

## Germany<sup>1</sup>

**IHF FOCUS: torture, ill-treatment and police misconduct; judicial system and detainees' rights; prisons and detention facilities; right to privacy; intolerance, xenophobia and racial discrimination; asylum seekers.**

Despite the repeatedly expressed commitment of the German government to rank human rights highly on its agenda, no marked improvements were initiated in 2003. Ill-treatment by the police remained worrisome, the restrictions on detainees' rights and the living conditions in prisons fell short of international human rights standards. The right to privacy was restricted by numerous measures which were intended to make the fight against organized crime more effective. The activities of right-wing extremists were high on the agenda, especially as government programs against right-wing extremism were restricted by austerity measures.

The situation of asylum seekers and refugees did not improve as political agreement on a new immigration law could not be reached. The European Committee for the Prevention of Torture (CPT) visited Germany in 2000 and published its report in 2003. It reported allegations of the use of excessive force against foreign nationals by police officers and by the Federal Border Police (*Bundesgrenzschutz*). Moreover, the continued violations of international standards of the rights of the child remained a serious problem.

The Federal Constitutional Court ruled that the German states (*Länder*) could refuse to employ Muslim teachers who insisted on wearing the headscarf if they passed appropriate laws to this end. This added fuel to the ongoing debate about religious freedom, tolerance, women's rights and the separation of religion and state. Critics of the court decision noted that the headscarf was over-estimated as political symbol and that banning the Muslim headscarf but not Christian symbols from school would contradict article 3.3. of the Constitution which strictly prohibits any form of religious discrimination.

Finally, Germany again failed to submit periodic reports in accordance with an international human rights convention: the obligatory reports under the Convention on the Elimination of All Forms of Racial Discrimination, due on 15 June 2000 and on 15 June 2002, were not handed in during 2003. Positively, the reports under the Convention on the Elimination of All Forms of Discrimination against Women and under the Convention on the Rights of the Child were submitted in 2003, the latter with a delay of three years.<sup>2</sup> Moreover, Germany failed to sign and ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to establish a system of regular visits by independent bodies to places where people are deprived of their liberty and to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2003. Further, Germany did not implement the EU Directives against Discrimination which were adopted by the EU governments three years ago.

Notwithstanding, human rights received political attention. For example, the Committee on Human Rights and Humanitarian Assistance of the Lower House of Parliament (*Bundestag*) organized a hearing on Islamic law and human rights and the German president, on his trip to China, requested

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<sup>1</sup> Prepared by Wolfgang Büttner for the German Helsinki Committee for Human Rights, Security and Cooperation in Europe, December/January 2003.

<sup>2</sup> UN High Commissioner on Human Rights, "Reporting Status of Treaties. Overdue by Country," at [www.unhchr.ch/TBS/doc.nsf/newhvoverduebycountry?OpenView&Start=63&Count=15&Expand=66#66](http://www.unhchr.ch/TBS/doc.nsf/newhvoverduebycountry?OpenView&Start=63&Count=15&Expand=66#66); "Reporting Status of Treaties. Submitted by Country," at [www.unhchr.ch/TBS/doc.nsf/newhvsubmittedbycountry?OpenView&Start=62&Count=15&Expand=65.3#65.3](http://www.unhchr.ch/TBS/doc.nsf/newhvsubmittedbycountry?OpenView&Start=62&Count=15&Expand=65.3#65.3); "Status by Treaty. CAT-OP-Non State Parties," at [www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet](http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet); and "Status of Ratifications CRC-OP-AC," at [www.unhchr.ch/html/menu2/6/crc/treaties/status-opac.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/status-opac.htm); UN Committee on the Rights of the Child, "Second Periodic Reports of States Parties due in 1999. Germany", 24 July 2003, at [www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/32881780cf4f861cc1256e040035da4b/\\$FILE/G0343231.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/32881780cf4f861cc1256e040035da4b/$FILE/G0343231.pdf); *Frankfurter Allgemeine Zeitung*, "Kampagne gegen Diskriminierung," 17 June 2003.

the Chinese government to implement international human rights standards. A new Jewish Community Center was inaugurated in Munich to strengthen Jewish life in Germany.<sup>3</sup>

### **Torture, Ill-treatment and Police Misconduct**

The CPT published its report on Germany on 12 March 2003. During their visit to Germany, from 3 to 15 December 2000, the committee recorded allegations of the use of excessive force by police officers at the time of apprehension. Some detainees complained about blows and kicks after they had been restrained and placed on the ground.

Concerning fundamental safeguards against ill-treatment, the CPT criticized that criminal suspects apprehended by the police in cases of imminent danger (*bei Gefahr im Verzug*) did not have the formal right to inform a close relative or a third party of their choice until they were brought before a judge. Additionally, criminal suspects who were apprehended by the police did not have access to a lawyer from the moment of their arrest. As the risk of ill-treatment is highest immediately after apprehension, this lack of fundamental safeguards against police misconduct was worrisome.<sup>4</sup>

In 2003, several cases of ill-treatment and misconduct by law enforcement officials were pending in court. As there was no special representative for human rights in the Ministry of Interior, it was difficult to follow up on measures taken to investigate allegations of ill-treatment and police misconduct. Additionally, according to the German Section of Amnesty International, many cases of ill-treatment did not become public as criminal proceedings were expensive, chances of securing successful conviction remote and counter-charges because of civil disorder by the accused police officers widespread. Moreover, foreign nationals who were exposed to ill-treatment did often not know about their rights.<sup>5</sup>

- On 25 July, the District Court of Cologne found six police officers guilty of having beaten a 31-year-old man to death and gave them suspended sentences of up to one year and four months. Upon his arrest, the detainee had put up strong resistance and he had been ill-treated by police officers during transportation and while in detention. He fell into coma and died two weeks afterwards as a result of severe brain injuries.<sup>6</sup>
- At the Hamburg District Court, (*Amtsgericht*) three police officers were sentenced to a one-year suspended prison term. The judge concluded that the accused had ill-treated two undercover police officers during a demonstration in Hamburg in November 2002. The trial was overshadowed by the attempt of the minister of interior from Thuringia and a superior police officer to obstruct the proceedings.<sup>7</sup>

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<sup>3</sup> *Frankfurter Allgemeine Zeitung*, "Ich habe die richtigen Worte zur richtigen Zeit gesprochen," 15 September 2003 and "Ein großer Tag," 10 November 2003; Deutscher Bundestag, "Öffentliche Anhörung zum Thema Islamisches Recht und Menschenrechte," press release, 23 September 2003, at [www.bundestag.de/presse/presse/2003/pz\\_0309233.html](http://www.bundestag.de/presse/presse/2003/pz_0309233.html); *Süddeutsche Zeitung*, "Der Islam als Vorwand," 24 October 2003.

