

*Parallel Report on the 19th–22nd Report submitted by the
Federal Republic of Germany to the
UN Committee on the Elimination of Racial Discrimination
under Article 9 of the International Convention
on the Elimination of All Forms of Racial Discrimination*

Racial Discrimination in Germany

Manifestations and Human Rights
Obligations to Protect Individuals and
Groups Against Racial Discrimination

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Editor and address for order inquiries:

Diakonie Deutschland – Evangelischer Bundesverband
Evangelisches Werk für Diakonie und Entwicklung e. V.
Zentrum Migration und Soziales
Projekt Parallelberichterstattung zur UN-Antirassismuskonvention
Caroline-Michaelis-Str. 1, 10115 Berlin, Germany

Editing Committee:

Joshua Kwesi Aikins,
Project Coordinator, Berlin

Cengiz Barskanmaz,
LLM, Berlin

Johannes Brandstätter,
Speaker of the Working Group on Anti-Racism of Forum Menschenrechte, Berlin

Dr. des. Eddie Bruce Jones, LLM
Board of Directors, Institute of Race Relations, London

Mekonnen Mesghena,
Heinrich-Böll-Stiftung, Berlin

Translation:

Marianne Ballé Moudoumbou, Potsdam

Layout:

A. Stiefel, Filderstadt, alfredstiefel@yahoo.de

Printed by:

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Preliminary Remarks

The Parallel Report to the UN Committee on the Elimination of Racial Discrimination on the 19th-22nd Report submitted by the Federal Republic of Germany is a collective project led by civil society organisations, comprising the Büro zur Umsetzung von Gleichbehandlung e.V., Humanistische Union, Initiative Schwarze Menschen in Deutschland, Ini Romnja, LesMigraS e.V. and the Netzwerk gegen Diskriminierung und Islamfeindlichkeit (Network Against Discrimination and Anti-Muslim Racism). Diakonie Deutschland, the Social Service Organisation of the Protestant Church in Germany provided the organisational framework for the project. The Forum Menschenrechte (FMR), a network of more than 50 German non-governmental organisations (NGOs), committed to better and more comprehensive protection of human rights supports the project and made available the resources for building and managing the project website www.rassismusbericht.de. The research, writing and project management of the Parallel Report to the International Convention on the Elimination of All Forms of Racial Discrimination was funded through the German lottery organisation „GlücksSpirale“.

The contractual basis for the cooperation between the various actors was defined by the Terms of Reference, pursuant to which each of the actors had a voice in the consensus-oriented decision-making process on the report's content. A safeguard clause ensured that the organisations involved could endorse or specify contents within the scope of their respective mandates.

The Parallel Report complements the German State Report with analysis of complex forms of racial discrimination and provides recommendations for action aimed at strengthening obligations to protect individuals and groups against racial discrimination on the basis of human rights.

The main focus of the project is to make visible a variety of perspectives in relation to the experience of racism and expert knowledge on racial discrimination in Germany. This variety is ensured by in-depth expert knowledge imparted in the form of background papers to which the Report refers as sources of scientific knowledge. These reports were submitted by the Büro gegen Ungleichbehandlung e. V., Corinna Gekeler of Humanistische Union, Elsa Fernandez of Ini Romnja, Damaris Uzoma of the Initiative Schwarze Menschen in Deutschland Bund e. V., Aliyeh Yegane of Inssan e. V., and Bea Cobbinah of LesMigraS e.V. In addition, Dr. Bilgin Ayata, Cengiz Barskanmaz, Fortuna Ghebremeksel, Daniel Gyamerah, Dr. des. Eddie Bruce Jones, Dr. Kati Lang and Dr. Amma Yeboah have submitted background papers. The full content of all background papers cited are available on the project's website: www.rassismusbericht.de. The production of the Parallel Report was coordinated by Joshua Kwesi Aikins.

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List of Abbreviations

- ADS – Antidiskriminierungsstelle des Bundes – Federal Anti-Discrimination Agency
- AGG – Allgemeines Gleichbehandlungsgesetz – General Equal Treatment Act
- AsylbLG – Asylbewerbsleistungsgesetz – Asylum Seekers Benefits Act
- BGleiG – Bundesverfassungsgericht – Federal Equal Treatment Law
- BMI – Federal Ministry of the Interior
- BVerfG – Bundesverfassungsgericht – Federal Constitutional Court
- BUG e.V. – Bureau zur Umsetzung von Gleichbehandlung (eingetragene Verein) – Office for the implementation of the General Equal Treatment Act, registered NGO
- CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
- CJEU – Court of Justice of the European Union
- CERD – Committee on the Elimination of Racial Discrimination
- ECHR – European Convention on Human Rights
- ECRI – European Commission against Racism and Intolerance
- ECtHR – European Court of Human Rights
- EU-MIDIS – European Union minorities and discrimination survey
- FRA – European Union Agency for Fundamental Rights
- FRG – Federal Republic of Germany
- GG – German Basic Law
- GDR – German Democratic Republic
- ICCPR – International Covenant on Civil and Political Rights
- ICERD – International Convention on the Elimination of Racial Discrimination
- ICESCR – International Covenant on Economic, Social and Cultural Rights
- ISD e.V. – Initiative Schwarze Menschen in Deutschland (eingetragener Verein), Initiative Black People in Germany, registered association
- LGBTI – Lesbian, Gay, Bisexual, Transgender and Intersex
- MB – Migration background
- PMC – Politically motivated crime
- RiStBV – Richtlinien für das Strafverfahren und das Bußgeldverfahren – Guidelines for Criminal Proceedings and Proceedings Concerning Regulatory Offences
- SVR – Sachverständigenrat deutscher Stiftungen für Integration und Migration – Expert Council of German Foundations on Integration and Migration
- UDHR – Universal Declaration of Human Rights
- VerfG – Bundesverfassungsgericht – (German) Federal Constitutional Law

Introduction

This Parallel Report showcases a broad range of human rights violations due to racial discrimination in Germany. It is the outcome of a collaborative process aimed at giving a voice to the organisations and experts belonging to groups of people who require specific protection under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) but who have seldom been heard in the context of human rights-related aspects of anti-discrimination work. In Germany, on account of the country's specific racist tradition, these groups of people include Sinti_zza and Rrom_nja, Jewish people, people who are exposed to anti-Muslim racism, Black people and other People of Colour¹.

The main focus of the Parallel Report is racial discrimination and its impact on the groups that experience racism, as it manifests in the education and the health care systems, on the labour and housing markets, as well as in institutions such as the police and the judicial system. It is the outcome of the involvement of group-specific analyses of racial discrimination combined with an intersectional perspective, highlighting multiple layers of discrimination as experienced by lesbian, gay, bi-, trans- and intersex people who are exposed to hetero- and cissexism² as well as racism.

The particular manifestations, dynamics and consequences of racism can only be properly understood through accounts of the specific perspective of individuals and groups that have experienced such discrimination. A comprehensive picture of racial discrimination in Germany is only possible if first hand experiential knowledge from the aforementioned groups provide the foundation for analysis. The Parallel Report cross-references comprehensive analyses (developed in the reporting process) so as to make the perspectives that are often left unnoticed visible. They bring to light the realities of discrimination as experienced by people living in Germany, from a human rights point of view, and particularly in the light of the Convention.

The full extent of the racist so-called "NSU-crime spree", the murders perpetrated by a terrorist organisation calling themselves the "National Socialist Underground" was only uncovered when some of its members exposed themselves after 14 years of terrorist activity. The enquiry could have been conducted far more quickly had it not been obstructed for many years by the security and law enforcement agencies that attributed the crimes to relatives of the victims, thereby thwarting attempts to bring the investigation to a rapid conclusion.

The deep involvement of the security and law enforcement agencies as well as the refusal to acknowledge institutional racism as a problem are symptomatic of deep-rooted structural racism in Germany. There is ample evidence of this. This is repeatedly confirmed by the findings of studies and opinion polls. Despite clear evidence of structural racism, German law and politics, at both federal state and national levels, have been lagging behind with regard to the fulfilment of human rights obligations under the UN Anti-Racism Convention, which was ratified by both German states existing at the time of its adoption (the FRG in 1969 and the GDR in 1973). Though racial discrimination in Germany is structural, it continues to be too narrowly defined in national debates and is not discussed as a systematic violation of human rights.

This Parallel Report will draw particular attention to specific fields in the State Report that lack a more detailed description; i.e. the situation of the aforementioned groups requiring special protection under ICERD, as well as people who are exposed to extremely critical violations of human rights as per the analytical framework of intersectionality. This is defined, for example, as racism interconnected with hetero-sexism, or racism in asylum law and practice.

A central demand of this Report is the need to disaggregate data on discrimination and equal treatment in order to reflect discrimination against those groups requiring special protection. One of the manifestations of the problem posed by an insufficient collection of data is the use of concepts such as "migration background". This concept encompasses members of a given diaspora community up to the second and sometimes third generations, but denies membership to generations beyond that.

Thus, with only a single indicator consistently applied by the federal government to measure racial discrimination, a growing number of people who require specific protection pursuant to Article 1 of ICERD are not taken into con-

1 The concept of "People of Colour" has a strategic, self-determined definition for people who experience racism in Western societies. It emerged in the US context, acquired a new political dimension and content during the civil rights struggle and is increasingly used in Germany. Compare: Ha, Kien Nghi (2007): People of Colour – Koloniale Ambivalenzen und historische Kämpfe, In: Kien Nghi Ha, Nicola Lauré al-Samarai, Sheila Mysorekar (Hg.): *re/visionen. Postkoloniale Perspektiven von People of Colour auf Rassismus, Kulturpolitik und Widerstand in Deutschland*, Münster: Unrast, S. 31 – 40.

2 Cissexism refers to the rejection, marginalisation and discrimination of trans*people by people whose sexual identity harmonises with the gender they were assigned at birth and/or has never been questioned.

sideration. This has a significant impact on the collection of data on structural and institutional racial discrimination given the fact that violation of the obligation to collect and report data under ICERD renders racist structures invisible and therefore leads to a persistent weakening of the protections against discrimination.

The lack of disaggregated data on groups that are affected by racism, including the data contained in the 19th-22nd Report submitted by the Federal Republic of Germany to the UN Anti-Racism Committee demonstrates the limited scope of the definition of racial discrimination in Germany. It is considered first and foremost as an aggregate of individual, interpersonal and intentional acts. This once again reveals a narrowly construed understanding of racism. As a result, protection pursuant to Article 1 of the Convention, which also includes protection against the racist effect of legal provisions, policies, interpersonal and institutional acts or omissions, is only taken into account in a marginal way.

People who experience racism in Germany are not systematically informed about the legal provisions governing the protection against racism in the context of European law, nor are they adequately included in analysing racial discrimination in German society. The outcome is an incomplete analysis of the problem, according to the dominant perspective reflected in the 19th–22nd Report by the state. Its impact becomes apparent also at the linguistic and analytical levels: the term “xenophobia,” which is used in the State Report, is a problematic notion because it qualifies the concept of racial discrimination by referring to the idea of “xenos” (i.e. “stranger, foreigner”) and therefore adopts the perspective of the perpetrators, while making it appear as a normative standard. In addition, it participates in the systematic collection of data on hate crime as part of the statistics about politically motivated crime (PMC), whereby a distinction is made between racist and xenophobic attacks, which conceals the true extent of racist violence in Germany. The consequence of using “xenophobia” as an analytical framework is that a wide range of racist incidents and crimes are made invisible, institutional racial discrimination is de-thematised in a context in which it is described among others as a structural feature of the German education system, including in the field of international studies. Characteristically, the State Report contains no statistical data on cases of racial discrimination, the frequency of claims and complaints under anti-discrimination law, or at least of interventions or requests submitted to the anti-discrimination institutions at the state and federal levels.

This Parallel Report widens the perspective of the State Report by including several perspectives of those with experiences of racism. These bring to light the multifaceted aspects of racial discrimination in Germany. This reality contradicts the argument put forward by the state in its report that German Law provides sufficient protection against racism, owing to the fact that prohibition of racial discrimination is a principle enshrined in the German Basic Law, and protection is also guaranteed under the General Equal Treatment Act (AGG). The lack of legal concretisation of this protection under Basic Law, as well as the limited scope of the AGG in civil law, leave blatant gaps in the protection against discrimination, as CERD has regularly pointed out. In Recommendation 48 on Germany, CERD made it clear that it is not sufficient, for the purposes of fulfilling the state’s obligations under ICERD, “merely to declare acts of racial discrimination punishable on paper”. Rather, legal provisions to guarantee the human right to protection against racial discrimination must also be effectively implemented. As this report shows, this important distinction between rights on paper and effective implementation has not been paid the attention it is due; neither in the State Report, nor in everyday legal and political practice. This report does not only comprise findings and analysis; it also includes concrete approaches and alternative courses of action. Therefore all stakeholders therefore hope that this report will contribute to bringing about effective changes in the field of human rights protection against racial discrimination.

I. Re Article 1 ICERD (Definition of racial discrimination)

Definition of racial discrimination (Art. 1 para. 1 ICERD)

A definition of racial discrimination pursuant to Article 1 para. 1 of ICERD is absent from German law. By including protected characteristics, including "race", colour, national and ethnic origin, the definition of racial discrimination under Art. 1 para. 1 of the Convention has a wider scope than the definition of direct and indirect discrimination under the General Equal Treatment Act (AGG). Prohibition of discrimination as laid down in Art. 3 para. 3, clause 1 of the German Basic Law has not been sufficiently concretised in civil and penal law. Though the definition of Article 1 para. 1 of the Convention is applicable law in Germany, the human rights based definition of racial discrimination is only partially applied, if it is applied at all.³ There is an understanding that racism is only occurs in the forum of direct racism only as a direct or intentional form of discrimination, (i.e. an understanding which excludes indirect racism and effects) and this does not conform with a human rights understanding of racism. This inadequate understanding reflects common political discourse and institutional practice in administrative bodies, including security institutions and the judiciary. Furthermore, with regard to court cases on violent acts, even where the respective investigation files revealed the possibility of pursuing a right-wing motive,⁴ this factor was considered in less than half of the cases and in only twelve per cent of judgements. [See: V. 1. Criminal provisions and their effectiveness].

This understanding of racism, which does not conform to the principles of human rights, became particularly apparent in the case *Türkischer Bund in Berlin-Brandenburg versus Germany* (48/2010). Such understanding of racism⁵ and hate speech contributed to a large extent to the termination of the proceedings by the Berlin public prosecutor's office.

The concept of "Rasse"

The protracted controversy over the maintaining or deleting of the concept of "Rasse" in the German Basic Law illustrates the limited scope of human rights obligations under the Convention in the political debate and public opinion when it comes to ensuring that protection against discrimination is firmly rooted in the legal framework. Deleting "Rasse"⁶ without substitution would create a vacuum in protection.⁷ Considering that racial discrimination implies external characterisation, it cannot be replaced by the phrase "discrimination based on ethnic origin."

In the framework of its constitutional reform, the state of Brandenburg has removed the concept of "Rasse" as a constitutional principle of non-discrimination, so that instead of Art. 12 para. 2 of the Constitution of the State of Brandenburg now reads as follows: "No one may be favoured or disfavoured because of origin, nationality, language, gender, sexual identity, social origin or status, disability, or religious, philosophical or political convictions or on racist grounds." Furthermore, the constitutionally defined objectives of the State of Brandenburg have been expanded correspondingly, so that Art. 12 para. 1 now reads, "The state protects the peaceful coexistence of people and counters the dissemination of racist and xenophobic ideas and views."

These constitutional amendments are very welcome except for the fact that, in the German context the phrase "racist and xenophobic" often leads to the de-thematisation of racism. This wording leads to the issue of racism being ignored, downplayed or denied. Notwithstanding these reservations, the Brandenburger constitutional amendment should serve as a reference for corresponding amendments in the constitution of other federal states and the German Basic Law. [On the problematic issue of the collection of data on racist crime, see : V. 1. c). In the

3 Compare BayVerwGH, Urt. v. 24.11.2011, 4 N 11.1412, administrative court, judgement 24.11.2011 – "Ausländerbeirat", i.e. foreigners' advisory council, in connection to which the administrative refers to ICERD in its erroneous interpretation of the concept of "nationality" and applies, with due consideration, to exclusion from citizenship pursuant to Art. 1 para. 2 and 3 ICERD, a reference which was equally misconceived. .

4 This category encompasses the overall majority of crimes committed on racial grounds.)

5 See the comprehensive statement of the German Institute for Human Rights on the CERD/C/82/D/48/2010 in "Stellungnahme des Deutschen Instituts für Menschenrechte on the procedure before the UN Anti-Racism Committee in the case *Türkischer Bund Berlin-Brandenburg e.V./ Deutschland (48/2010)*", December 2011 and *Türkischer Bund Berlin-Brandenburg e.V./ Deutschland (48/2010)*, December 2011, http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Stellungnahme_DIMR_im_Verfahren_vor_dem_UN_Antirassismus_Ausschuss_TBB_Deutschland.pdf

6 Compare also ECtHR, judgement of 13.12.2005, N°. 55762/00 und 55974/00 – *Timishev u. a./Russland*, Rn. 55, which the Court gives the following explanation on the concept of race: „the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics“. The word "Rasse" was not translated into "race" as it does not include the social concept of "race" as a socially constructed reality based on and establishing a power relation. TN.

7 Compare also Cremer, "... und welcher Rasse gehören Sie an?" – „Zur Problematik des Begriffs "Rasse" in der Gesetzgebung“, Policy Paper No. 10, DIMR, 2008 (2. akt. Aufl.2009) about the problems of the concept of "Rasse" in the legislation.

German Basic Law, the constitutions of the federal states and all other laws, the concept of “Rasse” should be replaced by the German word for “racist”, which is “*racistisch*”. Using this approach, the protection coverage will be maintained, including the prohibition of discrimination, in a way that conforms with ICERD. At the same time, it will clarify the law, which will no longer imply the existence of human “races.”

Exclusion from citizenship (Art. 1 para. 2 and 3 ICERD)

Considering the characteristics of citizenship as defined in Art. 1 para. 2 and 3 of the Convention, reference has to be made to the ECRI report (European Commission against Racism and Intolerance, CRI(2014)2. TN), in which ECRI calls upon Germany to ratify the Protocol No. 12 to the European Convention on Human Rights. Germany refuses to ratify, as the restrictive regulation on foreign citizenship would no longer be applicable following the decision of the European Court of Justice. The German Constitutional Court declared that the exclusion of foreign citizens from being eligible to receive a state child-raising allowance is unconstitutional.⁸ In the same year, the Court found that a regulation of the Asylum Seekers’ Benefit Act (AsylbLG), under which asylum seekers were not guaranteed a minimum subsistence, is unconstitutional, as it contravenes human dignity as laid down in Art. 1 para. 1 of the German Basic Law (GG).⁹

Affirmative action (Art. 1 para. 4 ICERD)

With regard to the special measures listed in Art. 1. para. 4 of the Convention, it has to be mentioned that Germany has made hardly any efforts to implement an effective policy for the advancement of people who experience racism. This sharply contrasts with the affirmative action measures that have been implemented for decades with the aim of ensuring gender equality. The recent draft law to ensure the equal participation of women and men in management positions in the private and public sectors^{10, 11} of 10 December 2014 is based on a narrowly-defined policy of affirmative action, which does not take into consideration the structural character of discrimination.

In order to strengthen protection against racial discrimination, the concept of “Rasse” should be replaced in the German Basic Law as well as in all constitutions of the federal states by the phrase “on racist grounds”.

A definition of racial discrimination must be agreed in order to facilitate the incorporation of the provisions of the Convention into national law. This definition should be binding and conform to the definition of racial discrimination under the provisions of the Convention, including institutional discrimination by effect (i.e. institutional discrimination under Art. 1 para. 1 of ICERD).

In the Communication N° 48/2010, the German Institute for Human Rights strongly advocates the incorporation of the obligation of protection under ICERD into the German legislation not only de jure, but also de facto. The German government must be required to answer how the special regulations applicable to foreign citizens, including asylum laws, conform to Art. 1 para. 2 and 3 of ICERD and are to be assessed in the light of the CERD General Recommendations (Citizens and Non-Citizens), 22 (Refugees and displaced persons) and 30 (Discrimination against Non-Citizens).

The German government must fulfil its obligation under ICERD Art. 1 para. 4. Efficient measures must be taken for the protection of people who experience racism in the private sector and public services.

8 BVerfG, Beschl. v. 7.2.2012, 1 BvL 14/07 – “Bayerisches Landeserziehungsgeld”, Bavarian child-raising benefits.

9 BVerfG, Beschl. v. 18.7.2012, 1 BvL 10/10 – Asylbewerberleistungsgesetz, Asylum Seekers Benefits Act

10 Federal government, Draft law aimed at the promotion of equal participation of women in management position in the private and public sector, “Entwurf eines Gesetzes für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst”, accessed on 4 Februar 2015, http://www.bmfv.de/SharedDocs/Downloads/DE/pdfs/Gesetze/GE-Frauenquote.pdf?__blob=publicationFile.

11 “Merkel will sich bald mit Angehörigen der NSU-Opfer treffen – SPIEGEL ONLINE”, on the issue of Chancellor Merkel’s meeting with the relatives of the victims, accessed 4 Februar 2015, <http://www.spiegel.de/politik/deutschland/merkel-will-sich-bald-mit-angehoerigen-der-nsu-opfer-treffen-a-902403.html>.

II. Re Article 2 ICERD (Prohibition of racial discrimination and protection of certain groups)

The Federal Republic of Germany does not take sufficient action to ensure the protection of all the groups requiring special measures pursuant to ICERD Art. 1. This is demonstrated by the refusal to collect relevant data on discrimination broken down by group, from which to derive information and implement protection and affirmative actions policies pursuant to Article 2-1-e. The denial that specific groups are exposed to specific forms of racial discrimination is evidenced by the disparate and fragmentary data contained in the State Report. Racial discrimination takes various forms that are specific to particular groups, which is why group-specific analysis of racial discrimination is a precondition for obtaining a comprehensive picture of human rights violations.

