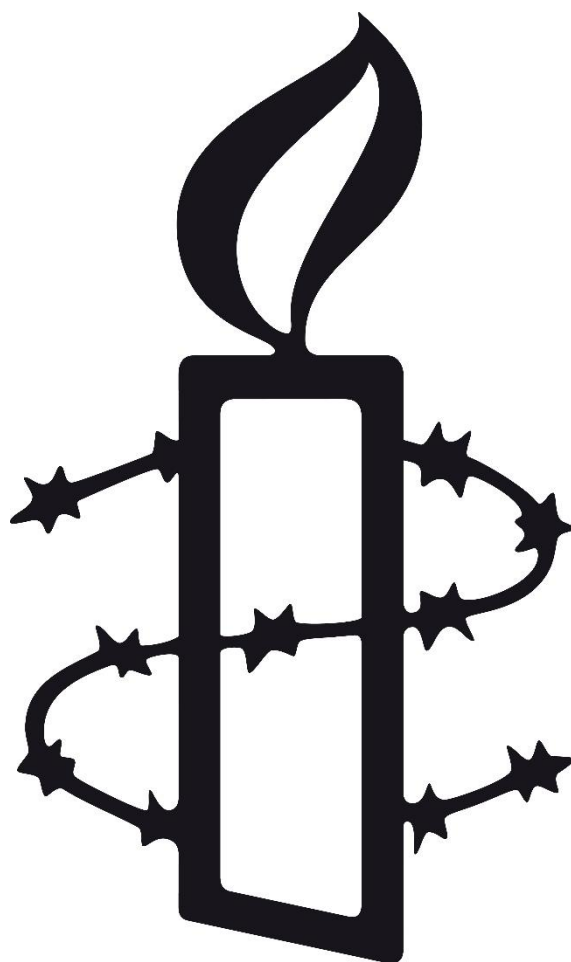


GERMANY

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION

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1. INTRODUCTION

Amnesty International submits this briefing in advance of the consideration by the UN Committee on the Elimination of Racial Discrimination (the Committee) of Germany's combined 23rd to 26th periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention).

In this briefing the organization outlines its concerns regarding Germany's failures to address systemic racism, racial discrimination, and racist violence by state actors as well as lack of protection from racist discrimination and violence by non-state actors and the right to truth, justice and reparations. Despite progress made, the German state – at the federal, state, and municipal/local level – is failing in its commitment to meet its obligations under the Convention across all of these issue areas. It is not an exhaustive list of concerns.

2. STATE'S FAILURES TO ADDRESS SYSTEMIC RACISM

This section indicates how despite significant efforts, Germany has failed to address systemic racism and its manifestations in laws, policies and practices (at institutional and individual levels).

2.1 CONSTRAINTS ON PUBLIC POLICIES TO COMBAT RACISM AND PROMOTE RACIAL EQUALITY

Amnesty International is concerned that knowledge about the existence and applicability of the Convention is not mainstreamed within different levels of government in Germany.¹

Racial discrimination is not defined in German law in a manner consistent with the Convention. International conventions ratified by Germany are federal law, however, the Committee has previously expressed concerns “that the absence of a statutory definition of racial discrimination in line with article 1 of the Convention in the domestic legislation has direct implications on the State party's failure to adequately address racial discrimination of all groups requiring protection under the Convention. In particular, the absence of such a statutory definition seems to result in reluctance by judges to refer to the Convention in German courts”.² The absence of such a definition has led to confusion about what constitutes racial discrimination by state actors and has prevented Germany from meaningfully addressing racial discrimination. For example, although the Convention clearly states that the purpose or effect of an action or omission is decisive, it is commonly assumed – including by state officials – that the intention and/or motivation of the perpetrator (and not the discriminatory impact) is crucial.³ As a result, not all cases alleging or involving racial discrimination are investigated as such.⁴ Amnesty International therefore welcomes the appointment of a Council of

¹ “The Federal Republic of Germany ratified the Convention in 1969. Nevertheless, ICERD is still not as well known today, even in legal circles, as the importance of the topic for an open and diverse society actually demands.” Foreword by Heiko Maas, then minister of Minister of Justice, of the information brochure on ICERD, May 2017, p. 2, https://www.bmj.de/SharedDocs/Publikationen/DE/Fachpublikationen/2017_ICERD.pdf?__blob=publicationFile&v=4 (in German). Acknowledging this problem, “the Federal Government is committed to advancing the ICERD definition of racism and its application as a yardstick in official practice as well”, see Commissioner for Anti-Racism, “Lagebericht, Rassismus in Deutschland” [Status report on Racism in Germany], 2023, p. 17, <https://www.integrationsbeauftragte.de/resource/blob/1864320/2157012/77c8d1ddddea760bc13dbd87ee9a415f/lagebericht-rassismus-komplett-data.pdf?download=1> (in German).

² Committee on the Elimination of Racial Discrimination, Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany (Concluding Observations on 19th-22nd reports on Germany), 30 June 2015, UN Doc. CERD/C/DEU/CO/19-22, para. 7; Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by state parties under article 9 of the convention, 22 September 2008, UN Doc CERD/C/DEU/CO/18, para. 15.

³ The European Commission against Racism and Intolerance (ECRI) criticized that in Germany the definition of hate crime “is still narrower than suggested by ECRI in § 14 of its GPR No. 11” which recommends that “a racist incident shall be: ‘any incident which is perceived to be racist by the victim or any other person’”. European Commission against Racism and Intolerance, ECRI report on Germany (sixth monitoring cycle) (ECRI on Germany 2020), 17 March 2020, <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-16809ce4be>, para. 61.

⁴ See inadequate investigation of racist hate crimes in section below as well as in Amnesty International, Living in insecurity: Germany is failing victims of racist violence (Index: EUR 23/4112/2016), 9 June 2016, <https://www.amnesty.org/en/documents/EUR23/4112/2016/en/>, p. 55 ff.

Experts on Anti-Racism by the Anti-racism Commissioner, in July 2023.⁵ The Council is tasked with developing proposals for an effective, sustainable anti-racism policy in Germany, including developing a definition of racism for administrative action and conduct by government officials.⁶

Amnesty International is alarmed that the government has not taken sufficient action to combat racist structures that historically and systemically discriminate against people based on race, colour, descent, national or ethnic origin. For example, the recommendations of the final report of the Cabinet Committee on Combating Right-wing Extremism and Racism of 2021,⁷ (set up in March 2020, inter alia, as a reaction to the racist attacks in Halle, Hanau and by the NSU mentioned below) are still to be implemented and the Action Plan Against Right-wing Extremism of March 2022⁸ which makes reference to well-known hate crimes detailed below as acts of “right-wing extremism” does not even mention racism.⁹ While the measures provided more support for civil society, they did not address institutional racism or set out an overall strategy against racist violence. Other measures to address racism have not been fully implemented or adequately updated. The National Action Plan (NAP) against Racism of July 2017,¹⁰ for example, has not been completely implemented and a follow-up NAP is yet to come.

As explained by the Committee, the persistent use of other terms to encompass the broader notion of racial discrimination is concerning. This includes “right-wing extremism” and “neo-Nazism” and the use of the term “cultural differences” to mean “ethnic diversity”.¹¹ This is linked to the fact that state actors predominantly perceive racism as intrinsically interlinked with migration status or “background” instead of acknowledging its many root causes such as white supremacy and colonialism. This is evident by the continued use of the term “persons with a migrant background”¹² to identify those who may be subjected to racial discrimination which is of particular concern of the Committee as it can exclude minorities and other racialized groups who have been in Germany for centuries.¹³ Furthermore, despite individual statements by officials,¹⁴ Germany does not adequately acknowledge and recognize the impact of its past practices of colonialism on the present contexts of discrimination and persisting structures of racial inequalities.¹⁵

Other public policy measures, such as supporting civil society organizations working with racialized groups exist,¹⁶ but need to be expanded and continued on a long-term basis.

⁵ In addition to the 2006 established Federal Anti-Discrimination Agency, the government appointed for the first time a commissioner against antisemitism in 2018, a commissioner for queer-related matters and commissioners for anti-racism and for Roma people in 2022. These positions are attached to different ministries which is often criticised due to different spheres of influence.

⁶ See Integration commissioner, “Expert*innenrat Antirassismus nimmt Arbeit auf” [“Council of Experts on Antiracism starts work”], <https://www.integrationsbeauftragte.de/ib-de/staatsministerin/expert-innenrat-2194024> (in German).

⁷ Federal Ministry of the Interior and Community, “Abschlussbericht des Kabinettsausschusses zur Bekämpfung von Rechtsextremismus und Rassismus“, [“Final Report of the Cabinet Committee on Combating Right-Wing Extremism and Racism“], 12 May 2021, <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/abschlussbericht-kabinettsausschuss-rechtsextremismus.html> (in German).

⁸ Federal Ministry of the Interior and Community, “Aktionsplan gegen Rechtsextremismus“ [“Action Plan Against Right-Wing Extremism “], 15 March 2022, <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2022/03/aktionsplan-rechtsextremismus.html> (in German).

⁹ Amnesty International, Germany: Discrimination on the rise – Submission to the 44th session of the UPR Working Group, 9 November 2023 (Index: EUR 23/6481/2023), 31 March 2023, <https://www.amnesty.org/en/documents/eur23/6481/2023/en/>, para. 16.

¹⁰ Federal Ministry of the Interior and Community, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, “Nationaler Aktionsplan gegen Rassismus“ [“National Action Plan Against Racism“], 14 June 2017, <https://www.bmfsfj.de/resource/blob/116798/5fc38044a1dd8edec34de568ad59e2b9/nationaler-aktionsplan-rassismus-data.pdf> (in German).

¹¹ Concluding Observations on 19th-22nd reports on Germany, UN Doc. CERD/C/DEU/CO/19-22, para. 7.

¹² It should also be noted that this term is frequently used in a derogatory manner as a proxy for race and ethnicity, exemplary for racism and racial discrimination in public discourse.

¹³ Concluding Observations on 19th-22nd reports on Germany, UN Doc. CERD/C/DEU/CO/19-22, para. 6.

¹⁴ Federal Foreign Office, “Speech by Minister of State Katja Keul on the occasion of a wreath-laying ceremony at the site of the execution of Rudolf Manga Bell in Cameroon”, 02 November 2022, <https://www.auswaertiges-amt.de/en/newsroom/news/-/2561510>.

¹⁵ Special Rapporteur on Contemporary Forms of Racism, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance, 21 August 2019, UN Doc. A/74/321.

¹⁶ With the government programme “Live democracy” organizations are supported, for example, in their educational work to raise awareness, in training programs for those affected, or in empowerment for self-organizations. Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Live Democracy! Find projects, last access 05.10.2023, <https://www.demokratie-leben.de/en/projects-expertise/find-projects> (in German).

2.2 RECOMMENDATIONS

Amnesty International recommends that the German authorities:

- Ensure that a definition of racial discrimination which is fully in line with article 1 (1) of the Convention is used in law and in practice, so that full protection of groups or individuals requiring protection under the Convention is guaranteed;
- Raise, in line with the Committee's recommendation, awareness, through campaigns in educational institutions at all levels, in the public arena and in the media, of the definition of racial discrimination and the impact on people experiencing such discrimination;
- Comprehensively train public servants and state employees on all levels of government on the source and effect of racial discrimination as well as on how to actively prevent racial discrimination;
- Address systemic and institutional racism on all levels of government and acknowledge the root causes of racial discrimination such as white supremacy and colonialism; and
- Continue and expand support for civil society organizations that address racial discrimination.