<sup>4</sup> CPT, *Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 15 December 2000*, Strasbourg 2003, p. 15-18 and 21-22, at [www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf](http://www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf).

<sup>5</sup> Amnesty International, *Back in the Spotlight. Allegations of Police Ill-treatment and Excessive Use of Force in Germany*, January 2004, at <http://web.amnesty.org/library/Index/ENGEUR230012004>.

<sup>6</sup> Amnesty International, *Concerns in Europe and Central Asia, January - June 2003. Germany*, June 2003, p. 32-33, at <http://web.amnesty.org/library/Index/ENGEUR010162003?open&of=ENG-DEU>; *Frankfurter Allgemeine Zeitung*, "Die Schläge waren nötig," 8 July 2003.

<sup>7</sup> *Frankfurter Allgemeine Zeitung*, "Codewort 'Mondlicht' schützte nicht," 19 July 2003 and "Immer Ärger mit Trautvetter," 22 December 2003; *Süddeutsche Zeitung*, "Alle für einen, drei auf zwei," 15 July 2003 and "Bewährungsstrafen für prügelnde Polizisten," 15 July 2003.

- In Stralsund, two police officers were sentenced to three years and three months imprisonment in July 2003 for taking a drunken homeless person to the outskirts of Stralsund in December 2002 and abandoning him there. The man was found dead one day later. He died as a result of severe hypothermia and alcohol poisoning. According to several police officers and witnesses it was common practice for the police to take drunken people to the outskirts of town and abandon them there.<sup>8</sup>

The CPT report also mentioned two cases of disproportional use of firearms. In 2002, firearms against suspected criminals were used 42 times which was a notable decrease from previous years (2001: 68; 2000: 52). Yet, six people died because of the use of firearms by police officers.<sup>9</sup>

In the spring, an intense public debate arose about whether any circumstances would justify the use of torture. On 1 October 2002, the Vice-President of the Frankfurt am Main police force, Wolfgang Daschner, ordered a subordinate police officer to threaten a criminal suspect with the use of force in order to make him reveal the whereabouts of a kidnapped boy. Although many German leading figures publicly and categorically objected to the use of torture, several prominent people, including the minister of justice, the prime minister of Hesse and the chairman of the German Association of Judges (*Deutscher Richterbund*) expressed understanding for Daschner. Investigations against him by the Public Prosecutor's Office in Frankfurt am Main were still pending as of the end of 2003.<sup>10</sup>

## Judicial System and Detainees' Rights

In the first trial linked to the terrorist attacks of 11 September 2001, in which the Higher Regional Court of Hamburg (*Oberlandesgericht*) gave the accused a 15-year prison sentence, criticism was voiced on the methods of taking evidence. The federal government refused to submit to the court reports on interrogations of two presumed supporters of the terrorist attacks who had been arrested and questioned in the United States and Syria. The defense complained that documents which might have exonerated the accused were withheld from the trial, and the judge acknowledged insufficiencies during the proceedings.<sup>11</sup>

The Federal Constitutional Court took under consideration a law which made it possible to extend the time in prison for convicted offenders shortly before their release if they posed a danger to the public and if this reservation was provided for in the offender's original sentence (*Sicherungsverwahrung*). The law focused mainly on sex offenders. Criticism was put forward that the rights of detainees would be restricted disproportionately because of two reasons: firstly, the new law affected current inmates retrospectively and would amount to double jeopardy, both in violation of

<sup>8</sup> *Frankfurter Allgemeine Zeitung*, "Kleine Meldungen," 28 June 2003 and "Kleine Meldungen," 10 July 2003; *Frankfurter Rundschau*, "Letzte Ausfahrt im Streifenwagen," 5 December 2003.

<sup>9</sup> Council of Europe, *Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 15 December 2000*, Strasbourg 2003, p. 15, at [www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf](http://www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf); Otto Diederichs, "Polizeiliche Todesschüsse 2002," in *Bürgerrechte und Polizei/CILIP* 75 (2003) 2, pp. 81-84.

<sup>10</sup> *Der Tagesspiegel*, "Folter in bestimmten Fällen erlaubt," 20 February 2003; *Frankfurter Allgemeine Zeitung*, "Der Staat im Notstand", 22 February 2003, "Koch: Daschners Verhalten menschlich sehr verständlich," 24 February 2003 and "Einiges deutet auf eine Anklage im Fall Daschner hin," 8 November 2003; *Süddeutsche Zeitung*, "Aus Menschlichkeit schmerzen angedroht," 24 February 2003 and "Ermittlung gegen Polizeipräsidenten," 30 July 2003; Deutscher Bundestag, "Menschenrechtsausschuss: Folterverbot gilt absolut," press release, 13 March 2003, at [www.bundestag.de/presse/presse/2003/pz\\_030313.html](http://www.bundestag.de/presse/presse/2003/pz_030313.html); Amnesty International, *Concerns in Europe and Central Asia, January - June 2003. Germany*, June 2003, pp. 32-33, at <http://web.amnesty.org/library/Index/ENGEUR010162003?open&of=ENG-DEU>; Heiner Busch, "Rechtsstaatlich geregelte Folter?" in *Bürgerrechte und Polizei/CILIP*, 70 (2003) 1, pp. 62-67; Michael Maier-Borst, "Verletzung des Folterverbots durch Polizeibeamte," in *Menschenrechte 2004*, Frankfurt/M 2003, p. 264-271.

