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Committee on Economic, Social and Cultural Rights

Forty-sixth session

Summary record of the first part (public)* of the 10th meeting

Held at the Palais Wilson, Geneva, on Friday, 6 May 2011, at 3 p.m.

Chairperson: Mr. Pillay

Contents

Consideration of reports

- (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Fifth periodic report of Germany (continued)

* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 3 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Fifth periodic report of Germany (continued) (E/C.12/DEU/5; E/C.12/DEU/Q/5; E/C.12/DEU/Q/5/Add.1; HRI/CORE/1/Add.75 and Rev.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

Articles 6 to 9 of the Covenant (continued)

2. **Mr. Koller** (Germany), responding to the question on prisoners' work, said that it would be wrong to refer to it as forced labour. Some 55 per cent of prisoners voluntarily engaged in remunerated work activities, 20 per cent of which was with private companies. Unemployment in Germany was at its lowest level since 1990. Some 3 million workers were currently unemployed, one of the lowest rates among countries of the Organization for Economic Cooperation and Development (OECD) and the European Union. He repeated that the ban on strikes by German State officials conformed with the Covenant, which provided for the imposition of legal restrictions on civil servants' exercise of their rights. The ban, which was established in the German Constitution, was essential for maintaining peaceful labour relations. Employees of privatized services, such as postal and railway staff, did have the right to strike, as did teachers in private schools. Indeed, teachers showed a preference for public-school posts when seeking work and willingly waived the right to strike.

3. Women were less affected by unemployment than men for structural reasons: the worst hit sector in the crisis had been industry, which employed more men than women. Workers in the "grey economy" were aware of their social rights, but preferred not to pay taxes or social security contributions. The possibility, as of March 2011, of free movement within the European Union for citizens of the eight countries that had joined the Union in 2004 should deal a blow to that informal economy, and customs officers' remit had been expanded to boost efforts to combat clandestine labour. As far as addressing discrimination against migrants was concerned, the opening up of the European labour market to citizens from the aforementioned eight countries was a major step forward. Germany was also planning to let in skilled workers from third countries to cover the growing demand for skilled labour, generated by its demography.

4. The wage gaps between east and west Germany existed because wages were set by companies and subject to market forces. The right to work was not enshrined in the German Constitution, which did, however, establish the right to choose one's profession freely and that it was the role of the State to help them find employment.

5. **Mr. Heyer** (Germany) said that, the merger of the unemployment benefit and welfare systems having made registration of unemployment status a prerequisite for obtaining social security benefits, an additional 500,000 people had joined the ranks of the country's unemployed statistics as of 2005.

6. **Mr. Kedzia**, referring to the situation that had arisen with the assistance given to Cambodia and the property registration problems (especially the risk of eviction), asked whether the policy paper and guidelines on human rights and development cooperation provided for compulsory assessment of the impact of development assistance projects on human rights, and the establishment of a complaints procedure whereby individuals could challenge decisions that violated their fundamental rights.

7. **Mr. Texier** asked for more information on the State party's extraterritorial commitments, including its exports to Bangladesh, Burkina Faso and Ghana and the aid given to Turkey for dam construction projects.
8. **Mr. Abdel-Moneim**, returning to the right to work, said that it remained to be seen whether the State party's Constitution prevailed over the Covenant in that connection. With regard to the persons arrested as part of Germany's counter-terrorism efforts, he wished to know to what extent their economic, social and cultural rights were affected and whether detained suspects risked losing their jobs. As to the Optional Protocol, he observed that the day might come when more developing than developed countries would have ratified the instrument, which would be something of a paradox.
9. **Mr. Ribeiro Leão**, referring to paragraph 138 of the State party's report, asked on what elements the interpretation of article 8, paragraph 2, of the Covenant had been based.
10. **Mr. Kedzia** asked whether the State party intended to sign in the near future Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, on the prohibition of discrimination.
11. **Mr. Martynov** asked the State party to provide the unemployment figures for persons with disabilities going back to 2005.
12. **The Chairperson**, speaking as a member of the Committee, asked the delegation to clarify whether the State party considered economic, social and cultural rights to be enforceable.
13. **Mr. Koller** (Germany) said that Germany had no intention of changing its position regarding its interpretation of article 8, paragraph 2, of the Covenant and that the prohibition of strike action by public servants was written into the Constitution. Germany considered the rights set forth in the Covenant to be guaranteed by the Constitution. Germany also upheld the provisions of the Charter of Fundamental Rights of the European Union and other international instruments.
14. **Ms. Chammas** (Germany) confirmed that the aforementioned draft guidelines did establish compulsory assessment of the impact of development assistance projects on human rights, and Germany did plan to set up a complaints mechanism. In 2009, Germany had disbursed 1.6 billion dollars in official development assistance (ODA) to heavily indebted poor countries (HIPC) and contributed 184 million dollars to the World Bank HIPC Trust Fund.

