

**Совет по правам человека****Пятьдесят пятая сессия**

26 февраля — 5 апреля 2024 года

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие****Посещение Германии****Доклад Специального докладчика в области культурных прав  
Александры Ксантаки\* \*\****Резюме*

Специальный докладчик в области культурных прав Александра Ксантаки посетила Германию с 28 ноября по 9 декабря 2022 года. Цель визита состояла в том, чтобы на основе сотрудничества и конструктивного диалога получить представление о том, как правительство стремится осуществлять культурные права, а также выявить передовой опыт и возможные препятствия на пути поощрения и защиты культурных прав в Германии. Специальный докладчик затрагивает ряд ключевых вопросов, связанных с правом каждого человека участвовать в культурной жизни по своему выбору, т. е. иметь доступ к культурной жизни, принимать в ней участие и вносить свой вклад во все ее проявления, свободно выражать свои мировоззрения, ценности и образ жизни и взаимодействовать с другими. Она также занимается вопросами, связанными с представлением разнообразия в общественных местах и культурных учреждениях. Особое внимание она уделяет ЛГБТИК+ людям и мигрантам, в том числе беженцам, а также практикам в области увековечения памяти и исторических событий, связанным с прошлыми и недавними миграциями, и тому, как они способствуют формированию немецкой идентичности сегодня.

Многие рекомендации Специального докладчика направлены на то, чтобы внедрить передовой опыт, свидетелем которого она стала, в дело осуществления культурных прав в рамках долгосрочных стратегий, политики и правовых структур страны, с тем чтобы гарантировать полноценную реализацию этих прав для всех, в каждой земле страны, независимо от политической повестки дня и позиции большинства.

\* Настоящий доклад был передан в структуры конференционного обслуживания для обработки после установленного срока, с тем чтобы отразить в нем самую последнюю информацию.

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## Приложение

### Доклад Специального докладчика в области культурных прав Александры Ксантаки о ее миссии в Германии

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## I. Introduction

1. The Special Rapporteur in the field of cultural rights conducted a mission to Germany at the invitation of the Government from 28 November to 9 December 2022. She thanks the Government for the invitation to visit the country and for its cooperation, which allowed her to hold discussions on various aspects of her mandate.

2. During her mission, the Special Rapporteur visited Berlin, Bonn, Cologne, Düsseldorf and Leipzig. She held meetings with several government officials, at the federal, regional and local levels, who hold responsibility in the areas of international human rights; combating discrimination, including against Sinti and Roma; culture and cultural cooperation; family affairs; gender identity and sexual diversity; migration, refugees and integration; and diversity policies and social innovation. In addition, she held meetings with members of Parliament and representatives of cultural institutions and agencies. She also met with artists, academics, representatives of civil society and of cultural communities, as well as with representatives of the German Institute for Human Rights and the German Commission for the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Special Rapporteur thanks all those persons and institutions for their time, commitment and the wealth of information they shared with her. She also extends her thanks to the colleagues from United Nations agencies for their assistance.

## II. General context and framework

3. At the time of the Special Rapporteur's mission, the three-party coalition Government had been in power in Germany for just over a year. The coalition agreement included several promising commitments of high relevance for cultural rights and diversity, such as the drafting of the Participation Act, recognizing migrants' organizations as important partners; a review of the naturalization process to make it more accessible, by reducing the qualifying period to five years and allowing everyone to hold multiple nationalities; and campaigns for more acceptance of diversity and against various forms of racism and "anti-queer" sentiments.

4. The agreement also stated the intention of the Government to include culture as a State goal in the Constitution and referred to the need to foster arts, culture and diversity and to improve the social situation of artists and cultural workers. The Special Rapporteur hopes that, in drafting those important pieces of legislation, the Government will take the opportunity to include and implement cultural rights as enshrined – and as currently interpreted – in instruments of international human rights law.

### A. International human rights framework

5. Germany ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 17 December 1973; the covenants contain the most significant provisions for the protection of cultural rights. Articles 18, 19, 21, 22 and 27 of the International Covenant on Civil and Political Rights protect, respectively, the rights to freedom of thought, conscience and religion, to freedom of opinion and expression, including in the form of art, of peaceful assembly, and to freedom of association, as well as the rights of ethnic, religious and linguistic minorities to enjoy their own culture, to profess and practise their own religion and use their own language. Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights protect the right to education and the rights to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author.

6. Germany also has obligations with respect to cultural rights through other important international treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination

against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

7. The international human rights instruments and their corresponding obligations do not need a specific domestic bill to be incorporated into federal law. According to article 25 of the Basic Law of 1949 for the Federal Republic of Germany, the general rules of international law are an integral part of federal law and take precedence over federal law. Those provisions are, however, not directly applicable by the courts. Federal courts check that none of their decisions go against the provisions of international law. There is, however, no system of verification to ensure that implementation at the state level is compatible with the provisions of international law.

8. Germany has a good record regarding its cooperation with the various treaty bodies and the universal periodic review. It issued a standing invitation to the special procedures of the Human Rights Council in 2001, and, since then, has received 12 visits from mandate holders, including the present one. The Special Rapporteur encourages Germany to continue its constructive engagement with all United Nations human rights mechanisms.

9. The Special Rapporteur was glad to hear that Germany planned to have ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by March 2023.<sup>1</sup> The instrument will allow individuals to present complaints to the Committee on Economic, Social and Cultural Rights regarding violations of cultural rights and should contribute to strengthening the implementation of those rights at the national level.

10. Germany is also a party to various UNESCO conventions relevant for the implementation of cultural rights for all. Concerning heritage, it is party to the Convention concerning the Protection of the World Cultural and Natural Heritage, the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols, and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and has accepted the Convention for the Safeguarding of the Intangible Cultural Heritage. Concerning broader cultural policies, Germany has ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

## **B. Constitutional and legislative framework**

11. Germany is a federal republic, composed of 16 states (Länder) which have local governments and legislatures that enjoy considerable decentralization. This is an inheritance of its history, the current German territory having been unified under one rule for the first time only in 1871.

12. The Basic Law of 1949, which acts as the constitution of the country, begins with the obligation of all State authorities to respect and protect as inviolable human dignity and human rights constituting the basis of every community, of peace and of justice (art. 1). It guarantees the right to property ownership, freedom of movement, free choice of occupation, freedom of association, and equality before the law, and establishes social protections in the form of a welfare system, building a safety net protecting rights such as economic and social rights, including health protection, unemployment and disability compensation, maternity and childcare provisions, and pensions.

