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MECHANISMS FOR TREATMENT OF HUMAN RIGHTS ISSUES IN NATIONAL PARLIAMENTS (GERMAN BUNDESTAG)

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Mechanisms for Treatment of Human Rights Issues in National Parliaments (German Bundestag)

1. The Basic Law of the Federal Republic of Germany acknowledges, in Article 1, paragraph 2, the "inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world". The respect and protection of the inviolability of human dignity, and the principle that the basic rights bind the legislature, i.e. the parliament, as well as the executive and the judiciary, as directly applicable law are thus fundamental elements of domestic German law. They play a significant role in shaping domestic and foreign policy. Their significance also results from the fact that the constitution does not allow these provisions to be amended (Article 79, paragraph 3 of the Basic Law - Amendments to this Basic Law affecting[...], or the principles laid down in Article 1[...] shall be inadmissible").
2. Ever since the Federal Republic of Germany was founded, the German Bundestag and Germany as a whole have taken this constitutional guarantee seriously. Thus, Germany is embedded in a comprehensive framework for the protection of human rights under international law. The Federal Republic of Germany has been involved in the wide-reaching implementation of human rights, through international declarations and conventions, as well as through the work of the delegations of the German Bundestag to the IPU and other inter-parliamentary assemblies, such as the Parliamentary Assemblies of the OSCE and the Council of Europe.
3. At a meeting of the IPU's human rights committee, on the occasion of the 102nd Inter-parliamentary Conference in 1999 in Berlin, Wolfgang Thierse, President of the German Bundestag, pointed out that parliaments can only carry out the tasks assigned to them if their members are free and independent. This means working with vigour to ensure that

the right of individuals to freely develop their personalities, which is guaranteed in democratic rule-of-law states, is established even in those places where its existence is called into question by an authoritarian leadership, resulting in human rights violations.

The Inter-Parliamentary Union has chosen the path of looking to the future, and endeavouring to uphold human rights through numerous resolutions, memorandums and other measures. I recall, in this context, the seven inter-parliamentary Conferences on Security and Cooperation in Europe (1972-1991). These conferences aimed, at a difficult time, to expand on, and provide impetus for the realisation of, the contents of Basket III of the Helsinki Accords, namely human rights. The untiring efforts of the parliamentarians from rule-of-law democracies finally succeeded in changing the minds of delegations determined to give no ground: on issues such as family reunification and the release of political prisoners, for example. The IPU played a major role in bringing about the collapse of the Communist regimes, which demonstrated contempt for human rights. Thus the decision to call off the VII CSCE-IPU parliamentarians' conference planned to take place in 1989 in Bucharest accelerated the fall of the dictator Ceaucescu. His regime of human rights infringements was criticised in the plenary debates at the IPU conferences, in particular by the Twelve Plus Group.

4. In 2000, two significant events for the safeguarding of human rights took place in Europe. On 4 November 2000, the Member States of the Council of Europe Parliamentary Assembly celebrated the 50th Anniversary of the European Convention on Human Rights. In December 2000 in Nice, the Charter of Fundamental Rights of the European Union was proclaimed. The Council of Europe has long advocated accession by the European Union to the European Convention on Human Rights and calls for amendments to the treaty text to ensure the necessary coherence between Convention law and Community law. Discussions on the necessity of effective protection for human rights are not only needed within Europe. Such discussions must be set in motion in representative bodies right across the world.

Together with the former President of the Italian Camera dei Deputati, Luciano Violante, and the then President of the Assemblée nationale, Raymond Forni, President of the Bundestag Wolfgang Thierse had taken up this discussion at the end of the summit meeting of parliamentary speakers from across the world which took place in

August/September 2000 in New York and set in motion a corresponding initiative. The result is a " Charter of the Duties of States ", in which the three parliamentary presidents enshrine the view that the fundament of human rights is the heritage of all cultures and civilisations of the world. It is this universal character which makes fulfilment of the duties listed in the Charter a moral obligation for all states. For this reason, the Presidents appeal to all states to adopt the Charter, regardless of their cultural and legal traditions.

