



Permanent Mission  
of the Federal Republic of Germany  
to the Office of the United Nations and  
to the other International Organizations  
Geneva

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Note Verbale

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and – with reference to the High Commissioner's Note with reference 255.sa.mdp dated 17 January 2008 requesting written answers regarding resolution A/C.3/62/L.66 entitled "Report of the Human Rights Council on the preparations for the Durban Review Conference" – has the honour to transmit herewith the replies of the Government of the Federal Republic of Germany.

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations would be much obliged if the Office of the High Commissioner for Human Rights could confirm receipt of this statement.

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 7 March 2008

To the  
Office of the High Commissioner for Human Rights  
Palais Wilson  
Geneva

**QUESTIONNAIRE TO MEMBER STATES prepared by the Office of the United Nations High Commissioner for Human Rights, pursuant to decision PC.1/10 of the Preparatory Committee of the Durban Review Conference at its first session (A/62/375)**

**Core questions**

**Question 1: Can you assess the implementation of the Durban Declaration and Programme of Action in your country?**

Germany and the other EU Member States were among those who actively participated in the negotiations at the Durban World Conference in 2001 and in the adoption of the final documents (DDPA). Germany has since focused its efforts on the full implementation of the agreed principles and operational recommendations of the DDPA.

Germany and the EU are, in line with the EU's fundamental founding principles, fully committed to the fight against racism, racial discrimination, xenophobia and related intolerance and have developed several regional and national strategies to combat this scourge. The main pieces of legislation, primarily the Directives on Racial Equality and the Framework Decision on Racism and Xenophobia, are applicable in all EU Member States and address discrimination on the grounds of race, ethnic origin, religion, disability, age and sexual orientation.

As an initial response to the decisions of the Preparatory Committee of the Durban Review Conference held in 2001, the Federal Government submitted its first "Report on the current and envisaged measures and activities of the Federal Government against right-wing extremism, xenophobia, anti-Semitism and violence" to the UN back in 2002. On this basis, the Federal Government drew up a **National Action Plan** that is due to be completed before the end of 2008 and will then be submitted to the UN. Civil society was involved in developing this Action Plan. The National Action Plan perceives itself as making a contribution towards the prevention of and protection against violence and discrimination. It explicitly highlights the fact that neither society, politicians nor the judiciary are willing to accept these phenomena, to stand for them without contradiction or to actually tolerate them. The Action Plan will urge people to ensure that a consistent policy of integration and participation at all social, political and economic levels is pursued against the backdrop of demographic forecasts

and conurbations which are increasingly developing a multi-ethnic structure. The Action Plan will also help to promote the policy of recognizing diversity.

In Note Verbale 261/07 of July 2007, the Federal Government also responded to the question from the Office of the United Nations High Commissioner for Human Rights regarding the implementation of Resolution A/61/149 (the implementation of the Durban Declaration and Programme of Action).

The Federal Government holds the view that the Durban decisions provide a sound basis for future action. The Durban Review Conference should therefore concentrate on the implementation of the Programme of Action adopted in Durban and on the problems associated with it, and give participating states the opportunity to exchange best practices.

**Question 2: Can you assess contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance as well as initiatives in this regard with a view to eliminating them in your country?**

German criminal law covers criminal offences that are motivated by racism, xenophobia and anti-Semitism, defining independent elements of the crimes, and punishes these criminal offences accordingly. As such, the offender's motivation is taken into special account when it comes to sentencing. The spreading of propaganda and the use of hallmarks of unconstitutional organizations and incitement are criminalized. There are provisions that sanction actions motivated by racism in the area of the right of association and assembly.

In this context the Federal Government acts in accordance with the principle that all forms of discrimination are unacceptable, whether on grounds of ethnic origin, religion, belief, gender, sexual orientation or other allegedly discriminating features. The measures taken therefore apply to all potential victim groups and offer them the same protection against racism and discrimination.

**Question 3: Please identify concrete measures and initiatives for combating and eliminating all manifestations of racism, racial discrimination, xenophobia and related intolerance in order to foster the effective implementation of the Durban Declaration and Programme of Action.**

Due to the large number of activities undertaken, and in order to highlight how the Federal Government implements the Durban Declaration and Programme of Action, follows an exemplary enumeration of such activities:

The Federal Government and the Federal Länder have adopted a diversified strategy aimed at combating **anti-Semitism**. Germany is actively involved in the work of the International Task Force on Holocaust Education, Remembrance and Research (ITF) and actively promotes Jewish life in Germany.

With regard to the **Sinti and Roma**, Germany has been involved within the framework of the OSCE in developing an action plan for enhancing the situation of the Sinti and Roma. The realities of the life of the Sinti and Roma in Germany are discussed on a regular basis in the "Forum against Racism", of which the Central Council of Sinti and Roma is a member.

In the area of **racially motivated crime**, the Federal Government attaches particular importance to preventive work, an approach which led to the establishment in June 2001 of the foundation "German Forum for Crime Prevention", which aims to prevent right-wing extremism, xenophobia, anti-Semitism and violence.