13. Cultural rights do not appear explicitly in the Constitution and the right to take part in cultural life is absent. Article 2 recognizes the right of a person to the free development of his or her personality, and article 5 protects the right of persons to freely express and disseminate their opinions in speech, writing and pictures, further proclaiming that arts and science, research and teaching is to be free. The two articles therefore cover broad aspects of cultural rights. Furthermore, article 3 protects the principle of non-discrimination, including on the basis of gender, language, origin, faith and political opinion. Article 4 establishes that freedom of faith and conscience and freedom to profess a religion or philosophical creed are

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<sup>1</sup> Germany acceded to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on 20 April 2023.

inviolable, and articles 8 and 9 protect the freedoms of assembly and association. All of the above-mentioned articles are important provisions for the full exercise of cultural rights by all. Germany is also bound by the Charter of Fundamental Rights of the European Union, including article 22 on the respect of cultural, religious and linguistic diversity.

14. Germany has a comprehensive system of protection of individual human rights supported by jurisprudence and the rule of law. The rights listed in the Constitution, including those directly relating to cultural rights, are directly applicable in law (art. 1.3). With regard to those international human rights not directly mentioned in the Constitution, the Special Rapporteur was told that monitoring at the federal level ensures that rules and legislation at the state or local level do not go against international provisions. The full implementation of the provisions of each international Convention remains, however, a competency of the individual states, and positive measures may be applied only on a voluntary basis.

## **1. Specific legislation**

15. The General Equal Treatment Act of 2006 incorporates four European Union anti-discrimination directives into German law to protect against discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. For the planned reform of that Act, the Independent Federal Commissioner for Anti-discrimination is calling for changes to allow claims to be filed against public bodies, to reverse the burden of proof to defending parties, and to include social status and sexual identity as prohibited grounds for discrimination. The Special Rapporteur hopes that the elimination of discrimination and negative cultural stereotypes in cultural activities and in the cultural sector will also be integrated into the revised instrument.

16. In March 2021, Germany adopted the LGBTI Inclusion Strategy for Foreign Policy and Development Cooperation, aiming to support civil society's LGBTI-related human rights activities. At the national level, an important piece of legislation on legal gender recognition, the Self-Determination Act, was being discussed during the time of the visit. The Special Rapporteur was told about the manifold difficulties related to the official recognition of a change in gender identity and she encourages the legislators to include in the instrument provisions for the related physical and mental health care of the persons concerned.

17. In August 2016, Germany adopted the Integration Act, which is aimed at the long-term integration of migrants into society. Initial orientation courses are targeted primarily at asylum-seekers and provide basic education to allow them to cope with everyday life, including with regard to certain values and norms of German society. The Act also established vocational German language courses to improve the employment opportunities of migrants. In 2020, a cooperation scheme was established under the National Action Plan on Integration involving the federal, state and local levels of government but consideration of culture under the scheme is reportedly marginal, mainly reduced to access to cultural institutions and language classes. The Special Rapporteur would encourage more reciprocity in the understanding of integration, and measures aimed at the education of the majority population regarding the migrants living within their regions.

18. In December 2022, the Government adopted a bill to strengthen measures promoting democracy, shaping diversity, preventing extremism and promoting civic education (Demokratieförderungsgesetz). One of the aims of the bill was improved support for civil society initiatives and organizations promoting democracy. The Special Rapporteur was also informed about the process for the adoption of the Participation Act, which could strengthen the existing system of a conference of states and other mechanisms ensuring the participation of all in law- and policymaking.

## **2. Broader policy areas relevant to cultural rights**

19. The right to education is not included in the Constitution. The Federal Ministry of Education and Research has a responsibility to address educational needs at every stage of life, with responsibility for non-school-based vocational training, training assistance and continuing education shared with the individual states. The Ministry also fosters social innovations in education and in promoting diversity and integration. The Special Rapporteur regrets that she was not able to meet with a representative from that ministry to discuss the

sharing of competencies, in particular with regard to aspects of education related to cultural rights, such as the teaching of languages, human rights and tolerance, representation of diversity and academic freedoms, and the “Integration through qualification” programme for migrants and refugees. Teaching the histories, values and philosophies of all sections of the population is an important aspect of cultural rights.

20. Competencies in the field of integration of migrants are also split between the federal, state and local levels. The Minister of State for Migration, Refugees and Integration is tasked with connecting the realities and demands of migrants and diasporas with policymaking initiatives, and with strengthening the participation of all migrants in German society. At the time of the visit, the Minister of State was working on the drafting of the Participation Act announced in the 2021 coalition agreement.

21. The Participation Act, in addition to requiring reports on participation from the various states, should make references to the right of all, with no distinction regarding legal status, to freely take part in cultural life, as established in article 15 of the International Covenant on Economic, Social and Cultural Rights and article 27 of the Universal Declaration of Human Rights, and as explained in general comment No. 21 (2009) of the Committee on Economic, Social and Cultural Rights. This also includes the right to take part in shaping culture (including narratives, values, practices and visions) and in any decision-making process that has an impact on cultural life broadly construed. Considering the absence of this right in the Constitution, explicit references to the international human rights obligations of Germany would be an important component of the Participation Act. The Special Rapporteur looks forward to learning more about the adoption and implementation of the Act when presenting her report.

22. The Special Rapporteur learned that the German Council for Sustainable Development had included cultural diversity, education for sustainable development and culture and development among its areas of focus, primarily implemented abroad by the Goethe Institute. As development and cultural rights have been one of the priorities of the Special Rapporteur and the theme of two of her reports, she hopes to collaborate with the Council to promote a greater recognition of cultural development and cultural rights both in the implementation of the 2030 Agenda for Sustainable Development and beyond, as a stand-alone goal.

### C. System of cultural governance

23. Germany is a party to five of the six main UNESCO conventions concerning heritage and has more than 50 properties inscribed on the World Heritage List. The German Commission for UNESCO is supported by the Federal Foreign Office but enjoys full independence.

24. The overarching cultural policy of Germany, overseen by the Parliamentary Committee on Cultural and Media Affairs, is aimed at guaranteeing the free development of the arts and facilitating access to arts and culture for all citizens. Through the constitutionally enshrined cultural federalism, states, municipalities and local governments share responsibility for supporting the arts and culture, including by providing creation and performance infrastructures, dissemination, awareness-raising and arts education. At the federal level, advice is provided on the legal framework but not on the substance of cultural policies. This is in many ways a commendable system based on subsidiarity, increasing consideration for local cultural diversity and bringing cultural decision-making processes closer to those concerned. Numerous public representatives expressed their commitment towards respecting local realities and not imposing a top-down agenda.

25. The Special Rapporteur shares, however, the concern of the Committee on Economic Social and Cultural Rights that such a decentralized system leads to a significant degree of disparity in the realization of cultural rights across the states. While Germany aims to respect local diversity, it also has a responsibility at the federal level to fulfil its obligations under the Covenant as the primary duty bearer,<sup>2</sup> which may require establishing minimum standards

<sup>2</sup> See [E/C.12/DEU/CO/6](#), paras. 5 and 6.

and guidelines to ensure all people, regardless of their place of residence, can fully enjoy and exercise their cultural rights. She found the discussion with representatives of the Parliamentary Committees on Cultural and Media Affairs and on Internal Affairs and Community on these disparities and how to overcome them insightful.

