

Parallel Report

of the

Eberhard Schultz Foundation for Social Human Rights and Participation, People's Solidarity, International League for Human Rights, Humanist Union, IALANA, LSBB and NatWiss



VOLKSSOLIDARITÄT



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Introduction

1. For the first time, we are pleased to be involved in the implementation of social human rights by the UN Committee on Economic, Social and Cultural Rights (CESCR) with the submission of this shadow report in coalition with the People's Solidarity (Volkssolidarität), the International League of Human Rights (ILHR), the Humanist Union, the German Section of the International Association of Lawyers against Nuclear Arms (IALANA), the Advisory Council of Senior Citizens Berlin (LSBB) and the Scientist Initiative (NatWiss).
2. Our young charitable foundation, founded in 2011, is the only one in the German-speaking world whose goal is to contribute to the realization of social human rights on the basis of the 1966 UN Social Pact. Their comprehensive recognition and implementation as subjective rights, which can be legally enforced before the courts and the UN Committee if necessary, is not only a mandatory requirement of international law. Especially in times of increasing social division in one of the richest countries in the world, in which growing right-wing populist forces demand discrimination and marginalization of entire parts of the population, the implementation of social human rights for all is late-breaking.
3. People's Solidarity (Volkssolidarität) is a charitable social and welfare association, which represents the interests of its members, the people it cares for as well as those of underprivileged people of all generations. Its fundamental values are peace, humanism, democracy and solidarity. The ILHR advocates the conservation and further development of civic and human rights in Germany, in Europe and worldwide and opposes any and all constraints or redemption of constitutional principles or civic liberties. The Humanist Union's main focus regards the respect for human rights. They are committed to the right of free and unconstrained development of personality. They oppose every unjustified limitation of this right induced by the state, the economy and the church. IALANA is an international association of lawyers and lawyers' organisations working for the elimination of nuclear arms, the strengthening of international law and the development of effective mechanisms for the peaceful settlement of international disputes. The Advisory Council of Senior Citizens Berlin (LSBB) is counselling the Berlin House of Representatives and the Senate of Berlin in important political issues related to senior citizens on the base of Berlin's law for the participation of senior citizens. The Scientist Initiative (Natwiss) is committed to a world without war and violence, to disarmament, peace research and social, ecological and human technology design.
4. The focus of our work to date is on public relations, also in cooperation with other human rights organizations and initiatives from the social movements, the promotion of social projects, symposiums and discussions with experts from science, politics and NGOs.¹
5. Already on 15 December 2017 - the eve of the 51st anniversary of the adoption of the UN Social Pact - we have in a joint declaration initiated by us with the German Parity Association, FIAN e.V., the Humanist Union, the IALANA, the VDJ and the International League for Human

¹ Symposium about the topics "The Social Human Right to Living, Health and Education" and "Social Human Rights – (not) an issue in Germany?"; as well as the public tendering and grant of the Social Human Rights Award during our annual event on the International Day of Poverty – the awardees were up to date, amongst others, KulturistenhochZwei Hamburg, mob e.V. Berlin and Medibüro Berlin. The laureates of our Special Award were SOS Mediterranée, FIAN e.V. and Vielfältiges Menschenbild Berlin gGmbH.

Rights on the occasion of the proclamation of the “European Pillar of Social Rights” at the EU Social Summit, also called on the civil society to comment on the sixth German State Report.

6. This shadow report was prepared on the basis of the List of Issues, which we sent you in 2017.
7. As stated in the individual sections, there is a significant shortcoming in reviewing the achievement of individual human rights in missing or inconsistent needs-based research, and in particular statistics. This report should serve as a general reminder and be improved.
8. In implementing social human rights, the Federal Government repeatedly cites - for example, the human right to education - the federal structure of Germany. Even if this is certainly to be observed according to the Basic Law, this opinion needs to be revised, for which the UN Human Rights Council should demand: Firstly, the Federal Government has the duty to inform the state governments about the requirements and existing deficits and jointly work on the improvements and necessary steps. The Federal Government, being the accountable body to the UN for the international legal entity Germany, cannot hide behind the fact that due to internal regulations other institutions are responsible for the realization of human rights. It would be as if the French Government argues: *What happens on the island of Corsica cannot be influenced by us in any case*. On the other hand, it should be considered whether and how the state governments themselves can be integrated in the process.

I. Ratification of the Optional Protocol

9. As is well-known, in 2008 the Federal Government played a major role in the conclusion and formulation of the Additional Protocol and later repeatedly stated that it wished to sign it, without wanting to commit to specific times or stipulating conditions for this.
10. The Sixth State Report on Recommendation No. 36 “Ratification of the Optional Protocol” states: “The possibility of [such] complaints procedures [...] is an important and proven instrument [...]. In this legislative period, the review procedure for ratification has been re-launched”.² Without further explanation, however, it is pointed out that the examination is still ongoing. Since 2009, the Federal Government has already been assessing the ratification-related adaptation requirements of the applicable law by the relevant department³ and stated in the Fifth State Report “that the clarification of open questions with a view to a functioning complaints mechanism should be speedily pursued”.⁴
11. In its response to a request by Member of the German Parliament Azize Tank on the obstacles to immediate ratification, the German government declared in 2014 that the case-law of the UN Expert Committee on the Social Pact (UN Social Committee) was “only partially assessable” and was in part missing “general remarks for some articles of the UN Social Pact”.⁵ The opposite is the case, if it should be of any relevance for the ratification of a convention binding under international law. The consequences of the ratification can be sufficiently estimated according to a statement of the German Institute for Human Rights, because the guaranteed rights in the UN Social Pact are substantiated by “Concluding Observations” and “General Comments” of the UN Social Committee.⁶ Since domestic legal remedies must be exhausted before an individual complaint to the UN Social Committee can be petitioned, no large flood of complaints is to be expected, let alone a large number of convictions of the Federal Republic. Just as an estimate: Until the end of 2015, only three individual complaints were accepted by this committee for decision.⁷
12. The coalition agreement between the CDU, CSU and SPD of the newly constituted Federal Government of 14 March 2018 states: “We seek the ratification of the Optional Protocol to the United Nations Social Pact and the ILO Convention 169 for the protection of indigenous peoples”.⁸ Again, there is no such thing as a concrete date of ratification or even a reliable indication of necessary preparatory work and a timetable.

² Sixth State Report of the Federal Republic of Germany pursuant to Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 2016 (hereinafter State Report 2016), p. 7.

³ Human Rights Council, *Report of the Working Group on the Periodic Review, Germany, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 11th sess., Agenda item 6, UN Doc A/HRC/11/15/Add.1 (20 May 2009) p. 2, para 5.

⁴ Fifth State Report of the Federal Republic of Germany pursuant to Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 2008, p. 21.