Obligation to provide information on groups requiring protection under ICERD

The collection of disaggregated, i.e. group specific data, on discrimination, as well as socio-demographic data on education, revenue and the lived experience of groups requiring specific protection under ICERD, gathered according to strict standards for the protection of privacy rights and individual data and on the basis of voluntary self-identification, is a pivotal tool for the protection against racistl discrimination.

The obligation to provide this information is consistent with Art. 2 of the Convention and the General Recommendations on the form and content of State Reports under Article 8, as well as the Concluding Remarks Nr. 14 of the Committee¹² and ECRI's renewed recommendations. The present 19th-22nd State Report fails again to include the relevant information. The only data provided are incomplete demographic data, mainly related to migration background.

The category defined as migration background is in many ways an inappropriate concept for identifying racial discrimination: on the one hand, it includes groups in the population who usually do not experience racial discrimination; i.e. people who are not Jewish, Black, Muslim or Rrom_nja (Roma), as well as Germans born abroad. Group-specific experiences of racial discrimination do not come into view using this category.

Secondly, many people who are exposed to racism are part of the German population and have no migration background: Sinti_zza (Sintis), Rrom_nja (Roma), Jews, as well as people of African descent and Black people in Germany. They are not referred to by this category. The recognition, based on a history-conscious approach, and proof of a specific, persistent racial discrimination against the aforementioned groups are rendered impossible by the use of the category of "migration background".

Furthermore, the "migration background" category does not apply, depending on the method used for the collection of the relevant data, after the second, and in few cases after the third generation. This leads to a growing number of people who belong to groups requiring specific protection under ICERD and still experience racial discrimination are being excluded from this category. Demographic data on the group of "people with a migration background" demonstrate to what extent this category is problematic: Of the 18 million people with a migration background living in Germany in 2012, 60 per cent have German citizenship. People with a migration background are considerably younger than the rest of the population. People of African ancestry are the youngest group in Germany, followed by people with Turkish and Arab¹³ ancestry. This data clearly indicates that there will be a growing number of people of the third-, fourth- or fifth-generation immigrants who can be deemed to be members of this group, but who will no longer be included in the category "migration background." Therefore, the category "migration background", based on an unacceptable summary analysis and leading to its arbitrary exclusion of various groups requiring specific protection under ICERD, is inadequate for insuring conformity with the obligation to report under ICERD. A rigorous analysis of the deeply rooted structural and institutional racial discrimination is not possible using this approach.

Refusal by the government to gather disaggregated data and the use of this inadequate category obscures the reality of racial discrimination in Germany and is a failure of the state in its obligation to the groups requiring pro-

12 CERD, „CERD/C/DEU/CO/18 – Concluding observations of the Committee on the Elimination of Racial Discrimination“, accessed 24 November 2014, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsv4qujPA8qSE3O3exJU3P3xxPG126Vm4ZRxoRSO6zJuol9nsW75tNMgzanWe7DTlwUotv91AOcyEnM1OYJDFP%2fMTJhaQoqopG8rat41aBS%2fq>.

13 Franziska Woellert und Reiner Klingholz, Neue Potenziale: Zur Lage der Integration in Deutschland (Berlin Institut f. Bevölkerung u. Entwicklung /Berlin Institute for Population and Development, 2014), on the situation of integration in Germany

tection under ICERD by denying them the right to a comprehensive analysis of their lived experience, including structural and institutional racial discrimination.

The reasons for opposing group specific information mentioned in recital 30 of the State Report are contrary to CERD recommendations. They refer to historic aspects, legal reservations and reservations expressed by national minorities. Reservations due to historical experiences cannot be put forward without extensive consultation with all the relevant groups. Moreover, reservations expressed by individual groups must not result in the withholding or ignoring of necessary information about other groups.

If categories are to be defined in order to gather data on racial discrimination, the participation of groups requiring protection is to be granted under ICERD and it must have a significant impact. The core principles of an adequate and appropriate system of data collection in a context of informational self-determination must be on a voluntary basis, must include the possibility of self-assignment to a category¹⁴ and / or the refusal to assign oneself to any category. An additional and important factor for the collection of data on discrimination is the differentiation between self-perception and the perception of others. The respondents must be given the opportunity to differentiate between their perception of their own experience of discrimination and the perception of others.

Among all the groups requiring protection under ICERD and who are exposed to racial discrimination in Germany, only Sinti_zza (Sintis), Rrom_nja (Roma) have the status of a national minority pursuant to international law, and only data on anti-Semitic attacks are collected separately in the statistical recording of hate crimes. Other groups that require protection under Art. 1 of the Convention have not been given the status of national minorities on the basis of the relevant agreements, or do not benefit from a differentiated collection of data on the hate crimes committed against them. For this reason, Sinti_zza (Sintis), Rrom_nja (Roma) as well as Black people demand a differentiated collection of data on discrimination offenses that are committed against them (See: II. 5. a) Sinti_zza and Roma_zza in Germany und d) Black People in Germany).

In the police files, as well as in the police criminal statistics, data are routinely generated in Germany, through the means of which suspects or the accused are assigned to groups requiring protection under ICERD (See: II. 5. a) Sinti and Roma in Germany). Given the fact that security bodies and criminal analysts already collect data on the basis of assignments decided upon by others, the collection of differentiated data on discrimination should be organised on the basis of consultation and cooperation with civil society organisations representing the interests of every single group that requires protection under ICERD, according to principles that conform with human rights.

In order for the relevant data to be used in a court proceeding, pursuant to EU Race Directive (2000/43/EC), which affords the opportunity to prove that discrimination took place on account of the victim's affiliation to a specific group, disaggregated data collection plays a pivotal role. For this reason, the current data does not offer the same protection potential as differentiated data, neither for analytical purposes nor for court proceedings.

The modalities for the collection of data on discrimination and equal treatment are to be defined in a consultative process with civil society organisations that can represent groups requiring protection under ICERD. To this aim, the reservations expressed by individual groups must not be put forward as arguments against other groups' demands for differentiated data. The Federal Republic of Germany should shift away from the undifferentiated concept of "migration background" and adopt differentiated, group specific solutions.

In order for monitoring to conform with the recommendations of the Committee (Concluding Observations, Item 14) in connection with Art. 2 of the Convention, disaggregated data, i.e. group-specific demographic data, which are broken down by group, must be collected. Information on education, income and the lived experience of each of the groups requiring protection under ICERD must be collected on the basis of voluntary self-identification and with full respect for privacy rights and individual data. To this aim, it is necessary to collect disaggregated demographic data, as well as data on discrimination, and systematically determine their development over a particular period of time. The relevant bodies for the collection of data on discrimination, including the Federal Anti-Discrimination Agency and the Federal Government Commissioner for Migrants, Refugees and Integration, must be given an explicit mandate and adequate resources to gather disaggregated data broken down by group, derived from scientific studies and surveys as well as the systematic assessment of court claims, judgements and complaints lodged with the Federal Anti-Discrimination Agency or the anti-discrimination agencies of the federal states ("Länder"). The categorisation, operationalisation, implementation, monitoring and analysis of this data must be conducted in consultation with, and with the participation of, relevant grassroots organisations.

¹⁴ This is conform with the requirements as established by the case law of the German Constitutional Court as well as pursuant to the Federal Data Protection Act (BDSG).

A reform of the crime statistics is necessary. Beside hate crimes, other offenses motivated by racial discrimination under Art. 1 of the Convention have to be recorded using a differentiated approach with data broken down by each group affected by racial discrimination. To this aim, a reform of the statistics on PMC (politically- motivated crime) is required.

Judicial statistics should be established in all cases where racial discrimination is mentioned, be they in police files or by the claimants themselves, and made public in order to assess the real impact of legal protection against racial discrimination.

1. Re Article 2 paragraphs a and b ICERD (Obligation of public authorities and institutions to not engage in any act or practice of racial discrimination)

Regarding conformity with Article 2 para. 1a and b of the Convention, the State Report explains that the entire public authorities and agencies are bound by Article 1 para. 1 of the German Basic Law (GG) and by Article 3 para. 3 of the German Basic Law; consequently, all public agencies are deemed prohibited from engaging in any act or practice of racial discrimination. This is precisely where a fundamental issue is raised when considering protection against racial discrimination in Germany: constitutional prohibition of discrimination alone does not guarantee legal protection against discrimination by public authorities and institutions.

Effective protection against discrimination by public authorities and institutions requires additional specification. This is most especially and obviously the case for education [see: V. 4. b) Rassistische Diskriminierung und Segregation im Bildungssystem] and asylum law and practice [see: V. 4. a) Rassistische Diskriminierung in Asyl- und Aufenthaltsrecht und -praxis]. Discrimination by public bodies is, according to the annual integration barometer survey conducted by the Expert Council of German Foundations on Integration and Migration (SVR), the most frequently mentioned source of discrimination; 31.8 per cent of people with Turkish migration background [see: II. – Obligation to provide information on groups requiring protection under ICERD] identified public services and institutions as the most frequent source of discrimination, whereas people with African/Asian/South American migration background ranked it third with 23.8 per cent after discrimination on the labour and housing markets¹⁵.

2. Re Article 2 paragraphs a and b ICERD (Mechanisms for the review of discriminatory effects of the acts and practices of public bodies and laws)¹⁶

Although compliance with national laws designed to uphold human rights are monitored at federal and state levels, some regulations still do not provide adequate legal protection. [see: V. 2. The right to equal treatment in court and in all institutions for the administration of justice – Racial Profiling], or the General Equal Treatment Act (AGG) (see: V. 4. c), including participation in professional and economic life and insufficient legal protection. (The General Equal Treatment Act (AGG) must be strengthened here). There is a lack of independent services mandated to monitor public institutions and, if necessary, to sanction the institutions that discriminate.

15 Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR), Deutschlands Wandel zum modernen Einwanderungsland Jahresgutachten 2014 mit Integrationsbarometer, 2014, <http://www.svr-migration.de/wp-content/uploads/2014/11/>; Expert Council of German Foundations on Integration and Migration on Germany's path towards a country of destination for immigration.

16 This section is based on background paper by Damaris Uzoma and Dr. Eddie Bruce Jones, submitted in the framework of the Parallel report under the UN Antiracism convention: Damaris Uzoma on behalf of Initiative Schwarze Menschen in Deutschland: Rassismus gegen Schwarze Menschen, about racism against Black people, full text available under <http://rassismusbericht.de/wp-content/uploads/Rassismus-gegen-Schwarze-Menschen.pdf> and Eddie Bruce Jones: „German policing at the intersection: race, gender, migrant status and mental health“, full text available under <http://rassismusbericht.de/wp-content/uploads/German-policing-at-the-intersection-race-gender-migrant-status-and-mental-health.pdf>

The Federal Republic of Germany must institutionalise a mechanism through which legislation, regulations and official acts can be checked for unintended discriminatory effects. Where procedures for the checking of laws for discriminatory effects already exist, the federal government will be required to prove which methods and standards are applied when conducting this examination. It is particularly necessary to check for the relevant consequences and disparate racial impact pursuant to Art. 1 of ICERD.

The competences of the Federal Anti-Discrimination Agency (ADS) must be expanded to more public institutions and the independence of ADS strengthened with regards to the implementation of the EU Anti-Discrimination Directive. The ADS must be able to conduct investigations, to be able to be effective in the administrative context (in a framework underpinned by sanctions) and bring cases of discrimination to court.

3. Re Article 2 paragraph 2 d ICERD (Prohibition and elimination of racial discrimination by private stakeholders)

Neither criminal nor civil law policies aimed at prohibiting and eliminating racial discrimination by private actors, the General Equal Treatment Act (AGG) included, offer sufficient protection. An examination of these measures with a focus on a critical analysis of AGG can be found in Article 4 [see: V. 4. c) Involvement and participation in economic life – Inadequate legal protection: strengthening of AGG is essential]

4. Re Article 2 paragraph 1 e ICERD (Combating racism, in particular by supporting relevant organisations and movements)

In the State Report, statements about protection against racism intertwine with discourse and policies aimed at the promotion of so-called “integration”. This is understood as the incorporation of people with so-called “migration background” into German society; this interpretation results in a narrowly construed representation of racial discrimination, though discrimination indisputably is an independent factor which is in no way determined by the “integration status” of the individuals or groups who are being discriminated against, especially given the fact that racial discrimination is increasingly experienced by people who have been living in Germany for generations.

Instead of severing the link between the two issues, the focus is turned towards the so-called “integration performance” (Integrationsleistungen), meaning that people with the individuals or groups who are being discriminated against “migration background” who are deemed “willing to integrate” are required to make constant efforts to achieve the supreme goal of integration: integration is to be achieved through painful toil. “ Though the promotion of “integration” through language and education support schemes has given people who experience racism in Germany access to important services, the lack of a human rights dimension in the integration policy has raised a fundamental issue. The starting point for antidiscrimination policy-making should be the guarantee of equal participation in society, supported by a comprehensive protection of human rights and not demands for integration, with the partial subtext, that equal treatment would need to be earned through an adequate display of „integration performance. In this context, the statement made by Chancellor Merkel during the 2013 Integration Summit, according to which she intended to replace the integration concept with “inclusion, participation and respect”¹⁷ is welcome. However, until today, a paradigm shift towards inclusion - particularly through the enforcement of the rights and state duties inscribed in ICERD - is still not evident.

The obligation to encourage anti-racist initiatives under Art. 2, para. 1 e of the Convention cannot be efficiently fulfilled at present. One of the main areas of concern is the insufficient funding of projects, relevant grassroots organisations and groups that require protection under ICERD that focusses on intersectional discrimination; e.g. sexual and gender-related issues in conjunction with affiliations to various social, religious and cultural groups. Due to the fact that an emphasis is placed on anti-discrimination projects that either represent the perspective of the majority of society in Germany or focus on a single factor, the inclusion and representation of lesbian, gay, bisexual, transgender and intersex people who experience racism is seldom ensured.

¹⁷ „Merkel will sich bald mit Angehörigen der NSU-Opfer treffen – SPIEGEL ONLINE“, on the issue of Chancellor Merkel's meeting with the relatives of the victims, accessed 4 Februar 2015, <http://www.spiegel.de/politik/deutschland/merkel-will-sich-bald-mit-angehoerigen-der-nsu-opfer-treffen-a-902403.html>.

The link between supporting organisations working in the field of racial discrimination and those fostering “integration” should be severed.

Grassroots organisations working in the field of intersectional racial discrimination should benefit from targeted support, so as to develop a targeted approach to intersectional discrimination and disseminate information to people who are exposed to intersectional discrimination with the aim of safeguarding their right to protection under human rights and anti-discrimination laws.

5. Re Article 2 paragraph 2 ICERD (Protection of specific groups)

The mention of Muslims and Black People in the State Report as groups of the population who require protection, together with Jewish and Sinti and Roma people, is highly welcomed. Unfortunately, the information presented does not comply with the reporting guidelines on the form and content of the State reports, nor does it comply with Item 14 of the Concluding Observations of the Committee.¹⁸ Against all expectations, the report falls short of giving an adequate account of the specific forms of discrimination the specified groups are exposed to. Furthermore, the report fails to take into consideration the intersectional aspects of racial discrimination, the importance of which the Committee explicitly underlined in the General Recommendation 32.

a) Sinti and Roma in Germany¹⁹

1. Art. 2 Art. and 5 ICERD Structural racism and multiple discrimination

Rom_nja and Sinti_zza are often depicted in the media as a problem²⁰. Public discourse and heated campaigns against Rom_nja have become common since the expansion of the EU to include Bulgaria and Romania and the liberalisation of travel requirements for Serbia. A survey conducted by the Federal Anti-Discrimination Agency²¹, which is consistent with the findings of the 2014 “mainstream” survey conducted at Leipzig University, reveals a widespread animosity against Rom_nja und Sinti_zza. The study shows, for instance, that 41.7 per cent of the respondents agree with “Sintis and Roma” being banished from inner city areas and 55.9 per cent of the respondents insinuate that “Sinti and Roma” have criminal tendencies.²² These assumptions are part of a deep-rooted form of structural racism that gives inter-subjective and inter-organisational coherence and legitimacy to racial discrimination in practice, as the following examples clearly demonstrate.

Rom_nja and Sinti_zza have been subject to discriminatory and racist language. In the time of National Socialism, the perpetrators labelled Rom_nja und Sinti_zza with the discriminatory term “Zigeuner” and carried out genocide against people considered as such. Despite the racist connotation that it has, the word “Zigeuner” is still used in an openly careless way in supermarkets²³, the media²⁴ and official administrative communications. Ignoring the self-determination of Rom_nja und Sinti_zza is a manifestation of structural racism.

18 CERD, CERD/C/DEU/CO/18.

19 This section is based on a background paper “Rassismus gegen Sinti und Roma in Deutschland” (Racism against Sinti and Roma in Germany”, by Elsa Moshitana on behalf of the Ini Rromnja, written in the framework of the parallel report process. Full text available under <http://rassismusbericht.de/wp-content/uploads/Rassismus-gegen-Sinti-und-Roma-in-Deutschland.pdf>

20 Romani Rose: Bürgerrechte für Sinti und Roma. Das Buch zum Rassismus in Deutschland., Auflage: 1. Auflage, 1. – 12. Tsd., (Heidelberg, Zentralrat Deutscher Sinti und Roma 1987., 1987). Citizen rightst for Sinti_zza und Roma_zza. A book on racism in Germany. Central Council of the Sinti and Roma.

21 Zentrum für Antisemitismusforschung, Institut für Vorurteils- und Konfliktforschung e V., Zwischen Gleichgültigkeit und Ablehnung Bevölkerungseinstellungen gegenüber Sinti und Roma, accessed 4 February 2015, http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Bevoelkerungseinstellungen_Sinti_und_Roma_20140829.pdf?__blob=publicationFile. The Center for anti-Semitic studies, Research Institute on prejudices and conflicts, between

22 Ralf Melzer, Fragile Mitte-Feindselige Zustände – Rechtsextreme Einstellungen in Deutschland 2014, accessed, wrangling on the renaming of a „gypsy sauce” that still kept its name despite protest, FOCUS online, news, accessed 4 February 2015, http://www.fes-gegen-rechtsextremismus.de/pdf_14/FragileMitte-FeindseligeZustaende.pdf, Ralf Melzer, Fragile Mitte-Feindselige Zustände - Rechtsextreme Einstellungen in Deutschland 2014, accessed 4 February 2015, http://www.fes-gegen-rechtsextremismus.de/pdf_14/FragileMitte-Feindselige-Zustaende.pdf, on fragile center, hostility, extreme rights views.

23 „Streit um Umbenennung: Zigeunersauce heißt trotz Protesten weiter Zigeunersauce – Deutschland – FOCUS Online – Nachrichten”, zugegriffen 4. Februar 2015, http://www.focus.de/politik/deutschland/streit-um-umbenennung-zigeunersauce-heisst-trotz-protesten-weiter-zigeunersauce_aid_1124016.html, wrangling on the renaming of a „gypsy sauce” that still kept its name despite protest, FOCUS online, news, accessed 4 February 2015

24 Rolf Bauerdick, „Wer ist schuld am Elend der Zigeuner?”, Welt Online, 25. März 2013, Abschn. Feuilleton, <http://www.welt.de/kultur/article114753394/Wer-ist-schuld-am-Elend-der-Zigeuner.html>, on the issue of „Who is responsible for the misery of the Gypsies”.

Regarding institutional racism, the aforementioned assumptions and attitudes stabilise institutional racial discrimination against Rrom_nja und Sinti_zza and appear as an essential ingredient of Gadge²⁵racism. Rrom_nja und Sinti_zza have a multifaceted experience of institutional discrimination, including by public bodies such as schools, administrative services, the judiciary and the police. This can be illustrated using following examples:

In relation to the police, in 2014, the Central Council of the German Sinti and Roma filed a suit against police officers of the State of Baden Württemberg, on the ground that in their files, they referred to a wrongly suspected Rrom, as a "typical representative of the minority", the implication being that "lying is an essential component of his socialisation."²⁶ This is an issue of concern, especially considering the pivotal role of the police administration in the registration and persecution of Rrom_nja und Sinti_zza during the time of National Socialism as well as the registration of of Rrom_nja und Sinti_zza by the police long after 1945²⁷. [see also: V.2. The right to equal treatment in court and in all institutions for the administration of justice].

Development programmes: the Berlin-based „Romano Bündnis“, a coalition of Rrom_nja and Sinti_zza grassroots organisations, criticises especially the ethnisation of social problems, the fact that grassroots organisations are largely kept out and that the combating racial discrimination against Rrom_nja und Sintizza²⁸ is not considered as a major issue of concern.

2. Art. 3 ICERD Condemnation and prohibition of segregation

According to reports based on the experience of Rrom_nja und Sinti_zza in the Berlin district of Neukölln, (including by the Roma Informations Centrum e. V.) Rromani children remain much longer in the so-called „welcome classes“ (for children with limited knowledge of German) than other children. Whereas most children stay in the class up to three months, on average Rromani children remain in the class for one year and sometimes even remain there for up to three years. .

The transgenerational trauma experienced by Rrom_nja und Sinti_zza and their consequences are realities that educational institutions, youth welfare offices, and family support schemes completely ignore or negate. In addition, German Sinti_zza und Rom_nja, who are exposed to massive discrimination at school, are left alone with their experiences, as shown by the "Survey on the Current Situation of Sinti and Roma in the Education System."²⁹.

3. Art. 2 b ICERD State support schemes

Though Rrom_nja und Sinti_zza have been recognised as a national minority in Germany, their languages and culture do not receive adequate support. The Romani language is not recognised as an independent, complex and historical language, and does not benefit from any promotion scheme, nor is it integrated by the administrative bodies into the official interpretation services, even though national minority status in Germany covers legal rights in the fields of education and language promotion.

