



European network against racism

ENAR Shadow Report 2009-2010

ENAR Shadow Report 2009/2010

Racism and Discrimination in Germany

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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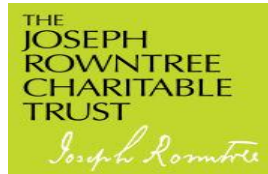
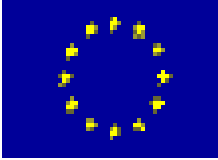
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I. Executive summary

Due to the changes in the statistics of 2005 and the introduction of the category of „*Germans with migration background*“ **communities vulnerable to racism and discrimination** can be described and analyzed in a more appropriate way. The new definition is slowly trickling down and is affecting the statistics. The real size and characteristics of the Muslim population is now fairly well described. As there is no new immigration taking place the composition of the vulnerable groups have not changed much.

Manifestations of racism and religious discrimination are described in the following fields:

Employment: Evidence has been provided that persons with a migrant background independent of their qualifications are discriminated against with regard to access to the labour market. The emigration of highly qualified persons with a migrant background to Turkey is increasing due to such discrimination. Non-recognition of foreign certificates remains a huge problem.

Housing: Evidence has been provided that persons with a migrant background independent of their income, their language knowledge or education are discriminated against on the basis of "*foreign sounding*" names. Persons with a migrant background pay more rent for low quality houses and flats and have less access to better and more affluent areas.

Education: Racism is barely discussed in German schools just as systematic monitoring of ethnic and religious discrimination and racist violence within schools is widely absent. Schools are not equipped to support pupils in cases of ethnic discrimination and to resolve such conflicts. Attitudes of people in higher social status - no matter if they are of German or other ethnic backgrounds - intensifies the segregation in ethnically-mixed districts and therefore within the schools. The allocation of resources in the German education system is disproportionate. Most states allow children of asylum-seekers and children of parents whose deportation is intermitted full access to education. In most professions qualifications obtained in the home country are still not formally recognized.

Health: The health condition of persons with a migrant background is similar to that of persons with a non-migrant background, but they are deprived of access to specific medical services. They lack information about health entitlements and how to use the health system. As a result, persons with a migrant background are more likely than the average patient to end up in emergency care, because they sort out medical aid too late. There is evidence that some practitioners refuse treatment because of the name of the patient.

Policing and ethnic profiling: The supplement on counter-terrorism, policing and ethnic profiling in annex 2 describes the recent developments in relation to dragnets, raids on mosques and the role stereotypes play in everyday policing in Germany.

Racist violence and crime: Although numbers show no increase, current approaches to data collection and classifying racist violence and hate crime are not providing a realistic picture of the situation and unknown dimensions of hate crimes are hidden in unreported and unregistered crimes. Categories are open to selective interpretations and subjective judgments by the police, framed by a lack of awareness or even racist attitudes. The problematic way of conceptualizing racist violence as right-wing extremism is illustrated by the Islamophobic murder of Marwa El-Sherbini in a German court room.

Access to goods and services in the public and private sector: Data availability in this area is bad because there is no common understanding and definition of what falls under "goods and services". Refusal of access to bars and clubs by bouncers remains a problem. In addition, credit scoring practices are under surveillance by the ombudsmen for data protection.

Media, including the Internet: The media has started to report on discrimination; however racism only gets the media's attention when there is public or international pressure. Stereotyping and hate speech against Islam is still common and most of the time only positions of "Islam critics" get a public forum and are heard. There is no public forum for other perspectives. This leads to Muslims withdrawing from participating in mainstream media.

The **political and legal context** is described and analyzed in the following areas:

Anti -discrimination: Studies indicate a large number of undiscovered ethnic discrimination. First court judgments related to discrimination in the field of labor market, access to goods and services and housing have been concluded. Court decisions consider existing Neutrality laws as being legal under the Equal Treatment Act and the ban of head-scarves therefore is not considered as discrimination. Expert opinions say protection against discrimination in the education sector is not sufficient and Neutrality laws contradict the Equal Treatment Act. Now it is up to the Court of Justice of the European Community to take a decision.

Migration and integration: The numbers of naturalization are still decreasing and currently the "*Optionszwang*", which forces children with a migrant background to decide whether they want to remain German and reject the citizenship of their parents or give up German citizenship, is still upheld. The number of asylum seekers has increased, while the acceptance rate has decreased. The referendum on minarets in Switzerland triggered a debate in

Germany. German-Turkish schools are considered as being a barrier to integration. In the National Plan on Integration (NIP) discrimination is not a topic and the consequences of racist discrimination are not viewed as serious. Scientists criticize indicators of integration monitoring.

Criminal justice

Racism as a crime: Legislature, the judicial and executive institutions as well as the media have an isolated view of racism and depict it as only a practice by the extreme right. There is little assessment of everyday racism and discrimination which does not necessarily have a right-wing motivation. This narrow understanding of the manifestations of racism tends to be neglected in the criminal process. The production sites of right-wing extremist recordings are in countries where production, possession and distribution of this type of music are not punishable by law.

Counter- terrorism and ethnic profiling: The supplement on counter-terrorism, policing and ethnic profiling in annex 2 describes the recent legal and political developments in relation to dragnets, raids on mosques and the role stereotypes play in everyday policing in Germany.

Social inclusion: Official reports confirm that there is a higher risk of poverty because of discrimination. The government is developing activities to combat poverty, but disabled people and migrants are treated as separate groups in certain areas. The National Action Plan (NAP) has a strong focus on right-wing extremism. A new campaign for communal voting rights for third-country nationals has been initiated in Frankfurt and Munich. As a result the involvement of migrants in civil-society activities has increased.

The report ends with **national recommendations** for each of the areas.

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III. Introduction

You are now reading the eighth ENAR-Shadow report on racism in Germany since 2002. In those eight years quite a few things have changed in Germany. Germany now sees itself as an immigration society, has changed its citizenship legislation, has implemented European anti-discrimination legislation and has changed the way it is measuring its population, because current statistics are no longer informing the authorities about “real” composition and needs of the population. This institutional rearrangement had the effect that anti-discrimination as a new field of action was constituted with new actors arriving in the field of anti-racism. This has had consequences for the reporting on racism in Germany. In the first years of the ENAR shadow reporting the aim was to consolidate information which was scattered around and hidden in a wide range of sources. Those bits and pieces had to be put together into a coherent picture about the situation of vulnerable groups targeted by racism and which reflected the different perspectives and assessed them from an NGO point of view. During those first years, the shadow reports were monitoring barely existing policies on racism, because racism and discrimination were not relevant to those populations not being affected by it. Nowadays discourses neglecting racism at work have to deal with more and more evidence based research, which makes denial for those who believe in scientific arguments much more difficult.

The discussion has arrived at the centre of society and meanwhile an armada of research institutes and ministry units are studying, monitoring and advising on this field, often without any reference to racism and its historical origins. Evidence is however, showing that problems of integration are not solely due to the unwillingness or incapability of minorities, but that it also has a structural component, preventing newcomers from establishing themselves in certain areas of German society. It becomes clear that racism is as much about the defence and protection of own privileges as it is about de-articulating questions of equality and social justice. Those changes reflect the changes within wider German society. If you look at a wide range of surveys and studies it becomes obvious, that certain groups are interested in maintaining the subordination of others, but this opinion is often not shared by the majority of the Germans.

The international market research institute “YouGov” asked more than 1000 German citizens over the age of 18 about the role skin colour plays in Germany. 40 per cent agreed with the statement “*the color of a person’s skin does not have a negative effect on his or her social and professional chances in Germany*”, but 55 per cent did not agree. There are minor differences between men and women and regional differences. Moreover, there are also significant differences when it comes to party affiliation. While the right has a high rate of agreement the left is divided¹. Another survey tested people’s opinions about the building of larger

¹ 12nach12, [Makel Hautfarbe: Mehr als die Hälfte der Deutschen räumt Nachteile durch Rassismus ein](http://12nach12.blogspot.com/2010/01/makel-hautfarbe-mehr-als-die-halfte-der.html), accessed 27.8.10.

mosques. 42 per cent felt threatened if a mosque would be built in their neighborhood, but 58 per cent didn't feel threatened. Women felt more threatened than men, but there was no difference between the generations. In this question the political spectrum sorts differently. While voters of the liberals (FDP) and the left (DIE LINKE) see the building of big mosques very negatively, the voters of the conservatives (CDU/CSU), social democrats (SPD) and greens (GRÜNE) are less fearful in this respect. Those who have a Muslim relative in their family or have daily contact or live near a mosque are less afraid (34 per cent) than those who have no close contact with Muslims (46 per cent)².

This shows that while the classification of the German society as showing racist features or not is represented by the old right-left dichotomy, the Islamophobic features of German society transcends this dichotomy and reshuffles the political scene, with new alliances emerging.

Social changes affecting the anti-racist movement can be observed in the majority of EU member states and therefore ENAR and its shadow reporting system has had to adjust to this changing environment in Europe and in Germany. This adjustment becomes most obvious in the period covered in this report. ENAR is launching the European Shadow Report on the 21st of March, the day against racism, which is also the day of the German Shadow Report launch. To adjust the reporting period according to this new time line, this year's report will cover January 2009 to March 2010, but still highlighting some key developments in late 2010. The report looks at communities vulnerable to racism and discrimination and how racism and religious discrimination is manifested in Germany in the area of employment, housing, education, health, in relation to policing, ethnic profiling, racist violence and crime, in access to goods and services in the public and private sector and in the media, including the Internet. The second part of the report informs about the political and legal context in Germany reflecting developments in anti-discrimination, migration, integration and social inclusion. Special focus in this year's report is on the criminal justice sector, where racism as a crime, counter-terrorism and ethnic profiling is intensively reviewed in the context of the current German discussions. Like every year the report ends with national recommendations for each of the discussed areas.

² 12nach12, [Bundesbürger stehen dem Bau repräsentativer Moscheen mit gemischten Gefühlen gegenüber](http://12nach12.blogspot.com/2009/11/bundesburger-stehen-dem-bau.html), <http://12nach12.blogspot.com/2009/11/bundesburger-stehen-dem-bau.html> accessed 27.8.10.

IV. Communities vulnerable to racism and discrimination

Since the changes in German population statistics in 2005, it is now possible to describe the population in Germany in a more differentiated way, than in the former German citizen - foreigner dichotomy. The population in Germany is now subdivided into German citizens with and without a migrant background and foreigners. Germans with a migrant background and foreigners furthermore can have an own migration experience or none. This is the only way to describe the German and foreign population in a representative and official way³.

At the end of 2009 the Federal Office of Statistics counted 14,871,061 people in Germany with a migrant background. That's approximately 18.7% of the overall population of 81,882,342. 10,534,000 have an own migration experience (4,942,000 migrant background; 5,592,000 foreigners). 4,337,061 have no migration experience (3,201,443 with migrant background; 1,135,618 foreigners) and can be considered as German although they are not legally Germans⁴.

The average age of the population with a migrant background is, in comparison to the German population without any migrant experience, very young. 57.4 per cent of all foreigners are younger than 40 years, compared to 42.3 per cent of the German population without a migrant background⁵. The share of children under five years of age supports this statement. 7.5 per cent of the population with a migrant background is younger than five years, as compared to only 3.4 per cent of the population without a migrant background. Foreigners in comparison to German citizens, irrespective of their migration experience, have fewer children, who are younger than six years. This is due to the fact that a new citizenship law had been introduced in 2000, where every child born in Germany automatically acquires German citizenship, also in cases where both parents hold a foreign passport. This citizenship is called "optional", because the person has to decide between 18 and 23 years of age which citizenship they want to adopt, German citizenship or the one of their parents⁶.

Approximately 7,543,000 men and 7,300,000 women with a migrant background are living in Germany. Germans with a migrant background from Poland (56.7%), Romania (55.8%), Ukraine (54.9%) or Russia (53.8%) have a higher ratio of women in comparison to those with a background from Africa (53.8%), Italy (58.7%), the Middle East (55.8%) or Greece (54.7%) who have a high ratio of men.⁷ People classified as foreigners from Russia (60.8%), Ukraine (61.3%), Thailand (86.2%), Brazil (72.3%) and Lithuania (71.0%) show a higher ratio of women and foreigners originating from Iraq (63.1%), India (64.7%), and Tunisia

³ BAMF: *Grunddaten der Zuwanderung 2009*, p.16

⁴ *Ibidem*, p. 17

⁵ *Ibidem*, p.22ff.

⁶ Migazin, *Gesetzesentwurf zur Streichung der Optionsregelung*, <http://www.migazin.de/2009/05/07/grune-fordern-streichung-der-optionsregelung-aus-dem-staatsangehoerigkeitsrecht/> accessed 17.8.10.

⁷ BAMF: *Grunddaten der Zuwanderung 2009*, p.22ff.

(76.7%) show a higher ratio of men⁸.

People of Turkish origin constitute the largest group among those holding a foreign passport. 25.1 per cent of all foreigners are Turkish (1,688,370). But the number is decreasing since 1998 due to the effects of naturalization and natural death. Foreigners from Italy are the second largest group. At the end of 2008 523,162 Italian citizens (7.8 per cent) lived in Germany and their number decreased as well since 1998 (619,060). The next largest group of foreigners is constituted by those holding a Polish passport (5.9 per cent) and a Greek passport (4.3 per cent). While the number of Greek nationals decreased as well from 365,438 in 2000 to 287,187 people in 2008 the number of Polish nationals is increasing.

Muslims constitute the largest religious minority in Germany. According to a study of the Federal Ministry for Migration and Refugees it is estimated that between 3.8 and 4.3 million Muslims with a migrant background are living in Germany, among them between 1.65 and 2.03 million German Muslims⁹. Therefore 4.6 per cent to 5.2 per cent of the German population is Muslim and constitute the 3rd largest denomination after Catholics and Protestants¹⁰. Muslims are a diverse group with different religious orientations: 74.1 per cent are Sunnites, 12.7 per cent are Alevites and 7.1 per cent are Shiites. Smaller denominations make up to 6.1 per cent, such as the Ahmadi, Sufi/Mystics or Ibadits¹¹. Most of the 2.1 to 3.2 million Muslims with a foreign passport originated from Turkey. 355,000 Muslims came from south-eastern European countries and 353,000 Muslim foreigners came from Iran or other Middle East countries. Therefore approx. 55 per cent of all Muslims in Germany have a foreign passport, 45 per cent a German passport. The background of the Muslim population in Germany originated in 50 different countries¹². To estimate the number of German Muslims without any migrant background is difficult, because religion and conversion is not registered, but experts estimate it is between 13,000 to 100,000¹³.

The estimates about the Jewish communities in Germany are more difficult. Approximately 100,000 Jewish people are living in Germany today. Since 1989, an additional 80,000 Jewish migrants have come from the former Soviet Union. There are approximately 100 Jewish communities, the largest being in Berlin (11,000 members)¹⁴, Frankfurt a. M. (7,161 members)¹⁵ and Munich (9,500

⁸ Ibidem

⁹ Haug, Sonja; Müssig Stephanie and Anja Sticks, *Muslimisches Leben in Deutschland (Muslim Life in Germany)*, BAMF, Nurremburg, 2009, http://www.deutsche-islam-konferenz.de/cln_110/nn_1876234/SubSites/DIK/DE/InDeutschland/ZahlenDatenFakten/StudieMLD/studie-ml-d-node.html?_nnn=true, accessed 19.8.10, p. 81.

¹⁰ Ibidem, p. 80.

¹¹ Ibidem, p. 79.

¹² Ibidem, p. 80.

¹³ Ibidem, p. 58.

¹⁴ Jüdische Gemeinde zu Berlin, *Wir über uns*, <http://www.jg-berlin.org/ueber-uns/kurzportraet.html> <http://www.jg-berlin.org/ueber-uns/externe-kontakte-org.html>; accessed 15.07.10

¹⁵ Jüdische Gemeinde Frankfurt, *Wir über uns*, <http://www.jg-ffm.de/web/deutsch/wir-ueber-uns> [/http://www.jg-ffm.de/web/cms/front_content.php](http://www.jg-ffm.de/web/cms/front_content.php); accessed 15.07.10

members)¹⁶.

Sinti (living in Germany since the 14th century) and Roma (arriving in the 19th century) are less visible minorities in Germany, but still exposed to discrimination and racism. Different estimations claim that between 80,000 to 120,000 Sinti and Roma are living in Germany. Most of the recently arriving Roma came from the former Yugoslavia and the Balkans¹⁷. Since the accession of Romania and Bulgaria into the EU in 2007 a new vulnerable group, with a new specific legal position, seems to be emerging. Because of the freedom of movement within the EU, nationals of these two member states are allowed to travel freely, like the inhabitants of other EU member states. Although they have those formal rights, their social rights (like access to health care, to social housing, equal pay, etc.) are restricted because of their social background in their home country. Quite a high proportion seems to have a Roma background, although statistically data on the ethnic background of this new type of migrant is not available. The numbers of EU-citizens from those countries are increasing. Detailed numbers for 2009/10 do not yet exist, but according to the latest available statistics there is an increase of 38 per cent of Bulgarians and 29 per cent of Romanians living in Germany at the moment¹⁸.

