



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany\*

1. The Committee considered the nineteenth to twenty-second reports of Germany, submitted in one document (CERD/C/DEU/19-22), at its 2337th and 2338th meetings (see CERD/C/SR.2337 and SR.2338), held on 5 and 6 May 2015. At its 2348th meeting, held on 13 May 2015, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the timely combined nineteenth to twenty-second reports submitted by the State party, in which the State party provided detailed information on the implementation of the recommendations contained in the previous concluding observations of the Committee (CERD/C/DEU/CO/18) and which were prepared in consultation with representatives of civil society organizations. The Committee acknowledges the contribution and participation of the German Institute for Human Rights.

3. The Committee also welcomes the supplementary information provided orally by the State party's large and diverse delegation in respect of the issues raised by the Committee during the frank and constructive dialogue.

#### B. Positive aspects

4. The Committee notes with appreciation the legislative and policy developments in the State party to combat racial discrimination since the submission of its previous report, including:

(a) The adoption of the amendment to section 46 of the Penal Code requiring that racist motivation be taken into account as a specific aggravating circumstance in sentencing offenders, as recommended by the Committee in its previous concluding observations (see CERD/C/DEU/CO/18, para. 26);

(b) The intention to revise the National Plan of Action against Racism to reflect the adoption of a more strategic approach, take into consideration the recommendations

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\* Adopted by the Committee at its eighty-sixth session (27 April–15 May 2015).



made in the present concluding observations and include a focus on intersectional discrimination;

(c) The rescindment of the Baden-Württemberg procedure, which had consisted of a questionnaire to be answered by citizens of the 57 member States of the Organization of the Islamic Conference who applied for German citizenship, which was considered to be discriminatory by the Committee in its previous concluding observations (*ibid.*, para. 19);

(d) The willingness shown by Chancellor Angela Merkel in 2013, during the sixth Integration Summit, to replace the integration concept with concepts of inclusion, participation and respect in the State party's policies for ethnic minorities in Germany.

5. The Committee also welcomes the ratification by the State party of the following treaties since its previous examination by the Committee:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in December 2008;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2009;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2009;

(d) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009;

(e) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2013;

(f) The Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, in 2011.

## C. Concerns and recommendations

### **Lack of disaggregated data on the composition of the population**

6. While taking note of the State party's reluctance, based on its particular history, to categorize its population by ethnicity, the Committee reiterates concerns that were raised in its previous concluding observations (para. 14), namely, that no adequate and accurate criteria have been put in place to enable the production of reliable statistics on the composition of the population in Germany, and recalls the importance of reliable statistical data for identifying and addressing racial discrimination. The Committee is particularly concerned about the continued use of the term "persons with a migrant background" to identify those who may be subjected to racial discrimination even though such notion could include many German citizens and exclude minorities who have been in Germany for centuries (art. 1 (1) and (4)).

**Recalling its previous recommendation on statistical data, the Committee recommends that the State party strive to undertake a more comprehensive analysis and develop tools to obtain an overview of the composition of its population, in accordance with the Committee's general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1). In this regard, the State party should provide information on mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information about descent or national or ethnic origin derived from social surveys. In**

**the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied. Such information, including with regard to national minorities, should be collected in a manner that is voluntary and based on self-identification and anonymity.**

**Definition of racial discrimination and applicability of the Convention at the national level**

7. While noting the State party's affirmation that the Convention is directly applicable in the domestic legal system, the Committee is concerned that the absence of a statutory definition of racial discrimination in line with article 1 of the Convention in the domestic legislation has direct implications on the State party's failure to adequately address racial discrimination of all groups requiring protection under the Convention. In particular, the absence of such a statutory definition seems to result in reluctance by judges to refer to the Convention in German courts. While acknowledging the importance of addressing right-wing extremism and neo-Nazism, the Committee is also concerned about the persistent use of those terms to encompass the broader notion of racial discrimination, the use of the term "xenophobia" to mean racial discrimination as understood in article 1 of the Convention, and the use of the term "cultural differences" to mean "ethnic diversity" (arts. 1 (1), 2 and 6).

