



Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review:

GERMANY

I. BACKGROUND INFORMATION

Germany is one of the first six States worldwide that signed the *1951 Convention on the Status of Refugees* (the Convention); and it became a State party to this international instrument on 1 December 1953. UNHCR has been present in the country since 1951. Germany still ranks worldwide amongst the main asylum host countries hosting large numbers of persons in need of international protection.

There has been a significant increase in asylum applications over the past several years: 22,085 in 2008; 27,649 in 2009; 41,332 in 2010; and 45,741 in 2011.¹ According to the information published by the Federal Office for Migration and Refugees, the trend of rising numbers continues in 2012; there was an increase of 11.9 % in first applications in the first half of 2012.² This in turn is likely to increase the volume of appeals submitted to the administrative courts, as well as the number of court decisions dealing with protection related issues, such as the issuance of travel documents, residence permits or birth certificates, the access to the labour market, social welfare and family reunification.

The largest caseloads of new asylum-seekers in 2011 originated from Afghanistan, Iraq, Iran, Serbia, and Syria.³ In 2011, of all the decisions on the merits (i.e. not calculating cases otherwise closed) the overall protection rate amounted to 29%. Refugee recognition status was granted in 21.3% of the decisions, subsidiary protection according to the EU

¹ Press release of the Federal Office for Migration and Refugees, available at: <http://www.bamf.de/SharedDocs/Pressemitteilungen/DE/2012/20120124-0002-pressemitteilung-bmi.html?nn=1366068>

² BAMF, Aktuelle Zahlen zu Asyl – Ausgabe: Juni 2012, http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.pdf?__blob=publicationFile

³ BAMF, Das Bundesamt in Zahlen 2011, pages 18 and 19 at: http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2011.pdf;jsessionid=D8D1E49258A2B299AB1A9D729B93D0A9.1_cid244?__blob=publicationFile

Qualification Directive was granted in 2% of the decisions and complementary protection according to national provisions was granted in 5.7% of the decisions.

II. ACHIEVEMENTS AND BEST PRACTICES

1. The asylum system in Germany

The Government of Germany has a long tradition of refugee protection, given the inclusion of the fundamental right to asylum in the Constitution (the “Basic Law”) in 1949. As a result, Germany has a well-established and generally functioning asylum system with a high degree of sophistication which, of course, requires constant monitoring, review and adjustment, both as regards the quality of the procedures as well as the substantive criteria for granting protection.

2. ”Support to the Comprehensive Solutions Strategy for the Afghan Situation

UNHCR welcomes pledges by the Government of Germany made at the Ministerial Meeting held in Geneva in December 2011 to contribute to a durable solution for Afghan refugees, returnees and IDP’s in line with UNHCR’s “Comprehensive Solutions Strategy for the Afghan Situation (2012 – 2014)”, by redoubling its support to UNHCR’s operations in the main countries of asylum in the region (Iran and Pakistan) and by increasing the number of DAFI scholarships for Afghan refugees.

3. Establishment of a resettlement programme

Having engaged over the years in several ad-hoc programmes on resettlement, the Government of Germany introduced the basis for a programme in late 2011. At the 2011 Ministerial Meeting Germany pledged to offer resettlement to 300 refugees per year for the initial duration of three years (2012-2014). Through this initiative, the Government takes an important step forward to actively protect refugees who continue to suffer from serious human rights violations.

4. Suspension of transfers of Dublin cases to Greece

UNHCR would like to commend the Government of Germany for its decision to suspend transfers to Greece under the Dublin II Regulation until January 2013. UNHCR, as well as the Special Rapporteur on Torture, among others⁴ have highlighted the deplorable situation awaiting asylum-seekers in Greece, especially with respect to reception conditions, detention in inhuman and degrading conditions and the danger of chain-*refoulement* from Greece to Turkey and onwards to asylum-seekers’ countries of origin.

⁴ See the UNHCR report *Observations on Greece as a country of asylum*, December 2009, available at: <http://www.unhcr.org/refworld/pdfid/4b4b3fc82.pdf>,

At the end of his fact-finding mission to Greece in October 2010, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment made a statement, in which he noted the following: “I fully support the recommendation of the UN High Commissioner for Refugees and human rights institutions to halt all returns under Dublin II due to the inadequate protection against *refoulement* and the inhuman detention conditions for migrants in Greece.”

The full statement is available at: <http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm>

5. Statelessness

UNHCR would like to commend Germany for the support it provides to UNHCR's global efforts to address statelessness. This includes consistent advocacy from Germany for greater international attention to resolving statelessness in fora, such as the UN Human Rights Council and UNHCR's Executive Committee.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Transfer of asylum-seekers to another State participating in the Dublin II Regulation

While the Government suspended transfers to Greece according to the Dublin II Regulation, it does not, as a rule, review cases before they are transferred to other European States to make sure that the asylum-seekers are not being put in situations where there are no adequate reception conditions, fair procedures for determining protection needs, or humane conditions for detainees. Moreover, section 34a(2) of the Asylum Procedures Act explicitly prohibits suspensive effect of appeals against transfer orders to another State participating in the Dublin II Regulation. Consequently, there is no proper access to an effective legal remedy.

