

Committee against Torture

Forty-seventh session

31 October–25 November 2011

Consideration of reports submitted by States parties under article 19 of the Convention

ADVANCE UNEDITED VERSION

Concluding observations of the Committee against Torture

Germany

1. The Committee against Torture considered the fifth periodic report of Germany (CAT/C/DEU/5), at its 1028th and 1031th meetings (CAT/C/SR.1028 and 1031), held on 4 November and 8 November 2011. At its 1046th and 1047th meetings (CAT/C/SR.1046 and 1047), held on 18 November 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report by the State party but regrets that it was submitted after a delay of more than two years. The Committee further notes that the State party's report generally complied with the reporting guidelines although it lacked specific data, disaggregated by sex, age and nationality, in particular about the acts of torture and ill-treatment by law enforcement officials.

3. The Committee commends the State party for its comprehensive inter-ministerial delegation, which included the Federal and Länder representatives of the National Agency for the Prevention of Torture, and appreciates the dialogue between the delegation and the members of the Committee covering many areas under the Convention. The Committee further commends the State party for the detailed written replies to the list of issues that it provided in advance of the session to facilitate the consideration of the State party report.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) United Nations Convention against Transnational Organized Crime, on 14 June 2006;

(b) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 14 June 2006;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 4 December 2008;

(d) Convention on the Rights of Persons with Disabilities, on 24 February 2009;

(e) Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 24 February 2009;

(f) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, on 15 July 2009;

(g) International Convention for the Protection of All Persons from Enforced Disappearance, on 24 September 2009.

5. The Committee welcomes the enactment of the following legislation:

(a) Federal Law on the Parliamentary Control of Intelligence Services, having entered into force on 30 July 2009;

(b) Federal Law on Preventive Detention of January 2011 requiring that preventive detention is applied as a measure of last resort in accordance with the principles of necessity and proportionality.

6. The Committee commends the establishment of the National Agency for the Prevention of Torture composed of the Federal Agency and the Joint Commission of the Länder, which has been mandated to serve as independent national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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

8. The Committee notes the existence of a vibrant civil society that significantly contributes to the monitoring of torture and ill-treatment thereby facilitating the effective implementation of the Convention in the State party.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

9. The Committee welcomes the State party's Code of Crimes against International Law which codifies, inter alia, crimes of torture in the context of genocide, war crimes or crimes against humanity, in accordance with article 7 of the Rome Statute of the International Criminal Court. However, the Committee expresses serious concern at the absence of provisions adequately criminalizing acts of torture in the context of general criminal law as the application of provisions of the Criminal Code (including section 340, paragraph 1, in conjunction with section 224) and the Military Penal Code (sections 30 and 31) do not adequately sanction the infliction of pain or suffering, whether physical or mental, as required by article 1 of the Convention. Moreover, while noting the data on investigations into alleged offences by law enforcement officers, the Committee regrets the absence of clarity which of the allegations of ill-treatment by public officials, if proven true, would amount to torture, under article 1 of the Convention, or to cruel, inhuman or degrading treatment or punishment, under article 16 of the Convention (arts. 1 and 4).

The State party should include torture as a specific offence in its general criminal law and ensure that its definition encompasses all the elements of article 1 of the Convention. In accordance with the Committee's General Comment No. 2 (2007), the State party should also clarify which of the incidents of ill-treatment by law enforcement officers reported in the State party's response to the list of issues amount to torture, and other cruel, inhuman or degrading treatment or punishment, in order to facilitate the identification of the implementation of the Convention by the State party and the monitoring thereof by the Committee.

10. The Committee notes with concern that the State party has no specific information on cases in which the Convention has been invoked and directly applied before the domestic courts (arts. 2 and 10).

The Committee recommends that the State party take steps to disseminate the Convention to all public authorities, including the judiciary, thus facilitating direct

application of the Convention before domestic courts, both at the federal and Länder level, and that it provide an update on the illustrative cases in its next periodic report.

11. While welcoming that the Military Penal Code allows for sanctioning of ill-treatment and degrading treatment by military superiors, in conjunction with the possible penalties for “causing grievous bodily harm” or “causing bodily harm while exercising a public office” stipulated in the Criminal Code, the Committee is concerned at the lenient penalties in the Military Penal Code, which range from six month to five years even where such acts can cause severe pain or suffering (art. 4).

The State party should amend its Military Penal Code in order to make the offences of torture in the military punishable by appropriate penalties which take into account their grave nature, in accordance with article 4 of the Convention and the relevant jurisprudence by the Committee.