**In addition to reiterating its previous recommendation (ibid., para. 15), the Committee urges the State party to:**

(a) **Incorporate the Convention into the legal system in ways that ensure its direct application before German courts in order to afford all individuals its full protection;**

(b) **Ensure that its legislation includes a statutory definition of racial discrimination that is fully in line with article 1 (1) of the Convention, clearly naming racial discrimination so that full protection of groups or individuals requiring such protection under the Convention is ensured;**

(c) **Raise awareness, through campaigns in educational institutions at all levels, in the public arena and in the media, of the definition of racial discrimination and the impact on victims of such discrimination;**

(d) **Provide the Committee with concrete information about the application of the Convention in courts and administrative proceedings in its next periodic report.**

**Lack of comprehensive anti-discrimination legislation**

8. The Committee acknowledges the measures taken by the State party to harmonize its domestic legislation with the Convention, in particular the adoption of the General Equal Treatment Act, the protection afforded by the Basic Law, including under articles 1 and 3 thereof, and the amendment to section 46 of the Penal Code to add racial discrimination as an aggravating circumstance for the increase of penalties in criminal cases. The Committee is nevertheless concerned that the General Equal Treatment Act does not address racial discrimination by public authorities, does not allow for collective action and does not sufficiently encourage litigation, owing to the costs of legal suits, which can be an obstacle to gaining access to an effective remedy. The Committee is also concerned that while the Basic Law can in principle be invoked in court against public authorities, in practice, administrative courts only infrequently address racial discrimination through the Basic Law, and compensation cannot be obtained through the same proceedings. The Committee is therefore concerned that the existing gaps in domestic legislation make it difficult to adequately combat racial discrimination (arts. 2, 4, 6).

**The Committee calls upon the State party to take practical steps to:**

(a) **Conduct an evaluation of the General Equal Treatment Act and other anti-discrimination legislation in order to identify the gaps regarding full and effective protection against, and effective remedies for, racial discrimination, in line with the Convention;**

(b) **Prohibit racial discrimination in all its forms in federal and state (Land) legislation, including indirect discrimination, covering all fields of law and public life, in accordance with article 1 (1) of the Convention;**

(c) **Support the establishment of accessible non-governmental anti-discrimination advice centres throughout the country and support the creation of public anti-discrimination agencies in all Länder.**

#### **Hate speech and incitement to racial discrimination**

9. While noting the steps taken by government leaders to promote tolerance and combat racial discrimination through shifts from expressions such as “integration”, which could imply the obligation for minorities to assimilate, towards notions of “inclusion, participation and respect”, the Committee considers that much more needs to be done at all levels of the federal Government and the Länder to deter racially discriminatory acts. The Committee is greatly concerned about the proliferation and dissemination of racist ideas by certain political parties and movements and about the lack of efficient measures taken to strongly sanction and deter such discourses and behaviours. The Committee is concerned that such discourses may promote racially motivated acts, including violence, against groups protected under the Convention (arts. 2, 4 and 7).

**In the light of its general recommendation No. 35 (2013) on combating racist hate speech, the Committee reiterates its previous recommendations (ibid., para. 16) and further recommends that, in addressing issues that affect ethnic minorities in the population, the State party make clear its political will to promote understanding and tolerance between the majority population and the various ethnic groups in its discourse and its actions. The Committee also recommends that the State party:**

(a) **Increase its efforts and use all possible means to counter and stem the tide of racism, in particular by strongly condemning all racist statements by political leaders, public authorities and public figures, including through the institution of criminal proceedings;**

(b) **Institute a comprehensive strategy, including mandatory training, to enhance the understanding of police, prosecutors and judges of the notion of racial discrimination and the way to combat it, and to ensure that any act that may contain racist motives is investigated effectively and that, where appropriate, perpetrators of such acts are charged and punished;**

(c) **Implement appropriate measures to combat the proliferation of acts and manifestations of racism on the Internet, including by blocking websites devoted to inciting racial discrimination and hatred;**

(d) **Provide statistical information on trends in instances of racist hate speech and violence, including Islamophobic trends, in its next periodic report in order to enable assessment of the impact of measures adopted by the State party in combating racist hate speech.**

#### **Institutional shortcomings in investigating racially motivated acts**

10. While noting the delegation’s acknowledgment of the State party’s difficulty in investigating effectively the series of murders committed by the National Socialist Underground, the Committee remains concerned about the State party’s continued failure to

recognize its systemic shortcomings in identifying and addressing the racial motivation behind such acts, which may mask institutional racism. The Committee is alarmed at the information provided by civil society that informants hired by law enforcement officials during the investigation were themselves supporters of the National Socialist Underground movement and that one particular witness who clearly indicated his support of that movement received government legal counselling during the proceedings. The Committee is concerned that even the report of the parliamentary committee of inquiry on those failings does not refer specifically to racial discrimination and the racial motive of the murders committed. These issues seem to indicate that structural discrimination may be the root cause of the State's shortcomings in identifying racial motivation (arts. 2, 5 and 6).

