



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENCE: cc/jli/follow-up/CAT

11 June 2013

Excellency,

In my capacity as Rapporteur for the Follow-up on Concluding Observations of the United Nations Committee against Torture, I refer to the examination of the fifth periodic report of Germany at its 47th Session in November 2011 (CAT/C/DEU/5). The Committee adopted its Concluding Observations (CAT/C/DEU/CO/5), in which it requested the Government of Germany to provide further information on its response to the Committee's recommendations contained in paragraphs 16, 24, 28, and 30.

On behalf of the Committee, I thank you for your response of 26 November 2012. The additional information provided assists the Committee in its ongoing analysis of the issues identified for follow up. As Rapporteur on follow up, I would be grateful for clarification and further information on the following matters, where sufficient information is not yet provided to complete the analysis of the progress made regarding implementation of the recommendations. Additionally, the Committee would appreciate if in its responses, the State party indicated measures it has taken to ensure that the relevant standards and safeguards are equally protected in all Länder, as previously recommended by the Committee.

Physical Restraints (*Fixierung*) (paragraph 16)

The Committee appreciates the information provided that the practice of *Fixierung*, or using restraints to deprive detainees to the ability to move without help, has been completely abolished in a police context in many of the Länder. Please clarify in which of the Länder the practice of *Fixierung* continues to be used, and provide the Committee with data on the number of cases in which it has been used since November 2011, including any places of deprivation of liberty in which it was used. Please clarify whether the State party has changed its view on the possibility of fully implementing the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that the State party ultimately abandon the practice of *Fixierung* in all non-medical settings at the Länder level. Please indicate what oversight mechanisms exist to monitor the use of *Fixierung* and other methods of restraint by police, in prisons, psychiatric hospitals, juvenile prisons, and in detention centers for foreigners, and indicate if any personnel have been subjected to disciplinary or criminal sanctions for improper use of physical restraints, including *Fixierung*, since November 2011. Please also provide information about training received by law enforcement and other personnel on the use of physical restraints.

.../...

H.E. Mr. Hanns Heinrich Schumacher
Ambassador
Permanent Representative of Germany
to the United Nations Office at Geneva
Fax: 022 734 30 43

Detention pending deportation (paragraph 24)

The Committee appreciates the information provided indicating that the total number of people detained pending deportation in the State party declined from 2011 to 2008 from 8,805 to 6,466. The Committee would appreciate updated information particularly reflecting the number of individuals detained pending deportation since November 2011, indicating the number of those who were subject to transfer in the context of the Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003). The Committee would also appreciate information on the length of detention pending deportation experienced by asylum seekers since November 2011. Please also indicate if the State party has taken any measures to further decrease the number of individuals detained pending deportation, such as adopting or broadening application of non-custodial alternatives to detention in such cases.

The Committee appreciates the information provided regarding the standards governing interim measures in the case of transfers pursuant to the Dublin Regulation. Please indicate whether, since November 2011, there has been any case in which the State party has adopted interim measures suspending the transfer of an individual who made a well-substantiated appeal claiming that deportation would give rise to a risk of torture or ill-treatment.

The Committee appreciates the information provided regarding measures taken by the State party to ensure that asylum seekers receive mandatory medical checks and systematic examination of mental illness or traumatization upon arrival in all Länder detention facilities. Please clarify whether the individuals all Länder detention facilities who carry out initial medical consultations with asylum seekers are independent qualified health professionals, as recommended by the Committee, and describe how their independence is assured. Please also indicate the number of cases in which a detained asylum-seeker has requested and received an additional advisory physician at his or her own cost since November 2011.

The Committee appreciates the information provided regarding the State party's efforts to ensure, when signs of torture or trauma are detected during personal interviews with asylum applicants, that specially trained independent health experts are available to provide medical and psychological exams and reports. Please indicate if the State party anticipates increasing the number of special asylum officers "for victims of torture and traumatized asylum applicants" beyond the 40 currently employed by the Federal Office for Migration, and if the State party has considered broadening its trainings on the Istanbul Protocol to all asylum officers.

The Committee appreciates the information provided by the State party on its efforts to provide accommodation for detained asylum-seekers separate from remand detention facilities. The Committee would appreciate clarification as to which Länder have not yet ensured that immigration detainees are kept physically separate from other prisoners, and the number of immigration detainees presently kept together with other prisoners in those Länder, and any measures being undertaken in those Länder to ensure separation of immigration detainees in the future.

Exercise of jurisdiction (paragraph 28)

The Committee appreciates the information provided regarding the State party's efforts to exercise jurisdiction over allegations of torture and ill-treatment case of Khaled El-Masri. The Committee would appreciate updated information regarding the investigation of the Munich I State Attorney's Office, whether it is ongoing, and whether the State party has extradited any of the wanted individuals in the case. In light of the December 2012 determination by the European Court of Human Rights that Mr. El-Masri experienced torture, please indicate if the State party has undertaken any efforts to ensure that he obtains redress, including rehabilitation.



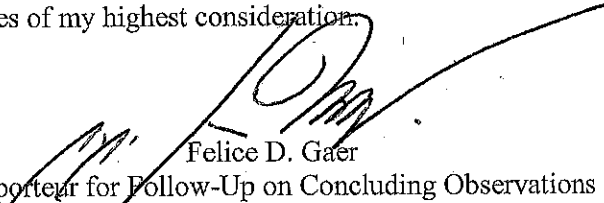
Identification of police officers (paragraph 30)

The Committee appreciates the information provided regarding efforts to ensure that members of the police in all Länder can effectively be identified at all times when carrying out their functions. Please indicate if the anticipated requirements for police to wear identification in Rhineland-Palatinate and Schleswig-Holstein, as described in the follow-up reply, have been implemented, and if any other Länder have made progress in this regard since the submission of your Government's report. Please also clarify for the Committee which Länder do not presently require police to wear identification while performing official functions, other than during covert operations, and indicate measures the State party is taking to address this situation. Please also indicate how the State party monitors the implementation of these requirements to ensure that required identification is worn at all times.

With regard to the Committee's recommendation for the State party to assess the cases of lack of investigation raised during the November 2011 dialogue, the Committee notes with regret that the State party has declined to provide updated information, referencing only its supplement to its presentation to the Committee on its fifth periodic report (CAT/C/DEU/CO/5/Add.1). Please indicate if the State party has taken steps to undertake a broader assessment of the impact of the failure of police to wear identification badges on the effective investigation of allegations of excessive force by police officers.

We look forward to receipt of information on these items, which will be assessed upon receipt. The Committee looks forward to pursuing the constructive dialogue it has started with Germany on the implementation of the Convention, and to receiving clarification on these remaining issues.

Accept, Excellency, the assurances of my highest consideration.


Felice D. Gaer
Rapporteur for Follow-Up on Concluding Observations
Committee against Torture