



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

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**Committee against Torture**

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**Written replies by the Government of Germany to  
the list of issues (CAT/C/DEU/Q/5) to be taken up  
in connection with the consideration of the fifth  
periodic report of Germany (CAT/C/DEU/5)\*\***

[30 August 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\* Annexes can be consulted in the files of the Secretariat.

## **Introduction**

1. In February 2011, the Government of the Federal Republic of Germany submitted the fifth periodic report in accordance with article 19, paragraph 1, second sentence, of the Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: the Convention). The period under review covered the years 2004 to 2008. In specific cases, account had been taken of current developments up until June 2009.
2. In a letter dated 8 June 2011, the Committee against Torture requested the Government of the Federal Republic of Germany to respond to a list of issues, containing 53 questions, by 30 August 2011.
3. The Government of the Federal Republic of Germany hereby submits its replies to the list of issues.
4. Looking forward with great interest to the presentation of its fifth periodic report under the Convention, the Government of the Federal Republic of Germany hopes for a constructive dialogue with the Committee. The Government further affirms that it will continue its practice of taking due notice of the results of the presentation and the recommendations to be issued.

## **Articles 1 and 4**

### **Response to the issues raised in paragraph 1 of the list of issues (CAT/C/DEU/Q/5)**

5. A definition of torture which is in full conformity with the Convention – and is literally taken from article 7 of the Rome Statute of the International Criminal Court – is contained in section 7 of the *Völkerstrafgesetzbuch* (Code of Crimes against International Law), in force as of 1 July 2002. This has been set out in paragraph 7 of the State report.

### **Response to the issues raised in paragraph 2 of the list of issues**

6. As indicated in the fifth report (at 7, 163) and *supra*, at 1, the Criminal Code as well as the Code of Crimes against International Law already provide provisions which allow the prosecution of torture. The Federal Government believes that German criminal law sufficiently incriminates and adequately sanctions all acts of torture. Therefore, making torture a specific offence in the context of general criminal law is currently not being contemplated.

### **Response to the issues raised in paragraph 3 of the list of issues**

7. The Convention is part of the German legal order. It ranks as a Federal Law and is therefore applicable in the German courts. The Federal Government is, however, not aware of any cases before the courts where the Convention has been applied. This may also be due to the fact that article 3 of the European Convention on Human Rights contains a similar provision which is usually cited in relevant cases. See e.g. the judgment in the Daschner case (cited in paragraph 56 of the State report) where the Frankfurt court made a reference to “international contracts and conventions like, e.g. article 3 of the ECHR”.

### **Response to the issues raised in paragraph 4 of the list of issues**

8. Any military superior who has committed any of these offenses is liable to imprisonment from three months to five years (sections 30, para. 1, 31 of the Military Penal

Code). According to sections 30, paragraph 4, and 31, paragraph 3, Military Penal Code, sanctions between six month and five years will be imposed in especially serious cases.

9. As set out supra, at 2, the Federal Government believes that section 340, paragraph 1, in conjunction with section 224, of the Criminal Code, already provides adequate and deterrent sanctions. As regards the armed forces, the Federal Government is convinced that sections 30 and 31 of the Military Penal Code as well as the provisions of the Criminal Code and the Code of Crimes against International Law (see section 3, paragraph 1, of the Military Penal Code) sufficiently incriminate and penalise any acts of torture in the military.

## **Article 2**

### **Response to the issues raised in paragraph 6 of the list of issues**

10. Following the transfer of legislative responsibility for the penal system to the *Länder*, the Federal Government no longer has any legal powers regarding the execution of sentences. However, the *Länder*, too, are bound by constitutional law, basic and human rights and, in particular, the principle of rehabilitation of prisoners and legally binding agreements at international level. To the extent that the *Länder* have passed new legislation, this does not differ considerably from previous regulations on the federal level. The standards and safeguards set forth in the Convention are fully guaranteed.

### **Response to the issues raised in paragraph 7 of the list of issues.**

11. Before a foreign national is handed over to the Federal Police for deportation, the *Länder* authorities must conduct a medical examination if there is any indication of a health risk or other risks which could have an impact on execution of the order. These examinations are conducted with a special focus on post-traumatic stress disorders (PTBS). As long as the existence of a post-traumatic stress disorder cannot be ruled out, removal by air will not take place.

### **Response to the issues raised in paragraph 8 of the list of issues**

12. On 1 January 2010, the Law amending the law on remand custody entered into force. The relevant new provisions of the Code of Criminal Procedure are the following:

#### **Section 114a - Notification of Accused**

A copy of the warrant of arrest shall be handed over to the accused at the time of his arrest; if he does not have a sufficient command of the German language he shall additionally be provided with a translation in a language he understands. If it is not possible for a copy and, where necessary, a translation to be handed over to him, he must be informed without delay, in a language he understands, of the grounds for his arrest and the accusations levied against him. In that case the copy of the warrant of arrest and, where necessary, a translation shall subsequently be handed over to him without delay.

#### **Section 114b - Instruction of Arrested Accused; Rights**

(1) The arrested accused shall be instructed as to his rights without delay and in writing in a language he understands. If written instruction is clearly insufficient, oral instruction shall also be given. The same procedure shall apply *mutatis mutandis* if it is not possible to give instruction in writing; written instruction shall, however, be given subsequently insofar as this can reasonably be done. The accused shall confirm in writing that he was given instruction; if he refuses, this shall be documented.

(2) In the instruction pursuant to subsection (1) the accused shall be advised that he

1. Shall, without delay, at the latest on the day after his apprehension, be brought before the court that is to examine him and decide on his further detention;
2. Has the right to reply to the accusation or to remain silent;
3. May request that evidence be taken in his defence;
4. May at any time, also before his examination, consult with defence counsel of his choice;
5. Has the right to demand an examination by a female or male physician of his choice;
6. May notify a relative or a person trusted by him, provided the purpose of the investigation is not endangered thereby.

An accused who does not have a sufficient command of the German language shall be advised that he may demand that an interpreter be called in to the proceedings free of charge. A foreign national shall be advised that he may demand notification of the consular representation of his native country and have messages communicated to the same.

#### **Section 114c - Notification of Relatives**

(1) An arrested accused shall be given an opportunity without delay to notify a relative or a person trusted by him, provided the purpose of the investigation is not endangered thereby.

(2) If detention is executed against the arrested accused after he is brought before the court, the court shall order that one of his relatives or a person trusted by him be notified without delay. The same duty shall exist in respect of every further decision on the continuation of detention.

#### **Section 127 - Provisional Arrest**

(1) If a person is caught in the act or is being pursued, any person shall be authorized to arrest him provisionally, even without judicial order, if there is reason to suspect flight or if his identity cannot be immediately established. The establishment of the identity of a person by the public prosecution office or by officials in the police force shall be governed by Section 163b subsection (1).

(2) Furthermore, in exigent circumstances, the public prosecution office and officials in the police force shall be authorized to make a provisional arrest if the prerequisites for issuance of a warrant of arrest or of a committal order have been fulfilled.

(3) In the case of a criminal offence which can only be prosecuted upon application, provisional arrest shall also be admissible where no application has yet been filed. This shall apply *mutatis mutandis* if a criminal offence may be prosecuted only with authorization or upon request for prosecution.

(4) Sections 114a to 114c shall apply *mutatis mutandis* to provisional arrest by the public prosecution office and by officials in the police force.

#### **Response to the issues raised in paragraph 9 of the list of issues**

13. The annual Public Prosecution Office Statistics for 2009 and 2010 show the following numbers for investigations initiated:

<i>Relevant allegation</i>	2009	2010
intentional killing by police officers	25	34
inappropriate use of force and abandonment by police officers	1,604	2,133
coercion and abuse of office by police officers	1,351	1,822

14. The information contained under 2.1.2, items 26 to 28, in the Public Prosecution Office Statistics refers to investigation proceedings initiated against law enforcement officers regardless of where the offence is alleged to have taken place. The statistical information gathered with regard to the alleged place of the offence – which is contained in another part of the statistics – had merely served as an indicator for possible offences by law enforcement officers before the introduction of the new data groups.

#### **Response to the issues raised in paragraph 10 of the list of issues**

15. The administration of the National Agency for the Prevention of Torture (comprised of the Federal Agency and the Joint *Länder* Commission) has been established at the Centre for Criminology (KrimZ), a joint academic facility of the Federation and the *Länder* located in Wiesbaden.

16. The Federal Agency for the Prevention of Torture was set up by decree of the Federal Ministry of Justice dated 20 November 2008 and began work on 1 May 2009. In December 2008 Mr. Klaus Lange-Lehngut, former governor of Berlin-Tegel Prison, was appointed as honorary director of the Federal Agency. Since the beginning of its work the Federal Agency has visited a total of 17 Federal Police Stations (Bundespolizei), five bases of the Federal German Defence Forces (Bundeswehr) and two customs investigation offices.

17. The Joint Commission of the *Länder* for the Prevention of Torture was set up by a State Treaty between the 16 *Länder* dated 25 June 2009 and came into force on 1 September 2010. The four honorary members of the Joint Commission of the *Länder* were officially nominated on 23 and 24 June 2010 during the 81<sup>st</sup> conference of Ministers of Justice of the *Länder* in Hamburg. Members of the Joint Commission of the *Länder* are:

- Prof. Dr. Hansjörg Geiger, former State Secretary (chairman)
- Mr. Albrecht Rieß, Chief Judge at a Higher Regional Court
- Prof. Dr. Dieter Rössner, Professor for Penal Law and Criminology
- Ms. Elsave Schöner, Psychologist and former prison governor.

18. The Joint Commission of the *Länder* has been operative since 24 September 2010. Since the beginning of its work the Joint Commission of the *Länder* has visited seven prisons, eight police stations and one detention centre for foreigners and one psychiatric hospital.

19. Based on an administrative agreement between the Federation and the *Länder* (that came into force on 1 September 2010) the Federal Agency and the Joint Commission of the *Länder* are working together. Currently, three research assistants and one administrative assistant are working for the office of the National Agency. The annual budget of the National Agency is 300,000.00 EUR, financed 1/3 by the Federation and 2/3 by the *Länder*.

20. The mandate of the National Agency encompasses all places where people are deprived of their liberty as long as these places are under German jurisdiction.

21. The jurisdiction of the Federal Agency and the Joint Commission of the *Länder* is consistent with the respective jurisdiction of the Federation and the *Länder*. The Federal

Agency's mandate includes all locations of the Federal Police (*Bundespolizei*), the Federal German Defence Forces (*Bundeswehr*) and Customs. The Joint Commission of the *Länder* is responsible for almost all places where people are deprived of their liberty: prisons, *Länder* police offices, psychiatric facilities, detention centres for foreigners, places where children and young persons are deprived of their liberty operated by child and youth welfare services and retirement and nursing homes lie within the jurisdiction of the Joint Commission of the *Länder*.

22. The results of all visits from 1 May 2009 to 30 April 2010 are included in the annual report of the Federal Agency that was published in September 2010. The English translation of the report is attached as annex. The further visits of the Federal Agency and the Joint Commission of the *Länder* will be presented in the next annual report 2010/2011 that will likely be published at the beginning of 2012.

**Response to the issues raised in paragraph 11 of the list of issues**

23. In principle, the NPM conducts its visits independently of other already-existing bodies that deal with the prevention of torture. However, the NPM does seek contact with such bodies (e.g. NGOs, Ombudsmen) in order to share experiences. The NPM also looks to develop contacts with the psychiatric commissions existing in each of the *Länder*. Contacts to petition committees on the federal and *Länder* level have yet to be established.

**Response to the issues raised in paragraph 12 of the list of issues.**

24. The Federal Government takes the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW) most seriously. Assessment and implementation of measures addressing the issues highlighted by CEDAW are underway and the Federal Government aims at providing CEDAW with the full details of its reactions to the recommendations in the due course of the procedure before that Committee. There are many measures in this field being undertaken; if the Committee so wishes, the Federal Government will be able to provide it with an overview in advance of the report to CEDAW.

25. Germany has signed the Council of Europe Convention on preventing and combating violence against women and domestic violence as soon as it was opened for signature on 11 May 2011.

26. Pursuant to the CEDAW recommendation, the collection of statistical data regarding domestic violence has been adjusted. From 1 January 2011, a new category, „violence in close social relations“, has been introduced in the standard police statistics. The relevant data will therefore be available soon.

27. Statistics on cases of female genital mutilation are not available. Statistics are disaggregated by sections of the Criminal Code. As there is no separate provision on female genital mutilation, which is punishable as infliction of severe bodily harm, such cases can not be discerned from the data available.

**Response to the issues raised in paragraph 13 of the list of issues**

28. The Federal Government takes the recommendations of CEDAW most seriously. Assessment and implementation of measures to address the issues highlighted by CEDAW are underway and the Federal Government aims at providing CEDAW with the full details of its reactions to the recommendations in the due course of the procedure before that Committee.

29. Human trafficking is punishable under sections 232 to 233a of the Criminal Code.

**Section 232****Human trafficking for the purpose of sexual exploitation**

(1) Whosoever exploits another persons predicament or helplessness arising from being in a foreign country in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person shall be liable to imprisonment from six months to ten years. Whosoever induces a person under twenty-one years of age to engage in or continue to engage in prostitution or any of the sexual activity mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) The penalty shall be imprisonment from one to ten years if

1. The victim is a child (section 176 (1));

2. The offender through the act seriously physically abuses the victim or places the victim in danger of death; or

3. The offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(4) The penalty under subsection (3) above shall be imposed on any person who

1. Induces another person by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above or

2. Gains physical control of another person by force, threat of serious harm or deception to induce them to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1<sup>st</sup> sentence above.

(5) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsections (3) and (4) above imprisonment from six months to five years.