⁵ German Parliament, plenary protocol of the 22nd session from 19 March 2014, response of parliamentary state secretary Gabriele Lösekrug-Möller to question 47 of delegate Azize Tank, plenary protocol 18/22, p. 1740.

⁶ German Institute for Human Rights, Dr. Claudia Mahler, *Das Fakultativprotokoll zum UN-Sozialpakt endlich annehmen* (05/2015), p. 3.

⁷ Office of the UN High Commissioner for Human Rights, Committee on Social, Economic and Cultural Rights, TABLE OF PENDING CASES BEFORE THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, CONSIDERED UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (OP-CESCR) <<https://www.ohchr.org/EN/HRBodies/CESCR/Pages/PendingCases.aspx>>.

⁸ Coalition agreement between the CDU, CSU and SPD (2018): *Ein neuer Aufbruch für Europa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land*, 19th legislative period, p. 155, row 7366 f.

We call for:

- Germany must immediately sign and ratify the Optional Protocol – or at least provide a concrete schedule for ratification.

II. Enshrining the Social Human Rights in the Basic Law

13. In addition to the ratification of the Optional Protocol, social human rights are required to be laid down in the Basic Law in view of the detailed catalog of individual civil rights and liberties, in order to underline their universal character. Several national constitutions already contain social human rights.

We call for:

- It is clear that social human rights in Germany must be legally determined in detail with constitutional rank and go beyond the welfare state principle – not only with regard to the comprehensive catalog of fundamental individual citizens' rights and freedoms.

III. On the Implementation of Individual Social Human Rights

1. Right to Social Security (Article 9)

14. The State Report rejects the comprehensive poverty reduction program recommended by the UN Social Committee as inappropriate and refers to existing legislation,⁹ although this is apparently no means for effectively fighting poverty, seeing that 13% of the population live below the poverty line. The Federal Government sees no need for action, since the existing legislation, in their view, guarantees a “life in dignity”, as well as ensure a “fair standard of living”.¹⁰
15. The UN Social Committee has also criticized the fact that the existing fallback system can not only not combat poverty, but that certain regulations, such as the obligation of beneficiaries to take “any reasonable employment” and the allocation of unpaid voluntary work, violate the articles 6 and 7, in particular the right to a free choice of employment and the right to reasonable remuneration for the work done.
16. The Federal Government explains in the State Report: “The rate for being at risk of poverty of both the total population and the employed population in Germany in 2014 were roughly equivalent to those in the European average”.¹¹ The poverty risk among unemployed is not mentioned, which was 70.8% in 2016 and is thus the highest of any EU country.¹² EU-wide, the risk of poverty for the unemployed aged 16-64 was 48.7%.¹³
17. The Federal Government further indicates that the calculation procedure will be re-examined in the context of a legally required recalculation of the benefits for ensuring livelihood in 2016 on the basis of current statistical data. Based on these recalculations, it will draft a bill to redefine the amount of benefits required to ensure livelihood from 2017 onwards.¹⁴

⁹ State Report 2016 (fn. 2), p. 49.

¹⁰ *Ibid*, p. 46.

¹¹ *Ibid*, p. 48.

¹² Eurostat, Almost half the unemployed at risk of monetary poverty in the EU (26 February 2018)

<<http://ec.europa.eu/eurostat/de/web/products-eurostat-news/-/DDN-20180226-1?inheritRedirect=true&redirect=%2Feurostat%2Fde%2Fhome>>.

¹³ *Ibid*; cf. Zeit Online, Deutschland hat EU-weit höchstes Armutsrisiko bei Arbeitslosigkeit (27 February 2018)

<www.zeit.de/gesellschaft/zeitgeschehen/2018-02/eurostat-deutschland-arbeitslose-armutsrisiko>.

¹⁴ State Report 2016 (fn. 2), p. 46-47.

18. Although the Federal Constitutional Court has determined that the unemployment benefit (*Hartz IV*) rules are “currently still constitutional” and have been calculated transparently,¹⁵ they need to be corrected. Criticism was made in view of the risk of a shortfall in terms of durable consumer goods (household appliances such as refrigerators, washing machines, and so on),¹⁶ household electricity (through price increases)¹⁷ and mobility needs.¹⁸ Nothing has improved in these points.¹⁹ Furthermore, when calculating the need for standard rates, the removal,²⁰ as required by the Federal Constitutional Court in 2010,²¹ would have led to an increase in the standard rates of 12 Euros for single persons in 2014.²²
19. There is a direct link between poverty and the loss of social participation and other social human rights. As the Federal Constitutional Court has already stated several times in this context, the “constitutionally guaranteed entitlement to a humane subsistence level” must also extend to “ensuring a minimum level of participation in social, cultural and political life”.²³

We call for:

- A comprehensive poverty reduction program based on resilient statistics should be developed and implemented in order to realize effective social participation that considers the different aspects of poverty. State benefits must be easy to understand and easy to access for all affected groups.

1.1. Child Poverty

20. In Germany, around 21% of all children live permanently or repeatedly in a poverty situation for at least five years.²⁴ The duration of children on welfare (*SGB II*) continues to rise: in 2015, nearly two million of under-18s were living in families in need of *SGB II* benefits,²⁵ 57.2% of these children aged 7 up to 15 years even for more than three years.²⁶ Whether a child grows up in poverty often depends on the family constellation and the following factors: Is a parent a single parent? Does it have siblings? Are the parents, especially the mother, employed? Does the family have a migration background?²⁷ Children living with a single parent and children with multiple siblings are particularly affected: in 2015, 50.2% of children receiving *SGB II* benefits grew up with one parent, while 36.4% lived in a family with three or more

¹⁵ German Federal Constitutional Court, Decision of the First Senate from 23 July 2014 - 1 BvL 10/12 - no. 86.

¹⁶ *Ibid*, no. 120.

¹⁷ *Ibid*, no. 111.

¹⁸ *Ibid*, no. 114.

¹⁹ Deutschlandfunk, „Die Menschen haben Angst vor sozialem Abstieg“ (12 March 2018)

<http://www.deutschlandfunk.de/armut-in-deutschland-die-menschen-haben-angst-vor-sozialem.694.de.html?dram:article_id=412760>.

²⁰ Households that do not make use of livelihood benefits which they are entitled to, see Irene Becker, *Der Einfluss verdeckter Armut auf das Grundsicherungsniveau* (2015) p. 4.

²¹ German Federal Constitutional Court, Decision of the First Senate from 09 February 2010 - 1 BvL 1/09 - no. 169.

²² Irene Becker (fn. 20) pp. 13.

²³ German Federal Constitutional Court, 23 July 2014 (fn. 21) no. 75.

²⁴ Bertelsmann Foundation, *Studie Kinderarmut ist in Deutschland oft ein Dauerzustand* (23 October 2017)

<<https://www.bertelsmann-stiftung.de/es/themen/aktuelle-meldungen/2017/oktober/kinderarmut-ist-in-deutschland-oft-ein-dauerzustand/>>.

