refers the State party to its general comments No. 3 (1990) and 9 (1998) respectively on the nature of States parties' obligations and on the domestic application of the Covenant.**

8. The Committee regrets that the State party has not acted upon the Committee's previous recommendation to extend the competence of the German Institute for Human Rights to consider complaints.

**While noting the availability of other avenues of recourse, including judicial recourse, the Committee recommends that the State party extend the competence of the German Institute for Human Rights to receive complaints, including those relating to economic, social and cultural rights, in view of the accessibility of such mechanisms for the public. In this regard, the Committee draws the attention of the State party to its general comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights (1998), which recommends, inter alia, that national human rights institutions examine complaints alleging infringements of applicable economic, social and cultural rights standards within the State.**

9. The Committee notes with deep concern the impact of the State party's agriculture and trade policies, which promote the export of subsidized agricultural products to developing countries, on the enjoyment of the right to an adequate standard of living and particularly on the right to food in the receiving countries (arts. 2.1, 11, 22 and 23).

**The Committee urges the State party to fully apply a human rights-based approach to its international trade and agriculture policies, including by reviewing the impact of subsidies on the enjoyment of economic, social and cultural rights in importing countries. In this regard, the Committee draws the attention of the State party to the guidelines on international measures, actions and commitments as contained in the FAO Voluntary Guidelines on the Right to Food (2004).**

10. The Committee expresses concern that the State party's policy-making process in, as well as its support for, investments by German companies abroad does not give due consideration to human rights (arts. 2.1, 11, 22 and 23).

**The Committee calls on the State party to ensure that its policies on investments by German companies abroad serve the economic, social and cultural rights in the host countries.**

11. The Committee is concerned that the State party's development cooperation programme has supported projects that have reportedly resulted in the violation of economic, social and cultural rights, such as in the case of the land-titling project in Cambodia (arts. 2.1, 11, 22 and 23).

**The Committee recommends that the development cooperation policies to be adopted by the State party contribute to the implementation of the economic, social and cultural rights of the Covenant and do not result in their violation.**

12. The Committee expresses concern that persons with a migration background, including those of the second generation, continue to face serious obstacles in the enjoyment of their rights to education and employment, due primarily to prevailing prejudices against them and insufficient awareness of their rights. The Committee is also concerned that relevant policies have failed to achieve significant improvement or have not addressed situations of indirect discrimination (art. 2(2)).

**The Committee urges the State party to strengthen efforts to address the issues faced by persons with a migration background in its education, employment and social policies and plans, including by taking concrete measures aimed at helping them assert their rights and by monitoring the enforcement of laws against racial discrimination in the labour market. Moreover, the Committee urges the State party to collect data on the enjoyment of economic, social and cultural rights by these persons, on the basis of self-identification, and, in this regard, draws the attention of the State party to its general comment No. 20 on non-discrimination (2009). The Committee also requests the State party to include information in its next periodic report on the work undertaken by the Federal Government Commissioner for Migration, Refugees and Integration.**

13. The Committee notes with deep concern the situation of asylum-seekers who do not receive adequate social benefits, live in inadequate and overcrowded housing, have restricted access to the labour market and have access only to emergency health care (art. 2(2)).

**The Committee urges the State party to ensure, in line with international standards, that asylum-seekers enjoy equal treatment in access to non-contributory social security schemes, health care and the labour market. The**

**Committee also calls on the State party to ensure that national regulations on housing standards, particularly on overcrowding, also apply to reception centres.**

14. The Committee remains concerned that the unemployment rate in the Eastern Länders is still double the rate in the Western Länders despite the measures taken to address this disparity (art. 6, 2(2)).

**The Committee calls on the State party to take all necessary measures to address regional disparities in employment between the Western and Eastern Länders, including by adopting employment strategies and plans of action targeting regions where unemployment is most severe. Moreover, the Committee recommends that such strategies and plans of action comprise technical and vocational education plans to meet the labour market demands. In this respect, the Committee draws the attention of the State party to its general comment No. 18 on the right to work (2005).**

15. The Committee remains concerned about the low representation of women in decision-making positions, both in the public and private sectors and that the earnings gap remains considerable despite the prohibition of discrimination on the basis of gender and the existence of the principle of equal pay in the State party's legislation (arts. 6, 3, 9).

**The Committee urges the State party to promote equal representation of men and women in decision-making positions in the public and private sectors. The Committee urges the State party to consider doing this through the adoption of quotas in the public sector and effective mechanisms to monitor the compliance by private actors with the State party's equal treatment and anti-discrimination laws.**

16. The Committee is concerned that insufficient childcare facilities, women's and men's career choices and stereotypical gender roles continue to impede women's equal enjoyment of the right to work.

**The Committee recommends that the State party continue efforts to address gender role stereotypes and to educate girls and boys about equal career opportunities with a view to promoting their pursuance of education in fields other than those traditionally dominated by either sex. Moreover, the Committee calls on the State party to significantly increase the supply of care services for children, persons with disabilities, older persons and the sick, and the participation of men in care-taking work.**

17. The Committee is concerned that, in spite of measures taken, unemployment is high among persons with disabilities and that the situation has not been effectively addressed by the State party's employment services. The Committee is further concerned about the lack of reliable data on the employment situation of persons with disabilities (art. 6, 2(2)).

