



UNITED NATIONS

Press Release

UN EXPERT ON RACISM CONCLUDES MISSION TO GERMANY

1 July 2009

BERLIN - The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, concluded his 10-day visit to Germany (22 June-1 July 2009).

Mr. Muigai expressed his sincere appreciation to the authorities at the Federal, State and Municipal levels for their full openness and cooperation throughout his visit. He also thanked civil society and community organizations, religious communities, the academia, victims' associations and other institutions who provided him with comprehensive information regarding the situation of racism, racial discrimination, xenophobia and related intolerance in Germany.

In his conclusions, the Special Rapporteur noted that "much has been achieved in the fight against racism in Germany over the past few years. Yet, much still needs to be done". Mr. Muigai explained that "due to its historical experience, German society is very much aware of the dangers of racism and its implication to the democratic process". He observed that "actors at all levels are well aware of the historical experience of Nazism and the Holocaust, showing a commitment to preserve the memory of these events and ensure that they will not be repeated in the future".

Mr. Muigai stated that "in view of the new challenges facing Germany in the 21st century, there is a need to shift from a more circumscribed view of racism as associated to right-wing extremism to a broader understanding of the problem that takes into account the difficult challenges of integration and the recognition that racism occurs regularly in everyday life". In this regard, the Special Rapporteur affirmed that he was encouraged by the open recognition by authorities that Germany is nowadays a country of migrants and that migrants make a positive contribution to German society.

The Special Rapporteur also welcomed the adoption of the Federal Equal Treatment Act and the establishment of the Federal Anti-Discrimination Agency. "The key challenge now is to make this anti-discrimination framework more active, robust and responsive to the victims of racism, particularly at the State and Municipal levels".

The Special Rapporteur noted that in spite of the high awareness of German society regarding the threat of right-wing extremism, youth groups and political parties based on this ideology have shown enduring resilience and therefore require constant vigilance and actions at all levels of the State.

The Special Rapporteur called in particular for a stronger mandate for the Federal Anti-Discrimination Agency, which should be made more independent and be entrusted with more financial and human resources with a view to being physically present in all 16 States and to have the responsibility to provide legal services to victims of discrimination. “The legal and institutional frameworks play a key role in the fight against racism, not only by providing victims with the possibility of seeking remedies, but also by demonstrating to society that racism and discrimination are unlawful and will bring swift consequences”.

The Special Rapporteur also noted that persons with a migrant background are underrepresented in important institutions, including the political system, the police and the courts. In this regard, he strongly recommended that “special measures be taken to ensure an adequate representation of persons with a migration background in State institutions – particularly in the areas of employment, education and the creation of political opportunities, including in the civil service – in order to correct existing imbalances and to offer such persons adequate opportunities to make a lasting contribution to German society”.

The UN independent expert also made recommendations concerning the situation of refugees and asylum seekers, particularly in the way their claims are processed by the authorities, as well as concerning discrimination in the domains of education, housing and employment.

During his visit, the Special Rapporteur was introduced to a wide-ranging number of initiatives at the local level in cities like Stuttgart, Nuremberg and Leipzig. “I hope that these good practices in the fight against racism will be replicated throughout the country and supported financially and politically by the Federal Government”, Mr. Muigai noted.

The mandate of the Special Rapporteur on racism was established in 1993 by the Commission on Human Rights to examine incidents of contemporary forms of racism, racial discrimination, xenophobia and related intolerance, as well as governmental measures to overcome them. It was further extended by the Human Rights Council in its resolutions 5/1 and 7/34.

Mr. Githu Muigai, a Kenyan national, commenced his mandate as Special Rapporteur on 1 August 2008 after being appointed by the Human Rights Council. He is a lawyer specialized in international human rights law.

The full report on the Special Rapporteur’s mission to Germany will be presented at the 14th session of the Human Rights Council in 2010.

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For more information regarding the Special Rapporteur, please visit <http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>

Full Statement

I visited Germany from 22 June to 1 July. During my stay, I had the opportunity to travel to Berlin, Cologne, Karlsruhe, Stuttgart, Heidelberg, Nuremberg, Leipzig, Crowitz, Rostock and Hamburg. I held meeting with high-level authorities at the Federal, State and Municipal levels as well as civil society organizations, religious communities, the academia, victims' associations and other entities.

I would like to start by expressing my sincere appreciation to the Government of the Federal Republic of Germany for its full openness and cooperation throughout the visit as well as for the organization of a very rich programme with all levels of Government and with a number of projects implemented across the country. I would like in particular to express my gratitude to the Foreign Office for its support throughout my visit and for assigning a very skilled diplomat to manage my official programme throughout the visit.

