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CONTRIBUTION

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to the CEDAW Committee on the information provided in the Ninth periodic report submitted by Germany (CEDAW/C/DEU/9, 16 July 2021)

The German Women Lawyers' Association (djB) brings together women from all legal professions and aims to achieve substantive equality for women in all areas of society and to help realize women's human rights.

Women, peace, security (para.6)

Art.7(4) Arms Trade Treaty (ATT) prescribes a risk assessment regarding gender-based violence which has not been adequately implemented. The guidelines for licensing arms exports are laid down in the "Political Principles Adopted by the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment". While these principles stipulate respect for human rights and international humanitarian law by the country of final destination as a decisive criterion, they are legally non-binding. Moreover, there is no explicit reference to the gender dimension. The Government's export figures and practice regarding licensing arms exports show important principles are not being complied with, such as not supplying war weapons and small arms to third countries (non-EU countries that are not NATO countries or countries with NATO-equivalent status) and observing human rights in the country of destination and end-use.¹

Lacking a legal basis, the former Government could not list any measures that explicitly assess the impact of small arms and light weapons misuse on women in the country of destination before issuing export licenses.

We urge the Federal Government to:

- implement a uniform Arms Export Control Act that explicitly prohibits export of war weapons and small arms to third countries where human rights are being violated;

¹ Greenpeace, Entwurf für ein Rüstungsexportkontrollgesetz, 04/01/2021, <https://www.greenpeace.de/publikationen/greenpeace-entwurf-ruistungsexportkontrollgesetz>.

- explicitly prohibit export of military equipment used to perpetrate or facilitate serious acts of gender-based violence or serious acts of violence against women and children and implement a risk assessment to that effect.

Digitalization (para.11(g))

While we welcome the Third Equality Report's comprehensive analysis and demands, we do not consider the measures set out as adequate. The programs are underfunded and the amendments to the Network Enforcement Act (*NetzDG*) are not sufficient. In 2024, the *NetzDG* will be replaced by the European Digital Services Act (*DSA*) which will loosen the deletion periods. When enacting the Digital Violence Protection Act, Germany should fully exploit the margin afforded under the *DSA*.

The Government's 2022 digital strategy lacks an equality perspective.² Digital projects should ensure specific socio-technical as well as gender competence and a comprehensive technology assessment to avert discrimination and digitized gender-based violence. It is essential to include equal representation in authorities, agencies and bodies and to create organizational units incorporating the recommendations for action of the Third Equality Report. Adequate funds for implementing the Government's digital strategy are necessary. A digital department equipped for this purpose should be established and obligatorily involved in digital projects. Gender aspects need to be mainstreamed in the Data Institute for Germany and in the Government's Digital Council. The digital strategy should address the lack of data on women ("gender data gap") leading to systems and products geared exclusively to a male standard.

We call for a regulatory framework of algorithms and autonomous systems graded according to risks, value-based and committed to non-discrimination.

An Act on Protection Against Digital Violence is needed enabling deletion and/or (temporary) blocking of accounts, without a real-name requirement, within a few hours by means of temporary injunction proceedings before specialized courts.³

Regulations on digitization-related interests of women in paid work should be created. The impact of digital developments on gender equality should be assessed.

We urge the Federal Government to:

- institutionally secure the gender-equitable design of digitization;
- overcome discriminatory algorithms and the gender-data gap;
- combat digital violence effectively;
- avoid disadvantages of digital developments for gender equality.

² Cf. DjB, Stellungnahme 22-22, 08/30/2022, <https://www.djb.de/presse/pressemitteilungen/detail/st22-22>.

³ Cf. Gesellschaft für Freiheitsrechte, Eckpunkte zum Digitalen Gewaltschutzgesetz, 12/22/2022, <https://freiheitsrechte.org/uploads/documents/Demokratie/Marie-Munk-Initiative/Eckpunkte-Marie-Munk-Initiative.pdf>.

Gender-based violence against women (paras.11(b), 11(f))

Deficiencies persist particularly in the application of the law and in law enforcement.