**The Committee urges the State party:**

**(a) With respect to the investigation into the National Socialist Underground:**

(i) To take the measures necessary to ensure that, in the course of the investigation, which has not yet been completed, every effort is made to clearly identify the racial motivation behind the murders committed, and take all measures necessary to unveil the remaining dimensions and scope of the movement, its affiliations and the threat it may still pose today;

(ii) To take the necessary action against all law enforcement officials who, while conducting the investigation, were responsible for committing discriminatory acts, in particular acts against victims and victims' relatives.

**(b) Reiterating its previous concluding observations (ibid., para. 18), and as a guarantee of non-repetition:**

(i) To include provisions in the Police Service Regulations and the Guidelines for Criminal and Summary Proceedings imposing an explicit duty to investigate and document any racist or other discriminatory motives, in parallel to the legislative change to section 46 of the Penal Code;

(ii) To improve the State party's data collection system for statistics on complaints of hate crimes, including by officially requiring all law enforcement agencies to record all such instances and transmit statistics thereon to the federal authorities, disaggregated by mother tongue, language commonly spoken or other indicators of ethnic diversity, and regularly publicize such information;

(iii) To ensure that all acts committed against groups requiring protection under the Convention are investigated through the racial discrimination lens with a focus on the victim and with systematic collection of data on indicators of racial discrimination, including the name of the victim and other intersectional criteria, such as gender and religion;

(iv) To institute mandatory training and testing of law enforcement officials on racial discrimination and measures to combat racial discrimination, and report and investigate complaints of hate crimes;

(v) To increase the representation of ethnic minorities in law enforcement agencies at both the federal and Land levels.

**Racial profiling and other racially discriminatory acts committed by law enforcement officials**

11. The Committee is concerned about the extremely broad scope of section 22 (1) of the Federal Police Act, which, for the purpose of controlling immigration, enables police to

stop, question, demand identity documents from and inspect objects in the possession of any person in railway stations, trains and airports. The Committee is concerned that this general provision leads de facto to racial discrimination, especially taking into account the delegation's explanation of the criteria used by police to carry out these checks, which involve notions such as a "feel for a certain situation" or "the person's external appearance". The Committee is also concerned about the lack of comprehensive data, disaggregated by ethnicity and/or national origin, of persons who are targeted by these random checks (arts. 2, 4 (c) and 5 (b)).

**Recalling its general recommendation No. 31 (2001) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify efforts to combat effectively and end any practice of racial profiling by federal and Land law enforcement officials, including by:**

(a) **Amending or repealing section 22 (1) of the Federal Police Act and legally prohibiting discriminatory profiling;**

(b) **Reviewing all other provisions that may lead to racial profiling;**

(c) **Inserting in all training and education curricula for law enforcement officials a specific module on the definition of racial discrimination, in line with article 1 of the Convention; increasing awareness throughout law enforcement officials' careers on the prohibition of racial discrimination and ensuring that promotions are subject to scrutiny as to officials' actions on racial discrimination and racial profiling;**

(d) **Establishing independent complaints mechanisms at both the federal and Land levels to investigate acts of racial discrimination committed by law enforcement officials;**

(e) **Adopting a comprehensive training strategy and vetting system for application during recruitment and throughout the career of law enforcement officials to ensure that law enforcement tasks are performed without racial profiling or any other methods leading to racial discrimination;**

(f) **Undertaking prompt, thorough and impartial investigations into all allegations of racial profiling, holding those responsible accountable and providing effective remedies, including compensation and guarantees of non-repetition.**

#### **Discrimination and segregation in housing**

12. The Committee reiterates the concerns expressed in its previous concluding observations (*ibid.*, para. 17) about possible indirect discrimination on the grounds of ethnic origin arising from section 19 (3) of the General Equal Treatment Act. Under section 19 (3), landlords can refuse to rent apartments to persons applying for accommodation, with a view to creating and maintaining socially stable residential structures and balanced housing estates or balanced economic, social and cultural conditions. The Committee is also concerned that the Act exempts landlords with fewer than 50 units. It is further concerned at reports of de facto ghettoization of some geographical areas, which have disproportionately higher percentages of people of non-German ethnic origin (arts. 3 and 5 (e) (iii)).

