

# Flüchtlingsrat Hamburg e.V.

Offenes Plenum für antirassistische Arbeit

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## Report to the United Nations Anti-Torture Committee

**Re.: Federal Republic of Germany**

**Issue: Forced use of Emetics while in Hamburg Police Custody**

### **A. Issue:**

According to police sources street dealers have sometimes swallowed small quantities of drugs (mainly cocaine derivatives) wrapped in cling-foil, when approached by police officers.

Since the beginning of the nineties, people suspected of dealing drugs in some German cities (e.g. Bremen and Frankfurt-am Main) who the police observe making a swallowing motion when apprehended, are forced to vomit while in police custody.

These police methods have been publicised by the human rights organisation Amnesty International.<sup>1</sup>

Initially Hamburg refused to use emetics, because the dangers to health were not commensurable with legal ethics.

In July 2001 - shortly before the Hamburg Senate elections - Mr. Olaf Scholz (SPD), then Senator of the Interior, decided to implement this system in Hamburg.

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<sup>1</sup> e.g. AI Annual Report 1996 Federal Republic of Germany; Report of 3<sup>rd</sup> July 1997: Federal Republic of Germany - Continuing pattern of police ill-treatment, AI Index 23/004/1997

## **Appendix 1**

The newly elected Hamburg senate (CDU, FDP, P.R.O.), who have been in office since 31<sup>st</sup> October 2003, continues to use emetics.

On the 9<sup>th</sup> of December 2001, a young African refugee, Mr. Paul Nwabuisi, known as "Achidi John" died after being forcibly administered an emetic substance per stomach probe in Hamburg University Hospital's Institute for Forensic Medicine.

### **A. 1. Emetics - as Practised in Hamburg**

In a joint decree dated 20<sup>th</sup> July 2001, the Hamburg public prosecutor and police

## **Appendix 2**

have stated which criteria are prerequisite for the use of emetics.

These state that when circumstances point to a likely conviction for drug dealing, and the suspect is seen to have swallowed, emetics may be used.

In such cases the police must first contact the public prosecutor by phone. The prosecutor responsible then decides whether or not to allow the use of emetics.

With his permission, the suspect is taken to a forensic doctor at the Institute of Forensic Medicine in Hamburg University Hospital. There, the doctor requests the detainee to voluntarily drink ipecacuanha syrup and vomit. If he refuses the emetic syrup will be forcefully inducted through a stomach probe.

Emetics must be administered no later than two hours after swallowing any substances.

If taken later, it is possible that substances swallowed cannot be vomited, because they have already passed into the intestines.

### **A.2 Achidi John's Death <sup>2</sup>**

Achidi Johns parents have instructed a lawyer to look after their interests in an inquiry into the German authorities responsibility for their son's death.

Therefore we are neither authorised nor intent on presenting an individual case.

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<sup>2</sup>We are using the pseudonym "Achidi John" in this report, because the name is symbolic in Hamburg for the public discussion about alleged offenders human rights, while in police custody. This is not only about this particular case, but systematic use of emetics.

However, facts made public about the circumstances leading to his death are decisively important in judging the systematic use of emetics in Hamburg, and as such will be part of this report.

Achidi John was arrested on the 9<sup>th</sup> December 2001 and taken to Hamburg University's Institute of Forensic Medicine with his hands bound behind his back.

Once there, Achidi John started to panic and fiercely defend himself, he was gripped with mortal fear and repeatedly called 'I will die!' He had already staggered and slipped in the hallway in front of the examination room. A medical student took his pulse, 120 beats per minute.

Then, laid on his back, with his hands still bound behind him, he was pinned to the floor by five policemen who held his legs, upper body and also pressed his head down onto his chest.

After many attempts, a forensic doctor finally succeeded in inserting a stomach probe through Achidi John's nostril and despite his resistance, administered ipecacuanha syrup and 800 ml of water.

During this procedure Achidi John had urinated and eventually laid motionless on the floor.