Obligations of the Federation and the Länder

12. While taking note of the constitutional reform of 2006 involving the transfer of responsibility for prison legislation from federal to Länder level, the Committee remains concerned at the prevalence of a higher standard of protection against torture and ill-treatment at the federal level as compared to individual Länder. This is particularly the case of physical restrictions (*Fixierung*). The Committee is also concerned at the lack of clarity about the measures taken by the Federal Government to ensure compliance with the Convention at the Länder level (art. 2).

Since the Federal Republic of Germany is the State party under international law which has undertaken the obligation to implement the Convention in full at the domestic level, the Committee recommends that the State party provide guidance and assist in the adoption and application of legislative and policy measures to individual Länder to achieve even protection of human rights in the context of law enforcement at the federal and Länder level, and seek consistency between the steps taken by various Länder in order to ensure that the standards and safeguards set forth in the Convention are equally protected and implemented in all Länder.

National Agency for the Prevention of Torture

13. The Committee is concerned at the lack of sufficient staff and financial and technical resources provided to the National Agency for the Prevention of Torture, comprised of the Federal Agency for the Prevention of Torture, and of the Joint Commission of the Länder, due to which the places of detention can be currently visited only once in four years, preventing the adequate fulfilment of its monitoring mandate (arts. 2 and 12). The Committee is further concerned at the information by the State party that the Joint Commission of the Länder had to announce, in some instances, its intention to visit the places of detention to the respective authorities in advance in order to gain access.

The Committee recommends that the State party provide the National Agency with sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently, in accordance with article 18, paragraph 3, of the Optional protocol to the Convention and Guidelines n°11 and 12 of the Sub-Committee on Prevention of Torture, as well as ensure its regular and timely access to all places of detention at the federal and Länder levels, without the requirement of a prior consent to the visit by the respective authorities.

14. While commending the National Agency’s recommendations aimed, inter alia, at improving conditions of physical restrictions, clothing in special secured rooms or of the technical requirements of new detention rooms in Brandenburg prison, the Committee notes with concern the lack of public awareness about the recommendations adopted by the National Agency and the steps taken by the State party in order to ensure their

implementation. The Committee is further concerned at the reports that the cooperation between the Joint Commission of the Länder and the existing bodies including the petitions committees, which are entitled in some of the Länder to make unannounced visits to places of detention, has not been established (arts. 2 and 12).

The Committee recommends that the State party:

- a) Make public and regularly disseminate, using all appropriate means of communication, the recommendations adopted by the National Agency to improve conditions in places of detention as well as the steps taken by the State party to ensure their effective implementation;**
- b) Compile the best practices by the National Agency and undertake relevant training to its personnel; and**
- c) Establish cooperation between the Joint Commission of the Länder and the existing bodies in individual Länder, in particular the petitions committees that are also mandated to carry out preventive visits of places of detention.**

Trafficking in persons

15. The Committee notes with interest the cooperation programmes between the federal and Länder levels, church and civil society organisations to provide assistance to victims of trafficking, and welcomes the exercise of universal jurisdiction in regard to crimes of trafficking for sexual and work exploitation pursuant to section 6 of the Criminal Code. However, it expresses serious concern at a “dark field of undetected cases” of trafficking as acknowledged by the State party and as evidenced by low number of such crimes registered by the police as compared to non-governmental estimates. According to NGO sources, there are some 15,000 people, including children who have been allegedly trafficked to the State party from various European, Asian and African countries for forced sex-work, illegal adoptions and as labourers in service sectors (arts. 2, 3, 12, 14 and 16).

The Committee urges the State party to:

- a) Prevent and to promptly, thoroughly and impartially investigate, prosecute and punish trafficking in persons and related practices;**
- b) Provide means of redress to victims of trafficking, including the assistance to victims to report incidents of trafficking to the police, in particular by providing legal, medical and psychological aid and rehabilitation including adequate shelters, in accordance with article 14 of the Convention;**
- c) Prevent return of trafficked persons to their countries of origin, where there is a substantial ground to believe that they would be in danger of torture, to ensure compliance with art. 3 of the Convention;**
- d) Provide regular training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, including on the guarantees of the right to be represented by an attorney of one’s own choice, and inform the general public on the criminal nature of such acts; and**
- e) Compile data disaggregated, as appropriate, by nationality, country of origin, ethnicity, gender, age, employment sector as well as the provision of redress.**

Physical restraints (*Fixierung*)

16. The Committee welcomes the information provided by the State party that since the 2005 visit to the State party by the European Committee against Torture (CPT), the Federal Police has refrained from utilising means of physical restraints (*Fixierung*) and that at the Länder level the practice of *Fixierung* has been applied as a measure of last resort.