**The Committee reiterates its previous recommendation (*ibid.*, para. 17), and asks the State party to amend the General Equal Treatment Act, notably section 19 (3), so as to harmonize the Act with the State party's obligations under the Convention. It also requests the State party to undertake prompt, independent and thorough investigations into all cases of discriminatory practices by private actors, including in**

**relation to discriminatory lending practices, hold those responsible to account and provide effective remedies, including appropriate compensation and guarantees of non-repetition.**

### **Education**

13. The Committee notes the explanations given by the delegation regarding the efforts made to reduce the gap between minority students and their fellow students, especially with regard to mastering the German language, and the interesting initiatives launched, such as the “Clearinghouse of Children’s Worlds for Anti-Bias Education and Training”. The Committee is concerned at reports that the three-tiered education system in Germany, with early selection into separate levels of education, creates a bias against students whose mother tongue is not German, leads to an overrepresentation of minority students in the lower school stratum and therefore reduces their chances of gaining access to higher studies and employment in Germany. The Committee is also concerned about the high representation of minorities, including Sinti, Roma, persons referred to as Black people by the State party and other intersectional minorities, such as Muslims, in lower level schools and in schools in marginalized areas. It is further concerned that such systems create segregation of certain marginalized groups with no real chances of enhancing their education and work opportunities (arts. 3, 5 (e) and 6)

**The Committee recommends that the State party intensify its efforts to ensure equal access to education by, inter alia:**

- (a) **Engaging in a profound reflection on how to address the underperformance of children from ethnic minorities;**
- (b) **Strengthening its special measures to increase the level of educational attainment of children of ethnic minorities, in particular by preventing their marginalization and reducing dropout rates;**
- (c) **Comprehensively addressing de facto segregation of ethnic minorities, including Sinti and Roma, in education, taking into account its close relation to discrimination in the fields of housing and employment.**

### **Employment**

14. While noting the efforts made by the State party to close the gap between groups requiring protection under the Convention and the majority of the population in gaining access to employment, the Committee is concerned that the unemployment rate of the first category is still twice as high as that of the second. It is particularly concerned at reports of the ethno-religious discrimination of Muslim women in gaining access to work opportunities (arts. 2, 5 and 6).

**Recalling its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party:**

- (a) **Carry out a thorough evaluation of the measures adopted to date to improve access to employment for members of ethnic minorities, with a focus also on the intersection of gender and religion. The Committee particularly encourages the State party to undertake an assessment of the XENOS programme, with statistical data disaggregated by, inter alia, ethnicity and language;**
- (b) **Strengthen existing measures at the federal and Land levels to improve the integration of ethnic minorities in the labour market and address the structural discrimination they face;**

(c) **Step up its efforts to encourage the recruitment of members of ethnic minorities to jobs in the public and private sectors, implementing special measures as appropriate;**

(d) **Investigate effectively cases of racial discrimination in employment and provide victims with adequate remedies.**

#### **Intersectional discrimination**

15. While noting the explanations provided by the delegation regarding the right to self-determination of church-based structures in accordance with section 9 (1) of the General Equal Treatment Act and the special provisions contained therein, the Committee is concerned that the elements of the exemption to the General Equal Treatment Act may indirectly discriminate against Muslims and other groups in their access to employment (arts. 2, 5 and 6).

**The Committee recommends that the State party consider repealing or amending section 9 (1) of the General Equal Treatment Act so as to comply with its obligations under the Convention, limiting any exemption under the Act to organized religious entities.**

16. While noting the justified concerns of the State party and the action it has taken to combat anti-Semitism, the Committee is concerned that the State party is not adequately addressing other forms of racial discrimination, including institutional racism against Muslims, and the discrimination experienced by women from minority groups, or the intersection between discrimination against lesbian, gay, bisexual, transgender and intersex persons and racial discrimination.

