



Alternative Report submitted by the Alliance of German Women's Organizations

**in response to the 6th Periodic Report
of the Federal German Government
on the Convention on the Elimination
of All Forms of Discrimination against
Women (CEDAW)**

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1 Introduction

On 14 September 2007 the CEDAW Committee received the 6th Report from the Federal Republic of Germany on the United Nations Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). In December 2007 and February 2008, 28 women's associations, organisations and campaign groups joined together to produce a Alternative Report that would comment on the official report, subject it to critical review and add further material. In so doing, they were building on and structurally consolidating cooperation that had been reflected in comments on and additions to the 5th Report.

The authors of the Alternative Report observe in general terms that the federal government's equality policies were only partially effective in the last reporting period. Germany has still not implemented key recommendations from the CEDAW Committee's Concluding Comments on the 5th Periodic Report. Indeed, a deterioration in the status of women can be observed in significant walks of life, as the chapters of this Alternative Report will seek to illustrate.

It is quite evident that the federal government is not pursuing an objective-oriented equality policy and is concentrating almost exclusively on family policy – a family policy, moreover, that is not consistently equality-oriented and exerts a retraditionalising effect, especially on people with low incomes.

Contrary to the recommendation in the Concluding Comments (no. 40), the State party did not consult with women's non-governmental organisations when preparing its Periodic Report. There is no sign of federal government measures that might have made people more aware of the Convention. Besides, the official report unfortunately almost always confines itself to measures adopted at federal level; the Länder, which are regularly responsible for the administrative implementation of laws, are not covered in the report.

In drawing up the Alternative Report, the participants decided that every chapter would, as far as possible, devote particular attention to the situation encountered by specific groups; these may, for example, be migrant women or women with disabilities.

The present report is linked to additional dedicated reports on the situation of intersexual and transsexual people. These two phenomena both need to be considered separately as they entail very different constellations of risk to human rights which imply specific legal entitlements (or legal needs). Intersexuality describes the situation of people who originally have some male and some female attributes and who are ascribed to one sex (usually female) by means of surgery or medication without their effective consent. Transsexuality describes people who were born with attributes that deviate from their birth sex. As the authors of this Alternative Report we support the aims of those reports, which are needed because they address the specific concerns of two marginalised groups about whom there is presumed to be little information and awareness.

2 Fundamental comments on federal government equality policy (Art 1 and 2 CEDAW)

2.1 General protection from discrimination

In their quality as human rights, women's rights impose a duty on the state to ensure effective protection from discrimination by public and private parties and to create the legal and institutional framework enabling those concerned to defend themselves effectively against discrimination. During the most recent reporting period, the Federal Republic of Germany implemented anti-discrimination Directives adopted by the European Union that relate explicitly to gender. Nevertheless, this does not cover the definition of discrimination in CEDAW in its entirety. Clear shortcomings in this transposition can particularly be identified in the General Equal Treatment Act (*Allgemeine Gleichbehandlungsgesetz*, AGG), notably with regard to the right of both sexes to equal pay for the same work or for work to which equal value is attributed, which has not currently been implemented effectively in German

law.¹ Moreover there is not yet any legal norm requiring employers to treat women and men equally in the workplace and in access to employment, vocational training and promotion.² The Federal Anti-Discrimination Office (*Antidiskriminierungsstelle – ADS*)³ was established when AGG entered into force on 18 August 2006. The authors of the present report fundamentally welcome this. We are, however, extremely concerned about the centre's independence and effectiveness. Neither has the German public been adequately informed about the existence of the ADS and its mode of operation, nor have the various groups concerned been made adequately aware of the services it offers. It is furthermore still not clear how the ADS intends to function in the 16 German *Länder*. As the management's term of office is linked to the legislative period, the impression could be gained that it depends on the political majority of the day.

Our recommendations to the federal government:

- *to take appropriate action to endow the ADS with additional investigative functions, together with the right to provide information, including to private parties, and to provide arbitration;*
- *to take steps to help enhance the impact of the ADS in the Länder.*

2.2 Gender mainstreaming and gender budgeting

Having been praised by the CEDAW Committee in 2004 for the way it had implemented gender mainstreaming, the German government has now discarded gender mainstreaming as an equality strategy and has fallen far short of the expectations raised by the 5th Periodic Report. Gender mainstreaming is no longer proactively pursued by the current federal government (6th Periodic Report, Part A I, "Equality policy as a Strategy for Success"). As such the German government does not take the responsibility for the obligation by CEDAW Article 2 to pursue a policy of eliminating all forms of discrimination against women "without delay". Moreover, the 6th Periodic Report offers a thoroughly inadequate picture of the activities that are being undertaken to implement gender mainstreaming and gender budgeting at various levels in the German federal structure.

The current German government claims to be creating a new orientation for equality policy. To this end it abolished the working structure⁴ that had so far been coordinating the implementation of gender mainstreaming across ministerial boundaries. This new adjustment in equality policy is not based on an analysis of previous policy strategies and outcomes. The crucial changes to structural framework conditions are not mentioned as an objective.

One particularly outstanding example of the federal government's current policy is illustrated by its exposure to the equality strategy of gender budgeting. Despite the declaration of intent on gender budgeting in 2004 and the European Symposium on this subject held by the new government in June 2007⁵ as part of Germany's Council presidency, including the published feasibility study⁶, until now no steps of any gender budgeting implementation within the federal budget are made. The implementation processes underway in Germany, notably in the State of Berlin⁷, but also in the cities of Munich⁸, Freiburg⁹ and Cologne, have gone without mention.

¹ This is a reference to Art. 4 of Directive 2006/54/EC.

² As required under Art. 21 of Directive 2006/54/EC. The least one might envisage would be a duty for companies to publish the proportion of women and men at various levels in the organisational structure and gender-related pay in the company. Further discussion in Chapter 3.

³ Cf. 6th Periodic Report, Chapter 2.1.

⁴ Interministerial working group on gender mainstreaming and the Gender Mainstreaming Unit at the Ministry for Family, Seniors, Women and Youth (BMFSFJ).

⁵ Documents [in German, English, French] at
<http://www.bmfsfj.bund.de/bmfsfj/generator/Kategorien/Publikationen/Publikationen,did=101658.html>, date of access: 26.4.2008.

⁶ BMFSFJ (ed.): "Machbarkeitsstudie Gender-Budgeting auf Bundesebene", Berlin 2007. Published at:
<http://www.bmfsfj.bund.de/bmfsfj/generator/Kategorien/Publikationen/Publikationen,did=101104.html>, date of access: 26.4.2008.

⁷ <http://www.berlin.de/sen/gender/gender-budget/index.html>, date of access: 7.5.2008 (two documents in English)

Gender mainstreaming has produced equality policy successes, small as these may be. The fact that the recent German government conceals these is an eloquent proof that it opposes an continuation of the implementation. This avoidance from gender mainstreaming and the failure to implement gender budgeting are contradictory to many of the foreign and development policy activities undertaken by the German government. As a donor country in the context of development, it promotes and funds gender mainstreaming and gender budgeting in other countries.

We demand the federal government to center gender mainstreaming and gender budgeting as instruments of all gender equality activities without delay,¹⁰ in accordance with the German governments international obligations within the EU and the UN and especially its obligations under CEDAW.¹¹

Our recommendations to the federal government:

- *introduce gender budgeting at national level “without delay”¹² and take concrete steps for implementation, building on the findings of the Feasibility Study on Gender Budgeting and drawing on experience in the State of Berlin;*
- *set up an active work structure to coordinate the implementation of gender budgeting and gender mainstreaming across ministries;*
- *establish an interministerial gender budgeting steering group under the responsibility and lead of the Federal Ministry of Finance;*
- *include among appointments to the steering group representatives of parliament, civil society (NGOs) and experts;*
- *design the process of implementing gender budgeting and gender mainstreaming in a manner that will ensure its continuation throughout several legislative periods by means of high-level anchorage within the Chancellor’s Office and the Cabinet, a structure at working level, the definition of responsibilities, a long-term work plan, resources and a duty to report to parliament;*
- *enrich the federal budget preparation document with comprehensive gender data to permit gender and impact analysis and ensure that the financial policies of all departments and the overall budget volume serve gender equality;*
- *use state-of-the-art gender budgeting procedure to define administrative and political responses that will ensure that the composition of the budget and realistic spending practices rule out direct and indirect discrimination against any specific circumstances;*
- *commit to the gender mainstreaming strategy again without delay in the domestic policy context and place the objective of equality-oriented change to the structural framework at the heart of its policy: this includes leaving gender mainstreaming in the Common Rules of Procedure for Federal Ministries (GGO)¹³ and recognising and building on positive efforts to implement gender mainstreaming in the ministries, Länder and local authorities;*
- *link up the implementation of gender budgeting and gender mainstreaming more effectively as strategies towards equality (see § 2 GGO), identifying concrete objectives for processes and outcomes, with clearly quantifiable criteria to measure the achievement of objectives and as to the time frame define bench marks;*

⁸ http://www.muenchen.de/cms/prod2/mde/_de/rubriken/Rathaus/40_dir/frauengleichstellung/broschueren/kiel_endfassung.pdf, date of access: 17.5.2008.

⁹ http://www.freiburg.de/servlet/PB/menu/1148777_12/index.html.

¹⁰ The full version of these comments on gender budgeting and gender mainstreaming can be downloaded in German at www.gender-budgets.de and www.cedaw-alternativbericht.de.

¹¹ EU Directive on gender mainstreaming (1997), Treaty of Amsterdam (1999), UN: Beijing Platform for Action (1995, 2000 ff.), Monterrey Consensus (2002), CSW (2008).

¹² Article 2 CEDAW.

¹³ In 2000 gender mainstreaming was enshrined in the Common Rules of Procedure for Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien, GGO*), Chapter 1, § 2). In Germany cooperation between federal ministries is governed exclusively by these Rules. This means that any process implemented by the federal government as a whole to eliminate all forms of discrimination against women (and based on sex/gender) must be enshrined in this text.

<http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2007/GGO.templateId=raw.property=publicationFile.pdf/GGO.pdf>, date of access: 7.5.2008.

- invite the Federal Ministry for Family, Seniors, Women and Youth to subject its current middle-class family policy to a consistent gender analysis and steer its measures and budget lines for the objectives of gender equality of all citizens and inhabitants, taking care in future to avoid negative, retraditionalising gender impacts on women and men with low incomes.

2.3 Poverty

Even in the wealthy Federal Republic of Germany, poverty is a growing problem that particularly affects women. The Periodic Report fails to mention this, although it is a known fact. Whereas in the year 2000 12% of men and 15% of women were living below the poverty risk threshold (60% of average income for the total population), in 2005 the figures had risen to 16% of men and 21% of women.¹⁴ There is also no mention of the particularly high poverty risk for children¹⁵ or of the age-related poverty to be feared for women,¹⁶ which is associated with the high proportion of women among the long-term unemployed.¹⁷ The people (mostly women) most severely threatened by poverty are those who perform caring, supportive, child-rearing and life-sustaining tasks in this society without earning a living wage from it (cf. Chapter 3). Therefore the poverty rate among the employed population increased in 2005 by 12%¹⁸ opposite to the European trend and inequalities in income distribution have increased sharply in recent years. In this respect, there is no basis for the federal government's claim in the 6th Periodic Report that the effects of the so-called labour market reform since 2002 are still being evaluated by researchers (Article 11.2).

Nevertheless, the subject of poverty is only mentioned twice in the 6th Periodic Report on CEDAW: in Chapter A I in connection with age-related poverty and in the comments about Art. 13 with regard to families (cf. Chapters 3 and 6). There is no attempt to address the issue in an appropriate manner as to differentiate the gender specific, generation specific, region specific (east, west) and ethnic groups specific implications on their impacts and needed solutions. The government thereby distances itself from the "ongoing challenge" it formulates for itself of devoting particular attention to "the gender-specific distribution of labour within the family and in the workplace" (Chapter A I). After all, the links between the social division of labour and poverty have been described on plenty of occasions, not at least in official social reports commissioned by the government itself and in some cases complemented by approving commentary.¹⁹

However, if the government deduces from its awareness of precarious employment (Chapter A I, Article 10.1; Article 11.5) that the "right" career choice helps women, in other words that they merely have to decide not to take jobs in low paid occupations with very limited career chances, e.g. in people-related services, this is an unacceptable reversal of cause and effect. It is well established, and can be demonstrated for all OECD countries, that jobs only become low paid dead-end jobs when most of employees in this sector are 'female', while jobs that attract 'male' employees are upgraded in the eyes of society. In Germany as in all patriarchal societies so called "women's work" – including in the family – is undeniably held in disregard by society.

¹⁴ Cf. 3rd Poverty and Wealth Report (*Armuts- und Reichtumsbericht*), p. 294.

¹⁵ 26% according to the 3rd Poverty and Wealth Report (p. 294). The subject is also treated in detail in the reports on children and young people (*Kinder- und Jugendberichten*) commissioned by the government (1998, 2002, 2006).

¹⁶ The Gender Data Report (p. 417) is specific here.

¹⁷ According to the 3rd Poverty and Wealth Report (p. 310) 43.5% of the women unemployed in 2006 were long-term unemployed.

¹⁸ *ibid.*, p. 308.

¹⁹ Cf. 7th Family Report (*Familienbericht*) 2005 with official government commentary of April 2006, the "Kommentierter Datenreport zur Gleichstellung von Frauen und Männern in der Bundesrepublik Deutschland" of 2005, on which the government refused to publish its views despite earlier promises, and the three Poverty and Wealth Reports for the years 2001, 2005 and 2008.

2.4 Girls in prison

We wish to draw the Committee's attention to the matter²⁰ of discrimination against girls in juvenile prisons²¹ in Germany. This is of growing significance; as the subject will not be addressed later in the report, it is briefly outlined here²².

About 270 girls spend time in juvenile prisons in an average year. Girls serving prison sentences are not taken to separate juvenile penal institutions for girls only adapted to their needs, as called for by international codes and recommendations²³ and specialist associations²⁴. They are accommodated in mixed juvenile penal institutions or penal institutions for adult women. Not many prisons have juvenile units with their own management structure, teams and specialist services trained to work gendersensitive with young people. As there are not enough juvenile institutions and only five separate women's prisons in Germany, many of the girls in prison suffer a double disadvantage²⁵: while prison for women is dominated by the criteria for male institutions, prison for female juveniles is subservient to institutions for adult women. This causes inadequate psycho-social and health provision and in a lack of access to equal rights to education, vocational training and work. Anything achieved by the enforcement of sentences is undermined by a lack of follow-up provision after release: Many girls are therefore repeat offenders and cannot escape the vicious circle. Experts have advised that this group should no longer be placed in closed institutions but as a matter of principles in open juvenile law enforcement institutions. The girls would stand a chance if they could put the risks they encounter in the family home (drugs, violence) behind them and had enough time to stabilise and to learn how to learn, and if prison staff had enough time to promote and challenge them so that the girls concerned could (re-)integrate into society.

Our recommendations to the federal government:

- *dismantle and reform the penal structure, which has been designed in response to male crime; train prison staff in gender competence;*
- *ensure that girls and young women have access to social therapy to restore their physical and mental health and incorporate external service provision;*
- *provide a regular option for girls to be placed in secure juvenile law enforcement hostels independent of adult prison institutions;*
- *ensure that girls and young women have access to schooling, vocational training and employment that respects gender-typical experience;*
- *ensure appropriate post-release provision so that girls can complete the therapy, educational/vocational course and orientation begun while serving their sentence; provide safe places (assisted youth accommodation) to prevent them lapsing into the criminal cycle.*

²⁰ Staatsbürgerinnen-Verband-NRW e.V.: The report is founded on visits to the juvenile prisons in Vechta and Cologne, expert discussions and the conference "Einbahnstrasse Jugendhaft" in August 2008.

²¹ Cf. CEDAW Articles 10, especially (g), 11 and 15 (2).

²² The full version can be downloaded in German at www.gender-budgets.de and www.cedaw-alternativbericht.de.

²³ UN Minimum Standards for the Treatment of Prisoners: Art. 6 (1), 8, 8 (a), 8 (d), 58-78; Council of Europe Committee of Ministers Recommendations Rec(2006)2 to member states on the European Prison Rules: Article 18.8.b and 18.8.c; 34.1; 34.2; 81.1-4; 81.3, 81.4, 85.

²⁴ Declaration of 13 February 2007 on minimum standards for juvenile prisons by the Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen (DVJJ): "Mindeststandards für den Jugendstrafvollzug", <http://www.dvjj.de/artikel.php?artikel=842>, date of access: 7.9.2008), especially recommendation no. 14: Girls should be recognised as a minority in the penal system and placed in separate institutions or houses; Bastick, Megan; Townhead, Laurel: Women in prison. A commentary on the UN Standard Minimum Rules for the Treatment of Prisoners, published by the Quaker United Nations Office, Geneva June 2008.

²⁵ Jansen, Irma: "Gender Mainstreaming im Jugendstrafvollzug", in: Jugendstrafvollzug in Deutschland, Walkenhorst, Philipp (ed.), Mönchengladbach, 2008, p. 243. The author was consulted for the purposes of this report. The research confirms the observations referred to in fn 20.

3 The labour market: Equality at work

3.1 The basics

3.1.1 Women in the labour market: paid employment

For all the legislation and voluntary agreements achieved to date, women still suffer considerable disadvantages in the labour market compared with men. The rise in the female employment rate in recent years goes hand in hand with an increase in part-time work for women – not with an increase in women's share of the overall volume of gainful employment.

Nor has anything changed since the 5th Periodic Report about the horizontal segregation of the labour market into female and male sectors. While men tend to work in better paid sectors such as manufacturing, manual trades and services to industry, women are more likely to be found in poorer paid sectors, social care, early education, and services to households.

There has been further deterioration with regard to the precarisation of employment on which NGOs already complained in the Alternative Report to the 5th Periodic Report submitted by the German government in 2003. This trend is largely due to the fact that more jobs are being limited in duration by short term contracts, the practice of using agency workers and – especially in the last few years – more young people are working in unpaid traineeships or internships. Other major contributing factors are the labour market policy instruments that were introduced or heavily expanded under the labour market reforms of 2003 to 2005 (marginal part-time jobs with limited participation in the social insurance system, "mini-jobs", and "opportunity jobs" for which benefit recipients receive an extra allowance in lieu of the extra living expenses incurred by working). Since altogether they account for a significant portion of the labour market (about 40%). Especially women are still being pushed into these types of precarious employment and are discriminated in their right to equal access to their participation on the labour market, to equal pay, their right to work and economical rights and participation in many areas of life.