Regarding the integration problems of **late repatriates** ("**Spätaussiedler**", a special group of German immigrants), the Federal Government has funded social integration measures and has also supported projects aimed at preventing xenophobia (e.g. the project "Integration through Sport" together with the German Olympic Sports Confederation).

The Federal Government also supports the work of the German Institute for Human Rights and other non-governmental organizations aimed at combating racism.

Numerous measures are also being implemented at EU level: for instance, in connection with the European Year of Equal Opportunities for All 2007 and the European Year of Intercultural Dialogue 2008, a number of events are being held with the aim of raising awareness and developing new strategies in the fight against racism and other forms of intolerance. The European Agency for Fundamental Rights, which was set up on 15 February 2007, advises and assists the EU Member States (by sourcing information and data) with the development of special programmes for raising public awareness focusing on fundamental rights.

**Question 4: How would your Government assess the effectiveness of the existing Durban follow-up mechanisms and other relevant United Nations mechanisms dealing with the issue of racism, racial discrimination, xenophobia and related intolerance in order to enhance them?**

Germany acknowledges the work of the existing Durban follow-up mechanisms and supports them, wherever possible, in the fulfilment of their mandates.

Germany especially welcomes the work of the anti-discrimination unit of the High Commissioner of Human Rights, to which it has dedicated financial and personnel resources. Germany actively cooperates with all existing instruments; it participates in all open sessions of the different working groups and answered the High Commissioner's questionnaire on the implementation of the DDPA (cf. Note Verbale 261/07 of July 2007).

The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr Doudou Diène, has visited Germany several times, also within the framework of the "Say No to Racism Campaign" during the FIFA World Cup in Germany in 2006.

Without wishing to minimize the valuable contribution to the fight against racism of all the new instruments created in the wake of the Durban Conference, Germany is, however, of the opinion that there is a need to rationalize and streamline these mechanisms in order to prevent duplication of work and overlapping. The Durban Review Conference thus provides a good opportunity to evaluate the work done so far and to decide on possible rationalization with a view to enhancing the effectiveness of the systems established to fight racism.

Along with the instruments dedicated specially to the fight against racism, other Special Procedures also contribute to the implementation of the DDPA in line with the Programme of Action, paragraph 198, and should accordingly also be invited to participate in the conference.

Until then, all existing mechanisms should concentrate on their contribution to the review process without taking any new initiatives.

**Question 5: What are the steps taken by your Government to ratify and/or implement the International Convention on the Elimination of All Forms of Racial Discrimination**

**and give proper consideration to the recommendations of the Committee on the Elimination of Racial Discrimination?**

Germany ratified the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1969. Since then, Germany has regularly presented reports to the Committee on the Elimination of Racial Discrimination (CERD), pursuant to Article 9 of ICERD. The most recent report (16<sup>th</sup> to 18<sup>th</sup> periodic report) was forwarded to CERD in January 2007, is available on the website of CERD and will be presented during its 73<sup>rd</sup> session in July/August 2008. In response to the Concluding Observations by CERD, Germany has also conformed to the complaints procedure for individuals pursuant to Article 14 of ICERD. A declaration to that effect was issued on 30 August 2001. Germany regards ICERD as the core international legal document in the fight against racism and discrimination. The Federal Government will continue to give full support to ICERD and, to this end, will take the concluding observations by CERD into account in national legislation and legal practice.

**Question 6: Please identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance in your country.**

To successfully implement measures against racism, racial discrimination, xenophobia and related intolerance, all action should be embedded in an accountable and participatory governmental process responsive to the needs of the people and guided by the rule of law. Civil society and the media also play a fundamental role in the fight against racism.

In the National Action Plan adopted by the Federal Government, great importance is attributed to the aspect of integrated cooperation across the boundaries of ministries and competencies. A special coordination group against right-wing extremism was set up in November 2006 to fight racism, xenophobia and anti-Semitism. The prevention concept includes teaching democratic values at an early age, i.e. by making it part of early childhood education. With children and adolescents, this can be achieved by providing leisure activities that teach the relevant values and by providing meaningful and advanced civic education courses.

At regional level Germany has supported the establishment of a Tolerance and Non-Discrimination Unit within the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in both political and practical terms by providing funding, seconding personnel and

promoting projects (e.g. development of teaching materials on anti-Semitism, project on freedom of belief and religion).

The OSCE Anti-Semitism Conference in Berlin in 2004 and the conferences in Paris and Brussels that same year set in motion an irreversible move towards tolerance and non-discrimination and were the prelude to numerous follow-up conferences up to the present day which have looked into specific themes in greater depth. Most recently, an OSCE High-Level Conference on Combating Discrimination and Promoting Mutual Respect and Understanding was held in Bucharest in 2007 – as a follow-up to the Cordoba Conference on Combating Anti-Semitism and Other Forms of Intolerance in 2005 – and the OSCE Chairmanship Conference on Combating Intolerance and Discrimination against Muslims took place in Cordoba.