**Section 233****Human trafficking for the purpose of work exploitation**

(1) Whosoever exploits another persons predicament or helplessness arising from being in a foreign country to subject them to slavery, servitude or bonded labour, or makes him work for him or a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be liable to imprisonment from six months to ten years. Whosoever subjects a person under twenty-one years of age to slavery, servitude or bonded labour or makes him work as mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) Section 232 (3) to (5) shall apply mutatis mutandis.

## **Section 233a**

### **Assisting in human trafficking**

(1) Whosoever assists in human trafficking under section 232 or section 233 by recruiting, transporting, referring, harbouring or sheltering another person shall be liable to imprisonment from three months to five years.

(2) The penalty shall be imprisonment from six months to ten years if

1. The victim is a child (section 176 (1));
2. The offender through the act seriously physically abuses the victim or places the victim in danger of death; or
3. The offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(3) The attempt shall be punishable.

30 A cooperation concept for police and counselling institutions for the protection of victims and witnesses is in force since 1999 and has been restructured in 2007. Witness protection programmes are available.

31. There are special training programmes for the treatment of traumatised victims. A working group of federal and *Länder* institutions provides a forum for cooperation and exchange of information.

32. All *Länder* have counselling institutions. The Federal Ministry for Family, Senior Citizens, Women and Youth provides funding for a nationwide coordination forum of NGOs active in this sector. Local institutions cooperate with the police and provide shelter as appropriate.

### **Response to the issues raised in paragraph 14 of the list of issues**

33. In general, medical treatment is possible only with the informed consent of the person concerned. Informed consent means that possible alternative treatments must be explained. This also holds true for persons with psychological disorders.

34. Treatment without consent is possible only under very strict conditions. The Basic Law allows treatment without consent only in cases of imminent danger for life or health or public safety, and only if such danger can not be averted by less intrusive means. This presupposes a judicial order on a statutory basis in each case. The same applies for detention in a psychiatric institution.

35. In addition to these prerequisites, neuroleptic drugs may be administered only in the context of an overarching therapeutic concept which includes psychotherapy and psychosocial treatment. Electroshocks, which are used very rarely and only in cases of severe depression with suicidal tendencies which have resisted all alternative treatments, are given only under narcotics and muscle relaxation.

## **Article 3**

### **Response to the issues raised in paragraph 15 of the list of issues**

36. Data on the response to the issues raised in paragraph 15 (a) and (b) can be found in annex 1 and 2. There are no statistics with regard to the reasons for a request being granted.

### Response to the issues raised in paragraph 16 of the list of issues

37. The automatic review is conducted by the Federal Office for Migration and Refugees (BAMF). The Office uses the same criteria as for the initial decision on refugee status; the main practical point is to check whether the situation in the country of origin has sufficiently improved to render the risk of persecution improbable. The Office uses reports from the Foreign Office, UNHCR and other sources to determine this. In cases where the risk of torture or ill-treatment had been established, there will be no revocation of refugee status if the refugee can show that former persecution has continuing effects. Also, a subsidiary protective status which allows the person to remain in Germany may be granted even if the refugee status as such is revoked. In practice, revocations after the legal time period for automatic reviews of three years are very rare.

38. Before the decision is taken, the refugee will be given the opportunity to make observations. He or she may challenge any revocation or cessation of his or her status before the administrative courts.

### Statistical data on revocation proceedings:

#### *Revocation proceedings*

Year	Total judicial proceedings	Judicial decisions						
		total	Revocation of refugee status		No revocation		Other (e.g. claim dropped after grant of subsidiary status)	
			total	%	total	%	total	%
2006	7,472	7,142	83	1,2%	1,165	16,3%	5,894	82,5%
2007	4,583	5,406	2,373	43,9%	981	18,1%	2,052	38,0%
2008	4,355	5,569	955	17,1%	1,753	31,5%	2,861	51,4%
2009	1,752	3,695	530	14,3%	1,738	47,0%	1,427	38,6%
2010	600	1,490	363	24,4%	598	40,1%	529	35,5%

### Response to the issues raised in paragraph 17 of the list of issues

39. The so-called airport procedure under article 18 a of the Law on Asylum procedure (AsylVG) applies only if an asylum-seeker arrives from a safe country of origin or without a valid passport. Rejection of the application is possible only if the application is manifestly ill-founded. When assessing this, the BAMF takes into account whether there is any reasonable ground to expect torture or ill-treatment in case of rejection and deportation. The applicant may appeal to the administrative court against the decision.

40. While minors may still in theory be placed under the airport procedure, this question is at the moment under discussion in the EU context. Germany will await the outcome of these discussions before entering into any legal changes on this subject.

	<i>Asylum-seekers in airport procedure</i>	<i>Including: entrance granted under section 18a Abs. 6 AsylVG</i>
2005	434	182
2006	601	313
2007	608	426
2008	649	454
2009	435	371
2010	735	565

**Response to the issues raised in paragraph 18 of the list of issues.**

41. Asylum-seekers have full access to the system of legal aid and “counselling aid” (legal counselling for a nominal fee via the local court). That means that indigent asylum-seekers may be granted legal aid before the administrative courts unless the court regards their claims as frivolous. In the administrative stage, indigent asylum-seekers will have access to the counselling aid system, which allows for free legal counselling (apart from a nominal fee of 10 €).

42. It is in Germany’s own interest to keep the duration of asylum procedures down. For this reason, the BAMF has increased its personnel, introduced a system of prioritization concerning certain countries of origin and support units for Afghanistan, Serbia and the former Republic of Macedonia. These measures have caused the average duration of procedures to drop to 5.5 months in the first quarter of 2011 (compared to 8.5 months in 2009).

43. There are no specific statistics with regard to reasons for asylum applications. The general figures regarding the success of appeals in asylum procedures are as follows:

	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Cases pending at beginning of year	54,315	38,873	25,168	16,209	10,168	9,937
New cases 1	33,016	25,376	15,763	11,320	11,663	20,510
Cases decided 1	48,458	39,081	24,722	17,361	11,894	13,602
Cases pending at end of year	38,873	25,168	16,209	10,168	9,937	16,845

**Response to the issues raised in paragraph 19 of the list of issues**

44. As far as extraditions are concerned, the Federal Office of Justice must approve any request and will do so only if there is no risk of torture or ill-treatment. The use of diplomatic assurances will serve as protection only in appropriate – and exceptional – cases.

45. As far as deportations are concerned, apart from the case mentioned in paragraph 13 of Germany’s response of 25 September 2007, diplomatic assurances have not been employed.

**Response to the issues raised in paragraph 20 of the list of issues**

46. Forced return is always a measure of last resort. In line with EU policy, the Federal Government encourages voluntary return by providing and financing reintegration programmes in the relevant countries.

47. Bilateral readmission agreements with countries outside the EU exist with regard to Algeria, Armenia, Kasachstan (not yet in force), Kosovo, Croatia, Morocco, Norway, Switzerland, Republic of Korea, Syria and Vietnam.

48. With regard to Albania, Bosnia and Hercegowina, Georgia, Hongkong, the former Yugoslav Republic of Macedonia and Serbia, the also existing bilateral readmission agreements are de facto no longer applicable because the EU has entered into readmission agreements with these countries.

49. Germany has a system of judicial monitoring which ensures effective remedies before the administrative courts against deportation decisions. In addition, at the major international airports there are independent monitoring institutions organized by churches and NGOs. Those independent bodies work in conjunction with the Federal Police Offices at the respective airports.

50. With regard to the current situation in Syria, the Federal Ministry of the Interior has asked the *Länder* on 28 April 2011 not to remove anyone to Syria for the time being. The Federal Government will closely follow the situation and take developments – especially with regard to the human rights situation – into account.

51. With regard to Kosovo, the Federal Government and several *Länder* together support the Project “URA 2” which gives practical assistance in reintegration into Kosovar society. The project has supported more than 1,100 returning persons to date, including many members of ethnic minorities.

**Response to the issues raised in paragraph 21 of the list of issues**

52. Meanwhile, 9 *Länder* have established a system of free legal counselling, mostly provided on a pro bono basis by local advocates. Other *Länder* facilitate contacts with counselling organisations which also provide legal assistance. In any case, indigent detainees have access to legal aid and “counselling aid” (legal counselling for a nominal fee via the local court).

**Response to the issues raised in paragraph 22 of the list of issues**

53. Germany does not intend to withdraw the declaration. As to the status of the Convention under German Law, reference is made to the response to the issues raised in paragraph 3 of the list of issues.

**Response to the issues raised in paragraph 23 of the list of issues**

54. The figures given cannot be supported on the basis of statistics available to the Federal Government. During the period 2005 to 2007 3 persons committed suicide while awaiting deportation; one of them was, however, at the time in remand detention in a regular prison under suspicion of attempted homicide. In the same period, the *Länder* have reported 38 unsuccessful suicide attempts.

55. In general, the detention authorities place a high priority on suicide prevention. During the initial medical examination at the beginning of the detention, medical officials try to detect any suicide risks. Symptoms of high suicide risk are the subject of training courses for detention officials. If any such risk is detected, detainees will receive psychological or psychiatric support either by the facility’s own medical staff or by external

medical experts. In appropriate cases, detainees will be transferred to detention centres with psychiatric facilities.

56. In some detention centres there are NGO offices which specialise in counselling refugees. They too offer help in dealing with the psychological problems that may be caused by imminent return.

**Response to the issues raised in paragraph 24 of the list of issues**

57. Since 1996, the BAMF has been using specially trained staff in cases of torture victims and traumatised asylum-seekers. BAMF personnel are trained to watch for indications of such situations in every phase of the asylum procedure. If necessary, such individuals will be put into contact with institutions that care for torture victims.

**Response to the issues raised in paragraph 25 of the list of issues**

58. The Federal Government will address these questions before the Committee on the Rights of the Child. The principle that unaccompanied or separated children should be detained only as a measure of last resort and for the shortest appropriate time is legally enshrined in the Convention on the Rights of the Child and is therefore part of German law. All authorities are bound by it.

**Articles 5 to 7**

**Response to the issues raised in paragraph 26 of the list of issues**

59. There have been no extradition requests with regard to persons suspected of having committed acts of torture under the Code of Crimes against International Law, nor has Germany been requested by other States to prosecute such offenders by other States.

60. With regard to the extradition request mentioned in paragraph 85 of the State report, the Administrative Court of Cologne has rejected the application by Mr. E.-M., which aimed at compelling the Federal Government to request the extradition of the persons in question. The judgment entered into force on 9 February 2011.

**Response to the issues raised in paragraph 27 of the list of issues**

61. The Federal Prosecution Office filed its first indictment under the Code on Crimes against International Law in December 2010. The proceedings against a leading member of the FDLR are now pending before the Higher Regional Court in Stuttgart; however, the charges brought are not related to torture but rather to genocide.

62. Generally, it can be remarked that the Federal Prosecution Office monitors all public available information with regard to events which may lead to an investigation should a link to German law appear (e.g. immigration of a suspect or a potential witness).

**Response to the issues raised in paragraph 28 of the list of issues**

63. Following the recommendations contained in the Inquiry, a new law on the parliamentary control of intelligence services has been adopted. The Law clarifies the rights of the parliamentary control panel. It entered into force on 30 July 2009.

64. The Parliamentary Inquiry was terminated after the plenary debate on 2 July 2009. Only the Parliament itself has the right to reopen an inquiry; it must do so if a quarter of its members request the reopening. No such decision has been taken; the Federal Government has no way of influencing this decision.

## Article 10

### Response to the issues raised in paragraph 29 of the list of issues

65. As set out in paragraph 126 of the fifth State report, international human rights law is an integral part of the training of German law enforcement personnel. The guarantees of international and regional instruments as well as the Code of Conduct for Law Enforcement Officials have been implemented in national law which is part of the training of all law enforcement staff.

66. In the German federal system, responsibility for training of law enforcement personnel lies with the *Länder*. For the Federal Police (*Bundespolizei*) and the Federal Criminal Police Office (*Bundeskriminalamt*), several modules of the offered university degrees, like in several *Länder*, include training on the Convention, on constitutional guarantees (including the prohibition of inhuman treatment, articles 104, 1 and 2 of the Basic Law), the European Convention on Human Rights, other conventions of the Council of Europe, public international law instruments and national criminal and procedural law. Training especially includes offences committed by State officials (chapter 30 of the Criminal Code). All study and vocational training programmes as well as continued in-service education provide, as in the case of the *Länder*, additional courses on human rights topics, notably regarding migration, tolerance, minorities, racism and xenophobia to enhance sensibility as well as intercultural and social competence.

67. Regarding the *Länder* law enforcement personnel in police, prisons and psychiatric institutions, the respective training programmes abide to the standards of the named United Nations and Council of Europe conventions, declarations and documents although some of them provide their trainings on the basis of national law into which the named guarantees have been implemented. The *Länder* provide regular and continued in-service education which includes human rights and conflict management training, enhancement of intercultural competence and use of force, notably the use of firearms. The Istanbul Protocol is part of the trainings in most *Länder*.

68. As an example, *Baden-Württemberg* has reported that its trainings are based on United Nations curricula and inter alia include the guarantees of the Convention against Torture, the Covenant on Civil and Political Rights as well as the Universal Declaration of Human Rights and the United Nations Code of Conduct for Law Enforcement Officials, as well as the topic of human rights and detention. *Baden-Württemberg* additionally provides handbooks of international human rights standards, including documentation standards to ensure effective investigations, to all staff members of psychiatric institutions. Measures are documented, evaluated and discussed with patients and personnel. Moreover, training courses on conflict prevention and anti-aggression, regular staff meetings and briefings are conducted to ensure continuous information. In addition, the reports of the CPT regarding psychiatric institutions are analysed and implemented.

