

8 September 2008

Public

amnesty international

Germany

Submission to the UN

Universal Periodic Review

**Fourth session of the UPR Working Group of
the Human Rights Council**

February 2009



In this submission, Amnesty International provides information under sections B and C as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

Under section B, Amnesty International raises concern over reservations which might be made upon ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the extraterritorial applicability of the International Covenant on Civil and Political Rights.

Section C highlights Amnesty International's concerns about human rights violations in the context of counter-terrorism measures, excessive use of force by police officers, and violations of the rights of asylum seekers, refugees and migrants without legal status.

Each section sets out recommendations which Amnesty International has made to the government with the aim of addressing the concerns listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Germany

Amnesty International submission to the UN Universal Periodic Review

Fourth session of the UPR Working Group, February 2009

B. Normative and institutional framework of the State

Amnesty International welcomes the fact that Germany has initiated the process for ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. The organization is concerned, however, at reports that the government is contemplating restricting the right to obtain information about persons deprived of their liberty and not codifying enforced disappearance as an offence in the national criminal code.

Amnesty International calls on the government to ratify the Convention for the Protection of All Persons from Enforced Disappearance without any reservations and to implement it including by ensuring that the crime of enforced disappearance is codified as a criminal offence in national law, as required by Article 4 of that Convention.

In its Concluding Observations on the fifth periodic report of Germany in 2004,² the Human Rights Committee encouraged the government to clarify its position regarding the applicability of the International Covenant on Civil and Political Rights to persons subject to its jurisdiction in situations where its troops or police forces operate abroad. Amnesty International is concerned that the government's response to the Committee did not provide a clear position and did not acknowledge the full applicability of the Covenant in the above mentioned situations.

Amnesty International calls on the government to formally acknowledge the full applicability of the International Covenant on Civil and Political Rights to persons subject to its jurisdiction in situations where its troops or police forces operate abroad and adjust accordingly training provided for members of its security forces deployed internationally.

C. Promotion and protection of human rights on the ground

Human rights violations in the context of counter-terrorism

Amnesty International is concerned that counter-terrorism measures in Germany are giving rise to human rights violations and are undermining the framework of human rights protection both in Germany and internationally.

In its Comments to the Conclusions and Recommendations of the Committee against Torture of 17 August 2005³ Germany explained that, with one exception, there have been no cases of deportation in which diplomatic assurances were required since 11 September 2001. Amnesty International is concerned about increasing requests by Germany for "diplomatic assurances" when seeking to return individuals the authorities suspect of involvement in terrorism-related activities to states where they face a real risk of serious human rights violations, including torture and other ill-treatment and unfair trial.

² CCPR/CO/80/DEU

³ CAT/C/CR/32/7/RESP/1 at para 16 (d)

In February 2007, it was reported that the Federal Ministry of Interior had sought diplomatic assurances from Algeria not to torture anyone suspected of involvement in terrorism-related activities, when returned there from Germany. The Ministry reportedly provided its Algerian counterpart with a list of Algerians suspected of involvement in such activities who Germany sought to return to Algeria. Amnesty International is concerned that handing over such a list might have put the individuals at increased risk of grave human rights violations in case of return.⁴

In July 2007, an Under Secretary of State travelled to Tunisia to request similar assurances from the Tunisian Minister of Interior with regard to two Tunisian nationals suspected of having links to organizations involved in terrorism. The German Federal Ministry of Interior considered the Tunisian assurances, which were given orally during the visit, to be sufficient to reduce the risk the men could face if returned. The German authorities subsequently issued deportation orders for the two Tunisian nationals, although in at least one of these cases the Federal Office for Migration and Refugees had earlier decided that the individual should not be deported to Tunisia because of a real risk of being subjected to torture or other ill-treatment. The judicial review of his deportation order was still pending in August 2008. The German authorities have imposed severe restrictions on this individual; among other measures prohibiting him from accessing the internet and meeting with his lawyer in the lawyer's office. Although all criminal investigations against him were closed in March 2008 the authorities adhere to the expulsion order based on the assumption that the individual poses a threat to national security.

