

## GERMANY

# Human and social rights: not always a given

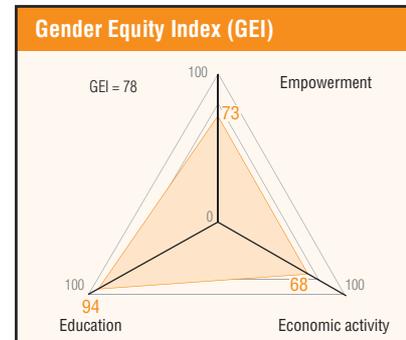
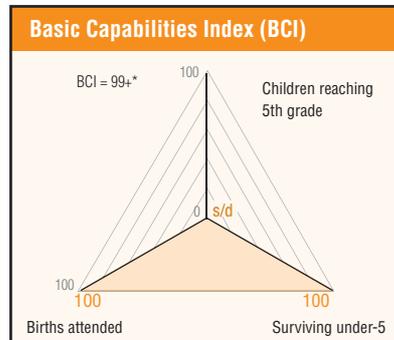


Poverty and economic and social inequality are increasing more rapidly in Germany than in most other EU countries, stimulating debate about minimum wage and labour protections as well as concern about human and social rights. Although politicians and the public assume that the law guarantees their human and social rights, citizens and groups are increasingly demanding Government human rights compliance. Interestingly, the Government continues to insist on human rights compliance as a condition of official development assistance.

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Poverty and economic and social inequality are increasing more rapidly in Germany than in most other EU countries. Income disparities have increased by 0.3 percentage points in 2007 alone. Without state benefits, the poverty rate would include more than a quarter of the population and a full one-third of children and young people.<sup>1</sup> These disparities provoked an intense debate about social justice in 2007. Employment shifts in particular came under scrutiny, for despite a more buoyant economy<sup>2</sup> and a substantial fall in unemployment,<sup>3</sup> the number of people in precarious employment and/or working for very low wages is steadily increasing.

During the third quarter of 2007, for example, the number of 'mini-jobs' paying a maximum wage of EUR 400 (USD 632) a month rose by a further 240,000 against the previous year, to around 6.6 million.<sup>4</sup> Since 2002, the number of part-time or temporary jobs has doubled – with women accounting for almost two-thirds of these marginal workers.<sup>5</sup> The State subsidizes this form of employment to the tune of almost EUR 4 billion (USD 6.32 billion), in terms of lost tax revenue and social security contributions.<sup>6</sup> The disproportionately large number of women in marginal employment reflects both a lack of state-funded childcare options as well as the impact of gender discriminatory tax provisions on female workers in the household. Preferential



tax treatment is still given to the 'male-breadwinner' model of the family, which puts women at a disadvantage in the labour market and makes them dependent on a higher-earning partner. There are therefore calls for a Gender Equality Act on the Norwegian model.<sup>7</sup>

Full-time workers are also facing losses, as economic restructuring results in plant closures and worker layoffs. These losses are matched by a parallel increase in workers employed by temporary employment agencies, which has tripled over the last ten years. In 1997, they numbered around 200,000, but by mid 2007, this had risen to a startling 713,000 – some 2.4% of the workforce.<sup>8</sup> As a result, despite the economic upturn, the number of people claiming partial unemployment benefits rose by one-third to 1.3 million between September 2005 and August 2007. Families are especially hit: almost 50% of married couples with children are now claiming unemployment benefit II – alongside a regular earned income that is liable for social insurance contributions.<sup>9</sup>

Combining all of these trends, we can see that the number of low wage workers has increased by 43% since 1995, totalling 6.5 million people – roughly 22% of all payroll employees.<sup>10</sup>

In light of this, it is hardly surprising that the demand for a comprehensive minimum wage has grown, resulting in a legislative initiative for a minimum wage of EUR 7.5 (USD 11.85) an hour scheduled for mid 2008. Minimum wage regulations already exist for construction workers and postal workers, and temporary employment agencies are already backing this initiative. It would also cover private security providers, workers in waste disposal, meat processing, horticulture and landscape architecture, retail and home care workers hairdressers and bakery workers.<sup>11</sup>