²⁵ Bertelsmann Foundation, *Factsheet Kinderarmut – Kinder im SGB-II-Bezug in Deutschland* (2016) p. 1

<https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Factsheet_WB_Kinderarmut_DE_09_2016.pdf>.

²⁶ *Ibid*, p. 5.

²⁷ Nationale Armutskonferenz, *25 Jahre Nationale Armutskonferenz – Raus aus der Armut* (2017) p. 7

<<https://www.nationale-armutskonferenz.de/wp-content/uploads/2017/06/25-Jahre-Armutskonferenz.pdf>>; Bertelsmann Foundation, *Studie Kinderarmut hängt stark von Berufstätigkeit der Mütter ab* (27 June 2018) <<https://www.bertelsmann-stiftung.de/de/themen/aktuelle-meldungen/2018/juni/kinderarmut-haengt-stark-von-berufstaetigkeit-der-muetter-ab/>>.

siblings.²⁸ Especially children of unemployed single mothers almost always (96%!) grow up in a permanent or recurrent poverty situation.²⁹

21. The UN Social Committee notes that the contribution of social benefits to children is very low, resulting in over 2.5 million children living below the poverty line. It is recommended that the existing fallback system be specifically reviewed for the effects on child poverty.³⁰ Germany claims in the State Report that the SGB II benefits would be adapted to the specific needs of children and adolescents.³¹ This is not the case. The livelihood protection system of children is oriented towards the lower income bracket of society and ignores the rights, interests and real needs of young people. It does not help to prevent child poverty, because there is a lack of a "Teilhabegeld"³² or a separate set of children's standard rates, which considers the needs of adolescents.³³
22. According to the so-called "Child Deprivation Index" developed by the UN, children need 14 different commodities or facilities to ensure their development opportunities and appropriate participation. Based on this index, 8.8% of children in Germany feel disadvantaged, and most of the following goods and services are lacking: regular leisure activities (6.7%), one hot meal a day (4.9%), a place to finish their homework undisturbed (4.4%), appropriate clothing: 3.7% of children have at most a pair of shoes and 3.1% of under-16s never get any new clothes.³⁴ In comparison to other industrialized countries, Germany only performs mediocrely.³⁵ Germany is called upon by the UN Social Committee to ensure that children from poorer families in particular receive warm meals and that the measures do not contribute to further discrimination against poor children.³⁶ In the State Report, Germany relies on the financial support of cafeterias in schools and kindergarten, which offer poor children a meal for a contribution of one euro. The State Report further refers to the embedding of the topics healthy nutrition into the curriculum as a practical measure. This does not take account of the fact that a balanced diet requires the corresponding financial resources of the parents. Broaching the issue in the classroom can lead to stigmatization of students and feelings of social exclusion if they do not receive a full-fledged diet at home. The nutritional budget for a 5-year-old child, for example, is set at 2.80 euros per day at the standard rate. This will not only rule out a healthy and balanced diet at home, but will also promote the unequal opportunities of children on SGB II welfare in accessing a healthy diet.³⁷ A combination of measures is necessary. Teaching content must be combined with offering a free lunch at school.

²⁸ Laubstein, Holz, Seddig (publishers), *Armutfolgen für Kinder und Jugendliche. Erkenntnisse aus empirischen Studien in Germany*, Bertelsmann Foundation (2016); Bertelsmann Foundation (fn. 25) p. 6, 7.

²⁹ Bertelsmann Foundation (fn. 25).

³⁰ UN CESCR, Review of the State Reports pursuant to Articles 16 and 17 of the Convention: Concluding Remarks of the CESCR: Germany, 46th sess., UN Doc. E/C.12/DEU/CO/5 (12 July 2011) p. 6, para. 21.

³¹ State Report 2016 (fn. 2), p. 46.

³² A cash benefit with the aim to enable participation in society; Bertelsmann Foundation, *Neue Existenzsicherung für Kinder und Jugendliche* <<https://www.bertelsmann-stiftung.de/de/unsere-projekte/familie-und-bildung-politik-vom-kind-aus-denken/projektthemen/neue-existenzsicherung-fuer-kinder-und-jugendliche/>>.

³³ Andreas Kaczynski, *Kinderarmut – und was daraus folgt*, Eberhard Schultz Foundation for Social Human Rights and Participation (10 October 2017) <http://sozialemenschenrechtsstiftung.org/images/pdf/Rede_Kaczynski.pdf>.

³⁴ Zivilgesellschaft KONKRET, *Allen Kindern eine Zukunft bieten* (07/2015), p. 5 <https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/ZiviZ_Konkret_Nr_7_NEU.docx.pdf>.

³⁵ Unicef, Innocenti Research Center Report Card 10: Measuring Child Poverty, p. 2, Fig. 1a: A league table of child deprivation, 29 economically advanced countries <https://www.unicef-irc.org/publications/pdf/rc10_eng.pdf>.

³⁶ CESCR (fn. 30), p. 8, para. 28.

³⁷ PD Dr. Mathilde Kersting und Dr. oec. troph. Kerstin Clausen, *Wie teuer ist eine gesunde Ernährung für Kinder und Jugendliche, Ernährungs-Umschau* (09/2007) p. 512-3 <https://www.ernaehrungs-umschau.de/fileadmin/Ernaehrungs-Umschau/pdfs/pdf_2007/09_07/EU09_508_513.qxd.pdf>.

23. The further benefits of the education and participation package do not do justice to the aspiration to enable social and cultural participation. This is shown by the evaluation of the Federal Ministry of Labor and Social Affairs of August 2016 - five years after the introduction of the education and participation package.³⁸ The data shows that only 52% of the beneficiaries requested services from this package. This is not because there is no need for support. There is rather a lack of information, because the beneficiaries are not automatically informed by the authorities about the package. In addition, the application is complicated, bureaucratic and very expensive, so that the beneficiaries need support with the application.³⁹
24. The benefits included in the education and participation package are also unsuitable for securing the right to education for children from low-income families and provide only limited financial support. Thus, the school equipment of a child is funded with 100 euros, although the real cost is twice as high.⁴⁰ Children only receive support for tutoring if their transfer is demonstrably at risk. However, this is only verifiable in the second half of the school year. The use of tutoring in order to improve personal performance without the risk of transfer is not intended. This means that children from low-income families are given only limited access to educational support. It is highly problematic that educational support only starts when the transfer is endangered and not generally provided as a means to increase the chances of future social participation of children from low-income families. The educational success of children in Germany is still strongly linked to the social status of their parents.⁴¹ Here, there is an urgent need for action to permanently break the family cycle of poverty. Only 25% of the poor adolescents have a high level of education, 45% of the non-poor. The long-term development shows that early poverty has a significant impact on the level of education achieved, as poor daycare children are later at 48% above average often secondary modern school students or graduate without a degree.⁴² Poverty leads to poor participation in education and drastically reduces the chance of a job with a good income.
25. The social participation in cultural and extracurricular education offers is not effectively supported by the education and participation package. Children from low-income families receive a monthly allowance of 10 euros to finance sports and cultural activities. However, there are few offers that are affordable for low-income families. The amount of the subsidy is too low to allow children to participate in cultural life.⁴³ The participation of older children in recreational activities in sports clubs is related to family income: 33% of children from households on SGB II welfare and only 73% of children from families with 130% median income participated in sports club activities.⁴⁴ Added to this are the social consequences, as children have to out themselves as poor, because of their lack of material resources. The standardized method of measuring the need for normal requirements is not suited to identify the individual needs of children and adolescents, and is not an effective way to