The growth in employment in the low-paid sector is especially worrying. 64.1% of women in full-time jobs for which social insurance is paid are working for low wages, and a disproportionately high number of women are working in part-time jobs and jobs which fall below the social insurance threshold. If all these types of employment, i.e. including part-time jobs and jobs which do not qualify for social insurance contributions, are taken together, women's share of the low-wage economy is 69.6%. And 75% of those concerned have completed vocational training.²⁶

Although 49.8% of the new student intake in 2007 was female²⁷, the percentage of women in top-level management in big German companies was 5.5% at the start of 2008 (compared with 7.5% at the start of 2007)²⁸, even though the legal conditions for real gender equality exist: in the constitution, in the EC-Treaty and last not least in Article 3 of CEDAW.

Women migrants are still affected more by unemployment and precarious employment than male migrants and women/men without a migrant history.²⁹ Factors such as residence status, sex, origin, religion and/or non-recognition of foreign qualifications present particular hurdles for women migrants seeking access to the labour market in Germany.

Our recommendations to the federal government:

- establish a statutory minimum wage as soon as possible and in the process ensure participation in the social insurance system, which is the basis for the entitlements which provide a living wage especially in times of unemployment, sickness, old age and need of care.

²⁶ Kalina, Thorsten; Weinkopf, Claudia: IAQ-Report 2008-01, p. 7f.

²⁷ Federal and Länder statistics agencies, university statistics.

²⁸ Hoppenstedt: Kurzauswertung "Frauen im Management", 2008.

²⁹ 7th Report by the Federal Commissioner for Migration, Refugees and Integration on the situation of foreigners in Germany, December 2007.

3.1.2 The specific labour market status of women with disabilities

Disability and gender are both factors which still exert a negative impact on opportunities in the general labour market, and as such women with disabilities are hit by unemployment more frequently than men with disabilities and individuals without disabilities.

Although the employment situation of severely disabled women improved by 4% in the period from 2003 to 2005, with women holding 41.5% of jobs taken by people with severe disabilities in 2005, unemployment among women with severe disabilities rose from 2005 to 2006 by 3.5%. This rise is disproportionate, as unemployment among women and men with severe disabilities increased by 1.8% overall, whereas the total number of registered jobless actually fell by 7.7%.³⁰ Up-to-date month-on-month comparisons of employment and joblessness for women with severe disabilities are not accessible because the monthly statistics on people with disabilities published by Germany's public employment service, the *Bundesanstalt für Arbeit*, are not disaggregated by sex, even though associations representing women with disabilities have been calling for this for many years.

The 2003 microcensus shows that 31% of women with disabilities are all too often obliged to live off a personal net income of less than € 700/month, compared with just 12% of men with disabilities.³¹

In the past few years the federal government has launched a number of initiatives to improve the labour market situation for persons with severe disabilities. Legislation for people with severe disabilities was formulated in 2001 in the new Social Code (SGB IX). SGB IX contains some positive approaches to strengthening the participation of women with disabilities. But these measures are often not implemented and operated according to their needs. This applies both to measures planned to offer rehabilitation close to the home that can be joined combined with a part time employment and with such labour market programmes which offer short-term employment contracts run by the Bundesanstalt für Arbeit (Federal Employment Agency) for women with severe disabilities. This is presumably one reason for the low percentage of women (about 30%) in dedicated rehabilitation training centres for the disabled. Despite high levels of unemployment, the Bundesanstalt für Arbeit has not conducted any labour market programmes in recent years to promote the employment of women with severe disabilities.

Since 2004 the Federal Ministry for Employment and Social Affairs has been running the campaign Jobs Without Barriers (*Jobs ohne Barrieren – job*) together with partners from industry, the trade unions and disability associations. This campaign has included projects to promote the employment of people with severe disabilities. Gender criteria such as gender specific needs have played a secondary role in this campaign although project evaluation is supposed entail "the appropriate participation of women with abilities and severe disabilities and gender-specific differentiation".³² Of the 41 projects funded in the years 2004 to 2006, only three targeted women with disabilities.

The indirect gender discrimination of the laws on modern labour market services hits disabled women especially hard: the introduction of placement vouchers is an additional obstacle to participating in initial and further vocational training, as they are rarely granted to women with disabilities. The 70% retention target (success rate) is especially detrimental to disabled women's chances of taking part in employment incentive schemes, as they are assumed to face longer odds of labour market integration. Instead they are directed towards midi- and mini-jobs as a "substitute" for jobs for which compulsory social insurance contributions are paid.

Our recommendations to the federal government:

- *introduce dedicated gender-specific programmes at federal and Länder level to eliminate*

³⁰ Bundesministerium für Arbeit und Soziales: Bericht der Bundesregierung über die Wirkungen der Instrumente zur Sicherung von Beschäftigung und zur betrieblichen Prävention, Berlin 27.6.2007.

³¹ Statistisches Bundesamt (ed.): Auszug aus Wirtschaft und Statistik. Behinderung und Einkommen. Ergebnisse des Mikrozensus 2003, Wiesbaden 2005.

³² *ibid.*, p. 71.

- unemployment among people with disabilities;*
- *examine the legal provisions with a view to identifying indirect discrimination;*
 - *turn discretionary initial and further training options into legally enforceable entitlements.*

3.2 Labour market reforms

The legislative basis for labour market incentivisation is subject to constant changes. By the time the Job AQTIV Act entered into force on 1 January 2002, the Promotion of Employment Act of 1 July 1969 had undergone more than 100 amendments, was recodified in 1998 and subsequently amended over 30 times in four years. Lawmakers always sought to make the law transparent and understandable for those who applied it and those who benefited from its provisions. There is no doubt that by combining unemployment assistance and social assistance for those capable of working into a compensation supplement for long-term unemployment, or *Arbeitslosengeld II*, (based on the Second Book of the Social Code – SGB II), the Fourth Law for Modern Services in the Labour Market (Hartz IV) that came into force on 1 January 2005 brought certain improvements for women who had previously been receiving welfare benefits. On the other hand, however, most women saw their situation deteriorate seriously, especially those who had been drawing unemployment assistance prior to January 2005.

The systemic switch from wage-related personal benefits to means-tested minimum subsistence payments has made it harder for many unemployed women to secure a benefit of their own enabling them to support their basic needs without dependence on a breadwinner. Financial dependence on a husband or partner has been strengthened by the introduction of so-called "needs units". The construct of the "needs unit" is founded on the premise that individuals with a particular personal relationship or degree of kinship who are living in the same household will support each other materially in a crisis and cover each other's maintenance needs. In reality this means that the income of employed persons living in the household is taken fully into account when establishing the individuals assistance requirements. On the one hand, this has the legally dubious effect that individuals who should really be able to maintain themselves from their own income start to require assistance themselves, but on the other hand individuals requiring assistance are struck from the list if their partner's income is sufficient to cover subsistence for the needs unit, whereupon they are known as "non-recipients of benefit".

Although the Acts are formulated in gender-neutral terms, they discriminate indirectly against women by not taking account of the different situations women and men face in life and the working world. Principal factors here are the gender-hierarchical division of labour between paid employment and unpaid work within the family and the gender-typical vertical and horizontal segmentation of the labour market³³, which result in longer average periods of unemployment for women, poorer career status and lower pay.

Apart from these social prevailing circumstances, further causes of this indirect discrimination against women lie in the fact that the institutions responsible for implementing the labour market reforms are characterised "in addition by a relatively low degree of institutionalised equality and gender mainstreaming and a low incidence of equality-oriented management and controlling"³⁴.

The 6th Periodic Report announces a research project to evaluate the effects of the Fourth Law for Modern Services in the Labour Market (Hartz IV) under the title "Assessment of the Second Book of the Social Code – Implementation from the Perspective of Equality Policy. The decision to conduct this research is in part due to the political commitment of the women's movement. The evaluation report should be ready by June 2009; in October 2007 the research consortium published an interim report. In the light of the reply to the CEDAW

³³ Bothfeld, S.; Klammer, U.; Klenner, C.; Leiber, S.; Thiel, A.; Ziegler, A. (eds): WSI FrauenDatenReport 2005 – Handbuch zur wirtschaftlichen und sozialen Situation von Frauen, Berlin 2006.

³⁴ IAQ, FIA, GendA (5.10.2007) (Projekt-Nr. 03/06: Bewertung der SGB-II-Umsetzung aus gleichstellungspolitischer Sicht, Jahresbericht 2007 des Gender-Projekts – Kurzfassung.

Committee's Concluding Comments on the 5th Periodic Report (nos. 28 and 29), the NGOs feel it would be too late to wait until the next periodic report in four years to begin evaluating the above-mentioned research report. Attention is therefore drawn below to serious problems already indicated in the interim report.

3.2.1 Non-recipients of benefit

Non-recipients of benefit are persons no longer regarded under the provisions of Social Code Book II as being in need of assistance because their partner's income has been taken into account when calculating their needs related expenses. Of these 546,000 unemployed persons not receiving benefits, 347,000 or 63% are women. Among the long-term unemployed not receiving benefit, women constitute an even larger majority at 74%³⁵.

In the agencies of the public employment service, non-recipients are managed under the provisions of Social Code Book III. This means that they have almost no chance of participating in a funded labour market policy scheme. This denies them access to the labour market integration assistance available under Social Code Book II. This applies to "opportunity jobs with compensation for additional costs", job creation measures, integration and recruitment grants designed to help people entering employment, early-phase assistance for those attempting to set up in self-employment and incentives to accept low-paid jobs.

As a result non-recipients are unable to obtain even the smallest contribution of their own towards maintaining their basic needs; financially they are completely dependent on their partner. As they do not receive benefits, they are not on the list of those whose benefits must be funded by the employment service out of its budget from unemployment insurance, and who must therefore be quickly reintegrated into the labour market – that is, persons referred to as "close to the labour market". There is no commercial interest in placing or counselling them, and so little effort is invested in doing so. All this consolidates their exclusion from the labour market and hence their social isolation. Employment agency statistics only list those non-recipients of benefit who regularly contact the service, i.e. at least once in three months. Those who do not "disappear" into the so-called "silent reserve" and help to reduce statistically recorded unemployment.

One statistic available under Social Code Book II provisions is of some, albeit limited, value in comparing the size of this silent reserve. It indicates reasons for losing jobless status. About one man in four is deemed to be no longer in search of employment, most commonly because he is not available for work or cooperating in the job search. The most common reason for removing women in western Germany from the jobless register (31.5%) is that they are no longer considered to be seeking employment.¹¹

Our recommendations to the federal government:

- *implement at long last its voluntary undertaking in the Common Rules of Procedure to submit all new draft legislation to a gender impact assessment, design such legislation in an appropriately gender-differentiated manner and improve existing legislation along these lines;*
- *consult women's organisations and other NGOs concerned in the legislative procedure at an early stage and in an appropriate manner;*
- *review as a matter of urgency the "needs unit" construct;*
- *establish a legal entitlement for non-recipients of benefit to labour market incentives in the form of activation programmes.*

3.2.2 Women in cases of emergency

Since the Social Code Book II (SGB II) entered into force, women facing various crisis situations have received the same benefits as other employable persons in need of assistance. There was a failure, however, to take account of the specific concerns of women

³⁵ Data from the Bundesagentur für Arbeit – June 2007.

in particular situations, such as pregnancy, lone parenthood, violence, immigration or disability.

Although the standard monthly payment was increased by 16% and deductible allowances were raised, a new obligation was imposed to create reserves from these standard benefits to cope with any extraordinary expenditure, with a few exceptions. Given that the standard benefit is still very low, despite the above-mentioned increase, this causes unreasonable hardship.

In the days of entitlement to social benefit, a simple application had to be made to the former Social Department. Although even this legal entitlement entailed an often difficult and at times humiliating procedure for those concerned, access to the unemployment supplement under Social Code Book II (known as ALG II) is far more difficult. The application procedure has been highly formalised, and the forms are hard for many applicants, especially migrants, to understand. Besides, there has been a build-up of cases where women in crisis have had to wait months for approval. The legal provisions are far too insensitive to the particularly difficult situation of women suffering gender based violence (cf. Chapter 7.7). Experience since the Hartz Acts took effect demonstrates that these women are often simply not able to press their entitlement. For example, women cannot obtain speedy or adequate financial assistance to cover their needs after leaving a violent partner. When women take refuge in a shelter, they are often unable to take cash or identity papers, let alone other documents, with them. Benefits under SGB II are only accorded from the date of application, not from the onset of the crisis. Women who are unable, for example, to prove their identity for a week in order to apply for ALG II will not receive any funds for their maintenance during that week. Facilities for advanced disbursement have been closed and approval cannot be backdated. Migrant women whose residence papers restrict their movements³⁶ are at a particular disadvantage. If they leave the permitted area when fleeing a violent partner, they often receive no benefit at all. Similar restrictions apply to women from the new EU member states.

Our recommendations to the federal government:

- *amend the law to ensure that additional needs created by extraordinary circumstances or by the growth of children and teenagers are financed as one-off assistance payments and do not have to be funded from standard benefits;*
- *simplify applications and ensure that women in extraordinary circumstances are offered informed and adequate counselling; establish a standard provision for hardship in the case of domestic violence to permit all impecunious women in this situation to obtain immediate financial support and free access to women's support facilities, regardless of their origin, age, income or residence status;*
- *grant women experiencing violence a period of grace when they are exempted from the duty to begin employment without delay.*

3.2.3 The impact of Social Code Book II on pregnant women and family planning

The legal clarification that equipping a new baby includes a pram and a cot is a positive step. However, this legal entitlement is being implemented very differently in different places. Sometimes women are directed to charity clothes shops and used furniture stores without these facilities being able to cover their requirements. In many places the lump sums approved are so low that they only partially finance the items required. In addition, pregnant women and couples about to have their first child are often in contravention of the case law – denied the right to rent an appropriate home for themselves, the child (and where appropriate the father) prior to birth. Since 1 August 2006, moreover, entering into a partnership or marriage automatically incurs a duty to provide for the other person's child. (The Civil Code provisions on maintenance contain no such duty.) Not only the parents' income, but also that of any step-parent or partner of the parent will be taken into account before the authorities will consent to social benefits in respect of children's needs.

³⁶ Non-approved asylum seekers in Germany are in general restricted in their right to free movement and are only allowed to move in a 30 or 40 km radius;

The position is particularly hard for trainees and students who apply for social benefits in connection with pregnancy or maternity. If they are entitled to support under the Federal Education and Training Assistance Act (*BaföG*), they may only claim a benefit to meet their basic needs (i.e. ALG II) if they interrupt their training or studies during pregnancy and until after the birth. Once-off payments (e.g. the equipment grant) and benefits for the child, on the other hand, may be claimed by anyone. Women students from non-EU countries find themselves in a highly precarious position if they fall pregnant. Their residence permit is intended exclusively for training purposes and assumes that they can maintain themselves independently. They may not claim social benefits even if they are pregnant.

These benefit restrictions also apply to family planning. Under the old Social Assistance Act the cost of contraceptives and sterilisation were reimbursed by the Social Department, but since Social Code Book II entered into force in conjunction with the Health Modernisation Act which entered into force on 1 January 2004, these must also now be covered from the standard benefit. This substantial financial burden, combined with the risk of an unwanted pregnancy if safe contraception is not in place, discriminated particularly against women receiving benefits under Social Code Book II, Social Code Book XII and the Asylum Seekers Benefits Act. Besides, this practice violates the sexual and reproductive rights enshrined as human rights in 1994 by a decision at the international UN Conference on Population and Development.

Our recommendations to the federal government:

- *ensure approval of an adequate grant to obtain basic equipment for a new baby;*
- *grant payments to provide for basic needs in pregnancy and maternity, including for trainees and students, and for students from non-EU countries in line with the usual academic leave granted at birth;*
- *re-enact statutory reimbursement of the costs of sterilisation and (at least when prescribed by a doctor) contraceptives.*

3.3 Promoting employment

3.3.1 The Job AQTIV Act

Until 2001 the proportion of women participating in schemes to actively promote employment was based on the percentage of women among the jobless population. When the Job AQTIV Act became effective in January 2002, it introduced a target percentage for women taking part in employment promotion schemes which factors in both women as a percentage of the unemployed and the rate of unemployment (relative impact). The previous rate for Germany had been 44.2%. In 2005, using the new formula to calculate, the percentage of women to be funded on such schemes was down to 41.5%. The new quota itself signals a lower target for promoting women.

In 2005 the target quota was 41.1% for western Germany and 41.8% for eastern Germany. That year all schemes fell clearly short of the target in western Germany (36.5%), but slightly exceeded it in eastern Germany (44.1%). A detailed examination of the different programmes shows that in western Germany women underscored particularly with integration grants (25.5%) and employment entry benefit (27.5%), (i.e. those measures supporting access to the primary labour market which promise the greatest success). In eastern Germany the 2.3% “surplus” only came about because women accounted for 45.6% of the participants in aptitude testing and training courses and 45.7% of those who took “opportunity jobs with compensation of additional costs”. There are all relatively weak measures for integrating people into the labour market. Those employment promotion measures designed for people who are particularly “close to the labour market” were the ones where the target for women was not met: further vocational training (38.7%), integration grants (40.7%) and employment entry benefit (35.4%).³⁷

The public placement agencies explain the low female take-up of employment promotion

³⁷ IAQ, FIA, GendA: Bewertung der SGB-II-Umsetzung – Kurzfassung, p. 14.

schemes for people “close to the labour market” in terms of company recruitment patterns: as companies still prefer men, it does not make economic sense to offer further vocational training or integration grants to women.

In 2004 44% of the unemployed were women, which is about the same as the female proportion of the employed population. However, the re-employment rate is lower for women than for men. East German women are more likely to find another job than West German women.³⁸ But they take much longer to do so than the few West German women and men in general: in 2004 East German women were on average unemployed for 16 weeks longer than men and West German women.³⁹

Our recommendations to the federal government:

- ensure that all data recorded in the field of labour market policy is broken down by sex;
- continue improving job opportunities for women in male domains and strengthening their career prospects in all spheres, including female domains;
- achieve the target quotas for women in labour market policy schemes consistently, and notably in the more effective programmes that genuinely provide skills (close to market); devise much-needed measures specifically for women and introduce gender budgeting to monitor success (cf. Chapter 2.2 Gender mainstreaming and gender budgeting).

