

# Parallel Report to the Interim Report

*of the Eberhard Schultz Foundation for Social Human Rights and Participation  
as well as other NGOs:*

*Poverty Network, Attac Berlin, Bizim Kiez- unser Kiez, Buchwerk Bodoni e.V., Ethecon Foundation, European Citizens' Forum (EBF, forum civique), Society for the Protection of Civil Rights and Human Dignity, Grips Theater, Harmonie e.V., Institute for Critical Theory (InkriT) e.V., International League for Human Rights, Hartz IV. Betroffene e.V., House of Democracy and Human Rights, Humanist Union, Initiative Kotti und Co, Initiative Mietenvolksentscheid, Mieterprotest Kosmosviertel, National Poverty Conference (nak), SKM Bundesverband e.V., Homeless Parliament in Foundation*

**on the forthcoming review of the State Report of the Federal Republic of Germany  
on the social human right to housing by the  
UN Committee on Economic, Social and Cultural Rights (CESCR)**

# **Parallel Report to the Interim Report**

of the Federal Republic of Germany for the UN CESCR  
**on the social human right to housing**

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## A. Introduction

1. We are pleased to be able to contribute to the more effective implementation of social human rights in accordance with the guidelines of the UN Committee on Economic, Social and Cultural Rights (UN CESCR) by presenting this parallel report by NGOs to the Federal Government. The Federal Government has been requested by the UN CESCR, also on the basis of parallel reports by civil society at the end of 2018, to submit an urgent interim report by October 2020. The UN Committee has called for concrete measures to remedy the acute housing shortage. We want to prepare this requested interim report of the Federal Government with a joint parallel report of civil society on the social human right to housing in order to increase the necessary pressure on housing associations and politicians.
2. This parallel report also ties in with the parallel report prepared by our foundation together with other non-governmental organizations [Volkssolidarität, International League for Human Rights, Humanist Union, Association of Lawyers against Nuclear Arms (IALANA) and Landesseniorenbirat Berlin (LSBB)] to the last state report of the Federal Government of 13 August 2018. In this report we have already focused on the problems of implementing the social human right to adequate housing (see pp. 12-15). In this regard, the UN Special Rapporteur on the Right to Housing, Leilani Farah, explained in her speech at an event of our Foundation in October 2019:

*“Access to adequate and affordable housing is the most pressing issue in many cities around the world. [...] If we are to tackle commercialization, we need a fundamental paradigm shift; we need to implement the right to housing as a human right and hold the government accountable to ensure safe and dignified access to housing. To implement such a paradigm shift, we need organizations that engage locally and hold governments accountable to ensure that human rights are respected. The Eberhard Schultz Foundation for Social Human Rights is such an important organization in this field. The foundation worked intensively on the report on Germany for the UN Committee on Social, Economic and Cultural Rights - and the foundation's contributions enabled the committee to develop very concrete recommendations which, if implemented by the government, would lead to an improvement in housing conditions in Germany.”<sup>1</sup>*

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<sup>1</sup> [https://sozialemenschenrechtsstiftung.org/images/bersetzung\\_Videobotschaft\\_Leilani\\_Farah.pdf](https://sozialemenschenrechtsstiftung.org/images/bersetzung_Videobotschaft_Leilani_Farah.pdf), full text of the video message of Leilani Farah; Annual event of our foundation, 17 October 2019, Berlin Charlottenburg City Hall.

3. In its **Concluding Observations** on Germany,<sup>2</sup> the **UN CESCR** expressed concern about the situation of social human rights in the area of the right to housing. Specific mention is made of rising rents, the lack of affordable housing and increasing numbers of homeless people. We share this concern and see the right to housing threatened, especially in the large cities. Low-income households and marginalized individuals and groups in particular have much more difficult access to housing and increasingly live in an inadequate housing situation or the uncertainty of losing their homes. The housing crisis in Germany will intensify especially under the exceptional conditions of Covid-19, as it particularly affects people in the low-wage sector (e.g. cleaners or the catering trade) as well as homeless people etc.
4. In its Concluding Observations following a diplomatically formulated but clear criticism, the Committee describes the concrete tasks for the Federal Government as follows:

### ***“Right to housing”***

*54. While noting the announcement that the budget allocation to social housing would be increased in the future, the Committee is concerned at the very high level of rents and rent increases; the acute shortage of affordable housing, coupled with the decreased number of apartments available as social housing; and the decreasing and low level of public spending on housing. It is particularly concerned at the very low threshold for housing reimbursement in the basic social benefits, which has led many families on the basic social benefits in metropolitan areas to cut down other basic expenses to pay rent or in some cases rendered such families homeless. It is also concerned at reports that the number of persons without adequate housing has constantly increased, reaching 1.2 million. The Committee regrets the absence of official data on the prevalence of homelessness and the lack of shelters to accommodate homeless persons (arts. 9 and 11).*

*55. The Committee recommends that the State party:*

- (a) *Increase the provision of affordable housing units, especially for the most disadvantaged and marginalized individuals and groups;*
- (b) *Continue to increase the level of public funding in the housing sector;*
- (c) *Increase the threshold for housing reimbursement under the basic social benefits to reflect market prices;*

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<sup>2</sup> UN CESCR, Concluding observations on the sixth periodic report of Germany, 27 November 2018, UN Doc. E/C.12/DEU/CO/6, available at <https://undocs.org/E/C.12/DEU/CO/6>, last accessed 18 May 2020.

- (d) *Reduce the level of homelessness and ensure adequate provision of reception facilities, including emergency shelters and hostels, as well as social rehabilitation centres;*
- (e) *Collect data, disaggregated by gender, ethnicity and other relevant criteria, on the scope and the extent of homelessness in the State party and establish an effective means of monitoring the situation of homelessness;*
- (f) *Take appropriate measures to counteract the impact of speculation in urban residential accommodation on access to affordable housing.*<sup>3</sup>

5. The UN CESCR has thus formulated a number of concrete recommendations and **called on the German government to submit an interim report on recommendations b) and c) within 24 months (see above)**. With our parallel report we want to take the opportunity - expressly provided for in the regulations - to communicate our assessments of the current situation of social human rights in the area of housing and in this way to exert influence.

6. **Finally, a brief introduction of the participating organizations:**

- Our young, non-profit foundation, founded in 2011, is the only one in the German-speaking area that has set itself the goal of contributing to the realization of social human rights on the basis of the UN International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR), and to achieve their comprehensive recognition and implementation as subjective rights, which, if necessary, can be enforced before the courts and the UN Committee. For more than a year, we have initiated the campaign "Call for the Realization of the Social Human Right to Housing".<sup>4</sup>

**The cooperation partners in order:**

- The **Poverty Network (Armutsnetzwerk)** wants to strengthen the fight against poverty and exclusion in cooperation with other regional, national and international initiatives and organizations of people experiencing poverty, with shelter-less and homeless people and so-called marginalized groups.
- **Attac Berlin** - as one of over 150 groups in Germany - is part of the international Attac network, which works for an ecological, solidary and peaceful world economic order.

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<sup>3</sup> *Ibid*, p. 8.

<sup>4</sup> Eberhard Schultz Foundation, Website, Symposia on the topics "The social human right to housing, health, education" and "Social human rights – no topic in Germany?" as well as the public announcement and awarding of the social human rights prize at our annual events - the winners of our special prize in 2019 were the Berlin neighborhood initiative "Bizim Kiez - unser Kiez" and Robert Trettin, deputy spokesman of the National Poverty Conference, <https://sozialemenschenrechtsstiftung.org>.

This includes supporting initiatives and educational events for the human right to housing and campaigns of the tenants' movement.

- The initiative **Bizim Kiez - unser Kiez**, Berlin is an initiative founded in 2015 to combat the displacement of people and small businesses from the inner cities - and to preserve the neighborhood.
- The association **Buchwerk Bodoni e.V.** wants to promote the respect of literature and the medium book with the means of book art.
- The **Ethecon Foundation Ethics and Economics** is a corporate critical "foundation from the bottom" for a world without exploitation.
- The **European Citizens' Forum** (EBF, forum civique) was founded in 1990 after the fall of the Berlin Wall to promote cooperation between citizens' initiatives between Eastern and Western Europe. The right to housing is one of the basic concerns of the EBF.
- The members of the **Society for the Protection of Civil Rights and Human Dignity e.V.** (GBM) want to make an effective contribution to the promotion and protection of basic and human rights and to the protection of human dignity.
- **Grips Theater**, founded in Berlin in 1966, sees itself as a socially critical theater with a focus on children's rights and the rights of young people.
- Since 1998, the **Harmonie e.V.** association has been supporting people, giving them stability in personal emergencies and offering a wide range of needs-oriented activities and measures for self-discovery and self-development of migrants.
- The **Institute for Critical Theory (InkriT) e.V.**, Berlin, aims to promote critical theory, especially the historical-critical study of Marxism in its various forms.
- The association **International League of Human Rights e.V.** is a member of the Fédération Internationale des Ligues de Droits de l'Homme (FIDH - International Federation of Leagues for Human Rights) and the Association Européenne des Ligues des Droits de l'Homme (AEDH Association of European Leagues for Human Rights) and is committed to the realization and expansion of human rights and to peace. Their concept of human rights includes civil, political, social, economic and cultural rights of protection and participation on an equal footing.
- The association **Hartz IV. Betroffene e.V.** supports people vis-à-vis authorities in enforcing their claims: The right to housing, the granting of the socio-cultural subsistence level, is not at the discretion of any authority.
- The **House of Democracy and Human Rights**, Berlin is a non-profit foundation, which sees itself as a think tank, a place of dialogue, of commitment to human rights and of

work for more participation of the citizens in the decisions of the community - as a public space for the necessary counter-public in the common process of German and European unification.

- The **Humanist Union e.V.** is a civil rights organization that has been working for the protection of human and civil rights since 1961.
  - Since 2011, the **Kotti und Co Initiative** has been fighting against rising rents and displacement and for a socially sustainable reform of social housing and state housing companies.
  - The **Initiative Mietenvolksentscheid Berlin** has been fighting since 2014 for a social orientation of the urban housing policy in Berlin.
  - The alliance **Mieterprotest Kosmosviertel** is an initiative of Berlin tenants for social justice, against rent profiteering and gentrification, whose demand for the re-municipalisation of the Kosmosviertel could be pushed through with public support.
  - The **National Poverty Conference (nak)** - section of the European Anti-Poverty Network (EAPN) - is an alliance founded by organisations, associations and initiatives committed to an active policy to combat poverty.
  - The **SKM Bundesverband e.V.** is a Catholic professional association in which 110 associations and initiatives from 14 German dioceses have joined forces. Their services and facilities provide help, advice and support to people in various life and conflict situations and regarding legal issues.
  - The **Homeless Parliament in Formation** is an alliance of affected persons, former affected persons and supporters, who want to point out and prevent jointly forced homelessness and its precarious consequences in all areas of life in order to enable everyone to participate actively and self-determined in the civil society.
7. Our parallel report is divided into the following sections: In section (B) we explain the previous ruling practice of the UN CESCR on the human right to housing. In section (C) we describe the current situation of social human rights in the field of housing provision in Germany and in section (D) we discuss the **recommendations 55 b) and c)** on the social human right to housing of the UN CESCR and will present concrete demands and proposals for their implementation to support them. Section (E) contains important fundamental demands for implementing the social human right to housing in Germany.
8. The present report was prepared by Eberhard Schultz, Andrej Holm, Katja Schubel, Charlotte Baldauf, Peter Schmidt.



