



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

Distr.: General  
15 November 2011

Original: English

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**Committee against Torture**

**Forty-seventh session**

**Summary record (partial)\* of the 1028th meeting**

Held at the Palais Wilson, Geneva, on Friday, 4 November 2011, at 10 a.m.

*Chairperson:* Mr. Grossman

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*Fifth periodic report of Germany*

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\* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 10.05 a.m.*

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

*Fifth periodic report of Germany (CAT/C/DEU/5; CAT/C/DEU/Q/5, Add.1 and 2)*

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*
2. **Mr. Schumacher** (Germany) congratulated those members of the Committee who had recently been re-elected for another term and introduced the members of the German delegation.
3. **Ms. Wittling-Vogel** (Germany) apologized for the delay in submitting the report and said that the delegation would endeavour to provide satisfactory answers to the questions posed by Committee members.
4. Turning to the issue of detention pending deportation, she acknowledged the concerns that had been raised by the national preventive mechanism in that regard. She said that the issue was taken very seriously by the Government and that measures would be taken to address the problems.
5. With regard to the use of evidence obtained as a result of ill-treatment, she said that the Code of Criminal Procedure expressly prohibited the use of statements obtained as a result of ill-treatment regardless of where it had taken place. However, it was important to note that an allegation of ill-treatment or torture was not sufficient to exclude testimony altogether; it was the responsibility of the courts to decide whether the allegations were sufficiently reliable to permit exclusion of the testimony. In addition, owing to concerns regarding the treatment of detainees by foreign police forces, interrogations by German officials abroad had been suspended.
6. On the issue of involuntary treatment of persons with mental disabilities, the Federal Constitutional Court had recently issued a ruling laying down criteria for such treatment. It was important to note that treatment was carried out only with the consent of the guardian of the person concerned or under judicial order and so long as the treatment would pose no serious risk to the person or to others. In addition, involuntary treatment was permissible only as a last resort. Taking into account the restrictions in place, her country did not believe such treatment was contrary to the provisions of the Convention.
7. She welcomed the concluding observations of the Committee resulting from its consideration of the previous periodic report of Germany and stressed that, although fully addressing the issues raised could take a long time, her Government would endeavour to comply with the recommendations made.
8. Turning to the need for more statistical data, she said that Germany had attempted to improve the situation, but that it would take time for any changes to yield results. Some of the changes had been implemented in 2010 and had not yet produced any data.
9. Welcoming the new optional reporting procedure adopted by the Committee, she said that it would facilitate a more focused discussion between States parties and the Committee. Receiving the list of issues one year prior to the submission of the report would be particularly useful, as it would enable States parties to present more detailed and focused reports. For the current report, only a very short period had elapsed between the receipt of the list of issues produced by the Committee and the submission of the written responses in time for the session, so that some of the responses had been very brief. In that regard, Germany had prepared a longer response to question 12 in the list of issues, and the delegation would present that response during the meeting.

10. Lastly, Germany had ratified the Optional Protocol to the Convention in 2008 and, as a result, had established the relevant national preventive mechanism, through the creation of two bodies: the Federal Agency for the Prevention of Torture, and the Joint Commission of the Länder for the Prevention of Torture.

11. **Mr. Geiger** (Germany) explained that the Joint Commission of the Länder for the Prevention of Torture, which he chaired, had been established only in 2010, since all 16 Länder had to agree, while the Federal Agency for the Prevention of Torture had been active since mid-2009.

12. With regard to the staffing and roles of the two bodies, he explained that the Federal Agency had been allocated only three staff positions, of which only one and a half had been filled to date. The Joint Commission of the Länder had four staff members and a chairman. The role of the bodies was to visit sites where persons were deprived of their liberty. The Federal Agency was responsible for supervising 360 prisons, customs offices and police stations, while the Joint Commission of the Länder's remit covered a total of 1,300 facilities, including deportation centres, police stations within the Länder, psychiatric clinics, children's homes and care homes.

13. Both bodies had begun their visits to the different facilities, including prisons, police stations and deportation centres. No indications of torture or ill-treatment had been found, but, in accordance with the Optional Protocol, the bodies had issued recommendations and proposals on how to improve existing facilities.

14. With regard to prisons, the recommendations had included the provision of paper clothing in specially secured cells for violent prisoners suffering from psychiatric disorders, and the blurring of video coverage of toilet areas of those cells, to which some, but not all, of the Länder had agreed; the use of non-metal restraints in the specially secured cells; the recording of the implementation of such measures in a separate register; the increase of labour opportunities and leisure activities for detainees; improvement to the layout of cells to increase the amount of natural light and fresh air; recognition of the different cultural backgrounds of detainees, and the introduction of partitions in the shower rooms.