26. According to the quadrennial periodic report of Germany to UNESCO in 2020,<sup>3</sup> public expenditure in culture and the arts represented 1.73 per cent of total public spending in 2018, with more than 80 per cent of it coming from the individual states. At the municipal level, however, securing consistent funding for cultural institutions and supporting free access to performance spaces to ensure artists could avoid the precarity inherent in their profession was still a major challenge.

27. Areas of competency at the federal level are stipulated in the Constitution or arise from the Government's obligation to represent the State as a whole. The Minister of State for Culture and the Media, who reports directly to the Chancellor, has five areas of competency, including basic rights, promotion of the arts and culture, remembrance, including colonialism, and heritage and society, including diversity.<sup>4</sup>

28. The Office of the Minister of State for Culture and the Media provides funding for approximately 200 cultural institutions across Germany, as well as for the important 360° Fund for New City Cultures. This independent fund is aimed at supporting the development of, and cooperation between, artistic institutions and certain important festivals. It provides 50 per cent of the funding for diversity agents on the staff of participating cultural institutions and a continuing training programme to increase diversity in the structures of those institutions and in the content they present. The Minister of State is also invested in the recovery of the cultural sector from the impacts of budget cuts imposed during the coronavirus disease (COVID-19) pandemic.

29. Support for international cooperation in the performing arts, literature and film sectors is a significant part of the cultural relations and education policy of Germany. Artist mobility and exchange are promoted through artist residencies and fellowships from the municipalities, the states and the Federal Government, as well as from foundations. The Federal Foreign Office also has a sector dedicated to culture. The Special Rapporteur was introduced to the Martin Roth Initiative, which supports artists who are persecuted in their home country in reaching safer places, either in Germany or in a third country; to the network of Goethe Institutes; and to Kulturweit, a programme of the German Commission for UNESCO that organizes stays abroad for young people during which they volunteer in cultural and educational institutions.

### **III. Realizing cultural rights in Germany: specific issues**

#### **A. Awareness of cultural rights standards in all public bodies**

30. Throughout her visit, the Special Rapporteur observed the need to strengthen the common messages that derive from the international standards on cultural rights at the national level. The specific obligations that Germany has undertaken by signing and ratifying international instruments are not always clear to the administration at various levels, and there is not always awareness regarding the role of each department in relation to implementing or monitoring those obligations.

31. Although the arts and culture are free according to the Constitution, rights and freedoms in the field of culture, and in particular the manifold implications of the right to take part in cultural life, are not explicitly recognized. Representatives of the Government indicated that one reason for that was to avoid the financial implications that would derive from recognizing such rights explicitly, including the need for the Government to provide means for their full realization. The Special Rapporteur stresses that Germany already has an obligation to respect, protect and fully implement cultural rights for all, including to ensure

<sup>3</sup> Available at <https://en.unesco.org/creativity/governance/periodic-reports/submission/6827>.

<sup>4</sup> See [www.kulturstaatsministerin.de/DE/startseite/startseite\\_node.html](http://www.kulturstaatsministerin.de/DE/startseite/startseite_node.html) (in German).

favourable conditions and sufficient financial resources for their exercise. Fulfilling such international obligations is the responsibility of all levels of government and all public institutions, across all relevant sectors of public policy.

32. United Nations human rights monitoring bodies regularly remind Governments of the need to raise awareness nationally of international standards.<sup>5</sup> Explicit reference to cultural rights would increase the visibility and understanding of such rights and help ensure that all relevant public institutions and bodies play their role in meeting the country's existing obligations. The Special Rapporteur understands that, in a federal system, the monitoring function of each international instrument may be coordinated by a specific ministry, and the competencies may be divided between the various levels of government. Nevertheless, and in particular for human rights instruments as broad as the two International Covenants, all government bodies should be fully informed of the human rights guidance that exists at the international level, understand their role in upholding such rights within their functions and have the necessary capacity to contribute to their explicit implementation and monitoring. A federal system, with its ability to ensure more direct participation of its citizens and involvement of a diversity of voices in decision-making processes, should be a strength in upholding human rights responsibilities, not an excuse for incomplete or weak oversight.

33. The Special Rapporteur was not able to ascertain how new international standards and discussions related to the International Covenant on Economic, Social and Cultural Rights are communicated effectively to all relevant public institutions and authorities. From her discussions with the relevant public institutions and authorities, she noted a disconnect between international and national laws, and a lack of awareness of the broad scope of cultural rights, including the right of each person to participate in decision-making processes that relate to his or her way of life, as well as of the guidance regarding respect for cultural diversity. She worries that many decisions that have an impact on cultural rights are taken without taking international human rights law and standards into consideration.

34. More discussion needs to be conducted among different public bodies on the international human rights standards relating to cultural matters. The Special Rapporteur encourages Germany to consider creating specific training on cultural rights and to strengthen the ability of judges, prosecutors and lawyers to directly apply or invoke the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the optional protocols thereto, in national courts.

## **B. Right of all to take part in cultural life**

35. The Special Rapporteur was told that discrimination in the right to participate in cultural life was not uncommon and that the extent of the obligations relating to this right was not well known. While the General Equal Treatment Act of 2006 applies to the fields of work and civil law, it does not apply to all areas of law. Furthermore, in practice, people are still excluded from private clubs on the basis of skin colour, real or perceived origin or other grounds, despite the fact that such discrimination is illegal. She was also informed that taking a case of discrimination to court was not always possible or easy.

36. One difficulty in upholding this right without discrimination stems from the distinction in law and policies between migrants and persons of migrant background on the one hand, and Germans, on the other. When considering the policy approach of aiming to integrate migrants, the Special Rapporteur heard about the wide availability of public-funded German language classes, including vocational language courses, and about orientation courses that introduced certain German values and ways of interacting in German society, such as the significance of the free and democratic order, the federal structure, the welfare system, equal rights, tolerance and religious freedom. These are all important resources for migrants that can help them to overcome initial language barriers and facilitate adaptation. Cultural integration measures were described to the Special Rapporteur as being aimed at building and fostering a sense of belonging to society. The sense of belonging to a society,

<sup>5</sup> See [CERD/C/DEU/CO/19-22](#), paras. 7, 11 (c), 16 and 24, and [E/C.12/DEU/CO/6](#), para. 65.

however, can only develop in an amount proportionate to society's acknowledgment of multiculturalism and reciprocal efforts to understand one another.

