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**UNIVERSAL PERIODIC REVIEW**

**Report of the Working Group on the Universal Periodic Review\***

**Germany**

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### Introduction

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its fourth session from 2 to 13 February 2009. The review of Germany was held at the 1st meeting on 2 February 2009. The delegation of Germany was co-headed by H.E. Gernot Erler, Deputy Minister for Foreign Affairs and H.E. Peter Altmaier, Deputy Minister of the Interior. At its meeting held on 4 February 2009, the Working Group adopted the present report on Germany.
2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Germany: Cameroon, Republic of Korea and France.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Germany:
  - (a) A national report submitted / written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/4/DEU/1);
  - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/4/DEU/2);
  - (c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/4/DEU/3).
4. A list of questions prepared in advance by the Czech Republic, Denmark, Liechtenstein, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to Germany through the troika. These questions are available on the UPR extranet.

## I. Summary of the proceedings of the review process

### A. Presentation by the State under review

5. At the 1st meeting, on 2 February 2009, Mr. Erler and Mr. Altmaier presented the national report and made an opening statement. The Ministry for Foreign Affairs and the Ministry of the Interior were responsible for the coordination of the national report. Representatives from five Ministries and other authorities and the human rights committee of the Federal Parliament, some members of which were present at this meeting, had all been involved in the preparation of the report, for which intensive consultations also were held with civil society.
6. Noting that both treaty bodies and special rapporteurs attest Germany a very good human rights record, the delegation stated that human rights are of high importance in Germany's legal system and the country's daily practice. Nevertheless, challenges to the comprehensive protection and realization of human rights exist.
7. Germany explained that its national report focuses on five areas: (a) Regarding asylum and integration policy, and with 15 million persons with a migration background out of a total populations of 82 million, the integration of migrants is a major challenge. Measures taken by the Government include a National Integration Plan, adopted in 2007; (b) While racism and xenophobia in parts of the population remains a concern, the federal government, the governments of the Länder and civil society are determined to tackle this. Recently, the Government has adopted a National Action Plan against Racism following the World Anti-discrimination Conference in 2001; (c) Given remaining imbalances in salaries between men and women and difficulties with reconciling work and career, ensuring gender equality remains a priority; (d) As regards human rights and terrorism, the delegation emphasized that fighting terrorism must not be detrimental to the respect for human rights, a principle that continues to be at the heart of the anti-terror policies of the Government; (e) Although a prosperous country, Germany needs to make continuous efforts to secure the enjoyment of economic, social and cultural rights.
8. Responding to advance questions, the delegation stated that the reform of the laws for foreigners and asylum-seekers has strengthened their rights. The law applies to those whose request for asylum has been turned down and who have lived in Germany for several years, offering them a right of residence which allows them to integrate into society and seek a permanent residence permit. Under the program, 55,000 resident permits have been granted, 8,000 applications are pending. Moreover, relevant EU Directives have been incorporated into German law.
9. Another major reform effort was the 'German Islam Conference' founded in 2006, which is the first official forum for dialogue with representatives of Muslim communities at the national level and aims at improving relations with the three million Muslims living in Germany.
10. Germany informed that an "Integration Summit" has the goal to improve the participation of migrants in civil society. As knowledge of the German language is essential for successful integration, the Government spent almost 170 million Euros for language and integration courses for migrants in 2008, including for those who have lived in Germany for many years.
11. Referring to a question about the right to education, Germany acknowledged that disadvantages for migrants persist and emphasized its efforts to have a full programme of pre-school language courses for migrants in place by 2012. Furthermore, the cooperation with parents is being enhanced, provision of all-day schools expanded, and teacher training improved.
12. Germany stated that although the number of undocumented immigrants living in Germany is unknown, the Government is keen to

ensure that they are treated with dignity. From fear of being deported, many are unwilling to disclose their status, which leads to problems regarding access to health as well as school education for children. Many illegal migrants do not send their children to school as they will risk disclosing the parents' status. To address this problem, a revision of the law is suggested whereby schools will no longer need to report to immigration authorities.

13. Regarding the issues of forced marriages, forced prostitution and trafficking in human beings, Germany noted that it works towards improving the situation of victims, notably women, inter alia through witness protection programmes. Joint task forces between the Federal Government and the Länder on trafficking of women, on domestic violence and on forced evictions have been established. These problems including the sexual exploitation of children and child pornography through misuse of the internet are taken seriously.

14. Addressing an advance question on the right of residence for victims of forced marriages and forced evictions, the delegation explained that EU directives have been incorporated into German law in 2007. Victims of forced marriages have a right to return after having to leave the country due to a forced marriage provided they have inter alia resided in Germany for eight years and attended school in Germany for six years and as long as their absence from Germany does not exceed 5 years.

15. Germany stated regarding the situation and rights of street children that the estimated number of 5,000 to 7,000 children living on the street has not increased in recent years. Efforts are being made establish contact with them and to integrate them into society.

16. Germany stated about the protection of children of prison inmates that most children are, with the State's help, cared for by inmates' relatives. Only 5 per cent are sent to children's homes. Additionally, wards in which women can live together with their children have been established.

17. Responding to an advance question, the delegation stated that a host of measures are being taken to improve the protection of seniors living in nursing homes, including changes in the applicable law and the improvement of quality control.

18. As regards racially motivated crimes, the Government informed that such criminal acts have been listed in a separate statistic since 2001 and that a range of different activities aimed at combating such crimes, as well as violence against homosexuals, are implemented.

19. Referring to anti-terrorism legislation, the Government reiterated the principles of the rule of law are observed. The anti-terror database only contains data already in existing databases and legislation regulates the use of the database and prevents abuse. Since January 2009, on-line searches of computers are allowed, but only *ultima ratio* and only upon a court decision, so that the private sphere is still protected.

20. Regarding a question on the deaths of two detainees, the delegation emphasized that these were not cases of excessive use of force by the police. Both cases have been thoroughly investigated and measures have been implemented to better control prison cells and to improve the protection against prison mates.

