

## Submission

Day of General Discussion on „The Right to Social Security“

Monday, 15 May 2006, Palais des Nations, Geneva

Dear Members of the Committee,

Dear Ladies and Gentlemen,

On behalf of the German Institute for Human Rights, I sincerely want to thank the Chair and all Members of the Committee on Economic, Social and Cultural Rights for the opportunity to make this intervention from the floor.

In 2005, the German Institute for Human Rights organised an international Workshop on the “International Right on Social Security”. Experts from different academic and cultural backgrounds assembled to explore some of the existing formal and informal systems of social security. From a human rights perspective, these experts shared experiences and identified sensitive issues relating to the right to social security.

As the national human rights institution in Germany, the German Institute has a mandate, among other issues, to promote economic, social and cultural rights nationally and internationally. Thus, we are naturally interested in all attempts to further clarify the meaning of all Covenant rights and their corresponding duties. We therefore welcome the Committee’s decision to draft a General Comment on Article 9 of the Covenant. Let me congratulate the Rapporteurs for their outstanding quality of their work.

I would like to make four brief comments - more general in nature - on the pre-draft General Comment:

Human rights in general are legal responses to elementary experiences of injustice from which people have suffered individually and collectively. Stressing this connectedness with experiences of injustice, the Universal Declaration of Human Rights in its Preamble refers to “barbarous acts which have outraged the conscience of mankind.”

Although experiences of injustice differ in degree, causes and phenomena, such experiences remain the starting point for any understanding of human rights. This also holds for the right to social security. From this perspective, it seems to me that too much emphasis is placed on the concept of social risks. The confrontation with social risks in individual or collective cases such as sickness, unemployment, old age or other grounds first of all indicates a difficult situation, but it does not necessarily amount to an elementary experience of injustice. In order to make a claim for a human rights violation, an additional component must come into play such as, for instance, discrimination of particular group concerning their access to social security. Accordingly, the purpose of social security as a human rights claim is not, in the first instance, on social risk provisions as such, but rather on addressing all forms of discrimination and exclusion from existing societal institutions of risk provisions. Some clarification in the draft General Comment would be useful to sharpen the specific profile of the human approach in the conceptualization of social security.

Secondly, respect for human dignity in the context of human rights is spelled out in the rights of freedom which aim at empowering people. This “liberating spirit” underlying the entire system of human rights protection is expressed in “all human beings are born free and equal in dignity and rights” (Article 1 of the Universal Declaration of Human Rights). Considering the present draft, I strongly feel that we should place more emphasis on the idea of empowerment, not only in the wording but also in the conceptual and structural terms. Thus, we can further develop our understanding of social human rights as freedom rights - this mission is yet to be fulfilled. At the same time, we can and should strengthen the quality of the obligations - to respect, protect, fulfil - in this way because all of these obligations are bound to this end of empowerment. Therefore, to give one example, the present draft should overcome the juxtaposition of “entitlements” and “freedoms” (cf. paragraph 9) because this seems to conjure up the obsolete assumption that the concept of freedom merely refers to the negative dimension of human rights vis-à-vis the state, rather than covering the whole spectrum of state obligations as instruments of empowerment.

Thirdly, in tackling the challenge to elaborate the genuine normative content of the right to social security, it does not seem useful to “overcharge” this right by borrowing normative elements from other rights such as, for instance, access to health care (cf. paragraph 2). This, of course, is part of the right to health. Rather, applying the “violations approach” during the upcoming working process might reveal the relevant cases on the factual side of social security and eventually provide solid material for identifying the specific legal obligations of this right. Besides, with regard to the section of the General Comment on “violations” (paragraphs 52-55), the draft could be strengthened.

Fourthly - my last point: Considering the present draft, one might wonder whether gender issues have sufficiently been woven into the text in all passages. For instance, all relevant CEDAW provisions such as articles 4 (2); 11 (2) and 13 CEDAW could be taken up (cf. paragraph 9); specific situations of women in the list of social groups should be taken into account (paragraphs 18 to 29); the important aspect of multiple discrimination, especially if grounded on sex, should be inserted in the relevant paragraphs; and states should be asked to pursue a gender-mainstreaming approach whenever they conduct a national strategy or plan of action (paragraph 58).

Ladies and Gentlemen, I thank you for your attention.