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Berlin, 3. April 2018

C O N T R I B U T I O N

to the UN Human Rights Committee on the List of Issues Prior to Reporting by Germany (Seventh Periodic Report): Frauenmenschenrechte beim Menschenrechtsausschuss – der UN-Zivilpakt (ICCPR)

Frauenmenschenrechte spielen in allen UN-Menschenrechtsverträgen eine wichtige Rolle. Der Menschenrechtsausschuss ist das Gremium unabhängiger Expert*innen, das die Umsetzung des Internationalen Paktes über bürgerliche und politische Rechte (Zivilpakt, International Covenant on Civil and Political Rights) durch seine Vertragsstaaten überwacht.

- Informationen zum ICCPR beim Deutschen Institut für Menschenrechte
- Dokumente zum 6. Staatenberichtsverfahren
- Informationen auf den Internetseiten der UN

Alle Vertragsstaaten sind verpflichtet, dem Ausschuss regelmäßig (in der Regel alle vier Jahre) darüber Bericht zu erstatten, wie die staatlichen Verpflichtungen aus dem Zivilpakt umgesetzt werden. Ab 2018 wird die deutsche Berichtsprüfung in dem seit 2010 geltenden vereinfachten Berichterstattungsverfahren durchgeführt. Danach wird ein "Focused Report" abgegeben, der nicht umfassend über die Umsetzung der Konvention berichtet, sondern sich an einer Liste besonders relevanter Fragen (LOIPR, List of Issues Prior to Reporting) orientiert. Diese Fragenliste wird vom Menschenrechtsausschuss erstellt, der sich insbesondere auf aktuelle rechtliche und tatsächliche Entwicklungen fokussiert. Die Zivilgesellschaft kann dem Ausschuss Vorschläge unterbreiten, welche aus ihrer Sicht besonders relevanten Fragen die Bundesregierung beantworten sollte.

Die folgende Contribution to the List of Issues Prior to Reporting enthält Vorschläge des Deutschen Juristinnenbunds e.V. (djb), welche Fragen die Bundesregierung (auch) dringend beantworten sollte. In seiner 123. Sitzung im Juli 2018 wird der Menschenrechtsausschuss die Fragenliste für das deutsche Staatenberichtsverfahren beschließen. Die Antworten der Bundesregierung werden dann den 7. Deutschen Staatenbericht zur Umsetzung des Zivilpaktes bilden. Der djb erwartet, dass sich die Bundesregierung auch zu Frauenmenschenrechten bei der Umsetzung des Zivilpaktes äußern wird.

Prof. Dr. Maria Wersig
Präsidentin

Prof. Dr. Ulrike Lembke
Vorsitzende der Kommission Europa- und Völkerrecht

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C O N T R I B U T I O N

to the UN Human Rights Committee on the List of Issues Prior to Reporting by Germany (Seventh Periodic Report)

These suggestions for the List of Issues Prior to Reporting are made by the German Women Lawyers' Association (Deutscher Juristinnenbund, djb).

The primary goal of the German Women Lawyers' Association is to achieve substantive equality for women in all areas of society and to help realize women's human rights. It was founded in 1948, bringing together women from all legal professions. The German Women Lawyers' Association addresses gender-based discrimination in every field of society, professional and family life by advocating for and participating in law reforms, by submitting *amicus curiae* briefs to the Federal Constitutional Court, by reporting to human rights bodies, by offering continued legal education, by supporting young female legal professionals and scholars, and by bringing together women lawyers from all walks of life.

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ARTICLES 2 and 26 (ANTI-DISCRIMINATION)

The German Women Lawyers' Association is concerned that the following issue may constitute a violation of Articles 2 and 26 of the Covenant and thus, respectfully requests you to include it on the List of Issues Prior to Reporting.

1. Group action and mandate of the Federal Anti-Discrimination Agency

One of the main obstacles to combatting discrimination, especially on the grounds of sex/gender, is the weak and lonely position of victims of discrimination striving for justice. The German laws on civil court proceedings do not cover any group action and, moreover, anti-discrimination bodies have no standing in court to effectively support victims of discrimination. Time and again, the missing possibility of group action and the lack of institutional or organised support for victims of discrimination have been identified as serious barriers for access to justice and thus, for combatting discrimination. Ten years after its entering into force, the General Equal Treatment Act was thoroughly evaluated by anti-discrimination law experts who recommended, among many others, the introduction of group action and the extension and strengthening of the mandate of anti-discrimination bodies.[1]

In its concluding observations to the German periodic report in 2012, the Committee expressed its concern at the fact that the mandate of the Federal Anti-Discrimination Agency established by the General Equal Treatment Act was limited to public relations, research activities, advice and assistance to alleged victims of discrimination but does not encompass the possibility to deal with complaints, which limited its efficiency.[2] The Committee recommended that Germany should extend the mandate of the Federal Anti-Discrimination Agency including the power to investigate complaints brought to its attention and to bring proceedings before the courts, so as to enable it to increase its efficiency.