I would like to start by outlining some of the main reasons for my visit.

I decided to come to Germany not because of any special desire to "inspect" the country, but rather in order to engage constructively with the Government and to prepare a constructive and useful report. Germany has been committed to the anti-racism cause since the drafting of the International Convention for the Elimination of All Forms of Racial Discrimination, which it ratified in 1969. In addition, Germany is among the minority of United Nations Member States in holding a standing invitation to all Special Rapporteurs, which means that it is constantly open to receiving visits such as mine. This fact in itself is already a reflection of the commitment of the country to the international human rights system and a good sign that it is open to discussing human rights issues, including the question of racism. As my predecessor visited Germany over 12 years ago, and in view of the numerous changes that took place since then, I thought this was a good time to visit this country.

I also decided to visit Germany because of its special position at the center of Europe, both literally and metaphorically. In other words, the challenges that Germany faces at present are similar to those faced by many other European countries, and therefore Germany is a good measure of how Europe is doing in matters related to racism.

Finally, my visit also had the objective of identifying good practices in Germany that could be shared both within the country – across cities and regions – and with the international community at large.

As a United Nations Special Rapporteur, the key principles that guide my work are independence, impartiality and expertise of the issues at hand. I came to Germany for a fact-finding mission, with an open mind and no preconceived notions about any issue in the country. The preliminary conclusions that I share with you today are based therefore on the large number of meetings I held in the country with all sectors of society. I will further refine these views when drafting the report that I will present to the Human Rights Council in 2010.

During my visit, I detected a very positive trend in German society and political institutions regarding issues of racism. I could note that a number of concrete measures were adopted since the visit of my predecessor in 1997. The adoption of the General Equal Treatment Act (AGG) in 2006, transposing a EU directive, is of particular relevance to the fight against racism. This Act established a new institutional and legal framework to promote non-

discrimination in the country. I also welcome the establishment of the Federal Anti-Discrimination Agency, which can play a central role in the fight against racism in the long-term.

I was very pleased to hear from authorities at the highest levels – both at the Federal Government and in the different *länder* and cities that I visited – the recognition that Germany is today a country of immigration. Such statements were not common only a few years ago, when my predecessor visited this country. They reflect a commitment of authorities to address underlying challenges stemming from migration and to devise a new approach for the integration of migrants in German society, including through the National Integration Plan. While most persons I met underlined the many challenges that lie ahead, this new context that recognizes the place of migrants at the heart of German society is a positive step in the right direction in the fight against racism, racial discrimination, xenophobia and related intolerance.

I was also very positively impressed by the variety of interesting and innovative projects that are being implemented at the grassroots level across Germany. Such projects are generally implemented by a very active civil society and often supported by the authorities, including through public funds. I also commend the pro-active stance taken by many Municipal administrations in devising creative solutions to tackle the problem of racism in Germany. I would in this regard like to make special reference to the cities of Stuttgart and Nuremberg, where in my view very good experiences are being developed. I should add, however, that all the cities that I visited presented good practices that should be supported and strengthened.

We can see, therefore, that much has been achieved in the fight against racism in the past few years. Yet, much still needs to be done. In particular, I identified two critical areas that in my view should be the focus of immediate attention.

1. Broadening the understanding of racism in German society

I noticed that the understanding of racism by the society at large had for many been equated to right-wing extremism. This is understandable in view of the historical experience of Nazism in Germany and the commitment of the German society not to allow these past tragedies to be repeated in the future. However, despite the persistence of extremist right-wing groups and parties in Germany, the challenges of racism at present go beyond this issue. Due to the changes that took place in Germany over the past half century – and the arrival of a large number of migrants – the question of racism should also be approached from the standpoint of structures and institutions that facilitate the integration of such migrants in German society and that grant them with the necessary skills that will allow them to prosper. The new approach devised by the Government with regard to the integration of migrants recognizes the need for a broad and comprehensive understanding of racism. However, such understanding has yet to fully permeate all relevant institutions, in particular the police, immigration services and the courts, which are key in implementing anti-discrimination provisions.

The fight against racism requires not only attention to the most extreme and violent manifestations of this phenomenon, but also a comprehensive programme that addresses the serious discrimination that individuals face in their daily lives, such as in schools, in public places, in finding housing, etc.

2. **Involving the Länder and Municipal administrations**

Due to the strong form of federalism in place in Germany, the real locus of political power often lies at the level of the different Länder and Municipal Governments. This brings additional challenges for the transformation of Federal laws and programmes, as well as international human rights commitments, into concrete actions at the local level. Yet, it is at this level that the real implementation of anti-discrimination provisions takes place. Unless local administrations transpose Federal laws into local ordinances and guidelines, a core problem will continue to exist in the fight against racism. In this regard, the next phase of the struggle against racism in the German society is to ensure that local Governments have effective legal and institutional frameworks that respond to the many challenges of the problem of racism. In addition, there is a need to ensure that these laws are effectively implemented.

