

Germany

IHF FOCUS: torture, ill-treatment and police misconduct; detainees' rights and conditions in detention facilities; right to privacy; intolerance, xenophobia and racial discrimination; asylum seekers; rights of the child; arms trade.

The human rights situation in Germany in 2002 showed some improvements but also gave rise to serious concern. Ill-treatment by the police remained worrisome and the restrictions on detainees' rights and living conditions in prisons fell short of international human rights standards. Anti-terrorist activities curtailed the right to privacy and xenophobia and racial discrimination were prominent.

Furthermore, continued violations of international standards concerning children's rights remained a serious problem. Finally, Germany failed to submit reports in accordance with international human rights conventions; the obligatory reports under the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) were overdue.¹

Notwithstanding, human rights received much political attention. The German government published its sixth *Report on Human Rights* on 7 June,² increased its efforts to fight against racial discrimination and xenophobia³ and founded the Centre for Peace Operations in Berlin.⁴ The German parliament passed a new law granting equal rights to handicapped people on May 1.⁵ Additionally, the Committee on Human Rights and Humanitarian Assistance of the Lower House of Parliament was highly active in putting forward a motion for the global struggle against torture and in organizing an on-line conference to discuss human rights issues in public.⁶

Moreover, sections of German civil society were active in the implementation of human rights. The Alliance for Human Rights consisting of different NGOs, trade unions and representatives from business and industry committed itself to act in accordance with human rights standards.⁷ Demonstrations against racially motivated offences were organized⁸ and a

¹ UN High Commissioner on Human Rights, "Reporting Status of Treaties. Overdue by Country", at www.unhcr.ch/TBS/doc.nsf/newhvoerduebycountry?OpenView&Start=63&Count=15Expand=66#66.

² Deutsche Bundesregierung, 6. *Bericht der Bundesregierung über ihre Menschenrechtspolitik in den auswärtigen Beziehungen und in anderen Politikbereichen*, June 2002, at www.auswaertiges-amt.de/www/de/infoservice/download/pdf/publikationen/mrb6.pdf.

³ *Süddeutsche Zeitung*, "Neues Konzept gegen Rechtsextremismus," May 10, 2002; *Frankfurter Allgemeine Zeitung*, "Programme gegen Rechtsextremismus," May 11, 2002; *Süddeutsche Zeitung*, "Fischer warnt vor Anti-Terror-Rabatt," June 8/9, 2002.

⁴ *Frankfurter Allgemeine Zeitung*, "Ein Zentrum für Friedenseinsätze," June 25, 2002.

⁵ *Frankfurter Allgemeine Zeitung*, "Wahlschablonen und ein Anrecht auf Gebärdendolmetscher," April 30, 2002; *Bundesgesetzblatt*, "Gesetz zur Gleichstellung behinderter Menschen und zur Änderung anderer Gesetze," 28 (2002), April 30, 2002, at

www.bma.bund.de/doc/doc_request.cfm?234E0C6BE09F47B3BCD89BAA322078B4.

⁶ Deutscher Bundestag, "Antrag: Weltweite Bekämpfung und Ächtung der Folter," Drucksache 14/8488, March 12, 2002, at <http://dip.bundestag.de/btd/14/084/1408488.pdf>; *Blickpunkt Bundestag*, "UN-Anti-Folter-Konvention auch von Irland zu ratifizieren," 3 (2002); Deutscher Bundestag, "Deutsche Menschenrechtspolitik auf dem Prüfstand. Online-Konferenz des Ausschusses für Menschenrechte und Humanitäre Hilfe," September 9, 2002, at www.bundestag.de/aktuell/presse/2002/pz_020909.html; Deutscher Bundestag, "Antrag: Weltweite Bekämpfung und Ächtung der Folter," Drucksache 14/8488, March 12, 2002, at <http://dip.bundestag.de/btd/14/084/1408488.pdf>.

