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Held at the Palais Wilson, Geneva, on Tuesday, 12 October 2021, at 10 a.m.

Chair: Ms. Pazartzis

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

*Seventh periodic report of Germany (continued) (CCPR/C/DEU/7;
CCPR/C/DEU/QPR/7)*

1. At the invitation of the Chair, the delegation of Germany joined the meeting.
2. **The Chair** invited the delegation to reply to the questions raised by the Committee members at the previous meeting.
3. **Ms. Jacoby** (Germany) said that migrants who were undocumented or who lacked a residence permit were able to receive vaccinations against coronavirus disease (COVID-19) anonymously.
4. **Ms. Florath** (Germany) said that a comprehensive diversity strategy was in place to ensure that the Government was representative of the general population and recruitment campaigns were designed to encourage the hiring of persons from different backgrounds. Some federal ministries were conducting pilot projects to analyse the working atmosphere, determine which groups of people were more likely to apply for certain positions and decide how to improve hiring procedures accordingly. The “Afrozensus” survey sought to gather data on persons of African descent in order to develop and enhance strategies to tackle racism and other forms of discrimination.
5. **Ms. Jacoby** (Germany) said that the federal Government had discussed the issue of drone strikes from the Ramstein airbase with United States of America in order to ensure that the country met its legal obligations under the Agreement between the Parties to the North Atlantic Treaty regarding the status of their forces.
6. **Ms. Florath** (Germany) said that the statute of limitations for unlawfully performing surgery on intersex children had been extended and the practice of bougenage on intersex children was expressly prohibited by law.
7. **Mr. Behrens** (Germany) said that one of the legal loopholes that favoured discrimination on the housing market was that landlords were able to select their tenants when they lived in the same building. The other involved specific requirements for larger residential units meant to ensure diversity and prevent segregation. While it was true that such provisions were subject to abuse, they existed for a good reason. It was the responsibility of the courts to ensure that the exceptions under the General Equal Treatment Act were properly applied and not abused.
8. **Mr. Merz** (Germany) said that the rules governing police actions varied across the country, but the restriction or deprivation of a person’s liberty by police officers had to be justified at all times. All measures to deprive liberty were ultimately at the discretion of judges.
9. **Ms. Röhl** (Germany) said that the federal Government was actively taking steps to combat climate change. During the previous session of the Human Rights Council, Germany had supported a resolution recognizing the right to a healthy environment and the extension of the mandate of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The country promoted human rights and climate protection projects throughout the world and supported non-governmental organizations (NGOs) working in that area.
10. **Mr. Merz** (Germany) said that, in 2020, only 45 complaints of racial profiling had been received for almost 2 million police checks carried out.
11. **Ms. Jacoby** (Germany) said that the desecration of Jewish cemeteries and Holocaust monuments was a criminal offence and cemeteries were closed at night in an effort to prevent it. The German Institute for Human Rights complied with the Paris Principles and was financed by the Bundestag (parliament).
12. The requirement for women to show that they had received counselling at least three days before undergoing an abortion procedure had been the result of a rigorous and open

debate on the issue of abortion – a compromise solution that was in women’s interests. Abortions for women living in poverty were covered by statutory health insurance.

13. **Mr. Behrens** (Germany) said that measures were in place to prevent assaults on women entering abortion clinics. However, those protesting outside the clinics had a right to free speech. Some protesters who had been removed by the police had brought their cases to the European Court of Human Rights, claiming violation of their right to free speech and freedom of religion, and had won. It was the task of the police to prevent assaults on women entering the clinics while upholding the rights of protesters.

14. **Mr. Merz** (Germany) said that a national contact point would be established in order to tackle discrimination and attacks against Roma communities and an independent body would be set up to monitor the issue. A panel of experts that had been created in 2019 would soon submit a report with recommendations on how to prevent attacks and discrimination. The federal Government worked in close cooperation with the European Roma Institute for Arts and Culture (ERAC) in Berlin, which had been a focus of the country’s presidency of the Committee of Ministers of the Council of Europe.

15. **Mr. Furuya** said that the Committee would appreciate recent data to confirm that the use of mechanical restraints in police custody and prisons was in fact decreasing. It would be helpful to know what new and stricter requirements had to be met in order for police or prison officers to use such restraints and whether they had resulted in decreased use. He wished to know whether the most recent report of the Medical Advisory Service showed a continuing downward trend in the use of measures involving the restriction of liberty in residential care facilities for persons with psychosocial disabilities and older persons. He would be interested to learn how the new quality control system reduced coercive measures at long-term care facilities; related statistics would be appreciated.

