

## **Working Group on discrimination against women in law and in practice**

### **Questionnaire on good practices**

In accordance with its mandate, the UN Working Group on the issue of discrimination against women in law and practice has developed this questionnaire to gather information on “good practices” in eliminating discrimination and empowering women for its next thematic report. Given the centrality of the law to the Working Group’s mandate, the report will focus on the processes by which laws that support women’s equality and enjoyment of human rights come into being and are implemented in ways that support women’s enjoyment of their human rights and fundamental freedoms.

The questionnaire intends to solicit information on how a specific law aimed at addressing discrimination against women and promoting women’s substantive equality has come into being, was effectively implemented (I), and what impacts the law has had for women on the ground (II).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes State obligation to respect, protect and fulfill women’s human rights, ensuring the de facto enjoyment of those rights by women. CEDAW’s framework is founded on the principle of substantive equality, which requires States to take active measures to not only eliminate laws and practices that directly discriminate against women, but to create an environment in which women’s rights can be fulfilled. Good practices in the promotion of women’s human rights thus require a holistic approach that addresses both the causes and consequences of discrimination, and aim at social transformation.

Recognizing the aspiration of the Working Group to better understand the processes and elements which contribute to build “good practices” in legislation and its implementation the Working Group requests that you provide detailed information on at least **one law** adopted in a State that has been successfully implemented in that it has had a notably substantial impact on eliminating discrimination against women in the specific area related to that law and has enhanced women’s enjoyment of their human rights in your national context, such that you consider it a “good practice.” Processes of substantive change often take place over a period of many years, so the law need not be new: this survey should focus on a law whose impact has been substantiated and the impacts of which are still being seen.

The Working Group wishes to thank all stakeholders for responding to this questionnaire **by 12 September 2016**.

## Questionnaire

**For the following sections, please provide information about a law that has been selected as an exemplary case study of a “good practice” in eliminating discrimination and empowering women in your national context.**

### **I. Identification of a law that has eliminated or substantially reduced discrimination and supported women’s empowerment.**

#### *Background Information on the Law*

1. Name/Title of the Legislation:

Gesetz zur Förderung von Kindern unter 3 Jahren in Tageseinrichtungen und Kindertagespflege (Kinderförderungsgesetz - KiFöG) (*Childcare Funding Act*)

2. Date the law passed and came into force:

The law passed on December 15<sup>th</sup>, 2008 and came into force on December 16<sup>th</sup>, 2008, except Article 1, No. 3, which came into force on August 1<sup>st</sup>, 2013

3. Was it a new law or an amendment of an existing law?

New  Amendment

If it was an amendment of an existing law, please providing name/title of existing law and any pertinent information here:

*The Childcare Funding Act consists of several parts. Some are amendments of existing laws (see II 4.), some are new.*

*Especially the Book of Social Code VIII has been changed. The changes focus on the extended right to attend ECEC (before children from age 3 had a legal right to a place in ECEC, with the new law KiFöG the right was extended to 1- and 2-year-olds) and on the stepwise expansion of the ECEC sector.*

4. Is the legislation focused specifically on discrimination against women/gender equality, or is it part of a larger piece of legislation (i.e. Labour law with provisions around gender)? Please explain.

*The Childcare Funding Act does not specifically focus on discrimination against women/ gender equality. The law focuses on the children’s right to attend ECEC in childcare centres or family day-care, as well as the expansion of the German ECEC sector, in particular for children under the age of three, and therefore affects gender equality in terms of enhancing women’s and men’s opportunities to participate in the labor market.*

5. Please provide a summary of the content of the law, its preamble or explanatory note, policy measures, dissemination and implementation regulations, and provisions for access to justice, as well a link to where all these can be found online.

*The Childcare Funding Act implements children's legal right to attend centre-based ECEC or home-based ECEC (family day care/Tagespflege) from the age of one onwards (starting August 2013). The aim is to strengthen the ECEC sector for children under the age of 3 in a quantitative and qualitative way. It is laid down in the law that places in ECEC for children under three have to be expanded.*

*The whole text of the law can be found [here](#) (in German only)*

6. When was the first draft of this law introduced, and when was it adopted (please specify dates of first draft and adoption?)

*Cabinet resolution: September 5<sup>th</sup>, 2007*

*([Press Article](#) [22.08.2016])*

*1<sup>st</sup> Draft of the law (in Bundesrat -Federal Council): May 2<sup>nd</sup>, 2008*

*1<sup>st</sup> draft of the law (in Bundestag): August 28<sup>th</sup>, 2008*

*([Press Release](#) [22.08.2016])*

*Adoption of the law: December 10<sup>th</sup>, 2008*

7. In your view, does the law in question place a positive duty on the State to achieve substantive equality for women?

Yes  No

If yes, please explain:

*As the Childcare Funding Act implements the children's right to attend ECEC at the age of one, it gives women the possibility to resume employment after parental leave. Therefore it can be seen as a step towards an improved reconciliation of family and career life and thereby as a step towards more gender quality.*

8. Does the law contain a definition of discrimination that is in accord with Article 1 of CEDAW?

Yes  No

If yes, please direct us to the section of the pertinent document. If not, please indicate if that definition is enshrined already in the constitution or charter of rights.