⁷ *Süddeutsche Zeitung*, "Allianz für Menschenrechte," May 4/5, 2002.

vigorous debate on bioscience and human rights took place.⁹ Finally, Germany submitted its fifth report in accordance with the UN Covenant on Civil and Political Rights (ICCPR) and its third report in accordance with the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment (CAT).¹⁰

Torture, Ill-treatment and Police Misconduct

Several cases of ill-treatment and misconduct by law enforcement officials in 2002 were reported and past cases were now in courts, many being long overdue:

- In February, the Public Prosecutor's Office in Frankfurt/Main brought charges against three officers of the special police force (*Bundesgrenzschutz*) for having killed a Sudanese deportee in May 1999. The African man was being deported by plane to Khartoum when he died. Tied to his seat and wearing a helmet, he suffocated during take-off when his head was pushed against his breast by the accompanying officers to calm him down.¹¹
- In May, a 31-year-old man died in hospital in Cologne after having been ill-treated by six police officers. Upon his arrest on 11 May, he had put up a strong resistance. While being transported and while in the police station he was kicked and beaten. He fell into coma on his way to hospital and died two weeks later of severe brain injuries. The police officers responsible were suspended from office and investigations were pending at the time of writing.¹²

Detainees Rights and Conditions in Detention Facilities

Restricted criminal laws for sex offenders, the accommodation of prisoners and the spread of extreme right-wing ideas in prisons gave rise to concern.

⁸ *Frankfurter Allgemeine Zeitung*, "Demonstration von Rechtsradikalen gescheitert," April 8, 2002; *Süddeutsche Zeitung*, "Tausende demonstrieren in Rostock gegen Rassismus," August 26, 2002.

⁹ Jürgen Habermas, *Die Zukunft der menschlichen Natur*, Frankfurt/M. 2002; Robert Spaemann, "Habermas über Bioethik," in *Deutsche Zeitschrift für Philosophie*, 50 (2002) 1, p. 105-110; Ludwig Siep, "Moral und Gattungsethik," in *Deutsche Zeitschrift für Philosophie*, 50 (2002) 1, p. 111-120; Gabriele von Arnim, Volkmar Deile, Franz-Josef Hutter, Sabine Kurtenbach, Carsten Tessmer (eds.), *Jahrbuch Menschenrechte 2003*, Frankfurt 2002, p. 107-156; *Süddeutsche Zeitung*, "Stammzellen hier, Klonen dort," December 31, 2002/ January 1, 2003.

¹⁰ Bundesjustizministerium, 5. *Staatenbericht der Bundesrepublik Deutschland nach Artikel 40 des Internationalen Pakts über bürgerliche und politische Rechte*, October 16, 2002, at www.bmj.bund.de/images/11504.pdf; Bundesjustizministerium, *Dritter Bericht der Bundesrepublik Deutschland nach Artikel 19 des Übereinkommens vom 10. November 1984 gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe*, October 16, 2002, at www.bmj.bund.de/images/11505.pdf.

¹¹ *Frankfurter Allgemeine Zeitung*, "BGS-Beamte angeklagt," February 16, 2002; *Tageszeitung*, "Anklage nach Tod bei Abschiebung," February 16, 2002.

¹² *Frankfurter Allgemeine Zeitung*, "Nach zwei Wochen im Koma gestorben," May 25, 2002; *Süddeutsche Zeitung*, "Opfer im Kölner Polizeiskandal gestorben," May 25/26, 2002; Amnesty International, *Concerns in Europe. January - June 2002*, September 1, 2002, at <http://web.amnesty.org/ai.nsf/index/EUR010072002?OpenDocument&of=COUNTRIES\GERMANY>.

Plans to tighten the criminal law for sex offenders caused fears that the rights of detainees would be restricted disproportionately. After the Lower House of Parliament had already passed a restricted law on sex offenders in June, the topic was discussed again in November. Especially, the demand to extend the time in prison for convicted sex offenders shortly before their release (*nachträgliche Sicherheitsverwahrung*) gave cause for concern. According to the new law, by a reservation in the verdict, the detainee can be kept detained even after serving his prison term. Furthermore, the opposition parties CDU and CSU preferred a retrospective extension of detention periods. According to them, this would be the only way to make current inmates fall under any new regulations. This was seen as a violation of fundamental judicial principles: the prohibition of changing verdicts retrospectively and the prohibition of double punishment. Additionally, statistics did not confirm the need for tightened laws against sex offenders. While 10 to 15 sexual crimes against children were registered annually in the 70s, this number decreased to 2 to 5 cases per year in the last few years. Experts also pointed out that better medical investigation methods and therapies could tackle the problem more adequately.¹³

In April, the German Constitutional Court ruled in favor of inmates held in solitary cells in Hanover and Hamburg in 2000. According to the court, holding two people in a cell of 8 m² which they were only allowed to leave for one hour per day was inhuman. Respect for and the protection of human dignity had to be granted in prisons, the court stated.¹⁴

