



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

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## Committee against Torture

### List of issues prior to submission of the sixth periodic report of Germany\*

The Committee against Torture, at its thirty-eighth session (A/62/44, paras. 23 and 24), established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

#### Articles 1 and 4

1. Please provide information on any steps taken by the State party to incorporate the specific crime of torture into its general criminal law (the Criminal Code and the Military Penal Code), and not only into its Code of Crimes against International Law, as recommended by the Committee in its previous concluding observations (CAT/C/DEU/CO/5, para. 9). Please also indicate if the State party intends to amend section 340 (1) (causing bodily harm while exercising a public office) and section 224 (causing grievous bodily harm) of the Criminal Code, and sections 30 (ill-treatment) and section 31 (degrading treatment) of the Military Penal Code, with a view to ensuring that the infliction of pain or suffering, whether physical or mental, for the purposes indicated in article 1 of the Convention, by a public official or other person acting in an official capacity is considered torture and is punished with increased penalties than the ones currently foreseen, to take into account its grave nature, in accordance with article 4, paragraph 2, of the Convention.<sup>1</sup>

2. In the light of paragraph 10 of the previous concluding observations, please indicate which steps have been taken by the State party to raise awareness among all public authorities across the *Landër*, and specifically among the judiciary, of the rights set forth in the Convention, so that they can give effect to those rights.<sup>2</sup> Also please indicate if the Convention, including the definition of torture set out in article 1, has been directly applied

\* Adopted by the Committee at its fifty-first session (28 October-22 November 2013).

<sup>1</sup> See CAT/C/DEU/CO/5, para. 11 and CAT/C/DEU/Q/5/Add.1, para. 8.

<sup>2</sup> See CAT/C/DEU/Q/5/Add.1, para. 7.

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by the domestic courts since November 2011, both at the federal and *Länder* levels and if so, please cite those cases.<sup>3</sup>

#### Article 2<sup>4</sup>

3. With reference to the previous concluding observations (para. 12), please provide information on measures taken by the federal Government to guide and assist individual *Länder* in the adoption and application of legislative and policy measures in the context of law enforcement, including with regard to prison administration and the use of physical restraints (and the practice of *Fixierung*), in order to guarantee that the standards and safeguards set forth in the Convention are protected evenly and applied consistently in all *Länder*.

4. Please inform the Committee on the steps taken at federal and *Länder* level to ensure that the relevant written information setting out the rights of persons in police custody is systematically given to such persons immediately upon their arrival at a police station and that information on the possibilities of benefiting from emergency legal counselling services is included in the written information, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Please also indicate whether any amendments have been made to section 114b, paragraph 2, of the Code of Criminal Procedure, with a view to clearly defining the exceptions to the right of a detainee for a family member or another trusted person to be notified and in order to ensure that the exceptions are applied for as short a time as possible and with the appropriate safeguards, as recommended by the Committee for the Prevention of Torture. Are there any mechanisms to ensure that all persons in police custody can effectively benefit, if they so wish, from access to a lawyer during police questioning, as recommended by the Committee for the Prevention of Torture, and not only when being questioned by a public prosecutor or a judge? How does the State party ensure across the *Länder* that police questioning is always suspended for a reasonable time pending the arrival of a lawyer?

5. Bearing in mind paragraph 13 of the Committee's previous concluding observations, and the recommendation of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during its visit to Germany in April 2013, please provide detailed data on the human and financial resources with which the National Agency for the Prevention of Torture has been provided. Please explain how these resources are sufficient for it to carry out its functions effectively and independently.<sup>5</sup> Also please explain how the appointment process of the head of the Federal Agency for the Prevention of Torture and the members of the Joint Commission of the *Landër* comply with the requirements of independence, transparency and inclusiveness established in paragraph 16 of the guidelines on national preventive mechanisms (CAT/OP/12/5) adopted by the Subcommittee.

6. Please inform the Committee if there have been any instances, since the consideration of the previous State report, in which the National Agency for the Prevention

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<sup>3</sup> See CAT/C/DEU/CO/5, para. 10, CAT/C/DEU/Q/5/Add.1, para. 7 and CAT/C/SR.1031, para. 2.

