

Contribution by the

FEDERAL REPUBLIC OF GERMANY

to the report of the Special Rapporteur
on the responsibilities of sub-national governments with respect
to the Right to Adequate Housing

A. Distribution of responsibilities related to the right to adequate housing

1. Please identify the levels of government (national, provincial/ state, municipal) primarily responsible for the following (where primary responsibility is shared please check more than one):

	National / Federal	Provincial / state	Municipal	Explanatory Notes
Housing programme		X	X	"Housing programme" is understood as referring to social housing.
Income support (e.g.: transfer payments to individuals, welfare, social security and/ or rent subsidies/ supplements)	X	X	X	legislative competence: Federal; executive competence: Länder, municipal
Tenancy and security of tenure legislation	X			
Infrastructure (e.g.: Water/sanitation, electricity)			X	
Prohibition of discrimination in housing	X			legislative competence: Federal

2. What are the primary bases for the allocation of responsibilities among different levels of government? Please identify the appropriate provision(s) and provide a copy or link if possible:

- Constitutional
- National framework legislation or housing strategy
- Sub-national level legislation or housing strategy
- Inter-governmental agreement
- Other – please explain

Explanatory note:

The distribution of powers among the Federation and the 16 German Länder is laid down in Articles 70 to 74 of the German Basic Law¹. Article 70 sect. 1 Basic Law provides: "The Länder shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation." According to this norm, the competence for the matter of housing law (especially the law on social housing) lies with the Länder.

Federal competences are either exclusive or concurrent competences. The latter means that generally, the Länder have the power to legislate as long as and to the extent that the Federation has not exercised its legislative power by enacting a law (Article 72 sect. 1 Basic Law). With regard to adequate housing, the Federation has, for example, enacted laws in the matters of Civil Law, including the prohibition of discrimination (Article 74 sect. 1 no. 1 Basic Law), Civil Procedure (Article 74 sect. 1 no. 1 Basic Law) and rental subsidies (Article 74 sect. 1 no. 18 Basic Law). Moreover, the Federation has exercised its concurrent legislative power with regard to accommodation costs for persons living on social welfare (Article 74 sect. 1 no. 7 in conjunction with Article 72 sect. 2 Basic Law).

3. What role does the national level government play in relation to housing and related programs? How is compliance with the right to adequate housing structured between the national and sub-national levels? If possible please kindly provide concrete examples of how these roles and compliance mechanisms are operationalized.

What role does the national level government play in relation to housing and related programs?

The German housing system is a market-based system, which relies on private property and private investments. In 2010, the number of households amounted to 40.3 million. At the same time, the number of dwellings accounted for 40.5 million. More than 50 % of the households live in rental dwellings. The German housing market

¹ <http://www.gesetze-im-internet.de/englisch_gg/>.

offers an adequate number of private rented dwellings for the population. Social housing is integrated in the general rental market; there is no public housing sector. With regard to housing, the federal Government offers a stable legal framework for the well-functioning of the housing market, in particular with regard to tenants' rights: German Tenant Law establishes a fair balance between the interests of landlords and tenants, including a comprehensive set of protective rules for the latter.

Moreover, the federal Government, the federal states and the municipalities spend approximately € 16 billion p.a. in support of 5 million households: The expenses cover housing subsidies for low income households and accommodation costs for persons living on social welfare.

The exclusive competence for social housing lies within the responsibility of the Länder. All Länder support social housing accommodation for those who experience problems with regard to housing, such as households with low income, families and other households with children, pregnant women, elderly people, persons with disabilities, homeless persons and other.

How is compliance with the right to adequate housing structured between the national and sub-national levels?

In Germany, the right to adequate housing is derived from the Social State principle (*Sozialstaatsprinzip*), Article 20 sect. 1 Basic Law. This constitutional principle includes, inter alia, the State's obligation to ensure the provision of adequate housing for the population. All state levels – the Federation, the Länder and the municipalities – are bound by the provisions of the Basic Law. Moreover, Article 20 sect. 3 Basic Law provides that “[t]he legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice”.

4. Where sub-national governments hold key responsibilities in relation to the right to adequate housing, please describe how programs and policies are co-ordinated nationally and what responsibilities remain with national level institutions.

As stated above, social housing – one of the main elements of the right to adequate housing – lies within the exclusive competence and responsibility of the Länder. Under German Constitutional Law, the vertical distribution of powers involves the absence of national co-ordination of policies which fall under the exclusive competence of the Länder. Nonetheless, there are semi-annual expert-level meetings where representatives of the Länder and the Federation discuss current challenges and problems.

5. Where housing and related programs are administered by sub-national level governments, by whom and how are these programs funded? Are conditions attached to the funding which seek to ensure the resources are spent in a way that protects the right to adequate housing? How is this monitored?

Under German Constitutional law, the Federation and the Länder shall separately finance the expenditures resulting from the discharge of their respective responsibilities (Article 104a Basic Law). In the field of social housing however, the Basic Law contains one temporary exception to that principle. Yet, this exception must be seen in the context of the reform of the federal system in 2006: Before the reform, the Federation had provided federal financial assistance to the Länder within the scope of her then concurrent competence for social housing. However, in the course of the reform of the federal system in 2006, the exclusive competence for social housing was transferred to the Länder. In order to mitigate the discontinuation of the federal financial assistance, the Basic Law allots annual compensatory payments from the federal budget to the Länder from 2007 through 2019 (Article 143c Basic Law).