69. On a regular basis, *Bavaria* organizes visits to shelters for asylum-seekers or to Islamic cultural centres as a part of the in-service trainings for law enforcement officers.

70. *North-Rhine Westphalia* has successfully established a commission in order to develop standards for avoiding suffocation. These standards have been implemented via administrative regulation. Standards as well as strategies are now part of the compulsory training programmes for officials and multipliers and are additionally handed out to law enforcement officials. In May 2010, the *Land* established another commission to evaluate conditions of police detention. The commission's mandate is to assess the necessity of further standards.

**Response to the issues raised in paragraph 30 of the list of issues**

71. The BAMF staff receive regular training on the legal basis for asylum procedures, including the relevant European directives which contain all the relevant rights of asylum-seekers.

72. The German Judges Academy, a training institution for all judges which is organized and financed jointly by the Federal Government and the *Länder*, offers regular seminars dealing with refugee and asylum law. These seminars are targeted at administrative court judges who deal with asylum cases. Apart from current legal issues, the topic “traumatized refugees” is part of the regular curriculum.

**Response to the issues raised in paragraph 31 of the list of issues**

73. The absolute prohibition of torture is part not only of the national law of Germany (on the level of the constitution) but also of binding international law. The instructions for the intelligence services and for other officers conducting investigations and interviews abroad (see response to the issues raised in paragraph 39 of the list of issues) refer to all violations of international human rights law. They refer explicitly to prohibited methods of examination under section 136a of the Code of Criminal Procedure, which in turn mentions *inter alia* ill-treatment and “torment”.

**Section 136a**

**[Prohibited Methods of Examination]**

(1) The accused’s freedom to make up his mind and to manifest his will shall not be impaired by ill-treatment, induced fatigue, physical interference, administration of drugs, torment, deception or hypnosis. Coercion may be used only as far as this is permitted by criminal procedure law. Threatening the accused with measures not permitted under its provisions or holding out the prospect of an advantage not envisaged by statute shall be prohibited.

(2) Measures which impair the accused’s memory or his ability to understand shall not be permitted.

(3) The prohibition under subsections (1) and (2) shall apply irrespective of the accused’s consent. Statements which were obtained in breach of this prohibition shall not be used, even if the accused consents to their use.

74. Whenever investigating officials have reason to believe that questioning in violation of these rules has taken place, they have to refrain from continuing the examination. All members of the intelligence services charged with such investigations are aware of these instructions which are binding for them.

75. With regard to members of the armed forces, the prohibition of torture as part of international law is part of the curriculum in basic training as well as in special pre-deployment training for peacekeeping units. There are specific training lessons such as “Basic rules for legally correct treatment of detained persons” and “Conduct and correct execution of duty when detaining persons”.

**Response to the issues raised in paragraph 32 of the list of issues**

76. Corporal punishment has long since been abolished in all circumstances in the German legal system, including punishment at school or in the military. These prohibitions constitute one of the basic self-evident rules of conduct for any public official. Violations will result in the most severe disciplinary and penal sanctions.

77. Since 2000, any form of corporal punishment or degrading treatment of children by parents has been prohibited (section 1631 of the Code of Civil Law). The Ministry for

Family Affairs, Senior Citizens, Women and Youth conducts ongoing public campaigns to make sure that everyone is aware of this rule. Details will be provided in the appropriate fora, e.g. the Committee on the Rights of the Child.

#### **Response to the issues raised in paragraph 33 of the list of issues**

78. As regards the training of law enforcement officials, the Federal Government refers to response to the issues raised in paragraph 29 of the list of issues.

79. In the context of the programme “MENSCHEN RECHTE BILDEN” of the national Foundation “Remembrance, Responsibility and Future” a commission was established in 2011 to develop three human rights education modules in order to ensure sustainable in-service training as well as vocational training of future mid- and high-level law enforcement officials. The commission’s work builds on previous experiences and evaluation results.

80. The majority of *Länder* have reported that the effectiveness of the training provided is constantly assessed and evaluated with implementation of the results. Training programmes are updated and adapted to the respective circumstances. As an example, *Berlin* provides a standardised evaluation procedure. In accordance with section 156 of the Federal Prison Act (StVollzG), all events related to violence must immediately be reported to the Berlin Ministry of Justice. These events are evaluated and, if necessary, targeted intervention measures are implemented.

81. *Lower Saxony* and *North-Rhine Westphalia* have established specialised institutes for law enforcement education. Their mandate includes evaluation of the education programmes. The *Lower Saxony* Police Academy introduced a bachelor degree course in 2007; from 2012, alumni will be requested to evaluate its effectiveness from the perspective of their professional experience. *North-Rhine Westphalia* will conduct a pilot programme on transfer evaluation in the criminal sector at the end of the year in order to find out whether the training leads to structural and sustainable enhancement of the quality of police work.

82. In all *Länder*, events related to violence are subject to criminal and disciplinary investigations and to legal and technical supervision.

## **Article 11**

#### **Response to the issues raised in paragraph 34 of the list of issues**

83. The German Federal Government wishes to stress that the imposition of physical restraints always constitutes a last resort. With regard to the Federal Police, it can be affirmed that the Federal Police refrains from utilising means of *Fixierung* and that any remaining installations have been removed.

84. Within the remit of the *Länder*, though, it will not be possible to dispense with the use of physical restraints altogether. However, in accordance with the principle of proportionality, these restraints are applied only as a last resort in order to prevent individuals from injuring themselves or others; this means that they are applied extremely rarely. The necessary medical presence is ensured in each case. Also, restraints are applied only for as long as is absolutely necessary in accordance with the principles set by the Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (at 68.2-68.4).

85. As reported to the CPT, use of physical restraints is extremely rare: as an example, in 2010, the *Land of Brandenburg’s* detention centre for aliens pending deportation had no cause to make use of physical restraints. In *Bremen*, there were only three instances in the

last two years where it was necessary to fix detainees to benches. These instances involved two persons in 2009. In *Hamburg's* prisons, there were only two occasions in 2010 where it was at all necessary to use physical restraints. The police authorities in *Lower Saxony* reported on the physical restraints imposed since the year 2009. It was reported that there was a total of five occurrences in 2009 and none in 2010.

86. The CPT delegation's latest visit was seen in several *Länder* as an opportunity to issue new regulations. For example, on 1 February 2011, the use of strap systems was ordered as the general rule by the Justice Ministry of *Thuringia*. The Ministry of Home Affairs of the *Land* of *Saxony-Anhalt* and the Ministry of Home Affairs and Local Government of the *Land* of *North Rhine-Westphalia* have reported that the visit also led to a review of the way in which physical restraints are imposed, in order to meet the CPT's requirements.

87. Continuous, direct monitoring of all individuals placed in physical restraints is ensured in all of Germany's *Länder*. In this regard, the Federal Government wishes to refer to its response to the issues raised in paragraph 38 (b) of the list of issues. All of Germany's *Länder* believe it is important for members of staff to be available to speak to prisoners if the latter so desire. Restrained persons are given the opportunity to talk with various members of staff, including psychologists, psychiatrists, doctors or the executive staff of the institution, during and after their placement in restraints. Adherence to minimum standards and basic principles is monitored in the *Länder* within the framework of reviews conducted by official regulators and, where applicable, by independent visiting commissions as well.

88. An analysis of the statements given by the *Land* justice administrations shows that physical restraints are imposed only for as long as is absolutely necessary, and that this ranges from only a few minutes to several hours. As a general rule, they do not last for longer than 24 hours. Longer-lasting physical restraints are imposed in special cases, and must be reported to official regulators if they last more than three days.

89. According to information provided by the *Land* justice administrations, cases where physical restraints are imposed must be recorded in a comprehensive and verifiable manner. It is not permitted to order the placement in restraints as a penalty. In some *Länder*, any physical restraints imposed are already recorded in a special database, and written instructions are in place to govern issues which arise in connection with the imposition of such restraints. In all *Länder*, restraint measures are subject to supervision by the *Land* government. For instance, in *Sachsen-Anhalt*, the competent ministry receives weekly notifications regarding the – very small number of – measures taken, their beginning and their end. Furthermore, in hospitals a court decision or the informed content of the patient is a necessary requirement before a *Fixierung* may be ordered. Only in the case of imminent danger of severe risks, under the conditions of strict necessity, will a medical assessment be sufficient.

#### **Response to the issues raised in paragraph 35 of the list of issues**

90. While preventive detention (*Sicherungsverwahrung*) is in principle enforced in all *Länder*; Bremen and *Lower Saxony* (Celle prison) as well as *Saxony*, *Saxony-Anhalt* und *Thuringia* (Burg prison) currently resort to cooperation. Further cooperative projects may be initiated in the future due to implementation of the judgment of the Federal Constitutional Court of 4 May 2011.

91. On 31 March 2010, 536 persons were subject to preventive detention (KrimZ, *Lebenslange Freiheitsstrafe und Sicherungsverwahrung*, Wiesbaden 2011, p. 7). In terms of duration, as of 31 August 2010 304 persons had been in preventive detention for less than five years, 139 persons between five and ten years, 45 persons between eleven and

fifteen years, 17 persons between sixteen and twenty years, and three persons for more than twenty years.

92 The distribution of the 536 persons placed under preventive detention is as follows:

-	Baden-Württemberg	77
-	Bavaria	73
-	Berlin	38
-	Brandenburg	5
-	Bremen	-
-	Hamburg	23
-	Hesse	57
-	Mecklenbourg-Western Pomerania	3
-	Lower Saxony	37
-	North Rhine-Westphalia	150
-	Rhineland-Palatinate	40
-	Saarland	1
-	Saxony	5
-	Saxony-Anhalt	12
-	Schleswig-Holstein	14
-	Thuringia	1
-	Overall	536

93. The Numbers of persons subject to preventive detention as well as the numbers of convictions accompanied by an order of preventive detention have continually risen since 2004:

<i>Year *</i>	<i>Persons subject to preventive detention</i>	<i>Persons convicted, preventive detention being ordered</i>
2004	304	65
2005	350	75
2006	375	83
2007	427	79
2008	448	111
2009	491	107
2010	536	-

94. The annual study of the Wiesbaden *Kriminologische Zentralstelle e.V.* provides data regarding the duration of preventive detention and the reasons for its termination. According to the study for 2009 (Dessecker, Axel, *Lebenslange Freiheitsstrafe und*

*Sicherungsverwahrung: Dauer und Gründe der Beendigung im Jahr 2009*, Wiesbaden 2011), preventive detention was terminated in 37 cases, the reasons being the following:

Section 67a, para. 2 StGB – Transfer to another measure	6 cases
Section 67d, para. 2 StGB – Suspension	22 cases
Section 67d, para. 3 StGB – Termination of measure	3 cases
Deceased	4 cases
Others	2 cases
Overall	37 cases

Source: Annex Table A.29 of the study (2009).

Land	Transfer measure	Suspension of measure	Deceased	Other	Overall
Baden-Württemberg	1	4	-	2	7
Bavaria	2	1	2	2	7
Berlin	1	1	-	-	2
Brandenburg	-	-	-	-	-
Bremen	-	-	-	-	-
Hamburg	-	2	-	-	2
Hesse	-	3	-	-	3
Mecklenbourg-Western Pomerania	-	-	-	-	-
Lower Saxony	-	1	-	-	1
North Rhine-Westphalia	2	5	1	-	9
Rhineland-Palatinate	-	3	-	-	4
Saarland	-	-	-	-	-
Saxony	-	-	-	-	-
Saxony-Anhalt	-	-	-	-	-
Schleswig-Holstein	-	2	-	-	2
Thuringia	-	-	-	-	-
Overall	6	22	3	4	37

Source: Annex Table A.30 of the study (2009).

95. For those released in 2009, the average length of preventive detention amounted to 7.12 years (see KrimZ, supra, p. 59):

<i>Duration (from... to under... years) regarding released</i>										
<i>Year</i>	<i>under 1</i>	<i>1-2</i>	<i>2-3</i>	<i>3-4</i>	<i>4-5</i>	<i>5-10</i>	<i>10-15</i>	<i>ab 15</i>	<i>overall</i>	<i>Median</i>
2004	1	4	0	2	2	5	1	0	15	4.67
	6.7 %	26.7 %	0.0 %	13.3 %	13.3 %	33.3 %	6.7 %	0.0 %	100 %	
2005	0	1	1	1	2	10	5	2	22	6.54
	0.0 %	4.6 %	4.6 %	4.6 %	9.1 %	45.5 %	22.1 %	9.1 %	100 %	
2006	2	0	1	3	2	6	7	2	23	5.04
	8.3 %	8.3 %	8.3 %	12.5 %	8.3 %	37.5 %	16.7 %	0.0 %	100 %	
2007	2	0	3	1	1	3	3	3	16	5.17
	12.5 %	0.0 %	18.8 %	6.3 %	6.3 %	18.8 %	18.8 %	18.8 %	100 %	
2008	0	0	4	2	1	4	4	2	17	7.25
	0.0 %	0.0 %	23.5 %	11.8 %	5.9 %	23.5 %	23.5 %	11.8 %	100 %	
2009	1	1	1	4	2	6	8	2	25	7.12
	4.0 %	4.0 %	4.0 %	16.0 %	8.0 %	24.0 %	32.0 %	8.0 %	100 %	

*Source:* Annex Table A.22 of the study (2008 and 2009).

96. The Federal Government wishes to stress that no conclusions should be drawn regarding the length of placement for those who are currently subject to preventive detention.