<sup>4</sup> The issues raised under article 2 could also imply different articles of the Convention, including but not limited to article 16. As is stated in general comment No. 2 (2007) on the implementation of article 2 by States parties, paragraph 3: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

<sup>5</sup> See A/HRC/WG.6/16/DEU/3, para. 31 and A/HRC/24/9, para. 124.43.

of Torture has announced its intention to visit a place of detention prior to its visit, or was requested to do so in order to gain access, at the federal or *Länder* levels.<sup>6</sup> Please also state whether the National Agency has ever been prevented from gaining regular and timely access to places of detention since November 2011 and what steps have been taken to prevent such incidents.<sup>7</sup>

7. In light of the Committee's previous concluding observations (para. 14) with regard to the National Agency for the Prevention of Torture, please provide:

(a) Information on the efforts of the State party to disseminate regularly, using all appropriate means of communication, the recommendations of the National Agency and the measures taken by the State party to ensure the effective implementation of those recommendations;

(b) Updates on compilations of best practices of the National Agency and on the training provided to the personnel of the Agency since November 2011;

(c) Information on steps undertaken to enhance cooperation and coordination between the Joint Commission of the *Länder* and the existing bodies in the different *Länder* mandated to carry out preventive visits to places of detention, such as the petitions committees.<sup>8</sup>

8. Please report on the Federal and *Länder* government analysis of the results of the 2012 study by the *Kriminologische Forschungsinstitut Niedersachsen* (Criminological Research Centre of Lower Saxony) on violence experienced by prison inmates. What measures, if any, will the respective governments take as a result of the study?

9. With reference to the previous concluding observations (para. 15) and the phenomenon of trafficking in persons, please provide, from November 2011:

(a) Updated information on all appropriate measures, including awareness-raising campaigns, taken by the State party to prevent all forms of trafficking in persons and whether there is a methodology in the State party to assess the effectiveness and impact of all initiatives to combat trafficking;<sup>9</sup>

(b) Information on how the State party has strengthened its efforts to combat different forms of trafficking, including with regard to the improvement in identification of victims and intervention, specifically for child trafficking and prostitution, and in strengthening cooperation with countries of origin, transit and destination. Please also indicate whether any training has been provided on the subject to police, prosecutors and judges. Please clarify whether trafficking in persons for purposes other than sexual or labour exploitation is penalized in the State party;<sup>10</sup>

(c) Up-to-date statistical data disaggregated by age, sex, country of origin, ethnicity and employment sector of the victim, on the number of victims of trafficking, the number of complaints, investigations, prosecutions and convictions and the type of punishments imposed on convicted perpetrators on an annual basis;<sup>11</sup>

(d) Updates on the means of redress provided to victims, including compensation, legal, medical and psychological aid and rehabilitation, as well as

<sup>6</sup> See CAT/C/DEU/CO/5, para. 13, CAT/C/DEU/CO/5/Add.2, paras. 27 and 29, and A/HRC/WG.6/16/DEU/1, para. 11.

<sup>7</sup> See CAT/C/DEU/CO/5, para. 13.

<sup>8</sup> See CAT/C/DEU/Q/5/Add.1, para. 23.

<sup>9</sup> See CCPR/C/DEU/CO/6, para. 13.

<sup>10</sup> See CEDAW/C/DEU/CO/6, paras. 47 and 48, CAT/C/DEU/Q/5/Add.1, para. 29, and A/HRC/24/9, paras. 124.139–140.

<sup>11</sup> See CAT/C/DEU/CO/5, paras. 15 and 33.

information on the successes and constraints of the national programmes to protect, assist and support all victims and witnesses of trafficking, including those who do not cooperate with the investigations,<sup>12</sup> indicating the number of shelters and their occupancy rate, and efforts to provide temporary residence permits and protection against return to all victims and witnesses of trafficking, particularly when the persons would be in danger of torture in their countries of origin;<sup>13</sup>

(e) Updates on the progress made in the joint project by the International Organization for Migration and the Federal Office for Migration and Refugees to identify potential victims of trafficking among asylum seekers, as referred to in paragraph 7 of the previous concluding observations.

