



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Held at the Palais Wilson, Geneva, on Tuesday, 8 November 2011, at 3 p.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention
(*continued*)

Fifth periodic report of Germany (continued)

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Fifth periodic report of Germany (continued) (CAT/C/DEU/5; CAT/C/DEU/Q/5; CAT/C/DEU/Q/5/Add.1; HRI/CORE/DEU/2009)

1. *At the invitation of the Chairperson, the members of the delegation of Germany took places at the Committee table.*
2. **Ms. Wittling-Vogel** (Germany) said that her country had not judged it necessary to include a definition of the crime of torture in the Criminal Code since the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was directly applicable in domestic law and, as a result, the definition of torture contained in article 1 of the Convention was itself directly applicable. The European Convention for the Protection of Human Rights and Fundamental Freedoms was often cited by domestic courts in their decisions and judgements, particularly with regard to the deportation of foreigners or extradition. The Act on the Residence, Economic Activity and Integration of Foreigners on Federal Territory expressly referred to the European Convention for the Protection of Human Rights and Fundamental Freedoms and stated that no foreigner could be deported to a country where his or her freedom was at risk. She recalled a number of cases dating from 2004 to 2005 in which German courts had applied article 3 (on the Prohibition of torture) of the European Convention for the Protection of Human Rights and Fundamental Freedoms to deportation cases. Between 2007 and 2009, 20 per cent of the prison population had been foreigners. Germany did not collect data disaggregated by detainees' racial or ethnic origin. In general, ethnic minorities were fiercely opposed to the generation of such statistics. Moreover, article 3 of the Framework Convention for the Protection of National Minorities stipulated that any persons belonging to a national minority had the right to freely choose whether they wished to be treated as a minority or not. With regard to statistics on racist crimes, Committee members should refer to paragraphs 180 to 189 of the written replies of Germany to the list of issues (CAT/C/DEU/Q/5/Add.1).
3. With regard to intersexual minors who had undergone medical operations against their will or without their parents' consent, she explained that all forms of medical treatment were possible only with the agreement of the person in question; otherwise it was a crime, and therefore liable for compensation. In the case of minors, the parents must of course be consulted and give their consent. In that regard, the Federal Government had requested the National Ethics Council to proffer advice on the notion of consent for medical treatment and care.
4. **Mr. Plate** (Germany) said that his country did not have statistics on members of the armed forces who had been prosecuted for, or convicted of, ill-treatment. Criminal statistics in that area related to all agents of the State and were not disaggregated by profession. In respect of the maximum penalty for acts of torture, it was the general Criminal Code, not the Military Penal Code, that applied to military personnel.
5. Police officers did not act anonymously and were obliged to identify themselves when requested to do so. However, they were not required to carry an identity badge, except in Berlin, where, based on a pilot scheme, the municipal authorities had decided that police officers should carry a badge bearing their name. In general, experience had shown that police officers that wore their name on their uniforms were often the subject of Internet-based harassment. There were no independent departments responsible for allegations of ill-treatment made against the police. In such cases, it was systematically ensured that the inquiry was not entrusted to police officers from the same unit as the officer against whom the complaint had been made.

6. **Mr. Behrens** (Germany) said that article 6 of the Criminal Code established the principle of Germany's universal jurisdiction over certain crimes, particularly those linked to trafficking in persons. The German delegation was unable to confirm the estimates of the German Institute for Human Rights that 15,000 persons had been victims of trafficking within the country. In 2010, there had been 610 cases of trafficking for purposes of sexual exploitation and 43 cases of trafficking for purposes of labour exploitation. Combating trafficking was one of the key priorities of the Federal Police, even though the measures taken were obviously not sufficient to reverse the phenomenon. Victims of trafficking received special protection measures. In cases where threats were made against the victims, they could be admitted to a witness protection programme. In June 2011, the Federal Office for Migration and Refugees had concluded an agreement with the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees aimed at strengthening identification and protection measures for victims of trafficking.