15. The recommendations for psychiatric institutions had included reducing overcrowding and increasing the number of staff. With regard to police custody, information had been requested on the immediate reading of rights to detainees, with the added recommendation that those rights be made available in a number of different languages; that detention rooms should be equipped with washable mattresses and blankets; and that steps should be taken to ensure sufficient protection against fire. Unfortunately, owing to the limited financial and staff resources available, it was difficult to ensure regular visits from the two bodies to the different facilities.

16. **Mr. Lange-Lehngut** (Germany) reiterated that the funding and staffing limitations experienced by the two bodies made it difficult to fulfil the requirements of the Optional Protocol with regard to regular visits to facilities. The visits that had already been carried out by the Federal Agency for the Prevention of Torture, of which he was the Director, had shown that there were very few detainees in army and customs facilities or in deportation centres. Recommendations by the Federal Agency had called for all detention rooms to have access to natural light and to contain mattresses, blankets, pillows and nightlights, and for restraints to be removed from detention rooms. The recommendations had been taken seriously by the facilities and should lead to the introduction of best practices.

17. **The Chairperson**, speaking in his capacity as Country Rapporteur, commended the State party on the thoroughness of its responses to the questions raised in the list of issues, contained in its fifth periodic report, and on its ratification of the Optional Protocol to the Convention against Torture.

18. While the Committee welcomed the State party's adoption of its Code of Crimes against International Law, that Code could only be invoked in cases of armed conflict, genocide or widespread and systematic attacks against a civilian population. Although the State party maintained that acts of torture that occurred in other circumstances would be prosecuted under other legislation, a lack of clarity in that regard might hinder the ability of the State party to fully uphold the Convention. For example, according to the State party's replies to the list of issues (CAT/C/DEU/Q/5/Add.1), it had been alleged that certain police officers had used inappropriate force and abused their office while carrying out their duties. It remained unclear whether those allegations, if upheld, would constitute violations of articles 1 or 16 of the Convention. Detailed statistics in that regard were needed for the compliance of the State party with the Convention to be ascertained. Such data would, moreover, help the State party to improve its policing methods. The Committee therefore reiterated its call for Germany to adopt a comprehensive definition of torture which was in full conformity with the definition contained in article 1 of the Convention.

19. Although the State party was unaware of any cases in which its courts had invoked the United Nations Convention against Torture, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had on occasions been invoked. The Committee wished to know how often the European Convention had been invoked.

20. The German Institute for Human Rights and the Foundation "Remembrance, Responsibility and Future" had estimated that 15,000 adults and minors had been trafficked into Germany for sex work, illegal adoption or slavery. The Committee wished to know whether the delegation believed that that figure was accurate, and whether it had any information on the time period over which those cases of trafficking had taken place. Although provisions in Germany's Criminal Code criminalized trafficking, detailed statistics in that regard were required so that the effectiveness of those provisions could be ascertained. The Committee wished to know what measures had been enacted to ensure that illegal immigrants who reported cases of trafficking were not subsequently deported to their home countries, particularly if, under article 3 of the Convention, there were substantial grounds for believing that they would be in danger of being subjected to torture if they were returned. The Committee also wished to know how the State party intended to encourage trafficked persons to report cases of trafficking.

21. In its fourth report on Germany, the European Commission against Racism and Intolerance had highlighted the fact that widespread discrimination occurred against certain vulnerable groups within that country, including minorities. The Committee wished to know if the delegation could provide data on the number of detainees who identified themselves as members of minorities, what proportion of the total detainee population they constituted, and how many of those detainees had allegedly suffered ill-treatment while in detention.

22. In a parallel report by the Association of Intersexual People/XY Women and the Humboldt Law Clinic: Human Rights, it had been alleged that intersexual children, whose bodies did not conform to social norms for sex and gender, were routinely subjected to operations which constituted violations of the Convention. Furthermore, patients and their parents were not always fully informed of the implications of such operations and whether they were indeed necessary. The Committee wished to know whether the State party was investigating those allegations and whether steps were being taken to train medical and psychological professionals on the range of sexual genitalia and related physical diversity, as well as on the need to inform patients and their parents of the implications of performing unnecessary surgical operations on intersexual people.