10. With regard to domestic and gender-based violence, please provide information, from November 2011, on:

(a) Measures taken to strengthen the prevention, investigation and punishment of all forms of violence against women and children, including domestic violence,<sup>14</sup> and whether there is a methodology in the State party to assess the effectiveness and impact of all the initiatives in this area. Please also provide information regarding measures taken to protect particularly vulnerable groups, such as women and girls of Turkish and Russian origin;<sup>15</sup>

(b) Statistical data, disaggregated according to the type of crime and the age and sex of the victim, on an annual basis, on the number of complaints received, the number of investigations and prosecutions carried out, the number of convictions and the types of penalties imposed;<sup>16</sup>

(c) Updates on the means of redress provided to victims, including legal, medical, psychological aid and rehabilitation, as well as on the successes and constraints of the national programmes to protect, assist and support all victims, including victims with psychosocial disabilities,<sup>17</sup> indicating the number of shelters and their occupancy rate.

11. With reference to the previous concluding observations (para. 34), please describe measures taken to implement fully the provisions of international human rights instruments, in particular in the context of counter-terrorism measures.

### Article 3

12. Please provide statistical data, for the period since consideration of the previous report and on an annual basis, disaggregated by sex, country of origin and by whether the applicant is a minor or an adult and disaggregated according to the type of asylum procedure applicable (regular procedure or the fast-track airport procedure), concerning:

(a) The number of asylum requests registered;

(b) The number of asylum requests or the instances of humanitarian protection granted and the average processing period per year;

(c) The number of applicants whose requests were granted because they had been tortured or because they might be tortured if they were to be returned to their country of origin;

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<sup>12</sup> See A/HRC/WG.6/16/DEU/1, paras. 73 and 74.

<sup>13</sup> See CAT/C/DEU/CO/5, para.33, CCPR/C/DEU/CO/6, para. 13, A/HRC/WG.6/16/DEU/1, paras. 73 and 74, and A/HRC/WG.6/16/DEU/3, paras. 18 and 56.

<sup>14</sup> See CCPR/C/DEU/CO/6, para. 9, and A/HRC/24/9, paras. 124.134–137.

<sup>15</sup> See CCPR/C/DEU/CO/6, para. 9.

<sup>16</sup> See CAT/C/DEU/CO/5, para. 33, and CAT/C/DEU/Q/5/Add.1, paras. 24–26.

<sup>17</sup> See A/HRC/WG.6/16/DEU/1, para. 60.

(d) The number of those who have been returned, extradited or deported and the grounds on which they were sent back, including a list of countries to which individuals were returned;

(e) The number of appeals challenging a decision of expulsion, return or deportation on the basis of the danger for the applicant of being subjected to torture or other forms of ill-treatment, and their outcome, as well as the average processing period of appeals per year;

(f) The number of cases in which refugee status was revoked and the number of appeals lodged in these cases on the basis of the danger for the applicant of being subjected to torture or other forms of ill-treatment, as well as the outcome.<sup>18</sup>

13. Please provide information on measures taken by the federal and *Länder* authorities to ensure that asylum seekers are systematically given access to independent, qualified procedural legal counselling, which is free of charge, before a hearing is carried out, as recommended in the previous concluding observations (para. 23). Please also indicate which measures have been taken to ensure that legal aid is provided to asylum seekers in order to allow them to appeal a negative decision.

14. With reference to the previous concluding observations (para. 21), please inform the Committee if the State party has prolonged the suspension of forced transfers of asylum seekers to Greece under the Dublin Regulation (Council Regulation (EC) No. 343/2003) until the reception conditions improve in the country of return.<sup>19</sup> Please also inform the Committee as to the steps undertaken to ensure that asylum seekers are not being placed in situations where there are no adequate reception conditions in the reception country before being transferred to other European Union States under the Dublin Regulation.<sup>20</sup>

15. In light of the previous concluding observations (para. 22), the State party's follow-up replies<sup>21</sup> and the Committee's follow-up letter, please provide information about the status of any amendments to article 34a, paragraph 2, of the Law on Asylum Procedure, with a view to guaranteeing a stay of execution by law, for as long as is necessary, of the decision to transfer an asylum seeker to another State participating in the Dublin system when a well-substantiated appeal claiming that deportation would give rise to a risk of torture or ill-treatment has been presented against the impugned decision, in compliance with the previous concluding observations and European Court of Human Rights application no. 30696/09, *M.S.S. v. Belgium and Greece*.<sup>22</sup> Please also indicate, since November 2011, in how many cases in which an appeal was lodged on the grounds that deportation would give rise to a risk of torture or ill-treatment, an interim measure suspending the transfer or deportation of the concerned individual was adopted.<sup>23</sup> Please also indicate in how many of those cases in which an appeal was lodged, the decision on the appeal was adopted after the expulsion or transfer order had been executed.

