



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Germany under article 29, paragraph 1, of the Convention\*

#### I. General information

1. Please provide information on the activities carried out by the German Institute for Human Rights in relation to the Convention. In addition, please indicate whether the competence of the Institute includes the consideration of individual complaints.

#### II. Definition and criminalization of enforced disappearance (arts. 1-7)

2. In relation to paragraphs 13 and 15 of the report, please provide detailed information on the legal or other measures in force to ensure that the prohibition against enforced disappearance cannot be abrogated or restricted under any exceptional circumstances, including under external or internal states of emergency. Please, also indicate whether, besides the extension of the period of detention (para. 15 of the report), in the context of states of emergency or other exceptional circumstances the domestic legal framework foresees the possibility of derogating from any of the rights and/or procedural safeguards provided for in domestic legislation, including the Basic Law, or in international human rights instruments to which Germany is a party that might be relevant for the combat and prevention of enforced disappearances. If so, please enumerate the rights and/or procedural safeguards that can be derogated from, under which circumstances, according to which legal provisions, and for how long (art. 1).

3. In the absence of an autonomous crime of enforced disappearance, please specify how the “refusal to acknowledge the deprivation of liberty” or the “concealment of the fate or whereabouts of the disappeared person” would be punished under German law. Please also indicate whether there are any initiatives to incorporate enforced disappearance as an autonomous crime in domestic legislation. In this respect, please also update the information provided in paragraph 26 of the report with regard to the dialogues carried out with civil society stakeholders and the assessment made by the Federal Government to establish enforced disappearance as an autonomous crime (arts. 2 and 4).

4. Please indicate whether article 357 of the Criminal Code applies to both civilian and military authorities. Furthermore, and taking into consideration the information provided in

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\* Adopted by the Committee at its fifth session (4-15 November 2013).



paragraph 35 of the report according to which “depending on the factual situation, there can be criminal liability for a superior’s failure to act pursuant to section 323c StGB (omission to effect an easy rescue)”, please comment on how the potential application of such criminal provision is in compliance with the requirement set forth in article 6, paragraph 1 (b), of the Convention. Also in this respect, please indicate whether there are any equivalent provisions to articles 4, 13 and 14 of the Code of Crimes against International Law related to the responsibility of superiors that would apply to cases of enforced disappearance that do not amount to crimes against humanity. If not, please indicate whether there are any initiatives to revise existing legislation in that direction (art. 6).

5. Please indicate whether all kinds of public officials, either civilian or military, would be covered by the legal provisions referred to in paragraph 41 of the report and, if available, please provide examples of instances in which such provisions have been invoked and/or applied. Please, also describe the legal recourses available to subordinates against any potential disciplinary measures resulting from his/her refusal to carry out a criminal conduct ordered by a superior mentioned in paragraph 41 of the report (arts. 6 and 23).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8-15)**

6. Please clarify how the statute of limitations for criminal procedures and sanctions would be applied to a potential isolated case of enforced disappearance taking into consideration that, due to the absence of an autonomous crime, the conduct of enforced disappearance may fall under several of the provisions of the Criminal Code and that, as indicated in paragraph 50 of the report, such provisions have different periods of statutes of limitations. Furthermore, and in relation to the information provided in paragraph 55 of the report, please specify who the persons that would be considered victims according to national legislation and would be consequently entitled to “appeal against the decision by an authority or a court that the statute of limitations has expired” are (art. 8).

7. Please provide information about the scope and implications on the obligations stemming from article 9, paragraphs 1 and 2, of the Convention of the requirement that an act must be punishable at the place of the offence or the place of the offence must not be subject to any criminal law enforcement in order for Germany to exercise jurisdiction in the cases described in paragraphs 57, 58 and 61 of the report. Furthermore, please provide updated information with regard to the case of Mr. Khaled El-Masri mentioned in paragraph 60 of the report. Please also indicate whether a denial of extradition could be based on the immunity granted to certain categories of people and officials and, if that is the case, please enumerate such categories (arts. 9, 11 and 13).

8. In relation to paragraphs 64 and 111 of the report, please indicate the grounds under which a court may not allow a foreign national to communicate with his/her consular representatives. In this respect, please also inform the Committee for how long such a restriction could be applied and how this would be compatible with article 36 of the Vienna Convention on Consular Relations (arts. 10 and 17).

9. Please indicate whether allegations of enforced disappearances can be investigated and/or prosecuted by military authorities. If so, please provide information about the applicable legislation (art. 11).

10. Please indicate whether the rules and procedures described in paragraph 81 of the report apply to any public official, either civilian or military. Furthermore, please explain in detail the criteria used to temporarily suspend an official who is suspected of having committed a crime and, in that regard, please also indicate whether public officials suspected of having committed a crime of enforced disappearance shall always be immediately suspended from their functions. In addition, please indicate whether there are

procedural mechanisms to exclude a security force from the investigation of an allegation of enforced disappearance in the event that one or more of its members are suspected of having committed the crime (art. 12).