Data about African migrants in Germany is practically nonexistent. Different sources claim that Germany is not the primary destination for most African migrants. Most of them travelled to France, Spain or Greece. The Federal Office for Migration and Refugee estimates that the number of African immigrants in Europe will be increasing over the next few years, assuming that approx. 20,000 to 35,000 people will be arriving in Germany every year¹⁹. The reasons are said to be economic, political and ecological factors, e.g. Water shortage. The fact that the birth rate in Africa increases dramatically, is further seen as an aggravating factor. There has been a small community of Afro-Germans established for quite a long time.²⁰ The growth of communities with an African background can be observed in the past 20 years. Initially it was mainly young, male, asylum seekers arriving in Germany, now however family reunions and female migration is increasing. An estimate suggests that in 1984 approx. 124,500 African migrants lived in Germany, the number increased from 1990 to 2000 from 197,974 to 299,255²¹.

¹⁶ [Israelitische Kultusgemeinde München, Die Gemeinde, http://www.ikg-muenchen.de/index.php?id=38;](http://www.ikg-muenchen.de/index.php?id=38) accessed 15.07.10.

¹⁷ Günther Weiss, *Eine Kurzfassung über Geschichte, Kultur und Verfolgung,* http://www.zigeuner.de/sinti_und_roma_seit_600_jahren.htm; accessed 18.07.10

¹⁸ Ibidem, p. 34.

¹⁹ Migration-Info.de, *BAMF-Studie: Hohes Migrationspotenzial in Afrika,* http://www.migration-info.de/mub_artikel.php?id=100210, accessed 19.08.10.

²⁰ ISD-online, *Geschichte der ISD,* <http://www.isdonline.de/modules.php?name=Content&pa=showpage&pid=12>, accessed 19.8.10.

²¹ Institut für Ethnologien und Afrikastudien: *Afrikaner in Frankfurt - Migration, Netzwerke, Identitätspolitik, Ergebnisse einer Lehrforschung,* Frankfurt 2002 <http://www.ifeas.uni-mainz.de/workingpapers/Afrikaner.pdf> accessed 19.8.10.

Approximately 27,700 asylum seekers are currently living in Germany. In comparison to 2008 the Federal Office for Statistics noticed an increase of 25.2 per cent (from 22,085 to 27,649). While the number of Iraqi asylum seekers is similar to 2008 there is an increase from 657 to 3.375 asylum applications from Afghan citizens. There is also a general increase in asylum applications, especially from Iran, Nigeria and India. But compared to the last ten years the number of asylum seekers is still on a very low level²².

The Federal Office of Statistics maintains that approx. 466,000 people without any permission (undocumented migrants) are living in Germany. Recent estimates by the project CLANDESTINO²³ suggest that approximately 200,000 to 460,000 undocumented migrants are living in Germany. Based on the data collection by the Federal Office of Statistics the largest groups of undocumented migrants come from Turkey (29,555). Approx. 18,000 people were prevented from migrating to Germany in 2009, most of them coming from Iraq (10.8 per cent), Serbia (9.3per cent) and Turkey (9.2 per cent)²⁴. The data collection is often very imprecise and therefore statements made about the size of the group of undocumented is very unreliable, because of the very quick variation of this group, based on births, deaths and onward migration to neighbouring countries.

²²Bundesministerium des Inneren, *Rund 27.700 Asylanträge im Jahr 2009*, http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2010/01/asylzahlen_Dezember2009.html?nn=109632 ; accessed 21.07.10

²³HWWI, *Stocks of Irregular Migrants: Estimates for Germany*, http://irregular-migration.hwwi.de/typo3_upload/groups/31/3.Database_on_IrregMig/3.2.Stock_Tables/Germany_Estimates_IrregularMigration_Nov09.pdfhttp://irregular-migration.hwwi.net/Germany_Database.6165.0.html; accessed 21.07.10

²⁴Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung, BMI, Berlin, 2010.

V. Manifestations of racism and religious discrimination

V.i Employment

Evidence based research and testing, which emerged over the last years, is changing the discourse on the labour market integration of people with a migrant background. In recent years it has become evident that structural barriers not only exist for migrants with a low educational background but also negatively affects those migrants with high qualifications. Despite their high level of education they have to overcome stereotypical ethno-social perceptions, which their German counterparts are not confronted with. This is documented in a new study by the University of Constance²⁵. Researchers sent out thousands of applications for an internship with German and Turkish names of fictional Economics students. The applicants were indistinguishable regarding their qualifications and skills. Moreover, all candidates had German citizenship and all spoke German proficiently. Applicants with a Turkish name received 14% less favourable answers²⁶. A survey by the OECD came to the same conclusion. The study analyzed the situation of migrants in the labour market in 16 OECD-countries. While 90% of native Germans between 20-29 years hold a job, only 81% of young migrants do²⁷.

Access to the labour market is even more difficult for women wearing headscarves. This can be illustrated by the case of a young Muslim woman wearing a headscarf. She had a degree in Architecture and applied for a job as an engineer. Her application was rejected on the basis that a staff member with an obvious “Islamic attitude”, being represented by her headscarf as a “symbol of repression”, did not fit the corporate identity of the company. Thorsten Jäger from the “Inter-cultural Council” (Interkultureller Rat) points out, that this rejection is only the tip of the iceberg²⁸. A study by the “European Forum for Migration Studies” commissioned by the Federal Anti-discrimination body supports this suspicion and is looking into the problem of a high adverseness to Muslim women wearing headscarves.²⁹ Most of the employers consider these women with suspicion and as a result do not hire them. Behind these unfair hiring practices are deep-seated prejudices and stereotypes. A widespread

²⁵ Kaas, Leo and Christian Manger, *Ethnic Discrimination in Germany's Labour Market: A Field Experiment*, Discussion Paper No. 4741, IZA Bonn, 2010, <http://ftp.iza.org/dp4741.pdf>, accessed 20.8.10.

²⁶ Spiegel Online, *Tobias wirft Serkan aus dem Rennen*,

<http://www.spiegel.de/unispiegel/jobundberuf/0,1518,676649,00.html>, accessed 20.8.10.

and Kaas, Leo and Christian Manger, *Ethnic Discrimination in Germany's Labour Market: A Field Experiment*, Discussion Paper No. 4741, IZA Bonn, 2010, <http://ftp.iza.org/dp4741.pdf>, p. 6ff., accessed 20.8.10.

²⁷ Liebig, Thomas, *The Labour Market Integration of Immigrants in Germany*, www.oecd.org/dataoecd/28/5/38163889.pdf and UN, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Githu Muigai, http://www.aktioncourage.org/media/raw/UN_report_Germany_Racism.pdf, p. 12-13, accessed 20.8.10.

²⁸ TAZ.de, *Wer Kopftuch trägt, ist Islamistin*, <http://www.taz.de/1/politik/deutschland/artikel/1/wer-kopftuch-traegt-ist-islamistin/>, accessed 20.8.10.

²⁹ Europäisches Forum für Migrationsstudien, *Study on discrimination against Muslims in the labour market*, http://www.efms.uni-bamberg.de/prdads_e.htm, accessed 20.8.10.

discriminatory view is that women wearing headscarves are oppressed, inferior, and unable to speak German and are badly educated³⁰. Legal prohibitions for Muslim women wearing a headscarf in the public service, with a reference to the principle of neutrality of the state on the one side and the acceptance of exception clauses for “Christian-occidental traditions” by most of the Federal states highlight this bias towards head-scarf wearing Muslim women. “*Eight states-Baden-Württemberg, Bavaria, Berlin, Bremen, Hessen, Lower Saxony, North Rhine-Westphalia, and Saarland-have enacted legislation and policies to prohibit teachers in public schools from wearing certain visible items of religious clothing and symbols. In two states, Hessen and Berlin, the ban is even applied more widely, covering many civil servant roles*”³¹. According to Human Rights Watch these bans “*undercut individual autonomy and choice, privacy, and self expression, in similar ways to how they are violated in countries where women are forced to wear the headscarf*”³².

The UN Special Investigator for racism, Githu Muigai³³ has criticized that fact that foreign diplomas and qualifications are not recognized by Germany and therefore migrants often have to work in lower skilled jobs³⁴. The Federal Ministry of Labour and Social Affairs tried to solve the problem at the regional level by applying EU standards. A White Paper had been presented by the Federal Ministry of Education and Research, in which it is suggested that the variety of qualifications people who immigrated to Germany have, are evaluated in future in an easy procedure and that the qualifications and diplomas can be recognized accordingly³⁵.

Another area of discrimination in employment is related to the work place. The Federal Anti-Discrimination Agency (ADS) published their first report including the numbers of people who asked for advice or reported cases of discrimination. From August 2006 to December 2008 only 14.5 per cent were related to racist or ethnic discrimination³⁶. The UN Special Investigator for racism met with the Head

³⁰ Brochure basis&woege, p.13

³¹ Human Rights Watch, *Diskriminierung im Namen der Neutralität*, http://www.way-to-allah.com/dokument/germany0209dewebwcover_1.pdf, p. 1f., 12f., accessed 20.8.10.

³² Human Rights Watch, *Discrimination in the Name of Neutrality. Headscarf Bans for Teachers and Civil Servants in Germany*, Human Rights Watch, New York, 2009, http://www.hrw.org/sites/default/files/reports/germany0209_webwcover.pdf, accessed 20.8.10.

³³ Auswärtiges Amt, *Presserklärung des Sonderberichterstatters Muigai*, <http://www.auswaertiges-amt.de/DE/Aussenpolitik/Menschenrechte/Aktuell/090701-Muigai.html>, accessed 20.8.10.

³⁴ United Nations Assembly, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai – Mission to Germany*, http://www.aktioncourage.org/media/raw/UN_report_Germany_Racism.pdf, p. 13, accessed 20.8.10.

³⁵ Bundesministerium für Bildung und Forschung, *Ausländische Abschlüsse werden einfacher anerkannt*, <http://www.bmbf.de/press/2747.php> und

Eckpunkte der Bundesregierung „Verbesserung der Feststellung und Anerkennung von im Ausland erworbenen beruflichen Qualifikationen und Berufsabschlüssen“,

http://www.bmbf.de/_media/press/Pm1209-294Eckpunkte-Papier.pdf, accessed 20.8.10.

³⁶ Antidiskriminierungsstelle des Bundes, *Bericht über Schwerpunkte und Arbeit der Antidiskriminierungsstelle des Bundes*, Berlin, 2010,

http://www.antidiskriminierungsstelle.de/RedaktionBMFSFJ/RedaktionADS/PDF-Anlagen/Bericht_20Ausschuss-FSJ-21-4-2010 accessed 20.8.10.

of the Agency and pointed out that out of those 14.5 per cent a large number were related to harassment at the workplace³⁷. This is illustrated by the following example. An employee of Nigerian origin in a large enterprise reported that he received a lower wage than his white colleagues irrespective of the industrial arrangement. In addition he was not paid for doing overtime. Racist jokes were a daily occurrence and complaints were ineffective. The situation escalated when his colleagues became physical. The employee pressed charges against them and they were fined in court. This did not have any positive consequences in the workplace; instead he was sacked because of his alleged “provocations”³⁸.

The consequences of not tackling discriminatory practices are now becoming more and more visible for German society. Market research shows that every third Turkish graduate from Germany sees his future in Turkey. 41 per cent of the interviewed persons stated that it is a lack of feeling accepted and belonging, which motivates their decision³⁹. As a result the Federal Anti-Discrimination Agency initiated a project to introduce anonymous job applications in order to achieve more equal opportunities in recruitment⁴⁰.

Best Practice: Project ADA

The aim of the Project ADA (www.ada-bremen.de) is the formation of a center of excellence for education, qualification and consultancy respecting non-discrimination in the labour market. The target audience is young employees who are likely to become victims of discrimination, especially young people with a migrant background. Beyond that ADA wants to reach out to organizations and people who encounter discrimination in their field of work, to raise awareness on issues of discrimination and to qualify them.

V.ii Housing

At the beginning of 2010 the regional appeal court in Cologne reached a groundbreaking decision. Supported by the foundation “Living without Racism” (Leben ohne Rassismus) and the “Equal Treatment Office Aachen” (Gleichbehandlungsbüro -GGB- Aachen) an African family received 5.000 Euro compensation because they were refused a flat due to their ethnicity. The claim was initially dismissed by the regional court Aachen⁴¹. This individual case sheds

³⁷ United Nations Assembly, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai – Mission to Germany*, http://www.aktioncourage.org/media/raw/UN_report_Germany_Racism.pdf, p.7, accessed 20.8.10.

³⁸ ZEIT Online, *Gleichbehandlung Ehrensache*, <http://www.zeit.de/karriere/beruf/2010-03/diskriminierung-auslaender-arbeit>, accessed 20.8.10.

³⁹ MIGAZIN, *Jeder dritte türkische Akademiker sieht seine Zukunft in der Türkei*, <http://www.migazin.de/2009/04/21/jeder-dritte-tuerkische-akademiker-sieht-seine-zukunft-in-der-tuerkei>, accessed 20.8.10.

⁴⁰ Antidiskriminierungsstelle des Bundes, *Anonymisierte Bewerbungsverfahren - eine Initiative der Antidiskriminierungsstelle des Bundes*, <http://www.antidiskriminierungsstelle.de/ADS/Antidiskriminierungsstelle/aktuelles.did=151540.html>, accessed 20.8.10.

⁴¹ Für Chancengleichheit, gegen Diskriminierung ethnischer Minderheiten in NRW, <http://www.nrwgegendifskriminierung.de> accessed 20.8.10.

light on the more structural discrimination which is often covert. The UN-Investigator emphasized that discrimination in housing is one of the major problems for migrants and therefore sees a high relevance in the assessment of discrimination in the housing sector⁴². One important reason is that unequal treatment in the housing market appears subtly with general phrases like “Sorry, but the flat is already rented out”⁴³. Furthermore the complaints registered by official organizations and NGO's are not able to show the whole extent of discrimination in the housing market⁴⁴. Also the General Equal Treatment Act (AGG) features shortcomings. Flat owners for example who own less than 50 flats are not targeted by the AGG. This means that a large proportion of properties are excluded from an all-embracing protection from discrimination in the housing sector⁴⁵.

Social scientist Emsal Kılıç has analyzed the access of migrants pertaining to the housing market. In doing so, she applied the “Paired Ethnic Testing” as a method to identify discrimination⁴⁶. In the study a German and a Turkish woman with the same social and personal attributes applied for hundreds of vacant flats in Wilmersdorf and Neukölln (Berlin). The applications of the two women were identical, only the names were different⁴⁷. In Wilmersdorf the German applicant received six acceptances, one refusal and 93 of her requests were not answered. In return the Turkish candidate received six refusals, no acceptance and in 94 cases no reply. However, for the flats in Neukölln the Turkish candidate obtained 11 acceptances, four regrets and 85 no responses, whilst her German counterpart received 13 acceptances, two rejections, and 85 no responses⁴⁸. Finally the two women went to four viewings in Neukölln. Both were dressed in a modern fashion and spoke fluent German. It appeared that the Turkish subject received less information than her German counterpart. In the end the Turkish candidate received no call-back, while only the German applicant obtained positive confirmations.⁴⁹. The study reveals very clearly that it is virtually impossible for migrants to get access to good residential areas, like Wilmersdorf. Even in districts with a migrant population German applicants are explicitly

⁴² United Nations Assembly, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai – Mission to Germany*, http://www.aktioncourage.org/media/raw/UN_report_Germany_Racism.pdf p.12, accessed 20.8.10.

⁴³Carola Bluhm, Senatorin für Integration, Arbeit und Soziales- *Deutscher Name-halbe Miete? Gleichberechtigte Zugänge zum Wohnungsmarkt gewährleisten*, Schriften der Landesstelle für Gleichbehandlung- gegen Diskriminierung, Berlin 2010, S.4

⁴⁴Michail Beis, Europäische Agentur für Grundrechte, *Diskriminierung auf dem Wohnungsmarkt- eine europäische Bestandsaufnahme, Gleichberechtigte Zugänge zum Wohnungsmarkt gewährleisten*, Schriften der Landesstelle für Gleichbehandlung- gegen Diskriminierung, Berlin 2010, S.16

⁴⁵Carola Bluhm, Senatorin für Integration, Arbeit und Soziales- *Deutscher Name-halbe Miete? Gleichberechtigte Zugänge zum Wohnungsmarkt gewährleisten*, Schriften der Landesstelle für Gleichbehandlung- gegen Diskriminierung, Berlin 2010, p.5

⁴⁶Emsal Kılıç, *Diskriminierung von Migranten bei der Wohnungssuche- eine Untersuchung in Berlin*, Schriften der Landesstelle für Gleichbehandlung- gegen Diskriminierung, Berlin 2010, p.26

⁴⁷Berliner Zeitung, *Mietvertrag nur für Deutsche*, <http://www.berlinonline.de/berliner-zeitung/berlin/148078/148079.php>, accessed 20.8.10.