The Charter is intended to be a voluntary commitment by all states, with the aim of ensuring that those sentenced to death are not executed and that prisoners are neither tortured, nor treated in a cruel, inhuman or degrading manner. The Charter also calls for state authority to be enforced in an equitable and proportionate fashion. It stresses that slavery, trafficking in human beings and any type of discrimination must be abolished. Each country should earmark an appropriate share of its resources for the fight against poverty, and for health and education and training. The intention is that the Charter could be further developed, with the aim of sparking a broad discussion about the safeguarding of human rights and fundamental freedoms right across the world. The draft produced was forwarded to the IPU delegates at the 108th Inter-Parliamentary Conference in Santiago.

5. The Committee on Human Rights and Humanitarian Aid in the German Bundestag considers itself to be treading an uncomfortable path. In the 15th electoral term, a permanent committee dealing with human rights and humanitarian aid has once again been set up. The importance which the Bundestag places on human rights policy was recently underlined when, in the context of a debate on the key areas of German policymaking, the Bundestag adopted a motion defining respect of human rights as one of the guiding principles of German policy. Amongst other things, this motion highlighted the fact that the committee members' commitment to human rights applies to both domestic and foreign policy issues. This was not always the case; until 1998, the human rights committee was a subcommittee of the Committee on Foreign Affairs and dealt mainly with foreign policy matters.

The plenary of the German Bundestag has debated human rights issues on various other occasions. I wish to refer to the debate of 13 March 2003, during which the Bundestag dealt with:

- a motion tabled by the parliamentary groups of the SPD and Alliance 90/The Greens on the 59th session of the United Nations Commission on Human Rights;
- a recommendation and report of the Committee on Human Rights and Humanitarian Aid relating to the Federal Government's communication on the 6th report of the Federal Government on its human rights policy in foreign relations and in other policy areas;
- a recommendation and report of the Committee on Human Rights and Humanitarian Aid relating to the motion tabled by the parliamentary groups of the SPD and Alliance 90/The Greens on human rights as a guideline of German policy;
- a recommendation and report of the Committee on Human Rights and Humanitarian Aid relating to the motion tabled by the FDP parliamentary group on not overlooking human rights violations in Chechnya;
- and a motion by the CDU/CSU parliamentary group on advocating human rights globally – strengthening the international instruments to protect human rights.

The Committee on Human Rights and Humanitarian Aid deals with a wide spectrum of issues. Subjects of key interest for the parliamentarians in the current electoral term include the safeguarding of human rights in the war on terrorism, the protection of defenders of human rights and the area of Islamic law and human rights.

The committee also concerns itself with the further development of national, European and international instruments to safeguard human rights, and with the legal and political scrutiny of human rights infringements. Human rights issues also often arise in foreign, development and security policy, in economic and external trade policy, and in asylum and refugee policy. Questions concerning policy on minorities and humanitarian aid are also amongst the issues routinely dealt with by the committee.

The committee keeps itself constantly informed on the human rights situation around the world. It achieves this by consulting the responsible ministries and experts from within Germany and abroad and by frequently exchanging opinions with diplomatic representatives and human rights organisations. This provides the Members with important background information. They are thus able to use their wide-ranging contacts to political institutions in Germany and abroad, to governments and to human rights groups and bring their influence to bear in a targeted manner.

From the outset, the Committee on Human Rights and Humanitarian Aid has met with a positive response from politicians at home and abroad, as well as from a wide range of national and international human rights groups. The agenda is often shaped by current events. Reports by the Federal Government on the situation in Afghanistan, Chechnya, China, Columbia, Turkey, Africa or the Middle East, for example, are placed on the agenda at short notice. The members of the committee also inform themselves about the type and scope of humanitarian aid which may be necessary in countries suffering from the effects of natural disasters or military conflict.

The work of the Committee on Human Rights and Humanitarian Aid overlaps with numerous other areas of policy. This is also reflected in its parliamentary work. Increasingly, when the committee is asked for an opinion on items of business where other committees have overall responsibility, it does not merely state its support or rejection, but also makes concrete recommendations from a human rights viewpoint. One of the characteristics of committee work is the way in which all the parliamentary groups represented on the committee work together constructively. As a result of its persistent and sustained domestic and foreign policy work, the committee has established itself as an important and sometimes uncomfortable parliamentary voice.