<sup>11</sup> *Süddeutsche Zeitung*, "Richter im Rampenlicht," 19 February 2003 and "Urteil im Motassadeq-Prozess," 20 February 2003.

international law. Secondly, the proportionality of further imprisonment was questioned in light of the difficulty to judge an inmate's dangerousness upon release during his time in prison. The judgment of the Federal Constitutional Court was still pending at the year's end.<sup>12</sup>

The debate on extended imprisonment of sex offenders was highly emotional. Its supporters proposed that it should be possible to keep sex offenders incarcerated after serving a sentence even without a reservation in their original verdict. In addition, the prime minister of Saarland initiated a debate on forced castration of sex offenders.<sup>13</sup>

## Prisons and Detention Facilities

Prisons in Germany were overcrowded and corrections officials were overloaded. Although the overall official capacity of the prison system increased in 2003, the number of inmates increased as well. The latest statistics in Berlin from October 2003 confirmed the problem: the number of inmates was 5,212 while the official prison capacity was 4,958. The proposal by the minister of justice of Lower Saxony to deny the right of prisoners to be accommodated in a single-cell due to lack of space was in contradiction to the repeated request of the Federal Constitutional Court to ensure accommodation for prisoners in accordance with human rights standards.<sup>14</sup>

Material conditions of detention facilities in police establishments were sometimes poor or even very poor. The CPT reported that during its visit to Frankfurt am Main in 2000, its representatives had visited dirty, dilapidated or badly ventilated and/or lit cells. Moreover, the cells were often too small: for example, two people were held in a 2.8 m<sup>2</sup> cell. In addition, mattresses, blankets and basic hygiene products were lacking.<sup>15</sup>

In April, the Public Prosecutor's Office in Potsdam started investigations against nine penitentiary officials who were suspected of having forced inmates to work for them privately without paying them. The cost of material used was not even reimbursed.<sup>16</sup>

Cases of suicide in German prisons gave reason for concern:<sup>17</sup>

- The Petitions Committee of the Chamber of Deputies in Berlin (*Berliner Abgeordnetenhaus*) received a petition from a mother who complained about the death of her 19-year-old son, who had committed suicide shortly after having been sent to prison. Although the young man

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<sup>12</sup> Thomas Feltes, "Prognosen sind heikel," in *Frankfurter Rundschau*, 21 July 2003; Jörg Kinzig, "Verhältnismäßigkeit fraglich," in *Frankfurter Rundschau*, 21 July 2003; Bundesverfassungsgericht, "Informationen zur mündlichen Verhandlung zur Sicherungsverwahrung," press release, 2 October 2003, at <http://www.bverfg.de/cgi-bin/link.pl?presse>; *Frankfurter Allgemeine Zeitung*, "Karlsruhe prüft Sicherungsverwahrung," 21 October 2003; *Süddeutsche Zeitung*, "Eine Prognose mit Langzeitwirkung," 22 October 2003.

<sup>13</sup> *Das Parlament*, "Kontrovers über nachträgliche Sicherungsverwahrung," 24 February 2003; *Die Zeit*, "Einschneidende Maßnahmen," 13 March 2003.

<sup>14</sup> Bund der Strafvollzugsbediensteten Deutschlands, "Strafvollzugsbedienstete gehen auf dem Zahnfleisch. BSBD kritisiert verheerende Arbeitsbedingungen im Strafvollzug," press release, 16 May 2003, at <http://www.bsbd.de>; *Tagesspiegel*, "Gefängnisse voll: Haft-Rabatt für Straftäter," 21 August 2003 and "Mehrere Gefangene in nur einer Zelle?" 27 August 2003; *Frankfurter Rundschau*, "16 Quadratmeter Hannover," 1 October 2003; Council of Europe, *Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 15 December 2000*, Strasbourg 2003, p. 36, at <http://www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf>; Senatsverwaltung für Justiz, "Die Justizvollzugsanstalten," at [http://www.berlin.de/SenJust/Justizvollzug/allg\\_hinweise.html](http://www.berlin.de/SenJust/Justizvollzug/allg_hinweise.html).

<sup>15</sup> Council of Europe, *Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 15 December 2000*, Strasbourg 2003, p. 19-20, at <http://www.cpt.coe.int/documents/deu/2003-20-inf-eng.pdf>.

<sup>16</sup> *Tagesspiegel*, "Gefängniskandal: Wärter suspendiert," 23 April 2003.

<sup>17</sup> *Tagesspiegel*, "Strafgefangener nahm sich das Leben," 25 April 2003; *Berliner Zeitung*, "Gefangener erhängt sich in Vollzugsanstalt," 5 November 2003.

had threatened to commit suicide if imprisoned, it was not clear whether the responsible police officer had forwarded this information to the penitentiary officials. Additionally, the investigation by the Committee was delayed because a court official failed to reply to the Committee's questions for one year and finally gave false evidence.<sup>18</sup>

## Right to Privacy

On the pretext of stepping up crime prevention and security measures, the right to privacy and the protection of individual freedom were restricted and police powers were expanded. Moreover, the Lower House of Parliament failed to pass a law granting every citizen the right to inspect his/her records.<sup>19</sup>

The police and the Federal Border Police were vested with extensive rights to control and monitor terrorist suspects. The methods that were used, such as screening and empowering the police to check and compare personal data registered in electronic databases (*Rasterfahndung*), were hardly successful. The right of the Federal Border Police to carry out inspections without any suspicion on trains and at railway stations and airports all over the country was extended by the Lower House of Parliament.<sup>20</sup>

Hesse's government planned to extend the rights of the police in three ways: by giving them the right to search suspects by means of DNA testing, by allowing them to use the 'IMSI-Catcher' to localize mobile phones and by permitting a deliberate fatal shot. In Rhineland-Palatinate, a bill was launched to allow video-surveillance of public locations, to use screening methods not only in the fight against terrorism but also in the fight against organized crime and to tap telephones to prevent criminal activities. The latter measure was adopted as law in Lower Saxony, and the parliaments of Bavaria, Hamburg and Saarland were discussing the topics.<sup>21</sup>

Phone tapping remained a serious problem, with the number of intercepted calls increasing from 4,674 in 1995 to 21,874 in 2002. Yet, this number did not contain telephone tapping by the Federal German Intelligence Service (*Bundesnachrichtendienst*). According to a report by the Max-Planck-Institute for Foreign and International Criminal Law, existing laws were often not applied adequately. For example, police failed to inform individuals about their tapped phone calls following interception, and many examining magistrates checked requests for phone tapping only superficially.<sup>22</sup>

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<sup>18</sup> *Berliner Zeitung*, "Ausschuss will Justizsenatorin vorladen," 14 August 2003.