⁴⁸Kılıç, *Diskriminierung von Migranten bei der Wohnungssuche*, p.26 f.

⁴⁹Ibidem, p. 27.

preferred⁵⁰. The discrimination seems to be exclusively based on the foreign sounding name⁵¹ to which the conclusion can be drawn that there is no equal access to the housing market. The non-governmental organization “Planerladen e.V.” also investigated the chances of migrants’ in house hunting. Consequently they arranged a telephone study targeting real estate advertisements in North Rhine-Westphalia. 19% of 482 tested landlords favoured German rather than Turkish candidates. Similar to the study of Kiliç, income and education were not factors in acquiring a flat, even in “average” neighbourhoods⁵².

The result of these practices are that migrants are more likely to live in council houses under more cramped conditions and pay a higher rent than Germans⁵³. Especially people of Turkish descent live in such cramped conditions⁵⁴. The low quality of housing not only has effects on the neighbourhood, but also on the social prestige of the people living there. The Special Investigator of the United Nations, Githu Muigai, points that “*discrimination in the area of housing is one of the key factors that contributes to the process of ghettoization, where immigrants unable to find housing are forced to settle in certain ‘minority areas’*”⁵⁵. These structural effects of gentrified housing markets are individualized and often serve as an argument - especially by conservatives – to indicate that migrants do not want to integrate. The reality of unequal access to the housing market and the bad living conditions are disregarded⁵⁶.

Best Practice: Gender & Diversity

In cooperation with the “*Senate for Urban Affairs of the City of Berlin*”, the project “*Urban plus*”, four housing associations and the NGO “*Planerladen e.V.*” organised a workshop entitled “*Gender & Diversity*” to share experiences and problems encountered in the fields of anti-discrimination and conflict mediation⁵⁷.

⁵⁰ Ibidem, p. 28.

⁵¹ Der Tagesspiegel, *Ausländischer Name - keine Wohnung*,

<http://www.tagesspiegel.de/berlin/auslaendischer-name-keine-wohnung/1394308.html>, accessed 20.8.10.

⁵² Planerladen, *Planerladen untersuchte die Chancen von Migranten bei der Wohnungssuche anhand eines Telefon-Testings*,

[http://www.planerladen.de/50.html?&tx_ttnews\[pointer\]=7&tx_ttnews\[tt_news\]=208&tx_ttnews\[backPid\]=7&Hash=761ab8ce93](http://www.planerladen.de/50.html?&tx_ttnews[pointer]=7&tx_ttnews[tt_news]=208&tx_ttnews[backPid]=7&Hash=761ab8ce93)

⁵³ Lena Friedrich, Bundesamt für Migration und Flüchtlinge, *Integrationsreport Teil 4, Wohnen und innerstädtische Segregation von Migranten in Deutschland*, Working Paper 21, 2008, Nürnberg, p.36, 59, 6 and p.5, 28-32 and p.6, 36-38.

⁵⁴ Ibidem, p. 43.

⁵⁵ United Nations Assembly, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai – Mission to Germany*,

http://www.aktioncourage.de/media/raw/UN_report_Germany_Racism.pdf, p.12, accessed 23.8.10.

⁵⁶ Ibidem p.12, see also ECRI, *ECRI-Bericht über Deutschland*, http://www.aktioncourage.de/media/raw/DEU_EUROPA.pdf, p.27, accessed 23.8.10.

⁵⁷ Planerladen, *Planerladen berät im Rahmen eines Workshops Berliner Wohnungsgenossenschaften in den Bereichen Antidiskriminierungsarbeit und Konfliktvermittlung*, [http://www.planerladen.de/50.html?&tx_ttnews\[pointer\]=2&tx_ttnews\[tt_news\]=256&tx_ttnews\[backPid\]=7&Hash=3823485abb](http://www.planerladen.de/50.html?&tx_ttnews[pointer]=2&tx_ttnews[tt_news]=256&tx_ttnews[backPid]=7&Hash=3823485abb)

V.iii Education

Like every year, we have to mention that racism as such is still hardly addressed in German schools just as systematic monitoring of ethnic and religious discrimination and racist violence within schools is widely absent.

Figures documented by help desks show that ethnic discrimination within the education system is one of the major fields of discrimination. Cases reported in this field in Hamburg cover 11 to 15% of all reported cases⁵⁸. Figures by the Anti-discrimination association (advd) reflect that 22 of the 29 reported cases within the education system occurred in public schools⁵⁹. As the following two examples illustrate, many reported cases show that schools are not able or willing to support pupils adequately in cases of ethnic discrimination and to resolve such incidents.

A 19 year old student wearing a headscarf started at a vocational school. She arrived late on her first day due to inaccurate information provided by the school. Although she explained the situation several times the teacher sent her back telling her *"You do not belong in this class"*. Later one schoolmate reported to the student that after she left the classroom the teacher added *"And your headscarf as well does not belong here!"* The headmaster of the school intervened and spoke with the teacher outside the classroom. In this situation it appeared to the student that she heard the teacher saying *"I do not teach Neo-Nazis either"*. The headmaster encouraged the student to join the class. But she felt uncomfortable in the class not least because schoolmates verified that the teacher was xenophobic. As a result she approached a help desk. The counsellor summoned the Principal and reported the situation of the student and her wish to change the class. The Principal was very concerned for the student and he himself wanted her to change classes, however he also did not want the teacher to remain unpunished for the racist behaviour. In the end the Principal decided to allow the student to change the class and decided to take steps against the teacher⁶⁰.

Another example is that of a young pupil who was repeatedly insulted by his schoolmates because of the colour of his skin. One day his mother listened to a schoolmate shouting at her son "Go away! Go to where people with such a dirty skin colour like yours are coming from!" She observed that several teachers although noticing the situation did not intervene. She explained the problem to the class teacher, to the parents of the schoolmates and to the headmaster of the school. As a result she was accused of causing trouble in school. At the same time her son reported that he was punished for defending himself against the offences by his schoolmates. Supported by a helpdesk the mother wrote a letter

⁵⁸ basis&woge e.V., *Zwei Jahre Antidiskriminierungsberatung in Hamburg*, Hamburg, 2010. p. 11; ADB Köln/öffentlichkeit gegen Gewalt e.V., *Diskriminierungsfälle 2009*, Köln, 2010. p. 4; Landeshauptstadt München Direktorium AMIGRA, *Antidiskriminierungsarbeit für Menschen mit Migrationshintergrund*, München, 2009. p. 22

⁵⁹Jahresbericht 2009 des advd, *Auswertung der Diskriminierungsfälle in den Mitgliedsorganisationen*, Typoscript, 2010.

⁶⁰basis&woge e.V., *Zwei Jahre Antidiskriminierungsberatung in Hamburg*, Hamburg, 2010. p. 20

to the parents of her sons schoolmates and informed the school authority. The school authority did not intervene and mediation between the class teacher, the headmaster of the school and the mother remained without result. The mother was left with no option but to search for another school for her son⁶¹.

Since 2000 the lower opportunity of minority students to access higher education has been repeatedly reported⁶². In 2009 one of the central complaints of minority communities to the UN Special Investigator Githu Muigai was their impression “*that for children of migrants the educational system is not conducive to good performance leading to university-level qualification*”⁶³. The report sums up: “*The three-tiered system of German education, with early selection into separate levels of education, creates a bias against students whose mother tongue is not German. The Special Investigator believes that the overrepresentation of minority students in the lower school stratum is an indication of the problems in the three-tiered model*”⁶⁴. Besides this and other dynamics of institutional discrimination within the German school system⁶⁵ two more factors intensify the segregation in German schools especially in ethnic-mixed districts and therewith the disadvantage of minority students.

One decisive factor of segregation is the behaviour of parents from higher socioeconomic backgrounds and with a higher educational background. They show little willingness to send their children to schools where there are a high percentage of minority students. It is especially these attitudes of people with higher social status - no matter if they are of German or other ethnic backgrounds – which intensifies the segregation in ethnically-mixed districts⁶⁶.

The second factor is the disproportionate allocation of resources in the German education system. Whereas the financing of the lower secondary education in Germany (annual expenditure per student for all services: total 6632 USD, relative to GDP per capita 20 per cent) falls below the OECD median (annual expenditure per student for all services: total 7544 USD, relative to GDP per capita 23 per cent) the financing of the upper secondary education (annual expenditure per student for all services: total 9163 USD, relative to GDP per capita 28 per cent) exceeds the OECD median (annual expenditure per student for all services: total 8486 USD, relative to GDP per capita 26 per cent)⁶⁷. As minority students are overrepresented in the lower school stratum (16 per cent students of German origin but 36 per cent of minority students visit Hauptschule)

⁶¹ basis&woge e.V., *Zwei Jahre Antidiskriminierungsberatung in Hamburg*, Hamburg, 2010. p. 17/18

⁶² check also ENAR Shadow Reports on Germany 2008, 2006, 2004, 2003

⁶³ UN General Assembly - Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Githu Muigai (A/HRC/14/43/Add.2), 2010. p. 11

⁶⁴ Ibidem

⁶⁵ Gomolla, Mechtild/Radtke, Frank-Olaf, *Institutionelle Diskriminierung. Die Herstellung ethnischer Differenz in der Schule*, Opladen, Verlag für Sozialwissenschaften, 2002. and Weber, Martina, *Heterogenität im Schulalltag. Konstruktion ethnischer und geschlechtlicher Unterschiede*, Opladen, Leske+Budrich, 2003

⁶⁶ Sachverständigenrat deutscher Stiftungen für Integration und Migration, *Einwanderungsgesellschaft 2010. Jahresgutachten mit Integrationsbarometer*, 2010. p.152

⁶⁷ OECD, *Education at a Glance*, Paris, OECD Publishing, 2009. p. 202 and 206, figures from 2006

but underrepresented in the higher school stratum (37 per cent students of German origin but 22 per cent of minority students visit grammar school)⁶⁸ this is a further indication for structural discrimination in the German education system. Compared to the situation in 2005, today all states allow children of asylum seekers and children of parents whose deportation is intermitted full access to education⁶⁹. Only in Hessen is full access not allowed to children of parents whose deportation is intermitted. In contrast the majority of the states deny full access to education for children of undocumented migrants⁷⁰. Without full access to education children are disadvantaged in relation to insurance, free access to learning aids and funding of schoolbooks⁷¹. Children of undocumented migrants also face additional barriers: The law (§ 87 Abs. 2 AufenthG) dictates that Principals of schools have to report undocumented children to the foreign ministry. For fear of deportation many undocumented migrants do not send their children to school. Some states like Hamburg and Hessen however have resolved this problem by excusing principals from reporting undocumented children.⁷²

Best practice: 3-2-1-Mut! Empowermentprojekt⁷³

The project provides training in schools in Saxony, especially for students who had recently arrived from other countries. The training aims to enable the students to broaden their competencies in dealing with ethnic and racist discrimination and to develop practical coping strategies. The students are allowed to address and work through the victimization which is often internalized by the victims of discrimination.

V.iv Health

Research conducted in the health sector shows that persons with a migrant background profit less from the German health system than persons with no migration background. This occurs especially in rehabilitation facilities, where they are not able to participate in all rehab services and therefore are not able to take full advantage of a rehabilitation facility. In addition to the discrimination caused by cultural or religious differences, surveys suggest that migrants get less professional assistance in rehab, because of language barriers and less

⁶⁸ Autorengruppe Bildungsberichterstattung, *Bildung in Deutschland 2010*, Bielefeld, W. Bertelsmann Verlag, 2010. p. 65

⁶⁹ See: ENAR *Shadow Report on Germany 2005* p. 23

⁷⁰ Deutsches Institut für Menschenrechte. Cremer, Hendrik, *Das Recht auf Bildung für Kinder ohne Papiere*, Berlin, 2009. p. 11

⁷¹ Ibidem p. 12

⁷² Vogel, Dita/Aßner, Manuel, *Kinder ohne Aufenthaltsstatus – illegal im Land, legal in der Schule*, 2010. p. 10/11

⁷³ 3-2-1-Mut!, <http://drei-zwei-eins-mut.podspot.de/?page=3> accessed 7.7.2010 see also: Antidiskriminierungsbüro e.V., *Rassismus in Sachsen. Aktuelle Perspektiven 2010*, Leipzig, 2010. p. 61/62

information is communicated to them about their state of health⁷⁴. In conclusion the ethic council (Ethikrat) claims that language, cultural and religious differences are barriers to equal access to the health system and to equal medical treatment⁷⁵. Those barriers and shortcomings affect the participation of migrants in preventive health measures, because they know less about the health care system and health prevention. The very low immunization rate of migrant children, the seemingly unwillingness for volunteer medical checkups and a higher-than-average rate of migrants in emergency treatment are just a few indicators of such structural discrimination⁷⁶. How widespread discriminatory practices among doctors in the German health care system are is not really known. A study in Hamburg indicates that approx. 60 per cent of the polled Muslims are very satisfied or fairly satisfied with the German health care system. Only 7 per cent are really unsatisfied with the health care system⁷⁷.

Although the majority polled seems to be fairly satisfied, incidents of direct discrimination in the health care system are reported. In Hamburg a Muslim woman reported an incident with a practitioner. He was openly hostile, because he was of the opinion that her German was too weak to communicate with him. In reaction to this he ignored the woman's needs and sent her back home without providing treatment.⁷⁸ Another incident was reported by a Berlin newspaper. A 16 year old boy, called "Cihad" was not treated by a dentist. The reason for the refusal was the boy's name. The doctor interpreted his name as a declaration of war by Muslims on the West and felt sufficiently provoked to deny him treatment⁷⁹.

The gap between general satisfaction within the health care system and direct forms of discrimination show the difficulties in drawing clear conclusions pertaining to the scope of discrimination in the German health care system. One reason for this problem is the fact that Germany has no standardized way of documenting incidents of discrimination in the health care system and collecting such data to assess the scope of the problem. Currently it is only possible to analyze smaller regional samples captured by local NGO's or regional governmental bodies like the study by the ministry for labour, social affairs, health and family in Brandenburg, which explored the health situation of migrants in their region. The Ministry reported a general good health situation. About 80% of

⁷⁴Welt Online, *Migranten sind die Verlierer im Gesundheitswesen*, <http://www.welt.de/politik/deutschland/article7719675/Migranten-sind-die-Verlierer-im-Gesundheitswesen.htm> Accessed 18.08.2010

⁷⁵Deutscher Ethikrat, *Medizinethische Aspekte der kulturellen Wertvorstellungen und religiösen Werthaltungen*, <http://www.ethikrat.org/dateien/pdf/jahrestagung-2010-migration-und-gesundheit-praesentation-ilkilic.pdf> Accessed: 18.08.2010

⁷⁶Knipper, M. et al., *Migration und Gesundheit*, Berlin 2009, p. 6; http://www.kas.de/wf/doc/kas_16451-544-1-30.pdf Accessed 19.08.2010

⁷⁷Open Society Institute, *Muslims in Hamburg*, Budapest 2010, p. 144

⁷⁸Ibidem, p. 147.

⁷⁹Berliner Zeitung, *Zahnärztin verweigert Jugendlichen Behandlung*, <http://www.berlinonline.de/berliner-zeitung/archiv/.bin/dump.fcgi/2010/0206/politik/0170/index.html> Accessed: 18.08.2010.

migrants saw their health condition as good or satisfying⁸⁰. They found a clear correlation between the health condition and the recognition of language skills. Approximately 90 per cent of migrants, who considered their language skills as good, appraised their health situation as good as well⁸¹. Independent of health conditions only 69.4 per cent of all interviewed migrants used health care services.⁸².

In order to identify the correct requirements for the migrant population, a concise and comprehensive data collection method is needed, one which includes the specifics of the situation in which migrants live. Only this will prevent an inaccurate representation of the health care system and would increase its quality. A comprehensive method could also reduce the costs, because of the adjustment to detailed requirements and it could be possible to detect potential problems at an early stage⁸³. Currently there is a lack of exploratory studies in the field. The first steps for a move into a more inclusive data gathering system would be the collection of appropriate indicators, which capture the relevant aspects of the health situation of migrants⁸⁴.

The situation of undocumented migrants in the German health care system is still critical as the following example shows: “*An undocumented migrant, who had lived in Germany for 20 years, suffering from AIDS, did not dare – out of fear of being detected and expelled – to seek medical support before the end of July. He died some weeks later*”⁸⁵. The main reason for this problematic situation is the fear of being discovered by authorities. Practitioners and welfare offices in Germany have the obligation to inform the immigration authorities about illegal residents. Another problem is the costs of medical treatment, which are not covered by any health insurance, because their non-existing residence status doesn't allow them a health insurance and therefore they have to pay everything privately. Most of the undocumented migrants are poor, which makes self-supply impossible. They can use the legal right to medical treatment only in an emergency situation⁸⁶.