### Human rights and development cooperation

Shortly before going to press, the Federal Ministry for Economic Cooperation and Development (BMZ, in German) announced the publication of its Second Development Policy Action Plan on Human Rights 2008-2010, which explicitly describes social, economic and cultural rights as having the highest priority.<sup>12</sup> It thus builds on the previous Action Plan for the period 2004-2007, in which the Government defined 17 specific measures aimed at strengthening human rights through development cooperation.<sup>13</sup>

However, the BMZ has not yet taken up several human rights policy approaches, at least in the first Action Plan. The most important is the concept of *human rights budgeting*, which involves developing perspectives and analyzing the costs "of realizing

\* One of the BCI components was imputed based on data from countries of similar level.

1 Spiegel online, <[www.spiegel.de/wirtschaft/0,1518,529981,00.html](http://www.spiegel.de/wirtschaft/0,1518,529981,00.html)>.

2 The German economy achieved a growth rate of 2.9% in 2006 and 2.5% in 2007. Spiegel online, <[www.spiegel.de/wirtschaft/0,1518,528600,00.html](http://www.spiegel.de/wirtschaft/0,1518,528600,00.html)>.

3 In February 2008, the number of registered unemployed had fallen by 630,000 against the previous year. See: <[www.arbeitsagentur.de/nr\\_27908/zentraler-Content/A01-Allgemein-Info/A015-Oeffentlichkeitsarbeit/Allgemein/Arbeitsmarkt-Februar-2008.html](http://www.arbeitsagentur.de/nr_27908/zentraler-Content/A01-Allgemein-Info/A015-Oeffentlichkeitsarbeit/Allgemein/Arbeitsmarkt-Februar-2008.html)>.

4 For comparison, the official relative poverty line for Western and Eastern Germany in 2002 was EUR 730 and EUR 604 per capita per month respectively. See: <[www.taz.de/index.php?id=archivseite&dig=2005/01/15/a0175](http://www.taz.de/index.php?id=archivseite&dig=2005/01/15/a0175)>.

5 Financial Times Deutschland, <[www.ftd.de/politik/deutschland/Zahl%20Minijobs/280194.html](http://www.ftd.de/politik/deutschland/Zahl%20Minijobs/280194.html)>.

6 agesschau.de, based on figures from the German Trade Union Confederation (DGB), <[www.tagesschau.de/wirtschaft/minijobs2.html](http://www.tagesschau.de/wirtschaft/minijobs2.html)>.

7 For Germany's system of income splitting for married couples and taxation bracket V, see, e.g., Lissy Gröner, MEP, 8 March 2008: <[www.lissy-groener.de/public/2008/presse2008-03-06\\_frauentag.pdf](http://www.lissy-groener.de/public/2008/presse2008-03-06_frauentag.pdf)>.

8 Spiegel online, <[www.spiegel.de/wirtschaft/0,1518,536129,00.html](http://www.spiegel.de/wirtschaft/0,1518,536129,00.html)>.

9 FR online; based on a study by the DGB, <[www.fr-online.de/\\_inc/\\_globals/print.php?em\\_cnt=1266981&em\\_ref/in\\_und\\_ausland/wirtschaft/aktuell/](http://www.fr-online.de/_inc/_globals/print.php?em_cnt=1266981&em_ref/in_und_ausland/wirtschaft/aktuell/)>.

10 Report by the Work and Skills Institute, University of Duisburg, <[www.iaq.uni-due.de/iaq-report/2008/report2008-01.pdf](http://www.iaq.uni-due.de/iaq-report/2008/report2008-01.pdf)>. A "low wage" is defined as earning less than two-thirds of the mean gross hourly wage: in Western Germany, this is EUR 9.61 and in the new federal states, EUR 6.81.

11 Spiegel online, <[www.ftd.de/politik/deutschland/Scholz%20Mindestlohntr%E4ge/323173.html](http://www.ftd.de/politik/deutschland/Scholz%20Mindestlohntr%E4ge/323173.html)>.

