



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

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## Committee against Torture

Forty-sixth session

9 May–3 June 2011

### List of issues to be considered during the examination of the fifth periodic report of Germany (CAT/C/DEU/5)

#### Articles 1 and 4

1. In light of the previous recommendation of the Committee (A/53/44, para. 190), please provide information on steps taken by the State party to adopt a comprehensive definition of torture which is in full conformity with the definition contained in article 1 of the Convention.
2. Please inform the Committee whether the State party intends to explicitly make torture a specific offence under its criminal law in accordance with article 4 of the Convention.
3. Please explain the status of the Convention in the domestic legal system and whether the Convention is directly applicable before domestic courts, both at the federal and Länder levels. If so, please cite illustrative cases.
4. Please indicate whether the State party intends to amend relevant provisions of the Criminal Code (including section 340, paragraph 1) and the Military Penal Code (section 30 on ill-treatment and section 31 on degrading treatment) with a view to ensuring that offences that amount to an act of torture are punished with appropriate penalties (in accordance with article 4, paragraph 2, of the Convention) which take into account the grave nature of the offences.

**Article 2<sup>1</sup>**

5. Please provide information in relation to paragraphs 5(a) (measures to address allegations of torture and ill-treatment), 5(b) (measures to assemble statistical data and information), 5(e) (cases of extradition or removal, number and nature of diplomatic assurances or guarantees) and 5(f) (private security companies and avenues for redress, information on allegations or accusations of mistreatment of employees, Frankfurt am Main Airport) of the Committee's concluding observations (CAT/C/CR/32/7) adopted with respect to the State party's third periodic report (CAT/C/49/Add.4) as requested by the Committee's Rapporteur on follow-up to concluding observations in her letter to the State party dated 3 May 2011.

6. With reference to the Committee's previous recommendations, please provide information on measures taken by the State party to ensure the adoption and application at Länder level of measures that have proved efficacious at federal level in improving compliance with the Convention. In particular, further to the constitutional reform of 2006 and the transfer of responsibility for prison legislation from federal to Länder level, please provide information on measures taken by the federal government to guarantee that the standards and safeguards set forth in the Convention are protected and ensured in all Länder.

7. In light of the recommendations of the European Committee for the Prevention of Torture, please report on steps taken by the State party to ensure that comprehensive measures are taken to address health problems or risks which could influence the success of a forced air removal pursuant to internal instructions of the Federal Police on the forced removal of foreign nationals by air. In particular, please provide information on measures taken to ensure appropriate and responsible treatment for traumatized refugees, and qualified examinations performed by psychotherapists trained in the assessment of reactive trauma sequel, in order to identify especially vulnerable persons who have developed psychological symptoms during their stay in Germany..

8. Please provide information on measures taken to ensure the protection of fundamental safeguards of persons deprived of their liberty in police custody, including the application of the express intention of the State party to introduce provisions on the right of apprehended persons to notify third parties immediately after apprehension in the Criminal Code (StGB) and on the right of apprehended criminal suspects to be informed of their fundamental rights at the outset of deprivation of liberty in the Code of Criminal Proceedings (StPO). Please also provide information on steps taken to ensure in practice the rights of persons in police custody to have access to a lawyer and to a medical doctor.

9. In addition to information requested under the Committee's follow-up procedure in paragraph 6 in the present list of issues, please provide information on data collected since 1 January 2009 under the *Order regarding the gathering of statistical data* by the Public Prosecution Office Statistics. Please further clarify whether such data (a) will be compiled regardless of where such crimes by law enforcement officers are committed, and (b) will

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

provide information on the number of investigations initiated against members of the law enforcement authorities

10. Please provide information on the mandate and activities carried out to date by the National Preventive Mechanism of the State party (the National Agency for the Prevention of Torture), comprised of the Federal Agency for the Prevention of Torture and the Joint Commission of the *Länder*, as well as on findings and implementation of their recommendations. Please further indicate measures undertaken to provide the National Agency for the Prevention of Torture with the human, financial and technical resources necessary to ensure its effectiveness and independence. Please also provide the Committee with information on the undertaking and findings of any review undertaken of the National Agency for the Prevention of Torture (CAT/C/DEU/5, para. 21) and either of its members.

11. Please provide information on how the Joint Commission of the *Länder* will co-exist in parallel to, and complement, existing bodies such as the petition committees who are entitled, in some *Länder*, to make “unannounced visits to places of detention such as prisons or psychiatric institutions”. Please also provide information on steps taken by the federal authorities to encourage other *Länder* to explicitly authorize their respective petition committees to undertake such unannounced visits to places of detention.

