

**Oral Statement of the Alliance of German Women's Organizations to the 43- Session of
the CEDAW Committee, Geneva 26. January 2009**

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**Madam Chair,
Distinguished members of the Committee**

Human Rights are indivisible and universal: Therefore our Statement and Alternative Reports are not to be separated: – the one of the *Alliance* and those of the *Association of Intersexed People/XY-Women* and of *Human Rights and Transsexuality/Transsexual Women are ONE*.

In contrary we embrace the claims for freedom of torture, cruel treatment and multiple discriminations of this two editor groups.

The same is with the claims of lesbian women which are enshrined in our Alternative Report: We think that “sexual orientation” should be adopted on the list of grounds of discriminations within the UN since ALL human beings are equal and should be under the protection of the Human Rights Regime.

I. General Remarks

The Alliance of German Women's Organisations is very concerned that many of those problems which have already been mentioned during the last session of the Committee and for which the Committee had claimed action and recommended measures in the Concluding Comments of 2004 from the German Government are still existing unchanged and partially even have increased in their discriminating effects on women or on grounds of gender.

It seems that the German Government does not take the Concluding Comments of 2004 and not the Convention (Art. 2) serious which says that the German Government has to take a variety of measures (Art. 2, a-g) to end ALL FORMS of discriminations ‘WITHOUT DELAY’.

Germany is a federal state. The 6. State Report of Germany is again not paying sufficient attention to this fact. The federal government restricts itself almost entirely on reporting about regulations and politics which are under their federal competences instead of coordinating a reporting procedure including the activities and views of the Laender.

Even if the 6. State Report is listing some activities from the Laender at the end: It is not neutral and not complete, - e.g. it does not mention the progressing implementation of Gender Mainstreaming and Budgeting in the Land of Berlin.

II. Visibility of the Convention and the Optional Protocol

There is still very little knowledge of the Convention and its Optional Protocol even among law professionals in Germany. The brochure the government is talking about in its response

to the **list of issues** and questions from the pre-session though really being very informative had been printed in such a limited edition that it was not available anymore after a short period of time. The information on CEDAW on the web site of the ministry which is the National Machinery of the Advancement of Women is very well hidden.

It is almost impossible to find it if one is not very informed. The rare CEDAW information are not linked to active stakeholders of the civil society (NGOs), that information provided by the German Foreign Office or the German Institute for Human Rights (NHRI). Shortly before departure we discovered a small work was done to improve:

Nevertheless, we claim for a real awareness rising and information campaign for CEDAW's Convention and Protocol, it's options for individual citizens, NGOs, lawyers, judges and the whole society.

We hope that the Committee will support this in its next Concluding Comments.

III. National machinery for the advancement of women

The German government has obviously abandoned the equality strategy of gender mainstreaming. A new equality strategy to replace gender mainstreaming in all fields including in the public finances ("Gender Budgeting") in the practice are not visible, since four years now.

It is significant that the Ministry which is denying the international agreed instruments for Gender Equality is the **National Machinery of the Advancement of Women** (BMFSFJ). Since the last election no special gender or gender equality measures have been promoted other than 'family' issues:

Rarely there have been press releases since 2005 mentioning the term 'Gender' (or in German "Geschlecht/er") or Gender Equality or Women's Rights etc., no temporary special measures have been designed and put in place.

If the German Government is really **looking** for 'German terms' as written in the 6st State Report it is not necessary to wait without any activity:

There are similar German terms like "*Geschlechtergerechter Haushalt*" (Gender Budgeting) or "*Querschnittspolitik*" (Mainstreaming), but adopting them doesn't mean that the instruments methodology and the administrative realization will be different or impossible to implement:

In contrary – the practice of the Land Berlin shows that it is systematically possible to implement within the Budget Planning Process and Document and - that it makes sense and allows change for a more effective steering of the measures and finances for gender equality.

We hope that the Committee will urgently recommend the implementation of these instruments during the Session on Monday and in its Concluding Comments to the German Government - for the Gender E-**Quality**'s progress in Germany.

The allocation of resources and the authority of the Anti-Discrimination office, which has been set up by the General Equal Treatment Act (AGG 2006) is inadequate. The Anti-Discrimination Office must be granted comprehensive authority in a framework of Gender and General Equality Mainstreaming, especially the right to initiate legal proceedings. It must have unlimited right to obtain information from other agencies, and in individual cases from the companies involved.

Women in Germany face multiple discriminations. But the Anti-Discrimination Office or the Nat. Machinery of the Advancement of Women does not offer or communicate a concept of multiple discrimination and measures for its elimination.