In Hamburg, the Ministry of Justice planned to accommodate arrestees in containers due to a lack of cells, after the local government decided to make arrests more frequent in order to make the city “a safer place.” To ease the conditions of the inmates, containers were to be set up in prisons. Similar projects were also discussed in the state of Brandenburg.¹⁵

The spread of extremist right-wing ideas in prisons was worrisome. It appeared that young inmates in particular were encouraged to identify with nationalistic thoughts during their imprisonment. Many right-wing extremists regarded prisons as “academies of the nationalistic movements” because it was easy to recruit and train new adherents there and to prepare them for political work after their release. The new recruits and their friends and relatives were integrated into a network of right-wing extremist organizations.¹⁶ Although officers were aware of the problem, a lack of money and qualifications prevented them from counteracting the problem.¹⁷

Right to Privacy

Anti-terrorist activities, phone tapping and debates about biological data and fingerprint archives endangered the right to privacy.

The continuing search for terrorists targeted specific groups of people in a discriminatory way and restricted their right to privacy. In order to ensure the most effective and successful search for terrorists, the methods entailed screening and empowered the police to check and

¹³ Deutscher Bundestag, “Experten kritisieren Verschärfung des Strafrechts für Sexualtäter,” press release, April 18, 2002; *Das Parlament*, “Anordnung einer Sicherheitsverwahrung nach Teilverbüßung der Strafe möglich,” June 10, 2002; *Süddeutsche Zeitung*, “Todesstrafe auf Deutsch,” November 15, 2002, “Reden über das Risiko,” December 3, 2002, and “Das Prinzip Wegschließen,” December 14/15, 2002.

¹⁴ *Frankfurter Rundschau*, “Karlsruher Richter stärken Rechte von Häftlingen,” April 4, 2002.

¹⁵ *Tageszeitung*, “Hamburg plant Container-Haft,” March 17, 2002.

¹⁶ Hilfsorganisation für nationale politische Gefangene und deren Angehörige

¹⁷ *Frankfurter Allgemeine Zeitung*, “Kontrolle durch Knastkameradschaft,” June 3, 2002.

compare personal data registered in electronic databases (*Rasterfahndung*), a method that had already been used several times before 2002. Although the results were hardly successful, their use remained widespread.¹⁸

In the search for terrorists, the German Federal Criminal Bureau (*Bundeskriminalamt*) asked 4,000 companies to hand in personal data on their staff. Although cooperation was voluntary, it was doubtful whether this request was in accordance with employees' right to privacy. Additionally, the Federal Criminal Bureau was by law prohibited from carrying out crime-prevention measures.¹⁹

In Hamburg, the state government planned to simplify the monitoring of non-suspects if they could provide information on terrorist circles; such monitoring could include journalists, physicians and lawyers.²⁰

Phone tapping remained a serious problem. The number of telephone calls, which were kept under surveillance by the police increased from around 3,700 in 1995 to 20,000 in 2001. In May, the use of International Mobile Subscriber Identity Catcher (IMSI Catcher) to find out suspects' mobile phone numbers in order to tap their phone-calls amounted to another threat to the right to privacy. Finally, in North-Rhine-Westphalia, telephone tapping of the security services was not under parliamentary control for 15 months. When the Parliamentary Commission for the Surveillance of the Security Services was newly constituted in May 2000, it failed to set up a supervisory committee. Once the committee finally started working, the uncontrolled phone recordings were legalized retrospectively.²¹

The discussion on whether to introduce biological data or fingerprint archives raised concern. Firstly, biological data archives were to promote scientific progress in medical care. However, Data Protection Commissioners pointed out that biological data was often collected without any precise scientific need and that in many cases no time limit was set after which the data had to be deleted. Therefore, there was a danger of discrimination against people whose data were recorded.²² Secondly, the German Association of Criminal Detectives demanded that fingerprints of all Germans be registered in order to make the fight against crime more effective. However, critics noted that a central archive would violate people's right to be considered innocent unless proven guilty.²³

¹⁸ *Frankfurter Allgemeine Zeitung*, "Rasterfahndung bisher ohne Treffer," March 9, 2002; *Der Spiegel*, "Gigantischer Aufwand," March 11, 2002; *Tageszeitung*, "Trend zurück zum Rastern," April 24, 2002; *Süddeutsche Zeitung*, "Im Raster bleibt keiner hängen," April 26, 2002.