There is inconsistency in the application of the law in cases of both sexualized and fatal intimate partner violence. A current or previous sexual relationship between perpetrator and victim or a separation preceding the crime initiated by the victim are often mistakenly considered as a mitigating instead of an aggravating factor by the courts. In 2022, the Government has proposed a bill to explicitly list "gender-specific motives" as well as "motives directed against sexual orientation" as potential aggravating factors in the general sentencing norm.⁴

In law enforcement, victims of intimate partner violence lack access and support. Legal entitlement to psychosocial trial support is still lacking although victims are exposed to massive stress and risk (re)traumatization in criminal proceedings. Currently, such legal entitlement exists only in narrowly defined constellations, some of which are at the courts' discretion. Legal aid in representation of private accessory prosecution should be secured. Both free psychosocial support during the trial and free representation of private accessory prosecutors (*Nebenklage*) are currently only granted to certain groups of victims,⁵ leaving out a large number of cases. Expanding the victim groups covered is urgently needed to avoid gaps in protection.

The measures listed in para.11(f) are not sufficient to implement the obligations under CEDAW. The former Government has not indicated any plans to take further measures. Additional training of judges and public prosecutors should be mandatory. Such an obligation could be anchored in the German Judiciary Act (*Deutsches Richtergesetz*), taking judicial independence into account. If judges and prosecutors are not sufficiently sensitized to the psychological effects of such violence and the risks of secondary victimization, psychological effects caused by the crime could worsen during criminal proceedings. The same risk applies to police officers. As officers regularly serve as first point of contact for victims of gender-based violence, they must be able to assess risks and initiate steps to stabilize the victim's situation. Training measures must be expanded. They should address causes and effects of gender-based violence, examination of gender stereotypes and sexuality myths. CEDAW obliges Germany to provide appropriate educational and training measures. Existing risk assessment instruments should be expanded to improve the recognition of warning signals and the prevention of domestic violence. The information on individual threats known to counseling centers, women's shelters, police and judiciary, among others, have to be compiled. An inter-institutional case management system should be established throughout Germany.

Apart from police crime statistics, empirical data and statistical surveys on violence against women are lacking. The last representative study examining violence against women dates from 2004. Thorough research on gender-based violence is necessary to break down common

⁴ Sec.46 German Criminal Code.

⁵ Sec.397a(1), Sec.406g(3) s.1 German Code of Criminal Procedure.

stereotypes and myths. Empirical findings should form the basis for preventive risk assessments and for monitoring the effectiveness of legal regulations in the long term.

We urge the Federal Government to:

- introduce mandatory participation in training courses for public prosecutors, judges and police officers on gender-based violence to ensure consistent application of the law;
- sanction inappropriately imposed sexuality in a separate criminal offense or as a misdemeanor;
- systematically and fully protect adults against the unauthorized production and use of images that depict another person in a sexually explicit manner (under criminal law);
- expand risk assessment tools already in place to make them available to individuals and institutions dealing with risk cases;
- expand and fund empirical research for a thorough root cause analysis as a basis for risk assessments and prevention.

Female refugees (paras.11(d), 16(b), 21(a), (b))

All forms of gender-specific persecution must be identified in asylum procedures and accepted as grounds for granting refugee status. While decision-makers in official hearings of refugees are trained to deal with gender-based violence, binding guidelines on how to identify and acknowledge gender-based persecution are still lacking. The legal institution of “safe countries of origin” which places the burden of proof on women also prevents gender-based violence from being considered.

Restrictions on freedom of movement (*Residenzpflicht*)⁶ during asylum procedures are an obstacle in accessing effective protection against violence. Female refugees who have been victims of violence by family members, social or security staff or other refugees are generally not allowed to leave their assigned accommodation without a permit. Although the law provides for exceptions, gender-based violence is not among them. The often short-term need to seek protection in a women’s shelter leaves no time for a permit procedure. Without a permit, moving to a shelter is considered an administrative offence and leads to women's shelters refusing admission because funding is not secured.

Women without residence papers also have no access to protection against violence without risking their deportation. In most cases, women's shelters are obliged to inform the cost units about the names of the women they have taken in, which in turn are obliged to pass on the data to the immigration office.⁷

Obligatory violence protection measures are still lacking in all federal states (*Länder*). The newly introduced Sec.44(2a) Asylum Act (*AsylG*) merely obliges to ensure “appropriate

⁶ Sec.56, 60 Asylum Act; Sec.12a, 61 Residence Act.