³⁸ Federal Ministry of Labor and Social Affairs, Evaluation der bundesweiten Inanspruchnahme und Umsetzung der Leistungen für Bildung und Teilhabe (2016) <<http://www.bmas.de/DE/Presse/Meldungen/2016/enderbericht-zur-evaluation-des-bildungspaketes.html>>.

³⁹ Philip Banse, Zu wenig Informationen, viel zu komplizierte Anträge, Deutschlandfunk (02 May 2017) <https://www.deutschlandfunk.de/bildungs-und-teilhabepaket-zu-wenig-informationen-viel-zu.680.de.html?dram:article_id=385161>.

⁴⁰ <<https://www.paritaet-th.de/2017/06/06/presse/pressemeldungen/bildungs-und-teilhabepaket-reicht-nicht-heftige-kritik-an-hilfen-fuer-kinder-aus-einkommensschwachen-familien>>

⁴¹ Autorengruppen Bildungsberichterstattung, Bildung in Deutschland 2018 - Ein indikatorengestützter Bericht mit einer Analyse zu Wirkungen und Erträgen von Bildung <<https://www.bildungsbericht.de/de/bildungsberichte-seit-2006/bildungsbericht-2018/pdf-bildungsbericht-2018/bildungsbericht-2018.pdf>>.

⁴² Laubstein et al (fn. 28), p. 55.

⁴³ Claudia Heissenberg, Keine Chance auf Gerechtigkeit, Deutschlandfunk (05 July 2016) <http://www.deutschlandfunk.de/bildungs-und-teilhabepaket-keine-chance-auf-gerechtigkeit.724.de.html?dram:article_id=359230>.

⁴⁴ Laubstein et al (fn. 28) p. 67.

combat child poverty. Rather, the violation of further social human rights is the immediate consequence.⁴⁵

We call for:

- Social benefits for children, such as the education and participation package, need to be revised and simplified in a way that allows all children the same educational opportunities and cultural and social participation, regardless of their social background.
- A survey of demand of the interests and needs of children and adolescents as well as the introduction of a separate set of children's normal requirements is necessary.
- A healthy diet must be facilitated and guaranteed.

1.2. Poverty Among the Elderly

26. The important topic of poverty among the elderly is not discussed in the State Report of the Federal Government. There the statutory pension regulations are enumerated, but the poverty among the elderly is not mentioned. The risk of old-age poverty will increase from 16.2% to 20.2% by 2036.⁴⁶ The basic financial security rate will increase from 5.4% to 7%.⁴⁷ Reasons include interruptions in working life, such as with mothers, precarious employment in the low-paid sector and declining pensions due to an aging society. The measures of the Federal Government so far do not apply here, as they bypass these target groups.⁴⁸ The Federal Government's plans to introduce a basic pension are not an appropriate means of combating old-age poverty. According to the plans of the Federal Government, persons entitled to benefits are those who would qualify for SGB XII benefits due to their low pension level. Since the basic pension is to be linked to 35 years of contributions, the number of beneficiaries will be only about 100,000 people.⁴⁹ This is opposed by a figure of 522,000 retirees (as of 2017), who receive basic financial security.⁵⁰ The measures of the Federal Government must lead to a concept that adequately counteracts the risk factors for old-age poverty in the areas of contributions to the statutory pension insurance in the employment phase, benefits of the statutory pension insurance in the pension phase and benefits of basic financial security in old age and during reduced earning capacity.⁵¹
27. The number of retirees who depend on the supply of food banks has doubled in the past ten years. At the end of 2017, around 522,000 people received basic financial security benefits in old age; at the end of 2006, this number was still around 371,000. Particularly affected are women as well as pensioners with reduced earning capacity who have to pay high deductions on their pension. Not only the food supply, but also high rents are becoming a problem for many retirees. Old-age poverty also means that those affected, if they need more than one medication, can no longer afford the additional contribution. Not all necessary services are taken over completely by the health insurance companies and full

⁴⁵ Armutskongress, Das Bildungs- und Teilhabepaket ist gescheitert (08 April 2016)

<<https://www.armutskongress.de/armutsbloganzeige/ak/das-bildungs-und-teilhabepaket-ist-gescheitert/>>.

⁴⁶ Bertelsmann Foundation, Entwicklung der Altersarmut bis 2036. Trends, Risikogruppen und Politikszenerarien (2017)

<https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Entwicklung_der_Altersarmut_bis_2036.pdf>.

⁴⁷ *Ibid.*

⁴⁸ Zeit Online, Deutlich mehr Rentner versorgen sich bei Tafeln (21 December 2017) <<http://www.zeit.de/wirtschaft/2017-12/altersarmut-gesetzliche-rentenversicherung-tafeln-jochen-bruehl>>.

⁴⁹ Ann-Kathrin Büüscher, „Die Menschen haben Angst vor sozialem Abstieg“, Deutschlandfunk (12 March 2018)

<http://www.deutschlandfunk.de/armut-in-deutschland-die-menschen-haben-angst-vor-sozialem.694.de.html?dram:article_id=412760>.

⁵⁰ Zeit Online (fn. 48).

⁵¹ Sozialverband Deutschland, Lieber NICHT arm dran. Bekämpfung von Altersarmut (2016)

<https://www.sovd.de/fileadmin/downloads/broschueren/pdf/WEB_Bekaempfung-von-Altersarmut.pdf>.

health care becomes a luxury item. Old-age poverty leads to the fact that people are socially isolated and can participate only to a limited extent in social, in particular cultural life, since the limited financial means are not sufficient.⁵² Older employees also face the question of recognition of life achievements through poverty in old age. People who have worked for decades in physically demanding professions are dependent on social benefits on a basic income level within a very short time.⁵³

We call for:

- Poverty among the elderly must be effectively combated. The right to social security, adequate health care and cultural and social participation must be ensured.