⁸⁰Ministerium für Arbeit, Soziales, Gesundheit und Familie des Landes Brandenburg, *Gesundheit für alle, Brandenburger Beiträge zur gesundheitlichen Situation von Zugewanderten 2009*, p. 20

⁸¹Ibidem, p. 21.

⁸²Ibidem, p. 26.

⁸³Die Bundesbeauftragte der Bundesregierung für Migration, Flüchtlinge und Integration: *Migrationssensible Datenerhebung für die Gesundheits- und Pflegeberichterstattung*, Berlin 2010, S. 8; <http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/2010-06-04-broschuere-migrationssensible-datenerhebung-fuer-die-gesundheits-und-pflegeberichterstattung-property=publicationFile.pdf> Accessed 19.08.2010.

⁸⁴Ibidem, p. 168.

⁸⁵Health for Undocumented Migrants and Asylum seekers network, *Fatal delay for an undocumented migrant*, <http://www.huma-network.org/National-policies/Germany/Fatal-delay-for-an-undocumented-migrant>, Accessed 19.09.2010.

⁸⁶HUMA Network, *Access to health care for undocumented migrants and asylum seekers in 10 EU countries*, Law and practice, 2009, S. 78f.; <http://www.huma-network.org/Publications-Resources/Our-publications/Law-and-practice.-Access-to-health-care-for-undocumented-migrants-and-asylum-seekers-in-10-EU-countrie> Accessed 19.08.2010.

Best practice: Training on Psycho-Social Need of Refugees⁸⁷

'Training on Psycho-Social Needs of Refugees' is a project to integrate important skills for a normal life. The training material allows professional and volunteer human rights workers to understand and train about the needs of refugees and asylum seekers and on the obstacles they encounter in their normal course of life. The handbook is subdivided in different modules about pre-flight, flight, post-flight experience. Each module provides case studies, key questions for a group discussion and further readings, to give students the opportunity to study on their own. Its objectives are the awareness about psycho-social needs of refugees, the sharing of experiences and knowledge on psycho-social needs of refugees and the improvement of the professional skills of human rights activists who work in the field of psycho-social needs of refugees. The project was developed by IHAD (Turkey), iMiR (Germany) and CEIPES (Italy) and supported by the Life-Long-Learning program Grundtvig of the EU⁸⁸.

V.v Policing and ethnic profiling

The situation of policing and ethnic profiling in Germany in 2009/2010 is assessed in a supplement, which can be found in the annex.

V.vi Racist violence and crime

There are about 30,000 right-wing extremists at present, 4,800 of which are believed to be organized neo-Nazis, in nearly 160 associations. Some 9,500 persons are believed to be ready to engage in racist violence. 13,000 extremists are organized in extreme right-wing political parties. However, NGO's estimate that the real number is higher. The figures show that extreme right-wing ideologies are still active⁸⁹. In 2001 a new definition system called 'Criminal Investigation Registration Service - Politically Motivated Criminality' (PMK) dealing with right-wing extremism, racial violence and hate crime (although the concept of racist hate crimes is not formally defined in the legislation⁹⁰) came into effect⁹¹. The new system offers the opportunity to clearly categorize crimes by right-wing perpetrators and it permits a differentiated registration of the characteristics of perpetrators, crimes and victims,⁹² but it did not solve the difficulties of the police in categorizing and judging right-wing crime⁹³.

⁸⁷ Training on psycho-social needs of refugees, <http://www.psycho-socialneedsofrefugees.eu/>, accessed 25.8.10.

⁸⁸ Respect Refugiados, Training on psycho-social needs of refugees, <http://respectrefugiados.org/EN/training-on-psycho-social-needs-of-refugees/>, Accessed 19.08.2010

⁸⁹ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance from Githu Muigai, 22.02 2010, http://www.ecoi.net/file_upload/470_1277470440_a-hrc-14-43-add-2-en.pdf, accessed 1.8.2010.

⁹⁰ Ibidem

⁹¹ Resolution by the Standing Committee of Ministers and Senators of the Interior for the Federal Government and States (Ständige Konferenz der Innenminister und –senatoren des Bundes und der Länder) from 9./10.5.2001

⁹² RAXEN National Report, 2004 Data Collection, p.41, www.efms.uni-bamberg.de/pdf/NAR_2004_DE.pdf

⁹³ Singer, J.P.: *Erfassung der politisch motivierten Kriminalität*, in: Kriminalistik 2004, H. 1, S. 32-37 (34)

For 2009 the final figures show 19.468 political motivated right-wing crimes in the whole of Germany⁹⁴, among them 13.295 propaganda crimes and 959 violent acts. 3,981 incidents have been registered as hate crimes, among them 849 propaganda crimes and 418 violent crimes. The state with the highest amount was Northrhine-Westfalia (87 violent acts, 688 other)⁹⁵.

Looking at trends over time, high numbers of hate crime (5,456) were reported in 2001, when the renewed definition system was first introduced. The general trend shows a decrease from 2003 to 2005 and remains stable at 4,300 to 4,500 incidences per year. There is a massive rise of nearly 20% to 5,367 cases in 2006, mainly relating to right-wing motivated crime, of these 644 cases involved bodily harm. The Ministry of the Interior explained this increase was due to the heated public and political debate regarding xenophobic violence during the world-cup held in Germany in 2006 and a strong police presence before and during this event. From 2007 to 2009 the numbers decreased to 4,793 (2008: 4,759; 2009: 3,981) hate crimes, including 642 (2008: 561; 2009: 418) violent attacks⁹⁶.

Crime experts conclude that the current approaches of data collection and classifying hate crime is still strongly orientated towards political attitudes and is not sufficient in providing a realistic survey of bias-motivated incidences⁹⁷. There is still a large unknown dimension of hate crimes hidden in unreported and unregistered crimes⁹⁸. The overall problem is that these categories are open to selective interpretations and subjective judgments by the police which makes it difficult to arrive at an ultimate and unanimous classification. This is further complicated by the lack of awareness by the police or even clouded by racist attitudes within the law enforcement agency, as even the Federal Police admits⁹⁹. The data provided in the hate crime statistics cannot be expected to represent a realistic picture of the current situation and should, arguably, be viewed rather critically, especially by those making criminal policy decisions¹⁰⁰. The regular controversy arising between victim-support groups and the law enforcement agencies about the differences in the recorded crimes is one about the image of the police and Germany and the legitimacy of civil society organizations

⁹⁴ The increase is due to the fact that often only in court the right-wing motivation is discovered and only then added to the political motivated crime statistics.

⁹⁵ Kleine Anfrage: *Nachmeldungen PMK-rechts für das Jahr 2009* – Nachfrage zur Antwort der Bundesregierung auf Bundestagsdrucksache 17/943 in Drucksache 17/1319 vom 8. April 2010, http://www.petra-pau.de/17_bundestag/dok/down/1701319.pdf, accessed 1.8.2010.

⁹⁶ For 2007/2008: Glet, Alke (2009): *The German Hate Crime Concept*, p. 8. For 2009: Kleine Anfrage: *Nachmeldungen PMK-rechts für das Jahr 2009* – Nachfrage zur Antwort der Bundesregierung auf Bundestagsdrucksache 17/943 in Drucksache 17/1319 vom 8. April 2010, http://www.petra-pau.de/17_bundestag/dok/down/1701319.pdf, accessed 1.8.2010.

⁹⁷ Kubink, M. (2002): *Fremdenfeindliche Straftaten – ein neuer Versuch der polizeilichen Registrierung und kriminalpolitischen Problembewältigung*. Monatsschrift für Kriminologie und Strafrechtsreform, p. 340.

⁹⁸ Aydin, Ö.D. (2006). *Die strafrechtliche Bekämpfung von Hassdelikten in Deutschland und in den Vereinigten Staaten von Amerika*. Freiburg. Freiburg: Schriftenreihe des Max-Planck-Instituts für ausländisches und internationales Strafrecht.

⁹⁹ Falk, B.: *Der Stand der Dinge. Anmerkungen zum Lagebild Rechtsextremismus und Fremdenfeindlichkeit*, in: *Kriminalistik* 2001, H. 1, p. 9-20

¹⁰⁰ Glet, Alke (2009): *German Hate Crime Concept*, p. 15.

recording right-wing crimes.¹⁰¹

This problematic way of conceptualizing racist violence as right-wing extremism is illustrated by the Islamophobic murder of Marwa El-Sherbini, which was widely reported in international media. In August 2008, Alex W. (a 29-year-old German citizen, born in Perm, Russia, migrated to Germany in 2003) insulted Marwa El-Sherbini (a 32-year-old pregnant Egyptian pharmacist, living in Dresden for a couple of years), who was wearing a headscarf in a public playground in Dresden, East Germany¹⁰². After Mrs. El-Sherbini asked him to move so as to allow her child to go on the swing, he aggressively insulted her, calling her an “Islamist” and “terrorist”. A 30-year-old onlooker called the police while Alex W. continued to insult the woman¹⁰³. Alex W. was later charged and sentenced to a fine of €780 but the prosecutor appealed that decision for a stronger punishment. At the following Court hearing on 1 July 2009 before the Regional Court Dresden, the accused strode across the courtroom and attacked Mrs. El-Sherbini with a knife, which he had concealed in his backpack and stabbed her at least 16 times. While trying to protect his wife the husband Elwy Ali-Okaz was also stabbed and seriously injured. A police officer, who was in court testifying in an unrelated case was called to the scene but mistook the husband, Mr. Elwy Ali-Okaz, for the attacker and shot him in the lower leg¹⁰⁴. El-Sherbini subsequently died. Alex W. was indicted for murder and attempted murder before the Regional Court Dresden¹⁰⁵. Although he obviously acted with a racist motivation, he was not believed to be a member of a right-wing organization. He admitted to the crime but denied his xenophobic motivation¹⁰⁶. The charges against the policemen who shot at Mrs. El-Sherbini's husband were dropped, because he had acted in a very chaotic courtroom setting and did so within seconds to prevent more harm¹⁰⁷. Later the Municipal Court of Erlangen issued a summary penalty order against the media researcher Sabine Schiffer for slander, because she allegedly falsely accused the police officer of shooting the husband for racist reasons. She replied by stating that Defamation-by-insult charges must not be allowed to be used to intimidate those who express unpopular views¹⁰⁸. Alex W argued that he was acting out of 'mere hatred of non-Europeans and Muslims'¹⁰⁹. He was sentenced to life imprisonment on 11 November 2009, but the racist motivation was not taken into account by the judge, because he was not organised in a right-wing group¹¹⁰.

¹⁰¹ Holzberger/Kleffner (2004): *Reform der polizeilichen Erfassung rechter Straftaten*; in: Bürgerrechte & Polizei/CILIP 77.

¹⁰² Wikipedia, *Marwa El-Sherbini*, http://de.wikipedia.org/wiki/Marwa_El-Sherbini , accessed 9.12.2010.

¹⁰³ Ibidem

¹⁰⁴ Ibidem

¹⁰⁵ Ibidem

¹⁰⁶ Ibidem

¹⁰⁷ MDR Sachsen, *Ermittlungsverfahren gegen Bundespolizisten eingestellt*, <http://www.mdr.de/sachsen/6972984.html> , accessed 5.8.2010.

¹⁰⁸ Solidarität mit Dr. Sabine Schiffer, *Penalty Order against Media Researcher after Murder Trial in Dresden*, http://www.solidaritaet-mit-dr-sabine-schiffer.de/dossier_en.htm , accessed 6.8.2010.

¹⁰⁹ MDR Sachsen, *Urteil gegen Mörder von Ägypterin rechtskräftig*, <http://www.mdr.de/sachsen/dresden/7422539.html>, accessed 5.8.2010.

¹¹⁰ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and

Witnesses portrayed Alex W. as a 'lone wolf' with strong nationalist attitudes, who emphasized several times that he was German and that this is stated in his passport. His mother claimed that 'his view of Islam, his hatred, was all a result of watching television'¹¹¹. Several art installations have been installed in Dresden to commemorate Marwa El-Sherbini. Since 4 August 2009 the police-unit responsible for combating right-wing extremism by the police in Saxony is investigating, as these installations have been repeatedly vandalized.¹¹²

The case of Marwa El-Sherbini was registered as the 149th victim of racist violence who died since the unification of Germany in the victim support organisation recording system.¹¹³ In the recording system of the law enforcement agencies she was registered as the 49th victim who died since unification.¹¹⁴

V.vii Access to goods and services in the public and private sector

Most widely discussed in the area of goods and services was the access to bars and clubs, like in Göttingen, where a female student of African origin was refused entrance to a disco by a bouncer. He said "*You have to leave; this place is not for black people*"¹¹⁵. According to the integration council of Göttingen, this incident was not an exception. Different clubs have already denied access to "foreigners" or people of another skin color. Already in 2005 a similar discrimination incident became public in the same club, but didn't have any consequences for the owner. The new incidents happen to "newcomers", mainly foreign students who are new to the city and who are not familiar with the racism in the club scene. 'Old' migrants know about the situation outside the clubs and avoid them¹¹⁶. Such incidents happen in other cities as well. In Geldern, in Northrhine Westfalia the "Anti-Rassismus Information Center - ARIC" documented similar incidents¹¹⁷. Institutions like the "Schufa" (Schutzgemeinschaft für allgemeine Kreditsicherung), which collects information on the creditworthiness of customers, have scoring systems, which are used e.g. by financial institutes or

related intolerance from Githu Muigai, 22.02 2010, http://www.ecoi.net/file_upload/470_1277470440_a-hrc-14-43-add-2-en.pdf, accessed 1.8.2010 and MDR Sachsen, Urteil gegen Möder von Ägypterin rechtskräftig, <http://www.mdr.de/sachsen/dresden/7422539.html>, accessed 5.8.2010.

¹¹¹ Ibidem

¹¹² MDR Sachsen, *LKA ermittelt wegen Vandalismus am Marwa-Mahnmal*, <http://www.mdr.de/sachsen/dresden/7545893.html>, accessed 5.8.2010.

¹¹³ Opferperspektive, *Beratungsstellen für Opfer rechter Gewalt in den ostdeutschen Bundesländern veröffentlichen Jahresstatistik 2009*, <http://www.opferperspektive.de/Home/996.html>, accessed 5.8.2010.

¹¹⁴ Ziercke, Jörg (2009): Vortrag: *Aktuelle Entwicklung politisch motiviert Kriminalität -rechts- und Vorstellung der Untersuchung "NPD Wahlmobilisierung und politisch motivierte Gewalt*. http://www.bka.de/pressemitteilungen/hintergrund/091217_BPK-NPD_StatementPR.pdfhttp://www.bka.de/pressemitteilungen/hintergrund/091217_BPK-NPD_StatementPR.pdf, accessed 5.8.2010.

¹¹⁵ Neues Deutschland, *Rassismus am Disko-Eingang*, <http://www.neues-deutschland.de/artikel/151038.rassismus-am-disko-eingang.html>, Accessed 17.08.2010.

¹¹⁶ Ibidem

¹¹⁷ RP online, *Klagen gegen E-dry möglich*, http://www.rp-online.de/niederrhein/nord/geldern/nachrichten/geldern/Klage-gegen-E-dry-moeglich_aid_523938.html, Accessed 19.08.2010

mail order companies to assess the financial situation of people. There is little known about the construction of these indicators and how the scores are calculated. The ombudsmen for data protection therefore want to force such organizations to make their scoring principles public. But it is clear that these scores include information about the ethnic and social origin, area of residence, age or irregular credit repayments¹¹⁸. Critics see some of these practices as discriminatory because it limits equal access to goods and services based on ethnic origin, which is closely connected to the distribution of ethnic minorities in urban space. An example: a doctor, who lives in the poor area of Neukölln in Berlin, where the majority are of migrant background, might not be able to get a mobile phone contract. Because of the bad score of the area he is living in, the cell phone company won't approve the contract¹¹⁹. The ombudsmen for data protection work in alternative ways to decrease the possibility for discrimination. Since 1. April 2010 the companies active in scoring, are obliged to expose their scoring data to the individual person, who then has the opportunity to control their data and make the whole scoring system more transparent¹²⁰.

Generally, it is difficult to assess the extent of discrimination in access to goods and services in the private and public sector in Germany. This has several reasons. One might be that data collection on a national level related to this topic does not exist yet. Existing reports concentrate on regional incidents. In Cologne the Anti-discrimination office published the following distribution of cases for 2009 in the area of goods and services¹²¹: administrative office: 33 per cent, service area: 11 per cent, others: 4 per cent. In Hamburg the NGO "basis & woge" reported for 2009 of 27 per cent of the cases related to public accommodation (ARGE¹²² etc.), of 5 per cent in the service area and 2.5 per cent others¹²³. In Munich AMIGRA reported for the period 2008 – 2009 the following distribution of discrimination reports in the area of goods and services¹²⁴: administration offices: 19.3 per cent, retail Industry: 3 per cent, external administration (police / ARGE etc.): 15 per cent, gastronomy: 6.3 per cent, local public transport: 6.7 per cent, others: 3.3 per cent. An inconsistent definition of the term "access to goods and services" and ways of counting makes it difficult to integrate and interpret the data to get a wider analysis of the area. A descriptive presentation of incidents, which clarifies exactly what the barriers in the access to goods and services are, would be helpful to draw a more evidence based picture of discrimination occurring in this field.