¹⁹ *Der Spiegel*, "Gigantischer Aufwand," March 11, 2002; *Süddeutsche Zeitung*, "Die fragwürdigen Fangmethoden des BKA," August 10/11, 2002.

²⁰ *Frankfurter Rundschau*, "Journalisten fürchten Tendenz zum total überwachten Stadtstaat," October 16, 2002.

²¹ *Frankfurter Rundschau*, "Geheimdienste lauschten in NRW ohne Parlamentskontrolle," January 30, 2002; *Westfälische Rundschau*, "Abhör-Panne: Landtagspräsident gerät ins Zwielicht," January 30, 2002; *Frankfurter Allgemeine Zeitung*, "IMSI-Catcher," June 21, 2002; *Bürgerrechte und Polizei*, "Chronologie," 72 (2002) 2, p. 98.

²² *Süddeutsche Zeitung*, "Typisiert, stigmatisiert, diskriminiert - oder geheilt," October 26/27, 2002.

²³ *Frankfurter Allgemeine Zeitung*, "Fingerabdrücke aller Deutschen registrieren," August 8, 2002.

Intolerance, Xenophobia and Racial Discrimination

Rising anti-Semitism in Germany and other European countries led the OSCE Parliamentary Assembly to pass a resolution against xenophobia, and German experts on anti-Semitism complained about the mobilization of latent anti-Jewish tendencies in public debates.²⁴ Several offences against Jews and their institutions were reported:

- On March 16, a bomb went off in a Jewish graveyard in Berlin. The Criminal Bureau of the State Berlin initiated investigations against right-wing extremists and suspected Arab terrorists.²⁵
- On March 31, two Jewish people from the US were chased, insulted and beaten in Berlin. One of the victims suffered a laceration. The perpetrators could not be identified.²⁶
- On April 14, two Jewish women were attacked in Berlin. The perpetrators tore off a necklace with the Star of David from one of the women and hit her in the face. When the woman's 58-year old mother went to help her, she too was beaten. Both victims had to be hospitalized.²⁷

Extremist right-wing groups were better organized. As reports on racial discrimination on TV and in the press decreased, public awareness of right-wing extremism was reduced. Equally, as xenophobic comments made during public debates and by politicians became more widespread, extremist groups felt confirmed in their attitudes.²⁸ Offences committed by right-wing extremists continued.

- In July, a 16-year-old youth was ill-treated and killed by right-wing extremists in the state of Brandenburg. The perpetrators stated that they had attacked him because of the clothes he wore and his dyed hair. After having kicked and beaten the victim, they abducted him to a remote stable where they brutally tortured the youth to death. The corpse was then dumped in a cesspool where it was found five months later. One of the offenders had a previous criminal record for assaulting members of an asylum centre in August. In the indictment the public prosecutor stressed the primitive motives and the brutality of the crime.²⁹

²⁴ Amnesty International Germany, "amnesty international verurteilt Angriffe auf Juden scharf," press release, May 14, 2002, at <http://www2.amnesty.de/internet/deall.nsf/50144ae16ca25cecc12567df002695c7/a96c90f506e4abdfc1256bb9002e0a50?OpenDocument>; *Süddeutsche Zeitung*, "Antisemitismus ist alarmierend," July 9, 2002; OSCE, "Berlin Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted During the Eleventh Annual Session", July 10, 2002, p. 25-26, at www.osce.org/pa/annual_session/berlin/berlin_declaration_english.pdf.

²⁵ *Frankfurter Allgemeine Zeitung*, "Sprengstoffanschlag auf jüdischen Friedhof," March 18, 2002.

²⁶ *Süddeutsche Zeitung*, "Antisemitische Attacke," April 3, 2002.

²⁷ *Süddeutsche Zeitung*, "Antisemitischer Übergriff," April 16, 2002.

²⁸ *Frankfurter Allgemeine Zeitung*, "Antisemitismus-Vorwurf gegen die FDP Möllemann: Strategie der Einschüchterung," May 18, 2002; *Süddeutsche Zeitung*, "Statt Skinheads treten nun 'ordentliche Menschen' auf," July 5, 2002 and "Aus der Mitte der Gesellschaft," 5 August 2002; *Frankfurter Allgemeine Zeitung*, "Möllemann wirbt mit Kritik an Israel," September 18, 2002; *Süddeutsche Zeitung*, "Rücktrittsforderungen gegen Minister Schönbohm," November 19, 2002; *Frankfurter Allgemeine Zeitung*, "Kritik an Schönbohm," November 20, 2002; *Süddeutsche Zeitung*, "Koch erschreckt die eigene Partei," December 13, 2002 and "Der Mann der seine Grenzen vergaß," December 31, 2002/January 1, 2003.