21. Germany informed that the Optional Protocol to the Convention against Torture (OP-CAT) has been ratified and entered into force in January 2009. Regarding the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC), the procedure at the national level was complete, but not the ratification process.

22. Concerning the question about German national human rights institutions, the delegation noted that the "German Institute for Human Rights" is in full accordance with the Paris Principles and is accredited with "A" status by the ICC of National Institutions.

## **B. Interactive dialogue and responses by the State under review**

23. During the inter-active dialogue, statements were made by 46 delegations. Additional statements by six delegations which could not be delivered during the dialogue due to time constraints are also posted on the UPR extranet when available.\*\* A number of delegations thanked the Government for the comprehensive national report and its open, candid and self-critical presentation and for the responses provided to advance questions. Statements were made welcoming Germany's commitment to the UPR process, its constructive participation and the broad-based consultations with stakeholders that took place in preparing the national report.

24. Liechtenstein commended Germany's commitment to the prohibition of torture and other cruel, inhumane or degrading treatment or punishment. It congratulated Germany for having ratified the OP-CAT.

25. The Russian Federation expressed concern that migrants, including from Russia and other former Soviet Union countries, are sometimes seen as second-class citizens and experience difficulties in integration, leading to marginalization and criminalization. It recommended that Germany undertake additional measures to support migrants and implement recommendations of the treaty bodies, including from the Convention on the Rights of the Child (CRC), on support for migrants' families. The Russian Federation noted that Germany is not completely free from corruption. It recommended that Germany make additional efforts to combat corruption and to examine the possibility of ratifying the United Nations Convention against Corruption.

26. Poland referred to the issue raised by the League for Children's Rights concerning the overstepping by the *Jugendamt* (Office for Youth) of its competences. It asked whether the Government had analyzed the activity of *Jugendamt* towards parents with other than German citizenship in the light of international obligations, in particular the right to respect for family life. In this context, Poland recommended Germany to establish a form of effective judicial control over administrative decisions of *Jugendamt*.

27. Egypt noted the emphasis given to successful integration of migrants. While it welcomed the National Integration Plan, it recommended that Germany ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). It recommended that economic and social indicators be developed for migrants and minority groups and

that the government incorporate an economic cultural and social rights perspective as well as affirmative action in this regard. Egypt stated that three Special Rapporteurs noted discriminatory provisions in German laws, especially vis-à-vis Organisation of Islamic Conference member States' nationals applying for citizenship. It recommended that consideration be given to the establishment of a centralized database on qualitative and quantitative data provided by victims or witnesses of racist or xenophobic incidents that have been reported to counselling institutions. It also recommended Germany take necessary steps to prevent any actions that may lead to the stigmatization of migrants, asylum-seekers and ethnic or religious groups living in Germany in the context of political discourse, and address its role as a country of immigration by explicitly acknowledging the positive contribution of immigrants to German society.

28. Islamic Republic of Iran expressed concern regarding the increase in racist violence against minorities. It noted the Government failed to deal sufficiently with racial-related incidents and discrimination against Muslim, Sinti/Roma and other communities. Iran expressed concern, inter alia, that women have in some cases been denied positions and threatened with disciplinary action for the use of a headscarf. It noted the Human Rights Committee's concern that adherence to certain religious organizations or beliefs constitutes one of the main grounds for disqualifying individuals from employment in the public service. Iran recommended the Government comply fully with its obligations under the International Covenant on Civil and Political Rights (ICCPR) and the recommendation of the HR Committee. It recommended Germany to increase its efforts to prevent racially motivated offences and adopt required legislation as well as ensure that relevant criminal law provisions are effectively implemented. Germany also needed to take effective measures to counter the incitement to discrimination and violence in the media.

29. Qatar welcomed efforts made to counter racist incidents. It called upon Germany to continue with efforts in order to counter racism within the German society, especially racism against Roma/Sinti and Muslims. Qatar urged Germany to review some of the laws that have been promulgated that prohibited clothes that reflected a religious connotation. It called upon Germany to adopt necessary measures according to the international criteria to protect the freedom of Muslim women to belief. Finally, Qatar asked inter alia whether Germany intended to implement Committee on the Elimination of Racial Discriminations's recommendation to adopt a legal definition of discrimination.

30. Jordan noted the importance attached to integration of Muslims and the dialogue with Islam. Jordan requested Germany to elaborate on the follow-up to the German Islam Conference. It recommended that Germany continue to improve its efforts regarding the integration of citizen of Muslim confession within the German society while at the same time ensuring enjoyment of their human rights, including the right to freedom of religious practices.

31. Malaysia commended the establishment of the German Human Rights Institute, and asked if Germany will consider expanding its powers so it can investigate complaints and conduct national inquiries. It recommended that Germany continue its efforts to achieve the United Nations official development assistance (ODA) target of 0.7 per cent of gross domestic product (GDP). It also recommended that Germany consider taking more resolute action to prevent and punish perpetrators of racially motivated acts of violence against members of the Roma/Sinti, Muslim, Jewish communities, as well as German nationals of foreign origin and asylum-seekers. It also proposed Germany consider taking more effective measures to eliminate discrimination against female immigrants and minority, particularly in employment and education, and to promote their rights, including freedom of religion and expression.

32. France welcomed, inter alia, the establishment of the Federal Anti-Discrimination Office to combat discrimination although some areas are not covered. It asked about, inter alia, the measures that will be taken to reduce inequality of treatment between married couples and persons who are in a registered homosexual partnership to ensure full access to health insurance and allowances in the event of widowhood. France asked about measures to, inter alia, suppress disparities of wages and incomes between men and women. France encouraged the Government to conclude its procedure for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. France recommended that Germany take necessary measures to ensure the respect of the CRC to ensure minors are not imprisoned with adults.