In this respect, UNHCR welcomes the concluding observations and recommendations made by the Committee against Torture at its 47th session following its review of Germany.⁵

22. While noting that asylum applications falling under the Dublin II Regulation are subject to appeal, the Committee is concerned that under article 34a, paragraph 2, of the German Law on Asylum Procedure, lodging of an appeal does not have suspensive effect on the impugned decisions (art. 3).

The Committee also recommends that the State party abolish the legal provisions of the Asylum Procedures Act excluding suspensive effects of the appeals against decision to transfer an asylum-seeker to another State participating in the Dublin system.

According to the jurisprudence of the European Court of Human Rights, in cases where there is a risk of exposure to inhuman or degrading treatment in the country of destination, transfer under Dublin II is precluded, to ensure compliance with the ECHR. In addition, the Court found that there must be an effective legal remedy available, which has suspensive effect, meaning that the applicant may not be removed pending the outcome of an appeal against the transfer decision. Some courts order suspension of transfer in those cases based on arguments from constitutional law, European law and the European Convention on Human Rights. Other courts base their decisions solely on the letter of the law. However, currently there exists legal uncertainty in appellate courts on their authority to suspend implementation of a decision ordering transfers of asylum-seekers to another European State pending the substantive outcome of the appeal.

⁵ You can access the CAT concluding observations and recommendations at the following link: http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.DEU.CO.5_en.pdf

Recommendations:

- Abolish the legal provision that precludes the suspension of implementation of the transfer an asylum-seeker to another State participating in the Dublin II Regulation pending the outcome of an appeal against such a decision.
- Adapt the law to the requirements established by the European Court of Human Rights in the case of *M.S.S. versus Belgium and Greece*⁶ (January 2011), which was reinforced by the Court of Justice of the European Union in its preliminary ruling decision in the cases of *N.S. and M.E.*⁷ Such an amendment should ensure that an effective legal remedy, which has suspensive effect, is available against decisions to transfer an asylum-seeker to another State participating in the Dublin system.
 - Prevent transfers to countries where there is a real risk that asylum-seekers will be subjected to inhuman or degrading treatment, due to for instance poor reception conditions or detention conditions or where lack of access to fair and efficient asylum procedures may lead to indirect *refoulement*.
 - Carefully examine transfer decisions, particularly taking into consideration the specificities of individuals ensuring conformity with international human rights obligations, for instance Article 7 of the *Covenant on Civil and Political Rights*.

Issue 2: Freedom of movement for asylum-seekers within Germany

According to sections 46 and 47 of the Asylum Procedures Act, asylum applicants are assigned to one of the 22 branch offices of the Federal Office for Migration and Refugees and they are obliged to take residence in a nearby initial reception center for a maximum period of three months. After that period, asylum-seekers are generally distributed among the districts of the responsible *Bundesland*⁸ and, as a general rule, placed in collective centers for the duration of the asylum procedure.⁹ During the procedure, asylum-seekers receive a special residence permit (*Aufenthaltsgestattung*), which restricts their legal stay to the area they have been assigned to. Asylum-seekers can request an individual permission to temporarily leave the district for compelling reasons, but they may have to pay a fee for the waiver. After a recent revision of the Asylum Procedures act, there is now a more flexible application of the restrictions on the freedom of movement of

⁶ In the oral intervention, UNHCR repeated the view that the Greek asylum system does not, at present, adequately protect asylum-seekers, including Dublin transferees, against return to territories where there is a risk of persecution or serious harm. The intervention submits that “this assessment is largely based on the fact that even in cases where individuals manage (against all odds) to have access to the asylum procedure in Greece, they are not afforded a fair and effective examination of their claims, and they are not, as a result, identified as being in need of international protection and would risk onward removal to danger. Lack of protection from *refoulement* is related to, and compounded by, inadequate reception and detention conditions for asylum-seekers that do not guarantee the standard of treatment foreseen under the 1951 Convention and European law.” The full statement is available at:

<http://www.unhcr.org/refworld/pdfid/4c7fbf052.pdf>

⁷ Judgment of the Court (Grand Chamber) of 21 December 2011: *N. S. (C-411/10) v Secretary of State for the Home Department et M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*; available at: <http://curia.europa.eu/juris/liste.jsf?num=C-411/10&language=en>

⁸ Section 50 of the Asylum Procedures Act

⁹ Section 53 of the Asylum Procedures Act

asylum-seekers. In fact, competent authorities in the 16 *Bundesländer* and municipalities can extend the asylum-seekers' assigned area by including adjacent districts. However, this practice is not consistent and asylum-seekers are still subject to significant restrictions to their freedom of movement. Asylum seekers who violate such a restriction commit an administrative offence that may be punished with a fine (Section 86 Asylum Procedure Act).

Recommendation:

- Lift restrictions on the freedom of movement for asylum-seekers within Germany.

Issue 3: Access to procedural counseling for asylum-seekers

According to UNHCR's experiences, pre-hearing counseling for asylum-seekers remains limited. In most cases, it is only available, if at all, in initial reception centers run by NGOs that have managed to obtain funding for such services. The European Refugee Fund sometimes provides funding on a project-by-project basis only. According to UNHCR's assessment, a qualified and independent counseling session before a personal interview not only contributes to the fairness and transparency of the procedure, but is also a decisive tool for increasing the quality of the first-instance procedure. In particular, by explaining the complicated procedures to applicants, asylum-seekers can better understand the procedure and present all relevant facts during the interview.

