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**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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***Conclusions and recommendations of the Committee against Torture : Germany.
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CAT/C/CR/32/7. (Concluding Observations/Comments)

Convention Abbreviation: CAT

COMMITTEE AGAINST TORTURE
Thirty-second session
3-21 May 2004

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

GERMANY

1. The Committee examined the third periodic report of Germany (CAT/C/49/Add.4) at its 600th and 603rd meetings (CAT/C/SR.600 and 603), held on 7 and 10 May 2004, and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Germany, although it regrets the three-year delay in its submission. The report complies with the Committee's reporting guidelines; in particular, it addresses the State party's response to the Committee's previous concluding observations. The Committee commends the comprehensive written responses provided to the list of issues, as well as the meticulous responses provided to all oral questions posed. Finally, the Committee also welcomes the State party's willingness to engage in a full and frank dialogue with the Committee on all issues arising under the Convention.

B. Positive aspects

3. The Committee welcomes:

(a) The State party's strengthening of institutional protections for human rights, including through the establishment of the

Human Rights Committee of the Federal Parliament and the Federal Government's submission of biennial national human rights reports to the Federal Parliament;

- (b) The establishment in March 2001 of the German Institute for Human Rights, a focal point of whose competence is monitoring of the domestic human rights situation;
- (c) The State party's reaffirmation of its commitment to the absolute character of the ban on exposure to torture, including through refoulement. In this respect, the Committee takes note of the recent institution of criminal proceedings against a senior Frankfurt police officer on charges of threatened use of torture. In addition, it welcomes the State party's confirmation that the ban on *refoulement* contained in article 3 of the Convention is applicable to all cases, including where the asylum-seeker has been denied refugee status on security grounds;
- (d) The State party's commitment to external scrutiny of its record under the Convention, expressed by its acceptance of the Committee's competence to hear complaints under articles 21 and 22 of the Convention;
- (e) The significant improvements that have been made over the reporting period (i) to the Frankfurt airport refugee facilities; (ii) to the applicable refugee determination processes conducted there; and (iii) to the methods exercised in forcibly returning failed asylum-seekers by air;
- (f) The State party's passage of legislation to implement the Rome Statute of the International Criminal Court, which comprehensively codifies crimes against international law, including torture in the context of genocide, war crimes or crimes against humanity;
- (g) The consideration by the State party of issues of torture and other conduct contrary to the Convention that is committed by non-State actors, when relevant under the Convention, in asylum and removal proceedings, and the fact that according to federal jurisprudence individual claims of mistreatment may also be made where a person originates from a "safe" third country;
- (h) The State party's initiative to establish the mandate of a Special Rapporteur of the United Nations Commission on Human Rights on trafficking in persons, especially in women and children.

C. Subjects of concern

4. The Committee expresses its concern at:

- (a) The length of time taken to resolve criminal proceedings arising from allegations of ill-treatment of persons in the custody of law enforcement authorities, including in particular serious cases where death has resulted, such as that of Amir Ageeb, who died in May 1999;
- (b) Some allegations that criminal charges have been brought, for punitive or dissuasive purposes, by law enforcement authorities against persons who have brought charges of ill-treatment against law enforcement authorities;
- (c) The fact that for numerous areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those in its possession. During the current dialogue, this occurred with respect to, for example, public prosecutions, alleged cases of collusive allegations of ill-treatment, cases of counter-charges being brought by law enforcement authorities, and details as to offenders, victims and the factual elements of ill-treatment charges;
- (d) The fact that, owing to perceived constitutional difficulties arising from the division of powers between federal and Länder authorities, measures taken at the federal level to enhance compliance with the Convention are not applicable to relevant activities of the Länder. Thus, the comprehensive federal rules regarding forcible return by air, while applicable to returns carried out by the Federal Border Police (*Bundesgrenzschutz*), are not applicable to returns carried out by Länder

authorities;

(e) The legal controls and training provided to private security companies utilized to provide security to certain detention facilities at Frankfurt-am-Main international airport.

D. Recommendations

5. The Committee recommends that:

(a) The State party take all appropriate measures to ensure that criminal complaints lodged against its law enforcement authorities are resolved expeditiously, in order to resolve such allegations promptly and avoid any possible inference of impunity, including in cases where counter-charges are alleged;

(b) The State party create a central point to assemble relevant nationwide statistical data and information on areas covered by the Convention, request such data and information from the Länder authorities or undertake such other measures as may be necessary to ensure that the State party's authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention;

(c) The State party take such measures as are appropriately within its power with respect to the authorities of the Länder to ensure the adoption and general application of measures which have proven efficacious at the federal level in improving compliance with the Convention, such as the federal rules on forcible return by air;

(d) The State party comprehensively group together its criminal provisions relating to torture and other cruel, inhuman or degrading treatment or punishment;

(e) The State party provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum requirements are for the content of such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;

(f) The State party clarify for the Committee (i) whether all complaint facilities and avenues of legal redress (including State assumption of responsibility for the acts of its agents) that are available against members of the law enforcement authorities are applicable to the employees of private security companies engaged by the State party; and (ii) what kind of training is provided to such employees on issues arising under the Convention;

(g) The State party offer, as a routine practice, medical examinations both before all forced removals by air and, in the event that they fail, thereafter;

(h) The State party consider making more active use of the Convention's extradition mechanisms with respect to German nationals who are alleged to have engaged, or to be complicit, in acts of torture abroad or in which German nationals are alleged to be victims;

(i) The State party make all efforts to ratify the Optional Protocol to the Convention.

6. The Committee requests that the State party provide, within one year, information in response to the Committee's recommendations in paragraph 5 (a), (b), (e) and (f) above.

7. The Committee, considering that Germany has provided information concerning the implementation of the Convention during the period covered by the third and fourth periodic reports, recommends that the State party submit its fifth periodic report on 30 October 2007.



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