Amnesty International considers that reliance on diplomatic assurances, which are inherently unenforceable, is in effect an attempt to circumvent the absolute prohibition of torture and other ill-treatment, and that the use of such assurances undermines international protection against refoulement.

Amnesty International is concerned that German intelligence and law enforcement agents have been complicit in human rights violations committed against persons who have been subjected to rendition. They questioned – directly or by proxy – victims of US renditions while the detainee was in a situation of being subjected to torture or other ill-treatment, including through being held in prolonged incommunicado detention, or – in the case of life-long German resident Murat Kurnaz - while the detainee was unlawfully held at Guantánamo Bay.

German intelligence agents provided Syrian authorities with information about, and questions to be posed to, Muhammad Zammar, a German national born in Syria, after his unlawful transfer from Morocco to Syria. Members of German intelligence and law enforcement agencies also interrogated him in Syria, with a Syrian official present, in November 2002 in Far' Falastin, a prison run by Syria's Military Intelligence that is notorious for torture of security detainees. In the course of a subsequent parliamentary inquiry in Germany, senior officials of the German intelligence agencies and government officials conceded that they were either vaguely aware or knew that torture takes place in Syria. If the German officials knew or should have known that the detainees were unlawfully detained and had been or were at risk of torture or other ill-treatment, their actions could make the government responsible for violations of its international obligations, and could make individuals guilty of complicity in crimes.

The German government has not made public its revised guidelines for interrogations of criminal suspects in other countries by German government agents. Therefore it is not possible for any independent body or group to evaluate whether these guidelines are consistent with international human rights standards.

⁴ A branch of the security forces, the Department for Information and Security (*Département du Renseignement et de la Sécurité*, DRS, also known as the Military Security), continues to be responsible for secret detentions. Amnesty International has received dozens of allegations of torture and ill-treatment of detainees held by the DRS. The most frequently reported methods of torture include beatings, electric shocks, and the chiffon method in which the victim is tied down and forced to swallow large quantities of dirty water, urine or chemicals through a cloth placed in their mouth. For further information see: Amnesty International, Algeria: Briefing to the Committee Against Torture, MDE 28/001/2008, 17 April 2008; Amnesty International, Algeria: Submission to the UN Universal Periodic Review: First session of the UPR Working Group, 7-11 April 2008, MDE 28/021/2007, 28 November 2007.

Amnesty International considers that German intelligence agents and law enforcement services should refuse to participate in any way in the questioning of suspects unlawfully detained and/or at risk of other serious human rights violations, including torture or other ill-treatment.

In April 2006, the German Parliament established a committee of inquiry into any involvement by German authorities in the US-led rendition programme. However, (former) senior government and intelligence officials appear to have withheld information during the hearings and curtailed the permission of important witnesses to give answers to “sensitive” questions. Large parts of some files provided to the committee were redacted. Delay and/or failure of the authorities to provide some of the files requested by the committee severely impeded its investigations.

Individuals were rendered through German airspace and at least one CIA rendition flight, carrying the Egyptian national Abu Omar who was abducted in Italy, is known to have landed at Ramstein airbase in Germany en route to Egypt. Amnesty International is concerned that German authorities have failed to introduce measures to prevent future renditions through its territory, including its air space.

Amnesty International reminds the authorities that a state may breach its obligations not to expose anyone to the risk of torture or other ill-treatment, arbitrary detention, or enforced disappearance, by knowingly allowing its territory to be used by another state to commit such violations, or failing to put in place effective measures to prevent them.⁵

Excessive use of force by police officers

Amnesty International continues to receive credible reports that individuals have been subjected to ill-treatment by law-enforcement officials. Among them are numerous complaints that law enforcement officials used excessive force when policing the demonstrations against the G-8 summit in Heiligendamm in July 2007. Of 82 criminal investigations against police officers, 70 were terminated. Amnesty International believes that in some cases this was premature.

