



## Asamblea General

Distr. general  
22 de febrero de 2010  
Español  
Original: inglés

### Consejo de Derechos Humanos

#### 14º período de sesiones

Tema 9 de la agenda

**Racismo, discriminación racial, xenofobia y formas conexas de intolerancia: seguimiento y aplicación de la Declaración y el Programa de Acción de Durban**

### **Informe del Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, Githu Muigai**

Adición

#### **Misión a Alemania\***

##### *Resumen*

Por invitación del Gobierno, el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia visitó Alemania (Berlín, Colonia, Karlsruhe, Heidelberg, Nuremberg, Leipzig, Crostwitz, Rostock y Hamburgo) del 22 de junio al 1º julio de 2009.

El Relator Especial mantuvo largas reuniones con autoridades de los poderes ejecutivo, legislativo y judicial, incluso a nivel de los *Länder* (Estados federados) y los municipios. El Relator Especial también celebró amplias reuniones con representantes de organizaciones de la sociedad civil que trabajan en el ámbito del racismo y la xenofobia, asociaciones que representan a grupos minoritarios, comunidades religiosas y personas víctimas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia.

El Relator Especial formula varias recomendaciones, entre ellas las siguientes:

\* El resumen del presente documento se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo al resumen, se distribuye únicamente en el idioma en que se presentó.

- La Oficina Federal de Lucha contra la Discriminación debería disponer de los recursos humanos y financieros necesarios para que pueda estar presente en los 16 *Länder*. Además, su mandato debería ser más robusto, de forma que le permitiese investigar las denuncias que le hayan sido dirigidas y entablar procedimientos ante los tribunales. Por último, la Oficina debería estar facultada para llevar a cabo investigaciones de oficio, incluso en áreas como la discriminación en materia de empleo y de vivienda.
- Debería añadirse al artículo 46 del Código Penal una referencia explícita al racismo como circunstancia agravante en la comisión de un delito. Además, el Gobierno debería desarrollar una formación específica para los agentes de policía, fiscales y jueces sobre la identificación y caracterización de los delitos motivados por prejuicios.
- El Gobierno debería seguir haciendo uso de los artículos 84 y 85 del Código Penal y del artículo 4 b) de la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial, a fin de declarar fuera de ley y prohibir las organizaciones que promueven la discriminación racial e incitan a ella.
- Según lo previsto en el artículo 1, párrafo 4, de la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial, el Relator Especial recomienda enérgicamente que se tomen medidas especiales para asegurar una adecuada representación de las personas de origen migratorio en las instituciones estatales, en particular en las esferas del empleo y la educación, en las instituciones políticas y en la administración pública.

## Anexo

### Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, on his mission to Germany (22 June – 1 July 2009)

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	4
II. General background.....	4–11	4
A. Demographic, ethnic and religious composition.....	4–6	4
B. International human rights instruments.....	7–8	5
C. Methodology.....	9–11	5
III. Legal and institutional framework.....	12–28	5
A. Constitutional and criminal provisions.....	12–14	5
B. The General Equal Treatment Act.....	15–18	6
C. The Federal Anti-Discrimination Agency.....	19–23	7
D. The National Integration Plan.....	24–26	8
E. The National Action Plan against Racism.....	27–28	8
IV. Main challenges in the fight against racism, racial discrimination, xenophobia and related intolerance.....	29–61	9
A. Law enforcement and right-wing extremism.....	29–31	9
B. Hate crimes.....	32–36	9
C. Education.....	37–41	11
D. Housing.....	42–45	12
E. Employment.....	46–48	12
F. The situation of refugees and asylum-seekers.....	49–54	13
G. The situation of specific communities.....	55–61	14
V. Analysis and assessment of the Special Rapporteur.....	62–76	15
VI. Recommendations of the Special Rapporteur.....	77–87	19
Appendix		
List of official meetings.....		22

## I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Germany (Berlin, Cologne, Karlsruhe, Heidelberg, Nuremberg, Leipzig, Crostwitz, Rostock and Hamburg) from 22 June to 1 July 2009. He held extensive meetings with authorities from the executive, legislative and judicial branches. In light of Germany's federal structure and the scope of competences of the *Länder*, the Special Rapporteur conducted meetings both at the federal level and at the level of the *Länder* and municipalities. A full list of authorities met by the Special Rapporteur is contained in the appendix.

2. Apart from the agenda he covered with the Government and State institutions, the Special Rapporteur also had extensive meetings with representatives of civil society organizations that are active in the realm of racism and xenophobia, associations representing minority groups and religious communities, as well as individual victims of racism, racial discrimination, xenophobia and related intolerance.

3. The Special Rapporteur wishes to express his sincere gratitude to the Government of Germany for its full cooperation and openness throughout the visit and in the preparatory stages. He also wishes to convey his appreciation to the different civil society organizations that cooperated with him throughout the visit.

## II. General background

### A. Demographic, ethnic and religious composition

4. According to the Federal Statistical Office, Germany had a population of around 82.2 million as of 31 December 2007. However, Germany faces negative population growth rates. From 2006 to 2007, the population declined by about 97,000, or 0.1 per cent.<sup>1</sup> The foreign-born population amounted to 8.8 per cent of the total population, or around 7.2 million persons. People of Turkish descent make up the largest group of foreign-born individuals, with over 1.7 million inhabitants.<sup>2</sup>

5. Official data is not available concerning the ethnic background of the population. Many interlocutors within Germany highlighted the fact that there is general scepticism in the country regarding the gathering of ethnically disaggregated data in view of the insidious use of such type of data during the period of National Socialism.

6. The religious composition of the population is predominantly Christian: 34 per cent of the population is Protestant and 34 per cent Roman Catholic. Muslims make up around 3.7 per cent of the German population. A large segment, 28.3 per cent of the population, consists of atheists, unaffiliated or other religious groups.

---

<sup>1</sup> Federal Statistics Office, available online at: <http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Navigation/Statistics/Bevoelkerung/Bevoelkerungsstand/Bevoelkerungsstand.psm>.

<sup>2</sup> These figures reflect the number of foreign-born individuals legally residing in Germany. The total number of individuals, including undocumented migrants, is substantially larger.

## **B. International human rights instruments**

7. At the international level, Germany is a State party to the core international human rights instruments, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights. However, Germany is not a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

8. At the regional level, Germany has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the Council of Europe Framework Convention for the Protection of National Minorities and the European Convention on Nationality. Germany has yet to ratify Protocol No. 12 to the European Convention on Human Rights on general non-discrimination and the Convention for the Participation of Foreigners in Public Life at the Local Level.