Moreover, in its concluding observations on the last German periodic report in 2017, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) recommended that Germany should introduce the right of group action by women's organisations and trade unions to bring discrimination cases before the courts and extend the deadline for submitting discrimination complaints to at least six months.[3]

Please ask the German state to indicate when it will introduce the right of group action by women's organizations and trade unions to bring discrimination cases before the courts.

Please ask the German state to indicate when it will extend the mandate of the Federal Anti-Discrimination Agency including the power to investigate complaints brought to its attention and to bring proceedings before the courts, so as to enable it to increase its efficiency.

Please ask the German state to indicate which other measures will be taken to guarantee access to justice for every victim of (especially sex/gender) discrimination as well as the effective implementation of anti-discrimination statutes independent of the victim's personally, financially or otherwise limited ability to claim her rights.

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[1] Berghahn, S., Klapp, M. & Tischbirek, A., Evaluation des Allgemeinen Gleichbehandlungsgesetzes (Evaluation of the General Equal Treatment Act), Antidiskriminierungsstelle des Bundes, Berlin 2016.

[2] Human Rights Committee, Concluding observations on the sixth periodic report of Germany, CCPR/C/DEU/CO/6, 31 October 2012, para 6.

[3] Committee on the Elimination of All forms of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Germany, CEDAW/C/DEU/CO/7-8, 3 March 2017, para 14.

ARTICLES 2, 3 and 26 (EQUALITY OF WOMEN AND MEN)

The German Women Lawyers' Association is concerned that the following issues may constitute a violation of Articles 2, 3 and 26 of the Covenant and thus, respectfully requests you to include them on the List of Issues Prior to Reporting.

2. Representation of women in leading positions

According to an actual study by the German Institute for Economic Research (DIW), only 24.6% of the supervisory/administrative board members and 8.1% of the executive/management board members of the 200 largest companies in Germany are female (by the end of 2017).[4] In 68.5% of these companies, there is still no woman on the executive/management board at all.

In its concluding observations to the German periodic report in 2012, the Committee expressed its concern that the representation of women in leading positions in the private sector remained low and recommended that Germany should firmly strengthen its efforts aimed at promoting women in leading positions in the private sector.[5]

Since 2016, the Law on the equal participation of women and men in leading positions of private companies and in the civil service provides for a statutory 30 % gender quota for supervisory boards of all private companies that are listed and subject to full co-determination. In case of non-compliance, the election is void and the seat designated for a member of the underrepresented gender remains vacant. Unfortunately, this binding statutory gender quota covers no more than 108 companies in Germany. On average, these 108 companies fulfil their legal obligations of 30% female supervisory board members by today.

Further, the law on equal participation covers the obligation of 2.500 to 3.500 private companies which are listed or fully co-determined to set themselves target gender quotas, unfortunately without any effective sanctions in case of setting zero quotas or none at all. It is not surprising that ¾ of all MDax-listed companies set themselves a 0% gender quota regarding their executive boards for the first period until 30 June 2017.[6]

And there is nearly no progress concerning female representation on executive/management boards. In March 2017, there have been more male executive board members with the name of Thomas and Michael than female executive board members at all.[7] A study conducted by the German Women Lawyers' Association in 2017 found an alarmingly relaxed attitude of private companies towards target gender quotas, one third of the DAX 30 companies set a target gender quota of 0% for their boards.[8] The former Federal Minister for Family, Senior Citizens, Women and Youth expressed her disappointment with the broad failure of private companies to set sufficient target quotas (beyond 0%) and announced the serious consideration of amendments to the existing legal obligations such as an expansion of the statutory 30% gender quota.[9] At the moment, the new Federal Government does not display special interest in this problem.

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[4] German Institute for Economic Research (DIW), Women Executives Barometer 2018, available under https://www.diw.de/sixcms/detail.php?id=diw_01.c.574761.en.

[5] Human Rights Committee, Concluding observations (note 2), para 8.

[6] See http://www.spiegel.de/karriere/frauenquote-in-mdax-unternehmen-keine-weiblichen-vorstaende-a-1135060.html.