²⁹ *Süddeutsche Zeitung*, "Jugendlichen nur wegen seines Aussehens zu Tode gequält," November 22, 2002.

- In August, a neo-nazi stabbed to death a 19-year-old Turk during an argument. Although the perpetrators were drunk, extremist motives could not be excluded. The perpetrator was known to the police for being a member of skinhead groups, and nationalistic symbols and weapons were found in his apartment. The crime took place in an area of the state Saarland where right-wing extremism was on the rise.³⁰

A decade after the 1992 racial riots in Rostock, racial offenders were finally sentenced. In June, two offenders received an 18-month suspended prison sentence, while a third defendant received a 12-month suspended sentence for setting fire to an asylum seekers' hostel where more than 100 Vietnamese refugees lived. There was severe criticism as regards the delay of the trial, especially as all of the defendants had committed further criminal offences while the proceedings were pending.³¹

Germany failed to meet international standards to counter racial discrimination. It did not adopt a Bill against Discrimination required by EU guidelines in order to better fight racially and ethnically motivated discrimination in the fields of educational and social rights.³² In addition, the German government failed to submit two reports under article 9 (1) of the CERD due since June 2000 and June 2002 respectively.³³

On the positive side, the government drafted a treaty with the Central Organization of Jews (*Zentralrat der Juden*) to consolidate and promote Jewish life in Germany. The treaty was signed in January 2003. In addition, the government demonstrated its concern about xenophobia and displayed public resistance to racial discrimination through formal measures. It presented a comprehensive concept to fight against right-wing extremism, although the effectiveness of the program was ambivalent. A long-term preventive strategy including educational programs, international youth exchanges, programs for dropouts from extremist groups and job-programs for foreigners was combined with judicial reforms to guarantee fast criminal prosecution and to grant compensation for the victims. But an evaluation of the program showed that its impact was weak and that different conditions in the Eastern and Western parts of Germany were not adequately taken into account.³⁴

On several occasions, trials were opened against extremist right-wing groups. In August, members of the banned extremist group SSS were accused of having set up a criminal organization and of having committed several crimes of incitement and bodily injury. Founded in 1996, SSS was one of the most dangerous right-wing organizations in Germany. It was militarily organized and well-equipped with explosives, guns and parts of bazookas. Moreover, courts

³⁰ *Frankfurter Allgemeine Zeitung*, "Ministerium verteidigt Polizei," August 13, 2002; *Süddeutsche Zeitung*, "Entsetzen über Tod des 19-jährigen Türken," August 14/15, 2002.

³¹ *Frankfurter Allgemeine Zeitung*, "Gerechtigkeit ist kaum noch zu erwarten," March 12, 2002; *Süddeutsche Zeitung*, "Rostock-Lichtenhagen - war da was?" June 15/16, 2002; *Süddeutsche Zeitung*, "Bewährungsstrafen für Skinheads," June 18, 2002.

³² *Süddeutsche Zeitung*, "Benachteiligt sind irgendwie alle," April 9, 2002.

³³ 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=15Expand=66#66.

³⁴ *Süddeutsche Zeitung*, "Neues Konzept gegen Rechtsextremismus," May 10, 2002; *Frankfurter Allgemeine Zeitung*, "Programme gegen Rechtsextremismus," May 11, 2002; *Süddeutsche Zeitung*, "Gefangen in der Wagenburg," December 13, 2002; *Bürgerrechte und Polizei*, "Chronologie," 72 (2002) 2, p. 91; *Frankfurter Allgemeine Zeitung*, "Staatsvertrag mit dem Zentralrat der Juden," January 28, 2003; Roland Roth, Anke Benack, *Bürgernetzwerke gegen Rechts. Evaluierung von Aktionsprogrammen und Maßnahmen gegen Rechtsextremismus und Fremdenfeindlichkeit*, Bonn 2003, at www.fes.de/index_infonline.html.

increasingly managed to sentence nationalistic offenders promptly. Four right-wing extremists, who attacked and wounded an African asylum seeker in August, were given prison sentences between ten months and three years. The verdict was passed two months after the assault had taken place.³⁵