*A definition of discrimination can be found in the constitutional law (Grundgesetz, GG), Article 3, No. 1, 2.*

*The German constitutional law states that man and women have equal rights. The state promotes the enforcement of equality and works towards the elimination of existing disadvantages.*

9. Does the law's definition of discrimination include and define both direct and indirect discrimination?

Yes ( ) No

If yes, please explain:

10. How has the Constitution supported the process of adoption and implementation of the law? Does the Constitution have an equality and non-discrimination provision?

*A definition of discrimination can be found in the constitutional law (Grundgesetz), Article 3, No. 1, 2.*

*The German constitutional law states that man and women have equal rights. The state promotes the enforcement of equality and works towards the elimination of existing disadvantages.*

*The Childcare Funding Act therefore realizes the underlying regulation of the constitution, as it enhances gender equality.*

11. Does the law contain provisions that address discrimination against women from an intersectional perspective, taking into account a diversity of women's social identities, statuses and experiences?

Yes ( ) No

If yes, please explain which social identities, statuses and/or intersectional factors are explicitly noted in the law:

12. Whom of the following are bound by the law?

The State Yes  No ( )

Public Authorities/Bodies Yes  No ( )

Civil society organisations Yes ( ) No

Private companies Yes ( ) No

Individuals Yes ( ) No

## II. How the law came into being and was implemented

1. What was the impetus for the development of this law (i.e. social movement activism, political platform, a Supreme Court ruling, an egregious case of discrimination, constitutional reform...)?

National context:

National surveys showed that the demand for ECEC places for children under three was constantly increasing and could not be met by the already existing places. Legal entitlement to ECEC for children between 3 & 6 was already in place at the time. Both these facts motivated the development & formulation of the new law in terms of the expansion of places, as well as the extension of legal entitlement to ECEC for 1- and 2-year-olds.

International context:

In 2002, the Barcelona European Council set objectives in child care. It is stated, that “ensuring suitable childcare provision is an essential step towards equal opportunities in employment between women and men. [...] At the Barcelona Summit, the European Council set the targets of providing childcare by 2010 to:

- at least 90% of children between 3 years old and the mandatory school age and
- at least 33% of children under 3 years of age (cf. [http://europa.eu/rapid/press-release\\_MEMO-08-592\\_de.htm](http://europa.eu/rapid/press-release_MEMO-08-592_de.htm)).

Furthermore, the OECD Thematic Review of Early Childhood Education and Care Policy for Germany from 2004 emphasised the need for an expansion of the ECEC sector for children under the age of three, especially in West Germany. In 1998 the attendance rate for children under three in ECEC was 2.7% in West Germany, whereas the attendance rate in East Germany was already 37% (OECD 2004).

2. Were there any conditions in the political context that made it possible for this law to be developed and adopted at the time that it was (i.e. a particular political party in power, a conflict/post-conflict situation, a recent ratification of an HR instrument, etc.)?

Yes  No

If yes, please explain:

In 2007, the so-called “Krippengipfel” (crèche summit) was held. Within this summit the federal government, the Länder and the municipalities agreed on a stepwise, needs-oriented expansion of ECEC places (in particular for under three-year-olds).

3. What actors were consulted and how were they consulted in the law’s development and formulation? Check all that apply, and, where possible, provide names of involved individuals, agencies, organizations, etc.

Legal Experts/scholars (please specify)  \_\_\_\_\_

Government Ministries  The Länder and local umbrella organizations/ECEC providers were consulted in the law’s development and formulation.

NHRI  \_\_\_\_\_

NGOs/CSOs  \_\_\_\_\_

Other social groups (specify) ( ) \_\_\_\_\_

4. Was there opposition to the law?

Yes  No ( ... )

If yes, please explain from whom and why, and how it was addressed:

*Some concerns were expressed how early institutional/centre-based/formal ECEC might influence young children's development.*

6. Were there other laws that needed to be reformed in order to enact this law?

Yes  No ( )

If yes, please list and explain:

*With the implementation of the Childcare Funding Act several existing laws were adjusted. Especially the changes in the Book of the Social Code VIII, concerning the legal entitlement and the expansion of the ECEC sector can be seen as coherent.*

*The following laws have been changed:*

Fiscal Equalization Act (*Finanzausgleichsgesetz, FAG*)  
Books of the Social Code IV, VIII & XI (*SGB IV, VIII, XI*)  
Income tax law (*Einkommenssteuergesetz*)  
Federal Training Assistance Act (*BaföG*)  
Adoption law (*Adoptionsvermittlungsgesetz, AdVermG*)

7. Were any international human rights treaties or mechanisms referenced in the law's creation?

Yes ( ) No

If yes, please list and explain:

8. Did any international/regional/national human rights mechanism issue recommendations to the State in regard to amendment or formulation of this law, or regarding effective implementation? If yes, was this recommendation formulated prior, during or after the adoption of the law?