**The Committee urges the State party to ensure that the Federal Employment Agency provides services to enable persons with disabilities to secure and retain appropriate employment and to progress in their occupational field. In this regard, the Committee refers the State party to its recommendations on the rights relating to work of persons with disabilities as outlined in its general comment No. 5 (1994) on persons with disabilities. The Committee further requests the State party to provide data, disaggregated by year, on the unemployment of persons with disabilities in its next periodic report.**

18. While noting the statement by the State party that work performed by prisoners for private companies is voluntary, the Committee regrets that it has not been provided with information on the conditions of work in which prisoners are employed (arts. 6 and 7).

**The Committee requests the State party to include information in its next periodic report on the conditions of work of prisoners performing labour for private companies as well as on the measures taken to safeguard their labour rights, such as inspections.**

19. The Committee notes with concern that arrangements under the State party's unemployment assistance and social assistance, including the obligation for recipients of unemployment benefits to take up "any acceptable job", which in practice may be interpreted as almost any job, and the assignment of long-term unemployed persons to unpaid community service work, may lead to violations of articles 6 and 7 of the Covenant (arts. 6, 7 and 9).

**The Committee urges the State party to ensure that its unemployment benefits schemes takes account of an individual's right to freely accept employment of his or her choosing as well as the right to fair remuneration.**

20. The Committee reiterates its concern, as in 2001, that the prohibition by the State party of strikes by public servants other than those who provide essential services constitutes a restriction of the activities of trade unions that is beyond the purview of the restrictions allowed under article 8 (2) of the Covenant (art. 8).

**The Committee once again urges the State party to take measures to ensure that public officials who do not provide essential services are entitled to their right to strike in accordance with article 8 of the Covenant and ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948).**

21. While noting the ruling of the Federal Constitutional Court upholding the constitutionality of the method for the calculation of the subsistence level, the Committee remains concerned that this method does not ensure an adequate standard of living for the beneficiaries. Moreover, the Committee is concerned that the amount of the social security payment for children is very low with the result that approximately 2.5 million children in the State party remain below the poverty line. Furthermore, the Committee is concerned about the increase in the taxable portion of the pension to 80 per cent in 2005 (arts. 9, 10).

**The Committee urges the State party to review the methods and criteria applied to determine the level of benefits and to monitor the adequacy criteria regularly to ensure that the level of benefits affords the beneficiaries an adequate standard of living. Moreover, the Committee urges the State party to continuously review the impact of its various social security schemes, including the 2011 child package, on child poverty. The Committee also recommends that the State party reconsider its decision to increase the taxable portion of the pension. In this regard, the Committee reiterates its recommendation of 2001 to ensure that the social security reform undertaken by the State party does not retrogressively affect the Covenant rights of the low-income groups and the disadvantaged and marginalized groups of the population and refers the State party to its general comment No. 19 (2008) on the right to social security.**

22. The Committee is concerned about the discrimination in the enjoyment of social security rights between Eastern and Western Länders, as reflected in the Federal Constitutional Court decision of July 2010 on the pension rights of former GDR ministers and deputy ministers.

**The Committee urges the State party to take prompt and effective measures to prevent any further discrimination in the level of social security benefits between Eastern and Western Länder and remedy the existing cases of such discrimination.**

23. The Committee notes with concern that domestic violence does not constitute a specific criminal offence in the State party's legislation. The Committee is also concerned at the increase in violence against women from some ethnic groups (art. 10).

**The Committee urges the State party to criminalize domestic violence as a distinct criminal offence. The Committee also encourages the State party to continue to assess the implementation of various measures and plans on the incidence of violence against women, and particularly among some ethnic groups.**

24. The Committee notes with concern that according to the State party's data, 13 per cent of the population of the State party live below the poverty line while 1.3 million persons, who are economically active (see A/HRC/WG.6/4/DEU/3, para. 33), require income support as their earnings do not sustain them. The Committee is further concerned that in view of the extensive social security system in the State party, such a level of poverty may be indicative of inadequate levels of benefits or limited access thereto (arts. 11, 9).

**The Committee calls on the State party to adopt and implement a comprehensive anti-poverty programme taking account of the aspects of poverty as identified by the various qualified analyses undertaken by the State party. The Committee recommends that a review of the social security benefits levels be included in such strategies. Moreover, the Committee calls on the State party to integrate human rights into the implementation of the anti-poverty programme, thereby paying particular attention to the disadvantaged and marginalized groups. In this respect, the Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001).**

25. The Committee reiterates its concern that the State party has not responded to its recommendation of 2001 to report on the extent and causes of homelessness in the State party and for programmes and measures to address this problem (art. 11).

**The Committee reiterates its recommendation calling on the State party to report on the extent and causes of homelessness and to take concrete measures to combat it. In this regard, the Committee requests the State party to include information on homelessness, including data disaggregated by year, sex and Länder, in its next periodic report.**

26. The Committee notes with concern that transsexual and inter-sexed persons are often assimilated to persons with mental illness and that the State party's policies, legislative or otherwise, have led to discrimination against these persons as well as to violations of their sexual and reproductive health rights (arts. 12, 2.2).