Still the new law and office are only in line with the limited EU-definition and understanding of discrimination and has not yet adopted the broad CEDAW definition even if Germany is State Party of CEDAW:

We hope that the Committee will ask the German Government – and the whole EU member states - to broaden and amend its Anti-discrimination-policies, the General Equal Treatment Act and the Anti-Discrimination- Office to bring it in line with CEDAW and all other Human Rights Treaties as especially CERD and CMR.

IV. Reconciliation of work and family life

The increase of women in part-time jobs is very alarming. In addition the German legislators have created numerous new forms of employment in recent years, at a clear cost to women. Those forms are for example the so-called "mini-jobs" that are restricted by law to a maximum wage of € 400 per month and do not make the employee eligible for social security claims. Another example is the "1-Euro job" that pays 1, 50 EURO an hour plus transfer payments (social welfare payment paid by the state). Since these new forms of employment were officially approved especially women were pushed into these kinds of working relationships, which are cheaper for the employers. Hence many women, especially women with children, are dependent on government assistance for their livelihoods and are in consequence threatened by poverty more often than men.

The government should stop creating more forms of low employment and should abolish the already created new forms, since they discriminate women.

V. Migrant Women

The last new statistics were released in special research editions in 2004 on migrant women and violence against women. Since then migrant women have not yet been integrated into the survey system as a regular 'category' of national statistics as it might have been the intention of the CEDAW Committees Concluding Comments of 2004 which says more statistics are needed.

Migrant women are targeted by the selective educational system – and their male counterparts as well which endangers as well the gender equality between migrant women and migrant men but in general causes multiple discriminations but at first those in the higher education system and the labour market. Migrant women's rate at universities is still very low, their incomes are lower than their female non-migrant counterparts. Then consequences are not only less participation and access in many fields of daily life or in decision making levels and positions but as well a higher danger for poverty while rising the children and especially when

they are in older age and are retired. More often even qualified migrant women are unemployed.

There is more discrimination especially the denial of the full normal share of social welfare and the access to work for female refugees, asylum seekers and non-German national migrant inhabitants especially migrant women. Still Germany has the practice of a Residential Law which bans refugees and asylum seekers in a 40-Km-Circle and does not allow them to move any further even if access to health, educational institutions, churches, any services or work is then impossible. Special permissions to move are difficult to get.

This conflicts with the human rights of free movement and many rights to access:

In general migrant women in Germany are targeted by multiple discriminations which are not effectively addressed,- which we said above.

VI. Employment

Germany has one of the biggest gender pay gaps in Europe. Although it is almost impossible to exactly figure out how much each of several factors contributes to this discrimination, there are very interesting hints given by the statistics. The gender pay gap differs a lot between West Germany with a gap of 24% and East Germany where the difference between female and male income lies only at 6%. The former GDR integrated women and men equally into the labor market whereas in West Germany a model is still prevailing, in which male partners are considered to be the main earner of the family income. The female is supposed to only earn an additional amount of money. The social welfare payments are linked to the earning partner, who is in most cases the man.

The German government still promotes this old gender stereotyping labor market model through its tax system, its social welfare system and the planned payment to mothers taking care of their children at home. The tax system (marriage partner's "splitting") motivates women to refrain from looking for an own income by a qualified job because more income will be sanctioned by a minus of tax reimbursement for couples.

The "Splitting- tax-model" is contradictory to human rights since it is not individual but old fashioned group right.

As such we hope that the Committee will give recommendations and urged advice in the Concluding Comments to the German Government to change the tax system to individual taxation.

Other reasons for the gender pay gap are well known. One of them is the system of evaluating work in the wage in the collective bargaining process between the unions and the employer's organizations. This system based on a factor comparison system is discriminatory for women.

According to German law there exists a fundamental right of autonomy for the bargaining partners, but this does not expel the German Governments of their duty to protect. Procedural legislation to achieve compliance with the equal pay directive could be drafted and passed – based on already existing proposals – in order to ensure non-discriminatory job evaluation and job assignment systems as well as non-discriminatory compensation systems. Or some

pressure might be put onto or at least some state information might be given to the partners of the bargaining process about analytical job evaluation systems, which are not discriminating women. None of this is done by the German state.

Procedural legislation to achieve compliance with the equal pay directive of the European Union is necessary – based on already existing proposals – in order to ensure non-discriminatory job evaluation and job assignment systems as well as non-discriminatory compensation systems

There are quite a lot of negative impacts of the Federal Employment Reform “agenda 2010” on women, especially in “shared households” (“*Bedarfsgemeinschaft*”). Women in partnerships or marriage when they become unemployed will only receive 1 year of unemployment payment but thereafter no further support as long the partner’s income shall feed her as well:

This is no longer individual right it is group right.

