

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

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Preliminary remarks

This parallel report was elaborated by the registered association ISD e.V. – Initiative Black 1 People in Germany in response to the Nineteenth-Twenty-second Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination.²

The ISD understands itself as a platform aimed at fostering exchange between Black People. The organisation works for strengthening Black People, for enhancing their position and for their fulfilment. It is a registered organisation with members throughout Germany.

The ISD is an empowerment platform for Black People and represents their interests in Germany. The organisation supports Black People in their initiatives to highlight Black life experiences in society and in the general discourse, and combat racism.

The parallel report entails a definition for Black People deriving from the definition given by the Working Group of Experts on People of African Descent. Pursuant to General Recommendation N° 34, the Working Group of Experts on People of African Descent suggests that self-denomination shall be considered as the paramount criterion.³

The word “origin” as per “of African origin”⁴ has a very wide scope. Black People living in Germany come from a variety of Diasporas. These differences notwithstanding, they share common experiences resulting from having to face for centuries racist images of People of African Origin and racism.

¹ „B“ in “Black“ is written in capital letters so as to indicate that it is a construed attribution and no actual „characteristic“ that colour be derived from skin colour. In this context, it is not related to what could be considered as an „ethnic group“. „White“ is no political counterpart to tradition and practice of the anti-racist resistance that would be generated by the writing of „B“ in „Black“ in capital letter. This concept is written in lower case, for the reason that it is also a construed concept, though it does not entail a component referring to any resistance movement. (inspired by: Eggers, Maureen Maisha/Kilomba, Grada/Piesche, Peggy/Arndt, Susan (Hg) 2005: Mythen, Masken und Subjekte. Münster: Unrast Verlag, S. 13).

² The official translation into German of the concepts of “race and “racial discrimination” are “Rasse” und “Rassendiskriminierung”, respectively. This is at least the language used in legal documents. However, these concepts have developed differently in the German context, due to the historical background and current development. In Germany, the shift away from a biologicalising notion has not been consumed. As a result, the concepts “Rasse” and “Rassendiskriminierung” do not denote a social construed meaning. For this reason, the expressions “rassistische Diskriminierung”, “Diskriminierung aufgrund der zugeschriebenen “Rasse“, or “rassistischer Zuschreibung“, which literally translates as “racist discrimination”, “discrimination on the grounds of “race”” or “racist attribution” were used in the German original text. Official translations will be used in direct quotes from legal documents.”

³ To be consulted under: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD-C-GC-34.pdf> .

⁴ Official UN term: “African descent“

In the recent state report, Black People are mentioned⁵ for the first time as a group exposed to racism. There is no statistical data on the number of Black People living in Germany. The federal government's conservative estimate of the number of Black People living in Germany is 200,000 to 300,000 but the figure could be higher.

Black People are one of the youngest groups in Germany. With a view to the future, it is important that Germany should fulfil its obligations so as to enable Black People to exercise their right to participation in society, and to be protected against discrimination by the (*white*) majority and racist structures, where the latter still exist or develop.

Though Black People can look back to four hundred years history in Germany, the majority of the population still consider them as foreigners or as a temporary phenomenon. To be Black in Germany is not considered as an unremarkable fact that is part of society, which it actually is. For a long time, racism against Black People in the German context was re-institutionalised. Starting with colonisation by Brandenburg-Prussia in the seventeenth century, colonisation by the German empire in the nineteenth and twentieth century, in the course of which a considerable part of Africa was conquered and plundered and Black People were systematically subjugated, exploited and disfranchised. At the beginning of the Weimarer Republic, so-called "Völkerschauen"⁶ were organised, where Black people were displayed as human exhibits. During the time of National Socialism, Black People were persecuted, detained, sterilized and killed. In the 1950s the so-called "brown-baby-debate"⁷ in the Bundestag, the German parliament showed that the existence of Black People in Germany was considered as a problem that needed being overcome, even after the end of the National Socialist area. The State often act or fails to act with the backing of the population and vice-versa.⁸

Racism is a deep-rooted and common feature of German society and state. It has a larger scope than in other EU countries, such as the UK or the Netherlands⁹. By being members of a visible minority, Black People are exposed to specific threats. This specificity was acknowledged for the first time in the present state report¹⁰. However, discrimination was not limited to everyday racism and racist

⁵ S. 11, Absatz 47f., Neunzehnter bis Zweiundzwanzigster Bericht der Bundesrepublik Deutschland nach Artikel 9 des Internationalen Übereinkommens zur Beseitigung jeder Form von Rassendiskriminierung (ICERD).

⁶ Human zoos.

⁷ Verhandlungen des Deutschen Bundestages, Stenographische Berichte, 1. Legislaturperiode, Bd. 10 198. Sitzung am 12. März 1952, Punkt 10 der Tagesordnung, S. 8505ff, Stenographic Records of the Proceedings of the German Bundestag, first parliamentary term, volume 10 198, session on 12 March 1952, Item 10 on the agenda, S. 8505ff

⁸ Before the Berlin Conference 1884-1885, civil society initiatives had strongly advocated that the German Empire should have colonies of its own.

