

***"GERMANY FOR GERMANS"***

**XENOPHOBIA AND RACIST VIOLENCE IN  
GERMANY**

**Human Rights Watch/Helsinki**

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Cover photo: Hooded neo-Nazis give the Hitler salute on August 26, 1992 in front of a burning Trabant car during heavy clashes between police and neo-Nazis in front of an asylum hostel in Rostock. Copyright © Reuters/Bettman.

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The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Ann S. Johnson, development director; Gara LaMarche, associate director; Juan Méndez, general counsel; Susan Osnos, communications director; and Derrick Wong, finance and administration director.

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This report was prepared for publication by Anne Kuper and Lene Simon, associates with Human Rights Watch/Helsinki.



## **I. INTRODUCTION**

### **BACKGROUND**

The Federal Republic of Germany has undergone an entire epoch of history in the past five years since trainloads of East Germans crossed into Hungary and Czechoslovakia searching for a route to the West in the spring and summer of 1989. In November 1989, people rushed over the Berlin Wall, border crossings opened, and crowds danced on top of the grim edifice that had scarred the city once known as the "capital of Europe." The euphoria culminated one year later in December 1990 in the Treaty of Unification. Two states became one: the former German Democratic Republic (GDR) was transformed into five federal states (Bundesländer) that joined with the existing eleven federal states to constitute the Federal Republic of Germany. This transformation has been accompanied by heady euphoria at freedom of movement, freedom of assembly, freedom of speech, and freedom to buy a fabulous array of consumer goods provided by a free market economy. It has also been accompanied by a dramatic increase in unemployment in the East and heavy tax burdens on the more prosperous citizens of the West. Resentment of these two economic consequences of unification has led to bitterness with the present and nostalgia for the past. Many former citizens of the GDR feel a loss of a sense of community, as well as a loss of jobs and social support. Many also feel a loss of their bearings and values. In the former West Germany many citizens resent the economic cost of unification and are angry that the social process of unification is not already complete.

This darker side of the transformation has had a violent, sometimes murderous, aspect. The racism endemic in many societies has exploded in a public way in Germany in the past five years. Hostility against foreigners, a phenomenon seen in many countries, has linked up with right-wing and neo-Nazi movements in Germany to yield incidents of violence and brutality. Television audiences around the world watched with horror as the local population in certain German cities crowded around and supported neo-Nazi assaults and arson attacks on defenseless asylum seekers. People whose only offense was that they did not look German have been killed. Other "foreigners" have been driven from their houses. Widespread

beatings of "foreigners" seem to have become a regular feature of major holidays in some places in Germany.<sup>1</sup>

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<sup>1</sup> This report uses the terms "foreigners" or "non-Germans" to refer to those who are considered foreign by right-wing extremists. We note, however, that many of them are long-term residents of Germany or were born in Germany, speak fluent German and are, in some cases, German citizens, but they are not ethnic German.

It is clear that racist attacks and killings are not unique to Germany. Genocide has been committed in Rwanda and the former Yugoslavia. Many violent attacks against foreigners have occurred in France, England, Sweden, and other West European democracies in the early 1990s. However, the German government was slow to respond to attacks on foreigners and to initiate specific measures to combat right-wing violence. In fact, "the federal government must shoulder much of the blame for the increase in right-wing violence" that took place during the first years following unification.<sup>2</sup> What is more, history has left a special legacy for Germany. The massive persecution and execution of "non-Aryans" during the Nazi era set a backdrop for violence against foreigners that is too vivid to forget.

### CURRENT DEVELOPMENTS

Taken as a whole, Germany has been confronted with a disturbing escalation in violent crimes against those who are different, and especially those who are perceived as not ethnic German during the period since unification. For example, between 1990 and 1992, there was over an 800 percent increase in the number of attacks on foreigners.<sup>3</sup>

Due, in part, to more forceful government measures to combat xenophobic violence, there has been a significant decrease in the number of violent crimes

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<sup>2</sup> Helsinki Watch, *"Foreigners Out" Xenophobia and Right-wing Violence in Germany*, (Human Rights Watch: New York, October 1992), p. 1. (Hereinafter referred to as the "1992 Report")

<sup>3</sup> According to government statistics, violent right-wing crimes increased from 306 in 1990 to 2,639 in 1992, representing an increase of 862 percent.

against foreigners in Germany in the last two years.<sup>4</sup> Government statistics indicate that, from 1992 to 1994, there was a 46 percent decline in the number of violent attacks against non-Germans. The government has expanded the number of police and prosecutors trained to investigate and prosecute cases of xenophobic violence. It has also restricted the right to asylum, a step long urged by the extreme right, thereby expropriating a major aspect of the far right's political platform, at least temporarily.

Despite the significant drop in the number of violent attacks, however, the figures were still significantly higher in 1994 than prior to 1991. Figures for 1994 were still more than 400 percent higher than comparable figures for 1990. According to the Office to Protect the Constitution, 1,233 violent attacks motivated by xenophobia were reported to the German authorities in the first eleven months of 1994. According to foreigners' rights groups, a large number of attacks also went unreported.

There were also troubling failures by local and federal authorities in responding to specific cases of violence. Although the police response to attacks on foreigners does appear to have improved significantly over the past two years, many foreigners are still under the impression that they cannot rely on the German police to protect them. This impression is based, in part, on foreigners' experiences with the police during the 1990-92 period. What is more, foreigners' rights groups and our own research indicate that there is a growing problem of police brutality against foreigners, which makes it very difficult to assess whether foreigners are reporting xenophobic crimes as frequently as they may have done in previous years.

This is especially so for foreigners whose residency status has not been determined or for illegal aliens who fear deportation. These groups are particularly vulnerable to violence, and the least likely to report such violence to German authorities.

Moreover, other forms of xenophobic violence appear to be on the increase in Germany. Anti-Semitic crimes soared during 1994. Government statistics

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<sup>4</sup> The figures used in this report for 1994 do not include statistics for the month of December, which were not available as the report went to press.

indicate that an estimated 1,040 anti-Semitic crimes occurred during 1994, representing a 60 percent increase over 1993. Of these, fifty-six were violent offenses. Although this category of crimes includes criminal harassment and intimidation, it also includes expressive conduct that Human Rights Watch/Helsinki believes should not be criminalized. Such statistics may, however, be a measure of the depth of anti-Semitic sentiment in the society, and as such are troublesome. A growing number of right-wing crimes against other minorities, such as the handicapped and homosexuals, was also reported.

In October 1992 Human Rights Watch/Helsinki (then Helsinki Watch) published a report on xenophobia and right-wing violence in Germany. Based largely on information gathered during a Human Rights Watch/Helsinki mission to Germany in May and June 1992, the report examined the increase in violent attacks against foreigners from 1990 to mid-1992. The report identified serious problems in a number of areas: the police response to violence against foreigners; the prosecutors' response to xenophobic crime; the judiciary's response to trials of skinheads and others who attack foreigners; and the federal government's response to the rise in violence aimed at foreigners. The report concluded that:

Germany is currently confronted with a political and social crisis that has profound consequences for German citizens, as well as for the foreigners who seek refuge within its borders. . . . Rioting skinheads throwing Molotov cocktails at refugee shelters, onlookers applauding and cheering, slogans such as "foreigners out" and "Germany for Germans", inevitably recall images of Nazi terror during the Third Reich. Physical injury, fear and humiliation have become a daily experience for foreigners in unified Germany.<sup>5</sup>

Human Rights Watch/Helsinki found at the time that the German state's response to the violence had significantly contributed to an environment in which anti-foreigner sentiments flourished and appeared to be tolerated by the state.

Shortly after Human Rights Watch/Helsinki released its 1992 report, three long-time Turkish residents were killed when neo-Nazis firebombed their homes in the West German town of Mölln. Prior to Mölln, the right-wing violence had been directed primarily at asylum seekers, as opposed to the homes of long-time Turkish

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<sup>5</sup> Helsinki Watch, *"Foreigners Out"*, p. 1.

residents. The violence shocked the conscience of many Germans, especially because two of the victims in Mölln, as well as many in the ethnic Turkish community in Germany, were born in Germany, spoke German and considered Germany their home. Nevertheless, they were viewed as foreign and died because of that perception.

The deaths in Mölln and the dramatic increase in violence against foreigners in the fall of 1992 were followed by large-scale domestic protests against racism and violence, as well as by increasing international condemnation. After much foot-dragging, the German government responded to the crisis by adopting firmer measures to combat the violence. These measures included the formation of a working group to improve police methods for monitoring and combatting violent right-wing extremists in the various states. The federal prosecutor also began to take responsibility for investigating some of the attacks on foreigners by right-wing extremists; an important step toward improving the response of state prosecutorial bodies.

These firmer measures, which included stepped up police surveillance of far-right groups, were, on the whole, a welcome change in the government's response. However, the measures sometimes went further than necessary by excessively restricting expression, association and assembly. For example, the government banned several neo-Nazi political organizations, after which police conducted numerous raids on the offices and homes of their members, confiscating propaganda materials and some weapons, and making numerous arrests. Prosecutors also began more forcefully to enforce German laws prohibiting the use of Nazi symbols and prohibiting denials that the Holocaust occurred.

This report focuses on acts of violence by right-wing extremists and the response of the German state. While viewing extremist violence with great concern, Human Rights Watch/Helsinki at the same time opposes laws that prohibit the expression of anti-foreigner or anti-Semitic sentiments, as well as laws that prohibit groups that hold such views from forming associations and holding public gatherings, so long as that speech, association or assembly does not rise to the level of incitement to or participation in violence. While Human Rights Watch/Helsinki recognizes the historical context in which Germany first adopted such laws, we believe that such prohibitions on speech, association and assembly are overly broad. Freedom of speech, association and assembly are basic human rights that should be respected to the fullest extent possible. The exercise of these rights in a hateful fashion short of incitement to violence can best be countered by other forms of speech, association and assembly, such as anti-racist demonstrations and anti-racism educational efforts, without infringing the rights themselves. Furthermore, while

prohibitions on these rights may be adopted to protect minorities, they are often used by majoritarian governments against minority groups. Human Rights Watch has adopted a policy against such laws.<sup>6</sup>

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<sup>6</sup> See Human Rights Watch's Hate Speech Policy attached as Appendix B.

Throughout 1991 and 1992, the German government coupled its condemnation of violent attacks on foreigners with a call for restricting the number of asylum seekers in Germany. "By linking these two issues, the government fail[ed] to acknowledge the severity of the crimes being committed against foreigners by German citizens. Instead it subtly shift[ed] the focus and the blame to the foreigners themselves."<sup>7</sup> On May 26, 1993, the Bundestag (parliament) voted 521 to 132 to amend the country's constitutionally-guaranteed right to asylum. Since July 1, 1993, when the new asylum law took effect, the right of asylum does not exist for refugees who pass through safe countries before they reach Germany or who come from homelands deemed safe.<sup>8</sup> Legislation defines safe transit countries and safe home countries. Since July 1993, there has been a significant reduction in the number of foreigners legally entering Germany. Government statistics indicate that the number of foreigners seeking asylum in Germany decreased by 60 percent from 1993 to 1994.<sup>9</sup>

The asylum debate has left a legacy that continues to have a negative impact on foreigners — whether asylum seekers or not — in Germany. It explicitly put the burden of right-wing violence on the victims — the asylum seekers — rather than on the perpetrators. Schmalz-Jacobsen, the federal commissioner for foreigners' affairs, put it succinctly: "The asylum debate was irresponsible at times. It is easy to destroy a climate, and hard to create one."<sup>10</sup> Numerous others agree that the asylum debate encouraged hostility and violence against foreigners in Germany. Ernst Uhrlau, the director of the Office to Protect the Constitution in

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<sup>7</sup> Helsinki Watch, *"Foreigners Out"*, p. 33.

<sup>8</sup> Although this report does not address in detail the human rights concerns raised by Germany's new asylum law and practice, Human Rights Watch/Helsinki is troubled by reports it has received of the refoulement of legitimate asylum seekers who face repression once deported or excluded, and of mistreatment and inhumane conditions in detention for foreigners awaiting deportation.

<sup>9</sup> In 1994, 127,210 foreigners applied for asylum compared to 322,599 in 1993, and 438,191 in 1992. *Reuters News Service*, "Germany: Refugee Flow to Germany Slows in 1994," January 6, 1995.

<sup>10</sup> Human Rights Watch/Helsinki interview with Cornelia Schmalz-Jacobsen, federal commissioner for foreigners' affairs, Bonn, June 14, 1994.

Hamburg, noted that the impact of the asylum debate was great on the youths who participated in spontaneous violence against foreigners.<sup>11</sup>

The government had pushed for restrictions on the right to asylum, arguing that it was necessary to prevent a further escalation of xenophobic violence. However, on May 29, 1993, only three days after the Bundestag voted to restrict the right of asylum, five long-time Turkish residents died when four youths allegedly set fire to their house in the town of Solingen. This was the worst single attack on foreigners since unification and set off yet another wave of attacks on foreigners.

Following the tragedy in Solingen, Chancellor Helmut Kohl, faced with severe criticism of his handling of right-wing violence, vowed in June 1993 to crack down on German right-wing extremists, calling for tougher sentences, more police power and tighter restrictions on militant right-wing extremist groups.

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<sup>11</sup> Human Rights Watch/Helsinki interview with Ernst Uhrlau, expert on right-wing extremism for the Office to Protect the Constitution, Hamburg, June 17, 1994.

In the almost two years since Solingen, the German government has taken numerous measures to combat xenophobia and right-wing violence in Germany. In 1994, Human Rights Watch/Helsinki conducted a follow-up mission to Germany to evaluate the changes in violent attacks against foreigners that had occurred in Germany in the intervening years. Human Rights Watch/Helsinki interviewed, among others, government officials at the federal, state, and municipal levels; representatives of nongovernmental organizations; asylum seekers; long-time non-German residents of Germany; foreign-born naturalized German citizens; police officers; and religious workers. Human Rights Watch/Helsinki visited cities in the new federal states, as well as in the western states.<sup>12</sup>

In each locale, Human Rights Watch/Helsinki was interested in learning what measures the German government had taken to respond to problems identified in 1992, and how effective the measures had been, both in statistical terms and in the view of foreigners in Germany. Human Rights Watch/Helsinki was, of course, also eager to learn what further steps were planned to address right-wing violence. This report discusses the findings of the mission and relates them to the issues highlighted in the 1992 report.

This new report begins by recommending specific government actions that should be taken based on the findings of the investigation. This is followed by a short overview of general statistics on the foreign population. The report then turns to a more detailed review of the statistics gathered on right-wing violent crime. It next examines changes in the violence and in the German government's response to the violence since 1992. The report includes cases of violent attacks on foreigners and identifies specific problem areas that need to be addressed. The report concludes by identifying the applicable legal standards under international and national law.

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<sup>12</sup> In the new federal states, Human Rights Watch/Helsinki representatives traveled to Schwerin, Rostock, Potsdam, Dresden, Magdeburg, Burg, Halle, and parts of Berlin that were formerly in the German Democratic Republic. In the original federal states, the mission visited Bonn, Cologne, Düsseldorf, Hamburg, Frankfurt am Main, and the former "West" Berlin.



## **II. RECOMMENDATIONS**

Human Rights Watch/Helsinki's investigation found that despite the progress that the German government has made during the past two years, there is an ongoing need for federal leadership to protect non-Germans living in Germany. The steps taken to date have improved the police and prosecutorial response, but are still insufficient. There is an ongoing need for political and moral leadership not only to condemn violence against non-Germans, but also to take the lead in countering the more subtle forms of racism and xenophobia that contribute to the marginalization of minority groups. Having allowed foreigners to be threatened without a forceful and immediate government response, the German authorities should take steps to emphasize that non-Germans are not only tolerated but welcome and equal members of German society. Such steps include the need for a reevaluation of numerous German laws to remove discriminatory provisions, a reevaluation of the citizenship and immigration laws, and the initiation of additional protective legislation, including an anti-discrimination law.

Human Rights Watch/Helsinki urges the government of Germany to take the following steps to protect foreigners. Recognizing the federal structure of the German government, Human Rights Watch/Helsinki directs some of these recommendations to federal officials, some to state officials, and some to both.

### **FEDERAL AUTHORITIES**

- Guarantee the security of all persons from violence or bodily harm whether inflicted by government officials or private individuals or groups;
- Conduct a country-wide study, in cooperation with state authorities, of the failure of the local and state authorities to intervene to protect foreigners under attack. Publicize the findings of the investigation, including the identity of officers who failed to protect foreigners threatened or attacked, the disciplinary measures recommended, the disciplinary measures imposed, and the changes in procedures recommended to prevent similar failures in the future;
- Provide the political support, as well as sufficient resources, to ensure that the federal prosecutor's office can respond quickly to and supervise the prosecution of as many cases of anti-foreigner crime as are appropriate;

- Provide resources to encourage states to establish and fully staff special prosecutors' groups devoted to right-wing and xenophobic crime;
- Make clear to the general public that judges' personal sympathies for the political views or motives of a defendant are no justification for failing to apply the law in an equal and non-discriminatory manner, without regard to nationality, ethnicity, race, or political opinion;
- Continue to monitor and report the results of the prosecution of crimes against foreigners;
- Continue to monitor and report the types of sentences imposed on those convicted of committing crimes against foreigners;
- Intensify intelligence gathering, information sharing, and strategic planning to combat right-wing and xenophobic crime;
- Fulfill its obligations under Article 26 of the International Covenant on Civil and Political Rights that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination" by enacting anti-discrimination legislation to protect foreigners in Germany from discrimination based on race, ethnic background, or national origin;
- Resist the temptation to exploit racial and ethnic tensions for political gains and, instead, take the lead to combat racism and to condemn violence against non-Germans.

As a matter of policy and out of concern for fairness and equity, Human Rights Watch/Helsinki also urges the German government to:

- Adopt a citizenship law that will simplify the procedure for long-term residents of Germany who wish to become citizens, including providing the option of dual citizenship;
- Amend the aliens' law to allow on humanitarian grounds long-term residents of Germany to have frequent family visits from family members living abroad;

- Increase the recruitment efforts of federal agencies and forces to attract individuals of different ethnic and national backgrounds. This is especially important in the federal border guard and in the federal agencies that routinely deal with foreigners, but it is also important in other agencies because of the message it conveys to all of German society.

#### **STATE AUTHORITIES**

- Guarantee the security of all persons from violence or bodily harm, whether inflicted by government officials or private individuals or groups;
- Provide substantial additional resources to upgrade the police forces in the new federal states;
- Provide substantial additional resources to improve the training of the police forces in the new federal states;
- Provide substantial additional resources to establish and/or expand special divisions on right-wing and xenophobic crime in the law enforcement agencies of the state. The special commission in Saxony furnishes a successful model that can be replicated;
- Investigate the failure of the local and state authorities to intervene to protect foreigners under attack. Publicize the findings of the investigation, including the officers who failed to protect foreigners threatened or attacked, the disciplinary measures recommended, the disciplinary measures imposed, and the changes in procedures recommended to prevent similar failures in the future;
- Investigate the patterns of police brutality against foreigners that come to the attention of the state authorities. Publicize the findings of the investigations, including any officers guilty of brutality, the disciplinary measures recommended, the disciplinary measures imposed, and the changes in procedures recommended to prevent similar brutality in the future;

- Require police officers and other law enforcement personnel to wear name tags, badge numbers, or other insignia that allow citizens to identify the individual officers with whom they have contact;
- Prosecute to the fullest extent of the law all parties to crimes against foreigners, including accomplices and those who incite violent action, but not those who merely advocate hateful sentiments;
- Establish and staff fully special police units on right-wing and xenophobic crime, where they do not already exist;
- Establish and adequately staff special prosecutors' units on right-wing and xenophobic crime;
- Provide more adequate police training, including more professional police methods and more creative strategies for responding to right-wing crime;
- Provide special police training regarding foreigners, including programs about local conditions and political persecution faced by many asylum seekers in their home countries;
- Intensify efforts to recruit police officers from different ethnic and national backgrounds;
- Make special efforts to recruit individuals from different ethnic and national backgrounds into other state agencies, especially those that deal with foreigners.