Mr. Ö, a German national of Turkish origin, died in hospital on 5 March 2008 after falling into a coma while in the police station in Hagen on 17 February. He had reportedly called the police because of a cocaine-induced acute schizophrenic attack. Investigations by the office of the public prosecutor were terminated, as the prosecutor argued that the force used by the police was proportional. Amnesty International is concerned that the circumstances of his death have not been sufficiently investigated. He had been bound face-down by police officers in the police station, a position which can lead to the asphyxia of a person especially if they are very agitated. Since 2000 police officers have been trained not to restrain a person face-down.

There are credible complaints by non-German citizens that they were treated in a discriminatory and humiliating way by German federal police officers at the border between Germany and Poland. In May 2008, ten Ukrainian seasonal workers travelling from Spain to Ukraine by bus were stopped by German federal police allegedly because they did not have the correct visa to travel through Germany. It is reported that they were strip-searched. Afterwards, they were held in custody and then deported to Ukraine. In September 2007, a Ukrainian doctor travelling from Hamburg back to Ukraine was stopped at the border with Poland at 11.30 p.m. Her Schengen-visa expired the next day. After being examined by the Polish police for an hour she was handed over to the German police, and accused of staying illegally in Germany. She was strip-searched and then held in custody for three days before being deported to Kviiv. The higher regional court in Dresden has ruled that her detention was illegal.

Amnesty International is concerned that some victims of excessive use of force and ill-treatment by law-enforcement officers are not willing to file a complaint because they are afraid to go to the police.

Amnesty International notes that concerns raised and recommendations made to the authorities by the UN Committee against Torture in 2004 are still relevant: To date there is no nationwide statistical data available on alleged cases of ill-treatment by law enforcement officials. There are cases where complaints against

⁵ UN Human Rights Committee, General Comment 31, para. 8; *A v UK*, judgment of the European Court of Human Rights, 23 September 1998, paras. 22-24)

police for ill-treatment are countered with charges by the police against the person who alleged ill-treatment by the police.

Extradition of Refugees

Under Section 4 (2) of the Asylum Procedure Act, refugee status does not prevent the authorities from extraditing a person to their country of origin⁶. This provision contravenes Article 33 (1) of the Convention relating to the Status of Refugees, which imposes an obligation not to return a person to a place where their life or freedom would be threatened for reasons of race, religion, nationality, political opinion or membership of a particular social group. Even where national security or public order concerns exist, Germany has obligations to respect the principle of *non-refoulement* under the ICCPR and the CAT, both of which prohibit returning individuals to a place where they may be subject to torture or other serious human rights violations. This absolute prohibition was recently affirmed by the European Court of Human Rights in *Saadi v. Italy*. Diplomatic assurances are not sufficient safeguards against human rights violations they may be subjected to upon forcible return to their country of origin.

Though extradition of refugees is rare in Germany, the number of refugees held in detention for the purpose of extradition has increased in the last two years. Turkish nationals are particularly affected by this development. The European Court of Human Rights indicated to the government that Hasan Atmaca should not be extradited to Turkey while the Court was examining the case. The Turkish authorities had requested his extradition to stand trial on charges of activities in favour of the Kurdistan Workers Party. In May 2006 the government sought diplomatic assurances from the Turkish authorities that Hasan Atmaca would be detained in a high security prison meeting international standards and that German authorities could visit him. The Turkish authorities informed the German government that although the Turkish law does not allow such visits, a request by the embassy to visit Atmaca would be favourably considered. The Frankfurt Higher Regional Court had declared his extradition admissible. However, on 31 May 2007 the Darmstadt Administrative Court instructed the Federal Office for Migration and Refugees to declare Hasan Atmaca a refugee and stated that he could not be deported to Turkey as this might constitute *refoulement*.

Amnesty International reiterates its call on the government to repeal Section 4 (2) of the Asylum Procedure Act.