⁹ "Die Abwertung der Anderen. Eine europäische Zustandsbeschreibung zu Intoleranz, Vorurteilen und Diskriminierung", eine Studie der Friedrich Ebert Stiftung, constitution of imperial colonies, p. 69. On denying other people dignity. State of affairs in Europe in relation to intolerance, prejudices and discrimination. Accessible under: <http://library.fes.de/pdf-files/do/07905-20110311.pdf>

¹⁰ Item n°47, Nineteenth-Twenty-second Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination. Accessible under: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/ICERD/icerd_state_report_germany_19-22_2013_de.pdf.

offences and crimes, contrary to the arguments put forward by the federal government. In Germany, Black People are also exposed to structural racism¹¹.

This is demonstrated by the analysis of interactions between citizens and the state, which denotes racism. Areas to be mentioned are the education system, but also interaction with state bodies and institutions, including the police.

Actually, there are two levels of interaction. The first one, the private sphere is the space where citizens interact with each other. This is for example the case when Black People are looking for a flat. The second is the service sector. It clearly appears that neither in the private sphere nor in the service sector, does the State adequately fulfil its obligation to create and guarantee conditions for people to live together in an environment that would be free of any discrimination.

The ISD parallel report is aimed at drawing the attention of the Committee to the fact that the German federal government does not fulfil its obligation to protect People of African origin from racism and discrimination. In the following, a description will be given of how racism in Germany specifically targets Black People and openly prevents them from exercising their human rights and in which way in areas the Federal government is called upon to fulfil its obligations under ICERD.

The structure of this report follows the nomenclature of the articles of the Convention.

Damaris Uzoma

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¹¹ Structural racism is regarded in this context as the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, that is, on the grounds of “race”, culture, or ethnic origin. Inspired by the definition given by the Macpherson Commission during the inquiry into the racially-motivated murder of Stephen Lawrence in the UK.

Re: Article 1 ICERD Scope and definition

Narrowly-construed understanding of racism and lack of a definition

In the state report, the Federal Republic of Germany notices that there is no definition of racist discrimination in any German law¹². Besides, the German government explains that such a provision is not needed because it is already been incorporated into Article 1 para. 1 of ICERD, which makes it binding law in Germany.

This may well be considered very relevant comment from a legal point of view but in fact it implies that there is actually no human rights application of a definition of racism in Germany.

According to the human rights definition of racism, emphasis is put on the fact that¹³ it “shall mean any distinction, exclusion, restriction or preference (...) which has the purpose or *effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights (...) in (...) any other field of public life.¹⁴”

According to this definition of racism there is no requirement for racism to be intended by state bodies or institutions or private stakeholders. Racism can be the *effect* of an act by a citizen or racist state practice.

A strong evidence for this limited understanding of racism in Germany is given by the latest state report, which only deals with everyday racism, and fails to address the specific issue of structural racism.¹⁵

In the political arena and in society, two concepts are used as a synonyms, - “*Fremdenfeindlichkeit*”, and “*Ausländerfeindlichkeit*” -, which literally translates as “hostility against foreigners”. There are first, these two concepts imply an intentional act or a conscious attitude towards others. Besides, they also presuppose that German society considers itself as “white”, which explains why Black People are still seen as “aliens” or “foreigners”.

If racism were defined in legal terms in German law, this would contribute to thematise racism in legal science in Germany. A legal definition would also help overcome widespread ignorance on the various dimensions of racism. Together with other measures, this would contribute to raise awareness on structural racism.

¹² Item n° 9, p. 3, Nineteenth-Twenty-second Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination (ICERD).

¹³ Article 1 para. 1 ICERD.

¹⁴ Full text: Article 1 para.1 ICERD: „ In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

¹⁵ Item 47, p. 11, Nineteenth-Twenty-second Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination (ICERD).

Controversy around the concept of “Rasse” in the German legal system

In the state report it is explained that the concept of “Rasse” in Germany has given rise to controversy. Many initiatives intend to remove this concept from German laws. 16

The ISD strongly opposes the construct of “Rasse” which defines racist hierarchical systems as immanent and permanent¹⁷.

By only removing the concept of “Rasse” from German law, a protection gap will be generated, given the fact that legal protection of concerned individuals can only be guaranteed if there is an explicit reference in German law¹⁸.

The replacement of “Rasse” by “ethnic origin” is not a convincing argument. The concept of “ethnic origin” and “Races” are not synonymous. In the German context, ethnicity refers in the wider sense of the word to “a group of people” who “are bound together by sharing common features (language, culture, tradition, religion, ways of life)” and “who feel that they are bound together, that they have a community consciousness and identifying themselves and are identified by others as displaying cultural characteristics”.

The example of Black People in Germany clearly shows that they cannot be fall into this category on the grounds of the diversity of the diasporic ways.

The concept of “race” as per the Convention, or “*Rasse*”, as per Article 3 of the German Basic Law or Article 1 of the General Equal Treatment Act refers to “racism”, or “*Rassismus*” in German, as the origin of “race” or “Rasse” and not to a biologically based idea of human races. However, no movement in Germany has been successful in consuming the shift, away from the biologically based concept to a social construct in the legal context, contrary to the situation in the USA or in the UK.

One way could be the use of the word “*rassistisch*”, which translates as “racist” at it is already the case in the constitution of the federal state of Brandenburg.

Recommendations regarding Article 1

We call upon the German state to:

- Take initiative to give a legally binding definition of “(structural) racist discrimination in German law.

