GERMANY

Discriminatory family code

Women and men enjoy equal rights within the family and in respect to marriage under the German Civil Code. The law guarantees no marriage shall be entered into without the free and full consent of the intending spouses; provides that married couples jointly share legal responsibility for financially maintaining the family’s expenses and household management; and prohibits bigamy. Section 1303 of the Civil Code sets the minimum age of marriage at 18 years for both sexes; or 16 in the event that the family court grants an exception. Regarding early marriage, The United Nations reports that, based on 2011 data, 0.3% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 0% of boys in the same age range. According to government statistics, the average age at first birth was 29.2.

The federal law does not officially recognize any customary or personal laws, and section 656 of the Civil Code prohibits the act of brokering an arranged marriage. Additionally, forced marriage was made an explicit criminal offence in 2011 punishable by imprisonment from 6 months to 5 years, which also bolstered provisions governing residence and asylum law for victims of forced marriage, and extended the period of application for an annulment. However, despite the legal prohibition, there have been reports of unlawful, unregistered marriages involving underage girls in Germany, particularly among migrant communities. In 2012, the study entitled ‘Forced marriages in Germany - number and analysis of consultation cases’ found that, although the exact number of forced marriages could not be established, 30% of those victims surveyed had been under 17 years at the time of marriage, while 40% had been between 18 and 21 years, and almost all were new migrants to Germany.

Equal inheritance rights for sons and daughters are enshrined in the section 1924 of the Civil Code. There is no evidence that women in Germany are generally discriminated against in terms of inheritance.

2 CEDAW (2009), p.76
3 UN (2012)
6 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2007), p.8
7 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2011)
More

Both men and women have equal rights to initiate divorce pursuant to Title 7 of the Civil Code. The law generally favours the right of children to maintain contact with both parents after a separation, although this legal presumption has been criticized by NGOs in the context of domestic violence cases.\(^8\) Title 6 of the Civil Code also provides for joint ownership of property acquired during marriage, as well as non-monetary contributions to the household. However, the CEDAW Committee noted in 2011 that the current legislation on the equal distribution of property upon divorce and the award of maintenance (which provides for the termination of alimony rights to the custodial parent when the child reaches three years of age three) does not adequately address gender-based economic disparities between spouses resulting from the existing sex segregation in the labour market and from women’s greater share in unpaid work.\(^9\)

Women and men still largely divide household work along gender lines, with the Federal Statistics Office finding that women did the majority unpaid household work (63 percent).\(^10\) However, the government reported that the rising popularity of parental leave amongst new fathers could indicate a social change in the distribution of caring responsibilities.\(^11\) Starting in August 2013, a spot in a state subsidised childcare facility has become a legal entitlement for all children after their first birthday (Section 24 of Social Security Code VIII Sozialgesetzbuch VIII). In August 2013 Germany also introduced a childcare supplement (Betreuungsgeld - 150 Euro) for parents whose children aged between 1 and 3 years and are not using a state-subsidised childcare facility (Section 4a of the Parental allowance and parental leave Act). This Betreuungsgeld has been criticised by NGOs because it encourages the traditional division of labour between parents.\(^12\)

Pursuant to section 4 of the Nationality Act, both men and women have the ability to transfer citizenship to their children.\(^13\)

Restricted physical integrity

Domestic and family violence against women is addressed under various sections of Germany’s Criminal Code: section 174 (Abuse of Position of trust), section 177 (Sexual Assault by use of Force or threats; rape), section 179 (Abuse of Persons Who Are Incapable of resistance), section 221 (Abandonment), section 222 (negligent Manslaughter), section 226 (Causing Grievous Bodily Harm), section 238 (Stalking), section 239 (unlawful Imprisonment), among others.\(^14\) In addition to the criminal law, victims benefit from the “Act to Improve Civil Jurisdictional Protection