Administrative bodies make decisions and carry out policies that result in structural discrimination at national, state and community levels.³⁰ For example those organisations which are recognised as having expertise with Rrom_nja issues usually are those without Rrom_nja and Sinti_zza members. In addition, Rrom_nja und Sinti_zza grassroots organisations typically have their demands for equal rights and dignified treatment reduced to a simple assessment of their social services needs.³¹

With a view to asserting human rights, Germany must fulfil its obligation pursuant to Art. 2 of the Convention as well as under the Framework Convention and the European Charter for Regional or Minority Languages, and adopt pro-active policies for the promotion of the Rromani culture and language, which are detailed as follows:

25 Gadge encompasses all people who are neither Rrom_nja, Sinti_zza, nor Manusch or Kale. The concept of Gadge-racism is specific to racism against these groups. This concept has been developed by the aforementioned communities in order to describe their specific experience.

26 Romano, -, und Bündnis (Berlin), „Rassismus: Zentralrat der Sinti und Roma erstattet Anzeige gegen Polizei“, Die Zeit, 4 February 2014, section „Zeitgeschehen“, <http://www.zeit.de/gesellschaft/zeitgeschehen/2014-02/nsu-prozess-sinti-roma-rassismus>.

27 Compare Romani Rose: Bürgerrechte für Sinti und Roma. Das Buch zum Rassismus in Deutschland. Heidelberg 1987, on civil rights for Sinti_zza and Roma_zza and racism in Germany, the book on racism in Germany.

28 Romano Bündnis, positionspapier_bu_ndnis_zum_senat1.pdf, accessed 4 February 2015, https://inirromnja.files.wordpress.com/2013/08/positionspapier_bu_ndnis_zum_senat1.pdf

29 Daniel Strauß; Alexander von Plato, Michael Klein, Uta Rüchel, Jane Schuch, 2011_Marburg-strauss_studie_sinti_bildung.pdf, accessed 4 February 2015, http://www.stiftung-evz.de/fileadmin/user_upload/EVZ_Uploads/Publikationen/Studien/2011_Marburg-strauss_studie_sinti_bildung.pdf.

30 Romano, -, und Bündnis (Berlin), „Rassismus“ on Sinti_zza and education.

31 inirromnja, "Position des Romano-Bündnis (Berlin) zum ‚Berliner Aktionsplan zur (gegen die) Einbeziehung von Roma“, Inirromnja, accessed 4 February 2015, <https://inirromnja.wordpress.com/2013/09/08/position-des-romano-bundnis-berlin-zum-berliner-aktionsplan-zur-gegen-die-einbeziehung-auslandischer-roma/>. Berlin-based Romano Alliance, position paper on the Berlin action plan for (against) the involvement of Roma .

Actively promoting the use of family languages among children and young Rrom_nja and Sinti_zza and establishing language education schemes for children in order to ensure that young people and adults can learn and master their first languages.

The establishment of an institute managed by Rrom_nja and Sinti_zza to aid knowledge transfer from other European states and the development of didactic and education material for Romanes dialects and the transmission of the Rrom_nja History and cultural contribution for Rrom_nja and Sinti_zza and by Rrom_nja and Sinti_zza.

Ensure mainstreamed funding and hiring of Romanes interpreters to provide interpretation services in public administration offices.

There is a need for an active promotion and funding of the cultural and scientific production of Rrom_nja and Sinti_zza.

Education: The culture and education ministries of the federal states:

Abolition of segregated school classes and the creation of additional educational schemes for immigrant children within regular schools.

Grassroots organisations have spelled out needs and recommendations for action aimed at achieving justice in the education system and they must be taken into consideration.

It is imperative that projamos – i.e. the organised persecution and murdering of Rrom_nja and Sinti_zza throughout Europe – is included in the school curricula, from the perspective of the survivors and their descendants.

Monitoring discrimination:

Establishing an independent investigation commission to inquire into complaints against the police in connection to issues such as racial profiling and racist contents in police files.

Creation of an anti-discrimination complaint body, which could be attached to the Berlin Office for Equal Treatment and Against Discrimination but would have the obligation to employ multilingual and Rromani-speaking staff.

Promotion and further development of Rrom_nja and Sinti_zza grassroots organisations aimed at creating counselling centres to provide professional support to Rrom_nja and Sinti_zza who experience discrimination, and to document cases of discrimination on a permanent basis.

Allow for collective action lawsuits.

Monitoring and participatory promotion:

Set up a commission comprised of Rrom_nja and Sinti_zza grassroots organisations that will be given the task of setting participatory and efficient quality standards aimed at developing, implementing and assessing promotional schemes for Rrom_nja and Sinti_zza.

b) Jewish communities in Germany³²

Due to the persecution and annihilation of the Jewish communities in Nazi Germany, the Federal Republic of Germany has committed itself to protecting and guaranteeing the security of the Jewish community and Jewish life in Germany. For this reason, the Jewish community is the only group in Germany that requires protection pursuant to Art. 1 of ICERD and whose data on discrimination in the field of hate crime is listed separately.³³

32 This section is based on a background paper on anti-Semitism in Germany by Julia Alfandari in the framework of the Parallel report under the UN Antiracism convention. Full text available under: <http://rassismusbericht.de/wp-content/uploads/Antisemitismus.pdf>,

33 BT Drucksache 17/14754, motion n° 17/14754 (to be) submitted to the Bundestag, the German parliament.

Despite a wide range of measures to roll back anti-Semitism, Jewish people in Germany experience³⁴ crimes and violence, attacks, hostility and hatred, discrimination and inequalities, all acts behind which there are all motivated by anti-Semitism. According to a wide range of studies, anti-Semitic attitudes are still a pervasive problem in German society.³⁵ As it appears from the report submitted by the independent expert panel on anti-Semitism set up by the Federal Ministry of the Interior (BMI), there is a need for an overall strategy to combat anti-Semitism.³⁶

Article 2 and 4 ICERD - Racial discrimination and hatred on racist grounds

The data collected according to the specific definition system named „politically motivated crime“ (PMC) show that over 90 per cent of the crimes and acts of violence with an anti-Semitic background can be assigned to the phenomenon of right-wing politically motivated crimes (PMC right-wing).³⁷

According to the PMC definition, the salient feature of the crimes perpetrated on anti-Semitic grounds is what is known in German law as “Volksverhetzung”(i.e. incitement of hatred against a segment of the population). The second most frequent offence is the dissemination of propaganda³⁸ through music or on Internet platforms. After the NPD (National Democratic Party of Germany), which is the main source of hate speech in Germany,³⁹ the AfD supporters (Alternative for Germany) rate second highest on xenophobia, chauvinism and trivialisation of National Socialism.⁴⁰ Under international⁴¹ as well as German Law⁴² the trivialisation and denial of the Holocaust are punishable as an incitement to hatred.

The state parties have an obligation to ascertain whether anti-Semitic statements and propaganda activities would qualify as racist incitement⁴³ against a segment of the population and prohibit any manifestation of racist hate speech by taking efficient measures to combat them.⁴⁴ Pursuant to CERD General Recommendation n° 35, various manifestations of racist hate speech in the form of spoken word, the written or the pictorial form have been recognised. Politicians and opinion leaders in particular are required not to make any racist or anti-Semitic statements.

The cases of Thilo Sarrazin and the AfD politician Jan-Ulrich Weiß provide a blatant demonstration of the considerable impact of these statements in the general public [LINK: Follow up]. Sarrazin claimed that all Jewish people have a gene in common and Jewish people from Eastern Europe are more intelligent than people of Turkish and Arab origin in Germany.⁴⁵ Weiß is currently under investigation regarding the publication of an anti-Semitic caricature on his Facebook page.⁴⁶

The right to informational self-determination: Pursuant to the right to informational self-determination, the Jewish communities have opted against the collection of demographic and socio-economic data,⁴⁷ in order to protect themselves against anti-Semitic discrimination and offences. The request submitted by the right-wing party Die Rechte, who wanted to be given statistics about the Jewish population and housing situation,⁴⁸ should therefore be seen as a threat to the protection against organised discrimination of minorities⁴⁹ and consequently as a violation of the freedom of a person (Art. 2 para. 2 in conjunction with Art. 1 para. 1 GG) and equality before the law (Art. 3 GG).

34 Bundesministerium des Innern, Politisch motivierte Kriminalität im Jahr 2013, Pressemitteilung 29.04.2014. Federal Ministry of the Interior, politically motivated crime in 2013, press statement, 29.04.2014 [“The German penal code (Strafgesetzbuch) establishes that someone is guilty of Volksverhetzung if the person:[1] in a manner that is capable of disturbing the public peace: incites hatred against segments of the population or calls for violent or arbitrary measures against them; or assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population. There are also special provisions for Holocaust denial (added in the 1990s) and speech justifying or glorifying the Nazi government 1933-1945 (recently added)”. Source: Wikipedia. <http://en.wikipedia.org/wiki/Volksverhetzung>, accessed 16 February 2015. TN]

35 BT Drucksache 17/14754, motion n° 17/14754 (to be) submitted to the Bundestag, the German parliament

36 See Drucksache 17/1700, motion n° 17/1700, (to be) submitted to the Bundestag, the German parliament, or Friedrich Ebert Stiftung (FES), “Antisemitismus Als Herausforderung für Politik und Gesellschaft”, 17.11.2009, on anti-Semitism as a challenge for politics and society.

37 19th–22nd Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, p. 9.

38 Federal Ministry of Interior, National Action Plan of the Federal Republic of Germany to Fight Racism, Xenophobia, Anti-Semitism and Related Intolerance, p. 76.

39 European Commission Against Racism and Intolerance (ECRI); Report on Germany, Neonazis and extreme right-wing groups, 5.1.2.2013.

40 Friedrich-Ebert-Stiftung (FES), Mitte-Studie: Zentrale Ergebnisse, main findings, 20.11.2014.

41 HRC, Communication No. 550/199, Faurisson v. France, Stand, 8 November 1996, CCPR/C/58/D/550/199, Abs. 9.6. und 9.7.

42 § 130 StGB Paragraph 1 and 3

43 ICCPR (international covenant on civil rights), Art. 19 para.. 3 und Art. 20 para.. 2, ICERD Art. 4.

44 CERD, General Recommendations No. 35, 26 September 2013, para 7.

45 CERD/C/82/D/48/2010, para 12.6; Zeit Online, „Alle Juden teilen ein bestimmtes Gen“, Stand 28.08.2010, <http://www.zeit.de/gesellschaft/zeitgeschehen/2010-08/sarrazin-juden-gene-migration>, on all Jews share a particular gene.

46 Der Tagesspiegel, “Ermittlungen gegen AfD-Politiker Jan-Ulrich Weiß”, on investigations against the AfD politician, state of the affairs 3.11.2014, <http://www.tagesspiegel.de/politik/antisemitische-karikatur-ermittlungen-gegen-afd-politiker-jan-ulrich-weiss/10926460.html>.

47 Jüdische Allgemeine, „Neonazis wollen wissen, wo Juden wohnen“, Stand 17.11.2014 <http://www.juedische-allgemeine.de/article/view/id/20749>, Jewish magazine, neonazis want to know where Jewish people live

48 Stadt Dortmund Drucksache Nr. 14315 – 14, City of Dortmund, motion (to be submitted)

49 Europarat, Artikel 3, Rahmenübereinkommen zum Schutz nationaler Minderheiten, Straßburg/Strasbourg, 1.II.1995

Collection of data and multiple discrimination: In the 2004 “Berlin Declaration”, the OSCE participating states, including the Federal Republic of Germany, committed themselves to “collect and maintain reliable information and statistics about anti-Semitic crimes, and other hate crimes, committed within their territory, [and] report such information periodically.”⁵⁰ Despite this obligation aimed at ensuring effective and comprehensive protection and prevention mechanisms, the implementation process has only partially been engaged. Though the various manifestations of anti-Semitism are officially recognised⁵¹, offenses on anti-Semitic grounds are not taken into consideration in the collection of data. Furthermore, cases of intersectional and/or multidimensional discrimination⁵² are not considered. Jewish people with disabilities, members of the LGBTI community and other groups that require protection under ICERD (i.e. Jewish people with Arab, Persian, or Turkish family background) are particularly exposed to discrimination and hate crimes.

Article 7 ICERD– Education on human rights: Lessons on the Holocaust are part and parcel of education curricula in Germany, but this emphasis is not sufficient to counter⁵³ anti-Semitic attitudes in a sustainable way. Priority should be given to education to combat anti-Semitism and to foster a culture of remembrance, as recommended in a study of the European Agency for Fundamental Rights (FRA) during the recent Berlin Conference on Anti-Semitism.⁵⁴ The foundation of a human rights dimension in schools, as well as in extracurricular programmes and structures, is of paramount importance in order to create and enable a discrimination-free environment for people of various origins to live and exercise their human rights.

Measures are required aimed at creating a legal foundation for the investigation and prosecution of hate crimes and offenses on anti-Semitic grounds on the Internet by representatives of political parties and organisations of citizens.

Collect detailed and inclusive data on hate crimes on anti-Semitic grounds in order to improve legal and social protections and prevention.

c) Muslims in Germany⁵⁵

Compared to other European countries, negative opinions⁵⁶ about Muslims in Germany are very widespread. According to a recent representative study, up to 60 per cent of Germans are hostile to the practicing of Islam. This negative attitude has also other implications, in terms of concrete political demands. 42 per cent of people in Western Germany and 55 per cent of people in Eastern Germany demand that the practice of Islam should be restricted.⁵⁷

In the past year, populist movements have campaigned against “foreigners”, “migrants” and first and foremost “Islam” and “Muslims” in a most stringent or subtle manner. In this context, the Pegida (“Patriot against the Islamisation of the Western world”) in Dresden gathered up to 18,000 participants.⁵⁸

Anti-Muslim hostility is therefore by no way a marginalised phenomenon; it is deeply rooted in the core of mainstream society and unifies a broad political spectrum. This was evident in the debate on circumcision in 2012. Due to strong reactions opposing the decision of the court in Cologne, which found that the ritual circumcision of boys were to be considered as a grave violation of their physical integrity and could not be justified, the Bundestag decided to adopt a law protecting the religious practice in the case of Jewish and Muslim circumcision rituals.

The Federal government decided to provide for legal clarity by insuring that core traditions of the Jewish and Muslim communities could not be prosecuted, which is a highly welcomed step. The public debate and media coverage has

50 Organisation for Security and Co-operation in Europe (OSCE), PC.DEL/347/04, Berlin Declaration, 29. 04.2004. (Second OSCE Conference on Anti-Semitism, Berlin, 28-29 April 2004), „

51 Federal Ministry of Interior, Office for the Protection of the Constitution, Report 2013, „Verfassungsschutzbericht 2013“.

52 CERD, G.C. N°. 32, 24.9.2009, CERD/C/GC/32.

53 FES, Mitte Studie; Drucksache 17/1700

54 European Agency for Fundamental Rights (FRA) – Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, November 2013; Swiss OSCE Chairmanship conclusions, 10th Anniversary of the OSCE’s Berlin Conference on Anti-Semitism, Berlin, 12 – 13.11.2014.

55 This section is based on the background paper “Antimuslimischer Rassismus”, on anti-Muslim racism by Aliyeh Yegane on behalf of INSSAN e.V. and the Network against Discrimination and Anti-Muslim Racism against Islam as part of the parallel report process. The full text can be accessed under <http://rassismusbericht.de/wp-content/uploads/Antimuslimischer-Rassismus.pdf>.

56 The concept of „islamophobia” which is commonly used in international human rights instruments is a notion that is largely rejected in Germany. The most common concepts are “antimuslimischen Rassismus”, which means “anti-Muslim racism” in German or “Muslimfeindlichkeit” which literally translates as “hostility to Islam”.

The rejection of the concept of „islamophobia” is largely due to the suffix „phobia”, - derived from Greek/Latin meaning „extreme or irrational fear or dislike of a specified thing or group”, which usually refers to an illness, rather than an intended act. Muslim organisations in the English-speaking world put forward the same arguments. For this reason, it has not been used in this text in connection to discrimination. TN

57 Findings of the study „Wahrnehmung und Akzeptanz religiöser Vielfalt”, Westfälische Wilhelms Universität Münster: http://www.uni-muenster.de/Religion-und-Politik/aktuelles/2010/dez/Gastbeitrag_Pollack.html, on the perception and acceptance of religious diversity

58 Bernhard Honnigfort, „Pegida in Dresden: 15.000 Pegida-Anhänger demonstrieren”, fr-online.de, 15. Dezember 2014, Abschn. Anhänger demonstrieren, <http://www.fr-online.de/pegida/pegida-in-dresden-15-000-pegida-anhaenger-demonstrieren,29337826,29344090.html>, on Pegida in Dresden, 15,000 Pegida-supporters demonstrate.

nevertheless reflected anti-Semitic and anti-Muslim feelings and attitude. An analysis of the debate shows that even secular and atheist positions against Jewish and Muslim circumcision traditions are not free from anti-Muslim and anti-Semitic.⁵⁹ According to a subsequent representative survey, 70 per cent of Germans oppose the circumcision law.⁶⁰

Alarming increase of hate crime against Muslims: hate crime against muslim has strongly increased in the past few years. A parliamentary inquiry concluded that an average of 21.9 „politically motivated offences targeting places of worship/mosques „ had been officially registered. This figure increased from 2012 to 2014 to 39 cases per year, amounting to up to three attacks a month. The network against discrimination and anti-Islamism led by the Association Inssan e.V. in Berlin, which is the only non-state project that systematically document anti-Muslim crime and discrimination in Germany, recorded a similar evolution in the case of Berlin. There is certainly a grey zone, taking into consideration that the majority of hate crimes are not reported to the police and political motivations often remain unmasked in the course of the investigation. Data on Anti-Muslim offences are not collected separately by the investigating authorities, so that there is a need for comprehensive and precise information about the real dimension of the phenomenon.

Muslim are first and foremost exposed to discrimination the labour market and the education system. In the European Union, every third Muslim has experienced racism in the past 12 months, the majority of Muslims do not report⁶¹ cases of racism to institutions or the authorities. Discrimination against Muslims is an area which lacks concluding research data on the ground that structures for the collection, analysis, and documentation of cases of discrimination are hardly available.

The Network against discrimination and Anti-Islamism led by the Association Inssan e.V. Berlin is up to date the only non state maintained project that systematically record anti-Muslim crime and discrimination in Germany, Data collected by the network show that the areas in which Muslims are most affected by discriminations are the education sector (29%) and the labour market (20%).

Women who wear a headscarf, particularly, are confronted with prejudices, and have very limited opportunities to have access to mainstream education and labour market⁶². In the education system, they are confronted with prejudices, which contributes to the fact that the majority of Muslims attend schools leading to a certificates with a lower level and are often demotivated in their strive for higher levels of education⁶³.

A dynamic understanding of racism encompasses racism and anti-Muslim hostility. Protection against Anti-Muslim racism and Anti-Islam hostility is an area covered by the Anti-racism convention, as being a form of racism that is connected to a different characteristics, i.e. religion, from which difference and inferiority are being construed on the basis of racist assignation. Though the anti-racism convention simply mentions “race, colour, descent, or national or ethnic origin”, the racist marginalisation of Muslims falls within the scope of the Convention: the construed category of the alleged “races” is derived from a supposed “difference” and “inferiority” of the Muslim religion and culture.

Documented cases of anti-Muslim racist discrimination and hate crime are connected are closely associated with real or assigned religious practices or symbol of Islam. This is the reason why people who are members of other religious communities, such as the Sikhs or whose appearance is considered as “oriental”, “Arab” or as having a “Muslim” character, are also victims of anti-Muslim discrimination⁶⁴.

In addition, there is a need for a dynamic, updated and targeted approach that take into consideration the comprehensive framework and guidance provided by the Anti-Racism Convention and the intersectional dimension indicated in the General Recommendation N° 32. This means that the various aspects of discrimination are often interconnected and must be considered as such. This also applies to “discrimination on the ground of gender or religion.”⁶⁵

59 Çetin, Z.; Voß, H.J.; Wolter, S.A., "Interventionen gegen die deutsche Beschneidungsdebatte", edition assemblage, Münster, 2012, on interventions against the debate on circumcision in Germany

60 „Studie: Mehrheit der Deutschen gegen Beschneidungsgesetz“, Spiegel Online, 22. Dezember 2012, <http://www.spiegel.de/politik/deutschland/studie-mehrheit-der-deutschen-gegen-beschneidungsgesetz-a-874473.html>. A study on the majority of Germans being against the circumcision law.

61 FRA, Data in Focus Report – Muslims, 2009, http://fra.europa.eu/sites/default/files/fra_uploads/448-EU-MIDIS_MUSLIMS_EN.pdf

62 Netzwerk gegen Diskriminierung von Muslimen: 2011; Interkultureller Rat in Deutschland: 2010; IDA: 2007; Senatsverwaltung für Integration, Arbeit und Soziales 2009, OSI 2010. Network against anti-Muslim discrimination, 2011, Intercultural council in Germany, Senate administration for integration, labour and social affairs in Berlin

63 ADS 2013, p. 109, TIES 2009; Yegane Arani 2010. Among other sources: Federal Anti-Discrimination Agency

64 AN: There are some documented cases in which for example a Indian, non Muslim father was wrongly thought to his daughter’s husband, despite the age difference, as they went to open a bank account for her. This could be related to the image of the „oppressed Muslim wife“. Though the father is not of the Muslim faith, he has in his case been exposed to anti-Islam discrimination.

65 CERD, General Recommendation Nr.32: „(...) the Committee addresses situations of double or multiple discrimination – such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in Article 1 of the Convention.“

It is evident that as a specific group of people Muslims are a specific group of people that is exposed to marginalisation, discrimination and violence. Despite Germany's historical responsibility to act preventively against racism in connection with inhuman attitudes and practices that show contempt for human values, anti-Muslim racism and hate crimes have not been given adequate attention. In the context of the racist murders perpetrated by the National Socialist Underground (NSU), insufficient attention has been paid to the fact that the majority of the victims were Muslims, which reflects the mounting anti-Muslim direction taken by extreme right-wing groups. Furthermore, despite the uncovering of administrative shortcomings [see: page 27, The NSU crime spree] during the investigation, the demand of the NSU Commission that a racist motivation shall be taken into consideration by the police authorities in cases such as the burning of the Mevlana Mosque in 2012 in Berlin has been once again pushed aside.