### **III. A STATISTICAL OVERVIEW**

#### **FOREIGNERS IN GERMANY**

The Federal Statistics Office reports that the foreign population of Germany increased by 382,000 in 1993.<sup>13</sup> Almost seven million foreigners resided in Germany in 1994, constituting 8.5 percent of the population. This is a significant increase from the 7 percent of the population that was foreign in 1991.

Ninety-seven percent of the foreign population in Germany lives in the old federal states, and the whole of Berlin. Three percent, or 212,000, live in the five new federal states. Nearly two million Turkish nationals reside in Germany. Over one million nationals of the former Yugoslavia are also residents. Italians comprise the third largest group, with half a million German residents. Greek nationals follow in fourth place, with 350,000 residents in Germany.

#### **GROWTH OF RIGHT-WING EXTREMISM**

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<sup>13</sup> Bundespresseamt, Release # 4238 (e), May 17, 1994.

The German government has reported a phenomenal increase in right-wing and xenophobic violence in the last decade. In mid-1992, when the prior Human Rights Watch/Helsinki report was published, the government had just released statistics for 1991.<sup>14</sup> The government reported the existence of thirty neo-Nazi groups and forty-six other right-wing groups, with a total membership of 39,800.<sup>15</sup> These statistics showed a significant increase in right-wing extremist groups and membership over the previous year.<sup>16</sup> The 1991 statistics for the first time included 4,200 militant right-wing skinhead extremists, who were not members of any group.<sup>17</sup>

The numbers reported by the government at the end of 1992 again showed an increase. There were thirty-three neo-Nazi groups and forty-nine other right-wing groups, with a total membership of 41,900.<sup>18</sup> Of these 6,400 were skinhead extremists.<sup>19</sup>

The numbers remained steady in 1993. The total membership in right-wing groups was reported as 41,500. Four groups of militant skinheads appeared, with a combined membership of 5,600.<sup>20</sup> Similarly, in 1994 the number of right-

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<sup>14</sup> Bundesministerium des Innern, *Verfassungsschutzbericht 1991*, (Dortmund: Fritz Busche Druckergesellschaft, August 1992). This is the annual report prepared by the Bundesamt für Verfassungsschutz, the Federal Office to Protect the Constitution. In some respects, this federal agency is the German equivalent of the Federal Bureau of Investigation in the United States. This agency has a special division on right-wing movements, as well as on left-wing movements, extremist movements of foreign origin, and espionage. Each of the federal states also has its own Office to Protect the Constitution.

<sup>15</sup> *Ibid.*, p. 72. There were 2,100 members in thirty neo-Nazi groups, 24,000 members in three "National Freedom" organizations, 6,700 members in five "National Democratic" organizations, and 3,950 members in thirty-eight other groups. The total membership was 40,950; accounting for overlap among the groups, the membership was reported as 39,800.

<sup>16</sup> *Ibid.* The government figures for 1990 showed twenty-seven neo-Nazi groups and forty-two other right-wing groups, with a total membership of 32,200.

<sup>17</sup> *Ibid.*

<sup>18</sup> Bundesministerium des Innern, *Verfassungsschutzbericht 1992*, (Dortmund: Fritz Busche Druckergesellschaft, August 1993), p. 66.

<sup>19</sup> *Ibid.*

<sup>20</sup> Bundesministerium des Innern, *Verfassungsschutzbericht 1993*, (Dortmund: Fritz Busche

wing extremists remained steady at 41,500, with 5,600 classified as militant skinheads. There were seventy-seven right-wing organizations or groups.<sup>21</sup>

Over the past two years, the German state and federal governments have cracked down on the activities of neo-Nazi organizations. In addition to banning several groups, there have also been numerous large-scale raids of neo-Nazi headquarters and the confiscation of weapons, propaganda and other materials that may be evidence of criminal activity. (See discussion below.)

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Druckergesellschaft, June 1994), p. 74. The neo-Nazi groups declined from thirty-three to twenty-seven; the other right-wing groups declined from forty-nine to forty-six.

<sup>21</sup> "Right-wing Violence and Hate Crimes in Germany," German Embassy Press Department, January 1995, p. 2.

Some German officials have also expressed concern that right-wing extremists may be regrouping and preparing for a more violent campaign. Due at least in part to the government's crackdown, right-wing groups do appear to be restructuring. According to Rhineland-Palatinate Interior Minister Walter Zuber, "Firm organizational structures are being replaced with loose autonomous groups of people who do not belong to organizations and who participate in a network with the aid of mailboxes, info telephones and mobile telephones."<sup>22</sup>

Gerhard Fricke, a representative of the Federal Office of Criminal Investigation (Bundeskriminalamt or "BKA"), recently expressed concern that a new right-wing terrorism may be developing. Fricke pointed out that a four volume treatise entitled "An Armed Movement" sets out a "guerrilla concept . . . on the model of the Nazi werewolves for the 'illegal fight against the state.'" According to Fricke, the terrorist instruments include "sabotage, hostage taking, and also the annihilation of human lives."<sup>23</sup> Some officials are also troubled by information that militant neo-Nazis are getting training as mercenaries in the former Yugoslavia and will bring their newly-acquired expertise back to Germany.

## **VIOLENT CRIMES AGAINST FOREIGNERS AND OTHER MINORITIES**

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<sup>22</sup> "Restructuring of Neo-Nazi Scene," *Die Tageszeitung*, January 3, 1995; reported in *FBIS-WEU-95-003*, January 5, 1995, p. 12.

<sup>23</sup> Irene Kluender, "They Know How Bombs are Built," *Süddeutsche Zeitung*, February 11-12, 1995, p. 11; reported in *FBIS-WEU-95-032*, February 16, 1995, p. 22.

Much of the right-wing movement embraces a racist ideology, with hatred of foreigners as a prominent feature. Consequently, an increasing number of verbal and physical attacks against those perceived to be foreign has accompanied the growth of right-wing organizations. The number of crimes with right-wing extremist motivation has steadily increased. This category includes crimes such as criminal harassment and intimidation, as well as a host of expressive activities that Human Rights Watch believes should not be criminalized. However, we do view the steady increase in such activities as troubling because it indicates continued and even growing xenophobia in some segments of German society. In 1991, the total number of right-wing crimes, both violent and non-violent, was 3,884.<sup>24</sup> There was a major increase — to 7,121 crimes — in 1992.<sup>25</sup> The statistics showed another significant increase — to 10,561 crimes — in 1993.<sup>26</sup> Of these crimes, the majority were motivated by hostility against foreigners.<sup>27</sup>

The number of violent right-wing crimes also skyrocketed during the last decade. In absolute numbers, violent right-wing crime had hovered around 200 crimes per year during the late 1980s.<sup>28</sup> By the time of the last Human Rights Watch/Helsinki report, government figures for 1991 showed nearly 1,500 violent right-wing crimes.<sup>29</sup>

The government's statistics released after the end of 1992 showed that physical violence by right-wing extremists continued to grow dramatically. The total number of violent attacks by right-wing extremists increased to 2,639 in 1992.<sup>30</sup> Roughly 85 percent of the violence was directed against foreigners.<sup>31</sup>

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<sup>24</sup> *Verfassungsschutzbericht 1992*, p. 91.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Verfassungsschutzbericht 1993*, p. 79. Comparable figures for 1994 were not yet available at the writing of this report.

<sup>27</sup> *Ibid.* For example, in 1993 there were 2,232 violent acts and 8,329 other criminal acts attributed to right-wing extremist motivation. Of these, 1,609 violent acts and 5,112 other criminal acts were motivated by hostility to foreigners.

<sup>28</sup> *Verfassungsschutzbericht 1993*, p. 84.

<sup>29</sup> *Ibid.* The government reported 1,489 violent right-wing motivated crimes in 1991.

<sup>30</sup> *Ibid.*

There were seventeen murders in 1992, compared to three in 1991. Physical assaults on persons increased from 449 to 725 in 1992. Violent attacks on property increased from 793 to 1,122.<sup>32</sup>

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<sup>31</sup> *Ibid.*, pp. 79-80. The Office to Protect the Constitution lists 2,277 violent right-wing crimes against foreigners and 362 other violent right-wing crimes in 1992.

<sup>32</sup> *Verfassungsschutzbericht 1992*, p. 70.

The period between 1992 and 1993 showed a slight decrease in violent right-wing crimes, with the number of violent attacks totaling 2,232.<sup>33</sup> Roughly 75 percent of the violence was directed against foreigners.<sup>34</sup> The decline in violent crimes did not, however, bring those crimes down to the 1991 level, which itself had represented a huge increase from earlier years. Moreover, the number of nonviolent right-wing crimes showed a significant increase.<sup>35</sup>

Analysis of right-wing violence in 1993 showed that the number of actual and attempted homicides increased to twenty-three; seven people were killed.<sup>36</sup> Bombings decreased to three. Arson attacks decreased to 311. Physical assaults on persons increased to 899. Violent attacks on property decreased to 903.<sup>37</sup>

During the first half of 1994, there were 1,895 crimes against foreigners. There were four attempted murders, but no deaths. Two hundred and seventy-eight people were injured. There was one bombing and forty-four arson attacks.<sup>38</sup> Statistics released by the German government in January 1995 indicated that there had been 1,233 violent right-wing offenses in the first eleven months of 1994. This was a significant drop over the previous year.

## ANTI-SEMITIC VIOLENCE

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<sup>33</sup> *Verfassungsschutzbericht 1993*, pp. 79-80.

<sup>34</sup> *Ibid.* The Office to Protect the Constitution lists 1,609 violent right-wing crimes against foreigners and 623 other violent right-wing crimes in 1993.

<sup>35</sup> Nonviolent right-wing crimes increased from 5,045 in 1992 to 8,329 in 1993. *Verfassungsschutzbericht 1993*, pp. 79-80.

<sup>36</sup> *Ibid.* Violent attacks against foreigners resulted in 6 deaths, as well as eighteen attempted homicides. Other right-wing violence resulted in one death, as well as two attempted homicides.

<sup>37</sup> The 1993 Report presents these statistics in different categories from those used in the 1992 Report. (To obtain statistics for 1993 that are comparable to those provided for 1992 and 1991 in the 1992 Report, it is necessary to combine the numbers on the two charts located on pages 79 and 80 of the 1993 Report.) *Ibid.*

<sup>38</sup> Beauftragte der Bundesregierung für die Belange der Ausländer, "Daten und Fakten zur Ausländersituation" (Bonn: October 1994), p. 59.

The number of violent anti-Semitic acts has grown steadily in recent years. In 1991 there were forty cases of violent anti-Semitic acts.<sup>39</sup> In 1992 the number of violent anti-Semitic crimes increased to sixty-five. There were 656 anti-Semitic crimes in 1993, seventy-two of which were violent.<sup>40</sup>

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<sup>39</sup> *Verfassungsschutzbericht 1992*, p. 79.

<sup>40</sup> *Verfassungsschutzbericht 1993*, p. 87.

In the first nine months of 1994 the Office of Criminal Investigations (Bundeskriminalamt) reported that there had already been 937 attacks directed at Jews or Jewish property, representing a 60 percent increase over the previous year. "The rise in anti-Semitic crimes while racist offenses appear to be declining backs up a warning [made by the Interior Minister Manfred Kanther] that neo-Nazi groups were increasingly turning from attacking foreigners to targeting Jews."<sup>41</sup>

Anti-Semitic crimes during 1994 included the firebombing of a synagogue in Lübeck, the first such attack on a Jewish place of worship since World War II. Several people living above the synagogue, including the cantor, barely escaped the fire without injury. In 1994, there were also over forty cases "in which Jewish cemeteries or monuments to the victims of the Nazi Holocaust were desecrated. For example, a pack of neo-Nazi skinheads rampaged through the Buchenwald death camp memorial in July [1994], shouting 'Sieg Heil' and threatening to burn a supervisor to death."<sup>42</sup>

### VARIATIONS WITHIN GERMANY

As the statistics gathered by the government indicate, the dramatic rise in violence against foreigners leveled off and decreased in some categories in 1993 and 1994. There are two important caveats, however. First, as Cornelia Schmalz-Jacobsen, the federal commissioner on foreigners' affairs, pointed out, the number of violent attacks fell, but it did not come close to returning to the situation prior to 1990.<sup>43</sup> Second, anti-foreigner and racist sentiments continued to be expressed in a variety of non-violent ways, such as anti-foreigner graffiti and the distribution of

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<sup>41</sup> *Reuters News Service*, "Anti-Semitic Crimes Soar in Germany," December 20, 1994.

<sup>42</sup> *Ibid.*

<sup>43</sup> Human Rights Watch/Helsinki interview with Cornelia Schmalz-Jacobsen, the federal commissioner on foreigners' affairs, Bonn, June 14, 1994.

neo-Nazi propaganda. In fact, such incidents rose dramatically in 1993. Schmalz-Jacobsen found this development particularly troubling, because it reveals a level of xenophobia that could be the basis for future violence against foreigners.

In 1992 Human Rights Watch/Helsinki reported that, although attacks against foreigners occur frequently in the West:

[T]here is a qualitative and quantitative difference between the violence in the two parts of Germany. . . . Given that East Germans make up only twenty percent of the total German population, and that East Germany has a much lower foreigner-to-German ratio, the most serious crimes are occurring disproportionately in the East.<sup>44</sup>

As in 1992, government statistics for 1993 and 1994 showed that in absolute numbers the western states of North Rhine-Westphalia and Baden-Württemberg recorded the largest numbers of violent anti-foreigner crimes.<sup>45</sup> "Three quarters of the violent crimes occurred in Western Germany, one quarter in Eastern Germany. [However,] the highest per capita rate of right-wing violence occurs in the eastern part of Germany, more specifically in Brandenburg and West Pomerania."<sup>46</sup> In sum, there are far fewer foreigners in the new federal states, and the population in those states tends to be significantly lower than in the original states, but the number of attacks per capita in the new states tends to be high.

Schmalz-Jacobsen commented that in her work she sees and hears about xenophobia throughout Germany. Yet, she said, "there is a qualitative difference between East and West. The anger is much more open in the East and appears to be much more widespread in the young population there."<sup>47</sup> Others have made similar observations. They point out that the population in the former GDR was much more isolated from foreigners. Even the relatively few contract workers that lived in the GDR prior to unification were kept separate from the German population. As

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<sup>44</sup> Helsinki Watch, *"Foreigners Out"*, p. 12.

<sup>45</sup> *Verfassungsschutzbericht 1993*, p. 101.

<sup>46</sup> "Right-wing Violence and Hate Crimes in Germany," German Embassy Press Department, January 1995, p. 1.

<sup>47</sup> Human Rights Watch/Helsinki interview with Cornelia Schmalz-Jacobsen, Bonn, June 14, 1994.

a consequence, deep ignorance of foreigners, coupled with a sense of social disintegration and fear of perpetual unemployment, have been a lethal combination in some of the new federal states.<sup>48</sup>

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<sup>48</sup> There appear to be significant variations among the states. The eastern state of Saxony has a very low incidence of attacks on foreigners, both absolutely and as measured per capita. Many point to its commitment to devoting resources to combat right-wing terrorism as key to its success. (See discussion below.)

Almuth Berger, the commissioner of foreigners' affairs for the state of Brandenburg, emphasized that extensive ignorance, prejudice, and fear are directed at foreigners who live in the new federal states. For example, Berger noted that polls reveal that people in Brandenburg believe that 30 percent of the population of their state is foreign, when in reality foreigners make up only 1.2 percent of the population.<sup>49</sup> By contrast, citizens in the old federal states tend to hold less exaggerated views on the size of the foreigner population in Germany.

The violence directed against foreigners appears to vary from state to state and also according to the size of the city and the density of the population. Ernst Uhrlau, the director of the Hamburg Office to Protect the Constitution, has emphasized the difficulties of protecting against violence directed at foreigners in locations where the population is dispersed.<sup>50</sup> He contrasted big cities such as Hamburg, where police are more concentrated, with states like Brandenburg, where the population, asylum shelters, and the police are more spread out. If police reinforcements are needed in Hamburg, he said, they can be more easily deployed from other parts of the city. If needed somewhere in Brandenburg, the police reinforcements may be in Potsdam, thirty or more kilometers away.

This contributes, according to Uhrlau, to the fact that violent attacks against foreigners occur more often in cities with a population of 75,000 to 100,000 than in big cities like Hamburg. The larger cities also tend to be much more cosmopolitan, and the population much more used to routine encounters with non-Germans.

## THE 1994 ELECTION YEAR

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<sup>49</sup> Human Rights Watch/Helsinki interview with Almuth Berger, Potsdam, June 22, 1994.

<sup>50</sup> Human Rights Watch/Helsinki interview with Ernst Uhrlau, Hamburg, June 17, 1994.

There was a great deal of concern among many Germans that the far right would succeed in entering the federal parliament during the many elections at both the local and national level that were held during 1994. However, in the first test of their strength in the June 1994 elections for the European Parliament, the right-wing parties fared poorly. The largest right-wing party in Germany, the Republicans, won only 3.9 percent of the vote, falling considerably below the 7.1 percent they had achieved in 1989. Having obtained less than the 5 percent minimum needed for representation, the German Republicans will have no representative in the European Parliament, thereby forfeiting the six seats they won in 1989.<sup>51</sup>

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<sup>51</sup> Rick Atkinson, "Germany's Far Right Jarred by Defections in European Elections," *The Washington Post*, June 14, 1994, p. A13.

Some commentators claimed that many who had formerly voted for the Republicans had declined to do so in 1994 due to the xenophobia associated with the party and the escalation of xenophobic violence in recent years. "The murders in Mölln, in Solingen and the burning of the synagogue in Lübeck have shown Germans what they have done by voting for right-wing extremists," stated Manfred Goellner.<sup>52</sup> In discussing the poor showing of the Republicans in the June elections, Schmalz-Jacobsen emphasized two parallel developments in Germany. On the one hand, she described a passive majority and a small but violent minority. On the other, she described a growing anti-racist movement. This movement expresses itself not only in demonstrations and candle-light vigils, but also through social support, education, tutoring, and other activities designed to combat xenophobia and to assist foreigners. Schmalz-Jacobsen believes that anti-racist activities contributed to the poor showing of the Republicans in the 1994 election.

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<sup>52</sup> *Ibid.* Goellner is an analyst for the Forsa Institute.

## IV. CASES OF VIOLENCE AGAINST FOREIGNERS

Statistics and discussions by experts are important, but they can be cold and abstract. Victims of violent attacks, and witnesses to violence and intimidation, convey much more vividly the reality of the extreme hostility to foreigners that exists in Germany. The following case studies range from the notorious to the unreported, from major assaults involving multiple murders to individual instances of harassment and abuse. They are only a few of the many such reports that Human Rights Watch/Helsinki has received.