7. **Mr. Düwel** (Germany) said that the use of physical restraints (*Fixierung*) had been prohibited within the Federal Police but that the federal authorities were not obliged to impose the same restriction on the Länder. In any case, in the 16 Länder, physical restraint was a last resort that could be used only if the detainee was a flight or suicide risk or at risk of becoming violent towards others or themselves. Moreover, that measure was time-bound (often less than two hours) and was supplemented by increased medical observation.

8. **Mr. Plate** (Germany) said that, following the death by asphyxiation of a Sudanese national in June 1999 during a forced deportation by air, the Federal Police, drawing all the consequences of the tragedy, had amended the relevant regulations. Since then, the Federal Police had made absolutely sure that all of the conditions contained in the "Regulations on the deportation of foreign citizens by air" were met before proceeding with that form of deportation. With regard to forcible return, the delegation unfortunately had not been able to obtain data disaggregated by age, sex and nationality in time and therefore proposed to submit the data to the secretariat once they had been sent by the relevant authorities.

9. **Mr. Kleinhans** (Germany), responding to a question on the protection of unaccompanied minors, said that he had taken note of the observations made by members of the Committee on the issue and explained that Germany had implemented the common approach defined in the European Union Action Plan on Unaccompanied Minors (2010–2014). In that context, all unaccompanied minors arriving at borders should be subject to appropriate protection measures. Regarding the forcible return of members of ethnic minorities to Kosovo, Germany applied the general principle of voluntary return. In addition, the Federal Government and a number of Länder had provided practical assistance for the social and economic reintegration in Kosovo of the persons concerned within the scope of the "URA 2" project. In that context, assistance could be provided to younger persons to allow them to continue their studies on their return to the country. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), was an integral part of training for law enforcement officers in the majority of the Länder. Immigration officials were trained to spot as soon as possible asylum seekers likely to have suffered acts of torture or ill-treatment. When in doubt, they could seek medical advice.

10. There was no systematic federal inventorying of immigrants placed in holding centres, which meant that the delegation was unable to indicate the exact number. A parliamentary inquiry on foreigners awaiting deportation had however been held, and the conclusions would be submitted to the secretariat as soon as possible. Illegal immigrants were generally held in standard prisons but were separated from ordinary prisoners. There were also holding centres for irregular migrants, notably those in Hanover and Hamburg, with a capacity of 800 beds.

11. **Mr. Düwel** (Germany) said that there was no specific system for examining asylum applications from persons already staying in Germany who had been victims of torture in their country of origin or return: the persons concerned had to apply through the standard asylum procedure. Unaccompanied minors whose asylum applications had been rejected were placed under the protection of the Youth Welfare Office, which offered a series of assistance measures. If it was not possible to return them to their country of origin, for example if they had neither close relatives nor family able to take responsibility for them, they were placed in special housing. Automatic review of refugee status was made by the Federal Office for Migration and Refugees, which applied the same criteria as that for asylum applications, which was essentially verifying whether the situation in the country of origin had sufficiently improved so that the risk of persecution had become unlikely. To that end, the Office used information from the Federal Foreign Office, the Office of the United Nations High Commissioner for Refugees and other sources. It should be noted that when the risk of torture had been established at the time of the initial examination of the asylum application, refugee status was not removed if the person was able to show that the effects of the persecution persisted.

12. **Mr. Plate** (Germany) said that the considerations that had led Germany to suspend deportations to Greece under the Dublin II Regulation would be reviewed in order to determine whether they remained relevant.

13. **Mr. Kleinhans** (Germany) recalled that immigration staff were trained to spot asylum seekers who had been subjected to torture or ill-treatment but that there was no standard medical follow-up, which would considerably lengthen the process. With regard to the rehabilitation centres for victims of torture, all of the centres were funded by the Federal Government.

14. **Ms. Wittling-Vogel** (Germany) said that to her knowledge there was no specific programme on violence towards migrant women, although that group, as a particularly vulnerable sector of the population, were subject to the full general protection measures on violence towards women. The Committee should also be quite clear that while the Länder enjoyed a certain degree of autonomy, that did not mean that they were not bound by the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; they were obliged to respect those provisions just as the Federal State was.