Initially the doctor did not pay any attention to his condition and left the room. She only returned after a medical student informed her that Achidi John was unconscious, when she then attempted to rescue his life to no avail.

Casualty doctors who were called later were also unable to revive Achidi.

He remained in a coma till he eventually deceased on the 12<sup>th</sup> of December 2001 at which point intensive care was discontinued.

### **Appendix 3**

No judicial inquiry has been made against the doctor and the officers. In this case the public prosecutor only made so called 'preliminary inquiries'. Half a year later, the public prosecutor declared in a press release,

### **Appendix 4**

that the cause of death, 'hypotonia brain death' leads back to Achidi John's serious heart illness, which was not apparent to the doctor, and that neither she nor the police officers present could be accused of conduct relevant to a criminal offence. As to our knowledge no criminal charges or disciplinary measures have ever been taken against those involved.

Attempts made by Achidi John's parents lawyer in Hamburg, to press proceedings for a regular inquiry through the higher regional court have failed. The petition has been rejected on formalities which are presently the subject of a constitutional complaint.

### A.3. Groups Targeted by the Police

The police targets in question, are people who sell small quantities of drugs on the streets in their function as a last link in a chain of drug traffickers.

In over 85% of all cases where emetics were applied, the accused were citizens of an African country.

These answers are the result of questions asked in parliament.

### **Appendices 5 - 11**

Accordingly, emetics were applied 312 times between the 12<sup>th</sup> of August 2001 and 26<sup>th</sup> October 2003.

268 of these cases were Africans, mainly from West African trouble spots.

Up till the 9<sup>th</sup> of December 2001, the day when Achidi John fell into a coma, from a total 26 emetic cases five stomach probes had been administered. During the time between 09.12.2001 and 26.10.2003 stomach probes were used in nine out of 286 cases.

In forty-four cases no drugs were found in vomit.

According to details known, we are dealing with people who are mainly between 16 to 26 years of age.

Our experience as refugee councillors leads us to assume that these people are mainly young refugees who have arrived here without any family.

These young people have only a very unstable residential status.

As soon as refugees apply for political asylum they are allocated accommodation in a town or district, which they are only allowed to leave with a special permit. When found outside the allocated residential town or district by the police, they are transported back and fined. Repeat offenders can also face criminal proceedings (fines or prison sentences) for leaving their allocated town or district without a permit - so called "in breach of allocated area rules".

Refugees are not permitted to work during their first year in Germany, and often have difficulties obtaining a work permit afterwards. In some states they receive only payment in kind and little pocket money, other states pay an insignificant monthly allowance according to asylum laws which are well below the subsistence levels for German nationals.

Africans in particular have very little hope of being recognised as political refugees and reckon with deportation.

Their everyday life is characterised by local racists, police checks and nightly raids on their accommodation.

Many young men remain out of bounds in large cities away from their allocated accommodation, in order to take avail of infrastructures within their respective communities and find work in a city.

These circumstances (uncertain residence, extradition order, permanent police controls, no work permit, no prospects) sometimes lead refugees into dealing small amounts of forbidden drugs on the streets, in order to earn money.

Efforts made by active social workers and African associations to organise job creation and training for some of the young people have as yet not been very successful because the Hamburg authorities refuse to cooperate.

## **B. Offence against the Agreement against Torture and Other Cruel, Inhuman or Degrading Treatment as of 10<sup>th</sup> December 1984**

### **B. 1. Maltreatment and the Threat Through Extremely Dangerous Measures**

We regard the administration of emetics in Hamburg and other large cities in Germany as an offence against Article 1 of the Convention and hope, that the Committee will examine and consider our report under this aspect.

In 1996 a report on physical and mental pain experienced by people forced to vomit while in Bremen police custody has been published by a human rights initiative.<sup>3</sup>

People who had been forced to drink ipecacuanha, reported that afterwards they suffered for days with nausea and sickness, diarrhoea and exhaustion. These symptoms correspond to the possible side effects of ipecacuanha as described in medical publications, among other symptoms listed: an insatiable urge to vomit, diarrhoea, feeling dazed and fever, even dehydration resulting in gastrointestinal haemorrhages and cardiac insufficiency leading to a cardiac arrest can be caused.