[7] Allbright Foundation (2017), Ein ewiger Thomas-Kreislauf?, http://www.allbright-stiftung.de/aktuelles/2017/3/30/am-3-april-erscheint-der-neue-bericht-ein-ewiger-thomas-kreislauf-wie-deutsche-brsenunernehmen-ihre-vorstnde-rekrutieren.

[8] German Women Lawyers' Association, Aktionärinnen fordern Gleichberechtigung – 2017, www.djb.de/static/common/download.php/save/2334/180206_Studie%20Aktion%C3%A4rinnen_aktuell.pdf.

[9] See http://www.spiegel.de/karriere/manuela-schwesig-droht-firmen-mit-harter-quote-fuer-frauen-in-fuehrungsjobs-a-1137809.html.

Time and again, the German Women Lawyers' Association has suggested the introduction of binding statutory gender quotas and effective sanctions, such as the invalidity of resolutions of the respective board and corporate tax disadvantages.[10] In January 2018, seventeen women's organizations (including the German Women Lawyers' Association) launched their renewed Berlin declaration claiming for the expansion of the statutory binding 30% gender quota to all listed or co-determinated companies as well as the introduction of a statutory 30% gender quota for executive board and higher management positions and of effective sanctions.[11] Such sanctions should include the annulment of elections, the substitute appointment by courts, the annulment of decisions, severe fines and public naming and shaming.

Please ask the German state to indicate which measures will be taken to effectively combat discrimination on the grounds of sex/gender in leading positions in the private sector, especially by introducing a statutory binding 30% gender quota for executive/management boards and higher management positions covering all larger (listed or co-determinated) private companies, accompanied by smart and effective sanctions for non-compliance.

Please ask the German state to indicate which further measures will be taken to enhance equal representation in leading positions in the private sector, e.g. offering strong incentives for corporate strategies furthering gender equality and combatting discrimination or launching public awareness-raising campaigns on gender balanced leadership.

Please ask the German state to provide information on effective measures to change corporate culture, by e.g. developing and implementing the leadership "pipeline" and providing for a female talent pool with an appropriate budget or by training the (top) management on the impact of gender related stereotypes, the legal framework of anti-discrimination and the possibility of positive actions.

3. Persistent wage gap between women and men

The gender pay gap remains at more than 20 % in Germany, and this situation has not changed since 1995. In its concluding observations to the German periodic report in 2012, the Committee expressed its concern at the persistent wage gap between women and men and recommended that Germany should take concrete measures to reduce the wage gap and address all causes which widen such a gap.[12]

In December 2015, the Ministry for Family, Senior Citizens, Women and Youth presented a draft law on equal pay and wage transparency. The draft was amended for many times to water down the possibilities of enforcement of equal pay. On 6 July 2017, the Statute on Pay Transparency entered into force. Generally, it covers an individual right to obtain information on the gross remuneration for equal work or work of equal value as well as pay audits and reporting duties on equal pay.

But reporting duties are restricted to undertakings with more than 500 employees and there are no effective sanctions in case of non-compliance with them. Pay audits are not mandatory. And the information right is restricted to undertakings with more than 200 employees although the majority of women is working in smaller enterprises. The female employee has to establish that this is about equal work or work of equal value. When a collective agreement applies, the employer is not obliged to provide information on the criteria and procedures of the wage-

[10] German Women Lawyers' Association, Statement of 7 October 2014, https://www.djb.de/verein/Kom-u-AS/K1/st14-17/.: The German Women Lawyers' Association demands for the expansion of the statutory gender quota to 40% to all supervisory, executive and management boards as well as leadership management positions.
[11] Available under https://www.djb.de/st-pm/pm/pm18-04/.
[12] Human Rights Committee, Concluding observations on the sixth periodic report of Germany, CCPR/C/DEU/CO/6, 31 October 2012, para 8.

setting, but can just refer to the agreement although most sophisticated and often still gender-discriminatory job classifications set up by collective agreements are one of the obstacles to equal pay. The main problem is that the Statute on Pay Transparency itself does not cover any further consequences of pay discrimination. The employee has to take legal action under the General Equal Treatment Act. This Act does not cover any collective or class action such as the right of associations to start legal proceedings. The restriction to individual claims tackling structural problems (such as discriminatory structures of job classifications especially in but not restricted to collective agreements, gender-segregated labour markets, mostly female part-time work and gender stereotypes in the evaluation of 'female' work) and sex discrimination has been identified as one of the main obstacles to achieve gender equality time and again.