12. In light of the recommendation of the Committee on the Elimination of All forms of Discrimination against Women, please report on steps taken by the State party to ensure that comprehensive measures are taken to address all forms of violence against women. Has the State party adopted targeted measures to address sexual violence perpetrated against women and girls with disabilities, pursuant to the concerns of the Council of Europe Commissioner for Human Rights? Please provide data on the number of investigations into cases of domestic violence and the number and outcome of prosecutions and convictions of perpetrators as well as information on redress and compensation measures. Please further provide statistics on cases of female genital mutilation in the territory of the State party.

13. Pursuant to the recommendation of the Committee on the Elimination of All forms of Discrimination against Women, please provide information on all appropriate measures taken by the State party to suppress all forms of trafficking in women. Such information should include indication on whether the State party has taken concrete measures to provide shelter for victims of trafficking and to ensure the safety and protection of relevant witnesses. Please also provide information on whether the State party has exercised universal jurisdiction for the crime of trafficking as provided for under section 6, No. 4 of the Criminal Code.

14. Have violent and discriminatory practices against persons with disabilities in the medical setting, including deprivation of liberty and enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroshocks, been recognized as forms of torture and ill-treatment, in conformity with recommendations of the United Nations Special Rapporteur on Torture (A/63/175, para. 41; see also paras. 38, 40, 47, 49 and 61-63)? What measures have been taken to prohibit and prevent such acts? Is the State party aware of the existence of alternatives to these measures, particularly those based on a trauma-informed approach to care, and has it considered adopting such practices?

### **Article 3**

15. Please provide data, disaggregated by age, sex and nationality, for 2005 and subsequent years concerning:

- (a) The number of asylum requests registered;
- (b) The number of requests granted;

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

16. With respect to the State party's practice of automatic review of refugee status, please provide information on the procedures in place to ensure a thorough examination of all relevant factors on an individual basis before a decision to revoke refugee status is taken. Please provide statistical data (disaggregated by age, gender and nationality) on the number of cases where revocation of refugee status was withheld on grounds of fear of torture or ill-treatment. Please also provide information on possibilities to appeal a decision of refugee status revocation and, if so, data on such appeals and their outcome.

17. Please provide information on the "accelerated airport procedure" for the determination of asylum requests and on mechanisms in place to ensure that rejected asylum-seekers are not in danger to face torture or ill-treatment upon deportation. Please provide data (disaggregated by age, sex and nationality) of successful asylum applications under this procedure, on the basis of the principle of non-refoulement. Please also report on whether the State party intends to exclude unaccompanied minors from this procedure, as recommended by the European Commission against Racism and Intolerance (ECRI). In this respect, please provide steps taken by the State party to ensure the collection and public availability of data, disaggregated by age, sex and nationality, on the number of unaccompanied children that are subject to enforced removal from the State party.

18. Please provide information on the number of successful appeals of rejected asylum applications in 2005 and subsequent years on the basis of danger for the applicant to be subject to torture or other forms of ill-treatment. Please also provide information on measures taken by the federal and Länder authorities to ensure that asylum-seekers are systematically given free legal aid from the outset of the application procedure and, as recommended by the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to ensure that applications for asylum are processed in a shorter time period.

19. In addition to information requested under the Committee's follow-up procedure in paragraph 6 in the present list of issues, please provide further information about cases where German courts have struck down the use of diplomatic assurances on protection against torture or ill-treatment. Further, please clarify to the Committee steps taken to ensure that the use of diplomatic assurances is only employed in exceptional cases.

20. Please comment on the forced return of ethnic minorities to their countries of origin, especially Syria and Kosovo. Please also provide information on bilateral readmission agreements to which Germany is part and on the number of foreign nationals who were forcibly returned under such agreements. Please also provide information on steps taken to encourage and facilitate independent monitoring of forcible removals at international airports in the State party.

21. Please comment on progress in establishing free legal counselling in all establishments accommodating immigration detainees subsequent to the State party's reminder to all Länder of the recommendation by the Committee for the Prevention of Torture of the Council of Europe on the provision of such aid. What specific measures have been taken by the State party to ensure, in all Länder, prompt and free access to legal and other assistance to unaccompanied children held in detention?

22. Please provide information on whether the State party intends to withdraw its declaration to article 3 of the Convention with a view to allow the direct application of the Convention before courts and authorities at federal and Länder levels.

23. Please provide information on reports alleging that, during the period 1993 to 2008, 56 persons committed suicide and 492 persons injured themselves while awaiting deportation in custody or out of fear of deportation, and on measures taken by federal and Länder authorities to prevent suicides and self-inflicted treatment among foreign nationals awaiting deportation from the State party.