Recommendation:

- Ensure access to independent, qualified and free-of-charge procedural counseling for asylum-seekers prior to their personal interview before the asylum authority.

Issue 4: Legal aid for asylum-seekers in appeal cases

Asylum-seekers only receive financial support to pay lawyers' fees in appeals against negative decisions, if the appeal is likely to succeed according to the court's summary assessment. Therefore, only exceptional cases of asylum appeals qualify for legal aid. Contrary to usual administrative law proceedings, a decision taken in an asylum case often depends entirely on the personal interview and the assessment of the applicant's presentation and it is often not possible to establish the likelihood of success for an asylum appeal.

In this context, reference should also be made to the concluding observations and recommendations made by the Committee against Torture at its 47th session following its review of Germany:¹⁰

23. The Committee takes note of the lack of procedural counselling for asylum-seekers before a hearing is carried out by asylum authorities, and that legal aid is paid for a

¹⁰ You can access the CAT concluding observations and recommendations at the following link: http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.DEU.CO.5_en.pdf

lawyer in appeals against negative decisions only if the appeal is likely to succeed according to the court's summary assessment (arts. 3, 11 and 16).

The Committee calls on the State party to guarantee access to independent, qualified and free-of-charge procedural counselling for asylum-seekers before a hearing is carried out by asylum authorities, guarantee access to legal aid for needy asylum-seekers after a negative decision, as long as the remedy is not obviously without a prospect for success.

Recommendation:

- Guarantee access to legal aid for appeal cases for all asylum-seekers who are in need.

Issue 5: Diplomatic assurances in the context of extradition of recognized refugees

In order to avert the risk of inhuman or degrading treatment, the Government of Germany sometimes accepts diplomatic assurances when extraditing persons. Courts deciding on the admissibility of extradition will also sometimes ask for such assurances. Diplomatic assurances cannot effectively avert risks of ill-treatment or torture.

In this respect, the Committee against Torture noted the following: *The Committee recommends that the State party refrain from seeking and accepting diplomatic assurances, both in the context of extradition and deportation, from the State where there are substantial grounds for believing that a person would be at risk of torture or ill-treatment upon return to the State concerned, as such assurances may not ensure that an individual would not be subjected to torture or ill-treatment if returned, even in cases where post-return monitoring mechanisms are put in place.*¹¹

The Government should be reminded about the fact that diplomatic assurances are not acceptable, as they undermine fundamental refugee protection principles.¹²

Recommendations:

- Refrain from accepting diplomatic assurances from States concerning the treatment of recognized refugees.
- Refrain from extraditing individual refugees to other States on the basis of diplomatic assurances of humane treatment.

Issue 6: Procedural rules for minor asylum-seekers

In Germany, the legal capacity for asylum-seekers to conduct an asylum procedure on their own is determined to start at 16 years of age according to section 12 (1) of the

¹¹ Please see further the CAT concluding observations and recommendations on Germany, 47th CAT session, paragraph 25, at the following link:

http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.DEU.CO.5_en.pdf

¹² See also the report of the Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment, Juan Méndez, A/HRC/16/52 of 3 February 2011, Section D “Non-refoulement and diplomatic assurances”, paragraphs 60-63, at the following link:, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/105/87/PDF/G1110587.pdf?OpenElement>

Asylum Procedures Act. UNHCR has criticized that the provisions refer to the age of 16 instead of 18 years of age in view of the principle of the best interest of the child, which is protected by the *Convention on the Rights of the Child* as well as by European law.

Moreover, given that unaccompanied children are in a situation of particular vulnerability, UNHCR has called on the Government of Germany to exempt them from the airport procedure, which contains very short time frames within which it is decided whether an application is manifestly unfounded. In view of the specific protection needs of child asylum-seekers and considering the specific safeguards required to assess the best interest of the child, child asylum claims should never be processed through accelerated procedures to ensure full respect of the *non-refoulement* principle. In the same line, the UN Working Group on Arbitrary Detention noted following its visit to Germany from 26.09.2011 to 5.10.2011 that: “(...) according to the German Asylum Procedure Act, unaccompanied children aged 16 and 17 may be required to undertake the asylum procedures as adults, without the assistance of a guardian.”¹³

UNHCR furthermore welcomes the CAT concluding observations its review of Germany, expressing concern about the continuous exposure of unaccompanied minors to the “Airport Procedure”, including those whose asylum application has been refused or refugee status repealed who can be deported to the countries of origin if no reasonable ground to expect torture or ill-treatment has been detected. (...) The Committee recommends that the State party:

(a) Exclude unaccompanied minors from the “Airport Procedure” (...).¹⁴

Recommendations:

- Raise the age of legal capacity for carrying out an asylum-procedure like an adult to 18 years of age.
- Exempt unaccompanied minors from the airport procedure and the application of provisions allowing for turning back persons at the border.

