



LIST OF ISSUES PRIOR TO REPORTING – COMMITTEE AGAINST TORTURE  
51<sup>st</sup> Session - Germany

**Federal Republic of Germany**

Submission by the Berlin Center for Torture Victims (bzfo)<sup>1</sup>

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**1) Introduction:**

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The *Berlin Center for Torture Victims (bzfo)* welcomes the opportunity to contribute to the reporting process of the **Federal Republic of Germany's 6<sup>th</sup> Periodic Report** under the simplified reporting procedure to the **Committee against Torture** by submitting the following **list of issues prior to reporting**.

Since 1992, the *bzfo* has been treating victims of torture and war-time violence. People from nearly 50 countries around the world come to us to find help. We provide men, women, adolescents and children with medical and psychotherapeutic treatment as well as support from social workers. Our multidisciplinary team works with specially trained interpreters and treats approximately 500 patients each year.

The focus of the list of issues prior to reporting (LOIPR) submitted by the *bzfo* on occasion of Germany's 6<sup>th</sup> Periodic Report lies, first, with **issues already previously raised by the concluding observations issued by the Committee against Torture after the 5<sup>th</sup> Periodic Report**, but for which little or no improvement has been observed, and second, following the Committee's publication of General Comment No.3, with the **implementation of Article 14, the Right to Redress**.

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<sup>1</sup> [www.bzfo.de/homeen.html](http://www.bzfo.de/homeen.html)

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**2) Follow up on concluding observations/ recommendations:** \_\_\_\_\_

Following the examination of the Federal Republic of Germany's 5<sup>th</sup> periodic report to the Committee, the Committee articulated, amongst others, the following principal subjects of concern and recommendations, for which the *bzfo* has since not been able to observe any substantial improvement.

*Concluding Observations of the Committee against Torture: Germany<sup>2</sup>:*

*Paragraph 24, Detention pending Deportation:*

In the context of the detention of asylum seekers pending deportation the Committee criticized the fact that asylum-seekers were being **detained upon arrival, and on occasion for protracted periods of time**, despite such practice only being considered acceptable as a means of last resort<sup>3</sup>.

At the time the committee urged the state party to “[l]imit the number of *detained asylum-seekers, including those who are the subject in “Dublin cases”, and the duration of their detention pending return...*”<sup>4</sup>.

The *bzfo* has not been able to observe improvement on the issue above. Quite to the contrary and according to recent research conducted by one of the *bzfo*'s partner organizations *Pro Asyl* some detention facilities for persons awaiting deportation (Detention Facilities Eisenhüttenstadt in Brandenburg and Rendsburg in Schleswig-Holstein) now **have up to 90 per cent of their population made up by current asylum-seekers**, many of which are *Dublin cases* who under ordinary circumstances do not enter into normal asylum procedure and who are often detained in close proximity to the border by the German Federal Police, in charge of border control<sup>5</sup>. This is particularly concerning in the light of many of the asylum-seekers and refugees previously having experienced trauma, often in situations of detention, and thus being at risk of retraumatization in any new situation of detention.

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<sup>2</sup> UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Germany*, 12 December 2011, CAT/C/DEU/CO/5

<sup>3</sup> European Union: Council of the European Union, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, 2008/115/EC

<sup>4</sup> UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Germany*, 12 December 2011, CAT/C/DEU/CO/5, Paragraph 24 (a)

<sup>5</sup> Pelzer, M. & Sextro, U., (June 2013), “*Schutzlos hinter Gittern – Abschiebungshaft in Deutschland*”, (Pro Asyl e.V. and Diakonisches Werk in Hessen und Nassau e.V.), p. 14

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*The bzfo therefore recommends that the following questions/ concerns be raised in the list of issues to be reported on by the state party:*

- *Why has the Government, contrary to the recommendations of the Committee, not limited the number of asylum-seekers in detention, but rather increased their number?*
- *What is the Government's justification for detaining asylum-seekers on such a broad scale and seemingly as the default procedure, despite it only being considered a means of last resort by Directive 2008/115/EC of the European Parliament and of the Council?*
- *What is being done to decrease the number of asylum-seekers in detention pending deportation?*

*Paragraph 24, continued:*

The Committee, when issuing the concluding observations to Germany's 5<sup>th</sup> Periodic Report, also criticized the lack of appropriate medical identification of persons with psychological problems.

