

Opening Statement for the CERD Country Report Presentation, 5/6 May 2015, UN, Geneva

Mr. Chairman,
Members of the Committee,

Thank you for the opportunity to discuss Germany's Country Report on the International Convention on the Elimination of All Forms of Racial Discrimination with you today.

Germany regards the dialogue with the UN Committee of Experts as a matter of paramount importance. We take our obligations ensuing from the human rights treaties extremely seriously.

In this context we attach particular importance to ICERD.

The fight against all forms of racial discrimination and racial prejudice is a major political and legal priority in Germany. Given the undiminished relevance of the issue, it represents an ongoing challenge that must be tackled by society as a whole.

Two days ago, German Federal Chancellor Angela Merkel said the following words during a memorial ceremony at the former concentration camp in Dachau:

“2015 is a year of remembrance marking the end of the Second World War and victory over National Socialism 70 years ago. The liberation of the concentration camp at Auschwitz by soldiers of the Soviet Army 70 years ago was commemorated earlier this year on 27 January. Auschwitz symbolises the disenfranchisement and persecution of millions of people during the Shoah and the betrayal of civilisation that Germany initiated.”

Remembrance of the crimes committed by the German National Socialist State is very much alive, providing us – in Germany more than anywhere else – with a stark reminder of the need to fight racism.

Please let me make some fundamental remarks at the outset: peaceful coexistence and equality are among the core goals of our country. This is why the protection of human integrity and the prohibition of discrimination are enshrined in the German Constitution as values of the highest order. Article 1 of the Constitution reads as follows: *“Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community [...].”*

Article 3 (1) of the Constitution states in very clear terms that *“All persons shall be equal before the law”*, while Article 3 (3) contains an explicit prohibition of discrimination on the basis of parentage, race, language, homeland or origin (among other things).

ICERD's values are thus at the very heart of Germany's fundamental perception of itself as a country of freedom based on the rule of law.

The instrument of the constitutional complaint – which can be submitted by individuals to our highest court, the Federal Constitutional Court – ensures that our fundamental rights are not merely abstract propositions. Individual members of the public can appeal directly to the Federal Constitutional Court which in turn has far-reaching powers. It can even declare statutory regulations to be null and void.

However, it is vital that we continue asking ourselves critical questions. Have our values taken strong enough root in everyday society? How can we fight racial discrimination more effectively?

With this in mind, the Federal Government welcomes the parallel reports as being useful contributions to the debate, helping to further improve Germany's anti-racism policy.

If I may, I would like at this point to make an observation regarding the formal requirements: in compliance with the Committee's guidelines, Germany's report is quite restricted in terms of size. It can thus merely provide a brief overview of the most important topics and measures. In other words, just because a particular issue is not mentioned in the country report, it does not mean that the issue has not been recognized or is not being addressed by the Federal Government.

I would now like to touch upon a few current topics which are also discussed in some of the parallel reports:

Mr. Chairman, ladies and gentlemen,

Racism is not merely a problem on the far-right of the political spectrum. It is a phenomenon which can be found in all parts of society. This is not just the opinion of my delegation – it is the position of the Federal Government as a whole. The Federal Minister of Justice and Consumer Protection (Heiko Maas) has explicitly stated that zero tolerance must also be shown towards “everyday racism that is not obviously fuelled by right-wing extremism”. The Forum against Racism – a platform for dialogue between federal ministries and non-governmental organisations under the chairmanship of the Federal Ministry of the Interior – has similarly emphasized the need for a more nuanced conceptual approach: the general consensus is that racism is not solely an expression of extreme right-wing ideology but can be found in all parts of society.

I say this in response to criticism that the term “racism” is defined too narrowly in Germany. According to such criticism, there is an almost exclusive focus on right-wing extremists while the latently racist attitudes that exist throughout the whole of society – including within public authorities – are ignored. The Federal Government takes this criticism very seriously. I too believe that we in Germany need to direct more attention towards the presence of actual correlations and subconscious attitudes which facilitate racial discrimination. Nevertheless, I believe that we have made genuine progress in this area.

The accusation that non-extremist or subconscious forms of racial discrimination are being neglected is often voiced in connection with a further subject area which I would now like to address: the series of murders committed by the so-called National Socialist Underground (NSU).

The NSU's appalling crimes and their consequences have shaken Germany to the core.