2.3 LACK OF COMPREHENSIVE PUBLIC DISAGGREGATED DATA

Germany does not collect statistical data on race and/or ethnicity, while data on some other protected characteristics, such as sex, is recorded. As data on the population in all its diversity is lacking, a comprehensive analysis on the composition of population and discriminatory practices is more difficult, especially regarding intersecting and multiple forms of structural discrimination.¹⁷

Several civil society initiatives and academic institutions have tried to fill the lack of official, disaggregated data. In July 2020, the German parliament provided funding to establish a National Discrimination and Racism Monitor (NaDiRa) at the DeZIM institute (German Centre for Integration and Migration Studies). The study "Racist realities" by NaDiRa published in 2022 found that racism is common in Germany.¹⁸ In 2022, 43% of reported complaints to the Federal Anti-Discrimination Agency were about racial discrimination, a year in which they received more consultation requests on discrimination than ever before.¹⁹

Group-specific information on racialized people is rare with regards to the size of the groups as well as regarding the discrimination they face. In June 2017, the Independent Expert Group on Antisemitism, installed by the parliament, published its second report on the diversity of manifestations of antisemitism in the different social spheres in Germany.²⁰ Civil society organizations record high annual levels of antisemitic attacks.²¹ Although more than 1 million people of African descent live in Germany, there was hardly any other statistical information about this group until the first afro census was published in 2020 by two civil society organizations, supported by academics with financial support of the Federal Anti-Discrimination Agency. The afro census showed the diversity of Black people of African descent and Afrodiasporic people in Germany, most of them born in Germany, as well as their shared experiences of anti-Black racism.²² The Independent Group of Experts on Hostility towards Muslims, installed by the Federal Ministry of the Interior, found in June 2023 that anti-Muslim

¹⁷ Concluding Observations on 19th-22nd reports on Germany, UN Doc. CERD/C/DEU/CO/19-22, para. 6.

¹⁸ National Discrimination and Racism Monitor (NaDiRa), "Rassistische Realitäten" ["Racist Realities"], 2022, <https://www.rassismusmonitor.de/studie-rassistische-realitaeten> (in German).

¹⁹ Federal Anti-Discrimination Agency, "Jahresbericht 2022" ["Annual report 2022"], 27 June 2023, <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Jahresberichte/2022.html?nn=305458> (in German), p. 25.

²⁰ Federal Ministry of the Interior and Community, "Zweiter Bericht des unabhängigen Expertenkreises Antisemitismus" ["Second Report of the Independent Expert Panel on Antisemitism"], 8 June 2017, <https://www.bundesregierung.de/breg-de/service/publikationen/zweiter-bericht-des-unabhaengigen-expertenkreises-antisemitismus-735880> (in German).

²¹ Federal Association of Research and Information Centres on Antisemitism e. V., "Jahresberichte – Auswertung von Vorfalleszahlen in Berichten, Abbildungen und Beispielen" ["Annual reports - Evaluation of incident figures in reports, illustrations and examples"], <https://report-antisemitism.de/annuals/> (in German).

²² Aikins, Muna AnNisa/Bremberger, Teresa/Aikins, Joshua Kwesi/Gyamerah, Daniel/ Yıldırım-Calıman, Deniz, "Afrozensus 2020: Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiasporischer Menschen in Deutschland" ["Afrozensus 2020: Perspectives on Anti-Black Racism Experiences and Engagement of Black, African, and Afro-Diasporic People in Germany"], 2021 (in German).

racism is widespread in large parts of society and an everyday reality²³ and, thereby confirmed civil society reports²⁴. Data on racism against Roma people was first published in September 2023 by a civil society organization (sponsored by government funding). The report showed that discrimination, including on an institutional level, against Roma people was pervasive, including towards Roma people from Ukraine who recently arrived to Germany as refugees.²⁵ Data on racial discrimination against people of Asian descent is insufficient, although racist incidents especially during the COVID pandemic came to light.²⁶ Similarly, racist incidents against people of Eastern European origin after the beginning of the Russian war of aggression towards Ukraine highlighted the importance of maintaining data about anti-Slavic racism.²⁷

2.4 RECOMMENDATIONS

Amnesty International recommends that Germany:

- Improves the collection, disaggregation, and publication of data on the experience of racialized groups in Germany in all aspects of public life, including access to health, education, employment, housing, social protection, in the context of law enforcement and the criminal justice system as well as experience of discrimination and violence.²⁸ This should include but not be limited to Black people, Muslim people and Roma people.
 - In this regard, the State party should make public information on first languages, languages commonly spoken or other indicators of ethnic diversity, together with any information about descent or national or ethnic origin derived from social surveys.
 - All data, including with regard to national minorities, should be collected in a manner consistent with human rights, including in a manner that is voluntary and based on self-identification and anonymity.

3. RACIST DISCRIMINATION AND VIOLENCE BY STATE ACTORS

3.1 RACIALLY DISCRIMINATORY POLICING PRACTICES AND LACK OF PREVENTION AND ACCOUNTABILITY

Racial discrimination in policing is a long-standing issue documented across Europe including Germany. Amnesty International's research from 2016 is indicative of a broader problem of institutional racism within German police authorities.²⁹ The International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement states in its 2023 report that "in many contexts, there is strong evidence that the abusive behaviour of some individual police officers is part of a broader and insidious pattern, interwoven into larger social, historical, cultural and structural contexts within which policing is undertaken. It is inevitable that law enforcement officers will share and reproduce the values, attitudes and stereotypes of the society and institutions in which

²³ Independent Expert Group on Muslimophobia, "Muslimfeindlichkeit – Eine deutsche Bilanz" ["Muslimophobia - A German Balance Sheet"], 2023, <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2023/06/uem-abschlussbericht.html> (in German).

²⁴ CLAIM – Alliance against Hostility towards Islam and Muslims, "Pressemitteilung - Erstes zivilgesellschaftliches Lagebild zeigt: Mehr als zwei antimuslimische Vorfälle pro Tag in Deutschland" ["Press release - First civil society situation report shows: More than two anti-Muslim incidents per day in Germany"], 26 June 2023, <https://www.claim-allianz.de/aktuelles/news/pressemitteilung-erstes-zivilgesellschaftliches-lagebild-zeigt-mehr-als-zwei-antimuslimische-vorfaelle-pro-tag-in-deutschland/> (in German).

²⁵ Antiziganism Reporting and Information Centre, "Antiziganistische Vorfälle in Deutschland - Erster Jahresbericht der Melde- und Informationsstelle Antiziganismus" ["Antiziganist Incidents in Germany - First Annual Report of the Antiziganism Reporting and Information Centre"], September 2023, <https://www.antiziganismus-melden.de/2023/09/18/melde-und-informationsstelle-antiziganismus-mia-veroeffentlicht-ersten-jahresbericht-2022-zu-antiziganistischen-vorfaellen-in-deutschland/> (in German).

²⁶ rive, akiko/Ehrich, Cuso, "Broschüre Anti-Asiatischer Rassismus: Eine Einführung für die politische Bildungsarbeit" ["Brochure Anti-Asian Racism: An Introduction for Political Education Work"], 14 June 2023, <https://www.korientation.de/projekte/radar/broschuere-anti-asiatischer-rassismus/> (in German).

²⁷ See Panagiotidis, Jannis/Petersen, Hans-Christian, "Antiosteuropäischer und antislawischer Rassismus" ["Anti-Eastern-European and anti-Slavic racism"], May 2023, https://mediendienst-integration.de/fileadmin/Dateien/MEDIENDIENST_Expertise_Antislawischer_Rassismus.pdf (in German).

²⁸ See CERD Concluding observations on Germany, UN Doc. CERD/C/DEU/CO/19-22, para. 6.

Amnesty International, Living in insecurity: Germany is failing victims of racist violence (Index: EUR 23/4112/2016), 9 June 2016, <https://www.amnesty.org/en/documents/EUR23/4112/2016/en/>, p. 7.

they live and work. To break this insidious circle requires unpacking the laws, policies, practices and institutional cultures within which abusive practices are unfolding and which continue to influence and determine modern law enforcement practices”.³⁰

Racial profiling constitutes a specific form of racial discrimination, which the European Commission against Racism and Intolerance (ECRI) defines as “use by the police, with no objective or reasonable justification, of grounds such as ‘race’, colour, language, religion, citizenship or national or ethnic origin in control, surveillance or investigation activities”³¹. In 2019 and 2020, the EU’s Fundamental Rights Agency (FRA) reiterated its concerns of previous years over discriminatory ethnic or racial profiling in a number of European countries including Germany.³²

Amnesty International considers that measures to combat racial profiling by police in Germany continue to be insufficient.³³ In its report to the Committee in 2018, Germany argued that racial profiling is forbidden in Germany and that it does not feature among the methods used in police practice.³⁴ However, this is not consistent with the findings of other bodies, such as the CERD Committee³⁵ and ECRI. The Committee has recommended that extremely broad provisions enabling police to stop, question, demand identity documents and inspect objects should be revised as they can lead to de facto discrimination.³⁶ Also, ECRI has recommended to “introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.”³⁷ However, inadequate action has been taken to implement any of these revisions in the laws to date.

Amnesty International is highly concerned that the standard of “reasonable suspicion” is still not established at the federal and state level. Only the federal state of Bremen has taken a step into the right direction by specifying in its provision on identity checks that such measures “have to be necessary because of the person’s behaviour”.³⁸ In 2021, the federal police carried out 2,852,341 identity checks of people using provisions with the aim to “prevent or stop unauthorized entry or residence” that did not include a reasonable suspicion standard. An initial suspicion of unauthorized entry or residence could only be established in less than 1.2 %, implying that many people were stopped by police for no reason.³⁹ At the same time, racial profiling has severe negative and cumulative effects on the well-being of individuals and communities, such as the sense of injustice and humiliation, fear of reprisals and the risk of secondary victimization.⁴⁰ The draft Federal Police Act from June 2023 continues to include policing powers, such as authority to conduct identity checks and to search property, without the requirement of “reasonable suspicion”.⁴¹ The aim “to prevent or stop unauthorized entry” is maintained, but the provisions do not specify on what individual grounds this power can be exercised. As a result, the proposed act perpetuates the risk that the police inspect

30 International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement, Report: Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality, 21 August 2023, UN Doc. A/HRC/54/69, para. 21.

31 ECRI, General Policy Recommendation N°11 on combating racism and racial discrimination in policing, 29 June 2007, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.11>, para. 1.

32 European Union Agency for Fundamental Rights, Your Rights Matter: Police Stops, 2021, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-survey-police-stops_en.pdf.

33 Amnesty International, Germany: Discrimination on the rise: Submission to the 44th session of the UPR Working Group, November 2023 (Index: EUR 23/6481/2023), 31 March 2023, <https://www.amnesty.org/en/documents/eur23/6481/2023/en/>, para. 17.

34 Committee on the Elimination of Racial Discrimination, Combined twenty-third to twenty-sixth reports submitted by Germany under article 9 of the Convention, due in 2018, 29 June 2020, UN Doc. CERD/C/DEU/23-26, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FDEU%2F23-26&Lang=en, para. 144.

35 Concluding Observations on 19th-22nd reports on Germany, para. 11.

36 Concluding Observations on 19th-22nd reports on Germany, para. 11.

37 ECRI, General Policy Recommendation N°11 on combating racism and racial discrimination in policing, 29 June 2007, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.11>, para. 3.

38 § 27 para. 1 sentence 1 no. 2 a) PolGBremen, <https://gesetze.io/gesetze/hb/brempolg> (in German).

39 German Bundestag, “Antwort der deutschen Bundesregierung zur Problematik des Racial Profiling und anlasslose Kontrollen der Bundespolizei seit 2021” [“Answer of the German Federal Government on the Issue of Racial Profiling and Groundless Checks by the Federal Police since 2021”], 14 December 2022, Drs. 20/4961, <https://dservver.bundestag.de/btd/20/049/2004961.pdf> (in German).