3.3.2 Careers guidance

The public employment services exert a significant influence on career decisions. 80% of school-leavers consult a careers adviser. The materials published by the local Employment Agencies are used in schools. Quality improvements are hampered by overwork and cutbacks and frequently inadequate links between careers advisers and local equality networks. Gender stereotyping is encouraged by material that is not gender-sensitive or too one-sided in its approach, and this all too often turns young women beginning their careers against natural sciences and technical subjects and towards conventionally women’s jobs. These shortcomings make it harder to break open the horizontal segregation of the labour markets into male and female sectors.

Our recommendations to the federal government:

- ensure gender-sensitive careers guidance and promote active cooperation between the employment services and local equality agencies;
- ensure gender-sensitive training for careers advisers and optimise careers guidance materials.

3.3.3 Further vocational training

The federal government reports that women accounted for 50.9% of participants in further training measures run by the Federal Employment Agency in 2003 and 52.2% in 2004. It claims that the Federal Employment Agency thereby more than fulfilled its legal mandate to include women in their measures to promote vocational training in numbers that at least corresponded with the proportion of women unemployed and the relative degree to which they are affected by unemployment.

The authors of the Alternative Report have data for 2005. The targets for that year (west 41.1%, east: 41.8%) were substantially underfulfilled, with 39.2% (-1.9%) female participants in further vocational training measures in the west and 38.7% (-3.1%) in the east.⁴⁰

Our recommendations to the federal government:

- explain what measures it has been taking to achieve the target and provide for improved data.

³⁸ WSI: FrauenDatenReport 2005, p. 158.

³⁹ Statistisches Bundesamt: Frauen in Deutschland 2006, p. 34.

⁴⁰ IAQ, FIA, GendA (5.10.2007): Bewertung der SGB-II-Umsetzung, – Kurzfassung, p. 14.

3.3.4 Special measures for women returning to employment

The 6th Periodic Report describes how an explicit provision for women returning to employment in the Job AQTIV Act “ensures” that they have access to the employment promotion they need. The report does not mention, however, that the very same Act has cut back on the successful measures that already existed.

When Social Code Book III came into force, it introduced a new rule intended to make things easier for women who have primarily devoted their time to looking after children and caring for relatives, and who hence – as experience tells – encounter particular problems integrating into the labour market following this family leave. Until 1 January 2004, the Act provided that these individuals constituted a “group in particular need of promotion” and that the percentage of places they were granted on active employment promotion schemes should likewise reflect their proportion of the overall unemployed population. This included a legal entitlement to an integration grant during induction. The amendment put an end to this special promotion for individuals with problematic prospects of integration.

At the same time, a time framework for further vocational training was introduced which regulates the period previous to employment, so that whereas women returning to work had had almost unconditional access to further vocational training, they now faced obstructions.

The employment agency measures were flanked by European Social Fund (ESF) projects. The Operational Programmes of the various Länder refer explicitly to including women returning to work. These women often receive neither benefits under Social Code Book II (basic maintenance for job-seekers) nor under Social Code Book III (employment promotion). The public employment agencies responsible do not always grant these women the additional benefits, such as reimbursements for travel and child care, so that women slightly over the means test threshold in Social Code Book II are de facto denied access to these schemes.

3.4 Equal pay

The prohibition of pay discrimination was last codified in Germany in the form of a statute, the General Equal Treatment Act of 2006. However, it did not transpose EU standards properly. These legal requirements, most of which have been in existence for more than 50 years, have not managed to eliminate the considerable pay differentials between women and men. In this respect, the recommendation made by the CEDAW Committee on 7 March 1989 (CEDAW A/44/38) has not yet been met.

Women in Germany earn tangibly less than men. The European Commission has assumed an average pay gap of 22%.⁴¹ In August 2008 the German Statistical Office put the figure at 24%.⁴² This leaves Germany fourth from bottom of the European ladder – the average being 15%. Moreover, the gender pay gap in Germany has risen by 1% since 1995, whereas the European average has fallen by 2%.

There are many causes operating at different levels to explain the difference. Employment in the occupations which women tend to choose is still subject to lower wages, women's careers contain longer interruptions, and they tend to hold more precarious jobs. But even after all the familiar reasons, such as gender differences in training, occupation, sector etc. have been taken into account, there remains a difference which all experts agree can be attributed to purely gender-based wage discrimination.

Women still confront many prejudices, especially in highly skilled posts and in male-dominated sectors, and also stereotyped ideas about the kind of person who should be given a job, all of which lead to discrimination when it comes to pay. Women who work part time, for example, have poor prospects of a managerial position. There is a traditional link between

⁴¹ Commission Communication of 18.7.2007.

⁴² Statistisches Bundesamt, Verdienstabstand zwischen Frauen und Männern. Destatis 26.8.2008.

low pay and a predominance of women doing the job, and this persists even when women enter “new” professions or conquer hierarchies.

In mid-level management, for example, general salary levels fall when more women occupy positions.

The causes are not merely complex, but also mutually reinforcing: as long as women work at low levels in badly paid jobs, their income seems less essential than that of their partner. The state also creates the wrong fiscal incentives, for example by the way married couples are taxed, by promoting mini-jobs or by enabling spouses with no or low income from gainful employment to benefit from health insurance without contributing.

Wage agreement systems are also not gender-neutral. There are many potential ways of discriminating when evaluating labour, for example by ascribing no value to requirements that are expected of workers in jobs dominated by women, or by attaching disproportionately high weighting to criteria that apply to male-dominated occupations.⁴³ But the categories defined at microeconomic level – which do not reflect collective bargaining agreements, exploit additional leeway or introduce additional remuneration not governed by the agreement – can also reinforce the gender gap.

Recent developments towards more project-based employment, outsourcing and privatisation, often associated with wage agreements being dropped, reinforce these trends, because the gender differences are greater where wage agreements systems do not apply.

This disastrous contest can only be contained by establishing a minimum wage and adopting a comprehensive equality act that asserts EU standards in the private sector, obliging companies to create binding wage equality and offering those concerned effective remedies, including the right for trade unions and anti-discrimination organisations to seek judicial support.

Our recommendations to the federal government:

- *ensure non-discriminatory job evaluation in the paid sector and contribute through legislation to establishing a gender-based definition of pay in wage agreements and company pay structures.*

3.5 Atypical employment

The federal government states in the 6th Periodic Report (Article 11, 11.1.) that the proportion of women working (employed women as a proportion of the female population of working age - between 15 and 64) is 59.3% (2000: 57.7%). This, it says, means that Germany has well exceeded the 2005 target of the European Employment Strategy, which was 57%, is well on its way to fulfilling the 60% mark set by the European Council in Lisbon in March 2000⁴⁴ by 2010. However, the increase in the proportion of women working reported here was mainly achieved by redistributing the volume of employment among women, who are found to a disproportionately high degree in part-time jobs, especially in marginal part-time jobs of up to 18 hours a week. If the employment rate among women were to be calculated on the basis of full-time units, on the basis of EU data it would be merely 48.2% in 2008.⁴⁵

In other words, the federal government does not take adequate account in its report of the fact that due to the gender hierarchy that continues to determine the division of labour, a disproportionate number of women are found in atypical employment, i.e. jobs that do not comply with regular standards. Usually these jobs do not provide an independent livelihood. The negative effects of the various forms of atypical employment are compounded by the fact that part-time work is often linked to fixed-term contracts or combined with a mini- or midi-job.

⁴³ Cf. BT-DS 14/8952 of 25.4.2002.

⁴⁴ www.europarl.europa.eu/summits/lis1_en.htm

⁴⁵ http://europa.eu/employment_social/employment_strategy/pdf/2008compendium_en.pdf, date of access: 8.10.2008.

Part-time employment is not always a voluntary option. This is partly because in many parts of the country there is a lack of job vacancies for women or in the occupations they tend to choose. According to figures from the Statistical Office in May 2006, the percentage of under-employed workers rose in the course of the year 2005 to 13.9% of the employed population. This affects women in particular. Moreover, conditions often do not allow women to work full time. As they are largely held responsible for looking after the children, they depend on adequate, affordable provision of skilled child care – in facilities, furthermore, whose operating hours are compatible with employment. In western Germany, this kind of provision remains inadequate. In eastern Germany the infrastructure is considerably better, but the labour market has suffered such a generalised collapse that entire sectors, in particular services, are witnessing precarious conditions and stable, full-time jobs that provide a living wage have declined. Besides, many families in eastern Germany are unable to afford child care fees.

Entire sectors with high levels of female labour make widespread use of part-time work. In both the retail trade and in social care and cleaning, this is presumably due to specific time requirements combined with huge cost pressures. In home care, for example, where there is peak demand in the morning and evening hours, companies are more likely to employ two workers for shorter hours than one full-timer who stays the whole day. It is also more common in the retail trade to see full-time jobs replaced by one or more part-time jobs; companies will deploy these part-timers subject to need in response to fluctuating levels of turnover. The negative consequences for workers are tolerated. A glance at the statistics published by the State of Saxony-Anhalt illustrates what this means for women's income: in social care, where women account for 87.7% of workers in the state, the part-time rate is 51.4%, whereas among mechanics, where women account for 5.2% of the work force, only 1.3% of jobs are part time.

At the same time, these employment conditions are primarily found in low-pay sector occupations. Here again, data from Saxony-Anhalt offer a poignant illustration: a hairdresser in the state earns 3.05 Euros/hour, a building cleaner 5.79 Euros/hour and a food service worker 6.14 Euros/hour.⁴⁶

Mini-jobs (income up to 400 Euros) and midi-jobs (income of 401 to 800 Euros) are another female domain. They are especially dominant in midi-jobs, 75.2% of which are held by women. Among those who had no employment apart from a mini-job (up to 400 Euros), women account for 67.1%; among those who have a mini-job in addition to their main job, they account for 56.9%. By contract, women hold down only 45.6% of the jobs for which social insurance contributions are paid.⁴⁷ The situation would probably emerge even more clearly if the data was broken down by the federal states..

The data below, published by the Federal Statistical Office in September 2008, illustrates the gender trends in atypical employment:

⁴⁶ DGB Sachsen-Anhalt, Abteilung Frauen- und Gleichstellungsarbeit: "Von Arbeit muss Frau leben können", 8.3.2008.

⁴⁷ Data from the Bundesagentur für Arbeit: Mini- und Midi-Jobs in Deutschland, Nürnberg, May 2007.

Percentage of workers in atypical employment by gender, 1997–2007
age group 15–64, excluding those in education or training⁴⁸

Year	Atypical employment			
	part-time	few hours / fixed term	agency	%
	Men			
1997	2.0	1.4	5.8	-
1999	2.3	1.5	6.8	-
2001	2.6	1.6	6.5	-
2003	3.2	2.0	6.5	-
2005	3.9	3.0	8.0	-
2007	4.1	3.7	8.4	2.6
	Women			
1997	23.6	8.4	6.9	-
1999	25.9	11.2	8.0	-
2001	27.3	11.5	7.6	-
2003	28.9	12.1	7.2	-
2005	30.1	14.6	8.7	-
2007	30.2	15.3	9.3	1.4

Microcensus data – Main source of employment. Up to and including 2003 the data was based on a reporting week in spring; from 2005 these were annual averages.

These figures are already an indication of a worrying trend, but the reality is probably even more problematic. The data in the table is based on surveys, and in some respects it deviates substantially from data compiled in other surveys. For example, the Federal Employment Agency reports 7 million jobs below the threshold for social insurance contributions, not the 2.8 million mentioned in the above report. These deviations are, moreover, further evidence of the inadequate data resources encountered in the field of atypical employment.

The patterns of employment and income described here mean that more and more people are “topping up” their income from benefits under Social Code Book II, despite having a job. According to the Federal Employment Agency, 880,000 people in employment did this in 2005. They account for 17.5% of employable recipients of benefit. Among recipients of long-term benefits (over 9 months) the ratio of women to men is 44:56, which roughly reflects women’s share of the employed population; in the case of short-term benefits, the majority of recipients are men.⁴⁹

In the present context, it should be pointed out that the rampant trend towards fixed-term contracts means that pregnant women are increasingly not protected against dismissal. Young women who have just completed their training or studies frequently now only receive fixed-term contracts. If they fall pregnant, their job comes to an end, even if their employment was originally expected to continue.

Our recommendations to the federal government:

- *compile as yet unavailable data on the percentage of full-time and part-time jobs for all sectors, broken down by sex and state, and publish these regularly;*
- *do far more than up to now to promote vocational training for women in occupations so far dominated by men;*

⁴⁸ Statistisches Bundesamt, Atypische Beschäftigung auf dem deutschen Arbeitsmarkt, Wiesbaden 2008, p. 15.

⁴⁹ Kurzbericht des Instituts für Arbeitsmarkt- und Berufsforschung der Bundesagentur für Arbeit – Nr. 22, 30.11.2007.

- *take action to prevent the continued spread of part-time employment that does not provide a living wage;*
- *take measures to ensure that women are no longer shunted into atypical employment;*
- *make employers who do not renew a pregnant woman's contract provide evidence that there were justifiable operational reasons for limiting her employment; if they cannot, oblige them to continue the pregnant woman's employment.*

3.6 Promoting gender equality at work

Women's organisations have long been calling for an Equality Act for the private sector that will improve skilled women's access to higher level, better paid jobs in the company. Instead, the federal government chose to join with the associations representing German industry in 2001 in concluding a voluntary "Agreement to Promote Equality between Women and Men in the Private Sector". The 6th Periodic Report states (Article 11, 11.7) that this agreement has now been evaluated twice. The 3rd assessment, submitted in April 2008, once again demonstrates, however, that this agreement has not achieved real progress. In 2008 there was only one woman serving on a management board in one of Germany's 100 biggest companies (in 2004 there were still four). When subordinate tiers of management are taken into account, so that an ordinary store manager in a retail outlet can be counted as managerial, the percentage of women among German managers is 26.5% (EU: 32.3%). This places Germany in the lower third of the European countries.⁵⁰ Evaluation is complicated by the fact that the previous assessments did not cross-refer, making it difficult or impossible to draw conclusions about the impact of measures associated with the agreement.

Women's organisations would also like to see the promotion of equality criteria become a criterion in awarding public contracts. As the federal government and the federal states award contracts worth over 300 billion Euros a year to private companies, they are well placed to factor in powerful incentives for potential contractors to include gender equality in their corporate policy. EU Public Procurement Directive 2004/18/EC allows public bodies to require contractors to commit to additional conditions – notably social and environmental ones – in their calls for tender. The social criteria include promoting gender equality. The German Ministry of Economic Affairs has proposed that these additional conditions should only be permitted if they have a direct bearing on the contracted work and derive from the service specifications. Women's organisations oppose this proposed limitation and refer to the equality objective enshrined in the German constitution.

Our recommendations to the federal government:

- *submit an Equality Bill for the private sector to parliament;*
- *take action to enshrine a statutory quota to increase the number of women on management and supervisory boards;*
- *step up its efforts to promote de facto equality for women in the labour market, including their access to full-time employment, as called for in the CEDAW Committee's Concluding Comments (no. 25) on the 5th Periodic Report.*

3.7 Tax and pensions

The following sections address two issues to which the 6th Periodic Report has devoted no attention, but which have a direct impact on women's equality in the labour market.

3.7.1 Income tax

Under certain circumstances the current system of taxation, especially the method of calculating income tax jointly for married couples (known as marital splitting) offers little incentive for married women to participate in the labour market, especially when the joint tax code is III/V. As all wage substitution benefits, such as sickness and unemployment benefit and the parental allowance, are calculated on the basis of net pay, women having tax code V and whose wages are taxed at a higher rate, suffer a dual disadvantage. The stereotyped

⁵⁰ 3. Bilanz Chancengleichheit, April 2008, p. 29.

model of the male breadwinner is reinforced. This is why the CEDAW Committee recommended back in 2000 that “that the State party assess the current legal provisions on the taxation of married couples (“splitting”) and its impact on the perpetuation of stereotypical expectations for married women”⁵¹. In its Economic Report on Germany of 2008⁵², the OECD also draws attention to the negative employment incentive for the second earner of marital tax splitting and recommends introducing individual taxation with a transferable second tax exempt amount.

The federal government does not comment in the 6. Periodic Report on its efforts to reform the system. In fact, compensation is only envisaged for the worst negative effects, which result from indexing wage substitution benefits (parental allowance, sickness and unemployment benefit) to net income. The reasonable solution would be to abolish the tax code combination III/V, which triggers the “splitting gain” when tax exempt amounts are transferred to a partner with tax code III. The federal government is evidently not prepared to take this logical step and is working instead on compromise solutions of questionable impact on equality, if only because they would be optional alternatives to the familiar marital splitting technique. Moreover, some of the proposals give rise to concerns about data protection. The data required for the calculations would offer employers clues about the income of the spouse. This knowledge increases the risk of disadvantages, for example if severance schemes are drawn up.

Our recommendations to the federal government:

- *make individual taxation and independent cover compulsory in all branches of statutory social insurance in order to establish a legal framework for men and women to secure an independent living income.*

3.7.2 Provision in old age: raising the pensionable age – pensions at 67

Old age provision for women is drastically influenced by the above-mentioned low wages and part-time employment in predominantly female occupations, but also by steps that have been taken to reduce the burden of pension insurance. As statutory pension insurance is indexed to income from employment, the qualifying points obtained from low wages are also small. Besides, low wages permit no more than minimum contributions to private pension schemes (including the state-subsidised “Riester” pension), and the qualifying credits are similarly meagre. This raises fears that income from such small pensions will increasingly have to be complemented by welfare benefits in order to avert the looming threat of age-related poverty among women.

Since 2007 pensionable age has been raised (target age: 67) and the duration of pensions accordingly reduced, by the “Act adjusting standards age thresholds to demographic development and strengthening the financial basis of statutory pension insurance”. This graduated increase in pensionable age indirectly discriminates against women. The special provisions for “particularly long-term contributors” of 45 years standing does discriminate against women. Typical female careers, with employment interrupted to raise children, mean that a disproportionate number of women fail to achieve these 45 years of pension contributions. This excludes women de facto from the favourable regime.

As a compensation strategy, the legislator provide that the 45-year qualifying period may consist, not only of periods of employment and self-employment when contributions were paid, but also of periods spent caring for relatives and children up until the age of 10. However, including these periods only minimally improves the situation for women: without the care periods, only 2.48% of insured women meet the 45-year qualification requirement, but with them the figure is only 4.39%. In the case of men, about 27.2% meet the requirements.

In the field of private pension funds, the General Equal Treatment Act (AGG) has hardly changed practice at all. Private pension insurance providers have so far not applied unisex

⁵¹ CEDAW/C/2000/I/CRP.3/Add.7.