33. China noted Germany's active measures on integration and its anti-discrimination policies. China noted that the national report indicated that integration depends on the commitment of the population to accept migrants and on the willingness of migrants to respect laws and regulations and their commitment to promote their own integration. China asked how Germany will play its role in this process.

34. Finland supported Germany's decision to adopt a multi-faceted approach to tackle racism, and commended the adoption of the Anti-Discrimination Act. It asked if Germany has considered extending the time limit of two months for the claimant and would provide information on the services offered to victims. Finland recommended that adequate cooperation be ensured between anti-discrimination organisations operating on the State level, and that adequate resources and independence of action be ensured for the Federal Anti-Discrimination Office to enable it to effectively implement its mandate.

35. Azerbaijan commended the measures taken to integrate foreigners and noted the National Integration Plan. It recommended that Germany sign and ratify the ICRMW. Azerbaijan noted the number of racially motivated crimes recorded and while praising the Government's efforts, it asked about the causes of this intolerance. Azerbaijan encouraged Germany to further intensify its efforts to overcome the high disparity in income between men and women. It asked for information on measures taken regarding the ill-treatment of persons by the police.

36. Cuba noted the practice of race-related acts to which vulnerable groups, including migrants and Roma and Sinti minorities, are victims. It referred to an OHCHR study that cautioned that attention should be paid to xenophobia as a "gateway drug" leading to right-wing extremism. It noted CEDAW's concern on the situation of minority and migrant women suffering from discrimination. Cuba recommended Germany take the necessary measures to avoid the stigmatization of migrants and ethnic or religious minorities living in the country and to ensure that they do not become the subject of racism, racial discrimination, xenophobia and other forms of related intolerance, including the prohibition of any organization and propaganda based on racist or xenophobic ideologies. It recommended Germany take the necessary measures to ensure the protection of the rights of all children, and specially to resolve the

problem of the so-called street children by ensuring that their basic needs are covered including education, health, housing and food, and correspond to a society that is rich and developed.

37. The United Kingdom recommended that Germany continue that consultation in its follow up and implementation of the UPR outcome. It noted stakeholders' submission raised concerns about the treatment of migrants victims of forced marriages, forced prostitution or human trafficking. It requested information about the steps taken on these issues since the Second Action Plan to combat violence against women. It also recommended that Germany take steps to ensure that women and girls with German residency who were forced to marry abroad have a right to return. The United Kingdom welcomed Germany's ratification of the OP-CAT and recommended that Germany set a clear timetable for the establishment or designation of national mechanisms and grant adequate resources for the effective functioning of these mechanisms.

38. Pakistan noted the efforts to tackle xenophobia and racism, as well as policies to address economic, social and cultural rights. It asked, inter alia, for details on the Office of the Federal Ombudsman. Pakistan recommended that Germany: a) acknowledge the full applicability of ICCPR to persons subject to its jurisdiction both at home and abroad; b) in the context of counter terrorism measures fully respect the provisions of international human rights instruments including ICCPR and CAT; c) repeal any legislation that infringe upon individuals' right to privacy such as the video surveillance of private homes; d) ensure full access to primary health care, education and judicial recourse to all persons present on its territory irrespective of their legal status; e) take concrete actions to deal with the discriminatory practices on the grounds of religion in access to employment and social integration; and f) pay special attention to the recommendations of the Special Rapporteur on racism who cautioned that xenophobia needs to be addressed squarely to avoid right-wing extremism.

39. In response to the statements made, Germany said that it is unable, like other European States, to follow the recommendation to ratify the ICRMW. Germany noted its difficulties with the definition of migrant workers as contained in the Convention, since it does not distinguish between migrant workers with a legal entitlement to work in Germany and those who are staying illegally. That did not mean that Germany does not care about problems migrant workers are facing. Migrant workers including those without legal status were fully entitled to health care. The delegation referred to the improvement of the legal status of migrant workers in 2007 and stated that Germany has made progress and even extended protection to qualified migrants, thereby following the intent of the convention without formally recognising it.

40. Germany informed that one fifth of its population is of foreign origin and that Germany makes every effort to integrate migrants into society. It pointed out that since 2000, children of migrants born on German soil and whose parents have been living in Germany for a long time, have obtained German citizenship when they are born. Germany stressed that child protection is to be further improved through the Federal Child Protection Act which was adopted by the government in January 2009 and sets out the competencies of the *Jugendämter (Offices for Youth)*. There is made no difference in regard to families with parents not having German nationality.

41. The elimination of the gender pay is an important aim for Germany. On the equal treatment of men and women, Germany reported that new programmes have been started to facilitate the re-integration of women into working life after giving birth to children and parental allowances have been introduced, which led to the fact that now more men take over more child-care responsibilities in their families.

42. As for the development policy and the official development assistance (ODA) quota, Germany noted that it is committed to spending 0.51 per cent of the gross domestic product on ODA by 2010 and 0.7 per cent by 2015. In 2007, it reached a quota of 0.37 per cent, being the second largest donor in absolute terms.

43. Germany stated that against its historic background, in particular the period of National Socialism, it is dealing very seriously and extensively with xenophobia and racism, making sure that this will never happen again. It stressed that Germany has a very strong culture of remembrance, also among the younger generations. Germany submitted that it is not correct that there is an upward trend in racially motivated incidents. Furthermore, there was a decrease in affiliations to right-wing extremist parties. Germany pursues repressive measures with 28 right-wing extremist organisations being banned since 1992, as decided upon by independent courts. Xenophobic, anti-Semitic and racist incidents are met with zero tolerance by the police, judicial system and an emphasis was put to the involvement of civil society in the fight against racism and xenophobia. Concerning the lack of definition of racism, Germany noted that racism is forbidden by the Constitution and by law, but that a concrete definition would risk being too restrictive.