97. Since the visit of the CPT in 2005, the legal basis for preventive detention has considerably changed. The amendment law of 22 December 2010 (BGBl. I p. 2300), in force since 1 January 2011, restrict preventive detention to cases of exceptional gravity. On the one hand, the catalogue of offenses that may entail preventive detention has been considerably shortened (see section 66 of the German Criminal Code). While initially almost any intentional offence could trigger such an order, the new law requires a conviction which concerns offences against life, against the person, against sexual self-determination or personal freedom. Therefore, an order for offences such as theft, forgery or fraud is widely excluded. Furthermore, subsequently ordered preventive detention has largely been abandoned.

98. On 4 May 2011, the Federal Constitutional Court decided that all provisions of the Criminal Code and of the Youth Courts Act on the imposition and duration of preventive detention are not compatible with the fundamental right to liberty of the detainees under preventive detention arising from article 2.2 sentence 2 in conjunction with article 104.1 of the Basic Law on the grounds that the provisions do not satisfy the constitutional requirement of clearly different enforcement of preventive detention and prison sentences (*Abstandsgebot*). The Court *inter alia* reasoned that preventive detention is justifiable only if the legislature takes due account of the special character of the exceptional gravity of this kind of indeterminate deprivation of liberty. This means that further hardships – other than the indispensable deprivation of “external” liberty – must to be avoided as far as possible. This requires an overall concept of preventive detention with a clear therapeutic orientation towards the objective of minimising the danger emanating from the detainee and of thus reducing the duration of the deprivation of liberty to that which is absolutely necessary.

99. Furthermore, the Court held that the provisions on the subsequent prolongation of preventive detention beyond the former ten-year maximum period and on the retrospective imposition of preventive detention in criminal law relating to adult and to juvenile offenders infringe the rule-of-law concept of the protection of legitimate expectations under article 2.2 sentence 2 in conjunction with article 20.3 of the Basic Law.

100. The Federal Constitutional Court did not, however, declare the relevant provisions null and void, but ordered their continued applicability until the entry into force of new legislation, at the latest by 31 May 2013. In cases in which retrospectively prolonged preventive detention continues beyond the former ten-year maximum period, and in cases of subsequent preventive detention, placement in preventive detention or its continuance may be imposed only if a high risk of the detainee's committing most serious crimes of violence or sexual offences can be inferred from specific circumstances of the detainee's person or conduct and where the detainee suffers from a mental disorder within the meaning of section 1.1 no. 1 of the Therapy Placement Act (*Therapieunterbringungsgesetz*). The correctional courts must immediately examine whether these prerequisites of continued preventive detention exist; where they do not exist, the courts are to order the release of the detainees under preventive detention by 31 December 2011 at the latest. In the transitional period, the other provisions on the imposition and duration of preventive detention may be applied only subject to the proviso of a strict review of proportionality; as a general rule, detention will be proportional only where there is a danger of the person committing serious crimes of violence or sexual offences in the future.

101. Federal and *Land* authorities have already started to implement the ruling of the Federal Constitutional Court. The Committee on the Enforcement of Sentences of the Conference of the *Länder* ministries of justice has set up a cross-*Länder* task force. This task force has established a catalogue of criteria endorsed by the Conference on 15 December 2010. The catalogue stipulates targeted measures in order to provide a concrete and realistic chance for the person placed in preventive detention to regain liberty, to further minimise the detrimental consequences of the deprivation of liberty and to guarantee a maximum degree of "internal liberty" while maximising "external safety". On the basis of this catalogue and taking into account the criteria indicated by the Federal Constitutional Court, a cross-*Länder* working group is currently drafting a legislative prototype for the *Länder* in order to substantially enhance the situation of those placed in preventive detention.

102. As an alternative for preventive detention, since 1 January 2011, in the context of supervision (sections 68 et seq. of the Criminal Code), German law authorises electronic tagging of certain dangerous persons who have been convicted of offences against the person or against sexual self-determination. In particular, this instrument permits surveillance of directions regarding off-limit areas, for instance the prohibition to linger in the proximity of schools or playgrounds after having committed offences against sexual self-determination.

103. Likewise, the *Länder* are already taking steps to ameliorate the situation of persons subject to preventive detention. For instance, *Bavaria* is currently constructing a new building in *Straubing* prison abiding by the standards required by the European Court of Human Rights and Federal Constitutional Court. In *Saxony-Anhalt*, all persons under preventive detention are accommodated in a separate free-standing building of the newly constructed *Burg* prison offering adequate conditions, including the access to sport facilities, leisure time offers and social therapy. They benefit from residential groups of ten persons each, with own – regularly unlocked – single rooms, group rooms and a kitchen as well as access to spacious outside area. However, like the other *Länder*, *Saxony-Anhalt* aims for further improvement.

104. The Federal Ministry of Justice and the *Länder* ministries of justice have mandated the *Kriminologische Zentralstelle e.V.* to conduct empirical research of cases affected by the judgment of the European Court of Human Rights, *M v. Germany*, no. 19359/04, of 17 December 2009. Results are expected at the end of 2012.

105. In addition, several scientific studies have been conducted by criminological institutes, for instance: Tillmann Bartsch, *Sicherungsverwahrung - Recht, Vollzug, aktuelle Probleme*, Baden-Baden 2010; Elmar Habermeyer, *Die Maßregel der Sicherungsverwahrung: forensisch-psychiatrische Bedeutung, Untersuchungsbefunde und Abgrenzung zur Maßregel gemäß § 63 StGB*, Heidelberg 2008; Jörg Kinzig, *Die Legalbewährung gefährlicher Rückfalltäter*, Berlin 2008; Michael Alex, *Nachträgliche Sicherungsverwahrung: eine empirische erste Bilanz*, in: *Neue Kriminalpolitik* 2008, 20, 4, pp. 150-153; Hans-Ludwig Kröber, Matthias Lammel; Frank Wendt & Norbert Leygraf, *Erste psychiatrische Erfahrungen mit der nachträglichen Sicherungsverwahrung*, in: *Forensische Psychiatrie, Psychologie, Kriminologie*, 2007, 1, 2, pp. 130-138; Kröber, Hans-Ludwig; Lammel, Matthias; Wendt, Frank & Leygraf, Norbert, *Erste psychiatrische Erfahrungen mit der nachträglichen Sicherungsverwahrung*, in: *Forensische Psychiatrie, Psychologie, Kriminologie*, 2007, 1, 2, pp. 130-138; Ulrich Baltzer, *Die Sicherung des gefährlichen Gewalttäters*, Wiesbaden 2005. An overview of scientific research regarding the enforcement of sentences can be found in a bibliography edited by the *Kriminologische Zentralstelle* written by Werner Sohn: *Strafvollzug – Forschungsdokumentation 1987-2010*, Wiesbaden 2010. A summary of the evolution of measures of reform and prevention is contained in the recent essay by Wolfgang Heinz, *Wie weiland Phönix aus der Asche – die Renaissance der freiheitsentziehenden Maßregeln der Besserung und Sicherung in rechtstatsächlicher Betrachtung*, in: *Recht und Psychiatrie*, 2011, 29, pp. 63-78.

#### **Response to the issues raised in paragraph 36 of the list of issues**

106. In principle, as *ultima ratio*, permanent seclusion may be utilised in all prisons. It will not be possible to dispense with it altogether. However, as seclusion concerns a particularly intense interference with the detainee's fundamental rights, strict conditions must be fulfilled. In addition, any order of permanent seclusion is subject to strict judicial scrutiny. In some *Länder*, measures may be ordered by staff members in the case of immediate risk but have to be authorised without delay. The prison's physician or psychologist must be consulted in case of compelling reasons, for instance in cases where the respective detainee is under medical supervision. All measures and consultations must be documented and constant supervision is guaranteed. Reports must be made to medical and psychological services that conduct regular visits.

107. Permanent seclusion may only be ordered if compelling reasons exist and it is strictly necessary. Such reasons may include greater risks of flight, suicide or self-injury as well as the risk of acts of violence directed against persons or property. However, as *ultima ratio*, seclusion may be ordered only where there are no other means available. All other possibilities, such as measures to guarantee security and order as well as therapeutic, medical, psychiatric or psychological treatment, must be excluded before ordering seclusion.

108. Due to the severe character of the interference, German law provides adequate and effective remedies in order to fully guarantee the rights of detainees. Complaints may be made in accordance with sections 109 et seq. of the Federal Prison Act (StVollzG), which remains applicable to the *Länder* of *Berlin, Brandenburg, Bremen, Mecklenburg-Vorpommern, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia*, and / or similar provisions in the enforcement laws of the *Länder*. The chamber on enforcement of sentences of the competent District Court (section 110 of the Federal Prison Act), composed of independent judges, will reassess the legality of the seclusion order. It may declare that the measure was unlawful.

According to section 114, paragraph 2, of the Federal Prison Act, the chamber may make an interim order, suspending the measure, if danger exists that, otherwise, the enforcement of a right of the plaintiff could be prevented or considerably impeded, if there is no higher ranking interest requiring immediate execution.

109. According to section 89, paragraph 2, sentence 1, of the Federal Prison Act, an authorization of the supervising authority, regularly a *Land* ministry, is required if seclusion exceeds three month per year. In remand detention, authorization is needed after one month, in juvenile prisons after one or two month. This authorization, like the initial order, may only be given in the case of strict necessity which is caused by reasons emanating from the detainee's personality. Thereby, detainees are protected against unlawful or lengthy seclusion. The other *Länder* have introduced similar provisions in their prison acts (see for example section 82 of the *Lower-Saxony* Prison Act). During enforcement of a seclusion order, especially in the case of juvenile detainees, prisoners benefit from specific support.

110. In addition, applications for criminal prosecution may be filed against staff members. Detainees may contact the director of the prison or its advisory board; they may initiate disciplinary proceedings by contacting the supervising authorities or the director of the institution. Moreover, prisoners may contact the parliament's petitions committee or voluntary services at any time. In some *Länder*, like in *North Rhine-Westphalia*, specific ombudspersons for law enforcement or the council of inmates in the respective prison may be contacted.

111. Practice and conditions of permanent seclusion including the right to maintain contact with the outside world are within the remit of the *Länder*. Beyond Berlin-Tegel prison, seclusion is used in all the *Länder* but, according to the *Länder* reports, concerns only exceptional and rare cases. For instance, *North Rhine-Westphalia* has reported that, out of an overall number of 17,000 prisoners, only three male detainees had to be subjected to seclusion during a period requiring authorization. In *Saxony*, between 1 January 2010 and 30 June 2011, only eight cases of seclusion have been recorded. Currently, five prisoners remain in seclusion, two each in Dresden and Leipzig prisons and one in Bautzen prison. These prisoners are responsible for hostage-taking or other massively violent attacks against other inmates or staff members.

112. As seclusion means isolation in respect of other inmates, no restrictions exist in terms of the detainee's contact with the outside world, his or her right to be visited or to contact a lawyer, to write and to receive letters or to communicate via telephone, to make use of his or her legal remedies etc. In all *Länder*, prisoners under seclusion are entitled – to the same extent as other detainees – to participate in sport activities, to be outside or to attend church. As an example, in *Saxony*, seclusion is enforced in regularly furnished cells, including toilet and washing basin, some of them being equipped with additional safeguards at door and windows. To the extent possible, detainees are allowed to keep their personal belongings.

113. The *Länder* pursue the objective to reintegrate detainees under seclusion, thus minimising the risks emanating from respective prisoners. In *Lower Saxony*, as an example, security stations provide two safety levels. In the high-risk safety level I a (seclusion), detainees are entitled to individual free periods; they may use all sport facilities on a daily basis and the kitchenette on working days. Furthermore, they freely communicate with staff members and visitors and are fully authorised to write letters and to use the telephone. In safety level I b, connecting seclusion and regular enforcement, detainees are entitled to contact their inmates and benefit from extended working and leisure opportunities, including arts and handicrafts. They are authorised to spend their free time in pairs, to work out or to cook together.

**Response to the issues raised in paragraph 37 of the list of issues**

**Measures undertaken to ensure that detention of illegal immigrants is an exceptional measure and only a measure of last resort**

114. The Federal Government wishes to stress that immigration detention is far from being automatic. On the contrary, immigration detention may be ordered by a court only in the case of necessity if strict conditions are fulfilled. It therefore is an exceptional – *ultima ratio* – measure. The respective standards of the rule of law are guaranteed by the federal as well as by the *Länder* legislations.

115. In principle, detention shall be avoided, especially with regard to minors, parents and pregnant women. Minors have to be entrusted in the care of family members or – in their absence – the youth welfare office. They may be detained only in exceptional cases. Specifically, detention of parents with minor children shall be avoided. In *Thuringia*, for instance, pregnant or breastfeeding women, children under 16 and single parents whose children are younger than seven years old are in principle exempt from detention. If detention of parents is strictly necessary, *Brandenburg* and *Thuringia* have established the practice to enforce only the detention order against one of the parents in order to allow the other to look after the children.

**Measures taken to ensure that in all *Länder* (as in Brandenburg), the detention of immigration detainees are governed by specific rules reflecting their particular status and steps taken to introduce alternative measures to prisons for immigration detainees**

116. The Federal Government wishes to stress that all federal and *Länder* authorities are bound by standards which are entirely based on the rule of law. This principle particularly concerns the detention of immigrants. For all *Länder*, legal basis of the detention of immigrants is section 62 of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act, which reads as follows:

**Section 62**

**Custody awaiting deportation**

(1) A foreigner shall be placed in custody by judicial order to enable the preparation of deportation, if a decision on deportation cannot be reached immediately and deportation would be complicated substantially or frustrated without such detainment (custody to prepare deportation). The duration of custody to prepare deportation should not exceed six weeks. In case of expulsion, no new judicial order shall be required for the continuation of custody up to expiry of the ordered term of custody.