40 CERD General recommendation 36, CERD/C/GC/36, para. 26.

41 Draft Law on the Federal Police Act, 1 June 2023,

https://www.bmi.bund.de/SharedDocs/gesetzgebungsverfahren/DE/Downloads/referentenentwurfe/B1/ref-neustrukturierung-bundespolizeigesetz.pdf;jsessionid=F73CCB2959273429F790F35BA0436F05.2_cid360?__blob=publicationFile&v=6 (in German), § 23 para. 2 BPolGE, § 26 para. 1 no. 3 and § 65 para. 2 BPolG-E.

people based on their perceived residence status, which would exacerbate racist police action and not curb it.⁴²

In Bremen, the person subjected to an identity check shall, upon request, immediately receive a certification confirming the identity check and the reason for it (so called “Kontrollquittungen”).⁴³ The draft Federal Police Act from June 2023 also introduces this certificate, but without a reasonable suspicion standard, in only one of three relevant provisions.⁴⁴ These certifications can serve to improve police practices and accountability. They can initiate more reflection among police officers on the reason for an identity check. For those affected, they might help prove that an identity check was carried out and encourage complaints where these were unlawful or inappropriate. However, persons affected by possible unlawful police behaviour in Germany often refrain from filing a complaint. According to public prosecution statistics only in 2% of suspected illegal police violence charges were brought.⁴⁵

Besides, allegations of racial profiling continue to be insufficiently investigated. In October 2022, the European Court of Human Rights ruled that Germany’s inadequate investigations into allegations of racial profiling by the police had violated the right to non-discrimination (*Basu v. Germany*).⁴⁶ In 2023, the Council of Europe has decided to supervise the case under enhanced procedure, meaning that it is considered one of the main issues regarding Germany.⁴⁷ The Committee has also called upon Germany to undertake “prompt, thorough and impartial investigations into all allegations of racial profiling, holding those responsible accountable and providing effective remedies, including compensation and guarantees of non-repetition”.⁴⁸ In addition, the Committee recommended that Germany establishes independent complaints mechanisms at both the federal and state levels for allegations of racism in all police departments. In only eight out of 16 federal states, complaints mechanisms that are independent from the respective ministries of the interior exist (so called “police commissioners”).⁴⁹ However, Amnesty International has previously noted that none of the established mechanisms fulfils all applicable human rights requirements.⁵⁰ In particular, they lack sufficient investigative powers and the possibility to complain to the public prosecutor’s office or disciplinary authority.⁵¹ A commissioner for the Federal Police does not exist yet although the coalition government has agreed some preliminary points towards establishing such a post.⁵²

Accountability for discriminatory practices and other violations by police continues to be hampered by the police in five federal states and at the federal level not being required to wear identification badges. This makes it hard for racialized people to identify who the perpetrator of violations is, and thus hinders accountability.⁵³ Besides, there is a lack of independent studies on racial discrimination

⁴² See Amnesty International, “Stellungnahme zum Gesetzesentwurf zur Neustrukturierung des Bundespolizeigesetzes” [“Statement on the Draft Law on the restructuring of the Federal Police Act”], 09 June 2023, <https://www.amnesty.de/sites/default/files/2023-06/Amnesty-Stellungnahme-Bundespolizeigesetz-Juni-2023.pdf> (in German), p. 6.

⁴³ § 27 para. 1 sentence 2 PolGBremen, <https://gesetze.io/gesetze/hb/bremolg> (in German).

⁴⁴ Only in § 23 para. 2 (“Questioning and duty to provide information”) BPolGE, not in § 26 para. 1 no. 3 (“Establishing identity and checking entitlement certificates”) or § 65 para. 2 (“Search of property”) BPolG-E.

⁴⁵ See Abdul-Rahman, Laila/ Espin Grau, Hannah/ Klaus, Luise/ Singelstein, Tobias, “The use of excessive force by the police and struggles for accountability”, 2023, https://kviapol.uni-frankfurt.de/images/pdf/en/Executive%20Summary_Gewalt%20im%20Amt.pdf, p. 2.

⁴⁶ European Court of Human Rights (ECtHR), *Basu v. Germany*, Application 215/19, Chamber Judgment, 18 October 2022, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%7B%22001-220369%22%7D%7D>, para. 39.

⁴⁷ Department for the execution of Judgements of the European Court of Human Rights on main issues before the committee of ministers - ongoing supervision in Germany, <https://rm.coe.int/mi-germany-eng/1680a23c90> (accessed on 20 September 2023).

⁴⁸ Concluding Observations on 19th-22nd reports on Germany, para. 11 (f).

⁴⁹ Four other federal states have independent complaints offices with differing tasks and powers. These are partly contact persons for the police, partly for both police and citizens. See <https://www.bundestag.de/resource/blob/899854/c703911ae8f6e04a16618f8a85727ad3/WD-3-057-22-pdf-data.pdf>; Bavaria and Saarland currently have no such institutions.

⁵⁰ Amnesty International, Germany: Discrimination on the rise: Submission to the 44th session of the UPR Working Group, 9 November 2023 (Index: EUR 23/6481/2023), 31 March 2023, <https://www.amnesty.org/en/documents/eur23/6481/2023/en/>.

⁵¹ Amnesty International, “Amnesty-Positionspapier zu unabhängigen Untersuchungsmechanismen in Fällen von rechtswidriger Polizeigewalt in Deutschland” [„Position Paper on Independent Investigation Mechanisms in Cases of Unlawful Police Violence in Germany“], 21 November 2018, <https://www.amnesty.de/informieren/positionspapiere/deutschland-amnesty-positionspapier-zu-unabhaengigen>, para. 3.2 (in German).

⁵² Green Party, “Eckpunkte für Bundespolizeibeauftragten vorgestellt” [„Cornerstones for Federal Police Commissioner presented“], 2 June 2023, <https://www.gruene-bundestag.de/themen/innenpolitik/eckpunkte-fuer-bundespolizeibeauftragten-vorgestellt> (in German).

⁵³ See Amnesty International, “Positionspapier Kennzeichnungspflicht für Polizist_innen” [“Position Paper Identification Requirement for Police Officers“], September 2018, https://www.amnesty.de/sites/default/files/2019-03/Amnesty-Positionspapier-Kennzeichnungspflicht-fuer-Polizist_innen-November-2018.pdf (in German).

in the federal and state police forces.⁵⁴ In June 2022, ECRI has also stated that its recommendation to carry out a study on racial profiling at the federal and state level has not been implemented.⁵⁵

In recent years, cases of racist attitudes and behaviours of law enforcement officials have become public in the media.⁵⁶ In addition, racist bias and stereotypes are entrenched as “experience-based knowledge” by law enforcement authorities.⁵⁷ For example, categories such as “Arabs”, “Muslims”, “Turks” etc. are used by authorities as guiding criteria for police action, even though they reproduce othering and racist group attributions.⁵⁸ Another example is the construction of so-called “clan crimes” (“Clankriminalität”). Police use the fact of belonging to certain ethnic groups or the affiliation to the Islamic faith as a main cause for assuming forms of organized crime. In some cases, suspicions are based on surnames alone.⁵⁹ Police brochures on “Arab family clans” are sometimes distributed internally, reinforcing culturalist and patriarchal stereotypes.⁶⁰ Amnesty International is concerned that police at the federal level and in federal states have maintained such racist categorizations and stereotypes.⁶¹

Besides, contrary to the Committee’s recommendation,⁶² mandatory training and testing on racism, antisemitism and other forms of discrimination is not included in the education and further training of all police personnel, prosecutors and judges.⁶³ The training offer was expanded; in particular “intercultural trainings” are offered at the federal level and in some states. However, the focus on “cultural differences” does not constitute a tool to enforce the obligation to non-discrimination in policing.⁶⁴

3.2 RECOMMENDATIONS

Amnesty International recommends that Germany:

- Examines the extent and impact of systemic racism in law enforcement and adopts effective legal, policy and institutional measures that address racism beyond a summation of individualized acts, and measures progress according to indicators grounded in impact rather than intent;⁶⁵
- Eliminates police powers that are not based on a “reasonable suspicion standard”, consistent with human rights law, and ensure that police actions can only be exercised on the basis of a suspicion that is founded on objective criteria;

⁵⁴ Amnesty International, “Forderungspapier: Einsatzbereit gegen Rassismus?“ [“Demand Paper: Ready for Action Against Racism?“], June 2021, <https://www.amnesty.de/sites/default/files/2021-06/Amnesty-Forderungspapier-Polizei-Rassismus-Juni-2021.pdf>, (in German), p. 4.

⁵⁵ European Commission against Racism and Intolerance, Conclusions, 20 September 2022, <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680a807d2>, para 2; On deficiencies of existing studies see Amnesty International, Observation of Amnesty International Germany to the European Commission on Racism and Intolerance (ECRI) on Germany’s 6th Report Interim Follow-Up, 4 May 2022, <https://www.amnesty.de/sites/default/files/2022-05/Amnesty-Stellungnahme-ECRI-Deutschland-sechster-Bericht-Mai-2022.pdf>, p. 3.

⁵⁶ See SWR, “Hakenkreuze verbreitet: Ermittlungen gegen 70 Polizisten in BW” [“Swastikas Spread: Investigations Against 70 Police Officers in Baden-Württemberg“], 9 December 2022, <https://www.swr.de/swraktuell/baden-wuerttemberg/polizisten-volksverhetzung-100.html>, Burger, Reiner, “Nazi-Symbole und Menschenverachtung” [“Nazi Symbols and Contempt for Humanity“], 3 August 2023, <https://www.faz.net/aktuell/politik/inland/polizei-in-nrw-nazi-symbole-und-menschenverachtung-in-rechtsextremem-chat-19078319.html> (in German).

⁵⁷ The National Racism and Discrimination Monitor found that in order to reduce uncertainty in their everyday work, police officers also classify people on the basis of their appearance. In doing so, they fall back on widespread racist stereotypes. Police officers also have ‘knowledge’ about the (supposed) culture and nationality of people who are read as migrants, which they use in their work. This knowledge is partly conveyed to them as ‘intercultural competence’ or passed on as ‘experience-based knowledge’ among colleagues. Through this ‘body of knowledge’, police officers (re)produce racist discourses. See <https://www.rassismusmonitor.de/kurzstudien/rassismus-in-der-polizei/> (in German).

⁵⁸ Independent Expert Group on Muslimophobia, “Muslimfeindlichkeit – Eine deutsche Bilanz“ [“Muslimophobia - A German Balance Sheet“], 2023, <https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/heimat-integration/BMI23006-muslimfeindlichkeit.html>, (in German), p. 232.

⁵⁹ See “Muslimophobia - A German Balance Sheet“, p. 93 ff.

⁶⁰ See “Muslimophobia - A German Balance Sheet“, p. 233.

⁶¹ See Wegener, Kilian, “Über die sogenannte Clankriminalität“ [“Regarding the so called Clan Criminality“], August 2023, <https://verfassungsblog.de/uber-die-sogenannte-clankriminalitaet>, (in German).

⁶² Concluding Observations on 19th-22nd reports on Germany, para. 10.

⁶³ See Media Service, “Recherche: Rassismus und Antisemitismus bei der Polizei: Was tun Bund und Länder?“ [“Research: Racism and Antisemitism within the Police: What do the Federal Government and States do?“], August 2022, https://mediendienst-integration.de/fileadmin/Rassismus_und_Antisemitismus_bei_der_Polizei_MEDIENDIENST_Recherche.pdf (in German).

⁶⁴ Amnesty International, “Positionspapier zur Menschenrechtlichen Notwendigkeit von Antirassismus-Trainings für die Polizei“ [“Position Paper on the Human Rights Necessity of Anti-racism Training for the Police“], 19 October 2021, <https://www.amnesty.de/sites/default/files/2022-01/Amnesty-Positionspapier-Polizei-Antirassismus-Trainings-Deutschland-Oktober-2021.pdf> (in German).

⁶⁵ See UN Human Rights Council, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality, 26 July 2021, UN Doc. A/HRC/RES/47/21.

- Establishes independent complaints mechanisms for police actions at both the federal and state levels that fulfil all applicable human rights requirements. In particular, existing independent police commissioners should be equipped with sufficient investigative powers and the possibility to complain to the public prosecutor's office or disciplinary authority;
- Introduces identification badges for law enforcement officials in all states and at the federal level to combat impunity;
- Introduces a comprehensive strategy, including mandatory training, to ensure that police, prosecutors and judges understand racial discrimination and their role in combating it;⁶⁶
- Monitors racial discrimination in law enforcement, and publish this data, and includes concrete recommendations for and commitments to action; and
- Ensures that all incidents and complaints of racist attitudes and behaviours by police are investigated in a timely manner, independently, effectively and are sanctioned consistently.