Issue 7: Status of refugees resettled to Germany

The establishment of a specific legal framework for resettlement still being under review, the current practice is based on existing legal provisions regulating the admission of foreigners for humanitarian reasons (section 23 (2) of the Residence Act). This means that refugees resettled to Germany do not receive the same legal status as persons who travelled to Germany on their own and received refugee protection after successful completion of the regular asylum procedures. Although resettled refugees enjoy equal access to integration courses, gainful employment, social assistance, education and health care, their status is still less favourable in other areas, such as for example documentation, family reunification, residency permit and naturalization. Furthermore,

¹³ See the WGAD report to Germany A/HRC/19/57/add.3 at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Visits.aspx>

¹⁴Please see further the CAT concluding observations and recommendations on Germany, 47th CAT session, paragraph 27, at the following link: http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.DEU.CO.5_en.pdf

their status does not provide for the issuance of Convention Travel Documents (CTDs).¹⁵ In the absence of CTDs, resettled refugees are forced to approach their home countries for the issuance of national passports, in order to be able to travel abroad and to comply with passport requirements, which are a condition for the granting (or extension) of a residence permit according to German law. Aside from the risk of renewed or continued persecution which resettled refugees might be exposed to if requested to contact their authorities for a national passport, the lack of CTDs also means that they cannot prove their refugee status when traveling abroad. This might expose them to a further risk of *refoulement*.

In addition, while refugees recognized in the regular German asylum procedure are granted permanent settlement after a period of three years if the Federal Office for Migration and Refugees has not revoked their refugee recognition, resettled refugees can only apply for a permanent residence permit after seven years and provided that they are economically self-sufficient and have successfully completed language and integration classes. Moreover, in order to receive German nationality after eight years of residence, resettled refugees are required to renounce their primary nationality, as double nationality is in principle tolerated only for refugees recognized by the regular asylum procedure.

Recommendation:

- Encourage the Government to provide for the granting of refugee status for resettled refugees in Germany, in the context of the establishment of a permanent resettlement programme.

Issue 8: Stateless persons in Germany

Germany has ratified *the 1954 Convention relating to the Status of Stateless Persons* and acceded to *the 1961 Convention on the Reduction of Statelessness*. It has also ratified the *European Convention on Nationality* and *the Council of Europe Convention on the avoidance of statelessness in relation to State succession*.¹⁶ The State has, however, made two reservations with regard to the 1954 Convention. These state that Article 23 (public relief) of the 1954 Convention is applied without restriction only to stateless persons who are also refugees and otherwise only to the extent provided for by national legislation, while article 27 (identity papers) is not applied.

Germany has different mechanisms that identify stateless persons through its decentralized authorities. However, a uniform application of the 1954 Convention criteria is currently not enforced which can lead to stateless persons remaining unidentified (e.g.

¹⁵ Article 28 of the 1951 Refugee Convention provides for the right of refugees lawfully staying in the territory of a State party to be issued with a travel document, called Conventional Travel Documents (CTD), enabling them to travel outside that territory.

¹⁶ Convention relating to the Status of Stateless Persons (1954), http://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en; Convention on the Reduction of Statelessness (1961), http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en;

as persons with “unknown nationality”) and unable to avail of the protection of that Convention.

Recommendations:

- Lift the reservations to the 1954 Convention on the Status of Stateless Persons.
- UNHCR recommends a strengthening of the existing mechanisms to ensure identification of all stateless persons and their protection, building on recently published guidance.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
October 2012**

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

GERMANY

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations and Special Procedures' reports relating to issues of interest and concern to UNHCR with regards to Germany.

1. Treaty Body Concluding Observations and Recommendations

Committee Against Torture
CAT/C/DEU/CO/5, 47th Session
12 December 2011

Positive aspects

7. The Committee also welcomes the joint project by the International Organization for Migration and the Federal Office for Migration and Refugees to identify potential victims of trafficking among asylum-seekers.

Principal subjects of concern and recommendations

Refugees and international protection

21. While taking note that the transfers under the Dublin II Regulation to Greece have been suspended due to difficult reception conditions, the Committee notes with concern that the present suspension of returns, due to expire on 12 January 2012, might be terminated prior to the amelioration of the reception conditions in Greece (art. 3).

The State party is encouraged to prolong the suspension of forced transfers of asylum - seekers to Greece in January 2012, unless the situation in the country of return significantly improves.

22. While noting that asylum applications falling under the Dublin II Regulation are subject to appeal, the Committee is concerned that under article 34a, paragraph 2, of the German Law on Asylum Procedure, lodging of an appeal does not have suspension effect on the impugned decisions (art. 3).

The Committee also recommends that the State party abolish the legal provisions of the Asylum Procedures Act excluding suspensive effects of the appeals against decision to transfer an asylum - seeker to another State participating in the Dublin system.

23. The Committee takes note of the lack of procedural counselling for asylum-seekers before a hearing is carried out by asylum authorities, and that legal aid is paid for a lawyer in appeals against negative decisions only if the appeal is likely to succeed according to the court's summary assessment (arts. 3, 11 and 16).

The Committee calls on the State party to guarantee access to independent, qualified and free-of-charge procedural counselling for asylum-seekers before a hearing is carried out by asylum authorities, guarantee access to legal aid for needy asylum-seekers after a negative decision, as long as the remedy is not obviously without a prospect for success.