15. **Mr. Behrens** (Germany) said that the rejection of asylum applications was not automatic and that the legitimacy of applications was systematically assessed. On the extradition procedure, he explained that all requests had to be approved by the Federal Ministry of Justice; that was the case even if there was no risk of torture or ill-treatment. Recourse may also be had to diplomatic assurances, but only in exceptional cases. If there was a risk of torture or ill-treatment, diplomatic assurances were not relied on. However, such assurances could be used when the risk of torture was more general and could help to reduce that risk.

16. The German authorities had decided not to request the extradition of 13 American citizens suspected of involvement in the abduction of German citizen, Khaled El-Masri, recognizing that such a request would be refused by the United States. That did not mean that the files were closed; arrest warrants were still out for all the persons concerned and they could be imprisoned if they entered Germany. With regard to the Turkish Islamist militant, Metin Kaplan, who had been deported to Turkey on 12 October 2004, it should be noted that a consular official had monitored the process. Moreover, the Ambassador of Germany had requested authorization from the Turkish Justice Minister to visit Mr. Kaplan in prison so that a consular official should be able to interview him in the near future.

17. Regarding the reopening of the parliamentary inquiry into the alleged participation of the State party in the extrajudicial rendition and secret detention of terrorist suspects, it should be noted that only Parliament had the right to reopen an inquiry and that the Federal Government, which was of course free to further investigate the alleged facts, could in no way influence that decision.

18. **Ms. Wittling-Vogel** (Germany) said that representatives of the Federal Agency for the Prevention of Torture were able to make surprise visits to places of detention. They could not enter the detention centres belonging to foreign armed forces to be found on German territory as they did not come under German jurisdiction. However, the national preventive mechanisms of the member States to which they belonged could enter them. It should also be noted that it was difficult to draw conclusions on the new provision of parole under electronic surveillance as it had only recently been adopted. It was known only that in the State of Hesse, it had been applied to 209 persons during August 2001.

19. **Mr. Düwel** (Germany) said that strict conditions had to be met in order to resort to permanent isolation; it was a measure of last resort against which the detainee was able to appeal in the courts, which would then assess the legality of the decision. It was important to note that all detainees subjected to that measure received medical and psychological care. The aim of permanent isolation was to prevent contact with other detainees. As a result, there was no obstacle to the person concerned receiving visitors. Lastly, it should be noted that such a disciplinary measure was only temporary. After three months, renewal of the measure had to be authorized by the head of the prison in question.

20. **Ms. Wittling-Vogel** (Germany) said that at 31 March 2011, there had been 71,200 detainees in German prisons, including 10,468 persons awaiting trial. It was also important to add that in order to reduce prison overcrowding, four new prisons had been built, two of them already in service.

21. **The Chairperson**, speaking in his capacity as Country Rapporteur, noted that it was essential to define torture and the type of punishment that it carried. He wished to know how many of the allegations of violations related to article 1 of the Convention and how many related to article 16. He would also like data on prosecutions brought and sentences handed down to be submitted to the Committee. The German delegation should also clarify whether torture constituted severe or bodily harm or any bodily injury, in which case, the maximum sentence of 5 years for such a crime was not sufficient vis-à-vis the Convention according to the Committee's case law. Statistics would be welcome.

22. Stressing that it was impossible to directly apply the provisions of article 1 through the Criminal Code because it contained no specific sentence for acts of torture, he requested information on the direct applicability of the Convention in Germany. Moreover, given that the State party was unable to collect data on ethnicity, it would be useful to know that when an offence covered by the Convention was motivated by racism, there were other ways to address the problem, for example by focusing on activities such as the training of Roma police officers.

23. On the issue of trafficking in persons, he wished to know whether there had been any cases where the principle of universal jurisdiction had been applied in order to bring charges and impose sentences and whether the fight against such trafficking was a priority for Germany. Indicators, such as increased budgetary resources, the creation of special units, and training activities, could be revealing in that regard.

24. In cases of crimes committed by military personnel, he wished to know how the competent court was determined and what procedures were applied in cases of risk of double jeopardy (*ne bis idem*). For crimes that came under the Criminal Code rather than the Military Penal Code, such as severe bodily harm, which was the competent court?