12 <[www.bmz.de/de/presse/aktuelleMeldungen/2008/maerz/20080311\\_menschenrechte/index.html](http://www.bmz.de/de/presse/aktuelleMeldungen/2008/maerz/20080311_menschenrechte/index.html)>. The text was not yet available for download at the time of going to press and therefore could not be evaluated.

13 <[www.bmz.de/de/service/infotek/fach/konzepte/konzept127dt.pdf](http://www.bmz.de/de/service/infotek/fach/konzepte/konzept127dt.pdf)>.

human rights in the national budget cycle, i.e. in strategy development; planning and budget allocation; spending and auditing".<sup>14</sup>

Under current budget planning, Germany's resource framework for achieving the objectives it has set itself is inadequate. When measured against the EU's step-by-step plan to raise the official development assistance (ODA), to which the Federal Government has a binding commitment, there is a funding gap of almost EUR 3 billion (USD 4.74 billion) already for this year, which is in danger of increasing to more than EUR 5 billion<sup>15</sup> (USD 7.90 billion) by the deadline for the attainment of the EU's target.<sup>16</sup>

The main omission in German development cooperation, however, is the recognition that Germany has human rights obligations to people in other countries as well as its own: in other words, extraterritorial human rights obligations. Whenever the German State, its citizens or German companies engage in activities in other countries, the Federal Government has an obligation to respect human rights and ensure that they are upheld – especially if local institutions lack the capacity to take on this task. A report commissioned by the Church Development Service (EED) and Bread for the World, based on six case studies,<sup>17</sup> shows that Germany is not fulfilling this obligation to an adequate extent – especially when its economic interests are at stake. The study concludes that "the German government should (...) promote extraterritorial obligations through mainstreaming and institutionalizing these obligations in its executive branch, including the effort to increase in capacity to analyse the implications of German policies on human rights outside its territory. This should explicitly include trade and investment policies as well as decisions taken in multilateral development banks."<sup>18</sup> German corporate social responsibility commitments to gender equality and women's rights also applies in this context, as women in developing countries are most often found in flexible, informal and precarious employment at the very end of the global supply chain.<sup>19</sup> ■

14 Budgeting Human Rights, p. 5 ff. <[www.eed.de/dyn/download?entry=page.de.pub.de.202](http://www.eed.de/dyn/download?entry=page.de.pub.de.202)>.

15 *Die Wirklichkeit der Entwicklungshilfe* [The Reality of Development Assistance], 15th report, 2007, p. 27. <[www.tdh.de/content/materialien/download/download\\_wrapper.php?id=247](http://www.tdh.de/content/materialien/download/download_wrapper.php?id=247)>.

16 *Ibid.*: 0.51% of GNI for ODA in 2010.

17 Obstruction of land reform in Paraguay, export of unsafe food products to Cameroon, lack of access to antiretroviral drugs in South Africa and violations of the law by German companies in Mexico and India.

18 "Germany's extraterritorial human rights obligations – Introduction and six case studies", <[www.eed.de/dyn/download?entry=page.de.pub.de.182](http://www.eed.de/dyn/download?entry=page.de.pub.de.182)>, p. 5.

19 See, for example: *Unsere Rechte im Ausverkauf* [English original: Trading Away Our Rights] <[www.oxfam.de/download/Arbeiterinnen.pdf](http://www.oxfam.de/download/Arbeiterinnen.pdf)> or <[www.saubere-kleidung.de/2008/ccc\\_08-01-23\\_ka\\_aldi-aktionen-2008.html](http://www.saubere-kleidung.de/2008/ccc_08-01-23_ka_aldi-aktionen-2008.html)>.

## SOCIAL HUMAN RIGHTS: A GROWING CONCERN

In 2007, concern about the murders of children by mothers who could no longer cope led to calls for amending the provisions on marriage and the family in Article 6 of the Constitution, the Basic Law, to include a reference to children. A number of jurists – notably Federal Constitutional Court Judge Christine Hohmann-Dennhardt – argue that enshrining a duty to promote children's welfare in the Basic Law would create specific obligations for action by both parents and the State.<sup>1</sup> Although no such amendment will be introduced, there are now plans to adopt practical measures to support families and improve monitoring of children's health so that problems in families can be detected at an earlier stage.<sup>2</sup>