## B. The social human right to housing in the UN CESCR's previous comments and rulings

9. The UN CESCR has emphasized the importance of the social human right to adequate housing for all not only in the German state reporting procedures, but also in its comments and in particular in the **individual complaint procedure of I.D.G. against Spain** in 2015.<sup>5</sup> The Committee has **defined the social human right to housing as follows:** “*Pursuant to article 11 (1) of the Covenant, States parties ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’.*”<sup>6</sup>
  
10. Michael Krennerich has elaborated on this in his standard work “Soziale Menschenrechte: Zwischen Recht und Politik” (“Social Human Rights: Between Law and Politics”) and describes the following as essential elements:
  - **Availability of housing** and necessary infrastructure refers to the availability of sufficient housing
  - **Protection of housing:** All people should be granted legal and factual protection from state and private interference - for example, from house destruction, evictions, expulsions, threats, harassment or even arbitrary house searches.<sup>7</sup>
  - **Adequate quality and location of housing:** Housing should meet minimum conditions of habitability, health and safety.
  - **Cultural adequacy of housing:** The development and modernization of housing areas should ensure that the cultural diversity of housing and the cultural identity of the people living there are preserved.<sup>8</sup>

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<sup>5</sup> UN CESCR, Communication No. 2/2014, I.D.G. v. Spain, views adopted on 17 June 2015, UN Doc. E/C.12/55/D/2/2014, available at <https://undocs.org/en/E/C.12/55/D/2/2014>, last accessed 18 May 2020; Deutsches Institut für Menschenrechte (DIMR), Die Spruchpraxis des UN Ausschusses für WSK-Rechte, [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/INFORMATION\\_Die\\_Spruchpraxis\\_des\\_UN\\_Ausschusses\\_fuer\\_wsk-Rechte.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/INFORMATION_Die_Spruchpraxis_des_UN_Ausschusses_fuer_wsk-Rechte.pdf), p. 3.

<sup>6</sup> UN CESCR, General Comment No. 4, available at <https://www.refworld.org/docid/47a7079a1.html>, last accessed 18 May 2020.

<sup>7</sup> Krennerich, Soziale Menschenrechte, p. 229.

<sup>8</sup> *Ibid.*

In the case against Spain, the Committee examined a possible violation of the right to housing under article 11 (1) of the UN Social Covenant. It found that by opening mortgage enforcement proceedings without prior effective notification of the complainant (no personal delivery was made), the State party Spain had infringed the complainant's rights. The reason given for this was that this had not enabled her to fully defend her rights. The Committee thus interpreted the right to housing for this purpose. In June 2017, in a further case against **Spain**,<sup>9</sup> it found for the second time that the right to housing had been violated in accordance with article 11 (1) of the UN Social Covenant. The case was prompted by a court order to **evict** a family with two underage children from their rented housing in Madrid, which led to their **temporary homelessness**.

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<sup>9</sup> UN CESCR, Communication No. 5/2015, UN Doc. E/C.12/61/D/5/2015, available at <https://undocs.org/en/E/C.12/61/D/5/2015>, last accessed 18 May 2020; EuGRZ 2018, pp. 135–142, <http://www.eugrz.info/index.php/archiv/13-archivinfos/407-heft-5-8-2018>; DIMR, "Die Spruchpraxis des UN-Ausschusses für WSK-Rechte", available at [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/INFORMATION\\_Die\\_Spruchpraxis\\_des\\_UN\\_Ausschusses\\_fuer\\_wsk-Rechte.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/INFORMATION_Die_Spruchpraxis_des_UN_Ausschusses_fuer_wsk-Rechte.pdf), p. 5.

## C. Current situation of housing provision in light of the social human right to housing

### I. Importance of the rental housing sector for housing supply

11. On the right to housing, the UN CESCR in its Concluding Observations is concerned about (1) “very high rents and rent increases”, (2) “acute shortage of affordable housing”, (3) “decline in the number of social housing”, (4) “declining and low public expenditure on housing”, the (5) “very low limits for the assumption of housing costs in basic social security”, the (6) “(increasing) number of people without adequate housing” and regrets the (7) “lack of official data on the extent of homelessness and the lack of accommodation for homeless people”.
12. NGOs active in the field share this concern and see a **steady increase in human rights violations** with regard to the provision of housing, particularly in large cities and in regions with tense housing markets.
13. **Housing issues in Germany are rental housing issues.** More than three-quarters of households in large cities live in rented accommodation.<sup>10</sup> Because the income situation varies considerably (average monthly household income for tenant households: 1,600 €, for owner-occupied properties: 3,000 €), the rental housing stock is of particular importance for social housing provision.<sup>11</sup> Of the **households at risk of poverty with an income of less than 60 percent** of the federal median income, **more than 90 percent live in rented housing**.
14. **Essential social aspects of tenancy law** have been transformed since the 1980s in favour of **private exploitation interests**. Social housing construction has been considerably reduced, non-profit housing has been abolished and public housing stock has been privatized. This has created a market environment that is no longer significantly different from other profit-oriented economic sectors.<sup>12</sup> In addition, the change in the housing sector is characterized by the fact that **international investors** are playing an increasingly important role in the housing markets; a growing number of more than 900,000 apartments are being traded on the stock exchange in Germany.<sup>13</sup>

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<sup>10</sup> On average, the proportion of households living in owner-occupied property in Germany is 45.5 percent, but in the large cities - where housing supply problems are also concentrated - the proportion is just 24.6 percent.

<sup>11</sup> Holm/ Lebhun/ Junker/ Neitzel, "Wohnverhältnisse in Deutschland", HBS 2017, available at [https://www.sowi.hu-berlin.de/de/lehrbereiche/stadtsoz/mitarbeiterinnen/copy\\_of\\_a-z/holm/wohnverhältnisse-in-deutschland-hbs-hu-bericht.pdf](https://www.sowi.hu-berlin.de/de/lehrbereiche/stadtsoz/mitarbeiterinnen/copy_of_a-z/holm/wohnverhältnisse-in-deutschland-hbs-hu-bericht.pdf), p. 57.

<sup>12</sup> Parliamentary group DIE LINKE, Draft law amending the Basic Law's fundamental right to housing, Drs. 19/16479, available at <https://dip21.bundestag.de/dip21/btd/19/164/1916479.pdf>, p. 1 et seq.

<sup>13</sup> Bontrup, "Wohnst du noch...? Immobilienwirtschaft und Mieten kritisch betrachtet", VSA 2018, p. 71; Paus/Kühn 2017: Das Geschäft mit der Wohnungsnot. Blätter, 3/17, 103-108 (<https://www.blaeletter.de/ausgabe/2017/maerz/das-geschaeft-mit-der-wohnungsnot>).

15. The high rents for around five million households in the big cities can become a **question of existence**. But even medium-sized and smaller urban regions are affected even more intensively by the massive price increases. The social mix of urban society is increasingly threatened. Rapidly rising rents, the withdrawal of the state and large-scale privatization in the property market have created a situation in which tenants, **despite existing regulatory instruments in tenancy law, are increasingly exposed to the free market and its profit interests** - especially in an area of life where the basic human need for housing is at stake.<sup>14</sup>
16. The current measures in connection with the Corona crisis are striking proof that the federal government together with the state governments - despite the **competence of the states** - is quite capable of introducing legislative changes<sup>15</sup> in favour of tenants.<sup>16</sup> These far-reaching measures (such as extending the period after which it is possible to terminate a tenant's lease for late payment, protection against eviction)<sup>17</sup> are only temporary (initially until the end of June 2020). However, these measures involve the provision of financial contributions previously considered impossible (combined with the willingness to slaughter the sacred cow of breaking even).<sup>18</sup> However, this does not prevent a dramatic worsening of the catastrophic situation of homeless people,<sup>19</sup> women at risk and other particularly affected persons.<sup>20</sup>

## II. Rent levels and rent increases

17. The average rent levels in existing tenancies in 2018 were 6.92 €/m<sup>2</sup> (net cold) but showed enormous regional differences between the cities. While rents of less than 5 €/m<sup>2</sup> (net cold) are often paid in smaller cities, especially in North Rhine-Westphalia and Eastern Germany, average rents in Munich are over 10 €/m<sup>2</sup>. Low-income households in particular are dependent on rents

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<sup>14</sup> Parliamentary group DIE LINKE, Draft law, footnote 12.

<sup>15</sup> Federal Ministry of Justice and Consumer Protection (BMJV), Questions and Answers on the Draft Law for Weakening the Impacts of the COVID-19 Pandemic in Civil, Insolvency and Criminal Procedure Law, 23 March 2020, Tenant protection, available at [https://www.bmjjv.de/DE/Themen/FokusThemen/Corona/Miete/032320\\_FAQ\\_Miete.pdf?blob=publicationFile&v=2](https://www.bmjjv.de/DE/Themen/FokusThemen/Corona/Miete/032320_FAQ_Miete.pdf?blob=publicationFile&v=2) (in German).

<sup>16</sup> Immowelt, "Wie Mieter und Vermieter mit dem Coronavirus umgehen sollten", Guide, 24 March 2020, <https://ratgeber.immowelt.de/a/wie-mieter-und-vermieter-mit-dem-coronavirus-umgehen-sollten.html>.

<sup>17</sup> Schönböck, "Mieter sollen Grund für Zahlungsunfähigkeit glaubhaft machen", Tagesspiegel newspaper, 22 March 2020, <https://www.tagesspiegel.de/berlin/gesetz-zum-mieterschutz-wegen-des-coronavirus-mieter-sollen-grund-fuer-zahlungsunfaehigkeit-glaubhaft-machen/25670754.html>.

<sup>18</sup> Idowa, „156 Milliarden gegen Corona-Krise: Kabinett beschließt riesiges Hilfspaket“, 23 March 2020, <https://www.idowa.de/inhalt.corona-krise-kabinett-beschliesst-beispielloses-hilfspaket.b56359cf-9fe9-426e-8d58-0ee51f303967.html>.

<sup>19</sup> Zuschlag, "Corona Fall in Obdachlosenunterkunft - Isoliert mit Hunderten", taz newspaper, 17 March 2020, <https://taz.de/Corona-Fall-in-Obdachlosen-Unterkunft/!5668620/>; Wyputta, „Obachlosigkeit in Corona-Krise: Zelträume gefordert“, taz newspaper, 20 March 2020, <https://taz.de/Obachlosig-eit-in-Corona-Krise/!5672464/>.