1.3. People with Low Income

28. Every sixth person in 2015 was considered at risk of poverty in Germany. Without the redistributive effect of social benefits, even one in four people in Germany would be at risk of poverty. Among those affected, above-average numbers are unemployed. Single people and single parents are also at an increased risk of poverty.⁵⁴ According to the Federal Employment Agency, in February 2018 a total of 5.95 million people received unemployment benefits (*Hartz IV*), of which 4.26 million were fit for work. Almost one household in ten lives off of *Hartz IV*.⁵⁵
29. The UN Social Committee expresses its concern that the method used to calculate the benefit requirement under social assistance benefits (*SGB II*) does not guarantee the beneficiary a decent standard of living.⁵⁶ From 2018, the standard rates for singles increased from 409 to 416 euros, the basic financial security for children and adolescents increased by 5 euros.⁵⁷ These standard rates are still insufficient to guarantee the right to social security. According to calculations of NGOs, the amount should be at least 520-570 euros.⁵⁸
30. For low-income families, certain things are not available for financial reasons: One in four families cannot afford new clothes for their children, in every third family the young ones do not have their own room and one has to choose between dentures or glasses.⁵⁹ The health budget in the standard rate of 15.80 euros per month is much too low.⁶⁰ Unexpected but necessary expenses, like a broken washing machine, can be afforded by just under one third of the families. The same applies to an invitation from friends at home, a holiday lasting several days or even a visit to a restaurant: 83% of all poverty-affected families lack the financial resources here.⁶¹ The upper rent limits for *SGB II* beneficiaries make it almost impossible to find a social housing in many cities. In German cities, well over a million

⁵² Irene Götz, Sie kochen Kohlrabiblätter aus und heizen nur ein Zimmer, Zeit Online (07 February 2018)

<<http://www.zeit.de/arbeit/2018-01/altersarmut-frauen-ruhestand-jobbing/seite-2>>.

⁵³ Dietmar Bartsch, „So kann das nicht weitergehen!“, The European (24 May 2017) <www.theeuropean.de/dietmar-bartsch/12254-die-agenda-2010-muss-revidiert-werden>.

⁵⁴ Bundeszentrale für politische Bildung, Ausgewählte Armutsgefährdungsquoten (04 April 2018)

<<https://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61784/armut>>.

⁵⁵ Sabine Zimmermann, Viele Deutsche haben von *Hartz IV* gelebt, Zeit Online (25 March 2018)

<www.zeit.de/wirtschaft/2018-03/armut-hartz-iv-grundsicherung-sabine-zimmermann>.

⁵⁶ CESCR (fn. 30) p. 6, para. 21.

⁵⁷ German Federal Government, Grundsicherung und Sozialhilfe – Höhere Regelsätze ab 2018

<<https://www.bundesregierung.de/Content/DE/Artikel/2017/09/2017-09-06-neue-regelsaetze-grundsicherung-2018.html>>.

⁵⁸ Ann-Kathrin Büüscher (fn. 49).

⁵⁹ Nationale Armutskonferenz, Brille finanzieren, Zuzahlungen streichen: Nationale Armutskonferenz fordert gute

Gesundheitsversorgung auch für einkommensarme Menschen (01 February 2018) <<https://www.nationale-armutskonferenz.de/2018/02/01/brille-finanzieren-zuzahlungen-streichen-nationale-armutskonferenz-fordert-gute-gesundheitsversorgung-auch-fuer-einkommensarme-menschen>>.

⁶⁰ *Ibid.*

⁶¹ Laubstein et al (fn. 28) p. 75.

households already have to spend more than half of their income on basic rent, and after deducting rent payments, about 1.3 million households have a leftover income below Hartz IV benefits.⁶²

We call for:

- Income poverty must be effectively combated. The right to social security, adequate health care and cultural and social participation must be ensured.

1.4. Social Security of Refugees, Asylum Seekers and Tolerated People

31. Asylum seekers, foreigners with a tolerated status and foreigners obliged to leave the country and are without legal residence, can only claim benefits under the Asylum Seekers Benefits Act (AsylbLG).⁶³ After the judgment of the Federal Constitutional Court of 18 July 2012, which deemed the cash benefits pursuant to sec. 3 AsylbLG (old version) evidently insufficient to secure the humane subsistence level,⁶⁴ the law was reformed in 2015. The Federal Constitutional Court clarified that the “dignified existence must be understood uniformly [...] and be implemented from the beginning of the stay in the Federal Republic of Germany” and that “the human dignity, as guaranteed by article 1 paragraph 1 of the Basic Law, [...] cannot be qualified by migration policy”.⁶⁵ As is noted in the State Report, since the amendment of the act, asylum seekers are basically entitled to benefits under SGB VII 15 months after entry,⁶⁶ and they are primarily to receive cash benefits outside of initial reception facilities to cover their necessary personal needs, although vouchers and benefits in kind are also permitted.⁶⁷
32. Despite these fundamentally welcome changes, the Federal Government made extensive use of the leeway granted by the Federal Constitutional Court to determine the humane subsistence level.⁶⁸ Thus, the basic benefits of the people mentioned in sec. 1a para. 1-4 AsylbLG, such as tolerated people, those who are obliged to leave the country, or persons who have already obtained international protection status in another EU member state are, under certain conditions, restricted to a point below the humane subsistence level. Such sanctioning, which is not tenable under article 9 ICESCR, is also permissible under sec. 1a para. 5 AsylbLG if beneficiaries do not comply with the obligations to cooperate specified therein.
33. With the “Asylum Package II” the cash benefits pursuant to sec. 3 para. 1 AsylbLG were reduced by up to 10 euros per month on the grounds that it would be used to finance language and integration courses. Problematic, however, is the limited availability of these courses and the lack of entitlement of asylum seekers with a “negative prospect of permanent residence”.

We call for:

- The Federal Government must ensure that benefits pursuant to the AsylbLG guarantee at least the physical and socio-cultural subsistence level, independent of the residence status of beneficiaries.

⁶² Sylvia Margret Steinitz, Single-Eltern berichten: Deshalb sind wir von Armut bedroht, Stern <<https://www.stern.de/panorama/hartz-iv-und-armut--alleinerziehende-erklaren-ihr-armutsrisiko-7915826.html>>.

⁶³ Sec. 1 paras. 1, 4, 5, 7 Asylum Seekers Benefits Act (AsylbLG).

⁶⁴ German Federal Constitutional Court, Decision of the First Senate from 18 July 2012 - 1 BvL 10/10.

⁶⁵ *Ibid*, no. 94-5.

⁶⁶ Sec. 2 para. 1 AsylbLG; State Report 2016 (fn. 2), p. 13.

⁶⁷ Sec. 3 para. 2 AsylbLG.

⁶⁸ German Federal Constitutional Court (fn. 64) no. 73, 74, 133, 138; State Report 2016 (fn. 2), p. 13.