24. Please provide information on steps taken to identify at the earliest stage possible asylum-seekers who may have been subjected to torture or ill-treatment, according to the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and ensure medical and psychological assistance and care to those individuals.

25. Please provide information, disaggregated by age, sex and nationality, on the total number of unaccompanied children held in detention for the purpose of removal, and the length of their detention, during the reporting period. Please also provide information on steps taken by the Federal Government to ensure systematic collection of data across all Länder for this purpose. What measures have been taken to ensure that all Länder adopt a uniform policy that unaccompanied or separated children should not, as a general rule, be detained, and that, if at all resorted to, detention should only be used as a measure of last resort and for the shortest appropriate period of time?

### **Articles 5 to 7**

26. Please provide information on whether the State party has directly applied the Convention to extradite offenders suspected of committing acts of torture, or otherwise seek prosecution of such offenders before domestic courts. Please also provide the Committee with updated information on the extradition request referred to in paragraph 85 of the State party's report. Please also provide information on whether any preliminary inquiries were conducted into the use of physical restraints (*Fixierung*) on those in detention and advise the Committee as to the results of any inquiries. Please also provide information on the material conditions in detention facilities and access to medical staff.

27. Please provide information on the State party's exercise of universal jurisdiction under the Code of Crimes against International Law (CCIL), including prosecution and/or extradition of persons suspected of committing acts of torture amounting to crimes against humanity. In view of the very low number of investigations initiated under the Code of Crimes against International Law, please provide information on measures taken by the Federal Government to encourage proactive investigations by the Federal Prosecution Office with respect to cases referred to it.

28. Please provide information on implementation of recommendations by the 2009 Parliamentary Commission of Inquiry (*BND-Untersuchungsausschuss*) into alleged involvement of the State party in extrajudicial renditions and secret detention of terrorist suspects. Please also indicate whether the State party intends to reopen the Parliamentary Inquiry in the light of the ruling by the Constitutional Court that failure of the Government to fully cooperate with the Inquiry violated the Constitution.

### **Article 10**

29. Please provide information on measures taken to provide basic and regular training for law enforcement personnel on the Convention, international human rights law and on other standards relevant to their work, including the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms. Please inform the Committee whether all professionals who are directly

involved in the process of documenting and investigating torture, as well as medical personnel and other officials involved with detainees, are trained on the provisions of the Istanbul Protocol and the result of such training. Please also indicate whether the Istanbul Protocol is used in asylum determination procedures.

30. Please provide information on measures taken by the State party to intensify efforts to provide specific training on the rights of asylum-seekers and refugees, especially how they relate to the Convention, to the staff of the Federal Office for Migration and Refugees, members of the judiciary and all other officials involved in the asylum process.

31. Please inform the Committee whether the absolute prohibition of torture is explicitly referred to (a) in instructions issued to the intelligence services (CAT/C/DEU/5, para. 67) and (b) in the regulations on duties of members of the armed forces with respect to detention outside of armed conflict (para. 102). What specific training on international human rights law and the extraterritorial application of the Convention and other human rights treaties is provided to staff members of the intelligence services as well as for members of the armed forces participating in peacekeeping operations?

32. Please provide information on measures taken by the State party to ensure that laws prohibiting corporal punishment are fully implemented in all settings, including through appropriate and ongoing public education and professional training on positive, participatory and non-violent forms of education and childrearing.

33. Please outline measures taken by the State party to develop and implement a methodology to assess the effectiveness of training of law enforcement personnel with regard to the prevention of torture and ill-treatment.

## Article 11

34. Please provide information on measures taken by authorities at federal and Länder levels to reduce the practice of physical restraint – *Fixierung* – in prisons, psychiatric hospitals, juvenile prisons, and detention centres for foreigners, including steps taken to ensure the effective implementation of the CPT recommendations as contained in Section D 9 of the report on its visit to Germany in 2005. Please also indicate whether, in the long-term, the State party intends to abandon the practice of *Fixierung*.

35. Please provide information on the practice of secured placement (*Sicherungsverwahrung*) in the State party, including data on the number of Länder and facilities which resort to secured placement and on the number of prisoners subjected to, and the length of, such placement. Please comment on measures taken by the State party to review recourse to *Sicherungsverwahrung* in view of the comment by the Federal Ministry of Justice in the State party's response to the report by the CPT on its visit to Germany in 2005 that "the Länder need to take action in the matter". To what extent have alternative measures to secured placement been considered and applied? Have independent studies on its implementation been commissioned, as recommended by the Commissioner for Human Rights of the Council of Europe?