---

\(^8\) Group of the Alliance of German Women’s Organizations (2008), p.35
\(^9\) CEDAW (2009), p.12
\(^12\) Deutscher Juristinnenbund (2011), 21 NGOs and Trade Unions against “Betreuungsgeld” (German Women’s Lawyers Association), http://www.djb.de/Kom/K4/PM11-18/ [accessed 23/06/2014]
\(^13\) CEDAW (2009), p.36
against Violent Acts” (Protection against Violence Act). The Act provides for protection orders concerning the prohibition of contact, harassment and attempts to approach the victim on the grounds of physical violence, threats and stalking by a former spouse or partner, acquaintances or strangers. It also stipulates that the victimised party is entitled to retain the home in case of violence.\textsuperscript{15} However, the law is not entirely comprehensive, as the victim must request these civil protections, and NGOs have noted that the fines for breach are too insubstantial to function as an effective deterrent.\textsuperscript{16} Moreover, the law does not explicitly cover psychological, economic or emotional abuse.\textsuperscript{17} It is also reported that the effectiveness of the law is hampered by a lack of trust in judicial processes, ambivalence and fear of further violence, as well as lack of knowledge about existing rights and support systems.\textsuperscript{18}

Implementation of the Protection Against Violence Act, as well as nation-wide policies aimed at combating domestic violence, is supported by a National Programme of Action to Combat Violence against Women.\textsuperscript{19} In addition, the government reports that it has established a shelter system in many parts of the country (approximately 353 women’s shelters were operational in 2013\textsuperscript{20}), and conducts sensitivity training for medical professionals.\textsuperscript{21} In practice however, NGOs have expressed concern these shelters lack sustained funding and are often threatened with cuts or closure.\textsuperscript{22} There are also reports that there is not enough shelter space for women with disabilities - only 10% of women’s shelters are barrier free.\textsuperscript{23}

Domestic violence continues to be a challenge for German society. Results from a recent survey by the European Union Agency for Fundamental Rights indicated that the prevalence of physical partner violence in Germany was of 22%.\textsuperscript{24} Risk factors included separation, or intended separation, as well as the experience of violence as a child or adolescent; although education, income and class had no significant influence on the tendency to commit acts of violence.\textsuperscript{25} According to one social survey, attitudes towards domestic violence in Germany are improving: with 20% of Germans surveyed claiming that domestic violence is justified at least under some circumstances.\textsuperscript{26}

---

\textsuperscript{15} CEDAW (2009), p.20
\textsuperscript{16} Group of the Alliance of German Women’s Organizations (2008), p.39
\textsuperscript{17} Act on Protection against Violence (Gewaltschutzgesetz - GewSchG) (Article 1 of the Act to Improve Civil Law Protection against Violent Acts and Stalking as well as to Facilitate Relinquishment of the Marital Home in the Event of Separation of 11 December 2001 (Federal Law Gazette, Part I, p. 3513), section 1
\textsuperscript{18} Group of the Alliance of German Women’s Organizations (2008),p.39
\textsuperscript{19} CEDAW 2009, p.11
\textsuperscript{20} WAVE (2013), p.96
\textsuperscript{21} CEDAW (2012), p.23
\textsuperscript{22} Group of the Alliance of German Women’s Organizations (2008), p.38
\textsuperscript{23} WAVE (2013), p. 96
\textsuperscript{25} Federal (2004b), p.9
\textsuperscript{26} European Commission (2010), p.48
Again, prevalence data demonstrates that vulnerability to domestic violence increases in migrant communities. 25% of woman of migrant background interviewed in the 2004 study had experienced domestic abuse, increasing to 38% amongst Turkish-background women.\textsuperscript{27}

Section 178 of the German Criminal Code criminalizes sexual violence and \textit{rape}, including spousal rape, punishable by one to fifteen years of imprisonment. If the offender causes the death of the victim at least by gross negligence the penalty shall be imprisonment for life or not less than ten years (Section 178).\textsuperscript{28} The Act to Reform the Protection of Victims’ Rights also gives victims greater rights in criminal proceedings, including the right testify via video link, a service designed especially for vulnerable victims of sexually motivated crimes.\textsuperscript{29}

There are 183 rape crisis centers throughout the country; although NGOs have reported that the government funding for the support system is not sufficient, and that access to protection, counseling and support is difficult for marginalized victims of sexual violence, such as migrant women, women with disabilities or women living in rural areas.\textsuperscript{30}

Nevertheless, violence against women, including sexual violence, remains a problem in Germany. According to national police criminal statistics, 8,031 cases of rape or serious sexual abuse occurred in 2012.\textsuperscript{31} Yet, despite these figures, the percentage of cases reported to the police is estimated to be only 8%.\textsuperscript{32} Women's groups have reported that there remains a significant gap between the law and how it is practiced, and that proceedings are often dismissed for lack of evidence, a fact that is not always captured in national statistics.\textsuperscript{33} The most recent government survey data from 2004 indicates that 40% of women interviewed had experienced physical and/or sexual violence since the age of 16, while 13% had experienced sexual violence alone. Partners, former partners and lovers were most common perpetrators (49%), followed by casual acquaintances (22.9%), friends, acquaintances and neighbors (19.8%), unknown persons (14.5%), acquaintances from work, training or school (11.8%), family members (10.1%) and also professional caregivers, assistants, others (3.8%).\textsuperscript{34}