3.3 POLICE USE OF FORCE

The DFG “Police Use of Excessive Force” (KviAPol) research project published in May 2023 provides findings on how police officers in Germany use excessive force and how such occurrences are handled by the criminal justice system and persons affected. It was based on a survey of victims with over 3,300 participants, and over 60 qualitative interviews with police officers, judges, public prosecutors, victims advice centres, and lawyers. The project found that 33% of persons affected felt they had been discriminated against during the incident they had perceived as unlawful police violence. A further 15% agreed with this view at least in part. According to the interviews, marginalized groups such as racialized persons, LGBTI+ or people who are homeless are at particular risk of discrimination during interactions with the police and have less power to make complaints.⁶⁷

As of 1 August 2023, the chronicle of the civil society alliance “Death in Custody” listed 233 cases of people affected by racism that died in custody or due to police violence since 1990.⁶⁸ One recent example is the shooting of Mouhamed Lamine Dramé in Dortmund in August 2022.⁶⁹ The 16-year-old Senegalese unaccompanied refugee was killed by several shots from a machine gun by a police officer. The public prosecutor of Dortmund has found that the child was shot “without justifiable cause”⁷⁰ and brought charges against five police officers involved in the operation.⁷¹

The case of Oury Jalloh is another example of the multi-layered problems in German police and in investigating alleged racist police violence. On 7 January 2005, the asylum seeker Oury Jalloh from Sierra Leone died in a police cell in Dessau due to a fire in the cell.⁷² The Working Group of Experts on People of African Descent has raised concerns “about racial bias in his arrest, ill-treatment by the police, the use of physical restraint and gaps in the investigation into the cause of his death”.⁷³ The Working Group “believes that institutional racism and racist stereotyping by the criminal justice system has led to a failure to investigate and prosecute perpetrators effectively”.⁷⁴ After the exhaustion of the

⁶⁶ Concluding Observations on 19th-22nd reports on Germany, para. 10.

⁶⁷ Abdul-Rahman, Laila/ Espín Grau, Hannah/ Klaus, Luise/ Singelstein, Tobias, “The use of excessive force by the police and struggles for accountability”, 2023, https://kviapol.uni-frankfurt.de/images/pdf/en/Executive%20Summary_Gewalt%20im%20Amt.pdf.

⁶⁸ Documentation of death in custody, <https://doku.deathincustody.info/en/> (accessed on 21 September 2023).

⁶⁹ See Amnesty International, Report 2022/23, Germany (Index: POL 10/5670/2023), 2023, <https://www.amnesty.org/en/location/europe-and-central-asia/germany/report-germany/>

Wörtz, Aaron, “Polizei erschießt Teenager” [“Police Officer shoots Teenager”], August 2022, <https://taz.de/Polizist-erschiesst-Teenager/!5872147/> (in German).

⁷⁰ See Peters, David, “Tödliche Schüsse auf Mouhamed Dramé: Anklage gegen fünf Polizeikräfte” [“Fatal shooting of Mouhamed Dramé: Charges against five police officers”], 16 February 2023, <https://www1.wdr.de/nachrichten/ruhrgebiet/anklagen-fall-mouhamed-100.html> (in German).

⁷¹ See Jaspard, Catherine/ Voigt, Christof/ Peters, David, “Erster Todestag Mouhamed Dramé: Tödliche Polizei-Schüsse in Dortmund” [“First Anniversary of Mohamed Dramé’s Death: Deadly Police Shooting in Dortmund”], August 2023, <https://www1.wdr.de/nachrichten/ruhrgebiet/jahrestag-toedlich-schuesse-mouhamed-dortmund-100.html> (in German).

⁷² See Amnesty International, Unknown assailant: Insufficient investigation into alleged ill-treatment by police in Germany (Index: EUR 23/002/2010), July 2010, <https://www.amnesty.org/en/documents/eur23/002/2010/en/>, p. 11-12.

⁷³ UN Human Rights Council, Working Group of Experts on People of African Descent, Report: Germany, 15 August 2017, UN. A/HRC/36/60/Add.2, para. 28.

⁷⁴ Ibid.

national legal process, the family of Oury Jalloh took the case to the European Court of Human Rights in July 2023.⁷⁵ The case is still pending.

The UN High Commissioner for Human Rights stated in its 2021 report that generally it "appears that erroneous and stereotypical portrayals or perceptions of what or who is dangerous continue to drive inferences made in the context of law enforcement".⁷⁶ The Commissioner recommends that "States should undertake profound introspections and encourage the participation and engagement of affected communities in efforts to reimagine policing and reform the criminal justice system. These efforts should be seen as genuine attempts to ensure that police agencies better protect, represent and equally serve all communities. Processes of self-examination should consider the role of law enforcement agencies in society, the impact of their methods and their association with historical injustices on the functioning of modern law enforcement institutions and the criminal justice system."⁷⁷ The report also includes a recommendation to properly introduce alternative methods to policing and the use of force.⁷⁸

3.4 RECOMMENDATIONS

Amnesty International recommends that Germany:

- Undertakes introspections and encourages the participation and engagement of affected communities in efforts to reimagine policing and reform the criminal justice system as well as alternative methods to policing and the use of force;
- Ensures that use of force is only used in conformity with human rights law and standards, including the principles of legality, necessity, proportionality and that there is no discrimination on any prohibited grounds. Establishes that law enforcement officers consider, in all situations, whether and how de-escalation is possible; and
- Ensures that allegations of excessive use of force and discriminatory practices by law enforcement officials are investigated promptly, independently, impartially and thoroughly, holding those responsible accountable and providing effective remedies, including compensation and guarantees of non-repetition.

4. LACK OF ADEQUATE PROTECTION FROM RACIST DISCRIMINATION AND VIOLENCE BY NON-STATE ACTORS

4.1 HATE CRIMES

The authorities, both at federal and state level, have failed to develop a comprehensive strategy against hate crimes. Similarly, no comprehensive, accessible, and independent system exists throughout Germany to provide people who experienced discrimination with effective support.⁷⁹

The police record racist hate crimes in its statistics under the category of politically motivated crimes. The statistical recording needs to be improved,⁸⁰ among other things by merging problematic sub-categories such as "hostile towards strangers" and "hostile towards foreigners" (since 2019) with

⁷⁵ Initiative Oury Jalloh, "Die Familie Oury Jallohs reicht Beschwerde beim Europäischen Gerichtshof für Menschenrechte in Straßburg ein" ["The family of Oury Jalloh submits a complaint to the European Court of Human Rights in Strasbourg"], July 2023, <https://initiativeouryjalloh.wordpress.com/2023/07/05/klage-vor-dem-europaischen-gerichtshof/> (in German).

⁷⁶ United Nations High Commissioner for Human Rights, Report: Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, 1 June 2021, UN Doc. A/HRC/47/53, para. 31.

⁷⁷ Ibid., para. 37.

⁷⁸ Ibid., para. 42.

⁷⁹ Amnesty International, Germany: Discrimination on the rise Submission to the 44th session of the UPR Working Group, 9 November 2023, (Index: EUR 23/6481/2023), 31 March 2023, <https://www.amnesty.org/en/documents/eur23/6481/2023/en/>, para. 1.

⁸⁰ Amnesty International, Living in insecurity: Germany is failing victims of racist violence (Index: EUR 23/4112/2016), 9 June 2016, <https://www.amnesty.org/en/documents/EUR23/4112/2016/en/>, p. 55 ff.

“racist” incidents; and by adopting an approach that centres the perspective of persons affected.⁸¹ Nonetheless, numbers in all these three categories have risen and are higher than ever before.⁸²

In its previous review, the Committee highlighted the authorities’ failure to investigate the racial motivation of offences, including in relation to murders of nine racialized men⁸³ between 2000 – 2007, perpetrated by the far-right group National Socialist Underground (NSU). When uncovered in 2011⁸⁴ it exposed systemic failures in the German authorities’ response to the murders. Amnesty International has previously described how several police forces failed to take into account and effectively investigate aspects of the murders pointing to a discriminatory motive and instead focused on victims’ relatives and members of minority communities, despite the absence of any reasonable grounds for believing that they were involved in the crimes. This kind of victim-blaming prevented the police from identifying the real perpetrators and obscured the racist motives of the offences. As highlighted by a number of human rights bodies, the authorities’ repeated failure to identify and investigate leads pointing to the racist motivation behind the attacks, is indicative of a broader problem of institutional racism within German police authorities.⁸⁵

A second parliamentary committee of inquiry established by Parliament in 2015 to address the authorities’ failure to adequately investigate the racist crimes concluded in 2017 that the authorities had to establish clear rules for infiltrating “far-right extremist” movements, provide long-term funding to civil society initiatives against racism and assist victims of racist crimes.⁸⁶ The authorities did not launch an official investigation into the potential role of institutional and structural racism behind Germany’s failure to identify the racial motivation behind the murders and investigate the crimes committed by the NSU.⁸⁷ The only surviving member of the NSU was sentenced to life imprisonment in July 2018 for 10 cases of murder, 32 cases of attempted murder, aggravated arson and membership in a terrorist association.⁸⁸ Ten years after the beginning of the trial 2013 and five years after the verdict, society and relatives still do not know the networks behind the murderers.⁸⁹

In July 2016, a man killed nine racialized young people close to as well as inside a shopping mall in Munich before committing suicide. Only after more than three years of investigation, the police and the Bavarian Ministry of Interior recognized that racist motives played a role in what they had previously considered a killing spree due to bullying.⁹⁰ At the beginning, the Ministry had not considered evidence that may have pointed to a racist motive, including the date which was the same

⁸¹ This should be in line with the general recommendation No. 11 by the European Commission against Racism and Intolerance (ECRI) which says that a racist incident shall be: “any incident which is perceived to be racist by the victim or any other person”. See next chapter „Lack of comprehensive recording of criminal offenses”.

⁸² Federal Ministry of the Interior and Community, “Politisch motivierte Kriminalität im Jahr 2022” [“Politically motivated Criminality in the year 2022”], 21 April 2023, https://www.bka.de/SharedDocs/Kurzmeldungen/DE/Kurzmeldungen/230509_PMK_PK.html (in German).

⁸³ Their names are: Enver Şimşek, Abdurrahim Özüdoğru, Süleyman Taşköprü, Habil Kiliç, Mehmet Turgut, İsmail Yaşar, Theodoros Boulgarides, Mehmet Kubaşık, Halit Yozgat.

⁸⁴ The murders were uncovered in 2011 after two members of the NSU (allegedly) committed suicide and a third surrendered to police.

⁸⁵ Amnesty International has documented that a quick investigation of the crimes of the so-called NSU failed again and again over the years, not least because of racist prejudices of the law enforcement agencies against the relatives of the victims. Amnesty International, *Living in insecurity: Germany is failing victims of racist violence* (Index: EUR 23/4112/2016), 9 June 2016, <https://www.amnesty.org/en/documents/EUR23/4112/2016/en>.

⁸⁶ German Parliament, “Beschlussempfehlung und Bericht des 3. Untersuchungsausschusses gemäß Artikel 44 des Grundgesetzes” [“Recommendation for a Resolution and Report of the 3rd Committee of Inquiry according to Article 44 of the Basic Law”], Drs. 18/12950, <https://dserver.bundestag.de/btd/18/129/1812950.pdf>, p.1176f.

⁸⁷ Amnesty International, “NSU-Urteil darf kein Schlusstrich sein – Rolle von institutionellem Rassismus muss untersucht werden” [“NSU verdict must not be the final straw - role of institutional racism must be investigated”], 11 July 2018, <https://www.amnesty.de/informieren/aktuell/deutschland-nsu-urteil-darf-kein-schlussstrich-sein-rolle-von-institutionellem> (in German).