⁷ Sec.87(2) Residence Act.

measures” to guarantee protection of women during accommodation, without specifying them or setting binding minimum standards.

Existing regulations in the Residence Act (*AufenthG*) do not guarantee sufficient protection for women affected by violence. Even if the existence of violence in marriage theoretically justifies an independent residence title,⁸ such a title often is withheld in practice.

We urge the Federal Government to:

- introduce guidelines for determining gender-specific persecution and protection needs due to gender-specific threats;
- amend existing laws to ensure that female refugees and other migrants have unrestricted access to women’s shelters and all other forms of support in cases of domestic and sexual violence, and full autonomy to decide on the safest place for them to stay;
- introduce comprehensive binding guidelines on minimum standards of protection for the accommodation of female refugees;
- introduce binding guidelines and facilitation of evidence for the effective implementation of the protection standard laid down in Sec.31(2) *AufenthG*;
- abolish the obligation to pass on data from social authorities to the immigration office in cases of protection against violence.

Political participation of women (para.13)

While the percentage of female members of the Federal Parliament (*Bundestag*) rose to 34.8% with the elections 2021, for about 25 years the percentage has stagnated at around one-third. In the parliaments of the *Länder*, the average is 33.1%. The percentage of women in municipal councils (*Kommunalvertretungen*) reaches 30.3%, and that of female mayors, 13.5%.⁹

The former Government has not taken any legal measures to reduce the under-representation of women in political office during the reporting period. The adopted electoral law reform also does not contain any measures ensuring political participation of women.

While various non-statutory measures, including empowerment workshops and mentoring programmes have been introduced, they are overall insufficient. The awareness-raising and leadership programmes are not sufficiently targeted towards ensuring the general public’s understanding that equal representation of women is a prerequisite for effective implementation of women’s human rights.

⁸ Sec.31(2) Residence Act.

⁹ Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ), Participation, 02/23/2023, <https://www.bmfsfj.de/bmfsfj/themen/gleichstellung/gleichstellungsatlas?view>.

We urge the Federal Government to:

- adopt legal measures that ensure equal participation of women at all levels of political representation, including drafting constitutional parity laws;
- introduce special measures to strengthen women's representation in federal elections and political offices at the federal level;
- raise awareness and introduce leadership programmes at all levels of political representation to increase general understanding of the need to address women's under-representation in political office and political life to promote women's human rights.

Employment (para.15(a)-(i))

The former Government indicates various measures have been taken to reduce the gender pay gap. Nevertheless, 75% of the employees in the health and care professions, where precarious working conditions prevail, are still women (2022¹⁰). The Transparency in Wage Structures Act (*Entgelttransparenzgesetz*) was criticized¹¹ in its 2019 evaluation and, given the low take-up of the right to disclosure, ways to improve awareness and application of the Act were suggested. The EU Pay Transparency Directive should be taken as an opportunity to swiftly introduce a comprehensive new regulation. Required are a broad understanding of the comparators within the disclosure right, the introduction of a right to bring collective claims and an obligation for companies to review company remuneration systems. Legal developments of the Federal Labour Court and the European Court of Justice should be enshrined in law.

No sufficient measures have been taken to counteract the existing men-women-segregation in the public and private sectors as well as the digital gap. Training opportunities cited by the Government will not bring about any change in this regard: Neither the career guidance nor the Social Partner Directive are aimed at specifically providing incentives for women's non-traditional career choices.

Regarding legal remedies for victims of sexual harassment at the workplace (para.15(d)), the General Act on Equal Treatment (AGG) contains a general organisational obligation of companies to prevent harassment,¹² but still leaves too much discretion. *De jure*, it obliges employers to set up internal complaints centres,¹³ of which more than 40% of employees are unaware.¹⁴ Compensation and damages (Sec.15 AGG) are only claimed by less than 1% of all harassed persons.¹⁵ Reference to the AGG thus fails to recognise structural implementation deficits in practice. The forthcoming ratification of ILO Convention No.190 gains particular

¹⁰ Destatis, Gesundheitspersonal, https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Gesundheitspersonal/_inhalt.html.

