



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-third session
28 July - 15 August 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

GERMANY

UNEDITED VERSION

1. The Committee considered the sixteenth to eighteenth periodic reports of Germany submitted as one document (CERD/C/DEU/18), at its 1886th and 1887th meetings (CERD/C/SR.1886 and CERD/C/SR.1887), held on 5 and 6 August 2008. At its 1998th meetings (CERD/C/SR.1998) held on 13 August 2008, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of Germany's sixteenth to eighteenth periodic reports, which were elaborated in conformity with the committee's reporting guidelines, and expresses appreciation for the frank and constructive dialogue held with the delegation and for the comprehensive and thorough written replies to the list of issues, provided in a timely manner prior to the session. It further appreciates the attendance of a delegation composed of experts from various ministries, including the representative of the Federal Equal Treatment Office of the Ministry for Family Affairs, Senior citizens, Women and Youth.

3. The Committee appreciates the fact that the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*), non-governmental organisations working on human rights and racism issues, and representatives of the Jewish and Muslim communities, have contributed to the elaboration of the present report.

B. Positive aspects

4. The Committee welcomes the adoption of the General Equal Treatment Act in August 2006 (*Allgemeines Gleichstellungsgesetz, AGG*), which prohibits discrimination on the grounds of race and ethnic origin, gender, religion and belief, disability, age and sexual orientation.
5. The Committee welcomes the establishment of the Federal Equal Treatment Office within the Federal Ministry for Family Affairs, Senior citizens, Women and Youth, which provides legal advice to individuals who claim to have been victims of racial discrimination.
6. The Committee welcomes the elaboration of the National Plan of Action against Racism and notes that its content may evolve in the course of time.
7. The Committee welcomes the declaration made by the State party under article 14 of the Convention in September 2001, by which the State party accepted the competence of the Committee to consider individual communications.
8. The Committee welcomes the signature in January 2003 of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
9. The Committee welcomes the creation of the Secretariat for Minorities, which strengthens the visibility of minorities' rights at federal level and offers greater opportunities for minorities to voice their concerns to the federal executive and legislative bodies.
10. The Committee welcomes the enactment of the Law on the promotion of the Frisian language in public life adopted in 2004, which strengthens the position of the Frisian minority.
11. The Committee welcomes the entry into force in 2005 of the Immigration Act, the establishment of the National Integration Plan in July 2003 as well as the statement by the delegation that the policy of integration implemented by the State party is not aimed at the assimilation of minority groups.
12. The Committee welcomes the project "Youth for tolerance and democracy against right-wing extremism, xenophobia and anti-Semitism", which was implemented from 2001 to 2006, as well as the permanent follow-up through the programme "Youth for diversity, tolerance and democracy" launched in January 2007, which is intended to enhance the prevention strategies developed in the previous programme.

13. The Committee welcomes the establishment of the Islam Conference, as a forum in which representatives of the Muslim communities living in Germany meet with representatives of German authorities with the aim of establishing continuous dialogue to address Islamophobic tendencies and discuss relevant policy responses.

C. Concerns and recommendations

14. While taking note of the explanations given by the delegation with regard to legislative provisions preventing the State party from identifying ethnic groups in a census or otherwise drawing a distinction between citizens on the grounds of ethnic, linguistic or religious origin, the Committee expresses concern regarding the lack of statistical data in the report of the State party on the ethnic composition of its population.

The Committee recommends that, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), the State party provide information on the use of mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information derived from targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, so as to be able to evaluate the composition of its population and its situation in economic, social and cultural fields.

15. While noting the State party's reservations with regard to the use of the term 'race', the Committee is concerned that the State party's strong focus on xenophobia, anti-Semitism and right wing extremism may lead to the neglect of other forms of racial discrimination. The Committee is also concerned that the overall legislative design of key provisions of the Criminal Code may not be sufficiently precise in relation to racist elements in crimes. In this connection, the Committee also regrets the absence of a definition of racial discrimination in the State party's domestic legislation (art.1).