Yes ( ) No

If yes, please list and explain:

9. What measures to support implementation were built into the law or developed immediately after (and as a result of) its passing? This could include such measures as budgetary and resource allocation, monitoring mechanisms, data collection, impact

measurement mechanisms, independent monitoring, etc. Please list and explain, providing any relevant documents.

*In order to support the implementation of the law the federal government invested 2.15 billion EUR from 2008 to 2013 in the expansion of the childcare sector. Additionally, the government provided 1.85 billion EUR for operational costs. From 2014 onwards the federal government takes a share of 770 million EUR annually in the operating costs.*

*Apart from financial aspects, the legally mandatory evaluation report on the law (KiföG-Bericht) gives an insight on the implementation of the law.*

10. How was the law made accessible to the public? Did it include formal training on the new law for all stakeholders involved? Were specific groups of women targeted for these activities? Who was involved in these initiatives, and where did the funding come from? Please answer in detail.

*The law has been published, additionally there have been information notices for the Länder and local umbrella organizations.*

*There was no special training on the new law.*

11. Have there been any barriers to the law's full and successful implementation?

Yes  No

If yes, please explain the barriers and how they were/are being addressed:

*The demand for ECEC places for children under three in 2013 was calculated with 750 000. However, the demand rises constantly. In order to meet the rising demand new investment programmes have been set up by the federal government.*

12. What kinds of roles are being carried out by civil society/women's organizations in supporting the implementation and impact of the law? How are these activities being financed?

*ECEC providers (which can be public and private - either non-profit or for-profit) play a major role in the implementation of the Childcare Funding Act, as they are responsible for the infrastructure, which is needed for the expansion of the sector. They are funded amongst others by public spending.*

### **III. The impacts that the law has had for women on the ground**

1. Did the adoption of the law result in the creation of any policies?

Yes  No

If yes, please list and explain:

2. Have court cases/decisions resulted from the law? Has this data been systematically

collected? If so, please provide details about the number of cases, convictions, decisions made.

*In the first five months after the law came into force 242 court cases were counted. The reason for the lawsuits was that the parents' demand for places in child care was higher than the actual number of available places (BMFSFJ 2015).*

3. What specific and measurable outcomes showing the impact of the law on society and on women's enjoyment of their rights have been recorded as a result of the adoption and implementation of the law? How have these been monitored and by whom?

*The Federal Government has annually published the mandatory evaluation report on the Childcare Funding Act (KiföG-Bericht). In this context the impact of the law has been systematically monitored. In total 32.9% of the children under the age of three attended ECEC in 2015. In 2008 only 17.8 % of the children under three participated in ECEC. Thus, there has been an enormous development. However, the demand for childcare is still higher than the supply (Autorengruppe Bildungsberichterstattung 2016). The difference between demand and supply is especially high when it comes to places for children between 1 and 2 years (BMFSFJ 2015). Furthermore, the difference between East and West Germany is still evident when it comes to the attendance rate of children under 3. In West Germany 28.2% of the children under 3 participated in ECEC in 2015, whereas in East Germany the participation rate was 51.9%. It can be seen that children with a migration background or with parents with lower qualifications participate less in and start later with ECEC (Autorengruppe Bildungsberichterstattung 2016).*

*The employment rate of women with children at the age of 1 or 2 rose from 33% in 2006 to 41% in 2011. The employment rate of women with children between 2 and three years increased from 42% (2006) to 54% (2011)(BMFSFJ 2015).*

4. Are there other impacts of the law that have been observed?

Yes ( ) No (x)

If yes, please list and explain what they are, as well as monitoring mechanisms used to observe and/or measure those impacts:

5. What mechanisms have been set up to review and assess the implementation of the law?

*The Childcare Funding Act has been evaluated on an annual basis. The evaluation is conducted by the Federal Government and published in the so-called [KiFÖG Reports](#).*

6. Is there data on how the law has affected some groups of women differently (i.e. based on race, ethnicity, religion, social class, age, etc.)?



Yes (x) No ( )

If yes, please explain the differential impacts and provide any relevant documents.

*It can be seen, that the participation rate of children under three in ECEC depends on the employment rate of women. The more women are employed in a region, the higher the participation rate in ECEC in this particular region. Furthermore it can be seen that the unemployment rate affects the attendance rate as well. The higher the unemployment rate in a region is the lower is the attendance rate. This effect can only be found in West Germany (BMFSFJ 2012).*

7. Has there been independent monitoring of the law?

Yes (x) No ( )

Please provide information.

*The evaluation report on the KiföG can be seen as monitoring (see explanations above).*

## References

Autorengruppe Bildungsberichterstattung (2016): Bildung in Deutschland 2016. Ein indikatorengestützter Bericht mit einer Analyse zu Bildung und Migration. W. Bertelsmann Verlag: Bielefeld.

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