23. According to the State party's replies to the list of issues, any military superior who committed what amounted to acts of torture was liable to a maximum penalty of 5 years'

imprisonment under the Military Penal Code. The Committee believed that harsher penalties were sometimes required and wished to know whether such offences could be punished under other provisions of the law with a view to ensuring that appropriate penalties were imposed.

24. The Committee noted that the Minister of Defence had ordered a comprehensive investigation of the German armed forces, in response, inter alia, to allegations of mistreatment of detainees and deaths in custody, and looked forward to being informed of the outcome of that investigation.

25. Further information on the powers of federal and Länder authorities was required. In particular, the Committee wished to know how the federal authorities could ensure that regulations on the use of physical restraints (*Fixierung*) were respected across the whole territory of the State party, and what measures had been implemented to ensure compliance with the Convention at the Länder level, including in relation to ensuring that foreign nationals were not forcibly returned to States where they might be subjected to torture. The Committee also wished to know whether Länder were obliged to comply with decisions relevant to the Convention that had been taken at the federal level.

26. With regard to paragraph 9 of the list of issues, the Committee wished to know how many members of the law enforcement authorities had been convicted of offences under the Convention, and required more information on the extent to which the opinions of medical examiners were taken into consideration when the competent authorities sought to determine whether asylum-seekers should be forcibly removed from the State party. In that connection, the Committee was concerned that no legal assistance was provided to asylum-seekers when it was believed that they stood little chance of successfully appealing their removal, and requested information on the criteria used to determine their chances of success.

27. The Committee wished to know what procedures must be followed by NGOs that wished to inspect places of detention, how many requests to that end had been received and approved, and how long it took for a decision to be reached in that regard.

28. The Committee asked the delegation how the State party intended to make optimal use of the limited human and financial resources available to ensure compliance with the Committee's recommendations, and wished to know how the petitions committees mentioned in the State party report could be established in all Länder.

29. He asked whether the State party considered female genital mutilation to be a form of torture and why it did not keep statistics on the phenomenon. In the context of violence against women, he reiterated the Committee's request for more information on the State party's intended responses to recommendations made to it by the Committee on the Elimination of Discrimination against Women (CEDAW/C/DEU/CO/6, paras. 42 and 48). Sharing that information with the Committee should not involve an extra burden for the State party. Indeed, as the Committee's general comment No. 2 made clear, States parties were under an obligation to provide it with relevant information, regardless of any overlap with other treaty bodies.

30. With regard to the use of evidence obtained by unlawful means, he noted that several German courts had established that any evidence tainted by the use of torture poisoned the entire trial process. The Committee would like to have further clarification on that matter.

31. In the light of rulings by German courts that diplomatic assurances alone could not be relied upon as guarantees that a person deported or extradited to a third country would not face the risk of being subjected to torture, he asked whether the State party considered that diplomatic assurances were sufficient to allow deportation or extradition even in cases

where there were substantial grounds for believing that there was a real risk of torture in the destination country.

32. Noting that the State party was awaiting the results of discussion within the European Union on whether the airport procedure should be applicable to minors, he wished to know the position of the Government of the State party on the matter of their deportation. He reiterated the Committee's request for disaggregated statistics on the grounds given for accepting and rejecting requests for asylum. He requested more detailed information on what procedures were in place for the voluntary return of illegal immigrants to their countries of origin.

33. Turning to the matter of alleged instances of ill-treatment by members of the police, he noted that when complaints were filed, the police often put forward counterclaims. It would be useful to have statistical information on the nature of the complaints and counterclaims, with a view to identifying which police units tended to be the subject of such complaints.

34. With regard to the alleged involvement of the State party in extrajudicial renditions, he asked whether a declaration by the Constitutional Court to the effect that the Federal Government had failed to cooperate adequately with a parliamentary commission of inquiry into the matter had produced any tangible repercussions. Finally, he wished to know how many requests for judicial assistance the State party had received from other States under article 9 of the Convention and which Government department was responsible for dealing with such requests.

35. **Ms. Kleopas** (Alternate Country Rapporteur) noted with concern that the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, had stated in his report of 2010 (A/HRC/13/39/Add.5) that the State party's national preventive mechanism was "evidently unable to ensure complete geographic coverage of all places of detention" because of a lack of funding and staff. She was also concerned by the fact that inspections of places of detention continued to be announced in advance.