25. With regard to the use, as a last resort, of physical restraint, he asked whether a medical examination was carried out in all cases. On the issue of unaccompanied minors, there had been mention of training, but it would be useful to know the position of Germany with regard to the ongoing debate within the European Union on the issue. Turning to voluntary returns, which, unfortunately, were often not as voluntary as claimed, he asked whether, given that the consequences of returning to their country were yet to be fully assessed, the “candidates” for repatriation had access to a lawyer. Noting that diplomatic assurances seemed to have lost their appeal as a result of their unreliability, which had been confirmed in practice, and that when the risk of a violation of article 3 was invoked, such assurances did not solve the problem, he requested information on cases of expulsion, as a complement to the information on extradition. Lastly, he asked whether the case of Mr. El-Masri did not fall under article 14, which guaranteed the right to obtain reparation, and whether such reparation had been requested or proposed, whether an appeal was possible, and whether application of article 14 was envisaged.

26. **Ms. Kleopas** (Country Rapporteur) asked what could be done to ensure that the Länder, which were responsible for prisons, were kept abreast of the Committee’s recommendations and implemented them.

27. Welcoming the prohibition of use of physical restraint (*Fixierung*) by the Federal Police, she asked whether the Länder had also banned the practice.

28. With regard to the requirement for police officers in Berlin to carry a badge identifying themselves, she asked whether, if it proved successful, that initiative could be extended to the entire country. Turning to investigations carried out by German officials abroad, which were no longer permitted, she asked whether they had been carried out by security agents or federal officials, and whether they had been permitted to interview persons in connection with those investigations. She also wished to know whether information on the psychological effects of torture was also included in the training provided on asylum procedures under the Istanbul Protocol.

29. Regarding the confessions obtained under duress, she wondered whether the burden of proof should not lie with the prosecution rather than the defendant; in the absence of witnesses, it was difficult to gather evidence when a person under interrogation was subjected to torture or held incommunicado.

30. Lastly, she requested more detailed information on the separation of young and adult offenders, and investigations into alleged police ill-treatment, which should be independent of the police and should be carried out by an independent body rather than another police department.

31. **Mr. Mariño Menéndez**, referring to the lack of any definition of the crime of torture in the Criminal Code and the German Parliament’s refusal to amend its legislation as required by international law, noted that a number of treaties defined torture, which had become a technical term in international law as a whole. With regard to Mr. El-Masri, he stressed that, from a legal point of view, being of German nationality was not sufficient to establish German jurisdiction; his extradition to a foreign country for reasons of national security and political interest and the fact that he was unable to obtain compensation in the German courts raised many questions. He therefore wished to know whether national security considerations could overshadow the risk of torture faced by German nationals. In any case, Mr. El-Masri had been unable to obtain civil compensation in the United States of America and was also deprived of such compensation in Germany, which made him wonder whether there was any effective remedy.

32. It would be useful to know why foreign women residing in Germany, who had been forced to marry abroad for religious reasons were obliged to request political asylum on

their return and were not permitted to stay in the country even though, in many cases, they had grown up and had ties there.

33. With regard to the North Atlantic Treaty Organization (NATO) bases, which came under the jurisdiction of third countries, he asked whether, under international law, Germany did not have an obligation to cooperate in cases of allegations of inhuman treatment in one of those bases and a moral obligation to demand an investigation without encroaching on the jurisdiction of NATO by so doing. Lastly, with regard to refugees, he wished to know whether, when there was a change of political regime in a country to which a person had previously been unable to be returned because of the risk of torture, refugee status could be revoked automatically.

34. **Ms. Gaer** expressed surprise that negotiations were under way regarding a visit to Mr. Kaplan, “Caliph of Cologne”, since he had been expelled from Germany to Turkey in 2004. She requested clarification on the relevant diplomatic assurances and how such cases were monitored.