¹¹⁸ dradio.de, *Schufa und Co.*, <http://www.dradio.de/dlf/sendungen/marktplatz/1182710/>, Accessed 17/08/2010.

¹¹⁹ Ibidem

¹²⁰ Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit, *Schufa Scoring intransparent*, https://www.bfdi.bund.de/bfdi_forum/showthread.php?1432-Schufa-Scoring-intransparent&p=7285, accessed 26.8.10.

¹²¹ AntiDiskriminierungsbüro Köln/Öffentlichkeit gegen Gewalt e.V., *Diskriminierungsfälle 2009, Rassistische Diskriminierung in Deutschland*, Köln 2010, p. 4.

¹²² ARGE = the regional employment agency.

¹²³ basis & woge e.V., *Zwei Jahre Antidiskriminierungsberatung in Hamburg*, Hamburg 2010, p.13

¹²⁴ AMIGRA, *Antidiskriminierungsarbeit für Menschen mit Migrationshintergrund*, München 2010, p.22

Best practice: “Kreuzberg for Acceptance and Equal Treatment”¹²⁵

Kreuzberg is a densely populated district of Berlin heavily influenced by post-war reconstruction and migration, alternative political groups, financial crisis and gentrification. While Kreuzberg is generally a peaceful place, these complex political and economic factors sometimes lead to tension. These tensions are often connected to a process of exclusion against «others» and can manifest themselves in subtle forms of exclusion but also in verbal and physical attacks. Concerns about open expressions of homophobia, sexism, transphobia, hostility toward the elderly and disabled, anti-Semitism, anti-Islam and other racism has led to the «Kreuzberg for Acceptance and Equal Treatment» roundtable in 2009. A group of over 30 activists, business owners and NGOs got together to discuss ideas and strategies. The discussions centered on everyday discrimination and violence, intersecting forms of discrimination, the danger of putting different forms of discrimination into a hierarchy, and sexism, homophobia and transphobia in a pluralistic society. The project produced posters and a film entitled “What’s it got to do with me” about local Kreuzbergers and their strategies for empowerment.

V.viii Media, including the internet

There is an increasing coverage of discrimination incidents in the German media. But there is still discriminatory media coverage mostly related to Muslims in Germany, which goes hand in hand with the tabooing of racism as an aspect of reporting in the media.

Since 2001 the coverage of Muslims is dominated by security aspects and terrorism¹²⁶ and Muslim voices are rarely heard in the public debate. The main focus in the public controversy around Islam is absorbed by the so-called “Islamic critics” who act as “experts on Islam”, but often openly articulate racist resentments¹²⁷. The over-representation of such voices in the media is leading the debate into a direction, which reaffirms existing stereotypes. Following is such an example. At the beginning of 2010 a dispute arose in the feuilletons of the biggest newspapers in Germany about “Islamic criticism”¹²⁸. The flash point was an article by the renowned director of the Center for Research on Anti-Semitism (Zentrum für Antisemitismusforschung - ZfA) Wolfgang Benz in the *Süddeutsche Zeitung*. In his article Benz indicated that “Islamic critics” of the 21st century often resort to similar arguments for the construction of a hostile Islamic image like the anti-Semites of the 19th century for their concept of the

¹²⁵ GLADT, *Kreuzberg for Acceptance and Equal Treatment*, http://www.gladt.de/index.php?option=com_content&view=article&id=46&Itemid=42, accessed 26.8.10.

¹²⁶ Open Society Institute, *Muslims in Europe. A Report on 11 EU-Cities*, New York/London/Budapest, 2010, p.211

¹²⁷ Quantara.de, *Ventil für unterdrückte Intoleranz*, http://de.quantara.de/webcom/show_article.php/c-469/nr-1221/i.html, accessed 26.8.10.

¹²⁸ Schwarze, Benjamin, *Debatte um Islamkritik in deutschen Medien*, HEYMAT-Dossier, 2010, www.heyamat.hu-berlin.de/debatte_islamkritik, accessed 26.8.10.

Jewish enemy¹²⁹. In reaction to this a set of articles protested against his thesis. The scientist himself, who established the research on anti-Semitism and about the concentration camps in Germany was stigmatized as an anti-Semite and was indicted for pursuing an anti-Semitic agitation¹³⁰. This type of stigmatization of people criticizing the current discourse on Muslims in Germany, but as well the policy of the current Israeli government against Palestinians is part of the hegemonic consensus of the current political elite and related to the special relationship Germany has with Israel due to the Holocaust¹³¹.

Anti-Islamic coverage is not only restricted to tabloid newspapers, but also public broadcast stations like ARD or ZDF make use of that¹³². The consequences of such negative coverage were the focus of the study "*Muslims in the European 'Mediascape': Integration and Social cohesion Dynamics*"¹³³. The mistrust against mainstream media concerning objectivity and fair balance increased. 55 per cent of the interviewees hold the view that the mainstream media depicts Muslims negatively. As a consequence Muslims in Europe turn towards their own minority media, where they do not encounter discrimination based on their religion¹³⁴.

For a long time, opinion polls have demonstrated that negative media coverage coincides with widespread fear by the population of Muslims¹³⁵. This was sadly illustrated by the coverage of the already mentioned murder of Marwa El-Sherbini (see chapter on "racist violence"). The German media only reacted when the international, especially the media in the Muslim world began to cover the murder and radical protests began. Alex W. was then portrayed as an 'unemployed German-Russian' and no racist or islamophobic motives were mentioned. Empathy or compassion for the tragedy of a Muslim family was not articulated¹³⁶. After Axel Köhler, the head of KRM¹³⁷, spoke about the islamophobic atmosphere in the center of German society, conservative newspapers stressed, that Germany is endangered by Islamic attacks¹³⁸. More liberal newspapers argued,

¹²⁹ Sueddeutsche.de, *Hetzer mit Parallelen*, <http://www.sueddeutsche.de/politik/antisemiten-und-islamfeinde-hetzer-mit-parallelen-1.59486>, accessed 26.8.10.

¹³⁰ Endstation Rechts, *Die "kritische Theorie" frisst ihre Kinder – Antisemitismusforscher Wolfgang Benz ist plötzlich selbst ein Antisemit*, http://www.endstation-rechts.de/index.php?option=com_k2&view=item&id=4303:die-kritische-theorie-frisst-ihre-kinder-antisemitismusforscher-wolfgang-ist-pl%C3%B6tzlich-selbst-ein-antisemit&Itemid=618, accessed 26.8.10.

¹³¹ Zuckermann, Moshe, *"Antisemit". Ein Vorwurf als Herrschaftsinstrument*, Wien, Promedia, 2010.

¹³² Bundeszentrale für politische Bildung, *Das Islambild von ARD und ZDF*, http://www.bpb.de/publikationen/BSF019,2,0,Das_Islambild_von_ARD_und_ZDF.html#art2, accessed 26.8.10.

¹³³ M100, *Muslims in the European "Mediascape"*, http://www.m100potdam.org/M100/Sanssouci_Colloquium/2009/Podcasts/Muslims%20in%20the%20European%20Mediascape.pdf, accessed 26.8.10.

¹³⁴ Ibidem, p. 2.

¹³⁵ dieGesellschafter.de, *Medien und Islamfeindlichkeit*, <http://diegesellschafter.de/tagebuch/eintrag.php?eid=1430&z1=1282831404&z2=670142d06d01a610c70341caf0078881&>, accessed 26.8.10.

¹³⁶ de.indymedia.org, *In Gedenken an den Mord an Marwa El-Sherbini*, <http://de.indymedia.org/2010/07/285307.shtml>, accessed 5.8.2010.

¹³⁷ KRM = Koordinierungsrat der Muslime = Coordination Council of Muslims

¹³⁸ Welt online, *Islamisten fordern Vergeltung für Mord im Gericht*, <http://www.welt.de/politik/deutschland/article4069661/Islamisten-fordern-Vergeltung-fuer-Mord-im->

that the crime says a lot about prevailing Islamophobia in Russia, because Alex W. only came to Germany in 2003¹³⁹. The manner, in which the migration background of the perpetrator and the victim was stressed, portrayed the crime as a crime among foreigners and did not address the question in which way German society was involved in the murder.¹⁴⁰ The mother of Alex W. mentioned in court that her son might have learnt hatred toward Muslims “*from the media*”¹⁴¹. The murder of Marwa El-Sherbini also clearly demonstrates how racism is made invisible and how it is publicly declared as a taboo issue¹⁴². The media neglected the social background of Islamophobia and externalized the act to an incident involving migrants¹⁴³.

[Gericht.html](#) , accessed 5.8.2010.

¹³⁹ sueddeutsche.de, *Wir wollen Vergeltung*, <http://www.sueddeutsche.de/panorama/nach-mord-an-aegypterin-in-dresden-wir-wollen-vergeltung-1.93524> , accessed 5.8.2010.

¹⁴⁰ Nafisa, *Der Mord an Marwa El-Sherbini – Verschleierungen und Versäumnisse*, <http://www.nafisa.de/medienanalyse/der-mord-an-marwa-el-sherbini-%E2%80%93-verschleierungen-und-versaumnisse/> , accessed 5.8.2010.

¹⁴¹ dieGesellschafter.de, *Medien und Islamfeindlichkeit*, <http://diegesellschafter.de/tagebuch/eintrag.php?eid=1430&z1=1282138031&z2=5a49befb4bfdb6af2ba74afbeb83205c&>, accessed 26.8.10.

¹⁴² Rassismus in Sachsen. *Aktuelle Perspektiven 2010*, p.49, available at: <http://www.amadeu-antonio-stiftung.de/aktuelles/rassismus-in-sachsen/>, accessed 26.8.10 and <http://blog.derbraunemob.info/2009/11/09/aufruf-zur-prozessbegleitung-am-11-november-09-prozess-gegen-alex-wiens-wegen-mordes-an-marwa-el-sherbini-ausblendung-von-islamophobie-und-rassismus/>, accessed 26.8.10.

¹⁴³ Der Braune Mob, *Aufruf zur Prozessbegleitung am 11. November 09 gegen Alex Wiens wegen Mord an Marwa El-Sherbini: Ausblendung von Islamophobie und Rassismus*, <http://blog.derbraunemob.info/2009/11/09/aufruf-zur-prozessbegleitung-am-11-november-09-prozess-gegen-alex-wiens-wegen-mordes-an-marwa-el-sherbini-ausblendung-von-islamophobie-und-rassismus/>, accessed 26.8.10.

VI. Political and legal context

VI.i Anti- discrimination

Coinciding with the publication of the first governmental indicator based report on integration¹⁴⁴ in June 2009; the debate regarding ethnic monitoring has been revisited. As differentiated ethnic data is missing, the report documents the impossibility of drawing a coherent and differentiated picture of the social situation of ethnic minorities and the structural disadvantages they are experiencing. Ethnic monitoring is an ongoing controversial debate between stakeholders in the area of migration and anti-discrimination. Until now however, it has not lead to any political action to formulate a legal basis for the rules of ethnic monitoring. The Federal Government refuses demands by German and international anti-racist organizations to collect differentiated ethnic data following the principles of confidentiality, self-identification and that all data is given voluntarily. In addition there is no attention being given to this issue within the wider political, legal and public sphere. This perpetuates the narrow conceptualization of racism throughout society, portraying racism as only involving right-wing extremism and not acknowledging the indirect and structural discrimination beyond racist motivation or individual misconduct¹⁴⁵.

The policy and actions of the Federal Anti-discrimination Body between 2007 and 2009 focused on the public perception of the Equal Treatment Act (AGG) and corresponding concerns within the economy and the majority society¹⁴⁶, which has been criticized constantly by anti-discrimination organizations¹⁴⁷. However, the new director of the Anti-discrimination body seems to be turning the focus more onto the needs of people vulnerable to discrimination and onto establishing anti-discrimination infrastructure e.g. anonymous employment applications¹⁴⁸. As the office for statistics of the Federal Ministry of Justice (Bundesjustizstatistik) does not report cases related to the Equal Treatment Act (AGG), it is unclear as to how many cases had been taken to court since 2006. In 2008/2009 legal scientists did a survey of courts in eight states. The interviewed judges reported

¹⁴⁴ Beauftragte der Bundesregierung für Migration, *Flüchtlinge und Integration, Integration in Deutschland, Erster Integrationsbericht: Erprobung des Indikatorensets und Bericht zum bundesweiten Integrationsmonitoring*

¹⁴⁵ Heinrich Böll Stiftung, *Ethnic Monitoring als Instrument von Antidiskriminierungspolitik*, http://www.migration-boell.de/web/diversity/48_2281.asp, accessed 29.8.2010, see also: UN General Assembly - Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai (A/HRC/14/43/Add.2), 2010. p. 8/9, and taz.de, Deutschland auf halber Strecke, <http://www.taz.de/1/politik/deutschland/artikel/1/deutschland-auf-halber-strecke/>, accessed 2.9.2010.

¹⁴⁶ ZEIT online, *Bürger fürchten Überregulierung*, <http://www.zeit.de/online/2009/15/antidiskriminierung-studie>, accessed 31.8.2010 and <http://www.antidiskriminierung.org/?q=node/284>, accessed 31.8.2010

¹⁴⁷ Antidiskriminierungsverband Deutschland, *Leiterin der Antidiskriminierungsstelle des Bundes stellt die Interessen der Wirtschaft vor denen der Betroffenen, Antidiskriminierungsarbeit in Deutschland braucht eine Neuausrichtung*, <http://www.antidiskriminierung.org/?q=node/288>, Antidiskriminierungsverband Deutschland, *Leiterin der Antidiskriminierungsstelle des Bundes stellt die Interessen der Wirtschaft vor denen der Betroffenen*, <http://www.antidiskriminierung.org/?q=node/284>, accessed 31.8.2010.

¹⁴⁸ SPIEGEL online, *German Pilot Project Aims to Reduce Discrimination*, <http://www.spiegel.de/international/business/0,1518,713711,00.html>, accessed 31.8.2010.

1.121 cases related to the AGG. Only 4 per cent of these cases were related to ethnic or religious discrimination. Along with this survey the scientists interviewed 126 NGO's, 50 governmental services and 49 advocates dealing with discrimination. Their reports identified a huge variety of discrimination cases showing that ethnic and religious discrimination affects all areas of life of ethnic minorities and that discrimination is a constant part of their daily life. As the small number of court judgments does not convey the considerable extent of reported ethnic and religious discrimination, the scientists suggest that the discrepancy may be explained by the demanding proofs¹⁴⁹ required and the limited options of individuals to achieve their entitlements judicially¹⁵⁰. The European Union Minorities and Discrimination Survey 2009, reflecting the situation of ethnic minority members in the 27 EU member states, provides further figures and explanations: *“On average, 82% of those who were discriminated against in the past 12 months did not report their most recent experience of discrimination either at the place where it occurred or to a competent authority. The main reason given by all respondents for not reporting discrimination incidents was the belief that 'nothing would happen' as a result of reporting. Another common reason for not reporting was lack of knowledge of how to do reporting”*¹⁵¹.

According to the Federal Anti-discrimination body (ADS) seven cases of ethnic or religious discrimination have been judged within the period under review. Six of these cases were in the area of employment. As German language skills are a perpetual topic of the German debate on migration and integration this issue has been the focus in four of the cases. On two occasions applicants were denied employment based on the argument that their language skills were insufficient for the job. Both cases have been judged as discriminatory practice. Two other employers instructed their employees to improve their language skills. These cases have been judged as non-discriminatory practice. The Federal Labour Court banned a social worker from wearing a beret at school. She started wearing the beret after being forced by the school authority of North Rhine-Westphalia to remove her headscarf (hijab). The court treated the beret as religious demonstration which is forbidden by school authority through statutory regulation. By doing so, the court affirmed previous judgments that this kind of bans coincide with German Constitution, national legislation and the EU race directives. Four employees of Turkish background pressed charges against their employer for not removing xenophobic graffiti in the bathrooms. The court judged the xenophobic graffiti as harassment. Nevertheless the case was not successful because the employees had not submitted their entitlements within the given

¹⁴⁹ The shift of burden of proof is a new concept in the German juridical system. Therefore most lawyers and judges still see “indications” of acts of discrimination (which basically means that you need to give some evidence that the act happened) as “proof” and require a higher level of “evidence”, which is harder to achieve. The “shift of burden of proof” is practically not applied because it is not known by the actors at court.

¹⁵⁰ Heinrich Böll Stiftung, *Realität der Diskriminierung in Deutschland – Vermutungen und Fakten*, http://www.migration-boell.de/web/diversity/48_2525.asp, accessed 23.8.10.