¹¹ Djb, Stellungnahme 19-18, 08/07/2019, <https://www.djb.de/presse/pressemitteilungen/detail/st19-18>.

¹² Sec.12 AGG.

¹³ Sec.13 AGG.

¹⁴ Cf. Federal Anti-Discrimination Office, Umgang mit sexueller Belästigung am Arbeitsplatz, 2019, p.11, https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/umgang_mit_sexueller_belaestigung_am_arbeitsplatz_kurzfassung.pdf?__blob=publicationFile&v=8.

¹⁵ Ibid, p.12.

significance here, as it provides for collective labour law solutions, especially preventive measures.

The program “Stark im Beruf” (para.15(e)), which expired in 2022, has achieved considerable successes, but further measures are necessary. Despite female refugees’ strong desire to work (78.8% would like to work), their integration into the labour market is far less successful than that of male refugees (2021: 28% compared to 60% for men).¹⁶ Migrant women are exposed to considerable discrimination in the job search.¹⁷ Generally, the proportion of employees with very low weekly working hours is significantly higher among women with a migrant background than among women in general.

Regarding women with disabilities (para.15(f)), intersectional discrimination risks are currently not sufficiently addressed. These women are more affected by discrimination in the labour market than women without disabilities.¹⁸ Regarding childcare (para.15(h)), the implementation of legal entitlement must be ensured and flanked by quality-assurance measures.¹⁹ We criticize the refusal to ratify ILO Convention No.156; it contrasts with the vast majority of EU-States. We call for the implementation of the provision that family responsibilities as such may not constitute grounds for dismissal (cf. Art.8) in German labour law.

The Supply Chain Act (*Lieferkettensorgfaltspflichtengesetz*) does not refer to women-specific protection instruments, such as CEDAW, when defining protected legal positions and thus leaves serious gaps in protection of women’s rights in global supply chains.²⁰

We urge the Federal Government to:

- adopt concrete measures to eliminate the pronounced gender segregation of the labour market;
- pass an Equality Act for the private sector that obliges large, small and medium-sized enterprises to identify discrimination structures, analyse their reasons and determine and exhaust potential for change;
- introduce a legal obligation to carry out corporate audit procedures with regard to corporate pay practices and the pay regulations applicable in a company;
- adopt concrete measures to end discrimination and stereotyping of women with disabilities and women from a migrant background in the labour market;

¹⁶ Institut für Arbeitsmarkt- und Berufsforschung, Geflüchtete Frauen müssen viele Hindernisse überwinden, 08/2021, <https://doku.iab.de/kurzber/2021/kb2021-08.pdf>.

¹⁷ Susanne Worbs, Tatjana Baraulina, Geflüchtete Frauen in Deutschland: Sprache, Bildung und Arbeitsmarkt, 2017, www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Kurzanalysen/kurzanalyse7_gefluechtete-frauen.html.

¹⁸ BMFSFJ, Lebenssituation und Belastungen von Frauen mit Behinderungen und Beeinträchtigungen in Deutschland, 2013, www.bmfsfj.de/bmfsfj/service/publikationen/lebenssituation-und-belastungen-von-frauen-mit-beeintraechtigungen-und-behinderungen-in-deutschland-80576.

¹⁹ Djb, Pressemitteilung 21-19, 07/05/2021, No.11, <https://www.djb.de/presse/pressemitteilungen/detail/pm21-19>.

²⁰ Djb, Stellungnahme 23-09, 03/21/2023, No.9, https://www.djb.de/fileadmin/user_upload/presse/stellungnahmen/st23-09_Lieferketten.pdf.

- develop strategies for a more successful labour market integration of refugee women, including through the participation of refugee women in language courses, also providing childcare;
- take measures to combat discrimination against women in employment and in particular intersectional discrimination;
- introduce monitoring mechanisms through public control and implementation measures (e.g. collective action), and to introduce positive and negative sanctions in case of compliance or non-compliance with legal obligations;
- implement swiftly and comprehensively the forthcoming EU Pay Transparency Directive.