Promotion of research and studies on anti-Muslim racism and hostility against Islam.

Implementation of the General Recommendation N°15 by the Committee against Racial Discrimination (CERD) with the objective of taking into consideration racist hate speech in the interpretation and implementation of the offense of incitement against segments of the population (Sec. 130 StGB).

Separate collection and documentation of data on anti-Muslim criminal incidents and discrimination.

Establishment of accessible anti-discrimination facilities at which Muslims can receive legal information and guidance.

Specific diversity training schemes as part of further education programmes and organisation development (school development) in the education system focussing on diversity with respect to religion and beliefs with special emphasis on anti-Muslim racism.

Inclusion of the diversity with respect to religion and beliefs as an aspect of diversity in measures and policies aimed at fostering diversity at the workplace and in administrative bodies with special emphasis on anti-Muslim racism.

d) Black⁶⁶ People⁶⁷ in Germany⁶⁸

In Germany, Black People are exposed to everyday racism as well as structural racism. The federal government states in its report that Black People in Germany as members of a visible minority, Black people in Germany are particularly vulnerable to experiencing everyday racism as well as violence.⁶⁹ However it fell short of addressing structural and institutional racism (item 47 of the State Report). This indicates that only a very narrowly construed understanding of racism has been applied, one in which the focus is on intentional racism only.

Black People are not officially recognised as a group particularly exposed to racism. As a result, there are hardly any scientific studies about discrimination against Black People as a group in areas such as the labour market, the education system, the health system and the housing market, that could bring some light about their life reality. Single studies such as EU-MIDIS (European Union minorities and discrimination survey) conducted by the FRA (European Union Agency for Fundamental Rights) in the whole of Europe or studies in the education field show that, Black People together with Rrom_nja and Sinti_zza belong to groups that are particularly exposed to cases of discrimination, physical attacks, and unfair treatment at public offices, in the labour market and in the education sector.

Demographic data: The CERD has repeatedly underlined the necessity to gather data on the population structure in order to ensure effective protection against racism⁶⁹. [compare: LINK data gathering] There is no officially gathered demographic data on the number of Black people living in Germany. More precisely, the characteristic used,

66 „B“ in „Black“ is written in capital letters so as to indicate that it is a construed attribution and not an actual „characteristic“ that could be derived from skin colour. In this context, it is not related to what could be considered as an „ethnic group“. „White“ is no political counterpart to tradition and practice of the anti-racist resistance that would be generated by the writing of „B“ in „Black“ in capital letter. This concept is written in lower case, for the reason that it is also a construed concept, though it does not entail any component referring to any resistance movement. (inspired by: Eggers, Maureen Maisha/Kilomba, Grada/Piesche, Peggy/Arndt, Susan (Hg) 2005: Mythen, Masken und Subjekte. Münster: Unrast Verlag, S. 13).

67 General Recommendation N°. 34. The Expert committee recommends that self-definition and self-attribution should be the paramount criteria in all issues concerning People of African Descent.

68 This section is based on contents included in the background paper „Rassismus gegen Schwarze Menschen“, submitted by Damaris Uzoma on behalf of the Initiative Schwarze Menschen in Deutschland, in the framework of the parallel report process. The topic is „racism against Black People in Germany“ on Black People in Germany. The full text can be accessed under <http://rassismusbericht.de/wp-content/uploads/Rassismus-gegen-Schwarze-Menschen.pdf> and Eddie Bruce Jones: full text can be accessed under <http://rassismusbericht.de/wp-content/uploads/German-policing-at-the-intersection-race-gender-migrant-status-and-mental-health.pdf>

69 For example General Recommendation IV, General Recommendation XXIV para. 1, Compilation of Guidelines On The Form and Content of Reports To Be Submitted By The Parties To The International Human Rights Treaties, para. 8

“African migration background⁷⁰”, is not sufficient for collecting data on all Black people living in Germany. First, this concept does not include the third generation⁷¹ of people who migrated from Africa. Secondly, the Diasporan ways leading to migration to Germany are manifold⁷².

Institutional racism: According to the Federal government, racism is demonstrated by “prejudices” and “discriminatory attitudes” in the population⁷³. The denial of structural racism leads to a limitation of protection against discrimination.

a) Pursuant to § 2 AGG, the scope of the General Equal Treatment Act (AGG) is restricted to the interaction of private actors and actions of the State under private law. Legal acts of State institutions, e.g. in the education sector, are not subjected to the prohibition of discrimination under AGG. Germany does not meet the requirement laid down in the “EU Antiracism directive” (2000/43/EG), which does not foresee such a limitation.⁷⁴

b) Racial Profiling and police violence on racist ground: Black People are exposed to police control in the absence of reasonable suspicion. Police violence on racist grounds often follows on from racial profiling. Beside racist insults and particularly brutal procedures, there are many cases in which Black People are the actual victims or witness of what happens and criminalised and arrested⁷⁵ by the police officers that have been called to the scene (VERWEIS Racial Profiling)

Insufficient protection against institutional racism: The Federal government takes the stand that institutional racism does not exist.⁷⁶ It only recognises “prejudices” and “discriminatory attitudes” within the population.⁷⁷ The denial of structural racism leads to a limitation of protection against discrimination, which remains below the standards as spelled out under ICERD, including Art. 1, 2, 4 and 5.

The police is body which is a major cause of institutional discrimination for groups that require protection under ICERD, including Black People and People of Colour in Germany. In this context, a distinction has to be made between police violence on racist grounds and structural forms of institutional racism.

Article 4 a ICERD Accounting for Racial Discrimination in Criminal Law (Article 4)

Being members of a visible minority, Black People are particularly exposed to hate crime. In German criminal law there is no specific provision to explicitly record racist motivation.⁷⁸ Notwithstanding the absence of a specific language to target racism in criminal law, victims are often the aim of an attack on the ground of characteristics that cannot be altered for being part of the very essence of the personality, so that the extremely heavy wounds that affect the psyche and soul of the particular victim following a racist attack can be seen as a negative signal for the whole.⁷⁹

In the current statistics of the criminal police, there is no indication of the number of Black People who have been the “victims” of racially motivated offenses. Therefore, it is not possible to identify the places where Black People are particularly at risk from becoming the targets of racist attacks.

Effective legal protection (Article 6)

In order for the AGG to be able to provide effective protection against discrimination, those people directly affected need to be able to report a racist incident and bring a case to before a court of law. Usually this does not happen because the people affected are not aware of their rights. Additionally, according to the AGG, only individuals are allowed to lodge a case - collective action lawsuits are not possible. Therefore the individual is liable for all legal costs should the case be lost. This financial risk is usually far too high for the victim (who is usually financially less stable than the perpetrator), and therefore they do not take on the risk of initiating legal proceedings against the perpetrators.

70 Compare: microcensus 2013 https://www.destatis.de/DE/Publikationen/Thematisch/Bevoelkerung/MigrationIntegration/Migrationshintergrund2010220137004.pdf;jsessionid=3EA1AC5452E60A5A880D6654A663A7B7.cae3?__blob=publicationFile, on population, migration, migration background

71 “According to a common definition, the population group with a migration background consists of all persons who have immigrated into the territory of today’s Federal Republic of Germany after 1949, and of all foreigners born in Germany and all persons born in Germany who have at least one parent who immigrated into the country or was born as a foreigner in Germany.”

72 Black People migrate among other countries from the USA, France, the UK, the Caribbeans and South-America, but also from Scandinavia or Eastern Europe to Germany. These people are not included in the category of “African migrant background”

73 Particularly denied in relation to structural racism in the police : Bundestagsdrucksache 18/1629.

74 To have an insight into the communication between the European Commission and the Federal government, see for example under: <http://www.bug-ev.org/themen/recht/agg-vertragsverletzungsverfahren/antirassismusrichtlinie.htm>

75 Compare p. 2 of Chronicle

76 Particularly denied in relation to structural racism in the police : Bundestagsdrucksache 18/1629.

77 Ibid.

78 Even if in the legal practice pursuant to § 46 para. 2 StGB, the motives and objectives of the perpetrators as well as their convictions so far as it can be derived from the act, have to be taken into consideration when fixing a penalty.

79 Sotiriadis. Kritische Justiz, Heft 3/2014, p. 266, on the Justice system from a critical perspective.

e) Intersectional discrimination: the example of racism against lesbian, gay, bisexual and intersex people who belong to groups requiring protection under ICERD ⁸⁰

Although the Committee already insisted in the General Recommendation N° 32 of 24 September 2009 that intersectionality has to be taken into consideration when discrimination occurs on grounds of characteristics that are connected to the “ground” listed under art. 1 ICERD, Germany is far from fulfilling its obligation to ensure the resulting level of protection. Racist and hetero- as well as cissexist ⁸¹ discrimination against people who require protection under art. 1 ICERD and belong to one or several LGBTI communities highlights existing gaps in the protection against discrimination.

Police (Art. 2a and Art. 5b ICERD): Cases of discrimination reported to NGOs which offer counselling and anti-discrimination support demonstrate that no effective protection of constitutionally entrenched rights of the most vulnerable members of society is possible without regulating police laws at federal and state levels. In this way, not only external appearance, but also gender and gender identity that are not considered as standard norms in society are used to justify suspicion and police controls, establishing a direct connection between departing from the norm and delinquency. In this context, it becomes very apparent that individuals and groups with multiple identities are confronted with more severe conditions: Black and Trans* People ⁸² in particular are often stopped by the police, asked to produce their identity documents and searched without any noticeable ground or founded suspicion. This racial and sexual profiling can lead to further instances of discrimination. In the context of such selective police checks and searches attempted and enforced genital checks of Trans* are being performed. Police officers justify this by citing the necessity to ascertain a persons gender identity: THIS pretext highlights the specific vulnerability of persons who belong to groups who require protection under ICERD as well as one or more LGBTQI communities.

This situation is not without consequence for the recruitment practice within the police. The interwoven effects of hetero- and cissexims as well as racism are overwhelming. Applications submitted by Trans* and Inter* who are exposed to racism are most of the time unsuccessful. This is due to the fact that candidates are confronted with multiple discrimination: the examination of breast and testicles are all parts of test that candidates have to undergo pursuant to police regulation (Polizeidienstvorschrift PVD) 300. Based on the same regulation, Trans* and Inter* are deemed unfit for service for allegedly unstable hormone levels. These specific obstacles have to be added to the barriers preventing candidates who belong to groups requiring protection under ICERD to be able to even join the police force. As a consequence, Trans* and Inter* who experience racism face particular forms of exclusion, which hinders the recruitment in the police force of Trans* and Inter* who experience racism.

Multiple discrimination and asylum laws in practice: The current practice of providing accommodation to LGBTI asylum seekers without protection against discrimination constitutes a violation of article 3 of the European Human Rights Convention (prohibition of torture), article 5 b CERD, article 18 of the EU guidelines on the reception conditions of asylum seekers. Germany does not take the necessary measures for asylum seekers to be protected from (sexual) harassment assaults, and rape.

Outreach Counselling services report that an increasing number of refugees seek advice after being confronted with violence and discrimination in the refugee accommodation where they have been living during the last years. They explain that the person concerned finds herself in a difficult situation: “The persons who have not been outed fear of being identified as LGBTQI and facing discrimination.”

The persons who have already been outed live in the constant remembrance of the “physical and psychological violence, sexual harassment that other inhabitants of asylum homes made them suffer”. There is a growing number of asylum seekers who reports on being subject to marginalisation, violence and discrimination, by other

80 This section is based on a background paper on anti-Semitism in Germany, written by Beatrice Cobbinah on behalf of LesMigraS e. V. on “Lesbian, Gay- Trans-, Bi- and Intersex People of Colour who are exposed to Racism”. Full text available under <http://rassismusbericht.de/wp-content/uploads/Rassismus-gegen-LSBTQI-of-Color.pdf>

81 Cissexism refers to the rejection, marginalisation and discrimination of trans*people by people whose sexual identity harmonises with the gender they were assigned at birth and/or has never been questioned.

82 Trans* encompasses a large variety of people, including Trans*People and a wide range of selfdefinitions and ways of life of people who cannot or only partly identified with the the gender they were assigned at birth, e.g. Transgender, Transsexual People, Transidente, Polygender.

inhabitants or/and staff in the accommodation centres and their fear of being outed and subsequent reactions, ranging from discrimination to violence, at their place of living.

As a state party to international conventions and agreements on adequate accommodation, treatment and protection, Germany has committed itself to take the necessary measures to protect asylum seekers from (sexual) harassment, assaults, and rape during their stay in the accommodation centres. This particularly applies when asylum seekers have been placed under the care and custody of the State.

This issue is of a crucial importance for LGBTI who are exposed to specific forms of violence and sexual abuse. If asylum seekers are also Lesbian, Gay, Bisexual, Trans* and Inter*, this means that they face multiple discrimination, on account of their status as asylum seekers, and on the other hand, due to their sexual or/and gender identity. Trans* asylum seekers are confronted with additional difficulties, which can have extremely negative impacts, given the fact that they must have access to trans*-specific health services. Because they have limited access to health care, they are at risk of suffering from the consequences of an interrupted hormonal treatment. Trans* asylum seekers must have access to trans*-specific medical care at any time, first and foremost during a transition phase, in order to avoid negative impacts on health and psyche.

In the Concluding Observation of 31 January 2014 the UN-Committee expressed their concern for the rights of children: “[Children with a migration background in the state party are still confronted with discrimination, especially in the education system. [22]” Experiences of racist discrimination are aggravated by additional factors, such as gender identity. Lesbian, Gay, Bisexual and Trans* youth are deeply affected by the effect of intersectional and multi-dimensional discrimination. This clearly demonstrates a survey conducted by LesMigraS. While 27,9 per cent of all interviewees indicated that they often have to face discrimination in the education sector, 33 per cent of them reported that they are also confronted with discrimination, and experienced multiple discrimination in the education system. Questioned about their experience in the education sector, 45 per cent of the interviewees have been at least mobbed once or several times by fellow students. 72,6 per cent of the Lesbian, Gay, Bisexual and Trans* interviewees pointed out that they have been given lesser marks on account of the Lesbian or bisexual way of life at least once.⁸³

The most interviewees agreed that there is a need for sensitization on sexual diversity and ways of life in the education sector. These findings coincide with the conclusions of a survey conducted by the European Agency for Fundamental Rights (FRA) on discrimination against LGBT* people: homo- and transphobia is an extremely serious source of concern in German schools.⁸⁴ This situation can be best exemplified by the following figures: 68 per cent of the interviewees have concealed their sexual orientation during the school days. Around 77 per cent of the interviewees have had personal experience of negative comments or treatment at school on ground of their sexual orientation. Over 70 per cent of all interviewees in each of the LGBT groups had witnessed negative comments or treatment imposed on a fellow student for the reason that the person concerned had been identified as a member of the LGBT community. Only 4 per cent of the LGBT* interviewees had disclosed their sexual orientation at school.

The very specific form of intersectional vulnerability experienced by LGBTQI, who also belong to groups that require protection under ICERD has to be addressed. Data on discrimination have to be collected, particularly in view of obtaining a comprehensive picture of hate crime perpetrated against these groups.

Studies on experiences with and complaints about discrimination conducted by state and federal anti-discrimination offices should incorporate a greater emphasis on intersectional racial discrimination.

Racial and sexual profiling as well as discriminatory hiring practices are human rights violations, especially against article 14 of the European Convention on Human Rights Convention (ECHR), article 2 paragraph 1 and article 26 of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As a result, all the laws that legitimate discriminatory recruitment practices and the so-called police control not based on any concrete suspicion of wrongdoing should be deleted or amended. This review process should target police regulation and laws at federal as well as state levels.

⁸³ LesMigras-Studie, 2012, .. 81.

⁸⁴ EU LGBT survey – European Union lesbian, gay, bisexual and transgender survey – Results at a glance, 2013.

III. Re Article 3 ICERD (No segregation or apartheid)

Access to housing and education are two areas of blatant segregation in Germany. In both cases, legal protection is inadequate and article 3 of the Convention does not offer efficient protection in the national legal system.

Housing:

In the General Recommendation XIX, the committee explained the meaning of segregation under article 3 which does not presuppose any intended action by the State. Regarding housing, it observed that segregation can be a by-product of private action.

Sociological works and testing-processes regularly demonstrate that members of minorities looking for housing are discriminated under article 1 and 2 of the Convention and that is almost impossible for them to find accommodation in specific residential areas. This particularly applies to people whom landlords and landladies perceive as being members of the Muslims community.⁸⁵

Many of the concerned are reluctant to bring the matter to court despite blatant discrimination. This is best exemplified by the case of a Black couple who was denied the right to visit a flat on the ground that the flat could not be rented to Black people.⁸⁶

The AGG offers no protection. As the European Commission already observation⁸⁷ § 19 § 19, 3 violates European law. This standard gives the possibility to the lessors to exercise discrimination in the choice of their tenants. This is based on the conception of how it is possible to "create and maintain stable housing structures and balanced economic, social and cultural conditions."

In a communication with the federal government, the commission had stated that it is not certain that this norm conforms with the anti-racism guideline (2000/43/EG). Besides, § 19 IV AGG hinders an adequate implementation of the prohibition by granting exemption to lessors with less than 50 flats[siehe hierzu: V. 4. c) Teilnahme und Teilhabe am Berufs- und Wirtschaftsleben – Mangelnder Rechtsschutz: Stärkung des Allgemeinen Gleichbehandlungsgesetzes notwendig]

The standard underpinning prohibition of segregation pursuant to article 3 of ICERD has to be anchored and implemented under German law. To this aim, § 19 IV AGG has to be removed without replacement.

Education:

One of the features of the German education system is the permanence of segregation and racial discrimination. Compared to other European countries people who require protection under ICERD are disproportionately confronted with discrimination [See V. 4. b) Racial discrimination and segregation in the education system].

85 As an example: „Erfahrungen von türkischen und türkeistämmigen Migranten bei der Wohnungssuche in Berlin“(2008) der Soziologin Emsal Kiliç on the experiences made by Turks and People with a Turkish migration background on the housing market

86 On the court decision: : http://www.justiz.nrw.de/nrwe/olgs/koeln/j2010/24_U_51_09urteil20100119.html .

87 European Commission to the Federal Government, 23.10.2007 and 29.10.2009 pursuant to Art.I 266 EG-Vertrag, because of incomplete implementation of the guideline

IV. Re: Article 4 ICERD (Combating racist propaganda and organisations)

1. Re Article 4 a ICERD (Effectiveness of criminal laws)

There is a need for a comprehensive implementation of Art. 4 ICERD. The legal foundation and implementation of criminal laws and regulations in criminal court proceedings can be analysed in light of the efforts that have been made to take into consideration the communication of 26 February 2013 (No. 48/2010) by the Committee. The problematic issue is the concrete implementation of the regulation and investigation procedures. This is best exemplified by the role of the state in connection with the racist serial murders committed by the so-called "National Socialist Underground".

a) Implementation of regulations in the investigation process

Data collected by the Federal criminal police

[For the problematic issue of data collection see V.1. Criminal provisions and their effectiveness]

CERD Communication No. 48/2010 (Termination of the investigation against Sarrazin) and Follow-Up⁸⁸

The German legal practice suffers from a double deficit: an insufficient understanding of racism and a lack of knowledge regarding the implementation of the Convention.⁸⁹ The Sarrazin case epitomises the issues raised before and after the communication by the Committee of 26 February 2013 (N° 48/2010). For the first time, the Committee reproved Germany for violations against Art. 2 paragraph 1 (d), 4 and 5 of ICERD for failing to conduct an efficient investigation of the matter.

Even after the Committee sent its communication, the Berlin prosecutor failed to investigate Sarrazin for insults pursuant to to Sec. 185 or incitement pursuant to Sec. 130 StGB (German Criminal Code). This amounts to saying that the German courts have not checked Sarrazin's statements for violations of the Anti-Racism Convention and the established case law⁹⁰ of the European Court of Human Rights.

Furthermore, there seems to be no reason for why the German Federal Republic did not inform the general public about this communication although it had been requested to do so. On the contrary, the most influential media only mentioned the communication casually, if at all. The Committee had called upon Germany to submit a report within 90 days about the measures taken to implement the communication.

The federal government only answered with a verbal note⁹¹ on 1 July 2013. In this document, the federal government reported that it had passed on the communication to the relevant ministries for Justice of the Länder (federal states). To date, no information has been disclosed about the response given by the ministries of the Länder and whether they reacted at all. The federal government also considered whether they should check on the criminal liability (Strafbewehrung) of Sarrazin's statements in light of the communication by the Committee. Once again, it clearly appears that no information has been given on the state of the examination, whether the procedure has already been terminated and which conclusions were drawn from the whole process.

A major cause of concern is the book written by Sarrazin *Deutschland schafft sich ab* (translated as „Germany Is Doing Away With Itself“, „Germany Makes Itself Redundant“ or „Germany Is Abolishing Itself“) in which he develops similar theses⁹² and which has become the bestselling non-fiction book of the post-1945 era⁹³. The prosecutor's office saw no ground for a criminal investigation⁹⁴ of Sarrazin for insults or incitement. The reprimand by the Committee requiring examination also applied to Sarrazin's book. Reference to the right to freedom of speech is not sufficient grounds for justifying why the investigation had to be terminated. The approach of the prosecutor's office lay below the level of protection required under the Anti-Racism Convention and considering European Court for Human Rights case law. In this respect, the European Court for Human Rights had given clear guidance: a dif-

88 This section is based on a background paper „Der Fall Sarrazin und das Follow-up“ by Cengiz Barskanmaz

89 Critical approach by Payandeh, Mehrdad, Die Entscheidung des UN-Ausschusses gegen Rassendiskriminierung im Fall Sarrazin, in *Juristische Zeitung* 2013, 980 ff on the decision of the Committee on the Elimination of Racial Discrimination over the case Sarrazin.