¹⁵¹ European Agency for Fundamental Rights, EU Midis 2009, http://fra.europa.eu/fraWebsite/eu-midis/eumidis_main_results_report_en.htm, accessed 23.8.10.

time frame.¹⁵².

The seventh case was related to the area of housing: An African family received 5.000 Euros of compensation because they were not allowed to view a flat due to their skin colour and ethnic origin. Beforehand the claim was dismissed by the regional court Aachen¹⁵³.

An eighth case has been reported by a newspaper. A man of Turkish background was refused gym membership, whereas his German friend who applied for membership at the time was accepted. The case was not successful based on the argument that many members of the gym were of ethnic background. The court argued that the exclusion of the man could not be seen as discriminatory practice¹⁵⁴.

Anti-discrimination organizations welcomed the three above-mentioned convictions. The organizations highlighted that a high number of minority members wrongly accept a denial due to alleged poor language skills. That is why the corresponding conviction is seen as an encouragement for people to fight against this type of discrimination¹⁵⁵. Likewise the conviction concerning the refusal of flat viewing is seen as an encouragement for people affected by ethnic discrimination during house-hunting¹⁵⁶. Secondly this conviction is seen as especially valuable because the court expressed a very unambiguous understanding of ethnic and racial discrimination. The court assured that naming someone a "Neger" (Negro) nowadays is discrimination which is a grave infraction of someone's personal rights and as the refusal of a flat viewing due to skin colour indicates an entitlement for compensation¹⁵⁷.

The latter case uncovers a lot of the problems persons affected by discrimination

¹⁵² Antidiskriminierungsstelle des Bundes, *Ausgewählte Entscheidungen deutscher Gerichte zum Antidiskriminierungsrecht*, http://www.antidiskriminierungsstelle.de/RedaktionBMFSFJ/RedaktionADS/PDF-Anlagen/20100528_rechtsprechungsuebersicht.property=pdf,bereich=ads,sprache=de,rwb=true.pdf, p. 5-8, accessed 23.8.10.

¹⁵³ Ibidem, p. 47/48.

¹⁵⁴ Recklinghäuser Zeitung, *Gericht: Fitnessstudio diskriminiert keine Ausländer*, <http://www.recklinghaeuser-zeitung.de/lokales/recklinghausen/Gericht-Fitnessstudio-diskriminiert-keine-Auslaender;art1000,100031>, accessed 24.8.10.

¹⁵⁵ ADB, *Newsletter des Antidiskriminierungsbüros Sachsen, 01/2010*, <http://www.adb-sachsen.de/media/documents/1275468851.pdf?adb=c9rfo0m8pmj3u96qtq8j5mv96>, p. 8, accessed 23.08.2010. See also: Brotherskeeper, *Urteil wegen Diskriminierung nach dem Allgemeinen Gleichbehandlungsgesetz (AGG) - „Muttersprache Deutsch“ als Stellenanforderung ist diskriminierend*, http://brotherskeepers.org/blog/wp-content/uploads/2009/02/pm_agg_urteil_muttersprache_deutsch_23feb2009.pdf, accessed 23.08.2010.

¹⁵⁶ Der Braune Mob, *OLG Köln fällt wegweisendes Urteil gegen Diskriminierung auf dem Wohnungsmarkt und spricht Schwarzer Familie 5000 EUR Entschädigung wegen Diskriminierung bei der Wohnungssuche zu*, <http://blog.derbraunemob.info/2010/01/19/olg-koeln-faellt-wegweisendes-urteil-gegen-diskriminierung-auf-dem-wohnungsmarkt-und-spricht-schwarzer-familie-5000-eur-entschaedigung-wegen-diskriminierung-bei-der-wohnungssuche-zu/>, accessed 31.8.2010.

¹⁵⁷ Presse release of the foundation „Living without Racism“ and of the lawyer Busch, <http://www.nrwgegendiskriminierung.de/Stiftung/>, accessed 31.8.2010. See also: Antidiskriminierungsstelle des Bundes, *Ausgewählte Entscheidungen deutscher Gerichte zum Antidiskriminierungsrecht*, Berlin, 2010, p. 47, http://www.antidiskriminierungsstelle.de/ADS/root_did=140770.html, accessed 29.8.10.

have to face. The case has been clear-cut: The family had been told directly that they could not view the flat because of their skin colour and this had been repeated in front of non-involved witnesses. Nevertheless it took the family three years to obtain their rights, as courts in Aachen and Cologne were of the opinion that the case could not be won as their family application for legal aid was refused. The first court in Aachen dismissed the case. Without the support of anti-discrimination organizations the complaint would not have been launched and the family could not have survived the financial and psychological burden¹⁵⁸.

This picture corresponds with the NGO assessment of the German anti-discrimination infrastructure as a whole and the AGG itself. Since 2007 the advd, an association of German anti-discrimination organizations, repetitively indicated the shortcomings as following: no multilingual information campaigns to inform those vulnerable to discrimination about their rights and possibilities to defend themselves; lacking infrastructure of independent helpdesks that provide professional support locally¹⁵⁹; missing endowment funds for legal aid for people affected by discrimination; the missing "Verbandsklagerecht" (a kind of class action which allows alliances to act for people affected by discrimination in court for anti-discrimination organizations); the unrealized extension of respite to hand in entitlements from two to at least six months (currently victims of discrimination have to hand in their complaint within two months, which makes it often impossible to hand in complaints because the counselling process to explore other solutions for the victims often takes longer); the missing of a practicable shift of burden of proof (most judges and lawyer are not familiar with the concept of the shift of burden of proof)¹⁶⁰; the uncanceled article 19.3 of the AGG as an "approach path" for structural discriminations in the housing market (this is related to the urban planning practices, where a percentage of more than 20 per cent migrant and foreigners in an area are considered as problematic and therefore restrictions in accessing housing in those areas can be applied for migrants and foreigners)¹⁶¹. This article states that 'in the case of rental of

¹⁵⁸ <http://www.nrwgegendiskriminierung.de/Stiftung/> : Presse release of the foundation „Living without Racism“ and of the lawyer Busch, accessed 31.8.2010.

¹⁵⁹ Antidiskriminierungsverband Deutschland, *Antidiskriminierungsarbeit in Deutschland braucht Neuausrichtung*, <http://www.antidiskriminierung.org/?q=node/288>, accessed 31.8.2010.

¹⁶⁰ Antidiskriminierungsverband Deutschland, *Leiterin der Antidiskriminierungsstelle des Bundes stellt die Interessen der Wirtschaft vor denen der Betroffenen*, <http://www.antidiskriminierung.org/?q=node/284>, accessed 31.8.2010, Antidiskriminierungsverband Deutschland, *3 Jahre AGG: Der Betroffenenenschutz kommt zu kurz*, <http://www.antidiskriminierung.org/?q=node/289>, , accessed 31.8.2010; Antidiskriminierungsverband Deutschland, *Diskriminierung entspringt in der Mitte der Gesellschaft*, <http://www.antidiskriminierung.org/?q=node/304>, accessed 31.8.2010; Antidiskriminierungsverband Deutschland, *Stellungnahme zum einjährigen Bestehen des Allgemeinen Gleichstellungsgesetzes*, <http://www.antidiskriminierung.org/?q=Stellungnahme+1>, accessed 31.8.2010;. See also: Shadowreport 07 chapter 6.1. and Shadowreport 2008 p.28/29.

¹⁶¹ Senatorin für Integration, Arbeit und Soziales, *Deutscher Name-halbe Miete? Gleichberechtigte Zugänge zum Wohnungsmarkt gewährleisten*, Schriften der Landesstelle für Gleichbehandlung- gegen Diskriminierung, Berlin. 2010. p. 6. See also: ENAR Shadow Report on Germany 2007 chapter 6.1. and ENAR Shadow Report on Germany 2008 p.28/29 and Aktion Courage e.V., *Mission to Germany: UN-Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Githu Muigai. 22.02.2010, http://www.aktioncourage.de/media/raw/UN_report_Germany_Racism.pdf,S.12 and Aktion Courage e.V.,

housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.

The Federal Anti-discrimination body points out cases which are or might be pending with the European Court of Justice. It is a regulation within the Equal Treatment Act (AGG) that statements of victims have to be submitted within two months. This directive is the subject-matter of the case C-246/09 which is pending before the European Court of Justice. The complainant sees the regulation as contradictory to European legislation¹⁶².

All German courts affirmed that the ban of headscarves through statutory regulation of German school authorities is coinciding with German Constitution and national and European race directives. On the national level the decision in the beret case (see above) seems to be the final judgment to this question for now. The Federal Anti-discrimination body points out that it remains to be seen if a German court will bring this dispute before the European Court of Justice¹⁶³.

In addition to the judicial arguments in court the Coordinating Office for Equal Treatment - against Discrimination Berlin (Leitstelle für Gleichbehandlung - gegen Diskriminierung Berlin) have instructed the Faculty of Law of Humboldt-University Berlin to provide a legal opinion on whether the ban of headscarves through the statutory regulations of the Berlin authorities, the so called "Neutrality Law" is in line with the AGG. The "Neutrality Law" has been passed in 2005 and bans the wearing of religious and ideological symbols and clothing for judges, clerks within the law enforcement agencies, teachers and nursery nurses¹⁶⁴. The main justification within this law is an existing imperative dictating the state and its bodies to be neutral concerning religious and ideological opinions. Concerning the professional guild of teachers the judicial opinion points out that the blanket ban, which is dictated by the "Neutrality Law", is contradicting the requirements of the AGG to provide an appropriate regulation in every individual case¹⁶⁵. Furthermore the law brings forth serious infringements of the freedom of religion for religious dressed teachers and a direct and indirect discrimination which in the case of Muslim women wearing a headscarf leads to their total exclusion from working as a teacher¹⁶⁶. The expertise reveals that the supposed imperative to be neutral concerning religious beliefs is an unwarranted professional demand

Der Bericht der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI) über Deutschland vom 26.05.2009. , http://www.aktioncourage.de/media/raw/DEU_EUROPA.pdf, S.27.

¹⁶² Antidiskriminierungsstelle des Bundes, *Wichtige Urteile, Gesetzesinitiativen und Entwicklungen zum Diskriminierungsschutz*, Berlin, 2009. p. 8, <http://www.antidiskriminierungsstelle.de/ADS/Service/downloads.did=134620.html>, accessed 29.8.10.

¹⁶³ Ibidem, p. 12.

¹⁶⁴ Baer, Susanne/ Wiese, Kirsten, *Ist das Berliner Neutralitätsgesetz mit dem Allgemeinen Gleichbehandlungsgesetz vereinbar?*, Berlin, 2008.

http://www.berlin.de/imperia/md/content/lb_ads/neutrg_agg.pdf?start&ts=1273221058&file=neutrg_agg.pdf, p. 9, accessed 29.8.10.

¹⁶⁵ Ibidem, p.55.

¹⁶⁶ Ibidem, p. 43 and p. 49.

which is not justified by the German constitution. Likewise the blanket ban is seen as a disproportionate means to prevent religious conflicts at school or to avert the religious or ideological influence of teachers on pupils¹⁶⁷.

A second legal opinion had been worked out for the Coordinating Office for Equal Treatment - against Discrimination Berlin. This expertise reviewed whether there are sufficient regulations - by Berlin authorities, school authorities and private schools - which provide protection against discrimination in school including action and penalty as well as compensation. The expertise points out that regulations concerning the complaints procedure, the burden of proof, the ban on disciplinary treatment, the support by organizations, preventive actions and a more precise definition of discrimination are missing which is why definite regulations for handling discrimination in schools are required. Within statutory regulation of school authorities a ban of discrimination as well as standards how to deal with discrimination should be stipulated, including a possibility for complaining effectively and free of fear for those who feel discriminated in school, e.g. through establishing independent ombudsman or complaint services in schools; regulations concerning supporting activities of organizations; a ban on disciplinary treatment; a regulation concerning the shift of burden of proof; rules for announcing the rights of protection against discrimination and rules adequately qualifying all responsible persons in the school¹⁶⁸.

VI.ii Migration and integration

Germany's integration policy is double tracked and characterized by many inconsistencies. Despite (verbal) concessions made by the integration commissioner, Maria Böhmer (CDU), migrants are still faced with many obstacles.

This also includes the controversy regarding "option liability"¹⁶⁹, which forces children with a migrant background to decide whether they want to remain German and give up the citizenship of their parents or give up German citizenship. The "Intercultural Council" (Interkultureller Rat) pleads for the abolition of the "option liability" and initiated a campaign, which is supported by many prominent people¹⁷⁰. Non-governmental organizations like PRO ASYL¹⁷¹

¹⁶⁷ Ibidem, p. 43/44. See also: Landesstelle für Gleichbehandlung – gegen Diskriminierung, *Mit Kopftuch außen vor?*, Berlin,

http://www.berlin.de/imperia/md/content/lb_ads/kopftuch_klein.pdf?start&ts=1273221058&file=kopftuch_klein.pdf, accessed 3.9.2010.

¹⁶⁸ Baer, Susanne, *Schutz vor Diskriminierung im Bildungsbereich in Berlin aus juristischer Sicht*, Berlin, 2008. p. 43-44.

¹⁶⁹ Optionszwang, see ENAR Shadow Report. 2008

¹⁷⁰ Wider den Optionszwang, *Sie gehören zu uns – Wider den Optionszwang für Kinder unseres Landes*, <http://www.wider-den-optionszwang.de/aufruf.html>, accessed 19.8.2010.

¹⁷¹ Pro Asyl, NGOs: *Optionszwang im Staatsangehörigkeitsrecht abschaffen*, http://www.proasyl.de/de/presse/detail/news/ngos_optionszwang_im_staatsangehoerigkeitsrecht_abschaffen/back/657/, accessed 21.8.2010.

and foundations like the Expert council of German Foundations for Integration and Migration (Sachverständigenrat deutscher Stiftungen für Integration und Migration) supported this campaign¹⁷². Despite criticism from experts Maria Böhmer adheres to this policy. She rejects any criticism as “being backward” and “presumptuous”¹⁷³. However the figures speak for themselves: 95.500 people have been naturalized in 2008, which are 18.600 naturalizations less than in the previous year and a decrease of minus 16%, the lowest number since German unification¹⁷⁴. The federal government tries to curb this negative trend by making naturalization more attractive. In cooperation with the Federal states Maria Böhmer started an offensive for naturalization, including a new incentive that “good German speaking and integrated people” can get German citizenship after six instead of eight years¹⁷⁵. Among other things the language test and the citizenship regulation are made responsible for the decline¹⁷⁶.

In the political debate of integration in general, but especially in the debate about integration monitoring, almost every aspect of migrant life is illuminated to the smallest detail, like smoking or brushing teeth¹⁷⁷. This makes it all the more astonishing, that in the 400-sided National Integration Plan (NIP) the topic of discrimination is not even mentioned. That shows again that discrimination and racism is not clearly understood by most members in government and mainstream politicians¹⁷⁸. In 2008 the Federal government and the Federal states decided within the framework of the National Integration Plan (NIP) to implement a system which measures integration¹⁷⁹. This integration monitoring is the attempt to quantify an (in-) effective integration policy with the help of statistical indicators¹⁸⁰. Experts are analyzing different areas of migrant' life, like the education sector or their living situation, and comparing them with the German population. The monitoring includes 100 indicators covering 14 topics.

¹⁷² Sachverständigenrat deutsche Stiftungen für Migration und Interation. *Einwanderungsgesellschaft 2010 - Jahresgutachten 2010 mit Integrationsbarometer*. Berlin. 2010. http://www.wider-den-optionszwang.de/dl/Sachverstaendigenrat_Jahregutachten_2010.pdf, accessed 21.8.2010, S.14, 25, 71 ff., 187 ff.

¹⁷³ Migazin, *Kritik an der Optionsregelung ist rückwärtsgewandt und anmaßend*, <http://www.migazin.de/2009/06/26/bohmer-kritik-an-der-optionsregelung-ist-ruckwartsgewandt-und-anmasend/>, accessed 21.8.2010.

¹⁷⁴ Jurblog.de, *Die Einbürgerungsstatistik und das Integrations- und Einbürgerungsverständnis der Union*, <http://www.jurblog.de/2009/06/16/die-einbuengerungsstatistik-und-das-integrations-und-einbuengerungsverstaendnis-der-union/>, accessed 21.8.2010.

¹⁷⁵ Der Westen, *Offensive zur Einbürgerung starten*, <http://www.derwesten.de/waz/politik/Offensive-zur-Einbuengerung-starten-id318920.html>, accessed 21.8.2010.

¹⁷⁶ Welt online, *Sprachtest lässt Einbürgerungszahlen stark sinken*, <http://www.welt.de/politik/article3644860/Sprachtest-laesst-Einbuengerungszahlen-stark-sinken.html>, accessed 21.8.2010.

¹⁷⁷ <http://www.tagesspiegel.de/politik/deutschland/kritik-an-indikatoren-zur-integration/1534318.html>, accessed 30.8.2010.