16. With reference to the previous concluding observations (para. 24), and the State party follow-up replies,<sup>24</sup> please clarify whether the initial medical checks of all asylum seekers are systematic and mandatory and include examination of mental illnesses or traumatization across the *Länder*.<sup>25</sup> Please also clarify if the individuals who carry out the

<sup>18</sup> CAT/C/DEU/Q/5/Add.1, paras. 37 and 38.

<sup>19</sup> See CCPR/C/DEU/CO/6, para. 11.

<sup>20</sup> See A/HRC/WG.6/16/DEU/2, para. 80.

<sup>21</sup> See CAT/C/DEU/CO/5/Add.2, paras. 7–9.

<sup>22</sup> *Ibid.*, Committee follow-up letter of 11 June 2013, CCPR/C/DEU/CO/6, para. 11, and A/HRC/WG.6/16/DEU/3, paras. 16 and 98.

<sup>23</sup> See Committee follow-up letter of 11 June 2013.

<sup>24</sup> See CAT/C/DEU/CO/5/Add.2, para. 11.

<sup>25</sup> See CAT/C/DEU/Q/5/Add.1, para. 122.

initial medical checks of asylum seekers in all *Länder* detention facilities are independent qualified health professionals and describe how their independence is assured.<sup>26</sup> Please also indicate the number of cases in which a detained asylum seeker has requested an additional advisory physician at his or her own cost, specifying how many times the request was refused and how many times granted since the consideration of the previous State report.<sup>27</sup> Also please indicate the number of special asylum officers “for victims of torture and traumatized asylum applicants” currently employed by the Federal Office for Migration and Refugees.<sup>28</sup>

17. Please report on whether the State party intends to exclude unaccompanied minors from the so-called “airport procedure” under article 18 of the Law on Asylum Procedure, as recommended by this Committee in its previous concluding observations (para. 27) and by the European Commission against Racism and Intolerance.<sup>29</sup> Please also clarify whether an individual risk assessment is carried out in asylum applications under this procedure.<sup>30</sup>

#### **Articles 5, 7 and 8**

18. With reference to the previous concluding observations (para. 28), the State party’s follow-up replies and the Committee’s follow-up letter, please indicate the status of the investigation of the Munich I State Attorney’s Office with regard to the case of Khaled El-Masri and whether the suspected individuals have been extradited to the State party. Also please indicate if the State party has undertaken any efforts to ensure that Mr.El-Masri obtains redress, including rehabilitation, in view of the determination of the European Court of Human Rights that he had been subjected to torture.<sup>31</sup>

19. Please indicate whether, since the Committee’s consideration of the preceding report, the State party has rejected, for whatever reason, an extradition request concerning a person suspected of having committed acts of torture and whether, as a result, it decided to initiate prosecution proceedings itself. If applicable, please give details on the status and outcome of such proceedings.

#### **Article 10**

20. In the light of the previous concluding observations (para. 29), please provide information on the measures taken to ensure that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is provided on a regular and systematic basis to all law enforcement, medical and other personnel across the *Länder* involved in holding persons in custody, or the interrogation or treatment of any individual under any form of detention or imprisonment, as well as to all asylum officers and not only to those specialized in dealing with victims of torture.<sup>32</sup> Please mention whether such training focuses also on detecting psychological traces of torture and whether the training materials are available on the Internet.<sup>33</sup>

21. In the light of the previous concluding observations (para. 30), please provide an update on efforts to provide appropriate and ongoing public education, including

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<sup>26</sup> Committee follow-up letter, 11 June 2013, p. 2.

<sup>27</sup> See Committee follow-up letter of 11 June 2013. p.2.