16 <http://dipbt.bundestag.de/dip21/btd/17/040/1704036.pdf> .

17 Compare the demands of the Initiative Schwarze Menschen in Deutschland e.V. Bund, in the run-up to general elections – to elect the Bundestag in 2013.

18 As an example: Prof. Dr. Alenfelder <http://www.alenfelder.de/ethnische-herkunft.html> .

- Guarantee seamless human rights protection by not removing the concept of “*Rasse*” without replacement from the German Basic Law or by replacing it by “ethnic origin”. If it should be replaced, the expression “on racist grounds” should be used.

Article 2 General obligations to eliminate racial discrimination and protect individual groups

Elimination of racial discrimination

Pursuant to Article 2 ICERD, the Federal Republic of Germany has the obligation to pursue a policy of eliminating racial discrimination in all its forms by all appropriate means. This obligation is concretised in the article as well as in other documents of the Committee.

Demographic data and “data on discrimination”

There is no official set of demographic data on the number of Black People living in Germany.¹⁹

The importance of knowing the demographic composition of the population with a view to combatting racism was one aspect that was highlighted by the Committee on numerous occasions.²⁰ The Committee expressed its concern on the lack of statistical data in its Concluding Observations on the 16th-18th state report submitted by the Federal Republic of Germany.²¹

Germany justifies its refusal to collect data by arguing the, in the time of National Socialism, minorities were persecuted using data gathered by the state.²²

However, it must be added that data collection in those days aimed at the persecution of minorities and was designed to fulfil this purpose. Today, data on the percentage of Black People in the overall population will not aimed at persecuting them. On the contrary, data will be gathered to protect them, which should reflect in the method used. Data collection should conform to the General Recommendation n° 8, pursuant to which attribution to a minority should occur on the basis of self-

¹⁹ Item 47, p. 11, Nineteenth-Twenty-second Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination (ICERD).

²⁰ General recommendation IV, General Recommendation XXIV Item 1, Item 8 of the General Guidelines Regarding The Form And Contents of Reports To Be Submitted By States Parties, N° 92 of the Durban Action Plans reads: “(The committee) Urges States to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance“ (Under Policies and practices N°. 92).

²¹ As an example: Item 14 of the Concluding Observation on the 16th-18th State Report. http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/ICERD/icerd_state_report_germany_16-18_2006_cobs_2008_de.pdf

²² Item 30, p. 8, Nineteenth-Twenty-second Report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination (ICERD).

identification and in accordance with Article 3 of ICERD, which specifies that attribution to a minority should happen on a voluntary basis.²³

The characteristic of „*African migration background*” as used by the Federal Statistical Office is not an adequate concept comprehending the situation of Black People. According to the current definition, which has been used by the micro census since 2013, people with a migration background are: „all persons who have immigrated into the territory of today’s Federal Republic of Germany after 1949, and of all foreigners born in Germany and all persons born in Germany who have at least one parent who immigrated into the country or was born as a foreigner in Germany.”²⁴

This definition does not include, for example, the child of Black parents who would belong to the second generation of people born after migration, because the concept of “migration background” does not include the third generation. Therefore, there would be no possibility to relate to the specific situation of this child in Germany, though this child would be particularly exposed to racism. The child would not be included in the official statistics and hence, they would be no way to protect it.

Besides the lack of demographic data, there is also a lack of “data on discrimination” as faced by Black People in Germany, for example in relation to the housing market, the health system, the labour market.

Structural and institutional racism

The federal government denies the existence of structural racism in Germany.²⁵ As a consequence, there is no mention of structural and institutional racism as faced by Black People in the latest state report.²⁶ In relation to institutional racism it must be noted that there is no effective protection against discrimination in public bodies and offices.

Structural racism is understood as “the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people. It persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease.” [The Stephen Lawrence Inquiry, Report of an Inquiry by Sir William Macpherson of Cluny, advised by Tom Cook, The Right Reverend Dr. John Sentamu, Dr. Richard Stone, presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, February

23 General Recommendation VIII of the Committee.

24 Statistisches Bundesamt: Fachserie 1, Reihe 2.2 Bevölkerung und Erwerbstätigkeit, Bevölkerung mit Migrationshintergrund, Wiesbaden 2013, Textteil: Methodische Bemerkungen mit Übersicht über die Ergebnisse. Federal Statistical Office on population and employment, population with a migration background, methodological remarks and overview of findings.

25 As an example, in relation to the police: BT-Drucksache 18/1629, p.4, motion (to be) submitted to the *Bundestag*, the German parliament.