<sup>20</sup> Jacobsen, Sadigh „Soziale Ungleichheit: Hierarchie der Not“; Zeit newspaper, 21 March 2020, <https://www.zeit.de/wirtschaft/2020-03/soziale-ungleichheit-coronavirus-pandemie-versorgung-covid-19>.

below 6 €/m<sup>2</sup> if an affordable rent of no more than 30 percent of household income is not to be exceeded.<sup>21</sup> The average existing rents cannot guarantee social housing provision for households with low incomes. The effects of these developments are a significant increase in rents, especially in the major cities.<sup>22</sup>

18. Rental prices in existing tenancies are subject to various conditions under rental law and can be brought up to a maximum of the locally comparative rent. Nevertheless, **rents in existing tenancies have risen by an average of 11 percent nationwide between 2013 and 2018.**<sup>23</sup> The dynamics of rent increases also vary from region to region and amounted to 15 to 20 percent in many cities.<sup>24</sup> With average income increases of around 10 percent over the same period, even existing rents are developing faster than income. For households without income growth (e.g. pensioners) in particular, this development leads to a steadily rising rent burden. A study by the SoVD shows that the decoupling of income and rent is a long-term trend: "From 1993 to 2014, the average rent rose more strongly than the average income. **The reduced income growth of the poorest ten percent of all households in Germany reinforces the effects of rising rents** for those who have low incomes anyway. Poor population groups are particularly affected by high rent increases".<sup>25</sup>

19. For new rentals - which in principle can be freely agreed - the price increase will be even higher, the average price increase between 2013 and 2018 being around 25 percent.<sup>26</sup> in the five largest cities over 50 percent.<sup>27</sup> Because tenancy law places clear limits on the increase of existing rents, **changing tenants is the fastest way to increase rents and thus to increase earnings**, so that the **squeezing out of existing tenants in particular has become a business model**. The pressure of displacement is strongest where the gap between potential income and current rental

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<sup>21</sup> A single saleswoman who works 40 hours a week for the minimum wage (9.35 €/h) generates a monthly income of 1,133 € after deduction of all duties and taxes. Her income is "too high" for a claim to transfer payments or housing benefit. The maximum payable rent is 340 € per month. If she lives in a 40m<sup>2</sup> apartment, this corresponds to a maximum rent of 5.28 €/m<sup>2</sup> (net cold) after deduction of the average operating and heating costs (from a total of 3.22 €/m<sup>2</sup>). A single nurse with a monthly income of 1,600 € would be able to pay a maximum of 5.80 €/m<sup>2</sup> (net cold) in a 60m<sup>2</sup> flat together with child benefit (204 €) without breaching the affordability criteria.

<sup>22</sup> Parliamentary group DIE LINKE, Draft law, footnote 12, at p. 1 *et seq.*

<sup>23</sup> Holm, Bestandsmietenanalysen 2013-2018, [https://www.linksfraktion.de/fileadmin/user\\_upload/PDF\\_Dokumente/2019/190613\\_Bestandsmietenentwicklung.pdf](https://www.linksfraktion.de/fileadmin/user_upload/PDF_Dokumente/2019/190613_Bestandsmietenentwicklung.pdf).

<sup>24</sup> *Ibid.*

<sup>25</sup> Junker, "Wohnverhältnisse in Deutschland. Mietbelastung, soziale Ungleichheit und Armut", Kurzgutachten 2018; [https://www.sovd.de/fileadmin/bilder/web-Wohnverhaeltnisse\\_in\\_Deutschland\\_2018\\_10\\_19.pdf](https://www.sovd.de/fileadmin/bilder/web-Wohnverhaeltnisse_in_Deutschland_2018_10_19.pdf).

<sup>26</sup> The evaluation of the Federal Institute for Urban, Building and Regional Research (BBSR) for all municipalities in Germany documents an average increase in new contract rents from 6.80 €/m<sup>2</sup> (2013) to 8.33 €/m<sup>2</sup> (2018), BBSR, "Wohnungsmieten steigen weiter", Bonn 2018; <https://www.bbsr.bund.de/BBSR/DE/Home/Topthemen/2018-wohnungsmieten-halbjahr.html>.

<sup>27</sup> Holm, Mietwahnsinn, FORUM Wissenschaft 02/2019.

income is the largest. In the long term, this will lead to citizens with lower incomes being squeezed out of urban areas and replaced by more affluent population groups.<sup>28</sup>

20. The price increase for new rentals<sup>29</sup> is regularly achieved without performance - so the rent increases even without the landlord carrying out costly investment measures and thereby improving the residential value, as the tenant initiative Kosmosviertel also reports.
21. Households with low incomes are effectively excluded from market-based housing provision and are dependent on regulated housing market segments with below average rents.

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<sup>28</sup> Parliamentary group DIE LINKE, Draft law, footnote 12.

<sup>29</sup> Presseportal, Mietpreissteigerung bei Neuvermietung bis zu 21,6 Prozent: Alt-Treptow und Plänterwald führen Berliner Rangliste an, 13 September 2019, <https://www.presseportal.de/pm/121300/4373978>.

### III. Social housing needs and supply gaps

22. Under conditions of unequal income distribution, rising rents mean that **an ever-larger proportion of the population has to bear a high rent burden**. Housing costs are considered affordable if they do not exceed 30 percent of available household income. Studies on the housing supply situation in Germany's major cities have already shown for the **year 2014** that around 40 percent of all households pay more rent than they could afford based on their income - this affects more than 5.2 million households in the major cities alone. **At just under 19 percent (2.7 million households), the rent was even more than 40 percent of their income.**<sup>30</sup> This affects households with low incomes and below the statistical poverty line in particular.
23. **A comparison of housing supply needs** (by household size and income) and the **existing supply potential** (by housing size and rents) already revealed a **social supply gap of almost two million affordable housing units** in the major cities for the year 2014.<sup>31</sup> Even with a demand-optimized distribution of available housing among the households living in the big cities, social housing provision could not be ensured.
24. Large households are increasingly trying to compensate for high rental costs by overcrowding. **In 2014, about 25 percent of apartments in large cities** where at least three people live **were too small for the size of the household.**<sup>32</sup> Moving to better suitable housing is hardly possible, because "families with less than 60 percent of the local equivalent income have significantly lower chances of finding suitable housing for families". According to a study by the Bertelsmann Foundation, in the 100 largest cities, on average only 12 percent of the housing available was affordable for these families.<sup>33</sup>
25. High and rising rents pose a supply problem, especially for poor, young and old households. Also severely affected are single parents and people with a migration background who, due to discrimination in the housing market, often find themselves forced to accept higher rents at lower quality.<sup>34</sup>

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<sup>30</sup> Parliamentary group DIE LINKE, Draft law, footnote 12; Holm/ Lebhun/ Junker/ Neitzel, p. 69.

<sup>31</sup> Holm/ Lebhun/ Junker/ Neitzel, "Wie viele und welche Wohnungen fehlen in deutschen Großstädten?", HBS 2018.

<sup>32</sup> BBSR evaluation, footnote 26; Junker 2018, p. 25 et seq.

<sup>33</sup> Heyn/ Braun/ Grade; "Für arme Familien in Großstädten - Eine bundesweite Analyse am Beispiel der 100 einwohnerstärksten Städte" Bertelsmann Foundation, 2013; <https://de.slideshare.net/BertelsmannStiftung/studie-wohnungsangebot-fr-arme-familien-in-grostdten>.

<sup>34</sup> Winke, "Menschen mit Migrationshintergrund zahlen elf Euro mehr Miete pro Monat", DIW Wochenbericht 83 (47), 1133-1142 [https://www.diw.de/documents/publikationen/73/diw\\_01.c.547530.de/16-47-3.pdf](https://www.diw.de/documents/publikationen/73/diw_01.c.547530.de/16-47-3.pdf).

#### IV. Withdrawal from the promotion and reduction of social housing stock

26. **Social housing** in Germany is **rent-controlled housing** whose construction was financed by public funds (mostly building cost subsidies and loans).<sup>35</sup> In return for the public funding, the developers agree to enter into a rent and occupancy commitment. Rental price fixing means that the apartment is to be rented out at a price (social rent) specified in the funding guidelines. Occupancy commitment means that social housing may only be rented to prospective tenants below the income limits set in each case. The income check is carried out in the municipal housing offices and households entitled to social housing can apply for a **certificate of eligibility for social housing** (*Wohnberechtigungsschein*, WBS).<sup>36</sup> The income limits may vary by towns and municipalities and especially in the big cities there are assessment thresholds according to which about half of the households meet the requirements for social housing.
27. The current figures of 3.1 million households in basic provision and the approximately 600,000 housing benefit households alone add up to a need for provision of 3.7 million social housing properties. If the needs of low-income households were also taken into account, considerably higher target figures for social housing provision would have to be assumed. The supply needs are currently matched by only just over 1 million rent- and occupancy-bound social housing properties, so that we have a **shortage of social housing in the order of at least 2.5 million social housing properties**.
28. **A central problem of housing promotion is the time limit on rent and occupancy commitments.**<sup>37</sup> As a general rule, after repayment of the subsidized loan, the property ceases to be subsidized housing and the management of the formerly subsidized housing is subject to the rules of general commercial and tenancy law. This explains the paradox that despite a high total number of almost 4.5 million subsidized rental housing units since the 1950s, there are currently only 1.2 million housing units with social commitments. Over 80 percent of all subsidized rental housing has lost its social links over time. In an international comparison, the German subsidy system is therefore quite rightly described as "**a program of economic development with intermediate social use**".<sup>38</sup> Instead of investing in building up permanently committed stocks, a permanent cycle of funding with limited effects is enforced. Thus, in order to keep the

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<sup>35</sup> Noack, Lexicon entry from Deutsches Anwalt Office Premium, Social housing; [https://www.haufe.de/recht/deutsches-anwalt-office-premium/sozialwohnung\\_idesk\\_PI17574\\_HI625840.html](https://www.haufe.de/recht/deutsches-anwalt-office-premium/sozialwohnung_idesk_PI17574_HI625840.html).

<sup>36</sup> The concrete definitions of income limits and the conditions of WBS allocation are regulated, among others, in the Housing Commitment Act (§ 5 WoBindG) and the Housing Promotion Act (§ 27 paras 3 to 5 WoFG); Deutsche Anwaltshotline, "Sozialwohnung: Wer hat Anspruch darauf?", 25 December 2019, <https://www.deutsche-anwaltshotline.de/c/ratgeber/sozialrecht/sozialwohnung#c5999>.

<sup>37</sup> Djahangard, Sozialwohnungen- Schwund an Wohnraum, 08 August 2018, Zeit <https://www.zeit.de/2018/33/sozialwohnungen-rueckgang-schwund-belegungsbindung>.

<sup>38</sup> Donner, "Wohnungspolitiken in der Europäischen Union: Theorie und Praxis", self-published, p. 200.

number of social housing units in Germany constant, new housing would have to be built after 25 years at the latest. This is not very efficient and hardly feasible.<sup>39</sup>

29. **The need for social housing is a permanent task at a high level**, but the number of available housing units has been decreasing for years. Between 2013 and 2018 alone, the number has fallen by over 300,000 housing units nationwide. The almost 115,000 new social housing units built during this period could not nearly compensate for the almost 440,000 expiring commitments from previous funding periods.<sup>40</sup> Since 2016, the scope of funding has been increased to about 25,000 approvals per year. Nevertheless, the currently planned volume structure of housing promotion is not sufficient to close the existing gaps in supply. **The housing promotion scheme is lagging behind the losses in commitments.**<sup>41</sup>

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<sup>39</sup> Jegers; „Wir brauchen ein Umdenken beim sozialen Wohnungsbau“, 25 March 2019, Capital, <https://www.capital.de/immobilien/wir-brauchen-ein-umdenken-beim-sozialen-wohnungsbau>.

<sup>40</sup> Bericht der Bundesregierung über die Verwendung der Kompensationsmittel für den Bereich der sozialen Wohnraumförderung 2016, Drs. 18/13054, <http://dip21.bundestag.de/dip21/btd/18/130/1813054.pdf>; Bericht der Bundesregierung über die Verwendung der Kompensationsmittel für den Bereich der sozialen Wohnraumförderung 2017, Drs. 19/3500, <https://dip21.bundestag.de/dip21/btd/19/035/1903500.pdf>; Knauer, „2018 wurden nur 27.040 neue Sozialwohnungen gebaut“, 15 June 2019, WELT, <https://www.welt.de/politik/deutschland/article195297441/Sozialwohnungen-2018-wurden-nur-27-040-neue-gebaute.html>.