## **C. Methodology**

9. The Special Rapporteur carried out extensive meetings with authorities from the executive, legislative and judiciary branches, both at the federal and local levels of government, in order to obtain their views concerning racism and xenophobia in Germany, the adequacy of the existing legal framework and the programmes and policies adopted by the authorities to fight these problems. Additionally, meetings with independent institutions, civil society organizations, associations representing minority groups, religious communities and individual victims of discrimination were organized.

10. In order to better assess the main challenges that lie ahead in the fight against racism in Germany, the Special Rapporteur brought to the attention of the authorities some key concerns expressed by civil society and independent institutions. In this regard, he aimed to better understand the response of the Government to those challenges and, in addition, how the authorities identified existing problems and devised solutions thereto. The conclusions in this report are based on these rich exchanges with interlocutors in Germany and his own analysis of the literature.

11. Chapter III of this report analyses the legal and institutional framework adopted by Germany to combat racism. Chapter IV addresses a number of key areas in the fight against racism, presenting the views shared with the Special Rapporteur both by Government officials and civil society representatives. This is followed in chapter V by an analysis of the situation by the Special Rapporteur and in chapter VI by his recommendations to the Government.

## **III. Legal and institutional framework**

### **A. Constitutional and criminal provisions**

12. A general equal treatment clause is contained in article 3 of the Basic Law of the Federal Republic of Germany, which declares that “all persons shall be equal before the law” and that “no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability”.

13. The Criminal Code contains more specific prohibitions with regard to racism. In particular, section 130 labelled “Agitation of the People” contains robust provisions against

whomever “incites hatred against segments of the population or calls for violent or arbitrary measures against them”, including through the dissemination of writings and broadcasts. Section 130.3 also provides for criminal sanctions against approval or denial of acts committed under the rule of National Socialism, which can be punished with imprisonment of up to five years. Applicable in the framework of article 4.4 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Criminal Code also contains a prohibition on the activities of parties and organizations declared to be unconstitutional (sections 84 and 85), the propaganda of unconstitutional organizations (section 86) and the use of symbols of unconstitutional organizations (section 86a).

14. With regard to racist crimes, section 46 of the Criminal Code establishes the principles that should be taken into account to determine punishment for criminal offences. These include a general reference to the “motives and aims of the perpetrator”, but no specific reference to racist motivations is included (see paragraphs 32–35 below for a discussion on this question).

## **B. The General Equal Treatment Act**

15. In 2006, the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) was enacted by parliament, coming into force on 18 August 2006. The Act is in fact a transposition into German law of some key European Union (EU) anti-discrimination directives. As section 1 of the Act states, its purpose “is to prevent or stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation”.<sup>3</sup> It prohibits discrimination on these grounds in a variety of areas, including employment, vocational training, membership or involvement in workers’ and employers’ organizations, social protection, health care, education and housing. In this regard, the Act is an important milestone in offering specific protection to vulnerable groups in Germany, creating a particular set of rights that can be pursued through the courts and making more specific the general equal treatment provision contained in the Constitution.

16. The Act also addresses the question of affirmative action in its section 5 entitled Positive Action, which provides that “unequal treatment shall only be permissible where suitable and appropriate measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under Section 1 occurred”.

17. According to various accounts, the enactment of the Act was a controversial process because of the concern, mostly of the private sector, that it would lead to increasing bureaucracy, particularly in relation to employment discrimination. It demanded therefore that political capital be invested by Government authorities to ensure its approval. While the fears expressed regarding the implications of the Act were shown not to be realistic, many interlocutors confirmed that there remains a degree of reluctance on the part of many actors to fully accept the provisions of the Act.

18. Civil society organizations pointed out that at present there is, to their knowledge, little resort to the Act by victims of discrimination, due primarily to lack of awareness of the law. In addition, the lack of data collection on racial discrimination by most public agencies also contributes to the difficulty in providing solid evidence of structural discrimination. Many organizations also highlighted the fact that there is no tradition of strategic litigation in Germany, therefore only a limited number of racial discrimination

---

<sup>3</sup> The General Equal Treatment Act does not include language and nationality as protected grounds, as recommended by the European Commission against Racism and Intolerance (ECRI) in its general policy recommendation No. 7 on national legislation to combat racism and racial discrimination. See ECRI, Fourth Monitoring Report on Germany, published on 26 May 2009, para. 25.

cases reach the higher level of the judiciary. In his meeting with the Constitutional Court, the Special Rapporteur received confirmation that there are very few cases on discrimination, and even fewer on racial discrimination, that reach that level of judicial review. The main consequence of this state of affairs is slow progress in the interpretation of the law by the higher levels of the judiciary, the lack of a victim-centred approach, and a greater degree of flexibility for lower-level judges to disregard anti-racism provisions that are not explicitly spelled out in the legislative framework.

### C. The Federal Anti-Discrimination Agency

19. An important component of the General Equal Treatment Act was the creation of a Federal Anti-Discrimination Agency within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. While the Agency is functionally dependent on the Ministry and its head is appointed by the Government, the Act describes the Agency as “independent in the execution of its duties and only subject to the law”.

20. The main mandate of the Federal Anti-Discrimination Agency is to receive complaints from any person who believes he or she has been discriminated against on the grounds provided in the General Equal Treatment Act. The Agency is then mandated to “give independent assistance” to such persons, in particular by (a) providing information on claims and possible legal action; (b) arranging for advice to be provided by another authority; and (c) endeavouring to achieve an out-of-court settlement. The Agency therefore does not work as a quasi-legal complaint mechanism, as it is not empowered to bring about formal discrimination complaints against persons or institutions thought to have engaged in discriminatory behaviour. Contrary to similar bodies in other European countries, the Agency has more of an information and counselling mandate than one of providing legal support.

21. The Agency has dealt with a limited number of cases of discrimination based on race or ethnicity. From August 2006 to December 2008, 26.2 per cent of cases addressed by the Agency were on discrimination based on disability, 24.8 per cent on discrimination on the grounds of gender and 19.7 on discrimination based on age. Only 14.5 per cent of cases involved discrimination on grounds of race or ethnicity and 2.8 per cent on grounds of religion or belief.

22. The Special Rapporteur met with the Head of the Agency, who emphasized that, of the 14.5 per cent of cases on racial discrimination, a large number are related to cases of mobbing at the workplace, discrimination in admission to night clubs and discrimination in the rental of housing. The Special Rapporteur was informed that the approach of the Agency is to rely on a mediation role between the alleged victim and the perpetrator of discrimination in order to find a mutually acceptable settlement. The Head of the Agency expressed satisfaction with this mandate, which in her view facilitates a successful resolution to many of the conflicts brought to its attention.