16. He would be grateful for additional information about the measures taken to investigate and punish those who committed abuses involving the use of mechanical restraints. He wondered whether the investigating authorities found out about the inappropriate use of such restraints through regular inspections or whether there was an independent complaints mechanism whereby complaints could be made by residents or their family members to the authorities directly. He would like to know what requirements for the use of coercive measures had been defined by the amended law on guardianship and the Federal Constitutional Court. In particular, he would be interested to hear whether they included a periodic review on the necessity and proportionality of involuntary hospitalization in accordance with article 9 of the Covenant. He wondered whether the State party had an independent mechanism to receive and examine requests for release from persons who had been involuntarily hospitalized or their family members.

17. He wished to know what measures had been taken to determine the number, situation and whereabouts of unaccompanied minors who had applied for asylum in 2019 and to provide them with appropriate support. He asked whether the State party had any plan to eliminate the visible and invisible obstacles to the registration of children born to asylum seekers, refugees and other migrants.

18. **Mr. Santos Pais** said that he would appreciate comments from the delegation regarding his concern that the wording of sections 114b (2) and 114c (1) of the Code of Criminal Procedure might allow decisions to delay notification of arrest to be taken solely by the investigating police officer, before the person was brought before a judge. He wished to know whether a person who had been arrested on Friday evening would remain in detention until Monday morning in order to appear before a judge, and whether in such cases the person would be considered to have been presented before a judge “without delay”. He wondered whether decisions by police officers to delay notification and the grounds for doing so were recorded in writing and whether such decisions required the express approval of a prosecutor or a senior police officer unconnected to the case.

19. There were reports that, although accused persons had a right to counsel before the first police interview, of which they must be informed, that right was subject to the fulfilment of certain requirements. The Committee had also received reports that the presence of a defence lawyer was not mandatory in juvenile cases, except where the accused persons had been placed in pretrial detention, where the charges concerned serious offences or where the

defendants lacked sufficient capacity to defend themselves. The delegation's comments on those reports would be welcome. He would also like to know whether, in the latter case, defence lawyers were appointed ex officio before a juvenile's first interview of the and were present at all stages of the proceedings until delivery of the final judgment.

20. He would like more detailed information on the Independent Board for monitoring foreign intelligence-gathering, including on its status as a judicial or administrative body. He would also like to know how it functioned and how many times it met per year. It would be useful to have an explanation of how individuals could file complaints about potential violations of their data protection rights and what remedies were available to them. He would be interested to learn about parliamentary oversight of the Federal Intelligence Service and how an appropriate level of respect was ensured regarding the privacy of communications. He also wished to know what powers had been granted to the special committee that served as the supervisory body of the State party's intelligence services.

21. He would welcome the delegation's comments on allegations that the Act for Foreign-Foreign Signals Intelligence Gathering of the Federal Intelligence Service legalized practices that were unnecessary or disproportionate and that discriminated against foreigners, as well as on the Act's compliance with the principles of legality, proportionality and necessity. Information would be appreciated regarding the finding by the Federal Constitutional Court in May 2021 that the Act violated freedom of the press and freedom of telecommunications. He would like an update on the status of the three constitutional complaints against the data retention regulations that were pending before the Federal Constitutional Court, and the question of the compatibility of the data retention regulations with European law that had been referred to the European Court of Justice.

22. **Ms. Sancin**, while commending the State party for the solidarity it had shown with refugees, said that she would appreciate information on the impact of the steps taken to address shortcomings in asylum procedures; it would also be useful to learn whether further steps would be taken, particularly in the early stages of the procedure, to provide access to independent procedural counselling. The Committee would welcome information on the measures in place to ensure that the specific needs of particularly vulnerable groups of refugees and asylum seekers were identified at the earliest possible stage and taken into consideration during reception, asylum procedures and local integration processes. It would also appreciate the delegation's comments on how and when the State party intended to: facilitate the process of family reunification for beneficiaries of subsidiary protection, including by lifting the existing quota; allow reunification with individuals who reached 18 years of age during the procedure; create a right to family reunification for minor siblings of unaccompanied minors; introduce a broader understanding of the term "family"; and increase the expediency of family reunification procedures through flexibility concerning evidence of family relationships or additional resources in embassies.

