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Committee on Economic, Social and Cultural Rights

Forty-sixth session

Summary record (partial)* of the 11th meeting

Held at the Palais Wilson, Geneva, on Monday, 9 May 2011, at 10 a.m.

Chairperson: Mr. Pillay

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Fifth periodic report of Germany (continued) (E/C.12/DEU/5; E/C.12/DEU/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

Articles 13 to 15 of the Covenant (continued)

2. **Mr. Kerdoum**, referring to paragraph 322 of the fifth periodic report (E/C.12/DEU/5), asked what was meant by the term “theoretically”. Did children of immigrant origin only have “theoretical” rights? What was done to ensure that those children enjoyed rights in practice? He asked whether children from an immigrant background had the same rights and obligations as children from a non-immigrant background.

3. He also wished to know how the Government intended to address the linguistic, socio-economic and cultural issues typically faced by children and young people from an immigrant background, as they often had difficulties achieving the same academic results as those of non-immigrant origin. It appeared that the education system had failed to achieve the integration of children of immigrant origin; he asked what happened to other foreign pupils (Europeans, for example) in terms of integrating into German society.

4. **Mr. Koller** (Germany) said that the Government expected German companies to obey the laws and regulations of the countries in which they operated. German law, in particular criminal law, could be applied to acts that took place abroad, for example corruption. The Government had issued guidelines on investments in foreign countries and on Government guarantees for such investments. Both documents included the obligation to meet international standards, in particular with regard to human rights. A comprehensive impact assessment was undertaken prior to a Government guarantee being provided for any overseas investment by a German company and voluntary rules existed on corporate social responsibility that included provisions on human rights.

5. **Ms. Gruner** (Germany) explained that the Länder authorities were responsible for education and that the Federal Government had limited competence in that regard. The fifth periodic report (E/C.12/DEU/5) had been drafted between 2006 and 2008 and educational reforms had taken place since. In addition, many of the statistics provided were no longer a fully accurate reflection of the current situation.

6. She agreed that use of the term “theoretically” in paragraph 322 of the report was open to misunderstanding: in fact, children of immigrant origin had the same rights and obligations as other children. Surveys and statistics had shown that children from an immigrant background attained a lower educational level and were less likely to complete secondary school and acquire the requisite qualification for attending university than children from a non-immigrant background. However, poor education performance did not only concern children from an immigrant background: boys from both immigrant and non-immigrant backgrounds were more likely to drop out of school than girls.

7. Better integration by children from an immigrant background had been a priority for educational authorities for many years. The importance of nurturing and protecting all children was recognized and it could not be said that integration in education had failed; the

integration problems that existed were now better understood and work was being done to overcome them.

8. Given the importance of language to integration, wide-scale linguistic support programmes had been launched at both the federal and Länder level for children of immigrant background. Such programmes also aimed to establish cooperation with the parents of those children and to help them integrate into German society. Intensive linguistic support for children of immigrant background before they started school was seen as a priority and a great deal of research had been done in that regard. Not enough was yet known about the efficacy of those linguistic support measures and evaluations of them were due to be carried out by the Federal Ministry of Education and Research.

9. Human rights education was part of the curriculum in German schools but it was called democracy education. The way in which such education was described in future periodic reports would be amended to make it clear that it covered topics related to human rights.

10. The term “special schools” was no longer used in Germany; the expression “supportive schools” was used to describe the schools attended by children with physical disabilities or special educational needs. Such schools focused on the particular needs of their pupils. The supportive schools system had developed over the previous 100 years, taking into account the needs of pupils and the requirements of teachers, such as specific training. The need to review the support provided to pupils in those schools had been recognized and such reviews were undertaken in accordance with the Convention on the Rights of Persons with Disabilities.

11. The Constitutional Court had ruled that it was unconstitutional to transfer a child with disabilities to a supportive school against his or her parents’ wishes if adequate support could be provided at a mainstream school. The staff and organizational structure at mainstream schools should be considered when deciding which school was best for children with disabilities or special education needs; it was not simply a case of placing all such children in a supportive school.

12. No schemes existed in Germany such as the system in the United States of America of bussing children to attend non-local schools in order to ensure a more representative mixture of ethnic groups in the classroom. Some parents in disadvantaged areas wanted their children to attend a school outside the area in which they lived and the authorities were trying to prevent the inequalities that led to that situation through cooperation between schools, administrative entities, youth organizations and other partners with the aim of shaping education on a cooperative basis and improving all schools for all students.

13. The Programme for International Student Assessment (PISA) study from 2000 had shown that second-generation immigrants achieved less academic success than first-generation immigrants. The same situation had also been identified in France and it was a cause for concern. Several explanations for the phenomenon had been offered but had not yet been verified through research. Some findings had indicated that the educational success of pupils depended on that of their parents. Researchers had also suggested that, whereas first-generation migrants had been educated in schools with predominantly German classmates, in some schools the majority of children were now of immigrant background, which made it harder to meet all pupils’ needs. Support to enhance educational performance was offered to pupils from the primary level until university; the qualifications and training of teachers was being improved; and attempts were being made to increase parental involvement in education and to encourage more people of immigrant background to train as teachers. In addition, an agreement had been drafted to improve cooperation with migrant organizations.