⁸⁸ Germany, Munich Higher Regional Court, Judgement of 11 July 2018, no. 6 St 3/12, <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2018-N-051467?hl=true>.

⁸⁹ MDR, “Vor fünf Jahren wurde das Urteil im NSU-Prozess gefällt” [“Five years ago, the verdict in the NSU trial was handed down”], 11 July 2023, <https://www.mdr.de/geschichte/zeitgeschichte-gegenwart/politik-gesellschaft/nsu-urteil-morde-prozess-zschaepe-mundlos-100.html> (in German). See also: Amnesty International, “Zehn Jahre nach NSU-Selbstenttarnung: Kaum Verbesserungen bei der Polizei” [“Ten years after the NSU’s self-disclosure: Hardly any improvements in the police force”], 3 November 2012, <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-zehn-jahre-nsu-selbstenttarnung-polizei-bilanz> (in German).

⁹⁰ See Ministry of Interior, press release from 25 October 2019, <https://www.bayern.de/herrmann-zum-abschluss-der-ermittlungen-zum-oez-attentat/> (in German). Media Service Integration, “Der verkannte Anschlag” [“The misjudged attack”], 18 July 2022, <https://mediendienst-integration.de/artikel/der-verkannte-anschlag.html> (in German).

day as another attack,⁹¹ a racist manifesto and the choice of victims. The survivors and relatives of the victims continue to fight for recognition in society and for the attacks to not be forgotten.⁹²

In October 2019, a man attacked a synagogue in Halle/Saale during the Yom Kippur prayer service and afterwards killed two people on the street and at a kebab takeaway.⁹³ Less than half a year later, in February 2020, a man in Hanau shot and killed nine racialized people⁹⁴ in two shisha bars before killing his mother and himself at home.⁹⁵ Before the attack, the man published a racist, antisemitic and misogynist manifesto online.⁹⁶ The survivors and relatives of the attacks contributed significantly to the establishment of a committee of inquiry at the state parliament.⁹⁷ No final report has been presented yet. Survivors and relatives of the victims have criticized mistakes by the police during the operation which may have cost lives.⁹⁸ They cite an internal police report, which has just become public, as evidence, according to which there were communication problems, problems with the assessment of the situation and the mobilization of forces etc.⁹⁹ They also demand clarification and consequences for state failures in the aftermath of the attack. Additionally, many proceedings are underway against the father of the perpetrator, who is accused of incitement to racial hatred having sent harassing letters to the relatives of the victims even after the murders.¹⁰⁰ Thus, those affected continue to live in fear.

Recent disclosures have raised concerns about groups with an anti-human rights agenda having access to information held by the police and military. In August 2018, a series of more than 100 threatening letters, including death threats were sent targeting mostly female politicians, lawyers and anti-racism activists, whose addresses were often retrieved from official police data bases. While several individuals have been convicted related to the series of letters dubbed NSU 2.0,¹⁰¹ concerns over data breaches and infiltration of the security forces persist. In 2020, the military counterintelligence service investigated more than 500 soldiers suspected of using banned National Socialist symbols and of connections to “right wing extremist” networks that advocated violence focusing on Special Command Forces.¹⁰²

Amnesty International has documented how Germany is failing the victims of racist violence, especially with regards to attacks on asylum seekers shelters.¹⁰³ ECRI has also noted a wave of attacks on asylum shelters in its 2020 report. These attacks on shelters were illustrative of different racist and right-wing extremist motives, including anti-Muslim racism. In 2022, there were 121 attacks on

⁹¹ It was the same day as the attack in Oslo and Utøya, Norway (22 July 2011).

⁹² Amnesty International, “Erinnern heißt sich zu verbünden”: Sieben Jahre nach dem rassistischen Anschlag in München [“Remembering means uniting”: Seven years after the racist attack in Munich], 30 June 2023, <https://www.amnesty.de/informieren/aktuell/deutschland-oez-terroranschlag-muenchen-rassismus> (in German).

⁹³ Amnesty International, “Dritter Jahrestag des Anschlags in Halle: Erinnern heißt Verändern” [“Third anniversary of the attack in Halle: Remembering means changing”], 7 October 2022, <https://www.amnesty.de/informieren/aktuell/deutschland-halle-dritter-jahrestag-des-anschlags-antisemitismus> (in German).

⁹⁴ These were Gökhan Gültekin, Sedat Gürbüz, Said Nesar Hashemi, Mercedes Kierpacz, Hamza Kurtović, Vili Viorel Păun, Fatih Saraçoğlu, Ferhat Unvar, Kaloyan Velkov.

⁹⁵ See Amnesty International, “Zweiter Jahrestag des Anschlags von Hanau: Rassismus erkennen und entgegenreten!” [“Second anniversary of the Hanau attack: Recognising and confronting racism”], 18 February 2022, <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-hanau-anschlag-jahrestag-rassismus-entgegenreten> (in German).

⁹⁶ Jasser, Greta/Kelly, Megan/Rothermel, Ann-Kathrin, “Frauenfeind aber kein Incel” [“Misogynist, but not an incel”], 30 March 2020, <https://www.belltower.news/das-manifest-des-hanau-attentaeters-zwischen-rechtsextremismus-und-frauenhass-frauenfeind-aber-kein-incele-97509/> (in German).

⁹⁷ Initiative 19th February, “Keine Gerechtigkeit ohne Konsequenzen” [“No Justice without Consequences”], <https://kein-abschlussbericht.org/> (in German) (accessed on 21 September 2023).

⁹⁸ Initiative 19th February, “Interner Bericht bestätigt Polizei-Versagen in den ersten Einsatzstunden am 19./20. Februar 2020. Wer übernimmt die Verantwortung und zieht Konsequenzen?” [“Internal report confirms police failure in the first hours of operation on 19/20 February 2020. Who takes responsibility and draws consequences?”], 30 May 2023, <https://19feb-hanau.org/2023/05/30/interner-bericht-bestaetigt-polizei-versagen/> (in German).

⁹⁹ Frankfurter Rundschau, “Exklusiv: Das ist in der Terrornacht von Hanau wirklich geschehen” [“Exclusive: This is what really happened during the night of terror in Hanau”], 30 May 2023, <https://www.fr.de/rhein-main/terror-in-hanau-sti1519756/exklusiv-rechtsextremismus-terror-von-hanau-chaos-beim-polizeieinsatz-92309241.html> (in German) and Frag den Staat, “Diese zehn Toten sollten etwas ändern” [“These ten deaths should change something”], 30 May 2023, <https://fragdenstaat.de/blog/2023/05/30/anschlag-hanau-hessische-polizei-interner-bericht-fehler/> (in German).

¹⁰⁰ Taz, “Vater des Hanau-Täters droht Opfer” [“Father of Hanau perpetrator threatens victim”], 19 June 2023, <https://taz.de/Ausreiseforderung-aus-Deutschland/!5941454/> (in German).

¹⁰¹ The threatening material was mostly signed “NSU 2.0”, referring to the racist murders committed by the Nationalist Social Underground (NSU) between 2000 and 2007.

¹⁰² Amnesty International, Amnesty International Report 2020/21: The state of the world’s human rights (Index POL 10/3202/2021), 7 April 2021, <https://www.amnesty.org/en/documents/pol10/3202/2021/en/>, pp. 168-170.

¹⁰³ Amnesty International, Germany: Living in insecurity: Germany is failing victims of racist violence (Index: EUR 23/4112/2016), 9 June 2016, <https://www.amnesty.org/en/documents/EUR23/4112/2016/en>.

shelters nationwide - an increase of 73% compared to the previous year.¹⁰⁴ In the first quarter of 2023, the number of “politically motivated attacks” on refugee shelters doubled again.¹⁰⁵ One disturbing example took place in July 2023 when four masked men attacked residents of a refugee shelter in Sebnitz, Saxony. Investigations have been initiated.¹⁰⁶

4.2 RECOMMENDATIONS

Amnesty International recommends that Germany:

- Develops a comprehensive strategy against hate crimes which puts perspectives of affected persons and communities at the centre;
- Removes institutional shortcomings in preventing, investigating and sentencing racist hate crimes, e.g. by ensuring that perpetrator-victim reversals and victim-blaming are no longer used and reproduced by police authorities and other state actors;
- Acknowledges the impact of hate crimes on persons affected and provide support, including psychological and financial support, especially with regard to persons affected by intersectional discrimination such as asylum seekers;
- Establishes a comprehensive, accessible, and independent system throughout Germany to provide victims of discrimination with effective support, including legal consultation;
- Takes all measures necessary to unveil the remaining dimensions and scope of the NSU movement and threats;¹⁰⁷
- Investigates how institutional racism within authorities has prevented a better understanding and investigation of the NSU complex; and
- Fully investigates the NSU 2.0 threats to understand how police and military information was accessed, and takes steps to ensure this is not repeated, including by drawing consistent consequences in the event of misconduct by police and military personnel.

4.3 LACK OF COMPREHENSIVE RECORDING OF HATE CRIMES

For years, counselling centres and civil society organizations have been pointing out large discrepancies between state and civil society records of racist hate crimes. State records show far fewer instances of hate crimes than monitoring by civil society groups indicates. In 2021, the Organization of Independent Counseling Centers for Victims of Right-wing, Racist, and Antisemitic Violence (VBRG) registered 1391 “right-wing, racist and antisemitic hate crimes” in nine federal states in comparison to 1033 cases throughout Germany in the official statistics.¹⁰⁸ Statistical recording of hate crimes needs to improve, as does awareness-raising measures and trainings for law enforcement officials, prosecutors and judges to detect and investigate these crimes.

ECRI has pointed out that among “the reasons for this under-reporting are the misleading title “Statistics on Politically Motivated Offenses”, under which hate crimes are recorded and the definition of hate crime that is still narrower than suggested by ECRI in § 14 of its GPR No. 11¹⁰⁹ – any incident

¹⁰⁴ The German Federal Government, “Antwort der Bundesregierung: Proteste gegen und Übergriffe auf Flüchtlingsunterkünfte im vierten Quartal 2022” [“Answer of the Federal Government: Protests against and attacks on refugee shelters in the fourth quarter of 2022”], 22 February 2023, Drs. 20/5773, <https://dserver.bundestag.de/btd/20/057/2005773.pdf> (in German).

¹⁰⁵ Tagesschau, “Deutlich mehr Angriffe auf Flüchtlingsunterkünfte” [“Significantly more attacks on refugee shelters”], 15 June 2023, <https://www.tagesschau.de/inland/angriffe-fluechtlingsheime-100.html> (in German).

¹⁰⁶ ZDF heute, “Angriff auf Flüchtlingsunterkunft in Sachsen” [“Attack on refugee accommodation in Saxony”], 23 July 2023, <https://www.zdf.de/nachrichten/panorama/angriff-fluechtlingsheime-sachsen-sebnitz-100.html> (in German).

¹⁰⁷ See Concluding Observations on 19th-22nd reports on Germany, para 10. (a) (i).

¹⁰⁸ See Organization of Independent Counseling Centers for Victims of Right-wing, Racist, and Antisemitic Violence (VBRG), “Rechte, rassistische und antisemitische Gewalt in Deutschland 2022 – Jahresbilanzen der Opferberatungsstellen” [“Right-wing, racist and antisemitic violence in Germany 2022 - Annual reports of victim counselling centres”], 09 May 2023, <https://verband-brg.de/rechte-rassistische-und-antisemitische-gewalt-in-deutschland-2022-jahresbilanzen-der-opferberatungsstellen/> (in German).