Furthermore, due to the two hour deadline (after seen swallowing) set by the police, it is impossible for any doctor, to make a thorough examination and conscientiously consider all risks at stake in each individual case, administrating the medicine with or without a stomach probe is attached with unacceptable dangers.

In addition to the physical suffering and humiliation brought about by being forced to vomit in the presence of strangers, these dangers and side effects are always pre-eminent with emetic intervention.

In our opinion, one cannot speak of people drinking the syrup voluntarily. People who refuse to drink are threatened with forceful administration through a stomach probe.

People who still refuse, are given the medicine via a stomach probe which is pushed up the nostril down the oesophagus and into the stomach. This procedure is even painful for patients in medical care who cooperate with the doctor, and is often accompanied with unpleasant retching and a sense of suffocating.

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<sup>3</sup>Hefte der Forschungsgesellschaft Flucht und Migration e.V. (Hrsg.), Antirassismusbüro Bremen, Heft 4 "Sie behandeln uns wie Tiere", Berlin - Göttingen 1996

When people resist they are in danger of injury to their nasal and throat septum, their larynx and vocal chords, a probe inadvertently placed in the windpipe and the danger of irritating the vagus nerve, which can lead to cardiac arrest.

Because of these health hazards, the Hamburg Chamber of Doctors and The German Doctor's Congress have clearly stated that the forcible administration of emetics does not comply with medical ethics.

### **Appendices 12 - 14**

The 105<sup>th</sup> German Doctors Congress passed a resolution in May 2002 which explicitly refers to the UN-Resolution dated 18<sup>th</sup> December 1982, whereby medical staff are only allowed to work with prisoners in order to diagnose, protect or improve their physical and mental health.

Emetics are not being used as a method of forcing a spoken or written confession. Those affected are compelled to vomit evidence to be used in criminal proceedings against them.

This is one of the reasons why lawyers reject the use of emetics.<sup>4</sup>

Subsequent to Achidi John's death emetics are recognised by the public and seen in the eyes of those affected to be synonymous with police punishment.

The circumstances leading to his death on 10<sup>th</sup> December 2001 have, as far as possible, been made public.

### **Appendix 15**

The federal states Berlin and Lower Saxony have subsequently suspended penal use of emetics until the related health hazards have been investigated.

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<sup>4</sup> see below, page 8

## **Appendix 16 and 17**

Hamburg state government, the authority responsible for the death, declared to the contrary on 13<sup>th</sup> December that Hamburg would not suspend the use of emetics. The only precautionary measure consequently made being an emergency doctor on call when a stomach probe is planned.

On the 10<sup>th</sup> December 2001, when Ronald Barnabas Schill was Senator of the Interior, he announced to the press that changes in police guidelines on emetics were a signal that laws were not being implemented harshly enough.

Government delegates stated, among other things, that the "dealer" was partly responsible for people coming to a wretched end and that they did not feel much grief.

## **Appendices 15 and 18**

The public prosecutor waived regular legal proceedings and the results of the inquiry later shown, made apparent, that the public prosecutor did not criticise the maltreatment suffered by Achidi John let alone does he intend taking any legal proceedings.

The message behind these policies is that the authorities in Hamburg are prepared to use emetics under brute force, even at the risk of further deaths.

Social workers repeatedly report to us that the African juveniles they take care of, are very frightened after Achidi John's death.

Even those who have nothing to do with drug trafficking are conscious of their refugee status, and like most Africans in a certain age group, experience permanent police controls in public places. This death has had a demoralising and frightening effect on them.

Furthermore, it is apparent from police statistics<sup>5</sup> that after Achidi John's death

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<sup>5</sup> Appendices 5 - 11 see above Page 4

nearly all ipecacuanha candidates drank the syrup.