### BRUTAL ATTACKS AGAINST MULTIPLE VICTIMS

- In November 1994, a black African asylum seeker living in Magdeburg reported that he, along with three other black Africans who were on their way to the asylum home, were attacked by five young men with very short hair, wearing "bomber" jackets and combat boots. One of the assailants cut the victim several times with a broken bottle and caused him to be hospitalized. Jens-Martin Laugner, a local minister who works with asylum seekers in Magdeburg, stated, "It may sound cynical, but this is a very normal case for us."<sup>53</sup>
- On April 20, 1994, five pupils ages fourteen to seventeen-years-old threw a handmade fire bomb into the home of a Turkish guestworker in the Senne neighborhood in Bielefeld. At the time of the fire, which completely burned the top floor of the house, thirteen people were in the house. All of the residents were able to escape without injury.<sup>54</sup>

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<sup>53</sup> Michaela Haas, "Der unheimliche Spaß am Haß," *Süddeutsche Zeitung*, October 31/November 1, 1994.

<sup>54</sup> "Fünf Schüler wegen Brandschlags vor Gericht," *Süddeutsche Zeitung*, October 5,

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1994, p. 6.

- A month earlier, literally on the eve of Passover, March 25, 1994, firebombs ignited the synagogue in Lübeck, a port city in Schleswig Holstein, one of the original federal states. The synagogue had been destroyed in the 1938 *Kristallnacht* terror, and had just been rebuilt. For the first time since *Kristallnacht*, the twenty-seven-member Jewish community of Lübeck was looking forward to celebrating a Passover seder in the building.<sup>55</sup>

Two Molotov cocktails burned down the synagogue's meeting hall.<sup>56</sup> Luckily, neighbors saw the flames, called the fire department, and the fire was contained. Officials emphasized, "Ten minutes later the devastation would have been enormous."<sup>57</sup>

The first firebombing of a synagogue in Germany since *Kristallnacht*,<sup>58</sup> this attack posed a serious threat to human life. The synagogue's cantor and seven other people lived in the apartments above the synagogue.<sup>59</sup> "Because the building was inhabited, there is no way the arsonists could have ruled out the possibility of murder," said investigating officials.<sup>60</sup>
- Lethal violence occurred on October 29, 1993, in Oberhof, a town in Eastern Germany where winter athletes train. Five members of the U.S. luge team were celebrating a teammate's birthday when one of the team members, an African-American, became the target of skinhead hostility

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<sup>55</sup> Matthew Beard, "Synagogue in Germany Attacked by Arsonists," *The Times*, March 26, 1994.

<sup>56</sup> Anna Tomforde, "Germans Deplore Synagogue Attack," *The Guardian*, March 26, 1994, p. 11.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.* Although this appeared to be the first firebombing of a synagogue since the war, in the past few years there have been firebombings of portions of the concentration camp at Sachsenhausen, desecration of Jewish graves, and vandalism targeted at Jewish centers, memorials, and synagogues. Beard, "Synagogue in Germany....," *The Times*.

<sup>59</sup> Tomforde, "Germans Deplore....," *The Guardian*.

<sup>60</sup> Beard, "Synagogue in Germany....," *The Times*.

and insults. "Nazi Power!" yelled one. A crowd of fifteen skinheads gathered, began making monkey sounds and movements, and yelled, "Nigger out! Nigger out!"<sup>61</sup>

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<sup>61</sup> Ira Berkow, "Athletes Can Defeat Neo-Nazis," *The New York Times*, November 2, 1993, p. B13.

A local patron of the bar told the Americans they should leave, which they did, but the skinheads chased after them. Duncan Kennedy held off the gang while Robert Pipkins, the African-American, and the other team members ran to their hotel. Kennedy was kicked and beaten as he blocked the skinheads from following the others up the stairs: "My first thought was that they were going to kill Rob. They would have if they had caught him. No question."<sup>62</sup> Kennedy received a concussion, bruised ribs, and a battered nose.<sup>63</sup>

- Solingen, a city of 170,000 located near Cologne in the Western part of Germany, was the scene of horrifying violence and death in the early morning hours of May 29, 1993. Neighbors woke to terrified screams and saw flames racing through a house owned by the Genc family.<sup>64</sup> They saw a young woman with a child in her arms silhouetted against the flames she was unsuccessfully trying to escape. There were "bone-chilling screams and then silence, just the noise of the flames."<sup>65</sup>

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<sup>62</sup> *Ibid.*

<sup>63</sup> Ira Berkow, "Luge Team Unafraid to Revisit Attack Site," *The New York Times*, January 6, 1994, p. B16.

<sup>64</sup> Steve Vogel, "Turks Die in Germany," *The Washington Post*, May 30, 1993, p. A1.

<sup>65</sup> Michael Kallenbach, "Neo-Nazi Blames as Five Turks Die in German Blaze," *The Sunday Times*, May 30, 1993.

Five people died. Four were sisters: Saime Genc, 5; Hulia Genc, 9; Hatice Genc, 18; Gulfun Ince, 27; the fifth, Gulistan Yuksel, was a 12-year-old visitor from Turkey. Eight others were injured in the fire, including two small children hospitalized in critical condition. Fourteen others inside the building barely escaped injury.<sup>66</sup>

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<sup>66</sup> Vogel, "Turks Die...", *The Washington Post*.

The Genc family had lived in Solingen for fifteen years. Their youngest children were born and had lived their whole lives in Germany.<sup>67</sup>

They owned their own home. Outside their house, fresh swastikas were painted on nearby buildings and scratched in the dirt.<sup>68</sup>

- On November 23, 1992, two buildings housing Turkish families in Mölln, a town near Hamburg, were firebombed. Screams for help awakened the neighbors, who saw people jumping from the windows.<sup>69</sup> Someone telephoned the Mölln fire department, announced the fire, shouted "Heil Hitler," and hung up. The firefighters could not get there in time to save the victims.

Three people were killed: Bahide Arslan, who died shielding a grandson from smoke; her 10-year-old granddaughter, Yeliz Arslan; and Ayse Yilmaz, a 14-year-old girl visiting from Turkey. Of the forty-five people in the buildings at the time, nine others, ranging in age from eighty-two years to nine months, were injured.

#### **VIOLENT ASSAULTS AGAINST INDIVIDUALS**

- During one weekend in October 1994, right-wing extremists attacked numerous victims in Berlin. For example, four youths reportedly between sixteen and twenty years of age attacked a Nigerian man, kicking him

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<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> "The Killing of Three Turks in an Arson Attack on Two Apartments," *St. Louis Post Dispatch*, November 24, 1992, p. A8.

repeatedly and stabbing him with a knife in the Berlin neighborhood of Friedrichshain. In Schöneberg, two neo-Nazis, ages forty-five and fifty-three, attacked a Tamil florist who then fled into a nearby Turkish snack-bar. The neo-Nazis then prevented the owner from escaping the bar and gave the Hitler salute.<sup>70</sup>

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<sup>70</sup> "Wieder Übergriffe von Rechtsradikalen," *Süddeutsche Zeitung*, October 12, 1994.

- In mid-September 1994, four young men beat up a Ghanaian man and threw him out of the S-bahn (a commuter train). The victim was found the next day on the train tracks. In addition to a skull fracture, the victim's lower leg had been run over by a train and had to be amputated. An eighteen year old, who was arrested for the crime, confessed to having attacked the asylum seeker from Ghana with three of his friends.<sup>71</sup>
- Alino Kriso-Yasufye, a young asylum seeker from Chad, left a disco in Halle when it closed early in the morning of May 20, 1994.<sup>72</sup> As he did, he was attacked by a group of men. He didn't know what had triggered the attack, but he saw twenty to thirty people who had just left the disco standing around and cheering his assailants on. As they were trampling him, the assailants shouted "Sieg Heil!" Some bystanders shouted, "Knock the nigger flat!"<sup>73</sup> "Beat him up!"<sup>74</sup>

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<sup>71</sup> "Sieben Jahre wegen Mordversuchs," *Süddeutsche Zeitung*, October 7, 1994.

<sup>72</sup> Human Rights Watch/Helsinki interview with Alino Kriso-Yasufye, Halle, June 27, 1994.

<sup>73</sup> "Ermittlungen nach Hallenser Art," *TAZ*, May 25, 1994.

<sup>74</sup> "Ich würde das jederzeit wieder tun," *Mitteldeutsche Zeitung*, May 27, 1994.

A young German woman tried to help the victim. "Why are you doing this?" she demanded. "Because they are sub-human," was the response.<sup>75</sup> As Birgit Königsheim tried to protect the victim, she was punched and knocked to the ground. She heard a man shout, "Hit the dirty nigger in the head with a brick." No one else intervened.<sup>76</sup>

- An African asylum seeker assigned to the asylum center in Burg described a harrowing experience that occurred on Good Friday, April 1, 1994.<sup>77</sup> A little after midnight he was at the Jungle Club disco with several friends. A group of young German men pushed and shoved the Africans, who hurriedly left the disco.

They followed us. They also pursued us in a Trabant car. Suddenly the car pulled behind me. Turning back to look while in flight, one of the guys pulled out a pistol and shot at me over the window of the car. Luck was on my side that the bullet flew over my eyes without entering. It touched the surface of my eye, with the gas in my eyes and in my nose. As I couldn't see and was being choked by the gas, I held a pole by the road and they in turn advanced on me. They beat me to their liking.

When I came to, I heard a very faint tone. [Two guys led me toward home, but] they left me when the German boys advanced again. I tried to stop moving cars but they all ignored me. . . .

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<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> Human Rights Watch/Helsinki interview with victim and written statement provided by victim, Burg, June 28, 1994.

Having got at me, they advanced on me again with a series of beatings, kicks, and what have you. I knelt down and started begging them with all manner of pleading. At this, the big guy who serves as their boss came and shook my hand and asked me to go. . . . Thereafter I was able to stagger home. . . . At the gate the watchman took me over to the chief of the house who [called a doctor and an] ambulance.<sup>78</sup>

- A young man from French-speaking Africa had a similar experience in Magdeburg in May 1994.<sup>79</sup>

I was in the city when I was insulted by a group of young men. They said, "Nigger, why are you here?" I tried to run away. They hit me on the neck with a rock. My neck was swollen and I needed medical attention. I spent three days in the hospital.<sup>80</sup> I had a lot of pain. I still have a neck brace and need medicine now six weeks later.

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<sup>78</sup> The victim provided a document that indicated he had been taken to the hospital on April 2, 1994. He also produced photographs developed April 3, 1994, that showed him with a swollen face that appeared to be the result of a beating.

<sup>79</sup> Human Rights Watch/Helsinki interview with victim, Burg, June 28, 1994.

<sup>80</sup> This man presented a document dated May 28, 1994, indicating that he had been in the hospital for three days.

### DAILY HARASSMENT AND INTIMIDATION

Although the shocking incidents that are reported in newspaper headlines and television broadcasts are frequent enough, they are greatly outnumbered by small-scale attacks on individuals such as those described above. There are even more incidents of harassment and provocation that occur on a daily basis. The daily harassment and discrimination may not be "shocking" enough to attract regular media attention, but it creates a general atmosphere of fear and uncertainty for the non-ethnic German population. A few examples follow:

- An asylum seeker from Africa described an incident in Magdeburg on June 27, 1994.<sup>81</sup>

Just as we left the office, four grown men in a car threw a can of beer at us. They yelled, "Ausländer raus! Nigger! Get out! Fuck you!" This happens every day. It is endless. Some drive very close to us and go up on the curb to try to run us down.

- A young man from French-speaking Africa who lives at the asylum center in Burg described a pattern of harassment.<sup>82</sup>

Every day on the train people signal with their hand that they want to shoot you. They make a gun shape and point their finger at you to show they want to kill you.

- Tawo Dable, an asylum seeker from Togo, described similar problems in Schwerin.<sup>83</sup>

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<sup>81</sup> Human Rights Watch/Helsinki interview with victim, Burg, June 28, 1994.

<sup>82</sup> Human Rights Watch/Helsinki interview with victim, Burg, June 28, 1994.

<sup>83</sup> Human Rights Watch/Helsinki interview with Tawo Dable, Schwerin, June 20, 1994.

The German people, 90 percent of them, don't like foreigners. People just start laughing at us, calling us names. "Schwarze. Nigger." You can't go to a night club because skinheads are there and they can kill you.

- Ali Goudarzi, an Iranian who has been granted asylum in Germany, commented that he had had many problems with skinheads in Schwerin in 1993 and 1994.<sup>84</sup>

They came into my apartment building, wrote "SS" on my mailbox, and broke it. Two months later, they broke the lock on my car and wrote "SS" on it. Then about eight months ago I found a bullet shot into my window. I didn't report these to the police because each time I thought it was just a single young person.

Then seven months ago there was a note in my mailbox: "Scheiß Ausländer Raus." [shitty foreigners- get out] I got scared and went to the police. They said they could do nothing. A month later my car lights were broken, "SS" was written on the motor, and someone put a picture of a skull and cross bones on my car. Now I'm very scared. I have three locks. When I go home, I'm always careful and I run inside.

I see many other problems with the asylum seekers I work with. Everyone is so fearful that they can't leave their apartments after 8:00 P.M. It's like being in prison.

- Richardson Joseph, a South African who has been a legal resident in Germany for years, first in the former GDR and now in the new federal states, has an unusual perspective on the daily acts that create the atmosphere of intimidation.<sup>85</sup> He fled South Africa to escape the apartheid

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<sup>84</sup> Human Rights Watch/Helsinki interview with Ali Goudarzi, Schwerin, June 20, 1994.

<sup>85</sup> Human Rights Watch/Helsinki interview with Richardson Joseph, Magdeburg, June 28, 1994.

at home, and now works to assist victims of racism and discrimination in Germany. He has experienced harassment and oppression directed at black people both in South Africa and in Germany. He commented on the seemingly mundane matter of commuting to work in Magdeburg by bicycle.

First, there were shouts from cars. Then spitting. Then trying to hurt or kill me. I have given up riding my bicycle and am getting a driver's license again.

[Before unification] we could walk freely at night with no concern what area we were in. Now we can't do that. We must be very careful and have our antennae out for danger ahead and behind. . . .

Last year I went to South Africa for the first time in sixteen years. My wife and I, a mixed couple, walked around freely. We went everywhere, and no one seemed to notice. It was as if it had always been that way. It was amazing. Here in Magdeburg, my wife and I don't go out and just walk around. We go in our car, and we have a destination. . . . We think about it ahead of time. We don't just walk around our neighborhood or around town. We usually travel by car. There are a lot of Nazis in our area.

The atmosphere of intimidation is not a phenomenon limited to the eastern portion of Germany. Daily harassment and discrimination also occur in the West.

- Abubakar Akumfi-Ameyaw, a Ghanaian journalist and cameraman who has lived in Germany for twelve years, gave examples from his personal experience in Bremen and Düsseldorf.<sup>86</sup>

. . . I was looking for a house in Düsseldorf with my German girlfriend. The landlord told us: "I'll give this room to a German with a dog before I give it to you and a black man."

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<sup>86</sup> Human Rights Watch/Helsinki interview with Abubakar Akumfi-Ameyaw, Düsseldorf, June 16, 1994.

More recently, in the early summer of 1994 I bought a new telephone card and went to the post office in Düsseldorf to call Ghana. When the call did not go through, I came out of the booth, but forgot my card. Several other people in line used the phone booth before I realized I had forgotten my card. I went to a man who works at that post office and asked if he had found my card. He said, "You dumb nigger, I can't help it if you forgot your card. The train station is not made for you. Only for the Germans."

I've been in Germany for more than twelve years. The hostility to foreigners is worse now than before. Now there are many more serious attacks. I'm afraid to go out, especially late at night.

- Maria Uyaner, a German in Düsseldorf who is married to a Turk, works for Düsseldorf Appell, an emergency telephone line for victims of racism.<sup>87</sup> She commented on some of her recent experiences:

We had problems before, but not daily as we do now. I talk to a lot of foreigners through my work and most say things are worse now than they were ten years ago. There is more acknowledgment now of the problems and discrimination faced by foreigners, but now more lines are drawn. There is more support for us, but there is more open discrimination, too. For example, my landlord no longer will rent to foreigners. Although he has rented to foreigners for years without any problems, he now will rent only to Germans. He said he doesn't want to be the target of any violence against foreigners.

- The landlord is not alone in this reasoning. Agrippina Insurance Company recently notified a church group in Hamburg that it was canceling fire insurance on a home for ethnic German settlers from Eastern Europe.<sup>88</sup>

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<sup>87</sup> Human Rights Watch/Helsinki interview with Maria Uyaner, Düsseldorf, June 15, 1994.

<sup>88</sup> Letter from Agrippina Versicherung Aktiengesellschaft, July 8, 1993. Correspondence attached as Appendix A.

The rationale: there is a greater risk of arson attacks in neighborhoods where asylum homes are located. A more blatant example of punishing the victims of violence is hard to imagine, yet protests to the insurance company did not change this decision.<sup>89</sup>

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<sup>89</sup> A letter dated August 12, 1993, from Joerg Kiolbassa, Diakon, Christlicher Jugendsozialdienst Hamburg e.V., protested the cancellation of the policy. Human Rights Watch/Helsinki discussed this issue with several German lawyers who confirmed that there was no German legislation prohibiting this kind of discrimination by the insurance company.

## V. THE POLICE RESPONSE TO XENOPHOBIC VIOLENCE SINCE 1992

The 1992 Human Rights Watch/Helsinki report identified serious problems with police protection of foreigners and concluded that the police failed in four different aspects of their work: to intervene to protect foreigners who were being attacked, to investigate crimes against foreigners, to curb police discrimination against foreigners, and to combat police brutality. By 1994, there had been improvements in some of these areas of police conduct. For example, after solving only 8 percent of xenophobic crimes in 1993, police reportedly improved their success rate to 30 percent in 1994.<sup>90</sup> However, Human Rights Watch/Helsinki also found that many of the problems identified in 1992 persist in many locales.

The 1992 report noted that the failure of the police to provide adequate protection to foreigners appeared to occur more frequently in the eastern part of the country than in the West.

The police in East Germany have been unable or unwilling to guarantee the safety of foreigners living within their jurisdiction.

The shocking failure of the police in Rostock to intervene when Vietnamese were trapped in a burning building is only the most recent in a long series of police failures to protect foreigners in danger.<sup>91</sup>

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<sup>90</sup> *Reuters New Service*, "Arsonists Hit Home for Refugees in Germany," February 2, 1995.

<sup>91</sup> Helsinki Watch, *"Foreigners Out"*, p. 16.

This pattern has remained the same. A comparison of the arson attack in Rostock in August 1992<sup>92</sup> with those in Mölln in November 1992 and Solingen in May 1993 is revealing. Although hooligans with murderous intent set out to injure and destroy foreigners in all three cities, the police response varied greatly.

In Rostock, a city in Eastern Germany, the police arrived late, were unprepared, and withdrew at a crucial point, leaving the victims unprotected from a skinhead mob. The police did not ensure that firefighters could approach the building to put out the fire. By contrast, no such complaints were heard in the western cities of Mölln and Solingen, where firefighters and the police forces responded quickly, and immediately began to put out the fires, save lives, and search for the criminals involved.

The contrast between inadequate police work in the East and good police work in the West is striking. Accordingly, much of the discussion that follows of the police's failure to protect foreigners focuses on the new federal states that were part of the GDR prior to unification. Police work in the old federal states is by no means perfect, however. The police abuses tend to take a different form and typically do not result in a failure to respond to foreigners' appeals for protection.