14. The report of the Special Rapporteur on the right to education on his mission to Germany (A/HRC/4/29/Add.3) had been welcomed by the media, trade unions and politicians. The Federal Government and the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder had, on numerous occasions, commented on the report, which had also been referred to in the 9th Human Rights Report of the Federal Government. Parliamentary questions had been submitted regarding the report, which had, in addition, been discussed in parliamentary committees. In 2009 the Working Group of the Human Rights Council had carried out a periodic review on Germany and Germany had submitted views on the Group's recommendations and conclusions. Also, in 2009, there had been a meeting between Mr. Storm (at that time the State Secretary to the Federal Minister of Education and Research) and the Special Rapporteur. The Federal Ministry of Education and Research and the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder had issued recommendations relating to the results of the PISA Programme and the Progress in International Reading Literacy Study (PIRLS) contained in the 2010 National Education Report.

15. On the German selective system and early segregation, the link between academic performance and school structure could not be confirmed. Educational performance depended, not only on the school system, but also on the social status and educational level of parents, as well as on factors such as the distance of the school from children's homes. Teachers gave recommendations on the future education path of students after four or six years of schooling, depending on the Länder. Research had shown that children from disadvantaged backgrounds were less likely to be sent to a grammar school. In order to address that issue, parents were provided with advice and measures had been taken to facilitate access to grammar schools.

16. With regard to sex education and reproductive health, in Germany, sex education was included on the curriculum from primary school onwards, and was covered in biology and ethics classes. Efforts were made to promote a responsible attitude towards marriage and partnership. One important element of such education was sexual self-determination. The issue of child abuse had led to a greater focus on sex education. The Ministry of Education and Research had implemented a €100 million sex education programme, which included a larger sex education component in teacher-training courses.

17. **Mr. Kamperhoff** (Germany) said that special measures had recently been introduced to combat domestic violence. A court order could be issued removing an offender from the household of the victim and perpetrators of domestic violence could be taken into custody. Furthermore, the family courts could prohibit contact between offender and victim, with non-compliance leading to arrest or a fine. A variety of sanctions existed in the case of stalking, an offence which might consist of psychological, rather than physical, violence. Such activity was punishable by up to 10 years' imprisonment in the case of the death of the victim. Moreover, the police were able to issue emergency restraining orders prohibiting contact.

18. **Mr. Plate** (Germany) said that the German legal system consisted of the Constitution, the highest legal instrument, followed by statutory law. The Covenant was considered to be an ordinary statutory law and was fully justiciable and respected by the courts. However, the majority of the provisions of the Covenant were not self-executing and therefore German courts were unlikely to base their decisions directly on the Covenant, but rather to interpret statutory law in the light of that instrument and of the Constitution. The Federal Constitutional Court had issued a decision ordering German courts to construe and apply all statutory laws in the light of Germany's international legal obligations.

19. With regard to combating xenophobia, there were a number of Government programmes in place, such as an expert body to combat anti-Semitism, a national action plan to fight xenophobia and anti-Semitism and a forum against racism. Civil society was

also active in that field and, in certain instances, was coordinated and funded by the Government. Preventive measures included the prohibition of extreme organizations that engaged in xenophobic or racist activities. Moreover, a Government-funded programme had been set up to help individuals wishing to leave extremist groups.

20. Although the presentation of racist, xenophobic or anti-Semitic content on websites constituted a criminal offence, the authorities were reluctant to introduce measures which involved intense monitoring of the Internet, owing to the possibility of violating the freedom of speech. However, the Federal Police and the Federal Office for the Protection of the Constitution monitored suspect websites and the individuals involved in their creation and maintenance.

21. **The Chairperson** thanked the delegation for the information provided and invited members of the Committee to put any follow-up questions.

22. **Mr. Sadi** asked to be provided with an example of an instance in which German statutory law had been interpreted in the light of the Covenant. He also wanted to know if there was a mechanism in place to ensure uniform compliance with the Covenant by all the Länder. Furthermore, he raised the issue of whether the various Länder applied the Covenant differently in the field of education. He also asked for examples of how the Covenant was dealt with in the context of human rights education.

23. Regarding domestic violence, he asked whether Germany had identified the root causes of that problem.

24. As to xenophobia, he felt that there was no conflict between the prohibition of hate speech and the freedom of speech as set out in the international human rights instruments.

25. Regarding dropout rates at school and the social background of students, he asked if the Länder had educational or awareness-raising campaigns to tackle that issue; if so, he wished to be provided with examples of such activities.

26. Finally, he asked to what extent the Federal Government and the Länder were aware of the Committee's general comments on education.

27. **Ms. Barahona Riera** said that she had seen no evidence of concrete follow-up to the recommendations contained in the report of the Special Rapporteur on the right to education. She felt that educational path guidance was being given too early on in children's lives and that the existing approach should be re-thought. She also asked if comparative figures were available on university entrance levels for children from disadvantaged or migrant backgrounds as against children from better-off or non-migrant backgrounds.