36. Please provide information on the practice and conditions of permanent seclusion (*unausgesetzte Absonderung*) and whether permanent seclusion is used in other prison facilities apart from the Special Security Unit at Berlin Tegel Prison. Please also clarify the legal safeguards of prisoners subjected to permanent seclusion, including the right to appeal a decision of permanent seclusion and to have contact with the external world.

37. Please provide information on measures undertaken by the State party to ensure that detention of illegal immigrants is an exceptional measure and only a measure of last resort. Pursuant to the recommendation by the Committee for the Prevention of Torture of the

Council of Europe, please also provide information on measures taken by State party to ensure that in all Länder (as in Brandenburg), the detention of immigration detainees is governed by specific rules reflecting their particular status and steps taken to introduce alternative measures to prisons for immigration detainees. Further, please provide information on steps taken to ensure legal safeguards of immigration detainees, i.e. (a) access to an independent doctor, if possible of their own choice; (b) access to a lawyer; and (c) the right to contact members of their families. Please also indicate measures taken to provide interpretation services if necessary.

38. Please provide information to the Committee on steps taken improve detention conditions, including (a) measures to address overcrowding, especially in Halle prison and in Neustadt Psychiatric Centre; (b) an increase in staffing levels, in particular to ensure continuous supervision of detainees under restraint; and (c) installing video surveillance cameras throughout police stations where detainees are present and making video recording of interrogations of all persons questioned a standard procedure.

39. Please provide information to the Committee on measures taken to ensure that no torture or ill-treatment occur in places of detention in foreign countries where German officials have been involved in interrogations. Specifically, please inform the Committee: (a) how the State party ensures that legal safeguards for the protection against torture are in place and respected by local authorities; (b) whether the State party critically examines the conditions in detention facilities with respect to alleged acts of torture and ill-treatment prior to deciding to interrogate detainees in such places; (c) whether interrogations take place in the presence of State officials of the country concerned; and (d) whether interrogations are video recorded and information obtained shared with national authorities.

40. Please inform the Committee of measures taken to enforce in practice Regulation 1236/2005 of 27 June 2005 of the Council of European Union concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Please provide information on steps taken to prevent, prohibit and take action against the production, export of and trade in such goods, in view of information that the State party has issued licences for the export of leg cuffs and “fettters” to a number of destinations and supplied thumb-cuffs, leg irons and shackles originally manufactured outside of the European Union. Please also comment on reports that the State party is a major “proliferation centre” in Europe in view of the number of companies involved in this market.

### **Articles 12, 13 and 14**

41. In addition to information requested under the Committee’s follow-up procedure in paragraph 6 in the present list of issues, with regard to allegations of torture, ill-treatment and deaths in custody by law enforcement personnel, please provide information on steps taken to ensure that police officers carry visible badges indicating their police status and professional identity at all times when carrying out law enforcement functions. Please also provide information on ex officio investigations into suspected acts of torture and ill-treatment committed by law enforcement authorities launched by the Public Prosecution Office and by the police under sections 152 and 163 of the Criminal Procedure Code respectively.

42. Please provide statistics on members of the German armed forces prosecuted and convicted under sections 30 and 31 of the Military Criminal Code, including punishments received, for alleged acts of ill-treatment.

43. Please provide information on steps taken to establish independent bodies responsible for investigating complaints of torture and ill-treatment by federal and Länder

police. Please also provide information on steps taken to establish special departments within the Public Prosecution Offices (PPOs) mandated to investigate allegations of criminal conduct by police officers in all sixteen Länder of the State party.

44. Please provide information on measures undertaken by the State party to ensure the effective exercise of the right of alleged victims of acts prohibited under the Convention to complain to competent authorities, in particular with respect to the possibility and procedures in place for filing complaints about misconduct and ill-treatment by police.

45. Please provide information, including statistics (disaggregated by sex, age and nationality of the individual filing the complaint), on the number of complaints of torture and ill-treatment in the reporting period as well as information on investigations, prosecutions and penalties in relation to such complaints, including disciplinary measures. Please clarify which provisions of the German Criminal Code were violated in each case.

46. Please provide information on compensation, including the means for as full rehabilitation as possible, ordered by federal and Länder courts and actually provided to victims of torture or ill-treatment, or to their dependants, since the examination of the last periodic report in 2004. This information should include the number of cases brought to court and the number of cases granted, as well as the redress ordered and actually provided in each case. Please also provide information on compensation provided to the family of the juvenile inmate at Siegburg Prison who was forced to hang himself after being subjected to torture by fellow inmates in 2006.