<sup>41</sup> With an average commitment period of 20 years, more than 50,000 new social housing units would have to be built each year just to simply reproduce the existing stock. Even this minimum target is clearly missed by the currently promised funding volumes.

## V. Evictions and homelessness

30. The problem of rising rents and the scarce availability of social housing can have serious consequences. For low-income households the risk of **rent arrears, termination procedures and, as a consequence, eviction from the housing** increases. Due to the acute shortage of affordable housing and the tight housing markets in many cities, many of these households in such housing emergencies have no alternative to move to other and cheaper housing.<sup>42</sup>
31. **Despite the protection against termination under tenancy law**, forced evictions are taking place in many cities. In the five largest cities alone (Berlin, Hamburg, Munich, Frankfurt, Düsseldorf), a total of more than 8,000 eviction dates were set for 2018. Although this figure represents only 0.2 percent of households in the cities, it represents **almost 3 percent of all relocations: Almost every thirtieth move in the five major cities is a forced eviction**. In Berlin, with almost 5,000 reported eviction dates in 2018, even every twenty-fifth move was an eviction.<sup>43</sup>
32. **Evictions take place above all where rents are rising most sharply**; often the poor, the elderly and people with health and psychological problems are affected.<sup>44</sup> The **pressure of the rental market leads to a dynamic of eviction** that shifts the object and purpose of the eviction option available to landlords: what was once intended as a tool to protect the landlord from rent debtors is now a **cog in the wheel driving the displacement of tenants**.<sup>45</sup> In areas with rapidly rising rents and high pressure to evict, forced evictions not only result in the immediate loss of housing, but also increase the general fear of being driven out of the corresponding urban area.
33. The most common reasons for **actions for termination** are **rent arrears, terminations for own use<sup>46</sup> and planned demolition of residential buildings**. Tenant organizations also report, however, on attempts to terminate existing tenancies on the grounds of so-called petty offences or because of the lasting disruption of the relationship of trust. After termination of the tenancy,

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<sup>42</sup> DIMR, Human Rights Report 2019, pp. 14, 42, [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Menschenrechtsbericht\\_2019/Menschenrechtsbericht\\_2019.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Menschenrechtsbericht_2019/Menschenrechtsbericht_2019.pdf).

<sup>43</sup> Keller, "Berlin liegt bei Zwangsräumungen weit vorn", 22 November 2019, *Berliner Zeitung*, <https://www.berliner-zeitung.de/mensch-metropole/zwangsräumung-in-berlin-bedroht-rentner-arme-psychisch-kranke-li.1848>, and own calculations based on data on the number of private households in the cities.

<sup>44</sup> Keller, "Geräumt wird, wo die Mieten stark steigen", 22 November 2019, *Berliner Zeitung*; <https://www.berliner-zeitung.de/mensch-metropole/zwangsräumung-berlin-zahlen-räumungen-steigen-wo-mieten-steigen-li.1747>, there also to the following.

<sup>45</sup> *Ibid.*

<sup>46</sup> Keller, footnote 43; Räumungsklage – Wenn Mieter die Zwangsräumung droht, Ursachen, 22 November 2017, <https://www.movinga.de/hub/beratung/raeumungsklage/#ursachen>; „Kündigung wegen Eigenbedarf unterliegt strikten Regeln“, Aachener Zeitung, 13 March 2014, [https://www.aachener-zeitung.de/ratgeber/recht/kuendigung-wegen-eigenbedarf-unterliegt-strikten-regeln\\_aid-25851959](https://www.aachener-zeitung.de/ratgeber/recht/kuendigung-wegen-eigenbedarf-unterliegt-strikten-regeln_aid-25851959).

an action can be brought for eviction of the apartment<sup>47</sup> if this did not occur voluntary. The eviction period is usually three months but must be based on the housing market situation in the respective area. An eviction order issued by the court can set the dates of eviction, on which bailiffs execute the eviction order.<sup>48</sup> Since many tenants avoid a forced eviction by moving out, the numbers of eviction dates recorded by the authorities are based on an unknown number of forced losses of housing.

34. **The eviction period granted in the termination procedure** is intended to protect against homelessness and to give households threatened with eviction time to find a replacement home.<sup>49</sup> Despite the national **case law** that a forced eviction is inadmissible if it results in homelessness or threatens life (**BVerfG WUM 2014, 174**), there is **no formal exclusion of evictions to the street**. In the proceedings against Spain, the UN CESCR has also found a violation of article 11(1) of the UN ICESCR in such a case (in **Djazia and Bellili v. Spain**, see above). In the practice of most German municipalities, fixed eviction dates are notified to the relevant social welfare offices, thus delegating responsibility for finding alternative housing or accommodation to the local authorities.
35. With the forced evictions, but also due to the access difficulties in finding affordable housing, the number of homeless people in Germany has been rising continuously for many years<sup>50</sup>. The term "**homeless**" refers not only to those who live on the streets and in public places without shelter or who are accommodated in emergency shelters or institutions, but also to a much larger group of people **who "do not have a rented accommodation (or residential property) that is covered by a rental agreement"**<sup>51</sup>. This includes, among others, those who live in insecure circumstances such as a caravan or who temporarily stay overnight with acquaintances or friends.
36. **Homelessness is not a “marginalized group phenomenon”**:<sup>52</sup> the exact number of homeless people in Germany is unknown.<sup>53</sup> The **Bundesarbeitsgemeinschaft Wohnungslosenhilfe**

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<sup>47</sup> Deutscher Anwaltverein, Arbeitsgemeinschaft Mietrecht und Immobilien, Räumung und Herausgabe, <https://www.mietrecht-dav.de/rechtskunde/raeumung-und-herausgabe/>

<sup>48</sup> Senatsverwaltung Berlin, Wohnraumsbedarfsbericht 2019, p. 89, <https://stadtentwicklung.berlin.de/wohnen/wohnungsmarkt/wohnraumbedarfsbericht/download/Wohnraumbedarfsbericht2019.pdf>.

<sup>49</sup> Berliner Mieterverein, Info 121: Räumungsfrist und Vollstreckungsschutz, <https://www.berliner-mieterverein.de/recht/infoblaetter/info-121-klage-auf-raeumung-der-wohnung-raeumungsfrist-vollstreckungsschutz-und-hilfe-durch-das-amt-im-geschuetzten-marktsegment.htm>.

<sup>50</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 47.

<sup>51</sup> *Ibid*; there also to the following.

<sup>52</sup> DIMR, Von der Notlösung zum Dauerzustand, [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/ANALYSE/Analyse\\_Von\\_der\\_Notloesung\\_zum\\_Dauerzustand\\_web.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/ANALYSE/Analyse_Von_der_Notloesung_zum_Dauerzustand_web.pdf), p. 49.

<sup>53</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 45.

(BAG W) estimates the number of homeless and shelter-less people in Germany in 2018 at **678,000 people**. Compared to the previous year 2017 (with an estimated 651,000 homeless people<sup>54</sup>), this means an increase in the total number of homeless people by 4.2%; in 2006 the number was 'only' 250,000.<sup>55</sup> About 17% of the homeless (without including the homeless refugees) are EU citizens; that is about 40,000 people. Many of these people live on the streets without any accommodation. Especially in the metropolitan areas, the percentage of people without any accommodation on the streets is up to about 50% of the homeless. "Street homelessness" is strongly influenced by internal EU immigration; however, this is not true for homelessness as a whole.<sup>56</sup>

37. **The increasing number of homeless people**<sup>57</sup> systematically overstrains the accommodation capacities of the welfare state assistance system.<sup>58</sup> Neither the capacity nor the equipment of the accommodation system is suitable to ensure a dignified roof over the head for all. **In 2018, tens of thousands of homeless people were housed in Germany in accordance with the regulations:**<sup>59</sup> statistics from the states<sup>60</sup> show that regulatory housing, which is only intended as an **emergency solution** and a short-term measure of a few days or weeks, is increasingly becoming a longer-term solution: Around a third of the persons accommodated live there for **more than two years.**<sup>61</sup>

38. **Current case law in Germany** considers very basic, minimal housing and care standards to be sufficient with regard to regulatory housing.<sup>62</sup> In the case of **long-term accommodation**, this conflicts with the human rights requirements for adequate housing, which also apply to the regulatory accommodation of homeless people in Germany.<sup>63</sup> **In the long run, minimum**

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<sup>54</sup> BAGW, Homelessness Statistics, [https://www.bagw.de/de/themen/zahl\\_der\\_wohnungslosen/index.html](https://www.bagw.de/de/themen/zahl_der_wohnungslosen/index.html).

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> German Government, Fifth Report on Poverty and Wealth of the German Government, 2017, p. XXXVI, <https://www.armuts-und-reichtumsbericht.de/SharedDocs/Downloads/Berichte/5-arg-langfassung.pdf?blob=publicationFile=6>.

<sup>58</sup> DIMR, Human Rights Report 2019, footnote 42 at pp. 42 *et seq.*

<sup>59</sup> If someone loses his or her home and is unable to provide for himself or herself in any other way, the municipalities, as the police and regulatory authorities, have a legal obligation to provide "proper accommodation".

<sup>60</sup> "Ordnungsrechtliche Unterbringung": in NRW 30,736 persons (as of June 30, 2018); in Bavaria 12,681 persons (as of June 30, 2017) In Berlin alone, the number has more than tripled between 2014 (9615) and 2016 (30,718); DIMR, Human Rights Report 2019, footnote 42 at pp. 45 *et seq.*

<sup>61</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 53; DIMR, "From the emergency solution to the permanent state", pp. 30, 42.

<sup>62</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 54.

<sup>63</sup> "As a framework for analysis, the criteria for adequate housing developed by the UN Social Pact Committee in 1991 (Figure) are subsequently used as a basis. These are supplemented by the requirements of more recent human rights conventions, in particular the Istanbul Convention against Violence against Women and the UN Convention on the Rights of Persons with Disabilities", DIMR, Human Rights Report 2019, *ibid.*

**standards are not sufficient in terms of basic and human rights.**<sup>64</sup> As early as 2017, the German government has already identified the inadequate provision of regulatory housing in some regions of Germany in its Poverty and Wealth Report.<sup>65</sup> Nevertheless, a nationwide discussion on standards in the accommodation of homeless people is still missing.<sup>66</sup>

39. The DIMR also criticizes the fact that the criteria developed by the UN CESCR for the right to adequate housing have so far not been used by German courts as an interpretative aid.<sup>67</sup> Moreover, those affected have a "limited power of appeal"<sup>68</sup> and are often dependent on outside help to assert their rights in court: This is illustrated by a case handled by the Berlin Tenants' Association, in which a family of six<sup>69</sup> was evicted by force and, despite the illegality of the procedure - as later established by the court - cannot return to the apartment and has now been accommodated in a guest house for five months.<sup>70</sup> Many of the proceedings only clarify individual case questions and are decided under summary proceedings, which makes an analysis of German case law even more difficult.<sup>71</sup>

40. **The situation and quality of accommodation** in Germany varies greatly from region to region.<sup>72</sup> Access to accommodation depends to a large extent on whether the municipality has sufficient accommodation places available; but also on how the municipality understands its accommodation obligations. The range of accommodation is wide, from "normal housing" (flats) to shared rooms in collective accommodation, from hygienically sound to borderline neglected. The German Institute for Human Rights therefore calls for the development of **minimum standards for accommodation in accordance with the regulations**. This includes the legal clarification that the mandate for orderly housing applies regardless of the residence status and nationality of the persons concerned. In addition, it is demanded that, apart from sufficiently affordable housing, there must also be qualified social work counselling so that the affected groups of people do not slip into homelessness. However, an improvement in the provision of regulatory accommodation can only be one of many components in order to make the **living**

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<sup>64</sup> DIMR, Human Rights Report 2019, footnote 42 at pp. 14, 42 *et seq.*

<sup>65</sup> Federal Government, Fifth Report on Poverty and Wealth, pp. XXXV *et seq.*, [Section III.3.5 Housing: Affordable and inclusive and low-barrier].