The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its national legislation, in accordance with article 1, paragraph 1, of the Convention. The Committee also recommends that the State party broaden its approach to combating racial discrimination with a view to countering such discrimination in all its forms and including expressions of racist prejudices and attitudes.

16. While noting that the definition of the crimes in Sections 86a and 130 of the Criminal provides a basis for prosecuting crimes committed via racist propaganda on the internet, the Committee remains concerned about reported incidents of hate speech, including racist propaganda on the internet.(art.4 (a))

The Committee recommends that the State party increase its efforts to prevent racially motivated offences including hate speech and racist propaganda on the internet, and ensure that relevant criminal law

provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities, in particular the obligation not to disseminate racist ideas. In this respect, the Committee encourages the State party to ratify the Additional Protocol to the Convention on Cybercrime.

17. The Committee is concerned about the possible negative effects in terms of indirect discrimination on the grounds of ethnic origin due to the exception to the principle of equal treatment as regards access to rental housing contained in paragraph 19, section III of the General Equality Act. According to this provision, landlords can refuse to rent apartments to persons applying for accommodation with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions (art.3 and art. 5(e)(iii)).

The Committee recommends that the State party guarantee the equal enjoyment of the right to adequate housing by ensuring that housing agencies and other providers of accommodation refrain from engaging in discriminatory practices. Furthermore, the Committee encourages the State party to consider modifying paragraph 19 section III of the General Equality Act in order to conform with article 5 (e)(iii) of the Convention.

18. The Committee remains concerned about the increase of reported racist-related incidents against members of the Jewish, Muslim, Roma/Sinti communities as well as German nationals of foreign origin and asylum seekers, in particular of African origin(art.5 (b)).

The Committee recommends that the State party take more resolute action at the Federal and Länder level to prevent and punish perpetrators of racially motivated acts of violence against members of the Jewish, Muslim and Roma/Sinti communities, as well as German nationals of foreign origin and asylum seekers, in particular of African origin. Furthermore, the State party should provide updated statistical data, on an annual basis, on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and the national or ethnic origin of victims.

19. The Committee is concerned about the addition by some Länder, in particular in Baden-Württemberg, of specific questions to citizenship questionnaires which may be discriminatory, in particular the questionnaire introduced in the Land of Baden-Württemberg which was to be answered by citizens of the 57 members States of the Organization of the Islamic Conference (OIC) who apply for German citizenship (art. 5 (d) (iii)).

The Committee recommends that the Federal Government encourage the use of questionnaires without discriminatory content, for all applicants for citizenship.

20. While taking note of the amendments to the Nationality Law simplifying the acquisition of German citizenship by long-term residents, the Committee regrets that

a considerable proportion of non-citizens who may fulfil the requirements to obtain naturalisation still live in the State party without citizenship, in particular persons of Turkish origin (art.5 (d) (iii)).

The Committee recommends that the State party facilitate acquisition of German citizenship by long-term residents and persons born in Germany in order to promote the integration of such residents as may wish to acquire German citizenship without relinquishing their own.

21. While taking note that the State party recognizes German Roma and Sinti as national minority, the Committee is concerned that many Roma and Sinti continue to experience discrimination in the field of education, employment and housing (art. 5 (e)).

The Committee, recalling its General recommendation N°27 (2000) on discrimination against Roma, recommends that the State party take special measures to improve the situation of all Roma and Sinti to overcome the disadvantages brought about by persistent discrimination, in particular in the field of education, employment and housing. Furthermore, the Committee recommends that the framework agreement for the protection of Roma and Sinti between the Land of Rhineland-Palatinate and the respective Land association of the Central Council of German Sinti in 2005 be replicated at the Länder level.

22. While noting current proposals for legislative change, the Committee is concerned by reports that the principle of compulsory primary education is not fully applied to children of asylum seekers in Hesse, Baden-Württemberg and Saarland, with the effect that children concerned encounter obstacles in connection with school enrolment (art. 5 (e) (v)).