11. Please provide information about investigations carried out and their results in respect to the use of German airspace and airports in the extraordinary renditions programme, also involving the transfer of detainees, and the cooperation granted to other States with regard to investigations related to this matter (arts. 12 and 14).

12. Please develop the information provided in paragraph 89 of the report with regard to the relevant provisions that enable Germany to provide “other legal assistance” to any State party on a non-treaty basis. In relation to paragraph 90 of the report, in which it is indicated that the provisions for providing “other assistance” would *generally* allow the provision of legal assistance to other States parties in case-specific criminal contexts for the purpose of assisting the victims of enforced disappearance, please indicate in which cases these provisions would not allow such provision of legal assistance. Please also indicate whether, in accordance with German law, any limitations or conditions could be applied in relation to requests for judicial assistance or cooperation in the terms established by articles 14 and 15 of the Convention, including in cases where the request is made by a State which is not party to the Convention (arts. 14 and 15).

#### **IV. Measures to prevent enforced disappearances (arts. 16-23)**

13. Please comment on the declaration made on article 16 of the Convention with reference to the wording of this article, in particular as it prohibits refoulement “where there are substantial grounds for believing that [a person] would be in danger of being subjected to enforced disappearance” (art. 16).

14. Please provide information about the mechanisms and criteria applied in the framework of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please also indicate whether there are any States that are considered to be safe and, in that case, on the basis of what criteria a State is considered safe and whether consideration is given to the possibility that, after having been transferred to a State considered safe, the person can subsequently be transferred to another State where he/she could be exposed to the risk of being subjected to enforced disappearance. Furthermore, please indicate whether the State party accepts diplomatic assurances when there is a reason to believe that there is a risk that the person may be subjected to enforced disappearance (art. 16).

15. In relation to paragraph 120 of the report, please indicate whether, besides the person concerned and his/her counsel, in case of a suspected enforced disappearance any person with legitimate interest is entitled to take proceedings before a court in order for that court to decide without delay on the lawfulness of the deprivation of liberty and order the person’s release if such deprivation of liberty is not lawful (art. 17).

16. Please list the information contained in the registers and/or records kept, both at the Federal and Länder levels, in all places of deprivation of liberty regardless of their nature (art. 17).

17. Please indicate whether the National Agency for the Prevention of Torture (NAPT) possesses sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently. Moreover, please provide information about the existing guarantees to ensure that NAPT has immediate and unrestricted access to all places of deprivation of liberty, both at the Federal and Länder levels (art. 17).

18. Please indicate whether any person with a legitimate interest can access information about a person deprived of liberty that could be contained in the registries and/or records of prisons and other centres of deprivation of liberty. In this respect, please also provide information about the procedures to be followed to access such information and indicate whether any restrictions to such access could be applied and, if so, for how long (art. 18).

19. Please provide detailed information about the sanctions, either criminal, administrative or disciplinary, to be applied in relation to each of the conducts set forth in article 22 of the Convention (art. 22).

20. Please provide detailed information about the content, nature and frequency of the training provided to law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and prosecutors, in the terms set forth in article 23 of the Convention. Please also indicate if specific training on the Convention is provided, or is envisaged to be provided, to the abovementioned public officials (art. 23).

## **V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)**

21. Please clarify the extent and practical consequences of the declaration made upon ratification in relation to article 24, paragraph 4, of the Convention (art. 24).

22. In relation to paragraphs 161 and 162, please indicate whether, besides compensation, national legislation provides for other forms of reparation for the persons who have suffered harm as the direct result from an enforced disappearance in line with article 24, paragraph 5, of the Convention. Please also indicate whether there would be a time limit for victims of enforced disappearance to access reparation. In addition, please provide information on whether any reparations are currently being provided to victims of enforced disappearances that may have occurred in the past (art. 24).

23. Please provide information about the relevant criminal provisions that would apply should any of the conducts encompassed in article 25, paragraph 1, of the Convention would occur. Please also indicate whether any steps have been taken to bring national legislation into line with article 25, paragraph 1, of the Convention (art. 25).

24. Please provide information on the procedures in place to review, and if necessary annul, any adoption or placement of children that originated in an enforced disappearance. If such procedures have not been so far set up, please indicate whether there are any initiatives to bring national legislation into line with article 25, paragraph 4, of the Convention (art. 25).

25. Please provide information about the legal provisions and procedures in force that guarantee that in all actions concerning children, whether undertaken by public institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. In addition, please provide information on how the children, who are capable of forming their own views, have the right to express those views freely in all matters which are affecting them, specially those related to enforced disappearance (art. 25).

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