36. Turning to the matter of training, she asked whether all public officials involved in the investigation of crimes of torture and ill-treatment, medical personnel working in prisons and officials dealing with newly arrived refugees and asylum-seekers received training on the provisions of the Istanbul Protocol. She also wished to know whether other Länder had followed the example of North-Rhine Westphalia in developing standards for avoiding suffocation.

37. Noting that the State party's response to the Committee's question regarding the existence of public education and professional training on positive, participatory and non-violent forms of education and childrearing had been to the effect that such matters would be broached with the Committee on the Rights of the Child, she reiterated that general comment No. 2 established the duty of the State party to furnish the Committee with requested information.

38. Noting that recourse to *Fixierung* (the imposition of physical restraints on an individual) in places of detention would not be abandoned by the Länder, she wished to know whether the Federal Government could at least harmonize the different practices across prisons run by them. She also requested information regarding plans by the Länder to implement recommendations made in 2005 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

39. She wished to know the current situation with regard to the planned introduction of new legislation to regulate preventive detention, lending the concept of such detention a clear therapeutic orientation in order to minimize the danger emanating from the detainee

and at the same time reducing its duration. She also wished to know to what extent electronic tagging was used in the State party as an alternative to preventive detention. Had the State party begun to implement the 2011 ruling of the Constitutional Court on the matter?

40. She wished to know what progress had been made with regard to the construction of new facilities for juvenile prisoners aimed at putting an end to mixed accommodation with adults. Turning to the use of permanent seclusion (*unausgesetzte Absonderung*), she asked what medical and psychological support was available to prisoners, especially juveniles, held in such confinement and requested data on complaints, including of torture and ill-treatment, submitted by prisoners held in permanent seclusion. She also wished to know what standards and procedures were in place to move prisoners out of permanent seclusion.

41. With regard to undocumented illegal immigrants held in detention, she asked the delegation to provide disaggregated data on the current number of such immigrants, including the place of and reasons for their detention. She also wished to know whether detainees were held, and subsequently deported, individually or with their families. What efforts was the State party making to establish alternative detention facilities to house undocumented immigrants separately from other prisoners prior to deportation? She also asked whether detainees held under restraint had the right to request medical or psychiatric assessments by practitioners of their own choice or otherwise independent of prison staff, and what complaints mechanisms were in place for detainees, especially those subjected to physical restraints. With regard to the obligation to investigate allegations of torture promptly and impartially, the Committee was heartened by the decision of the State party to collect statistical data on those allegations. It was to be hoped that statistics on the ensuing investigations and convictions made would also be collated.

42. Noting the establishment in some Länder of independent departments responsible for investigating allegations of criminal conduct by members of the police, she said that such investigations were sometimes hampered by the fact that police officers could not be identified. The obligation for members of the police to wear an identification badge and number when on duty had been introduced in three Länder. Would the State party act to ensure that that was the case across the country?

43. Referring to the report submitted by Amnesty International, she drew attention to several cases in which the organization had reported that the State party had failed to take prompt action regarding allegations of ill-treatment. With regard to the obligation of States parties to carry out independent and thorough investigations into allegations of torture and ill-treatment, the Committee maintained that the person responsible for carrying out investigations must be independent from those implicated in events. There should be no institutional or hierarchical connection between investigators and alleged perpetrators. Although some progress had been made, she highlighted various cases of ill-treatment by police officers that had been brought to the Committee's attention by Amnesty International and asked whether the State party intended to ensure that all investigations were carried out by independent bodies that had no connection to the police. She also stressed that investigations must be thorough, as another element of ensuring impartiality. Lastly, she drew attention to information received from Amnesty International concerning lack of awareness among victims of how to submit complaints of ill-treatment, lack of accessible information on the procedure, and refusals by police officers to register complaints.

44. **Ms. Gaer**, referring to paragraphs 74 to 78 of the State party's report, enquired about the position of the individual responsible for giving diplomatic assurances and the person to whom they were given. Did any guidelines exist in that respect? Further to the Committee's letter of 3 May 2011, she requested information about the current whereabouts of the "Caliph of Cologne", measures being taken to protect him from torture, how often he had been visited and by whom, and how the situation was being monitored. In its letter, the

Committee had also expressed regret at the lack of training on the substance of the Convention for employees of private security companies, and she requested further information in that regard.

45. She asked what constituted “consent” under German law, particularly in the case of medical operations on a patient’s sexual and reproductive organs. Lastly, she requested a reply to question 50 of the list of issues prior to reporting, which appeared to have been omitted from the State party’s report.