The Committee at the time noted its particular concern **at the lack of procedures to identify especially vulnerable asylum seekers, such as refugees who had suffered trauma**. This was due to the absence of substantial medical checks upon arrival, especially for mental illness and traumatization.

The Committee urged the Federal Republic to “[e]nsure **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**”<sup>6</sup>, as well as “[p]rovide a **medical and psychological examination and report by a specially trained independent health expert when the signs of torture or traumatization have been detected**”<sup>7</sup>.

The *bzfo* has not been able to observe any substantial improvement on points mentioned above, since the concluding observations for Germany's 5<sup>th</sup> Periodic Report were issued. Nor has the *bzfo* been able to observe any steps taken by the Government to react to the concrete recommendations made by the Committee. The identification of particularly vulnerable persons especially still poses a massive problem that has not been remedied by the authorities.

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<sup>6</sup> UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Germany*, 12 December 2011, CAT/C/DEU/CO/5, Paragraph 24 (b)

<sup>7</sup> UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Germany*, 12 December 2011, CAT/C/DEU/CO/5, Paragraph 24 (c)

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*The bzfo therefore recommends that the following questions/ concerns be raised in the list of issues to be reported on by the state party:*

- *Why has the Government of the Federal Republic of Germany so far not implemented procedures to identify, at, or prior to, the point that they enter into detention, particularly vulnerable persons amongst asylum-seekers and refugees?*
- *Should, according to the Government, such procedures have been implemented: what are they concretely?*
- *How, where and by whom are they executed?*
- *How many persons, at which locations have benefitted from them thus far?*
- *On how many occasions have the relevant authorities commissioned examinations of particularly vulnerable persons by specially trained and independent health experts? On how many occasions were they actually performed?*
- *What concrete steps will the Government take to improve upon the procedures to identify particularly vulnerable persons in future?*

*Paragraph 29, Training of Law Enforcement Personnel:*

In the context of the training of law enforcement personnel, the Committee also addressed the **need for officials and medical personnel involved with asylum-seekers to be specifically trained in the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)**. The Committee noted at the time that especially the identification of the **psychological traces of torture** was not sufficiently addressed in the trainings that were to be provided to officials involved with asylum seekers. The recommendations made by the Committee also included that the State party *“[e]nsure that such training is also provided to personnel involved in asylum determination procedures...”*<sup>8</sup>.

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<sup>8</sup> UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Germany*, 12 December 2011, CAT/C/DEU/CO/5, Paragraph 29 (b)

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The *bzfo* has not been able to observe any substantial improvement upon the above issue, raised during the examination process of the 5<sup>th</sup> Periodic Report. Nor has the *bzfo* been able to observe substantial steps taken by the Government to react to the concrete recommendations made by the Committee, given that the trainings should be delivered by specially trained and independent health experts as our own.

***The bzfo recommends that the following questions/ concerns be raised in the list of issues to be reported on by the state party:***

- ***What specifically is being done to ensure that officials and medical personnel involved with asylum-seekers and refugees are trained in the use of the Istanbul Protocol?***
- ***What specifically is being done to equip personnel involved with refugee and asylum-seekers with the relevant skills, which ensure that also psychological traces of torture can be identified by them?***
- ***What steps have been, and are being, taken to provide asylum-seekers and refugees access to independent and specially trained health experts<sup>9</sup> in cases where indicators of torture, including such of a psychological nature, have been spotted?***
- ***What is being done to provide personnel involved with the asylum determination procedure with training on the use of the Istanbul Protocol?***

### **3) Art. 14: Redress and Rehabilitation**

The recent publication of the Committee against Torture's **3<sup>rd</sup> General Comment on the implementation of Article 14, concerning the right to redress**, which in turn includes the **right to rehabilitation** for torture victims has given rise to an improved understanding of the state parties' obligations under the convention regarding this theme.