Articles 10 to 12 of the Covenant

15. **Mr. Tirado Mejia** asked the State party to provide figures on alcohol, tobacco and drug use and to describe the prevention measures that accounted for the excellent results reported by Germany in that regard, which could help settle the debate on the comparative merits of punishment and prevention. In the area of mental health, he wondered about possible links between mandatory hospitalization and the high suicide and attempted suicide rates, and requested information on the measures taken to improve the appalling conditions in mental hospitals. He also wondered whether the privatization of universities, and registration fees, now higher in some Länder, complied with the principle of education for all.
16. **Mr. Atangana** (Country Rapporteur) requested specific information on the policy adopted by the State party to combat domestic violence and enquired about the number of domestic violence cases taken to court and the sanctions imposed. Returning to the issue of and what had been done to keep down registration fees for higher education, as recommended by the Committee.

17. **Ms. Shin** invited the delegation once more to answer her question about transsexuals and requested details on the initiative the State party had taken to declare 2011 the year of long-term care.

18. **Mr. Martynov** asked what policy the State party had put in place to combat increasing pupil malnutrition. Remarking that, despite the Governments laudable efforts, only one child in five secured a place in day-care facility (crèche or day nursery), which curtailed parents' access to the labour market, he wished to know how the Government envisaged improving the situation and countering the social exclusion of underprivileged children. He would also appreciate confirmation of the number of street children in Germany (estimated at 7,000) and the number of abused children (estimated at 100,000). Could the delegation say what figure had been used to demarcate the poverty line in 2011, given that the figure of euros 938 used in the report dated back to 2003.

19. **Mr. Kedzia** said that, according to some sources, the General Equal Treatment Act sometimes had the opposite effect: it apparently pushed up rents, for example, forcing migrant communities to move from cities to the outskirts. He asked for more details on the relevant case law.

20. **Ms. Cong** said that, although the State party had provided detailed information on various aspects of the fight against HIV/AIDS in paragraphs 292 to 302 of its report, it had not addressed its social aspects. She would therefore like the delegation to say how infected persons were perceived by society, whether they had problems finding jobs, or faced discrimination.

21. **Ms. Barahona Riera** asked whether the campaign against domestic violence was conducted at the national level or the level of the Länder. Given the magnitude of the problem in Germany, she wished to know whether the authorities were considering criminalizing domestic violence and what sanctions were currently applicable. She also requested statistics on domestic violence disaggregated by ethnic origin of the victims, for example, and asked whether steps had been taken to target different groups of victims, including minors, and to end the practice of forced marriage. Lastly, she wished to know the number of older adults who received no pension because they had worked in the informal sector, as well as their ethnic origin, and any special assistance to which they might be entitled.

22. **Mr. Ribeiro Leão** asked whether foreign children were vaccinated on an equal basis with German children and whether the health system included free medicines.

23. **The Chairperson**, speaking as a member of the Committee, said that, according to information he had received, 8 per cent of the German population was living below the poverty line. He wished to know whether poverty-reduction plans in Germany were rights-based, whether they fully incorporated economic, social and cultural rights and whether subsistence allowances covered basic needs. He failed to understand Germany's reluctance to tackle the problem of homelessness, to which the Committee had drawn attention on several occasions, and why no strategic plan had been implemented to address the issue. The only mention of the homeless in the State party's report was of people who could not keep up with their rent; but people might end up homeless for many other reasons. He also wished to know what the authorities were doing to solve the problem of overcrowding in refugee centres and to improve hygiene conditions in them.

24. **Mr. Koller** (Germany) said that his country was a social State in which no persons were left in the lurch. Nevertheless some population groups were ill-informed about the assistance available to them despite the myriad programmes implemented, as mentioned earlier.