## **THE POLICE FAILURE TO INTERVENE**

### **Magdeburg, May 1994**

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<sup>92</sup> *Ibid.*, pp. 18-21.

On May 12, 1994, the Ascension Day holiday in Germany, gangs of neo-Nazis deployed through the streets of Magdeburg "hunting foreigners." At least five asylum seekers from Africa were the unlucky targets. Beaten with iron bars and stabbed, they fled to a nearby Turkish-owned cafe.<sup>93</sup> The assailants raced after them, destroying windows and smashing furniture in the cafe, and shouting "Germany for the Germans! Foreigners Out!"

A young asylum seeker from Africa was in Magdeburg that afternoon. He told Human Rights Watch/Helsinki that he and a friend were listening to a group playing music when:<sup>94</sup>

Suddenly two German men came up and insulted us and told us to leave, shouting "Germany is for Germans." One man tried to hit one of my black friends. I realized it was dangerous and left the area. We now were six or seven black fellows walking away. The German men followed us. I said, "You asked us to leave. Why are you following us?" "Germany is for Germans" was the response.

Just then a streetcar came by and fifty hooligans got off. They crossed the traffic, went down to the park, and started beating up any foreigners they could find. They overpowered us. We scattered. Some foreigners ran to the Marietta-Bar, followed by hooligans. It had been about half an hour since the hooligans got off the streetcar. There were no police around.

The hooligans started dragging the foreigners in the Marietta-Bar. They began to destroy it.

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<sup>93</sup> Marjorie Miller, "Neo-Nazi Attack on Africans Leads to Criticism of Police," *The Los Angeles Times*, May 14, 1994, p. A5.

<sup>94</sup> Human Rights Watch/Helsinki interview with victim, Magdeburg, June 28, 1994.

Under attack, patrons of the cafe grabbed knives to defend themselves. They stabbed four assailants. After the thugs left the cafe, they and others roamed the streets for hours, committing acts of violence until late in the night.<sup>95</sup>

Public reaction to the Magdeburg violence was one of horror. "Human beings are being hunted down as they were in the worst times of the SA," said Cornelia Schmalz-Jacobsen. This is a "new and horrifying high point" in violence against foreigners.<sup>96</sup>

Without a doubt, the riots in Magdeburg on May 12, 1994, were horrifying. More frightening still was the police response. It is clear that the police had advance warning that there would be violence-prone right-wing extremists in Magdeburg on that day. Ernst Uhrlau, director of the Hamburg Office to Protect the Constitution, confirmed that law enforcement sources in Magdeburg had been alerted to expect violence on May 12.<sup>97</sup> Nonetheless, there was no increased police presence in Magdeburg as the gangs of thugs grew from fifty in the afternoon to over 150 by night.<sup>98</sup>

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<sup>95</sup> Stephen Kinzer, "Anti-Foreigner Riot Hits German Town," *The New York Times*, May 14, 1994, p. 6.

<sup>96</sup> Miller, "Neo-Nazi Attack on Africans..." *The Los Angeles Times*.

<sup>97</sup> Human Rights Watch/Helsinki interview with Ernst Uhrlau, Hamburg, June 16, 1994. German television and print news also reported that prior warnings had been provided.

<sup>98</sup> Stephen Kinzer, "Four Stabbed as Rightists Attacks African Refugees in Germany," *The Gazette (Montreal)*, May 14, 1994, p. A18.

When the police finally responded, it was too little and too late. Eyewitnesses reported that it took over half an hour for the police to respond after hooligans began beating foreigners.<sup>99</sup> The owner of the restaurant that was destroyed by the neo-Nazis, Arab Oetzbay, emphasized: "The police definitely showed up too late."<sup>100</sup> When the police responded, too few came. Only thirty police officers were sent to the scene.<sup>101</sup> By the time 150 reinforcements arrived, it was late at night.<sup>102</sup>

More serious than their late arrival and their small numbers was the police response at the scene. Instead of arresting those who had attacked foreigners, the police initially arrested the victims. Many asylum seekers escaped the neo-Nazis only to be forced by the police to spend the night in jail.<sup>103</sup> An employee in the Marietta-Bar who had just reported for work described what he saw:

I opened the door to the restaurant and saw the plate glass display window shatter. Old women and children ran from the terrace into the inside of the cafe looking for shelter. This all happened in seconds. At this moment four or five black Africans ran into the cafe . . . perhaps to flee through the rear exit. Suddenly I saw three Turkish and Algerian asylum seekers hiding behind the ice cream stand in front of the restaurant. . . I called them, but at this moment a Nazi came at me and tried to hit me on the head with a bottle. I instinctively put my hand out. The bottle slid past my head and broke on the floor.

[After trying to chase the Nazi away and getting beaten up myself, I returned] to the restaurant. At this moment I saw five or six police cars arrive between the Marietta-Bar and

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<sup>99</sup> Human Rights Watch/Helsinki interview with African asylum seeker, Magdeburg, June 28, 1994.

<sup>100</sup> Miller, "Neo-Nazi Attack on Africans....," *The Los Angeles Times*, May 14, 1994.

<sup>101</sup> Kinzer, "Anti-Foreigner Riots....," *The New York Times*, May 14, 1994.

<sup>102</sup> *Ibid.*

<sup>103</sup> Human Rights Watch/Helsinki multiple interviews, Magdeburg, June 28, 1994

McDonald's. As I got to the kitchen of the restaurant, a policeman, who was about two to three meters behind me, ordered: "Hands up." I had my hands pulled behind me; then he put on the handcuffs and tightened them so much that my hands got swollen and still hurt me ten days later. Then he led me away, pulling me so hard on my upper arm that blood was gushing there for a long time. . . .

When we reached the street car tracks, two Nazis came up to us and hit me in the head and on the back, so that I was knocked to the ground. I tried to protect my head behind the legs of the policemen. Then I was taken to a police van.

Furthermore, the police work was incredibly sloppy. No videotapes were taken to show which assailants had been involved in which attacks.<sup>104</sup> The forty-eight neo-Nazis ultimately detained were all released without being charged. These people were all "known to us," said a police spokesman. "They were drunk and obviously wanted to chase foreigners."<sup>105</sup>

By contrast, the foreigners were "not known" to the police, yet they were treated like criminals. A young asylum seeker from Algeria described to Human Rights Watch/Helsinki how he was attacked by skinheads and then by the police.<sup>106</sup>

On the 12th of May around 4 P.M. I was in the center of the city. A big car stopped, with many men carrying baseball bats, bottles, and other weapons. They ran toward the park, shouting, "Foreigners out! Foreigners are shit! This is our country!" They kept hitting all the foreigners they could find. They especially attacked the Africans, but also all the other foreigners. I tried to get away. . . .

After about fifteen minutes the police came and started beating me. They didn't ask me anything. They handcuffed me, put me

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<sup>104</sup> Kinzer, "Anti-Foreigner Riots...", *The New York Times*.

<sup>105</sup> Miller, "Neo-Nazi Attack on Africans...", *The Los Angeles Times*.

<sup>106</sup> Human Rights Watch/Helsinki interview with victim, Magdeburg, June 28, 1994.

and another man into a car, and took us to the police station. They kept us there with nothing to eat or drink. I kept telling them to let me go. They took me to see the prosecutor. They took pictures of me. At 5 A.M. they finally let me go. They told me to go home.

Similarly, another asylum seeker from Africa told Human Rights Watch/Helsinki:

All of a sudden I heard a noise behind me. I thought it was a holiday crowd. The crowd came closer fast. I tried to run away. All of a sudden I was kicked from behind. A man grabbed my hand. It was a cop. I asked, "Why?" He didn't answer. He forced me to the ground. I didn't resist and went straight to the ground. He held me there for five to ten minutes. Another cop came and arrested me and another foreigner. He did a body search of me. They never said why they arrested me. He kicked the other foreigner between the legs. They took me in a car to the police station.

At the station they locked me up for two hours. They made me strip naked. They never told me why I was there. Then they took me to another police station. They put me in a big cell with about fourteen other foreigners. There were no chairs, no benches; we had to stand or sit on the floor. I was in severe pain due to the kick in my back. I asked to see a doctor. They said one would come soon, but none ever did. I asked for a blanket, but was told there were no more.

About midnight questioning began. We were called out of the cell one at a time, asked why we had been arrested, and what had happened. Sometime around 1 or 2 A.M. I was questioned for about twenty minutes. I asked again for a doctor. After the last person had been questioned and returned to the cell, they released us in a group. This was around 5 A.M.<sup>107</sup>

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<sup>107</sup> Human Rights Watch/Helsinki interview with victim, Magdeburg, June 28, 1994.

A report by the German news weekly *Der Spiegel* raised questions about the police response and their tendency to diminish the seriousness of the crimes committed.

The delayed response by the police and justice officials to anti-foreigner youths in Magdeburg . . . is no isolated case. The great majority of the approximately 150 violent offenders who brutally attacked foreigners are already familiar to the authorities and apparently have already participated in innumerable similar incidents. A police official stated: "We have known the majority for years." [According to official police files,] some of them even since 1991. At that time right-wing radicals attacked several Turks, who were sleeping in their cars near Magdeburg. One Turk suffered life-threatening burns and injuries to his head. Neither the police nor the prosecutor's office made the crime public. Up to now, no date has been set for the trial of the perpetrators, whose identity has been known since September 1991. . . . Last Ascension Day, youths literally hunted down Africans. Many people were injured, some of them severely. Of the forty-nine persons initially detained only one remained in police custody, because an arrest warrant had been issued against her for another crime. According to Antonius Stockmann, Magdeburg's chief of police, the rest were released because of the "confusing situation" on the day of the incident. He downplayed the importance of the xenophobic background of the brutal attacks: "The role of the sun and alcohol was much greater."<sup>108</sup>

#### **Halle, May 1994**

Only weeks after the attacks in Magdeburg, violence also erupted in Halle. The police response again was shockingly inadequate. As described earlier,<sup>109</sup> an asylum seeker from Chad was attacked and beaten outside a disco in Halle on Saturday evening, May 21, 1994. The one German woman who tried to help him was also beaten.

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<sup>108</sup> "Täter gut bekannt," *Der Spiegel*, Nr. 20, May 16, 1994, p. 16.

<sup>109</sup> See case studies.

The police arrived shortly after the attack, but did nothing. Birgit Königsheim, the woman who tried to intervene, was shocked: "The police got there one minute after the attack, but they did not arrest the people that I identified to them. That really astounded me."<sup>110</sup>

In fact, the police did worse. They denied that they had seen any of the assailants, and instead reported that the attackers had fled unidentified. Several days later, after a public outcry, the police admitted that they had stopped the alleged assailants and then let them go.<sup>111</sup> They traced the suspects to a neighborhood bar, but failed to block the rear exit, through which the suspects escaped. The police identified the suspects as right-wing sympathizers, and the owner of the neighborhood bar as a friend of the German League, a right-wing organization.<sup>112</sup>

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<sup>110</sup> "Ich würde das jederzeit...", *Mitteldeutsche Zeitung*, May 27, 1994.

<sup>111</sup> "Ermittlungen nach Hallenser Art," *TAZ*, May 25, 1994.

<sup>112</sup> *Ibid.*

Police officials again sought to down play the incident. A spokesperson for the police stated that the police had made "tactical mistakes." They had not tried to "hush up" the incident, but had "merely failed to get a handle on the situation."<sup>113</sup>

Although the police failures to intervene in the violence described above received press coverage, there are thousands of daily incidents of harassment and violence that are never reported in the news. In many of these less sensational attacks on foreigners, the police also fail to respond in a prompt manner. An encounter in downtown Magdeburg in June 1994 is typical.

#### **Magdeburg, June 1994**

On June 16, 1994, an African asylum seeker was standing in the main train station in Magdeburg at about 12:30 P.M. waiting for a train back to Burg.<sup>114</sup>

Suddenly some Nazis came up from the subway, first a few of them, and then ten or more. They shouted, "Hey, Nigger," and poured a bottle of beer on my head.

There was no one around, but I saw a policeman, who was watching me and doing nothing. I walked toward him and then four more police came up. I told them in English, showed them my head and my bag, all covered with beer. I identified the man who had done it. The police chatted in a friendly way with the German man and did nothing.

The asylum seeker drew an obvious conclusion:

It's no use to go to the police. I missed my train. All I got out of this was a three-hour wait for the next train. There's no way I'll go to the police in the future.

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<sup>113</sup> "Ermittlungen nach Hallenser Art," *TAZ*, May 25, 1994.

<sup>114</sup> Human Rights Watch/Helsinki interview with victim, Burg, June 28, 1994.

**Buchenwald, July 1994**

In response to a skinhead rampage through the Buchenwald concentration camp in July 1994, Cornelia Schmalz-Jacobsen criticized the police for their weak response to right-wing attacks. She remarked that "[i]t is striking how often the police were not there when their presence was required," and observed that in the prior weeks there had been "an unbearable concentration of slip-ups at individual police stations."

The fact that the video unit was simply not present during incidents like the one in Buchenwald, where the police lost sight of a bus carrying right-wing extremists, and during xenophobic riots, like the ones in Magdeburg, cannot be tolerated any longer. [According to Schmalz-Jacobsen,] the governments of the Länder [states] are "urgently required to sensitize the police to a greater extent with regard to right-wing violent criminals."<sup>115</sup>

In a letter to the state government, Gerd Schuchardt, head of the Social Democratic Party's parliamentary group in the Thüringen state parliament, observed that the police response to the attack had been "a high point in a long series of failures by the security forces" and pointed out that "four years after the formation of the state of Thüringen, 20 percent of all police guards had not yet completed the basic training on [appropriate] police conduct in a state ruled by law."<sup>116</sup>

**Rostock: The Parliamentary Investigation**

The official response during the August 1992 violence in Rostock is perhaps the most vivid example of the failure of the German police to provide adequate protection for foreigners. Following two days of violence by right-wing skinheads in front of an asylum shelter, 200 asylum seekers, mainly Romanian Gypsies, had to be evacuated on August 24, 1992. However, approximately 150 Vietnamese contract workers who lived in a building next to the shelter were not moved.

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<sup>115</sup> "Skinhead Scene is a Burden Left Behind by Honecker," *Die Welt*, July 28, 1994, p.2; reported in *FBIS-WEU-94-145*, July 28, 1994, p.17.

<sup>116</sup> "Sicherheitsbehörden haben versagt," *Süddeutsche Zeitung*, August 25, 1994.

That evening the police protecting the building withdrew to a nearby hill, giving skinheads gathered nearby the opportunity to throw Molotov cocktails and storm the building. During the next two hours, the Vietnamese, as well as some German journalists, were trapped in the burning building while the police watched from a distance. The police moved in only after the foreigners had escaped on their own to safety.

The parliament of the state of Mecklenburg-Vorpommern established a special commission to investigate the events in Rostock. In 1993, the commission issued a report concluding that serious police failures had contributed to the violence and its aftermath.<sup>117</sup>

As discussed above, the police response was clearly inadequate. Only thirty police officers responded on Saturday, August 22, 1992, and they were easily overwhelmed by the 300 or more right-wing demonstrators.<sup>118</sup> There appeared to be major miscommunication between the police in Rostock and their superiors in Schwerin, the state capital. This was compounded by an unwillingness by police officials and political leaders to treat the situation as a life-threatening emergency.

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<sup>117</sup> There actually were two reports. The first report was issued in June 1993. It dealt with the facts of the violence in Rostock. Members of the Commission unanimously agreed with this report. The second report was issued in November 1993. It included analyses of the causes of the violence. The CDU/FDP voted in favor of this report. The SDP voted against it and submitted a separate report. Human Rights Watch/Helsinki interview with Dr. Manfred Rissman, member of the parliamentary investigatory commission, Rostock, June 21, 1994.

<sup>118</sup> These details come from Human Rights Watch/Helsinki interviews with Dr. Wolfgang Richter, commissioner for foreigners' affairs for Rostock, and Dr. Manfred Rissman, Rostock, June 21, 1994.

For example, Dr. Wolfgang Richter, the commissioner of foreigners' affairs in Rostock who was himself trapped in the building, called the Rostock police and pleaded for more police protection. He was told that only the minister of the interior could request reinforcements from the federal border guards, and that he could not be reached on a Saturday night.

The crowd of rioters and bystanders swelled immensely on August 23. Reinforcements were called in, and more than 300 police officers from other cities were in place in Rostock by the late afternoon. Inexplicably, on Monday evening, the police were removed from the vicinity of the building that housed the Vietnamese. Shortly thereafter, the mob moved in again, entered and vandalized the building, and set the fire that trapped and nearly killed over 100 people. Although the firefighters came relatively quickly, the police did not protect them from the crowd, and they were, therefore, unable to approach the flames.

Lothar Kupfer, the state minister of the interior, was dismissed in February 1993, but officially his dismissal was not related to the events in Rostock. Siegfried Kordus, the chief of police at the time of the violence, was promoted to director of the State Office of Criminal Investigations. Klaus Kilimann, the mayor of Rostock at the time of the violence, was forced to resign in November 1993, after the parliamentary report concluded that Kiliman had failed to fulfill his responsibilities to the city.<sup>119</sup>

There have been no major incidents of violence against foreigners in Rostock since 1992, so it is difficult to assess whether the willingness of the police to protect foreigners has improved during the past two years. Some who work with refugees and other foreigners in Rostock think that the police and other authorities have become more sensitive to the problems foreigners face.<sup>120</sup> They say that since 1992 the senior levels of the police have seemed more aware of violence and discrimination against foreigners and have been more cooperative in dealing with foreigners. Others, including some of the Vietnamese living in Rostock, feel that there have not been broad changes at the senior levels of the police.<sup>121</sup>

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<sup>119</sup> "Einsatzleitern drohen disziplinarische Folgen," *Süddeutsche Zeitung*, November 12, 1993; "Rostocks Bürgermeister zurückgetreten," *Deutschland Nachrichten*, November 19, 1993, p. 2.

<sup>120</sup> Human Rights Watch/Helsinki interview with Dr. Wolfgang Richter, Rostock, June 21, 1994.

<sup>121</sup> Human Rights Watch/Helsinki interview with Thinh Nyugen Do, Rostock, June 21, 1994.

### **POLICE FAILURE TO INVESTIGATE**

#### **Burg**

Human Rights Watch/Helsinki received many reports that police are often loath to mount serious investigations into crimes against foreigners. For example, an African asylum seeker was assaulted and beaten on April 1, 1994, in the town of Burg.<sup>122</sup> The injuries he sustained during the beating required hospitalization. Police follow-up was erratic.

The police asked if I could identify the man. I said yes. The police said they would come pick me up on Friday morning and then give me an appointment for Saturday. I waited all Friday and Saturday, but the police never came . . . About a month later, I made a written statement. They said they would come back, but they have not come [in the six weeks] since.

#### **Magdeburg**

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<sup>122</sup> See cases on violence against foreigners.

Similarly, an asylum seeker from Africa was attacked on his way to Magdeburg.<sup>123</sup>

I was going to the city on a bicycle. A group of boys in a car came up. The one in the front threw beer at me. I said, "Why?" He said, "Fuck you!" I dropped my bicycle.

A German lady was there. I pointed at her and then at them so she could see this. She said to them, "You're not acting right." The man said, "If you talk, I'll shoot you." He pulled a gun. The license plate had the last three numbers covered. . . . I came home and reported this to the police. They said, "Sorry, there's nothing we can do."