The newly elected Federal Government decided to carry out an evaluation of the Statute on Pay Transparency in July 2019 and to do nothing until then. Given the obvious deficiencies of the statute, this cannot be accepted as an adequate approach.[13]

Please ask the German state to indicate which immediate measures will be taken to effectively reduce the gender wage gap.

Please ask the German state to indicate which measures will be taken to guarantee the effective application of the Pay Transparency Statute and the actual access to justice for victims of pay discrimination on the grounds of sex/gender.

Please ask the German state to indicate which measures will be taken to introduce collective or class action in cases of structural and persistent discrimination from which many companies unlawfully profit following the example of procedural innovation in the field of consumer protection.

ARTICLES 3 and 7 (GENDER-BASED VIOLENCE)

The German Women Lawyers' Association is concerned that the following issues may constitute a violation of Articles 3 and 7 of the Covenant and thus, respectfully requests you to include them on the List of Issues Prior to Reporting.

4. Domestic and other forms of violence against women and girls

So-called domestic violence, violence in close social relationships and especially violence by (ex-)partners remain a severe problem in Germany. 35% of all women have been victims of physical and/or sexual violence since their 15th birthday, mostly by their intimate partners (22%), relatives or close friends. In 2016, 357 women suffered life-threatening attacks from their (ex-)partners on the main reason that they had left or wanted to leave the (mostly abusive) relationship. 149 of them were killed. While so-called honour killings by Muslim or Arab perpetrators are severely punished (life-sentence), many *white* German perpetrators benefit from judges' empathy for 'abandoned' husbands/partners and a cultural understanding of spouse or partner killings as domestic tragedies rather than gender-based violence and emanations of patriarchal culture.[14]

Concerning gender-based violence, there is a significant gap between legislation und legal practice. The criminal law provides for severe punishment for killing another person due to unacceptable, reprehensible and especially despicable reasons. The killing of an (ex-)partner because she terminated or wanted to terminate a (mostly abusive) relationship might easily be seen

[13] See the Press Realease of the German Women Lawyers' Association of 16 March 2018, https://www.djb.de/verein/Kom-u-AS/K1/pm18-11/.

[14] For a comparative analysis of criminal court judgments on lethal domestic violence either prosecuted as honour killings or as domestic tragedies see Lena Foljanty & Ulrike Lembke, Die Konstruktion des Anderen in der "Ehrenmord"-Rechtsprechung, in: Kritische Justiz 2014, S. 298–315.

as such reasons. But judges, including some of the federal courts, base their rulings on the idea that the perpetrator hurt himself by killing the person that 'he didn't want to lose'. In 2017, the criminal law on sexual offences was thoroughly amended, introducing the concept of 'No means No' and thus, focussing on the (lack of) consent to sexual interaction rather than stereotyped expectations concerning the behaviour of the victim ('fight or flight'). But many court proceedings are still dominated by gender stereotyping, rape myths and secondary victimization. Moreover, only 5-10% of the punishable sexual assaults are brought to the attention of the authorities, and attrition rates have been rising for more than twenty years. And legislation on the prosecution of stalking and on combatting domestic violence has only partly and very slightly improved the situation of victims of domestic violence in reality.[15]

On occasion of the ratification of the Istanbul Convention, the German government claimed that all obligations under the Convention are already fully met by national law and practice. These allegations raise some concern on the government's awareness of the situation of victims of violence and of the daily reality of shelters and support structures.

Please ask the German state to indicate which immediate measures will be taken to guarantee the effective implementation of legislation to prevent, combat and prosecute gender-based violence. We are especially interested in measures to bring about fundamental legal and cultural change, e.g. measures to improve the professional understanding of gender-based violence for judges and other law enforcement personnel, specific education measures, public awareness raising etc.

5. Sufficient funding for women's shelters and support structures

Battered women's shelters and support structures for victims of gender-based violence such as counselling centres are in permanent lack of sufficient funding. Women's shelters are not able to offer refuge for all women and girls in need of protection. Victims of gender-based violence suffer from long waiting periods when seeking support such as counselling or therapy. And the vast majority of shelters and support structures is not generally accessible, especially not for women with disabilities or women without a more permanent residence status.