44. Germany stated its commitment to the freedom of religion as this is a fundamental right. This is why the 'German Islam Conference' was set up and it was also demonstrated by the several hundreds of mosques and prayer centres in Germany. Germany would like to see similar efforts to be made and religious freedoms to be respected all over the world for all religions. There is no law in Germany discriminating against Muslims with regard to employment in the public sector. While some of the German Länder, laws stipulate that public servants are not allowed to wear, exhibit, or profess any religious symbols while performing their civic duty. In their private lives, public servants are perfectly free to wear, exhibit and profess religious symbols.

45. Regarding the question on the absence of an office of an ombudsperson, the delegation noted that Germany has a comprehensive system of protection by courts. It is also possible for citizens in certain cases to seek redress before the Constitutional Court. Over the past 15 years over 2,000 court rulings have been changed by the Constitutional Court, and many laws have been declared unconstitutional, demonstrating that the German court system is working. People can also submit petitions to the relevant Government or Parliaments.

46. On the question of the equal treatment of persons living in same-sex relationships, or "registered partnerships" and why they do not enjoy the full rights and privileges that married couples have, the delegation stated that these matters have been discussed in the Constitutional Court and in the European Court of Justice (ECJ). The latter has accepted the legal situation prevalent in Germany because registered partnerships and marriage proper are not entirely compatible in every respect. Despite these rulings there is a debate whether the rights of people living in a registered partnership may not be extended.

47. Algeria noted the reported increase of incidents of racist characters especially against Muslim, Roma, Sinti and asylum-seekers, in particular of African origin. Algeria recommended that Germany give diligent follow-up to recommendations of CERD in 2008, in particular the prevention of racially motivated offences, guaranteeing the equal enjoyment of the right to adequate housing, lifting obstacles encountered by asylum-seekers for schooling their children, and inclusion in their legislation of a specific provision making ethnic racial or religious hatred an aggravated circumstance in criminal matters. Given the importance attached by Germany to combating racism, racial discrimination, xenophobia and related intolerance, including within its own border, Algeria recommended that Germany should intensify its efforts in the area with a more committed contribution to the preparatory process for the Durban Review Conference with a view to ensuring its success. In order to be more persuasive in its approach vis-à-vis third parties, Algeria recommended that Germany should set an example itself by accepting that the thousands of migrant workers from its development partners should be able to live in Germany and benefit from the protection of the ICRMW as it can truly protect the most elementary rights. Algeria recommended that Germany should accede to this Convention.

48. Mexico noted that several mechanisms have mentioned the difficulties of the migrant populations in accessing the justice system and basic services. Mexico recommended considering the possibility of eliminating criminal sanctions against undocumented migrants as well as those sanctions against those providing services for the protection of their rights. Mexico recommended that within the framework of the open and permanent invitation that it has extended to special procedures, Germany encourage the visit of the Special Rapporteur on trafficking in persons, specially women and children. While noticing the importance attached to the respect of human rights in combating terrorism, Mexico asked about safeguards. While it appreciated the information on the obstacles preventing Germany from ratifying the ICRMW it invited Germany to maintain under study the ratification of this Convention from a human rights perspective, recognizing the fact that human rights are universal in nature and therefore are not conditioned by migrant status.

49. Slovenia noted that the Special Rapporteur on the right to education indicated that education authorities might attach disproportionate weight to linguistic competence of schoolchildren of foreign origin. It noted that CERD recommended reconsidering the problem of the transfer of children of non-citizens to special schools for “under-achievers”. In its voluntary pledge Germany committed to take steps to ratify OP-CAT and OP-CRC-SC. While noting the ratification of OP-CAT, Slovenia expressed its wish that Germany speed up the process of the ratification of the OP-CRC-SC.

50. Djibouti noted the recrudescence of racist incidents targeting members of Roma, Sinti, Muslim and Jewish communities, Germans of foreign origin and asylum-seekers, especially of African origin. Djibouti encouraged Germany to respect its commitments and take measures to combat incitement to discrimination and violence in the media. It also recommended that Germany set up independent bodies responsible for investigating complaints of ill-treatment inflicted by the police and take all measures to ensure that criminal complaints filed against the authorities responsible for law enforcement are treated with attention and due diligence. It invited the Government not to underestimate the urgent need to focus with similar attention on interior affairs. It encouraged Germany to reach the United Nations goal of 0.7 percent of GDP for foreign development aid.

51. Saudi Arabia noted that the measures of the national action plan against racism are in accordance with the Durban Declaration. It made reference to the hate crimes motivated by race or religion classified as crimes of xenophobia. It noted the measures taken to promote education in the pre-school period, improve language skills, and to provide free education including to children with disabilities. Saudi Arabia recommended Germany continue to implement the national action plan to combat terrorism in order to eliminate xenophobia and Islamophobia. It also recommended that Germany continue to implement the national integration plan to increase access to education for children of migrant workers.

52. India noted the introduction of anti-terrorism legislations in the 1970s to deal with the situation arising from violent acts of the Red Army Faction. It noted CERD's concerns about the increase of reported racist incidents involving the Roma and Sinti, and that the Committee on the Elimination of Discrimination against Women (CEDAW) drew attention to discrimination against Roma and Sinti. The Human Rights Committee had expressed concern that persons belonging to a certain religious organization or belief were disqualified from obtaining employment in the public service. India asked for information regarding German states having issued legislation forbidding teachers in public schools to wear certain religious symbols.

53. Ghana noted the adoption of, inter alia, the Anti-Discrimination Act. It noted that in spite of all measures to combat racial discrimination, xenophobia and associated forms of intolerance, racist attitudes persist. Ghana commended the adoption of a national action plan against racism and recommended that Germany take concrete steps to implement this plan and accelerate its efforts to combat all racially motivated crimes. Ghana encouraged Germany to enhance collaboration with global mechanisms for dealing with refugee crisis and continue to provide timely financial and political support to organizations involved with the protection of refugees and asylum-seekers.