25. **Mr. Kamperhoff** (Germany) said that since 2011 all long-term care establishments were subject to annual inspections in accordance with specific guidelines, and their results made public. Germany intended to expand home-care for older adults wishing to stay with relatives, that being a less expensive solution than institutionalization and better for their well-being. A number of initiatives had been launched to recruit better qualified personnel, based in part on the standardization of the relevant legal provisions.

26. **Mr. Heyer** (Germany) expressed dismay that the unemployment rate among persons with disabilities was twice as high as among the rest of the population and explained that persons with disabilities accounted for 3.8 per cent of the active population. In the fight against poverty, job-seekers received special assistance and were authorized to take on small temporary jobs. Poor children from families that were receiving social security allowances in the form of unemployment benefits, housing assistance or child welfare payments, received additional support in the form of free schooling and, in 30 per cent of cases, free school meals. A sports and cultural activities programme was also to be implemented, with an annual budget of 3 million euros, as a cooperative endeavour between federal and local authorities. Poverty statistics were not collected annually, but a report on wealth and poverty was due in 2012.

27. **Mr. Koller** (Germany) said that, under the European Union “Europe 2020” strategy, Germany had set itself the target of achieving, by 2020, an employment rate of 77 per cent for the population as a whole (compared with the European Union target of 75 per cent) and employment rates of 73 per cent for women and 63 per cent for the population aged between 55 and 64. In the pursuit of those targets and as part of the fight against poverty, Germany would be focusing on unemployed households, with a view to reducing their number by 20 per cent.

28. **Mr. Fuchs** (Germany) explained that poverty among those aged over 65 was low in Germany because members of that age group were covered by basic social security. As they did not need to turn to their children for help, they did not generate more poverty. Everyone was entitled to benefits under the social security scheme even if they had only worked in the informal sector. The Government was now seeking ways to ensure that people who had had to interrupt their careers would still receive an adequate pension.

29. **Mr. Gehrmann** (Germany) said that there were currently some 1.3 million alcoholics, some 200,000 drug addicts (excluding cannabis-users) — most of them heroin addicts — and over 525,000 cannabis-users in Germany. In 2009, there had been 9,571 suicides, 75 per cent committed by men. The Transsexuals Act, which the Constitutional Court had declared unconstitutional in parts, was under review so that hormone treatment and surgery costs could be covered.

30. Everyone residing in Germany had access to free medicines. HIV/AIDS patients had access to the right treatment, and specific programmes and projects better to integrate them and meet their needs had been implemented at all levels of authority. Germany was conducting numerous campaigns to combat HIV/AIDS, and celebrities had been involved in the publicity clips broadcast to mark World AIDS Day. The General Equal Treatment Act covered AIDS patients, protecting them against discrimination in housing, employment and other areas.

31. **Mr. Kamperhoff** (Germany) said that the authorities had adopted two successive action plans to combat domestic violence and violence against women in general, both of which provided for shelters for battered women and measures to end forced marriages. It was very difficult to obtain reliable data on spousal abuse and, hence, to obtain a clear picture of the scale of the problem.

32. Some of the projects prepared under the second action plan, which covered the period 2002–2010, were still under way. The Ministry of Family Affairs had established a

task force to ensure their implementation, in cooperation with the public agencies, local communities and managers of shelters, operating as a network to optimize efforts to prevent domestic violence and trafficking in women. A 24-hour emergency hotline for victims of domestic violence was due to be installed by the end of 2012. That service was essential because in 80 per cent of cases the authorities learned about a situation only later when the victims were admitted to other social services.

33. An initial report on the situation in the shelters should be published by the end of 2011, and a study on spousal violence was under way. The second action plan also included the passage in May 2012 of legislation to counter forced marriages and enhance victim protection. The new legislation would criminalize forced marriages, and abductions for the purpose of forced marriage. Forced hospitalization orders, were rarely issued and usually only for short periods, after which the person concerned was free to choose his or her doctor and medical treatment. As in many other countries, electroshock therapy treatment was administered only to patients with severe depression, and on an exceptional basis.

34. **Mr. Koller** (Germany) said that, although certain Länder seemed to opt to privatize higher education by charging students high fees, the great majority of universities were still public.