⁵² <http://www.oecd.org/dataoecd/27/35/40382005.pdf>, p. 13.

tariffs because women's life expectancy is statistically higher. They argue that women would have to contribute over a longer period for women and men to receive the same overall benefits from the fund. This group philosophy does not alter the fact that – regardless of her life expectancy – every woman receives less money every month than a man in return for the same contribution. This is a typical form of group discrimination against women based entirely on their sex, in other words: gender discrimination.

Our recommendations to the federal government:

- *launch a fundamental structural reform of statutory pension insurance which does justice to typical female life patterns.*

4 Health/Care

4.1 Gender mainstreaming and female specific concerns in health policy

Legally speaking women and men in Germany have equal access to health services (6th Periodic Report, Chapter 12.1, par. 1). However, in many respects provision has been designed around standard male needs: women are simply a deviation from this. They "are, in part, affected by different types of symptoms and illnesses" and "have different reactions to some health problems". Women's experience and their attitudes to sickness and health are barely reflected in the services provided by the health care system. Even services such as rehabilitation often ignore the practical needs of women with family responsibilities and so women do not make use of them.

It is most regrettable, therefore, that the federal government's health policy has not yet found the place for a consistently gender-sensitive strategy in the form of gender mainstreaming. As its health reforms have taken no account of equality policy implications, there has been no gender impact assessment of the new legislation.⁵³

4.1.1 The 2007 health reforms

The last sentence in the Health Reform Bill of 2007 is: "The Act bears no relevance to equality policy."⁵⁴ This needs contradicting, because women face de facto discrimination⁵⁵ due to the increasing privatisation of services (withdrawal of benefits such as certain medication or tests) and demand for supplementary payments (e.g. quarterly practice fee, prescription charges for medication and remedies)⁵⁶. The gender impact assessment of the reforms demanded by women's organisations has not happened, and so it is impossible to determine whether the equal access to health provision guaranteed by the law is actually occurring in practice.

The health reform establishes an obligation for patients to "cooperate"⁵⁷, which means that if they do not respect the therapy regime they may face financial penalties. The Care Development Act of 2008 is even more stringent, in that doctors have a duty to report such cases to the health insurance provider.⁵⁸ This is a particular cause for concern, because the lack of knowledge which sometimes exists about gender-related differences in the effect of therapies (e.g. more frequent occurrence of adverse side effects from a medicament) may result in women being wrongly accused of failing to cooperate. In this context, until we have more evidence-based data about the value of early diagnostic screenings, a critical view

⁵³ CEDAW General Recommendation No. 24, 1999: § 31 (a), www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24, date of access: 25.6.2008, and CEDAW/C/2004/I/CRP.3/Add.6/Rev.I: Concluding Comments, Germany, no. 39.

⁵⁴ www.dip.bundestag.de/btd/16/031/1603100.pdf, p. 213, date of access: 25.6.2008.

⁵⁵ Wasem, Jürgen; Gress, Stefan: "Geschlechtsspezifische Auswirkungen von Leistungsbeschränkungen und Zuzahlungserhöhungen in der gesetzlichen Krankenversicherung", 2004, www.boeckler.de/pdf/wsi_expertise_gkv.pdf, date of access: 25.6.2008.

⁵⁶ § 28, § 34, § 61 GMG – Gesetz zur Modernisierung der gesetzlichen Krankenversicherung, 2003 and § 242 GKV-WSG – Gesetz zur Stärkung des Wettbewerbs in der gesetzlichen Krankenversicherung, 2007.

⁵⁷ § 65a GMG and § 62 GKV-WSG.

⁵⁸ Art 6, Nr. 15c PfWG (Pflege-Weiterentwicklungsgegesetz), 2008.

should be taken on the new “responsibility” to attend them. Non-participation must not automatically be rated as misbehaviour if the patient then turns out to need treatment. Rules like these always suggest that the patient is no longer considered an intelligent adult and they signify a departure from the principles of informed consent and shared decision-making.

In the 2007 health reforms, gender figures merely as a “risk” to be factored into the mechanism for balancing out variable insurance exposure.⁵⁹ This means that health insurance providers covering cost-intensive patients receive financial compensation from providers whose members cost less. But all costs related, for example, to fertility and child-bearing are attributed by actuarial methods to women, thereby making them a financial “risk”. Another indication of the disrespect for gender in health policy is the inability of this law and other legal texts to reflect the existence of women in their language. This regrettable practice is echoed by the Joint Federal Committee, a body that defines the services to be covered by statutory health insurance providers in the form of guidelines. Its Guidelines on Home Care for Patients include a general term on linguistic equality which states that “for the sake of comprehension and clarity” the text will not use both the male and female forms, and “that the personal nouns and pronouns used in these guidelines (...) therefore also (apply) in their female form”.⁶⁰ In response to a letter of protest from an NGO (German Medical Women’s Association, *Deutscher Ärztinnenbund*), the Federal Ministry for Family, Seniors, Women and Youth (BMFSFJ) now intends to see what can be done.⁶¹

In one respect, the 2007 health reforms have had a positive effect on women’s concerns: a legal entitlement to regenerative therapies for mothers and fathers (6th Periodic Report, Chapter 12.1, par. 4). According to the German Mothers Recovery Plant (*Müttergenesungswerk*), for the first time since 2000 the health insurance providers are now spending more money on this provision again.⁶²

4.1.2 Public health reporting and information

The concept of gender is, fortunately, appearing more frequently in public health reporting (6th Periodic Report, Chapter 12.2). Publications by the Robert Koch Institute are usually formulated in gender-sensitive terms.⁶³ Further differentiation should be demanded. It is gratifying to see, for example, that maternal and infant mortality have been falling since 2003 (6th Periodic Report, Chapter 12.1, par. 3). There is a need, however, to distinguish further in these figures between German women and migrants, who may still experience a higher mortality rate.⁶⁴ Other groups, like the Sinti and Roma, lesbians and women with disabilities should also be indicated.

The health information provided by the Institute for Quality and Value for Money in the Health Service (IQWiG) on issues of specific interest to women is welcomed (6th Periodic Report, Chapter 12.2, par. 4). It enables women to make informed choices on the basis of independent information, e.g. on the menopause. But it is no replacement for a consistent gender perspective in the other health information published by the Institute, which adopt a predominantly neutral tone.⁶⁵

Another extremely useful resource for informed decision-making by women is the brochure on breast screening produced by an NGO (National Women and Health Network).⁶⁶

⁵⁹ § 87 e), § 87 b (3), § 266 GKV-WSG.

⁶⁰ www.g-ba.de/downloads/39-261-600/2008-01-17-HKP-Gender_BAnz.pdf, date of access: 25.6.2008.

⁶¹ Deutscher Ärztinnenbund (ed.): “Was heisst hier – mit gemeint?”, in: ÄRZTIN (55) 3-2008, p. 8.

⁶² www.muettergenesungswerk.de/cms/Docs/Attachments/9b609d4a-c9e7-4b2e-9876-79ae7461c0d0/GKV%20Statistik%20%202007.pdf, date of access: 25.6.2008.

⁶³ www.rki.de, date of access: 25.6.2008.

⁶⁴ David, Matthias: “Aspekte der gynäkologischen Betreuung und Versorgung von türkischen Migrantinnen in Deutschland”, 2001, p. 10 and Borde, Theda: “Patientinnenorientierung im Kontext der soziokulturellen Vielfalt im Krankenhaus”, Berlin 2002, p. 55.

⁶⁵ www.gesundheitsinformation.de, date of access: 5.9.2008.

⁶⁶ Schindele, Eva; “Brustkrebsfrüherkennung”, published by Nationales Netzwerk Frauen und Gesundheit, Hannover 2007 – www.nationales-netzwerk-frauengesundheit.de/downloads/mammografie112007.pdf, date of access: 5.9.2008.

4.1.3 Women's participation

Women are under-represented on decision-making bodies in all fields of health care. The above-mentioned very important Joint Federal Committee, for example, has four decision-making bodies with 21 members. There is one woman serving on each, except for one which has two. In the field of psychological therapy, seven women sit with 16 men.

The call for parity membership on decision-making bodies in all fields of health care and research is still very urgent. Efforts must also continue to establish gender, age and situational aspects in the Social Code Book V (SGB V).

The three-year Federal Coordination Project on Women's Health (BKF) was very successful, as described in the 6th Periodic Report (Chapter 12.1, par. 2, Chapter 12.4, par. 1). Unfortunately, though, the funding has now stopped and so the process of establishing women's health structures is faltering. The networks that were set up and the gender awareness that was raised are also likely to fade crumble. Women's organisations see this as a setback in political efforts towards gender-fair health care.

4.2 Women's health research

When the 12th Act amending the Medication Act was adopted in 2004, the principle of ensuring a proportionate participation of women in clinical drugs trials finally became law. Apart from demonstrating that the drug is harmless and effective, attention must now also be paid to whether there are any differences in the way they work in women and men.⁶⁷ Federal and state authorities must now examine and evaluate the extent to which this has been implemented.

Nevertheless, there is still a major need for gender-differentiated research in all fields of health provision, including a review of existing studies. The gender-sensitive evaluation of a study on the heart drug Digoxin, for example, produced completely new findings: men benefit from the treatment, whereas women are more likely to suffer from it. This had not been established by the gender-neutral evaluation of the overall sample.⁶⁸ Moreover, the treatment of women infected with HIV is very problematical, as the drugs that have primarily been tested on men produce different side effects in women and may require an adjustment of the dose. The mental and psychosocial aspects of the condition also require gender-specific research.⁶⁹

Research projects on the genesis, diagnosis and therapy of diseases have so far not been systematically designed to take account of gender differentiation (6th Periodic Report, Chapter 12.3, par. 1). The approach cannot be confined to biological sex, but must also include social gender, e.g. role stereotyping in health care⁷⁰, which can lead to different – and often less adequate – treatment for women by comparison with men.⁷¹

There is, moreover, an urgent need to consider the sex factor when evaluating therapies. That is unfortunately not apparent in the reports produced by the Institute for Quality and Value for Money in the Health Service (IQWiG). Evaluation of the benefits of, for example, non-medicinal treatment strategies (weight reduction for hypertension patients) is based on a gender-neutral sample.⁷² The evaluation of the Disease Management Programme (DMP) for cardiovascular disease even “always uses the male form of personal nouns and pronouns”.⁷³

⁶⁷ § 42 para.1 – 3 AMG (Arzneimittelgesetz).

⁶⁸ Rathore, Saif S. et al.: “Sex based Differences in the Effect of Digoxin for the Treatment of Heart Failure”, N Engl J Med, Vol. 347, No. 18, October 31, 2002, www.nejm.org, p. 1403 ff, date of access: 25.6.2008.

⁶⁹ Landtag Nordrhein-Westfalen (ed.): “Zukunft einer frauengerechten Gesundheitsversorgung in NRW. Bericht der Enquetekommission des Landtags Nordrhein-Westfalen”, Wiesbaden 2004, pp. 199-204.

⁷⁰ <http://www.aerzteblatt.de/v4/news/news.asp?id=32076>, “Studie: Ärztinnen setzen Diabetes-Leitlinien konsequenter um als männliche Kollegen”, April 2008, date of access: 25.6.2008.

⁷¹ Landtag NRW, pp. 186-191.

⁷² www.iqwig.de/download/A05-21A_Abschlussbericht_Gewichtsreduktion_bei_Bluthochdruck..pdf, date of access: 6.9.2008.

⁷³ www.iqwig.de/download/V06_03_Abschlussbericht_Leitlinienrecherche_und_bewertung_fuer_das_DMP_KHK.pdf; p. iii, date of access: 6.9.2008.

Our recommendations to the federal government:

- ensure that the considerable need for gender-differentiated research in all spheres of health care (including gender-sensitive review of existing studies) is satisfied. This is equally necessary in the fields of gender-sensitive health promotion, prevention, diagnosis, therapy, rehabilitation, care, and initial, further and continuous training for health professionals;
- respect the demand of women's organisations for parity representation on decision-making bodies in all spheres of health provision and research and step up efforts to establish gender-, age- and situation-specific factors in Social Code Book V (on statutory health insurance).

4.3 Health care for women and girls who have been affected by violence

The federal government study of 2004 on the Lives, Security and Health of Women in Germany, e.g. the S.I.G.N.A.L. project (6th Periodic Report, Part B on nos. 22 and 23), has generated positive momentum.

The angle could be broadened to include people in particular circumstances, such as women with disabilities, inter- and transsexual people and lesbians, migrant women, women in need of care, etc.

Steps to raise greater awareness among the health care institutions about the effects of violence on health are making a slow progress. Substantial efforts are still required to implement this issue in initial, further and continuous training for health professionals.⁷⁴

Practice shows that women who have been trafficked are very rarely granted adequate medical care under the Asylum Seekers Benefits Act because stringent legal conditions for reimbursing the costs of treatment have not been met. § 6 sentence 1 of the Act says that "other benefits" will only be granted if they are "essential" to ensuring health in an individual case. Women who have been trafficked usually have a particular need for medical diagnosis and appropriate treatment because of what they have experienced. This vital care is denied them under current law. In particular, the costs of therapy are hardly ever assumed, and this is difficult to defend in humanitarian terms.⁷⁵ Specialist counsellors are calling for improvements to the relevant provisions.

Our recommendations to the federal government:

- establish access to medical and therapeutic assistance as a legal entitlement for all den women who have experienced violence – especially women who have been trafficked.

4.4 Health care for women with disabilities

Women with disabilities – like women without disabilities – are fundamentally affected by the problems associated with the insufficient attention that has been given to date to gender-specific differences in health care needs. In addition to this, they face the difficulties associated with their particular disability.

4.4.1 Lack of accessibility

Only a small percentage of doctors' offices provide access for women and men of limited mobility. There is also a lack – sometimes even in hospitals – of toilets and changing rooms for wheelchair users and examination couches and equipment of adjustable height. There is an absence of information material for the blind, the deaf and people with learning difficulties; communication in general is often very limited, making informed decisions difficult, if not impossible.

When women or men are suffering from an illness that has not been induced by the disability, or when they want a check-up or test, it is difficult, if not impossible, to find a

⁷⁴ CEDAW General Recommendation No. 24, 1999: § 31 (f); Landtag NRW, p. 179.

⁷⁵ Landtag NRW, p. 174; KOK e.V. on the proposal for an Act implementing the residency and asylum directives of the European Union of 5.6.2007; available at www.kok-buero.de, date of access: 5.5.2008.

doctor's office with disabled access. The same applies during pregnancy and childbirth. Delivery units are very rarely accessible, and the same goes for childbirth preparation courses. Preventive services often exclude women and men with disabilities because of physical barriers.⁷⁶

4.4.2 Lack of knowledge

Neither research nor medical/therapeutic training takes account of women and men with disabilities. As a result, there is a lack of knowledge, for example, of the effects of drugs on disabilities commonly prescribed for acute illness (such as influenza), hormone therapy or substances used in conjunction with psychotherapy. Many hormone preparations, for example, have an adverse effect on muscular disease. There is also a frequent lack of awareness of the interactions between commonly used drugs and drugs taken because of a disability.

In addition to this, doctors are often not familiar with the way a disability can affect the course of a disease, or indeed of pregnancy or childbirth (e.g. in a paraplegic woman), and consequently the wrong conclusions are drawn about medical treatment. The ability by health professionals to recognise the effects of violence must be improved to ensure adequate treatment. Frequently unusual signs in girls or women who have suffered violence are interpreted as consequences of the disability (cf. Chapter 7.3 The specific impact of violence on women with disabilities).⁷⁷

Women with learning difficulties are sometimes treated, even by health professionals, as though they had no right to sexuality and motherhood.⁷⁸

And most psychotherapists refuse to treat women with learning difficulties who have experienced violence on the grounds that they have not been trained to work with this group (cf. Chapter 7.3 The specific impact of violence on women with disabilities).

Our recommendations to the federal government:

- *implement the legal entitlement to barrier-free access for all to medical and therapeutic assistance.*

4.5 Women and addiction

4.5.1 Smoking and women's health

The increasing consumption of cigarettes by the female population, beginning at an continuously earlier age, shows a correlation with the rise in new cases of heart attack and lung cancer among younger and middle-aged women (6th Periodic Report, Chapter 12.9, par. 5 and 7). The combination of smoking cigarettes and taking oral contraceptives increases the risk of heart disease by a factor of 40, a message which is often not adequately conveyed to women.⁷⁹

Insufficient attention is paid to the specific needs of women trying to give up smoking. Addictive behaviour in women goes hand in hand with a greater dependence on psychosocial factors than on nicotine as a substance. This makes it harder for them to give up than for men. Women are more likely to resume smoking in emotionally negative situations such as stress or frustration, whereas men are more likely to resume in a positive context, such as a party or relaxing in company. Other factors that make it hard for women to give up smoking are the fear of unwanted weight gain and the weaker effect of treatment with nicotine substitutes (plasters).⁸⁰ Social differences in the behaviour of smokers relating to

⁷⁶ For a definition of access see the UN Convention on the Rights of Persons with Disabilities, Article 9.

⁷⁷ Landtag NRW, p. 171.

⁷⁸ *ibid*, pp. 151-166.

⁷⁹ *ibid*, p. 188.

⁸⁰ Ortner, Romana et al: "Nikotin – Frauen sind anders abhängig", Pneumologisch Nr. 5, 2001, pp. 10-11.

education, income and marital status have been described in the literature⁸¹ but so far have played only a marginal part in strategies to wean people off cigarettes.

Preventive education also needs to be gender-sensitive and to reach out to all sectors of the population. There is a particular need for gender-sensitive addiction prevention strategies in schools. The brochures published by the Federal Centre for Health Education are useful here (6th Periodic Report Chapter 12.6 par. 1).

Germany has been somewhat tentative about meeting its commitments following accession to the WHO Framework Convention on Tobacco Control (FCTC). Deficits in regulating and enforcing the smoking ban endanger the health of women (and men) through passive smoking.