However, the Committee remains concerned at the assertion by the State party that it will not be possible in the long-term to abandon the practice of *Fixierung* in all non-medical settings at the Länder level, as recommended by the CPT, and at the lack of information on the uniform application of the CPT principles and minimum standards in relation to *Fixierung* (arts. 2, 11 and 16).

The Committee urges the State party to strictly regulate the use of physical restraints in prisons, psychiatric hospitals, juvenile prisons and detention centres for foreigners with a view to further minimise its use in all establishments and ultimately abandon its use in all non-medical settings. The State party should further ensure adequate training to law enforcement and other personnel on the use of physical restraints, harmonization of the permissible means of physical restraints in all the Länder as well as the observance in all establishments of the principles and minimum standards in relation to *Fixierung* elaborated by the CPT.

Preventive detention

17. The Committee takes note of the judgement of the Federal Constitutional Court of 4 May 2011 which has considered that all provisions of the Criminal Code and of the Youth Courts Act on the imposition and duration of preventive detention are unconstitutional and welcomes the fact that the Federal and Länder authorities have already started to implement the ruling. The Committee nonetheless notes with regret the information that more than 500 persons remain in preventive detention, some of them for more than twenty years (art. 2 and 11).

The Committee urges the State party to:

a) Adapt and amend its laws on the basis of the Federal Constitutional Court's decision by 31 March 2013, as requested by the Court, in order to minimise the risks arising from preventive detention; and

b) Take all necessary actions, in the meantime, to comply with the institutional measures requested by the Court's decision, in particular in regard to release of persons in preventive detention, reduction of its duration and the imposition of preventive detention, and take into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) adopted by the General Assembly (A/RES/45/110 of 14 December 1990) when devising the measures alternative to preventive detention.

Access to complaint mechanisms

18. The Committee is concerned at information that alleged victims of ill-treatment by the police are not aware of complaint procedures except for reporting their complaints to the police who in some cases refused to accept allegations of misconduct by the police. The Committee is further concerned at reported cases of ill-treatment of persons in vulnerable situation who have declined to file a complaint against the police out of fear of counter-complaints by the police or other forms of reprisals (arts. 12, 13 and 16).

The Committee recommends that the State party take appropriate measures to:

a) Ensure that information about the possibility and procedure for filing a complaint against the police is made available and widely publicised, including by being prominently displayed in all police stations of the Federal and Länder Police; and

b) Ensure that all allegations of misconduct by the police are duly assessed and investigated, including the cases of intimidation or reprisals in particular against persons in vulnerable situation as a consequence of the complaints of ill-treatment by the police.

Prompt, independent and thorough investigations

19. The Committee welcomes the information provided by the State party on the measures taken by the Federal Government and the Länder to ensure that investigations into allegations of criminal conduct by the police are conducted promptly and impartially. However, the Committee is concerned that allegations of torture and ill-treatment and of unlawful use of force by the police at the Federal level continue to be investigated by the Public Prosecution Offices and the police acting under the supervision of the Public Prosecution Offices. The Committee is particularly concerned at the allegations that several incidents of ill-treatment by the police, as pointed out during the dialogue with the State party, have not been investigated promptly, independently and thoroughly as in some of those cases the same Federal Police unit to which the accused police officer belonged was responsible for parts of the investigation. The Committee thus reiterates its concern at the absence at the Federal level as well as in some Länder of independent and effective investigations into the allegations of ill-treatment (arts. 12, 13 and 16).

The Committee recommends that the State party:

a) Take all appropriate measures both at the Federal and Länder level so as to ensure that all allegations of torture and ill-treatment by the police are investigated promptly and thoroughly by independent bodies with no institutional or hierarchical connection between the investigators and the alleged perpetrators from among the police; and

b) Provide the Committee with its comments on the specific cases of ill-treatment by the police raised during the dialogue with the State party.

Intersex people

20. The Committee takes note of the information received during the dialogue that the Ethical Council has undertaken to review the reported practices of routine surgical alterations in children born with sexual organs that are not readily categorized as male or female, also called intersex persons, with a view to evaluate and possibly change present practice. However, the Committee remains concerned at cases where gonads have been removed and cosmetic surgeries of reproductive organs have been performed, implying lifelong hormonal medication, without effective, informed consent of the concerned individuals or their legal guardians, where neither investigation, nor measures of redress have been introduced. The Committee remains further concerned at the lack of legal provisions providing redress and compensation in such cases (arts. 2, 10, 12, 14 and 16).