Annex (sample answers)

**Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national level (excerpt from 18<sup>th</sup> State Report under ICERD)**

Based on a decision by the German Bundestag of 7 December 2000, the German Institute for Human Rights was founded as a registered society on 8 March 2001. It is a national human rights institution accredited with the United Nations and based on the so-called Paris Principles. The Institute undertakes various tasks which are all dedicated to the protection and promotion of human rights in Germany. Apart from the Federal Government and Bundestag, it works with the federal states (Länder) and other key institutions. The Institute offers a broad forum for human rights discussions involving politicians, civil society and academia which serve as a platform for national and international debates.

One regular topic of the German Institute for Human Rights' education and public relations work and its political consultancy work is the necessary protection against discrimination. The Institute advocates a wide-ranging anti-discrimination policy and provides information on Germany's obligations under international law and on exemplary developments in other countries.

**Policies, practices and strategies**

**Action-oriented policies and action plans, including affirmative action to ensure non-discrimination**

The Federal Government has developed an **Action Plan against Racism** which is currently being coordinated by the Federal Government and non-governmental organizations. It is to be adopted by mid-2008. It will subsequently be submitted to the UN High Commissioner for Human Rights.

The **Forum against Racism**, which emerged from the National Action Committee to implement the European Year against Racism, was set up back in 1998. The Forum enables representatives of non-governmental organizations and government agencies to discuss all issues relating to the fight against racism and xenophobia. It convenes two to three times a year. It has developed into an important platform for mutual exchange. At present, around



85 representatives of national and supraregional non-governmental organizations are working in this Forum.

Another body called the **Alliance for Democracy and Tolerance – Against Extremism and Violence** was set up in 2000. It aims to harness social forces opposed to racism, xenophobia, anti-Semitism and violence, to support activities and to make them transparent via the network.

An ideal example of an effective programme aimed at combating a certain type of discrimination is the programme on the prevention of trafficking in women and children. This includes in particular developing a cooperation model for special witness protection for women that will act as a striking example at European and international level. In October 2007, the second **Action Plan to combat violence against women** was published. It contains an overall concept of measures to be implemented by the Federal Government to prevent and eliminate all forms of violence against women.

#### **Information, communication and the media, including new technologies**

Under German law, acts of incitement to racial violence are punishable. Section 130 of the Criminal Code provides that whoever, in a manner capable of disturbing the public peace, incites hatred against segments of the population or calls for violent or arbitrary measures against them or assaults the human dignity of others by insulting, maliciously maligning or defaming segments of the population, shall be punished with imprisonment from three months to five years. Section 130 (2) of the Criminal Code provides that whoever disseminates, makes accessible, produces or undertakes to import or export writings (as defined in Section 11 (3)) shall be punished with imprisonment of up to three years or a fine. Section 11 (3) equates audio and visual recording media, data-storage media (e.g. computer-stored data) with writings. The full text of these Sections is attached.

Under the German EU Presidency, the Council of EU Justice Ministers in Brussels achieved political agreement on a Framework Decision on combating racism and xenophobia. This implies that there will be binding minimum harmonization throughout Europe of the provisions on criminal liability for disseminating racist and xenophobic statements. Public incitement to violence and hatred, as well as the denial or gross trivialization of genocide due to racist or xenophobic motives, will be sanctioned across Europe.

**Ratification and effective implementation of relevant international and regional legal instruments on human rights and non-discrimination**

(Please refer to Core Question 5.)

**Provision of effective remedies, recourse, redress and other measures at the national level (excerpt from 18<sup>th</sup> State Report under ICERD)**

The Act for the Implementation of European Directives implementing the principle of Equal Treatment, which came into force on 18 August 2006, serves to implement all four EU Equal Treatment Directives: 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC.

While the main focus of the Act is on employment law, it also affects general civil law, above all private law agreements. The German Civil Law prohibits all forms of discrimination on the grounds of race or ethnic origin, gender, religion, disability, age or sexual identity. In case of discrimination, the victim is entitled inter alia to damages and compensation for pain and suffering. An anti-discrimination office has been created at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth which assists victims of discrimination within the scope of application as described above. Furthermore, Section 23 of the Act provides that, subject to certain conditions, anti-discrimination organizations may attend court proceedings as advocates where attendance of legal counsel is not mandatory.

**Has your Government devised, enforced and strengthened measures to prevent, combat and eliminate all forms of trafficking in women and children, particularly girls?**

According to the German Penal Code paras. 232-233a, human trafficking in the Federal Republic of Germany is comprehensively criminally liable. The regulations were redrafted in 2005 in order to accommodate the requirements of the framework resolution of the Council of the European Union to combat human trafficking.

The Federal Government has also adopted a draft law on the execution of the EU framework directive on combating sexual exploitation of children and child pornography, which will also serve to provide the legal framework for the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The law is currently being examined by the Bundestag.