Although Germany has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’) and article 36 of the convention states that any non-consensual sexual acts must be criminalised, NGOs have criticised that article 177 of the German penal code does not meet this requirement. To be punishable as a rapist, the offender must coerce another person “by force” or “by threat of imminent danger to life or limb” or “by exploiting a situation in which the victim is unprotected and at the mercy of the offender.”

\textsuperscript{27} Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2004b), p.28
\textsuperscript{29} CEDAW (2009), p.24
\textsuperscript{30} WAVE (2013), p.98
\textsuperscript{31} Federal Criminal Police (2012)
\textsuperscript{32} European Women’s Lobby (2013), p.34
\textsuperscript{33} Group of the Alliance of German Women’s Organizations (2008), p.42
\textsuperscript{34} Federal Ministry for Family Affairs, Senior Citizens, Women and youth (2004), p.14
Vulnerability to violence and sexual assault increases for especially marginalized women. The same 2004 study found that women from Eastern Europe experienced sexual and physical violence at a rate of 44%, while almost half (49%) of Turkish migrant had been victims of such crimes. In particular, Eastern European women reported significantly higher rates of sexual violence (17%, as compared with 13% of women generally).\(^\text{35}\) In addition, a government-supported survey conducted between 2008 and 2011 found that disabled women experienced psychological, physical and sexual violence two-to-three times more frequently than women in the average population; with sexual violence in adult life reported by 21 to 43% of disabled women.\(^\text{36}\) Moreover, the survey found that women in care and dependency relationships with the perpetrator and women experiencing violence in residential institutions by other residents rarely make use of the Violence Prevention Act.\(^\text{37}\)

**Sexual harassment** also remains a problem in German workplaces, despite being outlawed under the sections 3(3) and (4) of the General Equal Treatment Act covering education and the access to and supply of goods and services, and sections 3(3) and (4) of the Law on Equal Treatment of Soldiers Act. Under section 12(1) and (2) of the General Equal Treatment Act, employers must take preventive measures against harassment and sexual harassment such as the provision of information about the topic, offering appropriate training courses, or the adoption of codes of conduct. However, in practice the problem remains widespread,\(^\text{38}\) and NGOS report that many sexual harassment cases fail due to lack of evidence necessary to discharge the burden of proof, because harassment mostly takes place without witnesses.\(^\text{39}\) According to the European Commission there is still strong resistance to dealing with the problem of sexual harassment and case law is described as ‘hostile’.\(^\text{40}\) According to the 2004 study of violence against women in Germany, various forms of sexual harassment have been experienced by 58 percent of the women interviewed; 42 percent of which took place in working life, vocational training or education.\(^\text{41}\)

There is some anecdotal evidence that **female genital mutilation (FGM)** is practised in Germany, although official figures are not available.\(^\text{42}\) In Germany, FGM cases can be criminally prosecuted through the sections 224, 225 and 226 Criminal Code as grievous bodily injury having as consequence the loss of essential parts of the body or infertility. The principle of extraterritoriality is applicable, making FGM punishable even if it is committed outside the country.\(^\text{43}\) In 2011, an amendment to the Penal Code was proposed with the aim to include a specific criminal law provision on FGM. However, it has not yet entered into force.\(^\text{44}\) A study on the prevalence of FGM in Germany carried out in 2007 by the civil society organisation 'Terre

\(^\text{35}\) Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2004b), p.27

\(^\text{36}\) University of Gießen (2013), p.6

\(^\text{37}\) University of Gießen (2013), p.13

\(^\text{38}\) US State Department (2013)


\(^\text{40}\) European Commission (2011), p.111

\(^\text{41}\) Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2007), Chapter 4

\(^\text{42}\) CEDAW (2009), p.10

\(^\text{43}\) European Institute for Gender Equality (2012)

\(^\text{44}\) European Institute for Gender Equality (2012)
DesFemmes', estimated the number of women victims of FGM at 19,000 and the number of girls at risk at 4,000, with the total female population in Germany originating from countries where FGM is performed being at least 66,302 in 2011.\(^{45}\)

Regarding women’s reproductive autonomy, family planning and reproductive health services are provided and covered by the insurance schemes to a large extent. Up-to-date figures on the percent of women who used some form of modern contraceptive are not available.