<sup>19</sup> Datenschutzzentrum, "Engagement für mehr Informationsfreiheit in Deutschland," press release, 16 December 2003; Karin Wenk, "Bürgerrecht - kein Gnadenrecht," in *"M" - Menschen machen Medien* 11 (2003), at [http://www.verdi.de/0x0ac80f2b\\_0x00396b8c](http://www.verdi.de/0x0ac80f2b_0x00396b8c); Jürgen Kühling, "Das Ende der Privatheit," in *Grundrechte-Report 2003*, Hamburg 2003, pp. 15-23.

<sup>20</sup> *Frankfurter Rundschau*, "Viel Aufregung um schwache Ergebnisse," 4 June 2003 and "Grenzschrützer behalten erweiterte Kontrollrechte," 15/16 November 2003; *Süddeutsche Zeitung*, "Kontrollen erlaubt," 15/16 November 2003, "Wir haben es mit lauter Biedermännern zu tun," 1 December 2003 and "Ein Schleier über Deutschland," 16 December 2003; *Datenschutz Nachrichten*, "BKA: Rasterfahndung hat nichts gebracht," 2 (2003).

<sup>21</sup> *Süddeutsche Zeitung*, "Vom Kursverfall der Pressefreiheit," 3/4 Mai 2003, "Mainz schafft Grundlage für Video-Überwachung," 25 June 2003 and "Abhören ohne Verdacht," 11 December 2003; *Frankfurter Rundschau*, "Hessen plant mehr Rechte für Polizei," 20 November 2003.

<sup>22</sup> Max-Planck-Institut für ausländisches und internationales Strafrecht, *Rechtswirklichkeit und Effizienz der Überwachung der Telekommunikation nach den §§ 100a, 100b StPO und anderer verdeckter Ermittlungsmaßnahmen*, Freiburg i.Br. May 2003, at <http://www.bmj.bund.de/images/11600.pdf>; *Süddeutsche Zeitung*, "Gutachten zur Telefonüberwachung," 16 Mai 2003; Bundesbeauftragter für den Datenschutz, *Tätigkeitsbericht 2001 und 2002 des Bundesbeauftragten für den Datenschutz*, at <http://www.bfd.bund.de/information/19tb0102.pdf>; Otto Backes und Cristoph Gusy (eds), *Wer kontrolliert die Telephonüberwachung? Eine empirische Untersuchung zum Richtervorbehalt bei der Telephonüberwachung*, Bielefeld 2003.

In March, the Federal Constitutional Court ruled that tapping journalists' phones would be legal if it helped prevent serious crimes. Yet, at the same time, the court regarded tapping journalists' phones as a restriction of the freedom of the press. So it required the examining magistrates' consent on the procedure and insisted that the magistrates investigate every request in detail.<sup>23</sup> Critics noted that apartment tapping was hardly effective, that the affected were informed insufficiently, and that the term "organized crime," which was the keyword to allow apartment tapping, was not appropriately defined.<sup>24</sup>

Video monitoring of public places became widespread to combat terrorism and other crimes. After a bomb was found at the railway station in Dresden in June, public debate emerged on various strategies, including the possible monitoring of airports, railway stations and ports. Video-surveillance of apartments, police monitoring of car number plates, and the storage of such information at the Federal Criminal Office were also controversial. In Freiburg, video cameras were used to monitor collective changing rooms of swimming pools to prevent theft until the data protection commissioner intervened. The opponents of video-monitoring criticized that, in addition to jeopardizing the right to privacy, extensive video monitoring could result in violations of fundamental rights, such as the right to demonstrate, and that it just transferred crimes to other locations rather than prevented them.<sup>25</sup>

### **Intolerance, Xenophobia and Racial Discrimination**

Germany failed to meet international standards to counter racial discrimination. It did not incorporate the EU Directives on Racial Equality (2000/43/EC) and Employment Equality (2000/78/EC) into national legislation. These directives were meant help fight racially and ethnically motivated discrimination in the fields of educational and social rights. In addition, Germany failed to submit two reports under article 9.1 of the Convention on the Elimination of Racial Discrimination, due since June 2000 and June 2002 respectively.<sup>26</sup>

Anti-Semitism and xenophobic comments in public debates caused concern. A deputy of the Lower House of Parliament was excluded from the Christian Democratic Union (CDU) after he delivered a speech with anti-Semitic elements on 3 October 2003, the German Day of National Unification. He was not only supported by a high-ranking general in the army who was dismissed shortly afterwards but also by a considerable number of German people.<sup>27</sup>

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<sup>23</sup> Bundesverfassungsgericht, "Zur richterlich angeordneten Auskunft über Verbindungsdaten der Telekommunikation im Rahmen der Strafverfolgung," press release, 12 March 2003, at <http://www.bverfg.de/cgi-bin/link.pl?presse>; *Süddeutsche Zeitung*, "Polizei darf Telefondaten von Journalisten abfragen," 13 March 2003.

<sup>24</sup> Bundesverfassungsgericht, "Informationen zur mündlichen Verhandlung zum Verfahren 'Großer Lauschangriff'," press release, 6 June 2003, at <http://www.bverfg.de/cgi-bin/link.pl?presse>; *Süddeutsche Zeitung*, "Der Staat im Schlafzimmer," 1 July 2003 and "Ein einziger Mord aufgeklärt," 1 July 2003; *Frankfurter Allgemeine Zeitung*, "Der schmale Zipfel des Lauschangriffs," 2 July 2003.