<sup>28</sup> CAT/C/DEU/CO/5/Add.2, paras. 12–16.

<sup>29</sup> See CAT/C/DEU/Q/5/Add.1, para. 39.

<sup>30</sup> See A/HRC/19/57/Add.3, para. 68 (g).

<sup>31</sup> See Committee follow-up letter of 11 June 2013, p. 2.

<sup>32</sup> See CAT/C/DEU/CO/5/Add.2, paras. 12–16 and the Committee follow-up letter of 11 June 2013, p. 2.

<sup>33</sup> See CAT/C/DEU/Q/5/Add.1, paras. 66, 71 and 72.,

awareness-raising campaigns, and professional training on the prohibition of corporal punishment in all settings.<sup>34</sup>

22. Please inform the Committee whether the absolute prohibition of torture, as defined in the Convention, is explicitly and systematically referred to in instructions issued to the intelligence services.<sup>35</sup>

### Articles 11

23. With reference to the Committee's previous concluding observations (para. 16) on the use of physical restraints, and the State party's follow-up replies,<sup>36</sup> please provide information on:

(a) The steps taken by authorities at the federal and *Länder* levels to strictly regulate and harmonize the permissible means of restraint and their use in all settings across the *Länder*, including in prisons, psychiatric hospitals, residential homes, juvenile prisons, detention centres of foreigners and during court hearings,<sup>37</sup> with a view to abandoning the use of physical restraints at least in all non-medical settings and, ultimately, in all settings;<sup>38</sup>

(b) Training for law enforcement and other personnel that has been undertaken in the State party on the use of permissible restraints, with a view to ensuring the effective implementation in all *Länder* of the minimum standards drawn up by different human rights bodies;<sup>39</sup>

(c) Oversight mechanisms that exist in the State party to monitor the use of methods of restraint, including the practice of *Fixierung*, in all settings;<sup>40</sup>

(d) The number of complaints, investigations, and disciplinary or criminal sanctions, if any, imposed on any personnel for improper use of restraints, including the practice of *Fixierung*, and the use of seclusion and physical restraints on dementia sufferers in residential homes<sup>41</sup> since the consideration of the previous State party report.<sup>42</sup>

24. In particular with relation to the practice of *Fixierung*, please clarify in which *Länder* this practice continues to be used, which constraints the State party faces in abandoning this practice, at least in all non-medical settings across the *Länder*, as recommended by the Committee for the Prevention of Torture, and in which ways these constraints will be addressed.<sup>43</sup>

25. Please provide information on the steps taken by the State party to ensure that, whenever injuries which are indicative of ill-treatment are recorded by prison health-care staff, the record is systematically and confidentially brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned, as recommended by the Committee for the Prevention of Torture.

26. Please provide updated information on the measures undertaken by the State party to ensure, in the *Länder* concerned, that prisoners subjected to a disciplinary sanction are systematically provided with a copy of the disciplinary decision and informed in writing of

<sup>34</sup> See CAT/C/DEU/Q/5/Add.1, paras. 76 and 77, and A/HRC/WG.6/16/DEU/3, para. 60.

<sup>35</sup> See CAT/C/DEU/CO/5, para. 29, CAT/C/DEU/Q/5/Add.1, paras. 73 and 139–143.

<sup>36</sup> See CAT/C/DEU/CO/5/Add.2, paras. 1–5.

<sup>37</sup> See A/HRC/19/57/Add.3, paras. 38, 39 and 68 (d).

<sup>38</sup> See A/HRC/22/53, paras. 68 and 89.

<sup>39</sup> See Committee follow-up letter of 11 June 2013 and A/HRC/22/53, paras. 68 and 89.

<sup>40</sup> See Committee follow-up letter of 11 June 2013 and CCPR/C/DE/CO/6, para. 15.

<sup>41</sup> See CCPR/C/DEU/CO/6, para. 15.

<sup>42</sup> See Committee follow-up letter of 11 June 2013.

<sup>43</sup> *Ibid.*

the possibilities of lodging an appeal, as recommended by the Committee for the Prevention of Torture.