23. She would be grateful for an explanation of the guarantees in place to ensure that resettlement constituted a complementary approach to protection, rather than a replacement for the protection of spontaneous arrivals. She wished to know whether there were plans to increase the number of refugees admitted to the State party as transfers from their first country of asylum, including those on the so-called Central Mediterranean route, and through the Voluntary Humanitarian Admission Scheme between Turkey and the European Union. She also wished to know how, in the light of the reported amendment to section 62a of the Residence Act, it would be ensured that detainees awaiting deportation were kept in suitable, sanitary and non-punitive facilities, rather than in prisons.

24. Further clarification would be appreciated of the State party's position on whether the granting of temporary residence to foreign victims of trafficking in persons was contingent on their cooperation with the police, and how residence rights were granted to victims who were unwilling to participate in criminal proceedings against their traffickers due to fear of retaliation. It would be useful to learn how the State party intended to ensure, in law and practice, that all asylum seekers claiming a real risk of violation of the principle of non-refoulement had access to individualized protection procedures. She would also like to know what measures would be taken in response to concerns about conditions at the centralized refugee accommodation centres, or AnKER centres, that were used to receive, process and deport asylum seekers, including lack of access to services, restricted freedom of movement

and a lack of transparency of the monitoring of the treatment of individuals at those centres. She would appreciate updated information on the response to allegations of ill-treatment of asylum seekers at reception facilities and the increased exposure of “tolerated migrants” in designated places of accommodation to violent attacks.

25. **Mr. El Haiba** asked what effect the Federal Constitutional Court decision of 27 January 2015 had had on Land regulations prohibiting teachers from wearing religiously motivated dress and whether there had been any further developments since the adoption of that decision. Information on cases in which that decision had been taken into account would be welcome.

26. Information on the findings of the evaluation of the 2017 Network Enforcement Act and details of whether it had taken into consideration the impact on freedom of expression would be appreciated. It would be helpful to learn whether the State party had set criteria for authorizing self-regulation institutions to determine illegal content on social networks. Information on such institutions’ process for determining whether content was illegal would also be appreciated.

27. He would welcome information on the outcome of the constitutional appeal relating to section 202d of the Criminal Code that had been lodged by an alliance of civil rights organizations and journalists in 2017. He would like to hear the delegation’s views on the debates over whether defamation committed in public or via publications should be subject to stricter punishment. He asked how many journalists had been prosecuted under section 202d of the Criminal Code since its entry into force.

28. **Ms. Kpatcha Tchamdja** said that she would like clarification of the difference between solitary confinement and disciplinary detention, as well as more information on the different legal requirements relating to each practice and the serious offences that justified those practices. She wondered how the authorization of disciplinary detention for periods of up to four weeks for adults and up to two weeks for children was compatible with the Covenant. Had consideration been given to reducing those periods or harmonizing the legal provisions of different Länder?

29. She would like up-to-date statistics on the total number of convicted prisoners for whom preventive detention had been ordered or reserved at the time of sentencing. She wished to know how the conditions of preventive detention differed from those of punitive detention and how the State party had decided that preventive detention was to be used only as a last resort for serious crimes with a high risk of recidivism.

30. She would be interested to learn whether the ban on striking by civil servants would be addressed by the State party. More information should be provided on the scope of any derogations from articles 21 and 22 of the Covenant due to measures taken to tackle the COVID-19 pandemic, and how it had been ensured that those measures were proportionate to the situation and limited in duration and geographical and material scope.

31. She would appreciate the delegation’s confirmation that all legal impediments to the right to vote of persons with disabilities and persons with diminished criminal responsibility had been removed, as well as further details of the implementation of those legal changes in all Länder. In addition, information might be provided on the legal provisions in place to clearly define citizenship in the context of the rights protected by article 25 of the Covenant.

The meeting was suspended at 11.15 a.m. and resumed at 11.35 a.m.

32. **Mr. Merz** (Germany) said that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had visited Germany in December 2020 and had found that the application of mechanical restraints in police custody had continued to decrease; their use was legal in only five Länder and usage figures were low. The forthcoming report on that visit would contain the relevant statistical information. The national preventive mechanism did not receive individual complaints but was able to visit institutions.