23. Civil society organizations underscored the fact that the Agency has a weak mandate, including the incapacity to take up cases, even for strategic litigation. Furthermore, the Agency lacks adequate human and financial resources to fully implement its mandate, employing around 20 full-time staff. The lack of regional or local structures, including field offices, is also seen as posing a major obstacle for victims of discrimination in relying on the Agency. Many organizations also pointed out that the Agency has not been proactive in fulfilling its role, such as by carrying out in-depth research on racism, collecting data or undertaking paired testing to assess discrimination in employment and housing. Finally, the issue of independence of the Agency was addressed by many interlocutors, who expressed discomfort with the fact that the Head of the Agency is

appointed by a Ministry and that the Agency may be overly responsive to the majority in parliament.

#### **D. The National Integration Plan**

24. In July 2006, the German Chancellor convened a high-level integration summit, gathering representatives of civil society and migrant communities, as well as representatives of the Federal Government, the *Länder* and municipalities to discuss ways of addressing the question of migration in Germany and propose concrete actions in this area. The proposals put forward at the summit were integrated into a National Integration Plan, formally introduced in 2007. Most of the Special Rapporteur's interlocutors recognized that the summit and the Plan fostered a paradigm shift in the way the question of migration was addressed in Germany, as it recognized openly for the first time that Germany is a country of migration.

25. The National Integration Plan brought together for the first time an array of actors dealing with this question: the Federal Government, the *Länder*, local authorities, migrants, institutions and organizations from science, media, culture, sports, trade and industry, trade unions, and religious groups. According to many authorities, the Plan recognizes integration as creating responsibilities not only for migrants, but also for the host society and the Government. It outlined a number of actions that would support the goal of promoting integration, including the creation of integration courses for foreigners,<sup>4</sup> promoting German education at an early age, securing quality education and professional training, etc.

26. Despite the general recognition that integration should be a two-way process involving both migrants and German society, a number of civil society organizations have pointed out that the debate so far has focused solely on the "responsibility" of migrants to integrate, a term which in many instances is interchangeably used to mean assimilation. According to many of the Special Rapporteur's interlocutors, similarly to the provisions of the National Action Plan against Racism, the question of broader socio-economic structures that enable a proper integration of migrants has generally been avoided.

#### **E. The National Action Plan against Racism**

27. In line with the provisions of the Durban Declaration and Programme of Action, Germany has prepared a National Action Plan against Racism covering a range of actions to combat racism, racial discrimination, xenophobia and related intolerance. The Plan draws on a number of existing programmes, including "Competent for Democracy – Advisory Networks to Oppose Right-Wing Extremism" and "XENOS – Integration and Diversity". According to the authorities, the Plan is intended to be a comprehensive aid to prevent and protect against violence and discrimination by clearly demonstrating that neither policymakers, the judicial system nor the society at large are willing to accept or tolerate such phenomena.

28. Many civil society organizations pointed out that the National Action Plan against Racism has a narrow focus on right-wing extremism and is overly concentrated on the role of political parties, while almost entirely avoiding the key issue of indirect and structural

---

<sup>4</sup> Integration courses were in fact already initiated in 2005 with the introduction of the new Residence Act. This concept was subsequently expanded and improved with the introduction of the National Integration Plan.



discrimination against persons with a migration background. These interlocutors noted that the Plan does not propose any reform in key areas that directly contribute to the socio-economic exclusion of migrants, such as the role of the education system in promoting equal opportunities, or the question of discrimination in areas such as housing and employment. A more comprehensive criticism of the National Action Plan against Racism voiced by civil society is that it has not managed to shift anti-racism actions in Germany from project-oriented actions to taking a structural approach to the problem.

#### **IV. Main challenges in the fight against racism, racial discrimination, xenophobia and related intolerance**

##### **A. Law enforcement and right-wing extremism**

29. The Federal Ministry of Interior provided some relevant figures to the Special Rapporteur with regard to right-wing extremism. Officials noted that there are about 30,000 right-wing extremists in the country at present, 4,800 of which are believed to be neo-Nazis, in nearly 160 associations. Apart from these organized groups, according to the Ministry some 9,500 persons are believed to be ready to engage in racist violence. Furthermore, around 13,000 extremists are organized in extreme right-wing political parties. While civil society organizations estimated that these figures are much lower than the real number of extremists in Germany, the figures nevertheless show that extreme right-wing ideologies, including neo-Nazism, are still active and abundant in the country.

30. The question of right-wing racist organizations, including neo-Nazi movements, was also addressed by authorities in the Ministry of Interior. Government officials explained that over the past 20 years, more than 30 racist organizations have been banned. Some of these organizations continue to operate under different names, requiring legal procedures to be re-initiated. However, the Special Rapporteur noted a high level of awareness insofar as curbing the activities of such organizations is concerned. Officials explained that proceedings to ban political parties are more complex due to the additional constitutional protection afforded to such parties. In particular, the question of previous proceedings taken against the National Democratic Party (NPD) was addressed. In view of the failure of previous attempts to ban the NPD, the authorities explained that they would only initiate such a procedure if there were credible enough evidence for a lawsuit to be successful.

31. With regard to racial profiling, minority associations and non-governmental organizations expressed concern regarding the widespread perception that in the aftermath of 11 September 2001, the police engaged in racial and religious profiling against certain groups, including people of African descent, Arabs and Muslims. Officials at the Ministry of Interior emphasized that police searches have to be motivated by a prior suspicion, and that police officers cannot rely on subjective notions, such as the ethnic or religious background of individuals, as grounds for suspicion. They further emphasized that these principles are the subject of extensive training for police cadets.

##### **B. Hate crimes**

32. Existing criminal legislation on hate crimes is contained in section 46 of the Criminal Code, which provides for the consideration of the “motives and aims of the perpetrator” when investigating and adjudicating on criminal acts. The concept of racist hate crimes is thus not formally defined in the legislation. However, a peak in the number of cases which could be classified as hate crimes in the late 1990s and 2000 prompted the authorities to review the system of registration of hate crimes. In this new classification

scheme that came into force in 2001, hate crimes are generally viewed through the lens of “politically motivated crimes”.

33. The Special Rapporteur was informed by the Government that the German police use the following existing classification scheme for politically motivated crimes: right-wing politically motivated crimes, left-wing politically motivated crimes, politically motivated crimes committed by foreigners, and other politically motivated crimes. Furthermore, the Government indicated that of the 31,801 crimes registered as politically motivated crimes, 4,757 were qualified as hate crimes (4,358 of which were classified as right-wing politically motivated crimes, 127 as left-wing politically motivated crimes, 112 as politically motivated crimes committed by foreigners, and 160 as other politically motivated crimes).