35. **Ms. Shin** asked whether, in order to combat gender stereotypes, the State party intended to implement a plan of action to ensure that it was not only women who provided care under the home health-care schemes and who looked after persons with disabilities or the elderly. The State party should hold meetings with intersex and transsexual people, or the NGOs that defended their rights, so that they could air their grievances and any specific problems they faced, so that they could be taken into account in policymaking and new legislation.

36. **Ms. Barahona Riera** requested more information on the legal framework applicable to domestic violence. She wished to know whether it was the general provisions of the Criminal Code that were applied or whether there was a specific law that criminalized acts of domestic violence. In the latter, the delegation might state whether the law was a federal one or whether each of the Länder could establish its own definition of domestic violence and decide which acts were subject to criminal prosecution. It might also say whether the bill on forced marriages had been made law and its provisions incorporated into the Criminal Code. She would also like information on sexual health rights to complement the information provided on reproductive rights.

37. **Mr. Sadi** asked for information about the comparative advantages, including financial advantages, of home hospital treatment for those in need of long-term care. Observing that Germany was a human trafficking destination, he wished to know whether current legislation was effective and whether the penalties established and imposed were sufficiently severe to combat the phenomenon and whether trafficking in persons was, by and large, on the decline or on the rise in the State party.

38. **Mr. Koller** (Germany) said that home treatment was the Government's response to the demographic changes occurring in Germany, which were similar to those in other Western European countries. In order to encourage people to opt for the scheme, wages of carers would be tax-deductible and family members who acted as carers would receive benefits. To combat gender stereotypes, the Ministry of Education had introduced a weekly session in early-learning programmes in which girls would perform traditionally "masculine" activities and the other way round.

39. The Criminal Code provisions applicable to domestic violence were those governing physical assault and attempted murder. The Code was federal in scope and therefore applied in all Länder. Indeed, although the volume of human trafficking in Germany was

not large, a study into the matter had been commissioned and should provide a more accurate picture of the situation and help fund the correct response.

40. **Mr. Merz** (Germany) said that, according to official figures, 534 cases of human trafficking had been investigated in 2009, 11 per cent more than in the preceding year. The 710 victims involved had been from Romania, Bulgaria, Turkey, Hungary, Poland and Nigeria.

Articles 13 to 15 of the Covenant

41. **Mr. Atangana** enquired about the level to which university fees had been raised.

42. **Mr. Abashidze** asked whether the State party had set up mechanisms to integrate minorities other than those officially recognized as national minorities — Friesians, Danes, Sorbs, Sinti and Roma — and how it ensured respect for the linguistic rights of the minorities within its borders.

43. **Mr. Sadi** asked whether the State party had set up separate schools for children from certain ethnic groups, especially in towns where they were likely to be particularly large and, if so, whether the schools had triggered any particular problems. The delegation could perhaps confirm whether children of asylum-seekers lacked regular access to education, and explain what was happening with the classes that the State party had established for children with difficulties at school — where immigrant children doubtless needed to be placed. He also asked whether the Covenant was included in the State party's human rights training programmes.

44. He also wished to know how the Covenant was covered in human rights teaching, which he understood was not offered as a matter of course. Were there any campaigns, programmes or initiatives for better integration of first- and second-generation immigrants who, it seemed, were less successful in the education system than their German counterparts?

45. **Mr. Marchán Romero** said that the lack of statistics disaggregated by ethnic origin made it impossible to accurately assess to what extent minorities could exercise the rights protected under the Covenant, which was unfortunate. He understood the historical reasons why German legislation had prohibited them; however, the State party had also ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. He therefore urged it to amend its legislation to recognize minority communities. He also drew attention to some contradiction between German legislation, which prohibited identification of minorities, and the reference to "recognized national minorities" in paragraph 215 of the written replies (E/C.12/DEU/Q/5/Add.1). Cultural rights were fundamental rights in the entire corpus of law of the State party, which he commended for the wealth of its cultural institutions, although he saw from the report that they were often perceived as places of "high culture" by uneducated population groups. The State party should therefore strive to make culture accessible to a wider audience. Lastly, it was disappointing to see the German Government put the Optional Protocol on hold when it had been so active during the negotiation of its content. He stressed the importance of ratification of that instrument in order to facilitate individuals' exercise of their rights.