This lack of interest in protecting foreigners is typical. Many foreigners point out that thugs often abuse foreigners when no witnesses are present. In this instance, however, a cooperative witness was available, as well as some identifying evidence about the vehicle involved. Nevertheless, there was no police investigation. Not surprisingly, after incidents like this, many foreigners conclude that the police are essentially unavailable to protect them against crime and decide it is not worthwhile to report harassment and violence to the police.

### **Rostock**

The report prepared by the parliamentary commission, which investigated the 1992 events in Rostock, identified inadequate investigatory work as one of the

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<sup>123</sup> Human Rights Watch/Helsinki interview with victim, Burg, June 28, 1994.

deficiencies of the Rostock police in 1992.<sup>124</sup> More than one hundred criminal charges were lodged against right-wing extremists, and many suspects were arrested, but a large number of the proceedings were dismissed due to inadequate police work. As a result, many who attacked the Vietnamese were never punished.<sup>125</sup>

### **POLICE BRUTALITY AGAINST FOREIGNERS**

In addition to reports of police inaction in the face of violent attacks on foreigners, Human Rights Watch/Helsinki received numerous reports of police mistreatment of foreigners. A few of the complaints are described below.

- In August 1993, Vietnamese men were assaulted by police officers at the police station in the town of Bernau. One of the victims reported that:

We had to undress and were beaten by ten policemen. Then we were brought into one room where we had to line up against the wall with our faces to the wall. The policemen hit us in passing over and over again. Then we had to make faces and the police took pictures of us (not just our faces but our entire bodies).

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<sup>124</sup> Human Rights Watch/Helsinki interview with Dr. Manfred Rissman, Rostock, June 21, 1994.

<sup>125</sup> Many who were punished received very light sentences, such as one week of community service. The judges apparently focused on the young age of the defendants and not on their involvement in right-wing violence or on the deterrent impact that higher sentences might have. Human Rights Watch/Helsinki interview with Wolfgang Richter, Rostock, June 21, 1994.

I wore a Buddhist amulet containing ashes (a type of good luck charm) which the police ripped off my neck and broke. The police believed it contained narcotics and, therefore, beat me more brutally than the others. After two men were released, several policemen threw me down the stairs. I later complained about the treatment by the police to some kind of official and an interpreter.<sup>126</sup> We looked for my identity papers and found them in a trash can.<sup>127</sup>

- Another Vietnamese man reported that he was arrested in Bernau in 1993 and in 1994.<sup>128</sup>

We were taken down to the station and brought to a room where we were forced to undress. One of the policemen put on leather gloves. We were beaten and kicked all over by two policemen. The beatings lasted about twenty minutes. I was later forced to sign a statement saying that I had been arrested with twenty (rather than eight, the actual figure) cartons of cigarettes. I

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<sup>126</sup> Reistrommel, an organization that works to improve the situation of Vietnamese nationals in Germany, located the interpreter, who remembered that the Vietnamese man had said he had been beaten. The interpreter could not recall seeing any specific injuries.

<sup>127</sup> Written statement by victim, Bernau, 1993. Statement collected and provided by Reistrommel.

<sup>128</sup> Written statements by victim, Bernau, 1993 and 1994. Statements collected and provided by Reistrommel.

received a fine from customs later on for more than DM 1,000, which I paid in monthly installments.

[A year later] I was arrested by the same policeman in the same way as the last time. I had no cigarettes on me at the time. I was brought down to the station and put into the same room as before where I was forced to undress. Again, I was beaten (with leather gloves) and kicked all over my body. This lasted half an hour. For one month I had pain in my left cheek. Also, as a result of the beating, one of my teeth was chipped.

- Yet another Vietnamese man described similar mistreatment by the police in Bernau in March 1994.<sup>129</sup> He reported that he was in downtown Bernau with his girlfriend.

Suddenly, two uniformed policemen approached, arrested, and handcuffed us. They brought us down to the station, where they soon released my girlfriend. The policemen questioned me about my presence in Bernau since I was not registered in Berlin. He then took away my residence papers and forced me to undress. He beat me for approximately fifteen minutes and kicked me in the shins with his boots. I suffered hemorrhages and bruises and was in great pain for a long time.

- Human Rights Watch/Helsinki also received numerous reports of abusive police conduct in Halle. Many foreigners complained that the police illegally searched their apartments, used excessive force, and left their apartments in total disarray, with cash and other items missing.<sup>130</sup>

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<sup>129</sup> Written statement by victim, Bernau, March 1994. Statement collected and provided by Reistrommel.

<sup>130</sup> Human Rights Watch/Helsinki interviews with workers at Eine Welt Haus e.V., a center offering assistance to foreigners and Germans, Halle, June 27, 1994.

- Foreigners in the city of Berlin report widespread racism among the police, which often results in police abuse and mistreatment of non-Germans. In July 1994, the state minister of justice, Maria Peschel-Gutzeit, reported that there were twenty-six criminal investigations under way of Berlin police officials for having allegedly abused Vietnamese cigarette dealers.<sup>131</sup> In October, the minister of the interior for Berlin, Dieter Heckemann, reported that "forty-six of its police officers are being investigated in connection with accusations of causing bodily harm and of receiving stolen goods . . . . Twelve of the officers have been suspended from duty."<sup>132</sup>
- In July 1994, a police officer in the city of Leipzig was sentenced to four years of imprisonment for having beaten Vietnamese immigrants and one German with a club, having misused tear gas [Reizgas] and having robbed one in the summer of 1993.
- "In Hamburg, two police officers were convicted and fined for beating a forty-four-year-old Senegalese man who was wearing a hat with a sticker reading, 'Don't give Nazis a chance.'"<sup>133</sup>

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<sup>131</sup> "Ausländer in Berlin mishandelt," *Süddeutsche Zeitung*, July 28, 1994, p. 5.

<sup>132</sup> "Vietnamese immigrants feel force of German police brutality," *The Independent*, October 1, 1994.

<sup>133</sup> "German police accused of foreigner-bashing," *The Gazette*, November 19, 1994.

On September 12, 1994, Hamburg's minister of the interior, Werner Hackmann, resigned from office in protest against a growing number of racist attacks by police in the Hamburg police force. Hackmann stated that he could no longer control his officers and that the police in Hamburg had developed a pack mentality.<sup>134</sup>

The next day, on September 13, twenty-seven police officers in Hamburg were suspended for having allegedly attacked foreigners, three of whom were also accused of having contact with right-wing groups. Hackmann stated that he had "not believed it possible to what extent the police have attacked foreigners."<sup>135</sup>

As of March 1995, eighty police officers in Hamburg were being investigated for having mistreated and abused detained foreigners. Investigators have been conducting an investigation for almost five months. Their chief witness, himself a police officer, has reportedly testified that most of the victims are black. The witness has reportedly also testified that when police discovered that a detained black African possessed a can of teargas, they locked the man in a cell with five other black Africans. The police then sprayed the full can of teargas into the cell and left the detainees in a cloud of gas. In another case of psychological torture and humiliation, two police officers had carried out a fake execution of a black detainee. The victim was allowed to smoke a last cigarette, after which one of the policemen held a pistol to his forehead, while the other officer shot his gun into the air. According to the police witness, "the nigger just about pissed and shit in his pants." Although a parliamentary investigatory commission has been established, it is not expected to release its findings until after the fall of 1995.

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<sup>134</sup> "Interior minister resigns in protest against police racism," *Romnews*, September 13, 1994, No. 16, p. 1.

<sup>135</sup> "Twenty-seven Police Officials Suspended," *Süddeutsche Zeitung*, September 14, 1994, p. 5; reported in *FBIS-WEU-94-178*, September 14, 1994, p. 13.

- In mid-July 1994, in Lüneberg, two police officers were convicted and sentenced to jail for having detained a Russian asylum seeker, placed him in handcuffs and driven him to a forest where they beat him.
- Nadir Watad, an Israeli student living near Hannover, was hospitalized with bruises to the head after being thrown on the floor, beaten and kicked in the head by five police officers in mid-July 1994. The police officers apparently became angry after Watad complained that the five men, whom he did not realize were police officers, were making too much noise and were disturbing the neighbors. The three main police officers have been suspended from duty and are currently awaiting trial.<sup>136</sup>
- A.Z., a Kurdish man who came to Germany in 1979 to join members of his family, described an unprovoked beating by the police in Berlin.<sup>137</sup> A legal resident of Germany, A.Z. was stunned by the attack.

I spent the night of September 25-26, 1993, with three men friends at the home of one of them. We drank a lot. Around daylight I decided to go home by car. On the way home, the axle of my car broke. I tried to repair the car, but couldn't. . . . My house was five to ten minutes away, so I went home to get my wife. . . .

I came back with my wife. Two police officers were waiting and ran toward me and restrained me by the arms. They accused me of causing an accident and leaving the scene. I denied this and explained the car had broken down. The police called me a liar and said the car was okay. I gave them the keys and he tried to drive it away, but couldn't.

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<sup>136</sup> "Spiegel der Gesellschaft," *Der Spiegel*, August 1, 1994, pp. 63-4.

<sup>137</sup> Human Rights Watch/Helsinki interview with A.Z., Berlin, June 22, 1994.

They took me away, leaving my wife at the car. My wife asked where they were taking me. "To the hospital," the police replied. They took me to the police station. Inside the police station, they started to hit me. They broke my finger, gashed my hand, gave me two black eyes, and left me with a swollen face. I called for help, but no one came. I was taken further into the station and saw two other police officers. I told them, "They beat me. I want to make a complaint. You can see what happened. Didn't you hear me call for help?" They responded that they couldn't do anything. I asked for their police badge numbers, but they refused. I said, "If you don't give me your numbers, I won't leave." They still wouldn't give them.

They called a doctor to check my alcohol level. She saw my condition and my swollen hands. I asked her to help me get to the hospital. She said, "Sorry, I can't help you." Neither the doctor nor the police officers wore name tags.

I left the police station and took a taxi to the hospital. At the hospital they said my finger was broken and would take four to five weeks to heal.<sup>138</sup>

- Abubakar Akumfi-Ameyaw, a Ghanaian journalist and cameraman, who has lived in Germany for twelve years, described an experience in Bremen.<sup>139</sup>

In 1990 I was working as a cameraman at a soccer game in Bremen. I left the field to get a cable from my car. When I returned to the staff entrance, a policeman grabbed me by the

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<sup>138</sup> A.Z. possessed a doctor's certificate indicating he had the injuries he described.

<sup>139</sup> Human Rights Watch/Helsinki interview with Abubakar Akumfi-Ameyaw, Düsseldorf, June 16, 1994.

back of my shirt. He wouldn't let me in. He said, "You nigger. You must be a monkey. You can't be working a camera."

- Emelia Ogubuike Madu, a Nigerian whose asylum application had been rejected, was taken from Volkstedt Prison in handcuffs and leg chains to the airport in Berlin to be deported to Nigeria on June 11, 1994.<sup>140</sup> When he resisted going onto the Balkan Airlines plane, the pilot refused to allow him on board.

I was still handcuffed. I was taken into an airport building and pushed into a small cell. The airport police started beating me.<sup>141</sup>

There were about ten of them beating me with sticks and with their hands. They were calling me "Nigger." I said, "Yes, my name is Nigger" to get them to stop. I was bleeding; my eyes were puffy.

When I came back to Volkstedt Prison from the Berlin Airport, my face was puffy, abnormal. I had blood in my eyes. My nose, ears, and wrists were swollen. About 10 P.M. on the night I returned, I started vomiting blood. An emergency doctor came.

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<sup>140</sup> Human Rights Watch/Helsinki interview with Emelia Ogubuike Madu, Volkstedt, June 27, 1994.

<sup>141</sup> Madu said that the police who drove him to the airport and back did not participate in the beating. He said he was told the police who beat him were specially trained to work at the airport.

She said I must be taken to the hospital. After two days they took me to the hospital.<sup>142</sup> I had been vomiting blood.

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<sup>142</sup> The warden of the prison told Human Rights Watch/Helsinki that Madu had been in the hospital from June 16 to June 23 and had been released because he said there was nothing wrong with him.

Police brutality is not directed solely at non-Germans, but police brutality toward foreigners does appear to be a growing problem in Germany. Amnesty International concluded in 1994 that there had been a "marked increase in the number of reports of police ill-treatment of foreigners."<sup>143</sup> Similarly, "a watch-dog group of law-enforcement officials, the federal working group of critical police officers, agrees that the problem is real. 'The fact is, there are a series of events and attacks that suggest a rightist, racist and anti-foreign potential,' said Jürgen Korell, one of the organization's leaders."<sup>144</sup>

#### **FAILURE TO PUNISH POLICE MISCONDUCT**

By 1992 when the prior Human Rights Watch/Helsinki report was released, numerous instances of police misconduct had been identified. Many argued that the state could only show that it was serious about combatting violence against foreigners if disciplinary action were taken against police officers who abused and failed to protect foreigners. In 1994, Human Rights Watch/Helsinki inquired in each locale about disciplinary or criminal punishment of police officers who engaged in misconduct involving foreigners.

There have been several highly publicized investigations of police abuse of foreigners in the last year, especially in Berlin and Hamburg. As discussed above, some of these cases have resulted or are likely to result in disciplinary or criminal action against the officers. However, disciplinary action has rarely been taken against police officers, and criminal prosecution of police officers for misconduct involving foreigners has been even rarer. A few examples illustrate the situation.

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<sup>143</sup> Steve Vogel, "German Police Accused of Foreigner-bashing," *Washington Post*, November 19, 1994, quoting 1994 Amnesty International report.

<sup>144</sup> "German police accused of foreigner-bashing," *The Gazette*, November 19, 1994.

- The 1992 report recounted the murder of an Angolan guest worker, Amadeu Antonio Kiowa, in Eberswalde, northeast of Berlin, on November 25, 1990. Three armed police officers, who had a group of skinheads under surveillance, watched as the skinheads shouted anti-foreigner epithets, beat Amadeu with baseball bats, and left him to die. Another group of police officers located further away waited to respond until the victims had been severely beaten.<sup>145</sup>

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<sup>145</sup> *Rassismus in Deutschland - Das Beispiel Eberswalde*, Antirassistische Initiative Berlin, (Berlin: 1994), p. 13.

In July 1992 the prosecutor's office in Frankfurt/Oder began an investigation into the inaction of the three police officers who stood by and witnessed the violence. The police were charged with neglect of their duty, leading to manslaughter. More than three years went by after the death of Amadeu Antonio before the officers were brought to trial.<sup>146</sup> When the proceedings finally began, the judges dismissed the charges. In May 1994 the judges ruled that there was no proof that intervention by the police would have prevented death. "The judges added that the evidence indicated that the Angolan had suffered fatal injuries at the beginning of the attack, dying from them seven days later, and that an intervention by the police would not have kept him alive."<sup>147</sup> The head of the police in Eberswalde indicated that she would not initiate disciplinary proceedings against the three officers involved.<sup>148</sup>

The judicial ruling triggered serious criticism of the government. Hanns Thomas Venske, the coordinator for refugees and migrant workers of the Evangelical Church in Berlin, called it an outrage.<sup>149</sup> "This is a signal to the population that it is alright to do this. It's absurd that the

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<sup>146</sup> *Ibid.*, p. 39.

<sup>147</sup> "Police who watched African killed by Neo-Nazis walk free," *Reuters Information Service*, June 2, 1994.

<sup>148</sup> Human Rights Watch/Helsinki interview with Britta Grell, Berlin, June 25, 1994.

<sup>149</sup> Human Rights Watch/Helsinki interview with Hanns Thomas Venske, Berlin, June 24, 1994.

police can refuse to intervene if they are not sure they will be successful. It is unthinkable that the ruling would be the same if the victim were a German bank manager." Britta Grell, of Antirassistische Initiative, echoed him: "The ruling says that standing by and watching violence is alright for police in Germany. This gives the police the message not to intervene."<sup>150</sup>

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<sup>150</sup> Human Rights Watch/Helsinki interview with Britta Grell, Berlin, June 25, 1994.

- The 1993 report of the parliamentary investigatory commission, as well as many press accounts, roundly criticized the police in Rostock for their failure to stop the violence in 1992. Ultimately, the minister of the interior and the chief of police resigned in response to the commission's findings. However, almost two years after the riots, in the spring of 1994, the prosecutor's office had pressed charges against only two police officers. The charges are still pending. No civil cases or disciplinary proceedings were brought against these or any other police officers.<sup>151</sup>
- The failure of the police in Madgeburg to respond to the violence against foreigners in May 1994 made headlines around the world. The police were roundly criticized by the press. Although fifteen investigatory cases were opened, including seven against specific police officers, all but one of these cases has been closed without charges being brought. In one case, a police officer was suspended and is currently awaiting trial.
- When Alino Kriso-Yasufye was beaten and trampled in front of a disco in Halle in May 1994, the police who arrived at the scene spoke to the assailants and let them go. Then the police denied having seen the assailants. Even police officials reportedly acknowledged that the police response was inadequate.<sup>152</sup> It is unclear whether disciplinary action has

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<sup>151</sup> Apparently, the Ministry of the Interior has recently indicated that disciplinary action will be taken against the head of the Division of Foreigners Information and against the head of the Security Division. Human Rights Watch/Helsinki interviews with Richter and Rissman, June 21, 1994.

<sup>152</sup> Anti-racism activists in Halle said that the police admitted that they had made a

been commenced against the police officer in charge at the scene of the crime. Heidi Bohley, a human rights advocate in Halle, said that no disciplinary proceedings had been commenced against the police officers involved, but that one police officer has apparently been removed from duty. No information was available as to the reason for or the duration of the removal from duty.<sup>153</sup>

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mistake and that the police at the scene did not perform their duties properly. Human Rights Watch/Helsinki interview with Heidi Bohley, Halle, June 27, 1994.

<sup>153</sup> "Ermittlungen nach Hallenser Art," *TAZ*, May 25, 1994, reported disciplinary proceedings were begun, but provided no details.

Many complain that police officers are rarely prosecuted or convicted for abusive conduct, in part because the alleged abuse often takes place when no witnesses are present, leaving the victim with only his word against that of the police. The statistics also reveal that a low number of complaints ever result in a criminal conviction. For example, of the 646 criminal investigations for assault against police officers in Berlin in 1992, 627 were closed without charges being brought. In the nineteen cases that did result in charges against police officers, all were acquitted.<sup>154</sup> The German news weekly *Der Spiegel* also reported that, of the approximately 9,000 criminal investigations of police per year, 6 percent end in conviction. However, the number ending in conviction is much lower for offenses committed by police while on duty.

Recommendations intended to restrain violence-prone police officers are rarely or only half-heartedly implemented. Hardly any of the federal states employ a police ombudsman, who could hear citizens' and police officers' complaints and investigate violent attacks. A recommendation by the interior ministers' conference in May 1993 that foreigners be employed in the police departments has been implemented only sporadically.<sup>155</sup>

What is more, there has still been no decision to require that all police officers wear name badges so that victims will be able to identify their abusers. Only a few states are currently "experimenting with name badges."<sup>156</sup>

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<sup>154</sup> "Schwarze Horden," *Der Spiegel*, September 19, 1994, p. 109.

<sup>155</sup> *Ibid.* In October 1994, the state of Brandenburg began training the first non-German police in the state. They will become police officers in 1997. "Brandenburg macht Ausländer zu Polizisten," *Süddeutsche Zeitung*, October 7, 1994.