34. The application of the classification scheme used by the police with regard to hate crimes shows that a great majority of them are considered as right-wing politically motivated crimes. As pointed out by many civil society organizations, a narrow understanding of racism still permeates many public institutions in Germany. In this approach, racist crimes are viewed primarily as a product of right-wing extremism. The European Commission against Racism and Intolerance also emphasized that less obviously extreme manifestations of racism tend to be neglected as such in the criminal process, and that members of visible minorities feel that only offenders who are identifiably members or sympathizers of right-wing extremist groups are likely to be pinpointed in the criminal justice system as authors of racist acts, with the result that some racist offences are not treated as such at all.<sup>5</sup>

35. Apart from the conceptual flaws involved in this understanding of racism, civil society interlocutors pointed to the practical problems that this approach generates. In particular, the Special Rapporteur was informed that because of the association in practice of hate crimes to right-wing extremism, only crimes perpetrated by individuals known to be affiliated to an extreme-right wing movement will generally be characterized as a hate crime. Many other offences perpetrated by individuals who are not known to be right-wing extremists are not reported as hate crimes, but rather as bodily injuries.

36. The Special Rapporteur wishes to make reference to a tragic event that took place just after the conclusion of his visit to Germany, which is yet another reminder of the persistence of racism in the country and the need for robust action to curb it. On 1 July 2009, just after the Special Rapporteur concluded his visit to Germany, Marwa Al-Sherbini, a 32-year-old pregnant Egyptian pharmacist died after being stabbed at least 16 times in a courtroom in Dresden.<sup>6</sup> Ms. Al-Sherbini was in the courtroom to testify in a case against her attacker, who had previously been fined for uttering racial slurs against Ms. Al-Sherbini, calling her an “Islamist” and a “terrorist”. Ms. Al-Sherbini’s husband, a genetic research scientist, was also seriously wounded in the incident as the police mistook him for the attacker and shot him in the leg. The Special Rapporteur was informed of the judgement of 11 November 2009 by which the criminal chamber of the regional court of Dresden sentenced the attacker to life imprisonment for the xenophobic murder of Ms. Al-Sherbini and for the attempted murder of her husband.

---

<sup>5</sup> See ECRI, Fourth Monitoring Report on Germany, para. 18.

<sup>6</sup> See also the allegation letter sent jointly with the Special Rapporteur on freedom of religion or belief, as well as the summary of the Government’s reply, A/HRC/13/40/Add.1, paras. 88–99.

## C. Education

37. Due to the federal system of government in Germany, responsibility for education lies with the *Länder*. However, the Special Rapporteur was informed that the Federal Government works in close cooperation with the *Länder* in the realm of educational policies, including in the framework of the education summit held in Dresden in 2008. The Special Rapporteur notes with satisfaction some of the measures adopted at the education summit, including the commitment to invest in language competence among children with a migration background and to increase public spending on education and research to 10 per cent of GDP by 2015.

38. Officials at the Ministry of Education and Research noted that, insofar as primary and secondary education is concerned, in the majority of *Länder* the residential status of parents is not taken into account for the admission of students. This measure aims to ensure that all children of immigrants have a chance to obtain proper education. They further pointed out that the education of children with a migration background was one of the central topics of the National Education Report prepared by the Ministry. The National Integration Summit also addressed this same question at length and outlined over 400 measures to improve access to education for children and youth with a migration background.

39. During the mission, the Special Rapporteur visited some educational projects that are addressing some of the main challenges related to the integration of children with a migration background. These projects highlighted the need for comprehensive measures, starting at the preschool level and continuing through secondary and university education. In particular, promoting language competence among preschool children with a migration background has been seen as one of the factors that can have a long-term impact on the performance of these children in the school system.

40. In his discussions with civil society representatives, the Special Rapporteur noted that one of their central complaints is the impression, particularly held by minority communities, that for children of migrants the educational system is not conducive to good performance leading to university-level qualification. In particular, the Programme for International Student Assessment (PISA) studies has shown that there is a high correlation between migration background and school performance in Germany. The three-tiered system of German education, with early selection into separate levels of education, creates a bias against students whose mother tongue is not German. The Special Rapporteur believes that the overrepresentation of minority students in the lower school stratum is an indication of the problems in the three-tiered model. The Special Rapporteur also notes that the same finding was reached in 2006, when the Special Rapporteur on the right to education visited the country and recommended that the Government reconsider its multitrack school system (A/HRC/4/29/Add.3). The Special Rapporteur notes that existing experience in this area, such as in Hamburg, has proved successful and could provide lessons for education reform.

41. Civil society organizations also pointed out that a key challenge for persons with a migration background is to receive recognition for university diplomas obtained abroad. Whereas recognition of diplomas for individuals coming from other European Union members is generally straightforward, many non-European migrants who come to Germany with previously obtained qualifications in their home countries find it difficult to have their degrees formally recognized. The Special Rapporteur notes that these difficulties in diploma recognition have a direct impact on the integration of migrants in the workforce and this has a negative impact on the economy. Officials at the Ministry of Education and Research agreed that the question of recognition of diplomas was problematic but pointed to an initiative that they expected would be adopted in September 2009 by the parliament to

facilitate recognition of qualifications that are similar to German qualifications. The Special Rapporteur also took note of the intention of the authorities to further improve the recognition of diplomas by introducing a certificate based on the Lisbon Convention.

#### **D. Housing**

42. In the Special Rapporteur's meetings with civil society representatives, discrimination in housing was highlighted as one of the major problems faced by migrant communities. Across the country, many interlocutors pointed out that this form of discrimination is prevalent with landlords who are generally reluctant to rent housing units to persons with a migration background. The Special Rapporteur notes that this behaviour is often very hard to prove, as it occurs silently, when landlords inform the prospective tenant that the dwelling "is no longer available".

43. The Special Rapporteur wishes to note that across the world, discrimination in the area of housing is one of the key factors that contribute to the process of ghettoization, where immigrants unable to find housing are forced to settle in certain "minority areas". The Special Rapporteur noted that this process of ghettoization also occurs across Germany. In particular, he wishes to point out that the formation of ghettos creates additional barriers to the integration of migrants, particularly with regard to language proficiency. It has also fostered the image of migrant communities as being "secluded" and "unwilling" to integrate. In this regard, fighting discrimination in the domain of housing is a key responsibility of the Government to ensure better integration of migrants into society.

44. With regard to the enforcement of legislation for non-discrimination in housing, the Special Rapporteur recalls that one of the major problems is the production of evidence that would be valid in a court of law. In this regard, the Special Rapporteur believes that the assessment of discrimination in housing should be seen as a comprehensive set of obligations, in relation to which the State has a proactive role to play. He makes reference, in particular, to techniques such as paired testing, whereby public agencies or independent institutions compare the responses of landlords to prospective tenants of different backgrounds, bringing enforcement actions against those landlords who are found to be discriminating.

