

Questionnaire by the UN Working Group on Business and Human Rights – Gender Lens – Answers by GERMANY

Germany welcomes the OHCHR project “Gender Lens to the UNGPs” and appreciates the opportunity to share experiences and provide insight and comments.

Specific Questions/ Issues

1. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately? Please provide concrete examples in the context of both generic and sector- or region-specific experiences of women.

To the extent that wage discrimination can be a violation of economic rights (e.g. meaningful participation) there is some indication of the existence of discrimination due to the fact that the adjusted Gender Pay Gap, i.e. the statistical unexplained gap between women’s and men’s hourly wages still amounts to 6% in Germany. Female participation in the German labour market has risen from 55% from the early 1990s to currently 75%. Yet, while women are not hindered to participate in the labour market, gender stereotypes, traditional expectations and in some cases the lack of childcare facilities or disincentives in taxation may discourage them to take up full-time jobs or to work in typically male-dominated sectors like in the STEM sector. This contributes to the (unadjusted) Gender Pay Gap of 21%. Since the “MeToo movement” spread virally in October 2017 on social media, it demonstrated that there still exists a widespread prevalence of sexual violence like assault and harassment especially in the workplace, which is rooted in historic power imbalances and a male-dominated culture in the workplace.

Many German garment brands and retailers source from production countries in the Asia-Pacific region where women make up the majority of the workforce in the industry and, accordingly, are the group most affected by its human rights impacts. The profound discrimination that women face makes them particularly vulnerable to abuses and exploitation. Various factors of exploitation, including sexual harassment and gender-based violence, short careers in production sites, the gender pay gap and obstacles to collective organization, limit the ability of women workers to improve their working conditions.

2. Please share any good practices on how to deal with increased marginalisation or vulnerabilities faced by women due to intersectionality, feminisation of work, informal economy, and conflicts.

In July 2017 the German **Act to promote transparency in wage structures** came into force. This law is based on three pillars: Firstly, this law creates a clear legal basis for the principle of equal pay and the definition of essential terms. It establishes the rule of equal pay for equal work or work of equal value by women and men in unambiguous, transparent terms. Secondly, it provides an individual right to obtain information on pay levels for employees in establishments with more than 200 employees. Thirdly, private sector employers with more than 500 employees are called on to carry out pay reviews to verify and create equal pay. Finally, an obligation to report on equality and equal pay of women and men is introduced for employers with as a rule more than 500 employees if they are obliged to file a management report in accordance with the German Commercial Code.

Since 2017, the German Anti-Discrimination Agency has been offering an **equal treatment check** (gb-check¹) which enables the examination of gender equality in working life. The *gb-check* is a tool for analysis that helps employers and stakeholders to identify discrimination, prevent inequality, and take measures for greater equality of opportunity by using statistics, process analysis, and pair comparisons.

In 2017 Germany's Federal Anti-Discrimination Agency has launched a **research study on Gender Pricing in Germany**. The survey systematically examined the gender-based differentiation of prices (gender pricing) in case of the same or very similar products and services in Germany. As a result of the study, the majority of products and services in Germany are offered at the same price for both genders. Nevertheless it is necessary to raise the providers' and suppliers' awareness of gender-based price differences and to inform them on circumstances where their pricing could result in an infringement of the General Equal Treatment Act.

The **promotion of a partnership-based reconciliation of family and working life** over the course of a lifetime is at the heart of modern family policy in Germany. For both parents to be able to work, mothers and fathers need suitable arrangements to enable them to reconcile family and working life. This way, in heterosexual couples mothers are envisioned working more and fathers playing a more active role in the family.

Set up by the German Government the **company programme “Success Factor Family”** aims to turn family-friendliness into a business case and a hallmark of German economy. The programme was started in strategic partnerships with the Confederation of German Employers' Associations (BDA), the Association of German Chambers of Commerce and Industry (DIHK), the German Confederation of Skilled Crafts (ZDH) and the German Trade Union Confederation (DGB). In a range of special events and specialist publications organised in conjunction with the industry partners, the economic and social benefits of family-friendly corporate culture are brought to the public's attention. Key topics since 2016 include partnership-based distribution of tasks in the family and working life, reconciliation also in leadership functions (for women and men) and digitalisation. The programme has a proven track record of helping family friendliness to be seen as a strategically important human resources issue in German business and industry.

The corresponding **company competition**, rewards best practices and innovative concept ideas which not only demonstrate substantial progress but also show how companies in Germany promote the reconciliation of family and working life in many different ways.