The Committee recommends that the State party:

a) Ensure the effective application of legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people, including the full information, orally and in writing, on the suggested treatment, its justification and alternatives;

b) Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;

c) Educate and train medical and psychological professionals on the range of sexual and related biological and physical diversity; and

d) Properly inform patients and their parents regarding the consequences of unnecessary surgical and other medical interventions for intersex people.

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 suspension 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 of the fact 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 third country nationals. However, it is concerned at the information that several thousands of asylum-seekers whose requests have been rejected as well as a vast majority of so-called "Dublin cases" continue to be accommodated in Länder detention facilities immediately upon arrival, sometimes for protracted periods of time. This practice contravenes the EU Directive 2008/115/EC 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 of systematic checks for mental illnesses or traumatization. The Committee is further concerned at 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 the “Dublin cases” as well as the duration of their detention pending return, while observing the EU Directive 2008/115/EC;

b) Ensure mandatory medical checks and systematic examination of mental illnesses or traumatisation 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 traumatisation 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.

Diplomatic assurances

25. The Committee notes the March 2009 Düsseldorf Administrative Court’s judgement as confirmed by Higher Administrative Court of North Rhine-Westphalia of May 2010 in the case of a Tunisian man, considered a national security threat by the Government of Germany, who could not be deported to Tunisia despite diplomatic assurances as the diplomatic assurances have been considered “not legally binding ...and by nature hardly trustworthy or verifiable”. It also notes the practice by the High Regional Courts in regard of evaluation of the requests for extradition in light of all available information, including the incidents of torture and ill-treatment. The Committee further takes note of the State party’s assertion that no diplomatic assurances have been accepted since 2007; however, according to the State party “the possibility to accept diplomatic assurances in cases of extraditions still exists in appropriate and exceptional cases, in particular where the risk of torture or ill-treatment is only of general nature”. The Committee is also concerned at the reports that regulations implementing the Resident Act that aims at controlling the entry, residence and employment of foreigners in Germany provide for the use of diplomatic assurances in national security deportations carried out by the Federal Ministry of the Interior, as well as the lack of updated information on whether the diplomatic assurances have been applied in this context (arts. 3 and 14).

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.

Secret detention and extraordinary renditions

26. The Committee welcomes the adoption of a new law on the parliamentary control of intelligence services subsequent to the 2009 Parliamentary Inquiry into alleged involvement of the State party in extraordinary renditions and secret detention of terrorist suspects. However, it notes with concern the lack of clarity about the implementation by the Federal Government of the recommendations of the Parliamentary Commission of Inquiry. The Committee also notes with concern that no Federal Government’s investigation has been undertaken in response to the June 2009 ruling by the Constitutional Court having

pronounced that the failure by the Government to fully cooperate with the Inquiry has violated the Federal Constitution. The Committee is further concerned at the lack of information by the State party about the specific measures it has taken to implement the recommendations of the UN Joint study on global practices in relation to secret detention in the context of countering terrorism - A/HRC/13/42 (art. 3).

The Committee urges the State party to:

a) **Provide information on concrete steps to implement the recommendations by the 2009 Parliamentary Commission of Inquiry and measures to initiate Federal Government's investigation into alleged involvement of law enforcement officers of the State party in rendition and secret detention programmes;**

b) **Make the outcomes of the investigations public;**

c) **Take all necessary measures to prevent the future incidents of such situations; and**

d) **Take specific measures with a view to implement the recommendations of the UN Joint study on global practices in relation to secret detention in the context of countering terrorism - A/HRC/13/42.**

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 applications have 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 EU 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 (ECRI);**

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 EU discussion on this issue with a view of extending the protection of unaccompanied minors from the risk of torture and ill-treatment.**

Exercise of jurisdiction

28. The Committee is seriously concerned at the reported reluctance on part of the State party to exercise jurisdiction over allegations of torture and ill-treatment of persons rendered abroad, including the case of Khaled El-Masri, in violation of article 5 of the Convention. In addition, the Committee is concerned at the absence of information by the State party whether Khaled El-Masri has received any remedies including compensation, in accordance with article 14 of the Convention (arts. 5 and 14).

The State party is urged to observe article 5 of the Convention which requires that the criteria for exercise of jurisdiction are not limited to nationals of the State party. The

State party should also inform the Committee about the remedies including adequate compensation provided to Khaled El-Masri, in accordance with article 14 of the Convention.

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 the 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 Istanbul Protocol, to be introduced next year in all the Länder, is intended to focus on detecting physical but not psychological traces of torture. The lack of training about 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 custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, as well as in the documentation and investigation of torture are provided, on a regular basis, with training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the 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.