35. It was important to be able to identify law enforcement officials individually, whether in public places or in places of detention, by the presence of a badge or a marked vehicle, for example. The delegation had stressed that no reliable source had corroborated the claim that the difficulty of identifying police officers impeded investigations concerning them. However, Amnesty International had stated in its report that one of the reasons that victims of police ill-treatment did not file complaints was that it was impossible to identify the alleged author. Similarly, a professor from Berlin had carried out a detailed study, in which he stated that 10 per cent of cases that he examined had been dismissed because the officers involved had not been identified. The delegation might wish to indicate whether they were aware of that study and explain why they felt that the sources mentioned were not reliable.

36. **Ms. Sveaass** said that she welcomed the State party’s implementation of training programmes for spotting vulnerable asylum seekers, but stressed that it was important to determine what being considered as vulnerable meant for an asylum seeker. For example, would the asylum procedure be accelerated? Or would they be guaranteed other rights? In cases that came under the Dublin II Regulation, it was also important to ensure that screening procedures for determining such cases were subject to further evaluation. The Istanbul Protocol was a very important instrument in that regard because it was related not only to the physical effects of torture, but also the psychological effects.

37. She welcomed the continued financial support of the Government for special rehabilitation centres for victims of torture. However, given the large number of asylum seekers and refugees with particular needs in that area, she asked whether there were plans to implement more systematic rehabilitation programmes, particularly within the regular health-care system.

38. The delegation had said that when an asylum seeker had been denied asylum and returned to a country where they then became a victim of torture, if they were to come back to Germany, they were able to submit a new asylum application. And yet in those circumstances, that person’s return in itself constituted a violation of article 3 of the Convention and the person should therefore be subject to measures other than a simple reconsideration of their application, particularly compensation measures. Did the State party’s legislation contain provisions for such measures?

39. **Mr. Wang Xuexian** said that he would like the delegation to comment on the Joint study on global practices in relation to secret detention in the context of countering terrorism. He also wished it to specify whether the NATO detention centres it had referred to came under the jurisdiction of NATO or belonged to its members.

40. **Ms. Belmir** said she was surprised that one of the criteria for deciding whether juvenile delinquents were separated from adults or not was the nature of the crime, while neither the United Nations Standard Minimum Rules for the Administration of Juvenile Justice nor the United Nations Guidelines for the Prevention of Juvenile Delinquency mentioned such a criterion. Moreover, unaccompanied refugee children over the age of 16 were placed in support centres with adult asylum seekers. Was that because their mere presence in the State party territory constituted a crime? Clarifications on those points would be welcome.

41. She was also surprised that Germany, an exemplary country in the field of human rights, had not, as required by the Convention, included a definition of torture in its domestic legislation and that German legislation and courts only rarely referred to international human rights law. The delegation could perhaps comment on the matter.

42. **Ms. Wittling-Vogel** (Germany) said that the cases cited by Ms. Kleopas had indeed been subject to evaluation but that information on the subject had not been provided owing to time constraints. Written information on that topic would be supplied to the Committee. Replying to Mr. Wang Xuexian's question, she explained that the NATO detention centres he had mentioned belonged to NATO and not to the NATO member States.

43. **Mr. Behrens** (Germany) said that his country had responded in writing to the authors of the Joint study on global practices in relation to secret detention in the context of countering terrorism and had participated in debates by the United Nations Human Rights Council on the issue. While the authors of the study had indeed expressed concern about the link that could be established between Germany and some rendition flights, they had also reported that a willingness to cooperate had been displayed.

44. While the provisions related to bodily harm carried a sentence of a maximum of 5 years' imprisonment, all cases of severe bodily harm, for example injuries inflicted with a weapon or instrument, carried a sentence of up to 10 years in prison. An English translation of those provisions would be sent to the Committee.

45. With regard to concerns that the application of the Military Penal Code to military personnel would result in double jeopardy, he explained that the Code in question subjected the armed forces to certain obligations which did not apply to civilians, but in cases that constituted a breach of both the Criminal Code and Military Penal Code, they were tried in the ordinary courts, through a single procedure, and a single sentence was passed.

46. The explanations provided on diplomatic assurances applied only to extradition cases in which it was in the requesting State's best interest to maintain good relations with the requested State so that there was continued cooperation in the future. The situation was quite different for returns, where such assurances might not have the same weight, and the possibility of monitoring was much more limited. With regard to Mr. Kaplan, the assurances given, which had been respected, were related to monitoring the process and to detention methods. To his knowledge, there had been only one case of return in which diplomatic assurances had been requested.