However, NGOs accuse the German State itself of violating the Convention on the Rights of the Child. In their Shadow Report *Child Soldiers*, the charities *terre des hommes* and Kindernothilfe point to "serious shortcomings in the Government's treatment of former child soldiers", of whom around 500 are refugees in Germany. These charities are also urging Germany to raise the minimum age for military recruitment to 18 ("*straight 18*"), pointing out that 304 under-18s were recruited to the armed forces in 2007.<sup>3</sup>

An increasing number of human rights cases are being brought before the German or European courts. They include the case of two former prisoners who accused the federal state of North Rhine-Westphalia of committing human rights violations in its penal system; the case was decided in their favour in the first instance.<sup>4</sup>

Of course, this by no means implies that every crisis faced by individuals in Germany is due to a violation of their social rights. Nonetheless, there are worrying trends: for example, the number of people without health insurance is steadily increasing. In 1999, the figure stood at around 145,000 people, rising to 177,000 in 2003 and reaching 211,000 by early 2007.<sup>5</sup> Due to the high costs of medical care, however, the lack of health insurance puts individuals' right to health at serious risk.

Under some circumstances, legislation designed to ensure economic well-being can also result in the violation of civil rights. For example, individuals sharing a home with recipients of unemployment benefit II ("*Hartz IV*") must expect home visits from welfare officials, thus violating the privacy of the home and information.<sup>6</sup> The officials will attempt to determine the precise relationship between the persons sharing the home: for if they are cohabiting in a quasi-marital relationship, the partner must contribute to the maintenance of the Hartz IV recipient. If there is no cohabitation, no such obligation arises. The authorities can thus save money if they manage to prove that their client is in an intimate relationship.

Finally, access to education is increasingly being considered from a human rights perspective. For example, the German Education Union and the National Union of Students have produced an analysis of the implementation of the right to tertiary education, especially in light of the recent introduction of tuition fees. They conclude that "neither the Federation nor the individual federal states are fulfilling their obligations arising under the International Covenant on Economic, Social and Cultural Rights", especially as regards Article 13, paragraph 2 (c) and (e).<sup>7</sup> The University of Bamberg's "Human Right to Education" research project is intended to develop "a systematic rationale" for the "need for and scope of the human right to education from a Christian social ethics perspective" and devise appropriate criteria for its implementation.<sup>8</sup>

1 See, for example, *Süddeutsche Zeitung*, <[www.sueddeutsche.de/deutschland/artikel/895/148542/](http://www.sueddeutsche.de/deutschland/artikel/895/148542/)>.

2 *ZEIT* online, <[www.zeit.de/online/2007/52/kinderschutz](http://www.zeit.de/online/2007/52/kinderschutz)>.

3 Press release, *terre des hommes*, <[www.tdh.de/content/presse/pressemitteilungen/detail.htm?&view=detail&id=194&year=2007](http://www.tdh.de/content/presse/pressemitteilungen/detail.htm?&view=detail&id=194&year=2007)>.

4 *ZEIT* online, <[www.zeit.de/2007/51/LS-Haftbedingungen](http://www.zeit.de/2007/51/LS-Haftbedingungen)>.

5 *Spiegel* online, <[www.spiegel.de/wirtschaft/0,1518,533727,00.html](http://www.spiegel.de/wirtschaft/0,1518,533727,00.html)>.

6 Udo Geiger, *Liebe in den Zeiten von Hartz IV* [Love in the Time of Hartz IV], in *Grundrechte-Report 2006*, Fischer Taschenbuchverlag, Frankfurt a.M., 2006.

7 "*Die Einführung von Studiengebühren und der internationale Pakt über wirtschaftliche, soziale und kulturelle Rechte*" [The Introduction of Tuition Fees and the International Covenant on Economic, Social and Cultural Rights], <[www.studis.de/usta-ph-freiburg/cms/uploads/pdfs/sozialpakt\\_innenteil\\_web.pdf](http://www.studis.de/usta-ph-freiburg/cms/uploads/pdfs/sozialpakt_innenteil_web.pdf)>.

8 <[www.uni-bamberg.de/?id=17711](http://www.uni-bamberg.de/?id=17711)>.