

## **GERMANY END OF MISSION DEBRIEF**

Berlin, 9 December 2022

I am pleased to share my preliminary observations at the end of the 13-day official visit I carried out in my capacity as UN Special Rapporteur in the field of cultural rights and cultural diversity, at the invitation of the government of the Federal Republic of Germany.

The purpose of my visit was to understand, in the spirit of co-operation and constructive dialogue, how the State implements cultural rights. The intent was to identify good practices and possible obstacles in the promotion and protection of cultural rights in Germany. I addressed a number of key-issues, mainly the right of all to participation in cultural life, that is, to access, take part in, and contribute to cultural life in all its facets and to freely express one's world views, values and ways of life, as well as the representation of diversity in public spaces and cultural institutions such as museums. I also addressed the memorialisation and historical narratives about past and recent migrations and how these contribute to shaping the German identity of today. A specific focus was given to the cultural rights of LGBTIQ+ persons and migrants, including recognized and non-recognized refugees.

I will develop my assessment in a written report, in which I will also formulate recommendations. I intend to present this report at the 55th session of the United Nations Human Rights Council in March 2024 in Geneva.

Let me begin by thanking the Government of Germany for inviting me to conduct this official visit. My visit included Berlin, Bonn, Cologne, Düsseldorf and Leipzig. I had the opportunity to hold meetings with a number of Government officials, at the federal, regional and local levels, who are responsible in the areas of international human rights; anti-discrimination including against Sinti and Roma; culture and cultural cooperation; family affairs; gender identity and sexual diversity; migration, refugees and integration; diversity policies and social innovation, as well as with members of Parliament and representatives of cultural institutions and agencies. I also met with many artists, academics, representatives of civil society and representatives of cultural communities, as well as the German Institute for Human Rights and the National Commission for UNESCO. I would like to thank all the persons and institutions I met for their time, commitment and the wealth of information they shared with me. I also extend my thanks to the colleagues from United Nations agencies for their assistance.

- **Richness of cultures, debates, ideas, initiatives and civil society**

I was struck by the diversity and richness of cultures that co-exist in Germany today. It is a credit to the state and the society that such a mix of cultures develop freely. This diversity fuels the richness of ideas that are harboured in Germany. I was struck by the lively and interesting debates on the meaning of culture; on colonialism; on the past, and

how it should be represented; and on how the past leads to the future. There is no doubt that these debates are deeply reflective and timely. They are not only discussed within society but also at Parliament, in the federal and regional Ministries, the communal authorities and the cultural institutions. I was very interested to see genuine attempts to link the past -history, past cultural expressions, established ideas, classical art- with the current debates, present big questions and dilemmas.

Germany must be congratulated for the richness of its cultural sector. Museums, galleries, street art, architecture, theatres, festivals and markets all offer spaces for the expressions of artists, individuals and communities and for the enjoyment of such creativity by others. Many strive to continuously question and improve their methods, programmes and policies to better accommodate the cultural and other rights of the audiences. I was glad to learn about the investments of some cultural institutions into structural changes towards more diversity, through their participation in the 360° programme of the Cultural Foundation, or the project *Multaka*, for example. I strongly encourage to continue supporting these types of processes, adopt intersectional lens and broaden them so that cultural institutions remove barriers to enjoy cultural rights and become a mirror of the society.

I also welcome the various programmes Germany supports to provide artists and scientists at risk from various countries possibilities to safely flee situations of war or threats and find protection elsewhere, either inside or outside its borders. I hope that such opportunities are not only given to artists from very specific places but to all artists coming from ethnic conflict zones. I also hope that acceptable long-term solutions can be elaborated with the full involvement of these exiled persons and their families.

- **Legislation and policies**

I was delighted to hear that Germany will soon have completed the process to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural rights. This will allow individuals to present complaints regarding their cultural rights at the international level. It is envisaged that it will strengthen the implementation of cultural rights at the national level.

I welcome legislation that has recently been adopted and relates to cultural diversity within the society. I have also heard of ongoing work to revise the laws on self-determination for trans people; the law on citizenship for long-established migrants; and the anti-discrimination legislation. I hope that international human rights standards on discrimination and participation, including cultural participation and minorities effective participation, will be considered and included in these new pieces of legislation.

The contract of the newly elected coalition government includes a number of promising commitments of high relevance for cultural rights and diversity, such as the elaboration of a Participation Act and the inclusion of culture as a State goal in the Constitution. I hope that, in drafting these important pieces of legislation, the opportunity will be seized

to include cultural rights as enshrined in international human rights law instruments and interpreted currently.

- **Awareness of cultural rights standards in all state bodies and levels**

In my visit, I observed the need for strengthening the common messages that derive from the international standards on cultural rights at the national level. I have found that the specific obligations that Germany has undertaken by signing and ratifying specific instruments, such as the ICESCR, the ICERD, the ICCPR, the CRC, the CEDAW etc are not always clear to the administration at various levels and sections; and there is not always awareness of such obligations and how each department relates to them. I feel that the discussions relating to cultural rights and cultural diversity are not fully informed of the guidance that exists at the international level; and I worry that the subsequent decisions do not benefit of such rich guidance. UN monitoring treaty bodies always remind states to raise awareness of the standards and discussions. It must be emphasised that the international obligations of Germany lie with the state and all its bodies, not with one ministry or another ministry or one level or another level. In my visit, I developed the impression that not all state bodies are aware of the broad scope of cultural rights. Raising awareness on human rights standards has been also mentioned before in concluding observations of other monitoring bodies (f.ex. ICERD), so this suggestion should not come as a surprise.