37. It therefore needs to be understood that integration is a two-way road, where each person's path is respected and public spaces normalize diversity as part of the ecosystem of society, and where curiosity for the other is fostered. The Special Rapporteur did not hear much about coherent, permanent structures for teaching all individuals living in Germany about the values of migrants and also allowing and strengthening the infusion of such values into the shared vision and future of the country. An important step in the right direction would be to include, under the Equal Treatment Act, a general obligation for public institutions, including courts, to take positive measures to facilitate interactions in languages other than German, or other forms of accommodation. Another possible step would be to include the effective participation of migrants in designing the German language classes intended to help them integrate, thereby including their knowledge and experience. Representatives of the Goethe Institute expressed interest in exploring such an approach. Another important measure could be the revision of teaching materials to reflect the presence and contribution of migrants, introduced by migrants themselves. More widely, arts and cultural events must include migrants' histories and values.

38. It was repeatedly pointed out to the Special Rapporteur that counselling and psychological support for addressing the loss and trauma, and even sometimes violence, related to migration processes and the discrimination experienced after arrival were not readily available or adapted to migrants, refugees and asylum-seekers, who sometimes had a deep need for such support in order to be able to heal and adapt to their new situation. The intercultural and linguistic competencies of psychological centres are still generally insufficient. The lack of recognition of such needs, combined with other factors such as the insecurity related to the legal status of migrants, refugees and asylum-seekers, the precarity of their housing arrangements, the possible lack of recognition of their educational or professional qualifications, and the pressure of having to prove the existence of the threats that led to their exile, perpetuates the impression that such persons are not fully seen and recognized for who they are, and reduces their availability to meaningfully engage in language or vocational training and to cope with change.

39. The recent efforts made with regard to Ukrainian migrants, including the positive measures taken to allow them to continue their education online to avoid gaps, to recognize their qualifications and to develop specific programming in Ukrainian in cultural institutions, should serve as examples as to how Germany could do more for migrants of all origins, to increase their chances of rapidly settling into society.

40. The Special Rapporteur welcomes the shift in approach of the Minister of State for Migration, Refugees and Integration, emphasizing equal participation of all as a main aim rather than using the concepts of inclusion and integration, which had not been clearly defined, and the Special Rapporteur hopes that the approach will soon include specific measures. She was also pleased to hear about efforts made in certain states to make more space for the stories of the "others" and for religious diversity in school curricula. Such efforts to enhance mutual learning and understanding from an early age, adapted to local realities, need to be expanded across the whole country.

41. The Special Rapporteur was informed that the federal "Live Democracy!" programme was expanded in 2017 to include a new area on living together in a society of immigration. Under the programme, support was granted to civil society initiatives that connect newly arrived persons with longer-established migrants, who help them navigate the bureaucracy involved in gaining access to basic social services. Such initiatives empower migrants who have been living in the country for a longer period by validating their knowledge and putting them in a position where they can influence the policies that have an impact on their lives.

42. The Special Rapporteur was also told about a few persisting social practices that use culture as a justification for the unequal treatment or violation of women's rights. As stated repeatedly by the mandate holder, no one can use cultural diversity or cultural rights to violate any internationally recognized human right. It is the responsibility of the German authorities to take measures against practices that violate women's rights. At the same time, everyone must accept the evolving nature of all cultures, both of migrants and non-migrants, and the

inevitable influence they have on one another. Such evolving dynamics must be reflected in all policies. The Special Rapporteur hopes that the revision of the anti-discrimination legislation will be used as an opportunity to consider and include international human rights standards on non-discrimination and participation, including cultural participation and the effective participation of minorities.

## 1. Access to cultural institutions and services

43. The right not to be discriminated against in cultural activities is not fully implemented in Germany. Although physical access to cultural institutions for persons with disabilities was said to have improved, significant challenges remain for them to be able to participate on stage or as volunteers. Inclusive theatre initiatives are still limited. Libraries were identified as having made particular progress in ensuring the comprehensive accessibility of their premises and resources.

44. Various steps have been taken at the Federal Art and Exhibition Hall<sup>6</sup> to adopt an inclusive and barrier-free approach, involving persons with disabilities in the design of the museums and diversifying its exhibitions to ensure accessibility for persons with various disabilities, including mental disabilities. The Hall developed ways for art to be discovered through multiple sensory exploration, thereby making it more accessible for all, including children, older persons and persons with limited or no knowledge of the German language. The Special Rapporteur encourages cultural institutions to continue their efforts in this regard, including through a better implementation of reasonable accommodation<sup>7</sup> and universal design. The definition of “reasonable accommodation” should be further clarified and be applied more consistently. The relevant authorities may also increase the monitoring, and support the dissemination, of positive experiences in this regard among institutions.

45. Racism was also stated as a barrier to accessing cultural resources and institutions. Many expressed the feeling that sometimes the choice of topic or visible contents act as symbolic barriers. If cultural institutions do not display diversity, people of diverse backgrounds do not feel that those institutions are relevant to them and therefore do not engage with them. As a young activist mentioned to the Special Rapporteur, diversity in artistic and cultural forms should be the essence of cultural institutions, rather than some kind of social work that those institutions take on.

46. In a few institutions, diversity is already the norm. The many artists with dual or multiple heritage, for example at the Maxim Gorki Theatre or the Komische Oper, build bridges that contribute to intercultural dialogue. Various positive initiatives are being taken in cultural institutions to ensure wider accessibility, such as granting refugees and asylum-seekers free entrance to museums; free access to permanent exhibitions; culture passes for young people; exhibitions using classical works of art to question contemporary issues such as the Me Too movement; and the development of interactive and participatory “third spaces” in museums and libraries. These measures are excellent ways of engaging a wider spectrum of people with cultural institutions. Another commendable initiative is the Act Aware network,<sup>8</sup> which is aimed at creating cultural events free of all forms of discrimination in both theory and practice. The strength of such measures to broaden accessibility, however, lies in their continuity, which is currently not guaranteed.

47. Certain cultural programmes have partially integrated a cultural rights approach, even when not explicitly naming it as such. Of particular interest to the Special Rapporteur was the excellent practice of the Multaka project, through which newly arrived Syrians could progress from having free entry to visit museums to becoming museum guides, providing their own interpretation of collections. Since its creation in 2015, the project has developed a series of tools, training and institutional conditions to empower refugees, migrants and asylum-seekers to actively shape the museum experience and ensure that their voices are heard. In doing so, it has given those involved more agency and a chance to be seen as more than just refugees. Over the years, the project has involved refugees from a range of countries

<sup>6</sup> See [www.bundeskunsthalle.de/inklusion.html](http://www.bundeskunsthalle.de/inklusion.html) (in German).

<sup>7</sup> See [CRPD/C/DEU/CO/1](#), 2015, para. 13(a).