(2) A foreigner shall be placed in custody by judicial order for the purpose of safeguarding deportation (detention pending deportation) if

1. The foreigner is enforceably required to leave the Federal territory on account of his or her having entered the territory unlawfully,
  - 1a. A deportation order has been issued pursuant to Section 58a but is not immediately enforceable,
2. The period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached,
3. He or she has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible
4. He or she has evaded deportation by any other means or

5. A well-founded suspicion exists that he or she intends to evade deportation.

The foreigner may be placed in detention pending deportation for a maximum of two weeks, if the period allowed for departure has expired and it has been established that deportation can be enforced. By way of exception, the order for detention pending deportation pursuant to sentence 1, no. 1 may be waived if the foreigner credibly asserts that he or she does not intend to evade deportation. Detention pending deportation shall not be permissible if it is established that it will not be possible to carry out deportation within the next three months for reasons for which the foreigner is not responsible. Where deportation has failed due to reasons for which the foreigner is responsible, the order pursuant to sentence 1 shall remain unaffected until expiry of the period stipulated in the order.

(3) Detention pending deportation may be ordered for up to six months. In cases in which the foreigner frustrates his or her deportation, it may be extended by a maximum of twelve months. A period of custody to prepare deportation shall count towards the overall duration of detention pending deportation.

(4) The authority responsible for the detention application may detain a foreigner without a prior judicial order and place such foreigner in temporary custody where

1. There is a strong suspicion that the conditions pursuant to sub-section 2, sentence 1 apply,
2. The judicial decision on the order for detention pending deportation is not obtainable beforehand and
3. There is a well-founded suspicion that the foreigner intends to evade the order for detention pending deportation.

The foreigner shall be brought before the court forthwith for a decision on the order for detention pending deportation.

117. The provisions of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (*AufenthG*) are put into practice by administrative regulations ensuring that the enforcement of detention orders abides by these standards. All orders are subject to judicial control.

118. In the German legal system, the *Länder* are responsible for the enforcement of immigration detention. Only in this context, they may enact legal provisions or regulations. Besides *Brandenburg*, no other cases of specific legislation are known, the other *Länder* having consistently reported that they do not see the need for such regulation. However, the specific status of immigration detainees must be taken into account at all times. Therefore, the provisions on the enforcement of sanctions (sections 3 to 49, 51 to 121, 179 to 187 of the Federal Prison Act (*StVollzG*) for those *Länder* that have not enacted specific laws in this regard) may only be applied if they are not contrary to the objective and the specific character of immigration detention (see section 171 *StVollzG* taken with section 422 paragraph 4, of the *FamFG*).

119. Only *Berlin* and *Brandenburg* accommodate immigration detainees in separate detention facilities. *Hesse* and *Rhineland-Palatinate* currently provide specific establishments. The other *Länder* accommodate the majority of their immigration detainees in selected regular prisons, mostly in separate buildings. To assure the compliance with their specific needs, several *Länder* accommodate all immigration prisoners in the same prison. However, all *Länder* ensure separation of male detainees from regular prisoners while the extremely small number of female immigration prisoners does not always allow this separation. In these cases, separation will be effectuated in smaller units, such as stations or corridors. This solution presents the advantage that immigration detainees have

access to the facilities provided, including medical and psychological services, pastoral caregivers, social workers and leisure activities, libraries and television. In many *Länder*, due to small numbers of immigration detainees and their short period of stay, the establishment of separate facilities would otherwise lead to a considerable limitation of the range of services and activities offered. In addition, decentralisation allows maintaining existing social contacts.

120. The Federal Government wishes to stress that this practice is perfectly in compliance with point 16 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, which states:

*The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.*

121. As a matter of course, humane conditions of accommodation are provided in any case. For instance, in *Baden-Württemberg*, immigration detainees are provided double rooms with television – including foreign channels and free of charge. They may participate in leisure groups, use the telephone, write and receive letters without supervision, and benefit from two daily hours in the open air. In addition, the *Land* – like many other *Länder* – facilitates and supports assistance by pastoral caregivers, volunteers and social services. Volunteers offer group and individual sessions. In *Mecklenburg-Vorpommern*, immigration detainees may freely move within their stations throughout the day. Sports activities such as table tennis, fitness and ball games are provided. Immigration detainees have access to the prison shop where they can buy convenience goods. If their financial means are insufficient, they may apply for pocket money which, in principle, is granted by the authorities without any difficulty.

### **Steps taken to ensure legal safeguards of immigration detainees**

#### *Access to an independent doctor*

122. In all detention facilities, immigration detainees have access to local medical services. Specialists may be called in case of necessity. Several *Länder*, such as *Thuringia*, allow additional examination by external physicians by request of the detainee. While in *Brandenburg*, a physician of their own choice may be admitted, most *Länder* do not provide this possibility for enforcement reasons.

#### *Access to a lawyer*

123. As a matter of course, immigration detainees have access to lawyers of their own choice at all times. Some *Länder* additionally grant legal counselling by certain experienced lawyers within the institution. Supported by the prison administration, immigration detainees are provided with a list of lawyers as well as the necessary information to contact lawyers, embassies or file complaints or letters to petitions committees. Prison administration also provides help to fill in administrative forms or to request official documents. Immigration detainees may be visited by their lawyers within the prison's opening hours. They are entitled to legal aid like any German citizen if the legal conditions are fulfilled; they further have access to counselling services, often free of charge. In *Rhineland-Palatinate*, advance payment by the *Land* is provided for immigration detainees who wish to apply for legal aid in order to enable them to choose suitable lawyers.

124. In addition, in many prisons, *pro bono* legal advice is provided. Furthermore, the *Länder* grant access to non-governmental organisations, such as Amnesty International or *Pro Asyl*, and charities. Munich prison in *Bavaria* has even established an office for Amnesty International and the *Jesuitenflüchtlingsdienst*.

*The right of detainees to contact members of their families*

125. In all *Länder*, immigration detainees have the right to contact their family members via telephone or mail. In principle, contact may be restricted only by the financial means of the immigration detainees. They are legally entitled to at least one visit once a month. However, with regard to the specific situation and needs of immigration detainees, most *Länder* grant longer and more frequent visits. For instance, in *Baden-Württemberg*, family members may visit on working days between 8 am and 11 am without restrictions.

126. Furthermore, immigration detainees are free to contact friends, charities and non-governmental organisations or any administrative institution they may wish.

*Access to interpretation services if necessary*

127. Interpretation services are provided in case of necessity. Many *Länder* also employ staff members with special language skills who may be consulted. If their language skills and those of the co-detainees are insufficient, interpreters will be called.

128. As reported to the CPT in 2008, several *Länder*, such as *Saxony-Anhalt*, have additionally employed social workers with special language skills, specifically for the purpose of looking after immigration detainees. *Hamburg* prisons provide “counsellors for foreigners” for the most important and current languages. *Rhineland-Palatinate* grants financial support to *Caritas* and *Diözese Mainz e. V.* for unsalaried interpreters in the context of the project „*Ehrenamtliche Sprachmittlerinnen und Sprachmittler in der GfA in Ingelheim*“.

**Response to the issues raised in paragraph 38 (a) of the list of issues**

129. In the German federal system, the *Länder* are responsible for conditions of detention.

130. According to their reports, the majority of *Länder* are not confronted with problems of overcrowding. In *Baden-Württemberg*, for instance, 8,250 places were available for an average number of 7,500 detainees; more than half of them (4,700) benefitting from individual accommodation. As of July 2011, *Hamburg* provides 2,426 places to 1,729 prisoners. *Berlin* and *Brandenburg* report a decrease of prisoner numbers, leaving a considerable number of places open. Equally, *Mecklenburg-Vorpommern* provides more spaces than necessary. Via the construction of Hünfeld prison and its inauguration in 2006, *Hesse* has put an end to overcrowding. However, shortly the *Land* will bring into service another new prison (Frankfurt am Main I) which will be a further improvement of detention conditions. *Saarland* has abolished overcrowding thanks to the construction of a new building at Saarbrücken prison, providing 239 additional places. *Thuringia* refers, in this regard, to the enlargement of the prisons of Tonna and Goldlauter. *Saxony-Anhalt* has reported that, due to the opening of Burg prison in 2009 and the modernisation of existing prisons, all prisons – including Halle prison – fulfil legal standards, and overcrowding has been done away with the majority of detainees benefitting from individual accommodation. Despite a decrease in detainee numbers, *Rhineland-Palatinate* has created 100 additional places. Moreover, the modernisation of Wittlich prison has led to an improvement in detention conditions. A new long-term strategy has allowed accommodating all detainees in greater proximity to their home towns. *Lower Saxony* has indicated an average degree of capacity utilisation of 88 per cent for male prisoners, as of March 2011, and, respectively, 79 per cent for female and 82 per cent for juvenile detainees. According to the *Land*, it is now able to provide needs-based differentiated accommodation which takes due account of individual requirements regarding security, therapy or medical treatment, and assistance.

131. In the other *Länder*, substantive ameliorations have already been achieved. However, continuous efforts are undertaken in order to constantly improve detention conditions. Overcrowding has notably been addressed by long-term strategies, the

expansion of existing prisons and the construction of new prison buildings. As an example, during the last years, *Bavaria* has established 2,445 new spaces, spending a total sum of 693 million euros for construction works. In addition, the inauguration of the new Augsburg-Gablingen prison, scheduled for 2015, will provide another 420 places. In *North Rhine-Westphalia*, the three new or enlarged prison buildings in Heinsberg, Ratingen and Wuppertal-Ronsdorf will shortly come into service, thus putting an end to overcrowding in other prisons of the *Land*. In *Schleswig-Holstein*, large investments – including the construction of two buildings – have been undertaken to improve the situation in Neustadt Psychiatric Centre. A long-term strategy until 2016 in *Saxony* will lead to the construction of a new building in Waldheim prison providing 96 additional places – exclusively individual accommodation – which will be operative in winter 2011/2012, followed by the opening of 66 places in Chemnitz prison in 2012 and the construction of a new prison in Western Saxony, operative in 2016/2017.

#### **Response to the issues raised in paragraph 38 (b) of the list of issues**

132. The *Länder* continuously undertake needs-based assessments in order to guarantee that sufficient staff is available in detention facilities. Following this assessment, *Länder* hire or reassign qualified personnel. For instance, *Baden-Württemberg* has continuously increased staffing levels, proving a relation of 1:2.06 between full-time staff and detainees. Between 2007 and 2010, in order to improve the situation in Neustadt Psychiatric Centre, *Schleswig-Holstein* hired 32 additional full-time staff members.

133. As regards detainees under restraint, continuous supervision compatible with the standards required by the Committee and the CPT is provided. As set out above in the context of the response to the issues raised in paragraph 34 of the list of issues, Germany wishes to stress that the practice of restraint is exceptional and rare. It is a temporary measure which may be taken only if strict conditions are fulfilled. In such cases, permanent individual supervision of any detainee under restraint in prisons and psychiatric centres is provided for.

134. As a matter of example, *Berlin* has indicated that permanent personal and individual supervision by staff members is provided. Access to medical services being provided at all times, medical practitioners will immediately make an individual assessment of the strict necessity of the measure and its medical necessity which will exist only in extreme cases. Parallel regulations exist, for instance, in *Hessen*, *Bavaria*, *Brandenburg*, *Mecklenburg-Western Pomerania*, *Thuringia*, *Rhineland-Palatinate*, *Lower Saxony*, *Schleswig-Holstein*, *Saxony* and *Saarland* as well as in *Hamburg* where psychiatric control is undertaken and detainees are kept within visibility range.

#### **Response to the issues raised in paragraph 38 (c) of the list of issues**

135. According to the German Constitutional Court, video surveillance amounts to an interference with the right to self-determination in the sphere of information. Permanent video and audio surveillance of prison cells and detention rooms, notably, interfere with the inviolable core guarantee of the right to privacy. Therefore, the Federal Police, being barred from permanent video and audio surveillance in detention areas, operate a policy of adequate and regular controls to comply with any duties of control and supervision which may exist or arise. This policy and the frequency of controls will be flexibly adapted to the context and the circumstances of each specific case.

136. Regarding police stations, responsibility lies with the *Länder* which are also bound by the constitutional guarantees set out above. Several *Länder*, like *Bavaria* (e.g. at the Oktoberfest in Munich), have installed video surveillance facilities in police stations in order to enhance the protection of the health and safety of short-term detainees or to prevent criminal offences. The use of these facilities is subject to data protection laws. Other

*Länder*, like *Hamburg*, have installed open surveillance facilities in duty rooms for crime prevention. It must be stressed that detainees will only exceptionally and very shortly be kept in police stations. Video surveillance is subject to strict conditions and control. For instance, in *Lower Saxony*, surveillance is only in halls and corridors and no recording is made.

137. Several *Länder*, like Berlin, *Thuringia* and *Brandenburg*, do not provide surveillance facilities. They conduct personal controls and provide intercommunication systems. Other *Länder*, like *Saxony* and *Saxony-Anhalt* provide such facilities only in selected prisons – and not in police stations – where solely staircases and halls, but not individual rooms, may be subjected to video surveillance.

138. In none of the *Länder* does video recording of interrogations constitute standard procedure. In some of the *Länder*, however, interrogations may be recorded in exceptional cases. As an example, in *Baden-Württemberg* this may occur – albeit rarely – during the interrogation of witnesses, especially juvenile witnesses, this measure being counterbalanced by the right to be represented by a lawyer. *Thuringia* allows video recording during the interrogation of children and victims of sexual violence; *Bavarian* laws authorise the recording of victims up to the age of 16 and of witnesses who are barred from attending the main hearing.

#### **Response to the issues raised in paragraph 39 of the list of issues**

139. Further to the information given in paragraphs 67 and 71 of the State report, the Federal Government wishes to stress that the instructions mentioned in paragraph 67 are not restricted to the intelligence services but extend to all officials investigating abroad.