Tax law and policy (para.15(g))

The announced abolition of income tax class V has not yet been implemented. The marital splitting system remains in place – despite national and international recommendations for individual taxation.²¹

Consideration for an equality-oriented calculation of wage replacement benefits, such as short-time workers' or unemployment benefits, is lacking. The alignment with the wage tax classes leads to unjustified distortions in this area, which will not be eliminated by the abolition of tax classes III and V either.²²

The limit for marginal employment, which has risen due to the increase in minimum wage, has rather aggravated the existing problems. Marital splitting and mini-jobs are among the central causes of unjust distribution of care work and paid work, and the resulting disadvantages for women's financial security, especially after parental leave. As long as the Government upholds marginal employment, it must at least ensure that social security benefits also apply to precarious and atypical forms of employment.

The increasing taxation of consumption, the decreasing taxation of capital income and high incomes lead to a shift of tax burden from men to women.²³ Introduction of a wealth tax, raising tax rates for high income groups and appropriate taxation of capital income could contribute to cushion the costs of the current crises. Simultaneously, the progression of the tax system would be strengthened and social and gender inequality counteracted. The tax volume of the tax-free allowance for care, education and training, which mainly benefits single-income families with high incomes, should flow into the financing of the basic child allowance (*Kindergrundsicherung*) to promote fair needs-based support for families.

²¹ E.g. CEDAW, Concluding Observations, CEDAW/C/DEU/CO/7-8, 03/09/2017; European Parliament, Resolution on gender equality and taxation policies in the EU, 01/15/2019, 2018/2095 (INI); Bundesregierung, 08/30/2019, BT-Drs. 19/12857.

²² Ulrike Spangenberg, Gisela Färber, Corinna Späth, Mittelbare Diskriminierung im Lohnsteuerverfahren, 07/2019, https://www.boeckler.de/fpdf/HBS-007819/p_fofoe_WP_190_2020.pdf.

²³ Asa Gunnarsson, Margit Schratzenstaller, Ulrike Spangenberg, Gender equality and taxation in the European Union, 2017, pp.20f., [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583138/IPOL_STU\(2017\)583138_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583138/IPOL_STU(2017)583138_EN.pdf).

We urge the Federal Government to:

- abolish barriers to employment caused by the tax and social security system;
- ensure gender-related effects of the tax and social security system are examined and disadvantages eliminated.

Abortion (para.16(b))

We welcome the current Government setting up a commission to consider a new regulation of abortion outside the German Criminal Code (*StGB*). It is crucial to promptly implement a new regulation which respects the reproductive right to self-determination and physical integrity of pregnant persons.²⁴

Concerning accessibility and availability of abortion services, the former Government attributes responsibility to *Länder* to ensure sufficient inpatient and outpatient facilities for the performance of abortions in accordance with Sec.13(2) of the Act on Pregnancies in Conflict Situations. However, the *Länder* fail to fulfil this obligation. We draw attention to the steadily decreasing number of doctors and clinics performing abortions.²⁵ It is for the federal legislature to take appropriate measures to implement the *Länder's* mandate to ensure that every pregnant person has effective access to abortion as a regular part of health care.²⁶ Performance of abortion should become a mandatory part of medical training at university as well as of gynecological specialist training.

We urge the Federal Government to:

- abolish Sec.218-219b *StGB*;
- implement a new regulation of abortion outside the *StGB*, abolishing mandatory counselling;
- improve availability and accessibility of abortion care;
- ensure reimbursement of costs incurred for abortion procedure by statutory health insurance;
- ensure abortion as a mandatory part of medical education and training.

Prof. Dr. Maria Wersig
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Prof. Dr. Anna Katharina Mangold
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²⁴ Cf. DjB, Policy Paper 22-26, 12/08/2022, <https://www.djb.de/presse/stellungnahmen/detail/st22-26>.

²⁵ Cf. Matthias Janson, Immer weniger Ärzt:innen führen Abtreibungen durch, 05/13/2022, <https://de.statista.com/infografik/27437/anzahl-der-praxen-und-krankenhaeuser-in-deutschland-die-schwangerschaftsabbrueche-vornehmen/>.

²⁶ Cf. DjB, Policy Paper 22-26, 12/08/2022, pp.7f., <https://www.djb.de/presse/stellungnahmen/detail/st22-26>.