2. Right to Family (Article 10)

34. Initially, the so-called Asylum Package II suspended family reunification to people with subsidiary protection, including entry of parents to their unaccompanied minor children with this protection status, until 16 March 2018 “in the interest of the support and integration systems of the state and society”.⁶⁹ Although only (an estimated) 50,000-60,000 family members of people with subsidiary protection would benefit from family reunification,⁷⁰ the suspension of family reunification was extended until 31 July 2018.⁷¹ In addition, the legal exception, which should only be used in cases of absolute hardship, has so far rarely been used in practice.⁷² From 01 August 2018, family reunification to subsidiary protection beneficiaries is again permitted, but limited to 1,000 entitled family members per month.⁷³ The suspension of family reunification violates the fundamental and human rights of family life and ignores the particular vulnerability of children and adolescents.⁷⁴ Subsidiary protected people cannot return to their country of origin due to imminent serious harm⁷⁵ and are separated from their families for an indefinite period, just as refugees pursuant to the Geneva Convention on Refugees. The family must be protected as the “natural core cell of society”⁷⁶ regardless of the refugee's protection status.

3. Right of Everyone to Adequate Housing (Article 11 (1))

35. This important social human right is not worth any detailed statements in the State Report, even though the UN Social Committee had already stated in the Concluding Remarks on the 5th State Report of Germany the urgency of introducing a fundamental right to housing.⁷⁷

3.1. Combating Homelessness

36. The recent concern expressed by the UN Social Committee on the number of homeless people⁷⁸ is confirmed by the current trend: Given the estimated figures of the Federal Working Group on Homelessness (BAGW) of 860,000 homeless people⁷⁹ and 52,000 people without any shelter (2016),⁸⁰ it is urgently needed in a rich industrialized country like Germany to give everyone a legally enforceable right to adequate housing. While the initial forecast in 2014 calculated an increase to half a million homeless people by 2018,⁸¹ two years later BAGW revised its estimate to 1.2 million homeless people by 2018.⁸²
37. Homelessness is a nationwide problem and a major problem, especially in the big cities, which has recently also affected an increasing number of refugees, migrant workers from

⁶⁹ German Parliament, 18th legislative period, Gesetzentwurf der Fraktionen der CDU/CSU und SPD: Entwurf eines Gesetzes zur Einführung beschleunigter Asylverfahren, BT-Drs. 18/7538 (16 February 2016):

<<http://dip21.bundestag.de/dip21/btd/18/075/1807538.pdf>>.

⁷⁰ Herbert Brücker, Institut für Arbeitsmarkt und Berufsforschung, <<https://mediendienst-integration.de/artikel/familienzusammenfuehrung-iom-subsidiaer-schutzberechtigte-syrien-irak.html>>

<<https://www.iab-forum.de/familiennachzug-150-000-bis-180-000-ehepartner-und-kinder-von-gefuechteten-mit-schutzstatus-leben-im-ausland/?pdf=5323>>.

⁷¹ Sec. 104 para. 13 sent. 1 German Residence Act.

⁷² Sec. 104 para. 13 sent. 3 German Residence Act.

⁷³ Sec. 104 para. 13 sent. 2 German Residence Act; Coalition agreement (fn. 8), p. 104-5, ln. 4863 ff.

⁷⁴ Pro Asyl, Petition from 22 December 2017 <https://www.proasyl.de/wp-content/uploads/2015/12/Bundestag_Petition-Familiennachzug-PRO-ASYL.pdf>.

⁷⁵ Sec. 4 para. 1 German Asylum Act.

⁷⁶ Art. 10 para. 1 ICESCR.

⁷⁷ State Report 2008 (fn. 4) p. 72; CESCR (fn. 29) p. 7, 8 para. 25.

⁷⁸ *Ibid.*

⁷⁹ Since 2016, BAGW includes the number of homeless recognized refugees in its estimates. Without including this group of people, the number of homeless people was 420,000 in 2016, of which 32,000 were children and minors.

⁸⁰ BAG Wohnungslosenhilfe e.V. (BAGW), Zahl der Wohnungslosen 2016,

<http://www.bagw.de/de/themen/zahl_der_wohnungslosen/>.

⁸¹ BAGW, Zahl der Wohnungslosen 2014 <<http://www.bagw.de/de/presse/index~81.html>>.

⁸² BAGW (fn. 80).

Eastern European countries and other people without secure status. At the moment, the Federal Government emphasizes that it is the sole responsibility of the municipalities to solve problems of homelessness.⁸³

38. It is doubtful that the causes of homelessness are very different throughout municipalities. It goes without saying that the local housing conditions or the available housing space play a role, although the Federal Government itself refers to its preferred preventive measures based on the Social Security Codes II and XII. Accordingly, it can be stated that in Germany recipients of benefits under the Second Social Code are often threatened with homelessness despite their support. The practices of job centers and public housing associations promote this process. This shows the importance of combating homelessness at the federal level.

3.2. Official Statistics on Homelessness

39. To identify and reduce the causes and extent of homelessness in Germany, broken down data is needed. In the State Report, the Federal Government notes that “both the extent and the causes of homelessness are extremely different in municipalities”.⁸⁴ However, the extent of the problem can only be substantially compared on the basis of so far missing statistics.

3.3. Creation or Preservation of Social Housing

40. The demand for social housing is rising steadily, but the number of available apartments is in decline. According to a study by the Eduard Pestel Institute, only one in five economically weak households in 2012 had the possibility of getting social housing.⁸⁵ The demand for 5.6 million homes was offset by just 1.6 million available apartments. In order to maintain the status quo alone, 130,000 new homes were needed each year. Especially in large cities, urban areas and university cities, the situation is often particularly delicate.⁸⁶ Since 1990, the number of social housing has fallen by 60%; in 2016 there were still about 1.2 million social housing apartments.⁸⁷
41. Although the federal states now provide more funding each year, in some states no social housing was built over the years. A survey has shown that publicly funded social housing for businesses and others is unappealing, because of the rent control and too long durations of the support programs.⁸⁸ Often the means are also misappropriated and, e.g. in Saxony, mainly used for owner-occupied homes.⁸⁹
42. Not only are too few new social housing projects being built, but public housing associations are being privatized and state subsidies are linked to temporary commitments, which will eventually expire. This approach promotes the drastic reduction in the number of social housing through conversion to owner-occupied or rented apartments.

3.4. Evictions

43. According to estimates by BAGW, around 172,000 households (2012: 144,000) were directly threatened by the loss of their apartment in 2014, with a total of 86,000 new housing losses.

⁸³ State Report 2016 (fn. 2), p. 57-8.

⁸⁴ *Ibid.*

⁸⁵ Eduard Pestel Institut, Wohnungsmarkt <<http://www.pestel-institut.de/themenbereiche/wohnungsmarkt/>>.

⁸⁶ *Ibid.*

⁸⁷ BAGW, Pressemitteilung: BAG Wohnungslosenhilfe: 860.000 Menschen in 2016 ohne Wohnung, Prognose: 1,2 Millionen Wohnungslose bis 2018 (14 November 2017) p. 2.