26 19th-22nd Report submitted by the Federal Republic of Germany, p. 11

Two examples from the “German everyday practice” to illustrate the problematic

1. Immigration Office – The case of Ali Mohamed²⁷, who fled Sudan. More than twenty years ago, Mohamed, fled Sudan over Libya and Italy and reached Germany. He was supposed to be deported from Germany. The Sudanese Embassy did not confirm his nationality for a long period of time in the absence of identity documents. However, attempts were made to speed up the procedure and deport him to any other African countries. Ghana, Cameroon and Nigeria were on the lists, as these countries cooperate with the German administration. Mohamed had already received the same instructions from the Immigration Office, so that this seems to be common practice. Ghana is situated around three and half thousand kilometres (around two thousand and two hundred miles) away from his home countries. Despite this extremely long distance, it is still considered as a legitimate destination country for deportation. Therefore, there are reasons to think that the immigration office bases its decision on a stereotyped image of Africa, which is considered as a country rather than a continent. On the other hand, the Immigration Office does not apply objective criteria. They rather seem to satisfy themselves that the individual concerned is a Black Person and can therefore be deported to “any African country” following this biased image of the African continent. Such a procedure would be unthinkable in the case of citizens of any other region of the world.
2. The Youth Welfare office – The case of the dispute over the custody of a child involving a Ghanaian father²⁸

The father concerned came as an asylum seeker to Germany and is now a “tolerated” (“*geduldet*”) person, living under temporary suspension of deportation. Immediately after birth, the child was taken away from her parents on account of the disease that her mother was suffering. The father now lives with a new female partner, and he is only allowed to see his daughter once a month for one hour. The crucial element on which this decision was based was the expert report submitted by an agent of the Youth Welfare office, who was not free from racist prejudices. She had described the origin of the father in a “negative way without any reasonable ground.”²⁹ In the absence of any material evidence, she insinuated that the father would privilege “African methods of education” qualified as “brutal methods” aimed at “subjugating the child”. In addition, she implied that the man could be “no role model in the sense of the rule of law” because he had applied for asylum. But actually, she added, he only wanted to be able to work in Germany and therefore “circumvented the Asylum Law”.

In this case too, an expert called upon by the relevant administrative body was motivated by racist stereotypes on her cultural superiority. In the absence of any knowledge about the methods of education of the father concerned, who actually never had the custody of the

²⁷ <http://www.neues-deutschland.de/artikel/949705.hauptsache-zurueck-nach-afrika.html>: The only thing that matters is him to be sent back to Africa.

²⁸ “Jugendamt in German“. <http://m.taz.de/Beschluss-des-BVerfG/1150380/m/> ; <http://www.handelsblatt.com/politik/deutschland/verfassungsgericht-eltern-bei-entzug-des-sorgerechts-gestaerkt/11050582.html>. On the German Youth Welfare Office, parents and the withdrawal of child custody

²⁹ Ibid.

child, the collaborator of the Immigration Office projects her own racially motivated representations of “African methods of education” on him. She bases her decision on misconceived representations and irrelevant considerations, not finding any evidence of her accusations. It must be noted that the expert report went through two levels of jurisdiction. It had to be brought to the Constitutional Court for two previous verdicts and the expert report to be finally rejected.³⁰

Specific problematic in relation to the police

Offender-victim-role -reversal

Black People are also exposed to racism in context of the relations to the police. Often, the roles between the victim and the offender are reversed. This means that Black People who ring the police because they are for example been injured in an accident or the target of an attack, are at the end criminalised by the police officers and sometimes even arrested.³¹

The effect of institutional racism in the German police was recently demonstrated by the attitude of investigation bodies during the inquiry into the murders perpetrated by the right-wing terrorist organisation NSU. The members of the so-called NSU³² murdered ten years ago in various federal states.

Of ten victims, nine people had a migration background. This element was used by the authorities as a justification for establishing a link between the victims and criminal milieu. Their investigation were conducted on the basis of this unsubstantiated presumption. This routine stereotyping and criminalisation of the murdered victims with a migration background is a clear demonstration of structural racism. The conscious attitude of individual police officers is not the most crucial issue.³³

All the aforementioned examples hint at the failure of the institutions to protect Black People and People of Colour from racism in the institution and from the racism of their agents who use racist stereotypes in their work.

Racial Profiling

Pursuant to Section 22 para. 1 a BPol (§ 22 Absatz 1a BPolG³⁴), the federal police can check the identity of persons in order to prevent unauthorised immigration. In this context, the police use racist criteria. Black People are particularly targeted by this practice. The federal government denies the existence of this procedure.³⁵ However, voices within the police have confirmed³⁶ that this practice belong to the everyday life of Black People. Despite the negligible success rate, which fell

³⁰ Ibid.

³¹ As an example: <https://www.kop-berlin.de/files/documents/chronik.pdf> S. 2., p. 25

³² National Socialist Underground

³³ Further comments and observations: <http://www.bpb.de/apuz/180859/allgemeines-gleichbehandlungsgesetz-zwischenbilanz-eines-bruechigen-konsenses?p=all#fr-footnode6>. On the General Equal Treatment Act, tentative assessment of a fragile consensus.

³⁴ Federal Police Act (BPolG)

under 0.07 per cent³⁷ in 2012, the number of police checks even increased in 2013. ³⁸ Racist checks demonstrate that the image of Europe transpiring of the work of the German police is a white Europe. This is the only way to account for the fact that Black People who stay within the boundaries of the Schengen boundaries can be suspected of being illegal immigrants.

This practice results in considerable limitations in the everyday life of Black People. In addition to causing them to be under general suspicion, identity checks often lead to police brutality.³⁹

Racially motivated police violence and intersectionality

Black People are particularly exposed to police violence. The fact that the police pose a threat⁴⁰ to their physical integrity and psychological health is all the more preoccupying as Black People living in Germany are members of a minority that requires protection.