<sup>156</sup> *Ibid.*

## **VI. GOVERNMENT MEASURES TO IMPROVE POLICE RESPONSE**

The 1992 Human Rights Watch/Helsinki report identified several factors that exacerbated the inadequate police response to attacks on foreigners. It noted that the police in the new federal states generally were poorly equipped. For example, they often lacked working communications gear, as well as effective protective gear for anti-riot duty. In addition, the police in the states that comprised the former GDR were poorly trained compared to their colleagues in the West. The training deficit was exacerbated by uncertainty about their status. In the first years after unification, the former GDR police officers were reviewed for their political and professional integrity. Their future as police officers was not secure. The demoralization that accompanied this review process was intensified by the realization that police in the new federal states would earn only a portion of the pay of the police in the West.

### **INCREASED FEDERAL STAFFING**

The federal government has taken important steps to improve the protection of foreigners. For example, the Federal Office to Protect the Constitution has enlarged its division to focus on right-wing and xenophobic violence and has increased the personnel in that division.<sup>157</sup> The Federal Office to Protect the Constitution also formed a special task force to coordinate and pool information about right-wing and xenophobic crimes. Similarly, the Federal Office of Criminal Investigation (BKA) increased the personnel assigned to its division on right-wing extremism and restructured its operations. This office has established a

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<sup>157</sup> Human Rights Watch/Helsinki interview with Gerhard Siegele, Internal Security Division, Federal Ministry of the Interior, Bonn, June 30, 1994. Mr. Siegele described the details that appear in the text.

working group to assist the states in developing strategies to deal with right-wing violence.<sup>158</sup>

### **IMPROVED POLICE EQUIPMENT**

In terms of improving police equipment, the procurement programs in place in the old federal states were shifted to apply to the new states. The federal government financed the procurement of equipment for demonstration and riot control because it wanted police throughout the country to have uniform gear and compatible equipment. Generally, the equipment in the new states is now up to par with that in the rest of the country.

### **POLICE TRAINING**

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<sup>158</sup> Letter dated September 5, 1994, from Lenz, for the Federal Ministry of the Interior.

Improvements in police training have proved to be a more long-term problem. The new states have been partnered with original states for assistance with police training. The federal government has not become directly involved in developing training programs for local police officers.<sup>159</sup> Many officials acknowledge that despite these efforts the training of police in the new federal states is often still deficient.

#### STATE IMPLEMENTATION

Individual states are responsible for developing and implementing strategies to prevent violent attacks on foreigners. The conference of the ministers of the interior of all the states, as well as of the federal government, has convened to discuss strategies and coordinate efforts. A special committee of this conference has, for example, discussed ways to provide more protection to asylum homes and has recommended special commissions to combat xenophobic crime. The costs of suggested measures, such as special anti-right-wing-extremism police units, are shouldered totally by the individual states.<sup>160</sup>

Because the implementation of the plans and suggestions is left to the states, it is not surprising that the effectiveness of law enforcement efforts to protect foreigners varies significantly from state to state. It is noteworthy that the examples of police failure to intervene in cases involving foreigners came predominantly from East Germany. There were complaints of individual police misconduct and abuse

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<sup>159</sup> The federal government does organize training for high-level police officers and provides a special school for the internal security forces. This is co-financed by the federal and the state governments, with the federal government paying roughly half of the costs. Law enforcement officials from the new federal states participate fully in these efforts. Human Rights Watch/Helsinki interview with Gerhard Siegele, Bonn, June 30, 1994.

<sup>160</sup> *Ibid.*

toward foreigners in the West, but very few charges that police failed to respond to right-wing physical attacks on foreigners.

### **SAXONY: A ROLE MODEL**

Even within the new federal states there were great variations in the police response to crimes against foreigners. The state of Saxony has a well-deserved reputation for effectiveness in combatting right-wing violence, even though Dresden, the state capital, has been a magnet for right-wing extremists. Three years ago, the state criminal police in Saxony established "Soko Rex," a special commission on right-wing and xenophobic violence.<sup>161</sup> The commission is well-staffed, with over thirty officers working for it. Soko Rex has adopted two parallel approaches: prevention and prosecution. Its officers work with the public and the media to inform and educate them about right-wing violence. Simultaneously, Soko Rex police gather information on right-wing groups and their members.

In terms of prosecution, Soko Rex agents become active as soon as a crime occurs that appears to be right-wing or xenophobic in motive. Their strategy is to investigate the crime intensively from the beginning. Although there is coordination between the regular police and the officers in the special commission, once Soko Rex officers take over an investigation, they exclusively form the investigating team.

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<sup>161</sup> Human Rights Watch/Helsinki interview with Wolf Dieter Pfeiffer, deputy chief of the special commission on right-wing violence of the state criminal police of Saxony, Dresden, June 23, 1994. Pfeiffer provided the details described in the text.

It was striking to Human Rights Watch/Helsinki representatives that the incidence of attacks on foreigners in Saxony was relatively low. Similarly, Human Rights Watch/Helsinki representatives heard fewer complaints by foreigners concerning violence directed against them in Saxony than they did in Brandenburg and Mecklenburg-Vorpommern, for example, even though Saxony has been one of the focal points of right-wing extremists. Indeed, Marita Schieferdecker-Adolf, the commissioner for foreigners' affairs in Dresden, emphasized that there was a lot of violence against foreigners in 1991 and 1992.<sup>162</sup> She said that news reports in March 1994 indicated that there are over 1,000 right-wing militants and neo-Nazis in Saxony, plus several thousand other right-wing extremists.<sup>163</sup>

It appears that the special commission to combat right-wing violence has had a very positive effect in Saxony. State officials have devoted significant resources to staffing and supporting the special unit. This communicates directly the seriousness with which they view right-wing criminal activity. It also establishes the commitment they have to preventing xenophobic violence and to prosecuting those who engage in it. Beyond sending the message that the police in Saxony view violence against foreigners with serious resolve, the resources devoted to the special commission allow it to investigate right-wing crime thoroughly. The Soko Rex officers are well trained; they begin investigations promptly when the evidence is fresh; they are thorough; and they are committed to solving the crimes. Although there are special working groups on right-wing violence in Brandenburg and other new federal states, none is as well staffed or as successful as the unit in Saxony.

Saxony has also taken other approaches to respond to violent attacks on foreigners. Schieferdecker-Adolf, herself, has started programs to reach out to right-wing youth.<sup>164</sup> She has worked to gain their confidence and then slowly to teach them about other cultures and other people. In October 1993 she took a group of right-wing youth on a trip to Israel, so they could meet many ordinary Jewish people and begin to question the anti-Semitic notions that many have. Her work with right-wing youth has not been easy, nor has it always been successful. In the

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<sup>162</sup> Human Rights Watch/Helsinki interview with Marita Schieferdecker-Adolf, Dresden, June 23, 1994.

<sup>163</sup> Schieferdecker-Adolf referred to a news report dated March 9, 1994.

<sup>164</sup> Human Rights Watch/Helsinki interview with Schieferdecker-Adolf, Dresden, June 23, 1994.

fall of 1993, a meeting she attended with right-wing youth from Dresden and Düsseldorf ended in disruption and insults. The right-wing youths vandalized property and harassed people on the street, forcing individuals wearing Arab scarves to kiss their boots. Nevertheless, Schieferdecker-Adolf believes such programs are a necessary component of a comprehensive and long-term strategy to combat xenophobia.

#### ASSESSMENT OF GOVERNMENT MEASURES

Problems with poor or inappropriate police equipment in the eastern states largely appear to have been resolved. The federal government's procurement program and its concern about providing uniform and compatible police equipment has been effective. Problems with police training appear much further from solution. Inadequate police work such as that reported above, some of which was quite recent, indicates that there is an immediate need for improved training in a number of cities and towns in the East. The police failures call into question the effectiveness of the current federal approach of delegating all police training to the states. While pairing police in the new and original federal states may be a good idea, the recent events suggest that this is not sufficient.

Similarly, the suggestions and coordinating efforts of the conference of the ministers of the interior, the Federal Office of Criminal Investigation, and the Federal Office to Protect the Constitution, while useful, do not appear to be sufficient. The implementation is extremely varied. Some states devote adequate resources to protecting foreigners. Other states may decide that combatting violence against foreigners is less of a priority. For example, Saxony established the special commission on right-wing crime in response to a recommendation from the federal office of criminal investigation,<sup>165</sup> but no other state has adopted this model.<sup>166</sup>

All the states are strapped for resources. Many states may desire to use their law enforcement budgets for police work that does not deal with xenophobic crime. The foreigners who live in or travel through states that choose not to devote

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<sup>165</sup> Human Rights Watch/Helsinki interview with Gerhard Siegele, Bonn, June 30, 1994

<sup>166</sup> Human Rights Watch/Helsinki interview, Wolf Dieter Pfeiffer, Dresden, June 23, 1994

the requisite resources to combatting crimes against foreigners suffer serious consequences.

Without a doubt, there is a strong need for the political will to ensure that state law enforcement officials devote appropriate resources to the protection of foreigners.<sup>167</sup>

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<sup>167</sup> An example of the interplay between the federal and state law enforcement resources and the impact of funding on this interplay can be seen in the deployment of Federal Border Guard units. The Federal Border Guard has special units that state law enforcement officials can request if they need extra forces. The states routinely request Federal Border Guard units if they know in advance of major events, such as football games or political demonstrations, that will draw large crowds. The states can also request these federal units if they are overwhelmed by sudden demonstrations or riots, such as in Rostock in August 1992. The states must pay for the Federal Border Guard units, however, and this financial burden may be a reason that state officials hesitate or delay calling on federal forces. Details about the Federal Border Guard units provided by Ernst Uhlau, Human Rights Watch/Helsinki interview, Hamburg, June 17, 1994, and by Gerhard Siegele, Human Rights Watch/Helsinki interview, Bonn, June 30, 1994.

## **VII. THE PROSECUTORS' AND THE JUDICIARY'S RESPONSE TO THE VIOLENCE**

In 1992 Human Rights Watch/Helsinki reported that prosecutions of those accused of violence against foreigners often resulted in surprisingly mild results. This light treatment was troubling for two reasons. First, it appeared to follow in the Weimar Republic tradition of treating right-wing defendants with great sympathy, a historical tradition with particularly disastrous results. Second, and even more important, it conveyed the powerful message that the crimes involved were not serious or threatening to society. The 1994 Human Rights Watch/Helsinki mission followed up on its 1992 findings by examining two related aspects of lenient treatment afforded criminal suspects: the preparation of the cases by the prosecutors' offices and the sentences meted out by the judges.

### **CHARGES PRESSED BY THE PROSECUTORS' OFFICES**

Prosecutors appear to be pressing more serious charges now than they did several years ago.<sup>168</sup> In mid-1992 many critics commented that prosecutors often failed to charge right-wing thugs with serious criminal acts that the evidence in the case supported. For example, an individual who threw a firebomb into an inhabited building might be charged with a serious disturbance of the peace or arson, rather than attempted murder. Although that criticism is still heard, it occurs less frequently.

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<sup>168</sup> See Human Rights Watch/Helsinki interviews with Richter, Rostock, June 21, 1994, and Rossler, Schwerin, June 20, 1994.

For example, the skinheads who beat Amadeu Antonio to death in November 1990 used baseball bats and fence posts, as well as their fists and feet. At the trials, which took place in mid-1992 and early 1993, the defendants were charged with breach of the peace, theft, and inflicting grievous bodily harm contributing to death.<sup>169</sup> The more serious charge of manslaughter was not pressed.<sup>170</sup> The lawyer representing Amadeu Antonio's twenty-month-old son asserted that the light charges would encourage "right-wing radicals to continue their deadly campaign of violence."<sup>171</sup>

In contrast, the neo-Nazis who killed three people in Mölln in November 1992 were charged with murder as well as arson.<sup>172</sup> In December 1993, one of the defendants was sentenced to life in prison. The other received the maximum juvenile sentence of ten years. To some, the firebombing in Mölln marked a significant change. The three deaths not only resulted in an enormous public outcry, but also seemed to shock a number of officials into realizing that stiff action was necessary if Germany was going to come to grips with the waves of violence against foreigners. The prosecutors in Mölln charged the defendants with murder and arson. More important, the federal authorities took over the prosecution. Since

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<sup>169</sup> Robin Gedy, "Neo-Nazis Hiding Behind Mob That is Without Shame," *The Daily Telegraph*, August 24, 1992, p. 3.

<sup>170</sup> Anna Tomforde, "German Neo-Nazis Jailed for Killing Immigrants," *The Guardian*, September 15, 1992, p. 8.

<sup>171</sup> *Ibid.*, quoting Ronald Reiman, a Berlin lawyer.

<sup>172</sup> Wilker G. Landrey, "Racist Violence Has Captured the Attention of All of Germany," *St. Petersburg Times*, December 1, 1992, p. A2.

Mölln , prosecutors have been more aggressive in prosecuting cases of violence against non-Germans and the federal authorities have been more actively involved.

### **ACTION BY THE FEDERAL PROSECUTOR**

At the time of the 1992 Human Rights Watch/Helsinki report, local prosecutors were handling the investigations and court proceedings involving all violent crimes against foreigners. When action by federal authorities was requested,<sup>173</sup> federal officials declined, arguing that there was no proof of a political motive for the violence and that they would, therefore, not intervene.<sup>174</sup> That changed in late November 1992, following the violence in Mölln. Then-Federal Prosecutor Alexander von Stahl promptly took over the investigation into the firebombing. He noted that the anonymous call alerting the fire department to the blaze had included the phrase, "Heil Hitler!" This was evidence of a desire to "re-establish a National Socialist dictatorship in Germany" and justified federal intervention.<sup>175</sup> The attackers were "endangering the internal security of the German Federal Republic and seeking to liquidate, invalidate, or undermine the basis of [the] constitution."<sup>176</sup> It was also the federal prosecutor's decision to prosecute the two defendants for murder.

The Federal Prosecutor's Office also took immediate charge of the Solingen investigation in May 1993. At the time, Von Stahl explained: "All the circumstances and first results of our inquiry point to racist and therefore right-wing

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<sup>173</sup> The federal prosecutor has the authority to act in significant cases of xenophobically-motivated crime when there is suspicion of the formation of a criminal organization or of the formation of a terrorist organization, or where there is a question of murder, manslaughter, or serious arson and the circumstances of the offense are likely to impair the national security of Germany. Letter dated August 16, 1994, from Mdgt. Dr. Meyer-Ladewig, federal ministry of justice.

<sup>174</sup> Marc Fisher, "Germany Targets Firebombers," *The Gazette (Montreal)*, November 24, 1992, p. A1.

<sup>175</sup> *Ibid.*

<sup>176</sup> *Star Tribune*, November 24, 1992

terrorist motives."<sup>177</sup> There was evidence, he asserted, that neo-Nazi extremists were involved.<sup>178</sup>

In March 1994, the Federal Prosecutor's Office took over the investigation of the firebombing of the Lübeck synagogue. Investigators soon identified four young right-wing extremists, between the ages of twenty and twenty-five, who were charged with five counts of attempted murder and aggravated assault.

#### SENTENCES IMPOSED BY THE JUDICIARY

There has been much criticism both in Germany and around the world that German justice is "blind in the right eye," that is, severe on left-wing terrorists, but not on those on the right.<sup>179</sup> Early trials of skinheads accused of killing foreigners gave credence to this charge. Even Chancellor Kohl noted the weak response of the judiciary for "failing to use the full force of the law against people guilty of criminal violence."<sup>180</sup>

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<sup>177</sup> Kallenbach, "Neo-Nazis Blamed...", *The Sunday Times*.

<sup>178</sup> "German Fire Kills Five Turks," *The Dallas Morning News*, May 30, 1993, A15.

<sup>179</sup> Rich Atkinson, "Two Neo-Nazis in Germany get Maximum Sentence," *The Washington Post*, December 9, 1993, p. A33.

<sup>180</sup> "Es geht jetzt aufwärts," *Augsburger Allgemeine*, May 20, 1994.

For example, the killers of Amadeu Antonio could have been sentenced to ten years in prison. Instead, one of the convicted defendants received a two-year prison term, another defendant received a three-year term, and the other three defendants were sentenced to four years.<sup>181</sup> Almuth Berger, the commissioner for foreigners' affairs in the state of Brandenburg where the killing took place, said the sentences were "clearly too light." They give "encouragement for attacks against foreigners."<sup>182</sup> In light of the defendants' defiant conduct at trial where they bragged about beating up black men,<sup>183</sup> Berger's fears seemed entirely justified.

The sentences in the Amadeu Antonio case were not, unfortunately, atypical. In November 1993, a court in Dresden gave eighteen-month suspended sentences to two neo-Nazis convicted of killing a man from Mozambique by

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<sup>181</sup> Stephen Kinzer, "Light Sentences Against Germans Who Killed Foreigner Stir Debate," *The New York Times*, September 16, 1992, p. A14.

<sup>182</sup> *Ibid.*

<sup>183</sup> Gedy, "Neo-Nazis Hiding...", *The Daily Telegraph*. One defendant testified that "there were fifteen guys standing around and they started to push the African around. I punched Amadeu. Punched him in the face with my fist. Then he was pushed away and somehow he fell over." Another admitted, "[We] caught [this black guy] at the crossing and beat him up." A third witness said that black lives were worthless: "If [a black] buys it [dies], I don't give a damn."

throwing him from a moving train. The third defendant received a two-year prison term.<sup>184</sup> In another case, four skinheads from Potsdam were given suspended sentences of from one to two years of imprisonment for severely injuring three individuals at a local bar by beating them with baseball bats.

Many protests of the lenient sentences were met with the response that the German juvenile penal code protects juveniles from harsh treatment. The use of alcohol was also frequently cited as a mitigating factor in assessing the culpability of the defendants. This led some to complain that skinheads knowingly got drunk before they went on an anti-foreigner rampage because they knew this would reduce any punishment they might receive.<sup>185</sup>

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<sup>184</sup> Atkinson, "Two Neo-Nazis in Germany...", *The Washington Post*.

<sup>185</sup> Human Rights Watch/Helsinki interview with Richardson Joseph, Magdeburg, June 28, 1994.

The trial of the defendants accused of firebombing the Mölln building took a more serious tone, however. Lars Christiansen, a nineteen-year-old local apprentice, confessed to the crime. Michael Peters, a twenty-six year old from a nearby village, also confessed. They both later recanted their confessions, but the six-month trial convinced the judge that the accused men had thrown gasoline bombs that killed three people and injured others. "Such acts can be carried out only when one is indifferent to the fate of the victims," the judge said. As mentioned earlier, the judges sentenced the older defendant to life in prison and sentenced the youth to ten years, the maximum term for juveniles.<sup>186</sup>

The judge in the trial of two skinheads accused of assaulting members of the American luge team in Oberhof in October 1993 also established a serious tone. He sentenced the twenty-one-year-old gang leader to two years and eight months in prison. He sentenced the sixteen-year-old defendant to one year.<sup>187</sup> The judge was explicit about the message he wanted to send: "Those who don't listen must be made to feel, and so must go to jail."<sup>188</sup>

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<sup>186</sup> Stephen Kinzer, "Germans Sentence Two in Firebombing," *The New York Times*, December 9, 1993, p. A9.

<sup>187</sup> To appreciate the seriousness of the penalty, it is useful to remember that the man who stabbed Monica Seles, the tennis champion, was given a suspended sentence. Similarly, the former weightlifting champion who attacked former German President von Weizsäcker was given probation. Stephen Kinzer, "Germans Jailed in Attack on Athletes," *The New York Times*, January 18, 1994, p. A3.