⁸⁸ Nicolai Kwasniewski, Sozialer Wohnungsbau: Massiv gefördert, kaum gebaut, Spiegel Online (30 March 2017) <<http://www.spiegel.de/wirtschaft/soziales/mieten-in-deutschland-warum-fehlt-es-an-sozialwohnungen-a-1141001.html>>.

⁸⁹ MDR, SPD wirft Sachsen Missbrauch von Fördermitteln vor (30 June 2017)

<<https://www.mdr.de/nachrichten/politik/inland/spd-vorwurf-sachsen-missbrauch-foerdergelder-sozial-wohnungsbau-100.html>>.

Of these, 33,000 (38%) were due to forced evictions, and 53,000 (62%) were “cold” housing losses in which tenants left the home without an eviction procedure or before the eviction date.⁹⁰

We call for:

- The development and continuation of official nationwide statistics on homelessness is the foundation of a successful fight against homelessness. Moreover, the introduction of such statistics would show that the Federal Government perceives the problem as such.
- The development of a national action plan to overcome the housing shortage.
- The negative development in social housing should be reversed. Public housing associations must be protected against privatization. In addition, commitments in state subsidies must no longer be time-limited.
- Homeless shelters must be available regardless of the specific weather conditions and year-round, in order to provide the affected people with a personal sphere. Such a personal sphere is a basic requirement for the (easier) return to a steady life.
- Developing preventive measures that can already prevent the filing of an eviction action, as well as precautionary securing a new, reasonable, adequate and affordable housing.

[4. Right to the Highest Attainable Standard of Health \(Article 12\)](#)

44. Although the State Report contains a separate chapter with a number of sub-items, these do not compensate for the fundamental shortcomings of non-implementation as a social human right.

45.

In Germany, contrary to the welfare state principle, the medical and nursing care depends heavily on the financial possibilities of the individual. In the meantime, numerous studies and expert opinions have demonstrated a link between poverty and disease risks, as well as between poverty and a lower life expectancy.⁹¹

[4.1. Right to the Highest Attainable Standard of Health of Asylum Seekers and Homeless People](#)

46. During the asylum procedure, asylum seekers have limited access to medical care within the first 15 months. According to sec. 4 para. 1 AsylbLG only costs for vaccinations and the treatment of pain and acute diseases are reimbursed. Whether a treatment according to this provision is necessary and recoverable, is usually not decided by doctors, but medically non-specialized clerks. The Ethics Committee of the Medical Association criticized in 2013 that the “danger that health risks are misjudged [...], especially in sick children” is high.⁹² The President of the Federal Medical Association, Prof. Dr. Frank Ulrich Montgomery, strongly criticizes the AsylbLG: “In this way, us doctors indirectly become social judges of the patient, because we could treat these people better”.⁹³

47. Although under sec. 6 (1) AsylbLG the costs of other services that are essential for health or are necessary to cover the special needs of children can be reimbursed, such a decision is at the discretion of the competent authority and therefore does not guarantee that right to the

⁹⁰ BAGW (fn. 87).

⁹¹ Cf. Compilation of relevant study results by the Robert Koch Institute: <<http://edoc.rki.de/series/gbe-kompakt/sonstige/reAwH2wxwRHfM/PDF/29wYJ9AaKy3gU.pdf>>.

⁹² German Medical Association, Stellungnahme der Zentralen Kommission zur Wahrung ethischer Grundsätze in der Medizin und ihren Grenzgebieten (Zentrale Ethikkommission) bei der Bundesärztekammer „Versorgung von nicht regulär krankenversicherten Patienten mit Migrationshintergrund“ (2013) <<https://www.aerzteblatt.de/archiv/138061>>.

⁹³ Prof. Dr. Frank Ulrich Montgomery, Ärzte behandeln alle Menschen gleich, Youtube (21 August 2015) from 1:17 <<https://www.youtube.com/watch?v=AdxwlbWflaQ>>.

highest level of health. Since the admission into the statutory health insurance takes place only after 15 months, asylum seekers are not guaranteed a “good quality-assured health care” to which every human is entitled to.⁹⁴

48. The procedure for applying for a doctor's visit is handled differently in each federal state. For example, asylum seekers in Saxony or Bavaria must first go to the social welfare office before they can see a doctor. In Bremen and Hamburg, on the other hand, they receive an electronic health card from the AOK at an early stage and the preliminary examination pursuant to sec. 4 (1) AsylbLG is lapsed completely.⁹⁵
49. In addition, those affected in many federal states must first pay in advance, which not only presents many asylum seekers with enormous legal and financial hurdles, but also causes ethical conflicts of the treating medical staff if no payment is made.
50. In the course of the reimbursement of costs, it may happen that hospitals forward data from people without a legal residence status to the social welfare offices, which in turn can pass them on to the immigration authorities.⁹⁶ As a result, the sensitive data of the applicants are not protected, so that asylum seekers without a legal residence status will most likely refrain from a necessary medical treatment, so as not to endanger their stay.
51. The Health Modernization Act introduced in 2004 has worsened the health of homeless people.⁹⁷ Since the introduction of this law, homeless people must also contribute to health costs: they have to pay medical fees, make additional payments for remedies and aids, subsidies for glasses are completely eliminated and dental treatments have become unaffordable.⁹⁸ The use of medical services is made considerably more difficult by these co-payments, while the use of low-threshold medical assistance is hampered by tremendous administrative burdens and inadequate financial resources of voluntary organizations. For example, the health insurance companies have no cash transactions, which is why homeless people who do not have a bank account, have to expect higher additional payments if they want to pay for services.⁹⁹
52. Homeless people, especially people without any shelter, are generally severely affected by limited health care, which can in some instances be life-threatening: 64% of those affected have an apparent serious illness,¹⁰⁰ and at least 75% of the homeless are currently suffering from a psychiatric disorder in need of treatment.¹⁰¹ Compared with the general population, homeless people have a three to four times higher risk of dying prematurely.¹⁰² The causes of non-use of health care services are varied, but are largely related to the lack of or unclear health insurance status.¹⁰³ The medical assistance for homeless people outside the regular

⁹⁴ *Ibid.*

⁹⁵ Health Office Bremen, Gesundheitliche Versorgung von Flüchtlingen <<https://www.gesundheitsamt.bremen.de/fluechtlinge-15222>>; Irene Berres, So werden Flüchtlinge medizinisch versorgt, Spiegel Online (22 March 2016) <<http://www.spiegel.de/gesundheit/diagnose/fluechtlinge-so-laeuft-die-medizinische-versorgung-a-1081702.html>>.