Further momentum is expected from the annual conference on women and smoking organised by the federal government's Drugs Commissioner in October 2008.⁸²

4.5.2 Women and addiction to medication

In the light of the published data on women who are dependent on medication and use medication abusively, there is a need not only for gender-specific treatment strategies but above all for prevention (6th Periodic Report, Chapter 12.6, par 3; 12.12, par. 4 and 6). Advertising for psychotropic medication and other potentially addictive medical drugs should be restricted. Information campaigns and health education, beginning in pre-school facilities, can make a major contribution to the proper use of medication and of alternatives to medication to deal with pain and problems. Particular attention should be given to raising the awareness of those working in the health sector, enabling them to consider their information and prescription practices and offer female patients information about other treatment methods. In the broader sense, creating pro-health conditions helps to prevent addiction to medication.⁸³

4.6 The health status of elderly women

Although the 6th Periodic Report, Chapter 12.9, par. 2 and 3, describes how the symptoms of a heart attack often express themselves "differently" in women than in men, it is probably better to say that, in quantitative terms, women are the norm. Unfortunately, that is the predominant view taken in the report it mentions on Preventive Health Measures for Women in the Second Half of Life, which has now been published: men are the benchmark against women are measured.⁸⁴ The data compiled for this report are impressive, but we would take issue with the fact that preventive measures are directed above all at women, who in any case make more use of early screening than men, and that being of the female sex is presented as a risk factor.⁸⁵

4.7 Care and nursing

Very often women are the receivers and providers of care. This latter role of unpaid service is reinforced by the promotion of civic commitment – cf. 6th Periodic Report, Chapter 12.10 on the Supplementary Act on the Provision of Long-Term Care (PfLEG) – and the statute of 2008 on the structural development of care insurance (PfWG) which recognises periods spent as a carer. Care insurance now provides a degree of social security, but this does not cover all eventualities and it cannot compensate for the loss of income suffered when a caring relative reduces or gives up her paid employment. This can actually contribute to age-related poverty (cf. Chapter 3.7.2 Provision in old age: raising the pensionable age – pensions at 67).

⁸¹ Robert-Koch-Institut (ed.): "Bundes-Gesundheitssurvey. Soziale Unterschiede im Rauchverhalten und in der Passivrauchbelastung in Deutschland", Berlin 2006.

⁸² www.ctw-congress.de/frauen-rauchen08, date of access: 25.6.2008.

⁸³ Landtag NRW, pp. 85-89.

⁸⁴ BMG (ed.): Gesundheitlichen Prävention von Frauen in der 2. Lebenshälfte, Band 2, p. 9, 13, 22
www.bmg.bund.de/nn_822814/SharedDocs/Publikationen/Forschungsberichte/, date of access: 25.6.2008.

⁸⁵ BMG, p. 28 and 38.

The Deutscher Frauenrat made this and other points clear during the legislative consultation prior to adoption of the PfWG.⁸⁶ Carers who are not members of the family should be able to benefit from the provisions of the Act just like members of the family who provide this service. There has been a call for many years to allow those in need of care to choose who cares for them, but this has not yet been put into effect. In particular, preferences about the sex of the carer are often overridden in practice by an interpretation of the term “justified wish” in §9 of Social Code Book IX. The issue of violence must also be addressed openly, researched and prevented by appropriate means.

4.8 Pregnancy and prenatal genetic diagnostics

Prenatal diagnostics is now an inseparable part of care for pregnant mothers. The maternity guidelines stipulate a specific sequence for prenatal tests. According to pregnant women, the way doctors usually explain this before the first tests is to say “Let’s just see if everything is ok.” Scans (“baby TV”) have become well accepted by the public according to a representative survey.⁸⁷ That is why most pregnant women make use of them without asking questions.

Ethical and moral problems arise around prenatal genetic diagnostics once an “abnormality” has been observed. That is why there have been calls – including by the federal government – for information and advice to be given before prenatal examinations are taken up. NGOs critical of prenatal diagnostics, such as the Network Against Selection by Prenatal Genetic Diagnostics, believe that the provision of information presents a problem. They would like to see pregnant women receiving information and granting informed consent before every test. At present this is impossible, as the maternity guidelines determine that the first three ultrasonic scans are provided as a “package”, leaving no room for consent to be obtained for the second and third. The network is therefore asking for pregnancy care and prenatal diagnostics to be separated. This would mean changing the maternity guidelines.⁸⁸

One major ethical and social problem relates to what is called late terminations of viable embryos. If an apparent illness or disability is identified in the foetus during the last third of pregnancy, and if the mother declares that she feels unable to cope with the situation, a late termination can be carried out legally on the grounds of a diagnosis of “risk to the pregnant woman”. There was a cross-party debate in 2005 and 2006 about avoiding late terminations. Although the ethical issue of late terminations provokes public debate, front-ending prenatal genetic diagnosis with no questions asked regrettably remains unchallenged.

Our recommendations to the federal government:

- *take steps to ensure that pregnant women are granted the right of informed consent before every prenatal diagnosis and the right not to know;*
- *enable a woman to request that she only receive therapy-relevant information about her growing child.*

⁸⁶ www.bundestag.de/Ausschuesse/a14/anhoerungen/071_072_074_075/stellungn_SV/Dt_Frauenrat.pdf, date of access: 3.9.2008.

⁸⁷ Bundeszentrale für gesundheitliche Aufklärung (ed.): Schwangerschaftserleben und Pränataldiagnostik. Repräsentative Befragung Schwangerer zum Thema Pränataldiagnostik, Köln 2006.

⁸⁸ Netzwerk gegen Selektion durch Pränataldiagnostik (ed.): Rundbrief 13. Sonderheft Rechtsgutachten zur Betreuung schwangerer Frauen nach den Mutterschafts-Richtlinien, Düsseldorf 2002.

5 Role stereotyping

5.1 Role stereotypes still set their stamp on life in Germany

Achieving equality in society is closely linked to a broad process of overcoming role stereotypes.⁸⁹ In its Concluding Comments on Germany's 5th Periodic Report, the CEDAW Committee expressed concern about the continuation of pervasive stereotypical and conservative views of the role and responsibilities of women and men and recommended that policies be strengthened and programmes implemented, including awareness-raising and educational campaigns directed at women and men.⁹⁰ In its 6th Periodic Report the federal government describes how the gender-specific division of labour in the family and at work continues to influence the lives of women and men in Germany and is the cause of many inequalities. Traditional attitudes that ascribe women the primary responsibility for work in the family and men the role of breadwinner are at odds with the objective of creating equal opportunities for women and men in all walks of life (cf. 6th Periodic Report, Part A.I). The Periodic Report mentions a few of the measures and projects supported by the government which have been designed to combat traditional images in education and family policy, family law and the media (cf. 6th Periodic Report, Article 5 and Part B).⁹¹ It does not, however, have an all-round strategy, and there is no broad public discourse about the reasons for role stereotyping and its persistence.

In its report the federal government describes individual measures which may make an isolated contribution towards overcoming traditional role models, but do not attack the problem at its core. The introduction of parental allowance is seen as the key to breaking down traditional ideas based on the single-breadwinner model. NGOs welcome the introduction of parental allowance as a first step towards a model of employment in which both parents contribute together to keeping the family. But financial incentives such as the parental allowance are not enough to overcome role stereotypes. The structural inequalities that are rooted in the modified single-breadwinner model have continued to discriminate against the majority of married women working part-time in or mini-jobs (cf. Chapter 3.5 Atypical employment).

The number of fathers taking up the parental leave option, most of them for two months and few of them for longer, did rise from 3.5% in 2006 to 9.6% in 2007 (BMFSFJ, December 2007), but young fathers still confront prejudice at the workplace when they attempt to take on responsibilities in the family.

In its response to the CEDAW Committee's Concluding Comments, the federal government again resorts to listing individual measures to overcome traditional role models. There is, however, no recognisable strategy for initiating and encouraging social dialogue. And yet there is an urgent need to adopt a structural approach with a broad strategy for implementing a broad discourse embracing all social forces about the impact of role stereotypes.

Role stereotyping means attributing characteristics to people on the grounds of their sex. They derive from biological factors and cultural structures that have developed historically, determining roles for both women and men. If discrimination against women based on traditional role images is to be eliminated, male and female role stereotypes need revisiting and new aspirations have to be negotiated for both genders. The NGOs welcome the federal government's desire to involve men as partners and recipients for equality policies in order to overcome role stereotypes. The efforts by the BMFSFJ to establish work for men and boys are positive and evident progress has been made in this field. However, the aspirations of many young women are still marked by traditional female patterns of behaviour.

⁸⁹ BMFSFJ (ed.): Übereinkommen der Vereinten Nationen zur Beseitigung jeder Form von Diskriminierung der Frau (CEDAW) vom 18. Dezember 1979, p. 19. CEDAW is based on an awareness "that the traditional role of men and the role of women in society and the family must change if men and women are to achieve full equality".

⁹⁰ CEDAW Committee, Concluding Comments: Germany, unedited preliminary version, 30.1.2004, p. 4.

⁹¹ The issue of role stereotypes and migrant women is not mentioned in the Periodic Report.

The findings of a qualitative study on the aspirations, role models and attitudes of 20-year-olds commissioned by the BMFSFJ⁹² demonstrate clearly that role stereotypes and models are a key influence on the ideas of young adults about how women and men should live their lives and how to behave as mothers and fathers. Gender, education and the social milieu all affect these ideas. Women with higher levels of education see the equality process as incomplete and wish to continue it, whereas women with low to middle levels of education feel threatened in their aspirations to part-time work and motherhood by calls for more equality. Men with low levels of education draw on traditional role divisions and typically want a partner who will assume responsibility for the home and family. Young men leaving school with the advanced certificate say they are in favour of equality, but they are nervous about confident young women who adopt a modern role. They lack positive male role models. Conclusions from these findings prove insufficient. The federal government should provide much more support for the vocational programmes for boys and men.

New non-discriminatory role models based on egalitarian partnership need to be developed in nurseries and schools, in training, at work and in public discourse. The federal government should make it a principle to promote initiatives that formulate these new, forward-looking role models for women and men and help them to gain acceptance. Care should be taken that men's work is equality-oriented and non-discriminatory. Strategies should be drawn up to overcome role stereotypes and open the doors to their implementation.

5.2 Equality policies to overcome role stereotypes

The federal government's efforts to overcome role stereotypes focus on family policy, which is not consistently equality-oriented.⁹³ Role stereotypes refer to traditional divisions in the social roles of women and men which generate inequality between the sexes and resist the political objective of equality. Consistent equality policy is therefore key to combating them.

The *Bundeszentrale für politische Bildung* (BpB), which carries out political education on behalf of the federal government and reaches out to broad target groups, sometimes in partnership with providers of adult education, would be an appropriate institution to carry out education programmes to overcome stereotypes in broad sections of the population. At the moment there is a tendency to provide less education in the field of gender and equality. Subsequently, the BpB could play a bigger role with its network of centres in every federal state.

Gender budgeting is another appropriate tool for developing new role images (cf. Chapter 2.2 Gender mainstreaming and gender budgeting).

Our recommendations to the federal government:

- *adopt a clearer focus in tackling role stereotypes throughout Germany's federal structures, triggering and leading a broad public discourse about non-discriminatory role models founded on egalitarian partnership.*

5.3 Role models and the media

The media play a major part in conveying role models to a broad public. Television in particular promotes an image of women that is often incompatible with role models founded on egalitarian partnership. Private channels broadcast very popular shows that reduce women to external female attributes, e.g. "Germany's Next Topmodell" and "Deutschland sucht den Superstar". Women from migrant backgrounds confront multiple discrimination. Films offer many parts for foreign women reflecting female stereotypes such as the "gentle Asian" and the "temperamental Latin American". By looking different they frequently evoke stereotyped archaic images, are shown to be victims of violence, domestic servants or service workers, and subject to condescending and insulting treatment.

⁹² Sinus Socivision: 20-jährige Frauen und Männer heute. Lebensentwürfe, Rollenbilder, Einstellungen zur Gleichstellung. A quantitative study by Sinus Socivision for the BMFSFJ, Heidelberg, February 2007.

⁹³ Cf. Introduction, p. 3.

The federal government points out that our democratic constitution does not allow it to compel the media to convey a positive image of women. It argues that, for example, the growing number of female TV presenters and detectives are helping to raise awareness and combat stereotypes. Most decisions about programming and launching new formats are still in the hands of male managers. The federal and Länder governments could take action to ensure that public broadcasters employ more women in managerial positions. Of nine public regional broadcasters, only two are currently headed by women. An appropriate number of women in decision-making positions could exert a positive impact on programming. Establishing a quota of women would be helpful.

Our recommendations to the federal government:

- *find ways to influence the publicly owned media with the goal of combating role stereotypes in this field;*
- *establish a quota for women in top managerial posts in the broadcasting companies.*

5.4 Sexism and racist sexism in advertising

In the last Shadow Report in 2003 the NGOs described the problem of sexist advertising in Germany in detail. Sexist advertising is still a serious problem with regard to the stereotyped depiction of women in the German media and in public spaces. Sexism is so widespread that it often fails to cause annoyance. As a result, children and teenagers in particular take stereotypes on board as cultural views of the male and female.

5.4.1 The Advertising Council

NGOs estimate that the number of complaints about sexist advertising sent in by individuals and civil society organisations has continued to rise. Many complaints are sent directly to the company that placed the advertisement. As described in 2003 and on previous occasions, the German Advertising Council, a self-monitoring body set up by the advertising industry, is an inappropriate committee to prosecute sexist advertising.⁹⁴ This makes it all the more surprising that the federal government, in its 2007 report, concludes that the number of complaints relating to sexist advertising has fallen. It backs its case by saying that 347 complaints were received by the Advertising Council in 2004, but only 216 in 2005 (6th Periodic Report Part B, Re. Paragraphs 20 and 21, Combating Stereotypical Role Models in the Media).

Recent information from the Council also indicates that the number of complaints it receives about sexist advertising continues to fall. Another focus of protest in 2007, once again, were claims of discrimination against women. 33% (89 cases) of the advertising criticised during the reporting year fell into this category – slightly less than the year before (38%). However, the Advertising Council found in two-thirds of these cases that there had been no discrimination.

It founded its rejection of complaints on the argument that “frequently exaggerated criticism by citizens” was usually based on “an overinterpretation of the visual or text elements of the advertisement concerned”.⁹⁵ The Advertising Council takes heart in/with the freedom of opinion and freedom of the press enshrined in Germany’s constitution (Basic Act) and the restrictions there that are not clearly defined. Notably, Article 5 (3) (“Art and science, research and teaching are free”) has been used in the past to justify texts and programmes with pornographic content. The line of argument is to trace the etymology of the word “Kunst” (art) to its origins in “Können” (skills or special ability). The Advertising Council similarly adopts this line of argument, and refers in its advertising guidelines to voluntary self-monitoring and its freedom to form its own opinion. It is not obliged to respect any instructions. This makes it seem an inappropriate body to counteract sexist advertising. EU advertising guidelines also guarantee advertising freedom, but there is a complete lack of regulation for advertising at the European level.

⁹⁴ Cf. Shadow Report on the 5th Periodic Report from Germany on CEDAW, 2003, p. 28ff.

⁹⁵ <http://www.werberat.de/> date of access: 8.6.2008.

5.4.2 Effective measures to contain sexist advertising

The following measures could be effective in containing sexist advertising. A more precise definition of sexist advertising would establish clarity about what advertising can be characterised as sexist. The NGOs feel it would be very important to establish an institution independent of the Advertising Council for the present Council is only responsible to the industry. As the German Advertising Council does not pre-screen advertising, there is an urgent need to insist on pre-screening. Decision-making bodies as yet to be formed should consist of women experts, including lawyers, to ensure that they have the technical competence required.

Our recommendations to the federal government:

- *establish effective, independent monitoring outside the Advertising Council and involve the private sector in these efforts in order to combat sexist and racist advertising;*
- *impose tangible, non-waivable financial penalties for sexist and racist advertising.*

6 Family policy

6.1 Support for families

6.1.1 Parental allowances

We welcome the principle that the federal government has been funding a parental allowance since 2007 (cf. Chapter 5.1). Role stereotypes still set their stamp on life in Germany and we express the hope that more fathers than in the past (merely 15%) will take parental leave. Unfortunately, some categories of migrant women cannot benefit from the allowance because their – legal – residence status does not entitle them to apply for it.⁹⁶

In terms of family policy, the announced legislation of subsidizing parents who take care of their children at home does not make any sense. This promotes a model of the family in which the mother refrains from gainful employment in order to raise a child. This hampers equality for women rather than promoting it. This frequently called “kitchen stove bonus” (Herdprämie) should be completely rejected.

Our recommendations to the federal government:

- *grant migrant women unrestricted access to the parental allowance;*
- *refrain from introducing state funding for looking after children at home.*

6.1.2 Child allowance/Tax exemption for children

Child allowance is still too low in Germany and is not enough to cover a child’s basic needs. Deducing the child allowance from social welfare paying is detrimental to the child’s wellbeing and these provisions discriminates in particular single mothers (women still account for 85% of lone parents). There is a substantial gap between child allowance at 154 Euros and the highest recovery of taxes for a child that accrues to high earners at 230 Euros.

The way the cost of child care is taxed in Germany is as well unconstitutional. Only a fraction of child care costs can be deducted from taxable income.⁹⁷ To promote a gainful employment of women, child care – which is a prerequisite for taking a job – should not be treated any differently from other costs like transportation costs or other expenditures of working people as a result of their job. Working mothers are obliged to contribute to child care costs from

⁹⁶ These are migrant women whose status has been tolerated or exceptionally granted, or who are granted a resident permit to study or train, foreign residents who have been granted their resident permit for a previously specified, limited period of work. There is also no entitlement to parental allowance for women granted the right to stay under the hardship provision § 23a or under the provisions in §§ 24, 25 para. 3 to 5 for female witnesses in proceedings against human trafficking or former female witnesses who are unable to return due to a threat to life or limb. These provisions are unconstitutional.

⁹⁷ Cf. § 35a Einkommenssteuergesetz

their net income, otherwise they would not be able to take paid employment at all (cf. Chapter 3.5 Atypical employment).⁹⁸

Our recommendations to the federal government:

- *increase child benefit and stop including it in means-testing for social welfare payments;*
- *make child care costs fully deductible from taxable income.*

6.1.3 Child care

The child care services in Germany are in bad condition in terms of both supply and quality. Child care facilities in Germany are usually divided into three age groups: 0–3 years, 3–6 years and 6+ (until the 12th birthday). There are still too few places for children under 3, despite government efforts in recent years.⁹⁹ In mid-2005 there were 11.7 child care places per 100 children, predominantly in the new (eastern) states. The child care situation in western Germany is looking rather worse.¹⁰⁰

The supply with childcare facilities is better for children aged three to six. In the Länder of west Germany 85.7% of children receive child care, although only 15% attend the whole day. In the new Länder (East Germany) over half of these children remain the whole day.¹⁰¹ One problem with child care for the three- to six-year-olds is that organisation is still inflexible in many cases. In some cases precise hours and days have to be pre-booked at the start of the year. If too few women ask for hours before 8 a.m., the service is not provided. For women, who are still seen as almost exclusively responsible for looking after the children According to traditional roles in Germany (cf. Chapter 5.1 Role stereotypes still set their stamp on life in Germany), flexible hours of child care are more important than for men. The present situation does not encourage mothers to seek gainful employment.