And in the majority of cases the ‘female’ partner again are subordinated to the “male” or even “female” partner with an income and his or her disposal.

Many women therefore do not have access to the services and trainings of the unemployment agencies. Especially women (or men) who have never worked cannot benefit from the services.

The Government ignores two evaluations of the ‘Agenda 2010’ but does not take any consequences to abolish the discriminating aspects of the reform for women nor does the German Government report the Committee proper on the results of the evaluations in its answers to the list of issues or due to the referring Concluding Comments from 2004

VII. Participation of women in public life and decision-making

Women have never been as qualified as they are today. The percentage of women in business management positions has nevertheless remained unchanged and marginal. The percentage of women in management positions declines with their number of children, their increasing age, and company size. The Committee already recognized this Problem 2004 and recommended “*the adoption of proactive measures to remove existing obstacles and where necessary, to implement temporary special measures, as provided for in article 4, paragraph 1, of the Convention.*” None of these steps were taken.

In order to achieve significant improvement, we suggest the implementation of **equality legislation for the private sector**. Such a law would enable to counter segregation in the labor market and to enable greater access to higher and better paid company positions for well-qualified women – including after periods of unemployment due to family-related or other circumstances.

Suitable draft legislation has long been available. Instead of enacting this equality legislation for the private sector the German Government has limited itself to voluntary agreements with private industry which are clearly ineffective.

Another instrument could be linking government contracts with affirmative action programs for women. Government contracts should only be awarded to companies that systematically

promote women. The Federal Equality Act, which is supposed to use various instruments to promote equal opportunity for women and men in federal government jobs, lacks such a link. Through a Gender Budgeting implementation the Government can as well fix such measures to the various budget articles especially the investigative budget amounts and all budget which will be spend for secondary beneficiaries as to the private companies.

VIII. Violence against women

Protection from violence huge lacks and gaps between different targeted groups in Germany. Violence is a discrimination following the understanding of CEDAW. Violence hurts women physically and the dignity of them as individual citizens who deserve protection and a live free from violence.

The consequences of violence must normally be treated e.g. due to Art. 5 when role stereotypes which make women easy to be degraded or due to Art. 11 on the labour market and in work live. In 1992 CEDAW released a special General Recommendation as to the elimination of violence.

We don't see the Government is active in implementing it proactive and so we put all our hope on the Committee that it urges the German Government in it's dialogue and the Concluding Comments to start working harder and "without delay" to eliminate violence and to install a full and nationwide equal and accessible protection system.

IX. Forced marriages

The German Government argued that by having made a new regulation that non- German and outside of Germany living spouses of German nationals have to qualify in a German language seminar in German before they will be allowed to enter Germany for a marriage they had taken a measure against forced marriage.

This is not the case as NGOs argue:

The Government did only create a new discrimination since the targeted group is especially only women (and men) from Turkey e.g. the regulation does not apply for US-citizens, Canadian citizens, Australians, and many more. Then, in case the couple marries in Turkey the regulation creates a contradiction to the right to live together as a family.

Only a new hardship appears to those spouses willing to marry into Germany when they are living in villages and smaller cities where there is no access to such a language seminar and when they don't have money for travelling to a place where a seminar is offered.

The NGOs doubt if this is a measure to eliminate forced marriage. We recommend instead more awareness rising for women and: men (!) in the migrant communities while entering Germany and in Germany, to financially support counselling centres and shelters for those who are escaping the situation. As well we recommend bilateral information champagnes in the country of origin and of destination and finally more access to education and an increase of specific budget lines to be spent for to financing internationally and nationally the MDG 3 (Gender Equality) and MDG 2 (Education-including Human Rights Education) and a controlling with the methodology of Gender Budgeting on the effectiveness of the budgeting of such measures.

X. Exploitation of trafficking in women and girls

As to Art. 6 of CEDAW the German Government forwarded a list of implemented measures for the protection of victims of trafficking in women and girls.

The NGOs, especially the counselling centres for victims of trafficking in women and migrant women workers see nevertheless a number of unsolved problems which the Government does not mention.

The Federal Immigration Act has not yet enshrined needed regulations due to the needs of these women and as such does not guarantee any permit to stay for victims of trafficking in women and girls:

They will earlier or later be deported - the dignity and protection, restitution or respect towards the needs of this women to start a new live is not in the focus of the existing legal measures of the German Government.

The NGOs recommend a number of urgent needed changes and measures for this targeted group in the Alternative Report.

We hope that the Committee will take them up and recommend them to the German Government to implement “*without delay*”.