33. **Ms. Jacoby** (Germany) said that the sixth report of the Medical Advisory Service of the National Association of Statutory Health Insurance Funds had been published and indeed contained data on the use of measures involving the restriction of liberty in residential care

facilities for persons with psychosocial disabilities and older persons. The number of residents in care homes where mechanical restraints were used was low and had been declining. The new method for measuring long-term inpatient care quality involved gathering data every six months in an effort to counteract restrictions on liberty through the use of bed belts and bedrails. Such data gathering had been interrupted by the COVID-19 pandemic but visits had since resumed for patients who were no longer at risk. Although there was no specific complaint mechanism for such cases and victims were usually unable to contact the authorities to make a complaint themselves, family members or carers of the person concerned could complain to the public prosecution office. Complaints could also be made to the supervisory authorities and to the medical fund that paid for long-term care.

34. The Federal Constitutional Court had set out specific criteria for forced commitment to psychiatric facilities that amounted to a specific risk of serious harm to oneself or another person. Less severe measures had to have been exhausted, since involuntary hospitalization was a measure of last resort. Each case had to be confirmed by a judge, at either the Land or federal level, depending on the circumstances. Persons who had been forcibly committed could appeal at any time to the court for the suspension of that measure.

35. **Ms. Sasse** (Germany) said that the federal Government attached great importance to the protection of unaccompanied minors. In that context, it drew a distinction between the rules relating to residency, as set out in the Residence Act, and those governing the protection of children and minors. Unaccompanied minors arriving in Germany were placed under the protection of the youth welfare office. If the minor was not subsequently joined by a family member, he or she was transferred to the regular child protection services and offered all necessary forms of support, including accommodation and an officially appointed guardian. The decision as to whether to apply for asylum in Germany was left up to the minor, who was under no obligation to do so. Trafficking in persons was a criminal offence in Germany and, given that unaccompanied minors were particularly at risk, the law provided that the trafficking of a minor was to be treated as an aggravating circumstance that could result in a heavier penalty for the offender. With regard to reports of problems with the issuance of birth certificates to children born in Germany to asylum seekers, refugees and migrants, she said that a certified extract from the civil status register, which had exactly the same status as a birth certificate, could be obtained as an alternative to the birth certificate. Lastly, the purpose of the provisions under section 87 (2) of the Residence Act was to facilitate the provision of administrative assistance to irregular migrants. When authorities knew a person's residence status, they could more effectively provide such assistance to them.

36. **Ms. Viebig-Ehlert** (Germany) said that an accused person (*beschuldiger*) was defined as anyone in Germany who was under judicial investigation, irrespective of whether or not he or she had been formally charged with an offence. Thus, it was possible for someone to be at once an accused and an arrested person. Persons arrested in Germany were required to be brought before a judge immediately; for that reason, no one could be arrested on a Friday and brought before a judge on a Monday. If it was not possible to bring the arrested person before a judge immediately, then it must be done on the day after the arrest. The notification of family members concerning a person's arrest could be done directly by the arrested person, who must first be informed of this right and be given the opportunity to exercise it. The condition set forth in the Code of Criminal Procedure providing for an exception to that rule was very narrowly defined. In most cases, as soon as the arrested person had been brought before a judge – if continued deprivation of liberty was ordered – there was an ex officio obligation to notify his or her family of the order.

37. Under the Code of Criminal Procedure, an accused person had the right, at all stages of the proceedings, to consult a defence counsel and to be informed of his or her right to do so. Whereas previously the accused enjoyed that right only in respect of the first hearing, the Code had recently been amended so as to require that, before every hearing – whether before the police, the public prosecutor or the court – accused persons must be informed of their right to legal representation. Reforms carried out in 2019 in implementation of European Union directives provided for an extension of the accused person's right to a court-appointed defence counsel, so that if he or she applied for it, a lawyer could be appointed at a very early stage of the investigation proceedings. In the case of serious allegations, or where the accused was unable to understand the consequences of a proceeding or the gravity of a situation, the

court was required *ex officio* to provide him or her with a court-appointed defence counsel. Lastly, in the case of sentencing, the authorities were required to ensure the appointment of a defence counsel, irrespective of the wishes of the accused party.