¹⁷⁸ Heinrich Böll Stiftung, *Dossier Rassismus und Diskriminierung in Deutschland*, http://www.migration-boell.de/web/diversity/48_2493.asp, accessed 21.8.2010.

¹⁷⁹ Migration-Info.de, *Deutschland: „Erster Integrationsindikatorenbericht“*, http://www.migration-info.de/mub_artikel.php?id=090602, accessed 22.8.2010.

¹⁸⁰ Hamburger Weltwirtschaftsinstitut. *Integration in klaren Zahlen*. 2010. http://www.focus-migration.de/uploads/tx_wilpubdb/KD_16_IntMon_01.pdf, accessed 22.8.2010, page 1.

All populations with a migrant background are targeted by this monitoring¹⁸¹. The data-basis for the monitoring is the sample census of the “Federal Employment Office” (Bundesagentur für Arbeit), statistic of each of the Federal States and the police statistics on crime. The first report on integration indicators was conducted by the “Institut für Sozialforschung und Gesellschaftspolitik” (ISG) and the “Wissenschaftszentrums Berlin für Sozialforschung” (WZB)¹⁸². The report examines the progress of integration in the period between 2005 and 2007, but a deeper analysis and differentiated conclusions in all explored areas are not possible due to insufficient availability of data, which includes the newly introduced category of “migration background”. Most of the available data is still based on the old system of citizenship, which only recognizes “Germans” and “foreigners”¹⁸³. Many statistics especially in the area of education or labour market are still based on these dichotomous categories, with the result that successful migrants, when they obtain German citizenship, are then counted as Germans and statistically lose all their characteristics related to migration. This in turn limits the validity of the statistics. The sociologist at the WZB, Ruud Koopmanns, indicates that in these statistics, where “migration background” is available, it does not play a decisive role, when analyzing the different results between the migrant and the German population. He criticized the focus in the interpretation of data on the country of origin, because it constructs social as ethnic problems¹⁸⁴.

At the end of June the Integration Ministers of the Federal States agreed on a standardized indicator model comprising 28 criteria¹⁸⁵. The educationalist Prof. Dr. Franz Hamburger criticized the report on the integration indicators fiercely. He argued that the comparison between “Germans” and “foreigners” is incommensurable. Especially the high crime rate among foreigners is to be handled with care, in order not to feed into right-wing propaganda, which is often used in their election campaigns. 14 indicators in the area of social life, except for the “inter cultural opening” of organizations, “politics” and “xenophobia”, focus on the attributes of migrants. According to Hamburger the 100 indicators measures an object, the migrants, so accurately like no other part of the population was ever measured before. He stresses that “*the scientific methodology equals animal testing, because the object of the analysis is treated (...) like an unconscious non-subject.*” For him the most important question in the integration debate is the positioning and awareness of “local” actors and the impact of “their”

¹⁸¹Die Bundesregierung, *Funktioniert die Integration?*, <http://www.bundesregierung.de/Content/DE/Artikel/IB/Artikel/Integrationsmonitoring/2008-06-04-integrationsmonitoring.html>, accessed 22.8.2010.

¹⁸²Migration-Info.de, *Deutschland: „Erster Integrationsindikatorenbericht“*, http://www.migration-info.de/mub_artikel.php?id=090602, accessed 22.8.2010.

¹⁸³Ibidem and Die Bundesregierung, *Download des ersten Integrationsindikatorenberichts*, <http://www.bundesregierung.de/Content/DE/Artikel/IB/Artikel/Integrationsmonitoring/2009-06-10-download-erste-indikatorenbericht.html>, p. 22.

¹⁸⁴taz.de, *Dumm, faul, kriminell?* <http://www.taz.de/1/politik/deutschland/artikel/1/dumm-faul-kriminell/>, accessed 22.8.2010.

¹⁸⁵Migration-Info.de, *Deutschland: „Erster Integrationsindikatorenbericht“*, http://www.migration-info.de/mub_artikel.php?id=090602, accessed 22.8.10.

integration policy on the overall policy. But for a serious answer to this question no indicators are available ¹⁸⁶.

VI.iii Criminal justice

VI.iii.i Racism as a crime

German legislation defines right-wing activities as anti-constitutional activities with references to the Nazi past and to anti-Semitism. Against these core elements of right-wing extremism, there is comprehensive legislation and such crimes are punished severely. The German Parliament is currently drafting a law to implement the EU framework Decision on Racism and Xenophobia¹⁸⁷. However, despite these extensive and repressive instruments there is a stable basis of right-wing violence, which can rapidly increase in certain situations. The strict focus on right-wing extremism seems not to be working on its own and must be accompanied by additional dimensions¹⁸⁸. Although the political discourse has nominally shifted to include the fight against racism, the current discussions reflect the ideological nature of the definitions of extremist anti-constitutional activities, irrespective of their social context. For 2009 the Ministry of the Interior stressed the fact that the highest number of left-wing non-violent and violent crimes had been registered since 2001, as well as 'other crime', which is explained by protests and strikes against the German education system and against the decision by the government to overturn their stance and exit from nuclear energy¹⁸⁹. This adds to the already existing confusion, due to the incomparability of the different data recording systems as well as the unclear picture of the extent of racial violence in Germany.

Furthermore, the Legislature, the judicial and executive institutions as well as the media have an isolated view of racism and see it as only practiced by the extreme right. There is little assessment of everyday racism and discrimination which does not necessarily have a right-wing motivation. The European Commission against Racism and Intolerance emphasized that through this narrow understanding, manifestations of racism tend to be neglected in the criminal process. Members of visible minorities feel that only perpetrators belonging to or sympathizing with right-wing extremist groups are likely to be

¹⁸⁶ Migration – DBG Bildungswerk, *Der Vermessungswahn: Kommentar von Franz Hamburger, Professor für Pädagogik, Universität Mainz*, http://www.migration-online.de/beitrag_aWQ9Njc4Ng_.html, accessed 22.8.10.

¹⁸⁷ Entwurf eines Gesetzes zur Umsetzung des Rahmenbeschlusses 2008/913/JI des Rates vom 28. November 2008 zur strafrechtlichen Bekämpfung bestimmter Formen und Ausdrucksweisen von Rassismus und Fremdenfeindlichkeit und zur Umsetzung des Zusatzprotokolls vom 28. Januar 2003 zum Übereinkommen des Europarats vom 23. November 2001 über Computerkriminalität betreffend die Kriminalisierung mittels Computersystemen begangener Handlungen rassistischer und fremdenfeindlicher Art, <http://dip21.bundestag.de/dip21/btd/17/031/1703124.pdf>, accessed 27.11.2010.

¹⁸⁸ Britta Schellenberg (2008): *Strategien gegen Rechtsextremismus in Deutschland. Analyse der Gesetzgebung und Umsetzung des Rechts. Forschungsgruppe Zukunftsfragen, CAP-Analysen, Ausgabe 2, Mai 2008*, p. 16.

¹⁸⁹ [Bundesministerium des Inneren, Politisch motivierte Kriminalität im Jahr 2009](http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2010/03/politisch_motivierte_kriminalitaet.html), http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2010/03/politisch_motivierte_kriminalitaet.html, accessed 5.8.2010.

pinpointed in the criminal justice system, resulting in some racist offences not been classified as such if they are not associated with the far-right¹⁹⁰. Due to the association between hate crimes to right-wing extremism, many offences are not reported as hate crimes, but rather as physical attacks¹⁹¹. The lack of well-functioning instruments, which provide robust, reliable and coherent information on what is actually happening in the field and the lack of awareness among political parties and institutions (e.g. police, criminal justice, government) about racial violence outside of right-wing extremism makes it difficult to target racial violence with specific measure¹⁹².

In the former eastern Germany victim support organizations have been initiated by civil society, which deal with racist and other violence committed by right-wing extremist after racist incidents in the 1990's. They represent an alternative structure to the state dominated reporting structure.

ReachOut¹⁹³ is a counseling center for victims of right-wing extremist, racist or anti-Semitic violence in Berlin. They collect information on assaults and publish a chronicle of the attacks. The idea of building a registry started locally in Pankow and Lichtenberg-Hohenschönhausen in 2005. In 2006 one in Treptow-Köpenick, 2008 in Marzahn-Hellersdorf and 2009 in Friedrichshain-Kreuzberg was established. The objective of these registries is not only to record and to evaluate racist violence, but to make discrimination visible. Therefore it also includes low level incidents, like harassment, right-wing graffiti and other events, which normally do not get reported to the police.

In neighbouring Brandenburg the victim support organization "Opferperspektive"¹⁹⁴ researches and systematically records cases of right-wing violence. The approach developed by "Opferperspektive e.V." served as a model to be replicated in other states through the Civitas program and eight regional NGOs with a similar profile have been established since then in Eastern Germany.¹⁹⁵ They see typical victim groups along the criteria of nationality, ideology or sexual orientation. Through monitoring and victim counseling, Opferperspektive also advocates for socio-political interventions — processes that serve to help promote community solidarity with the victims. This serves the purpose of marginalizing right-wing extremism and violence.

Concerning the definition of "violent acts", the victim support centre AMAL¹⁹⁶ in

¹⁹⁰ Githu Muigai, 22.02.2010.

¹⁹¹ Ibidem

¹⁹² Schellenberg: *Strategien gegen Rechtsextremismus in Deutschland*, p. 16.

¹⁹³ Reachout Berlin, *Opferberatung und Bildung gegen Rechtsextremismus, Rassismus und Antisemitismus*, <http://www.reachoutberlin.de> accessed 5.8.2010.

¹⁹⁴ Opferperspektive, www.opferperspektive.de/, accessed 5.8.2010.

¹⁹⁵ Grell, Köhler, Pankowski, Sineaeva, Starnawski, Zinkiewicz (2008): »*Hate Crime Monitoring and Victim Assistance in Poland and Germany*«, p. 7.

¹⁹⁶ Mut gegen rechte Gewalt, *Das Ende vom Lied*, <http://www.mut-gegen-rechte-gewalt.de/debatte/rechtsblog/amal-apabiz/?pn=6&qid=d91c7c4c6f00745dbe0974b2002596b2&bs=10> accessed 5.8.2010.

Saxony also counts acts of threat/coercion, whereas the police categorize such acts as “other (non-violent) offences”.

“Lobbi-MV”¹⁹⁷ and “Mobile Opferberatung”¹⁹⁸ support victims in Mecklenburg-Vorpommern and in Sachsen-Anhalt. They see themselves as independent and subjective, because for them, right-wing violence is often aimed at people who are denied equal rights in their daily life, like refugees and immigrants, non-right-wing and alternative youth, homosexuals, people with disabilities and the homeless.

According to Europol, the German police seized thousands of recordings of suspected neo-Nazi music in a number of raids in 2009. According to ongoing police investigations, the production sites of the right-wing extremist recordings are not in Germany but rather in countries where the production, possession and distribution of this type of music are not punishable by law¹⁹⁹.

VI.iii.ii Counter terrorism

In March 2010 the German coordination of ENAR - NgR articulated its support for the new federal program against right-wing extremism which wants to strengthen diversity, tolerance and democracy. The NgR criticized the refocusing of parts of the program and the reallocation of resources towards the fight against “left-wing radicalism” and “Islamist radicals” by targeting child and youth programs to get pro-active in the field of radicalization. The German coordination fears that the focus on right-wing crime or hate crime may be diluted. The political and legal context of counter terrorism is more deeply discussed in the supplement on “ethnic profiling” which can be found in the supplement in annex 2.

VI.iii.iii Ethnic profiling

In 2010 the German coordination of ENAR - NgR adopted its new plan of action against racism. The last plan of action²⁰⁰ was adopted in 2000, two years after the founding of the German coordination. The new plan of action²⁰¹ evaluates the developments in the last years and places the focus of anti-racism in a changing environment. New activities will target the field of “Hate Crime” and “Ethnic Profiling” to fight new developments in Germany and Europe. The supplement in annex 2 gives a more detailed overview about the current developments and the legal and political context of ethnic profiling in Germany.

¹⁹⁷ Lobbi, www.lobbi-mv.de, accessed 5.8.2010.

¹⁹⁸ Mobile Beratung für Opfer rechter Gewalt, www.mobile-opferberatung.de, accessed 5.8.2010.

¹⁹⁹ EU Terrorism Situation and Trend Report TE-SAT 2010, p. 39, http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/Tesat2010.pdf, accessed 29.8.10.

²⁰⁰ Netz gegen Rassismus, für gleiche Rechte, <http://www.netz-gegen-rassismus.de/nationaler-aktionsplan-2000.php>, accessed 10.9.2010.

²⁰¹ The plan of action will be available at <http://www.netz-gegen-rassismus.de> after last changes have been included.

VI.iv Social inclusion

Monitoring on poverty and social exclusion is seen as a central precondition for combating exclusionary processes. During the last decade the Federal Government as well as the state governments has set up a regular reporting system. These reports examine the social situation in general as well as of particular population groups. They show the disproportionately high exclusion of people with a migrant background in all basic areas of life such as education, employment, health care, employment and civic participation. Concerning the risk of being poor, new data from Bavaria, Bremen, Rhineland-Palatinate and Saarland substantiate the findings of the “3rd Report on Poverty and Wealth of the Federal Government”²⁰². People with a migrant background are twice more likely to be at risk for poverty.²⁰³

Bremen and Rhineland-Palatinate report a set of actions to combat poverty and social exclusion of people with a migrant background. Many of them are part of the national social inclusion strategies highlighted in the “3rd Report on Poverty and Wealth of the Federal Government”.

A bunch of measures focus on abolishing structural barriers for disadvantaged children and youth in preschool and school education. These include enlarged and non-contributory preschool education, all-day schools, non-contributory learning aid and school reforms which lessens the selective effect of the three-tiered system of German education²⁰⁴ such as “Realschule plus” in Rhineland-Palatinate which transforms secondary General School (Hauptschule) and Intermediate Secondary School (Realschule) into an integrative form. In order to increase their upward mobility, students irrespective of individual capability are educated together on the basis of the class schedule of the grammar school during the fifth and sixth school year. By leaving the question of graduation to the very end, students are allowed to finish “Realschule plus” either after the ninth (graduation of secondary General School) or tenth school grade (graduation of Intermediate Secondary School)²⁰⁵. The social composition of pupils has an impact on the performance of the school as a whole. Parents of higher social status and higher educational background show little willingness to send their children to schools with a high quota of minority students²⁰⁶. That is why school reforms like those described above may breed just another generation of

²⁰²see ENAR Shadow Report on Germany 2008 p. 22.

²⁰³Bayerisches Staatsministerium für Arbeit und Sozialordnung, Familie und Frauen, Soziale Lage in Bayern 2010, p. 36; Otto-Blume-Institut für Sozialforschung und Gesellschaftspolitik, Sozialstudie Saar, Teilhabe und sozialer Zusammenhalt im Saarland, Köln, 2009. p. 38; Die Senatorin für Arbeit, Frauen, Gesundheit, Jugend und Soziales, Lebenslagen im Land Bremen, Armuts- und Reichtumsbericht des Senats der Freien Hansestadt Bremen 2009, Bremen, 2009. p. 73/74, Ministerium für Arbeit, Soziales, Gesundheit, Familie und Frauen Rheinland-Pfalz, Armut und Reichtum in Rheinland-Pfalz, Armuts- und Reichtumsbericht der Landesregierung 2009/2010, 2010. p. 16.

²⁰⁴see this report: V.iii Education

²⁰⁵Ministerium für Arbeit, Soziales, Gesundheit, Familie und Frauen Rheinland-Pfalz, *Armut und Reichtum in Rheinland-Pfalz, Armuts- und Reichtumsbericht der Landesregierung 2009/2010*, 2010. p. 110-112, see also: Rheinland Pfalz Ministerium für Bildung, Wissenschaft, Jugend und Kultur, <http://realschuleplus.rlp.de/>, accessed 6.9.2010.

²⁰⁶see this report: V.iii Education

segregated well-performing and non-performing schools. If so, the well-performing schools will be accessed by parents of higher social status and of a higher educational background. It is questionable if these schools will be available to children of minority members to a large extent.

“According to Ministry officials, the main problem Germany currently faces is (...) discrimination in hiring practices. This problem affects in particular young people with a migration background, who are subject to high unemployment rates”²⁰⁷. A second bunch of measures therefore focus on supporting access to apprenticeship/traineeship and work life, especially for youth without apprenticeship/traineeship or graduation. Measures include providing personal assistance in finding an occupational orientation and assisting with the search for an apprenticeship, mentoring young persons at the beginning of an apprenticeship to avoid dropout and possibilities to catch up on academics of secondary General School²⁰⁸. The focus on individual support in most of these measures can be qualified as compensating effects, which are generated by structural barriers. There is no structural approach to the problem. Bremen however highlights one possible structural approach, by establishing hiring quotas for people with a migrant background, thereby allowing for easier access to apprenticeship/traineeship in the public service²⁰⁹.