140. Information about existing legal safeguards and their observation in practice are gathered by the local embassy, which will use information from other sources (NGOs etc.) as appropriate.

141. Before deciding whether an interrogation may take place the investigating official will have to evaluate the circumstances of the detention. If there are any indications of torture or ill-treatment having taken place, the interrogation will have to be called off.

142. Whether the interrogation takes place in the presence of officials of the detaining State is not for the German authorities to decide.

143. German law provides for the possibility of video recording. However, when interrogating persons abroad, the local legal provisions will apply.

#### **Response to the issues raised in paragraph 40 of the list of issues**

144. Regulation 1236/2005 of the Council of the European Union regulates the export of certain goods which could be used for torture or other cruel, inhuman or degrading treatment. Where export licences are granted under this regulation, the German customs authorities conduct sample surveys, making sure that the conditions of the licence are complied with. When licensing any such exports, the authorities must ascertain whether there are any restrictions on the export of such goods.

145. Illegal export of regulated goods may be punished with fines up to € 500,000. Prison sentences of up to five years are possible for especially serious cases. In cases of professional crime prison sentences of no less than two years will be handed down.

146. In view of this regulatory framework, the Federal Government does not see any deficiencies in its commitment to EU regulation.

## Articles 12, 13 and 14

### Response to the issues raised in paragraph 41 of the list of issues

147. At the outset, the Federal Government wishes to stress that police officers on duty are required by the respective *Länder* laws to show on request their official legitimising documents, which give their name and rank.

148. In *Berlin*, *Brandenburg* and *Thuringia*, police officers must wear badges indicating their name or identification number when carrying out their duties (excluding situations where operative reasons do not allow this, e.g. covert operations).

149. Most other *Länder* provide for the possibility of carrying such badges but do not require the officers to wear them in all circumstances.

150. Regarding the statistical data for investigations into suspected acts of ill-treatment, see response to the issues raised in paragraph 9 of the list of issues.

### Response to the issues raised in paragraph 42 of the list of issues

*Cases under sections 30, 31 Military Criminal Code (WStG)*

Year	Section of the WStG				Persons with a different decision among them	
		Cases concluded	Convictions	Included: penalty suspended on probation	Case abandoned	Acquittals
2004*	§ 30	4	2	1	2	-
	§ 31	4	2	-	2	-
2005*	§ 30	7	4	1	3	-
	§ 31	5	3	-	2	-
2006*	§ 30	1	-	-	1	-
	§ 31	3	3	-	-	-
2007	§ 30	2	2	1	-	-
	§ 31	7	6	3	-	1
2008	§ 30	7	3	1	4	-
	§ 31	13	10	4	3	-
2009	§ 30	8	2	1	6	-
	§ 31	6	3	-	2	1

\* Former Federal Republic including Berlin

*Convictions under §§ 30, 31 WStG*

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*Convictions under §§ 30, 31 WStG*


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Year	Sec-tion of the WStG	Convictions	Prison sentence	Fine	Military detention
2004*	§ 30	2	1	1	-
	§ 31	2	-	1	-
2005*	§ 30	4	-	2	1
	§ 31	3	-	3	-
2006*	§ 30	-	-	-	-
	§ 31	3	-	3	-
2007**	§ 30	2	1	1	-
	§ 31	6	3	3	-
2008**	§ 30	3	1	2	-
	§ 31	10	3	6	1
2009**	§ 30	2	1	1	-
	§ 31	3	-	3	-

\* Former Federal Republic including Berlin

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**Response to the issues raised in paragraph 43 of the list of issues**

151. The Federal Government reiterates that, as a matter of principle, criminal and disciplinary law provide sufficient means for investigating complaints of torture and ill-treatment. All complaints are subject to review by Germany's independent judiciary. Against this background, the Federal Government does not consider that additional independent complaints bodies or special departments for police misconduct would provide any added value.

152. In accordance with section 158, paragraph 1, of the German Code of Criminal Procedure, anybody may file information of a criminal offence or an application for criminal prosecution orally or in writing with the public prosecution office (PPO), with authorities and officials in the police force, or with the Local Courts which will lead to independent investigations. Authorities and officials as well as PPOs are legally bound to receive and process these complaints. According to section 160, paragraph 2, of the German Code of Criminal Procedure, investigations conducted by the PPOs must be impartial and objective.

153. Furthermore, anybody may initiate disciplinary proceedings at any time. These proceedings are independent and subject to direct and objective control by the *Länder* ministries which are informed of any investigation against police officers.

154. Notwithstanding this general position of the Federal Government, steps have been taken, at the federal and at the *Länder* level, to constantly improve the treatment of specific allegations of torture and ill-treatment. As an example, the Federal Police permanently cooperates with the National Mechanism for the Prevention of Torture (NPM) whose members regularly visit Federal Police offices and issue recommendations. In 2011, it has inter alia visited police stations in *Berlin*, *North Rhine-Westphalia* and in *Baden-Württemberg*. Since September 2010, a Joint *Länder* Commission of the National

Mechanism has been mandated to conduct visits *inter alia* in *Länder* prisons, psychiatric hospitals and police stations. Between October 2010 and July 2011, the Joint Commission already visited police stations in *Hamburg*, *Rhineland-Palatinate*, *Saxony-Anhalt*, *Hesse*, *Saxony*, *Brandenburg* and *Lower Saxony*.

155. The *Länder* have opted for different strategies in order to guarantee independent and impartial investigation of allegations of criminal conduct by police officers.

156. *Hamburg* has set up a special police department (D. I. E.), mandated to investigate criminal conduct of State officials in general and of police officers in particular. All applications for criminal prosecution must be referred to the D. I. E., which reports directly to the *Hamburg* ministry of the interior.

157. *Saxony-Anhalt* has established an independent complaint mechanism for the police (ZBP) which reports directly to the State secretary of the *Land* Ministry of the Interior. Complaints may also be made via email or the Internet virtual police station. The mechanism also processes complaints directed against the chiefs of police institutions or which regard their management of complaints.

158. *Baden-Württemberg* and *Lower Saxony* have reported that police investigations are conducted by a different criminal police department than that involved in the alleged misconduct.

159. In *Saarland*, any allegation concerning criminal conduct by police officers must be immediately referred to the PPO, because police officers are barred from undertaking autonomous investigations against other police officers.

160. Regarding the PPOs, in *Brandenburg*, *Saxony-Anhalt*, *Mecklenburg-Western Pomerania* and *North Rhine-Westphalia*, all investigations against police officers are led by special PPO departments. *Hamburg* also provides a special PPO division for charges against police officers, law enforcement officials in prisons and other persons who are suspected of criminal conduct which is in direct correlation with investigations against police officers. In *Saxony* and *Thuringia*, these investigations are concentrated in specific divisions which, however, do not deal exclusively with such matters but also investigate other offences. In *Baden-Württemberg*, *Hesse* and *Lower Saxony*, several but not all PPOs have established specific departments for allegations against police officers or against State officials in general. In the other PPOs, like in *Bavaria*, investigations of these allegations are led by particularly experienced and skilled prosecutors.

161. Furthermore, the Federal Government would like to point out the possibility of contacting petitions committees. They exist in all *Länder* parliaments as well as in the Federal Parliament. All of them have specific powers of inquiry and investigation which may lead to public debates and decisions by the respective Parliaments.

#### **Response to the issues raised in paragraph 44 of the list of issues**

162. With respect to efforts undertaken in the sectors of the police and the PPOs to investigate allegations made against police officers, the Federal Government refers to its answer to the issues raised in paragraph 43 of the list of issues.

163. Above all, the German legal system provides numerous possibilities for any alleged victim to file complaints about ill-treatment by police officers. At the very least, the following remedies are available in all *Länder*:

- Filing information about a possible offence (or application for prosecution), initiating an impartial criminal investigation by police and PPO in the case of criminal offences, leading to the control of courts composed of independent and impartial judges

- Complaint against the conduct of an officer, leading to a formal legal and / or technical supervision by superiors
- Application for disciplinary investigation led by the executive
- Supervision by the Federal or the *Land* Ministry of the Interior
- Individual petition for parliamentary supervision through independent parliamentary petition committees mentioned above, in the context of the response to the issues raised in paragraph 43 of the list of issues; this right is guaranteed by article 17 of the Basic Law

164. Furthermore, the Code of Criminal Procedure provides the option of joining the public proceedings as a private party to the prosecution (sections 395 et seq.) or of filing a property claim during the criminal proceedings in order to receive compensation (without the necessity of further proceedings in the civil courts) from the accused after his conviction (sections 403 et seq.).

165. The Federal Government wishes to stress that complaints against police officers regarding unlawful use of force are pursued immediately. PPOs and police – under prosecutorial supervision – are legally bound to impartially investigate any potential criminal offence or other incident (see sections 160, 161, paragraph 1, 152, paragraph 2, 158, paragraph 1, of the Code of Criminal Procedure). Furthermore, the law requires an examination to be conducted into whether the act in question gives rise to a disciplinary measure – including beyond any penal sanctions. A decision on disciplinary measures must be taken in all cases.

166. These remedies – which are not mutually exclusive – may be utilised by alleged victims as well as by any other person. Applications and complaints are not subject to formal conditions, they may be filed orally or in writing with the public prosecution office, with authorities and officials in the police force, and with the Local Courts (section 158, para. 1, of the Code of Criminal Procedure).

167. The majority of the *Länder* have established Internet police stations where complaints may be filed online at any time. In addition, as explained *above*, several *Länder* have established independent mechanisms. While *Hamburg* and *Saxony-Anhalt*, for instance, have created specialised complaint bodies, the *Thüringen* Ministry of the Interior has set up an independent internal working group to supervise the impartiality of investigations against State officials. The *Hamburg* complaint body is permanently accessible in order to immediately follow up complaints against public officials.

168. No incident indicating a lack of adequate remedies has been reported. The Federal Government is convinced that its legal system which is based on the principle of the rule of law, is sufficiently equipped to guarantee the effective exercise of the rights of alleged victims under the Convention. Neither the Federal Government nor the reporting *Länder* therefore believe that additional measures would provide any added value.

#### **Response to the issues raised in paragraph 45 of the list of issues**

169. Statistics with regard to investigations into alleged ill-treatment by police officers were provided in the response to the issues raised in paragraph 9 of the list of issues. There are no other statistics available in this respect.

170. The Federal Government would also like to remark that it appears that a rather large number of allegations of ill-treatment are made in retaliation against legitimate police actions and serve mainly as an attempt to strengthen the complainant's case against the police action as such.

**Response to the issues raised in paragraph 46 of the list of issues**

171. On 4 August, the Frankfurt Regional Court awarded compensation of 3000 € to M. G., whose case is presented in paragraphs 50 et seq. of the State report. The judgment is not yet final.

172. Neither the Federal Government nor the *Länder* have reported other court orders with regard to compensation for ill-treatment by police officers.

173. The family of the victim at Siegburg prison has not availed itself of the possibility of attaching a claim for compensation to the criminal proceedings (see response to the issues raised in paragraph 44 of the list of issues). The Federal Government is not aware of any request for compensation made by the family against any State authority, which would of course have received proper attention.

**Response to the issues raised in paragraph 47 of the list of issues**

174. Education on human rights standards and protection of human rights are part of the regular training of soldiers at the Armed Forces training institutions. During pre-deployment training, human rights of persons under the protection of or detained by German forces are a main focus of training. The Federal Ministry of Defence and the operational commanders have issued orders with regard to these standards.

175. There have been no instances of torture or of cruel, inhuman or degrading treatment of punishment committed by members of the German armed forces. Members of the armed forces are under an obligation to report any indication of such actions to the superior officer.

176. There is a manual on the International Covenant on Civil and Political rights for officers responsible for training available in the Armed Forces Intranet which includes a set of relevant documents.

**Response to the issues raised in paragraph 48 of the list of issues**

177. Regarding the death of a soldier in Afghanistan in December 2010, the public prosecution office in Gera has filed an indictment against another soldier for criminally negligent homicide and disobeying orders under section 19 of the Military Penal Code and section 222 of the Penal Code. The trial has not yet commenced.

178. Regarding the deadly accident of a female soldier on board the GORCH FOCK, the investigations by the public prosecution office in Kiel did not disclose either any responsibility of superiors for the accident or any indications for sexual abuse, inappropriate disciplinary measures or deliberate harassment by superiors. The investigation has been closed.

**Article 15****Response to the issues raised in paragraph 49 of the list of issues**

179. The Federal Government reiterates its statement under paragraph 68 of the State report: “In criminal proceedings in a state under the rule of law, information which has demonstrably been gained under torture cannot be used as evidence, and that applies without reservation.” “Reports” to the contrary are wrong. The Federal Government therefore sees no need for any further comments.

## Article 16

### Response to the issues raised in paragraph 50 of the list of issues

180. German police collects data regarding “Hate Crime” in the context of the police reporting scheme “Politically Motivated Crime” (PMC). However, according to the definition of “Hate Crime” as internationally agreed upon, a hate crime offence is counted as PMC although in the individual case the specific act might not be committed by political motivation (e.g. an offence committed because of the victim’s sexual orientation or against disabled people). Data are disaggregated by type of motivation (for instance, xenophobia, anti-Semitism, religion) detected in the individual case. Therefore, while an offence will only be counted once for the overall statistics, the same offence might appear in several sub-statistics if there were multiple motives. Moreover, the number of victims may not be deduced from these statistics. Likewise, notwithstanding the victim’s affiliation, offences will not be categorised as “racist” if there was no political motivation. On the other hand, an offence might be considered politically motivated if the perpetrator wrongly assumed that the victim belonged to the targeted group or if he/she used respective insults being conscious that the victim was not a member of the targeted group.