<sup>8</sup> <https://act-aware.net/> (in German).

and offers museum visits in several languages (such as Arabic, English, German, Farsi and Kurdish), thereby contributing to countering stereotypes and discrimination against certain nationalities. It has also developed into an international network, including more than 29 institutions and 130 mediators across Europe.

## 2. Participation in cultural decision-making

48. The Special Rapporteur was concerned by the fact that decision-making channels do not include many persons with diverse characteristics, giving the impression that public structures do not enable everyone to participate fully in the common vision of the society and mainstream culture. There was a sense that cultural diversity, vibrant as it is, was to remain in peripheral spaces.

49. While some civil society stakeholders focused their work on the right of all to fully and freely take part in cultural life, their experience was that their demands for this right were not heard by the authorities. Most of the funding schemes available support short-term, project-based formats that are not appropriate for building the long-lasting dynamics needed to implement this right.

50. The Special Rapporteur met with a collective of journalists and media professionals dedicated to increasing diversity in the media. Their experience was that the added value of multicultural perspectives on the national and international news was not recognized. Access to the profession for persons with diverse backgrounds was made difficult by stereotypes that limit access to unpaid internships. Once hired, they were confronted with the persistent expectation that they should only cover topics linked with their own background, and were rarely involved in the writing teams creating content for television and radio productions, in particular in public-owned media. These are specific areas where the authorities could actively foster more diversity, which would in turn contribute to normalizing diversity, reducing stereotypes, promoting better mutual understanding and strengthening democracy.

51. In a similar way to the Multaka project, the programme for diversity agents of the 360° Fund for New City Cultures has led to some persons with diverse backgrounds being hired in cultural institutions that voluntarily participate in the programme. Those agents are asked to develop processes aimed at increasing diversity of the staff and of the audience of the institutions, as well as to bring multiple perspectives to the content and activities of the institutions. The Special Rapporteur commends this programme but found its success precarious. In one participating arts institution, for example, the diversity agent noted that the European-centric conception of what constitutes art was impeding the inclusion of diversity in the permanent collections. A single diversity agent, hired on a project basis for a set period of time, with limited influence and budget, cannot sustainably transform the culture of such an institution. While the programme should continue, it would need strengthening to ensure longer commitment that may lead to lasting changes.

52. The Special Rapporteur was told that anonymous application processes for employment were being discussed and tested in multiple fields, as measures to counter discrimination and increase diversity. She encourages public authorities at all levels, as well as cultural and educational institutions, to consider such an approach, possibly as a temporary measure, in order to improve the representation of diversity in the workforce. More generally, the Special Rapporteur encourages the Government to conduct studies on the presence of persons with various backgrounds in the cultural sector, in the same way as it should on the presence of women,<sup>9</sup> with a view to improving inclusivity in cultural institutions.

53. The Special Rapporteur identified various voluntary actions taken, in particular at the local level, to increase cultural diversity in decision-making positions in public administration. In Berlin and Cologne, for example, she was told about regular advisory board meetings with Sinti and Roma representatives, and of consultations with migrant and lesbian, gay, bisexual and transgender organizations on drafts of local implementation strategies for the laws that concern them. In Berlin, an advisory council with persons from various backgrounds regularly discusses matters of participation and integration with the

<sup>9</sup> See German Commission for UNESCO, “Re|Shaping cultural policies 2020: strengthening gender equality and cultural diversity” (Bonn, 2020).

administration before important legislation is submitted to the Senate; in Leipzig, the development of an action plan to address discrimination and Islamophobia was initiated by the city's Migrants Advisory Council and all concerned groups participated. The Special Rapporteur regrets that no national policies or even guidelines exist to foster such practices across all states.

54. The Special Rapporteur was informed that, within the framework of the International Decade for People of African Descent, a national coordination office was created in 2022, with the aim of casting light on the perspectives and life situations of people of African descent in Germany. She hopes that the office will seize the opportunity to ensure that people of African descent exercise their right to participate in decision-making relating to their cultural life, and will involve them in actions on the recommendations of the Working Group of Experts on People of African Descent, in particular concerning the appointment of educators of African descent to the commissions of the boards of education that develop school curricula and their content.

### C. Situation of long-established migrants

55. Beyond its four recognized national minorities, Germany has been receiving migrants for centuries and more than 28.6 per cent of its population is registered as having a migration background,<sup>10</sup> either because they were born outside the country or because one of their parents was not German. A large number of those with a migration background were born and raised in the country. In recent years, about 700,000 Syrians and over 1 million Ukrainians have settled in Germany.<sup>11</sup> The country must be commended for its efforts to open its borders to migrants during these recent crises.

56. The Special Rapporteur underscores that there has been insufficient consideration of the situation of migrants who have been established in the country for generations, known as "guestworkers" (Gastarbeiter). These migrants received lower salaries, had limited access to public services and received very little support for their integration. The work force they provided, however, was instrumental to rebuilding Germany after the two world wars, enabling the country to become a major European power. Their critical contribution is slowly being recognized by the Government, and specific measures for their naturalization are being considered in the review of the Nationality Act.

57. The position of Germany regarding these long-established migrants is ambivalent. On the one hand, in many ways, they are no longer considered to be foreigners, but to be Germans, and so their linguistic and cultural differences are not recognized. In interactions with public bodies, migration backgrounds are not always seen as relevant, in particular for those who grew up in Germany and speak German fluently. In many instances, this may be true but it also implies that the cultural expressions of these persons are neither recognized, nor encouraged to prosper or be further transmitted, and do not benefit from any protection.

58. On the other hand, minority protection has been granted to certain groups who have been allowed to maintain their linguistic and cultural specificities. In 1997, when signing the Council of Europe's Framework Convention for the Protection of National Minorities, the Federal Government declared that the only national minorities of Germany protected by the instrument would be the Danes, the Frisians, the Sinti and Roma, and the Sorbs, considered to meet the five criteria of having German nationality; having their own language, culture and history and thus their own distinct identity; wishing to maintain their distinct identity; traditionally residing in Germany; and living in traditional settlement areas.<sup>12</sup> The

<sup>10</sup> Federal Office for Statistics, "Population in private households with migrant background". Available at: [https://www.destatis.de/EN/Themes/Society-Environment/Population/Migration-Integration/\\_node.html#sprg265538](https://www.destatis.de/EN/Themes/Society-Environment/Population/Migration-Integration/_node.html#sprg265538).

<sup>11</sup> Federal Office for Statistics, "Persons seeking protection by protection status, regions and countries of origin (citizenship)". Available at <https://www.destatis.de/EN/Themes/Society-Environment/Population/Migration-Integration/Tables/protection-countries-of-origin-status.html>.

<sup>12</sup> Federal Ministry of the Interior and Community, "National minorities". Available at [www.bmi.bund.de/EN/topics/community-and-integration/national-minorities/national-minorities-node.html](http://www.bmi.bund.de/EN/topics/community-and-integration/national-minorities/national-minorities-node.html).