90 ECtHR, dec. n°15948/03, 10.7.2008, – Soulas v. Frankreich; ECtHR, dec. n° 15615/07, 16.7.2009, n° 15615/07 – Féret v. Belgien; ECtHR, dec. n° 18788/09, 20.4.2010, Nr. – Le Pen v. Frankreich; ECtHR, dec. n° 23131/03, Norwood v. United Kingdom. 16.11.2004

91 Permanent Mission of the Federal Republic of Germany, „CERD-TBB_Antwort.pdf“, accessed 4 February 2015, http://mediendienst-integration.de/fileadmin/Dateien/CERD-TBB_Antwort.pdf.

92 See Foroutan, Naika (Hg.) (2010): Sarrazins Thesen auf dem Prüfstand. Ein empirischer Gegenentwurf zu Thilo Sarrazins Thesen zu Muslimen in Deutschland, Humboldt-Universität of Berlin, <http://www.heyemat.hu-berlin.de/sarrazin2010> A critical analysis of Sarrazin's thesis. Empirical study, as an alternative approach to Sarrazin's thesis on Muslims in Germany (last accessed 9.9.2014)

93 1,2 million copies had already been sold by mid 2012

94 Compare with pending case Azize Tank and Gabriele Gün Tank v. Germany before the Committee

ferentiation is necessary and has to be scaled up according the offence with or without a racist group.⁹⁵ It is therefore necessary to investigate racist offences pursuant to Art. 14 ECHR with increased care and extreme vigilance.

In addition, there are some doubts as to whether the prosecutor's office has taken the decision of the Federal Constitutional Court⁹⁶ into due consideration. Regarding the so-called "Rudolph Heß Remembrance Day" in connection to Sec. 130 StGB, the court found that protection of public peace/order should be interpreted as "protection of a peaceful environment". "Disturbing the peace" is not a basis that could constitute an offence according to the Federal Constitutional Court⁹⁷. It is an assessment of the "value of an incident so as to determine whether it should be subject to prosecution and exclude it in the present case taking into consideration constitutional values, criteria and requirements". Indisputably, the prosecutor has allowed for a scope of discretion making it possible for Sarrazin to be prosecuted.

Unfortunately, the trivialisation of racist hate speech is a hindrance to prosecution, the prosecutor's office being an obstacle for its own investigation. Racist hate speech directly affects human dignity and therefore prevails over freedom of speech, as the Committee specified in its Recommendation N° 35. This interpretation is also included in the jurisdiction of the European Court for Human Rights⁹⁸. The prosecutor has so far not paid due attention to this aspect.

The prosecutor has so far not paid due attention to this aspect. With a view to Sec. 130 StGB and the necessary reviewing process, one could also consider introducing an interpretation that would conform with the framework decision⁹⁹ on combating discrimination. The European Union (EU) Framework Decision No. 2008/913/JI. The European Union (EU) Framework Decision No. 2008/913/JI¹⁰⁰ takes a very direct approach and requires efficient protection; sanctions have to be adequate and should be a deterrent to crime.

For this reason, the prosecutor's statement about the importance of public debate is no convincing argument. In addition, the prosecutor's office failed to take into consideration the conclusion drawn by the Committee about the racist nature of Sarrazin's statements. Therefore, there is a wide gap between the way the prosecutor's office understands racism and the views of the Committee on the topic.

The Sarrazin case epitomises how important it is to keep in mind the guidance provided by the Anti-Racism Convention; it is necessary to combat all forms of racism. As a result, obvious racist views on superiority are to be considered as one aspect, without losing sight of views on construed differences between cultures and religion, on the basis of which "other cultures or religions" are stigmatised on a racist grounds and considered to be of lesser value. The Committee has underlined the importance of this twofold approach in his General Observation n° 32 (Rz. 7).

German prosecution institutions would be well advised to no longer let these forms of cultural racism go unchecked. This should be all the more the case when the general public believes that Sarrazin's theses are protected under freedom of speech. All in all, the obligation to protect vulnerable groups against discrimination under Art. 1 para. 4 ICERD is the core statement of the anti-racism convention.

It is necessary to call upon the federal government to report on how far he implemented the measures listed in the verbal note. The ministries for justice of the federal states and the government must provide information about the answers they have given about future possibility for actions aimed at prosecuting the perpetrators of racist hate crimes. In addition, the government has to be asked whether an examination of Sarrazin's statements in the light of the communication by the Committee has led to any conclusion.

The government, including the Ministry of Justice is to be asked whether the prosecutor's office has been required to explain why it departs from the conclusion of the Committee, which found that Sarrazin's utterances have racist characteristics and therefore failed to prosecute Sarrazin.

Regarding German criminal law, the federal government should be asked to provide information on the concrete measures it has taken to delete "disturbing the public peace" from Sec. 130 German Criminal Code.

The German Federal Government should be asked whether the decisions of the European Court for human rights have been taken into consideration by the prosecution authorities with a view of establishing a distinction between crime with a racist basis and without a racist basis.

95 Compare ECtHR, n° 55523/00, dec. 26.7.2007, – Angelova and Iliev vs. Bulgarien; ECtHR, n°. 43606/04, dec. 23.10.2012, – Yotova/Bulgaria, including Rn. 104–111. BVerfG, dec. n° 1 BvR 2150/08, 4.11.2009, = BVerfGE 124, 300, 334 f., and more especially 341.

96 As an example among many other sources: ECtHR, dec. n° 23131/03, 16.11.2004 – Norwood/United Kingdom; see BVerfG, n° 2179/09, 24.9.2009, 2 BvR – "Polen-Invasion" = Neue Juristische Wochenschrift (NJW) 2009, 3503; BVerfG, dec. n°. 1 BvR 2150/08, 4.11.2009, = BVerfGE 124, 300

98 With the reviewed version of Sec. 130 StGB, the Framework decision 2008/913/JI was implemented. The Framework decision of on combating certain forms and expressions of racism and xenophobia by means of criminal law, was adopted by the Council of the European Union on 28 November 2008, ABl. L 328/5.

99 See also: CERD, Communication n° 36/2006, 8.8.2007, Nr. – P.S.N. v. Denmark on "interface of race and religion".

100 Relevant: General Recommendations n° 8, 11, 22, 23, 24, 27, 30, 32 and 34.

b) The NSU crime spree and the role of the State¹⁰¹

For the first time in the history of the Federal Republic of Germany, the parliaments (Landtage) of three federal states set up simultaneously four parliamentary investigation commissions, one in each state (i.e. Thuringia, Saxony and Bavaria) in order to investigate into the role of the security bodies in connection with the racist crime spree that went on, spreading death all over the country. A fifth investigative commission that was setup by the Landtag of North-Rhine-Westphalia took on its work in December 2014. This accounts for the scope of the scandal caused by revelations about an extreme right-wing terror group called the "NSU" (National Socialist Underground), despite massive obstructions impeding the work of the commissions and their investigations.

In November 2011, it came out that the NSU had been able to commit the most serious crime throughout the whole country without being identified for a period of ten years. The group, which allegedly consisted of three members, had been able to murder, unchecked, at least nine men, small-scale entrepreneurs with a Turkish or Greek migration background, by shooting them down in their own shops. They did not choose their victims at random. They perfectly knew whom they were aiming at.

The last murder they committed was the shooting of a female police officer in 2007. She and her alleged murderers came from the same region and the motive has remained unclear. This last murder uncovered links between police officers in Baden-Württemberg and the German Ku-Klux-Klan: the squad leader of the murdered police-woman was an active member of the Klan.

The NSU crime spree exposed deep-rooted and widespread institutional racism in Germany

The police, media and prosecutors paid particular attention to the NSU crime spree. However, what really became apparent was the fact that racist attitudes are deep-rooted in the institutions involved. Though family members repeatedly pointed out that the crime could have a racist motive, police, the prosecutor's office and the media did not seriously consider this. On the contrary, the family members themselves were subject to suspicion and accusations. The media failed to take a critical stand without taking into consideration the perspective of the victims, which manifests in the expression „Döner murders“ used in the press. This is a sad confirmation of the deep-rooted institutional racism that NGOs, migrant organisations and victims of racist violence have decried for years. And even worse, this deep-rooted institutional racism continues to be denied. Two of the inquiry commissions have submitted their report, since the beginning of the investigation in 2011. They gave a very gloomy picture of the work of the security bodies. The situation amounts to a disaster.¹⁰²

During the investigation into the murders of nine immigrants, the authorities believed that only immigrants could have possibly perpetrated the crimes. They targeted the victims' families, or organised crime involved in the drug trade, or political organisations from Turkey. When a reconstruction of the investigation was carried out, not only racist assignation in the perpetrators' profile came to light. Basic presumptions against migrants were also uncovered at various levels of the security bodies. Migrants are under general suspicion. For this reason, the relatives of the victims who were under general suspicion were interviewed by the police who for years exclusively aimed at establishing a connection between the murders and migrant victims. Various methods were used to relate the murders to organised crime. In addition, though there were more than sufficient grounds to suspect a racist motive behind the killing, a racist basis was discarded and from the beginning, testimonies of witnesses underpinning this theory were systematically discarded. Although the investigative committees and the media coverage shed light onto the investigation procedure, the federal government refuses to officially recognise that institutional racism is a source of concern and will not appropriate measures to combat it.

Failure to fulfil the obligation to protect: The police do not investigate violent crime on racist grounds

In 2006, two demonstrations were organised by migrant organisations in Dortmund following the murder of Halil Yozgat. It was a gathering of over 2,000 of participants, mostly people of Turkish descent, chanting "Not a 10th victim!" The victim's family clearly voiced their suspicion of a racist motive. Even at this point, the authorities ignored the victim's family. The NSU's killing spree clearly shows that the German state does not ensure that groups that are exposed to racism and need protection under the ICRD receive such protection. The state cannot protect these groups for the reason that the authorities systematically exclude racism as possible grounds for violent crime. There is a plethora of individual cases showing that members of the relevant authorities do not investigate rac-

¹⁰¹ This section is based on a background paper "Die rassistische Mordserie der NSU und die Rolle des Staates" (on NSU's racist crime spree in Germany"), by Dr. Bilgin Ayata, written in the framework of the parallel report process. Full text available under: <http://rassismusbericht.de/wp-content/uploads/Die-rassistische-Mordserie-des-NSU-und-die-Rolle-des-Staates.pdf>

¹⁰² The final report of the Investigation Committee of the Bundestag is available online and can be accessed under: <http://dipbt.bundestag.de/dip21/btd/17/146/1714600.pdf>, as well as the final report of the NSU investigation committee set up by the federal state of Thuringia: <http://www.thueringer-landtag.de/imperia/md/content/landtag/aktuell/2014/drs58080.pdf>

ism on their own initiative. But this time, for the first time, it was possible to document it exhaustively as a response to a killing spree. What becomes apparent is the very real vulnerability of migrants, which is not casual but the result of deliberate actions. Migrants are denied protection. As a result, racist perpetrators are able to commit murders against groups that require protection without fear of prosecution and rely on the fact that racism in the state's administrative bodies is largely tolerated, even actively fostered.

Inadequate investigation and measures to combat racism

Chancellor Merkel condemned the NSU's violent murders and promised a rapid and speedy investigation. The federal inquiry committee concluded in its report that the killing could have been prevented and described the work of the security authorities as a failure of the state. The investigative committee set up by the Thuringian Landtag argued that there had been errors making them suspect that the Thuringian security authorities had deliberately sabotaged the investigation. This means that state authorities bear part of the responsibility for the NSU crimes as complicit enablers.

It is necessary to assert to which extent this responsibility reaches beyond the scope of the inquiry into the NSU murder spree. Criminal investigations are required. Despite these facts, no member of staff belonging to one of the security authorities involved had to account for his action or failing to act. In addition, no legal action has been intended against the officers who destroyed records, withholding information from the investigative commissions. On 4 November, over 300 files were destroyed in various ministries by the intelligence agencies in charge of protecting the country against any violation against the constitution.

Instead of an investigation, the government took measures through which the attributions and power of the very institution that played a pivotal role in the non-investigation of the murders were even extended: this institution is called the "Verfassungsschutz", i.e. the intelligence agency in charge of protecting the country against any violation of the German Basic Law.

By choosing such a course of action, the state fails to assume – active and passive - responsibility of the murder spree and sends out a clear signal to all state bodies: racism in their midst is tolerated and should not be subject to prosecution. The government has used the NSU as an argument to introduce more stringent security and police laws to combat terrorism. Instead of concrete measures against institutional racism in the security authorities, the issue was confined to a lack of cooperation between the relevant security bodies and new coordination centres aimed at combating extreme right-wing movements were opened.

Failure to conduct an adequate investigation and the Munich trial

As of May 2013, there is a court case in Munich against a member and four alleged supporters of the NSU organisation. No member of staff of any state body has been prosecuted. Since the beginning, only five people have to answer charges, although the investigations have started afresh and have not been concluded yet. There is hardly any prospect of bringing clarity into the whole affair as long as the motives of the perpetrators and the role of the authorities have not been fully clarified.

The core issues remain: what was the true size of the NSU network? Have their main leaders, Mundlos and Bönhardt, really committed suicide? Why was the policewoman murdered? The inquiry commissions had a mandate that was too limited and did not allow for truly questioning the NSU's narrative. In order to shed light upon the whole affair, the procedure has to be conclusive, which was not the case.

The process only spawned a full range of details uncovered by the investigation, without giving an answer to question as to why each of the victims had been targeted. The families of the victims are left with a feeling of insecurity and distrust against state authorities. The actual role of state authorities cannot be highlighted without further inquiry commissions at federal and state levels. Furthermore, the government must take action against intimidation and threats against witnesses. Relevant cases have been well documented by the Thuringian inquiry commission. The government must also ensure that ministries cooperate with the inquiry commissions. This process could be underpinned by an international monitoring mechanism.

In order to find an answer to the pending questions and bring light into the whole issue, it is necessary to set up additional inquiry commissions at federal and state level. They must explicitly be given the mandate to investigate the claims that institutional racism exists in the security bodies. .

The measures indicated by the inquiry commissions and the NGOs to combat racism in the police, the justice system and other state administrative bodies have to be implemented.

A commissioner for racism, discrimination and right-wing extremism has to be installed.

A permanent anti-racism commission has to be established at the Bundestag (federal parliament).

V. Re: Article 5 ICERD (Comprehensive protection)

1. Criminal provisions and their effectiveness¹⁰³

a) Massive deficits in the prosecution of racist crime

The federal government states under item 56 of the State Report that "Comprehensive criminal provisions (a) are available for the fight against racist crime which are implemented in court proceedings (b) and investigation proceedings (c)."¹⁰⁴ This statement is, to say the least, a summarised version of reality.

In Germany, there are major deficits at the legislative as well as executive levels in the prosecution of racist offences. There are an impressive number of criminal regulations (§§ 86, 86a, 130 StGB) applying to hate speech. However, there is no specific standard for the prosecution of offences perpetrated on racist grounds, such as material destruction, physical attack, theft, etc.

This error has been justified by the government for a long time with the argument that "this concern has as a matter of principle been adequately taken into consideration by means of the general provision contained in section 46 subs. 2 of the Criminal Code, in accordance with which the court, when sentencing, is to consider the motives and aims of the offender and the attitude reflected in the offence by the court."¹⁰⁵ The federal government relies on the recognition of regulation in the German legal practice so that there are reasons to believe that prosecution of racist crimes will be intensified in the future.

b) Inadequate laws against crimes motivated by prejudice

Empirical studies tend to prove the contrary.¹⁰⁶ The assessment of all the violent crimes with a right-wing background for which the police in Saxony (2006/07)¹⁰⁷, conducted successful investigations. The existence of prejudices as motivation was not mentioned neither in half of the prosecuting files nor in the court decision (41% each). The shortcomings of the justice system were blatant in almost half of the cases. What also must be mentioned is the impact on sentencing. Even in 59 per cent of the court decisions in which prejudices were mentioned as a motive, less in every fifth case results in a higher sentence.

Another issue of concern is the frequency according to which the prosecution of violent crimes with a right-wing orientation is terminated; in 28 per cent of the cases was prosecution terminated, though there were sufficiently alleged perpetrators. If all the court cases – including the terminated procedures – are taken into consideration, it appears that of the cases in which it was possible to reach a conclusion, prejudices were taken into consideration pursuant to iSd § 46 Abs. 2 StGB in only 12 per cent of them.

These figures are no specific, applying only to the justice system in Saxony, as the survey led by Alke Glet¹⁰⁸ clearly demonstrates. There the author investigates the case of hate crime in Baden-Württemberg in the period of 2004 to 2008. The motive for the sentence was only mentioned in the final report of the prosecutor in every fifth case (19%). In 74 per cent of the decisions examined, there was no mention of motives.

Finally, prejudices were only mentioned as a motive in the justice files in only 13 per cent of the closed cases and taken into consideration in the sentencing. On the basis of the empirical conclusion, it becomes obvious that neither the prosecutor's office nor the courts are in a position to apprehend the motives and grounds in an adequate manner and involved these findings in the final decisions. The statement of the federal government in the State Report, according to which racist motives are more intensively taken into consideration, reveals itself to be mistaken.

103 This section is based on a background paper „Defizite in der Verfolgung rassistischer Straftaten“, by Dr. Kati Lang that was written as part of the parallel reporting process. The full text can be assessed under: <http://rassismusbericht.de/wp-content/uploads/Defizite-in-der-Verfolgung-rassistischer-Straftaten.pdf>.

104 19.th– 22nd State Report zum ICERD, p. 13

105 Ibid.

106 Lang, Kati: Vorurteils kriminalität. Baden-Baden 2014, on crimes on the ground of prejudices and Glet, Alke: Sozialkonstruktion und strafrechtliche Verfolgung von Hasskriminalität, on social construction and prosecution of hate crime, in Deutschland, Freiburg 2011, .

107 Lang, Kati: Vorurteils kriminalität. Baden-Baden 2014, crime motivated by prejudices.

108 Glet, Alke: Sozialkonstruktion und strafrechtliche Verfolgung von Hasskriminalität in Deutschland. Freiburg 2011, on social construction and criminal prosecution of hate crime in Germany.

c) Shortcomings in data collection on racist crime

The State Report gives its own position in reaction to the collection of data by the investigation authorities (Items 66-70). It leaves out the fact that a collection of data on politically motivated crime (PMC) with a racist motive only takes place at the level of police investigation. Neither the prosecutor's office nor the courts collect relevant data on the conclusion of court trials, sentencing, perpetrators, or offences. For this reason, only an analysis of politically motivated crime as recorded by the police is possible.

Despite the inclusion of "hate crime" in politically motivated crime in 2001, there is a wide gap between the figures collected by independent counselling services for people concerned with right-wing, racist and anti-Semitic violence and the data mentioned in official publications. In this way, monitoring projects listed 737 violent acts motivated by prejudices in Eastern Germany alone¹⁰⁹ whereas the authorities had only recorded 837 crimes motivated by right-wing violence¹¹⁰ for the same period of time and across the entirety of Germany.

This discrepancy is partly due to the fact that not all incidents and crimes known to NGOs are reported to the police. Furthermore, a substantial number of offences motivated by prejudices are not considered as such by the police. Institutionalised prejudice contribute considerably to this situation. Furthermore, people concerned, the media and human rights organisation repeatedly report that the police do not rush to the scene of a crime when they are called but allow for delay. Victims are viewed as perpetrators and perpetrators are allowed to leave the site, claims are not recorded or investigated, and/or the police do not take any further measures.

The data collection system for politically motivated crime remains the foundation of the state's concept of protection. It is based on the extremist theory. Converse to this approach, the orientation toward hate crime and crime motivated by prejudices has been inspired by a policy aimed at the emancipation of minorities. Regarding politically motivated crime, this mixture between two different concepts means that crime motivated by prejudices are mostly acknowledged as such when they have ties to perpetrators with an extreme (right-)wing background. This wide gap is entirely due to the non-recognition of victims of right-wing violence by state authorities. According to detailed investigations led by journalists, the number of victims of right-wing violence amounted to 152 from 1990 up to today.¹¹¹ Out of 152 investigated deaths, only 63 were so far officially recognised by the government.

d) Legal standards are necessary for crime motivated by prejudice

The previous chapter has pinpointed the shortcomings in the area of the police regarding the collection of data on crime motivated by prejudices. In addition, it demonstrated that the prosecutor's offices and court do not sufficiently make use of the standard pursuant to § 46 Abs. 2 StGB. As opposed to the views expressed by the federal government in the State Report, the statistics and legal systems are blemished by numerous flaws. These defects impair the functioning of the prosecuting authorities and courts. These critical points are part of an ongoing review and should lead to a revision of politically motivated crime.

The seventh draft of the law was submitted to the Bundestag in 2000. It aimed at introducing a new standard in criminal law, pursuant to which regulations for sentencing under § 46 Abs. 2 StGB would be strengthened: "Particularly racist, xenophobic and other inhuman motives and goals" would be added. The language used has been criticised from two angles: to begin with, the language is too vague. Secondly, the implementation process has been postponed to a later stage of the procedure.

One of the pitfalls that must be avoided is an excessively broad definition of characteristics. For instance, the idea that motives and goals that violate human dignity could be included in the characteristics does not pertain to the global approach. One should not lose sight of the real objective: the aim is not to protect any identifiable group in society, but to protect minorities who are exposed to marginalisation and discrimination according to a specific analysis of the conditions in society that have led to this situation. This is the reason why the motives for targeting a minority should not be covered up by introducing the umbrella concept of "motives and goals that violate human dignity". In addition, the wording "motives and goals that violate human dignity" trivialises violence against minorities by involving all the groups of society who can be clearly identified with no regard for specific characteristics.