The Chairwoman of the Committee, Ms Christa Nickels (Alliance 90/The Greens) made the following remarks:

"It is important that we preserve the key objective of this committee: to take the side of human rights. In fulfilling this commitment we continue to tread an uncomfortable path, because credible human rights policy also begins at home: We must ensure, for example, that meticulous attention is paid to human rights in Germany and Europe in the fight against terrorism. "

The Administration of the German Bundestag provides the administrative, specialist, technical and organisational framework, as well as the necessary personnel, for the work of the Bundestag committees. The staff members working for the committee secretariats are recruited from amongst the staff of the Bundestag Administration. Specially trained members of staff within the Administration also compile reports on particular questions and subject areas, thus providing additional input for the work of the committee. The Committee on Human Rights and Humanitarian Aid works together, for example, with

Subject Area II (Foreign Affairs, International Law, Economic Cooperation and Development, Defence, Human Rights and Humanitarian Aid) and Subject Area XII (European Affairs).

Cooperation between the legislator and various national human rights bodies and extra-parliamentary interest groups operating independently takes place via the committees.

The work of the Committee on Human Rights and Humanitarian Aid is extremely varied. It involves:

- cooperation with international organisations (such as Amnesty International, Human Rights Watch, Reporters without Borders, Terre des Hommes, etc)
 - visits by political representatives, religious leaders, heads of national human rights organisations
 - particular concentration on the human rights situation in selected countries
 - regular briefings to the committee by representatives of the Federal Government and experts
 - consultations between various Bundestag committees, as well as joint sessions with the delegations of the German Bundestag to the IPU and the OSCE Parliamentary Assembly
 - dialogue between the committee and representatives of the governments of, for example, Turkey and China
 - trips by delegations, such as that to the 59th Session of the United Nations' Commission on Human Rights in April 2003 in Geneva, the trip to Turkey and Iran in May 2003 and the trip to Afghanistan and Egypt in September 2003.
 - support for the work of human rights representatives.
6. The role of the courts in upholding human rights is also very important. Courts are bound by the law. Protection of human rights by courts is only as good as the contents of the laws by which the judges are bound. Human rights are enshrined in the constitution. Should a court believe that a particular law is not compatible with the Basic Law, it may request a ruling from the Federal Constitutional Court (Article 100 of the Basic Law, Compatibility of Laws with the Basic Law). The Federal Constitutional Court may then declare such a law unconstitutional.

A ruling of 27 August 2003 by Cologne Administrative Court makes clear the way in which human rights bind the judiciary as directly applicable law. The third chamber of Cologne Administrative Court issued a ruling on two actions brought by the Turkish national Muhammed Metin Kaplan against the Federal Republic of Germany/the Federal Agency for the Recognition of Foreign Refugees. The judges ruled that, although the Federal Agency for the Recognition of Foreign Refugees had been right in revoking Kaplan's right of asylum, he might not, at that point, be deported to Turkey.

The court rejected Kaplan's appeal against the revocation of his right of asylum. It ruled that the revocation of his right of asylum had been lawful, as Kaplan had been sentenced as the result of a serious criminal offence, by a final and binding court judgement, to a four-year custodial sentence and a danger existed that he would reoffend.

But the judges upheld Kaplan's appeal on another point. In December 2002, the Federal Agency for the Recognition of Foreign Refugees had issued an independent decision, allowing Kaplan to be deported to Turkey on completion of his custodial sentence. The court disagreed and reversed this decision, citing the existence of an "obstacle to deportation". The judges concluded that the criminal proceedings awaiting Kaplan in Turkey were not compatible with the principles of the rule of law. They judged that a concrete danger existed that incriminating statements would be used in these proceedings which had been made by people who, it had been proven, had been tortured whilst in police custody and who had later retracted these statements. The fact that these statements were likely to be used as evidence constituted an infringement of the UN Anti-Torture Convention, which Turkey had also signed, and represented a particularly grave infringement of the core principles of the European Convention on Human Rights, which included the right to a fair trial.