B. Accountability of Sub-National Governments

1. Are sub-national governments legally accountable to the right to adequate housing on the basis of any of the following?

- International human rights law (Yes/**No**)

Note: According to German Constitutional Law, international treaty law has to be transferred into German Law as to gain effect in the national legal system. After its transfer, international treaty law has the status of federal statutory law (Article 59 sect. 2 Basic Law).

- Constitution/ National Bill of Rights (**Yes/** No)
- National or sub-national legislation (**Yes/** No)

Note: See answer to question A. 3: In the exercise of their power, sub-national governments are bound by law and justice, Article 20 sect. 3 Basic Law. The term "law and justice" encompasses all elements of the right to adequate housing laid down in the Basic Law as well as in national and sub-national legislation.

- State level or municipal level Bills of Rights / Charters (**Yes/** No)

Note: Some Constitutions of the Länder contain references to the right to adequate housing (Article 28 sect. 1 Constitution of Berlin², Article 106 Constitution of Bavaria³,

² www.berlin.de/rbmskzl/en/the-governing-mayor/the-constitution-of-berlin/artikel.16538.php.

Article 47 Constitution of Brandenburg⁴, Article 14 Constitution of Bremen⁵, Article 63 Constitution of Rhineland-Palatinate⁶, Article 40 Constitution of Saxony-Anhalt⁷, Article 15 Constitution of Thuringia⁸).

- Inter-governmental agreements (Yes/ **No**)
- Conditional financing (e.g.: budget transfers from national level to sub-national) (Yes/ **No**)

2. With respect to the above and where applicable, please identify:

i. the relevant provision.

See above under 1.

ii. the sub-national levels of government to which the legal provision applies.

See above under 1.

iii. the means of enforcement (e.g.: courts, tribunals, national human rights institution, including ombudsmen, administrative mechanisms, etc.) and examples of how the means have been applied.

Germany is a law-based state (*Rechtsstaat*). The executive branch is bound by law and justice, Article 20 sect. 3 Basic Law. The principle of separation of powers guarantees a constant control of the executive by the legislative branch. Yet, the fundamental element of legal accountability is judicial review: Every person who claims to be violated in his/ her rights by an administrative decision has the right to take legal action against the administration, Article 19 sect. 4 Basic Law.

3. Are sub-national governments involved in State reporting to international human rights monitoring mechanisms and in implementing recommendations? (e.g., UN treaty monitoring body, Universal Periodic Review). If so, how? Please kindly provide an example.

The Länder are regularly involved in both State reporting to international human rights monitoring mechanisms and in implementing recommendations as far as and

³ German version only: www.gesetze-bayern.de/jportal/portal/page/bsbayprod.psml?showdoccase=1&doc.id=jlr-VerfBY1998rahmen&doc.part=X&doc.origin=bs&st=lr.

⁴ www.landtag.brandenburg.de/media_fast/5701/Verfassung_englisch_Internet_Juli2014.pdf.

⁵ German version only: www.bremen.de/fastmedia/36/landesverfassung_bremen.pdf.

⁶ German version only:

http://landesrecht.rlp.de/jportal/portal/t/zcf/page/bsrlpprod.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&fromdoctodoc=yes&doc.id=jlr-VerfRppG1&doc.part=X&doc.price=0.0&doc.hl=0#focuspoint.

⁷ German version only: www.landesrecht.sachsen-anhalt.de/jportal/?quelle=jlink&query=Verf+ST&psml=bssahprod.psml&max=true&aiz=true.

⁸ German version only:

[www.thverfgh.thueringen.de/webthfj/webthfj.nsf/F6A7AF01618CE6BFC12572D5002372DA/\\$File/Verfassung%20des%20Freistaats%20Th%C3%BCringen.pdf?OpenElement](http://www.thverfgh.thueringen.de/webthfj/webthfj.nsf/F6A7AF01618CE6BFC12572D5002372DA/$File/Verfassung%20des%20Freistaats%20Th%C3%BCringen.pdf?OpenElement).

to the extent their competences are concerned. In case of State reporting, the Federal Government usually sends all relevant questions to the Länder, which supply the Federal Government with all necessary information. In case of recommendations which concern the competences of the Länder, the federal Government usually informs the Länder about relevant recommendations. The Länder would then, in the following, decide whether and to which extent the recommendations are being implemented.

4. Apart from the legal and international accountability described above, what political or institutional accountability mechanisms are in place in your country through which sub-national governments are held accountable to standards or requirements linked to the implementation of the right to adequate housing (e.g., Government review procedures, ombudsman/national human rights institutions, local human rights councils). Please provide any useful examples of how these have been used and, if possible, assess the outcome.

Legal accountability mechanisms are the most effective mechanisms in order to guarantee accountability. Besides the central role of the judiciary, there are a lot of state and non-state organisations which are engaged in the protection of human rights, such as petition committees of the Parliaments.

5. Please kindly identify what in your view may be the three most significant challenges in your country to effective accountability of sub-national governments to the right to adequate housing as guaranteed under international human rights law and identify key strategies or ideas addressing these challenges.