<sup>66</sup> DIMR, Human Rights Report 2019, footnote 42 at pp. 54 *et seq.*

<sup>67</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 55.

<sup>68</sup> See below for details: E.III. Request for the introduction of the class action suit.

<sup>69</sup> Afterwards, she was asked to leave the apartment for two months for maintenance measures and sought support from the Berlin tenants' association.

<sup>70</sup> Decision of AG Berlin-Mitte of 23 May 2019 – case no. 35 C 350/18; Berliner Mieterverein, "Zwangsräumung einer sechsköpfigen Familie", 4 September 2019, <https://www.berliner-mieterverein.de/magazin/online/mm0919/zwangraeumung-einer-sechskoepfigen-familie-unsaeegliche-geschichte-091908.htm>.

<sup>71</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 56.

<sup>72</sup> DIMR, Human Rights Report 2019, footnote 42 at pp. 54 *et seq.*

**conditions of homeless people compatible with human rights.**<sup>73</sup> The primary goal of government action should be to prevent or overcome homelessness. To this end, there must be sufficient housing available in the municipalities - also for households with little or no income - and homeless people must also be given priority access to such housing.<sup>74</sup>

41. **As regulatory matters** are the **responsibility of local authorities**, professional associations also criticize the **lack of a nationwide strategy for the prevention of homelessness**.<sup>75</sup> The procedure for combating homelessness varies from one federal state to another, and there is a lack of comprehensive overall approaches. While some states set up **statewide coordination centers** or record the extent of homelessness, others refer primarily to local authorities and leave the structuring of the approach in this regard to them.<sup>76</sup> In Lower Saxony or Bavaria, for example, such state-wide coordination centers have been set up, but they also differ in their structure. In 2020, a different form of coordination is to take place in Berlin: The city-wide coordination of the accommodation of homeless people is planned.<sup>77</sup> Among the activities of the federal states, the **state-wide action program** for preventing and overcoming homelessness in North Rhine-Westphalia, for example, serves as a model.<sup>78</sup>

42. **Conclusion:** The **main reasons** for the rising number of homeless people are the insufficient supply of affordable housing, the shrinking stock of social housing, rapidly rising rents and the entrenchment of poverty. There is a particular lack of affordable housing for people on low incomes, for those receiving transfer payments and for recognized refugees. Single parents and young adults are particularly vulnerable groups; but the impending old-age poverty of the generation of cheap laborers, the self-employed and other precariously employed people is also a cause for concern. The further increase in the number of homeless people from 2017 to 2018 makes clear that an end to the housing crisis is not in sight. A nationwide uniform collection of homeless statistics is more important than ever.

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<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> For an overview of national strategies in selected European countries: German Bundestag (2018b); DIMR, Human Rights Report 2019, footnote 42 at p. 51, there also to the following.

<sup>76</sup> See for example: Brandenburg State Parliament (2017); Saxony-Anhalt State Parliament (24 April 2018); DIMR, Human Rights Report 2019, footnote 42 at p. 51.

<sup>77</sup> Senate of Berlin, Senate Department for Integration, Labor and Social Affairs: [https://www.berlin.de/rbmskzl/aktuelles/press\\_releases/2018/press\\_release.722198.php](https://www.berlin.de/rbmskzl/aktuelles/press_releases/2018/press_release.722198.php) (last accessed 5 March 2020); DIMR, Human Rights Report 2019, footnote 42 at p. 51.

<sup>78</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 51.

## D. Previous proposals and demands of NGOs, political parties and tenant initiatives on the human right to housing

As stated in **Part A (Introduction)**, the UN CESCR in its final report expresses concern about the situation in Germany and recommends a number of measures which we will go through below.

### I. Increased provision of affordable housing

43. **The human right to housing** includes, as stated above, access to adequate, affordable housing that meets needs. Rising rents and the acute shortage of at least two million affordable dwellings for low-income households require a rapid and extensive provision of rent-controlled housing with occupancy commitments for social housing provision.
44. As part of the federalism reform in 2006, **the federal government** transferred responsibility for housing to the federal states and gradually withdrew from responsibility and financing.<sup>79</sup> As compensation for the discontinuation of earlier financial assistance in this area, the federal government granted the federal states so-called compensation funds (2018 and 2019 each around 1.5 billion euros), which were to be paid until the end of 2019. A resolution of 2018 made these payments permanent at least for the period 2020/2021 in the amount of 2 billion euros, which will be earmarked for social housing.<sup>80</sup> With this amount of funding, only about 25,000 new social housing units per year can be subsidized at current subsidy conditions - far too little for the demand. As **more than 100,000 social ties from previous funding periods will expire** in the same period, the current funding approach is not even sufficient to compensate for the expiring ties.
45. **Construction of more social housing:** Social associations and tenants' organizations are calling for a significant increase in funding programs in order to build at least 80,000 new social housing units per year.<sup>81</sup> The Left Party also demands more investment in social housing construction.<sup>82</sup>

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<sup>79</sup> Bundestag, WD 3 - 3000 - 029/19,  
<https://www.bundestag.de/resource/blob/592066/409b80b8bd9764f047a54e923b7c0ab3/wd-3-029-19-pdf-data.pdf>;  
"Construction of social housing stagnates despite billions spent", 15 June 2019, Zeit-Online,  
<https://www.zeit.de/politik/deutschland/2019-06/wohnungsbau-sozialwohnungen-neubauten-bund-foerderung>, accessed on 9 April 2020.

<sup>80</sup> Federal Ministry of the Interior, for Building and Homeland, "Social Housing Promotion",  
<https://www.bmi.bund.de/DE/themen/bauen-wohnen/stadt-wohnen/wohnraumfoerderung/soziale-wohnraumfoerderung/soziale-wohnraumfoerderung-artikel.html>.

<sup>81</sup> German Tenants' Association, 12 Demands, 21 January 2020,  
<https://www.mieterbund.de/startseite/news/article/54604-wohnungskrise-2020-schnelle-umfassende-und-radikale-loesungen-notwendig.html>.

<sup>82</sup> "Wohnungsbau Sozialwohnungen stagnates", Zeit, 15 June 2019; <https://www.zeit.de/politik/deutschland/2019-06/wohnungsbau-sozialwohnungen-neubauten-bund-foerderung>.

46. **Support program with permanent commitments:** Tenants' organizations and political parties are also calling for a departure from the fatal logic of temporary ties in the support programs<sup>83</sup> and to break through the dilemma of "social interim use" with permanent ties. "**Once subsidized - always bound**" is the demand of the Greens,<sup>84</sup> for example, and it is also one of the common demands that were developed at the **Alternative Housing Summit**.<sup>85</sup>
47. **New non-profit housing:** In addition to an increase and change in the subsidy programs, there are calls for the **establishment and expansion of housing stocks** that do not follow the profit logic and can make long-term contributions to social housing provision.<sup>86</sup> In concrete terms, it is proposed to **reintroduce the non-profit housing scheme**,<sup>87</sup> which is intended to make an important contribution to social housing provision through profit restrictions and clearly defined allocation rules.<sup>88</sup>
48. **Purchase of stocks:** In addition to the demands aimed at the construction of new, permanently committed housing, local initiatives and organizations in particular are also calling for the increased purchase of housing stocks by public bodies and housing companies.<sup>89</sup> Since even the best new construction strategy can only gradually close the gap in affordable housing, the **public takeover of existing private housing stocks** could increase the proportion of rent- and occupancy-linked housing even in the short term.
49. **We support the calls for the rapid expansion of affordable housing stocks by means of subsidized new construction with permanent ties, the reintroduction of non-profit housing and the purchase of private stocks by public institutions and call on the Federal Government to create the necessary legal and budgetary conditions for this.**

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<sup>83</sup> German Tenants' Association, footnote 81.

<sup>84</sup> Bünger, "Sozialer Wohnungsbau: Berlin hat es komplett versemmt", 01 July 2019, Tagesspiegel, <https://www.tagesspiegel.de/wirtschaft/immobilien/sozialer-wohnungsbau-berlin-hat-es-komplett-versemmt/24478758.html>.

<sup>85</sup> Alternative Housing Summit [organised by the German Tenants' Association (DMB), the German Trade Union Confederation (DGB), the Paritätische Gesamtverband, the social association VdK, the BAG Wohnungslosenhilfe and the alliance #Mietenwahnsinn], 55 Demands, No. 41, <https://alternativer-wohngipfel.de/2018/wp-content/uploads/sites/3/2019/01/alternativer-wohngipfel-55-forderungen-20190118-ch.pdf>.

<sup>86</sup> *Ibid*, Demand No. 48.

<sup>87</sup> *Ibid*, Demand No. 10.

<sup>88</sup> See applications by the Green and Left parties: <dip21.bundestag.de/dip21/btd/19/177/1917771.pdf>, <dip21.bundestag.de/dip21/btd/19/173/1917307.pdf3>.

<sup>89</sup> German Tenants' Association, footnote 81.

## II. Increased public spending on social housing

50. **The human right to housing** presupposes the provision of sufficient housing that is affordable even for low-income households. Since private housing providers with market-based calculations of their management will usually aim for at least the average rental income, affordable housing can only be provided outside the usual market logic. **Public responsibility for social housing provision also requires the provision of public funds.**
51. **The Federal Government** currently spends about **€2 billion p.a.** on social housing promotion.<sup>90</sup> Of this amount, the construction of about 25,000 social housing units per year can be funded. In addition, the Federal Government has been making just under **€10 billion (3.3 billion p.a.)** available since 2018 (initially for a limited period of 3 years) to support the acquisition of owner-occupied homes ("Baukindergeld").<sup>91</sup> The "Baukindergeld" is used by mostly young middle-class families to build or buy their own homes and condominiums and does not make a significant contribution to the social housing provision for households that cannot provide for their own housing on the market. In addition, the federal government grants housing benefit payments of over **€1 billion** per year, which can be drawn by low-income households to finance rents that could not be met from their income. In addition, the federal government and municipalities pay over **€15 billion p.a.** in housing costs under social legislation. The sum of these so-called subject subsidies (which are granted to private households) currently amounts to **about € 17 billion p.a.** Although these funds enable millions of households to maintain their current housing situation, they also have the character of extensive economic promotion through the payment flow of rents, because they secure rental income that could not be generated from income. In total, the state spends around **€22 billion p.a.** in the area of housing - only around 9 percent of this money is used as funding for the direct expansion of social housing provision.
52. Therefore, 91 percent of funds are an indirect promotion of the private housing industry and thus non-repayable subsidies, which ultimately fuels speculation. Instead of developing a strategy with which the federal government fulfils its duty to implement the social human right to housing, this is likely to be a serious systemic failure.
53. **Increase in subsidies:** Tenant organizations, associations and also political parties are calling for a significant increase in direct subsidies<sup>92</sup> from the **current €2 billion p.a. to €8 to 10 billion.**

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<sup>90</sup> Federal Ministry of the Interior, for Building and Homeland Affairs, "Social Housing Promotion", footnote 80.