38. **Mr. Merz** (Germany) said that the Federal Intelligence Service, which was the foreign intelligence agency of Germany, was a high-level federal authority that fell within the remit of the Federal Chancellery. In its decision of 19 May 2020, the Federal Constitutional Court had found certain regulations of the existing Federal Intelligence Service Act to be unconstitutional. It clarified that the Basic Law, which provided protection for foreigners abroad, must be taken into account in those regulations, while nevertheless recognizing the importance of telecommunications monitoring and surveillance for the purposes of national security. The Court had not rescinded the existing Act immediately but had granted the legislature a transitional period for its amendment until the end of the current year. The new Federal Intelligence Service Act had been promulgated on 22 April 2021, and parts of it had already entered into force. It would enter fully into effect on 1 January 2022. The new Act provided an entirely new set of regulations for telecommunications surveillance, focusing on providing solid legal protections to foreigners and European Union citizens abroad. The amendments had resulted in not only more precise regulations, but also in better protection of confidential relationships, including those pertaining to lawyers, journalists, the clergy and the courts.

39. He could not provide information on the number of sessions or the precise oversight tasks to be carried out by the newly established Independent Board, which was described in section 40 of the new Act, because those aspects were currently being developed. The Board would take up its work on 1 January 2022 when the new Act had come fully into effect. The Independent Board was both a judicial and an administrative body; it could be described as an independent, high-level federal body that was attached to the executive branch but was not subject to parliamentary oversight.

40. **Ms. Jacoby** (Germany) said that the question concerning the compatibility with European law of the German data retention regulations had been referred to the European Court of Justice for clarification. A hearing had taken place the previous month, and a decision was expected at the end of the current year or at the beginning of 2022. The constitutional complaints lodged against data regulations before the Federal Constitutional Court were still pending, while the decision of the European Court of Justice was awaited.

41. **Ms. Sasse** (Germany) said that a quality assurance system had been set up within the Federal Office for Migration and Refugees for such purposes as regularly reviewing asylum decisions and developing training and guidelines for employees. As part of the decentralized quality assurance measures, the branch offices of the Federal Office for Migration and Refugees carried out recognition rates, or quotas, for various countries of origin twice a year, with at least two people checking every asylum decision. The Government considered its current system to be sufficiently far-reaching and did not plan to further expand those quality assurance measures.

42. Guidelines on the identification of vulnerable groups and their special needs had been prepared for both migration branch offices and the Länder, where asylum applications were filed. The Federal Office for Migration and Refugees was informed as soon as a hearing on asylum was being conducted if the person concerned belonged to a vulnerable group. In addition, the Office carried out awareness-raising activities among its employees, including special intercultural and diversity training.

43. The possibility of family reunification for beneficiaries of subsidiary protection had been introduced on 1 August 2018 under the new law on family reunification. A maximum of 1,000 people could receive approval for family reunification under that law. The number of visas granted was much lower than that figure, owing to the COVID-19 pandemic and its impact on third countries. A case was currently pending before the European Court of Justice concerning family reunification with unaccompanied minors who had reached the age of 18 while their asylum application was being processed. Once handed down, that decision would be evaluated to determine to what extent it necessitated the amendment of the Residence Act. The parents and minor siblings of unaccompanied minors who had been granted subsidiary protection could, under the rules of family reunification, be granted entry into Germany. The

criteria were not very stringent, and questions such as having sufficient funds available were not considered in that context. Such persons were, however, expected to ensure that they had a place to live when they came to Germany. In addition to the parents and minor siblings of the unaccompanied minor – who were considered to be the core family – the Government was currently considering extending the scope of the definition of the family in certain conditions to include siblings older than 18 years old in an effort to avoid imposing undue hardship on them. In an effort to accelerate procedures for family reunification with persons recognized to be in need of international protection in Germany, and in cases where it was difficult to secure the usual documentary evidence of relationship, authorities could rely on alternative means, such as other apparently trustworthy documents. Such measures were implemented on a case-by-case basis, as was also true for other administrative procedures.

44. Germany had an established resettlement programme which had been in continuous operation since 2013 and which had grown steadily. However, resettlement was only one of the various lawful means of entering Germany. Others that were set out in the Residence Act included family reunification, subsidiary protection and employment in Germany. The new Government was not expected to fundamentally change that approach; at the same time, no commitment could be made to increase the number of individuals admitted under those modalities, given that the new Government was still in the process of being formed.