45. The Special Rapporteur notes with concern that one of the provisions of the General Equal Treatment Act formally allows for different treatment on the grounds of race or ethnic origin under section 19.3, which states that "in the case of rental of housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions". The Special Rapporteur raised this provision with a number of interlocutors, many of whom were unaware of such an exception. Some authorities explained that the original purpose of this provision was to allow for affirmative action aimed at encouraging more integrated neighbourhoods. In any circumstance, this broad provision allowing for legal discrimination is detrimental to any possible affirmative action efforts, particularly in a domain as sensitive and problematic as discrimination in housing.

#### **E. Employment**

46. In his meeting with the Federal Ministry of Labour and Social Affairs, the Special Rapporteur was informed of the projects and policies that are currently being implemented in Germany to address problems of discrimination in employment. According to Ministry officials, the main problem Germany currently faces is not necessarily discrimination in the

workplace, but rather discrimination in hiring practices. This problem affects in particular young people with a migration background, who are subject to high unemployment rates.

47. The authorities have been relying on a two-pronged strategy to address this question. On the one hand, a number of actions have been developed to promote professional training of young people with a migration background, such as through apprenticeships. Officials emphasized that in view of the projected population decline in the country over the next decades, a qualified workforce composed of people with migration backgrounds will be essential to the sustainability of the German economy. On the other hand, the Government has also focused on developing actions to promote tolerance and respect for diversity in the workplace and among young people. In this regard, the Special Rapporteur was briefed about a large-scale programme called “XENOS - Integration and Diversity”, which supports action against racism, discrimination and xenophobia in the interface between school, training and professional life.

48. As mentioned above, following his contacts with civil society organizations and associations representing migrant communities, the Special Rapporteur noted that a key problem faced by persons with a migration background is the recognition of diplomas obtained in their own countries. Some key areas such as medicine are particularly problematic. Interlocutors at the Federal Ministry of Labour and Social Affairs recognize the problem and noted that this issue is being resolved at the regional level through EU standards. They also recognize that non-EU migrants in certain professions face considerable obstacles in obtaining equivalencies for their diplomas, which generally prevents them from integrating into the labour market in areas in which they are qualified.

## **F. The situation of refugees and asylum-seekers**

49. The Federal Office for Migration and Refugees, the main institution dealing with these questions at the federal level, was substantively restructured after the adoption of the Immigration Law. In his meeting with the Director of the Office, the Special Rapporteur was informed of a variety of strategies devised by the Office to promote the integration of migrants in Germany and of ongoing statistics regarding the processing of asylum claims. The Director noted that around one third of all asylum claims are processed within two months and roughly 60 per cent are processed within six months. He noted that in general the claims that are delayed for more than six months are those that go to appeal through the court system.

50. The Director also pointed out some key challenges that are presently being addressed. In particular, he highlighted the need for intercultural competencies, particularly among civil servants dealing directly with migrants, refugees and asylum-seekers. To meet this challenge, the Office invests in language and cultural sensitivity training for its staff. In addition, the Director pointed out to the need to ensure that the integration policy is designed to tap the existing potential of migrants. He highlighted the difficulties of recognition of foreign diplomas, which hinders their integration into the labour market.

51. With regard to the issue of housing conditions of refugees and asylum-seekers, the Director noted that the provision of housing is managed at the level of the *Länder*. The *Länder* are also responsible for the education of refugees and asylum-seekers and therefore different rules apply throughout the country.

52. Civil society interlocutors recognized the importance of the enactment of the new German Residence Act, which entered into force on 1 January 2005. The Act introduced for the first time mandatory integration measures for refugees and immigrants holding fixed-term residence permits, including language classes and an orientation class, which are both

conducted by certified private language schools, non-governmental organizations (NGOs) and welfare organizations.

53. While recognizing the importance of the Act, civil society organizations also pointed out that a number of problems still remain. With regard to the education of asylum-seeking children, some of the Special Rapporteur's interlocutors noted that due to the obligation of these children to stay with their parents in special accommodation centres, some may face practical problems in attending classes. Since certain reception centres are located in remote areas far away from towns or villages with the necessary infrastructure, it is physically difficult for these children to get to a school. In addition, the overall living conditions in these accommodation centres may not always be appropriate for children, and their parents may face problems in financing extra costs for school material, as they only receive a small amount of pocket money. Asylum-seeking children and their parents may also not always be informed by the school authorities that they have the right and the duty to attend school.

54. The question of accommodation of asylum-seekers was also found to be problematic in some of the *Länder*. Civil society interlocutors noted that the accommodation situation varies widely across the different *Länder*, with asylum-seekers allowed to live in flats in some parts of the country or confined to reception centres in others. NGOs pointed out that placing asylum-seekers in collective accommodation is often counterproductive to the goal of integration, as they exclude refugees from virtually any contact with German society.

## **G. The situation of specific communities**

55. Throughout the mission, the Special Rapporteur carried out extensive meetings with communities that face specific challenges in Germany, including the Jewish, Roma, Sinti, Arab and Muslim communities and people of African descent.

56. Representatives of the Jewish community generally expressed their recognition that Germany had put in place robust structures to ensure that the rights of its Jewish citizens are fully protected and that the tragic experience of the Jewish people during the Holocaust be constantly remembered. In particular, Jewish leaders highlighted the important work that has been carried out in terms of remembrance of the past, but also in supporting the flourishing of an active Jewish community at present. The Jewish community noted that some concerns regarding anti-Semitism and right-wing extremism remain. In particular, certain hate crimes like the desecration of Jewish cemeteries continue to take place, indicating that some small groups within German society still harbour an exclusionary and anti-Semitic ideology.

57. The Roma and Sinti community expressed similar views with regard to the progress achieved since the Second World War. They emphasized that there is a general recognition among the German public of the history of Roma and Sinti suffering during the Holocaust and noted a commitment on the part of public institutions to ensure that the memory of the Roma and Sinti people is preserved. However, the Special Rapporteur's interlocutors pointed to widespread discrimination that still continues, particularly through stereotyping by the media and the public at large, as well as attempts to associate individuals of Roma and Sinti origin with criminal behaviour. Roma and Sinti leaders also noted concern regarding the dissemination of hate messages over the Internet, including direct incitement to racial hatred and violence.