Detention pending deportation

24. The Committee notes a decrease in numbers and duration of detention of foreign nationals. However, it is concerned at the information that several thousand asylum-seekers whose requests have been rejected and a vast majority of those who are the subject in so-called "Dublin cases" continue to be accommodated in Länder detention facilities immediately upon arrival, sometimes for protracted periods of time. This practice contravenes Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals which regulates detention pending deportation as a means of last resort. The Committee is particularly concerned at the lack of procedure in a number of Länder for identification of vulnerable asylum-seekers, such as traumatized refugees or unaccompanied minors, given the absence of mandatory medical checks on arrival in detention, with the exception of checks on tuberculosis, and systematic checks for mental illnesses or traumatization. The Committee is further concerned by the lack of adequate accommodation for detained asylum-seekers separate from remand prisoners, especially for women awaiting deportation (arts. 11 and 16).

The Committee urges the State party to:

- (a) Limit the number of detained asylum-seekers , including those who are the subject in "Dublin cases" , and the duration of their detention pending return, while observing the European Union Directive 2008/115/EC;**
- (b) Ensure mandatory medical checks and systematic examination of mental illnesses or traumatization of all asylum-seekers including the "Dublin cases" by independent and qualified health professionals upon arrival in all Länder detention facilities;**
- (c) Provide a medical and psychological examination and report by a specially trained independent health expert when the signs of torture or traumatization have been detected during the personal interviews by asylum authorities; and**
- (d) Provide adequate accommodation for detained asylum-seekers separate from remand prisoners in all detention facilities, particularly for women awaiting deportation.**

Unaccompanied minors

27. While noting the information that the so-called "Airport Procedure" under article 18 of the Law on Asylum Procedure applies to the asylum-seekers arriving from a safe country of origin or without a valid passport, the Committee remains concerned in particular by the reports of continuous exposure of unaccompanied minors to the "Airport

Procedure”, including those whose asylum application has been refused or refugee status repealed who can be deported to the countries of origin if no reasonable ground to expect torture or ill-treatment has been detected. The Committee is also concerned about the lack of information on the State party’s position it represents in the context of the European Union discussion on minors subject to the “Airport Procedure” (art. 3).

The Committee recommends that the State party:

- (a) Exclude unaccompanied minors from the “Airport Procedure”, as recommended by the European Commission against Racism and Intolerance;**
- (b) Ensure that unaccompanied minors can enjoy the rights guaranteed by the Convention on the Rights of the Child;**
- (c) Ensure collection and public availability of data, disaggregated by age, sex and nationality, on the number of unaccompanied minors that are subject to enforced removal from the State party; and**
- (d) Play an active part in the European Union discussion on this issue with a view of extending the protection of unaccompanied minors from the risk of torture and ill-treatment.**

Training of law enforcement personnel

29. While taking note of the training of the federal and Länder law enforcement personnel on the Convention, constitutional guarantees and public and national criminal and procedural law, the Committee expresses its concern at the lack of specific training to all professionals directly involved in the investigation and documentation of torture as well as medical and other personnel involved with detainees and asylum-seekers on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The Committee is also concerned that the training on the Istanbul Protocol, to be introduced next year in all the Länder, is designed to focus on detecting physical but not psychological traces of torture. The lack of training on the absolute prohibition of torture in the context of instructions issued to the intelligence services is yet another source of concern (arts. 2, 10 and 16).

The Committee recommends that the State party:

- (a) Ensure that all law enforcement, medical and other personnel involved in the holding in custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment and the documentation and investigation of torture are provided, on a regular basis, with training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), requiring the identification of both physical and psychological consequences for victims of torture;**
- (b) Ensure that such training is also provided to personnel involved in asylum determination procedures, and make the existing publications and training tools on the Istanbul Protocol available on the Internet; and**
- (c) Include systematic reference to the absolute prohibition of torture in the instructions issued to the intelligence services.**

Data Collection

39. The Committee requests the State party to provide, by 25 November 2012, follow-up information in response to the Committee's recommendations related to (a) regulating and restricting the use of physical restraints in all establishments, (b) limiting the number of detained asylum-seekers including the "Dublin cases" and ensuring mandatory medical checks of detained asylum seekers, (c) exercising jurisdiction in accordance with article 5 of the Convention and providing information about the remedies including compensation provided to Khaled El-Masri, and (5) ensuring that members of the police in all the Länder can be effectively identified and held accountable when implicated in ill-treatment, as contained in paragraphs 16, 24, 28 and 30 of the present document.

Committee on Economic, Social, and Cultural Rights

E/C.12/DEU/CO/5, 46th Session

12 July 2011

Positive Aspects

The Committee welcomes a number of measures taken by the State party aimed at improving the enjoyment of social, economic and cultural rights, in particular:

The adoption of objectives to ensure the effective implementation of the National Integration Plan;

The introduction of universal health insurance coverage under the 2007 Health Reform;

The implementation of the 2007 National Plan of Action to Combat Violence against Women;

The measures taken to protect children from abuse and violence, such as the network of hotlines, the services provided by the child protection centres, and the free counselling services for children and teenagers

Principal Subjects of Concern

The Committee notes with deep concern the situation of asylum-seekers who do not receive adequate social benefits, live in inadequate and overcrowded housing, have restricted access to the labour market and have access only to emergency healthcare (art. 2(2)).

The Committee urges the State party to ensure, in line with international standards, that asylum-seekers enjoy equal treatment in access to non-contributory social security schemes, health care and the labour market. The Committee also calls on the State party to ensure that national regulations on housing standards, particularly on overcrowding, also apply to reception centres.