In addition to these two core issues, I would also like to put forward a number of concrete observations regarding both the legal-institutional framework and specific areas in which challenges still exist.

Strengthening the institutional and legal framework to fight racism.

While the adoption of the General Equal Treatment Act in 2006 and the subsequent creation of the Federal Anti-Discrimination Agency were important steps in creating an adequate institutional framework, some challenges persist. The legal and institutional frameworks play a key role in the fight against racism, not only by providing victims with the possibility of seeking remedies, but also by demonstrating to society that racism and discrimination are unlawful and will bring swift consequences.

In this regard, the Federal Anti-Discrimination Agency should be further empowered with human and financial resources to allow it to be present in all 16 States. In addition, its mandate should be amended to allow it to investigate complaints and to bring proceedings before the courts. Finally, the Agency should be empowered to conduct *proprio motu* investigations in areas such as housing discrimination. In my view, such changes in the mandate of the Agency, as well as its formal independence, would further adapt it to the requirements of the fight against racism.

I also recommend that the Government should consider amending the General Anti-Discrimination Act to further refine its provisions. In particular, the exception for differential treatment in housing for the creation of “stable or balanced social environments” should be eliminated, as it creates a provision with potentially negative effects. Furthermore, I believe the scope of the Act should be expanded in order to also include grounds of language and nationality.

Both the General Equal Treatment Act and the Federal Anti-Discrimination Agency should be the subject of a robust awareness-raising campaign to inform the public, particularly victims, of their rights and possibility for legal judiciability.

With regard to criminal law, I believe it would be important for German authorities to explicitly define racism as an aggravating circumstance under section 46 of the Criminal Code. Due to a narrow understanding of racism as being associated to right-wing extremism, it has been alleged that only offenders who belong to right-wing extremism organizations are likely to be

prosecuted for racist crimes, which results in many such acts being addressed as bodily injuries. An explicit legal basis to consider racism as a aggravating circumstance – as well as specific training to police officers, prosecutors and judges – would allow for racist crimes to be more clearly identified and persecuted.

Fighting extremist right-wing groups and parties

Despite the strong awareness that permeates German society concerning the danger posed by right-wing extremism to the very foundations of its democratic system, radical right-wing groups continue to exist, particularly youth organizations and nationalist political parties. Parties like the NPD have seats in local parliaments and town councils, being directly involved and vocal in political debates.

I note with appreciation that other German political parties have expressly refused to cooperate or entered alliances with such parties. In addition, and particularly with regard to youth organizations, I call on the Government to continue making use of Article 4(b) of ICERD in order to “declare illegal and prohibit organizations which promote and incite racial discrimination”.

The situation of specific communities

I have also observed and taken note of the special problems and circumstances related to the situation of certain key groups that are represented in Germany, particularly the Turkish community, Muslims, people of African descent, Sinti and Roma and the Jewish community. In this regard, I will present a detailed account of the specific actions needed for each of these communities in my full report.

The situation of refugees and asylum-seekers

In many meetings I held with civil society, the situation of refugees and asylum-seekers was referred to as a major issue of concern. Throughout the past two decades, Germany has been very open to refugees, receiving inflows of over 400,000 people per year in the early 90s. At present, despite the decrease in the flow of refugees and asylum-seekers, some important challenges exist with regard to this question.

The condition of reception centers for asylum-seekers was considered to be deplorable in some areas. Organizations supporting asylum-seekers note that housing conditions are sometimes precarious and many reception centers for asylum-seekers are situated far from larger towns, making it difficult for children to have access to education. While most asylum claims are processed within 3-months, a number of cases continue for a longer period, sometimes years.

In addition, I have received complaints regarding the limited freedom of movement granted to refugees, who often cannot leave their own district. This limitation also prevents them sometimes to seek employment or education farther away from the cities where they are hosted.

In this regard, I strongly urge the Government to ensure that applications of asylum-seekers are processed in a short period of time and that reception centers for asylum-seekers provide them with reasonable living conditions, including access to education and health services. Freedom of movement should be ensured while asylum claims application are pending or when refugee status has been granted.

Education

The education system is without a doubt the most important channel to constructing a long-term mentality of tolerance and diversity in any society and to offer equal opportunities to children of migrants.