¹⁰⁹ European Commission against Racism and Intolerance, General Policy Recommendation No. 11, 29 June 2007, <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>, p. 4.

which is perceived to be racist by the victim or any other person (...)."¹¹⁰ In contrast, the classification as “politically motivated” can exclude racist acts in which the racist intent cannot be proven. Moreover, the definition system is not coherent. It differentiates between motivations that are “hostile towards foreigners”, “hostile towards strangers” and “racist”. However, these categories cannot be separated from each other, and the first two categories reinforce the assumption that racialized people are not German nationals and not part of German society.¹¹¹

Furthermore, an incident is only recorded in the statistics if the racist component is recognized directly when reporting to police or public prosecutors. Whether or not the classification is carried out, is therefore largely dependent on the recognition of the respective police officer. An incident is not recorded as racist crime if the “racist intent” is detected at a later point during the investigations. Also, data collected by law enforcement authorities on hate crimes is not linked to statistics of the judiciary. The reports by the Ministry of the Interior and Community and the Federal Criminal Police Office (Bundeskriminalamt) do not contain information on measures for prevention and investigation of hate crimes. A critical and well-founded discussion of the data, including civil society and academia, also creates more transparency.¹¹²

Amnesty International welcomes that provisions in the Police Service Regulation and the Guidelines for Criminal and Summary Proceedings were amended along with the legislative change of Section 46 para. 2 of the Penal Code. They now include an explicit duty to investigate and document any racist or other discriminatory motives in any crime.¹¹³

Initial and continuous training of police, prosecutors and judges on recognizing, investigating and sentencing hate crimes has not been sufficiently implemented.¹¹⁴ This would be necessary to ensure that all possible crimes are investigated through a racial discrimination lens with a focus on the persons affected.

German authorities have not sufficiently acknowledged the impact of hate crimes on persons affected and provided them with support.¹¹⁵ For example, ECRI has pointed out that sometimes asylum seeker victims of hate crimes are deported before they can testify in criminal proceedings.¹¹⁶

4.4 RECOMMENDATIONS

Amnesty International recommends that Germany:

- Improves the statistical recording of hate crimes, especially by applying a definition of hate crimes that centres the perspective of persons affected. Merge problematic categories such as “hostile to foreigners” or “hostile to strangers” into “racist” attacks. Implement progressive statistics by law enforcement authorities that are linked to statistics of the judiciary;
- Improves the quality of the statistics by sustained and continuous critical monitoring and review, especially by civil society, expert bodies and academia;
- Establishes regular reports on hate crimes that include information on what measures state authorities have taken for the prevention and investigation of hate crimes;

¹¹⁰ ECRI on Germany 2020, para. 61.

¹¹¹ See The Commissioner of the Federal Government for Migration, Refugees, and Integration/ The Commissioner of the Federal Government for Anti-Racism, “Lagebericht Rassismus in Deutschland” [“Situation Report on Racism in Germany”], January 2023, <https://www.integrationsbeauftragte.de/resource/blob/1864320/2157012/77c8d1dddeea760bc13dbd87ee9a415f/lagebericht-rassismus-komplett-data.pdf?download=1>, p. 26 (in German).

¹¹² Ibid., p. 27.

¹¹³ See Federal Ministry of the Interior and Community, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, “Nationaler Aktionsplan gegen Rassismus” [“National Action Plan Against Racism”], 14 June 2017, <https://www.bmfsfj.de/resource/blob/116798/5fc38044a1dd8edec34de568ad59e2b9/nationaler-aktionsplan-rassismus-data.pdf> (in German), p. 18. However, the provisions also include the problematic wording “hostile towards stranger”.

¹¹⁴ See German Institute for Human Rights, “Rassismus in der Strafverfolgung - Von der Notwendigkeit struktureller Veränderungen” [“Racism in Law Enforcement - On the Necessity of Structural Changes”], 2022, https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Praxis_Rassismus_in_der_Strafverfolgung.pdf (in German).

¹¹⁵ See Diakonie Deutschland – Evangelischer Bundesverband, Racial Discrimination in Germany, Manifestations and Human Rights, Obligations to Protect Individuals and Groups Against Racial Discrimination, 2015, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FDEU%2F19968&Lang=en, p. 31.

¹¹⁶ ECRI on Germany 2020, para. 70.

- Implements initial and continuous training of police, prosecutors and judges on recognizing, investigating and sentencing hate crimes and ensure that all possible crimes are investigated through a racial discrimination lens with a focus on the persons affected; and
- Ensures that victims of hate crime whose applications for asylum were rejected are not deported before the final decision in any criminal proceedings.¹¹⁷

5. RACIST NARRATIVES IN PUBLIC DISCOURSE AND INADEQUATE STATE ACTION

Situations of denials of racism, reinforcement of racist behaviours, and hostility against racialized people are commonplace.

Black people, people of African Descent and Afrodiasporic people are often, inaccurately, considered as refugees or migrants, as are people descending from Northern Africa and the Middle East, as Muslims. Racist stereotypes - such as a permanent inability to be part of German society due to supposedly different “culture” and/or religion - are commonly voiced in public discourse.¹¹⁸ In contrast, the application of the Temporary Protection Directive (TPD)¹¹⁹ towards Ukrainians in response to the Russian war of aggression was openly justified by the “cultural proximity” or the ability of Ukrainians to “integrate”.¹²⁰ The same benefit was not given to Syrian and Afghan refugees and asylum seekers before. Thus, racialized groups are often characterized in discourse, as well as in legal and political decisions, as never belonging, regardless of their actual origin or nationality.¹²¹

The police and politicians also mention crimes allegedly perpetuated by racialized groups more often in the media,¹²² reproducing racist stereotypes and conflating criminality with race and ethnicity. Gender-specific racist speech is also voiced by politicians in the parliament¹²³ and in media.¹²⁴

For example, after incidents of sexual violence in a public space in Cologne on New Years Eve in 2015¹²⁵ were made public, the nationality of the suspected perpetrators was discussed¹²⁶ and restrictions on the right of asylum, and new deportation practices were introduced¹²⁷. Demands for

¹¹⁷ See ECRI on Germany 2020, para 71.

¹¹⁸ See Amnesty International, Regional Overview of Islamophobia (Index: EUR 01/5659/2022), 1 June 2022, <https://www.amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf>.

¹¹⁹ Transposed in Germany as § 24 Residence Act.

¹²⁰ See Fokus, “Deutsche stehen Ukraine-Geflüchteten positiver gegenüber als anderen Migranten” [“Germans have a more positive attitude towards Ukrainian refugees than other migrants”], 02 April 2022, https://www.focus.de/politik/deutschland/ergebnis-einer-umfrage-deutsche-stehen-ukraine-gefluechteten-positiver-gegenueber-als-anderen-migranten_id_77665450.html (in German): The reason most often given by respondents for their preference for Ukrainians was the cause of flight (53 per cent), followed by the “cultural proximity” of the refugees (52 per cent), the geographical proximity of the countries of origin (49 per cent) and the clearer prospect of return (40 per cent). This was followed by the religious affiliation of the refugees (33 percent) and the gender of the refugees (30 percent).

¹²¹ see e.g. Independent Expert Group on Muslimophobia, “Muslimfeindlichkeit – Eine deutsche Bilanz“ [“Muslimophobia - A German Balance Sheet”], 2023, pp. 240-243, <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2023/06/uem-abschlussbericht.html> (in German).

¹²² Pross, Jennifer, “Expertise: Wie häufig nennen Medien die Herkunft von Tatverdächtigen?” [“How often do media mention the origin of crime suspects?”], 10 December 2019, <https://mediendienst-integration.de/artikel/wie-oft-nennen-medien-die-herkunft-von-tatverdaechtigen.html>.

¹²³ e.g. Alice Weidel, AfD, said in the Federal Parliament that “Burqas, headscarf girls, and alimanted knife men, and other good-for-nothings will not secure our prosperity, economic growth and above all the welfare state.” Zdf, “Kopftuchmädchen und Taugenichtse” [“Headscarf girls and good-for-nothings”], 16 May 2018, <https://www.zdf.de/nachrichten/heute-sendungen/videos/alice-weidel-ordnungsruf-100.html> (in German).

¹²⁴ E.g. in January 2023, Friedrich Merz, CDU, opposition leader, used the expression “little pashas” to refer to pupils of Arab origin. Winkler, Pierre, “Merz spricht von “kleinen Paschas”“ [“Merz talks about “little pashas””], 11 Januar 2023, <https://www.zdf.de/nachrichten/politik/lanz-merz-silvesternacht-integration-100.html> (in German).

¹²⁵ Amnesty International, “Amnesty verurteilt sexualisierte Gewalt gegen Frauen in Köln und warnt vor rassistischer Hetze und Vorverurteilungen - Menschenrechtsorganisation verurteilt die Ereignisse der Silvesternacht in Köln“ [“Amnesty condemns sexualised violence against women in Cologne and warns against racist agitation and prejudgements - Human rights organisation condemns the events of New Year’s Eve in Cologne”], 12 January 2016, (in German).

¹²⁶ See Klemm, Sarah (2017) “Der deutsche Asyldiskurs vor und nach der Silvesternacht 2015, Eine Diskursanalyse parlamentarischer Debatten des Deutschen Bundestags“ [“The German asylum discourse before and after New Year’s Eve 2015, A Discourse Analysis of Parliamentary Debates of the German Bundestag”], Center for North African and Middle Eastern Politics, Freie Universität Berlin, September 2017 https://www.polsoz.fu-berlin.de/polwiss/forschung/international/vorderer-orient/publikation/working_papers/wp_16/WP16_Sarah-Klemm.pdf (in German)

¹²⁷ In February 2016, shortly after the New Year’s Eve in Cologne, the Asylum Package II was passed. It included the suspension of family reunification (especially for Syrians) and classified Morocco, Algeria and Tunisia as “safe countries of origin”. In July 2016, a reform of the Sexual Offences Act was passed. See Muslimophobia - A German Balance Sheet, p. 95-97.

tougher penal laws also often accompany the debate about racialized suspects.¹²⁸ Racist categories by the police such as “clan criminality”¹²⁹ have found their way into public discourse¹³⁰ which serve as arguments to extend the grounds for a “special interest in expulsion” for non-German nationals.¹³¹ Additionally, the attribution of a high propensity to violence to racialized people is used to justify restrictions of their human rights as the case of blanket bans on demonstrations illustrate.

One glaring example of how such racist narratives manifest in institutions, in particular law enforcement, are the blanket bans issued in Berlin, in 2022 and 2023, on demonstrations commemorating the Naqba. These were based on discriminatory and racist stereotypes of how participants would behave, namely “young Arab diaspora” would have a “clearly aggressive basic attitude”.¹³² The bans ascribed a “clearly aggressive general attitude and tendency towards violent acts” to this group.¹³³ This stigmatizing labelling of people who are or are perceived to be Muslim or Arab as prone to violence is exemplary of institutionalized racism and exposes discriminatory stereotypes and anti-Arab racism intersecting with anti-Muslim racism against a whole demographic group.¹³⁴

Incidents of hate speech were observed during electoral campaigns, such as the election to the federal parliament in 2021.¹³⁵ While some speeches by public authorities are contrary to efforts of combating racism and fostering racial equity, other state officials speak up against racist narratives in public discourse. Regarding the upcoming elections various commissioners warned in a joint statement against group-based hate speech.¹³⁶

5.1 RECOMMENDATIONS

Amnesty International recommends that Germany:

- In line with the Committee’s previous recommendations, strongly condemns all racist statements by political leaders, public authorities and public figures, including through the institution of criminal proceedings where appropriate; provide statistical information on trends in instances of racist hate speech and violence, including Islamophobic trends, in its next periodic report in order to enable assessment of the impact of measures adopted by the State party in combating racist hate speech.

¹²⁸ In view of violence at Berlin’s outdoor swimming pools, the Secretary General of the Berlin CDU parliament party, Linnemann called for criminal summary proceedings with same-day sentencing and prison sentences for “young men, often with a migrant background” that become violent. Zeit Online, “Linnemann fordert Bestrafung von Gewalttätern noch am Tag der Tat” [“Linnemann calls for violent criminals to be punished on the day of the crime”], 16 July 2023, <https://www.zeit.de/politik/deutschland/2023-07/carsten-linnemann-gewalt-freibad-berlin-schnellverfahren> (in German).