<sup>91</sup> Statement Holm of 5 June 2019, A-Drs. 19(24)094, <https://www.bundestag.de/resource/blob/645482/46fdea2eb045aa5b08d52f12620f95a9/Stellungnahme-SV-Holm-data.pdf>; Bundesregierung, Bericht der Bundesregierung über die Verwendung der Kompensationsmittel für den Bereich der sozialen Wohnraumförderung 2016, BT-Drs. 18/13054, <http://dip21.bundestag.de/dip21/btd/18/130/1813054.pdf>; Bericht der Bundesregierung über die Verwendung der Kompensationsmitteln für den Bereich der sozialen Wohnraumförderung 2017, BT-Drs. 19/3500, <https://dip21.bundestag.de/dip21/btd/19/035/1903500.pdf>; Bericht der Bundesregierung über die Verwendung der Kompensationsmitteln für den Bereich der sozialen Wohnraumförderung 2018, BT-Drs. 19/10220, <http://dip21.bundestag.de/dip21/btd/19/102/1910220.pdf>, there also on the following.

<sup>92</sup> Alternative Housing Summit, footnote 85, Demand No. 33.

54. **Public housing:** Local initiatives in particular are calling for a stronger commitment by municipalities to construct public housing with permanent supply functions, to be financed directly from the budget.<sup>93</sup> The demand for public housing construction departs from the logic of support programs and aims to build up a **permanent social infrastructure of housing:** public construction instead of private support.<sup>94</sup>
55. **We support the demands for substantial financial participation by the Federal Government, the states and local authorities in the development of affordable housing with permanent supply functions and call on the Federal Government to create the legal, financial and logistical conditions for this.**

### **III. The need to increase housing costs in basic social security**

56. **The human right to housing** not only includes a roof over one's head, but also access to adequate and needs-based housing in **long-term protected housing conditions.**<sup>95</sup> For more

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<sup>93</sup> "Further protection of tenants in the case of modernisation for municipal housing companies by the cities and municipalities": Alternative Housing Summit, footnote 85, Demand No. 10.

<sup>94</sup> Initiative Neuer Kommunaler Wohnbau, "Wer wir sind und was wir wollen", accessed 5 March 2020, <http://www.inkw-berlin.de/>.

<sup>95</sup> DIMR, Human Rights Report 2019, footnote 42 at pp. 42 *et seq.*

than 3.2 million households in Germany that are dependent on transfer payments, housing security depends on the so-called costs of accommodation, which are paid by the authorities.<sup>96</sup> Although the basic protection amounts paid in transfer payments are based on the minimum subsistence level, 18 percent of transfer benefit households have housing costs above the assessment thresholds for accommodation costs:<sup>97</sup> this **housing cost gap** means that almost 600,000 households have to divert part of their rent from basic protection or run the risk of losing their homes due to accumulating rent arrears.

57. **The federal government** regulates the assumption of housing costs in sec. 22 Social Security Code II ("Need for accommodation and heating"). The legal regulations contain requirements which - according to the Basic Law (Article 20 (1) GG) - must appear as a paradoxical construct for a person living in a welfare state: On the one hand, the **assumption of the "costs of accommodation and heating in the amount of the actual expenses** should be recognized" - on the other hand, the subsequent addition "**if these are appropriate**" provides an orientation towards an appropriate rent level, which is set by the municipalities in so-called **assessment limits**. Data from the Federal Employment Agency show that these requirements for the assumption of costs for accommodation are not practical and are contrary to the guarantee of social human rights.<sup>98</sup> It stands to reason that a considerable proportion of the needy communities concerned pay the shortfall in housing costs from the standard rates - which are oriented towards the subsistence level. No special arithmetic skills are required to recognize that less than the subsistence minimum can only be less than the subsistence minimum. However, the application for a statutory amendment to determine the coverage of housing costs was rejected in the parliament at the end of 2019.<sup>99</sup>

58. **Livelihood-securing regulation of the assumption of housing costs:** Social associations and political parties are calling for a new regulation of the legal basis for determining the **assumption of housing costs** and are pursuing the goal of **ensuring that payments of housing costs are made in a way to secure livelihoods**.<sup>100</sup> A regulation that secures livelihoods requires that the housing costs be covered throughout in the amount of the actual expenses.<sup>101</sup>

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<sup>96</sup> (households = "needy communities" - "Bedarfsgemeinschaften"), Answer of the Federal Government to the minor inquiry of the parliamentary group DIE LINKE, BT-Drs. 19/3073, p. 3, <https://dip21.bundestag.de/dip21/btd/19/030/1903073>.

<sup>97</sup> Answer of the Federal Government to a minor inquiry of the parliamentary group DIE LINKE, BT-Drs. 19/2536 (29 June 2018).

<sup>98</sup> *Ibid*, p. 3.

<sup>99</sup> German Bundestag, "Bundestag lehnt mehrere Anträge zu Hartz IV ab", 07 November 2019, <https://www.bundestag.de/dokumente/textarchiv/2019/kw45-de-hartz-iv-664922>.

<sup>100</sup> "Adjusting accommodation costs to real rent levels", Alternative Housing Summit, footnote 85, Demand No. 35.

<sup>101</sup> Parliamentary group DIE LINKE 2019: Application "Kosten der Unterkunft existenzsichernd gestalten", Drs. 19/6526 (14 December 2018), <https://dip21.bundestag.de/dip21/btd/19/065/1906526.pdf>.

59. **Exclude housing costs from the sanctions:** Associations and initiatives also demand to **strike out without substitution** the past practice of a **possible reduction of the costs** of accommodation and heating in the context of the **sanctioning of a breach of duties in the sense of the Social Code II** - for those under the age of 25 possible even in intensified form -, in order not to endanger the receipt of housing.<sup>102</sup> This is in line with the above-mentioned requirements for forced evictions (in the case of rent arrears which are sometimes caused consecutively in this way), which must not result in homelessness.
60. **Consider local housing market situation:** Greater consideration of the respective specific housing market situation is required when setting the assessment thresholds for the "appropriateness" of housing costs: The basis for the appropriateness thresholds should be the rent levels of the actually available housing units and should always be decided on a case-by-case basis as a concrete appropriateness threshold.<sup>103</sup>
61. **We support the demands for a fundamental reform of the regulations governing the assumption of housing costs of households receiving transfer payments. The legislator has the responsibility to ensure that the constitutionally guaranteed minimum subsistence level is secured for all households, to enable housing provision in line with demand and to guarantee the conditions for a manageable and legally secure practice in the municipalities.**

#### **IV. Protection against forced evictions and development of shelters**

62. **The human right to housing** includes legal protection against forced evictions and legal guarantees for housing<sup>104</sup> and implies a real opportunity for consultation and adequate

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<sup>102</sup> BAGW 2018: Konkrete Forderungen der BAG Wohnungslosenhilfe für eine alternative Wohnungspolitik (21 September 2018), <https://www.bagw.de/de/presse/Pressearchiv-157.html>; DIE LINKE 2019: Application: "Wohnkostenlücke schließen – Kosten der Unterkunft existenzsichernd gestalten", BT-Drs. 19/6526, p. 3.

<sup>103</sup> Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege 2018: "Position of the BAGFW on the determination of appropriate costs of accommodation and heating in the SGB II and XII and further proposals", 31 April 2020, <https://www.bagfw.de/suche/detailansicht-news/position-der-bagfw-zur-ermittlung-angemessener-kosten-der-unterkunft-und-heizung-im-sgb-ii-und-xii-und-weitere-vorschlaege>; "Adjusting accommodation costs to real rent levels", Alternative Housing Summit, footnote 85, Demand No. 35.

<sup>104</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 56.

notification in due time before the date of the ordered eviction.<sup>105</sup> The high and increasing number of persons without adequate housing (now at 1.2 million), the continued evictions and the lack of adequate accommodation for homeless persons are obstacles to the provision of housing in Germany in conformity with human rights.<sup>106</sup> Forced evictions constitute a gross violation of human rights. The aim must be to prevent this; only in the most exceptional circumstances and in accordance with the human rights requirements for adequate housing should recourse be had to accommodation in accordance with the regulations.<sup>107</sup>

**63. The federal government** largely evades responsibility in the field of homelessness and evictions, as the responsibility for the prevention of homelessness and the obligation to provide accommodation under the regulations lies with the municipalities. An exception here are the tenancy law rules on protection against termination, which are regulated in the German Civil Code (*Bürgerliches Gesetzbuch*, BGB). Here, the Bundestag missed the opportunity in 2019 to approve a motion to extend protection against terminations.<sup>108</sup>

**64. Extend protection against termination:** Tenant organizations, initiatives and parties are calling for an extension of the protection against termination. Proposals include the exclusion of terminations due to personal use after the conversion of apartments, a fundamental exclusion of personal use termination protection for tenants who have reached the age of 70, and a transfer of the legal remedial rules from terminations without notice to terminations with notice, so that terminations due to rent arrears become generally ineffective if the outstanding amount is settled.<sup>109</sup>

**65. No eviction in case of rent arrears through no fault of the tenant:** For many years, initiatives, tenant organizations and studies have been pointing to the problem of rent arrears caused by

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<sup>105</sup> UN CESCR, General Comment No. 7, The right to adequate housing (art. 11(1)): forced evictions, accessible at <https://www.refworld.org/docid/47a70799d.html>; Wissenschaftlicher Dienst des Bundestages, "Soziales Menschenrecht auf angemessene Unterkunft nach dem VN-Sozialpakt", 2016.

<sup>106</sup> UN CESCR, Concluding observations on the Sixth Periodic Report on Germany by the United Nations Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/DEU/CO/6, 12 October 2018, No. 54.

<sup>107</sup> Criteria for housing in conformity with human rights were developed by the UN ESC Committee in 1991, among others. In its General Comment No. 4 on the right to housing and No. 7 on forced evictions, the UN ESCC Committee emphasizes that the States Parties to the UN Covenant on Economic, Social and Cultural Rights have an obligation to guarantee legal protection in procedures in the context of forced evictions. This includes a genuine opportunity for consultation and adequate notification in due time before the date of the ordered eviction. Article 2(1) of the UN Covenant on Economic, Social and Cultural Rights also requires States Parties to implement measures to ensure access to effective legal protection concerning all rights enshrined in the Covenant. See also DIMR, Human Rights Report 2019, footnote 42 at p. 55.

<sup>108</sup> Parliamentary group Die Linke 2019: Application: Kündigungsschutz für Mieterinnen und Mieter verbessern, Drs. 19/10284 (16 May 2019), <https://www.bundestag.de/dokumente/textarchiv/2017/kw25-de-wohnungswirtschaft-509782>.