The Committee expresses concern that persons with a migration background, including those of the second generation, continue to face serious obstacles in the enjoyment of their rights to education and employment, due primarily to prevailing prejudices against them and insufficient awareness of their rights. The Committee is also concerned that relevant policies have failed to achieve significant improvement or have not addressed situations of indirect discrimination (art. 2(2)).

The Committee urges the State party to strengthen efforts to address the issues faced by persons with a migration background in its education, employment and social policies and plans, including by taking concrete measures aimed at helping them assert their rights and by monitoring the enforcement of laws against racial discrimination in the labour market. Moreover, the Committee urges the State party to collect data on the enjoyment of economic, social and cultural rights by these persons, on the basis of self-identification, and, in this regard, draws the attention of the State party to its general comment No. 20 on non-discrimination (2009). The Committee also requests the State party to include information in its next periodic report on the work undertaken by the Federal Government Commissioner for Migration, Refugees and Integration.

Committee on the Elimination of Discrimination Against Women
CEDAW/C/DEU/CO/6, 43rd Session
12 February 2009

Positive aspects

(b) The adoption of the Residence Act, in force since 1 January 2005, which provides for the granting of refugee status to persons claiming fear of gender-specific persecution in their country of origin.

Principal areas of concern and recommendations

Education

33. While noting the State party's efforts to address stereotyping in the choice of academic and vocational fields, the Committee expresses concern about the prevailing existence of such stereotyped choices, despite the numerous initiatives undertaken by the State party in that regard.

34. **The Committee encourages the State party to strengthen its programme aimed at diversifying academic and vocational choices for girls and boys and to take further measures to encourage girls to choose non-traditional fields of education. In addition, the Committee calls upon the State party to closely monitor the situation of refugee and asylum-seeking girls, especially undocumented ones, at all educational levels and to continue to address the difficulties they experience in the school system.**

Violence against women

45. The Committee welcomes the increased efforts of Germany in compiling sex-disaggregated statistics and in shedding light on the number and ages of asylum-seeking and refugee women and girls but regrets the lack of statistical information on cases of female genital mutilation on women and girls living in Germany, on violence against women in institutions and on homicide of women in the context of domestic violence.**46. The Committee calls upon the State party to establish a method of collecting comprehensive statistical data disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim. The Committee urges the State party to**

provide statistical information in its next periodic report on the number of cases of female genital mutilation on women and girls living in Germany.

Health

53. The Committee welcomes the existence of a number of measures and information material targeted at women but regrets that not all programmes, policies and activities are aimed at promoting the inclusion of gender and diversity perspectives in health reporting. In addition, the Committee notes with concern the low percentage of women in high-level positions in all fields of health care. While welcoming the plan of action to combat HIV/AIDS, the Committee expresses its concern at the continuous increase in the number of new infections since 2004. The Committee notes that not all reproductive health treatments are available in the State party, which might lead women to seek such treatment in countries where health standards are not met. The Committee regrets the lack of data provided in the State party's report on access to health services for migrants, asylum-seekers and refugee women, as well as on the incidence of abortion, disaggregated by age and ethnic group.

54. The Committee calls upon the State party to continue its efforts to improve health services and to integrate a gender perspective into all health sector programmes, services and reforms, in line with the Committee's general recommendation No. 24, so that all women and men in every part of the territory have equal access to appropriate and adequate health services. The Committee further recommends that the State party ensure the presence of a proportionate percentage of women in decision-making positions in order to better take into account women's needs and perspectives. It further calls upon the State party to ensure the effective implementation of the HIV/AIDS plan of action and to provide detailed statistical and analytical information about women and HIV/AIDS in the next report. In addition, the Committee recommends that the State party address the concerns raised by civil society about reproductive treatments. The Committee requests the State party to provide disaggregated data on access to health services for migrant, asylum-seeker and refugee women and on the incidence of abortion in Germany in its next periodic report.

Vulnerable groups of women

59. While noting the measures taken with the aim of enhancing the integration of immigrant, refugee and minority women into German society and of including such women in the labour market, the Committee continues to be concerned that they may be subject to multiple forms of discrimination with respect to education, health, employment and social and political participation. The Committee notes that the 2007 action plan on violence recognizes women of immigrant or foreign origin as a particularly vulnerable group requiring special protection, but it remains concerned at the violence and discrimination on the grounds of sex that such women face in their own communities.

60. The Committee urges the State party to intensify its efforts to eliminate discrimination against immigrant, refugee, asylum-seeker and minority women. It encourages the State party to be proactive in its measures to prevent discrimination against such women, both within their communities and in society at large, to combat violence against them, and to increase their awareness of the availability of

social services and legal remedies as well as familiarize them with their rights to gender equality and non-discrimination. The Committee also urges the State party to take effective measures to integrate them into the German labour market. In addition, the Committee calls upon the State party to conduct regular and comprehensive studies on discrimination against immigrant, refugee, asylum-seeker and minority women, to collect statistics on their employment, education and health situation and on all forms of violence that they may experience and to submit such information in its next periodic report.

Committee on the Elimination of Racial Discrimination
CERD/C/DEU/CO/18, 73rd Session
22 September 2008

Positive Aspects

4. The Committee welcomes the adoption of the General Equal Treatment Act in August 2006 (*Allgemeines Gleichbehandlungsgesetz - AGG*), which prohibits discrimination on the grounds of race and ethnic origin, gender, religion and belief, disability, age and sexual orientation.