The funding of women's shelters and support structures for victims of gender-based violence is based upon a confusing mix of social assistance benefits, individual payments, state and local funding, awarded fines and private donations. The (generally underpaid and generally female) employees of shelters and counselling centres have to spend large amounts of their working time for fundraising, dealing with underfunding and worrying about the future (state and regional funding must be applied for anew every year) instead of supporting and caring for victims of violence.[16]

In their coalition agreements, the parties to the new government announced to spend considerable sums for the better funding of women's shelters and support structures. But the structural obstacles to sufficient and reliable funding remain unaddressed. Persistent constitutional law questions concerning the permissible relationship between federal, state and local funding are not answered. Further, the new government does not reflect upon the problem of major funding by social assistance benefits paid for individual victims seeking refuge or support—a system causing the impossibility of developing any planning security. The main obstacle for dependable support and shelter is not even mentioned: the legally unfounded idea that shelter

[15] For further information see the CEDAW Alliance of civil society organizations in Germany, CEDAW Alternative Report, 2017, pp. 18ff, available under https://www.frauenrat.de/cedaw-allianz/.

[16] See German Women Lawyers' Association, Detailed statement on the effective implementation of the Istanbul Convention of 29 January 2018, https://www.djb.de/verein/Kom-u-AS/K6/st18-02/.

and support for victims of gender-based violence would be a voluntary and not mandatory state task.

Please ask the German state to indicate which concrete measures will be taken to guarantee the sufficient and reliable funding for women's shelters and support structures for victims of gender-based violence. We are especially interested in ideas to replace the individualized funding using social assistance benefits by models of general, long-term and sustainable funding.

Please ask the German state to indicate which concrete measures will be taken to guarantee the access to shelters and support structures for all women including women with disabilities or health issues, migrant and refugee women, women without (permanent) residence status, poor or homeless women and women with children.

6. Digital violence against women (hate speech and cyber harassment)

Digital violence has become a major problem in Germany. Especially persons supporting refugees and defending migration rights are subjected to hate speech, insults, defamations, rape threats (women) and death threats (men). But there is an increasing number of cyber feminists, women's rights advocates, gender equality activists or just critical female journalists who are victims of repeated and long-lasting digital violence. This does not only harm the women addressed but gravely endangers democracy and the freedom of speech for everybody including minorities. Another form of digital violence against women is the continuance of domestic or ex-partner violence by digital means, including cyber harassment, defamations in digital public, cyber stalking, revenge porn and others.[17]

The German Penal Code does not cover digital violence explicitly. Moreover, it does not cover the problem of non-physical violence except very detailed threats to commit a certain serious crime. Some criminal law remedies could be used to combat digital violence, such as libel, slander, threatening, stalking or anti-porn laws (revenge porn). But prosecuting authorities (police, state attorneys, judges) very often do not apply the appropriate laws due to a misunderstanding of digital violence as a private matter or due to examining freedom of speech in sole favour of the perpetrator and not the victim and ignoring the victim's fundamental rights as well as questions of discrimination. The same is true for most efforts to tackle digital violence by media law remedies and moreover, the costs of litigation are a severe obstacle for the victims' access to justice. The above-mentioned introduction of a possibility of group action and anti-discrimination organizations' standing in court could diminish these obstacles.[18]

The Committee (GC 28, para 11) asked the governments to provide information on national laws and practice with regard to violence against women. In human rights discourse, violence against women means all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Council of Europe Convention on preventing and combating violence against women and domestic violence requests states to take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

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[17] For different forms of appearance and extent of digital violence against women see bff, Fachberatungsstellen und die Digitalisierung geschlechtsspezifischer Gewalt, Oktober 2017, https://www.frauen-gegen-gewalt.de/aktuelle-studien-und-veroeffentlichungen.html.

[18] See Ulrike Lembke, Kollektive Rechtsmobilisierung gegen digitale Gewalt, E-Paper 2018, https://www.gwi-boell.de/de/2018/01/09/kollektive-rechtsmobilisierung-gegen-digitale-gewalt.

Please ask the German state to indicate which measures will be taken to effectively combat gender-based digital violence. We are especially interested in any consideration of amendments to criminal law to cover psychological violence with severe consequences and in any measures to improve the criminal and the media law enforcement.

Please ask the German state to indicate which measures will be taken to further an understanding of gender-based violence as a human rights problem in national jurisdiction and law enforcement.

Please ask the German state to indicate when it will introduce the right of group action by women's organizations and trade unions to bring cases of gender-based violence before the courts.

ARTICLES 7 and 26 (CRUEL AND DEGRADING TREATMENT)

The German Women Lawyers' Association is concerned that the following issue may constitute a violation of Articles 7 and 26 of the Covenant and thus, respectfully requests you to include it on the List of Issues Prior to Reporting.