¹²⁹ See Section: Racially discriminatory policing practices and lack of prevention and persecution thereof.

¹³⁰ See Winkler, Michèle/Sauer, Levi, “Clankriminalität“ in Lagebildern – Unklare Definitionen, eindeutiger Rassismus“ [“Clan Crimes“ in situation reports - unclear definitions, clear racism”], 12 August 2022, <https://www.cilip.de/2022/08/12/clankriminalitaet-in-lagebildern-unklare-definitionen-eindeutiger-rassismus/> (in German).

¹³¹ Federal Ministry of the Interior and Community, “Diskussionsentwürfe für ein Gesetz zur Verbesserung der Rückführung und zu Datenübermittlungsvorschriften im Ausländer- und Sozialrecht vorgelegt“ [“Discussion drafts for a law on improving repatriation and data transfer regulations in migration and social law presented“], 02 August 2023, <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2023/08/diskussionsentwuerfe.html> (in German).

¹³² Decision of the Berlin State Police Directorate regarding the assembly on 20 May 2023 on the theme “Demonstration für das Grundrecht auf Versammlungs- und Meinungsfreiheit zum 75. Jahrestag der Nakba”, 17 May 2023, page 11. Amnesty International has access to the decision. The decision was upheld in summary proceedings by both the Berlin Administrative Court and the Higher Administrative Court of Berlin-Brandenburg (VG Berlin – 1 L 217/23; OVG Berlin-Brandenburg – 1 S 45/23).

¹³³ *ibid.*

¹³⁴ See Amnesty International, Germany: Protect the Protest: Against blanket bans of demonstrations for the rights of Palestinians (Index: EUR 23/7180/2023), 12 September 2023, <https://www.amnesty.org/en/documents/eur23/7180/2023/en/>.

¹³⁵ Sponholz, Liriam/ Meuth, Anna-Maria/ Weiberg-Salzmann, Mirjam, “Hate Speech, aber normal“? [“Hate Speech, but normal?“], 2023, <https://www.dezim-institut.de/publikationen/publikation-detail/hate-speech-aber-normal/> (in German).

¹³⁶ They said they “observe with great concern that in election campaigns and media debates, resentment is once again increasingly stirred up and group-related misanthropy is blatantly expressed in social media. Often, this is directed against refugees, Jews and Muslims, Sinti and Roma, women, people with disabilities, queer people and others“, see Federal Anti-Discrimination Agency, “Gemeinsame Erklärung der Beauftragten des Bundes“ [“Common Declaration of the Federal Commissioners“], 11 September 2023, https://www.antidiskriminierungsstelle.de/SharedDocs/pressemitteilungen/DE/2023/20230911_Erklärung_Beauftragte.html (in German).

6. RIGHT TO TRUTH, JUSTICE AND REPARATIONS

As emphasized by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and related intolerance, the formal abolition of slavery and colonialism has not dismantled the structures of racial inequalities and subordination built by this practice. Contemporary structures and forms of racial discrimination, inequality and subordination are among the most salient legacies of slavery and colonialism.¹³⁷ As acknowledged by the UN Secretary General, “any measures that aim at dismantling systemic racism and the racially discriminatory effects of structures of inequality and subordination resulting from enslavement and colonialism can contribute to advancing reparatory justice.”¹³⁸ Guarantees of non-repetition are a form of reparation, which requires the prevention of future racial injustice and harm by dismantling the contemporary structures of racial inequality and subordination built by slavery and colonialism.

With regard to the atrocities committed by Germany on the African continent in their former colonies, the Working Group on People of African Descent on its country visit to Germany highlighted that “Ovaherero and Nama peoples were the primary victims of the 1904-1908 genocide in South-West Africa (now Namibia) by the German colonial authorities. Various historical accounts estimate that over 65,000 Ovaherero and 10,000 Nama were killed by the German authorities, including thousands who died of starvation and thirst after being driven into the desert without food or water.”¹³⁹ Additionally, Ovaherero and Nama women and girls were subjected to sexual violence including rape. The report of the Working Group stated that “[m]any Ovaherero and Nama who survived the initial slaughter of their people died in the notorious concentration camps; they were decapitated, and their skulls were then sent to Germany at the request of medical researchers to help prove the racial superiority of white people over black people.”¹⁴⁰

In her Report A/74/321 from 2019,¹⁴¹ the former Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance criticized resistance by former colonial powers to reparations: “Germany has acknowledged that it has a moral and historical responsibility to Namibia. (...) Although Germany now refers to the Ovaherero massacre as a genocide, it reportedly does so in a non-legal sense and refuses to acknowledge a legal obligation for the massacre.” After six years of negotiations, the German and Namibian Governments issued a joint declaration in June 2021, in which the German Government acknowledges that “the abominable atrocities committed during periods of the colonial war culminated in events that, from today’s perspective, would be called genocide”.¹⁴² While the German government agreed to pay the Namibian government approximately €1.1bn over a period of 3 years for “reconstruction and development” the German government has declined legal claims for compensation.¹⁴³ Development aid is not a substitute for reparatory justice and accountability. As the Special Rapporteurs have highlighted, it risks “perpetuating rather than rectifying, colonial dynamics where the former colonial power sets the conditions for the provision of assistance to the former colony”.¹⁴⁴

Recalling the legal status of the Ovaherero and Nama peoples and their representatives as Indigenous peoples under international and national law, seven Special Rapporteurs expressed “grave concern” in February 2023 over the “alleged lack of their meaningful participation in the negotiations leading to the issuance of the Joint Declaration, as well as the lack of effective reparative measures afforded to

¹³⁷ Special Rapporteur on Contemporary Forms of Racism, Racial discrimination, Xenophobia and Racial intolerance, Report, (Report of the Special Rapporteur), 21 August 2019, UN Doc. A/74/321.

¹³⁸ UN Secretary General, Report: Implementation of the International Decade for People of African Descent, 18 August 2023, UN Doc. A/78/317, para. 58.

¹³⁹ UN Human Rights Council, Report of the Working Group of Experts on People of African Descent on its mission to Germany, UN Doc. A/HRC/36/60/Add.2, para. 7.

¹⁴⁰ Ibid.

¹⁴¹ Report of the Special Rapporteur, UN Doc. A/74/321. Also Letter by Seven Special Rapporteurs to Germany, 23 February 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27875>

¹⁴² Federal Republic of Germany and the Republic of Namibia, “United in Remembrance of our Colonial Past, United in Our Will to Reconcile, United in Our Vision of the Future”, 2021, <https://www.parliament.na/wp-content/uploads/2021/09/Joint-Declaration-Documents-Genocide-rt.pdf>.

¹⁴³ See Federal Foreign Office, “Foreign Minister Maas on the conclusion of negotiations with Namibia”, 28 May 2021, <https://www.auswaertiges-amt.de/en/newsroom/news/-/2463598>. “We will now officially call these events what they are from today’s perspective: a genocide. ... Legal claims for compensation cannot be derived from it.”

¹⁴⁴ Seven Special Rapporteurs. Letter to Germany, 23 February 2023, p. 10 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27875>

them, including an unqualified recognition of the genocide committed against these communities in the former German Southwest Africa colony between 1904 and 1908.”¹⁴⁵ Among further concerns, they also pointed towards the insufficient memorialization about the genocide in Germany. Neither the genocide against the Ovaherero and Nama peoples nor Germany’s active participation in colonialism more generally is part of the German collective memory, public discourse or school education.¹⁴⁶ As a German representative in Cameroon put it in 2022, (Cameroon was under German colonial rule between 1884 and 1919): “In Germany, we either played down or ignored the colonial period for far too long. As a society, as a government, and also as the Federal Foreign Office.”¹⁴⁷ This also applies to other former German colonies. Therefore, a comprehensive approach to reparative justice is needed.

Another more recent example is the injustice suffered by Mozambican contract workers in the former Democratic Republic of Germany (GDR) who allege being denied their full wages even 33 years after the end of the GDR and reunification of Germany. After many years of survivors drawing attention to their exploitation and suffering, compensation was discussed in the Human Rights Committee of the federal parliament for the first time in April 2023.¹⁴⁸ According to the Ombudswoman for victims of the former Democratic Republic of Germany (GDR) at the parliament, Evelyn Zupke, many of the approximately 17,000 women and men who had worked in the GDR between 1979 and 1989 in lignite or copper mining, in agriculture or in the textile industry, among other things, were still waiting for promised benefits and recognition. The contract workers, who came to East Germany on the basis of a state treaty between the GDR and the People’s Republic of Mozambique signed in 1979, were promised they would be undertaking training, but in fact they were required to perform mainly physically strenuous work, Zupke said.¹⁴⁹ In addition, they only received part of their wages: to pay off Mozambique’s debts, the GDR withheld at least 25 per cent and in some cases up to 60 per cent of their wages above a base amount of 350 GDR marks. The workers were assured that they would be paid this remaining amount after their return to Mozambique. However, the SED victims’ ombudswoman stressed that this had not happened. Pension claims were also unresolved. The ombudswoman emphasized the “historical responsibility of Germany”.¹⁵⁰ Despite payments already made by the then Federal Government, the goal of providing sufficient support for the contract workers had not been achieved. She noted that they had been exploited and wronged in Germany and the majority of them currently live “in precarious conditions”¹⁵¹. She said it was important to send a signal to those affected that they were not “second-class victims”.¹⁵² The hearing in the Human Rights Committee of the parliament needs to be followed by further state action and, where appropriate, effective remedies for the harm suffered by former contract workers.

6.1 RECOMMENDATIONS

Amnesty International recommends that Germany:

- As recommended by the Working Group on People of African Descent, formally recognizes, without qualification, its role in the history of colonization, enslavement, exploitation and genocide of African people, and should make reparation to provide remedy for and to address the continued impact of those acts;

¹⁴⁵ The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women and girls, its causes and consequences, 23 February 2023, Ref. AL DEU 1/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27875>.

¹⁴⁶ This is of particular concern as the Africa conference in November 1884 to February 1885 took place in Berlin where major European powers negotiated and formalized claims to territory in Africa, which had a devastating and lasting impact on the continent of Africa.

¹⁴⁷ Federal Foreign Office, “Speech by Minister of State Katja Keul on the occasion of a wreath-laying ceremony at the site of the execution of Rudolf Manga Bell in Cameroon”, 02 November 2022, <https://www.auswaertiges-amt.de/en/newsroom/news/-/2561510>.

¹⁴⁸ German Bundestag, “Entschädigung von DDR-Vertragsarbeitern aus Mosambik” [“Compensation of GDR contract workers from Mozambique”], 26 April 2023, <https://www.bundestag.de/presse/hib/kurzmeldungen-945228> (in German).

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

- With regard to all former German colonies, adopts a comprehensive approach to reparatory justice that accounts for not only historical individual and group wrongs, but also the persisting structures of racial inequality, discrimination and subordination that have slavery and colonialism as their root causes as recommended by the Special rapporteur on Contemporary Forms of Racism, Racial discrimination, Xenophobia and Racial intolerance.¹⁵³
- Guarantees meaningful participation by affected individuals, communities and their descendants in any reparation process or mechanism for past human rights wrongs in a manner which does not replicate colonial dynamics. With regard to the genocide committed against the Indigenous peoples in the former German Southwest Africa colony between 1904 and 1908, Germany should guarantee the participation of the Ovaherero and Nama peoples in discussions and negotiations regarding the determination of any reparations measures; and
- Conducts independent, impartial and effective investigation(s) to determine (i) whether the rights of any Mozambican contract workers were violated; (ii) the responsibility of the authorities in any such violations; and (iii) where appropriate, to provide effective remedies for those whose rights were violated, including but not limited to an official apology and compensation.