The lack of after school programs attracts little attention in Germany. According to the planned reforms mentioned in the 6th Periodic Report (Chapter 16.3), new maintenance legislation is now in force since 1 January 2008. This means that in principle divorced women must earn a full income once the child turns 4 as the father no longer has to pay alimony for his ex-wife (cf. Chapter 6.2.1 Maintenance provisions).¹⁰² Schools in Germany that operate all day are very rare, and there are too few places in after-school centres. Finally, any afternoon care that is provided is usually confined to supervising the children without a midday meal or an opportunity to do homework with guidance. Here reality is blatantly at odds with the law, undermining the employment opportunities for women called for in women's policies.

Our recommendations to the federal government:

- *take action to ensure quality child care for all throughout the country that meets the actual needs of the children.*

6.2 Provisions after separation or divorce

6.2.1 Maintenance provisions

Every woman must have the chance to pursue gainful employment, including full-time, even if she has children. The government has to create the conditions to make this possible. Cutting alimony from an ex-spouse without improving the availability of child care places a dual burden on women which cannot be accepted.

⁹⁸ Statement of the German Women Lawyers Association (djb), cf. <http://www.djb.de/Kommissionen/kommission-recht-der-sozialen-sicherung-familienlastenausgleich/sn-26/>

⁹⁹ Zahlenpiegel 2007, Forschungsverband Deutsches Jugendinstitut der Universität Dortmund, <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/Zahlenpiegel2007.property=pdf,bereich=sprache=de,rwb=true.pdf>

¹⁰⁰ Federal government report on child care for the under-3s: "Kindertagesbetreuung für Kinder unter drei Jahren", July 2006, <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/TAG.property=pdf,bereich=rwb=true.pdf>

¹⁰¹ Social policy databank of the University of Duisburg/Essen; <http://www.sozialpolitik-aktuell.de/datensammlung/7/ab/abbVII31.pdf>.

¹⁰²General comments: <http://www.djb.de/Kommissionen/kommission-zivil-familien-und-erbrecht/St07-19-EU-Scheidung-Unterhalt/>.

The principle of income-dependent maintenance payments produces unfair results for the (usually female) recipients when the (usually male) person obliged to pay the maintenance is self-employed. Clever presentation of the figures can often make the income look much lower than it actually is. The criminal offence defined in §170 of the Criminal Code is a “paper tiger”. Usually not even the most obstinate non-payers of maintenance are accused. The penal provision does not bite. Compared with other countries, notably the United States where violations of the duty to pay maintenance ranks as a highly criminal, rigorously prosecuted offence, the German provisions are essentially toothless.

If fathers do not pay maintenance, the Youth Welfare Office will pay maintenance in advance but only until the child's 12th birthday. After that, the child has to receive welfare. This age limit and as well the maximum duration of the advance (72 months) are far too low.

Our recommendations to the federal government:

- *create incentives in maintenance legislation to make fathers feel more responsible and play a greater role in child care;*
- *ensure that a mother who incurs child care costs in the course of her paid employment and cannot deduct these from her taxable income is indemnified for these costs by the child's father, because her paid employment relieves him of the burden of paying maintenance;*
- *impose a duty on the person paying maintenance to provide information to the court if income has been concealed, including a duty to declare income and transfers of wealth that have arisen in past years.*

6.2.2 Matrimonial property law

Although the federal government intends to amend the legislation on matrimonial property, the distribution of surplus can still be manipulated. As long as there is no duty to provide information during a marriage, manipulations of property will continue to happen when the marriage comes to an end. Women are unable to gain insight into their husband's asset position during their marriage unless the information is granted freely. This makes it all the easier to conceal wealth when the marriage breaks up.¹⁰³

Our recommendations to the federal government:

- *enable women to obtain full information about their husband's wealth during marriage;*
- *enable married women to obtain independent information from third parties when a marriage is terminating.*

6.3 Planned reforms to the Family Procedure Act and tougher rules on access to children and right of custody

The reform of child law in 1998 were originally intended to strengthen the right of children to maintain contact with both parents after a separation. In terms of women's policy, however, it has been a serious setback in highly contentious proceedings about the right of custody and the right of contact and access, especially since the Family Procedure Reform Act¹⁰⁴. It has increased the risk that after separation from a partner (especially a violent one) the mother and child will suffer damage to their health or face a threat to their life. Not regarding this fact, which has been proved by research, family courts immediately after the parents' separation force women who have experienced violence and their children to maintain contact with a violent or threatening ex-partner and father. Again and again, women or children have been injured or killed by ex-partners in direct connection with the application of the law on the right of custody and of access. There is an urgent need to compile statistics.

When the law on right of custody and access is applied, contact with the father is often imposed against the will of the child(ren) and despite terrible fear. This universal practice is

¹⁰³ Cf. djb opinion at: http://www.djb.de/Kommissionen/kommision-zivil-familien-und-erbrecht/St_08-02_Zugewinnausgleich/.

¹⁰⁴ Gesetz zur Reform des Verfahrens in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, BT-DS 16/6308.

founded on the idea that contact with both parents is good for children. The quality of the contact, the experience of the child and the father's concrete behaviour are not taken into account. This is clearly at odds with the wellbeing of the child, contrary to the intention behind the law of making the child's protection and wellbeing a priority. Access law has placed the father's rights higher than the child's wellbeing and the mother's protection. In many cases the mother is compelled to assuage her children's fears and trauma and to stabilise the children again after conflict-ridden contact. De facto children are denied their own right to refuse contact. Courts very often assume, rather, that a child's voluntary refusal is the result of the mother's manipulative influence. If mothers refuse contact with the father to protect a child from further harm, this often leads to court enforcement (e.g. §33 Family Procedure Act) ranging from the compulsory hand-over of the child to financial penalties, withdrawal of guardian's rights or even custody.¹⁰⁵ Whereas children can be forced in this manner to see the father, a father is entitled according to recent case law from the Federal Constitutional Court to refuse to see the child.¹⁰⁶

The experience of women's shelters and women's counselling services indicates that the Protection from Violence Act has to all intents and purposes been rendered ineffective by these so-called provisions on guardianship and access.¹⁰⁷ The Protection from Violence Act seeks to protect women and children from violence more effectively and must have primacy over enforced contact. Protecting mothers and children from those who inflict violence must have absolute priority.

Our recommendations to the federal government:

- *define domestic violence in the text of the law as an explicit criterion for denying guardianship and contact;*
- *amend §1631 Civil Code to this end with the formulation: "Domestic violence poses a threat to the wellbeing of the child."*

6.4 Rainbow families

The federal government claims on page 72 of its report (Chapter 16.1) that the Registered Partnership Act abolishes further forms of discrimination against same-sex partnerships. It glosses over the fact, however, that there is now equality of duties, but not equality of rights. This lack of equality encountered by same-sex partnerships is a particular disadvantage for children in what are now called rainbow families. Thousands of children in Germany are now growing up with a lesbian mother or homosexual father. Many years of research show that these children develop well in every respect. But the rights which appear self-evident to families where the parents are married are still denied to registered partners with children. In financial and fiscal law and in many facets of family planning there is blatant discrimination against same-sex families which places a particular strain on provision and hedge of the children. A married heterosexual couple can, for example, pool their tax returns (the "splitting" formula), whereas a family founded by two mothers is unable to do so. This means that a family with two female partners earning a gross income of 3,000 Euros a month will have about 300 Euros less available.

The social parent is regarded as childless in all social and financial contexts (e.g. health insurance and pension rights), even if the mothers are registered partners and share child care and bringing up the children on an equal basis. For the children this constellation leaves a large gap in protection with regard to maintenance rights, inheritance or in the event that the legal parent should die. Registered partners have also not been granted equal status in the law of descent. If a child is conceived by artificial insemination with donor sperm in a marriage, s/he is legally considered to be the child of the two spouses who wanted the child,

¹⁰⁵ *ibid*

¹⁰⁶ Cf. djb press release at: http://www.djb.de/Kommissionen/kommision-zivil-familien-und-erbrecht/PM08-06_Umgangszwang/.

¹⁰⁷ Cf. djb opinion at: http://www.djb.de/Kommissionen/kommision-zivil-familien-und-erbrecht/St_08-01_FGG-Reformgesetz/ and BIG opinion at: http://www.big-interventionszentrale.de/mitteilungen/pdfs/0803_stellungnahmeFGG.pdf.

regardless of biological connections. This is not the case for registered partners, where the child has to be adopted like a step-child.

Joint adoption is reserved in Germany for married heterosexual couples (§1741 II 1 Civil Code). Lesbians and gays may adopt as individuals, although their chances are slim. The European Court of Human Rights in Strasbourg ruled for the second time in January 2008 that there must be no discrimination of persons seeking to adopt a child on the grounds of their sexuality. All these laws and provisions violate Art. 14 and Art. 8 of the European Convention on Human Rights.

Our recommendations to the federal government:

- *grant equality to registered partners under the law governing income and taxation;*
- *extend right of descent to registered partnerships;*
- *include registered partnerships in maintenance law;*
- *grant lesbians in registered partnerships equality when accessing the services of sperm banks;*
- *create a right to joint adoption for registered partnerships.*

6.5 Forced marriages

The federal government states on page 71 of its report that forced marriages constitute a grave violation of human rights and, among other things, that the legal status of victims should be improved. It is currently examining whether this will require changes in residence rights. Forced marriages clearly violate the right to choose a spouse and enter freely into marriage enshrined not only in Art. 16 (1) CEDAW, but also in the UN's Universal Declaration of Human Rights of 1948 (Article 16 (2)), the International Covenant on Civil and Political Rights of 1966 (Article 23 (3)). Forced marriages are also practised in Germany. There are no reliable statistics on this. "A forced marriage signifies the denial of free self-determination in a key area of personal choice with far-reaching consequences for the victim's self-esteem and her opportunities to develop and shape her life."¹⁰⁸

A forced marriage, by definition in itself a violation of human rights, entails further violations. The women concerned often report that they were raped and sexually abused by their husbands and thereby violated in their rights to sexual self-determination and physical integrity. This can result in severe impairment of the right to physical and mental health. Furthermore, these young women and girls are denied the right to education and free access to a profession.

As the 6th Periodic Report enumerates under 16.2, the federal government has introduced a variety of measures, especially during the last legislative period.¹⁰⁹ But there is still a great dearth of opportunities for women affected by forced marriage to protect themselves. A spouse who arrives in Germany to join a spouse will not be granted her/his own residence permit until the marriage has remained legally in force for two years. For migrant women threatened by violence, this makes it harder to resolve the situation. The current hardship clause¹¹⁰ is rarely applied in practice. Recognising a case of hardship is thwarted again and again by the rules of evidence (cf. Chapter 7.1.1 Protection against).

If the woman is forced into a marriage abroad, she must return to Germany within six months, otherwise she will lose her previous legal entitlement to stay under §51 (1) no. 7 of the Residence Act. This even applies if the woman was held outside Germany against her will. Return is also prohibited de facto for these women because she must be able provide for her own livelihood to re-enter the country. Usually it is the family that guarantees to provide

¹⁰⁸ Zwangsverheiratung in Deutschland, Reader des DIMR, p. 14.

¹⁰⁹ *ibid.*

¹¹⁰ The requirement that a marriage must have been valid for two years may be waived if this is necessary to avoid particular hardship. Particular hardship means, *inter alia*, if continued adherence to the marriage cannot be reasonably expected because it would be detrimental to concerns worthy of protection.

for her upkeep, but as it would have been her own family that forced her into the marriage, obviously no provision can be expected from that quarter.¹¹¹

Our recommendations to the federal government:

- *tackle the task of preventing forced marriages, and as long as they continue open the door for the (young) women and girls concerned to escape;*
- *strengthen the legal status of migrant women (who experience violence) by means of criminal law and reforms¹¹² and fund and advertise low-threshold counselling for such women in their native language;*
- *continue academic research into forced marriage in the form of a study to verify the still patchy information available about the causes, manifestations and extent of the phenomenon;*
- *include forced marriage in the wording of the hardship clause in §31 (2) Residence Act so that this provision can be used in the case of migrant women who are victims of violence/forced marriage;*
- *extend the right to return beyond six months to protect the victims of forced marriage.*

7 Violence against women

Combating violence against women is an indispensable aspect of eliminating discrimination against women and essential to achieving acceptance for equal rights and autonomy. The NGOs therefore welcome the measures and programmes in the federal government's Actions Plans I and II which set out to combat violence against women and hope for a comprehensive and timely implementation. Each measure, however, needs to be evaluated meticulously.

We also welcome the work on statistics and research which has already commenced. The NGOs stress again the importance of submitting the information and data requested in Concluding Comment no. 23. We still lack meaningful figures on homicide in relation to women and children in the context of domestic violence as well as the extent of domestic violence and sexualised violence reported to the police, including prosecutions and outcomes of legal proceedings. The same applies to meaningful data on the actual occurrence of forced marriages, genital mutilation, and violence in institutions (homes for disabled people, psychiatric wards, etc.) and during care in the home or community.

The NGOs are very concerned that existing, and absolutely essential support systems such as shelters for women, non-residential counselling centres lack sustained funding and are often threatened with cuts or closure.

The Federal government's shift of priorities from women-orientated to family-orientated policies (cf. Chapter 1) will, in our view, particularly cause disadvantages for women who experience violence, and for whom the family home is not infrequently the most dangerous place of all.

7.1 Domestic Violence

7.1.1 Protection against Violence Act

Chapter 5.5 of the 6th Periodic Report states the positive effect the introduction of the Protection Against Violence Act has had. Yet, the principle that "the one who does the hitting has to go" often does not apply in practice (6th Periodic Report, *ibid*). We note obstacles for women experiencing violence in substantive as well as in procedural law and as a result many women feel demoralised and waive their rights. The many procedural challenges arise from the different sectors involved (police guidelines, decisions in civil law, servicing court orders, enforcement in case of violation, criminal proceedings). Thus, in many cases it is not

¹¹¹ § 37 Residence Act makes the right to return conditional on certain requirements, such as independent means.

¹¹² Cf. die Stellungnahme des djb zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der EU in: <http://www.djb.de/Kommissionen/kommission-oeffentliches-recht-europa-und-voelkerrecht/St-07-08-Zuwanderung/>.

straightforward for women to “attain justice with fewer complications and less delay” (6th Periodic Report, Chapter 5.9 Procedural Law). A number of causes are responsible for a reluctance to take legal action: lack of trust in judicial processes, ambivalence, and fear of further violence.¹¹³ In addition a significant number of women are not aware of their rights and existing support systems.

Once the federal government became aware of these problems, measures such as public relations campaigns, action plans, legislative amendments, and working groups were introduced. We welcome these measures but stress that they should be expanded continuously. In chapter 5.2 of the 6th Periodic Report, Combating Violence against Women, reference is made to the federal government’s second plan of action, which is restricted to legislative measures relating to the standardisation of jurisdiction, the introduction of stalking as a criminal offence as well as compatibility between protective measures in the Protection Against Violence Act and the law applying to the regulation of parental guardianship and visiting rights.¹¹⁴ The latter is not being implemented because of statutory provisions (also relating to the forthcoming reform of proceedings in family law¹¹⁵) and case law in favour of visiting rights (cf. Chapter 6.3 Planned reforms to the Family Procedure Act and tougher rules on access to children and guardian’s rights).

Missing are measures to facilitate submitting proof in form of *prima facie* evidence, i.e. evidence that is sufficient to establish the fact in question unless rebutted. According to burden of proof regulations in civil law procedure an application is rejected if one testimony stands against another. As this is a frequent scenario in cases of violence behind closed doors, an adjustment is necessary. It is often impossible for women to supply proof or proof of sufficient quality (e.g. doctors’ certificates) unless they are able to assume often enormous financial risks. Frequently civil law courts either take no notice of police records or the public prosecutor’s office does not consent to the transmittal of files with reference to pending investigations. It would be promising to explore the possibility of a civil court’s duty to seek information from the police or the public prosecutor’s office in this respect using an analogue to the duty of hearing youth welfare offices. The legislative range of action does not cover these reservations.

The Protection Against Violence Act contains a central problem, namely the inadequate effect it has on persistent and extremely violent perpetrators. Enforcement of judgments takes effect after a second legal action which requires a full burden of proof to demonstrate a violation has taken place. At this stage the limitations of sanctions in civil law proceedings are exposed. Perpetrators often lack financial resources, so that the fine imposed is then paid out of the family income – which is also the woman’s income. Arrest is unusual. The threat of a penalty in the Protection Against Violence Act is not severe, as in the case of a first offence there is no expectation of serious repercussions and in the event of repeat offences or very serious violence the first offence is seen as insignificant compared to grave offences committed later. On the whole, pre-trial detention or other immediate repercussions are deemed inappropriate. When weighing up the rights of the perpetrator and those of the injured person it tends to be the perpetrator’s rights which carry more weight. There is a definite need for a change in the law and at the same time for a coordinated support system for the women.

Migrant women who have been married for less than two years and live with their husband, whether German or not, have a further problem. Depending on their residence status, intervention under the Protection Against Violence Act can be counterproductive. Lack of explicit hardship criteria in residence law in relation can result in an order to bar the husband from the marital home being interpreted as a break-up of the marriage. This in turn can lead to the woman’s residence status being restricted temporally or terminated altogether. A

¹¹³ Rupp, Marina, “Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz”, commissioned by the Federal Ministry of Justice, Bundesanzeiger Verlagsgesellschaft, Köln 2005, Executive summary, p. 305 f. (German only).

¹¹⁴ Federal government action plan II to combat violence against women, pp. 32-33, available in English.

¹¹⁵ Gesetz zur Reform des Verfahrens in Familiensachen und in den Angelegenheiten der freiwilligen Greichtsbarkeit, BT-DS 16/6308.

further problem in implementing the Protection Against Violence Act for migrant women is that there is no mandatory requirement for interpreters.

The specific needs of women with disabilities are also not considered sufficiently in the Protection Against Violence Act, in particular where the perpetrator is also the personal assistant.