47. Please provide information on measures taken by the State party to ensure the application of the Convention in respect to all individuals within its power or effective control in situations where its troops operate abroad, particularly in the context of peace operations. Please provide information on cases of alleged torture or other forms of cruel, inhuman or degrading treatment or punishment committed by members of the armed forces in such situations and the investigation, prosecution and punishment of such acts. Also, please inform whether members of the German armed forces on duty abroad are under an obligation to report on serious violations of human rights, including torture.

48. Please inform the Committee of outcomes of the investigation into practices throughout the Federal Armed Forces (*bundeswehr* ordered by the Minister of Defence in January 2011 following two isolated cases of deaths among members of the *bundeswehr* deployed abroad. Please also provide information on action taken in relation to allegations of sexual abuse, harsh discipline, and deliberate harassment by superiors.

## **Article 15**

49. Please report on measures taken to ensure that legislation, administrative rules and regulations and practice are in compliance with the State party's obligations under article 15 of the Convention. In particular, please provide information to the Committee on steps taken by the State party to ensure that its intelligence service does not utilize information which has been obtained through torture. Please comment on reports that evidence obtained through torture and ill-treatment in foreign countries may be used in criminal proceedings in the State party. Please also comment on whether the State party intends to shift the burden of proof from the defendant to the prosecution to prove, beyond reasonable doubt that a confession was not obtained by unlawful means. Further, with reference to the State party's report (CAT/C/DEU/5, para. 69), please further elaborate on article 15 with respect to the use of evidence to avert a threat.



## Article 16

50. In light of the recommendation of the Committee on the Elimination of Racial Discrimination please provide data on cases of racially motivated acts of violence, especially against members of the Jewish, Muslim and Roma/Sinti communities, as well as German nationals of foreign origin and asylum-seekers, in particular of African origin. Please comment on measures taken by the State party to prevent and combat racist-related incidents, in particular among law enforcement officers.

51. Please provide information on measures adopted by the State party to enhance the rights and protection of juvenile offenders in places of detention and prisons, in particular on steps taken to:

(a) Prevent and eliminate all forms of inter-prisoner violence in juvenile prisons in the State party, including through revisions of Prison Acts and Juvenile Prison Acts of the Länder providing, inter alia, for single-occupancy accommodation and the creation of independent ombudsman for individual complaints, as in the case of North Rhine-Westphalia;

(b) Prevent suicide among juvenile inmates, including through the introduction of a special suicide prevention programme. Please provide information on the implementation of findings and recommendations of the cross-Länder working group established in 2006 to draw up a conceptual model for suicide prevention in prisons, as reported to the CPT in the response of the State party to its report on the visit to Germany in 2005;

(c) Ensure the separation of juvenile offenders from (young) adults in prisons and places of detention and, in light of the recommendation by the Committee on the Rights of the Child (CRC/C/15/Add.226, para. 45), also in psychiatric institutions;

(d) Develop alternative measures, such as diversion and restorative justice, in the juvenile justice system, in line with the recommendation by the Committee on the Rights of the Child (para. 61 (c)).

52. Please provide information on complaints of ill-treatment by staff members of psychiatric establishments at Länder level in the context of “enhanced security measures” (seclusion, restraint and coercive medication) and “direct coercion” (in accordance with Sections 7 and 8 of the Coercive Treatment Act, respectively), and the investigation, prosecution and penalties in relation to such complaints. Please also provide information on legal provisions and prison rules regulating the use of seclusion and measures to restrict the use of seclusion to only very exceptional circumstances set forth in law with a view to reducing the resort to seclusion, as recommended by the Committee on Prevention of Torture of the Council of Europe.

## Other issues

53. Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards under the Convention in law and practice and how it has ensured that those measures taken to combat terrorism comply with all its obligations under international law (Security Council resolution 1624 (2005)). In particular, please provide information on any implications of the State party’s obligations under the Convention subsequent to the adoption of the new anti-terrorism law of December 2008 and its rationale. Please provide information on procedural rules for members of the intelligence services of Germany when, during the course of questioning,

“there are concrete indications to suggest that the person concerned has been subjected to torture in the country where they lived” (CAT/C/DEU/5, para. 34). Please also provide information to the Committee on how the State party ensures that information shared with other States in the context of anti-terrorism activities will not lead to detention and ill-treatment abroad? How does the State party ensure that the judiciary and the Parliament exercise control over information-sharing in such cases? In this context, please also provide information on how the State party can ensure access to court and to redress, including compensation, for those allegedly tortured and ill-treated in places of detention abroad as a result of information provided by the State party.

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