Identification of police officers

30. The Committee is concerned at the State party's information that the police officers are not obliged, with the exception of Brandenburg and Berlin, to wear identification badges showing their number or name during the exercise of their functions and that even in those two Länder the wearing of badges might be withdrawn in order to protect the safety and interests of the police officers, according to the State party. This practice has reportedly hindered in many cases the investigation and accountability of the police officers allegedly implicated in ill-treatment, including the incidents of the excessive use of force in the context of demonstrations. According to a study commissioned by the Berlin Police, some 10% of cases of alleged ill-treatment by the police could not be clarified and prosecuted because of lack of identification (arts. 12, 13 and 14).

The Committee recommends that the State party:

a) Weigh the interests of both police officers and potential victims of ill-treatment and ensure that members of the police in all the Länder can be effectively identified at all times when carrying out their law enforcement function and held accountable when implicated in ill-treatment; and

b) Assess the cases of lack of investigation raised during the dialogue with the State party and report thereon to the Committee.

Interrogations abroad

31. The Committee welcomes the reported discontinuance of the practice of interrogation of terrorism suspects by German intelligence agents abroad, reflecting on the findings of the Parliamentary Commission of Inquiry in regard to Khaled El-Masri case and the Federal Government's declaration that the investigations by the police, prosecutors and intelligence officers abroad have been halted. The Committee is however concerned about the lack of clarity whether the commitment to discontinue investigations abroad extends to private security companies. The Committee further notes with concern the lack of explanations, taking into account the June 2005 Hamburg Supreme Court decision related to the case of Mounir al-Motassadeq, about who carries the burden of proof in regard to inadmissibility of evidence allegedly extracted by torture or ill-treatment before the State party's courts. The absence of information whether the Government continues to rely on the information by intelligence services of other countries, some of which may have been extracted through torture or ill-treatment, is of serious concern (art. 2, 3, 11 and 15).

The Committee recommends that the State party:

- a) Apply the ban on investigation abroad to all the authorities and entities engaged in law enforcement, including the private security companies when there is a suspicion of coercion being used;**
- b) Clarify the procedural standards, including the burden of proof applied by the State party's courts for the assessment of evidence which may have been extracted by torture or ill-treatment; and**
- c) Refrain from "automatic reliance" on the information by intelligence services of other countries with the aim of preventing torture or ill-treatment in the context of forced confessions.**

Corporal punishment

32. While taking note that corporal punishment is prohibited in all circumstances in the German legal system (section 163 of the Code of Civil Law), the Committee expresses concern at the absence of information about the efforts to provide appropriate and ongoing public education and professional training on the prohibition of corporal punishment in all settings (art. 16).

The Committee recommends that the State party actively promote positive, participatory and non-violent forms of education and childrearing as an alternative to corporal punishment.

Data collection

33. The Committee appreciates the State party's decision to compile new statistics of crimes including ill-treatment by the police as well as "violence in close social relations". It notes the data on complaints of ill-treatment by law enforcement officers, disaggregated by suspected crime. However, the Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, trafficking and domestic and sexual violence, crimes with racist motives, as well as on means of redress, including compensation and rehabilitation provided to the victims (arts. 2, 12, 13 and 16).

The Committee recommends that the State party compile data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel,

trafficking, domestic and sexual violence, crimes with racist motives, as well as on means of redress, including compensation and rehabilitation provided to the victims.

34. Noting the commitment made by the State party in the context of the universal periodic review of Germany, the Committee recommends that the State party ensure full implementation of the provisions of international human rights instruments, in particular in the context of counter terrorism measures.

35. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to consider signing and ratifying the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

36. The State party should consider withdrawing its declaration to article 3 of the Convention with a view to allowing direct application of article 3 of the Convention before courts and authorities at federal and Länder levels.

37. The State party is requested to disseminate widely the report submitted to the Committee, summary records and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

38. The State party is invited to further update its common core document (HRI/CORE/DEU/2009), in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

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 (1) regulating and restricting the use of physical restraints in all establishments, (2) limiting the number of detained asylum seekers including the "Dublin cases" and ensuring mandatory medical checks of detained asylum seekers, (3) exercising jurisdiction in accordance with article 5 of the Convention and providing information about the remedies including compensation provided to Khaled El-Masri, and (4) 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.

40. The State party is invited to submit its next report, which will be the sixth periodic report, by 25 November 2015. To that purpose, the Committee invites the State party to accept, by 25 November 2012, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report to the Committee.