7. Cruel and degrading treatment of female rape victims in court proceedings

In 2017, a fundamental Penal Code reform took place to establish consent or the lack of consent as the central element of the criminal law against sexual assault and rape (among other reasons, to implement the Istanbul Convention). But there was and is strong resistance against the reform among the legal professions. Time and again, the very few victims whose cases have being tried in criminal court report that judges and state attorneys employ little knowledge about sexual violence and its consequences or about different manifestations of trauma. Victims report court proceedings to be characterized by gender stereotypes, rape myths, blaming the victim, secondary victimization and obstructions to the work of the legal counsel to whose support they are entitled.

In many criminal courts, victims' legal counsels are denied access to the case files although they are legally entitled to have access. This violation of legal counsels' statutory rights is justified by criminal court judges with the allegation that the counsels would 'prepare' the victim-witnesses.[19] It is still true that no rape myth is more powerful than the myth of the lying woman. And this denial of statutory rights cannot be brought before a higher court due to criminal procedural law.

Moreover, criminal court judges approve of cruel and degrading treatment of female rape victims by defence lawyers whose behaviour cannot be justified by the presumption of innocence nor any other right of the accused. In 2014, a severely drunk woman was raped several times and in several ways by two men who recorded their rape actions in detail. Due to her drunkenness, the victim's recollection of the rape was severely impaired. The recording of the rape was found on the smartphone of one of the perpetrators and established more than sufficient proof. Nevertheless, the defence lawyers decided that the victim must watch the recording 'to help her to remember'. The court agreed. The victim and her counsel clearly rejected this proposal, but as the defence lawyers and the judge insisted, they saw no possibility to avoid it. The showing of the recording had to be interrupted after some seconds because the victim collapsed. Although it was obvious that the victim's memory would not return and that the victim became severely re-traumatized by watching the recording, the judge ordered that the victim

[19] Higher Regional Court of Hamburg, judgment of 24 October 2014, 1 Ws 110/14, and judgment of 24 November 2014, 1 Ws 120/14; of a (slightly) different opinion: Regional Court of Leipzig, judgment of 12 August 2015, 1 Qs 195/15.

had to watch the recording until the end. The showing had to be interrupted for several times because the victim needed urgent psychological support. The judge did not terminate the obviously needless torture for the victim but made her watch the full recording.

These facts and their legal implications are confirmed by a judgment of the regional court of Münster which decided upon an unusual high amount of compensation for the victim to be paid by the perpetrators.[20] The court stated that it was obviously unnecessary to insist on the showing of the recording and that this showing caused severe additional harm and trauma to the victim of repeated and especially degrading forms of rape. What has to be noted is that the judge who decided upon the defence's proposal was neither ordered to pay a compensation nor faced any other legal consequences of his decision to make the victim watch the recording despite the obvious consequences for her.

Please ask the German state to indicate which measures will be taken to abolish cruel and degrading treatment of rape victims in criminal proceedings, to hold judges accountable for such treatment, and to safeguard the statutory rights of victims' legal counsels.

ARTICLE 8 (TRAFFICKING)

The German Women Lawyers' Association is concerned that the following issue may constitute a violation of Article 8 of the Covenant and thus, respectfully requests you to include it on the List of Issues Prior to Reporting.

8. Trafficking of women and girls

As the Committee pointed out before (GC 28, para 12), the State Parties are requested to take measures to eliminate trafficking of women and children, within the country or across borders, and forced prostitution. In November 2016, several amendments to the Penal Code entered into force extending the criminal liability concerning forced prostitution, the reckless benefitting from forced prostitution and trafficking in women and children for the purpose of labour exploitation and of sexual exploitation. There is no indication that these new regulations have any considerable effect.

What is missing is an overall strategy and coherent action against all forms of trafficking in women, children and men. Moreover, criminal law is no substitute for the comprehensive and effective protection and support of victims of trafficking and the enhancement of their rights. Victims of trafficking who are non-EU citizens are severely affected by the insecurities of their residence status. Their right of residence must be uncoupled from their suitability as witnesses in criminal proceedings and their willingness to testify.[21]

Please ask the German state to indicate which measures will be taken to effectively implement the statutory amendments concerning trafficking and forced prostitution.

Please ask the German state to indicate which further measures will be taken and resources will be invested to guarantee the protection and support of victims of trafficking and to safeguard their rights, both independent from their nationality or actual or former status of residence.

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[20] Regional Court of Münster, judgment of 7 December 2017, 02 O 229/17, http://www.justiz.nrw.de/nrwe/lgs/muenster/lg_muenster/j2017/02_O_229_17_Teil_Versaeumnis_und_Schlussurteil_20171207.html.