### Selected subcategories of Politically Motivated Delinquency (PMC) / Hate Crime

181. Multiple selections are possible in relation to the subcategories in the individual criminal phenomena.

<i>Racism</i>										
<i>overall</i>	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
PMC –left-wing-	0	0	1	0	0	0	1	0	0	0
PMC –right-wing-	193	377	373	379	349	530	501	417	419	423
PMC –foreigners-	3	8	3	2	2	6	5	5	7	7
PMC –other-	7	3	8	5	0	4	6	1	2	3
PMC overall	203	388	385	386	351	540	513	423	428	433
Racism	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>Violence<sup>1</sup></i>										
PMC –left-wing-	0	0	0	0	0	0	0	0	0	0
PMC –right-wing-	29	79	58	77	60	109	87	77	65	61
PMC –foreigners-	1	2	1	0	2	4	2	0	4	3
PMC –other-	2	0	1	2	0	0	2	1	1	0
PMC overall	32	81	60	79	62	113	91	78	70	64

<sup>1</sup> Violence in the sense of this statistics includes the following offences: offences against life or against the person, causing arson or explosion, rioting, dangerous disruption of rail, ship and air traffic, unlawful imprisonment, robbery, blackmail, resistance und sexual violence. Not included: simple criminal damage .

<i>Xenophobia</i>										
<i>overall</i>	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
PMC –left-wing-	5	3	6	4	3	5	6	5	7	4
PMC –right-wing-	3.391	2.789	2.431	2.553	2.493	3.294	2.866	2.950	2.477	2.083
PMC –foreigners-	12	23	24	30	37	42	39	37	33	25
PMC –other-	140	62	64	107	62	83	78	56	47	54
PMC overall	3.548	2.877	2.525	2.694	2.595	3.424	2.989	3.048	2.564	2.166
Xenophobia	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>Violence</i>										
PMC –left-wing-	0	1	2	1	0	0	1	2	2	0
PMC –right-wing-	519	512	465	391	373	511	440	409	366	295
PMC –foreigners-	1	5	10	2	3	11	7	6	6	5
PMC –other-	13	9	6	15	8	9	9	7	9	8
PMC overall	533	527	483	409	384	531	457	424	383	308
<i>Anti-Semitic</i>										
<i>overall</i>	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
PMC –left-wing-	2	6	6	4	7	4	1	5	4	1
PMC –right-wing-	1.629	1.594	1.226	1.346	1.682	1.662	1.561	1.496	1.520	1.192
PMC –foreigners-	31	89	53	46	33	89	59	41	101	53
PMC –other-	29	82	59	53	26	54	36	17	65	22
PMC overall	1.691	1.771	1.344	1.449	1.748	1.809	1.657	1.559	1.690	1.268
Anti-Semitic	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>Violence</i>										
PMC –left-wing-	0	1	0	1	1	0	0	2	0	0
PMC –right-wing-	27	30	38	40	50	44	61	44	31	31
PMC –foreigners-	1	7	7	3	3	7	3	1	9	6
PMC –other-	0	1	1	1	2	0	0	0	1	0
PMC overall	28	39	46	45	56	51	64	47	41	37

<i>Religion</i>										
<i>overall</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
PMC –left-wing-	3	5	1	1	5	7	6	11	17	15
PMC –right-wing-	59	60	60	73	84	209	179	182	166	148
PMC –foreigners-	18	20	15	18	31	46	28	29	38	31
PMC –other-	18	21	26	43	24	53	25	31	35	54
PMC overall	98	106	102	135	144	315	238	253	256	248

Religion	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
violence										
PMC –left-wing-	0	0	0	0	0	0	0	0	1	1
PMC –right-wing-	3	5	6	5	2	7	7	4	8	3
PMC –foreigners-	0	3	5	0	2	10	8	6	2	8
PMC –other-	1	0	4	2	0	4	1	1	3	3
PMC overall	4	8	15	7	4	21	16	11	14	15

182. There are no separate subcategories in the German statistics about politically motivated acts specifically against members of Roma/Sinti communities. The following data have been extracted from facts reported by the *Länder*, for instance, facts regarding the victim or the wording of a defamation or sedition have served as indication.

<i>Politically Motivated Crime against Roma/Sinti people</i>			
	<i>2008</i>	<i>2009</i>	<i>2010</i>
PMC –right-wing-	20	41	31
PMC –left-wing-	1	0	0
PMC –foreigners-	0	0	1
PMC –other-	1	2	3
PMC overall	22	43	35

183. Three of the named acts are reflective of violence, two in 2009 and one in 2010.

184. The collection of data on hate crime and its publication have been useful in discovering existing patterns, predicting future evolutions and preventing crime. In addition, data on hate crime have become a regular source of information for media and parliaments, resulting in public awareness regarding the issue of intolerance and its consequences. Police officers are encouraged to verify whether the facts reported to them may indicate hate crime.

185. The Federal Government wishes to stress that combating hate crime essentially means combating delinquency with right-wing motives. Despite a decrease in the last two years, the number of cases in this sector is still worrying. The Federal Government aims at concerted action by all political actors and members of civil society against racially

motivated acts. It therefore encourages cohesion of society through all forms of political participation, engagement and democratic awareness by supporting and financing large-scale programmes for political education, notably via the Federal Agency for Civic Education and civil society, as well as actively helping civil society networks, for instance via the Alliance for Democracy and Tolerance.

186. Furthermore, the Federal Government acknowledges that combating political violence represents a constant challenge requiring concerted action by all actors in society. This includes all the measures undertaken by *Länder* authorities for law enforcement, prosecution and security, regardless of whether they concern prosecution, for instance via special investigation units, or prevention, for instance via de-escalation measures or intensified presence of police officials in places of risk.

187. All *Länder* provide training of law enforcement officers with particular focus on topics related to Politically Motivated Crime – for instance, discrimination, intercultural competence, religion, especially xenophobia and Islamophobia, and de-escalation strategies – in order to prevent relevant offences. When selecting and supervising public officials, the *Länder* pay special attention to the personality of the candidates.

188. In addition, the *Länder* have established specialised institutions to implement Federal Government programmes, for instance “kompetent für Demokratie – Beratungsnetzwerke gegen Rechtsextremismus“ and „TOLERANZ FÖRDERN – KOMPETENZ STÄRKEN – Gegen Rechtsextremismus, Fremdenfeindlichkeit und Antisemitismus“.

189. As an example, Lower *Saxony* has developed a strategy aimed at quickly identifying racially motivated violence and at providing professional support to victims in the future. The steering committee that has been set up will develop a network and provide counselling for individual citizens, local politicians and members of local initiatives. If challenges are reported, an expert body is established to visit the locality in order to make a needs-based assessment of the situation and to find sustainable solutions in cooperation with the persons concerned.

#### **Response to the issues raised in paragraph 51 (a) of the list of issues**

190. The Federal Government reiterates that it has already reported regarding the conditions of detention of juvenile offenders in its fifth periodic report, at paras. 129 et seq.

191. In the German legal system, the *Länder* are responsible for the enforcement of sentences.

192. For all *Länder*, education and therapy of juvenile offenders constitute a central aspect, prevention of inter-prisoner violence and aggression being a key issue. Juvenile prisons and psychiatric establishments everywhere in the country provide better detention conditions, elevated numbers of staff with special qualifications, and intensive as well as constant psychotherapy, group therapy, as well as training in anti-aggression and social skills.

193. To prevent inter-prisoner violence, most *Länder* provide single accommodation during unattended times and supervised residential groups for eligible juvenile prisoners. Female and male juvenile prisoners are separated. In several *Länder*, such as *Berlin*, *Saxony* and *Lower Saxony*, juvenile offenders are in principle legally entitled to single accommodation. In some *Länder*, like *Thuringia* and *Mecklenbourg-Western Pomerania*, they may share a room with one further inmate with his or her prior consent if risks are excluded. In other *Länder*, like *Brandenburg*, exceptions from the principle of single accommodation may be made only on a temporary basis if compelling reasons exist, or, like in *Hamburg*, in case of special needs of an inmate or of a risk for life or health. Stations

are small and clearly separated from one another. Eligible offenders may benefit from supervised residential communities. In *Hesse*, juvenile prisoners stay in groups of eight during the day while they are singly accommodated at night. The new Arnstadt Juvenile Prison in *Thuringia* will provide residential communities of 12 juvenile offenders each.

194. In all *Länder*, acts of inter-prisoner violence are subject to immediate and comprehensive criminal and disciplinary investigation and, if applicable, prosecution. Frequent controls of conditions of detention – including medical and hygienic conditions – take place, including visits by the CPT, the NPM as well as the Joint Commission (see response to the issues raised in paragraphs 10, 11 and 43 of the list of issues above). There are duties for all staff members to report without delay all acts of violence to the supervising authority and, if applicable, to the police or PPO. The involved persons and witnesses are heard in order to investigate all facts and reasons, and the results are documented. Injuries are examined by physicians, and, if necessary, by specialists. The juvenile establishments take the necessary measures on a case-by-case basis, ranging from disciplinary consequences, instructional measures, applications for criminal prosecution, enhanced security measures, to the restriction of collective accommodation or transfer to a different juvenile prison. In addition, victims of violence may contact the competent authorities for legal and technical supervision, contact parliamentary petition committees (article 17 of the Basic Law), and may file applications requesting criminal investigations at all times. Juvenile offenders may also address the advisory board in confidence. Some *Länder*, like *North Rhine-Westphalia*, additionally provide an ombudsperson for the enforcement of sentences.

195. In the following paragraphs, the Federal Government will present selected *Länder* examples. *Baden-Württemberg* has reported that there are only very few juvenile delinquents in psychiatric establishments. They benefit from special attention. Prevention of inter-prisoner violence – the obligation of the state to protect persons in custody being provided by law (section 2, para. 4, Prison Act) – represents a central aspect of psychotherapy and group therapy. Juvenile offenders are accommodated in small residential communities under constant supervision, with close contacts to therapists, psychologists and physicians. Competent personnel are accessible at all times. The Adelsheim Juvenile Prison has established and implemented a long-term project in order to prevent inter-prisoner violence. In addition, individual evaluations take place to determine whether a juvenile offender has been subjected to violence and whether this could have been prevented.

196. In *Bavaria*, in addition to a special facility for juvenile drug addicts, a facility for juvenile offenders with mental disorder is currently being established. To date, due to specific concepts of therapy, treatment and support, no case of inter-prisoner violence has been reported. Legal provisions stress the State's obligation to protect juveniles. The Prison Act follows the principle of single accommodation as well as the accommodation of eligible prisoners in residential communities. Male juvenile offenders are exclusively accommodated in Laufen-Lebenau Juvenile Prison which provides 174 spaces, 77 per cent of them being single accommodation. Overall, there are 757 prisoners and 500 staff members, of them 17 psychologists, 16 teachers, 25 social workers and 70 master craftsmen. Special focus in preventing violence lies on sport. Outdoor activities for eligible detainees, such as hiking and ski-touring, represent an important aspect of therapy, allowing young offenders to gain confidence and to learn how to work and live together as a group. As proven by international studies, the most effective element in preventing inter-prisoner violence is social therapy; since 2009 *Bavaria* has doubled the number of spaces in Neuburg-Herrenwörth Juvenile Prison, now providing 16 spaces, and established another 10 spots in Ebrach Juvenile Prison. The opening of another six spaces in this prison and another 16 spaces in Laufen-Lebenau Juvenile Prison is scheduled.

197. In *Lower Saxony* and *Saxony*, scientific studies are undertaken in all prisons in order to determine reasons for and specificities of inter-prisoner violence. In *North Rhine-Westphalia*, guidelines for the prevention of inter-prisoner violence have been developed by scientific experts in collaboration with experienced staff members.

198. In *Saxony*, juvenile prisons are required to offer leisure activities, a minimum of four hours weekly. A big sports hall is provided in the Regis-Breitingen Juvenile Prison. Staff receive compulsory and specific in-service training – including on nonviolent communication, specificities of juvenile behaviour, conflict resolution and suicide prevention – qualification, counselling and support. The *Land* offers extensive educational programmes and vocational training, social therapy, art therapy and therapy with animals in cooperation with the Chemnitz Guide Dog School, which involves training guide dogs for visually impaired persons. In the Regis-Breitingen Juvenile Prison, the non-governmental organisation Violence Prevention Network e.V. operates the project “Abschied von Hass und Gewalt” for juveniles who have committed severe acts of violence with possible right-wing extremist motives. Confrontational anti-aggression training is provided by the association *Klinke e.V.* Moreover, in the Regis-Breitingen Juvenile Prison, staff fills in observation forms twice a day in order to supervise the state of health of the juvenile offenders. The medical service is immediately contacted in case of injuries.

#### **Response to the issues raised in paragraph 51 (b) of the list of issues**

199. The Federal Government wishes to refer to its 2005 CPT report and the 2008 follow-up report cited by the Committee. These reports highlight the awareness of the Federal Government and the *Länder* governments of the suicide rates and indicate steps taken by the *Länder*, including programmes for suicide prevention launched by them. Therefore, only new elements will be mentioned.

200. In all *Länder*, suicide prevention is repeatedly discussed in compulsory regular in-service trainings and staff meetings. Potential approaches include the reduction of occasions for suicide, with a focus on prevention via therapy, increased staff numbers and a variety of activities offered. In addition, *Länder* make a constant effort to minimise differences between the conditions of life outside and life in prison as far as possible.

201. In forensic establishments in all *Länder*, suicide prevention constitutes an inherent part of the work and training of the staff members as suicide attempts may be elements of the problems being treated. From the beginning, patients are classified in pre-defined risk groups established in conformity with official scientific standards and checklists.