Finally, grass-root initiatives against intolerant behavior demonstrated against racial offences and extremists. In Freiburg, 100 members of the nationalistic party NPD were faced with more than 10,000 people demonstrating against xenophobia and discrimination; in Potsdam 75 NPD-adherents were confronted with 1,500 opponents of nationalistic ideas; in Leipzig, right-wing extremists were encountered by confetti and the slogan "Leipzig is laughing about a carnival in brown."³⁶

Asylum Seekers

In 2002, 71,127 individuals sought political asylum in Germany, a decrease of 19.4% from the year 2001. Most asylum seekers came from Iraq, Turkey, the Federal Republic of Yugoslavia and Russia. Asylum was granted to 1.8% of all applicants; 61.8% of all asylum applications were rejected.³⁷

The airport asylum procedure continued to cause concern in 2002. All asylum seekers who arrived in Germany by plane were obliged to stay at the airport while awaiting a decision on their application. Conditions of detention in the airports remained poor and the time of detention was not restricted. Moreover, the airport asylum procedure did not provide for personal interviews between asylum seekers and the decision-maker, and legal advice was provided only after the asylum seeker's application was rejected. Even children and traumatized people had to undergo the procedure.³⁸

The conditions of people who were not granted political asylum but who could also not return to their home country remained problematic. In 2002, approximately 150,000 people without any permanent right to stay had been living for more than five years in Germany, many in poor conditions and with insecurity about their future.³⁹

³⁵ *Süddeutsche Zeitung*, "Militante Szene ist gewachsen," August 5, 2002; *Frankfurter Allgemeine Zeitung*, "Sächsische Skinheads wegen Volksverhetzung angeklagt," August 8, 2002; *Süddeutsche Zeitung*, "Hohe Haftstrafen für Angriff auf Asylbewerber," October 29, 2002.

³⁶ *Frankfurter Allgemeine Zeitung*, "Konfetti gegen Rechts," April 6, 2002; *Frankfurter Rundschau*, "Die NPD sieht sich einer Übermacht gegenüber - und gibt klein bei," September 16, 2002; *Süddeutsche Zeitung*, "Einfach rechts liegen lassen," September 16, 2002; *Tageszeitung*, "Braune Socken in Freiburg," September 16, 2002.

³⁷ Bundesministerium des Inneren, "Schily: Niedrigste Asylbewerberzahlen seit 1987- Vorauswirkung des Zuwanderungsgesetzes," press release, January 8, 2003, at www.bmi.bund.de/frame/liste/Presse/Pressemitteilung/ix3735_presse.htm?behoerde=+&schwerp=+&Thema=+&language=de&verknuepfung=+&script=1.

³⁸ Amnesty International, "Tag des Flüchtlings," press release, October 4, 2002, at <http://www2.amnesty.de/internet/deall.nsf/50144ae16ca25cecc12567df002695c7/03cc05e2052ac2b9c1256c45004de119?OpenDocument>; Pro Asyl, "Tag des Flüchtlings 200," press release, October 4, 2002, at www.proasyl.de.

³⁹ Amnesty International Germany, "Ein Zuwanderungsgesetz auf dem Weg," March 22, 2002, at <http://www2.amnesty.de/internet/deall.nsf/50144ae16ca25cecc12567df002695c7/b63b3a7c8f509967c1256b870035575d?OpenDocument>; Pro Asyl, "Tag des Flüchtlings 2002," press release, October 4, 2002.

The daily life of asylum seekers was restricted as they were not allowed to leave their administrative district without permission and the law concerning their provision with goods was very restrictive. The need for medical care was in some cases hardly fulfilled. Moreover, there was no obligatory legal advice for refugees as regards the asylum procedure.⁴⁰

In line with anti-terror measures, the categories of people who could be considered eligible for asylum seeker status were restricted. Refugees who supported a terrorist organisation during their stay in exile were no longer granted any protection from deportation.⁴¹

Pre-deportation custody also remained a problem. Detainees were held there for up to 18 months and they often had no access or very restricted access to legal advice.⁴²