45. Section 62a (1) of the Residence Act had been necessitated by the fact that Germany did not have sufficient capacity to accommodate all persons requiring custody while awaiting deportation. Any complaint alleging inappropriate accommodation in those circumstances could be lodged before the competent courts.

46. Referring to section 24 (1) of the Residence Act, which required foreign victims of trafficking in persons who invoked that section to cooperate with the police, she noted that residence status was assessed on a case-by-case basis, and the competent authorities always checked what options were available to them. If the applicant was the victim of a crime, then section 24 (1) served precisely to trigger the application of victim protection guidelines and to prevent trafficking and illegal immigration. That said, if an applicant did not want to testify, other options for obtaining a residence permit could be made available.

47. An updated assessment of the AnKER centres had been conducted by the Federal Office of Migration Research Centre, which confirmed that the aim of getting all the stakeholders together in one place was actually helping to make procedures more efficient. Minimum standards relating, inter alia, to safety and security had been established for those living in the centres. Such persons also had the right to proper accommodation and protection, as stipulated in the Basic Law and other applicable legislation.

48. **Mr. Behrens** (Germany) said that the Federal Constitutional Court decision of 27 January 2015 stipulated that bans on the wearing of religiously motivated dress were permissible only if there were reasonable grounds for suspecting that such dress might disturb the peace or public order. The mere wearing of a headscarf therefore did not constitute sufficient grounds for its prohibition. Since the Länder had to ensure that their rules were compatible with the Federal Constitutional Court decision, some had had to amend their laws.

49. **Ms. Jacoby** (Germany) said that the results of the Government's evaluation of the impact of the 2017 Network Enforcement Act on freedom of expression, which had been made publicly available, showed that there had not been any excessive content removal by networks wishing to avoid penalties, as had been feared by civil society organizations. In addition, there did not appear to be any evidence of a limitation of the freedom of expression, and normal democratic discussion was still possible, subject to the limits of criminal law.

50. The Criminal Code stipulated clearly when social networks had to take action against illegal content. For support, social networks could turn to the recognized self-regulation institution or enquire with the Federal Office of Justice as to whether a given act, such as a satirical post, constituted a criminal offence. Social networks were only penalized for excessive content removal in the event of systemic failures, such as not establishing structures to handle illegal content. Social networks operating in Germany were required to have a representative in the country, so that the Government could always reach a point of contact at the company.

51. Turning to the three complaints on data-retention regulations that were before the Federal Constitutional Court, she said that the ruling on the data-fencing offences in question was due in 2021, but had not yet been issued. Data fencing did not undermine the work of journalists because, if a journalist received confidential information from another individual, a criminal investigation would be conducted into the person who had provided the information rather than into the journalist, since the latter had not received the information illegally.

52. Solitary confinement was a measure of last resort applied to prisoners who posed a serious risk to others. Prisoners in solitary confinement were monitored and could be kept there for as long as they remained a threat. Disciplinary detention, on the other hand, while still a measure of last resort, was a punishment in response to a specific act that caused harm to another person. Since enforcement was a competence of the Länder, each had slightly different laws on the matter; she was not aware of any intention to make those laws more uniform in that specific regard, although the permanent committee that discussed rules within the prison systems of the various Länder did have a coordinating role.

53. **Mr. Behrens** (Germany) said that, according to the most recent data available, from late November 2020, 595 persons were being held in preventive detention. Significant investment had resulted in dramatically improved conditions, in particular in the quality of the accommodation. Each instance of preventive detention underwent an annual judicial review, and psychiatric assessments were required in all cases, although admittedly there was a shortage of psychiatrists able to conduct such assessments.

54. Referring to the periodic report (para. 229), he said that the Federal Constitutional Court, after an extensive analysis of the case law of the European Court of Human Rights on the right to strike, had found that the ban on striking by civil servants was compatible with the European Convention, and, by implication, with the Covenant. A decision had yet to be handed down regarding the individual complaints pending before the European Court of Human Rights on the matter.

55. Turning to derogations from the articles of the Covenant, he said that there had been no such derogations because, under article 12 (3) of the Covenant, the State party had the option of restricting the right to liberty of movement and the right of peaceful assembly on public health grounds; the restrictions had been proportional. In individual cases, the courts had reviewed and sometimes withdrawn certain measures; for instance, assemblies had been banned in one city, in order to prevent the spread of COVID-19, but were now permitted, provided that participants wore masks and observed physical distancing requirements.