7. REFUGEES AND MIGRANTS - RESTRICTIONS OF MOVEMENT AND ACCESS TO SOCIAL PROTECTION

Under German law, asylum seekers are obliged to live in an initial reception facility for up to 18 months. In some cases, they may have to do so for the full duration of the asylum procedure (“Wohnpflicht”).¹⁵⁴ They are also subject to limits on leaving specific districts unless an official permit is granted (“Residenzpflicht”).¹⁵⁵ These provisions highly restrict the freedom of movement and impede individuals from finding jobs, language classes, recreational activities or visiting friends and family.¹⁵⁶ Amnesty International has previously stated that these restrictions are discriminatory as well as disproportionate.¹⁵⁷

The Asylum Benefits Act provides both cash and non-cash benefits with respect to housing, food, clothing, hygiene, health care and personal needs. However, reporting by the scientific institution Robert Koch Institute indicates that despite health care benefits, access to health care is often both delayed and/or insufficient assistance.¹⁵⁸ Furthermore, their report also noted that in-kind benefits are often not adequate for what is needed for a life in dignity.¹⁵⁹

In 2012, the German Constitutional Court ruled that benefits provided under the Asylum Seekers Benefits Act are insufficient to lead a life in dignity.¹⁶⁰ It declared particular provisions unconstitutional, as they contradicted the principle of equality, and the welfare state principle of a life in dignity (“Sozialstaatsgebot”, Arts. 1 and 20, Basic Law). Amnesty International fears that the benefits are not adequate to protect the right to health and physical integrity (Art. 2 Subsection 2,

¹⁵³ Report of the Special Rapporteur, UN Doc. A/74/321.

¹⁵⁴ Germany, Asylum Act, 2022, § 47 and § 30a, https://www.gesetze-im-internet.de/asylvfg_1992/BJNR111260992.html#BJNR111260992BJNG000104311.

¹⁵⁵ Germany, Asylum Act, 2022, § 56 Asylum Act. The residence obligation applies as long as asylum seekers are subject to the obligation to stay in initial reception facilities. As a result, it can also apply again for the entire duration of the asylum procedure and beyond.

¹⁵⁶ Germany, Asylum Act, 2022, § 33.

¹⁵⁷ Amnesty International Germany, “Das Asylpaket II: Menschenrechte in Gefahr” [“The asylum package II: Human rights in danger”], 09 December 2015, <https://www.amnesty.de/2015/12/9/das-asylpaket-ii-menschenrechte-gefahr> (in German).

¹⁵⁸ Robert Koch-Institut, Monitoring der Gesundheit und Gesundheitsversorgung geflüchteter Menschen in Sammelunterkünften [Monitoring Health and Access to Health Care of Refugees in Reception Centers], 2021, https://www.rki.de/DE/Content/Gesundheitsmonitoring/Gesundheitsberichterstattung/GBEDownloadsJ/Focus/JoHM_01_2021_Gesundheit_Gefluechteter_RESPOND.pdf?__blob=publicationFile.

¹⁵⁹ Pro Asyl, “Das Asylbewerberleistungsgesetz – Einschränkungen des Grundrechts auf ein menschenwürdiges Existenzminimum für Geflüchtete” [“The asylum seekers benefit act – Restrictions of the fundamental right to a dignified subsistence level for refugees”], November 2022, https://www.proasyl.de/wp-content/uploads/221108_PA_Stellungnahme_alles_1_236_last.pdf (in German); Amnesty International Germany, “Submission to the UN Universal Periodic Review, 16th session of the UPR working group, May-June 2013”, August 2013, <https://www.upr-info.org/sites/default/files/documents/2013-08/aiuprdeus162013amnestyinternationale.pdf>.

¹⁶⁰ German Constitutional Court, Judgment of 18 July 2012, 1 BvL 10/10 and 1 BvL 2/11, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/07/1s20120718_1bvl001010.html.

Basic Law), and the rights in the UN Convention on the Rights of the Child and the ICESCR.¹⁶¹ In the following years, the Asylum Benefits Act was amended on various occasions with the latest amendments being implemented in June 2022. In November 2022, the Constitutional Court again declared specific provisions of the Asylum Benefit Act as unconstitutional and insufficient to enable individuals to lead a life in dignity.¹⁶²

7.1 RECOMMENDATIONS

Amnesty International recommends that Germany:

- Ensures access to *adequate* social protection for all, irrespective of migration status; and
- Respects the freedom of movement of people in asylum procedures within the German territory, and refrain from subordinating individuals to the obligation to live in a determined reception center (“Wohnsitzauflage“) and within geographical limitations (“Residenzpflicht“) for long periods of time.

8. INTERSECTIONAL DISCRIMINATION EXEMPLIFIED BY HEADSCARF BAN

The German Federal Constitutional Court decided in 2015 that a general headscarf ban is not compatible with the Constitution.¹⁶³ A blanket prohibition of *hijabs* would constitute an intersectional form of gender-based discrimination against headscarf-wearing Muslim women.¹⁶⁴ However, some governments of the federal states have laws in place which prohibit teachers in public schools from wearing religious symbols and clothing, mostly based on the reasoning that religious clothing could constitute a “threat to the neutrality of the state as perceived by students and parents, and risk school peace”.¹⁶⁵ Some federal states also have enshrined a “privilege for Christian Western values”.¹⁶⁶ This, taken together with the parliamentary debates on the draft laws and the corresponding commentaries¹⁶⁷, make it clear that the main objective of the prohibition is the headscarf worn by Muslim women and girls.¹⁶⁸ In Hessen, this prohibition applies to all the employees of the state service.¹⁶⁹ In Berlin, the Berlin State Education Act/Neutrality Act is still in place. It prohibits the wearing of all religious clothing and symbols for people working in the public education sector and also prevents judges and public prosecutors, police officers and judicial staff from wearing religious symbols while doing their jobs.¹⁷⁰

¹⁶¹ Amnesty International Germany, “Das Asylbewerberleistungsgesetz muss abgeschafft werden!” [“The asylum seeker benefit act has to be abolished!”], 03 January 2023, <https://www.amnesty.de/informieren/aktuell/deutschland-asylbewerberleistungsgesetz-abschaffen> (in German).

¹⁶² German Constitutional Court, Judgment of 19 October 2022, 1 BvL 3/21, https://www.bverfg.de/e/ls20221019_1bvI000321.html

¹⁶³ Germany, Federal Constitutional Court, “A general ban on headscarves for teachers at state schools is not compatible with the Constitution”, Press Release No. 14/2015 of 13 March 2015, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html>. The Court, deciding on a case in North Rhine Westphalia held that only in case of a “concrete danger” (“concrete disturbance of school peace”), a prohibition of religious clothing during office hours was justified but not already when there was an assumption of an “abstract danger” (due to a general assessment of the situation in schools).

¹⁶⁴ See Amnesty International, Regional Overview of Islamophobia (Index: EUR 01/5659/2022), 1 June 2022, <https://www.amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf>, p. 23-24.

¹⁶⁵ Ibid.

¹⁶⁶ Federal Anti-Discrimination Agency, “Kopftuch am Arbeitsplatz” [“Headscarf in the workplace“], 2021, <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/lebensbereiche/arbeitsleben/kopftuch-am-arbeitsplatz/kopftuch-am-arbeitsplatz-node.html> (in German) (accessed on 15 September 2023): In Berlin, Bremen and Hesse the respective neutrality laws continue to apply. Further in Bavaria, Baden-Württemberg, Hesse and Saarland the privilege for Christian Western values continues as well.

¹⁶⁷ See e.g. comments by members of the Bavarian Parliament at the session of Wednesday, Plenary Minutes of the Bavarian Parliament, 17 March 2004, https://www.bayern.landtag.de/www/ElanTextAblage_WP15/Protokolle/15%20Wahlperiode%20Kopie/15%20WP%20Plenum%20Kopie/013%20PL%20170304%20Ges%20end%20Kopie.pdf (in German).

¹⁶⁸ Ibid.

¹⁶⁹ Germany, Hessen Civil Servants Law, Hessisches Beamtenengesetz (HBG), 2014 - 2021, <https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-BGHE2013pP45> (in German), para 45. In a case in Hessen, the Administrative Court of Kassel rejected the complaint of a Muslim trainee after she was forbidden from wearing a headscarf in certain activities during the traineeship (decision of May 23, 2017, reference number: 1 B 1056/17).

¹⁷⁰ Germany, “Gesetz zu Artikel 29 der Verfassung von Berlin” [“Law on Article 29 of the Constitution of Berlin“], 2005, <https://gesetze.berlin.de/bsbe/document/jlr-VerfArt29GBE2005pP2> (in German).

A ruling of the Federal Labour Court in August 2020 awarded a Muslim woman who was not accepted into the school service because of her headscarf a compensation of around 5,159 Euro ruling that the Neutrality Act had to be interpreted in line with the 2015 Constitutional Court judgement.¹⁷¹ Afterwards, the State of Berlin filed a constitutional complaint against this ruling before the Federal Constitutional Court which decided in January 2023, without giving reasons, not to accept the constitutional complaint.¹⁷²

A federal law regulating the appearance of civil servants, passed on 7 May 2021, also refers to religious symbols giving specific examples of restrictions on religious clothing, which “concern, for example, the Muslim headscarf, the Jewish kippa or a Christian cross (...)”, stipulating that “the right to wear such features may be restricted or prohibited entirely if they are objectively likely to impair confidence in the neutral conduct of the official's office.”¹⁷³ The government tried to dispel concerns and criticism that the law encouraged racism and discrimination, stating that it will not bring about any changes in the legal situation on the subject of a “general headscarf ban”.¹⁷⁴ The CEDAW Committee noted with concern the chilling effect of the 2021 amendment to the Law on Federal Civil Servants (sect. 34 (2)) for the employment prospects of Muslim women who wear a headscarf.¹⁷⁵

8.1 RECOMMENDATION

Amnesty International recommends Germany:

- Ensures that Muslim women in the public sector, including the judiciary, are not penalized for wearing headscarves, including by further amending the Law on Federal Civil Servants and raising public awareness so that the wearing of a headscarf by women civil servants does not result in the undermining of trust in the public service.¹⁷⁶

¹⁷¹ Germany, Federal Labor Court, “Benachteiligung wegen der Religion – Kopftuchverbot“ [“Discrimination on the grounds of religion - headscarf ban”], 8 AZR 62/19, Judgment, 27 August 2020, <https://www.bundesarbeitsgericht.de/entscheidung/8-azr-62-19> (in German).

¹⁷² Germany, Federal Constitutional Court, “Nichtannahmebeschluss ohne Begründung (Berliner Neutralitätsgesetz - Kopftuchverbot für Lehrkräfte)“ [“Non-adoption decision without justification (Berlin Neutrality Act - headscarf ban for teachers)“], 1 BvR 1661/21, Court Order, 17 January 2023, http://www.rechtsprechung-im-internet.de/jportal/portal/t/19ke/page/bsjrsprod.psm?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=10908&fromdoctodoc=yes&doc.id=jb-KVRE451092301&doc.part=L&doc.price=0.0&doc.hl=1#focuspoint (in German).

¹⁷³ Germany, “Gesetz zur Regelung des Erscheinungsbilds von Beamtinnen und Beamten sowie zur Änderung weiterer dienstrechtlicher Vorschriften“ [“Act on the Regulation of the Appearance of Civil Servants and on the Amendment of Further Service Law Provisions”], 2021, <https://djp.bundestag.de/vorgang/.../272243> (in German).

¹⁷⁴ Welt, “Kopftuchverbot durch die Hintertür?“ [“Headscarf ban through the back door“], 7 May 2021, <https://www.welt.de/politik/deutschland/article230971383/Bundesrat-Kopftuchverbot-durch-die-Hintertuer.html> (in German).

¹⁷⁵ Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the ninth periodic report of Germany, 31 May 2023, UN Doc. CEDAW/C/DEU/CO/9.

¹⁷⁶ Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Concluding observations on the ninth periodic report of Germany, 31 May 2023, UN Doc. CEDAW/C/DEU/CO/9, recalling its previous recommendations: CEDAW, Concluding observations on the combined seventh and eighth periodic reports of Germany, 9 March 2017, CEDAW/C/DEU/CO/7-8, para. 36.

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