27. In light of the Committee's previous concluding observations (para. 17), please provide information on whether any amendments have been made to the provisions of the Criminal Code and the Youth Courts Act with a view to strictly restricting the use of post-conviction preventive detention, in compliance with the judgment of the Federal Constitutional Court of 4 May 2011.<sup>44</sup> Please explain in detail the current legal safeguards for the imposition and duration of post-conviction preventive detention, indicating whether regular periodic reviews by an independent body are foreseen to determine the continued justification of the detention, with a view to releasing those detained or to shortening the period of their detention. Please also indicate if the detention conditions applicable to persons subject to post-conviction preventive detention across *Länder* are distinct from the treatment of convicted prisoners and whether they are aimed at the rehabilitation and reintegration into society of detainees, as recommended by the Human Rights Committee.<sup>45</sup> In this regard, please indicate how the State party will address the shortcomings identified by the Committee for the Prevention of Torture in Freiburg prison.<sup>46</sup> Please also indicate whether all the decisions imposing post-conviction preventive detention in the period between the adoption of the above-mentioned judgment and the adoption of new legislation have been reviewed by the correctional courts according to the principles set by the judgment.<sup>47</sup> Please also provide data, disaggregated according to the type of offence, on an annual basis and since consideration of the last State report, on the number of persons subjected to post-conviction preventive detention and the length of their detention.<sup>48</sup>

28. In light of the Committee's previous concluding observations (para. 24), the State party's follow-up replies and the Committee's follow-up letter, please provide information, since consideration of the previous report and on an annual basis, on the total number of asylum seekers who have been held in *Länder* detention facilities, specifying whether the asylum seeker is a minor under the age of 18, unaccompanied or as part of a family and indicating the number of those who were subject to transfer in the context of the Dublin Regulation.<sup>49</sup> Please also indicate on an annual basis the length of their detention, prior to transfer, release or expulsion.<sup>50</sup> What measures have been taken to ensure that all *Länder* adopt a uniform policy that detention of asylum seekers, and particularly of minors, should be resorted to for the shortest appropriate period and as a means of last resort?<sup>51</sup> Please clarify if the State party has taken any measures to adopt or broaden the application of non-custodial alternatives to the detention of asylum seekers.<sup>52</sup>

29. Also with reference to the previous concluding observations (para. 24) and the State party's follow-up replies,<sup>53</sup> please indicate which *Länder* have not yet ensured that asylum seekers and other immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria and recommendations set out by the Committee for the Prevention of Torture and, as a minimum, kept physically separate from remanded or

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<sup>44</sup> See CAT/C/DEU/Q/5/Add.1, para. 97–101, CCPR/C/DEU/CO/6, para. 14, and A/HRC/19/57/Add.3, para. 68(c).

<sup>45</sup> See CCPR/C/DEU/CO/6, para. 14.

<sup>46</sup> See A/HRC/WG.6/16/DEU/3, para. 62.

<sup>47</sup> See CAT/C/DEU/Q/5/Add.1, paras. 97–101.

<sup>48</sup> *Ibid.*, paras. 91–96.

<sup>49</sup> *Ibid.*, para. 58 and Committee follow-up letter of 11 June 2013, p. 2.

<sup>50</sup> See CAT/C/DEU/CO/5, para. 27, CAT/C/DEU/Q/5/Add.1, paras. 39, 114 and 115, and Committee follow-up letter of 11 June 2013, p. 2.

<sup>51</sup> See CAT/C/DEU/CO/5, para. 27, CAT/C/DEU/Q/5/Add.1, paras. 39, 58, 114 and 115, and A/HRC/19/57/Add.3, paras. 47 and 68(e).

<sup>52</sup> See CAT/C/DEU/Q/5/Add.1, paras. 116–121, and Committee follow-up letter of 11 June 2013, p. 2.

<sup>53</sup> See CAT/C/DEU/CO/5/Add.2, paras. 17 and 18.



sentenced prisoners. Please also inform the Committee as to the number of immigration detainees who are kept together with remanded or sentenced prisoners in those *Länder* and whether their conditions of detention reflect the nature of their deprivation of liberty, with more limited restrictions. Please indicate which steps are being undertaken to ensure the separation of immigration detainees in those *Länder* in future.<sup>54</sup>

30. In the light of the previous concluding observations (para. 25), please provide information on the progress made to refrain from seeking and accepting diplomatic assurances under any circumstances, both in the context of extradition and deportation of foreign nationals.<sup>55</sup> Please clarify whether diplomatic assurances were sought or accepted in cases of extradition or deportation since the consideration of the previous report.