The **company network “Success Factor Family”** (currently around 6,900 member companies) is a joint initiative of the German Ministry of Family Affairs, Senior Citizen, Women and Youth and the Association of German Chambers of Commerce and Industry. The network increases awareness amongst the public at large of the commitment and the experiences of family-friendly companies and endeavours to motivate others to put into practice ideas and measures for the improved reconciliation of family and work in everyday company life.

German development cooperation has considerably increased its efforts to establish human rights due diligence in garment supply chains focusing on the specific vulnerabilities of women workers.

- **GIZ² programme “Social and labour standards in the textile and garment sector in Asia”** (in particular Bangladesh, Cambodia, China, Myanmar and Pakistan): Sunday cafés give seamstresses an opportunity to meet and exchange views outside the workplace. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH has introduced legal advice for women in conflict situations in the Sunday cafés. Experience gained with similar cafés in

¹ www.gb-check.de

² GIZ is the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH.

Bangladesh shows that higher levels of awareness and confidence among seamstresses in the factories reduce the likelihood of conflict escalation. Some 200 women were informed about the key aspects of Myanmar labour law and had the opportunity to discuss their questions and to use one-on-one consultations since the programme started in 2015.³

- **GIZ programme “Promotion of Social and Environmental Standards in the Industry”** (Bangladesh)
Around 252,481 workers, mostly female, have been made aware of their rights as well as responsibilities through women’s cafés, for improvement of social dialogue and industrial relations in the ready-made garment and leather sectors. Since 2015, around 9,635 disputes between workers and management in the garments sector have been resolved amicably through women’s cafés.⁴
- The **Partnership for Sustainable Textiles**, a multi-stakeholder initiative with about 130 representatives from different actor groups (German Government, business, non-governmental organizations, unions, standards organizations) wants to achieve social, ecological, transparency and economic improvements alongside the entire garment supply chain. The Partnership seeks to prevent any form of discrimination based on gender as well as physical, psychological and sexual abuse. The Partnership has started an initiative to improve working conditions in southern India that targets women working in spinning and weaving companies.⁵

In the **G7 framework**, the German Government is pressing for improvement of the economic position of women. Partners in developing countries are to be assisted in eliminating discrimination and violence against women as well as other social, economic and legal obstacles to the economic participation of women. One objective agreed by G7 countries in 2015 is to increase the number of women and girls learning occupational skills by one third by 2030. The German Government also actively supports the **Women’s Empowerment Principles** and is committed to having as many enterprises as possible subscribe to them.

3. How to address sexual harassment and sexual or physical violence suffered by women in the business-related context, including at the workplace, in supply chains and in surrounding communities? Please share any good practices which have proved to be effective in dealing with sexual harassment and violence against women.

On behalf of the Federal Anti-Discrimination Agency, a new **empirical study on sexual harassment at work** is being conducted from June 2018 to May 2019. The aim is to use individual and group interviews to capture the perspective of women and men affected as well as of the institutional environment and to gather information on the conditions of success and obstacles to successful action against sexual harassment in the workplace. On 12 October 2017, Germany ratified the **Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**. The Convention entered into force for Germany on 1 February 2018. Germany understands the ratification of the Convention as a commitment to persevere with our efforts to combat violence against women, to keep women safe and to offer them support. To this end Germany is planning to launch an action programme for prevention and support for women and children victims of violence and to strengthen the assistance infrastructure. Sexual harassment and sexual or physical violence are serious breaches of human rights that need to be prosecuted wherever they happen. This includes, of course, the workplace, supply chains and surrounding communities. A

³ <https://www.giz.de/en/worldwide/34136.html>

⁴ <https://www.giz.de/en/downloads/giz2016-en-women-cafe.pdfm>

⁵ <https://www.textilbuendnis.com/was-wir-tun/gemeinsames-engagement/>

Five-Point Action Plan to Stop Violence against Women that was presented in November 2017 guides German Development Cooperation on this matter. The Action Plan aims to support partner countries in establishing and reinforcing mechanisms to prevent violence against women. For example, the programme “ComVoMujer” works with companies in Peru, Ecuador, Bolivia and Paraguay to engage them in a process of social change that rejects violence against women.

4. Which State laws and policies or social, cultural and religious norms continue to impede women’s integration into economic activities and public life generally?