Still the alimantation of asylum seekers in general and victims of trafficking especially longs for a better solution then the ongoing systematic discrimination by the limitation of social welfare and health services and benefits: They receive as Non-EU-citizens less then the ordinary German, their rights to access to health, education, participation, work, family live, their social, cultural and economical rights are restricted and effected by this law called (“*Asylbewerberleistungsgesetz*”).

A clear lack is obvious – even if not reported by the Government-: the financing of shelter for victims of violence against women:

CEDAW has claimed in its General Recommendation No. 19 that State Parties such as Germany should use all measures for the protection of those women e.g, to finance enough places in shelters and maintain a sustainable sufficient help and protective network for all targeted victims of all forms of VAW.

The lack is partly due to the different conditions in the Laender but stays unchanged as long the federal Government does not take responsibility and action.

Please read the recommendations and details in the Alternative report; fact is we need equal access to protection and shelter for all groups of victims no matter in which Land of the Federal Germany they live.

XI. Stereotypes and education

A traditional notion of gender roles continues to prevail in the Federal Republic of Germany. Instead of counteracting this situation, the state is sending the wrong signals. One example of the government's policies is its retention of a tax class model that in many ways keeps women from (re)entering gainful employment. This model gives married couples the option of

selecting tax class V for the partner who has little or no earnings. This means that the partner who earns more (tax class III) has a relatively lower tax rate, while the partner who chooses class V, generally the wife, pays proportionately more. Most married couples with different income levels choose this model because their combined tax burden is less than it would be if the two partners had the same tax class. This model especially favors couples in which only one partner is gainfully employed. Because most women earn less than men anyway for the reasons already discussed, this model has the psychological effect of discouraging them from working because the relatively high taxes on their (lower) income make work seem not worthwhile. Many women therefore do not reenter the workforce after leaving their jobs for family-related reasons. This tax system reinforces the stereotyped model of the male breadwinner. 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” As this tax class option perpetuates old role models.

Another kind of these wrong signals of the German state is its policy of free health insurance for spouses who have no jobs or are only minimally employed.

Sex stereotyping in the media and in society is still a serious problem in Germany. The federal Government counteracts gender stereotypes through single measures which may make an isolated contribution towards overcoming traditional role models but does not deal with the problem at its roots causes.

There is no action as to communicate and promote a visible concept or strategy for initiating and encouraging a social dialogue on how to change gender roles by the German Government.

But it is urged to define gender roles new as to cope with the challenges of today and the future and as to realize a true gender equality and partnership in all fields of daily life. The results of the recent misconception already cause high prizes and ‘collateral damages’ to be paid mainly by women (VAW, pay gap, poverty in especially old age, no or limited participation) and for the society while missing the valuable contribution of so many women or failing men to the wealth of the societies.

Gender Equality is a mayor factor of human security and peace: A new gender role conception could and should enhance the process of more peace and human security in national economy and society as well as international relations.

There is an urgent need to adopt a structural approach with a broad strategy for implementing a discourse embracing all social forces about the impact of role stereotypes. New non-discriminatory role models based on egalitarian partnership need to be developed. The federal government should promote initiatives that formulate these new, forward-looking role models for women and men and help them to gain acceptance.

The media play a major part in conveying role models to a broad public. The image of “women” or ‘femininity’ and ‘masculinity’ promoted in TV is often incompatible with role models based on egalitarian partnership. Most decisions about programming and launching new formats are still in the hands of male managers.

The federal government should establish a quota for women in top managerial posts in the public broadcasting companies.

Sexist advertisement is not decreasing in Germany. The federal government refers to the figures of the German Advertising Council dropping from one year to the other, whereas NGOs estimate that the number of complaints about sexist advertising sent in by individuals and civil society organisations has continued to rise.

The German Advertising Council is a self-monitoring body set up by the advertising industry which often rejects complaints on the grounds of freedom of opinion and freedom of the press which are guaranteed in Germany's constitution. It is not obliged to respect any instructions. This makes it seem an inappropriate body to counteract sexist advertising.

The NGOs recommend to establish an effective, independent monitoring procedure outside the Advertising Council and to involve the private sector in these efforts in order to combat sexist advertising. Tangible, non-available financial penalties for sexist advertising should be adopted.

XII. Economic consequences of divorce

The principle of income-dependent subsistence allowance produces unfair results for the (usually female) recipients when the (usually male) person obliged to pay the subsistence 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-payer of subsistence is accused.

The NGOs recommend creating incentives in maintenance legislation to make fathers feel more responsible and play a greater role in child care. The federal government should impose a duty to declare income and transfer of wealth occurred over past years.