**The Committee recommends that the State party reinforce its measures on raising awareness among the public, civil servants and law enforcement officials about Islamophobia, on promoting tolerance among the various ethnic groups of the population, and on the intersection among ethnicity, religion, gender and sexual orientation.**

#### **Sinti and Roma**

17. While noting the various measures taken by the State party to combat racism against the Sinti and Roma communities, the Committee is concerned about the persistence of racially motivated incidents and discourse against members of those groups. It is also concerned about the persistent discrimination faced by members of the Sinti and Roma communities regarding access to housing, education, employment and health care, to which current public measures do not adequately respond (arts. 2, 5 and 6).

**Recalling its previous concluding observations (ibid., paras. 21 and 27) and in the light of its general recommendations No. 27 (2000) on discrimination against Roma and No. 32, the Committee recommends that the State party ensure that special measures and programmes in favour of Roma, including Roma migrants who arrived in Germany in the past three decades, are taken, and that such measures and programmes include:**

(a) **A comprehensive action plan designed and implemented, with sufficient resources and monitoring, to ensure access to housing, education, employment and health care without discrimination;**

(b) **The incorporation of all aspects of minority rights into strategies that address Roma disadvantage, including the protection and promotion of Roma identity, language and culture and the guarantee of dignity and equality;**

(c) **The promotion of tolerance and a better understanding of the Roma and Sinti communities, and public condemnation of any attacks targeting those communities;**

(d) **Consideration to be given to declaring a memorial day of the Roma genocide during the Second World War as part of a general effort to foster understanding of Roma history in Germany.**

#### **Asylum seekers and “tolerated” migrants**

18. While welcoming the assurances given by the delegation with regard to the administrative and judicial measures taken to combat racist attacks against asylum seekers, the Committee remains concerned about the increase in violent attacks targeting asylum seekers and so-called “tolerated” migrants who are, by law, restricted in their freedom of movement and are often compelled to remain in shared accommodation structures, which increases their vulnerability to human rights violations. The Committee is also concerned about the incompatibility of certain provisions of the Asylum Seekers Act with the Convention, in particular with regard to the limited access of asylum seekers to social allowances and services (arts. 2, 5 and 6).

**The Committee calls upon the State party to ensure that the rights of non-citizens are fully guaranteed in law and in practice to asylum seekers and “tolerated” migrants, by, inter alia:**

(a) **Revoking legislation at the Land and municipal levels compelling asylum seekers and people who have been granted a temporary suspension of deportation to live in shared accommodation facilities;**

(b) **Adopting specific measures to ensure the protection of asylum seekers against racist violence, including investigation into racially motivated acts;**

(c) **Ensuring that asylum seekers are able to enjoy their rights to education and health care without restrictions;**

(d) **Pursuing its awareness-raising campaigns and promoting tolerance and understanding between communities and towards asylum seekers.**

## **D. Other recommendations**

### **Individual communications**

19. The Committee recommends that the State party act upon and provide information on follow-up measures to give effect to the recommendations of the Committee in communication No. 48/2010, *TBB-Turkish Union in Berlin/Brandenburg v. Germany* (the “Sarrazin case”). The Committee reminds the State party of the need for effective responses to racist hate speech in accordance with the Committee’s general recommendation No. 35.

### **Follow-up to the Durban Declaration and Programme of Action**

20. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests the State party to assess the extent to which its National Plan

of Action against Racism implements the Durban Declaration and Programme of Action at the national level.

#### **International Decade for People of African Descent**

21. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed the International Decade for People of African Descent, 2015–2024, and resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests the State party to include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

#### **Ratification of other treaties**

22. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying the international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

#### **Consultations with organizations of civil society**

23. The Committee recommends that the State party continue to consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

#### **Dissemination**

24. The Committee recommends that the State party increase its efforts to raise public awareness and knowledge of the Convention throughout its territory, make the State party's reports readily available and accessible to the public at the time of their submission, and widely publicize the concluding observations of the Committee in the official and other commonly used languages, as appropriate.

#### **Core document**

25. Noting that the State party submitted its core document in 2009, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

#### **Follow-up to concluding observations**

26. In accordance with article 9 (1) of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 10 and 19 above.

#### **Paragraphs of particular importance**

27. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 6–9 above, and requests the State party

to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

**Preparation of the next periodic report**

28. The Committee recommends that the State party submit its twenty-third to twenty-sixth reports in a single document by 15 June 2018, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports and 42,400 words for the common core document.

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