⁹⁶ German Medical Association, Patientinnen und Patienten ohne legalen Aufenthaltsstatus in Krankenhaus und Praxis, p. 2-3 <http://www.bundesaerztekammer.de/fileadmin/user_upload/downloads/Faltblatt_Patienten-ohne-Aufenthaltsstatus_30112013.pdf>.

⁹⁷ BAGW, Gesundheit und medizinische Versorgung wohnungsloser Menschen <<http://bagw.de/de/themen/gesundheitsversorgung/>>.

⁹⁸ *Ibid.*

⁹⁹ BAGW, Positionspapier: Auswirkungen zunehmender Kostenbeteiligung und Eigenverantwortung auf die Gesundheitsversorgung und wohnungsloser und armer Patienten (12 November 2010) p. 5.

¹⁰⁰ BAGW, Statistikbericht 2008, Bielefeld 2010.

¹⁰¹ Hanna Kaduszkiewicz et al, Medizinische Versorgung von wohnungslosen Menschen, Deutsches Ärzteblatt 2017, 114(40), p. 673-9 <<https://www.aerzteblatt.de/archiv/193639/Medizinische-Versorgung-von-wohnungslosen-Menschen>>.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

care system must be expanded by additional services, such as mobile medical practices and “infirmaries”.¹⁰⁴

53. As with the asylum seekers group, reimbursement of health care costs, such as hospitalization, is troublesome as there are different approaches. Thus, it is at the discretion of the medical staff to put the bill back until the affected patient voluntarily pays or is exempt from his additional payment.¹⁰⁵ Pursuant to sec. 186 (11) (4) SGB, health insurance funds must provide for rules to reduce, defer or waive contributions in arrears due to late notification - homelessness must be considered as a non-attributable reason.¹⁰⁶

We call for:

- A nationwide and uniform regulation for good quality assured health care for all.
- Immediate modification of the Asylum Seekers Benefits Act so that asylum seekers have unrestricted access to adequate medical care before the end of 15 months. Especially the care of children and traumatized asylum seekers is to be guaranteed early and unconditionally.
- The nationwide introduction of the electronic health card, following the example of the federal states of Bremen and Hamburg, to overcome the current bureaucratic hurdles. If this requirement cannot be enforced, at least specialist medical staff must decide on service payments.
- Non-discriminatory access to public health services and the protection of sensitive data of those affected.
- Expanding medical care services outside the regular offers for homeless people.

[5. Right to Education \(Articles 13, 14\)](#)

54. In the face of growing social divisions in one of the richest countries in the world, it is unacceptable that educational content is in part based on outdated ideals of the educated middle-class, or tailored to the alleged needs of the labor market. They predicate the ambition of equal access to lifelong comprehensive education to one’s heritage or the financial possibilities of one’s parents and do not courageously address new inclusive forms of education with equal opportunities for all, such as the models of a community school (in Denmark).

[5.1. Access to Education of Asylum Seekers, Refugees and Tolerated People](#)

55. The right of access to education for refugee children of compulsory school age is implemented differently in the state school laws of the individual federal states. In Bavaria and Thuringia compulsory education begins three months after immigrating, in Baden-Württemberg compulsory education starts only after six months.¹⁰⁷ In Brandenburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saxony and Saxony-Anhalt, refugee children in initial reception centers are not entitled to a regular school place, since compulsory education only begins with the assignment to a municipality.¹⁰⁸ In these states, refugee children are denied access to mainstream education, also by extending the permissible length of stay in initial reception

¹⁰⁴ *Ibid.*

¹⁰⁵ BAGW (fn. 97) p. 5.

¹⁰⁶ *Ibid.*, p. 7.

¹⁰⁷ German Institute for Human Rights, Welchen Zugang haben geflüchtete Kinder zu Schulen? Frage 1/6 <http://landkarte-kinderrechte.de/zugang_schule.html>; Institut der deutschen Wirtschaft, Vom Recht auf (Schul-)Bildung <<https://www.iwd.de/artikel/vom-recht-auf-schul-bildung-286616/>>.

¹⁰⁸ *Ibid.*

centers through the Asylum Procedure Acceleration Act,¹⁰⁹ for a period of up to six months.¹¹⁰ Refugee children from so-called “safe countries of origin” and those with a “negative prospect of permanent residence” are particularly disadvantaged. They have to remain in the initial reception center or are housed in “special reception facilities” because, for lack of compulsory education in numerous states, they have no access to the regular school system for an indefinite time period.¹¹¹

56. Rudimentary replacement education in reception facilities is insufficient and does not replace the right of every child to attend mainstream schools.¹¹² The accommodation of refugee children in separate welcome classes, such as in Berlin schools, not only leads to the social isolation of children, but also impedes language learning.¹¹³

We call for:

- Compulsory school attendance in all federal states, regardless of residence status and assignment to a federal state.
- Sufficient regular school places for newly arriving children.
- The inclusion of refugee children in regular classes from the beginning of school.

¹⁰⁹ Sec. 47 para. 1 German Asylum Act.

¹¹⁰ Unicef, Kindheit im Wartezustand – Studie zur Situation von Kindern und Jugendlichen in Flüchtlingsunterkünften in Deutschland, p. 38-43 <<https://www.unicef.de/blob/137024/ecc6a2cfed1abe041d261b489d2ae6cf/kindheit-im-wartezustand-unicef-fluechtlingskinderstudie-2017-data.pdf>>; German Institute for Human Rights, Welchen Zugang haben geflüchtete Kinder zu Schulen? Frage 4/6 <http://landkarte-kinderrechte.de/zugang_schule.html>.

¹¹¹ Unicef, Kindheit im Wartezustand – Studie zur Situation von Kindern und Jugendlichen in Flüchtlingsunterkünften in Deutschland, p. 27, 38-43 <<https://www.unicef.de/blob/137024/ecc6a2cfed1abe041d261b489d2ae6cf/kindheit-im-wartezustand-unicef-fluechtlingskinderstudie-2017-data.pdf>>; Unicef, Zur Situation der Flüchtlingskinder in Deutschland, p. 10-11 <<http://www.b-umf.de/images/zur-situation-der-fluechtlingskinder-in-deutschland.pdf>>.

¹¹² Pro Asyl, Recht auf Schule auch für Flüchtlingskinder <<https://www.proasyl.de/news/recht-auf-schule-auch-fuer-fluechtlingskinder/>>.

¹¹³ Unicef, Kindheit im Wartezustand – Studie zur Situation von Kindern und Jugendlichen in Flüchtlingsunterkünften in Deutschland, p. 37 ff. <<https://www.unicef.de/blob/137024/ecc6a2cfed1abe041d261b489d2ae6cf/kindheit-im-wartezustand-unicef-fluechtlingskinderstudie-2017-data.pdf>>; Ufuq.de, Studie zu Willkommensklassen: Neues Konzept ohne Zukunft? <<http://www.ufuq.de/studie-zu-willkommensklassen-neues-konzept-ohne-zukunft/>>.