In Germany most of the issues regarding Article 14 concern asylum-seekers and refugees who have come to Germany for the very reasons they might be entitled to redress. As the Committee has clarified in the General Comment, state parties are obliged to "***ensure that effective rehabilitation services and programmes are established in the State, taking into account a victim's culture, personality, history and background and are accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalized or vulnerable group, as illustrated in paragraph 32, including***

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<sup>9</sup> available in Germany via the SBPM-Working Group ([www.sbp.de](http://www.sbp.de)) or via BAfF (<http://www.baff-zentren.org/neu/>)

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***asylum seekers and refugees.”<sup>10</sup> Rehabilitation “refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment”<sup>11</sup> and includes, as stated in General Comment 3, “a procedure for the assessment and evaluation of individuals’ therapeutic and other needs, based on... [t]he Istanbul Protocol; and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education etc.”<sup>12</sup>”.***

Further it is clarified that the application of article 14 is “***not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party***”<sup>13</sup> and that such should be “***especially so where a victim is unable to exercise***” his or her right to redress in the territory the violation took place in<sup>14</sup> – a more than likely circumstance in case of asylum-seekers and refugees. The obligation of state parties who are not themselves the violators of the international standards to help obtain redress and rehabilitation is once more underlined in paragraph 32 of the General Comment, concerning non-discrimination against, amongst others, asylum-seekers and refugees<sup>15</sup>.

General Comment 3 therefore makes clear that Germany has an obligation, even if not itself the perpetrator of a violation of the convention, to help victims obtain redress and rehabilitation.

To this end the “***[t]he obligation in article 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by non-governmental organizations (NGOs)...***”<sup>16</sup>

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<sup>10</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 15

<sup>11</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 11

<sup>12</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 13

<sup>13</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 22

<sup>14</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 22

<sup>15</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 32

<sup>16</sup> UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 of the Convention*, 13 December 2012, CAT/C/GC, paragraph 15



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The latter being the case in Germany, it must however be said that there is, to date, neither sufficient, nor specifically marked funding for the rehabilitation of torture victims and NGOs providing such services. Although in Berlin the *bzfo* receives, to some extent, federal funding, and benefits from some of the means provided through the regular health care system, these funds are by far not sufficient to provide satisfactory capacity for rehabilitation services, even in this one location. The *bzfo* alone for example is faced with **a demand ten times higher than its current capacity** and is frequently forced to turn away persons in dire need of treatment. Other specialist treatment centers face similar, if not worse, situations, therefore creating a problem of accessibility in many parts of Germany for those in need of specialist treatment and rehabilitation services following torture and other ill-treatment.

Under these circumstances, it is especially unfortunate and regrettable that there, thus far, exists **no federal budgetary allocation specifically marked and guaranteed for the treatment and rehabilitation of torture victims.**

Such an allocation could serve not only an increase in capacity of individual centers, but also broaden the scope of geographical accessibility of services throughout the Federal Republic of Germany.

*The bzfo recommends that the following question/ concern be raised in the list of issues to be reported on by the state party:*

- *What is being done by the Government to ensure that victims of torture, irrespective of their national origin or status as asylum-seekers or refugees, have access to necessary rehabilitative services as guaranteed by article 14 of the Convention?*
- *What does the Government plan to do in order to guarantee funding and regular budgetary allocation, in all Länder, to those institutions providing rehabilitation for torture victims?*
- *Why does the Government not provide specifically marked and guaranteed budgetary allocation for the treatment of torture victims to serve specialist care centers and NGOs in all parts of Germany?*
- *The Government should include in its report adequate and detailed information on the implementation of article 14, including the specific information outlined in paragraph 46 of General Comment No.3, especially, but not solely, sub-paragraph (c) on budgetary allocation for rehabilitation programmes.*



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**4) *bzfo* details and contact persons**

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