In absence of an official complaints office there is no official set of data. For this reason, the only way to obtain statistics is to use the documentation gathered by civil society organisations. The analysis of the Chronicle of racially motivated violence by the police, alone in Berlin, clearly demonstrates that Black People are particularly exposed to intersectional discrimination.

An importance interface between the various forms of discrimination includes racism and sexism.

The case Lucy I. makes visible the problematic of intersectionality as an interwoven form of discrimination between racism and sexism. She is a Black woman who does not master the German language. A doorkeeper, who is a civilian, attacks and insulted her in a racist way. Instead of protecting her, the other police officers insulted her in a sexist way and checked her identity. In the police station she was told that she was suspected of having stealing a mobile phone. She was refused the possibility to be assisted by an interpreter so that she could not understand the information. In the course of the investigation she was forced to let officers in civilian clothes enter her house, though she was undressed and to dress in front of male officers. ⁴¹

This case demonstrates how a Black Person, who is in fact the victim of an attack by a civilian, is criminalised by the police. Police brutality in the form in which she had to experience⁴² it is no

³⁵ Bundestagsdrucksache 18/1629. Motion n° 18/1629 (to be) submitted to the Bundestag, the German parliament. See also: Bundestagsdrucksachen 17/11971 and 18/453.

³⁶ As did the head of the police union: Rainer Wendt to the daily newspaper “Die Tageszeitung” (Taz), 27.10.2013 on the Internet: <http://www.taz.de/!126295/>.

³⁷ There had been 466,664 police controls not based on any concrete suspicion of wrong doing in 2012. In 3,757 cases there were indication of illegal immigration or residence in (compare Bundestagsdrucksache, 17/14569, Motion n° 17/14569 (to be) submitted to the Bundestag).

³⁸ From 466,664 to 482,953 police checks. Bundestagsdrucksache 18/453, Motion n° 18/453 (to be) submitted to the Bundestag

³⁹ Many of the attacks described in the Chronicle have racial profiling as a starting point. <https://www.kop-berlin.de/files/documents/chronik.pdf>.

⁴⁰ The campaign for the victims of racially motivated police violence led by the NGO KOP- Kampagne für Opfer rassistischer Polizeigewalt provide a non-exhaustive listing of attacks perpetrated between 2000 and 2014 in Berlin. These reports are based among other sources on statements by people concerned, witnesses, individuals passing by who observed the scenes, or newspapers reports.. <https://www.kop-berlin.de/files/documents/chronik.pdf>.

⁴¹ For further information see Chronicle, p. 10.

⁴² For further information see Chronicle, p. 10. <https://www.kop-berlin.de/files/documents/chronik.pdf>.

exception in the relations between the German police and Black People. However, there is an additional dimension to discrimination as she was also insulted in a sexist way. In addition to the gender dimension, she was totally defenceless against the police as she could not be assisted by an interpreter.

In the vast majority of attacks by the police, the police officers sentenced. There has been a court procedure in only five percent of the reported attacks by the police. The police's response is usually a counter-notification so that the actual victim of police violence is often sentenced on the grounds of insult, or resistance against enforcement officers.⁴³ Thus, it is almost impossible to resist racially motivated police violence, and those who try must expect a sanction, given the fact that report by the police are often successful.

Concerned individuals who have an uncertain residence status are often reluctant to report a case of ill-treatment as they fear negative consequence on the procedure under residence laws. These are the most sensitive cases, given the fact that the individual concerned are often traumatised by experiences with the police in Germany or in their countries of origin.

Experience teaches that German police officers are not adequately trained or not willing to handle sensitively these cases of pre-traumatisation.

Inadequate protection under the General Equal Treatment Act (AGG)

Since 2006 there is a law in Germany aimed at protection against discrimination.

The scope of the General Equal Treatment Act is limited as it only includes acts by private stakeholders or by entities rules by private law, pursuant to Article 2. Acts by state intervention authorities are also excluded. As a consequence, acts by the state, including the work of the police or the education sector, are not subjected to prohibition of discrimination under the General Equal Treatment Act. As the European Commission pointed out, Germany does not fulfil its obligations as spelled out in the directive of which the AGG is supposedly the implementation.⁴⁴

Monitoring and complaints mechanisms in administrative⁴⁵ bodies

In the German administrative bodies, there is no independent complaints office to which people concerned can turn in case of a racist incident. For this reason, as the aforementioned case of racist discrimination by the Youth Protection Office shows, the only recourse is often a court case, though the example shows that it only offers limited the protection.

Protection of groups concerned

Recognition as a group and research

In the Recommendation n°34 on ICERD is a document entirely dedicated to the specific situation of Black People. Yet, Black People are not officially recognised as a group exposed to racism. As a

43 Ibid.

44 As demonstrated in communication between the European Commission and the Federal government:
http://www.bug-ev.org/fileadmin/user_upload/Anfrage_der_Kommission_200043_RL_17.10.2007.pdf;

45 As also spelled out in the General Recommendation XXXI

consequence, there is no comprehensive research on discrimination against Black People as a group in areas such as the labour market, the education system, health services, and the housing market.