I believe that there needs to be better co-ordination on cultural rights within the multi-layered administration of Germany. This will ensure more treacle of the international standards in national discussions in cultural matters; more co-ordination among state bodies on such matters; more discussion among different state bodies at different levels; and ultimately more attention and emphasis on the universal international standards, especially on cultural rights, would benefit the implementation and internal monitoring of such rights.

- **Anti-discrimination legislation**

The elimination of discrimination in the cultural sector, in cultural activities and in the matters and in the way cultures are perceived is an important part of my mandate.

Germany has a comprehensive system of protection of individual human rights supported by jurisprudence and the rule of law. At the same time, I heard that the anti-discrimination legislation needs to be strengthened. I commend the direct applicability of the convention in the domestic legal system but, in line with the concluding observations of the CERD in 2015, I also found that the content of the International Convention against all forms of racial discrimination, and in specific the right not to be discriminated against in cultural activities, are not fully implemented. Recourse to courts on the basis of being discriminated is not always possible nor easy. I believe that an intersectional approach must also be adopted.

Even more so, I heard from several parts of the civil society that discrimination in the implementation of cultural rights is still on-going.

One main aspect of this may be the distinction in law and policies between migrants and persons of migrant background on the one hand; and Germans on the other. It seems that this distinction is not fully in line with the international instruments and jurisprudence, and neither does it help to the respect of cultural rights for all. Several of the persons that are categorised as migrants would be under the protection of minorities in current international standards. The UN “Practical Guide on developing comprehensive anti-discrimination legislation” that came out just last week points out that the “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 requires to be established by objective criteria”. Minority protection should not be given only to citizens. I believe that citizenship and identity must be distinguished more clearly. Multiple identities need to be recognized and nurtured. I have heard from several people that the categorisation of long-term residents and second generation diaspora as migrants makes them feel excluded from the German society and is an obstacle in being seen and act as partners in shaping society and its vision.

The understanding of ‘integration’ as a term used widely in Germany is also not fully used in line with international standards on cultural rights. I have heard about migrants’ lessons in German and attempts to help migrants to be integrated in the state; but I have not really heard a lot about coherent, on-going structures to teach all individuals living in Germany the values of the migrants and also allow and strengthen the infusion of these values in the vision and future of the state. Integration is a two way road; and I have heard a lot about the one direction, but not the other. I applaud the shift from integration to participation and hope that this shift also includes specific precise measures to achieve this.

Let me turn to specific aspects of cultural rights.

- **Right to access to culture**

There are some great initiatives to ensure wide access to culture. Poverty, disability, migration and LGBTIQ+ status still act as important barriers to access to cultural services and institutions. I became aware of serious thought going into addressing these challenges: the cultural pass for every person turning 18-year-olds, the discussions on how to ensure access for all to museums and historical sites. However, I believe that there is space for more measures that institutions can take to understand and reflect widely on cultural diversity. Access to public funding and other opportunities are not always reflective of the cultural diversity existing in society. At times, it seems like a vicious circle: the juries of competitions belong to the mainstream elites or are experts to mainstream cultural expressions that indirectly exclude migrants and other marginalised artists. Ensuring that the staff of cultural institutions as well as in all levels of Germany’s administration reflect the cultural diversity of the

society, providing wide training sessions, employing anonymously, adopting gender neutral language, creating focus groups of marginalised persons to discuss ways forward; are some measures that the state's emanations could consider further.

- **The right to participate in culture**

Even more challenging is the implementation of the right to participate in cultural life (or lives?) that exist in the society. I have heard concerns that decision-making channels do not include many persons with diverse characteristics. These persons do not feel that state structures enable them fully to participate actively in the common vision of the society and the common, mainstream culture, but they are to remain - vibrant as they may be - in peripheral spaces. Themes that are tackled in the mainstream narrative are still very much focused on the history of Germany in the WWII and/ or before the influx of migration after the Second World War. Recent conflicts and tensions within the state have only started being the focus of the cultural institutions. There still seems to be a hierarchy in cultural life, reflecting possibly hierarchies in public life in general. I really appreciated the attempts to link the past to current multicultural realities.

- **The right to participate in culture as ways of life**

Related to this are the stereotypes which continue to exist in society and which, at their extreme, act as a spark for hatred and leads to hate speech and hate crime. There is a lot of work that goes into addressing this by the communal authorities. Germany may wish to intensify measures to address stereotypes still existing in the media on LGBTIQ+ persons and to give more visibility and more knowledge on cultural diversity. It is important to create more spaces for interaction of culturally diverse parts of the population, as are measures to introduce knowledge of and respect for diverse cultures and ways of life in schools. I have heard repeatedly how many schools still look down on diversity in languages and cultural dress codes. Curricula that reflect the cultures and histories of all the population and address difficult questions of the past beyond the main narrative are important tools to promote cultural rights. Important is also to address stereotypes regarding Sinti/Roma and understanding of their culture and knowledge of their turbulent histories are important.

- **Restitution**

I have been impressed with the debate on restitution of colonial artefacts in Germany. I heard about the return of the Benin bronzes and I commend the state and the society for such initiatives. I heard about the debate on German colonialism and was impressed with the maturity and reflection on such matters. I am interested to see how such a debate will continue to address historical injustices and address non-discrimination for the future.

I would like once again to thank Germany for opening its doors to me and my team. I take with me many examples of best practice in cultural rights that may benefit other states. I

look forward to continuing the discussions in order to strengthen even more the implementation of cultural rights at the national level. In this ongoing journey, we are at your side.

Many thanks.