**More**

So-called “honor killings” also reportedly occur in Germany. A study published in 2011 by the Federal Criminal Statistics Office placed the number of honor crimes - defined as “as intentionally committed or attempted homicides that are carried out predominantly by males against females in the context of patriarchal families or societies in order to restore, from the perspective of the perpetrator, their family’s honour” - at approximately 12 annually between 1996 and 2005.\(^{46}\)

Germany has been identified as a destination country for women subjected to forced prostitution and forced labor.\(^{47}\) In 2009 the CEDAW Committee noted that, while there has been a decrease in the number of people reported as victims of trafficking for sexual exploitation, the number of women subject to trafficking for labour exploitation in Germany had grown.\(^{48}\) In order to combat the practice, Germany has comprehensively criminalized all trafficking-related activity. These efforts fully comply with the minimum international standards for action according to the U.S. Department of State’s Trafficking in Persons Report.\(^{49}\) The law differentiates between trafficking in human beings for the purpose of sexual exploitation (the new section 232 of the Criminal Code) and trafficking in human beings for the purpose of exploiting their labour (the new section 233 of the Criminal Code).\(^{50}\) The Act Reforming the Protection of Victims’ Rights, which came into force in September 2004, the legal stipulations for protecting victims under procedural law were improved, including the provision of legal representation free of charge, regardless of their financial situations. Section 25(4) of the Residence Act foresees the possibility of granting a temporary residence permit to victim-witnesses when their presence is required for the duration of criminal proceedings or for psychosocial treatment. With the implementation of the Victim Protection Directive, victims of offences related to trafficking in human beings are also granted temporary residence permits regardless of whether their presence on German territory was legal, temporarily tolerated or illegal up to that point.\(^{51}\)

Section 218 of the Criminal Code make abortion a crime, with up to three years in prison or a fine, or, where the perpetrator acts without the consent of the pregnant woman, a maximum of

\(^{45}\) European Institute for Gender Equality (2012)

\(^{46}\) Max Planck Institute for Foreign and International Criminal Law (2011), p.4

\(^{47}\) US State Department (2013)

\(^{48}\) CEDAW (2009), p.11

\(^{49}\) US State Department (2013), p.78

\(^{50}\) CEDAW (2009), p.86

\(^{51}\) CEDAW (2009), p.29
five years in prison. However, exceptions are made for abortions performed within the first trimester upon condition of mandatory counseling, and later in pregnancy in cases where pregnancy endangers the woman’s life or severely compromises her physical or mental health and no other solution can be found. In both cases a waiting period of 3 days is required.\textsuperscript{52}

**Son bias**

Germany currently has a **male/female sex ratio** for the working age population (15-64) of 1.02 male(s)/female and a sex ratio at birth of 1.06.\textsuperscript{53} Data on infant mortality in Germany does not suggest a son bias. According to United Nations data, roughly equal numbers of girls enroll in primary schooling.\textsuperscript{54}

**Restricted resources and entitlements**

Under section 14 of the Basic Law of the Federal Republic of Germany, women have the right to non-discrimination in the ownership and **access to land**. There is limited data available in terms of women’s ownership of **property** and land in the society in general. However under the Civil Code, both partners to a marriage must consent to the administration of property during marriage.\textsuperscript{55} The government reported in 2009 that 94% of all farms in Germany were individually owned and operated, the vast majority of them by families. Of the family members that were employed full-time on these farms, 39% were women involved in farming activities, who performed 31% of the work. However, the government also reported that only 9% of the independent farms are owned by women alone.\textsuperscript{56}

There are no legal restrictions on women’s ability to freely enter into contracts and apply for **bank loans** and other types of credit. According to 2011 World Bank data, women were less likely to have obtained a loan from a financial institution (10.9% of women, compared with 14.2% of men) in the previous year.\textsuperscript{57} The government reports that women who found businesses, or are active as entrepreneurs, can draw on a system of financial support including low interest lines of credit, subsidised loans and microcredit programmes. It estimates that 56% of self-employed women in the service sector and have taken advantage of these microcredit initiatives, and that women made up 39.2% of all small business loans in 2005.\textsuperscript{58}