Against the background of the comments by the President of the Federation of German Judges and the ensuing public discussion, the committee had, at its meeting on 12 March 2003, requested a briefing by the Federal Government on the ban on torture enshrined in the constitution and in international law.

7. One other example of the work of the Committee on Human Rights and Humanitarian Aid can be seen in the press release of 13 March 2003. This press release concerns the universal application of the ban on torture and refers to the current discussion in Germany concerning the ban on torture and to the debate on human rights in the German Bundestag.

The Chairwoman of the committee had stressed that the ban on torture and inhumane or degrading treatment applied universally and without exceptions and that it constituted one of the elementary and inalienable fundamental and human rights in the international community of states. She stressed that the ban on torture was one of the core elements of the constitution, the Basic Law. It was recognised as binding law and anchored in numerous human rights conventions, which also applied to Germany. She emphasised that these provisions did not allow any leeway which would allow torture or the threat of torture to be used in exceptional cases. This belief was shared by all the members of the committee, she continued, and constituted a central element of the political work of the Committee on Human Rights and Humanitarian Aid.

When the Iraq war broke out on 20 March 2003, the Committee on Human Rights and Humanitarian Aid reacted immediately, calling for international humanitarian law of war to be applied. I should recall at this point that the IPU, at the 76th Inter-Parliamentary Conference in Buenos Aires in 1986, dealt with the topic of international humanitarian law in armed conflicts and that the Inter-parliamentary Council, at the 100th Inter-Parliamentary Conference in 1998 in Moscow, deliberated on the subject of international humanitarian law of war; both bodies adopted unanimous resolutions. At the meeting on 20 March, the members of the committee appealed for international humanitarian law of war and, in particular, the protocols to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to be strictly applied. They called on the national and international aid organisations to set in motion the necessary humanitarian aid measures. They stated the committee's support for all national and international humanitarian measures to assist the victims of the Iraq conflict.

8. I would now like to give a short overview of that part of the committee's work which concentrates in particular on the human rights situation in selected countries. On 24 November 1999 and 18 December 2002, for example, the committee was briefed by the Federal Government on the human rights aspects of the Federal Chancellor's trip to China, and on the human rights situation in China in general. On 17 May 2000, the committee forwarded a recommendation for a resolution on the human rights situation in China to the plenary of the German Bundestag (Printed Paper 14/3501). The human rights situation in Russia, Iraq, Afghanistan, Turkey, Iran, and in various African and Latin American states was also the subject of deliberations by the committee. Topics included the recruitment of child soldiers in African states and the impunity of criminals in Latin American states.

The human rights situation in those countries which had previously been discussed by the IPU's human rights committee was also deliberated on.

9. National parliaments, including the German Bundestag, can speak out whenever it is necessary to uphold human rights or to combat threats to human rights. During the summit meeting of parliamentary speakers from around the world in New York in August/September 2000, Secretary-General Kofi Annan stressed that the "voices of parliaments must be heard". This can be taken to include the right and duty of parliaments and their members to speak up whenever human rights are threatened anywhere in the world. The case of the Guinean politician Alfa Condé is one impressive example of parliaments refusing to remain silent. Admittedly, in view of the division of powers in a democratic parliamentary system of government, the possibilities of the German Bundestag to exert direct influence on human rights policy are limited, but they do exist. As experiences in the inter-parliamentary assemblies, in particular the IPU, have demonstrated, parliamentarians, who are not bound by the lines taken by governments and diplomats are able to speak more openly on human rights issues, without having to take into account the stance of their governments. Former IPU President Dr. Hans Stercken (1985-1988) and Dr. Heiner Geißler (CDU/CSU), both Members of the Bundestag for many years and exceptional defenders of human rights, have stressed that responsibility for upholding human rights around the world should not be sacrificed on the altar of diplomacy and profit. Treading the uncomfortable path can prove an arduous task. Choosing this path is a heavy responsibility which national parliaments and their members, all of us, must shoulder at the beginning of this century.