One of the central complaints of civil society and minority communities is the impression that the educational system has not been allowing children of migrants to perform well and to reach university-level. As the PISA studies have shown, there is a high correlation between migrant background and school performance in Germany. In particular, the three-tiered system of German education, with an early selection into separate levels of education, is being seen as contributing directly to this trend, with minority students being overrepresented in the lower school stratum. As the Special Rapporteur on the right to education suggested after his visit in 2006, the Government should reconsider its multi-track school system and analyze the possible bias that it creates against children of migrant background. Experiences such as that of Hamburg should also provide concrete evidence regarding possible alternatives to the multi-track system.

Another important issue raised by civil society concerns the recognition of university diplomas obtained abroad. Many migrants have already obtained degrees in their home countries that should qualify them to carry out their professions in Germany. This would allow them to better integrate in the workforce and to make an important and needed contribution to German economy. I recommend that a flexible scheme be put in place to ensure that proper equivalences are recognized and the requisite certification granted so that the holders of these qualifications may present themselves to the job market on a competitive basis.

Housing

Housing discrimination, particularly in the selection of tenants, is seen by civil society as a major problem. Across the country, many interlocutors pointed out that such form of discrimination is prevalent, with landlords generally refusing to rent housing units to persons of migrant background. This generally occurs silently, with the simple statement that the dwelling “is no longer available”. Discrimination in the area of housing has also contributed to the process of ghettoisation, as many immigrants are unable to find housing outside of certain “minority areas”. The formation of ghettos, in turn, has create yet additional barriers for the integration of migrants, particularly with regard to language proficiency. It has also fostered the image of migrant communities as being “secluded” and “unwilling” to integrate.

Governments at all level should strictly enforce the regulations under the General Equal Treatment Act preventing discrimination in the domain of housing. In particular, the Federal Anti-Discrimination Agency should be given a mandate to conduct *proprio motu* investigations into discriminatory practices in the housing market, with the possibility of initiating legal complaints – rather than simply mediation – against persons and companies that are found to be discriminating. Techniques such as paired testing – which allows to compare the responses of landlords to potential tenants of different backgrounds – can be useful means to enforce equal treatment in housing.

Employment

Non-discrimination in the realm of employment should also be robustly enforced as provided for by relevant legislation. This includes both discrimination against job-seekers from minority ethnic or religious backgrounds, as well as discrimination in the workplace itself.

On the question of discrimination against certain job-seekers, I received complaints pointing to the problematic request by companies that job-seekers add a photograph in their CVs. There is a widespread perception among minority communities that they are less likely to be called for interviews than persons of “German” appearance of similar or even worse qualifications.

Some interesting initiatives are taking place in this area at the local level. I would like to make particular reference in this regard to an idea that is being implemented in the city of Nuremberg with regard to the inclusion of anti-discrimination obligations in the licenses granted to private companies who operate in the city.

The question of religious symbols cannot be dissociated from discrimination in employment. Germany has applied double-standards in the prohibition of the wearing of religious symbols by teachers in public schools, as several Länder have introduced exceptions that allow Christian and Jewish symbols to be worn. Such a prohibition is therefore disproportionately affecting Muslim women who choose to wear the *hijab*. I have also been informed that many private employers have followed the “precedent” created by this measure and are now also discriminating against women who choose to wear the *hijab*.

The media

In the fight against all forms of racism in Germany, the media has a key role to play in eliminating prejudices and ensuring that there is no perpetuation of stereotypes regarding minority communities. I would strongly recommend that the media takes this role seriously.

Participation and representation in the political process

Persons with migration background have been underrepresented in the political process, both as voters and as representatives. Such underrepresentation has a major impact in the power of such communities to influence policy-making and to have a say in the decisions taken in their local communities. In this regard, political parties should be proactive in selecting German citizens with a migration background to run for office. In addition, more flexibility could be adopted with regard to the recognition of the right of migrants who have resided in Germany for a reasonable time to vote in local elections, thus improving the representation of these communities in city councils and other municipal bodies.

The need for special measures

Despite all of the efforts undertaken by the German government to bring about the integration of its migrant communities, it is a fact that such communities are still underrepresented in public life, particularly in the civil service. Some central State institutions such as the police and the courts have very few members who are of migration background. Similarly, in the media and the private sector there is a large underrepresentation of such persons. Representation and visibility of minorities is key to ensure their proper integration into German society. In this regard, as provided by article 1.4 of the International Convention on the Elimination of All Forms of Racial Discrimination, I strongly recommend that special measures be taken to ensure an adequate representation of persons with a migration background in State institutions— particularly in the areas of employment, education and the

creation of political opportunities, including in the civil service – in order to correct existing imbalances and to offer such persons adequate opportunities to make a lasting contribution to German society.