47. Turning to the issue of burden of proof in cases of allegations of unlawfully obtained confessions, he said that it was the responsibility of the courts to investigate such allegations, using all available evidence to assess the merits. Moreover, the term "burden of proof" was not always appropriate in such cases because, even if the accused was unable to back up an allegation of abuse, the courts were required to take into consideration all the information at their disposal to assess the evidence presented. Any challenge to a piece of evidence sufficed to reduce its value substantially, and for a court to fail to take that dispute into consideration constituted a procedural defect and could lead to an appeal.

48. Lastly, with regard to the question of interrogations carried out abroad by German officials, he confirmed that German investigating officers were no longer involved in interrogations carried out by members of the intelligence services.

49. **Ms. Wittling-Vogel** (Germany) said that the issue of the appropriateness of incorporating into German legislation a definition of torture in keeping with that contained in the Convention, as well as other specific provisions on torture, had been the subject of high-level debate; however, no commitment could be made in that regard at that point. All of the Länder had a policy of recruiting persons belonging to minorities and immigrants for their police forces and carried out anti-discrimination training. However, the State party did not have any data on those subjects.

50. With regard to cooperation among the various levels of government, the Federal authorities and the Länder maintained close collaboration and continuous dialogue on human rights issues. A report on the examination by the Committee of the fifth periodic report of Germany and the Committee's concluding observations would be sent to all Federal institutions and all the Länder. The federal authorities would also send them information on the Istanbul Protocol and recommend to them that all persons dealing with refugees should have access to the German version of that document. In that regard, it should be noted that the authorities were aware of the need to expand training on the detection of signs of torture to include the psychological aspects of torture.

51. Regarding unaccompanied minors, it was awkward for Germany to elaborate further on the position it defended in the context of the current debate within the European Union because it was an internal discussion. The debate is ongoing and should have very positive results.

52. It had to be acknowledged that the non-identification of police officers sometimes posed difficulties in terms of criminal proceedings and that, in cases such as that mentioned by Ms. Kleopas, the police must be identifiable; however, it was also important to consider the inherent problem of the dissemination of names and addresses of officers, particularly on the Internet. Debate on the issue was continued and the study mentioned by Ms. Gaer would be taken into account.

53. With regard to military facilities and detention centres that did not come under German jurisdiction, if the Government learned of cases of ill-treatment there, it would have no other choice but to address the issue via the normal diplomatic channels, government to government.

54. Replying to the question asked by Ms. Sveaass, she said that the German authorities fully shared the opinion that the training for those assessing the situation of vulnerable refugees and asylum seekers should focus on enabling them to identify cases requiring further examination. Efforts in that direction would continue.

55. There was no particular programme in place for foreigners who returned to their country on their own initiative and wished to consult a lawyer in that connection. Everyone had the right to legal assistance and to consult a lawyer, even foreigners.

56. German legislation contained general provisions regarding reparation and compensation which could be used for asylum seekers who had been denied asylum and returned to a country where they had then been a victim of torture. However, the adoption of such measures depended on the degree of responsibility of the German State and should therefore be decided on a case-by-case basis.

57. She agreed that German legislation and courts, with a few exceptions, made very little reference to international law, a fact she regretted. However, that did not mean that there were any gaps in human rights protection, since German legislation was usually sufficient to ensure compliance with international law and made it possible for courts to

obtain the desired result. However, the Government organized seminars for judges to increase their awareness of international instruments, and the bar associations were working on raising awareness of those instruments among lawyers.

58. In conclusion, she said that written responses to all of the questions that had not been answered would be sent to the Committee. She welcomed the constructive dialogue that her delegation had had with the Committee, which would fuel the consideration of the authorities of the questions that had been tackled.

59. **The Chairperson** thanked the German delegation for their detailed responses and announced that the Committee had concluded its consideration of the fifth periodic report of Germany.

60. *The delegation of Germany withdrew.*

The meeting rose at 6.15 p.m.