54. Japan welcomed the restructuring of the offence of human trafficking for the purpose of sexual exploitation and for labour exploitation as punishable offences under the Penal Code. It commended the development of a special protection programme and the preparation of a code of practice for police, judiciary and other authorities. Japan asked for information on any further measures Germany is going to implement in dealing with human trafficking issues, and in this connection, asked about the timeframe for the Government's plan to ratify the OP-CRC-SC. Japan also indicated to have heard that Germany is considered to be an asylum for foreign criminals who have committed crimes punishable under international law outside of Germany and asked about measures that are being considered to address this issue.

55. The Netherlands noted that changes to German migration law were considered difficult and discriminatory. It recommended that Germany continue to guarantee non-discrimination for all and share further experiences with regard to the new integration policies with regard to guaranteeing human rights. It also recommended that Germany continue to strengthen its efforts to prevent law enforcement officers from using excessive force. Regarding the widespread stereotypes and discriminatory attitude towards lesbian, gay, bisexual and transgender including violent attacks and damage to the memorial for lesbian and gay victims of the Holocaust, the

Netherlands welcomed Germany's positive steps to protect them from hate crimes and recommended that Germany continue its efforts and take further initiatives to combat hate crimes based on sexual orientation.

56. Turkey noted problems related to the education of the migrant population. Turkey noted that the views of the Special Rapporteur on the right to education could be considered in a review of the existing school system, which seems discriminatory against school children of foreign origin and not of German mother tongue. Turkey said it believed the practice of dual citizenship would enhance the political participation of migrations and their integration. It therefore recommended that Germany consider the suggestions made by CERD in this respect. Turkey noted that the amendment introduced to the migration law requiring knowledge of German applies only to those for whom an entry visa is required, and considered that this discriminatory practice should end.

57. Hungary indicated that it welcomed the upcoming closure of the Guantanamo detention camp and asked about the intention to grant asylum to inmates. Hungary asked questions regarding combating racism and the National Action Plan against Racism. It also asked for information on the special protection programme for the victims of human trafficking.

58. Benin noted that Germany has ratified OP-CAT and declared that it will establish the national preventive mechanisms within three years. In this context, Benin recommended that Germany be one of the countries contributing to best practices of the Human Rights Council by speeding up the establishment of these mechanisms.

59. Spain noted that the 2007 reform of the German Residents Act represented significant legislative progress regarding the irregular solution of the so-called "tolerated" immigrants, who are illegal and cannot be expelled for reasons of fact or law and whose integration is being pursued. Spain asked if the advances were sufficient and how Germany could guarantee coordination of the different levels of the administration in order to avoid the expulsion of the "tolerated" migrants.

60. South Africa noted that the Special Rapporteur on education had recommended, inter alia, appraising the possibility of withdrawing Germany's reservations and declarations to the CRC. South Africa recommended that the Government should consider adopting measures that would ensure that any law or regulation for controlling irregular migration should neither deny nor prevent migrants from accessing fundamental human rights, including access to education, health, care and effective redress for human rights violations. It referred to concerns raised about political platforms that promote or incite racial discrimination, including indications that the right-wing extremist ideology is not only found at the fringe of the German political spectrum. It recommended that Germany should implement the recommendations of the CERD, including the adoption of a clear definition of racial discrimination in its domestic legislation, adoption of legislative measures that would criminalize incitement to racial hatred, and effective sanctions for hate crimes.

61. Colombia requested additional information on the Alliance for Democracy and Tolerance - against Extremism and Violence which has led to the establishment of networks with the participation of civil society to find solutions to human rights challenges. Colombia asked about the strategy which has been adopted to achieve the active participation of civil society in this project and the indicators that made it possible to measure the progress achieved.

62. Indonesia noted references to too frequent occurrences of, inter alia, right-wing extremist and xenophobic attitudes and aggressive behaviour of police and law-enforcement officers against foreigners. Indonesia referred to the recent law restricting the use of religious symbols, thereby de facto targeting and discriminating Muslim women. Indonesia recommended the Government ensure that laws and policies are consistent with CEDAW and ICERD by revising or revoking laws and regulations that prohibit religious symbols or clothing for teachers and civil servants and are deemed contravening the freedom of religion and expression.

63. Italy noted that the European Commission against Racism and Intolerance (ECRI) recommended the adoption of legislation providing for racist motivation to be considered as an aggravating circumstance in all offences. CERD recommended the adoption of a comprehensive definition of racial discrimination. Italy noted that both ECRI and CERD encouraged Germany to take steps to ensure the integration of children who do not have German citizenship into the regular school system. Italy welcomed the National Integration Plan and asked about measures taken to promote integration. Italy recommended Germany take fully into account the relevant recommendations of CERD aimed at ensuring the integration of non-German children into the regular school system.

64. Brazil welcomed the adoption of the Anti-Discrimination Act, while it expressed concern due to the increase of reported racial-related incidents. It also noted concerns relating to deportation and return policies, as well as to providing migrants with access to social, economic and cultural rights. Brazil asked for elaboration on public bodies providing migration authorities with personal information on migrants. Within the context of paragraph 1 (a) of resolution 9/12 of the Council, entitled "Human Rights Goals", Brazil recommended the withdrawal of German reservations and declarations to the Convention on the Rights of the Child and to ratify its optional protocol OP-CRC-SC. It also recommended the adoption of a clear and comprehensive definition of racial discrimination, in full compliance with CERD recommendations. Lastly, Brazil recommended the implementation of the United Nations target of allocations at least 0.7 per cent of GDP to official development assistance, in order to help achieving the Millennium Development Goals by 2015.

65. Burundi noted that Germany has been able to learn the necessary lessons of its history during the 20<sup>th</sup> century. Burundi also welcomed inter alia the recent positive developments in the field of asylum and integration policy, as well as the amendment in 2007 to the law on residency. Burundi also welcomed the policy on promoting gender equality and measures to promote conciliation of family life as models for many nations, as well as the parental allowance and partner month scheme.