28. **Ms. Shin** asked whether the Government had implemented any measures to help parents from disadvantaged or migrant backgrounds provide breakfast for their children.

29. **Mr. Koller** (Germany) said that the Government attached great importance to the Covenant and made every effort to ensure that all its provisions were implemented. Training was provided for lawyers and judges on international human rights instruments including the Covenant. In any case, most of the provisions of the Covenant were reflected in the Constitution. The Government ensured that there was unified application of all domestic legislation throughout the country, which guaranteed respect of the Covenant across the different jurisdictions of the Länder. The principles of fundamental human rights were taught to children from an early age in German schools. His country had high constitutional standards concerning respect of the freedom of expression, which the authorities tried to balance against the clear need to combat xenophobia.

30. **Mr. Plate** (Germany) said that German courts rarely invoked the Covenant, for the most part because its provisions were largely reflected in domestic statutory laws and the

Constitution. The Government recognized the need to improve the provision of training on international human rights instruments for lawyers in general and judges in particular. Some courses were currently available to judges, but the judiciary was fully independent, so judges could not be forced to attend. As more recently trained judges began serving, awareness of and reference to international human rights instruments would doubtless increase in the courts. There was nothing to indicate that the Länder did not implement the provisions of statutory legislation and the Constitution that reflected those of the Covenant. There was, however, no specific mechanism to monitor the application of the Covenant by German courts.

31. Hate speech was prohibited in several provisions of the Criminal Code, which were implemented whenever necessary. International negotiations on that issue were always difficult for his country because few other States were prepared to accept the German concept of prohibiting hate speech, which others argued was in conflict with freedom of expression. Owing to German history and German public opinion, that was an important issue for his country.

32. **Ms. Gruner** (Germany) said that, while there were framework curricula, the content of the courses given in schools remained at the discretion of individual teachers' professional judgement and was not monitored by the Federal Government.

33. The major target towards which federal and regional authorities were working was to halve the school dropout rate, reaching 4 per cent by 2015.

34. There had been a heated debate about the age at which children had to opt for one career direction or another and there were indications that there might be some significant changes to the structure of the secondary school system in the future. However, many parents appeared to have a preference for the current system. Higher education was free of charge in her country and some 41 per cent of young people currently attended higher education institutions. In 2008, over 800,000 higher education students had received financial assistance from the State, amounting to an average payment of €375 per month. A system of grants was currently being developed, particularly targeting students of immigrant background. The authorities continued to try to raise awareness among all social sectors of the importance of education, including higher education.

35. According to one survey, some 25 per cent of children did not have breakfast before going to school. The number of schools providing lunch for students had doubled since 2003.

36. **Mr. Heyer** (Germany) said that research would be conducted into the education package available to young persons in families entitled to unemployment benefit between 2013 and 2015. The aim was to ascertain why some benefits were not claimed and what improvements beneficiaries could suggest.

37. A significant number of people took advantage of the opportunity to gain university entrance qualifications after having left school.

38. Research had revealed that men who were unemployed and in debt were more likely to be perpetrators of domestic violence than others. Studies showed that persons of immigrant background were less likely to get into debt. The local authorities took account of that research in the services they offered, such as counselling on debt, drug addiction, anger management and telephone hotlines providing advice on an anonymous basis.

39. **Ms. Shin** asked whether any research had been conducted in the State party into a link between concentration and academic achievement and whether children had breakfast before going to school. She would be interested to learn whether any steps were being taken to encourage parents to ensure their children had breakfast on a daily basis.

40. It would be useful to know whether the Committee's concluding observations were disseminated to the education authorities in the Länder, boards of education, teachers' trade unions and individual teachers. Given the lack of apparent monitoring by the Federal Government, she asked how the State party ensured that the Covenant was being implemented at the local level.

41. **Ms. Gruner** (Germany) said that no research had been conducted into the effect of breakfast on children's academic achievement. The Federal Ministry of Education and Research had carried out research into children's health and behaviour at school.

42. **Mr. Koller** (Germany) said that the German system ensured close monitoring of the implementation of the provisions of the Covenant at local, regional and federal levels. In the case of a violation of the rights enshrined in the Covenant, all persons were entitled to bring complaints before the ordinary and constitutional courts.

43. The social partners and NGOs worked with the Government to ensure the implementation of the Covenant and had contributed to the preparation of the fifth periodic report. The Committee's concluding observations would be disseminated to all relevant parties.

44. He emphasized that, in his country, the education system was affordable and non-discriminatory, the labour market accommodated the needs of all people and health insurance provided coverage for all persons including migrants and asylum-seekers. Owing to the financial and economic crisis, public resources were scarce and the Government was currently unable to invest in every area. His team would examine all the Committee's recommendations carefully and make every attempt to implement them. Despite the complex context involving the international, European, national and federal levels, the Government would continue to strive for policy coherence.

45. *The delegation of Germany withdrew.*

The discussion covered in the summary record ended at 11.45 a.m.