Recommendation regarding Article 2

We recommend that the state party

- Should act according to the recommendations of the Committee and officially collect data on the structure of the population in the Federal Republic of Germany. The objective is to acquire a deeper knowledge of the causes, scope and effects of racial discrimination in Germany. This knowledge should be incorporated into the practice of state bodies and institutions. The methods should be designed involving the organisations of the minorities concerned.
- Should conform to the recommendations of the Committee and conduct a diversity mainstreaming check when new laws or government strategies are elaborated in crucial areas.
- Set up an independent monitoring body aimed at conducting research on the work of state institutions in relation with racism. What should be particularly monitored is whether there are invisible obstacles to access that Black People and People of Colour have to face. This especially applies to the police and the Justice.
- Complaints offices have to be set up in all state bodies. These offices should provide qualified assistance in dealing with racist-discriminatory treatment. They should have the duty to investigate in the incident, for example by transferring the case to for further processing to another person or department and initiate disciplinary consequences. This applies for all state bodies and institutions, and more especially the police administration.
- Comply with the recommendations of the Committee and organise further education schemes and training to sensitise public servants and employees, including those who have regular contacts with people who belong to minorities. This particularly applies to members of staff of the immigration offices, the police and teachers.
- Develop targeted promotion programmes, funded by the state and aimed at combating intersectional discrimination

Re Article 3 and 5 Sanction and prohibition of segregation and fundamental rights

Racist discrimination in the housing market

There is in Germany no intended segregation policy

In the General Recommendation n° 19, the Committee specified the language of Article 3 of the Convention. In para. 3 and 4 of the Recommendation, the Committee notes that “a condition of partial segregation may also arise as an unintended by-product of the actions of private persons” and can therefore arise “without any initiative or direct involvement by the public authorities.”⁴⁶ The Committee singled out housing: “In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and

46 General recommendation XIX, para. 3 and 4.

national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.”⁴⁷

It has already been mentioned that the Federal Republic of Germany does not officially recognise Black People as a specific group particularly exposed to racism. For this reason, there is a lack of relevant and comprehensive statistics on segregation within society, including in relation to housing.

Yet, it was still possible to use a testing method to establish that People of Colour⁴⁸ have to face discrimination when they are looking for a flat. Discrimination by private persons, i.e. lessors was the most common feature. In 2008, Emsal Kiliç conducted a survey on Turkish migrants and migrants of Turkish ancestry looking for a flat in Berlin.⁴⁹ Her conclusion is that “access of people with a migration background to so-called “residential areas” is de facto impossible using ordinary channels and access to other areas with a large population of “people with a migration background” is more difficult for people with a migration background who are also disadvantaged in those areas.

Black People are also disadvantaged as a case that was brought before a higher court in Cologne, the “Oberlandesgericht Köln.”⁵⁰ An estate agent was sentenced. He had refused to rent a flat to Black People.

A sentencing in those cases is a very seldom occurrence. What was particular in that case is that the culprit explicitly admitted that he had a racist motive.

In many cases, people concerned are reluctant to bring a case to court for fear of paying high legal costs.

⁴⁷ General recommendation XIX, para. 3.

⁴⁸ Von Rassismus betroffene, nicht-weiße Menschen.

⁴⁹ Emsal Kiliç „Türkische und türkeistämmige Migranten bei der Wohnungssuche in Berlin“. In 2008, the sociologist Emsal Kiliç conducted a study on discrimination against migrants looking for housing. She used a three-layer method, which was developed in the Department for Social Sciences of the Humboldt University in Berlin. The findings were a high level of discrimination, which can be qualified as “strong”. In a first step, the test persons contacted a estate agent on an online platform for people looking for housing. Both test persons sent each 100 e-mails to a estate agent in Willmersdorf and Neukölln. The German test person received six positive answers from Willmersdorf and on negative answer, whereas the test person of Turkish ancestry received six negative answers and no single positive answer. Only in Neukölln, which is an area in Berlin with percentage of people with a migration background above average, the test person of Turkish ancestry did receive eleven positive answers and four negative answers. But even in this case, the German test person was favoured she received 13 positive answers and two negative answers. The second step consisted in responding to the positive answer from Neukölln and fixing an appointment to visit the flat. The German test person receives was given 9 appointments whereas the test person of Turkish ancestry was only given four. After the visit, the “face-to-face” testing, the German test person was offered four flats for rent while her counterpart of Turkish ancestry was offered none. In addition, the test person of Turkish ancestry was asked questions on her private and professional life as well as her income. As opposed to this, the German test person was asked no question, and even given further information on where she could widen the scope of her search.

⁵⁰ On 19.01.2010, the Court rejected a former verdict of the Landgericht Aachen and sentenced an estate agent for refusing on a racist ground that a Black couple should visit a flat. In addition, they were insulted in a racist way. The Court ruled that these acts constitutes a violations of the general right of personality which guarantees the protection of human dignity. http://www.justiz.nrw.de/nrwe/olgs/koeln/j2010/24_U_51_09urteil20100119.html

Section 19 par. 3 of AGG (§ 19 Absatz 3 AGG) entails a clause that is highly problematic. It is an exemption to prohibition of discrimination under Civil Law in relation with the renting of flats.

Lessors are allowed to discriminate against candidates for a flat on the ground of the attributed "Rasse"⁵¹ where it serves „to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.”⁵² Protection against discrimination under Civil Law does not apply if the lessor let out less than 40 apartments in total.⁵³ This limitation completely undermines protection against discrimination in relation to housing under AGG.