- The asylum claim of Indian Singh Bullar was rejected and he was deported to India in January 1995. Almost three years later, in October 1997, the Administrative Court in Frankfurt ruled against the deportation on the grounds that, having a criminal record in India, he would have faced possible torture and death penalty in his home country. Indeed, when Bullar arrived at New-Delhi airport in 1995, he was arrested and confessed to having participated in a bomb attack. Although he withdrew the confession later, he was sentenced to death in August 2001 and the Supreme Court of India confirmed the verdict in March and December 2002. Appeals for mercy from Germany failed.⁴³

Deportation to “safe third countries” also remained controversial. Asylum seekers who entered Germany by passing a safe third country including a stopover by plane were rejected and deported to the “safe” transit country. However, it was not codified in law that the “safe country” was not allowed to deport the asylum seeker to his home country if she/he would be persecuted there. Furthermore, the burden of migration was simply shifted to Germany's neighboring countries.⁴⁴

Germany's reservation to the UN Convention on the Rights of the Child upon ratification in 1992 remained in force throughout 2002.⁴⁵ According to the reservation, German asylum legislation would not be affected by the provisions of the Convention. 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 good of all children in

⁴⁰ Pro Asyl, “PRO ASYL zum Antirassismustag,” press release, March 20, 2002, at www.proasyl.de; Amnesty International Germany, “Ein Zuwanderungsgesetz auf dem Weg,” press release, March 22, 2002; Pro Asyl, “PRO ASYL wird Mitglied von Attac,” press release, May 24, 2002, at www.proasyl.de.

⁴¹ Amnesty International Germany, “Ein Zuwanderungsgesetz auf dem Weg,” press release, March 22, 2002; *AI-Journal*, “Forderungen von amnesty international an die Menschenrechtspolitik in der nächsten Legislaturperiode,” September 2002, at <http://www2.amnesty.de/internet/deall.nsf/windexde/JL2002116>.

⁴² Pro Asyl, “Tag des Flüchtlings,” press release, October 4, 2002.

⁴³ *Frankfurter Rundschau*, “Nach seiner Abschiebung landete Singh Bullar in der Todeszelle,” July 13, 2002; Pro Asyl, “Drohende Todesstrafe für den aus Deutschland abgeschobenen indischen Staatsbürger Professor Davinder Pal Singh Bullar,” press release, January 20, 2003, at www.proasyl.de.

⁴⁴ Jürgen Habermas, “Kampf um Anerkennung im demokratischen Rechtsstaat,” in Jürgen Habermas, *Die Einbeziehung des Anderen. Studien zur politischen Theorie*, Frankfurt/M. 1999, p. 272; Amnesty International Germany, “Stellungnahme von amnesty international zu dem Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) - Bundestagsdrucksache 14/7387,” January 14, 2002, at www.amnesty.de (Berichte: Asyl); Pro Asyl, “Vor Zehn Jahren: Der so genannte Asylkompromiss,” press release, December 6, 2002, at www.proasyl.de.

⁴⁵ See also Rights of the Child.

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 1995.⁴⁶

During the asylum process, minor refugees were subject to the airport asylum procedure and were not entitled to adequate health care, education and pedagogical support. Furthermore, there were reports of sexual violence against female minors in provisional asylum seekers' hostels in Brandenburg. In order to deport rejected minor asylum seekers, children were held in deportation custody. In Hamburg plans were published to build a prison only for minor inmates in pre-deportation custody, and youths were deported to "safe third countries" regardless of their final destination.⁴⁷

While the respective legislation on reforms was still pending, the necessary improvement in the protection of refugees remained overdue. As a result, persecution by non-governmental actors or sexual violence still did not entitle people to asylum, and German refugee laws remained in contravention of the Geneva Convention and article 3 of the European Convention on Human Rights (prevention of torture and ill-treatment). In addition, special regulations for hardship cases could not be implemented. Refugees had still no right to stay if they had been persecuted in their home country but were not accepted as asylum seekers because of inadequacies in the right to asylum.⁴⁸

Rights of the Child⁴⁹

Germany was one of the markets for trafficking in children but also served as a transit country for traffickers of children. In June, an international conference in Bonn organized by Terre des Hommes and UNICEF focused on the condition of trafficked children. According to them, a large number of the approx. 6,000 - 10,000 foreign children living in Germany without legal guardians were victims of child trade. Exact numbers were hard to come by because of many unreported cases.⁵⁰

⁴⁶ UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Germany*, November 1995, at [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.43.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.43.En?OpenDocument).