<sup>25</sup> Bernd Walter, "Checkliste: Videoüberwachung," in *Deutsches Polizeiblatt* 1 (2003), p. 35; *Heise Online News*, "Bürgerrechtler gegen Videoüberwachung," 6 June 2003, at <http://www.heise.de/newsticker/data/anw-06.06.03-004/>; *Tagesspiegel*, "Union fordert mehr Videoüberwachung," 6 June 2003 and "Schily will Bahnhöfe besser überwachen lassen," 14 June 2003; *Berliner Zeitung*, "Leichter Rückgang der Organisierten Kriminalität," 24 June 2003; *Das Parlament*, "Videoanlagen an allen gefährdeten Orten," 7 July 2003; *Frankfurter Rundschau*, "Big Brother darf beim Umziehen nicht zuschauen," 4 December 2003; *Süddeutsche Zeitung*, "Digitale Dauerfahndung," 29 December 2003.

<sup>26</sup> European Commission, "For Diversity - Against Discrimination: Diamatopoulou acts to boost awareness of new EU anti-discrimination rules," press release, 16 June 2003, at [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=IP/03/840|0|AGED&lg=EN&display=](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/840|0|AGED&lg=EN&display=); *Frankfurter Allgemeine Zeitung*, "Kampagne gegen Diskriminierung," 17 June 2003; UN High Commissioner on Human Rights, "Reporting Status of Treaties. Overdue by Country," at <http://www.unhchr.ch/TBS/doc.nsf/newhvoerduebycountry?OpenView&Start=63&Count=15Expand=66#66>.

<sup>27</sup> *Süddeutsche Zeitung*, "Struck entlässt Chef der Eilte-Einheit KSK," 5 November 2003 and "Hohmann-Günzel-Affäre," 6 November 2003; *Frankfurter Allgemeine Zeitung*, "Hohmann ist kein Einzelfall," 6 November 2003; *Frankfurter Rundschau*, "Angriff gegen Muslime," 8 November 2003.

According to a survey by the University Bielefeld, almost 52 % of the German population supported anti-Semitic attitudes and almost 22 % were convinced that Jews living in Germany were too influential. These attitudes were not only supported by adherents to right-wing political parties but also by people who identified themselves with moderate or left-wing parties.<sup>28</sup>

Moreover, several offences against Jewish institutions were reported: for example, graveyards were desecrated and memorial places destroyed.<sup>29</sup> The threat by extreme right-wing groups became obvious when in September, plans by an extremist group were uncovered to blast an explosive device during the inauguration of a Jewish community center in Munich. Further investigation revealed that the group had also planned to attack a high-ranking Bavarian politician.<sup>30</sup>

Offences by right-wing extremists, including indiscriminate acts of violence, continued.

- In Frankfurt/Oder, three extremists forced their way into a private apartment and fatally beat a 25-year-old man they did not know; in Schwandorf, a right-wing extremist kicked a Nigerian national brutally after having shouted "Heil Hitler!"; in Munich an African-American US-national was attacked and insulted by 11 skinheads.<sup>31</sup>
- After a five-month trial, the District Court (*Landgericht*) Neuruppin ruled on the murder of a 16-year-old boy who was brutally ill-treated and killed in July 2002. The three right-wing extremists who attacked him because of his clothes and dyed hair, kicked him, tortured him to death and dumped his body into a cesspool. The accused received prison sentences up to 15 years.<sup>32</sup>

The Federal Constitutional Court suspended legal proceedings to ban the right-wing extremist party NPD (*Nationale Partei Deutschlands*). The court complained that it had not been informed in a timely manner by the federal government that an NPD-official who had been called as a witness was an undercover agent of the Federal German Intelligence Service. The court noted that, should the charges be taken up again, the names of undercover agents on the NPD board should be revealed to it and their activities should be stopped before and during legal proceedings. The case had been filed by the federal government together with both houses of the German parliament. Critics pointed out that the suspension of the trial would step up support for the NPD.<sup>33</sup>

Despite the setback in the NPD case, police and courts proceeded against extreme right-wing groups. In October, the police arrested leading members of the group, Combat-18. Combat-18 was involved in arms-trade between extremist groups, planned attacks on politicians and was under

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<sup>28</sup> *Frankfurter Rundschau*, "Hat der Antisemitismus die Mitte erreicht?" 23 December 2003; *Süddeutsche Zeitung*, "Die Hemmschwelle sinkt," 12 December 2003; Universität Bielefeld - Institut für interdisziplinäre Konflikt- und Gewaltforschung, "Feindselige Mentalitäten in Deutschland," at <http://www.uni-bielefeld.de/Universitaet/Einrichtungen/Zentrale%20Institute/IWT/FWG/Feindseligkeit/Antisemitismus.html>.

<sup>29</sup> *Frankfurter Rundschau*, "Jude in Berlin geohrfeigt," 25 March 2003 and "Jüdischer Friedhof in Kassel geschändet," 19 August 2003; *Berliner Zeitung*, "Hetzplakate gegen Juden in KZ-Gedenkstätte," 30 July 2003; *Süddeutsche Zeitung*, "Unbekannte zerstören jüdisches Mahnmahl," 10 November 2003 and "Jüdisches Denkmal zerstört," 18 November 2003.

<sup>30</sup> *Süddeutsche Zeitung*, "Neonazis planen Bombenanschlag mit TNT," 11 September 2003, "Terror der Neonazis," 13/14 September 2003 and "SPD-Spitzenkandidat Maget im Visir der Neonazis," 16 September 2003; *Frankfurter Allgemeine Zeitung*, "Maget im Visir der Rechtsextremisten," 16 September 2003.

<sup>31</sup> *Tagesspiegel*, "Rechtsradikaler tritt Nigerianer," 22 July 2003 and "Mordanklage gegen rechte Schläger," 27 August 2003; *Tageszeitung*, "Mordanklage gegen rechte Schläger," 27 August 2003; *Frankfurter Rundschau*, "Skinheads greifen einen Ausländer an," 15 September 2003.

<sup>32</sup> *Frankfurter Allgemeine Zeitung*, "Ich hab schon einen umgebracht," 25 October 2003; *Süddeutsche Zeitung*, "Hohe Haftstrafe für die Peiniger von Marinus S.," 25/26 October 2003.