FRONTEX Operations

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) aims to reinforce security on the EU's external borders and to coordinate EU border management.⁷ Operations within the framework of FRONTEX include migration flow control along the EU's external borders, and since August 2006 it has also included control of irregular migration from West Africa into Europe.⁸ German law enforcement officials have participated in FRONTEX operations in the Mediterranean sea, alongside local police agencies to support migration control and enforcement measures.

The Federal Ministry of Interior has asserted that the principle of *non-refoulement* does not apply to persons claiming persecution if they are beyond the 12 mile zone, i.e. outside of Germany's jurisdiction. This view, although supported by state practice and legal opinion,⁹ violates Germany's general obligations under international human rights law, including those articulated by the UN Human Rights Committee in General Comment 31, to respect and ensure the rights to all persons subject to their jurisdiction, including anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. The Committee against Torture has also confirmed that the obligation of *non-refoulement* applies to

⁶ See: Univ. Prof. Dr. Otto Lagodny: „Auslieferung trotz Flüchtlings- oder Asylanererkennung? Gutachten zur Vereinbarkeit von § 4 Satz 2 AsylVfG mit Völker-, Europa- und Verfassungsrecht“ www.amnesty.de

⁷ FRONTEX was established by Council Regulation (EC) No 2007/2004 on 26 October 2004.

⁸ HERA I, II and III.

⁹ See: Government Answer to question put by Members of Parliament Winkler, Beck, Beck and others as well as Bündnis 90/ Die Grünen – Drs. 16/2542 –, BT-Drs. 16/2723 of 25 September 2006, p. 6

state security forces, wherever situated, where they exercise effective control over an individual, and remains so even if they are subject to the operational command of another state.¹⁰

Amnesty International urges the government to review and revise its present position and accept the extra-territorial application of human rights obligations, wherever it exercises its jurisdiction or effective control, including in joint operations with other states.

Revocation of refugee status

Amnesty International is concerned about the implementation of Section 73 (I) of the Asylum Procedure Act which requires the Federal Office for Migration and Refugees to revoke refugee status, when the circumstances in connection with which a person has been recognized as a refugee have ceased to exist ("revocation clause"). While Section 73 (I) as drafted is consistent with in Article 11 (1) e of Council Directive 2004/83/EC of 29 April 2004 (Qualification Directive), which is based on Article 1 C (5) of the Refugee Convention, its implementation is not. Whether authorities in the countries of origin are able to provide effective protection upon return is not being taken into account by German authorities and courts. General conditions of insecurity, violence and lack of livelihood are also not taken into consideration on the basis that they do not satisfy the refugee definition which requires evidence of personal persecution. In February 2008 the Federal Administrative Court requested a preliminary ruling from the Court of Justice of the European Communities concerning the interpretation of the "revocation clause" in the Qualification Directive. UNHCR submitted an opinion on the interpretation of the revocation clause in view of the ruling by the Court of Justice. The application of the revocation clause without taking into account generalized violence and insecurity has deep implications for refugee populations in Germany whose status may potentially be affected, allowing for their return to situations of ongoing violence and instability.

Amnesty International urges the government to review and revise its application of Section 73(1) of the Asylum Procedure Act so as to take into account in all refugee circumstances whether effective protection is available, including taking into consideration situations of generalized violence, insecurity and lack of livelihood.

Non-Refoulement

The UN High Commissioner for Refugees (UNHCR) issued guidelines in January 2004 recommending that states "refrain from all forced returns of rejected asylum seekers to Eritrea and grant them complementary forms of protection instead, until further notice" on the grounds of the record of serious human rights violations in Eritrea.¹¹ These guidelines are still in force.

Despite this, authorities forcibly returned two Eritreans, Yonas Haile Mehari and Petros Aforiki Mulugeta, on 14 May 2008 to Eritrea¹². Neither of them has been seen since they arrived in Asmara. Amnesty International is concerned that the two men may have been detained at Asmara airport upon arrival, and are being held *incommunicado*. The organization considers that they are at risk of torture or other ill-treatment.