Racist discrimination in relation to access to leisure activities

The segregating effect is similar in the area of hotels, restaurants and related industries. Black People in Germany are very often refused entry to leisure centers, including discotheques. A racist motivation is very seldom spelled out, contrary to the case brought⁵⁴ to the Oberlandesgericht Stuttgart. This is the reason why it is more difficult to prove that customers were refused entry on this ground.

The testing study conducted by Hamado Dipama in Munich gave clear evidence of a racist motivation when customers were refused entry. The testers were refused entry in twenty clubs out of twenty-five, whereas the white control group was given entrance into all the clubs.⁵⁵

Recommendations regarding Article 3 and 5

We recommend the state party that

- Germany should gather data in a way that is conform to the General Recommendation n° 19 par. 4, on already existing or expected racist segregation trends in housing, with special focus on the situation of Black People.
- Germany should fulfil its obligations as state party⁵⁶ and as a member of the European Union. It must take all adequate measures to implement the principle of prohibition of segregation under Civil Law (“effect utile”).

51 or on any of the grounds, i.e. criteria, spelled out in Section 1 of AGG (§ 1 AGG).

52 In several communications addressed to the state party, the European commission drew attention to the fact that Section 19 Art. 3 contravenes the provisions of the guidelines and therefore and is therefore violates European Law.

53 Compare Section 19 Art. 5 Allgemeines Gleichbehandlungsgesetz.

54 The judgement can be : <http://openjur.de/u/357685.html>. The person concerned was refused entry alleging that there were already enough Africans in the surrounding.

55 <http://www.spiegel.de/panorama/justiz/rassismus-vorwurf-klage-von-auslaenderbeirat-muenchen-gegen-nachtclubs-a-966962.html> ; <http://www.dw.de/rassismus-vor-der-disko/a-17646626>. Racism claim, migrants' council against night clubs in Munich.

56 As did the General Recommendation XXXIV, Item 10 and 12, 50, 51.

- In Section 19 para. 3 of AGG (§19 Absatz 3 AGG) and Section 19 para. 5 of AGG (§19 Absatz 5 AGG) the final clauses should be removed without replacement.
- Protection against discrimination should be strengthened under Commercial Law.

Re Article 4 ICERD Criminal prosecution of racist discrimination

Racism in criminal cases

Criminal Law – hate crime

It is highly necessary to take racist motivation into consideration, especially as degrading motives are involved. Studies in the UK demonstrate that people who have been victimised on racist grounds or on other group specific hate-related grounds often suffer more serious (psychological) damages than people concerned by acts that have been perpetrated without group specific hate-related grounds.⁵⁷ In addition, by targeting an entire group, such an act tends to intimidate and gives out the signal that the rights of specific people will not and should not be respected.

In various communities it is known that there are particular places in Germany that should be avoided by Black People and People of Colour, because they would be particularly likely to be exposed to racist violence there. These areas are euphemistically referred to as “national liberated zone.”

On 27 August 2014, the federal government adopted a draft law against hate crime. The intended law shall introduce changes in the principles of sentencing under Section 46 StGB (§ 46 StGB), meaning that offences that have been perpetrated with a “racist, xenophobic [*fremdenfeindlich*]” or other degrading motive shall have an aggravating effect on sentencing.”⁵⁸ A concretisation of under Section 46 StGB is welcome. However, the concept of “*Fremdenfeindlichkeit*” which translates as “xenophobic” in English, should be removed. The German Institute for Human Rights already pointed out that “(this concept) is criticized by numerous non-governmental organisations working against racism and by scientists: it is used in replacement to the concept of racism and undermines the dimension of racism as a feature of society and blurs out historical continuity. The attributed “alien” character marginalises people (...) within the German society. Its use in an immigration country such as Germany is neither adequate nor helpful. By using the attribute “*fremd*” (alien, foreign), the legislative would take the perspective of the perpetrators and give a wrong signal if this terminology is incorporated in German Law.”⁵⁹

⁵⁷ Sotiriadis. *Kritische Justiz*, Heft 3/2014, p. 266

⁵⁸ <http://www.spiegel.de/politik/deutschland/nsu-folgen-hasskriminalitaet-soll-haerter-bestaft-werden-a-988429.html>, on harder sentences for hate crime following the NSU case

⁵⁹ See another policy paper of the German Institute for Human Rights, Deutschen Instituts für Menschenrechte, on protection against racism, to be accessed under: [http://www.institut-fuer-menschenrechte.de/publikationen/schutz-vor-rassismus.html?tx_commerce_pi1\[catUid\]=51&tx_commerce_pi1\[artAddUid\]\[137\]\[price_id\]=&tx_commerce_pi1\[artAddUid\]\[137\]\[count\]=1&cHash=e262e2cae23910a822d9a10a4cad0300](http://www.institut-fuer-menschenrechte.de/publikationen/schutz-vor-rassismus.html?tx_commerce_pi1[catUid]=51&tx_commerce_pi1[artAddUid][137][price_id]=&tx_commerce_pi1[artAddUid][137][count]=1&cHash=e262e2cae23910a822d9a10a4cad0300).