<sup>33</sup> *Süddeutsche Zeitung*, "Alte Kameraden," 18 March 2003, "Das große Schweigen in Karlsruhe," 18 March 2003 and "NPD-Verbotsverfahren in Karlsruhe gescheitert," 19 March 2003; Marek Schauer, "Zweilichtige Provokateure," in *Grundrechte-Report 2003*, Hamburg 2003, pp. 139-142.

suspicion of having desecrated a Jewish graveyard. In December, the Supreme Court of Justice Berlin (*Kammergericht*) sentenced the songwriter of the Neo-Nazi band, Landser, to three years and four months in prison for incitement to violence against Jews and foreigners and for defamation of the Constitution. Other members of the group received suspended sentences.<sup>34</sup>

While civil society programs to combat right-wing extremism were considered useful, public funding was very limited and only allowed short-term action. For example, the Miteinander association, which established a network for democracy and tolerance, was due to be dissolved in April 2004 because of a lack of public funding. Permanent networks between young people, their parents and teachers to fight right-wing extremism could not be established. Additionally, there was no proper evaluation mechanism for such programs. In a similar vein, governmental programs aimed at promoting tolerance also lacked solid funding.<sup>35</sup>

German right-wing extremists increasingly used the Internet to spread their ideas. Already in 2002, there were about 1,000 Internet pages maintained by German right-wing extremists and it appeared that their number was on a steady rise. The web was not only used to inform on current events but also to co-ordinate meetings, mobilize adherents and recruit new members, especially young people.<sup>36</sup>

On the positive side, the government signed a treaty with the Central Organisation of the Jews (*Zentralrat der Juden*) to consolidate and promote Jewish life in Germany. The Lower House of Parliament passed a resolution on 11 December in which it condemned anti-Semitism and welcomed plans to organize an OSCE conference on anti-Semitism in Berlin in 2004.<sup>37</sup>

### Asylum Seekers

In 2003, 50,563 individuals sought political asylum in Germany, a decrease of 28.9% from the year 2002 and the lowest number since 1984. Most asylum seekers came from Turkey, Serbia and Montenegro, and Iraq. Asylum was granted to 1.6% of all applicants; 68.8% of all asylum applications were rejected.<sup>38</sup>

The Ministry of Interior in Hamburg planned to deport Afghan refugees to their home-country in spring 2004. Although there was no proper legal system in Afghanistan, armed conflicts were still

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<sup>34</sup> *Süddeutsche Zeitung*, "Ausländerhass propagiert," 25 June 2003 and "Razzia gegen Neonazis," 29 October 2003; *Frankfurter Allgemeine Zeitung*, "Kleine Meldungen," 4 November 2003 and "Rechtsextreme Musiker verurteilt," 23 December 2003.

<sup>35</sup> *Frankfurter Allgemeine Zeitung*, "Viel Geld mit wenig Wirkung," 2 January 2003; *Tagesspiegel*, "Miteinander vor dem Aus," 30 January 2003 and "Nicht effizient genug," 9 March 2003; *Frankfurter Rundschau*, "Kampf gegen Rechtsextremismus ist der CDU/CSU keinen Euro wert," 11 February 2003 and "Kritiker zweifeln an der Effizienz von Xenos," 23 April 2003; *Süddeutsche Zeitung*, "Sparen gegen Rechts," 3/4 May 2003; Roland Roth, Anke Benack, *Bürgernetzwerke gegen Rechts. Evaluierung von Aktionsprogrammen und Maßnahmen gegen Rechtsextremismus und Fremdenfeindlichkeit*, Bonn 2003, at [http://www.fes.de/index\\_infoon\\_line.html](http://www.fes.de/index_infoon_line.html); cf. <http://www.xenos-de.de>, <http://www.entimon.de> and <http://www.miteinander-ev.de>.

<sup>36</sup> Bundesministerium für Familie, Senioren, Frauen und Jugend, "Zunahme rechtsextremer Internetseiten Besorgnis erregend," press release, 19 May 2003, at [http://www.bmfsfj.de/Kategorien/Presse/pressemitteilungen\\_did=6226.html](http://www.bmfsfj.de/Kategorien/Presse/pressemitteilungen_did=6226.html); *Frankfurter Allgemeine Zeitung*, "Mehr rechtsextreme Seiten im Internet," 20 May 2003.

<sup>37</sup> *Frankfurter Allgemeine Zeitung*, "Staatsvertrag mit dem Zentralrat der Juden," 28 January 2003 and "Bundestag verurteilt Antisemitismus," 12 December 2003; *Süddeutsche Zeitung*, "Jüdische Gemeinde und christliche Kirche gleichberechtigt," 28 January 2003; Deutscher Bundestag, "Antrag: Antisemitismus bekämpfen," Drucksache 15/2164, 10 December 2003, at <http://dip.bundestag.de/btd/15/021/1502164.pdf> and "Antrag: Für eine OSZE-Antisemitismuskonferenz 2004 in Berlin," Drucksache 15/2166, 10 December 2003, at <http://dip.bundestag.de/btd/15/021/1502166.pdf>.

<sup>38</sup> Bundesministerium des Inneren, "Schily: Asylbewerberzahlen 2003 auf niedrigstem Stand seit 1984," press release, 16 January 2004, at <http://www.bmi.bund.de>.



widespread and human rights violations were commonplace, the Conference of the Ministers of the Interior supported the plan.<sup>39</sup>

With respect to European negotiations on the right to asylum, the government belatedly accepted, in March 2003, that victims of non-state persecution should be regarded as refugees, a status not legally guaranteed on the national level. Yet, a negative step was taken when the German government pushed through its proposition to allow children to reunite with their family only until the age of 12 while other European countries favored a higher age limit.