A third set of measures focus on supporting access to labour market for adults with a migrant background by making information accessible, counselling and differentiated qualification programs²¹⁰. These measures again focus on individual support instead of offering a structural approach to the problem. On the other hand the Bremen and Rhineland-Palatinate report a set of actions addressing structural barriers to employment, such as implementing diversity management within public services²¹¹. Likewise Bremen mainstreamed the promotion of the integration of people with a migrant background into the labour market within one of its main support programs. 30 per cent of the public support budget is set aside for people with a migrant background and they are supposed

²⁰⁷ UN General Assembly - Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai (A/HRC/14/43/Add.2), 2010. p. 12/13.

²⁰⁸ Ministerium für Arbeit, Soziales, Gesundheit, Familie und Frauen Rheinland-Pfalz, *Armut und Reichtum in Rheinland-Pfalz, Armuts- und Reichtumsbericht der Landesregierung 2009/2010*, 2010. p. 61.

²⁰⁹ Die Senatorin für Arbeit, Frauen, Gesundheit, Jugend und Soziales, *Lebenslagen im Land Bremen, Armuts- und Reichtumsbericht des Senats der Freien Hansestadt Bremen 2009*, Bremen, 2009. p. 395; see also: Die Senatorin für Arbeit, Frauen, Gesundheit, Jugend und Soziales, *Lebenslagen im Land Bremen, Konzeption zur Integration von Zuwanderern und Zuwanderinnen im Lande Bremen 2007-2011*, Bremen, 2008. p. 13/14

²¹⁰ Ministerium für Arbeit, Soziales, Gesundheit, Familie und Frauen Rheinland-Pfalz, *Armut und Reichtum in Rheinland-Pfalz, Armuts- und Reichtumsbericht der Landesregierung 2009/2010*, 2010. p. 162/163; Die Senatorin für Arbeit, Frauen, Gesundheit, Jugend und Soziales, *Lebenslagen im Land Bremen, Armuts- und Reichtumsbericht des Senats der Freien Hansestadt Bremen 2009*, Bremen, 2009. p. 394/395.

²¹¹ Ibidem, p. 388, 389, 394/395; Ministerium für Arbeit, Soziales, Gesundheit, Familie und Frauen Rheinland-Pfalz, *Armut und Reichtum in Rheinland-Pfalz, Armuts- und Reichtumsbericht der Landesregierung 2009/2010*, 2010. p. 162.

to involve 30 per cent of the participants²¹².

A fourth and especially large set of measures include several programs to improve the German language skills of adults, children and youth with a migrant background²¹³.

The reports do not provide any evaluation of the highlighted measures. Therefore it is impossible to estimate the extent to which they reach the target group and to which extent they lessen poverty and social exclusion of people with a migrant background. Likewise many of the highlighted measures are not well-defined, they are limited because they are project-oriented actions and they do not take a structural approach to the problems of poverty and social exclusion of people. Looking at the National Action Plan against Racism (NAP) as another strategy to combat social exclusion of people with a migrant background, civil society organisations criticise its narrow focus on right-wing extremism. The *“Plan does not propose any reform in key areas that directly contribute to the socioeconomic exclusion of migrants, such as the role of the education system in promoting equal opportunities, or the question of discrimination in areas such as housing and employment”*²¹⁴.

The Ministry for Family, the Aged, Women and Youth initiated the development of a National Strategic Plan for the promotion of civic engagement and participation. To do this in collaboration with independent experts and stakeholders of civil society, policy and economy the national forum for civic engagement and participation (Nationales Forum für Engagement und Partizipation) was established in 2009. One of ten topics discussed was civic engagement in the migrant society. Several recommendations were included in the “National Strategic Plan”, such as developing instruments to make the civic engagement of people with a migrant background more visible and more appreciated throughout society. Other recommendations have been diversity management within civil society organizations; backing up diversity management within civil society organizations with policies of civic and governmental agencies; strengthening the participation of people with a migrant background in political decision making by establishing voting rights on the local level for Third Country Nationals; the enhancement of the resources of migrant and minority organizations by sustainable financial support; increasing research on participation and civic engagement of people with a migrant background by involving them as well in the development of research designs and focusing itself, especially on barriers

²¹²Die Senatorin für Arbeit, Frauen, Gesundheit, Jugend und Soziales, Lebenslagen im Land Bremen, *Armuts- und Reichtumsbericht des Senats der Freien Hansestadt Bremen 2009*, Bremen, 2009. p.395.

²¹³Ibidem, p. 394/395; Ministerium für Arbeit, Soziales, Gesundheit, Familie und Frauen Rheinland-Pfalz, *Armut und Reichtum in Rheinland-Pfalz, Armuts- und Reichtumsbericht der Landesregierung 2009/2010*, 2010. p. 159-161.

²¹⁴UN General Assembly - Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Githu Muigai (A/HRC/14/43/Add.2), 2010. p. 9

for participation and engagement²¹⁵. The issue of migration and integration will be included in an upcoming decision by the Federal government on the National Strategic Plan. The concrete design of the plan in regard to the issue of migrant's participation is said to be enhanced by continuously developing the recommendations in 2011. To which extent the recommendations will be included in the National Strategic Plan, especially those with a focus on anti-discrimination are still an open question.

About 4, 4 million Third-Country nationals live in Germany, many of them for many years²¹⁶. Due to several reasons, including individual as well as structural barriers, they are not naturalized. In contrary to citizens of EU member states, they do not have any possibility to vote on the local level, nor participate in the political decision making processes nor in referendums. For these people participation in a "council for integration" (Integrationsrat) is the only possibility to politically influence their local environment, a job which is restricted to counselling. Over a period of two decades campaigns have been run to establish a voting right on the local level for Third-Country nationals to strengthen civic and political participation by ethnic and religious minorities. Draft laws to change the constitution have been formulated by e.g. the Green Party in 2007. Such initiatives are necessary because in 1990 the Federal Constitutional Court ruled that the establishment of a voting right on the local level for Third-Country nationals is against the constitution. The court argued that only German citizens are entitled to vote, because §20 of the Constitution states that all power comes from "the people". Until today opponents of a voting right on the local level for Third Country nationals hold onto this argument although citizens of EU member states do have a voting right on the local level since the end of 1995. Supported by a wide alliance a new campaign²¹⁷ started in 2009 and the Green Party and the SPD (Social Democrats) handed in new draft laws which have been discussed in the German Federal Parliament in March 2010²¹⁸. Trade unions, civil society organizations²¹⁹ and political parties (excluding the majority of the Christian Social Union and the Christian Democratic Union²²⁰); have contributed powerful support to the campaign. A number of city parliaments decided to instruct their local governments to get involved with calling upon the Bundestag (lower house) and the Bundesrat (upper house) to agree to the necessary change of constitution as well as calling upon the "Deutschen Städtetag" (a body which holds the interests of cities against the Federal Government, the Federal

²¹⁵ Bundesnetzwerk Bürgerschaftliches Engagement, *Nationales Forum für Engagement und Partizipation*, Erster Zwischenbericht, Berlin, 2009. p. 121-124.

²¹⁶ Der Paritätische Bayern, *Demokratie braucht jede Stimme - kommunales Wahlrecht für Alle* <http://www.paritaet-bayern.net/index.php?id=1675>, accessed 8.9.2010.

²¹⁷ see Demokratie braucht jede Stimme, <http://www.kommunales-wahlrecht.de/>, accessed 9.9.2010.

²¹⁸ Demokratie braucht jede Stimme, *Gesetzentwurf der SPD-Fraktion „Entwurf eines Gesetzes zur Änderung des Grundgesetzes (Artikel 28 Absatz 1)“ vom 16.03.2010 und Gesetzentwurf der Fraktion Bündnis 90/Die Grünen „Entwurf eines Gesetzes zur Änderung des Grundgesetzes (Artikel 28 Absatz 1 – Kommunales Ausländerwahlrecht)“ vom 23.03.2010* <http://www.demokratie.agaby.de/>, accessed 8.9.2010.

²¹⁹ E. g. see Der Paritätische Bayern, <http://www.paritaet-bayern.net/index.php?id=1675>; Interkultureller Rat, <http://www.interkultureller-rat.de/wir-ueber-uns/jahresberichte/>, all accessed 9.9.2010.

²²⁰ ZDF – Forum am Freitag, *Kommunales Wahlrecht*, <http://www.forumamfreitag.zdf.de/ZDFde/inhalt/13/0,1872,7690701,00.html>, accessed 8.9.2010

Parliament and the European Union) to initiate a collective campaign for establishing a voting right on the local level for Third Country nationals²²¹. The dedication of cities to this issue is rooted in the significant number of migrants without political rights especially in larger cities which is problematic for democratic legitimacy and acceptance²²². Nonetheless a cohesive alliance of German cities for establishing a voting right on the local level for Third Country nationals still does not exist. Although the chairman as well as the vice chairman of 'Deutsche Städttag', both Lord Mayors of two big cities (Munich and Frankfurt am Main) have supported the establishing of a voting right on the local level²²³, the 'Städttag' itself have rejected this request.

²²¹Demokratie braucht jede Stimme, <http://kommunales-wahlrecht.de/aktuelles.shtml>, accessed 8.9.2010; Hier wo ich lebe, will ich wählen, Immer mehr Städte für Kommunales Wahlrecht, <http://www.wahlrecht-fuer-migranten.de/xd/public/content/index.html>, accessed 8.9.2010. See also the brochure of the campaign 'Demokratie braucht jede Stimme' p. 15/16, kommunales-wahlrecht.de/files/Broschuere.pdf

²²²E. g. 22.000 adult inhabitants, that is 10% of the inhabitants of the city of Freiburg i.Br., are excluded from elections on the local level, see Freiburger Wahlkreis 100%, Wer in Freiburg lebt, soll auch wählen dürfen! Integration heißt Gleichberechtigung, <http://www.wahlkreis100.de/sites/home.htm>, accessed 8.9.2010

²²³brochure of the campaign 'Demokratie braucht jede Stimme' p. 14, kommunales-wahlrecht.de/files/Broschuere.pdf

VII. National recommendations

VII.i General

- Broadening of the understanding of racism in public discourses.
- To ensure that local governments have available effective legal and institutional frameworks to fight racism.

VII.ii Anti- discrimination

- **Expand the network of counselling and anti-discrimination offices** to improve the availability of data about discrimination. To achieve this better cooperation between private and public offices dealing with discrimination issues and a nationwide network of offices to improve the data collection and to help identify gaps in the protection from discrimination should be established. NGO's and official institutions should develop a framework for standardized data collection especially in the area of goods and services.
- **Finance more studies and research on discrimination.** These studies and research should not only collect cases of discrimination, but should also explore why victims of discrimination do not report such cases.
- **Establishing a round-table to assess discrimination in housing** and develop a strategy which makes the comprehensive set of obligations visible, in which the State has a proactive role to play.
- **Remove exceptions in the Equal Treatment Act (AGG)** related to discrimination of house owners owning less than 50 units and to art. 19/3 which relates to the social composition of the city.
- **Ban discrimination within statutory regulation of school authorities** and develop standards on how to deal with discrimination in school.
- **Introduction of ombudspersons in schools**, who are trained in handling discrimination and familiar with the rules for complaints procedures. Looking at how the burden of proof can be shifted, how victimization can be avoided, how associations can support the victim and how discrimination can be prevented. This should be accompanied by the introduction of a monitoring system, which can make discrimination visible and can help schools to avoid discrimination or to handle existing discrimination in an appropriate manner.
- **Make sure that there is compulsory school education free of charge** for children of tolerated refugees or of undocumented migrants.
- Inclusion in the residence law (§ 87 Abs. 2 Aufenthaltsgesetz) the **exception to report children of tolerated refugees or of undocumented migrants** for all schools, educational bodies and kindergartens.

VII.iii Migration and integration

- The actors of the integration debate should consider the topic of discrimination and exclusion and should **shift their perspective from a**

deficit view of the individual to a structural view.

- **Get rid of the forced option model.** Naturalization cannot function as an indicator of willingness for integration into German society. A prerequisite for integration is equality.

VII.iv Criminal justice

VII.iv.i Racism as a crime

- **Evaluate the existing legislation** directed against right-wing actors and activities and the role 'race' and ethnicity plays in the German legal framework to develop coherent legislation within the German legal framework.
- **Encourage a substantial multidisciplinary, transnational scientific exploration** of the nature and prevalence of the hate crime phenomenon in Germany. This should include an analysis as to how law enforcement agencies address and respond to such incidents and how the media, elite discourses and institutional frameworks influence national anti-hate speech policies as well as a broad academic discussion on the usefulness and the applicability of this concept to assist policy makers and law enforcement agencies to adequately address the problem.
- **Evaluation of the current statistics** on hate-motivated crime in order to reach a comprehensive system of data collection on a national level and to create an understanding of the characteristics and the actual extent to what may be considered a hate crime.
- **Independent evaluation of police operational guidelines** assessing and classifying 'hate motives' and exploring the handling of hate crimes by the criminal justice system to develop training strategies and increase continuous obligatory training for police officers.

VII.v Social inclusion

- Immediately starting, **fundamental and long-term evaluation of school reforms** to see if the expected positive and anti-discriminatory effects for children with a migrant background really exist or if they are inhibited by other excluding mechanisms, like heavy spatial segregation.
- **Establishing a policy of resource allocation** which counteracts the existing distribution of money in the education sector. These allocation policies should especially target primary and secondary schools in poor areas and areas with a high immigrant population by allocating additional funds to achieve the objectives of the 2008 Education summit.
- **Health insurers should provide better information** about the German health system targeting persons with a migrant background.
- Legal opinions, which **compare laws in the federal states and explore if there is a systematic exclusion of members of a particular religion from the labour market**, should be commissioned.

VIII. Conclusion

At the time of finalizing this shadow report a massive media campaign, has been initiated by the tabloid “Bild”, the notoriously Islamophobic weekly magazine “Der Spiegel”, the publishing house and a broad coalition of media and intellectuals, around Thilo Sarrazin, board member of the German Federal Bank. Mr Sarrazin openly declared in his newly published book that Muslims (mainly ethnic Turks and Arabs) are less intelligent than the average German population and through greater reproduction rates endanger the intelligence level of the whole country in the future.

The outcome and effects of this debate, which reflects both "natural racism" connected to Nazism and a "cultural racism" targeting Muslims as an inferior culture, are not yet clear.²²⁴ However it can already be estimated, that these assumptions are accepted by a substantial minority of Germans. New polls published at the beginning of September 2010 indicate that nearly 18 per cent would elect him if he created a party. That is in line with what political analysts mean when they speak of a potential of 20 per cent of the electorate, who would support a modernized, openly racist party defending “European values” against the “Muslim invasion”. It is however to be seen, if the rejection of his and other similar statements gain strength and change the tone towards Muslims and their public perception positively or if the opposite would happen and racist, anti-Muslim stereotypes, which have already claimed one Muslim female victim in the Egyptian Marwa El-Sherbini, are heightened even more.

These events show the need for the articulation of a new narrative on racism and migration because as described in the report, the focus on right-wing extremism prevents the visibility of ordinary racism in society. It is therefore necessary to improve the monitoring and voluntary ethnic data collection to in order to present it to the public as evidence of the exclusionary process. This aims to highlight that the difficulties with integration cannot only be explained with deficits on the part of the individual. This type of hypocrisy becomes visible in the contradictions about the “*Optionszwang*”, which forces young people with a migrant background to choose whether they want to remain German or not and at the same time the public wonders why the numbers of naturalizations are decreasing. The same is true for discrimination in the labour market. There is a public discourse on the lack of qualified workforce in key sectors of the German economy and at the same time everybody is concerned about the increase of emigration of well-educated and qualified young people of migrant background, mainly to Turkey. In this discourse on labour market access as well low qualifications are seen as individual problems, but nobody wants to talk about the structural problems within the German labour market, where higher education is not necessarily a guarantee for a qualified job. It’s time that German ideologies are unveiled and people’s needs and necessities are targeted!

²²⁴ Goldberg, David Theo and Ato Quayson (ed.) (2002), *Relocating Postcolonialism*. London, Blackwell

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X. Annex 1: List of abbreviations and terminology

advd = German Anti-discrimination Association
AGG = General Equal Treatment Act
AI = Amnesty International
AZG = Ausländerzentralregister = Central Registry of Aliens
BAMF = Federal Office for Migration and Refugees
CDU = Christian Democratic Union
CSU = Christian Social Union
DGB = Confederation of German Trade Unions
DIK = German Islam Conference
GAL = Green-Alternative List
GIMF = Global Islamic Media Front
HWWA = Hamburg Archive for World Economy
ICERD = International Convention on the Elimination of all Forms of Racial Discrimination.
NgR = Netz gegen Rassismus – Net Against Racism
NIP = National Plan to Integration
NPD = National Democratic Party Germany
NRW = North-Rhine-Westphalia
OSJI = Open Society Justice Initiative
SPD = Social Democratic Party



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