We came to the conclusion, that they are frightened to suffer the same fate as Achidi John and thus offer no resistance.

As well as the physical and psychological strain that is concurrent with emetic treatment nowadays those affected are plagued by a rational mortal fear of refusing to drink.

## **B. 2. Legal Problems**

In our opinion the use of emetics is a grievous violation against the detainee's human rights and as such does not need to be founded as defined in the Agreement, Article 1., § 2.

We want to briefly outline the legal procedures called upon by public prosecutors and judiciary in German courts:

Police and prosecution cite § 81 a, as code of criminal procedure, which allows detainees to be physically examined by a doctor under due medical care - without their permission, as long as not detrimental to the detainee's health.

This is the same legislation that is applied when blood tests are made when drivers are suspected of drunken driving.

Whether or not § 81 a, constitutes as a basis for the use emetics is disputed.

In 1996 the higher regional court in Frankfurt on Main declared the use of emetics in order to perpetuate evidence as inadmissible.

The federal constitutional court rejected a constitutional complaint made by a detainee on formal grounds (inadmissibility), they also resolved that they had no qualms about implementing emetics.

After Achidi John's death the federal constitutional court issued a press release, modifying previous statements. The previous resolution did not define to what extent forceful administration of emetics is allowed, in view of the physical harm and commensurability involved.

## Appendix 19

Legal literature rejects prosecutions under the code of criminal proceedings § 81 a, mainly because the use of emetics contravenes with directives on forbidden interrogation methods (§ 136 a) and the right of self incrimination, whereby the accused is free to confess or remain silent and not incriminate himself.

Retrospective of the position taken by the Commission in its second regular report on Germany (A/53/44 paras. 179 - 195) we would like to discuss two further points.

Nobody can prevent the use of emetics already ordered by police and public prosecution through claiming legal advice.

§ 81 a, code of criminal procedure, which the authorities claim to legitimise such intervention, requires a court order for a physical examination. Only in by way of exception is the public prosecutor authorised to issue an order in an urgent case.

Hamburg police have never ever informed the courts before using emetics.

Thus, the criminal prosecution apparently views all cases as urgent.

This results in detainees receiving no legal advice whatsoever, lawyers are not foreseen in urgent cases.

It is, in theory, possible to take measures and verify ones legal position after being forced to consume emetics.

We know of no case where anyone has actually tried this.

Above all, the deciding factors are, the social position of the accused and how criminal courts judge the value of drugs used as evidence in a trial that have been produced by forced vomiting.

Even those persons not found in possession of drugs, would probably be wary of the legal costs and a (renewed) confrontation with the authorities.

So far as refugees who are seeking right of asylum are concerned, they can neither raise the financial means to pay a lawyer nor expect to hear about the outcome of the case, because they reckon with being deported beforehand.

The way in which Hamburg's justice dealt with the death of Achidi John shows just how questionable the effective protection of human rights, as defined in the Agreement, through German laws is.

When a crime is suspected, according to the German code of criminal procedure, proceedings must be taken against known or unknown persons accused.

In a case involving such a severe use of force as the emetic intervention on Achidi John, according to legal regulations, the public prosecutor should have initiated a judicial inquiry against the doctor and police officers concerned for homicide or at least grievous bodily harm.

There is no provision for 'preliminary inquiries' as undertaken by the authorities in this case in the code of criminal procedure.

Thereby, the public prosecutor predicts the outcome of the inquiry before it begins. Namely that neither the use of force nor neglect by civil servants responsible, caused the death of a person in their custody.

Police officers are obliged during a legitimate intervention using force against a detainee to always respect the principles of commensurability and the detainees right to life and health.

In addition doctors have a special duty towards people in their medical care; not to cause them any harm and to take all measures to prevent dangers to their health.

When a case involves severe force, as in the use of emetics against Achidi John, and it is not reviewed whether the structures bound to a regular legal inquiry are adhered to, § 349 of the penal code (inflicting bodily harm while on duty) proves ineffective.

Hamburg, December 2003

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