As a principle, sentencing is the right place for such a regulation. This is the legal area with the greatest impact on all delicts. However, a single knot does not bring changes in the course of a whole vessels and the anchorage of

109 Statistik Beratungsstellen 2013, Statistical data, counselling services

110 Press statement on politically motivated crime, 2013.

111 Dokumentation: 152 Schicksale. Zeit Online, documentation on 155 tragic cases, can be accessed on: <http://www.zeit.de/gesellschaft/zeitgeschehen/2010-09/todesopfer-rechte-gewalt>

the regulation at the closing of a criminal procedure – in connection with the judge’s decision making process on the sentence – does not allow for a positive evolution throughout the procedure. Real changes could be brought already at the onset, starting with police investigations, followed by prosecution, with the recognition by the court as the crowning point. This is the only way to ensure that a racist motive can be identified and does not “lose its way” in the course of the procedure. To this aim, changes in the criminal code and relevant measures in the field of criminal procedure and regulations for sentencing and fines (RiStBV) are necessary. As a considerable amount of offenses are perpetrated by youth and young adults, it is advisable to keep a closer look on possible amendments to the juvenile criminal law (Juvenile Court Act, JGG, as well as the relevant regulations)

Taking into consideration the constantly high number of crime motivated by prejudice, there is a need for specific standards for the justice system and a reform of the data collection system for the police.

In statistics, there should be a distinction between the concept of the state’s security authority and crime motivated by prejudice. The collection of data should not be limited to the police but encompass the whole process up to a legally binding decision.

The implementation of a specific legal standard is a welcome step. However, unspecific concepts that leave room for interpretation, such as “contempt for humanity” or “inhuman character” should be rejected. An exhaustive list would be a better option. It has to be established with due consideration to the historical framework and current societal issues. Such a definition should become the foundation of the suggested flow statistics mechanism.

Laws and regulations embracing the entire legal procedure are needed, starting with the beginning of police investigations, followed by prosecution, up to the binding court decision. To this aim, changes in the criminal code, the code criminal procedure and the fine and sanctioning proceedings are to be considered.

Considering the fact that a substantial number of perpetrators are likely to be tried by a juvenile court, it is advisable to consider possible amendments to the juvenile criminal law (Juvenile Court Act, JGG, as well as the relevant regulations)

Racist crime has a particular impact on the victims, which should be recognised. Concerned people who have been exposed to violence motivated by prejudices must receive support.

The case-law of the European Court for Human Rights, pursuant to which prosecution authorities have to make a distinction between offenses perpetrated with or without a racist ground.

2. The right to equal treatment in court and in all institutions for the administration of justice¹¹²

Racial profiling by the police: Pursuant to § 22 paragraph 1a of the police law, the police can check someone’s identity without founded suspicion as preventive measure against unauthorised immigration. In this context, the police use racist criteria to select the individuals they are going to check. Whilst the federal government still denies the existence of such a practice¹¹³, voices from the police¹¹⁴ have confirmed the truth of the matter. For Black People and other People of Colour in Germany, this practice has become part of their daily life. In spite of what could be tagged as an almost non-existent success quote (0,07 per cent)¹¹⁵ in 2012, the number of police checks without noticeable ground increased¹¹⁶ in 2013. Hence, the arguments put forward in the State report under Item 100 are unfounded and the claim that no ethnic profiling is taking place in Germany is therefore to be dismissed¹¹⁷. This line of reasoning demonstrates once again the unwillingness of the state party to acknowledge the reality of state-made racist discrimination.

112 This section is based on contents included in the background paper by Damaris Uzoma on behalf of the Initiative Schwarze Menschen in Deutschland, “Rassismus gegen Schwarze Menschen” on Black People in Germany and Dr. des. Eddie Bruce Jones, “German policing at the intersection: race, gender, migrant status and mental health”. Both papers can be accessed online. Damaris Uzoma, full text can be accessed under <http://rassismusbericht.de/wp-content/uploads/Rassismus-gegen-Schwarze-Menschen.pdf> and Eddie Bruce Jones: full text can be accessed under <http://rassismusbericht.de/wp-content/uploads/German-policing-at-the-intersection-race-gender-migrant-status-and-mental-health.pdf>

113 Bundestagsdrucksache 18/1629, motion(to be) submitted to the Bundestag (German federal government). See also Bundestagsdrucksachen 17/11971 and 18/453.

114 As did the head of the Police trade Union Rainer Wendt to the daily paper “Die Tageszeitung” (Taz) published on 27.10.2013 in Internet:

115 Bundestagsdrucksache 17/14569, motion submitted to the Bundestag, ie. the German federal parliament n° 17/14569

116 Bundestagsdrucksache 18/453, motion (to be) submitted to the Bundestag, ie. the German federal parliament

117 Compare VG Koblenz, n° 5 K 1026/11.KO, 28.2.2012, did not object to control on the ground of skin colour. This judgement war reversed by the Oberverwaltungsgericht Rheinland-Palatinat, (higher administrative court), n° A 10 532/12.OVG, 29.10.2012 – 7 reviewed: The court ruled that police checks on the ground of skin colour in the absence of reasonable suspicion are unconstitutional.

It is imperative that § 22 paragraph 1a of police law shall be deleted without replacement.

The police must keep a record of the checking process and hand in to the person subject to the check a reference number on the basis of which it will be possible for the civil society to carry out an analysis of random sample of such checks. In this way, a monitoring of racist discrimination against each of the groups who require protection under ICERD could take place.

Finally, the government should be asked to which extent the standards for racial profiling in the police practice developed by the European Court for Human Rights have been implemented.

Police violence motivated by racism: Police violence on racist grounds often follows on from racial profiling. In the absence of a complaints office, there is no official body to keep record of racist attacks by the police. The only sources¹¹⁸ available for analysis is the documentation compiled by NGOs.

Beside racist insults and particularly brutal procedures, there are many cases in which Black People who actually are victims or witnesses end up being criminalised and arrested by the police officers who have been called to the scene.¹¹⁹ In addition to an uncertain residential status, the interwoven effects of intersectional forms of discrimination - hetero- and/or cissexist as well as racist forms of discrimination are experienced as a threat by the people concerned.

There is a necessity for an independent complaints office against racism to record cases of discrimination by the police. This body should be adequately equipped and funded and have the power to take sanctions. In this way, cases of discrimination by the police experienced by the specific groups who require protection under ICERD, such as Sinti_zza and Rom_zza (Sinti and Roms), Black People and LGTI could be recorded and followed-up

The federal government should be requested to give evidence of the extent to which the stringent requirements spelled out by the European Court for Human Rights for police administrative practice, including for police misconduct with a racist background, have received due consideration

3. Right of a person to security and protection by the state against violence or bodily harm

[see: Racial Profiling and police violence with a racist motivation]

4. Racial discrimination and exclusion

a) Racial discrimination in the regulation and application of asylum and residence law¹²⁰

For decades, asylum has been a topic that has caused waves of blatant racial discrimination and populist and racist mobilisation among the population. Asylum and residence laws, including § 1 AufenthaltG, aim at containing migration to Germany. Such provisions are a hindrance to the full exercising of constitutional rights. As a result, it can be said that such provisions pave the way for racial discrimination. Certainly, the Convention does allow different treatment for citizens and non-citizens (Art. 1 para. 2 CERD). However, the General Recommendation N° 30 (2004) clearly states that this difference should never result in human rights being rendered void. The state must provide concrete measures to ensure that legislation and regulations do not have any discriminatory impact on non-citizens.

Many special rules and regulations add to this heavy load, such as the so-called "Residenzpflicht", (the obligation of residence for asylum seekers), insufficient access to health care, stigmatisation through police checks with a racist motivation. Furthermore, given the uncertain legal status of asylum seekers and the so-called "Geduldete", (i.e. the people under temporary suspension of deportation), it is no wonder that they find it difficult to avail themselves of legal protection. As a result, those among them who belong to at least one of the groups requiring protection under ICERD, are particularly vulnerable. [Particularly see thereof the situation of LGBTI refugees and asylum seekers: II 5 e]

118 For instance the chronicle of a campaign for a victim of police racist violence, Chronik der Kampagne für Opfer rassistischer Polizeigewalt: <https://www.kop-berlin.de/files/documents/chronik.pdf>

119 Compare p. 2 of the Chronik.

120 This section is based on analyses by Katharina Stamm, Officer for migration law at the Diakonie Deutschland, and Dr. Dorothee Hasskamp

Intersectional discrimination exemplified by racism against LGBTI people who belong to a group requiring protection under ICERD].

The uncertain situation of asylum seekers led to the suicide of a refugee in an accommodation centre. This in turn prompted refugees to take up a protest march to Berlin. Up until now, nothing has abated the self-organised protest movement of refugees and asylum seekers. It is still directed at the "Residenzpflicht", which restricts mobility to the boundaries of a district ("Kreis"), the "Lagerpflicht", (i.e. the obligation to stay in an accommodation centre), restricted access to social services and health care, and lengthy asylum procedures¹²¹.

Populist statements by the government coalition have given unequivocal support to a more stringent legislation, which coincide with an increased number of attacks on refugees in accommodation centres and in residential areas with a strong presence of migrants from the European Union.¹²² Racism against Roma_zza (Roms) is on the increase, fired up by the political campaign of the National Democratic Party of Germany (NPD) which posted posters with the slogan, "More money for Grandma instead of Sinti and Roma". Several administrative courts have legitimised¹²³ this poster, despite the fact that it marginalises a whole ethnical group in a statement that is clearly racist. 120

It is recommended that the Committee should address the issue of racial discrimination in asylum and residence law, including the few aforementioned examples, especially with regard to the signal this legislation gives to society. Particular attention should be paid to the social allowances and services available to groups of people such as asylum seekers, "temporarily tolerated people" ("Geduldete"), and people without residential status, under the Asylum Seekers Act (Asylbewerberleistungsgesetz).

The Asylum Seekers Act is a cause of major human rights discrimination. The Federal Constitutional Court has made some improvement, upgrading the volume of services and allowances¹²⁴. However, a considerable potential for discrimination remains. For this reason, many NGOs advocate that the issue the benefits and services available to foreigners shall be dealt with on the basis of the Social Act (Sozialgesetzbuch).

In 2014, Germany received 173,072 first applications for asylum.¹²⁵ Since the 1990s, the number of refugees who first set foot in Germany have amounted to 400,000. Now, makeshift tent towns and container villages emerge and standards for the accommodation of refugees have become a high source of concern. The German Institute for Human Rights has raised the alarm, filing complaints about the disastrous living conditions in the refugees accommodation centres and urging that human rights factors should be taken into consideration when choosing a place of accommodation¹²⁶.

There are reported cases of racist demonstrations taking place in front of the accommodation centres and before the very eyes of the refugees. Residence in accommodation centres is compulsory and the decision to allocate refugees to a particular location is made from above. The failure of the authorities to fulfil their obligation to protect has serious consequences, especially considering that the location of asylum residence centres are known to the public, which make them a target of hostility and attacks. The number of attacks on asylum refugee centres rose to 150 in 2014. The number of demonstrations against accommodation centres also increased. Data on attacks and demonstration are fragmented. [See V. 1. Rechts- grundlagen und Rechtswirklichkeit]. Given the preliminary nature the of figures published by the German home office, many more unaccounted-for attacks are likely to have taken place.

Restriction to the choice of residence for asylum seekers and "tolerated" people ("Residenzpflicht" or mandatory residence): The "Residenzpflicht" is a rule that has deprived the refugee movements of any legitimation and criminalises them as soon as they leave the boundaries of the places they have been allocated to. Asylum seekers and "tolerated" people cannot choose freely their place of leaving and residence: they are allocated to a compulsory place or residence and accommodation.

121 "Flüchtlingsbewegung in Deutschland: Radikaler, lauter, aber kaum gehört", on refugee movements in Germany, more radical, louder, yet hardly heard to., weekly magazine Die Zeit, 9 September 2013, section. Zeitgeschehen. <http://www.zeit.de/politik/deutschland/2013-09/emanzipations-fluechtlingsbewegung> as well as an overview of the issue http://de.wikipedia.org/wiki/Fl%C3%BCchtlingsproteste_in_Deutschland_ab_2012

122 Article 23.08.2013, daily magazine die tageszeitung. „Rechte Hetze gegen Roma – Die Angst vor Lichtenhagen" on right-wing hate campaign against Roma_zza – a fear of a new upsurge of xenophobic violence as in Rostock-Lichtenhagen 1992 <http://www.taz.de/1122337/>

123 The Central Council of Sinti and Roma documented the campaign and the legal dispute. For further details see <http://zentralrat.sintiundroma.de/content/downloads/presseschau/303.pdf>

124 See above under Article 1 paragraphs 2 und 3 ICERD

125 BAMF – Bundesamt für Migration und Flüchtlinge - Aktuelle Meldungen - 202.834 Asylanträge - 128.911 Entscheidungen", Office for Migration and Refugees, information update, 202.834 application for asylum - 128.911 decisions, accessed on 10. February 2015, <http://www.bamf.de/SharedDocs/Meldungen/DE/2015/20150114-asylgeschaefststatistik-dezember.html?nn=1367522>

126 Henrik Cremer, Menschenrechtliche Verpflichtungen bei der Unterbringung von Flüchtlingen, on human rights obligation for the accommodation of refugees, accessed 4 February 2015, http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Policy_Paper_26_Menschenrechtliche_Verpflichtungen_bei_der_Unterbringung_von_Fluechtligen_01.pdf

This means that only the Federal Office for Migration and Refugees (BAMF – Bundesamt für Migration und Flüchtlinge) and the Immigration Office have the power to decide on the area where they can stay and live. This most stringent requirement is unique to Germany (§§ 56, 71 para. 7n of the Asylum procedure law and § 61 para. 1 of the Residence Act, Aufenthaltsgesetz, AufenthG). No other country in Europe has adopted a similar regulation.

In districts (Landkreisen with a vast territory, this regulation is an even greater obstacle to social participation. In order to obtain an authorisation to leave the district, a fee has often to be paid at the discretion of the authorities. Whether a visit to relatives, friends or the attendance to an event is at stake, most of these everyday activities do not qualify for a leave permit. Violations of the “Residenzpflicht” are punished with a fine that rapidly exceeds the monthly benefit payment of a refugee. In case of delayed payment, jail or coercive detention may follow. As a result, refugees and tolerated people are criminalised and they are largely denied the possibility to engage in social activities. Beside the negative impact on social participation, this regulation contributes to higher criminal statistics and paves the way for a more forceful stigmatisation.

According to the newest legislation, asylum seekers will not be subject to restrictions to the choice of residence for asylum seekers after a period of four months. However, restrictive measures may still be enforced in the case of people who have committed offenses or crimes in connection with the Narcotic Drugs Act (Betäubungsmittelgesetz), or who are exposed to imminent measures aimed at terminating their stay in Germany, which mostly apply to people under “Duldung”¹²⁷. These restrictions to freedom of movement are not only disproportionate to the offences they have committed; they also have a discriminatory character, given the fact that they contribute to exclude asylum seekers from possibilities of social participation and give incentives for police checks without reasonable ground (see Item 4).

Access to health care: According to the revised version of the Asylum-Seekers’ Benefits Act (AsylbLG), asylum seekers and “tolerated” people have only access to limited health care services during the first 15 months of their stay in Germany. Medical or psychotherapeutic treatments can only be provided to patients who suffer from an acute illness or pain. It goes without saying that, in the absence of proper treatment and care, the pain or illness can persist and become chronic. In addition, medical aids and equipment, such as glasses or walking devices, are often not included. Teeth that would have been preserved¹²⁸ have to be extracted for lack of treatment. In practice, those who oversee the issuing of health insurance vouchers (Krankenschein) as a prerequisite to access to medical care, are likely to be members of staff of the social services with no expert knowledge of medicine.

In refugee accommodation centres, guards and members of staff often decide when to call an ambulance. This delays emergency treatment. Patients are often directed to the emergency squad, medical doctors being often reluctant to attend to them on account of the high bureaucratic hurdles they will have to face, and uncertainty about the types of treatment they are entitled to. This in turn tends to reinforce prejudices among members of the medical staff [See: V. 4. d) Rassistische Diskriminierung im Gesundheitswesen].

Black asylum seekers are particularly vulnerable, as the following case best exemplifies: In Hannover, a Ghanaian asylum seeker with a baby born four-weeks premature was refused admission to hospital. The situation was not identified as an emergency. The mother rushed to a resident physician, who called an ambulance. Despite her prompt reaction, the baby died shortly after. The baby could have been immediately admitted to hospital and saved if only his mother had had an insurance.

Distinctions are made between the country of origin of asylum seekers: many politicians claim that the reason for overburdening is the high number of unfounded applications for asylum from the Western Balkan region. They oppose refugees who “flee poverty”, while supporting “legitimate” refugees who flee war or political persecution. From January to November 2014, Germany received 15,000 applications for asylum from Serbia.¹²⁹

Serbia, Macedonia and Bosnia-Herzegovina have been declared safe third countries pursuant to a law that came into force in November 2014.¹³⁰ Very often, applicants from these countries are Roma or members of other minorities in Germany. Whilst the other applicants are formally entitled to have their case examined without preconceived beliefs, asylum seekers from these countries are automatically deemed not to be subject to any persecution. As a consequence, they have to bear a much heavier burden of proof and produce more convincing evi-

127 Deutscher Bundestag, „Erleichterungen für Asylbewerber“, on improvements in connection to asylum laws and procedure, accessed 4 February 2015, http://www.bundestag.de/presse/hib/2014_12/-/343932

128 Additional case studies that have been documented can be accessed on the website of the Kampagne Stop AsylbLG, which is supported by a broad alliance of refugees organisations <http://stopasylblg.de/faelle-berichte/>

129 BAMF – Bundesamt für Migration und Flüchtlinge - Aktuelle Meldungen - 202.834 Asylanträge - 128.911 Entscheidungen“, accessed 10. Februar 2015, [http://www.bamf.de/SharedDocs/Meldungen/DE/2015/20150114-asylgeschaefsstatik-dezember.html?nn=1367522](http://www.bamf.de/SharedDocs/Meldungen/DE/2015/20150114-asylgeschaefsstistik-dezember.html?nn=1367522) Current statistics on asylum, Federal Office for Migration and Refugees (BAMF) November 2014: January – November 2014: First applications for asylum 15.282 (p. 5).

130 Law on classification of further states as safe countries of origin and on the facilitation of access to the labour market for asylum seekers and tolerated foreigners, “Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer“, Bundesgesetzblatt (Official Gazette), No. 49, 5 November 2014 BGBl. I 2014, p. 1649.

dence than other asylum seekers for whom those assumptions are not made. Their applications are more rapidly turned down with the argument that they are manifestly “unfounded”. This leads to significant limitations on the legal protection of applicants.

The European Commission and several other Human Rights organisations have reported on Roma_ zza in Serbia, Bosnia and other countries having to face serious racist discrimination. Yet, the percentage of applications from these countries that have been approved is lower than 1 per cent¹³¹. There could not be a sharper contrast to the level of protection granted in other countries of the European union. If this percentage is lower in Germany than in other countries there is reason to suspect that elements that denote cumulative discrimination on a racist or ethnic ground have been systematically pushed aside.

To add to the difficulties, interpreters generally do not master the Romani languages, more likely speaking the languages of the majority of the population of the country from which asylum seekers have migrated. The decision-making process must be improved in practice. Secondly, suspicion of racial discrimination and the possible impact on social rights must be given due consideration. Thirdly, the root cause of what leads refugees to flee their country has to be addressed. The low percentage of successful applications was unfortunately used as a counter argument to declare that these countries are safe.

This legislation distills the idea in the mind of the population that asylum seekers from these states are not persecuted. The administrative court in Münster ruled on 27 November 2014, four weeks after the law came into force, that there were some doubt as to whether the upgrading of the Serb Republic as safe country of origin was constitutional.¹³²

The federal government envisage serious sanctions against asylum seekers who submit applications considered as being “manifestly unfounded”. This draft law will be even underpinned with several years of ban¹³³. The most affected group is likely to be Roma_ zza, given the fact that they have least opportunity to give evidence of the cumulative racial discrimination that they face. As a result, their applications are rejected. Asylum seekers subject to the Dublin rule made out 80 to 90 per cent of all the detainees awaiting deportation in Germany, most of whom after being arrested by the police, in the first half of 2014.¹³⁴

Abolition of the asylum seekers benefit act, which is per se a source of discrimination. The benefits and services that refugees are entitled to, included equal access to medical care, should be regulated on the basis of the social law.

Abolition of the “Residenzpflicht” and full right to mobility within the German territory, including people who have the obligation to leave the German territory.

Facilitate access to the housing market, providing accommodation compatible with human dignity, taking into consideration the infrastructure, and the right to have opportunities of participation in the choice of a location for accommodation.

Thorough examination of the reasons for asylum including in the case of asylum seekers from Serbia, Macedonia and Bosnia-Herzegovina, with due consideration to cumulative discrimination on racist grounds. Interpreters and translators in the asylum process who have knowledge of the languages of ethnic minorities. No ban on asylum seekers whose application has been rejected.

No detention of asylum seekers awaiting transfer in the course of a Dublin procedure.

Targeted studies on discrimination as it is experienced by refugees who belong to one or several groups that require protection under ICERD. These surveys must be used to collect data on intersectional discrimination as it is experienced by these groups pursuant to the General Recommendation n° 38

131 Statistics about the BAMF: Das Bundesamt in Zahlen 2013, Tab. I-14, p 47, See: http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundes- amt-in-zahlen-2013.pdf?__blob=publicationFile

132 Administrative court VG Münster 4 L 867/14.A http://www.vg-muenster.nrw.de/presse/pressemitteilungen/08_141127/index.php

133 Pro Asyl, “Verschärfung des Aufenthaltsrechts droht : Pro Asyl, accessed 4 February 2015, http://www.proasyl.de/en/news/news-english/news/massive_verschaeerfung_des_aufenthaltsrechts_droht/. On further restriction on the right to choose one’s place of residence.