[21] CEDAW Alliance of civil society organizations in Germany, CEDAW Alternative Report, 2017, pp. 25f, available under https://www.frauenrat.de/cedaw-allianz/.

ARTICLES 17, 7 and 26 (PRIVACY and CRUEL AND DEGRADING TREATMENT)

The German Women Lawyers' Association is concerned that the following issues may constitute a violation of Articles 7, 17 and 26 of the Covenant and thus, respectfully requests you to include them on the List of Issues Prior to Reporting.

9. Mandatory counselling and waiting period when seeking for a safe and legal abortion

The Committee (GC 28, para 20) asked the governments to provide information on national laws and practice that may interfere with women's right to enjoy privacy protected by article 17 on the basis of equality with men. The Committee pointed out that one area where States may fail to respect women's privacy relates to their reproductive functions, especially concerning sterilization or abortion.

In Germany, women who are in need for a safe and legal abortion face the statutory obligation of receiving mandatory counselling and fulfil a mandatory waiting period after the counselling before they are allowed to have an abortion. The mandatory counselling has the statutory aim to make the woman carry their pregnancy to full term. The mandatory waiting period is not founded upon medical reasons but serves the sole purpose to underline the fact that there is no general access to abortion and that abortion should not be easily available as a medical service for women.

Founded upon this ratio, the mandatory counselling as well as the mandatory waiting period might be seen as an inhuman and degrading to women. Further, both enforces the stereotype that women are not able to make rational and responsible decisions with regard to their reproductive rights.[22] The state should provide for counselling meeting pregnant women's need and offer it non-mandatory, and every woman should have the possibility to take her individual time. The World Health Organization rejects mandatory waiting periods arguing that they can have the effect of delaying care which can jeopardize women's access to safe and legal abortion services (it has to be kept in mind that in many regions in Germany, only very few or no doctors offer safe and legal abortions) and demean women as competent decision-makers.[23]

In its concluding observations on the last German periodic report in 2017, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) recommended that Germany should ensure access to safe abortion without subjecting women to mandatory counselling and a three-day waiting period, which the World Health Organization has declared to be medically unnecessary, and ensure that such procedures are reimbursed through health insurance.[24]

Please ask the German state to indicate which measures will be taken to guarantee the access to safe and legal abortion in respect for women as competent decision-makers, especially concerning their own reproductive rights.

Please ask the German state to indicate which measures will be taken to offer respectful and supportive counselling on a voluntary basis for every pregnant woman in need.

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[22] Article 16 CEDAW guarantees the right of all women to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. In Germany, 60% of all women seeking for a safe and legal abortion have one or more children.

[23] World Health Organization, Safe abortion: technical and policy guidance for health systems, 2nd edition 2012, pp. 96f, http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/.

[24] Committee on the Elimination of All forms of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Germany, CEDAW/C/DEU/CO/7-8, 3 March 2017, para 38(b).

10. Street harassment of pregnant women seeking counselling

As the Committee pointed out (GC 20, para 2), the State's obligation to guarantee protection against cruel, inhuman or degrading treatment or punishment covers all prohibited acts whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The Committee further (GC 28, para 20) explained that women's privacy, including their reproductive functions, may also be interfered with by private actors, and that the states should report on measures taken to eliminate such interference.

Under German law, women seeking for a safe and legal abortion are obliged to receive mandatory counselling before they can receive the medical services needed. The counselling can only be offered by (very few) state-approved counselling centres. For some time, religious fundamentalists have been loitering on the streets directly in front of approved counselling centres to harass women who are seeking for counselling. They yell at any woman crossing their way, insult women as 'baby murdereres', show them pictures with foetuses cut into pieces and lots of blood, put mock child coffins on the sidewalk, and harass women in any ways to force them to surrender from seeking counselling and safe and legal abortion. This constitutes inhuman and degrading treatment of women who are in an especially difficult and vulnerable position and who cannot avoid the harassment due to the mandatory character of the counselling and the small number of approved counselling centres.

Authorities refuse to protect women against this degrading treatment and interference with their most intimate decisions upon pregnancy and family planning with the argument that the anti-abortion activists would exercise their freedom of religion and freedom of speech. But neither the freedom of religion nor of speech includes the right to impose (religious) opinions upon other people or to harass women, especially not when they are in a vulnerable position and cannot avoid the interference. In 2011 and 2012, German courts decided that religious fundamentalists are not allowed to harass women and that they can exercise their freedom of speech in any other place but close to approved counselling centres or medical practices and clinics offering abortion services.[25]

Please ask the German state to indicate which measures will be taken to guarantee protection against degrading treatment and street harassment of pregnant women in front of approved counselling centres or medical practices and clinics offering abortion services.