The German Constitution (basic law) protects the equal treatment of men and women and prohibits unequal treatment on grounds of gender. It thus establishes a negative right against unequal treatment on the grounds of gender. The basic law also protects against indirect unequal treatment such as rules that are formulated in a gender-neutral way, but consequentially predominantly concern women because of natural differences or societal circumstances. Moreover, the basic law obliges the State to promote the actual implementation of equality, especially with regards to reducing existing disadvantages. This obligation envisages an alignment of the living conditions of women and men. Following this rule, the German Constitutional Court has acknowledged the need for equal access to gainful occupation for women and men. Nonetheless, gender-based unequal treatment can be justified with other rights stated in the basic law (e.g. regulations to protect pregnant women and mothers). In specific cases, gender might be a criterion for differentiation if the nature of a problem is such that it concerns only men or only women.

The objective of the General Equal Treatment Act (GETA) Germany implements four European directives on equal treatment in German law.⁶ Unless there is a justification for it, discrimination is inadmissible. Grounds that provide justification, i.e. exceptional conditions under which differences of treatment in relation to working life or access to goods and services are admissible, are also cited in the GETA. The GETA addresses direct and indirect discrimination, harassment (including sexual harassment and mobbing), and instructing others to discriminate. The person affected by discrimination is obliged to provide proof of the fact that an act of discrimination as defined by the General Equal Treatment Act has taken place. However, measures have been foreseen in this conjunction to make it easier to provide proof, since those affected will not always be in a position to produce conclusive evidence of discrimination. It is, therefore, initially sufficient to cite evidence indicating that discrimination has taken place. The other party is then obliged to prove that there was no difference of treatment or that there was a justifiable reason for it in this specific case.

5. Are there any good practices of integrating a gender perspective into States’ economic sphere (e.g., state-owned enterprises, public procurement agencies, trade missions, export credit agencies, privatisation of public services, public-private partnerships, and trade and investment agreements)?

All applications for cover submitted to the German Government’s Export Credit Agency (ECA) are subject to a so called “Watchful Eye”-Screening. It evaluates publicly available information to identify evidence of any significant environmental, social and human rights risks. Since the implementation of the National Action Plan on business and human rights, applications with long-term terms of payment (> 2 years) are subjected to an additional layer of screening focused on human rights-specific risks for individuals concerned (workers/local communities affected by the respective

⁶ http://www.antidiskriminierungsstelle.de/EN/TheAct/theAct_node.html

project) such as discrimination or a lack of equal opportunities. If any human rights risks are identified, this will be followed up by an assessment of the severity of the (potential) human rights abuses, the required preventive or remedial actions and Germany's leverage to implement these actions. The result of this assessment affects the German Government's decision on whether to grant cover.

The **Act on the Equal Participation of Women and Men in Leadership Positions in the Private and the Public Sector**, which entered into force in May 2015, also applies to state-owned enterprises (stock-listed or co-determined). All 43 shareholdings in which the state has a direct majority apply the Public Corporate Governance Codex (PCGC) (Status as of 31st December 2016). The PCGC emphasizes that the nomination of members of supervisory boards in state-owned companies should aim at raising the proportion of women to achieve parity. Thus the average proportion of women in supervisory bodies in state owned enterprises was 31.9% in 2016, which is an increase of 3.9 percentage points compared to 2015. At higher management level the average share of women has increased from 15.7 % in 2015 up to 17.7 % in 2016.

In 2011, the **UN Guiding Principles** were incorporated into the German Ministry for Economic Cooperation and Development's strategy paper on human rights in German development policy. This strategy is binding for organizations that implement public development policy on behalf of the German Government. Contractual obligations to this effect have also been incorporated into agreements on development partnerships with the German and European private sector under the develoPPP.de programme. The German **National Action Plan on Business and Human Rights** includes an additional measure: The instruments of development policy relating to cooperation with business will be reviewed for compliance with the requirements of the UN Guiding Principles. In particular, the contractual clauses of the develoPPP.de programme⁷ are to be fleshed out to include the due diligence requirements with regard to human rights.

6. How could policy coherence be improved between different government ministries or departments dealing with women issues and business-related matters?

Gender Mainstreaming is a cross-cutting principle every government department has to act on in Germany. It is regulated by the common rules of procedure. A further requirement for policy coherence is a common evidence-based framework for the policy of different government ministries or departments dealing with gender equality-related issues and business-related matters. For every parliamentary term, the German Government presents a report on gender equality in Germany. The 2017 reports consist of the expertise of an Expert Commission and a statement by the German Government. This Second Report addresses gender-equal organization of work in digital technologies as a current policy challenge and gives recommendations on how to improve gender equality. A strategy to implement the recommendations is currently being drafted.

7. What is the extent to which businesses currently apply a gender lens in conducting human rights due diligence, including social or environmental impact assessment?