134 NGOs estimation of number of detainees awaiting deportation. <http://www.jesuiten-fluechtlingsdienst.de/images/pdf/140717%20pro%20asyl%20Bjrs%20eugh%20abschiebungshaft.pdf>

b) Racial discrimination and segregation in the education system¹³⁵

Racism and structural discrimination in the German education is prohibited pursuant to Art. 1 para. 1, 2 and 3 of ICERD, Art. 13 of the International Covenant on economic, social and cultural rights, Art. 1 of the Convention against Discrimination in Education as well as Art. 2, 3 and 29 of the Convention on the Rights of the Child. Consequently, Germany has the obligation to combat racial discrimination under four international human rights convention at least. In addition, the European Court for human rights has ruled in the case D.H. versus Czech Republic in a highly differentiated way so that the education system has to fulfil stringent requirements against unequal treatment, including segregation.¹³⁶

The reading of the states report reveals among others in the sections on education that emphasis has been layed on racist discriminatin against immigrants or people, with a migration background (Items 199 – 123). This presumption is highly problematic. The two groups of people mentioned in the state report are school children and high school students from families with a lower rate of education achievement immigrant children, ie. children with a migration background. In reality, this list should have included the growing number of children and youths who belong to at least one of the groups that require protection under ICERD, yet do not have a migration background according to the definition of the microcensus.

This listing makes apparent the fact that the state fails to take resolute action against discrimination in the education system. In fact, school children and high school student with a migration background are not targeted because of their migration background as it is no characteristics on the basis of which they can be identified in everyday life. They are rather discriminated against as a result of a process of external assignation to a particular group defined according to racist criteria, which can be regarded as pertaining to a “racialisation”¹³⁷ process. Migration background is a volatile feature that has mostly vanished after the third generation [siehe hierzu: II.– Verpflichtung zur Bereitstellung von Informationen zu den nach ICERD schutzwürdigen Gruppen]. In one word, the state report fails to pay due consideration to effects and therefore fails to prove that it has an understanding of racial discrimination that would be conform with the definition spelled out in ICERD.¹³⁸

Regarding the inequal treatment of people with a migration background who belong to groups that require protection under ICERD, an analysis of microcensus shows that additional factors converge, independently from socio-economic staus, education background and professional status of the partents. This has a particular impact on Black children¹³⁹: for example, wo are on average up to 8 per cent (+/- less likely confidence interval) (+/- 6 Prozent Konfidenzintervall) less chances to obtain a certificate higher than “Hauptschulabschluss”, which does not qualify for higher education.

The impact of this negative factor equates the positive effect of the higher education or socio-economic status of parents on the education level of children. This is by no means a specific of Black children. It applies to further groups that require protection under ICERD. Furthermore, this clearly demonstrates the necessity to define specific categories for the collection of data so as to unveil racial discrimination in the German education system.

After comparing the educational performance of students with and without migration background the Organisation for Economic Cooperation and Development (OECD) concluded that these two groups show the largest discrepancies in test scores in PISA chievement tests. The achievement gap between students with a migration background on the one hand and their fellow students without a migration background could be as wide as two years (Programme for International Student Assessment 2006:79)¹⁴⁰.

135 This section is based on a background paper on racial discrimination in the German education system “Rassistische Diskriminierung im deutschen Schulsystem”, written by Daniel Gyamerah as part of the parallel reporting process. The full text can be accessed under: unter <http://rassismusbericht.de/wp-content/uploads/Rassistische-Diskriminierung-und-Segregation-im-deutschen-Schulsystem.pdf>. In addition to this, Dr Elina Marmer made available analysis and data from her reseach projet IMAFREDO . See also: Marmer und Sow (Hg), *Wie Rassismus aus Schulbüchern spricht. Kritische Auseinandersetzung mit „Afrika“-Bildern und Schwarz-Weiß-Konstruktionen in der Schule – Ursachen, Auswirkungen und Handlungsansätze für die pädagogische Praxis*. Published 2015, Publisher: Beltz Juventa. It deals on racism in school books. This is a critical analysis of the stereotyped image of Africa and Black-White constructions in the school system and deals with causes, impact and action approaches to effective pedagogical practices .

136 European Court of Human Rights, dec. n°. 57325/00., 7.2.2006, – D.H. u. a. vs. Czech Republic, see the most recent decitions ECtHR, dec. n°. 11146/11, 29.1.2013, – Horváth und Kiss/Ungarn.

137 in the sense of a publication of Dr. Mark Terkessidis, 2004

138 Human Rights Council, untitled – report_Muigai_mission_Germany_2009.pdf, accessed 4 Februar 2015, http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/UN-Dokumente/Sonderberichterstatter/report_Muigai_mission_Germany_2009.pdf.

139 These children were identified on grounds of a Subsaharian migration background - an indirect method for collection data. This approach does not enable to identify all People of African Descent. Yet, in the absence of a comperhensive set of data broken down by group, this is the only way to be able to conduct an analysis..

140 OECD Programme for International Student Assessment, *Where Immigrant Students Succeed A COMPARATIVE REVIEW OF PERFORMANCE AND ENGAGEMENT IN PISA 2003*, accessed 4 Februar 2015, http://www.phil-fak.uni-duesseldorf.de/ew/bf/bf_veranstaltungen/ss06/HS_Bildungssoziologie/9806021E.pdf.

Diefenbach (2011)¹⁴¹ notes that 8 years later no study has been able to disprove the causal relationship between migration background and education achievement, even where socio-economic variables had been taken into consideration (ibid:463).

Segregation in the German education system: horizontal and vertical mechanisms of segregation have been identified in the Germany education system and all of them have discriminatory effects. Depending on the federal state in which they are enrolled, children are subject to a hierarchical system on the basis of which they are allocated one type of school, between the 4th and 6th form. Only one of these types of ordinary schools can lead to the Germany Abitur (A-Level), given direct access to university. In the lower, underprivileged¹⁴², students have no access to higher education and are confronted to an unabling learning environment.¹⁴³

Due to "Differential learning and development milieus" (Baumert, Stanat and Watermann 2006:99)^{144, 145} children in the underprivileged types of schools have a slower learning rhythm. This discrepancy is exacerbated by different "theoretical approaches of education, curricula-related and didactic traditions [as well as] different approaches to teachers' education" (ibid.:177). Taking the national education panel as an example it clearly appears that students with a migration background with a lower socio-economic status are overrepresented in these schools (Authors groups report on the state of education 2014:76 and 257)¹⁴⁶. Moreover, surveys on residential environment demonstrate that residential segregation, which is related to the place of residence, is the basis on which segregation at school can grow.¹⁴⁷

Given the fact that German as a second language is not taught in schools with a higher educational status, insufficient knowledge of the German language has an extremely strong prejudicial effect. The consequence is extreme segregation based on assigned social, national and ethnical origin in connection with the vertical distribution of students according to the various types of schools.

In 2012¹⁴⁸ studies have highlighted an additional aspect of horizontal segregation in the education system: a considerable level of horizontal segregation was identified among the same types of schools. Following an analysis of 108 primary schools in Berlin, it was possible to show that some schools had a share of foreign students three times higher than the share of foreign children in their constituency whereas in other schools this number was five times lower. In some schools, the share of students with a non-German language of origin even reached 98 per cent (ibid:9).

A survey conducted across the whole country (Lange, Wendt and Wohlfahrth 2013)¹⁴⁹ showed that in major cities, 38,2 per cent of fourth form students with a migration background had attended schools with a majority of students who had poorer education performances as compared to 5,7 per cent of the students without a migration background (ibid: 22). This figure was even higher in the major cities, where 69,7 per cent of the students with a migration background attended a segregated school (share of the students with a migration background over 50

141 Diefenbach, H 2011. "Der Bildungserfolg von Schülern mit Migrationshintergrund im Vergleich zu Schülern ohne Migrationshintergrund" (449 – 73) in Lehrbuch der Bildungssoziologie, edited by R. Becker. Wiesbaden: Springer. A comparative study of the education achievements of children with a migration background versus children without a migration background.

142 In Germany, the education system had a three layered architecture: The *Gymnasium* was the only channel to qualify for higher education; the *Realschule* could lead to higher qualifications in technical professions and the *Hauptschule* prepared the students for certificates with a lower level of qualification. Various reforms were implemented in several states, according to the specific of each of these states, resulting in a more diversified system. However, equal opportunity, that is equal access to higher education and professional training is still reserved has still not been achieved, even in the new types of school.

143 Maaz, K., U. Trautwein, O. Lüdtke und J. Baumert. 2008. Access to higher education and professional training is still reserved Educational Transitions and Differential Learning Environments: How Explicit between-School Tracking Contributes to Social Inequality in Educational Outcomes." Child Development Perspectives 2(2):99 – 106.

144 Baumert, J., P. Stanat and R. Watermann. 2006. "Schulstruktur Und Die Entstehung Differenzieller Lern-Und Entwicklungsmilieus." Herkunftsbedingte Disparitäten im Bildungswesen: Vertiefende Analysen im Rahmen von PISA 2000:95 – 188. On school structure and how differential learning and development milieus are generated. Disparities based on origin in the education system: comprehensive analyse in the framework of PISA 2000:95 – 188 .

145 Van Ophuysen, Stefanie and Heike Wendt. 2010. "Zur Veränderung Der Mathematikleistung Von Klasse 4 Bis 6. Welchen Einfluss Haben Kompositionen und Unterrichtsmerkmale?" in Bildungsentscheidungen, edited by J. Baumert, K. Maaz and U. Trautwein. Berlin: Springer. On performance in mathematics at grades 4 to 6 (German education system). What is the influence of composition and instructional characteristics

146 Autorengruppe Bildungsberichterstattung. 2014. "Bildung in Deutschland 2014. Ein Indikatorengestützter Bericht Mit Einer Analyse Zur Bildung Von Menschen Mit Behinderung." Bielefeld: Bertelsmann Verlag. (http://www.bildungsbericht.de/daten2014/bb_2014.pdf). A collective study on education in Germany, 2014. A report based on indicators combined with an analysis of education in relation with differently abled people. According to this study, the probability for students with a migration background to attend a *Hauptschule* - the type of school leading to part-time enrollment in a vocational school in conjunction with apprenticeship training - is twice as high as it is the case for students without a migration background.

147 Terpoorten, Tobias. 2014. "Räumliche Konfiguration Der Bildungschancen: Segregation Und Bildungsdisparitäten Am Übergang In Die Weiterführenden Schulen Im Agglomerationsraum Ruhrgebiet." Vol. Band 3: ZEFIR. (http://www.zefir.rub.de/mam/content/zefir_materialien_3_r%C3%A4umliche_konfiguration_der_bildungschancen_2014.pdf). On spatial configuration, education opportunities, segregation and education disparities: On the crossroad, secondary schools in an urban agglomeration, the Ruhr district.

148 Sachverständigenrat deutscher Stiftungen für Integration und Migration, Segregation an Grundschulen: Der Einfluss der elterlichen Schulwahl, zugegriffen 4. Februar 2015, http://www.svr-migration.de/wp-content/uploads/2014/11/Segregation_an_Grundschulen_SVR-FB_WEB.pdf.

149 Sachverständigenrat deutscher Stiftungen für Integration und Migration, Segregation an deutschen Schulen Ausmaß, Folgen und Handlungsempfehlungen für bessere Bildungschancen, zugegriffen 4. Februar 2015, http://www.bagkjs.de/media/raw/SVRFB_StudieBildungssegregation_Web.pdf.

per cent) while only 17,1 compared to 17,1 per cent for children without a migration background (ibid:9). This trend is just as strong /can be tracked up the rural area.

All in all it appears that vertical and horizontal segregation mechanisms cause schools to be labelled as “hotspot schools” who have an extremely rate of students who have a migration background, and students who are exempted from learning material fees.¹⁵⁰ In Berlin, there are 66 schools with a rate of exemption from learning material fees exceeding 75 per cent. In this context, provisions of the General Equal Treatment Act (§ 19 para. 3 of AGG) that dovetail with a segregative form of urban development have become redundant.

Racism in school books, curricula and at school: IMAFREDU (The Image of Africa in Education) is a project which dealt with the issue of racist contents in the Hamburger school books and their impact on everyday life at schools. The project run for several years and was able to give evidenc of the relation between racist and discriminatory contents in school books and racist and discriminatory incidents.

It clearly appears that German curricula, school books and didactic contents reproduce the colonial and racist messages of mainstream discourse in society. Teachers pass them on to the children in their unreflected form. A critical approach is not in seen. As a result, children acquire knowledge that reproduces racism. The IMAFREDU survey gives empirical evidence of the fact that this knowledge gives backing to people who have a privileged position on the ground of racism support in the exercise of racism in practice. In one word racist knowledge encourages racist practice. In addition, racist knowledge has indoubtedly a negative impact on the self-image of students who experience discrimination.

White teachers who were interviewed by the IMAFREDU project team were unequivocally opposed to racial discrimination. Yet, they hade an understanding of racial discrimination that was limited to intentional racism, and therefore not conform with the definition spelled out in ICERD. Narrowly-construed racism has prevented them from adopting a critical attitude and checking the learning material available against racist contents. For the same reason, they were unable to acknowledge that their students 'experience in relation with racism.

Insufficient human rights education: In Germany, students and teachers are not fully conscious of the fact tht discrimination is a violation of human rights. This also explains why they have a limited knowledge of the rights and actions that one has and can avail oneself of in case of discrimination. Discrimination is seen by students and teachers as resulting from individual misconduct. There is a lack of understanding for institutional forms of racist discrimination. .

The CERD has issued numerous recommendations pointing out the necessity for human rights education to have a firm anchorage and space in curricula and education laws ate stat levels and in the teachers schools curricula. Yet, only specific human righs are dealt with at random and explained. There is a lack of comprehensive curricula on democracy and citizen education in Germany school covering the whole range of human rights listed in the Universal Declaration on Human Rights.

Indisputably, Germany does not fulfil tis obligation pursuant to Art. 5 and 7 of ICERD. In addition, Germany's must be considered as a violation of Art. 14 of the European Union Charter of Fundamental Rights, in relation with the right of every person to education an Art. 26 para. 2 of the Universal Declaration of Human Rights. Germany's policy also contravenes Art. 13 of the Convention on the Rights of Children, in connection with Art. 2 para. 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In 2010, the Special Rapporteur on Racism underlined the necessity to adopt and use a comprehensive definition of racism. He added that such an approach is a precondition for combatting racism. Consequently, it is imperative that all structural changes and policies resolutely aimed at curbing down racism in the education system have a human rights dimension pursuant to Art. 1of ICERD. In other words racism hast to be assessed considering the effect it has actually has beyond the intended effect. This approach has to be made known in all relevant bodies and accounted for in the planning process of any reform.

150 Arbeitskreis Stadtentwicklung, Bau und Wohnen Friedrich Ebert Stiftung, Das Programm Soziale Stadt, accessed 4. February 2015, <http://library.fes.de/pdf-files/wiso/07498.pdf>

Curricula and school books must be revised from a critical perspective and checked against racist content in the light of the General Recommendation n° 32 of the CERD. All stakeholders must be involved, including the curricula and und Schulbücher in Deutschland müssen im Sinne der Allgemeinen Empfehlung Nummer 32 von CERD aus rassismuskritischer Sicht überarbeitet werden. Hierzu soll die Kultusministerkonferenz, in der die Bildungsminister_innen der Länder Leitlinien der Bildungspolitik koordinieren, auf Basis der relevanten Ausschussempfehlungen verbindliche Leitlinien erarbeiten.

Human rights based education may entail interactional forms of discrimination. It can also be tainted by non-intentional, institutional and structural forms of racial discrimination, which are defined in Art. 1 of ICERD as human rights violations. With this aspect in mind, it is imperative that human based education should be included in the curricula as a compulsory content. This applies to school curricula as well as teachers' training. Given the lack of an anti-discrimination infrastructure in the education system, including schools, there is a necessity for the creation of an independent complaint office, which would offer counseling services, receive complaints and develop anti-discrimination interventions. The action of this independent office should be underpinned with sanctions. Furthermore, its power should not be limited to the aforementioned forms of discrimination but also enable it to provide information on mechanisms tending to reproduce discrimination, such as micro-attacks, stereotypes and threat.

There is also a need for research surveys on the extent of racist discrimination at school, university and in other educational institutions. The interviewees must be given the opportunity to choose a differentiated, self-assigned category, which is a clear requirement pursuant to Art. 1 of ICERD, including "race, colour, descent and national or ethnic origin" (GR No 24 & GR No 34/9). Due consideration must be paid to members of groups that require protection under ICERD, who must have the opportunity to decide themselves between self-assigned categories or being assigned to categories by a third party.

The urban planning bodies must also assume responsibility for the discrimination-free access to education. To this aim, they must submit adequate concepts aimed at combatting the negative effects of segregation (ICERD GR No 19/4).

The federal government and the government of the federal states should be requested to provide information on the state of implementation of case-law of the European Court of Human Rights and the obligation of the state and state to adopt and implement affirmative actions in the field of education. Pursuant to this, measures must imperatively be taken if a group that has a historical experience of discrimination still experience discrimination today..

c) Involvement and participation in economic life

Racial discrimination in the labour market

In Germany, the labour market is segregated and segmented in a specific way. This form of discrimination affects people with a migration background as well as people who require protection pursuant to Art. 1 para. 1 of ICERD. Needless to mention, this form of discrimination is a violation of their right to be protected against discrimination under Art. 5 . Lit.e I of ICERD. They are more often affected by unemployment, more frequently employed in the precarious work sector and discriminated against in the application process.¹⁵¹ In addition, the form of discrimination as described in the following section is a violation of the right to work (Art. 23. N° 1 of the Universal Declaration of Human Rights, Art. 6 of of the International Covenant on Economic, Social and Cultural Rights) and an adequate standard of living (Art. 11 of ICESCR).

Discrimination of people with a "migration background": Contrary to the recommendations and calls of the ECRI and CERD, the federal government persistently opposes the breaking down of demographic data by groups, which would illuminate the situation of groups that require protection under ICERD. For this reason, the only way to comprehend the scope of discrimination in the labour market is to use research studies on discrimination against people with a migration background.

Incomplete as they may be, the data available [see: II. – Verpflichtung zur Bereitstellung von Informationen zu den nach ICERD schutzwürdigen Gruppen] shows that people with a migration background face blatant forms of discrimination: Of all the forms of discrimination, discrimination on the labour market ranks second. According to a representative survey conducted by the SVR in 2012, 22 per cent of the respondents indicated that they often experience discrimination by public bodies and 19 per cent report discrimination in the labour market..

¹⁵¹ See SVR Study „Diskriminierung am Ausbildungsmarkt – Ausmaß, Ursachen und Handlungsperspektiven“, Berlin 2014

Furthermore, employment is a precondition for acquiring German citizenship. Racial discrimination is a serious obstacle to accessing the labour market, and consequently Racial discrimination is a serious obstacle to accessing the labour market and, since work is crucial accessing civil rights, racism in the workplace paves the way for racism in other spheres of life.

A close examination of the situation in the labour market shows that self-assessments of people with a migration background converge with demographic data in relation to the labour market. The overall picture is that structural discrimination can be clearly identified: In 2012, 10 per cent of the respondents with a migration background stated that they face “serious discrimination” or “rather serious discrimination” in the labour market¹⁵². whereas 6.5 per cent indicated that they are exposed to “serious” or “rather serious discrimination” in the education sector. All in all, every fifth respondents with a migration background pointed out that they had faced discrimination in both sectors at least once (ADS on comparison between Western and Eastern regions and 2012, p. 9 – 10). 24.3 per cent of the respondents with a migration background had the feeling that they were discriminated against in the labour market while 23.7 per cent of them had the same feeling about discrimination in the education system, including in apprenticeships.

Beside, the relation between discrimination in the education system and discrimination on the labour market is even more apparent when a comparison is made between people without migration background and a relatively lower level of education and the population with a migration background. In this way, racial discrimination, segregation and lower education achievement (see SECTION on education) have a negative impact on the labour market.¹⁵³

Discrimination in accessing the labour market: the number of people with a migration background who are in employment has increased though the percentage of people with a migration background remains lower than the percentage of those without migration background. In 2010, 69.4 per cent of the people with a migration background were employed. Yet this percentage is still lower than that of their German colleagues, 78.2 per cent of whom are at work. (Federal Commissioner for Migration, Integration and Refugees 1012, table 25)

The core personnel of companies only includes a limited proportion of people with a migration background. Conversely, there is usually a much higher percentage of people with a migration background doing low wage and precarious work.

This gap is particularly wide in the public sector, in the age group encompassing people age 15 to 34: there are just half as many people with a migration background as without a migration background. According to the figure collected by the OECD, people with a migration background employed in the public sector made up 13 per cent of the employees subject to social insurance contributions in the public sector in 2008 whereas 26 per cent of the employees in the public sector were people without a migration background (OECD 2012c, p. 129237). As a result, the employment structure in the public sector does not reflect the demographic structure of the population in Germany. This gap explains to a certain extent why people with a migration background consider the public sector to be the most frequent cause of discrimination [see: II. 5. a) – e) on the situation of each of the groups that require protection under ICERD].¹⁵⁴

It is noticeable that people with a migration background who have a high level of education have a higher at-risk-of-poverty rate than people without a migration background who have a lower education level. This gap is an additional indicator for deep-rooted structural discrimination in the German labour market. The education level of people with a migration background has hardly any effect on the at-risk-of-poverty rate, which remains high despite a higher education level, assessed by qualifications such as the German school-leaving exams known as *Abitur*. The at-risk-of-poverty rate (20.1%) is double the rate of people without a migration background who do not have *Abitur* (8.9 %).

In addition, there is only a limited proportion of migrants or people with a migration background in the core personnel of companies. They are more often employed in sectors requiring a lower level of qualification and more precarious wage structure. As a result, employees with a migration background have an at-risk-of-poverty rate of 13.5, which is more than double the rate of employees without a migration background, which is 6.2 per cent (Federal Office for Statistics 2011, p. 245).

152 according to a study by the Expert Council of German Foundations on Integration and Migration (SVR) on behalf the Federal Anti-Discrimination Agency

153 *Ibid.*

154 Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR), Deutschlands Wandel zum modernen Einwanderungsland Jahresgutachten 2014 mit Integrationsbarometer, 2014, <http://www.svr-migration.de/wp-content/uploads/2014/11/>

It is necessary that data broken by groups on the situation in the labour market of groups that require protection under ICERD must fulfil stringent requirements on the protection of individual data. This data must be collected on the basis of voluntary self-identification. [see: II. – Obligation to provide information on groups of people that require protection under ICERD]

The available anti-discrimination infrastructure, which encompasses the various anti-discrimination offices, must be expanded in such a way as to make available a specialised service that has the capacity to deal with labour-related issues.