56. **Mr. Merz** (Germany) said that the right to vote in elections for the country's various legislative bodies was linked to citizenship, in line with article 25 of the Covenant. Pursuant to an order of 2019 by the Federal Constitutional Court, the right of participation of persons with disabilities or diminished criminal responsibility had been incorporated into the Federal Electoral Regulations: section 57 provided for participation by persons with disabilities and section 64 covered persons in prisons and care homes. There were corresponding provisions at the level of the Länder.

57. His Government had no plans to decriminalize defamation, as very offensive statements could constitute a grave violation of a person's right of publicity. The offence had an unusual status in criminal law in that it was deemed to have been committed only if the victim filed a complaint with the public prosecution office; the public prosecution office was required to investigate all complaints.

58. **Mr. Yigezu** said that, while the statutes prohibiting religiously motivated dress that were currently in force in the Länder might be compatible with the Federal Constitutional Court judgment of 27 January 2015, it was unclear that those statutes were, in practice, fully compatible with the Covenant. In any event, he would be interested to hear some examples and, if the statutes were not in fact compatible with the Covenant, he would like to know whether they could be reversed and whether there were examples of such reversals. It would be interesting to hear whether the Federal Constitutional Court judgment was being enforced in the Länder.

59. **Mr. Muhumuza**, expressing gratitude for the information provided on the State party's racial inclusion policy, asked for more information on its implementation in practice. He would also appreciate clarification of the State party's vaccination strategy and how its implementation at all levels of government was consistent with the Covenant.

60. **Ms. Sancin**, referring to a case in which 50 asylum seekers, including minors, deported to Greece without their applications' having being processed individually, said that she wished to know what administrative practices the State party was adopting or intended to adopt in order to ensure that such a situation did not recur and that, in observance of the peremptory principle of non-refoulement, similar deportations to third countries under bilateral agreements would not take place.

61. **Mr. Santos Pais**, noting that there were probably some 20 million non-citizens or dual citizens resident in Germany, some of them second- or third-generation immigrants, said that he would like clarification of whether such individuals had the right to vote. Referring to the joint declaration between the Government of Namibia and the State party in regard to the latter's responsibility for the genocide committed against the Ovaherero and Nama indigenous peoples between 1904 and 1908, he said that he would appreciate information on possible plans to include the affected communities in the follow-up process to the joint declaration.

62. **Mr. Behrens** (Germany) said that enforcement of the judgment of the Federal Constitutional Court of 27 January 2015 would be decided in the courts of the Länder if a ban on religiously motivated dress were challenged; he was not currently aware of any such cases. The case of the 50 asylum seekers deported to Greece was pending before the European Court of Human Rights; there was always the option of bringing such cases before a court.

63. **Ms. Florath** (Germany) said that her ability to provide information on the practical implementation of racial inclusion policy was constrained by a lack of data, which was the reason for the Afrozensus that the Government was currently conducting. The Government was also working closely with civil society on closing the gap between policy and its practical implementation. The fact that very few complaints of racial profiling had been filed was considered positive.

64. **Ms. Jacoby** (Germany) said that solitary confinement was a measure of last resort, to be used only when deemed proportionate to the risk posed by the prisoner in question. Depending on that risk, some prisoners could receive family visits, take part in religious services and have contact with the outside world.

65. **Ms. Röhl** (Germany) said that the federal Government had explicitly taken into consideration the interests of the affected Ovaherero and Nama communities in the drafting of the joint declaration.

66. **Mr. Merz** (Germany) said that dual citizens of Germany and another State could participate in elections. In recent years, it had become easier for long-standing residents to obtain German citizenship, which in turn made it easier for such persons to attain the right to vote.

67. **Ms. Jacoby** (Germany) said that the dialogue had been very useful in that it offered her Government a different perspective, enabling it to identify potential human rights violations more easily. The main issues discussed during the two meetings were also the main political and social challenges faced by Germany, in particular the defence of civil liberties against surveillance and the ways in which the country's established human rights standards could be carried into the digital era. Her delegation had taken note of the Committee's questions and recommendations, and would endeavour to submit any outstanding replies within 48 hours.

The meeting rose at 1.10 p.m.