Amnesty International urges the authorities to abide by UNHCR guidelines and recommendations and not return any failed asylum seekers to countries where they are at risk of incommunicado detention, torture and other ill-treatment.

Migrants without legal status

The number of irregular migrants in Germany is estimated at between 100.000 and 1.000.000. By law, all public institutions, including doctors and schools, are required to report the identity of any irregular migrant, including those who entered without authorization or whose authorization may have expired, to the Aliens Authority. This leads usually to the start of the deportation procedure. This impedes migrants' access to health care and prevents them from reporting their employers to the authorities for violating their labour and other rights and from seeking redress before judicial authorities.

¹⁰ UN Doc: CAT/C/DNK/CO/5, 16 May 2007, paragraph 13. See also, *Issa and Others v. Turkey*

¹¹ UNHCR position paper "Return of rejected asylum-seekers to Eritrea"– January 2004, at 7.

¹² AI Index: AFR 64/002/2008

Irregular migrants are particularly vulnerable to exploitation, including unhealthy and unsafe working conditions in the construction or sex industries and when working as domestic workers. Irregular migrants rarely seek redress for abuses by their employers before the courts in part due to the lack of information available about avenues of redress and the fact that they risk being reported to the Aliens' Authority if they present themselves to any public authority. Amnesty International considers that the law is inconsistent with Article 12 of the International Covenant on Economic, Social and Cultural Rights, which requires, *inter alia*, that health facilities, goods and services be accessible to everyone, without discrimination, within the jurisdiction of the State Party. In General Comment No. 14 on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights confirmed that "[i]n particular, States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy...".¹³ In its General Comment on the right to education, the Committee confirmed that "the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of legal status".¹⁴ Amnesty International also underlines that these reporting requirements are clearly inconsistent with Article 5 of the International Convention on the Elimination of Racial Discrimination, which requires States parties to "to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects".¹⁵ States cannot enforce their immigration policy by violating other human rights, and effectively barring access to health and education for irregular migrants and their children.

Amnesty International reiterates its call on the government to ensure that access to primary health care, education and judicial authorities are not affected by measures against irregular migration. The authorities should immediately repeal the law requiring all state authorities to report to the aliens' authority the identity of all irregular migrants (section 87 para.2 of the Residence Act).

Children who live irregularly in Germany do not always have access to education, including primary education. The competency for regulating all matters of education lies with the 16 *Länder* (federal states). In some states, there is legal uncertainty as to whether children without residence permits have the right to primary education. Moreover, some states interpret section 87 para. 2 of the Residence Act in such a way that headmasters of schools are required to report the identity of a child without a residence-permit to the aliens' authority. This frequently leads to the start of the deportation procedure.

- *Amnesty International calls on the government to ensure that all children in the country have access to primary and secondary education.*
- *Amnesty International urges the government to ensure that fundamental human rights norms are adhered to and that all migrants, regardless of their legal status, are treated with dignity, in particular that legislation aimed at controlling irregular migration does not effectively deny or prevent migrants from accessing other international human rights, including access to education, health care and an effective remedy or redress for human rights violations.*
- *Amnesty International urges the government to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.*

¹³ General Comment No. 14 (2000). The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (11 August 2000), paragraph 34.

¹⁴ CESCR, General Comment No. 13, The right to education (Art. 13), UN Doc. E/C.12/1999/10 (1999), paragraph 34.

¹⁵ UN Committee on the Elimination of Racial Discrimination, General Comment No. 30, Non-citizens, para 33.

Appendix: Amnesty International documents for further reference

- Amnesty International, State of Denial: Europe's role in rendition and secret detention, June 2008, EUR 01/003/2008 (www.amnesty.org)
- Amnesty International, Forderungskatalog, Keine Flüge in die Folter – CIA-Verschleppungsflüge und unrechtmäßige Haft verhindern, Juni 2008 (www.amnesty.de)