66. Bosnia and Herzegovina, observing that the German Institute for Human Rights acts as an independent human rights institution, asked Germany to elaborate on its activities and obligations. It requested information on State legislation to protect children from abuse of drugs, tobacco, alcohol and other toxic substances. It asked if Germany intends to ratify the OP-CRC-SC.

67. Ecuador noted that migration deserved global attention and Ecuador recommended that Germany take steps to become a party to the ICRMW. The General Assembly having adopted the Optional Protocol to the International Covenant on Economic, Social and

Cultural Rights., Ecuador recommended that Germany sign and ratify it.

68. Argentina noted that Germany is working on the establishment of a national prevention mechanism required by the Optional Protocol to the Convention against Torture. It requested information on the implementation proposals. Argentina noted that the National Integration Plan is an important tool for integration policy. Argentina considered the measures in the Plan and other policies important for giving effect to the CERD recommendations that require the full integration of non-national children in the regular school system.

69. Canada noted the Special Rapporteur's observation on the right to education, particularly the young age that children are selected for streaming into the academic and non-academic schools, and recommended that Germany consider enabling children to move between streams at a later age. Canada also recommended that special attention should be paid ensuring that children of migrant background are not denied academic opportunities based primarily on their acquired proficiency in the German language. Canada recommended that Germany explore with the Ministries of Education at the state levels the incorporation of more content in school curricula on the longstanding historical contribution of the Roma and Sinti communities to German society and culture. Canada also noted that the requirement of public institutions to report irregular migrants to the Aliens' Authority. It recommended that the Government ensure that measures to control irregular migration do not operate to impede access to primary health care, education and judicial authorities.

70. Palestine noted the existence of the national human rights institution and encouraged Germany to continue with its efforts. Palestine underlined the question of migration and the integration of the migrant communities in Germany, especially in view of the presence of 140.000 migrants from Palestine in the country. It asked Germany to state the measures taken to ensure, *inter alia*, the comprehensive and overall integration of those communities.

71. New Zealand recommended that Germany adopt time-bound measures to increase children with disabilities' access to inclusive education in mainstream schools, and that it ensure funding for the specific services necessary to help such students reach their full learning potential and participate along with other students. New Zealand recommended that Germany strengthen measures to counter discriminatory attitudes, for example by including sexual orientation and gender identity in public education and equality programmes and initiatives. It further recommended that German law on transsexuality be modified promptly to facilitate registration of a change of gender on official documents, without requiring transsexuals to divorce, in line with the decision of the Constitutional Court. It recommended that the government continue to prioritise gender mainstreaming and to ensure that appropriate mechanisms are in place to implement, monitor and review the Government's strategy.

72. Morocco noted with interest *inter alia* the national integration plan and programme which provides for language courses, integration and orientation. Given all that had been done, Germany should accede to the ICRMW and Morocco encouraged Germany to do so. Morocco noted that the expulsion and the escorting to the borders of undocumented people sometimes includes entire families which penalizes children that do not speak German. Morocco called on Germany to show more understanding and flexibility during such expulsions and to take into account the social and humanitarian aspects regarding the families. Morocco welcomed the dialogue that had begun with the Muslim community. Morocco was pleased to see the interest by Germany in implementing the recommendations of the Durban Conference.

73. Chad thanked the delegation for its comprehensive presentation. It noted that Germany was a key partner of poor countries in financing and implementing development projects that were major contributions combating poverty and ensuring good governance. Chad was concerned by reported racist incidents against minorities, migrants, Muslims etc. Chad recommended that Germany adopt laws to punish racist acts.

74. Belgium welcomed Germany's commitment to guarantee respect of fundamental rights in the fight against terrorism. However it noted that the new anti-terrorist law adopted at the end of December 2008 provided, *inter alia*, for the possibility of restricting the right of certain members of professional categories such as doctors, journalists and lawyers, to testify witness before courts. Whilst it was being drafted, the law's constitutionality had been questioned and since its adoption, the law has been heavily criticized. Belgium therefore asked, *inter alia*, what had motivated the Government to adopt the measure.

75. Senegal noted that Germany has achieved some considerable progress in a number of different fields such as education, quality of opportunities and combating poverty. The presence of about 15 million migrants is a clear indication of the favourable situation in the country. It was also a challenge regarding effective protection of the migrants' rights. Senegal would be pleased if Germany could reconsider its position on the ICRMW. Senegal encouraged Germany to pursue and strengthen its efforts to prevent racism and promote tolerance.

76. Australia said it would welcome advice on how Germany coordinated human rights issues between the State and federal levels. It asked whether Germany could give an update on how the Federal Anti-Discrimination Office cooperated with anti-discrimination organizations at the State level. Australia recommended that Germany consider a strategy to address inequalities for children at high risk of exiting the education system too early as highlighted in the OHCHR summary.

77. Chile asked how Germany plans to overcome the discrimination of various types that affect women as indicated in the stakeholder summary. Chile asked about additional measures to reduce the levels of school dropout by immigrants' children and to reduce the wage gap between women and men and how the victims of forced marriages could be better protected. Chile commended Germany for establishing as a crime the offence of trafficking in persons for sexual exploitation and asked about steps to improve the support to victims.

78. Germany stated regarding education, that the performance gap between migrant and native students was not only related to migrant status but that socio-economic status, educational level of parents and language spoken at home and with peers partly account for educational achievement. In the framework of the national integration plan, Germany has started 400 different measures in that context. Last year, 750 millions Euros were invested into this particular area, with the view to ensuring equal opportunities and



better integration of migrant children.

79. Concerning Sinti and Roma, Germany stated that about 17,000 persons were recognised and protected as belonging to national minorities. Sinti and Roma coming to Germany as asylum-seekers are treated as all other asylum-seekers.

80. In its closing remarks, Germany expressed its gratefulness for the recognition of the concrete steps undertaken during the last years. It promised that more efforts will be made in the future. Germany noted that the UPR process was extremely useful because it will be fruitful and constructive for the national and the international debate.