In 2012 the German *Bundestag* (federal parliament) set up a committee of inquiry tasked on the one hand with shedding more light on the NSU terrorist group itself, and on the other hand with finding out how it was possible for the group to commit

such serious crimes for so long without being detected. The committee has already presented its final report in which numerous measures are recommended. Some of these measures have already been implemented.

In March 2015, for example, the *Bundestag* passed a law emphasizing the significance of racist, xenophobic or other humanly degrading motives within court and investigation proceedings: the German Criminal Code now explicitly lists such motives as aggravating circumstances. The guidelines for public prosecutors and the duty regulations for the police are currently being revised. The goal is to improve the detection and documentation of possible racist motives with a view to ensuring appropriate sentencing later on.

NSU committees of inquiry were also set up in six *Bundesländer* (federal states) in order to investigate the activities of the public authorities in those regions. Some of these committees have already presented their final reports.

Furthermore, criminal proceedings against the last surviving core member of the NSU and other defendants have been underway at Munich Higher Regional Court since May 2013. The proceedings are a major undertaking. More than 80 injured parties and surviving relatives of the victims are involved as joint plaintiffs.

In carrying out the described measures and reforms, the Federal Government has demonstrated its resolve to identify racist incidents and punish them accordingly.

However, these steps have been criticised in some quarters as being insufficient. There have been calls – including from CERD in the proceedings involving the Turkish Union in Berlin/Brandenburg – for a more aggressive use of criminal justice tools. We fully realize that criminal prosecution is a necessary part of state activity and, in many cases, the only appropriate option.

At the same time, we would like to emphasize the fundamental significance of freedom of expression which occupies a key position within our national constitutional order and is an equally important part of the international human rights system. While utterances made by members of certain groupings may be felt – justifiably – to be insulting, shocking, unsettling or excluding, these utterances do not always cross the

threshold of criminality. The Federal Government believes that the area of speech crime requires a most prudent approach, even though many people may find such an approach difficult to bear – particularly those who are directly affected. Otherwise there is a danger that public debate might be suffocated by overly zealous criminal punishment, sparking off a chilling effect and thus eroding the culture of critical expression. By contrast, a culture that allows critical debate and discussion to occur provides a solid foundation for healthy democracy and, we believe, a strong basis for a society without racism.

The UN Special Rapporteur on Freedom of Religion or Belief, Prof. Heiner Bielefeldt, has recommended “more speech” rather than “no speech” in this regard. He is a strong advocate of emphasizing the role of debate rather than criminal law in the fight against racial discrimination.

This in turn brings fresh urgency to the question of whether it is possible in certain cases to deal with racist utterances using measures other than those provided by the criminal justice system.

First and foremost, political decision-makers must continue to clearly and publicly distance themselves from racist speech. The Federal Government has repeatedly made clear in the strongest possible terms that it condemns racially discriminating language. The Federal Justice Minister (Heiko Maas) has called for the justice system – and particularly the law and order authorities – to devote greater effort to examining whether action can be taken against election campaign posters that use racist language, while still giving due consideration to the freedom of expression.

We are not talking here about prosecuting the people who put up the posters in the first place but about whether the posters can be removed.

This is why the Federal Ministry of Justice and Consumer Protection has recently commissioned an academic report. The aim is to assess the extent to which ICERD can be utilized in cases where local authorities wish to take action against racist election campaign posters without resorting to criminal justice measures.

Our intention is to help decision-makers in governmental administration and the justice system to understand their legal options and to respond accordingly when dealing with racist language.

Another extremely important topic stems from the many refugees who have left their home countries and now wish to build new lives in Europe. Given the dramatic increase in refugee numbers and the tragedies involving boat people in the Mediterranean, the question of how to deal with refugees is an extremely urgent matter facing Europe as a whole. Germany takes in about one third of all the refugees who come to the EU.

Unfortunately, there have been shameful and dangerous reactions from the population in Germany. It goes without saying that offences such as arson attacks on proposed accommodation facilities for asylum seekers are investigated and prosecuted with the full force of the law. But the matter cannot be allowed to rest there.

We have to ask ourselves whether such behaviour is encouraged by the underlying social climate – and we must be resolute in taking countermeasures. Here I am thinking in particular about certain tendencies within public opinion which come to the surface in organisations such as Pegida (“Patriotic Europeans Against the Islamisation of the West”). We are deeply concerned that some of the demonstrations organised by these groups have attracted significant numbers of people.