58. The Special Rapporteur also met with a number of members of the Arab and Muslim communities and visited mosques, as well as cultural centres. According to official figures, there are approximately 4 million Muslims living in Germany, half of whom are not German citizens and the majority of whom are of Turkish origin. The Special Rapporteur noted that many Muslims, due both to their religious affiliation and ethnicity, face

discrimination in many aspects of their life. In particular, a large number of Muslim residents live in ghettoized neighbourhoods, with few opportunities to interact with German society at large. Although ghettoization may at times be voluntary, the Special Rapporteur recalls that discrimination in housing has a substantial impact in creating these ethnically or religiously segregated communities (see section D above). It should be noted in addition that the overlap of social status with religious affiliation and ethnicity further compounds the difficulties faced by these communities as far as integration is concerned.

59. The Special Rapporteur also noted with concern that discrimination against Muslims increased substantially after 11 September 2001, with widespread stigmatization associating Muslims and terrorism. This directly affects Muslims in many aspects of their life, including the school system and the workplace. The Special Rapporteur was informed of some innovative strategies to try to foster better understanding between Muslim communities and State institutions, particularly the police, in order to build better common understanding and trust. However many Muslims voiced concern that relations between the Muslim communities and State institutions, in particular the police, are predominantly focused on security issues.

60. The Special Rapporteur also received information concerning the prohibition introduced by many *Länder* regarding the wearing of religious symbols by schoolteachers. None of these laws exclusively address the headscarf, but rather focus on the need to promote “religious neutrality”. However, the Special Rapporteur noted that some of these laws may have a discriminatory effect on Muslim women and often engage in double standards, particularly with the introduction of some forms of exemption granted to the wearers of Christian symbols.<sup>7</sup> In addition, these laws may also have the effect of further decreasing the number of qualified Muslim teachers in public schools, thus making it more difficult to promote cultural awareness among pupils.

61. The Special Rapporteur notes with satisfaction that in order to address some of the challenges faced by the Muslim community, the Federal Ministry of Interior set up the German Conference on Islam, which brings together civil society representatives, religious leaders, representatives at the federal level, the *Länder* and municipalities, as well as scholars and academics. According to the authorities, the Conference aims to promote inclusive and constructive forms of dialogue, and to ensure better integration of Muslims in Germany.

## V. Analysis and assessment of the Special Rapporteur

62. The Special Rapporteur observed some very positive trends within German society and political institutions regarding issues of racism. He would like to make reference to three key areas of progress in the fight against racism: (a) the reform of the legal and institutional framework to prevent discrimination; (b) the shift in Germany’s approach towards recognizing the contribution of migrant communities in the country; and (c) the wide array of grass-roots projects to fight racism and promote integration.

63. The Special Rapporteur noted with satisfaction that a number of important measures had been taken in Germany since the visit of his predecessor in 1997. In particular, he welcomes the efforts of the Government to reform the legal and institutional framework to

<sup>7</sup> See Human Rights Watch, *Discrimination in the Name of Neutrality*, February 2009, available online at <http://www.hrw.org/en/reports/2009/02/25/discrimination-name-neutrality-0>. See also the analysis of the issue of religious symbols in general by the Special Rapporteur on freedom of religion or belief, E/CN.4/2006/5, paras. 36–60.

combat all forms of discrimination, through the enactment of the General Equal Treatment Act, transposing a number of EU directives, and the establishment of the Federal Anti-Discrimination Agency. The Special Rapporteur considers that these legislative measures were important steps in creating a more robust framework to protect the victims of discrimination. Apart from creating justiciable rights, the enactment of the General Equal Treatment Act and the establishment of the Anti-Discrimination Agency also have an important symbolic role, demonstrating to society that racism and discrimination are unlawful and that such practices carry swift consequences.

64. Beyond these legislative reforms, the Special Rapporteur was particularly pleased to detect a change in the mindset of authorities at the highest levels, starting with the Chancellor, in recognizing that Germany is today a country of immigration. Such statements were not common only a few years ago, including when the Special Rapporteur's predecessor visited Germany in 1997. This groundbreaking change in rhetoric and mindset has been well received by migrant communities, who previously felt that their decades-long contributions to Germany were not properly recognized by the population and the Government. In the Special Rapporteur's view, these statements reflect a commitment from the authorities to address underlying challenges stemming from migration and to devise a new approach for the integration of migrants in German society, including through the National Integration Plan. While a number of challenges remain in the continuation of the fight against racism in Germany, the Special Rapporteur believes that the recognition of the place of migrants at the heart of German society is a step in the right direction towards addressing the root causes of racism, racial discrimination, xenophobia and related intolerance.

65. During his visit, the Special Rapporteur was able to visit a wide array of projects that are being implemented at the grass-roots level across Germany. He was positively impressed with the innovative approaches that lie behind many of these projects, which directly contribute to addressing the root causes of racism and promote real integration, particularly for children and adolescents. Such projects are generally implemented in partnership with active civil society organizations and often supported by the federal or local governments, including through public funds. While preserving independence and civil society leadership in these actions, the Special Rapporteur believes that the key challenge at present is to integrate these actions into a broader, national strategy to create adequate structures for the integration of racial or ethnic minorities in Germany.

66. Despite the important progress achieved in the country since the visit of the former Special Rapporteur in 1997, particularly the reforms undertaken in the past three years, the Special Rapporteur wishes to point out a number of existing challenges that need to be met in order to further improve the framework to fight all forms of racism, racial discrimination, xenophobia and related intolerance in Germany.

67. The Special Rapporteur is convinced that one of the central problems in furthering the fight against racism in Germany is the narrow understanding of racism in practice that for many years prevailed within society at large. Due to Germany's historical experience, racism has traditionally been equated with extremist right-wing ideology and violence. This has posed a number of practical problems, such as a tendency to predominantly characterize as hate crimes those acts perpetrated by members of extreme right-wing groups, which results in many such acts being addressed solely as bodily injuries. While the challenge of eradicating such practices obviously remains relevant, the understanding of racism needs to be broadened in practice to take into account the changes that have occurred in Germany over the past half century, including the arrival of a large number of migrants of different cultural, ethnic and religious backgrounds. In this regard, the Special Rapporteur believes that the question of racism should also be approached from the standpoint of structures and institutions that facilitate the integration of such migrants into German society and that



provide them with the necessary skills to allow them and future generations to prosper. The new approach devised by the Government with regard to the integration of migrants recognizes the need for a broad and comprehensive understanding of racism. However, such understanding has yet to fully permeate all relevant institutions, in particular the police, immigration services and the courts, which are key in implementing anti-discrimination provisions. The fight against racism requires not only that attention be paid to the most extreme and violent manifestations of this phenomenon, but also a comprehensive strategy that addresses the various forms of serious discrimination that individuals face in their daily lives.