Government maintains that the status of national minority and related protection cannot be extended to other groups, including migrants and their descendants.

59. The Special Rapporteur shares the view of the Advisory Committee on the Framework Convention for the Protection of National Minorities that long-established migrants in Germany to a large extent meet the criteria set for national minorities and should be given the same opportunities to maintain, practise and transmit their language and cultural expressions.<sup>13</sup> The Human Rights Committee has long established the principles that the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but should be established by objective criteria and that minority definitions cannot be limited to citizens or to permanent residents.<sup>14</sup> The existence of a minority group, which has in common a culture, a religion or a language, is a matter of fact, not of law, official policy or decision. The Working Group on Minorities has stated that the Declaration benefits from a scope as wide as that of article 27 of the International Covenant on Civil and Political Rights and its application extends to minorities, regardless of citizenship. The distinction made by the Government is therefore not fully in line with the international instruments and jurisprudence, and may be an impediment to the respect of cultural rights for all. The recognition of migrants as members of minorities would strengthen, among other things, their right to effective participation and the need for positive measures to protect their cultural rights.

60. Furthermore, the Special Rapporteur believes that there should be a clearer distinction between citizenship and identity. Multiple identities and affiliations need to be recognized and nurtured as part of the reality in Germany. For some long-term residents and second- or third-generation migrants, not being recognized both for their origins and as Germans makes them feel excluded and impedes them from feeling “seen” and acting as partners in shaping society. The Special Rapporteur therefore welcomes the discussions regarding accepting dual or multiple citizenships in the review of the Nationality Act.

#### **D. Embracing diversity**

61. In addition to people with migration backgrounds, the population of Germany has a great diversity that can be expressed freely and witnessed daily in various areas. Government authorities recognize that the diversity of Germany is still underrepresented in public institutions and in the media, but the situation is improving. Only certain states have adopted gender-sensitive teaching materials, including those that promote diversity and the protection of all minority groups, and recruitment of teachers could also benefit from more diversity. Knowledge of and respect for cultural diversity and different ways of life should be introduced in schools, and more continual training on diversity should be provided for employees of public administrations.

62. The Special Rapporteur would welcome comprehensive programmes that would run at all levels to ensure that marginalized sections of the population, their art and their views and visions are represented in the media and in the cultural sector of Germany, including major national arts institutions. The inclusion of a diversity champion in such institutions may be a good first step but cultural diversity must be mainstreamed across the sector. Further reflection is required on the potential benefit of diversity training sessions for all and, possibly, of anonymous employment procedures.

63. The Special Rapporteur was told that negative stereotypes and even feelings of shame continue to be transmitted, mainly regarding those who grew up in eastern Germany. Visibility, respect and infusion of the values, practices and traditions of eastern Germany are essential if the social divide resulting from the division of Germany between its eastern and western parts is to be breached. Without denying the democratic deficit of the former system in the German Democratic Republic, social cohesion in Germany today can only be achieved,

<sup>13</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities “Fifth opinion on Germany”, document ACFC/OP/V(2021)6.

<sup>14</sup> Human Rights Committee, general comment No. 23 (1994), paras. 5.1 and 5.2. See also [A/74/160](#), para. 59.

and cultural rights can only be implemented, if the contributions of persons from eastern Germany to current society together with their past experiences, practices and traditions are recognized as equal to those of the people living in western Germany.

64. Most work to counter negative representations and foster interactions between groups and communities is conducted at the local level, by local authorities, associations, cultural services and institutions. The Special Rapporteur was informed about various schemes, such as community gardens, the long-standing tradition of neighbourhood and school associations (Verein) and the involvement of young men with migration backgrounds in rural voluntary firefighting squads. The importance of such spaces for interaction cannot be overstated. Support for these local dynamics should feature more prominently in programming and strategies at the federal and state level. The federal social cohesion programme, established in 2021, which is aimed at supporting initiatives with similar goals, would be a step in the right direction, as long as it provides continuity for the initiatives.

## 1. Right-wing extremism

65. Unfortunately, the multifaceted nature of German society is not accepted by all. According to official statistics, politically motivated crimes and, in particular, hate crimes carried out by right-wing extremists, are still increasing, and far-right extremism represents a real threat to the democracy of Germany. In February 2021, the country's domestic intelligence agency placed the Alternative für Deutschland party, a conservative, anti-human-rights party, represented by 14 per cent of parliamentarians at the time of the Special Rapporteur's visit, under formal surveillance for potential extremist links. During the visit of the Special Rapporteur, an attempted coup by a far-right group against Parliament was intercepted. Closed, right-wing extremist communities, which do not recognize the rule of law and the democratically elected Government, also exist throughout Germany.

66. Such extremist movements deserve the serious attention of the Government. Incidents involving neo-Nazi or other extremist groups must be publicly exposed and duly investigated. Authorities at all levels must take a clear position, followed by specific measures, against the dissemination of hate speech and of negative generalization and stereotypes, in particular in the media and in educational contexts.

67. Although debates regarding the criteria necessary to be able to access naturalization are important for democracy, they should be monitored to avoid undue generalization about newcomers and hate speech against foreigners, including refugees and asylum-seekers. The discussions should focus on shared understanding and recognition of the national political and legislative systems, rather than on cultural "integration" criteria.

68. The Special Rapporteur was impressed with some fantastic initiatives in the field and witnessed the drive to address, with a democratic approach, contentious issues often reflected in sociopolitical conflicts. Constructive debates that allow the wide range of positions in society to be voiced ultimately support democracy. The authorities must continue to provide lasting support to the work of civil society initiatives and organizations to this end, including using the Democracy Promotion Act and through programmes such as "Live Democracy!" and its "Active against Right-wing Extremism, Violence and Hate" element. Such policies would greatly benefit from a more coherent approach to cultural rights from the Government.

## 2. Representation of LGBTIQ+ persons

69. The visibility of LGBTIQ+ persons and related issues has been improving, including in the media, and their representation throughout society needs to keep growing to guarantee better consideration for the specific challenges they face. LGBTIQ+ persons have developed an alternative culture and language that reflect their realities. This cultural space, which is much more developed and accessible in urban than in rural contexts, provides them with breathing space to express themselves more freely, and may sometimes represent a chosen family. The pandemic had a devastating effect on the whole of the cultural ecosystem of the country and LGBTIQ+ persons, who have a greater need for dedicated spaces, have suffered in particular from the closure of such spaces. The diversity that LGBTIQ+ persons represent is still seen as a challenge rather than as the expression of another way of life. Many spaces, including places where arts, music and dance are taught, operate with more or less conscious

gendered stereotypes and expectations that bring discomfort to LGBTIQ+ persons, considered to be outside of “the norm”, as well as to others, as it makes gender roles an issue where it should not be relevant.