In line with the OECD Common Approaches, any applications for cover with long-term terms of payment (> 2 years) and a high contract value (> EUR 15m) are benchmarked against either the World Bank Safeguard Policies or the IFC Performance Standards. These standards already incorporate a

⁷ develoPPP.de is aimed at companies that are investing in developing and emerging countries in a sustainable way. With this programme, the German Ministry for Economic Cooperation and Development (BMZ) is offering financial and technical support for such companies.

strong gender lens. The assessment of a project's environmental and social risks is required to pay special attention to vulnerable groups such as women. Human resource policies and practices need to exhibit a commitment to non-discrimination and equal opportunity. Any risk mitigation measures are required to ensure that adverse project impacts do not fall disproportionately on women and that women are not neglected in taking advantage of project benefits.

8. Are there any good practices of business enterprises adopting a gender perspective in making human rights policy commitments, addressing the gender wage gap and under-representation of women in boards and senior positions, or involving affected women in meaningful consultations and remediation processes?

The **Women-on-Board-Index 186**⁸ shows the progress of private sector companies in Germany concerning the increase of the share of women in the supervisory and executive board level. It also contains the set target figures on supervisory board level, on executive board level and the two top management levels.

Since 1st January 2017 it is mandatory for a certain number of big companies to publish a declaration concerning employee matters (e.g. adopted measures regarding gender equality) in their annual report.

9. What is the role of businesses in dealing with domestic laws, policies and societal practices which are discriminatory to women?

All domestic laws are subject to legal examination by the Ministry of Justice before entering into force. This legal examination includes the compatibility with the basic law that stipulates an interdiction of discriminatory laws.

10. How could media and advertising industries fight against gender stereotyping and disempowerment of women?

The following projects and activities have recently been funded by the Federal Government Commissioner for Culture and the Media in order to develop and promote specific actions for the enhancement of gender equality in the cultural and media sectors.

- 2016 study by the German Cultural Council investigating the situation of women working in the cultural and media sectors in Germany.
- 2017 European comparative study "Gender Equality Policy in the Arts, Culture and Media: Comparative Perspectives".
- Round Table meetings in 2016 and 2017.
- Formation of the Project Office "Women in Culture and the Media" at the German Cultural Council in 2017 (e.g. launch of a mentoring program for women striving for managerial positions in culture and media, research and development of various data reports).
- Establishment of an independent association of trust which offers legal and psychological counselling for those who have experienced sexual harassment resp. sexual violence in the context of their professional engagement in the film, theater and TV industries. The association is open to be expanded towards other cultural or media sectors according to respective demands.

⁸ The index is regularly published by the German association "Frauen in die Aufsichtsräte e.V." (FidAR). FidAR was founded in 2006 by women in leadership positions working in the economic and political sector.

Media or media companies can contribute to the fight against gender stereotyping and disempowerment of women e.g. by setting thematic priorities in their program. It should however be noted that state bodies do not exert any influence on the media. Also, press and broadcasting lie within the jurisdiction of the German Länder (federal states).

Germany's foreign broadcaster "Deutsche Welle" plans to focus more on women as a target group. Deutsche Welle will also increase the employment of female moderators in its program or female journalists as dialogue partners in social media. Moreover, media can improve gender equality through offering flexible working conditions within their companies – also in this field, Deutsche Welle sets a good example.

The **German Advertising Council** was set up in 1972 by the German Advertising Federation⁹ as a self-regulatory body and an industry institute. It serves as an arbitrator between complainants from the general public and companies running advertisements. The Advertising Council also addresses sexist advertising. It shares justified criticisms over advertising activities with the corporate decision-makers to try to make them discontinue or modify the offending activities. However, the Advertising Council has no means of compelling the companies to "cease and desist"; this decision must be based on a self-commitment.

The following projects have received funding from the German Ministry for Family Affairs, Senior Citizens, Women and Youth and /or the Federal Commissioner for Culture and the Media:

The "PinkStinks" campaign¹⁰ has launched a **monitoring project on sexist advertising in Germany**. The project serves to map the persistence and prevalence of sexist advertising and includes measures to take down sexist advertising in the media (ads or video clips, print and online). "Pinkstinks" has also introduced a **positive award for gender-aware advertising** called "Pink Poodle" and a **theatre project** for children aged five to eleven years called "David and his pink pony". It is about limiting role stereotypes that girls and boys are exposed to on a daily basis.