31. Bearing in mind the Committee's previous concluding observations (para. 26), please provide information on concrete steps taken to implement the recommendations of the 2009 Parliamentary Commission of Inquiry, in particular to initiate the Federal Government investigation into the alleged involvement of law enforcement officers of the State party in rendition and secret detention programmes. Please also inform the Committee about any measures taken to prevent future similar incidents and implement the recommendations of the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42).

#### Articles 12, 13 and 14

32. Please indicate which measures have been taken at the federal and *Länder* levels to ensure that all allegations of torture and ill-treatment by the police are investigated by independent bodies, with no institutional or hierarchical connection between the investigators and the alleged perpetrators, at police and public prosecution offices, as required by the Committee's previous concluding observations (para. 19).<sup>56</sup>

33. In the light of the previous concluding observations (para. 30) and the State party's follow-up replies, please indicate if the requirement for police to wear identification in Rhineland-Palatine, Schleswig-Holstein, North Rhine-Westfalia and Lower Saxony have been implemented and applied systematically and if any other *Länder* have made progress in this regard since consideration of the State report.<sup>57</sup> Please also clarify which *Länder* do not presently require police to wear identification while performing official functions, other than in covert operations, and indicate what measures the State party is taking to address this situation.<sup>58</sup> Has the State party taken any steps to undertake a broader assessment of the impact of the failure of police to wear identification badges on the effective investigation of allegations of excessive force used by police officers?<sup>59</sup>

34. Please provide updated data on an annual basis, disaggregated by the crime committed and the sex, age, nationality and ethnicity of the individual filing the complaint, on the number of complaints of torture, or of other cruel, inhuman or degrading treatment

<sup>54</sup> See CAT/C/DEU/Q/5/Add.1, para. 119, CAT/C/DEU/CO/5/Add.2, paras. 17 and 18, and Committee follow-up letter of 11 June 2013, p. 2.

<sup>55</sup> See A/HRC/WG.6/16/DEU/3, para. 52, and A/HRC/WG.6/16/DEU/2, para. 27.

<sup>56</sup> See CAT/C/DEU/Q/5/Add.1, para. 151–168, CCPR/C/DEU/CO/6, para. 10, A/HRC/WG.6/16/DEU/1, para. 72, A/HRC/19/57/Add.3, para. 68(b), and A/HRC/24/9, para. 124.128.

<sup>57</sup> See CAT/C/DEU/CO/5/Add.2, paras. 22–26, Committee follow-up letter of 11 June 2013, p. 3, and CCPR/C/DEU/CO/6, para. 10.

<sup>58</sup> See CAT/C/DEU/Q/5/Add.1, paras. 147–149, CAT/C/DEU/CO/5/Add.2, paras. 22–27, A/HRC/WG.6/16/DEU/1, para. 71.

<sup>59</sup> See CAT/C/DEU/Q/5/Add.1, paras. 147–149, CAT/C/DEU/CO/5/Add.2, para. 26, and Committee follow-up letter of 11 June 2013, p. 3.

committed in all contexts of custody or control, such as police custody, prisons, hospitals, institutions that engage in the care of the aged, children or disabled persons and other places of administrative detention, since the consideration of the previous State report.<sup>60</sup> Please also provide information on investigations, prosecutions, convictions and penalties in relation to such complaints.<sup>61</sup> Please also specify how many cases of alleged ill-treatment by the police could not be elucidated or prosecuted because of lack of identification of the alleged perpetrator.<sup>62</sup>

35. Please provide the information required in paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties. In relation to paragraph 46, subparagraphs (h), (l), and (n) of the general comment, please specify which steps have been taken to ensure that the complaint mechanisms within the Federal and *Länder* police guarantee the same standards of independence, confidentiality and protection to persons who are in vulnerable situations, such as police custody, and report any case of alleged police misconduct or ill-treatment.<sup>63</sup> With regard to paragraph 46, subparagraph (h), please specify the measures undertaken to widely publicize the different procedures for filing a complaint in cases of misconduct and ill-treatment by police, including to the public prosecution office or to the local courts,<sup>64</sup> ensuring the display of this information in all police stations of the federal and *Länder* police.<sup>65</sup>

#### Article 15

36. In the light of the previous concluding observations (para. 31), please clarify whether the ban on investigations by police, prosecutors or intelligence agents abroad is still in place and applies also to private security companies engaged in law enforcement activities. How does the State party ensure that these companies do not use coercion as part of their interrogation and investigation practices?