68. Due to Germany's federal structure, the Special Rapporteur believes that the second key challenge for the realization of anti-racism commitments in Germany is to successfully involve the *Länder* and municipal administrations, where the real focus of political power often lies. Despite the range of federal laws and programmes, as well as international human rights commitments, it is at the local level that the real implementation of anti-discrimination provisions takes place. Unless local administrations transpose federal laws into local ordinances and guidelines, a core problem will continue to exist in the fight against racism. In this regard, the next phase of the struggle against racism in German society is to ensure that local administrations have effective legal and institutional frameworks that respond to the many challenges of the problem of racism.

69. With regard to the General Equal Treatment Act, the Special Rapporteur recalls the negative impact of the exception contained in the Act which allows for discrimination in the rental of housing in order "to create and maintain stable social structures" (see paragraph 45 above). The Special Rapporteur noted that discrimination in housing is still a pervasive phenomenon in Germany, directly contributing to the creation of virtually segregated neighbourhoods in some large cities and having spillover effects in areas such as education and health care (see paragraphs 53–54 above). In this regard, the Special Rapporteur believes that the Act should be reformed so that this exception may be eliminated.

70. The Special Rapporteur also noted the need to strengthen the Federal Anti-Discrimination Agency, transforming it into the key institutional actor that will contribute to the eradication of racism in the country. Most of the Special Rapporteur's interlocutors pointed out that the Agency has yet to become a relevant actor in the fight against racism. They highlighted the shortcomings in human and financial resources at the disposal of the Agency, which had fewer than 20 full-time professional staff at the time of the Special Rapporteur's visit. More importantly, the limited mandate of the Agency to carry out investigations and its inability to initiate legal proceedings, or provide legal support to victims, were highlighted as a major obstacle to its effectiveness. While the institutional design of independent anti-discrimination bodies varies in different legal systems, the Special Rapporteur is convinced that the effectiveness of such agencies is directly related to the level of legal support they offer to victims and to the capacity to bring legal action against individuals or institutions which are believed to engage in discriminatory practices. Without a robust mandate, the equal treatment provisions contained in national legislation will not have a concrete effect on the lives of those who are or could be victims of discrimination.

71. The Special Rapporteur also noted that despite the recent reforms in the anti-discrimination framework in Germany, limited awareness exists among the general public, including victims, regarding both the General Equal Treatment Act and the Federal Anti-Discrimination Agency. Victims often do not understand that they can resort to federal law when they are discriminated against. Better information and awareness-raising campaigns, including in minority languages, would contribute to better knowledge of existing legislation.

72. The Special Rapporteur also wishes to highlight the need to address the comprehensive socio-economic structures that may positively affect the integration of foreigners. Direct and indirect discrimination in areas such as housing, employment and education have contributed to the exclusion of persons with a migration background, leading them to live in ghettoized communities and be seen by the public at large as “unwilling” to integrate.

73. While the importance of addressing new forms of racism and discrimination cannot be overstated, the Special Rapporteur also calls attention to the need to address more traditional manifestations of racism in the country. In particular, despite the high level of awareness within German society of the danger posed to the very foundations of the democratic system by right-wing extremism, radical right-wing groups continue to exist, particularly youth organizations and nationalist political parties. Parties like the NPD have seats in local parliaments and town councils. Although there is a commendable reluctance from mainstream parties to collaborate with the NPD or allow it to join coalitions, the NPD is still involved and vocal in political debates, including on sensitive questions like immigration. While this phenomenon is more prevalent in the east, the Special Rapporteur would like to emphasize that these groups and parties are active nationwide.

74. The Special Rapporteur is concerned about the situation of refugees and asylum-seekers in Germany. While he acknowledges that Germany has generally been an open country in accepting refugees and asylum-seekers, the Special Rapporteur notes that some major concerns were brought to his attention regarding the living conditions of these groups. In particular, the condition of reception centres for asylum-seekers was considered to be deplorable in some areas. Some reception centres are situated far from large urban areas, making it difficult for children to get access to quality education. The Special Rapporteur also noted that while most asylum claims are processed within three months, a number of cases continue for a longer period, sometimes years, with asylum-seekers being confined to reception centres for the duration of the process. The Special Rapporteur is also concerned about the limited freedom of movement granted to refugees, who often cannot leave their own districts. This limitation also prevents them from seeking employment or education away from the locations where they are hosted, contributing to the perpetuation of their poor socio-economic status.

75. The Special Rapporteur noted during the mission that, as a consequence of naturalization rules in Germany, persons with a migration background have been underrepresented in the political process, both as voters and as representatives. Such underrepresentation has a major impact on the power of such communities to influence policymaking and to have a say in the decisions taken in their local communities, as well as at the federal level. Many migrant communities have also pointed to what they consider to be an unfair practice, whereby European Union citizens who have resided in Germany for more than six months are allowed to vote in local elections, whereas foreign citizens who have resided in the country for many years are not granted a similar right. Granting migrants who have lived in Germany for a certain period of time the right to vote in local elections would not only improve their representation in local political institutions, but also increase the sense of ownership of these communities over the political process and government decisions.

76. Despite all the efforts undertaken by the German Government to bring about the integration of its migrant communities, the Special Rapporteur notes that such communities are still underrepresented in public life, particularly in the civil service. Some central State institutions such as the police and the courts have very few members who are from a migration background. Similarly, in the media and the private sector such persons are very underrepresented. Representation and visibility of minorities are key to ensuring their proper integration into German society. The Special Rapporteur takes note of the fact that,

in accordance with the “Charter for Diversity” supported by all Federal Government ministries and agencies, specific measures aimed at increasing the number of persons with a migration background in public life are being implemented. While he is encouraged by these initiatives, he believes that more comprehensive efforts need to be made, including through the adoption of legally binding frameworks, in order to ensure an adequate representation of persons with a migration background in State institutions.

## VI. Recommendations of the Special Rapporteur

### On the legal and institutional framework

77. The Special Rapporteur recommends that:

(a) The concept of racism both in the legislative framework and in practice be expanded beyond a focus on right-wing extremism and towards a comprehensive understanding of racism, racial discrimination, xenophobia and related intolerance, in line with the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) The Federal Government work alongside the governments of the *Länder* and the municipal administrations in order to ensure that Germany’s international obligations to fight racism, racial discrimination, xenophobia and related intolerance are implemented at lower levels of government, where many of the competences to promote equal treatment truly lie;

(c) The Federal Anti-Discrimination Agency be provided with the human and financial resources necessary for it to be present in all 16 *Länder*. In addition, its mandate should be made more robust, allowing it to investigate complaints brought to its attention and to bring proceedings before the courts. Finally, the Agency should be empowered to conduct *proprio motu* investigations, including in areas such as employment and housing discrimination;

(d) The Government undertake awareness-raising campaigns in order to inform the public about anti-discrimination legislation and the institutional framework;

(e) The National Action Plan against Racism be strengthened through the involvement of civil society and associations representing migrants. In particular, the Action Plan should focus on structural discrimination, legislative reforms and the need to strengthen enforcement of anti-discrimination legislation;

(f) The Government continue to make use of sections 84 and 85 of the Criminal Code and Article 4 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination in order to declare illegal and prohibit organizations which promote and incite racial discrimination.