8. The Committee welcomes the signature in January 2003 of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

9. The Committee welcomes the creation of the Secretariat for Minorities, which strengthens the visibility of minorities' rights at federal level and offers greater opportunities for minorities to voice their concerns to the federal executive and legislative bodies.

11. The Committee welcomes the entry into force in 2005 of the Immigration Act, the establishment of the National Integration Plan in July 2003 as well as the statement by the delegation that the policy of integration implemented by the State party is not aimed at the assimilation of minority groups.

12. The Committee welcomes the project "Youth for Tolerance and Democracy - against Right-Wing Extremism, Xenophobia and anti-Semitism", which was implemented from 2001 to 2006, as well as the permanent follow-up through the programme "Youth for Diversity, Tolerance and Democracy" launched in January 2007, which is intended to enhance the prevention strategies developed in the previous programme.

13. The Committee welcomes the establishment of the Islam Conference, as a forum in which representatives of the Muslim communities living in Germany meet with representatives of German authorities with the aim of establishing continuous dialogue to address Islamophobic tendencies and discuss relevant policy responses.

Concerns and recommendations

18. The Committee remains concerned about the increase of reported racist-related incidents against members of the Jewish, Muslim, Roma/Sinti communities as well as

German nationals of foreign origin and asylum-seekers, in particular of African origin. (art.5 (b))

The Committee recommends that the State party take more resolute action at the federal and Länder level to prevent and punish perpetrators of racially motivated acts of violence 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. Furthermore, the State party should provide updated statistical data, on an annual basis, on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and the national or ethnic origin of victims.

22. While noting current proposals for legislative change, the Committee is concerned by reports that the principle of compulsory primary education is not fully applied to children of asylum-seekers in Hesse, Baden-Württemberg and Saarland, with the effect that the children concerned encounter obstacles in connection with school enrolment. (art. 5(e) (v))

In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party ensure that children of asylum-seekers residing in the territory of the State party do not face any obstacles in connection with school enrolment.

Committee on the Rights of the Child: Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

CRC/C/OPAC/DEU/CO/1, 44th Session

13 February 2008

Positive Aspects

(b) Contributions to projects for the rehabilitation and reintegration of child soldiers in several countries experiencing conflict or in post-conflict situations.

General measures of implementation

Dissemination and training

6. The Committee notes with appreciation that military personnel, including the participants of peacekeeping missions, receive training on human rights, including on the provisions of the Convention on the Rights of the Child and the Optional Protocol. The Committee is however concerned that certain categories of professionals working with children may not receive sufficient training.

7. The Committee recommends, in light of article 6, paragraph 2, of the Optional Protocol, that the State party ensure that the principles and provisions of the Protocol are widely disseminated to the general public and State officials. The Committee also recommends that the State party develop systematic awareness-raising, education and training programmes on the provisions of the Protocol for all relevant professional groups working with children (asylum-seeking and refugee children who may have been recruited or used in hostilities), notably teachers,

medical professionals, social workers, police officers, lawyers, judges and journalists. The State party is invited to provide information in that respect in its next report.

Data

8. The Committee regrets the lack of data on children, especially those who are 16 or 17 years old, present in the jurisdiction of the State party who have been recruited or used in hostilities.

9. The Committee urges the State party to establish a central data system in order to identify and register all children present within its jurisdiction who have been recruited or used in hostilities. In particular, the Committee urges the State party to ensure that data is available regarding refugee and asylum-seeking children who have been victims of such practices.

Protection, recovery and reintegration

Assistance for physical and psychological recovery

16. The Committee welcomes amendments to the Youth Welfare Act and the Immigration Act of 2005, which recognizes the recruitment of child soldiers as a form of persecution on the grounds of which refugee status can be granted. The Committee regrets that sufficient measures are not applied in order to identify refugee or asylum-seeking children entering Germany who may have been recruited or used in hostilities abroad. Furthermore, the Committee is concerned that unaccompanied children may be detained, and that for those who have attained 16 years of age a guardian in the asylum-seeking procedure might not be assigned in a timely manner.

17. The Committee also remains concerned that unaccompanied asylum-seeking and refugee children involved in hostilities abroad have insufficient access to specialized professionals who can provide multidisciplinary assistance for their physical and psychological recovery and social reintegration in Germany. The Committee is concerned that within the migration authorities, specially trained staff is inadequate, in particular for the determination of asylum cases of children who are 16 or 17 years of age.

18. The Committee recommends that the State party provide protection for asylum-seeking and refugee children arriving in Germany who may have been recruited or used in hostilities abroad by taking, inter alia, the following measures:

(a) Identify at the earliest possible stage those refugee and asylum-seeking children who may have been recruited or used in hostilities;

(b) Improve the access to information, including through help lines, for asylum-seeking children, reinforce the legal advisory services available to them, and ensure that all children under 18 years are assigned a guardian in a timely manner;

(c) Carefully assess the situation of these children and provide them with immediate and culturally and child-sensitive multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6, paragraph 3, of the Optional Protocol;

(d) Ensure the availability of more specially trained staff within the migration authorities and that the best interests of the child and the principle of non-

refoulement are primary considerations taken into account in the decision-making process regarding the repatriation of a child. In this regard, the Committee recommends that the State party take note of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, in particular paragraphs 54-60.