46. **Ms. Barahona Riera** asked what action the State party had taken on the 2006 recommendations of the Special Rapporteur on the right to education (A/HRC/4/29/Add.3), of which no mention was made in the periodic report (E/C.12/DEU/5) or the written replies to the list of issues (E/C.12/DEU/Q/5/Add.1). Of particular interest were the recommendations on special schools and the multitrack school system which, according to the Special Rapporteur, discriminated against children from underprivileged backgrounds, the very children whose upward social mobility education was meant to encourage. She

also requested information on sexual and reproductive health education, including initiatives that targeted not only young people in schools and colleges, but adults as well. As to domestic violence, Germany's legislation lagged behind that of many other countries where domestic violence was already established as a criminal offence. The State party should review the relevant legislation.

47. **Mr. Kedzia** asked the delegation to provide more detailed information on human rights education, particularly on education on economic, social and cultural rights. He wished to know whether it occupied an important place in syllabuses and at what level it was taught. According to a 2003 study by the German National Institute for Human Rights, human rights education was a relatively new concept. He wished to know whether, and how, the situation had since evolved.

48. **Ms. Cong** asked how the State party addressed the specific needs of "young people leav[...] school without a qualification", mentioned in paragraph 348 of its report, and whom she presumed to be of German nationality, and the needs of the "migrants" mentioned in the next paragraph, who also left school without qualifications only on account of their inadequate knowledge of German. She would also be interested in details about the media's role in the fight against racism and xenophobia and whether the State party used the Internet in those efforts.

49. **Mr. Koller** (Germany) said that university fees were between €500 and 600 per semester in the five Länder where fees were charged; university courses in the other 11 Länder were free. Germany did not keep statistics broken down by ethnic origin. There were no restrictions whatsoever on expressions of cultural diversity. Such expressions did not pose a problem, and minorities were free to organize any cultural displays they wished. He undertook to pass on Ms. Barahona Riera's comment on the criminalization of domestic violence.

50. **Mr. Gehrman** (Germany) said that a multitude of sexual and reproductive health services were provided. During pregnancy and the post-delivery period, women had access to comprehensive health monitoring services and medical care, as well as a wide range of advice on such matters as the importance of dental hygiene, mother-infant bonding, nutrition, illnesses and the risks of HIV transmission. Consultations on sexuality and assistive reproduction were also available, and a national network of pregnancy advice centres had been set up. All medical, psychological and social services associated with reproductive health and pregnancy were covered by a specific federal law on the subject. The Federal Foundation "Mother and Child-Protection of Unborn Life" provided financial assistance to pregnant women who applied for support at the pregnancy advice centres, and the Federal Centre for Health Education organized large-scale information campaigns on sexual and reproductive health. Family planning and sexual health services were also adapted to address specific needs, such as those of marginalized groups and members of ethnic minorities.

51. **Mr. Merz** (Germany) pointed out that the Government had created a national minorities' special representative post in the Federal Ministry of the Interior, with the rank of Parliamentary State Secretary, a clear demonstration of the importance that the political authorities attached to the matter.

52. **Mr. Heyer** (Germany) said that it was up to the schools to bring down school dropout rates. The Federal Ministry of Labour and Social Affairs for its part made every effort to give a second chance to people who left school without any qualifications. Some 400,000 young people attended diploma vocational training courses, enabling them to make the transition from school to work. People entering the labour market without completing their schooling but wishing to do so could obtain a secondary-school certificate by participating in a vocational training programme. It was easier to motivate such students by

linking the teaching of theory to practical training. Young women of Turkish origin were the most difficult to involve in the schemes because of their often poor educational background and their disinterest. To rectify that situation, the Federal Ministry of Labour was carrying out awareness campaigns in schools and employment agencies. For example, there were plans to declare 28 June to be Job Centre Day, with a special focus on immigrants; experts, themselves immigrants or of foreign origin, would serve as moderators. In addition, a programme dubbed "IQ" (Integration through Qualification) had been introduced. Germany had also set itself the goal of spending 10 per cent of GDP on education by year 2015. Education was largely the responsibility of the Länder, and even greater efforts to ensure effective coordination and cooperation between the federal and local authorities would be made.

53. *The German delegation withdrew.*

The first part (public) of the meeting rose at 5.40 p.m.