Please ask the German state to indicate which measures will be taken to raise awareness among the authorities concerning the obligations to protect women's privacy, including their reproductive functions, and to eliminate interferences by private actors as well.

11. Sterilizations without consent of women with (mental) disabilities

The Committee (GC 28, para 20) pointed out that one area where States may fail to respect women's privacy relates to their reproductive functions, especially concerning sterilization or abortion.

The German law provides for the possibility of sterilization of women with so-called mental disability at the decision of a care-giver and with collaboration of a court. Disabled persons' organizations and women's organizations point out that this possibility of sterilization without the consent of the person involved severely violates human rights under the Convention on the Rights of Persons with Disabilities and the Council of Europe Convention on preventing and combating violence against women and domestic violence.

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[25] Administrative Court of Freiburg of 4 March 2011, 4 K 314/11; State Administrative Court of Baden-Württemberg of 11 October 2012, 1 S 36/12; approved by the Federal Administrative Court of 22 July 2013, 6 B 3/13.

There are still around 30-40 annual cases of sterilization of women with so-called mental disability documented following the statutory required procedure. Nevertheless, an unusual high number of women with disabilities, especially so-called mental disabilities, are sterilized in Germany (9% to 18% in comparison to between 2% to 6% of the female population). There seems to be a high number of undocumented cases. According to a study on the sterilization of women with so-called mental disabilities, half of the women explained that they consented to their sterilization while for the other half of the women the determining factors were persuasion by parents, physicians or nursing staff, lack of knowledge about contraception or lack of prospects of living with a child.[26]

Please ask the German state to indicate which measures will be taken to abolish any sterilization without the prior understanding and informed and freely given consent of the person affected.

ARTICLE 25 (PUBLIC AFFAIRS AND VOTING)

The German Women Lawyers' Association is concerned that the following issue may constitute a violation of Articles 25 of the Covenant and thus, respectfully requests you to include it on the List of Issues Prior to Reporting.

12. Representation of women in parliaments and political decision-making

The Committee (GC 28, para 29) requires states to provide statistical information on the percentage of women in publicly elected office, including the legislature, as well as in highranking civil service positions and the judiciary and to take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action.

With the elections in September 2017, the percentage of female members of the Federal Parliament (Bundestag) dropped to a mere 30.9 % (from 36.5 % during the preceding legislative period), which is the lowest percentage within the past 20 years.[27] Only political parties that committed themselves to gender quota through their statutes reached an adequate percentage, ranging from approximately 42 % to more than 58 %;[28] the other three of the six parties have a women's percentage among their MPs between 10.6 % and 22.5 %.[29] In the parliaments of the federal states (Länder), the percentage ranges from 21.8 % to 40.7 %.[30] The percentage of women in the municipal councils (Kommunalvertretungen) reaches 25 %, and that of female mayors 10 %.[31]

Please ask the German state to indicate which measures, including affirmative action, will be taken to ensure women's de facto equality in the legislatures and governments at federal, state and municipal levels.

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[26] BMFSJ (2013), Lebenssituation und Belastungen von Frauen mit Behinderungen und Beeinträchtigungen in Deutschland, http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste,did=199822.html.

[27] https://www.bpb.de/gesellschaft/gender/frauen-in-deutschland/49418/frauenanteil-im-deutschen-bundestag.

[28] German Women Lawyers' Association, Press Release 17/35 of 26 September 2017, https://www.djb.de/verein/Kom-u-AS/K5/pm17-35/.

[29] DIE WELT (online) of 29 September 2017, https://www.welt.de/politik/deutschland/article169078778/Diese-Fraktionen-haben-den-geringsten-Frauenanteil.html: Alternative for Germany (AfD): 10.6 %; Christian Democratic Union and Christian Social Union (CDU/CSU) parliamentary faction: 20 %, The Liberal Party (FDP): 22,5 %.

[30] http://kuerschners.com/verlag/aktuelles/thema/news/frauenanteil-in-parlamenten.html.

[31] See www.frauen-macht-politik.de/infothek.html. For details regarding municipal councils (as of 2015), see: www.bmfsfj.de/bmfsfj/service/online-rechner/gleichstellungsatlas. For a more detailed breakdown with respect to female mayors see: Helga Lukoschat & Jana Belschner, Frauen führen Kommunen, 2014, p. 16, www.frauen-macht-politik.de/fileadmin/eaf/Dokumente/Schwerpunktthema/Studie_Frauen_fuehren_Kommunen.pdf.