In addition, Germany supported the idea proposed in EU negotiations of sending refugees back to “safe third countries” even if they had not acceded to the European Convention on Human Rights (ECHR) and the Geneva Convention on Refugees. Countries such as Belarus and Moldova could be included in the list of “safe third countries.” The new regulation would diminish the national standards of the right to asylum in Germany. The list of “third safe countries” will be adopted by the EU Council with a qualified majority vote; the European Parliament will be the only one consulted and national parliaments will have no influence on the list at all.<sup>40</sup>

On the national level, the main problems encountered by asylum seekers in Germany included an inadequate asylum procedure, the deportation of rejected applicants, the poor treatment of victims of torture and the unsure status of minor asylum seekers. As the Federal Constitutional Court had overturned a new immigration law because of errors in the voting process and as the two houses of the federal parliament could not agree to vote on the law again, necessary improvements in the protection of refugees remained overdue.<sup>41</sup>

#### *Asylum Procedure*

German legislation did not provide asylum on grounds of persecution by non-state actors or sexual violence, and laws on refugees remained in contravention of the Geneva Convention and article 3 of the ECHR (prevention of torture and ill-treatment). In addition, special regulations for hardship cases were not implemented. The legal status of rejected asylum seekers, those who were not granted political asylum but could not return to their home country, was not sufficiently regulated (“*Duldung*”). In 2003, approximately 100,000 people without permanent right to stay had been living in Germany for more than seven years, many in poor conditions and without any prospect for the future. Moreover, during the procedure, asylum seekers were not always sufficiently informed about their rights and did not have adequate access to legal counsel.<sup>42</sup>

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<sup>39</sup> *Süddeutsche Zeitung*, “Hamburg will Afghanen abschieben,” 20 November 2003, “Der Staat will Härte zeigen,” 21 November 2003 and “Beckstein für schärfere Gesetze,” 22/23 November 2003.

<sup>40</sup> *Frankfurter Allgemeine Zeitung*, “Einigung in der EU über Familienzusammenführung,” 28 February 2003 and “Kritik an geplanten EU-Flüchtlingsregeln,” 1 October 2003; Pro Asyl, “Europäisches Asylrecht: Deutschland zieht Vorbehalt zur nicht-staatlichen Verfolgung zurück,” press release, 5 March 2003, at <http://www.proasyl.de/presse03/mar05.htm> and “Verfassungsminister Schily verhandelt auf EU-Ebene am Grundgesetz vorbei,” press release, 10 November 2003, at <http://www.proasyl.de/presse03/nov10.htm>; cf. Amnesty International, “Stellungnahme zum aktuellen Entwurf einer Richtlinie zur Regelung des Asylverfahrens auf europäischer Ebene,” 20 September 2003, at <http://www2.amnesty.de/internet/Gutachte.nsf/AlleDok/1900CE12BF4B8367C1256E00004F026F?Open> and “Deutsches und europäisches Asylrecht am Scheideweg - Flüchtlingsschutz europaweit stärken,” press release, 30 September 2003, at <http://www2.amnesty.de/C1256A380047FD78/0/FA0D092C3850D2F3C12556DB10030B4C3?Open>; Statewatch, “EU law on asylum procedures: An assault on human rights?” 19 November 2003, at <http://www.statewatch.org/news/index.html>.

<sup>41</sup> *Bundesgesetzblatt*, “Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern,” 38 (2002), 25 June 2002, at <http://217.160.60.235/BGBL/bgb11f/BGBL102038s1946.pdf>; *Süddeutsche Zeitung*, “Union lehnt auch Kompromissvorschlag der FDP ab,” 14 March 2003; *Frankfurter Allgemeine Zeitung*, “Verhandlungen zum Einwanderungsgesetz vertagt,” 6 December 2003.

<sup>42</sup> *Süddeutsche Zeitung*, “Letzter Versuch,” 24 September 2003 and “Beck fordert Regelung für geduldete Ausländer,” 23 October 2003; Amnesty International, Arbeiterwohlfahrt Bundesverband et al., “Gemeinsames Positionspapier zum Entwurf eines Zuwanderungsgesetzes,” 13 February 2003, at

The work of asylum officers caused concern:

- In Cloppenburg, an asylum officer faked the place of birth and the address of a rejected African asylum seeker to make his deportation possible. Yet, neither Ivory Coast, the country where the asylum seeker was born, nor Mali, where his parents came from, were willing to receive him. An asylum officer asked the embassy of the Republic of Congo to issue the asylum seeker a Congolese passport. In agreement with the embassy, personal data of the asylum seeker was tampered with so as to issue him a passport. The Court of Lay Assessors (*Schöffengericht*) acquitted the official of any guilt as he had not tried to deceive the embassy, but the embassy had recommended him to provide it with fictitious data.<sup>43</sup>
- In Trier, several Chinese nationals who were due to be deported, were interrogated by Chinese officials on 19 June. The interrogation, which was supposed to confirm the nationality of the interrogated, took place outside any control by German police officers. One of the affected complained that he had been insulted and ill-treated by the Chinese officials. The minister of the interior of Rhineland-Palatinate confirmed that this kind of interrogation, to determine deportees' identity, was common practice in consular affairs. The Public Prosecutors Office suspended the judicial proceedings as German officials had not been present during the interrogation.<sup>44</sup>

The airport asylum procedure continued to raise concern. All asylum seekers who arrived in Germany by plane were obliged to stay at the airport while awaiting a decision on their application. The airport asylum procedure did not provide for the decision-makers to have personal interviews with the asylum seekers and legal advice was provided only after the asylum seeker's application was rejected. Even children and traumatized people had to undergo this procedure.<sup>45</sup>

The daily life of asylum seekers was restricted as they were not allowed to leave their administrative district without permission (*Residenzpflicht*). The law concerning providing them with goods was very restrictive (*Asylbewerberleistungsgesetz*). The need for medical care was in some cases hardly fulfilled and housing in collective camps was a psychological and physical burden. Moreover, it was not obligatory to give refugees legal advice on the asylum procedure.<sup>46</sup>

### *Deportation*

Pre-deportation custody remained a problem. Detainees were held for up to 18 months and they often had no, or very limited, access to legal advice.<sup>47</sup> In its report from March 2003, the CPT noted allegations of the use of excessive force against foreign nationals and the use of sedatives by police officers and the Federal Border Police when removal orders were executed, methods which went beyond acceptable measures.