Our recommendations to the federal government:

- *formulate the facts of an eviction order by the police and civil law courts so that they meet the requirements of the hardship clause under § 31 (2) of the Residence Act;*
- *improve the efficacy of these measures, at the very least by adding a provision to the rules of implementation for the Residence Act, but preferably by the introduction of an rule example into the law;*
- *ensure an agreed and coordinated approach to the implementation of the Protection Against Violence Act with participation of all relevant bodies and local agencies as well as the necessary funding required.*

7.1.2 Criminal penalties

Domestic violence is frequently not pursued in the courts due to, for example, "lack of further evidence" following recourse to the right to refuse to give evidence, or the case may be referred as private legal action as it is lacking public interest. This state of affairs could be changed by improving the support system for the injured party in criminal proceedings (cf. Chapter 7.1.3 Victim protection in criminal proceedings) but also by securing independent evidence. There is a need, for example, for immediate medical examinations by specialists to be undertaken as a matter of course, for improvements in securing the scene of the crime, for independent witnesses to be interviewed and for a prompt response to the offence.

The protection against stalking stressed in the Periodic Report demonstrates how many different offences are involved in domestic violence and stalking (6th Periodic Report, Chapter 5.8). This density and complexity could be better tackled by introducing a single cumulative offence of domestic violence, which would also lead to better management in criminal proceedings.

Our recommendations to the federal government:

- *establish domestic violence as a single cumulative criminal offence which reflects the complexity of circumstances.*

7.1.3 Victim protection in criminal proceedings

CEDAW's recommendation to guarantee victims of violence protective rights to safeguard their privacy and dignity¹¹⁶ has not been sufficiently implemented as far as victim protection in cases of domestic violence is concerned. Criminal proceedings are still a traumatic experience for women experiencing domestic violence.

Insufficiently trained members of staff of both police forces and the judiciary can exacerbate the trauma. The women affected are often bewildered by proceedings. It is also the rule rather than the exception to interview women several times.

The woman's safety and protection is often given insufficient consideration, for example when they are interviewed in the presence of the perpetrator, when they are not informed of either the date for or the outcome of a review of a remand in custody, or when a warrant of arrest has been rescinded. Following conviction the perpetrator often has to wait until the prison service can accommodate him. This means that women continue to live in fear, as threats and harassment continue; as a consequence they seek refuge in shelters. The long waiting times are punishing.

In cases of domestic violence, in particular, there is no provision for qualified witness support for the entire duration of the proceedings. It is imperative that qualified and professional

¹¹⁶ United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation no. 19, Special Recommendation no. 24 b.

support, free of charge, is made available on a universal basis, so that women can be appropriately informed about their rights and procedural matters from the beginning of legal proceedings and are offered qualified support to help them to stay calm / stable / balanced and feel safe.

7.1.4 Stalking

A new offence (Section 238 of the Criminal Code, Criminal Liability in cases of Persistent Persecution) came into effect on 31 March 2007. We welcome this as it has led to a greater public awareness of stalking. As yet there are no statistics on how this new law is being applied. Judging by the experience of practising consultants, however, there appear to be difficulties in implementing the law. Women are still turned away by the police when reporting incidents “because so far nothing has happened”, meaning that no physical violence has taken place. A major problem arises when the police do not consolidate multiple reports of assault into one case of stalking but treat each one as an individual offence. Not only does this hinder prosecution but it also makes it less likely that potential risks to the victim of stalking will be recognised. It is urgent that the police train specialists capable of taking charge of a stalking case from the beginning and seeing it through.

Frequently public prosecutors and courts deal with stalking cases with a significant delay, thus prolonging the harassment. A further problem is that, according to the Crime Victims Compensation Act as it is operated at present, compensation is paid to victims only where actual physical violence is involved, but not as a matter of principle for victims of stalking.

There is a similarity in the way the Protection Against Violence Act is applied to cases of domestic violence and to stalking offences: the problems in implementation can result in insufficient protection for the women (cf. Chapter 7.1.1 Protection Against Violence Act).

Our recommendations to the federal government:

- *secure universal further training for professionals, particularly in the police and judiciary, whose work involves stalking cases, to enable them to understand the phenomenon, the dramatic consequences for the victims and the correct application of legal instruments;*
- *ensure that stalking cases are dealt with by trained specialists in the police and the judiciary;*
- *ensure that the law states clearly that stalking constitutes an assault under § 1 of the Crime Victims Compensation Act, so that victims of stalking can be paid compensation. This law should be adapted to cover victims of stalking and should be applicable to the situation of victims of trafficking.*

7.2 Sexualised violence against women and girls

Since the Protection Against Violence Act came into force, public concern about domestic violence has increased. Much as we welcome this, it has coincided with a remarkable decline in public and political attention to sexualised violence against girls and women, also reflected in the 6th Periodic Report.

On the one hand this is a problem with regard to the situation of women experiencing sexualised violence outside partnerships as it is receiving less and less attention. On the other hand this focus contributes to women experiencing domestic violence from (ex-) partners not reporting the sexualised violence as a part of it, also the problem is not being recognised by specialists and, consequently, remains undetected. Given the reactive traumatic psychological consequences that sexualised violence causes, this is a deplorable development which must be countered urgently. Adult women who have experienced sexualised violence as children/teenagers or are experiencing it still, like girls who are affected by it, need urgent specialist psycho-social support in the same way that women who have been raped need help. The legal and political measures for the protection of women as

recommended by CEDAW¹¹⁷ must also apply fully and explicitly to cases of sexualised violence, without restriction and in an appropriate form.

Girls and women who are victims of offences against sexual self-determination (rape) need immediate medical attention as a first step. They can experience long waiting times, often the medical staff are not sufficiently trained, and often the documentation of the cases is inadequate and unsuitable for use by the courts. These practices can cause secondary damage, and it is therefore urgent to provide further training for medical practitioners.

The decision to report an offence and the resulting criminal proceedings increase the physical and psychological distress for girls and women. So as not to pressurise women into instant decision-making, the possibility of preservation of evidence on an anonymous basis should be adopted – this has already been done in some regions of Germany. The reformed Victim Protection Act, in force since 2004, attempts to limit the traumatic experience when reporting an offence and during criminal proceedings by, for example, the presence of a trusted person during questioning, the option of giving evidence on video and the provision of a women's room for witnesses. Nevertheless, there is still an enormous gap between the law and how it is practised. This gap must be closed.

Specialist advice agencies which support women during the process of investigation and trial frequently report a dismissal of proceedings. At present it is not possible to determine the extent of this practice; it is therefore imperative that relevant statistics are compiled. Reliable statistics and also research are needed into the use of "knockout drops" or other sedating drugs, which has increased steadily in cases of sexualised violence in the recent past.

The federal government's action plan for the protection of children and young people from sexualised violence and exploitation¹¹⁸ should address the particular needs of children¹¹⁹ and contribute effectively to combating abuse of this nature.

A working group consisting of federal and state representatives to consider the above-mentioned action plan was set up and scheduled to meet twice each year. No meetings took place in 2007. According to government department sources, combating sexualised violence against girls and boys is at present not a priority as there are other concerns that take precedence. A similar approach is evident in relation to the 2004 plan to initiate the preventative campaign "Look, Act, Help", which has never been put into operation; to this day there are no agreed quality criteria for nationwide online advice services. While existing quality assurance models have been successfully put into practice in projects against sexualised violence¹²⁰, this experience has so far not fed into the implementation of quality assurance indicators or their advancement.

Above all, the action plan has still not responded to an explicit demand for permanent, vital funding to ensure that advice and therapy for girls experiencing sexualised violence can be preserved and expanded. Other items that have not been delivered are the planned curriculum for further specialist training on sexualised/structural violence for staff working in institutions, and the participatory model described in the action plan as a preventative measure to combat sexualised attacks.¹²¹ Across the board there has been no funding for projects researching the issue of sexualised assault.

In the light of the basic principles of gender politics, we deplore the extensive neglect of these aspects in the measures listed in the federal government's action plan for the protection of children and young people from sexual violence and exploitation.

¹¹⁷ *ibid*, Special Recommendations no. 24 b-r.

¹¹⁸ BMFSFJ, 2002.

¹¹⁹ The focus in the following paragraphs is on girls, as girls and boys face different problems.

¹²⁰ Cf. the quality standards for working in feminist counselling centres dealing with sexualised violence.

¹²¹ The funding for a project by BAG FORSA, a national network of feminist projects to combat sexual violence, on how staff respect young people's personal dignity in residential institutions was refused by the BMFSFJ in February 2008.

Our recommendations to the federal government:

- draw up a comprehensive government strategy to protect girls and women affected by sexualised violence and take responsibility for its implementation;
- improve the implementation of existing practices and possibilities to protect victims;
- undertake a careful examination of the circumstances, without time pressure or working towards common consent, until visiting rights governing contact between an allegedly violent parent and the affected children have been resolved under the reformed Family Procedure Act;
- provide and fund further training for specialists who work with affected girls and women as part of their job;
- commission and publish robust statistics and research, including studies of legal custom and practice in cases of sexualised violence;
- include the substance gamma-butyrolactone (liquid ecstasy)¹²² in the Narcotics Act and ensure that this substance does not fall into the hands of private individuals;
- revitalise the working group on protecting girls and boys from sexual violence and exploitation with representatives from federal and regional state level, and ensure the full implementation of the action plan for protecting children and young people from sexual violence;
- consider gender aspects in every measure taken to combat sexualised violence against girls and boys and drew consequences from these.

7.3 The specific impact of violence on women with disabilities

Women with disabilities are particularly subject to violence, especially sexualised violence. To date, however, there are no representative statistics for Germany.¹²³

There is a complete lack of barrier-free infrastructure to help women with disabilities after they have experienced violence. Women with disabilities are not perceived as subject to violence. This often means that there are no suitable facilities available. Medical staff frequently fail to register the effects of violence because injuries or unusual behaviour are evaluated as aspects of the disability. Institutions for disabled people usually have no preventive programme or schedules for dealing with instances of violence. In addition to this, only 10% of women's shelters provide for barrier-free access, at least in part. There is a similar picture for women's advice centres. There are not enough suitable therapies provided for women who have experienced violence, especially if they have learning difficulties. If offences are ever reported at all, statements made by women with disabilities are often considered unreliable.

In 2003 new legislation on sex offences became effective, with new minimum penalties for raping persons unable to resist and new penalties for staff convicted of sexual abuse in semi-residential institutions. The authors very much welcome these reforms.

The Protection Against Violence Act of 2002 and a first representative study in 2004 failed to take account of the experience of women with disabilities. A separate academic study on the extent of violence against girls and women with disabilities is due to begin in 2008.

Our recommendations to the federal government:

- include the situation of girls and women with disabilities in all (political) measures to combat violence against women (disability mainstreaming);
- provide public funds to expand barrier-free access to women's shelters, women's counselling centres etc. (cf. Chapter 7.7 Funding protection and support for women affected and threatened by violence and their Children),

¹²² GBL (gamma-butyrolactone) is a precursor substance of GHB (gamma-hydroxybutyric acid) that is converted into GHB in the body. Depending on the dose, the two substances can have lethal effects, e.g. sleepiness, loss of memory, confusion, paralysis of the motor system, even coma or death.

¹²³ An Austrian study demonstrates that 60% of women in institutions have experienced violence, cf. Bundeskanzleramt Abt. I/10 (ed.): "Weil das alles weh tut mit Gewalt. Sexuelle Ausbeutung von Mädchen und Frauen mit Behinderung", Wien 1996.

- draw up binding prevention and management strategies for institutions;
- educate girls and women with disabilities (at school, in disabled welfare institutions etc.) about sexuality, (sexual) violence and setting limits, and provide forms of assistance;
- take action to ensure awareness-raising and training for all relevant professionals (health professionals, police, prosecutors, judges, teachers etc.) about the situation of girls and women with disabilities and training for staff in institutions for the disabled to enable them to deal with (sexual) violence;
- enable the development and funding of a preventive nationwide network to protect girls and women with disabilities from violence.

7.4 Trafficking in women

7.4.1 The World Cup

The campaigns funded by the federal government around the World Cup in Germany were intended to raise public awareness. Two offered protection measures in terms of hotlines for trafficked women, as there were fears that the number would be significantly increasing. The success of these measures has been a controversial issue; some NGOs argue that the figures published in advance were absurdly high and that campaigns on other subjects would have been more useful. The – government funded – evaluation of the hotlines has shown that little use was, indeed, made of them.¹²⁴

Our recommendations to the federal government:

- ensure that support for the work of NGOs is not confined to once-off campaigns around isolated events but can be designed to combat trafficking in women and support those affected sustainably and continuously.

7.4.2 Legal provisions in the Immigration Act¹²⁵

Sweeping changes to the Immigration Act entered into force in August 2007, partly to implement Directive 2004/81/EC (known as the Protection of Victims Directive). Aspects of residence status still prevent an appropriate treatment of the women concerned.¹²⁶

7.4.2.1 Residence permits for third-country nationals

§ 25 (4a) sentence 1 of the Residence Act provides that victims of human trafficking who are not citizens of an EU member state *can* be granted a residence permit if they agree to cooperate as witness in future criminal proceedings and break off all contact with the accused. This gives the authorities discretionary leeway once all the statutory requirements have been met. Another problem is that this residence status is marked in passports and identity papers. This makes it immediately apparent that the holder has been trafficked. This can endanger life and limb and result in discrimination; it is also questionable under data protection rules.

Our recommendations to the federal government:

- introduce a legal entitlement to residence for those concerned;
- establish a residence permit that does not depend on willingness to cooperate with law enforcement, as this places the emphasis on the criminal prosecution and not on the protection and dignity of the woman concerned¹²⁷;

¹²⁴ Cf. 6th Periodic Report, Chapter 6.3 and the IOM evaluation of the hotlines; “Trafficking in Human Beings and the 2006 World Cup in Germany”, IOM Migration Research Series Volume 29, available at <http://www.iom.int/germany/downloads/World%20Cup%20Study%20Report.pdf>; date of access: 5.5.2008, and also the unpublished study by the Katholische Hochschule für Sozialwesen Berlin, compiled by Dr. Kavemann, Barbara; Kretschmann, Johanna and Rabe, Heike.

¹²⁵ Cf. 6th Periodic Report, Chapter 6.4.

¹²⁶ Cf. Updated comments by KOK e.V. on the proposed text for an Act implementing EU residence and asylum directives.

¹²⁷ Comments of the Deutscher Juristinnenbund (djb, Association of Women Lawyers in Germany) of 18.5.2007, p. 7, <http://www.djb.de/Kommissionen/kommission-oefentliches-recht-europa-und-völkerrecht/St-07-08-Zuwanderung>; date of access: 5.5.2008.

- seek ways to ensure that women cannot be recognised from their documents as victims of human trafficking (see Hamburg¹²⁸);
- grant the unconditional right to stay after the trial has ended.

7.4.2.2 Time to consider and stabilise (§ 50 (2a) Residence Act)

A third-country national who has been trafficked is legally granted at least one month of residency right to decide whether she prefers to leave Germany or to cooperate with law enforcement. While it is gratifying that the Residence Act now provides explicitly for this period to consider, experience tells us that a woman in this situation needs more time to reflect in peace and come to a considered decision about whether she is prepared to appear as a witness.

Our recommendations to the federal government:

- introduce a period of at least six months, granted according to well-defined criteria, for a woman to stabilise and consider her choice.

7.4.3 Maintenance under the Asylum Seekers Benefits Act

As the 6th Periodic Report mentions in 6.3, victims as witnesses from non-EU countries receive benefits under the Asylum Seekers Benefits Act. These benefits are not sufficient to provide these women with the appropriate care demanded by their situation. Experience at the counselling centres demonstrates that the sum of almost 200 Euros is too small to pay for her basic keep, that often no arrangements are made to place her in protected accommodation and that medical provision is limited to emergency treatment and therefore inadequate.¹²⁹ Moreover, the women concerned usually have no access to education or occupation. In many cases access to the labour market is restricted.

Furthermore, there is a serious need to improve the arrangements for granting state benefits to women from the new member states of the European Union. We are seeing in practice that sometimes no benefits at all are paid, and in other cases only payments under the Asylum Seekers Benefits Act. EU citizens, contrary to the opinion of many public agencies, are entitled to benefits under Social Code Book II (unemployment benefit) or Book VIII (social welfare).¹³⁰

Our recommendations to the federal government:

- create clear nationwide mechanisms to grant women who have been the subject of trafficking benefits appropriate to specific demands by meeting their essential needs and providing maintenance, accommodation and medical care;
- grant women who have been the subject of trafficking access to public education and training facilities, to the labour market and available employment schemes;
- take action to ensure that the provisions of the Social Code are applied in accordance with the law when granting state benefits to EU citizens who have been the subject of trafficking in women.

7.4.4 Prostitution Act (6th Periodic Report, Chapter 6.6)

The adoption of the Prostitution Act has neither fundamentally improved working conditions for prostitutes nor contributed much to combating human trafficking. These objectives cannot be achieved by making clients criminally responsible.

Our recommendations to the federal government:

- implement the provisions of the Prostitution Act in other statutes, involving the counselling centres for prostitutes in the consultations for this, and create good, legally binding

¹²⁸ In Hamburg identity papers are merely stamped “Residence acc. to § 25 Residence Act” and not “Residence acc. to § 25 (4a) Residence Act.

¹²⁹ Most recently confirmed by a survey of KOK affiliates in December 2007.

¹³⁰ Dr. Bosse, Rolf; Schmidt, Annette: “Leistungen nach SGB II/XII für Angehörige eines EU-8-Mitgliedstaates, Bulgariens oder Rumäniens, bei denen konkrete Hinweise vorliegen, dass sie Opfer von Menschenhandel geworden sind”, KOOFRA Studie, July 2008, available at www.koofra.de.

*standards for prostitutes' working conditions, a nationwide network of good counselling services, with appropriate assistance for prostitutes willing to leave the trade.*¹³¹

7.4.5 Human trafficking for the exploitation of labour

Counselling centres are reporting a growing number of women who are very likely to have been the subject of human trafficking for labour exploitation. This applies above all to exploitation in the informal services sector, including the sex and entertainment industry, domestic services, au pair arrangements and the restaurant business. Germany lacks the structures to tackle this problem, and there is also little concrete assistance or awareness-raising.

Our recommendations to the federal government:

- *take up the challenge of human trafficking for labour exploitation, offer protection for those who have been exposed to it and adopt measures to combat this phenomenon*¹³²;
- *promote awareness among the public agencies concerned, employers and the general public and create and support the requisite partnerships and structures of the stakeholders involved.*

7.4.6 Foreign domestic workers in diplomatic households¹³³

NGOs continue to share the Committee's concern about the situation of some foreign domestic workers in diplomatic households. We, too, welcome the introduction of minimum standards which employers must accept when recruiting domestic workers. However, when employers do not recognise the need for these, such measures in practice are very hard to enforce. They do not suffice to protect servants from exploitation and/or human trafficking. This emerged clearly, for example, in the case of Ms Hasniati, a domestic worker who arrived in Germany after the protective measures took force. But she nevertheless spent 2½ years working and living under slave-like conditions.¹³⁴ Although her employer had clearly been exploiting her, he was not declared *persona non grata* by the German Foreign Office and is still serving as a diplomat in Germany.