## **II. Conclusions and/OR recommendations**

81. In the course of the discussion, the following recommendations were made to Germany:

1. Sign (Azerbaijan), ratify (Egypt, Azerbaijan), accede to (Algeria, Morocco), take necessary steps to become a party to (Ecuador) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
2. Maintain under study the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from a human rights perspective, recognizing the fact that human rights are universal in nature and therefore are not conditioned by migrant status (Mexico); set an example itself accepting that the thousand of migrants workers from its development partners should be able to live in Germany benefiting from the protection of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as it can truly protect the most elementary rights (Algeria);
3. Conclude its procedure for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (France);
4. Withdraw reservations and declarations to the Convention on the Rights of the Child and to ratify its optional protocol OP-CRC-SC (Brazil);
5. Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Ecuador);
6. Acknowledge the full applicability of ICCPR to persons subject to its jurisdiction both at home and abroad (Pakistan); comply fully with its obligations under the ICCPR and the recommendation of HR Committee (Islamic Republic of Iran);
7. Fully respect the provisions of international human rights instruments including ICCPR and CAT in the context of counter terrorism measures (Pakistan);
8. Be one of the countries contributing to best practices of the Human Rights Council by speeding up with the establishment of national preventive mechanisms (Benin), set a clear timetable for the establishment or designation of national mechanisms and grant adequate resources for the effective functioning of these mechanisms (United Kingdom), following the recent ratification of the Optional Protocol to the *Convention against Torture* and Other Cruel, Inhuman or Degrading Treatment or Punishment;
9. Ensure adequate cooperation between anti-discrimination organisations operating on the State level, and that adequate resources and independence of action be ensured for the Federal Anti-Discrimination Office for it to be able to effectively implement its mandate (Finland);
10. Encourage the visit of the Special Rapporteur on trafficking in persons, specially women and children, within the framework of the open and permanent invitation extended to special procedures (Mexico);
11. Continue to guarantee non-discrimination for all and share further experiences with regard to the new integration policies with regard to guaranteeing human rights (Netherlands);
12. Take concrete actions to deal with the discriminatory practices on the grounds of religion in access to employment and social integration (Pakistan);
13. Increase its efforts to prevent racially motivated offences and adopt required legislation as well as ensure that relevant criminal law provisions are effectively implemented (Islamic Republic of Iran); adopt laws to punish racist acts (Chad); give diligent follow-up to recommendations of CERD in 2008 in particular the prevention of racially motivated offenses, guaranteeing the equal enjoyment of the right to adequate housing, lifting obstacles encountered by asylum-seekers for schooling their children, and inclusion in their legislation of a specific provision which establish ethnic racial or religious hatred as an aggravated circumstance in criminal matters (Algeria); implement the recommendations of the CERD, including the adoption of a clear definition of racial discrimination in its domestic legislation, adoption of legislative measures and that would criminalize incitement to racial hatred, and effective sanctions for hate crimes (South Africa); adopt a clear and comprehensive definition of racial discrimination, in full compliance with CERD recommendations (Brazil);
14. Consider taking more resolute action to prevent and punish perpetrators of racially motivated acts of violence against members of the Roma/Sinti, Muslim, Jewish communities, as well as German nationals of foreign origin and asylum- seekers (Malaysia); continue with efforts in order to counter racism within the German society in particular racism against Roma/Sinti and Muslims (Qatar);
15. Take concrete steps to implement the National Action Plan against racism and accelerate its efforts at combating all racially motivated crimes (Ghana); continue to implement the national action plan to combat racism in order to eliminate xenophobia and Islamophobia (Saudi Arabia);

16. Give consideration to the establishment of a centralized database on qualitative and quantitative data provided by victims or witnesses of racist or xenophobic incidents that have been reported to counselling institutions (Egypt);
17. Take effective measures to counter the incitement to discrimination and violence in the media (Islamic Republic of Iran); respect its commitments and take necessary measures to combat incitement to discrimination and violence in the media (Djibouti);
18. Take the necessary measures to avoid the stigmatization of migrants and ethnic or religious minorities living in the country and to ensure that they do not become the subject of racism, racial discrimination, xenophobia and other forms of related intolerance, including the prohibition of any organization and propaganda based on racist or xenophobic ideologies (Cuba);
19. Pay special attention to the recommendations of the Special Rapporteur on racism who cautioned that xenophobia needs to be addressed squarely to avoid right wing extremism (Pakistan);
20. Intensify its efforts in the area of combating racism, racial discrimination, xenophobia and related intolerance with a more committed contribution in the preparatory process for the Durban Review Conference with a view to ensuring its success (Algeria);
21. Continue to prioritize gender mainstreaming and to ensure that appropriate mechanisms are in place to implement, monitor and review the Government's strategy (New Zealand);
22. Continue its efforts and take further initiatives to combat hate crimes based on sexual orientation (Netherlands); strengthen measures to counter discriminatory attitudes, for example by including sexual orientation and gender identity in public education and equality programmes and initiatives (New Zealand); modify promptly the law on transsexuality to facilitate registration of a change of gender on official documents, without requiring transsexuals to divorce, in line with the decision of the Constitutional Court (New Zealand);
23. Continue to strengthen efforts to prevent law enforcement officers of using excessive force (Netherlands); put into place independent bodies responsible for investigating complaints of ill-treatment inflicted by the police et take all measures to ensure that criminal complaints filed against the authorities responsible for law enforcement are treated with attention and due diligence (Djibouti);
24. Take the necessary measures to ensure the respect of the Convention on the Rights of the Child to make sure minors are not imprisoned with adults (France); establish a form of effective judicial control over administrative decisions of the Office for Youth called *Jugendamt* (Poland);
25. Take necessary measures to ensure the protection of the rights of all children, and specially to resolve the problem of the so-called street children ensuring that their basic needs are covered including education, health, housing and food, and correspond to a society that is rich and developed (Cuba);
26. Make additional efforts to combat corruption and to examine the possibility of ratifying the United Nations Convention against Corruption (Russian Federation);
27. Repeal any legislation that infringe upon individuals' right to privacy such as the videosurveillance of private homes (Pakistan);
28. Consider the suggestions made by CERD in respect to the acquisition of dual citizenship (Turkey);
29. Review some of the laws that have been promulgated that prohibited clothes that reflect a religious connotation (Qatar); ensure that their laws and policies are consistent with CEDAW and ICERD by revising or revoking laws and regulations which prohibit religious symbols or clothing for teachers and civil servants which are deemed contravene to freedom of religion and expression (Indonesia);
30. Adopt necessary measures according to the international criteria to protect the freedom of Muslim women to belief (Qatar); continue to improve its efforts regarding the integration of citizen of Muslim confession within the German society while at the same time ensuring enjoyment of their human rights including the right to freedom of religious practices (Jordan);
31. Further intensify its efforts to overcome the high disparity in income between men and women (Azerbaijan);
32. Take fully into account the relevant recommendations of CERD aimed at ensuring the integration of non-German children into the regular school system (Italy); pay special attention to ensure that children of migrant background are not denied academic opportunities based primarily on their acquired proficiency in the German language (Canada); continue to implement the national integration plan to increase access to education for children of migrant workers (Saudi Arabia);
33. Consider enabling children to move between streams at a later age, noting the Special Rapporteur's observation on the right to education and particularly the young age that children are selected for streaming into the academic and non-academic schools (Canada);
34. Adopt time-bound measures to increase children with disabilities' access to inclusive education in mainstream schools, and that it ensure funding for the specific services necessary to help these students reach their full learning potential and participate along with other students (New Zealand);
35. Consider a strategy to address inequalities for children at high risk of exiting the education system too early as highlighted in OHCHR summary (Australia);
36. Explore with the Ministries of Education at the state levels the incorporation of more content in school curricula on the longstanding historical contribution of the Roma and Sinti communities to German society and culture (Canada);