<sup>109</sup> *Ibid.*

the negligence of job centers and public offices. They call for forced evictions to be legally excluded for reasons where tenants are not at fault.<sup>110</sup>

**66. Humane housing for all:** Municipal accommodation capacities are often overstretched in view of the increasing number of homeless people, so that accommodation is provided in inadequate forms such as hotels and pensions or homeless people are turned away. Associations of homeless people's aid demand an unrestricted fulfilment of the duty of municipal emergency accommodation regardless of the residence status of the persons concerned.<sup>111</sup> The affected persons have a claim to regular accommodation from the competent authority, which they can enforce by means of a legal action if necessary.<sup>112</sup> However, there is no entitlement to accommodation in a specific accommodation, so that admissions to other accommodation are possible. The German Institute for Human Rights has criticized that such measures to guarantee (temporary) accommodation are still only covered by state-internal danger prevention clauses (general police clauses): There is no explicit legal regulation of such accommodation obligations. There is an urgent need to catch up here.<sup>113</sup>

**67. We support the above demands: Forced evictions are a gross violation of human rights.** **The aim must be to prevent these; only in the most exceptional circumstances and after all alternatives have been examined can forced evictions be a last resort. The relevant principles of international law must be respected by ensuring that the persons concerned are free to choose adequate alternative accommodation.**<sup>114</sup>

## V. Housing Needs Reports and Homelessness Statistics

**68. The human right to housing** presupposes public responsibility for housing provision and depends on appropriate planning bases. The statistical recording of housing needs and homeless people has been sporadic and lacks a uniform nationwide system. The Federal Republic's obligation to guarantee all people a right to housing as part of the right to an adequate standard of living means that Germany must provide all people in its sovereign territory with the

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<sup>110</sup> Alternative Housing Summit, footnote 85, in particular Demand No. 36: "No forced evictions in case of failure of the job centres".

<sup>111</sup> Bundesarbeitsgemeinschaft Wohnungslosenhilfe 2015: Municipalities must fulfil their obligation to provide emergency accommodation for homeless people (<https://www.bagw.de/de/presse/Pressearchiv-117.html>).

<sup>112</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 56.

<sup>113</sup> DIMR, Human Rights Report 2019, footnote 42 at p. 55.

<sup>114</sup> See [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Sonstiges/Recht\\_auf\\_Wohnen.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/Recht_auf_Wohnen.pdf).

possibility of adequate housing. This is not synonymous with the right of individuals to specific housing. However, the state must develop an overall strategy that combines policy and legislative measures.<sup>115</sup>

**69. The Federal Government** has drafted a law on the introduction of nationwide uniform homeless statistics, which was passed by the Bundestag on 16 January 2020.<sup>116</sup> This provides in particular for a survey of those accommodated through municipal measures. The initiation of a comprehensive research project by the Federal Ministry of Labor and Social Affairs confirms that there is a knowledge deficit regarding the homeless situation.<sup>117</sup>

**70. Comprehensive survey of homelessness:** Social organizations and also trade unions welcome the decision to have a nationwide survey of homeless people living in institutions but criticize the limited definition of homelessness in the law. It only covers people who are in institutions because of homelessness, but not other acutely homeless people (living on the street or staying with friends), people directly threatened by homelessness and people in unacceptable housing conditions.

**71. Draw up housing needs analyses:** With regard to the scope and design of subsidy programs or the target share of public and public-service housing stocks in cities and regions, there is no systematic survey to date on how many dwellings are needed for households that cannot adequately provide themselves with affordable housing under market conditions. For this reason, expert contributions and local policy contexts regularly call for the preparation of housing needs analyses. Berlin is so far the only federal state to have prepared a housing needs report that systematically presents the actual supply deficits in the area of social housing provision.<sup>118</sup>

**72. We support the demands for verifiable indicators for supply deficits and housing emergencies as well as proposals for the regular and standardized recording of homelessness and supply needs. These can represent important, nationwide steps on the way to the actual realization of the right to housing in Germany.**

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<sup>115</sup> UN CESCR (1991), point 11; UN Human Rights Council (2018), points 7 and 8; DIMR, Human Rights Report 2019, footnote 42 at p. 53.

<sup>116</sup> See <https://www.bundestag.de/ausschuesse/a11/Anhoerungen/68-sitzung-wohnungslosenberichterstattung-673606>.

<sup>117</sup> Busch-Gertsema/ Henke / Steffen (2019); DIMR, Human Rights Report 2019, footnote 42 at p. 51, there also to the following.

<sup>118</sup> See  
<https://stadtentwicklung.berlin.de/wohnen/wohnungsmarkt/wohnraumbedarfsbericht/download/Wohnraumbedarfsbericht2019.pdf>.

## **VI. Measures to counter the effects of speculation**

73. **The human right to housing** includes secure housing conditions and the provision of adequate, affordable housing that meets the needs of all income groups. This can only be achieved if housing is seen primarily as a social good and market economy considerations are subordinated. The permanent tension between "dwelling as home and dwelling as real estate"<sup>119</sup> has been radicalized in many cities by speculation with real estate and housing stocks and by the transformation of housing estates into financial assets in recent years. Social housing provision is therefore always faced with the challenge of enforcing the social aspects against the private and entrepreneurial pursuit of profit and of pushing back the effects of speculation with housing.
74. For a long time, **the German government** has favoured the financialization of housing provision by abolishing non-profit status, weakening public institutions, privatizations induced by budgetary policy, the authorization of Real Estate Investment Trusts (REITs) and tax relief for so-called share deals. Measures to improve the protection of tenants were limited to measures under

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<sup>119</sup> Madden, David; Marcuse, Peter 2016: In Defense of Housing. NYC: Verso, p. 4.

tenancy law (cap on modernization apportionment, rent control) to cushion the effects of increasingly speculative housing management without restricting it themselves.

**75. Taxing share deals:** Political parties and tenant initiatives have been demanding for many years that the tax privileges for share deals be abolished. At present, real estate sales that are carried out via share sales of business shares of less than 95 percent are exempt from real estate transfer tax. The transaction volume with real estate has risen nationwide within a few years from €13.4 billion (2003) to €89.5 billion (2019).<sup>120</sup> Without the tax exemption for share deals, trading with large real estate portfolios and the merger of large housing companies would be economically less attractive and the problematic concentration of housing portfolios in the management of a few large real estate companies could be restricted. The simplest way of taxation would be a pro rata payment of the real estate transfer tax, corresponding to the proportion of the shares taken over.<sup>121</sup>

**76. Re-municipalization of return-oriented housing companies:** Tenants' organizations and initiatives are also calling for re-municipalizing the housing portfolios of large real estate groups, whose portfolios are often the result of the privatization of public companies or former social housing.<sup>122</sup> While some city administrations are focusing on the increased use of municipal rights of first refusal and have developed purchase strategies,<sup>123</sup> initiatives are now also calling for the expropriation of large real estate companies. They refer to Article 15 of the Basic Law and are counting on the socialization of as many housing stocks as possible in order to guarantee social housing provision in the long term.<sup>124</sup>

**77. Rent moratorium:** In order to stop the rapid rise in rents and gain time for more far-reaching housing policy measures, tenant organizations and initiatives in several cities and federal states are now calling for a rent moratorium lasting several years. The Berlin Senate has passed a corresponding "Law on rent caps in the housing sector in Berlin" ("Rent cap") in 2020.<sup>125</sup> In Bavaria, an initiative for the referendum "6-year rent freeze" has successfully completed the first stage of the referendum.<sup>126</sup>

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<sup>120</sup> Ernst & Young 2020: Real estate investments in Germany at record levels, [https://www.ey.com/de\\_de/news/2020/01/ey-immobilien-trendbarometer-2020](https://www.ey.com/de_de/news/2020/01/ey-immobilien-trendbarometer-2020).

<sup>121</sup> Bündnis90/Die Grünen 2020 parliamentary group: Motion: No speculation with land and real estate - close tax loophole share deals, Drs. 19/16501, <https://dip21.bundestag.de/dip21/btd/19/165/1916501.pdf>; Alternative Housing Summit, footnote 85, in particular demand no. 47: "Abolish share deals".

<sup>122</sup> Alternative Housing Summit, footnote 85, in particular demand no. 48: "Remunicipalization of housing stocks of yield-oriented housing companies that have acquired stocks".

<sup>123</sup> rbb 2019: State of Berlin buys back 6,000 apartments, <https://www.rbb24.de/politik/beitrag/2019/09/berlin-kauft-6000-wohnungen-zurueck.html>.

<sup>124</sup> Initiative for a referendum in Berlin: "Deutsche Wohnen & Co. enteignen", <https://www.dwenteignen.de/>.

<sup>125</sup> <https://www.berlin.de/sen/justiz/service/gesetze-und-verordnungen/2020/ausgabe-nr-6-vom-22-2-2020-s-49-56.pdf>.

<sup>126</sup> <https://mietenstopp.de/>.

78. The initiative "**Deutsche Wohnen & Co. Enteignen**" (**Expropriate Deutsche Wohnen & Co.**) wants to incorporate about 240,000 apartments of real estate companies by means of a referendum: "Article 15 of the Basic Law creates the possibility for this. The socialization would not only immediately secure eleven percent of the apartments in Berlin, but also keep them affordable forever". Thus claim the campaign and its supporters.<sup>127</sup>
79. **We support the demand to curb speculation with housing and to return as many stocks as possible to municipal or public-service administration, because private sector management strategies of profit maximization cannot guarantee social housing provision.**

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<sup>127</sup> Deutsche Wohnen & Co. Enteignen, "Warum enteignen?", <https://www.dwenteignen.de/warum-enteignen/>, last accessed on 11 April 2020.

## E. Further demands for the implementation of the social human right to housing

### I. Call for ratification of the Additional Protocol to the UN ICESCR

80. In the current public debate on the right to housing, the question has repeatedly been raised as to why the principles set out in the previous sections are applied in Germany in a highly incomplete manner. For the full applicability of an international treaty, such as the UN ICESCR, ratification<sup>128</sup> of the treaty is necessary first.<sup>129</sup> For the implementation of the UN Social Covenant, a so-called Optional Protocol<sup>130</sup> must also be signed by the individual state parties. This Optional Protocol introduces an individual complaints procedure for the economic, social and cultural rights (ESC rights) of the UN Social Covenant.
81. The UN CESCR should serve to make the implementation of the treaty more effective (as the expert Norman Paech, Prof. em. for Political Science and Public Law, explains on the purpose of the Committee in more detail).<sup>131</sup> The Committee consists of 18 elected independent experts who examine and comment on the state reports which are due every five years. All UN treaty bodies have such reporting and monitoring rights, they develop **interpretation and monitoring standards to review state practice**.<sup>132</sup> As early as 2001, in its Concluding Observations on the Third State Report of Germany, the UN CESCR expressed its concern "that there is [in Germany] no comprehensive system to ensure that the Convention will take account of economic, social and cultural rights both in the formulation and in the implementation of legislation and policies" (UN CESCR, 2001).
82. As is well known, the German government played a major role in the creation and formulation of the Optional Protocol in 2008,<sup>133</sup> and later repeatedly declared its intention to sign it without specifying specific dates or conditions.

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<sup>128</sup> DIMR, "Was ist der Unterschied zwischen Unterzeichnung und Ratifizierung?", <https://www.institut-fuer-menschenrechte.de/themen/entwicklungsrecht/oft-gestellte-fragen/was-ist-der-unterschied-zwischen-unterzeichnung-und-ratifizierung/>.