70. The Special Rapporteur was told that no education curriculum mentions intersex persons, and sex education does not acknowledge their existence or bodily experience, but instead perpetuates the binary notion of sex. More needs to be done to challenge all forms of discrimination and hate speech, ensure awareness-raising and tolerance throughout education, as well as to provide support for those who, due to past practices and legislation, have not had the possibility to become their full authentic self, and may therefore need specific psychological support.

71. The Special Rapporteur was glad to hear of the possibility of pursuing gender and queer studies at some universities, of efforts to develop research and knowledge on trans, intersex and non-binary issues, and to move away from pathologizing these realities. She was told that the funding provided at the federal level to support teenagers and young people transitioning was greatly appreciated and should continue. The Special Rapporteur commends the Government and encourages it to adopt more initiatives such as the “Live Democracy!” programme. She also encourages the inclusion of culture as a cross-cutting consideration in the implementation of the 2022 national action plan for queer life (Aktionsplan “Queer leben”).

### **3. Linguistic diversity**

72. Thanks to very high numbers of translations from other languages, foreign literature, films and other artistic productions are readily available to German speakers. Conversely, in several fields, the use of a language other than German has negative connotations, even more so in the case of certain languages. The Special Rapporteur was told that artistic productions either in sign language or in any language other than German were generally perceived as threatening, or as directed only at those speaking that language, and not as opportunities for all to engage with other cultural realities. She was also informed that a negative attitude towards linguistic diversity prevails in schools, and that the use of any language other than German had been banned in some school playgrounds.

73. While a common language is important, the diversity of languages present on the German territory should be seen as an asset. Resources and measures to maintain and transmit different languages or to foster their use should be decided on the basis of a fair assessment of the commitment and will of those speaking those languages. An excellent approach was that of Leipzig local authorities which, during the COVID-19 pandemic and upon the request of the local population, worked in seven different languages, thereby ensuring the recognition of vulnerable persons and the general protection of all.

### **4. Intersectional challenges**

74. The stereotyped portrayals and negative images in the media of ethnic minority and migrant women are still a challenge and have undermined the ability of such women to become better integrated into society; another challenge is the non-acceptance of LGBTIQ+ migrants, both by the LGBTIQ+ community itself and migrant projects and refugee spaces in general. The Special Rapporteur was glad to witness the broad variety of civil society organizations addressing the intersectionality of various characteristics. Those organizations not only ensure the provision of important safe spaces, which needs to be encouraged and supported, but can also understand and analyse better intersectional situations and provide guidance for necessary, targeted measures.

75. The Special Rapporteur stresses the need to ensure that broader associations and general public measures, in rural as much as urban areas, fully consider the intersectional forms of discrimination and the diverse challenges they represent, and encourages regular diversity training and campaigns that normalize differences and mutual respect.

## **E. Dealing with the past**

76. How to deal adequately with the past was a question gaining increasing attention during the Special Rapporteur's visit. Whose narrative about the past is being told, and whose historical perspective is heard or pushed aside, are questions at the core of cultural rights. As one person told the Special Rapporteur, only that which is memorialized is made relevant.

77. The Special Rapporteur commends the work carried out by Germany in dealing with the difficult legacy of the two world wars of the twentieth century. Numerous museums, monuments, exhibitions, documentary productions and history textbooks have contributed to addressing the consequences of the Nazi regime, the realities of the Shoah and the impact of the division of Germany and Berlin after the Second World War, as well as to developing a strong consciousness about this legacy. Efforts have also been made to draw parallels between those chapters of history and the events and challenges of today.

78. The Special Rapporteur observed that, despite all the above-mentioned excellent work, other groups persecuted during that period, such as the Roma and Sinti and lesbian, gay, bisexual and transgender persons, have been given much less attention in the historical narratives. Whereas museums dedicated to Roma and Sinti or to LGBTIQ+ issues, such as the Schwules Museum in Berlin, are great initiatives, such perspectives of twentieth-century German history, and the struggles and contributions of those persons to rebuilding the country, should also be included in other museums that cover those periods of history and be recognized nationally.

79. The lack of knowledge about the persecution of Sinti and Roma in general, including its absence in the educational system, may have contributed to the persistence of structural discrimination against them.<sup>15</sup> Efforts to combat that structural discrimination and address stereotypes in public representations and in the media through familiarity and understanding of Sinti and Roma culture need to be strengthened. More generally, curricula that reflect the cultures and histories of the whole population of Germany and address difficult questions of the past beyond the main narrative are important tools for promoting cultural rights.

80. Narratives about the reunification of Germany are reportedly told from the perspective of the western part of the country, and there is not much space for the narrative of eastern Germany, or for the experiences of being a migrant from the German Democratic Republic at that time. This historical perspective is, however, important in understanding Germany today and assimilating all the relevant lessons of that period of history.

### **1. Colonial history**

81. Emphasis on the twentieth-century wars may have limited the resources for addressing other important historical periods, such as the colonial past of Germany. That period is reportedly only briefly mentioned, if at all, in the history curricula in schools, and is not generally well known to Germans. Shortly before the visit, the use and presentation of ethnographic artifacts in the collection of the Humboldt Forum, and the underlying structural racism the collection highlighted, was being widely discussed. As a result, representatives of concerned communities were invited to inform the debates of certain museums, and other institutions adopted a more participatory approach or strengthened their provenance research. These were all voluntary measures, however, and in other public institutions, including a zoo, colonial representations remain unchallenged.

82. The Special Rapporteur was impressed with the debate surrounding the restitution of colonial artefacts currently in Germany. Work to prepare the restitution of the Benin bronzes to Nigeria, completed in July 2022, is said to have started over 10 years ago. Representatives of the Foreign Office seemed very conscious of their responsibility for requesting and encouraging truly participatory processes from their counterparts, which is commendable.

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<sup>15</sup> The report of June 2021 of the independent commission established by Parliament on the issue (p. 77) found that the effects of the Nazi genocide and the failure to counter anti-Roma racism are still evident today. See <https://dserver.bundestag.de/btd/19/303/1930310.pdf> (in German).

83. More importantly, the recent returns seem to have provided the Government, museum authorities and other relevant stakeholders with an opportunity to establish new ways of collaborating with communities that suffered from the loss of their artefacts. The country's colonial past and the consequences in the present, including structural racism, and the responsibility of Germany for the export of other artefacts, are important issues that would benefit from further debate. The Special Rapporteur looks forward to learning about the continued efforts to address historical injustices and discrimination in the future, and the various approaches that may be developed.

## 2. Memorialization initiatives

84. The Special Rapporteur focused on the memorialization practices and historical narratives regarding past and recent migrations in Germany. She was eager to hear about the possibilities and spaces given to migrants for participating in shaping the common history and understanding of the country.

