

**Stellungnahme des Deutschen Instituts für Menschenrechte zum Bericht der UN-  
Arbeitsgruppe über willkürliche Haft im UN-Menschenrechtsrat am 6. März 2012 /**

**Human Rights Council, 19th session, 27 February - 23 March 2012, Agenda item 3,  
WG Arbitrary Detention, Statement by the German Institute for Human Rights**

Madam President, distinguished delegates,

I am speaking on behalf of the German Institute for Human Rights, a National Human Rights Institution with A-status accreditation under the Paris Principles and full member of the International Coordinating Committee.

We welcome the report of the Working Group on Arbitrary Detention on its mission to Germany. The perspective of an international human rights body is very helpful to identify protection gaps and to reconsider established practices so as to ensure the highest level of human rights protection. This is particularly important in the area of deprivation of liberty. A few days ago, the European Committee on the Prevention of Torture (CPT) also published a report on its mission to Germany in 2010. The German Institute considers that the findings of the international and the regional monitoring bodies reinforce each other. They highlight important issues that the German authorities should deal with as a matter of high priority.

Among the recommendations made by the Working Group, we would like to emphasize the following:

The German Institute supports the Working Group's call for the establishment of independent commissions to investigate complaints of police misconduct or ill-treatment. In setting up such commissions, the competent German authorities should draw on the detailed standards developed by the European Committee on the Prevention of Torture.

We concur with the Working Group's finding that subsequent preventive detention must differ fundamentally from criminal detention. This standard has been confirmed by the European Court of Human Rights and by the German Federal Constitutional Court. We welcome the fact that the Working Group will monitor the on-going reform of the system of preventive detention in Germany. It would be particularly helpful if the Working Group monitors the application of the new Therapy Placement Act, while the Council of Europe monitors the implementation of the European Court's judgment on subsequent preventive detention that has been imposed on the basis of a retroactive law.

The Working Group rightly emphasizes the principle that detention of foreigners awaiting deportation should be used as a last resort and for a short period only, and that detention of unaccompanied minors is incompatible with the Convention on the Rights of the Child. The German Institute already raised these issues with German authorities before the mission, and will continue doing so.

Lastly, we encourage the Government to take up the observation made by the Working Group about the disproportionate number of detainees of foreign German origin. In our view, the questions raised by the Working Group deserve to be studied in depth so as to gain a full picture and an insight into possible causes.

Madam President,

the German Institute for Human Rights would like to encourage the Working Group to take into account, in its future work, the situation of persons deprived of their liberty or of their freedom of movement in public and private care institution, in particular the situation of elderly persons, persons with disabilities, and children. We are convinced that international monitoring of these situations by the Working Group would help ensure the right of everybody to be free from arbitrary detention. We call upon all UN member states to support the important work of the UN special procedures through voluntary contributions.

Thank you.