### On law enforcement and hate crimes

78. The Special Rapporteur recommends that an explicit reference to racism as an aggravating circumstance in crimes be added under section 46 of the Criminal Code. In addition, the Government should develop additional training for police officers, prosecutors and judges on the identification and characterization of racist hate crimes, extending the existing training programmes provided by the German Judicial Academy.

#### **On the role of the media**

79. The Special Rapporteur recommends that the media engage in an autonomous and independent discussion on its role in eliminating prejudice and ensuring that there is no perpetuation of stereotypes regarding minority communities. In particular, media outlets, in cooperation with universities, should seriously engage in enhanced professional training for their professionals, ensuring high standards of conduct and sensitivity concerning issues related to racism.

#### **On economic, social and cultural rights**

80. The Special Rapporteur recommends that:

(a) The Government continue its efforts to implement the recommendations presented by the Special Rapporteur on the right to education following his visit to Germany in 2006. In particular, the Special Rapporteur recommends that the Government engage in a profound reflection on how to address the underperformance of children with a migration background;

(b) An appropriate scheme be put in place to ensure that diplomas obtained abroad, particularly outside the European Union, are properly recognized so that the holders of such diplomas may present themselves to the job market on a competitive basis;

(c) The General Equal Treatment Act be amended in order to eliminate the exception granted to landlords, allowing them to discriminate in order to “create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions”. While this provision may have been created to promote integration, its broad nature can be detrimental to such efforts by in effect allowing for discrimination.

#### **On the wearing of religious symbols**

81. Restrictions to the wearing of religious symbols should not lead to either overt discrimination or camouflaged differentiation depending on the religion or belief involved, and exceptions to the prohibition of wearing religious symbols should not be tailored to the predominant or incumbent religion or belief.<sup>8</sup> The Special Rapporteur therefore recommends that a review be undertaken of the existing legislation in several *Länder* which prohibits the wearing of religious symbols by public schoolteachers and may have a discriminatory effect on Muslim women.

#### **On refugees and asylum-seekers**

82. The Special Rapporteur strongly recommends that the Government ensure that asylum-seekers' applications are processed in a short period of time and that reception centres for asylum-seekers provide them with reasonable living conditions, including access to education and health services. Freedom of movement should be ensured while asylum claim applications are pending or when refugee status has been granted.

83. The Special Rapporteur recommends that the Government examine the current conditions of reception centres for asylum-seekers in order to ensure that such centres provide dignified accommodation and ensure that the economic, social and cultural rights of asylum-seekers are respected.

---

<sup>8</sup> See E/CN.4/2006/5, para. 55.

84. In light of article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, the Special Rapporteur recommends that all unaccompanied minors and separated children between the ages 16 and 18 are provided with youth-specific accommodation and protection measures as enshrined in section 42 of the Youth Welfare Act.

**On the representation of persons with a migration background in public institutions**

85. The Special Rapporteur recommends that the Government consider recognizing the right of migrants who have resided in Germany for a reasonable period of time to vote in local elections, thus improving the representation of these communities in city councils and other municipal bodies.

86. As provided by article 1.4 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Special Rapporteur strongly recommends that special measures be taken to ensure an adequate representation of persons with a migration background in State institutions – particularly in the areas of employment, education, in political institutions and the civil administration.

87. The Special Rapporteur recommends that the Government make reference to the progress in implementing these recommendations in its future periodic reports to the Committee on the Elimination of Racial Discrimination, as well as in its national reports to the universal periodic review.

## Appendix

### List of official meetings

#### Federal level

Federal Foreign Office, including the Office of the Commissioner for Human Rights Policy and Humanitarian Aid, the United Nations Department and the Human Rights Division

Federal Ministry for Labour and Social Affairs, including Division GS (Social Europe Group) and the XENOS Programme

Federal Ministry of the Interior, including the Directorate for Migration, Integration and Refugees, the Directorate for Public Safety, the Directorate for Domestic Policy Issues and the Federal Criminal Police Office

Federal Ministry of Education and Research

Federal Ministry for Family, Senior Citizens, Women and Youth, including the Division on Youth and Prevention of Extremism

Federal Ministry of Justice

Federal Office for Migration and Refugees, including the Directorate on Asylum Procedure Implementation, Regional Coordination of Integration, Migrations Tasks; the Directorate on General Aspects of Migration, Migration Research, Central Register of Foreigners, Statistics; the Directorate on General Aspects of Integration, Federal Programme on Integration, Public Relations on Integration Issues; the Directorate on Language Education, Integration and Naturalization Courses and Tests Procedures, Financial Matters; the Directorate on Supportive Measures on Integration, Jewish Immigrants, Migration Counselling; the Directorate on Asylum Procedure Management, Special Procedures; and the Division on General Aspects and Conceptual Issues of Integration Support

Federal Anti-Discrimination Agency

Federal parliament, including the Bundestag Committee on Human Rights and Humanitarian Aid and various members of parliament

Federal Constitutional Court

#### National human rights institution

German Institute for Human Rights

#### *Länder* and city levels

City of Berlin: Senate, including the Office of the Commissioner for Integration and Migration, the Working Group on Combating Right-Wing Extremism and the Office for Equal Opportunities; District Court Berlin-Tiergarten

City of Cologne: Office of the Mayor; Intercultural Council

State of Baden-Württemberg: Chancellery; Ministry of State, including the Department of International Affairs; Ministry of the Interior

City of Stuttgart: Office of the Mayor; Division for Integration Policy

City of Nuremberg: Office of the Deputy Mayor; parliamentary groups of the City Council; Nuremberg Human Rights Office

State of Saxony: parliamentary groups; Office of the Commissioner for the Integration of Foreigners

City of Leipzig: Office of the Mayor; Office of the Counsellor for Youth, Social, Health and Schooling Issues; Office of the Representative for Foreigner Issues, Department for Extremism and the Prevention of Violence

City of Rostock: city parliament; Office of the Commissioner for Integration; Advisory Board for the Immigrant Population; Office of the Mayor; Police Department; Executive Board of the Federal Employment Office Rostock; State Ministry for Health and Social Affairs

City of Hamburg: Chancellery of the Hamburg Senate, including the Division for International Cooperation; Office of the Legal Authority; parliamentary groups

---