85. She visited the Documentation Centre and Museum of Migration and was impressed by its human-centred and inclusive approach, focusing on the value of each individual migration story as a resource for persons with migration backgrounds for developing both a sense of self and of belonging to Germany. Through its methodology, the Centre and Museum contributes to changing the perception of migration from an exceptional disruption to a social constant, normalizing mobility across various forms of borders as part of an ever-changing society. It is also an excellent example of a bottom-up, cultural-rights-compatible approach to memory- and heritage-building. The Special Rapporteur was glad to hear of its upcoming expansion into a larger museum, as well as of the discussions regarding the creation of a migration museum in Berlin, focused on “guestworkers”, with a similar participatory approach to various migrant communities. She hopes to learn more about the museums in the near future.

86. Other cultural institutions, such as music and theatre companies, should consider how the experience of these museums and the recommendations of the German Museum Association on museums, migration and cultural diversity<sup>16</sup> could inspire more work on these topics in their respective fields.

87. In the field of heritage, interesting work is being done on multidirectional memory, and the interactions between various groups contributing to heritage-making. The Special Rapporteur visited Oranienplatz, where multiple heritage communities wish to create a permanent inscription memorializing their connection with this place. She talked with a representative of the Dersim Kurd community about their project for a monument, and heard about the monument planned to “guestworkers”. This public space has also been associated for 10 years with the O-Platz Movement, fighting against discrimination and for the rights of refugees. The Special Rapporteur encourages all stakeholders to see multiple memorializations such as these as composite parts of a shared local history rather than competing and mutually exclusive requests.

## IV. Conclusions and recommendations

### A. Conclusions

**88. Germany has made significant progress in recognizing its difficult past and the changes in its society, and in building a sophisticated legal and policy framework to uphold its international human rights and humanitarian law commitments.**

**89. There needs to be better understanding and coordination of cultural rights within the multi-layered administration of Germany, and clearer leadership from the Federal Government in ensuring the full implementation of those rights. International standards should be considered in national discussions regarding cultural matters and**

<sup>16</sup> Network of European Museum Organisations, “Museums, migration and cultural diversity: recommendations for museum work” (Berlin, 2016).

more discussion among different public bodies on such matters needs to be encouraged. International human rights standards on non-discrimination and participation, including cultural participation and the effective participation of minorities, should guide any relevant new legislation and be considered in all public policies. This would increase the visibility and understanding of these rights, help raise awareness for the standards and obligations and ensure that all relevant public institutions and bodies play their role in meeting the country's existing obligations.

90. The Special Rapporteur admires the vibrancy and engagement of German civil society and of the cultural sector towards cultural diversity, as well as the numerous associated excellent practices, and welcomes the commitments and legislation recently adopted to better respect and protect that diversity.

91. In addressing the challenges of multicultural realities, German authorities should, however, make better use of the international human rights standards and guidance on cultural rights, and ensure that they are better disseminated, known and implemented at all levels of the country's federal system. The voluntary, ad hoc and temporary initiatives for implementing cultural rights remain fragile for as long as they are not structurally anchored in long-term strategies and policies.

## **B. Recommendations**

92. To improve the understanding and full realization of cultural rights, the Government should:

(a) Incorporate all international human rights instruments, including the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, into its legal system in ways that ensure their direct application before German courts, in order to afford all individuals its full protection;

(b) Disseminate and enable discussion of the provisions of international human rights law relating to cultural rights and of the present report, at the national, state and local levels, in particular among parliamentarians, public officials and judicial authorities, in order to improve awareness of the cultural rights standards and obligations contracted by Germany and their full implementation at all levels;

(c) Include explicit references to cultural rights in the federal, state or local laws, programmes and regulations, and in particular, in the Participation Act;

(d) Raise awareness, through campaigns in educational institutions, the public arena and the media, of the definition of cultural rights, including the right for all to take part in cultural life, to express one's own identity, values and way of life without fear of discrimination, and to access and enjoy the arts, science and sports;

(e) Establish minimum standards and guidelines for reducing disparities and ensuring that all people, regardless of their place of residence, can fully enjoy and exercise their cultural rights, and closely monitor the implementation of those rights at all levels;

(f) Include international human rights instruments in the curricula of universities and legal studies;

(g) Conduct regular and mandatory training on intercultural competencies across all ministries and local authorities, as well as for education professionals and members of the police force, and ensure that the training includes the standards and norms of both human rights and cultural rights.

93. In addressing discrimination, the authorities should:

(a) Take specific and special measures at all levels, and with the meaningful participation of groups and communities involved, for reducing discrimination, including indirect, structural and intersectional measures, and address the widespread and continuing stereotyping and marginalization of specific sections of the population;

(b) Strengthen the monitoring and reporting of the right not to be discriminated against in cultural activities, including in reporting to the Committee on the Elimination of Racial Discrimination;

(c) Review their application of minority protection to fully conform with the guidance of the Office of the United Nations High Commissioner for Human Rights, as contained in *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*;

(d) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, in order to facilitate the full participation of the persons concerned in all aspects of cultural life;

(e) Consider adopting guidelines for applying the Equal Treatment Act also to private actors, in particular regarding access to, and participation in the activities of, cultural venues;

(f) Take steps to ensure that reasonable accommodation provisions are enshrined in law as an immediately enforceable right in all areas of law and policy. Authorities should also take positive measures in the implementation of the Equal Treatment Act, ensuring that the denial of reasonable accommodation is recognized as a form of discrimination and punished accordingly;

(g) Ensure that teaching materials that promote diversity and the protection of all minority groups are available across all federal states, and include in national teacher training programmes a module on respect for diversity in education. This content should be protected as a fundamental element of educational systems, and maintained despite any political pressure;

(h) Support projects that reduce discrimination against LGBTIQ+ persons, and work for the protection and recognition of sexual diversity;

(i) Introduce incentives to the media to promote positive images of minorities, migrants, refugees and asylum-seeking persons, including women and LGBTIQ+ persons.

94. To further promote cultural diversity, the authorities at all levels should:

(a) Discuss widely the meaning of integration and review how it applies within the country;

(b) Promote preventative measures against extremist attitudes and behaviour threatening the expression of diversity, pursue actions against hate speech and racist propaganda, and raise awareness of the same at the federal and state levels;

(c) Provide means and resources for highlighting and disseminating throughout the country information regarding the contribution of migrant, minority and LGBTIQ+ communities to German history and heritage;

(d) Share the added value of participatory and multiple perspective approaches to historical narratives, memorialization and the arts between cultural institutions, so that best practices in the area can become standard practice;

(e) Strengthen efforts to ensure the full participation of migrants and refugees in policies and programmes that concern them, and to ensure access for them to adapted psychosocial and mental health services.