<sup>188</sup> *Ibid.*

On December 16, 1994, a lower court, which had thrown out charges of attempted murder against neo-Nazi Rüdiger Klasen, sentenced Klasen to three-and-one-half years of imprisonment after being ordered to retry him. Klasen, who was accused of having organized in 1992 a firebombing of a hostel in which approximately one hundred asylum seekers lived, was initially convicted only for breach of the peace. However, "the federal court of justice ruled that the attempted murder charges should have stood, [because] he had known he was endangering life."<sup>189</sup>

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<sup>189</sup> "German Court Gives Neo-Nazi Stiffer Sentence," *Reuters News Service*, December 16, 1994.

Whether these more serious sentences have set a trend remains to be seen. The criminal trial of those accused of setting fire to the Genc family's residence in Solingen is currently underway. In March 1995, "after eight court sessions and eleven months, the trial has failed to produce a clear picture of the event and has become bogged down in conflicting testimony. . . . In the trial's eightieth session, defendant Markus Gartmann, [twenty-five years of age], also retracted a confession he had made which implicated all four accused."<sup>190</sup> During the trial, there have also been charges that the police investigation was flawed.<sup>191</sup>

Human Rights Watch/Helsinki continues to receive some reports of what appear to be disturbingly low sentences in cases of violence against foreigners. For example, in the eastern town of Halle, three juveniles were charged with attempted murder, aggravated assault, aggravated arson and attempted aggravated arson for having firebombed two houses where Vietnamese lived. In one case, a pregnant Vietnamese woman and five young children were injured. Although the prosecutor in the case argued for sentences ranging from three-and-one-half to four years, the court gave each defendant a two-year suspended sentence with probation and a 600 Deutschmark (approximately US\$460) fine. The chief judge justified the sentences, saying that "it was credible that the defendants had changed their way of thinking."<sup>192</sup>

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<sup>190</sup> "Confession Withdrawn in German Firebombing Trial," *Reuters News Service*, March 21, 1995.

<sup>191</sup> Human Rights Watch/Helsinki interview with Vera Egelberger, IDA, Düsseldorf, June 15, 1994.

<sup>192</sup> "In Halle Bewährungsstrafe nach Brandschlag," *Süddeutsche Zeitung*, October 15-16, 1994.

Similarly, four skinheads were convicted of numerous violent crimes against foreigners, including an attack on four Turkish flower dealers near Berlin, during which one was shot with a flare gun and burned. The man suffered life threatening injuries and survived only because he received quick medical treatment. However, the skinheads were sentenced only to probation ranging from ten months to two years.<sup>193</sup>

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<sup>193</sup> "Bewährungsstrafen für Skinheads beantragt," *Süddeutsche Zeitung*, November 5-6, 1994, p. 6.

The prosecution of some of the skinheads who rioted in Magdeburg in May 1994 also gives some cause for concern. An eighteen-year-old skinhead was convicted of beating up a man who tried to help a woman being threatened. He also was convicted of giving the Nazi salute, a gesture banned in Germany. The judge sentenced the defendant to twenty months, with a probationary period included.<sup>194</sup> The young age and the drunkenness of the defendant were factors weighed heavily by the judge.<sup>195</sup> The active "hunt" for foreigners and the serious threat to the lives of foreigners did not seem to weigh as heavily in the calculation. However, in August 1994, three defendants were sentenced to prison terms ranging from twenty-five to thirty-six months for inciting violence against foreigners during the Magdeburg riots.

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<sup>194</sup> "Himmelfahrtsprozeß: Haftstrafe für achtzehnjährigen Randalierer," *Volkstimme*, June 25, 1994.

<sup>195</sup> Human Rights Watch/Helsinki interview with Richardson Joseph, Magdeburg, June 28, 1994.

## **VIII. GOVERNMENT MEASURES TO IMPROVE THE RESPONSE OF PROSECUTORS AND THE JUDICIARY**

### **ACTION ON THE FEDERAL LEVEL**

The Federal Prosecutor's Office made an important decision to take over the investigation and prosecution of some of the notorious cases involving violence against foreigners. This appears to have had a significant impact on the seriousness with which the cases are treated.

In addition, some federal government officials have become increasingly more outspoken in criticizing the lenient charges and sentences awarded in many of the anti-foreigner attacks. For example, President Roman Herzog, when he headed the German Constitutional Court, said publicly that the first line of defense against right-wing violence is the political will to invoke the criminal laws that are already on the books. Many interpreted his remarks as a call to the judiciary to treat xenophobic crime seriously and sentence convicted defendants to penalties more in accord with the gravity of the crimes.<sup>196</sup>

The federal government has also recommended legislative changes. It has proposed broadening pre-trial detention provisions to include suspects accused of malicious arson and grievous bodily harm, and broadening provisions authorizing the arrest of repeat offenders.

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<sup>196</sup> Ian Black, "Israelis Denounce Violence in Germany - Kohl Pledges Full Force," *The Gazette (Montreal)*, November 30, 1993, p. A1. Many others also echo this sentiment. See Human Rights Watch/Helsinki interviews with Rössler, June 20, 1994; Ulrich Fischer, human rights expert, Greens/Alliance 90, June 13, 1994.

### ACTION ON THE STATE LEVEL

Even without legislative change, though, it appears that there has been an increase in prosecutorial action in the past two years. In 1992, 12,000 preliminary proceedings were initiated in cases of right-wing crime. In contrast, there were almost 19,000 preliminary proceedings in right-wing crime cases during the first nine months of 1993. In both years approximately 40 percent involved crimes directed against foreigners.<sup>197</sup>

The number of persons charged with right-wing crimes also showed a major increase. Approximately 11,600 people were charged in 1992. In the first nine months of 1993, over 16,600 individuals were charged. The significant increase between 1992 and 1993 in the number of preliminary proceedings initiated and the number of individuals charged may indicate that the police and prosecutors were more active and effective in 1993. No doubt, a number of the persons charged and proceedings initiated in 1993 stemmed from crimes in 1992, a year in which there was a huge increase in violent and nonviolent right-wing crime.<sup>198</sup> Nonetheless, the upsurge in prosecutorial activity, comparing the first nine months of 1993 with 1992, seems significant. Some data suggest cause for concern, however. Only 297 arrest warrants were issued in the first nine months of 1993, compared with 705 for the same period in 1992.<sup>199</sup>

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<sup>197</sup> Bundespresseamt-Special # 4237 (e), May 17, 1994.

<sup>198</sup> In a nutshell, right-wing crimes increased from 3,884 in 1991 to 7,121 in 1992 to 10,561 in 1993. The number of violent right-wing crimes grew from approximately 1,500 in 1991 to 2,600 in 1992 and then decreased to 2,300 in 1993.

<sup>199</sup> "Suppression of right-wing extremist activities, particularly of a xenophobic and anti-Semitic nature, in the Federal Republic of Germany," Federal Ministry of Justice, Bonn,

The data on trials and other resolutions to the preliminary proceedings are also troubling. Almost 16,000 cases were concluded in the first nine months of 1993, compared to 10,000 cases in 1992, but in both periods almost 70 percent of the cases were dismissed because of insufficient evidence. An additional 7 to 8 percent of the cases were dismissed as insignificant, with certain conditions imposed on the accused. The conviction rate in 1992 was only 14.6 percent. It was even lower in the first nine months of 1993 — only 9.8 percent.

Although the conviction rate was astonishingly low, the sentencing data showed the beginning of a trend away from leniency. Of those convicted in 1992, only 34 percent were sentenced to prison. During the first nine months of 1993, the number of defendants given prison terms increased to 40 percent. The number sentenced to more than two years increased from 12 percent in 1992 to 14 percent in the first nine months of 1993. Surprisingly, the number sentenced to six months or less also increased between 1992 and 1993, and a huge proportion of these lower sentences were suspended.<sup>200</sup>

#### ASSESSMENT OF GOVERNMENT MEASURES

It is crucial that violent attacks on foreigners be thoroughly investigated and prepared for trial. To accomplish this, two elements are fundamental. There must be a clear demonstration of the political will to solve these crimes and punish the perpetrators. There also must be adequate resources devoted to the task.

The intervention by the Federal Prosecutor's Office beginning in December 1992 has been salutary. When the federal prosecutor takes over an investigation, it conveys a clear political message that punishing anti-foreigner violence is an important goal of the federal government and of the society as a whole. It also commits greater resources to solving the crime. It brings a trained and resourceful staff to manage the investigation and thus makes it more likely that the perpetrators will indeed be punished. These elements of the federal prosecutor's involvement are crucial.

Intervention by the Federal Prosecutor's Office is important and should continue. A decision by the federal prosecutor not to pursue any more anti-foreigner attacks would clearly send a message that the federal government no longer believed this problem was a high priority.

It is obvious, though, that the Federal Prosecutor's Office cannot prosecute all acts of right-wing violence. Local prosecutors' offices must also make these cases a priority and should devote adequate resources to them. The local

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<sup>200</sup> *Ibid.* All statistics in this section, other than those concerning arrest warrants (see footnote 192), come from BPA # 4237 (e), which itself is from the 1993 report of the Federal Commissioner for Foreigners' Affairs.

prosecutors' offices appear to vary significantly on both counts — both in terms of the political will to respond to anti-foreigner violence and in terms of resources to devote to case investigation and preparation. Accordingly, there is need for more active federal leadership and support in this area.

Government statistics on prosecutions, dismissals, and convictions bear this out. The high number of cases dismissed for insufficient evidence suggests that more thorough investigations are needed. When the government reports that more than 16,600 individuals were charged with right-wing crimes, but that only 1,500 were convicted, this reveals a major problem. When government statistics demonstrate that 70 percent of the cases are dismissed for insufficient evidence, and approximately 10 percent more are dismissed as insignificant, the problems of inadequate investigation and case preparation rise to monumental proportions.

In order to assess the sentences imposed by the judiciary on skinheads and other right-wing extremists convicted of violent acts, it is necessary to evaluate the impact of the German Penal Code for Juveniles. The juvenile penal code has come into play frequently because many of the defendants have been young. At least three different aspects of the juvenile penal code have affected many of the cases examined here. First, the philosophy behind the juvenile penal code is primarily that of reform. There is great stress on giving juvenile offenders a chance to rehabilitate themselves. Second, the punishments permissible under the juvenile penal code typically are much more lenient than under the standard criminal law. Third, while the juvenile penal code applies automatically to defendants over the age of fourteen and under the age of eighteen, the judge has discretion as to whether to apply it to defendants between the ages of eighteen and twenty-one.

Although these aspects of the juvenile penal code have combined in a number of cases to yield exceedingly light sentences, that is not necessarily the result that must follow in cases involving violence committed by juveniles. When judges find that young defendants are convicted of heinous anti-foreigner crimes, the juvenile penal code generally contains adequate flexibility to provide serious punishment for the defendants. Although the judges may keep reform and rehabilitation in mind, they may also consider the important societal goal of deterrence. Indeed, it is important to convey to the specific defendants before the court that they have committed serious crimes and that their punishment will reflect this fact.

Further, the range of sentences permitted by the juvenile penal code includes serious penalties, even if the penalties are not as stiff as for adult defendants. As the judge in the Mölln case demonstrated, imposing the maximum sentence on a juvenile defendant who caused serious injury and death will send him to prison for a long time. Moreover, judges are able to use their discretion to decide

in appropriate cases not to treat as juveniles defendants who fall between the ages of eighteen and twenty-one. When individuals in this age group commit violent and lethal acts against foreigners, it may well be appropriate to try them as adults.

Although the federal government has recommended legislative changes, the government has indicated that it believes the existing criminal law is generally sufficient to combat right-wing and xenophobic crime.<sup>201</sup> It has further stated that "[t]he instruments of criminal law and procedure must also be applied in combatting violence. Investigations must be conducted without delay. Offenders should feel the weight of the law, and punishment should follow hard on the heels of the deed."<sup>202</sup>

Human Rights Watch/Helsinki agrees that this approach is essential to protecting foreigners in Germany. It is now necessary to convert the words into reality. It will take federal leadership and resources to do so. State leadership, of course, will also be crucial to the success of government efforts to protect foreigners from violence and to obtain justice for the victims of such violence. Until there is a sustained increase in the number and percentage of successful prosecutions and convictions of those who attack foreigners, the German government will need to

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<sup>201</sup> See proposed legislation described in the conclusions. Human Rights Watch/Helsinki has not analyzed the pertinent provisions of the German Penal Code that the proposed legislation would modify. It appears that, although some of the amendments — such as increased penalties for those causing bodily harm — may be desirable, the main problem is not the absence of legislative authority, but the lack of sustained and effective enforcement of the laws currently in force.

<sup>202</sup> *Campaign Against Violence and Hostility Toward Foreigners: Sequel to the Interim Report of the Government of the Federal Republic of Germany*, January 1994, at IV.1.1, p.37.

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devote additional efforts and resources to combatting and providing a deterrent to right-wing violence.

## **IX. GOVERNMENT MEASURES TO BAN RIGHT-WING GROUPS AND PROHIBIT HATE SPEECH**

In the past two years, the German state and federal governments have cracked down on the activities of neo-Nazi organizations. In addition to banning several groups, the German government has also undertaken numerous large-scale raids of neo-Nazi headquarters, and confiscated weapons, propaganda and other materials that may be evidence of criminal activity. In addition, the government has begun more rigorously to enforce laws prohibiting racial incitement. It also treats any denial that the Holocaust occurred (otherwise known as the "Auschwitz Lie") as incitement under the criminal statutes. These steps were taken pursuant to laws that have been in effect since World War II.

Human Rights Watch/Helsinki acknowledges that the tragedy of the Holocaust is the historical context in which such laws were adopted. We also recognize that, by more rigorously enforcing these laws, the German government has underscored the seriousness with which it views the danger posed by right-wing extremists. Nevertheless, Human Rights Watch/Helsinki believes that such measures seriously restrict the protected right to freedom of expression, association and assembly. We are mindful of the fact that international human rights law provides different and conflicting standards in this area, and base our position on a strong commitment to freedom of expression as a core principle of human rights. We believe that freedom of speech and equal protection of the laws are not incompatible, but are, rather, mutually reinforcing rights.

Certainly those whose expressive activities constitute a direct and immediate incitement to violence can and should be prosecuted to the fullest extent of the law. But sweeping restrictions that affect entire parties, organizations or philosophies inevitably cast too broad a net; they can be used to suppress dissenting political movements of all sorts and often encourage gratuitous restrictions beyond those initially foreseen.

While such measures may be popular politically and may even appear to be effective in the short-run, Human Rights Watch/Helsinki is concerned that over the long run such measures are not only not effective to counter bigotry, but they may even be counterproductive. Draconian bans turn bigots into victims, driving them underground and creating a more attractive home for the unstable and insecure people who are drawn to such groups.

What is more, Human Rights Watch believes that there are other, more effective ways to counter expression that is hostile toward minorities, ways that do

not jeopardize civil liberties. First and foremost, restrictive legislation on expression, association and assembly is no substitute for meaningful and persistent police and prosecutorial action against racist violence. What is more, measures adopted in many German cities to inform and educate the public and the media about right-wing violence are an another important alternative to prosecuting speech.

### RESTRICTIONS ON ASSOCIATION

Numerous right-wing organizations have been banned during the last two years. Other groups have been placed under surveillance by the Minister of the Interior.

Once an organization is banned, the police conduct raids, confiscate right-wing propaganda and the party's property, and freeze its bank accounts. Members are arrested, and are often charged with glorifying Nazism through the use of right-wing symbols or gestures, and through inflammatory speech. (See discussion below.) Government officials argue that such laws are necessary to combat right-wing extremism, making it easier to prosecute the leaders and organizers of these groups, who are seldom direct participants in violent crimes. Instead, once an organization is banned, its leaders can be prosecuted for maintaining an illegal organization or for possession of right-wing propaganda. However, Human Rights Watch/Helsinki notes that, in many of these cases, prosecutors have the option of bringing charges against right-wing leaders for conspiracy to commit acts of violence; an option that would preserve the right to free speech.

Article 9 of the German Constitution (the Basic Law or *Grundgesetz*), which guarantees freedom of association, provides that "Associations, the purpose or activities of which conflict with criminal statutes or which are directed against the constitutional order or the concept of international understanding, shall be prohibited." The minister of the interior has the authority to ban associations or organizations it determines are directed against the constitutional order. In addition, article 21(2) of the Constitution states, "Parties which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional." The Federal Constitutional Court has the

power to determine whether a political party is unconstitutional and should be banned.<sup>203</sup>

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<sup>203</sup> In addition to the constitutional provisions for banning political parties and organizations, the German criminal code provides for prison terms of up to five years for continuing a banned party or organization. *Strafgesetzbuch*, Articles 84-85, (Munich: C.H. Beck Verlag, 1992), pp. 56-57.

As of March 1995, nine organizations had been banned. These were: the Nationale Front ("NF"), Deutsche Alternative ("DdA"), the Nationale Offensive ("NO"), Deutscher Kameradschaftsbund, ("DKW"), the Nationale Block, Heimattreue Vereinigung Deutschland (HVD), Freundeskreis Freiheit für Deutschland (FFD), the Wiking-Jugend, and the Freiheitlicher Deutschen Arbeiterpartei ("FAP").<sup>204</sup>

In addition to banning these small extreme right-wing organizations, the federal minister of the interior placed the Republican Party under surveillance in August 1994, after it formed a coalition with the People's Union, a right-wing extremist political party. "The Republicans had been considered marginally less hard-line than the People's Union and the party most likely to pull in far-right votes in October [1994's] federal elections."<sup>205</sup> However, the federal government viewed this coalition as an open acknowledgment that the Republican Party's platform was similarly extremist.<sup>206</sup> No right wing political parties have been banned in the last years.

### THE PROSECUTION OF HATE SPEECH AND OTHER FORMS OF EXPRESSION

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<sup>204</sup> "Right-Wing Violence and Hate Crimes in Germany," p.3; see also John Holland, "Neo-Nazis arrested as Germany bans party," *The Times*, February 25, 1995.

<sup>205</sup> "Germany Orders Surveillance on Extremists Party," *The Washington Post*, August 24, 1994, p. A25.

<sup>206</sup> The Republican Party fell far short of the 5 percent needed for the federal parliament and only won 3.9 percent of the vote for the European parliament, thereby actually doing more poorly than it had in 1989.

Since 1945, German law prohibits the use of Nazi symbols and gestures, or the distribution of Nazi propaganda. Article 86 of the German Criminal Code states that:

§86. Dissemination of the propaganda of unconstitutional organizations

Whoever . . . distributes, produces for distribution within this area, keeps in supply or imports into this area, propaganda:

1. of a political party which has been held unconstitutional by the Federal Constitutional Court, or of a political party or association, concerning which an unappealable determination has been made that it is a substitute organization of such a political party, or

2. of an association which has been unappealably prohibited because its activities are directed against the constitutional system of government or the concept of international understanding, or concerning which an unappealable determination has been made that it is a substitute organization of such prohibited association . . .

4. propaganda, the contents of which is designed to further the aspirations of a former National Socialist organization

shall be punished by up to three years' imprisonment or by fine.

Furthermore, the distribution of propaganda and the use of gestures or symbols of other unconstitutional organizations is also prohibited.