2. Special Procedures' Reports

Report of the Working Group on Arbitrary Detention

Addendum: Mission to Germany

Human Rights Council, 19th Session

A/HRC/19/57/Add.3

23 February 2012

Positive Aspects

24. The Working Group notes that human rights are protected in Germany by an independent and impartial court system, with assistance from active non-governmental organizations. Among the good practices it observed is the establishment in Hamburg of an independent special commission for investigation of police officers in cases of alleged misconduct or alleged ill-treatment. The abrogation of the obligation of head teachers and hospital authorities to report children of irregular immigrants receiving education or emergency medical treatment is also a positive change.

26. The Working Group notes that the Government concluded a broad modification in the Aliens Act, to include measures for the protection of victims of trafficking.

Findings

The "fast-track" procedure at airports

53. The "fast-track" procedure is an accelerated process for asylum applicants from countries considered to be "safe States" of origin and asylum applicants without identification papers who try to enter Germany via an international airport. It is intended to make possible a prompt decision in simple cases, in which it is evident that the asylum application is manifestly unfounded and the Federal Office for Migrants and Refugees can determine this within two days. The Working Group is concerned about this fast-track procedure, particularly at Frankfurt Airport. According to information received by the Working Group, if the application for political asylum is rejected, the applicant has only three days to appeal to the Administrative Court. This period seems to be insufficient to allow the applicant to prepare her or his appeal. The Working Group also notes that according to the German Asylum Procedure Act, unaccompanied children aged 16 and 17 may be required to undertake the asylum procedures as adults, without the assistance of a guardian. The authorities reported that this airport procedure is, in practice, used with restraint. For example, in 2011, of 772 asylum applications submitted at Frankfurt Airport, only 58 cases were decided using the airport procedure, that is, within two days. The applicants who have been denied asylum are immediately given the

opportunity to contact a legal counsel of their choice, and they may be provided with legal advice free of charge. For unaccompanied minor asylum applicants, a curator is appointed by the Youth Welfare Office.

54. Concerning the transfer of deportees, the Working Group considers that there needs to be clarity about which European Union State is responsible for asylum claims in cases of transfer. Often people are transferred for deportation purposes, against their will, to countries that may not be their country of origin. The Working Group considers that an individual risk assessment should be requested to process forcible returns. The risk of persecution and discrimination in countries of origin should also be conscientiously evaluated. This evaluation should include the consideration of essential economic and social rights, such as access to health care, education and housing.

55. The authorities pointed out that the detention in the transit area of an international airport during the airport procedure does not constitute imprisonment. The foreigner is only prevented from entering Germany, but not from continuing his or her journey on another plane. The Federal Constitutional Court upheld the airport procedure in its decision of 14 May 1996, case No. 2 BvR 1516/93. The Working Group notes that immigration detainees, particularly in Hamburg, should be accommodated in centres specifically designated for that purpose and not in prisons.

56. Given that its mandate covers the protection of asylum-seekers, immigrants and refugees against arbitrary deprivation of liberty, the Working Group requests the Government to ensure that the rights of these individuals are fully protected in accordance with international human rights standards. It requests the Government to ensure that individual procedural guarantees are granted to individuals immediately upon their detention, and to pay particular attention to issues such as interpretation, legal counselling and the provision of information, such as on the right to seek asylum. Detention should also be used as a last resort and applied in exceptional cases, for a clearly specified reason and for the shortest possible duration.

Conclusions and Recommendations

65. Concerning the “fast-track” airport procedure, particularly at Frankfurt Airport, the Working Group considers that, even if foreigners are immediately given the opportunity to contact a legal counsel of their choice, the three-day period to appeal the rejection of a request for political asylum to the Administrative Court does not seem to be sufficient to allow the applicant to prepare her or his appeal. Detention should be used only as a last resort and applied in exceptional cases, for a clearly specified reason and for the shortest possible duration. The risk of persecution and discrimination in countries of origin should be conscientiously evaluated.

68. On the basis of its findings, the Working Group makes the following recommendations to the Government:

(g) An individual risk assessment should be requested to process forcible returns of foreigners, particularly in the cases of foreigners requesting political asylum. The risk of persecution and discrimination in countries of origin should be evaluated, and essential economic and social rights should be considered;

(i) The Government should consider promulgating a binding legal regulation by the Parliament establishing that the Convention on the Rights of the Child and its Optional Protocols have priority over alien and asylum laws.

Report of the Special Rapporteur on the right to education, Vernor Muñoz

Addendum: Mission to Germany

Human Rights Council, Fourth Session

A/HRC/4/29/Add.3

9 March 2007

Conclusions and Recommendations

92. Given the risk that, under the current system, children living in Germany might be denied the right to education, it is recommended that studies be carried out to clarify the actual school attendance situation of asylum-seeking children, refugee children or children without the proper papers; and also to appraise as a matter of urgency the legal framework for the protection and promotion of the human right of such children to education, (...).

93. It is also recommended:

(a) That arrangements be set in place to improve the compilation and processing of complaints relating to violations of the right to education of refugees, refugee applicants and asylum-seekers, and also of persons who do not have a legal immigration status.

...