⁴⁷ *Märkische Oderzeitung*, "Sexuelle Übergriffe sind Realität," January 16, 2002; UNICEF, "Zehn Jahre UN-Kinderrechtskonvention in Deutschland: UNICEF fordert gleiche Rechte für alle Kinder," press release, April 4, 2002, at www.unicef.de/index_rub.php?node=akt; Pro Asyl, "10 Jahre Kinderrechtskonvention," press release, April 4, 2002, at www.proasyl.de; *Süddeutsche Zeitung*, "Unicef-Appell an Deutschland," May 3, 2002; Pro Asyl, "Bundesrat behandelt am Freitag Kinderrechte," July 11, 2002, at www.proasyl.de; Pro Asyl, "Weltkindertag am 20. September," press release, September 18, 2002, at www.proasyl.de; *Süddeutsche Zeitung*, "Deutschland verstößt gegen Kinderrechte," November 16/17, 2002.

⁴⁸ Amnesty International Germany, "Zuwanderungsgesetz auf dem Weg," press release, March 22, 2002, at <http://www2.amnesty.de/internet/deall.nsf/50144ae16ca25cecc12567df002695c7/b63b3a7c8f509967c1256b870035575d?OpenDocument>, and "Deutschem Flüchtlingsrecht droht europäische Zweitklassigkeit," press release, December 18, 2002, at <http://www2.amnesty.de/internet/deall.nsf/50144ae16ca25cecc12567df002695c7/1a8e0eff43d6215bc1256c9300367ed9?OpenDocument>.

⁴⁹ See also Asylum Seekers.

⁵⁰ Terre des Hommes, "Gehandelte Kinder in Deutschland: Rechtliche Situation," April 2002, at www.oneworldweb.de/tdh/.

Minors from Eastern Europe, Africa, Asia and Latin America were forced to work as prostitutes. In 1999, 1,150 cases of child prostitution at the German-Czech border were reported. Trafficked children were also used for sex films and were given for adoption for up to €23,000. Many youths from Romania were engaged in theft and begging.⁵¹

The reservation of Germany to the UN Convention on the Rights of the Child worsened the conditions of trafficked children. As foreigners they could not claim any support from the youth welfare and were subject to the normal asylum procedure. There was no program to protect minor witnesses of trafficking in children, and statistics on the topic were rarely available. Additionally, Germany did not engage sufficiently in projects to prevent trafficking in children in the home countries of the abused.⁵²

Arms Trade

Continuous arms export from Germany to conflict prone countries aroused concern. In October 2001, the government had published its first report on arms trade, which was discussed in the German Lower House of Parliament in February 2002. Although the report reflected the willingness of the government to improve transparency in the field, it was highly criticized: human rights were not given priority in arms trade; the amount of exported weapons had not been reduced since the new German government had been in office in 1998; and this issue was still characterized by a lack of transparency.

The report did not mention weapons, which could be used for torture, such as electroshock weapons and handcuffs, and excluded “dual-use” material which could be used both for military and non-military purposes. Additionally, it was not clear to what extent human rights considerations influenced the government when deciding on arms exports.

Finally, the export of small weapons caused concern. The report did not disclose whether small weapons were intended to be used militarily or for sports, nor did it name the recipients of the weapons. There was also concern about indirect export of small weapons to African countries. By granting the license to build small weapons or by selling production plants to conflict prone countries, human rights considerations were neglected.⁵³

⁵¹ Terre des Hommes, “Child Trafficking in the Federal Republic of Germany,” February 2001, at www.stopchildtrafficking.org/site/uploads/media/english/InBrief_Germany.pdf; *Westdeutsche Allgemeine Zeitung*, “Kinder-Handel hat auch in Deutschland viele Kunden,” June 21, 2002.

⁵² Terre des Hommes, “Gehandelte Kinder in Deutschland: Rechtliche Situation,” April 2002, at www.oneworldweb.de/tdh/.

⁵³ Amnesty International Germany, “Rüstungsexportbericht. Erneut mehr Verschleierung als Aufklärung,” press release, February 21, 2002, at <http://www2.amnesty.de/internet/deall.nsf/50144ae16ca25cecc12567df002695c7/a95885cd428f3192c1256b6700511e10?OpenDocument>; Amnesty International Germany, “Deutschland, Kleinwaffen und Afrika”, June 2002, at http://www2.amnesty.de/internet/ai_theme.nsf/db2320ec1f478ab641256737002b1008/2209ac0986354dd9c1256bf10050a7be?OpenDocument