It is imperative to support civil society organisations, including grassroots organisations of groups that require protection under ICERD in order for them to be in a position to provide targeted information to their respective communities on the protection against discrimination in the field of labour rights.

Anti-discrimination offices at federal and state levels must be more resolute in their action to provide targeted information to people who belong to groups that require protection under ICERD, with due consideration to the specific situation of each of the groups on the labour market. The latter must receive information on their rights and opportunities for counseling and receiving support. The human rights dimension of protection against discrimination has to be made explicit.

It is necessary that the public sector should implement affirmative action measures pursuant to Art. 2 Ans1 of ICERD, so as to put an end to blatant discrimination against people with a migration background who are employed in the public sector. To this aim, recommendations as derived from the National Integration Plan 2012/13 should be implemented. This measures and their implementation must also be binding for the state-funded social sector. .

Disparate racial impact of church based employment policy:^{155, 156}

Given the structure of the personnel employed in church-related institutions in Germany, it is clear that specific groups of people who require protection are marginalised, which is a source of discrimination pursuant to under Art. 4 a – d and Art. 5 d of ICERD. The option to select and privilege employees with a Christian affiliation leads to the disproportionate exclusion of people with another religious faith and this fact constitutes a violation of Art. 1 ICERD¹⁵⁷.

Given the size of church-related institutions, racist exclusion in the German health and social systems can be deemed to have a structural dimension. All employees working for Germany's second largest employer are affected, including those who are not involved in faith-based activities: Diakonie and Caritas employ altogether over 1.3 million people and have a structural position in the health and social sectors.

The loophole with the most crucial impact derives from Sec. 9 AGG, allowing Protestant and Catholic-affiliated institutions to require that their employees satisfy specific requirements of loyalty. Pursuant to Sec. 9. AGG "difference of treatment on the grounds of religion or belief [...] shall not constitute discrimination." The consequence is a systematic marginalisation of applicants of another faith. This particularly applies to groups that require protection under ICERD on the ground of race, colour, descent, or national or ethnic origin, including people with a Turkish and Arab background from predominantly Muslim countries.

According to the estimation of the federal government, 2.1 to 2,3 million Muslims with foreign citizenship live in Germany, while 1.7 to 2.0 million Muslims with German citizenship live in Germany. The nationalities most con-

155 This section is based on the background paper Discriminatory effects of the church's recruitment policy by Corinna Gekeler on behalf of the Humanistic Union, which was written in the in the framework of parallel reporting process. The full text can be accessed to under <http://rassismusbericht.de/wp-content/uploads/Diskriminierende-Effekte-der-kirchlichen-Einstellungspolitik.pdf>.

156 Diakonie Deutschland in principle welcomes an independent civil society Parallel Report, has supported the process leading to the submission of the Report, and is committed to its principle of independence. However, Diakonie Deutschland objects to the actual statements made in relation to Diakonie. They do not convey an accurate picture of actual relations. Thus, Diakonie Deutschland opposes the legal assessments which are being made. Any claim of discrimination is to be refuted, both from a factual and a legal point of view. In addition, Diakonie Deutschland rejects the assessment made regarding paragraph 9 AGG. Paragraph 9 AGG expresses a distinction, based on practical considerations, between church employment practice in relation to Diakonie and non-church-affiliated employers. At the same time, it articulates the right to self-determination of the church, in accordance with the German constitution, European law and international law – particularly human rights standards.

Other church-based organisations that are members of Forum Menschenrechte, and that are subject to the same requirements in relation to labour law, share this view.

157 Frings, Dorothee: Diskriminierung aufgrund der islamischen Religionszugehörigkeit im Kontext Arbeitsleben – Erkenntnisse, Fragen und Handlungsempfehlungen. Diskriminierungen von Musliminnen und Muslimen im Arbeitsleben und das AGG, on discrimination on ground of affiliation to Islam in the context of labour relations and the General Equal Treatment Act (AGG) – Findings, questions, recommendations for action, discrimination of Muslim women and men at work from the point of view of legal science. Research paper submitted to the Federal Anti-Discrimination Agency, 2010, p. 51.

cerned are those for which labour recruitment agreements were signed by Germany. It has to be mentioned that at that time migrant workers were called “*Gastarbeiter*”, which means “guest workers” in Germany.

	Muslims living in Germany with relevant citizenship ¹	German Muslims with a relevant migration background
Turkey	1,506,410	1,054,618
Former Yugoslavia	346,917	189,823
Morocco	32,609	131,057

All figures : Average number according to the Federal Office for Migration and Refugees, Survey about “*Muslimisches Leben in Deutschland 2009*”, that is “Muslim life in Germany 2009”

Current praxis includes job offers, even if there is no religious-function directly related to the positions – for example assistants in kitchen and kindergardens –, where Christian membership is required for performing these tasks. Employees without religious affiliation cannot be elected into workers’ representation committees and are thus, denied their rights to represent their own interests. In addition, their advancement opportunities are systematically thwarted.

This situation has serious consequences given the structural importance of Diakonie und Caritas as the second largest employers in Germany and their quasi-monopolistic position in some regions and fields of work.

The following examples illustrate the scope of marginalisation, as caused by the aforementioned framework and an environment that does not conform with the legal foundation of ICERD:

The work contract of a Muslim nurse was terminated on the ground that she wore a headscarf which was deemed to be threatening the credibility of her institution and the church.

A medical practitioner was asked at the beginning of the interview whether he was Muslim. He said he was and was told in the follow-up that he could not work in the institution concerned.

For the five past years, a children and youth worker (pedagogical assistant) with additional training has been looking for employment in a city with a high percentage of migrants but thusfar his applications have been unsuccessful because the majority of the institutions are run by church organisations.

In the absence of statistic data, structural marginalisation can only be demonstrated using individual cases. This approach is conform with the definition given by the „Working Group Church and Right-Wing Extremism“ (BAGKR) in 2013: Anti-Muslim racism is “a form of racism against Muslims and people who are perceived and identified as Muslims on the ground of their external appearance.”

Church institutions are massively funded using income tax, which amounts to a state-maintained form of financing discriminatory practice, which is prohibited pursuant to Art. 2 (b) ICERD. Moreover, these practices are even financed by the people affected by such discrimination because they themselves pay taxes.

Provisions in § 9 AGG allows for unequal treatment on the grounds of religious affiliation are being arbitrarily implemented.

However, churches can only maintain their increasing number of institutions if they hire people who do not have any religious affiliation or who are of another faith. This is the reason why around 50 per cent of non-Christians are employed in these institutions. The theological arguments put forward by both churches, based on the controversial concept of ministerial communion borders on the absurd in view of the numerous exceptions in the employment practice. This demonstrates that it is possible and will be necessary to depart from a restrictive interpretation of § 9 AGG. Though the churches claim that they are compelled to practice unequal treatment, employment practice demonstrates that there are alternative approaches.

Germany can only fulfill its human rights obligation to provide protection against racial discrimination pursuant to Art. 2 ICERD if § 9 AGG is removed. In fact, § 8 AGG (“Permissible difference of treatment on grounds of occupational requirements”) already covers exceptions in relation to employment where there is a religious function directly related to the positions concerned and they are dealt in adequate manner. In Germany, the implementation of the European Union Anti-discrimination Guideline is subject to criticism, in relation to § 9 AGG especially. The reason is that, contrary to the EU requirements, unequal treatment is not limited to positions with a religious function; it encompasses all activities. Even the guidelines for labour relations in the churches establishes a clear distinction between positions with a religious functions and those that are not faith-based activities in relation to religious faith.

A legal expertise submitted to the Federal Anti-discrimination office also criticised the implementation of the European Union anti-discrimination guidelines, stating that § 9 AGG is a loophole that leads to a wide protection gap. It added that the state must take corrective measures pursuant to Art. IV a, b, c, d, Art. V d among other articles of ICERD.

Inadequate legal protection: strengthening of AGG is essential¹⁵⁸

In the state report, AGG is described as the core instrument of anti-discrimination protection. Undoubtedly, AGG provides protection against discrimination on the labour market and in the field of civil law. Yet, improvements are necessary in many aspects. The European Commission drew attention to this issue in its injunction of 17 October 2007 (K(2007)4872).¹⁵⁹ Protection under AGG remains below the Anti-racism guideline (RL 2000/43/EG) and ICERD. The UN Committee already pointed out that § 19 Abs. 3 AGG contradicts the principles laid out in Art. 3 on prohibition of segregation.¹⁶⁰

Entities acting on behalf of the State. Acts by public entities are excluded. This is best exemplified by racial profiling, which cannot be punished on the basis of AGG. Besides, the mandate of the Federal Anti-Discrimination Office is subject to criticism for being too narrowly defined. For this reason, the Federal Anti-discrimination Office has no power to represent any party in court nor support it in a legal proceeding. Finally, it has often been remarked that sanctions based on the Racial Equality Directive (2000/43/EC) are not a major deterrent to discrimination.

The anti-discrimination (AGG) law should be further developed, and corresponding legislation should be adopted at state levels.

The scope of AGG should be extended to also cover governmental action.

Affirmative action measures should be legally compulsory for public administration and companies. Beyond the affirmative action measures enumerated in Sec. 5. AGG, legally binding measures are necessary in order to assert equal treatment in the administration and the private sector.

Exemptions in relation with the housing market pursuant to Sec. 19 AGG should be removed. Adequate sanctions should be included.

The mandate of the Federal Antidiscrimination agency (ADS) should be strengthened. It should be given power to support the people who are affected by discrimination, including in court. Additional anti-discrimination agencies should be set up at the state level.

Exemptions in relation with the housing market pursuant to § 19 AGG should be removed.

Adequate sanctions should be included.

Associated discrimination should be included in the law: Until now, only people whose relatives are affected by discrimination can bring a claim. For example, when a flat is not rented to a couple of which one spouse belongs to groups requiring protection under ICERD. For example, when a landlord refuses to rent a flat to such a couple, relatives do not have the possibility to receive remedy. Only people directly affected by discrimination have this right. It is necessary to provide the opportunity to bring to court cases of associated discrimination.

158 The following excerpt is based on the background paper “Rechtlicher Diskriminierungsschutz gegen Rassismus in Deutschland muss gestärkt werden” submitted by the Büro zur Umsetzung von Gleichbehandlung e.V. working in favour of the implementation of AGG. This paper was developed as part of the parallel reporting process. The full text can be accessed under: <http://rassismusbericht.de/wp-content/uploads/Rechtlicher-Diskriminierungsschutz-gegen-Rassismus-in-Deutschland-muss-gestaerkt-werden.pdf>

159 See also Nickel, Rainer: Drei Jahre Allgemeines Gleichbehandlungsgesetz (AGG): eine Zwischenbilanz, unter: http://www.migration-boell.de/web/diversity/48_2303.asp.

160 See also Nickel, Rainer: Drei Jahre Allgemeines Gleichbehandlungsgesetz (AGG): eine Zwischenbilanz, unter: http://www.migration-boell.de/web/diversity/48_2303.asp. An assessment after three years of General Equal Treatment Act

d) Racial discrimination in the health sector – physical health¹⁶¹

People who require protection under ICERD, including Black People and People of Colour, are exposed to racist practice and attributions in the health sector. Before any contact with a patient takes place, racist attributions have a negative impact on the relationship between medical doctors/nurses and patients.

The mere sound of a name often leads to rash conclusions about the patient's behaviour, the reason for the complaint and the root-cause of the issue. There are a full range of discriminatory acts that shall be demonstrated by a few examples: The presumption of aggravation: that is exaggerated and unprofessional diagnosis in the case of People of Colour or women of Muslim faith based on the presumption that they surely are victims of violence against women at the hand of a male relative. Surveys show that there is a relation between applications for employment and unequal treatment on the grounds of the applicant's name. Yet, there is still a lack of systematic research on the impact of racist attributions affecting patients in the health sector.

The attributed aggravation is usually codified in allegedly medical languages, as it is the custom in the medical profession. As an example morbus M (as an abbreviation for morbus mediterraneus, is the description used for aggravated patients from the Mediterranean region, but it is exclusively used to describe People of Colour. Surveys demonstrate that Black People have according to medical doctors a lesser "Western" understanding of illnesses, which creates problems in the relationship between medical doctors and patients.¹⁶²

There is a misconceived and preconceived image of a Black patient in the mind of medical doctors as the aforementioned survey demonstrated. However, the issue is not dealt with as such in the survey. These images and opinions do not have negative consequences on the relationships between medical doctors and patients. They create an environment in which there are "us versus them". This aggravates the lack of empathy, as surveys conducted in the Anglo-American space demonstrate.¹⁶³ Attributions as described below can entail opinion about sensitivity to pain and result in the practice of inadequate treatments.

The situation is more acute in the case of people who require protection under ICERD when confronted with other ways of dealing with grief. There is a lack of knowledge about different funeral rituals. Muslims bury their deceased relatives immediately after death with the eyes and mouth closed and among other things in a cotton linen, which is not widely known and even opposed.

Reference to Anglo-American surveys is a clear sign that research work on this issue is urgently needed in Germany. It is imperative that qualitative and quantitative research studies should be conducted. In that way, the data that they entail could be used as a base for drawing up guidelines for everyday medical practice.

It is particularly important that acquired know-how and competences should be shared by personnel who received specific training and passed so as to be included in training schemes for medical staff. Training, acquiring these competences and passing them are crucial aspects that should be highly valued.

In this context, research work on group-specific experience of racist discrimination in the German health system is urgently needed. The aim is to be able to assess the scope, the form and the impact of racist discrimination, as no systematic research into this issue has ever been carried out before.

Besides, personnel working in the health and outdoor patient care sector must take part in comprehensive training schemes so as to be able to adequately attend an increasingly diverse population of patients.

Thirdly, linguistic barriers must be to a greater extent overcome. To this aim, interpreters must be made available. Pilot projects with multilingual medical students could inspire further measures with a similar approach.

As for the state-funded health and outdoor patient care sector, the focus should lie on taking affirmative action measures pursuant to Art. 2 ICERD Art. with the aim of increasing the representation of groups that require protection under ICERD.

161 This section is based on a background paper „Rassistische Diskriminierung und physische Gesundheit“, by Fortuna Ghebremeksel. See <http://rassismusbericht.de/wp-content/uploads/Rassismus-und-physische-Gesundheit.pdf>

162 H. Gerlach u. a., „Diskriminierung von Schwarzen aufgrund ihrer Hautfarbe? Ergebnisse von Focusgruppendifkussionen mit Betroffenen im deutschen Gesundheitswesen“, *Das Gesundheitswesen* 70, Nr. 1 (Januar 2008): 47 – 53, doi:10.1055/s-2007 – 1022524.

163 E. Koch u. a., „Patienten mit Migrationshintergrund in stationär-psychiatrischen Einrichtungen“, *Der Nervenarzt* 79, Nr. 3 (2008): 328 – 39; Meryam Schouler-Ocak u. a., „Patienten mit Migrationshintergrund in stationär-psychiatrischen Einrichtungen-Vergleich zwischen Patienten aus Osteuropa und der Türkei“, *Psychiatrie und Migration* – National survey on patients with migratory background in inpatient psychiatric clinics of the working group, *Psychiatrie und Migration* of the Federal Board of Directors“, *Zeitschrift für Medizinische Psychologie* 18, Nr. 3 (2009): 117 – 23; Isaac Bermejo u. a., „Psychische Störungen bei Menschen mit Migrationshintergrund im Vergleich zur deutschen Allgemeinbevölkerung“, *Psychiatrische Praxis* 37, Nr. 05 (Juli 2010): 225 – 32, doi:10.1055/s-0029 – 1223513.

e) Racial discrimination in the health sector – mental health¹⁶⁴.

The findings of many studies demonstrate that the groups who require protection under ICERD and experience discrimination in Germany have a lower psychiatric health quality and benefit from inadequate group-specific health services in Germany.¹⁶⁵ A sample taken out of a representative group of household encompassing 1,844 migrants indicates that migrants who have experience racism enjoy a significantly poorer mental health.

Several studies on the impact of migration processes and the experience of difference offer the following information on the psychiatric morbidity of migrants in Germany compared to the majority of the population: higher prevalence of psychotic disturbances, higher prevalence of affective and psychosomatic disturbances among women, wider spread treatment in locked psychiatric units, lower day-care attendance and less frequent use of outdoor treatment. As for psychotherapeutic treatment¹⁶⁶, consulting rates were extremely low. Löhner and Al. report about a higher prevalence of suicides among people with a Turkish migration background.

These findings provide only indirect information on the higher prevalence of mental stress among patients who do not benefit from a medical treatment of the same quality as people who are not affected by racism. However, the non-thematisation of racism is a hindrance to a further going in interpretation of these studies. Another obstacle is the use of the unprecise variable of „migration background“. [see hierzu: II. – Obligation to provide information on the groups that require protection under ICERD]. As an example, it was not possible to establish a relationship¹⁶⁷ between a migration background and mental health problems. The survey was based on a representative sample comprised of 2,510 respondents. However, this rather tends to prove that a distinction had not been made in the sample between racist discrimination and other migration-related grounds.

As a comparison, research outcomes in the USA, the United Kingdom and Australia have proved beyond doubt the correlation between the two factors: racism was clearly mentioned as one of the most important, independent indicator for the health of members of minorities¹⁶⁸, independent from any migration background, as per Paradies and Cunningham¹⁶⁹ in their research study on Australia's indigenous population.

Medical care for people with mental problems in Germany is characterised by the absence of any diagnostic tools aimed at apprehending pain, stress reactions due to racist discrimination and other consequence of racist experience and racism. Racist practices by members of the medical teams are not thematised. Furthermore, racist structures on account of which the person concerned is denied access to adequate care, are not questioned. The current practice of culturalisation of mental care (transcultural psychiatry, intercultural psychotherapy) strengthens the racist system, by presenting the structure of medical care as neutral, whereas the pain induced by racism and experienced by the persons concerned are considered as „alien“.

Racist structures that are the real cause of systematic exclusion from medical care remain unquestioned. The current practice of culturalisation of mental care and treatment (transcultural psychiatry, intercultural psychotherapy) strengthens the racist system. The reason is that medical services are seen as having a neutral structure while medical problems due to racism are deemed as being „different“.

164 This section is based on the background paper on „Rassismus und psychische Gesundheit in Deutschland“, submitted by Dr. Amma Yeboah as part of the parallel reporting process. The full text can be accessed under <http://rassismusbericht.de/wp-content/uploads/Rassismus-und-physische-Gesundheit.pdf>

165 Ulrike Igel, Elmar Brähler, und Gesine Grande, „Der Einfluss von Diskriminierungserfahrungen auf die Gesundheit von MigrantInnen“, *Psychiatr Prax* 37 (2010): 183 – 90.

166 E. Koch u. a., „Patienten mit Migrationshintergrund in stationär-psychiatrischen Einrichtungen“, *Der Nervenarzt* 79, Nr. 3 (2008): 328 – 39; Meryam Schouler-Ocak u. a., „Patienten mit Migrationshintergrund in stationär-psychiatrischen Einrichtungen-Vergleich zwischen Patienten aus Osteuropa und der Türkei“, *Zeitschrift für Medizinische Psychologie* 18, Nr. 3 (2009): 117 – 23; Isaac Bermejo u. a., „Psychische Störungen bei Menschen mit Migrationshintergrund im Vergleich zur deutschen Allgemeinbevölkerung“, *Psychiatrische Praxis* 37, Nr. 05 (Juli 2010): 225 – 32, doi:10.1055/s-0029-1223513.

167 Heide Glaesmer u. a., „Sind Migranten häufiger von psychischen Störungen betroffen? Eine Untersuchung an einer repräsentativen Stichprobe der deutschen Allgemeinbevölkerung“, *Psychiatr Prax* 36 (2009): 16 – 22.

168 Hope Landrine und Elizabeth A. Klonoff, „The schedule of racist events: A measure of racial discrimination and a study of its negative physical and mental health consequences“, *Journal of Black Psychology* 22, Nr. 2 (1996): 144 – 68; Don Elligan und Shawn Utsey, „Utility of an African-centered support group for African American men confronting societal racism and oppression.“, *Cultural Diversity and Ethnic Minority Psychology* 5, Nr. 2 (1999): 156; Shawn O. Utsey und Yasser Payne, „Psychological impacts of racism in a clinical versus normal sample of African American men“, *Journal of African American Studies* 5, Nr. 3 (2000): 57 – 72.

169 Yin C. Paradies und Joan Cunningham, „The DRUID study: racism and self-assessed health status in an indigenous population“, *BMC public health* 12, Nr. 1 (2012): 131.

There is an urgent need in Germany to conduct qualitative and quantitative studies that would examine the impact of racism on the mental health of patients suffering from psychiatric disorders broken down by groups of people that require protection under ICERD. In addition, comparative studies should investigate discrepancies in relation to the medical services and care provided to patients in Germany.

Racism is a topic to be included in all curricula for future medical staff. The quality of medical care for people who experience racism and suffer from mental disorders or illnesses should be assessed and monitored. It is necessary to establish standards and overcome discrepancies in the quality of medical services and care provided to people who are exposed to racism in contrast to the majority of the population.

In the long run, studies on racism and mental health should help define criteria for diagnosis in relation to disturbances and illnesses due to racism, with the aim of establishing a classification of mental disturbances and illnesses due to racism.

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Les Migras e.V.

Initiative Schwarze Menschen in Deutschland e.V.

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and independent experts:

Julia Alfandari

Elsa Fernandez

Dr. des. Eddie Bruce Jones

Dr. Bilgin Ayata

Fortuna Ghebremeksel

Dr. Kati Lang

Cengiz Barskanmaz

Daniel Gyamerah

Dr. Amma Yeboah

Project Coordinator: Joshua Kwesi Aikins

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