In light of its General recommendation N°30 (2004), the Committee recommends that the State party ensure that children of asylum seekers residing in the territory of the State party do not face any obstacles in connection with school enrolment.

23. The Committee is concerned that children of immigrants are overrepresented in special schools for “under-achievers” (Sonderschulen), mainly on account of their lack of adequate German language skills, and under-represented in secondary and tertiary education (art. 5 (e) (v)).

The Committee, recalling its General recommendation N°30 (2004), recommends that the State party take effective measures to ensure the integration of children of non-citizens in the regular school system and to reconsider the problem of transfer of such children to “Sonderschulen” including the criteria for any such transfer, as well as improving current arrangements to support German language skills of such children.

24. The Committee is concerned about the fragile situation of the Sorbian school network in the Länder of Saxony and Brandenburg, caused in part by falling school enrolment,

which may have an impact on the general principle of the use of minority languages in the school system (art. 5 (e) (v)).

The Committee recommends that the State party ensure effective implementation of the legal provisions with regard to the use of minority languages in the school system. The State party should encourage authorities of the Länder of Saxony and Brandenburg to consider means of strengthening the involvement of the Sorbian minority in decision-making in this field and ensure the continuation of a viable Sorbian school network, including secondary schools, in order to sustain Sorbian language and culture.

25. The Committee is concerned that the granting of compensation to victims of racially motivated acts under the Victims Compensation Act (“OEG”) appears to be based on the citizenship status of the victims rather than on the seriousness of the acts committed. (art.6)

The Committee recommends that the State party consider revising the provisions of the Victims Compensation Act in order to provide for compensation to victims of racially motivated crime regardless of their citizenship status.

26. While noting that the Penal Code includes a general provision stipulating that the motives and aims of the offender must be taken into account in determining the sentences for crimes, the Committee is concerned that German criminal law does not explicitly include a provision which stipulates that racist motivation should be taken into account as a specific aggravating circumstance for the purpose of sentencing in relevant crimes. The Committee understands that such a law will be considered by the Parliament (art.6).

The Committee recommends that the State party continue its efforts to include in its domestic criminal legislation a specific provision to ensure that the motive of ethnic, racial or religious hatred is taken into account as an aggravating circumstance in proceedings under the criminal law.

27. The Committee is concerned that members of Roma and Sinti communities are victims of racial prejudice and stigmatization in the media and that insufficient measures have been taken by the State party to address this situation (art. 7).

The Committee, recalling its General Recommendation N°27 (2000), recommends that the State party take effective measures to counter the dissemination of any ideas of racial or ethnic superiority or racial hatred as well as the incitement to discrimination and violence against Roma in the media, in accordance with the provisions of the Convention. It encourages the State party to fully implement and where possible improve methods of self-monitoring by the media in order to avoid racially discriminatory or biased language.

28. The Committee recommends the State party to provide information on the follow up measures to give effect to the recommendations of the Committee on Communication No. 38/2006 adopted on 22 February 2008, in conformity with article 14 of the Convention.

29. While taking note of the State party's explanation in its written replies (see question 23), the Committee nevertheless encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by General Assembly resolution A/RES/45/158 of 18 December 1990) with a view to strengthening the protection of non-citizens against racial discrimination.
30. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I), when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on the National Action Plan against Racism and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to continue to actively participate in the Preparatory Committee of the Durban Review Conference, as well as in the Durban Review Conference in 2009.
31. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official languages and in minority languages.
32. The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.
33. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 16, 17, 22 and 26 above, pursuant to paragraph 1 of the rule 65 of the Committee's rules of procedures.
34. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the Common Core Document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4)
35. The Committee recommends that the State party submit its combined nineteenth to twenty-second periodic reports in a single report, due on 15 June 2012 taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1). That report should be an update document and address all points raised in the present concluding observations.