**The Committee urges the State party to step up measures, legislative or otherwise, on the identity and the health of transsexual and inter-sex persons with a view to ensuring that they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected. The Committee calls on the State party to fully consult transsexual and inter-sexed persons for this purpose.**

27. The Committee notes with deep concern that the State party has not taken sufficient measures to improve the situation of older persons in nursing homes who

reportedly live in inhuman conditions and continue to receive inappropriate care due to a shortage of qualified personnel and inadequate application of standards of care (art. 12).

**The Committee urges the State party to take immediate steps to improve the situation of older persons in nursing homes. The Committee particularly calls on the State party to allocate the necessary resources to train nursing care personnel according to the recently adopted standards of training. The Committee also calls on the State party to conduct more frequent and thorough inspections of nursing homes. In this regard, the Committee draws the attention of the State party to the United Nations Principles for Older Persons (General Assembly resolution 46/91 of 16 December 1991) as well as its general comment No. 6 on the economic, social and cultural rights of older persons (1995).**

28. The Committee notes with concern that as many as 25 per cent of pupils go to school without breakfast and are thereby at risk of malnutrition as lunch is not yet provided in all schools (arts. 13, 12, 10).

**The Committee urges the State party to take concrete measures to ensure that children, especially from poor families, are provided with proper meals. The Committee also calls on the State party to ensure that measures taken in this regard do not further stigmatize children from disadvantaged social backgrounds.**

29. The Committee is concerned that the number of pupils who leave schools without a diploma, particularly among the socially disadvantaged, remains high in spite of the various measures taken by the State party such as the individual counselling and monitoring services, and the special support to pupils with special needs (arts. 13, 2.2).

**The Committee urges the State party to address the social aspects of the issue when implementing plans aimed at supporting pupils at risk of leaving schools without a diploma. The Committee also calls on the State party to heighten awareness of the possibility for, and to provide support to, those enrolled in vocational training programmes to acquire the secondary school diploma.**

30. The Committee is concerned that the State party has not acted on its earlier recommendation of 2001 to introduce a reduction of fees in higher education with a view to abolishing them, in compliance with the provisions of paragraph 2 (c) of article 13 on the progressive introduction of free higher education (art. 13).

**The Committee reiterates its recommendation calling on the State party to introduce a reduction in tuition fees into the national framework legislation regulating higher education and urges the State party to vest more responsibilities in the Federal Government as regards education policies which have to date been devolved to the Länders. In this regard, the Committee once again draws the attention of the State party to its general comment No. 13 on the right to education (1999).**

31. The Committee notes with concern that education on human rights, including on economic, social and cultural rights, is not given sufficient attention and not systematically integrated into education curricula at various levels (art. 13).

**The Committee calls on the State party to provide education on human rights, including on economic, social and cultural rights, to students at all levels as appropriate, and for members of all professions that have a direct role in the promotion and protection of economic, social and cultural rights, including civil servants, teachers, social workers and the police.**

32. While noting the information provided in the replies to the list of issues, the Committee is concerned at the lack of data to allow the identification of ethnic and religious groups and minorities in the territory of the State Party and which limits, inter alia, the full enjoyment of their cultural rights (art. 15).

**While taking note of the legal provisions which prevent the State party from collecting statistical data on the ethnic composition of its population, the Committee recommends that the State party adopt measures and mechanisms to enable groups and minorities to identify themselves as such, with a view to guaranteeing their cultural rights, on the basis of self-identification, in particular the right to preserve, promote and develop their own culture, which is an essential basis of their identity. In this regard, the Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.**

33. The Committee encourages the State party to increase the level of its contribution of official development assistance, which stood at 0.35 per cent of gross national income (GNI) in 2009,<sup>1</sup> and to achieve the international standard of 0.7 per cent as expeditiously as possible.

34. The Committee recommends that the State party take concrete steps to review the policy and practice of early orientation and classification of pupils, taking particular account of the impact of the practice on the higher education achievement especially of those pupils from socially disadvantaged groups, in line with the recommendation of the Special Rapporteur on the right to education (A/HRC/4/29/Add.3).

35. The Committee requests the State party to include in its next periodic report information on:

(a) Children living and working in the street, including statistical data disaggregated by age group and by migration origin, as well as measures taken to address the problem;

(b) Its policy regarding the protection of health in the context of food containing genetically modified organisms;

(c) The use of coercive medical treatment on mental health patients and the regulations thereon;

(d) The prevalence of drug consumption and the impact of the projects for the prevention of drug consumption and addiction among children and young persons, as outlined in annex 16 of the replies to the list of issues (E/C.12/DEU/Q/5/Add.1); and

(e) The incidence of suicide and the impacts of measures taken for its prevention.

**36. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant.**

**37. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.**

**38. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State**

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<sup>1</sup> See: <http://www.oecd.org/dataoecd/17/9/44981892.pdf>



officials, the judiciary and civil society organizations, to translate and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

39. The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2016.

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