"Pro Quote Film" is an initiative by female media professionals to stand up for gender equality in the German film and TV business to **end the underrepresentation of women not only in directing, but also in all of the other creative key positions**. More than twelve professional and industry associations of the movie and television sector - among them Pro Quote Film – are going to set up the first **industry-wide contact point for persons affected by sexualised harassment, violence and discrimination**.¹¹ ProQuota Media (PQM) is a group of female German journalists and media professionals, founded in 2012, that aims to **bring the percentage of women in German media boardrooms to 50 per cent**; PQM also campaigns against any sexist representation of women in the media and for balanced reporting by women for women.¹² Funded projects include a gender monitoring of the percentage of women in media companies and the establishment of a crisis telephone to provide support in facing up to superiors, in interviews etc.

The League of Women Journalists in Germany (Journalistinnenbund - jb) wants to do **gender-appropriate journalism and gender-sensitive media work** and, in the process, make women visible, give them a voice and a "face". jb is currently preparing an online platform for gender-sensitive journalism and regularly offers media workshops and a Global Media Monitoring.¹³

⁹ Deutscher Werberat: www.werberat.de.

¹⁰ www.pinkstinks.de

¹¹ www.proquote-film.de

¹² <http://www.pro-quote.de/>

¹³ See <https://www.journalistinnen.de/projekte/gmmp>.

Girls' Day and **Boys' Day** are yearly days of activities that challenge gender stereotypes and encourage vocational choices free from limiting gender roles. Since 2001, 1.8 million girls have taken part in the Girls' Day to take a closer look at professions in which they are still underrepresented, such as natural sciences, technology, IT and crafts. A parallel event since 2011 is the nationwide Boys' Day that allows boys to get some real-life insights into occupations where the male percentage is rather low, such as education, nursing and social professions.¹⁴

The **online magazine www.meintestgelaende.de** is the only website in Germany and the German-speaking countries to publish authentic and unedited posts on gender and equality from youth and triggers discussions not only among young people, but also with professionals.

The Government initiative “no clichés” (Klischeefrei) aims to **enable unbiased vocational and study choices**. It supports and enables all of those involved in the vocational choice process to help girls and boys make vocational choices that match their strengths – free from any gender clichés. It is addressed to all actors engaged in vocational guidance, including early-years education, schools, tertiary education institutes, companies/institutes, vocational guidance centres and parents.

11. What additional or specific barriers do women (women human rights defenders) face in accessing effective remedies for business-related human rights abuses?

In many countries the barriers women face include gender-based power asymmetries, gender norms, interfering with women's leadership and agency, disproportionate unpaid care responsibilities, inequalities in access to education, the general absence of gender sensitivity within judicial, non-judicial and company based grievance mechanisms and high financial costs of participating in consultations and grievance processes.¹⁵

12. How could all types of remedial mechanisms, processes and outcomes be made more gender-sensitive?

In order to make remedial mechanisms, processes and outcomes more gender-sensitive, women's participation and voice need to be ensured. Specifically, women should be actively consulted so that their specific experience can be taken into account when taking remedial actions. During the remedial process, women's opinions, experience and needs should receive the same value and recognition as men's. Also, experiences based on multiple forms of discrimination (gender identity and sexual orientation, for example) should be addressed accordingly during remedial processes. Particular attention should be paid not to deteriorate gender relations due to remedial actions that benefit men before women.

13. How to overcome power imbalances and discriminatory practices that might undermine the effectiveness of remedies obtained by women?

In order to overcome power imbalances and discriminatory practices new approaches to access to justice can be powerful tools. German Development Cooperation implements a project in Bangladesh that introduced the restorative justice approach (RJ) on local level. RJ is an alternative dispute resolution mechanism and thus an alternative to the formal justice system in minor cases. RJ aims at

¹⁴ www.girls-day.de; www.boys-day.de

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https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects_docs/gender_business/bhr_gender_mapping_notes_draft_2018.pdf, sections 3.6.2.-3.6.4.

repairing the harm caused by wrongdoing instead of punishing the offender. RJ can have a great impact on women's empowerment specifically in societies that inhibit women's access to justice by laws, traditions and customs.

14. Please provide any additional comments, suggestions or information which you think may be relevant for the Working Group's forthcoming report on the gender lens to UNGPs.

Action should involve all relevant stakeholders, including the factory management. It is important to work with trade unions that have hitherto been dominated by men and do not take sufficient account of women's specific concerns. Measures should provide the knowledge of how they can work consistently to improve their working conditions and how they can counter the cultural stigmatization of women engaged in labor policy. Factors that complicate workplace organization, such as childcare and other unpaid care work, should be included, as should the promotion of skills development so that women can use the machines and technologies that are increasingly being utilized in formal work.