37. Please clarify the procedural standards, including the burden of proof, applied by the German courts when assessing evidence that might have been extracted by torture or ill-treatment, as requested in the previous concluding observations (para. 31).<sup>66</sup>

38. Please provide information to the Committee on steps taken by the State party to ensure that its intelligence service does not automatically rely on information from the intelligence services of other countries without prior verification that such information has not been obtained through torture.<sup>67</sup>

#### Article 16

39. Please also indicate which complaint mechanisms are available to children and which safeguards exist to enforce the law prohibiting corporal punishment and ill-treatment, particularly in schools and institutions that engage in the care of the children. In this regard, please provide disaggregated data from November 2011 and annually thereafter on the number of complaints received of cases of ill-treatment, violence, abuse and negligence in State-run and private institutions for children and the outcome of any such

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<sup>60</sup> See CAT/C/DEU/CO/5, para. 9.

<sup>61</sup> See CAT/C/DEU/CO/5, para. 19, and CAT/C/DEU/Q/5/Add.1, paras. 169 and 170.

<sup>62</sup> See CAT/C/DEU/CO/5, para. 30.

<sup>63</sup> See CAT/C/DEU/CO/5, para. 18, CAT/C/DEU/Q/5/Add.1, paras. 151–168, A/HRC/WG.6/16/DEU/1, para. 72, and A/HRC/WG.6/16/DEU/3, para. 65.

<sup>64</sup> See CAT/C/DEU/Q/5/Add.1, para. 152, and CCPR/C/DEU/CO/6, para. 10.

<sup>65</sup> CAT/C/DEU/CO/5, para. 18.

<sup>66</sup> CAT/C/DEU/Q/5/Add.1, para. 179.

<sup>67</sup> Ibid.

complaints. Please provide information on the structure and practice of oversight over these institutions by public authorities and independent control mechanisms. Please also provide information on responses to the allegations of ill-treatment in closed institutions for children run by Haasenburg GmbH in Brandenburg, including steps taken by the public authorities regarding these allegations.

40. In the light of the previous concluding observations (para. 20) please provide updates since November 2011 on any steps taken by the State party to ensure that the current legal standards and medical practices applied with regard to medical and surgical treatment of intersex persons at the Federal and *Länder* levels guarantee that prior information about the suggested treatment, as well as the consequences of unnecessary interventions is given to the individuals concerned orally and in writing and their legal guardians, when appropriate. Please also explain whether the current legal standards and medical practices require mandatory prior consent of the patient and their legal guardians, when appropriate, before the treatment is provided.<sup>68</sup> Please inform the Committee about any training carried out among medical professionals on the range of sexual, biological and physical diversity and the respect of the rights of intersex persons, including their right to free, prior and informed consent to any treatment. Please provide updated data on the number of complaints of incidents of medical treatment on intersex persons without their effective consent and information on investigations, prosecutions, convictions and penalties in relation to such complaints. Please also provide updates on the legal means of redress provided to intersex people who have been victims of non-consensual surgical and other medical treatment, including legal, medical and psychological aid, and adequate compensation.

41. Please provide detailed data on sterilizations of persons under custodianship and in particular on those sterilizations that have been carried out without prior, free and informed consent. Please report on any steps taken by the State party to amend section 1905 of the German Civil Code.

**General information on other measures and developments relating to the implementation of the Convention in the State party**

42. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since consideration of the previous report that implement the provisions of the Convention or the Committee's recommendations. This may include institutional developments, plans and programmes, including resources allocated and statistical data or any other information that the State party considers relevant.

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<sup>68</sup> A/HRC/WG.6/16/DEU/3, para. 50.