In June, the deportation of 60 people to Kosovo failed because the United Nations Mission in Kosovo (UNMIK) did not give the airplane permission to land and it had to return to Germany.

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<http://www2.amnesty.de/internet/Gutachte.nsf/abfa3d9860847807c1256aa3004afabc/7145e3e053b320c0c1256d3a0030f45c?OpenDocument>.

<sup>43</sup> *Frankfurter Rundschau*, "Pro Asyl rügt richterlichen Freibrief zum Aktenfälschen," 5 September 2003.

<sup>44</sup> Pro Asyl, "Skandal in rheinland-pfälzischer Abschiebungsbehörde," press release, 4 August 2003, at <http://www.proasyl.de/presse03/aug04.htm> and "Skandal in rheinland-pfälzischer Abschiebungsbehörde," press release, 15 August 2003, at <http://www.proasyl.de/presse03/aug15.htm>.

<sup>45</sup> Amnesty International, Arbeiterwohlfahrt Bundesverband et al., op.cit.

<sup>46</sup> *Frankfurter Rundschau*, "Erleichterung für Flüchtlinge erwogen," 14 January 2003; Amnesty International, Arbeiterwohlfahrt Bundesverband et al., op.cit.; Pro Asyl, "Ein ganzes Leben im Flüchtlingslager?" press release, 22 October 2003, at <http://www.proasyl.de/presse03/okt22.htm> and "1 November 2003: Zehn Jahre Asylbewerberleistungsgesetz," press release, 31 October 2003, at <http://www.proasyl.de/presse03/okt31.htm>.

<sup>47</sup> Amnesty International, Arbeiterwohlfahrt Bundesverband et al., op.cit.

Among the passengers were members of ethnic minorities whose deportation should have been individually examined in Germany and the results should have been communicated to UNMIK.<sup>48</sup>

### *Victims of Torture*

The Federal Constitutional Court ruled that German authorities were allowed to deport asylum seekers to countries in which torture was used. Yet, each case had to be examined separately to ensure protection of the deportee against torture. The court decided that it was safe to deport an Indian national who had allegedly committed a fraud in India to his country of origin despite the fact that Indian police was known to use torture during interrogations.<sup>49</sup>

In August, the UN Committee Against Torture (CAT) declared an individual appeal filed from Germany admissible for the first time. The CAT ruled in favor of the appeal of a Turkish Kurd who had applied for asylum in Germany in 1991 claiming that he had been tortured by the Turkish police. His initial application and final appeal were turned down. He appealed to the UN committee after he was informed that he should be deported in December 2002. CAT stated that the deportation of the asylum seeker to Turkey would put the applicant in danger of being tortured. The asylum seeker remained in Germany while his case was pending before the CAT.<sup>50</sup>

Medical doctors and psychologists demanded better medical treatment and better living conditions for victims of torture and ill-treatment during the asylum procedure. As the duration of an applicant's stay was mostly uncertain, long-term therapies were not possible. In addition, the prohibition to work and living in collective camps caused psychological deterioration of the traumatized asylum seekers.<sup>51</sup>

### *Minor Asylum Seekers*

Germany's reservation to the UN Convention on the Rights of the Child upon ratification in 1992 remained in force throughout 2003. According to the reservation, German asylum legislation was not be affected by the provisions of the convention and children older than 16 fell under the adult asylum procedure. Contrary to article 2 of the UN convention, minor refugees were discriminated against in comparison with non-refugees; contrary to article 3, the government did not grant the unrestricted wellbeing of all children in Germany; and contrary to article 22, Germany did not grant special protection to minor asylum seekers. The UN Commission for the Right of the Child had already complained about the reservation in 1995. During the asylum procedure, minor refugees were subjected to the airport asylum procedure and were not entitled to adequate health care, education or pedagogical support.<sup>52</sup>

Living conditions of child soldiers who sought asylum in Germany underlined the shortcomings of the German asylum procedure for minors. Child soldiers were not accepted as asylum seekers as they were regarded as deserters and therefore needed an additional political reason to be granted asylum. They were allowed to stay in Germany, but only for a restricted period of time. The integration of minors proved to be very difficult as their school education was limited and the uncertainty of their length of stay added to their psychological problems. Those who were older than 16 were placed with adult refugees in collective camps and were not assigned individual guardians. Moreover, Germany

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<sup>48</sup> Pro Asyl, "Kosovoabschiebung: Absprache mit UNMIK verletzt," 20 June 2003, at <http://www.proasyl.de/presse03/jun30.htm>.

<sup>49</sup> Bundesverfassungsgericht, "Entscheidung vom 24.06.2003," 2 BVR 685/03, 24 June 2003, at <http://www.bverfg.de/cgi-bin/link.pl?entscheidungen>; *Süddeutsche Zeitung*, "Abschiebung auch bei Folter Drohung," 23 July 2003.

<sup>50</sup> Pro Asyl, "Individual Appeal to United Nations Committee Against Torture by asylum seeker in Germany declared admissible for first time," press release, 12 June 2003, at <http://www.proasyl.de/presse03/jun12.htm>.

<sup>51</sup> *Süddeutsche Zeitung*, "Nicht mehr heimisch in der Welt," 6/7 September 2003.

<sup>52</sup> UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Germany*, November 1995, at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.43.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.43.En?OpenDocument); Pro Asyl, "Weltkindertag am 10. September 2003," press release, 18 September 2003, at <http://www.proasyl.de/presse03/sep18.htm>.

did not ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2003.<sup>53</sup>

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<sup>53</sup> Terre des hommes, "UN-Zusatzprotokoll gegen den Einsatz von Kindersoldaten endlich ratifizieren!" press release, 24 June 2003, at <http://www.oneworldweb.de/tdh/presse/p0178.html> and "Ehemalige Kindersoldaten als Flüchtlinge in Deutschland," October 2003, at [http://www.oneworldweb.de/tdh/materialien/files/studie\\_kindersoldaten.pdf](http://www.oneworldweb.de/tdh/materialien/files/studie_kindersoldaten.pdf); *Frankfurter Rundschau*, "Vom Elend der Kindersoldaten," 20 November 2003.