\textsuperscript{52} UN (2013)  
\textsuperscript{53} CIA (2014)  
\textsuperscript{54} UNICEF (n.d)  
\textsuperscript{55} Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 4 para. 5 of the Act of 1 October 2013, sections 1363-1366  
\textsuperscript{56} CEDAW (2009), p.70  
\textsuperscript{57} World Bank (2011)  
\textsuperscript{58} CEDAW (2009), p.51
Restricted civil liberties

Women enjoy freedom of assembly, freedom of expression under section 11 of the Basic Law for the Federal Republic of Germany, and there is no evidence that there is institutional discrimination against women’s associations or NGOs. The government reports that it supports women’s civil society groups through institutional support for the German Women’s Council, the umbrella organisation of German women’s associations, as well as through targeted support for projects initiated by women’s associations.\(^{59}\)

The German Government has not adopted quotas or targets to increase the number of women in political and public life or to ensure the equal representation of women in all publicly appointed bodies; although the government reports that most political parties have introduced internal quota systems.\(^{60}\) Since the Bundestag elections in September 2005, Germany has had its first female Chancellor, Angela Merkel. In addition there are five female female ministers in the Federal Cabinet.\(^{61}\) However, women continue to be under represented in political life. Following the 2013 elections, women make up 36.5% of elected members of the lower house, and 27.5% of seats in the upper house.\(^{62}\) According to government data from 2013, 36.5% of representatives in all state parliaments were women; while the percentage of women in county councils was 26.1%.\(^{63}\) The CEDAW Committee also expressed concern in 2009 over the under-representation of immigrant women in decision-making, given they account for a large percentage of the population.\(^{64}\)

More

With respect to women’s equal participation in employment, the General Equal Treatment Act prohibits direct and indirect discrimination against employees based on race or ethnic origin, sex, religion or world view, disability, age or sexual orientation. The Act also prohibits harassment on any of these grounds and sexual harassment. Section 12 of the legislation not only prohibits discrimination but also establishes an obligation for the employer to take the measures necessary to protect employees from discrimination, including through preventative measures such as information and training for staff concerning equal treatment, and to provide appropriate procedures to address cases of discrimination. In addition, the Federal Equality Act continues to promote equal opportunities for women and men within the sphere of the federal government’s influence.\(^{65}\) Notwithstanding these legal protections, NGOs have questioned the

---

59 CEDAW (2009), p.33
60 CEDAW (2009), p.33
61 The Federal Republic of Germany (n.d)
62 IPU (2014)
64 CEDAW (2009), p.7
65 CEDAW (2009), p.15
effectiveness of the law, reporting that the Anti-Discrimination Office is underfunding and lacks authority to properly investigate complaints.\textsuperscript{66}

German women are entitled to 14 weeks paid \textit{maternity leave} (6 prenatal and 8 postnatal).\textsuperscript{67} In 2007 an income-related parental allowance system introducing non-transferable parental leave for fathers, along with an awareness-raising campaign aimed at convincing fathers to take an active part in raising their children.\textsuperscript{68} The Government estimated in 2011 that 25\% of young fathers now take advantage of the parental allowance and parental leave.\textsuperscript{69} The German Government has also embarked on an extensive series of policies aimed at improving the retention and re-entry of women in the workforce, in particular working mothers.\textsuperscript{70} Although, as of 2011 the \textbf{wage gap} was 23.2\%, it was the fourth highest in the European Union.\textsuperscript{71}

\textbf{Sources}


CEDAW (2009) Forty-third session Concluding observations of the Committee on the Elimination of Discrimination against Women Germany, CEDAW/ C/DEU/CO/6

CEDAW (2011), Fiftieth session Response to the follow-up recommendations contained in the concluding observations of the Committee pursuant to the examination of the sixth periodic report of the State party on 2 February 2009 Germany, 3 – 21 October 2011, CEDAW/C/DEU/CO/6/Add.1


\textsuperscript{66} The German Women Lawyers Association (2008), p.4
\textsuperscript{67} Maternity Protection Act, (Gesetz zum Schutz der erwerbstatigen Mutter), of 24 January 1952 (BGBl I 1952, 69), as amended up to 17 March 2009 (BGBl I 1952, 69), sections 3(2) and 6(1); 13(1), 14(1)
\textsuperscript{68} CEDAW (2007), p.19
\textsuperscript{69} CEDAW (2011), p.12
\textsuperscript{70} CEDAW (2011)
\textsuperscript{71} CEDAW (2011), p.6