37. Develop economic and social indicators for migrants and minority groups and that the government incorporate an economic cultural and social rights perspective as well as affirmative action in this regard (Egypt); consider taking more effective measures to eliminate discrimination against female immigrants and minority women in all areas, in particular in employment and education, and to respect and promote their human rights and to respect and promote their human rights, including their freedom of religion and expression (Malaysia).

38. Consider adopting measures that would ensure that any law/regulations aimed at controlling irregular migration should not deny nor prevent migrants from accessing fundamental human rights, including access to education, health, care and effective redress for human rights violations (South Africa); ensure that measures to control irregular migration do not operate to impede access to primary health care, education and judicial authorities (Canada); ensure full access to primary health care, education and judicial recourse to all persons present on its territory irrespective of their legal status (Pakistan); consider the possibility of eliminating criminal sanctions to undocumented migrants as well as those sanctions against those who provide services for the protection of their rights (Mexico);

39. Undertake additional measures to support migrants and in particular to implement the corresponding recommendations of the treaty bodies, such as recommendations of the CRC on support for the families of migrants (Russian Federation);

40. Take necessary steps to prevent any actions that may lead to the stigmatization of migrants, asylum-seekers and ethnic or religious groups living in Germany in the context of political discourse, and address its role as a country of immigration by explicitly acknowledging the positive contribution of immigrants to German society (Egypt);

41. Take steps to ensure that women and girls with German residency who were forced to marry abroad have a right to return (United Kingdom);

42. Show more understanding and flexibility during the expulsions of undocumented people and to take into account the social and humanitarian aspects of these families (Morocco);

43. Continue efforts in achieving the United Nations official development aid target of 0.7 per cent of gross domestic product (Malaysia); implement the United Nations target of allocations at least 0.7 per cent of the gross domestic product to official development assistance, in order to help achieving the Millennium Development Goals by 2015 (Brazil);

44. Continue civil society consultation in its follow up and implementation of the UPR outcome (United Kingdom).

82. The response of Germany to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its eleventh session.

83. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

## **Annex**

### **COMPOSITION OF THE DELEGATION**

The delegation of Germany was co-headed by H.E. Mr. Gernot Erler, Deputy Minister for Foreign Affairs, and H.E. Mr. Peter Altmaier, Deputy Minister of the Interior, and composed of 19 members:

H.E. Dr. Reinhard Schweppe, Permanent Representative;

Mr. Busso von Alvensleben, Ambassador, Commissioner for Global Issues: Civil Crisis Prevention, Human Rights, Humanitarian Assistance and International Terrorism, Federal Foreign Office, Berlin;

Mr. Dieter Lamlé, Head of Division, Federal Foreign Office, Berlin;

Mr. Holger Schamberg, Federal Ministry of the Interior, Berlin;

Mr. Hans Joachim Stange, Federal Ministry of the Interior, Berlin;

Ms. Alexandra Kuczynski, Federal Ministry of the Interior, Berlin;

Dr. Hans-Jörg Behrens (Mr.), Federal Ministry of Justice, Berlin;

Ms. Antonia Muhler, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Berlin;

Mr. Lutz Rüdiger Vogt, Federal Ministry of Labour and Social Affairs, Berlin;

Ms. Daniela Kuck-Schneemelcher, Federal Ministry of Labour and Social Affairs, Berlin;

Dr. Petra Gruner (Ms.), Federal Ministry of Education and Research, Berlin;

Dr.. Birgitta Ryberg (Ms.), Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany;

Ms. Anke Oppermann, Federal Ministry for Economic Cooperation and Development, Berlin;

Ms. Anne-Christine von Duhn, Federal Foreign Office, Berlin;

Ms. Claudia Baumgärtner, Federal Ministry of Defence;

Ms. Barbara Chisholm, Federal Ministry of the Interior;

Mr. Michael Klepsch, Counsellor;

Ms. Antje Häusler, Third Secretary;

Mr. Wolfgang Beckstein, Third Secretary.

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\*\* Czech Republic, Norway, Philippines, Portugal, Republic of Korea and Sweden.