46. **Mr. Bruni**, referring to paragraph 91 of the State party’s written replies to the list of issues (CAT/C/DEU/Q/5/Add.1), observed that preventive detention in the State party could sometimes last for many years. He enquired about the reasons for such long periods of preventive detention and requested specific examples of individuals who had been in preventive detention for over 15 years. In its visit to the State party in October 2011, the Working Group on Arbitrary Detention had expressed concern that some people remained in preventive detention after serving their sentences because they represented “a danger to society”. He asked whether such detainees were provided with assistance with a view to progressive reintegration into society.

47. According to paragraphs 130 and 131 of the State party’s written replies, there were few problems of overcrowding in places of detention; however, the situation seemed worse in certain Länder, particularly North Rhine-Westphalia. He asked whether the new prison buildings referred to had been brought into operation, and requested information on the current rate of prison occupancy in that Land and in the country as a whole.

48. **Mr. Mariño Menéndez** drew attention to the complications of reconciling the lack of a specific offence of torture in the State party’s criminal legislation with the number of international instruments it had ratified that proscribed the practice, which could be obviated by incorporating the accepted international understanding of torture into domestic law. With regard to the Optional Protocol to the Convention, he asked whether the designated visiting body was authorized to visit facilities under foreign jurisdiction on German territory where individuals might be deprived of their liberty, including in cases where the foreign State had not ratified the Optional Protocol, or whether applicable bilateral or multilateral treaties excluded the possibility of such visits.

49. He referred to a case in which a German citizen had been tortured abroad by agents of the United States Central Intelligence Agency. In December 2010, a court in Cologne had upheld the decision not to request the extradition of the agents concerned from the United States, on the grounds of national security. He asked whether that criterion had been applied widely or only to the case in question, and whether it had implications for the relationship between the executive and judicial authorities.

50. With regard to protecting vulnerable groups, he enquired whether the State party had considered granting the right of return to foreign women resident in Germany who had been forced to marry abroad, and whether unaccompanied minors denied asylum were given special protection. He expressed concern about the application of cessation clauses to refugees in the State party, and enquired about safeguards in that respect. Lastly, he asked whether statistics were available for asylum requests received from individuals detained abroad for being in an irregular situation, and whether any regulations or practices existed regarding such cases.

51. **Ms. Sveaass** sought confirmation that there was a difference in procedures under public and private law with regard to involuntary placement in psychiatric institutions. Concerning violence against migrant women, she asked whether the State party had strategies to combat, prevent and investigate such cases and whether girls could be separated from adult women in prisons. Given that the return of asylum-seekers to Greece had been suspended until January 2012, she asked whether the suspension would continue

after that date in the event that the situation in Greece had not changed significantly by then.

52. She asked whether there were plans to discuss, evaluate and revise current medical practice in the area of early determination of sex in cases of sexual ambiguity at birth, in the light of new research.

53. Enquiring about mechanisms for identifying vulnerable asylum-seekers arriving in the State party at an early stage, she asked how medical documentation was used in the asylum procedure. She asked whether any individuals who had been returned to their own countries had suffered torture and subsequently come back to the State party and, if so, whether they had received monetary or other compensation, or rehabilitation. She enquired about plans for strengthening rehabilitation for refugees who had been victims of torture.

54. **Ms. Belmir** said that, despite the State party's considerable efforts and achievements in protecting human rights, more could always be done in striving for perfection. It was important to consider how to overcome differences in the treatment of certain groups, particularly foreign citizens, even though rights were legitimately subject to limitations. Minors seeking asylum were especially susceptible to discrimination and should be better protected. The State party's asylum and refugee procedures seemed ill-adapted to children. Asylum-seekers of 16 and over were often denied child protection services and detained with adults. Measures should be taken to address the high levels of suicide and violence among such groups.

55. There had been some debate within the State party on whether to pursue an absolutist or relativist approach to the prohibition of torture. She wondered whether rendition was not more consistent with the latter.

56. **Mr. Wang Xuexian** asked whether the State party had responded to the Human Rights Council's joint study on global practices in relation to secret detention in the context of countering terrorism, released in February 2010 (A/HRC/13/42), and invited it if so to share its response with the Committee. He also asked whether the State party intended to follow up on the study.

57. **Mr. Schumacher** (Germany) thanked the Committee for its perceptive questions and welcomed the participation of civil society in its work. Echoing the view expressed by Ms. Belmir that more could always be done to protect human rights, he hoped that the delegation would be able to provide answers to all the questions asked.

*The discussion covered in the summary record ended at 12.10 p.m.*