202. In juvenile prisons, categorisation takes place from the very beginning through medical and psychological assessment. Low-level measures are taken in order to achieve mental stability of juvenile inmates from the start. Many *Länder*, like *Saarland*, provide mechanisms for intervention in situations of acute crisis and / or expert circles with medical and psychological practitioners. Cases of suicide must be reported to the authorities, which are under an obligation to investigate. Since the year 2000, data have been collected at the federal level, with the results of the evaluation reported to the *Länder* who use them for training. In this context, *Lower Saxony* has informed the Federal Government that, since 2003, only one further suicide in Hameln prison has been reported.

203. Based on the initial Hameln model explained in the CPT reports, *Berlin*, *Saarland*, *Saxony* and the other *Länder* have continued to successfully elaborate and enhance their strategies of suicide prevention with screening and questionnaires. In addition to the *Länder* mentioned in the CPT reports, *Saxony-Anhalt* and *Thuringia* have established specific large-scale programmes for suicide prevention. Experiences are evaluated and shared in the national cross-*Länder* working group that has developed comprehensive leaflets (“Hinsehen, Zuhören, Reden”) which are accessible for all staff members. Further leaflets

“Niedergeschlagen? Schlecht drauf? Nicht zögern! Reden!” are available for all juvenile prisoners as soon as they enter the institution; they have been translated into 14 different languages and are drafted in a language targeted at juvenile and adolescent inmates. The working group has also established consistent standards applicable in all *Länder* which are in conformity with the guidelines developed by the WHO and the International Association for Suicide Prevention (IASP). These guidelines are handed out to juvenile prisons as well as forensic institutions. In addition, members of the psychological services of the establishments, at least one per institution, may receive additional training in order to work as multipliers and contact persons for their colleagues. Moreover, the directors of these establishments receive specific training. In October 2011, the working group will publish further guidelines on the topic of acute suicidal tendencies.

204. In addition, several *Länder* like *Hesse*, *North Rhine-Westphalia*, *Saarland* and *Saxony* have set up their own permanent working groups to develop comprehensive strategies. Moreover, some *Länder*, like *Saxony*, collaborate with universities and institutes who conduct scientific evaluation of the performance of prisons and forensic institutions in the sector of suicide prevention. Other *Länder* use scientific studies and materials, which are constantly updated. The *Länder* governments also work closely with specific associations and non-governmental organisations such as the National Suicide Programme (*Nationales Suizidpräventionsprogramm - Suizidprävention im Vollzug der Deutschen Gesellschaft für Suizidprävention e.V. -NASPRO*), with competent staff as well as experienced directors.

#### **Response to the issues raised in paragraph 51 (c) of the list of issues**

205. Regarding the separation of juvenile offenders from adults, practice in the *Länder* is divergent. In some *Länder*, no juvenile offenders are currently serving prison sentences, or, like in *Bremen* and *Saxony-Anhalt*, there is currently no need for accommodation in hospitals for mentally ill offenders. Other *Länder*, like *Rhineland-Palatinate*, *North Rhine-Westphalia* (forensics) and *Saxony-Anhalt* (for prisons), strictly separate adults from juveniles.

206. The majority of *Länder*, however, do not operate a strict separation between adolescent and juvenile offenders. This is partially due to the Youth Courts Law which allows the conviction of young adults under its provisions. According to section 105, paragraph 1, this is the case if

1. The overall assessment of the perpetrator’s personality, taking account of his living environment, demonstrates that at the time of the act he was still equivalent to a youth in terms of his moral and intellectual development, or
2. The type, circumstances and motives of the act indicate that it constituted youth misconduct.

207. Some *Länder* operate special youth divisions which are housed in general prisons but do justice to the needs of the juvenile and adolescent inmates, as well as specific juvenile prisons. The reasons for this decision differ. Several *Länder*, like *Baden-Württemberg*, invoke the unreasonably small number of juvenile offenders that would not permit a separation. In *Bavaria* as of March 2010, only 1.2 per cent of male and 0.2 per cent of female inmates were juvenile offenders. In *Saxony*, of 314 inmates convicted according to the Youth Courts Law, only 26 were younger than 18 years old. Separating these small numbers and accommodating them in a centralised juvenile prison would inevitably lead to a collision with other good practice, for instance the accommodation close to the offender’s home town in order to preserve his or her social contacts. In contrast, decentralised accommodation might lead to isolation and deprivation of adequate educational or occupational offers. *Länder* experience indicates that a strict separation

would not be helpful either. In their experience, as *Bavaria*, *Saxony* and *Hesse* assert, age is rarely a decisive factor as personalities and degrees of maturity of juvenile inmates and of young adults vary widely. This is one of the reasons why the Youth Court Law can be applied to young adults. With regard to the educational aim of the juvenile justice system, the personality and the medical, therapeutic and social needs of each individual offender must be specially considered. In this respect, for instance, *Bavaria* has opted for a separation of the youngest juvenile male offenders (14-16 years) – who need special protection – from the older ones who will be accommodated according to age, social contacts, provenance, needs for social therapy and criminal record. This complies with the requirements set by the German Constitutional Court (see decision of 31 May 2006, paragraph 49).

208. Regarding forensic institutions, the majority of *Länder* opt for collaboration between forensic institutions and paediatric psychiatry. For instance, while the seven juvenile and adolescent offenders in *Brandenburg* are accommodated in the smallest hospital for mentally ill offenders in Teupitz, *Hamburg* – for its average one case per year – has opted for accommodation in eligible paediatric psychiatric hospitals, with the support of forensic psychiatric establishments. Following an individual needs-based assessment, juvenile offenders who will shortly reach the age of full legal responsibility may also be placed in forensic hospitals. Moreover, juvenile offenders may be transferred from paediatric to forensic hospitals at any time if this corresponds to their needs. In this case, they will receive, if needed, vice versa, additional support from the paediatric clinic. Some *Länder*, like *Mecklenburg-Western Pomerania*, reserve a particular station in a forensic institution for juvenile offenders, providing local psychological and medical assistance by a child and adolescent psychiatric clinic.

209. In *Bavaria*, the existing facility for drug-addicted young delinquents (minors and young adults) separates patients into age groups having regard to the therapeutic needs of the individual detainee. *Bavaria* is currently planning a similar special facility for young delinquents who require psychiatric treatment.

#### **Response to the issues raised in paragraph 51 (d) of the list of issues**

210. The Federal Government is constantly evaluating the functioning of the juvenile justice system. The development of alternative measures has always been a central feature and a hallmark of the German system.

211. As the recommendations of the Committee on the Rights of the Child (CRC) are currently being evaluated and implemented, the Federal Government will comment on them in detail in the course of the reporting process before the CRC.

#### **Response to the issues raised in paragraph 52 of the list of issues**

212. In the German federal system, the *Länder* are responsible for psychiatric establishments.

213. All allegations of ill-treatment are examined comprehensively and without delay. Any staff member found responsible for ill-treatment of patients will be dismissed immediately. In addition, in the sector of psychiatric establishments many remedies against ill-treatment exist, including complaints mechanisms and patients' representatives within the clinics, external visiting commissions, legal and technical supervision by the authorities as well as ombudspersons. Complaints against "enhanced security measures" may be made in Local Courts in accordance with sections 109 et seq. of the Federal Prison Act (StVollzG) or the respective provisions of the *Länder* prison acts. In addition, applications for criminal prosecution may be filed against staff members.

214. Only very few *Länder* have recorded cases of complaints of grave ill-treatment by staff members of psychiatric establishments.

215. *Bavaria* and *North Rhine-Westphalia* have reported that allegations of ill-treatment or applications for criminal prosecution are extremely rare and, to date, have always been refuted as the measures taken were necessary for reasons of health and safety or as an element of therapy. In several cases, allegations had been raised as a part of the patient's disease pattern. In *Bremen*, where on average three investigations per year have been initiated regarding staff of the forensic clinic, all of them were refuted and terminated without indictment. Only *Saarland* has indicated that one patient successfully complained against an enhanced security measure (handcuffing).

216. In the case of O.J. (see fifth periodic report, key issue B IV 2 a, paragraphs 103 et seq.), the Federal Supreme Court has reversed the judgment of Dessau-Roßlau Regional Court regarding the acquittal of the accused S. According to the report of *Saxony-Anhalt*, the case is on retrial at Magdeburg Regional Court, since 12 January 2011. The Court has timetabled 36 trial dates for 2011 and is currently conducting expert and witness hearings.

217. As regards seclusion the Federal Government refers to its response to the issues raised in paragraph 36 of the list of issues. However, it wishes to stress that "enhanced security measures" are exceptional emergency measures which, are subject to the standards of the rule of law according to the Basic Law which is binding for the *Länder*. They may be ordered only in accordance with the conditions provided by law and in the case of strict necessity, to protect the patient from grave harm or to prevent high risks for other patients or staff. This principle is accentuated in the relevant laws of the *Länder*, which are subject to strict scrutiny with regard to compatibility with the Basic Law.

218. As an example, Hamburg's Law on the Enforcement of Mental Hospital Orders provides in its section 32 that enhanced security measures may be ordered in case of emergency caused by the behaviour or the mental condition of the respective patient. Relevant emergencies are risk of flight, suicide or self-injury as well as the risk of acts of violence directed against persons or property (para. 1). In such cases, the *Hamburg* law allows depriving the patient of certain objects, separating him or her from other patients, withdrawing or restricting the patient's time outdoors or submitting the patient to certain legal restraints, or to accommodating the patient in a specially protected room without items who could endanger him or her (para. 2). All of these measures may be ordered only by a physician and must be conducted under medical supervision. In emergency situations, other staff may take the decision, but must seek confirmation by a medical scientist without delay (para. 3). All measures taken, notably their nature, beginning and end as well as the reasons for the decision, must be documented (para. 4 in conjunction with section 33, para. 3).

### **32 Hamburg Coercive Treatment Act – Special Precautionary Measures**

(1) Special precautionary measures may be ordered with regard to an accommodated individual if and to the extent that, due to his behaviour or in view of his mental state, there is increased danger of his escape, or the danger of violent attacks against persons or property, or the danger of suicide or self-injury.

(2) The following shall be permissible as special precautionary measures:

1. Deprivation or withholding of articles,
2. Separation from other accommodated individuals,
3. Withdrawal or restriction of time outdoors or issuance of instructions with regard to its implementation,

4. Detention in a specially secured room containing no dangerous objects,

(3) The special precautionary measures enumerated in para. 2 above may be undertaken only upon the order by a physician and under medical supervision. In the case of imminent danger, they may also be ordered by other employees of the prison; the approval of a physician shall be obtained without delay. Section 5 (2), no. 5 shall remain unaffected.

(4) For measures pursuant to (2) no. 4, section 33 (3) shall apply mutatis mutandis.

### **33 Hamburg Coercive Treatment Act - Restraint**

(1) An accommodated individual may be restrained temporarily if and for as long as the clear and present danger exists that he will become violent against other persons or commit suicide or self-injury, and if this danger cannot be averted in another manner. The restrained accommodated individual is to be monitored in a suitable manner at all times.

(2) Restraint may be ordered only by a physician experienced in psychiatry based upon a personal examination and for a limited period of time. In the case of imminent danger, restraint may also be ordered provisionally by other employees of the prison; a decision by a physician based upon a personal examination shall be obtained without delay. The director of the prison is to be informed. If a restraint lasts more than twelve hours or is ordered again after less than twelve hours, the approval of the director of the prison or another physician with advanced training in psychiatry shall be necessary as well.

(3) Documentation pursuant to section 7 shall specifically include the type, beginning and end of a restraint, the reasons for ordering it and the type of continual monitoring. The competent authority may determine details in this regard.

### **18 Hamburg Act on Assistance and Placement of Mentally Ill Persons - Restraints**

(1) An accommodated individual may be restrained temporarily if and for as long as the clear and present danger exists that he will become violent against another person, commit suicide or self-injury, and if this danger cannot be averted in another manner. The restrained individual is to be monitored in a suitable manner at all times. This shall not apply if, due to special circumstances in the specific case, continual monitored is not required and it is also ensured that, upon request by the restrained individual, he will be sought out without delay by an employee suitable to engage in such monitoring.

(2) Restraint may be ordered only by a physician based upon a personal examination and only for a limited amount of time. In the case of imminent danger, restraint may also be ordered provisionally by a staff member; a decision by a physician shall be obtained without delay. If a restraint lasts longer than twelve hours or is again ordered after less than twelve hours, it shall be necessary to obtain the approval of the medical director of the hospital division or other facility in which the restrained individual is accommodated, or of another physician with advanced training in the field of psychiatry as well.

(3) The type, beginning and end of a restraint, the reasons for ordering it, and the type of continuous monitoring or reasons for not engaging in continuous monitoring are to be recorded.

(4) Sections 1 to 3 shall apply mutatis mutandis if the freedom of movement of an accommodated individual is restricted to a small space as a result of comparable measures.

## **Other issues**

### **Response to the issues raised in paragraph 53 of the list of issues.**

219. The new anti-terrorism law of December 2008 does not have any implications on Germany's obligations under the Convention. The law regulates the internal division of competences between the Federal Criminal Police Office and the *Länder* police forces and gives the Federal Criminal Police Office more scope for investigations. Nothing in the law gives any scope for violation of the Convention by police forces.

220. When considering requests from other States in the context of judicial cooperation, the Federal Office of Justice will assess whether there is any risk of abuse of such information in the requesting State. If appropriate, the Federal Office of Justice will request a diplomatic assurance regarding the treatment or punishment of any persons involved.

221. There is no provision for judicial control over such information-sharing. Access to court and compensation is governed by the general rules of German law.

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