The Federal Government has been absolutely clear in positioning itself as opposed to these movements. In her New Year's Speech, for example, the German Chancellor called upon the population not to support Pegida: “All too often their hearts are filled with prejudice, coldness and even hatred!” The Federal Minister of Justice (Heiko Maas) and the Federal Minister of the Interior (Dr. Thomas de Maizière) recently took part in a major conference with the title “The frontiers of political debate – Dealing with racist prejudice and ideologies of discrimination”.

Federal Minister Maas denounced the way in which “public opinion against foreigners is being stirred up at the expense of people who have lost everything”. He called for a “debate on the actual issues in order to expose Pegida and disprove their nonsensical arguments”. Federal Interior Minister de Maizière underlined the fundamental im-

portance of respect for one's fellow human beings. This, he said, must always be the basic attitude even when opinions become highly emotional and polarized. Respect for other human beings is the opposite of racism.

The Federal Government is extremely concerned to see this type of respect becoming increasingly absent from the public debate. In the words of Interior Minister de Maizière, a “climate of hatred and excess” has crept into the discussion about refugees and “all sense of reticence has been swept away” over the past few months. We believe that the response to this has to come from the mainstream of society. It is thus highly encouraging to see peaceful demonstrations taking place against racism and in favour of solidarity, along with numerous initiatives in support of refugees. But this alone is not enough. Democratic awareness needs to be permanently strengthened and the social climate needs to be stabilized.

The Federal Government and the *Bundesländer* have taken action along these very lines with numerous projects, some of which are already described in the nineteenth to twenty-second periodic report.

One of these projects is the “Solidarity Through Participation” scheme which offers training to people actively involved in clubs and associations in how to counteract the risk of extremism and racism. The scheme helps to foster the necessary conditions for coexistence based on equality and non-violence. After being launched in 2010, the scheme entered its second phase in 2013 and is planned to run until 2016.

The “Live democracy!” programme – initiated in 2015 with € 40.5 million of funding – takes a comprehensive approach. It aims to eliminate the underlying support for attacks on democracy, freedom and the rule of law as well as ideologies of inequality – racism in particular. To this end, it sets out to support projects which are actively involved in promoting democracy and preventing extremism. The range of topics covered is extremely broad and includes pilot projects that focus on hostility towards specific groups. By this we mean Islamophobia, anti-Semitism, anti-Gypsyism, homophobia and transphobia. Further examples that I can mention include the strengthening of democracy in rural areas and pilot schemes to prevent radicalization.

All of these projects are aimed at permanently strengthening our society in terms of democratic coexistence. School education assumes a centrally important role in this regard – both in terms of guaranteeing equal opportunities to the children of immigrants, and in providing democracy education to pupils with and without migrant backgrounds. The Federal Government and the *Bundesländer* are making a huge effort to ensure that children and juveniles with immigrant backgrounds are given the best possible opportunities – not just in their own interests but for the good of society as a whole. The goal of all these measures is to help compensate for the educational deficits of children with migrant backgrounds.

All of the *Bundesländer* have committed themselves to the goal of reducing the correlation between social background and educational success as far as possible. This includes systematically addressing questions on how to make schools more open in intercultural terms and how to deal with diversity. In numerous *Bundesländer*, a two-pronged school system has been introduced in order to enhance the provision of equal opportunities for all pupils. Most of the *Bundesländer* are thus following the trend of responding to the criticism also expressed by UN Special Rapporteur Muñoz.

These initiatives are proving to be successful: the school drop-out rate has fallen among juveniles with a migrant background, and the last PISA report (2012) indicated a clear improvement in the performance of pupils with immigrant backgrounds.

These examples are heading in the right direction and I believe we can draw encouragement from them. Because in the midst of all the criticism – which we do not in any way wish to evade – we should not lose sight of the positive developments. Germany has long been an immigration country and is committed to fostering a culture of openness – even if there is still room for improvement in this area.

The signs from the general public are encouraging: even during Pegida's “boom” phase, the total number of people demonstrating on the streets against Pegida and similar movements was greater than those demonstrating in favour of them – often several times over. And refugees are not always met with hostility in Germany. Quite the opposite: in the municipalities concerned, citizens nearly always come together to explicitly welcome the newcomers and provide them with help.

Overall, we feel confident that Germany will rise to the challenge of breathing life into the values contained in our Constitution and the Anti-Racism Convention. But we also realize that there is still much to be improved. This is something we want to discuss with you today and tomorrow, and we look forward to your questions and suggestions.