<sup>129</sup> Mahler, DIMR, "Das Fakultativprotokoll zum UN-Sozialpakt endlich annehmen", May 2015, <https://www.institut-fuer-menschenrechte.de/publikationen/show/aktuell-52015-das-fakultativprotokoll-zum-un-sozialpakt-endlich-annehmen/>.

<sup>130</sup> "Regulates matters that go beyond the main contract, either with regard to individual areas of law (e.g. prohibition of the death penalty) or individual complaints procedures. An Optional Protocol must be ratified separately by the State Parties", DIMR, Glossary, Optional Protocol, [https://www.institut-fuer-menschenrechte.de/no\\_cache/service/glossar/?tx\\_contagged%5Bsource%5D=defaultx\\_contagged%5Buid%5D=589Has h=e37bd27f4a7a2285c0705010b96d4bf5](https://www.institut-fuer-menschenrechte.de/no_cache/service/glossar/?tx_contagged%5Bsource%5D=defaultx_contagged%5Buid%5D=589Has h=e37bd27f4a7a2285c0705010b96d4bf5) (in German).

<sup>131</sup> Paech, Menschenrechte, pp. 173-175.

<sup>132</sup> *Ibid.*

<sup>133</sup> Mahler, DIMR, "Das Fakultativprotokoll zum UN-Sozialpakt endlich annehmen", May 2015, <https://www.institut-fuer-menschenrechte.de/publikationen/show/aktuell-52015-das-fakultativprotokoll-zum-un-sozialpakt-endlich-annehmen/>.

83. The 6th State Report of Germany states with regard to Recommendation No. 36 "Ratification of the Optional Protocol": "**The possibility of [such, author] international complaints procedures [...] is an important and proven instrument [...]** In this legislative period the examination procedure for ratification was newly initiated.<sup>134</sup> However, it is pointed out, without further explanation, that the examination is still ongoing. In this context, the Federal Government has stated since 2009 that the competent ministry has been examining the adaptation requirements of the applicable law associated with ratification<sup>135</sup> and already stated in the 5th State Report that "the clarification of open questions with regard to a functioning complaints mechanism should be expedited rapidly".<sup>136</sup>
84. In its answer to a question by the Member of the German Parliament Azize Tank, MdB (ret.), regarding the obstacles to an immediate ratification in 2014, the Federal Government stated that the ruling practice of the UN CESCR was "only to be assessed to a limited extent" and that "general comments on some articles of the UN Social Covenant were missing in part".<sup>137</sup> The opposite is the case, if the ratification of a treaty binding under international law should be at stake at all. According to a statement of the German Institute for Human Rights, the consequences of ratification can be sufficiently assessed by concretizing the rights guaranteed in the UN Social Covenant through "Concluding Observations" and "General Comments" of the UN CESCR.<sup>138</sup> Since the domestic legal channels must be exhausted before an individual can lodge a complaint with the Committee, no great flood of complaints is to be expected, and certainly not a large number of convictions of the Federal Republic of Germany. By way of comparison: By the end of 2015, only three individual complaints had been accepted for decision by the UN CESCR.<sup>139</sup>
85. The coalition agreement of the newly constituted federal government of CDU, CSU and SPD of 14 March 2018 now states: "We are striving for the ratification of the Optional Protocol to the United Nations Social Pact as well as the ILO Convention 169 on the Protection of Indigenous Peoples".<sup>140</sup> Unfortunately, here too, there is no concrete date of ratification or even a reliable indication of necessary preparatory work and a timetable.

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<sup>134</sup> Sixth State Report of the Federal Government, p. 7 *et seq.*

<sup>135</sup> UN Doc A/HRC/11/15/Add.1, 2, para. 5.

<sup>136</sup> Fifth State Report of the Federal Government (2008), p. 21, <https://www.bmas.de/SharedDocs/Downloads/DE/5-staatenbericht-kulturelle-rechte.pdf?blob=publicationFile=25>.

<sup>137</sup> Plenary protocol 18/22, Answer to question by Mrs Azize Tank (DIE LINKE), <http://dip21.bundestag.de/dip21/btp/18/18022.pdf>, p. 1740.

<sup>138</sup> Mahler, DIMR, "Das Fakultativprotokoll zum UN-Sozialpakt endlich annehmen", May 2015, <https://www.institut-fuer-menschenrechte.de/publikationen/show/aktuell-52015-das-fakultativprotokoll-zum-un-sozialpakt-endlich-annehmen/>, p. 3.

<sup>139</sup> UN CESCR, Table of Pending Cases, <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/PendingCases.aspx>.

<sup>140</sup> Coalition agreement between CDU, CSU, SPD 2018, p. 155, line 7366 *et seq.*, [https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag\\_2018.pdf?file=1](https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1).

**86. We support the call for Germany to sign and ratify the Optional Protocol without delay - at least to present a concrete timetable for ratification.**

## **II. Inclusion of the social human right to housing as a fundamental right in the Basic Law**

87. As explained above, tenants are not sufficiently protected from the profit interests on the free market by the existing legal situation and existing regulatory instruments of tenancy law.<sup>141</sup> As in the previous legislative period, the parliamentary group DIE LINKE has again presented a **draft**

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<sup>141</sup> Parliamentary group DIE LINKE, Bill to amend the Basic Law - fundamental right to housing, Drs. 19/16479, <https://dip21.bundestag.de/dip21/btd/19/164/1916479.pdf>, p. 2.

**law to include the social human right to housing as a fundamental right in the Basic Law.**

The draft law proposes the creation of an **Article 14a in the Basic Law**, which includes a subjective and enforceable right to adequate and affordable housing. The state will be constitutionally empowered to take further measures and instruments to solve the social housing problem. In this context, the criterion of income-appropriate housing is linked to the general development of income. Further-reaching interventions in the housing market - than already possible - are justified in order to realize the right to housing. The right to housing should in particular also put a stop to displacement. This is to be guaranteed by paragraph 2, according to which forced evictions are to be restricted as far as possible.<sup>142</sup>

88. **The explanatory memorandum to the law** contains further detailed arguments for the urgent need to introduce a fundamental right to housing. It is pointed out that the codification of the right to housing is not a new idea, as this human right is already listed in Article 11 of the International Covenant on Economic, Social and Cultural Rights and in Article 16 of the European Social Charter.<sup>143</sup> Both agreements play a central role for social human rights in Germany; through ratification they have become a binding part of the German legal system.<sup>144</sup> The assertion of the rights contained in them has been possible in German courts since then:<sup>145</sup> however, both instruments are not enforceable through a constitutional complaint, as they are only granted the rank of simple federal law.<sup>146</sup> To be able to establish social justice in the sense of the UN Social Pact requires the acceptance of basic social rights as an "indispensable condition for a dignified life and the participation in a democratic welfare state"<sup>147</sup> as it should be in Germany according to the welfare state principle (Article 20 (1), Article 28 (1) GG) of the Basic Law. Since the welfare state principle is merely a state objective directed at the legislature, it does not itself grant "directly judicially enforceable subjective rights in the sense of entitlements", although it is just as little a mere program provision.

89. The authors of the draft bill<sup>148</sup> explain that the right to housing also includes the right to demand that rents be in line with income, i.e. in a fair relationship to general wage developments. The constant deregulation and privatization on the real estate market have created a situation that has led to a housing shortage in German conurbations. The current tenancy law cannot lead to a comprehensive improvement of this and other grievances in the housing sector, even by means

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<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*, p. 5.

<sup>144</sup> Rosa Luxemburg Foundation, Paper "50 Jahre UN Sozialpakt" (2017), p. 11,  
[https://www.rosalux.de/fileadmin/rls\\_uploads/pdfs/rls\\_papers/Papers\\_3-2017\\_50Jahre.pdf](https://www.rosalux.de/fileadmin/rls_uploads/pdfs/rls_papers/Papers_3-2017_50Jahre.pdf).

<sup>145</sup> *Ibid.*, number 151.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*, number 148; there also to the following.

of the rent control. It therefore fails to have a socially compensatory effect, as it often allows, for example, opting out, i.e. many exceptions for rent increases, which were introduced into the legislative process through lobbying by the real estate industry.

**90. We support the demand to include the social human right to housing as a fundamental right in the German Basic Law.**

### **III. Introduction of the possibility of a class action**

91. In its General Comment No. 4 on the right to housing and No. 7 on forced evictions, the UN CESCR emphasizes that State Parties to the UN Covenant on Economic, Social and Cultural Rights have an obligation to **guarantee legal protection** in procedures in the **context of forced evictions**. This includes a genuine opportunity for consultation and adequate notification in good time before the date of the ordered eviction. Article 2 (1) of the UN Covenant on Economic, Social and Cultural Rights also requires State Parties to implement measures to ensure access to effective legal protection concerning all rights enshrined in the Covenant.

92. An important measure for effective legal protection would be the **introduction of class actions** in the field of social human rights, in particular the right to housing. Numerous tenants affected

by rent increases and tenants' associations and initiatives face major hurdles and practical difficulties in enforcing the rights of the tenants concerned. Many apparently shy away from the effort and the cost risk. Moreover, it can take years for the courts to arrive at a uniform case law - not to mention the actually unnecessary burden on the courts and the costs and uncertainties also for the opposing party.

93. So far, **class action** is only possible to a very limited extent, sec. 42 (2) of the German Administrative Court Rules (*Verwaltungsgerichtsordnung*, VwGO). However, without infringement of its own rights, an association can take legal action against an official measure if a law expressly provides for this.<sup>149</sup> Through German consumer protection law, such regulations have found their way into public nature conservation law, where the **class action suit has resulted in above-average success rates.**<sup>150</sup> That the introduction of class actions is not only possible and sensible in these areas is shown by the development at European level for consumer actions for damages: European and German legislators have strengthened consumer protection since the mid-1980s by introducing substantive legal regulations.<sup>151</sup> This has been lacking in German legal tradition until now.<sup>152</sup>

94. For an effective guarantee of the right to housing for all, the possibility of a class action must therefore be introduced into the German legal system as soon as possible, so that the two-stage nature of the indirect model declaratory action can give way to the extended legal protection afforded by the EU Directive and class actions directly aimed at redress. The German legislator is therefore obliged to enact necessary laws independently - also independent of the introduction as a fundamental right.

95. **We support the call for the introduction of class actions in the area of the social human right to housing, in order to ensure more effective legal protection.**

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<sup>149</sup> Bundeszentrale für politische Bildung, Lexikon, Verbandsklage, <https://www.bpb.de/nachsagen/lexika/recht-a-z/23075/verbandsklage>; accessed on 8 April 2020.

<sup>150</sup> Koch, Die Verbandsklage im Umweltrecht, NVwZ 2007, 369 (373), [https://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte\\_73\\_2015\\_gerechtigkeit\\_im\\_umweltrecht.pdf](https://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte_73_2015_gerechtigkeit_im_umweltrecht.pdf).

<sup>151</sup> <https://www.lto.de/recht/hintergruende/h/europaeische-verbandsklage-konkurrenz-deutsche-musterfeststellungsklage/>, Legal Tribune Online, "Europäische Verbandsklage - Wird die Musterfeststellungsklage zum One-Hit-Wonder?".

<sup>152</sup> European Commission, Representation in Germany, "Kollektiver Rechtsschutz: Mitgliedstaaten einigen sich auf Regeln für europäische Verbandsklagen", 28 November 2019, [https://ec.europa.eu/germany/news/20191128-kollektiver-rechtsschutz\\_de](https://ec.europa.eu/germany/news/20191128-kollektiver-rechtsschutz_de).

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