

Opening Statement

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Presentation of the first State Party Report of the Federal Republic of Germany pursuant to the International Convention for the Protection of All Persons against Enforced Disappearances on 17th and 18th March 2014 in Geneva

Mister Chair,

Distinguished members of the Committee,

Ladies and Gentlemen,

Thank you for the opportunity to be here today to discuss Germany's State Report under the Convention for the Protection of All Persons from Enforced Disappearances. Please allow

me to make a few remarks before I turn to the List of Issues you have sent us.

The dialogue with the expert committees of the United Nations is a matter of paramount importance to Germany. We take our obligations ensuing from the human rights treaties very seriously.

The painful experiences of Latin American countries in the 1970ies and 80ies, and the ongoing abuse people are still suffering in many countries underline the pressing need to vigorously combat throughout the world the phenomenon of enforced disappearance.

Germany therefore very much welcomes the Convention as the first international treaty with global reach expressly banning this crime against personal freedom.

Because Germany has become a stable democracy under the rule of law, enforced disappearances are not a matter of practical relevance in our country today. However, we are well aware that this has not always been the case in our country and that preserving the rule of law takes continuous effort. We have learnt from our past how quickly lawless regimes can take over a society, and how important it therefore is to install structural legal safeguards against all possible kinds of human rights violations. We all know that during the Nazi reign of terror, personal freedom was brutally disregarded and was granted only according to the whims of those in power.

In direct reaction to these abuses, Article 1 section 1 of the German Basic Law - the

German Constitution - protects human dignity as a paramount constitutional value. According to Article 2 section 2, any interference with personal freedom is possible only on a statutory basis. With respect to deprivations of liberty, Article 104 of the Basic Law specifies fundamental guarantees by requiring a formal statute, to be followed both in substance and procedure, and a judicial decision in each individual case. The norm expressly prohibits mental or physical mistreatment of persons in custody and contains a duty for the government to inform relatives or persons enjoying the confidence of the detainee without delay.

These constitutional premises form the basis of all public action and are an integral part of Germany's self-concept. They permeate all branches of education and relevant profes-

sional training, and are therefore perceived as a matter of course by all German citizens. In the same spirit, Germany has ratified and supports all relevant international treaties for the protection of human rights.

We do believe that Germany lives up to the specific responsibility that comes with its history and to that flowing from the Convention. This leads me to the questions that the Committee has raised in its List of Issues, of which I would now like to address a few:

Concerning the need to codify a new criminal offence specifically addressing enforced disappearances, the Federal Government undertook comprehensive research and thoroughly analysed the German legal situation when ratifying the Convention. The Government has

come to the conclusion that the existing norms suffice to prosecute and sanction cases of enforced disappearance. Notably, we do believe that our existing criminal offences suitably reflect the specific wrong embodied in the crime of enforced disappearance. More to the point, we would venture to ask whether a combination of individual elements of crime, as applied to the respective circumstances at hand, might not even be better suited to sanctioning the violations occurring in each concrete case of the complex and multifarious crime of enforced disappearance. This may hold true especially where, for example, the victim is a minor or transferred abroad, both aspects of criminal behaviour being specifically addressed in the German criminal code (sections 235 [Entziehung Minderjähriger (Abduction of minors from the care of their parents)])

and 234a [Verschleppung (Causing a danger of political persecution through use of force, threats or deception)] of the German Criminal Code). However, we are aware of the discussion that has unfolded since the ratification, and we take the arguments advanced by civil society seriously, especially where questions regarding the statute of limitations are concerned. The Federal Government is firmly committed to effectively combating and pursuing enforced disappearances. We do not shut ourselves off from new insights when they become evident, and have not yet formed a definitive opinion on the subject. We are therefore looking forward to a constructive dialogue with you and will carefully consider all arguments that may be put forward.

We are aware of the fact that the crime of enforced disappearance often has a cross-border dimension. We believe that the German legal system is able to respond appropriately to any international dimension. First, as explained in our State Report and in the Answer to the List of Issues, comprehensive legal assistance can be provided to all States of the world, independently of any multilateral or bilateral agreement. This includes any and all types of investigative measures provided by the German Code of Criminal Procedure for purely national proceedings. Second, as we have stated, the existing legal norms allow Germany to exercise its jurisdiction in all cases listed in Article 9 of the Convention. Exceptions could be construed on a theoretical basis only and will, as has been shown, not be applicable in practice.

Self-critically considering our own legal system, governed as it is by the rule of law, we realize that violations of the Convention do not necessarily always arise out of the actions of totalitarian regimes, but might also have their roots in structural and procedural deficits of a democratic state's institutions.

It is in this spirit that Germany has – for instance – introduced new legislation concerning preventive detention. The new statute introduces independent controls for each individual case not only every two years (as in the past), but every single year.

Finally, I would like to address the question of how information about people who have been deprived of their liberty is registered and pro-

cessed in Germany. Owing to Germany's federal structure, there is no single unified register of detainees, inmates etc. This does not mean, however, that the relevant information is not structured and that there is no unified system: In the area of criminal law, the ordinances on the keeping of files of the various federal *Länder* – this is what we call our constituent states - all stipulate that “a list is to be kept with every court and every public prosecutor's office [...] of the persons against whom a measure depriving them of their liberty is being executed.” As regards police detention, the regulations may vary in detail from one *Land* or one state to another, but they are, at their core, identical in structure and content. The same holds true for the recording of information in all other places of detention. This means that, in essence, the information sys-

tems are sufficiently comparable in all places of detention to allow for quick and reliable access to any relevant data. Irrespective of these individual regulations, transparency in matters of deprivation of liberty is, as I have said, guaranteed as a fundamental value through the Basic Law, which mandates prompt information about any deprivation of liberty in its Article 104 and subjects all public action to the rule of law.

In sum, we believe that Germany respects all of the rights and duties enshrined in the Convention. At the same time, we are very much willing to consider constructive criticism and value the opportunity to learn from your experience and, where possible, further improve our system of legal protection.

I would like to close with these remarks and thank you for your attention. I am now looking forward to your questions.