The Foreign Office also supplies contradictory statistics on the real number of domestic workers in diplomatic households in Germany. In March 2008 there were allegedly 284 workers¹³⁵, but at the same time a list was published¹³⁶ suggesting that at the same time there were 5,955 members of embassies and consulates in Germany, which renders the figure of only 284 domestic workers rather unlikely.

Our recommendations to the federal government:

- *establish greater transparency about the magnitude of this form of female exploitation and create better protection for those who are subjected to it, combined with consequences for the exploiters.*

7.4.7 Commitment by destination countries to prevent human trafficking

One contribution to preventing human trafficking by means of "safe and informed migration" was the "Guide to Germany for Ukrainian Women Seeking to Migrate" that was funded by GTZ, which has been evaluated as a contribution to Germany's duty as a country of destination to provide information for migrants.¹³⁷ Distribution of this brochure was stopped

¹³¹ Howe, Christiane: "Bericht der Bundesregierung zu den Auswirkungen des Prostitutionsgesetzes. Anmerkungen und Empfehlungen für den KOK und seine Mitgliedsorganisationen", KOK Study, July 2008, available at www.kok-buero.de.

¹³² Those affected need better protection, especially information about and access to their rights, payment of outstanding wages and better access to counselling and support. Cf. Schwarze, Sarah: "Menschenhandel zum Zweck der Ausbeutung der Arbeitskraft", KOK Study, September 2007, available at www.kok-buero.de.

¹³³ Cf. 6th Periodic Report, Part B, Re. Paragraphs 30 and 31.

¹³⁴ Cf. e.g. <http://afp.google.com/article/ALeqM5gJMe5Iqciaue8-NH2PC6F6DTehvQ>, date of access: 15.4.2008.

¹³⁵ Parliamentary question by Irmgard Schewe-Gerigk (Bündnis 90/Die Grünen) et al., BT-DS 16/8288, March 2008.

¹³⁶ <http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/VertretungenFremderStaatenA-Z-Laenderauswahlseite.jsp>. March 2008, date of access: 15.5.2008.

¹³⁷ Spiess, Katharina: "Die Wanderarbeitnehmerkonvention der Vereinten Nationen. Ein Instrument zur Stärkung der Rechte von Migrantinnen und Migranten in Deutschland", Deutsches Institut für Menschenrechte, Berlin 2007, p. 78.

by the German Ministry for the Interior, and the impression was created that this was due to the not existing assessment on the moral or penal aspects of illegal immigration. Some NGOs are very concerned about this; they are worried that this hampers effective measures to prevent human trafficking.

7.5 Issues specific to female migrants¹³⁸

7.5.1 Migrant women and women from ethnic minorities¹³⁹

One criterion for granting a resident permit is the knowledge of German, to be acquired prior to entry (§30 (1) no. 2 Residence Act. Practical experience shows that many migrants, especially from rural areas, have no facilities to learn German. This above all affects women, as cultural and educational structures often make it harder for them to access language or other courses. Requiring evidence that a spouse seeking family reunion has a knowledge of German is not an appropriate tool for preventing or countering forced marriages (cf. Chapter 6.5 Forced marriages).¹⁴⁰

Our recommendations to the federal government:

- *establish nationwide provision of advice and assistance, provide more integration courses and abolish the criterion that requires an adequate knowledge of the language at the time the resident permit is issued.*

7.5.2 Residence restrictions

Foreign citizens who only possess a temporary resident permit or are being tolerated under special protection rules are subject to restrictions on their movements, which means that they must remain in one particular federal state or region (§61 Residence Act and §56 Asylum Procedure Act). For women who have been the subject of violence these residence restrictions are a huge problem and an obstacle to helping and supporting them appropriately. If violence has occurred in the home or if a woman has been forced into marriage or threatened with forced marriage, she needs to be accommodated outside the town or state where she has been living. These residence restrictions also hinder the integration of migrant women that the federal government would like to see (6th Periodic Report, Chapter 13.4), making it harder to seek work, limiting mobility and hampering social and family contacts beyond the place of residence.

Our recommendations to the federal government:

- *remove residence restrictions for women who have been the subject of violence and may be in danger if they stay in the area.*

7.6 Exploiting the issue of violence against migrant women to restrict immigration

NGOs have been deeply concerned to see how the issue of violence against migrant women is being used by the federal government to justify measures to limit immigration, as recently happened when more restrictive provisions were included in the Residence Act of 18.8.2007. In the name of protecting victims of forced marriage – for the most part women – a number of measures were adopted which give reason for concern from a human rights perspective. These provisions include:

- restricting the age a person may enter Germany for the purpose of family reunion to 18 (§30 (1) no. 1 Residence Act) if, on the other hand, a person living in Germany is allowed

¹³⁸ Cf. also Chapter 6.5 Forced marriages.

¹³⁹ Cf. 6th Periodic Report, Part B, Re. Paragraphs 30 and 31.

¹⁴⁰ Cf. "Aktualisierte Stellungnahme des KOK e.V. zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union" of 5.6.2007, available at www.kok-buero.de, date of access: 5.5.2008.

to marry at the age of 16 with the parents' consent. This provision is both unconstitutional and problematic in terms of human rights.¹⁴¹

- waiving the requirement to prove knowledge of German (§30 (1) no. 2 Residence Act, cf. Chapter 5.1) for citizens from certain states¹⁴², university graduates¹⁴³ and EU citizens¹⁴⁴. The logic underlying this rule is incomprehensible and discriminatory.
- a failure to review the proportionality of measures intended to prevent forced marriage that encroach seriously on the rights of a far larger group of migrants.

It is regrettable that the public's and government's interest in the issue of violence against migrant women has not led to improvements in their situation. Indeed, an impression is gaining ground that these measures make immigration harder for certain groups who are already marginalised. Rather than offering better assistance to those affected and improving their legal status, rules are adopted which neither prevent violence against migrant women nor offer adequate protection to migrant women who have been the subject of such violence.

7.7 Funding protection and support for women affected and threatened by violence and their children

Although, 32 years after the first women's shelters were founded in Germany, violence against women, especially domestic violence, has been acknowledged in the general political discourse as a problem for society as a whole, but nevertheless women's shelters and advice centres are having to close because of huge cutbacks. The financial circumstances of the surviving facilities for protecting and assisting women mean that it is often impossible to provide women and their children in all parts of the country with the same level of protection, advice and support, regardless of their origins, income and residence status. These inadequacies of the protective network permit further violations of women's rights and discrimination. Most facilities cannot afford measures such as converting premises for barrier-free access. Unrestricted access cannot be granted for women with disabilities who have been the subject of violence (cf. Chapter 7.3 The specific impact of violence on women with disabilities).

7.7.1 Funding structure

There are still no nationwide, legally binding provisions in Germany for implementing measures to protect the victims of gender-based violence effectively and to secure for resources to fund these measures adequately and reliably so as to ensure planning security. Within the country's federal structure, the federal government does not feel responsible for guaranteeing the funding for institutions that protect and assist women who have been subject to gender-based violence. The federal government takes the view that financing women's shelters and other safe places along with support services is a matter for the Länder and local authorities.¹⁴⁵ The Länder and local authorities regard responsibility for the protection and security of women who have been subject to violence as either an obligation or a voluntary commitment. This lack of binding rules confronts the facilities that provide the protection and assistance with major financial difficulties: in some cases costs cannot be covered, deficits are generated, acquiring funds incurs considerable bureaucracy and there is no planning security. This means that institutions providing support constantly fear for their survival and cannot maintain their services on a safe permanent basis.

¹⁴¹ Cf. Freudenberg, Dagmar: "Verfangen im Netz des Aufenthaltsrechts. Aufenthaltsrechtliche Liberalisierungen als zentraler Bestandteil von Präventions- und Interventionsstrategien"; in: BMFSFJ and Deutsches Institut für Menschenrechte (ed.): Zwangsverheiratung in Deutschland, Nomos Verlag, Baden-Baden, 2007, p. 253 f.

¹⁴² Australia, Israel, Japan, Canada, South Korea, New Zealand and the United States.

¹⁴³ § 4 (2) Integration Regulation.

¹⁴⁴ Zentner, Christian; "Sprachanforderungen im Ausländerrecht" in: Aktueller Begriff, Deutscher Bundestag; Wissenschaftliche Dienste, Nr. 08/08 (2 April 2008),

http://www.bundestag.de/wissen/analysen/2008/Sprachanforderungen_im_Auslaenderrecht.pdf

¹⁴⁵ Deutscher Bundestag, Government answer to a parliamentary question from members of parliament Sibylle Laurischk, Ina Lenke, Miriam Gruss et al. and the FDP, Frauen und Kinderschutzhäuser in Deutschland, BT-DS 16/8435.

7.7.2 Women's shelters

Only one federal state and two city states provide the blanket financing for women's shelters that has been a demand for many years, and hence for free access to a shelter regardless of income (without personal contributions) for all women and children. It is more frequently the case that women who have been the subject of violence have to bear the expenses themselves for staying in a women's shelter and if they do not have the resources or income they must apply to have the costs reimbursed.

Entitlements are indirectly based on social legislation designed either to encourage the recipient to find or remain in paid employment (Social Code Book II) or to assist in other circumstances (Social Code Book XII). Those categories of women who have no entitlement under these laws are denied access to women's shelters. They include trainees, school students over 18, migrants who are only in the country to seek work, women without a legal resident permit such as those who have been trafficked but have not yet decided that they will appear as a witness.

Increasingly, the costs of living in a women's shelter are being recovered by charging each woman a daily rate which she must then apply to have reimbursed. It is not rare for women who have suffered violence to decide not to come to the shelter, although the threat persists, partly out of fear that their debts will grow. Moreover, applying for the benefits to which they are entitled means engaging in a great deal of bureaucracy.

Local authority rules prevent many shelters from accepting women from other areas. For many women, however, safety concerns urgently require them to seek protection further away.

Migrants with temporary residence permits that impose mobility restrictions and who have to take refuge in a house outside the prescribed area repeatedly find that the local authority refuses to take responsibility for paying benefits.

If women who have suffered violence are expected to bear the follow-on expense of these human rights violations themselves, the political claim by the Federal Minister for Family, Seniors, Women and Youth that violence against women is a social problem that can be prevented and averted by all responsible parties working together loses credibility.¹⁴⁶

7.7.3 Non-residential counselling centres for women who suffer violence

The density, structure and equipment of non-residential counselling centres and specialist counselling for girls and women affected by violence vary substantially from one federal state to the next. This sometimes makes it hard for women affected by violence to understand how the support system works. In the new states and many rural areas in particular, there is no adequate network of support facilities that women affected by violence can easily access.

When the Protection against Violence Act was introduced, there was a great need for specialised advice on how women could protect themselves in acute situations, and this was usually provided by women's advice centres. This is an additional service which plays an extremely important role in enforcing the Act, but in many places it is performed without additional resources, and other provision suffers as a result. The chance to offer longer term advice and therapy, appointments without prior arrangement in acute crises and a range of low-threshold and preventive services is no longer adequately available.

Non-residential, specialised advice and support for women and girls affected by violence should not be a voluntary service, but a statutory duty. It is essential to have a network of specialised counselling services in response to sexualised violence and therapies which cater for needs.

Our recommendations to the federal government:

- *do all that is necessary to protect girls and women, along with their children, effectively against gender-related (domestic and sexual) violence;*

¹⁴⁶ Federal government action plan II to combat violence against women, published by the BMFSFJ, Preface, p. 3.

- *take action to ensure that migrants affected by violence, including women who have been the subject of human trafficking, are offered the support they need in response to their specific requirements;*
- *ensure and negotiate for the federal, state and local authorities to guarantee a nationwide needs-responsive infrastructure of protection and support facilities for girls and women along with their children who have been the subject of gender-based violence in compliance with the following basic principles:*
 - *the federal, state and local authorities must commit to making available financial resources without bureaucratic hurdles to cover all the costs of a needs-oriented support network with barrier-free access*
 - *the costs of the support system must not be passed on to the women and girls concerned*
 - *advice and support for girls and women who are the subject of gender-based violence must be a statutory duty*
 - *standards must be introduced for the equipment and staffing or protection and support facilities*
 - *low-threshold services and prevention campaigns must be available*
 - *quality assurance measures for protection and support facilities must be funded*
 - *the need for protection and support facilities to network and coordinate their activity and to conduct public information campaigns must be taken into account*
 - *nationwide coordination and networking offices and women's shelters must be funded.*

7.8 Article 8 CEDAW

7.8.1 UN zero tolerance policy on sexual exploitation and abuse (SEA)

Although facts have come to light about German soldiers in Macedonia/Kosovo taking part in forced prostitution, including with under-age women,¹⁴⁷ this has not resulted in any charges or gender awareness training for German troops. These subjects are also covered in NATO's training manual on combating trafficking in human beings for military forces¹⁴⁸, although they are not actually being addressed during training. Matters are actually worse, because according to statements by military representatives it is considered natural for German soldiers to make use of prostitution, and it is regarded at most as an excusable trivial offence. The lower ranks continue to lack awareness and skills relating to gender-sensitive and intercultural relations or knowledge of international human rights standards in dealings with women and young girls in countries of operation. There is also no strict code of conduct or monitoring system with accountability to a high-ranking military office. Soldiers accused of such crimes are either released without criminal proceedings or transferred to another unit. With regard to SEA, this means that military and/or combined civil and military operations to build democratic, non-violent structures in post-war zones lead with considerable frequency to fresh violations of the human rights of women and young girls by international forces in the security and military sector.

7.8.2 The implementation of UN Security Council Resolution 1325 in Germany

Both the German Foreign Office and Chancellor Merkel have told medica mondiale several times that they are not prepared to establish a National Action Plan to implement UN SC Res 1325. The reason given is that there are already two action plans which can be used to introduce appropriate measures.¹⁴⁹ Although there have been preliminary efforts to do this, the measures are often unsustainable because support for them is short term. Besides, they are divided up between very different state mechanisms and instruments as well as across various ministries and players in the fields of conflict prevention, human rights, health, humanitarian aid and development – without managing to demonstrate any clear, intersectoral, coordinated strategies to support women in armed conflicts, notably survivors

¹⁴⁷ Cf. amnesty international report "Does it mean that we have the rights?", 2004.

¹⁴⁸ Three e-learning modules can be downloaded from the NATO website.

¹⁴⁹ They concern the German Action Plan for Civil Conflict Management, Conflict Resolution and Peace-Building in Post-War Areas of 2004 and Action Plan II to combat violence against women.

of violence with sexualised violence. In this respect, UN SC Res 1325 is urgently needed as a common thread to pull all these actions together. The German approach also fails to take account of the fact that the original meaning of gender mainstreaming, whether at national or international level, implied a dual approach in which gender mainstreaming must be combined with additional measures aimed exclusively at women. Only this dual strategy can guarantee progress towards equality of the sexes, ending violence against women and empowering women in war-torn and post-war countries. It is vital, therefore, that in addition to the mechanisms described¹⁵⁰ the federal government draws up an integrated strategy in the form of a 1325 Action Plan, from which other instruments can take their bearings. This will prevent measures geared solely to the needs, circumstances and rights of women/girls in armed conflicts being ruled out by the very practice of gender mainstreaming.

Our recommendations to the federal government:

- *instruct that German soldiers are given awareness training about forced prostitution as a violation of human rights based on the NATO training manual on combating trafficking In human beings for military forces;*
- *establish a strict Code of Conduct and a monitoring system attached to a high-ranking office in the armed forces, especially for operations abroad;*
- *soldiers on operations as home or abroad who violate human or women's rights must always be prosecuted under criminal law and not transferred to other operations;*
- *launch an National Action Plan to implement UN SC Res 1325 with binding and sustainable targets and an intersectoral, coordinated strategy to support women in armed conflicts, especially those who have survived sexualised violence;*
- *implement gender mainstreaming, including gender budgeting, as the guiding horizontal principle underlying all dimensions of operations abroad and all aspects of foreign, military and security policy related to UN SC Res 1325.*

¹⁵⁰ Plan on Conflict Management, Conflict Resolution and Peace-Building.

Involved Women's Organisations

Agisra e.V. - Arbeitsgemeinschaft gegen internationale sexuelle und rassistische Ausbeutung

AG Frauenrechte im Forum Menschenrechte

BAG-FORSA - Bundesarbeitsgemeinschaft Feministischer Projekte gegen Sexuelle Gewalt an Mädchen und Frauen e.V.

BAG-SHI – Bundesarbeitsgemeinschaft der Erwerbslosen- und Sozialhilfeinitiativen e.V.

Ban Ying e.V.– Beratungs- und Koordinierungsstelle gegen Menschenhandel

BIG - Berliner Interventionszentrale bei häuslicher Gewalt e.V.

BIG Budget- Bundesinitiative Gender Budgeting

bff - Bundesverband Frauenberatungsstellen und Frauennotrufe - Frauen gegen Gewalt e.V.

Deutscher Ärztinnenbund e.V.

Deutscher Frauenrat e.V.

Deutscher Frauenring e.V.

DGB - Deutscher Gewerkschaftsbund / Abteilung Frauen

dfb - Demokratischer Frauenbund e.V.

djb - Deutscher Juristinnenbund e.V.

DStV - Deutscher Staatsbürgerinnen-Verband e.V., Landesverband Nordrhein-Westfalen

EFID - Evangelische Frauen in Deutschland e.V.

Frauenhauskoordinierung e.V.

GMEI - Gender Mainstreaming Experts International

GBI - Initiative for Gender Justice in the Budget of Berlin

KDFB - Katholischer Deutscher Frauenbund e.V.

KOK - Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V.

Landesfrauenrat Sachsen-Anhalt e.V.

LSVD - Lesben- und Schwulenverband in Deutschland e.V.

Medica Mondiale e.V.

mitgedacht e.V. - feministische Perspektiven auf Politik, Wirtschaft und Gesellschaft

Pro Familia e.V.

TERRE DES FEMMES e.V. - Menschenrechte für die Frau

Weibernetz e.V. - Politische Interessenvertretung behinderte Frauen

ZIF - Zentrale Informationsstelle Autonomer Frauenhäuser

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