Racist ground in criminology and investigations

Racist grounds must be taken into consideration in sentencing. However, there is a lack of expertise at the investigation level. The officers in charge of conducting an investigation are often not sensitized to racism as a motive and do not identify it as such. This is particularly the case when a perpetrator has no connection with the “right-wing milieu.” There is no procedure for checking if a perpetrator could have a racist motive.

Racism in criminology

There is in Germany no statistical record of the frequency of racially motivated crime. As consequence, racially motivated crime does not appear as a specific category that renders impossible adequate prevention. It is not possible to monitor racially motivated crime in areas where Black People in Germany are particularly at risk of becoming victims of a racist motivated crime. In the same way, it is not possible to issue any founded statement on the type and gravity of those crime. Besides, the absence of statistical record prevents the state from adopting adequate methods to prosecute hate crime. The foundation Amadeu Antonio Stiftung estimated that right-wing violence had caused the death of 184 victims since 1990, of whom almost 10 percent Black People.⁶⁰

In addition, the lack of official figures is a hindrance to a stronger awareness of racism in society. On the contrary, it led to racism being underestimated in mainstream society.⁶¹

Recommendations regarding Article 4

We recommend that the state party:

- Should act in accordance to the recommendation of the Committee and adopt effective strategies and programmes aimed at making the police and enforcement officers accountable for racially motivated misconduct
- Change administrative guidelines so as to enable offences to be actively checked against a racist motive
- In accordance to the comments by the Committee⁶², the state party should re-examine the procedure for the prosecution of racist speech and incitement to racist discrimination. The current procedure does not allow for an effective implementation of the Convention. Beyond the offence of incitement (*Volksverhetzung*) pursuant to Section 130 StGB (§ 130 StGB), racism must be adequately accounted for under Criminal Law.

⁶⁰ www.mut-gegen-rechte-gewalt.de, on taking courage against right-wing violence

⁶¹ <http://www.spiegel.de/international/germany/spiegel-online-interview-with-racism-expert-awareness-of-ethnic-discrimination-is-low-in-germany-a-502694.html>.

⁶² Communication No. 48/2010 of 04.04.2013

RE Article 6 ICERD Legal protection and Remedies against racism

Legal instruments

In the absence of an antidiscrimination infrastructure in Germany, people who have been exposed to racism are very often no other recourse than bringing the matter to court. There are various factors preventing an effective protection against racism:

One of the major obstacles is the risk attached to any court case, namely legal costs. In a procedure under Civil Law, the defeated party has to pay all the fees incurred. In the majority of the cases of discrimination, the people concerned are largely at a disadvantage from a financial point of view. This is especially the case in matters involving estate agencies or employers. This aspect is all the more problematic as a case generally has to go through several levels before a party bringing a case of discrimination to court may be successful. There is no legal fund to support the people concerned and mitigate the risk of losing a case.

Under Public Law, organisations and associations of people who are exposed to racism do not have the possibility of collective action lawsuits and bringing matters of discrimination to court, as opposed to other comparable areas of Law.⁶³ As a consequence, there must always be an individual acting as the person concerned. In addition, the person concerned has difficulties to provide evidences, discrimination being mostly an occurrence that needs unveil. Testing procedures constitute an important tool for providing evidence of discrimination in court or in an investigation, as demonstrated in the European context. However, this method has only been accepted as evidence in a German court proceeding in very few cases.⁶⁴

2. Personnel of the Justice system

Even if an action is brought, the judges are likely not to be adequately sensitized to and able to competently decide on a case involving racism. The aforementioned case (III.1.b.aa.), in which a racially motivated expert report could go through two levels before been rejected demonstrates that they are not in a position to identify racism and protect the people concerned including in the cases in which the reason for bringing a case to court was no explicitly racist discrimination. Committed organisations that are working under Civil law confirm that the person concerned is also exposed to structural racism in the courtroom.⁶⁵ Given the negligible number of the judges who have been exposed to racism,⁶⁶ the lack of further education schemes has an even more crucial impact. The Committee already recommended that sensitization to racism should be possible and target state representatives and public servants and employees. .

⁶³ As an example in the case of barrier free access to participation of other abled people pursuant to the German Law on equal opportunities for people with disabilities (BGG).

⁶⁴ For further comments see: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Expertise_Anwendbarkeit_Testingverfahren_20110704.pdf?__blob=publicationFile ; <http://www.bug-ev.org/themen/schwerpunkte/dossiers/testing.html> .

⁶⁵ Recommendations for further reading: „Rassismus und Justiz“ on racism and the justice system, published by the migrants' umbrella organisations Migrationsrat Berlin-Brandenburg e.V.

⁶⁶ Basu, Sanchita „Brauchen Richter_innen Fortbildungen zu Antirassismus“ in Rassismus und Justiz die Broschüre zur Veranstaltungsreihe des Migrationsrates Berlin-Brandenburg, p. 10 ff. On the issue on whether judges need further education programmes on antiracism, included in the leaflet on the series of events organised by the migrants' umbrella organisation Migrationsrat Berlin-Brandenburg e.V.

Recommendations regarding Article 6

We recommend that the state party:

- Introduce further education programmes for judges and court clerks and staff, for them to be sensitized to racism.
- To engage in making collective action lawsuits possible under AGG
- Allow for collective action lawsuits by organisations of the people concerned.
- Testing methods with a proven methodology should be developed and accepted as evidence in a court case.