§86a. Use of the symbols of unconstitutional organizations:

Whoever . . . 1) distributes or publicly, in a meeting or in writings distributed by him, uses symbols of one of the political parties or associations described in [article 86] or 2) produces, keeps in supply, or imports into the area of applicability of this Code objects displaying or containing such symbols, for the purpose of distribution or use in a manner described in number 1, shall be punished by up to three years' imprisonment or fine.

Symbols, within the meaning of subparagraph (1), shall be deemed to include flags, insignia, uniforms, slogans and forms of greeting.

What is more, in the last two years, prosecutors have increasingly brought charges for inciting ethnic hatred under article 130 of the German penal code, which states:

Whoever, in a manner to breach the public peace, attacks the human dignity of others by (1) inciting to hatred against parts of the population, (2) provoking to violent or arbitrary acts against them, (3) insulting, maliciously making them contemptible, or defaming them shall be punished by a term of imprisonment of three months to five years.

and under article 131 of the German penal code, which states:

Whoever, distributes; publicly displays, posts up, presents or otherwise makes accessible; offers to a person under eighteen years of age, lets him have or makes available to him; or produces, obtains, supplies, keeps in supply, offers, announces, commends, undertakes to import into the area of applicability of this Code, or to export from it . . . any writings which incite to racial hatred or which depict cruel or otherwise inhumane acts of violence against persons in such a manner as to glorify or deny the wrongfulness of such acts of violence, or which represent the cruel or inhumane aspects of the subject matter in a manner violative of human dignity, shall be punished by imprisonment for up to one year or by fine.

In the last two years, numerous right-wing extremists have been prosecuted under these laws. As the German weekly *Der Spiegel* noted, "After judges and public prosecutors have shown clear indulgence toward right-wing extremists for years, they are now increasingly making use of the harshness of the law."<sup>207</sup> The following are only a few examples:

- The federal supreme court in Karlsruhe [*Bundesgerichtshof*] overturned a lower court's decision to sentence neo-Nazi leader Günther Deckert to one year suspended sentence and held that the defendant should be given a stricter sentence. Deckert was convicted for having stated that the Holocaust never occurred. The case on remand is still pending.
- An eighteen year old was sentenced to twenty months for giving the Nazi stiff-arm salute in Magdeburg.

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<sup>207</sup> "Ein Bißchen stiller," *Der Spiegel*, Nr. 51, December 19, 1994, p. 34.

- The police in Berlin arrested four young men on October 28, 1994, who were singing national-socialist anthems in a house in the neighborhood of Neukölln. The youths were also in possession of neo-Nazi propaganda and newspapers. Additional propaganda was found in their apartments.<sup>208</sup>
- The state court in Darmstadt upheld a sentence of the lower court convicting neo-Nazi leader Heinz Reisz to a five-month suspended sentence for exhibiting the Hitler greeting and salute and for having denied that the Holocaust happened.<sup>209</sup>
- In December 1994, neo-Nazi Ewald Althans was sentenced to eighteen months of imprisonment without parole by the state court in Munich for having denied that the Holocaust occurred in propaganda videos, and for having used banned Nazi symbols such as the swastika and the Hitler salute.<sup>210</sup>
- In late November 1994, Christian Worch, the head of the banned right-wing National List in Hamburg, was sentenced to two years of

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<sup>208</sup> "Wegen neonazistischer Lieder festgenommen," *Süddeutsche Zeitung*, October 28, 1994.

<sup>209</sup> "Urteil gegen Neonazis wegen Hitlergrußes bestätigt," *Süddeutsche Zeitung*, February 19-20, 1994.

<sup>210</sup> "Ein Bißchen stiller, *Der Spiegel*, p. 34.

imprisonment for having continued to carry out activities of a banned organization.<sup>211</sup>

- Arnulf Winfried Priem, formerly head of the now-banned German Alternative in Berlin, has been held in pre-trial detention since August 1994 because he allegedly possessed Nazi propaganda.

There are numerous legal consequences for those who are members of right-wing extremist parties, even if those parties have not been banned. For example, members of the Republican Party, which has not been banned but is under surveillance, can be subject to disciplinary measures if they hold public service positions. The minister of the interior for the state of Hesse, Gerhard Bökel, announced in January 1995 that he would begin an investigation of public servants who hold leadership positions in the Republican Party.

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<sup>211</sup> *Ibid.*

The party is right-wing extremist and anti-constitutional, Bökel said; any public service employee speaking out publicly for that party, therefore, comes under suspicion of "committing a disciplinary offense." . . . the Republikaner are not distancing themselves sufficiently from the Nazi regime and are active in "racially biased campaigns" and "xenophobic agitation." Public service employees who are Republikaner members will, therefore, have to expect disciplinary measures in Hesse in the future.<sup>212</sup>

Such prosecutions should be even easier in the future. A new "Crime Prevention Law" went into effect on December 1, 1994, with many provisions that were aimed primarily at right-wing extremist groups. The provisions included:

- a broader "definition of incitement of violence and racial hatred to include blanket statements defaming whole groups and minorities."
- a prohibition of "the use of any Nazi-like flags, badges uniforms, slogans or gestures, (the use of actual Nazi material or gestures has been banned since 1945)."<sup>213</sup>

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<sup>212</sup> "Hesse to Investigate Republikaner in Public Service," *Süddeutsche Zeitung*, January 17, 1995, p. 2; reported in *FBIS-WEU-95-011*, January 18, 1995, p. 11.

<sup>213</sup> "Right-Wing Violence and Hate Crimes in Germany," p. 3. See also, *Campaign Against Violence and Hostility Toward Foreigners: Sequel to the Interim Report of the Government of the Federal Republic of Germany*, January 1994, pp. 40-44.

- an end to the requirement that prosecutors show that a racist statement is an "assault on human dignity." Now, anyone who denies the Nazi genocide against the Jews can be sentenced to a period of imprisonment of up to five years for incitement to racial hatred."<sup>214</sup>

#### **RESTRICTIONS ON ASSEMBLY**

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<sup>214</sup> "Faster Proceeding and Banning the 'Auschwitz Lie,'" *Düsseldorfer Handelsblatt*, November 30, 1994, p. 2; reported in *FBIS-WEU-94-231*, December 1, 1994, p. 28.

Public assemblies by right-wing extremists are now frequently prohibited. For example, in August 1994, state and federal officials prohibited all demonstrations for the seventh anniversary of the death of Rudolf Heß, Hitler's former representative. Over one hundred individuals, who nevertheless tried to demonstrate in several German cities, were arrested. During the week prior to the anniversary, state and federal government officials had coordinated their response to any neo-Nazi activities. The minister of the interior for the state of North Rhein-Westphalia, Herbert Schnoor, stated that "All measures have been coordinated. There will be no events anywhere in the Federal Republic. The brown spectre will not march through the Federal Republic."<sup>215</sup>

Numerous concerts by right-wing rock groups have also been banned over the last years. In 1993 several concerts by the group Böhse Onkelz, a skinhead group whose lyrics are often anti-foreigner and anti-Semitic, were banned and restrictions were placed on sales of the group's records.

As discussed above, while viewing extremist violence with great concern, Human Rights Watch/Helsinki at the same time opposes laws that prohibit the expression of anti-foreigner or anti-Semitic sentiments, as well as laws that prohibit groups that hold such views from forming associations and holding public gatherings, so long as that speech, association or assembly does not rise to the level of incitement to or participation in violence.

We recognize that international law provides different and conflicting standards on this point, but we base our policy on our conviction that the protected rights of speech, association and assembly are fundamental rights that should be guaranteed. Our own research has shown that such restrictions are often misused by majoritarian governments against minorities. It is our view that it is inherently dangerous for governments to have the power to determine which political philosophies are "threatening"; power that invites abuse against political foes. What is more, we are concerned that although such restrictions may be effective in the short-term, they may be counterproductive over time. In fact, they may actually force right-wing groups to move underground and to establish organized links with each other that did not previously exist.

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<sup>215</sup> "Behörden beugen Aufmarsch von Neonazis vor," *Süddeutsche Zeitung*, August 11, 1994; see also "Großeinsatz der Polizei verhindert Neonazi-Aufmärsche," *Süddeutsche Zeitung*, August 16, 1994.

## **X. THE RESPONSE OF THE GERMAN PUBLIC TO VIOLENCE AGAINST FOREIGNERS**

Many Germans have been aghast and outraged at the anti-foreigner attacks that have taken place in their midst. Their shock, sorrow, and anger have been demonstrated in private ways and also in public demonstrations. Neighbors of those murdered in Mölln and Solingen tried to help rescue them from the flames and wept when they failed. Wolfgang Richter risked his life to try to protect the Vietnamese trapped in the firebombed building in Rostock. Birgit Königsheim went to the assistance of an asylum seeker being trampled by a gang of men and was herself knocked to the ground.

Some, like Richter, work full time to protect foreigners in Germany. Annette Köppinger, called a saint by those whom she assists, works unending hours to try to wrest more protection and support for foreigners in Schwerin. Tamara Henschel in Berlin has devoted herself to trying to obtain justice for Vietnamese contract workers living in Germany when the GDR collapsed. Almuth Berger and Ines Sprenger in Potsdam work tirelessly to help foreigners in the state of Brandenburg and to educate citizens there about people from other cultures and other countries.

There are many others too numerous to mention. They include individuals who work full time to aid foreigners in Germany, as well as those who volunteer their free time to tutor foreigners, to establish community programs where Germans and foreigners can meet or to work on anti-racist telephone chains and other political and educational activities.<sup>216</sup> More than one observer has commented that

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<sup>216</sup> Vera Egelberger of the Informations-Dokumentations-Aktionszentrum gegen Ausländerfeindlichkeit (IDA), an organization that compiles information on resources and programs aimed at combatting racism and anti-foreigner hostility, has described the surprising plenitude of materials available. IDA's mission is to identify, compile, catalogue,

although the amount and intensity of anti-foreigner violence in Germany is substantial and very troubling, the number of private citizens in Germany actively engaged in supporting foreigners is remarkable and generally unreported.<sup>217</sup>

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and publicize the resources so that groups in Germany can avail themselves of these materials in order to educate their members on these topics. Human Rights Watch/Helsinki interview in Düsseldorf, June 15, 1994.

<sup>217</sup> See Human Rights Watch/Helsinki interview with Schmalz-Jacobsen, Bonn, June 14, 1994.

Public demonstrations against xenophobic attacks on foreigners have captured the media's attention.<sup>218</sup> In early November 1992, ten weeks after the Rostock riots and following ten consecutive weekends of anti-foreigner violence, 350,000 people marched in Berlin, 10,000 marched in Dresden, and 100,000 marched in Bonn. The arson and murders in Mölln triggered more demonstrations against violent attacks on foreigners. From 6,500 in Mölln to 15,000 in Kiel to 20,000 each in Hamburg and Dortmund, there were marches against racism in at least twenty cities and towns in late November 1992. December saw additional demonstrations: 350,000 people in Munich; 450,000 in Hamburg; 150,000 in Frankfurt am Main; 120,000 in Hannover; 100,000 in Stuttgart; 10,000 in Dresden; and many more people in many more towns. On Christmas Day 1992, 200,000 people demonstrated against xenophobia in Berlin. On New Year's Day 1993, 300,000 people gathered in Essen to protest violence against foreigners. In total, the government figures indicate that almost three million people joined in at least fifty different demonstrations against xenophobia and racism in late 1992 and early 1993.

It appears that these public demonstrations, marches, and vigils have had a positive impact. They have given a voice to many Germans who actively condemn anti-foreigner hostility. They have begun to create a climate that censures those who attack foreigners. They have begun to change the silence that may have communicated implicit support for — or at least no active opposition to — past xenophobic assaults.

Public demonstrations are, of course, no panacea. They did not prevent the murders in Solingen, the attacks in Oberhof, Magdeburg, and Halle, or the firebombing in Lübeck. Nonetheless, they have been an important development. As Ernst Uhrlau, an expert on right-wing violence, said, the government needs the aid of the population.<sup>219</sup> Crimes will be solved and criminals punished only if

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<sup>218</sup> The statistics reported in this section appear in *Measures to Prevent Violence and Hostility Towards Foreigners: Interim Report of the Federal Government*, February 1993, p. 99-100.

<sup>219</sup> Human Rights Watch/Helsinki interview with Ernst Uhrlau in Hamburg, June 17,

ordinary people report information and assist the police. If the public demonstrations begin to change public attitudes so that neighbors no longer support and protect right-wing attacks on foreigners, as they did in Rostock in 1992 and in Halle in 1994, this will be a substantial improvement.

Although public protests against anti-foreigner violence in the last two years have been a significant development, it is worrisome that relatively few have taken place in the new federal states. This relative lack of protest against xenophobia in the East correlates with the higher incidence per capita of anti-foreigner attacks in some of the eastern states and the greater number of complaints Human Rights Watch/Helsinki received about hostility to foreigners there. All these factors indicate that anti-foreigner violence, although not limited to any one part of Germany, is a particularly serious problem in the new federal states. With this information in mind, government resources should be particularly targeted to protecting foreigners there and preventing violence against them.

## **XI. BUILDING A TOLERANT MULTI-CULTURAL SOCIETY**

The response by the police, prosecutors and the judiciary to xenophobic violence is crucial to the safety and security of non-Germans in Germany. However, over the long run, it is not an adequate response. Foreigners and long-time non-German residents also need the opportunity to become integrated into German society. They must have the opportunity to be not only tolerated guests, but full members of the society, with equal protection of the laws. Such steps must be an important aspect of any government campaign to combat racism and xenophobic violence.

This point has been made by Cornelia Schmalz-Jacobsen, the commissioner for foreigners' affairs in the federal government. In a report issued in March 1994, she stated that:

[T]he ways to improve the legal integration of foreigners outlined in this report should in the future become an integral component of a policy geared to overcoming intolerance and violence. An "offensive for antidiscrimination and the integration of foreigners" must be put in place along side the "offensive against violence and xenophobia" if the latter is to retain its credibility."<sup>220</sup>

Germany will be challenged in future years, not only to combat xenophobic violence when it occurs, but to create the basis for people of diverse ethnic and racial backgrounds to live peacefully and productively together. Human Rights Watch/Helsinki urges government officials to take a true leadership role in building such a society. With a non-German population that is more than 8 percent,

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<sup>220</sup> Report by the Federal Government's Commission for Foreigners' Affairs on the Situation of Foreigners in the Federal Republic of Germany in 1993, March 1994, p.79.

there can no longer be any dispute that Germany is a multicultural society. It is time for the government's policies to reflect more accurately that reality. As Cornelia Smalz-Jacobsen observed:

The question is no longer whether we want to live together with migrants, but how we want to shape the life we share. Or, to be more accurate: whether we can succeed in sharing a peaceful life.<sup>221</sup>

#### **MORAL LEADERSHIP**

Political leaders must resist the temptation to exploit racial and ethnic tensions for political gains and, instead, must take the lead to combat racism and to condemn violence against non-Germans. The first step in this process is for politicians to be sensitive to the ways in which their language and conduct foster or diminish racial and ethnic tensions. Former President von Weizsäcker called attention to the importance of the language used by government officials. He emphasized that Germany excludes foreigners from the mainstream of society by the labels it attaches to them. In mourning the victims of Mölln, he said: "Ten-year-old Yeliz Arslan was born among us and never lived anywhere else. Our media simply called them three Turks. That expression, based solely on their passports, already suggests that they should remain forever foreign. But those three in Mölln belonged to us."<sup>222</sup>

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<sup>221</sup> *Ibid.*, p. 11.

<sup>222</sup> Marc Fisher, "Acceptance Urged by Germans; President Criticizes Anti-Foreigner Acts," *The Washington Post*, December 25, 1992, p. A29.

Most German politicians regularly condemn violence against non-Germans. However, as many of those interviewed by Human Rights Watch/Helsinki pointed out, too many official statements simultaneously comment on the large numbers of asylum seekers and other foreigners in Germany — as if this somehow excuses or explains the violence. In addition some government officials combine any discussion of violence against foreigners with a comparison of the "criminality" of foreigners with that of Germans. German activists forcefully criticize the bases of the comparisons and emphasize that, even if there were significantly higher crime rates among foreigners,<sup>223</sup> it would not justify violence.

Ulrike Haupt in the office of the commissioner for foreigners' affairs for Berlin observed that:

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<sup>223</sup> The most frequently quoted statistics have been roundly criticized for treating different categories of offenses as comparable. *"Foreigners' crimes" or "Criminal Foreigners": Remarks on a Sensitive Issue*, 1993, published by the Federal Government's Commissioner for Foreigners' Affairs as No. 2 in the "Under Discussion" Series. For example, the foreigners' crime rates include violations of laws that apply only to foreigners (such as deadlines for renewing residence permits). When violations that apply only to foreigners are added to violations that apply to both Germans and foreigners, it skews the comparison and increases the crime rate reported for foreigners. Human Rights Watch/Helsinki interview with Herbert Leuninger, Pro Asyl, Hofheim, June 29, 1994. Many also criticize the comparisons because they do not take into account the different social conditions of the groups being compared. Human Rights Watch/Helsinki interview with Jochen Rössler, Schwerin, June 20, 1994.

Chancellor Kohl condemned violence against the Turks on the basis that Germans invited Turks to Germany. He did not say asylum seekers also need protection. He did not emphasize that it is unacceptable to burn any houses of foreigners. There has been too much focus on the particulars of the victims as opposed to the rights of all the foreigners in Germany.<sup>224</sup>

Statements that by implication suggest that violence against some foreigners — such as asylum seekers — is not as reprehensible as violence against other foreigners must be avoided.

Top government officials communicate not only with words, but also with actions. As Ulrich Fischer, a human rights expert in Bonn, observed: "If Chancellor Kohl leaves it to other federal officials to make the official government response to violence against foreigners, the top officials in the states also leave it to other state officials."<sup>225</sup> The moral tone needs to be set at the very top.

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<sup>224</sup> Human Rights Watch/Helsinki interview with Ulrike Haupt, Berlin, June 22, 1994.

<sup>225</sup> Human Rights Watch/Helsinki interview with Ulrich Fischer, Bonn, June 14, 1994.

Jochen Rössler, the commissioner for foreigners' affairs for the state of Mecklenburg-Vorpommern, put it succinctly: "We have a real need for political leadership. We can only make strides against anti-foreigner hostility if we improve the general political debate. You can't think of it outside the larger political context. . . . Although politicians dismiss many of the assailants as stupid, as individual crazies, the youth are responding to the xenophobic tone set by adult politicians."<sup>226</sup> Rössler added, "We need the public to see that violence against foreigners is a serious matter. They see this when the police treat the problem seriously. We need the politicians to condemn the police inaction. We need government officials, such as the interior minister and the police president, to say that it is important to protect foreigners. They need to say it after violent attacks and also in police training," before attacks take place.<sup>227</sup>

### LEGISLATIVE ACTION

In light of the substantial presence of non-Germans in Germany, there is a need for legislative action. Schmalz-Jacobsen has forcefully called for legislative change. "We need to do more to show that foreigners belong here. We need to show normalcy. We must do this by changing our laws. Amending our citizenship law is crucial. We also need to amend the Aliens' Law to enable family members, such as grandmothers, to visit relatives who permanently reside in Germany. An immigration law also would be crucial."<sup>228</sup>

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<sup>226</sup> Human Rights Watch/Helsinki interview with Jochen Rössler, Schwerin, June 20, 1994.

<sup>227</sup> *Ibid.*

<sup>228</sup> Human Rights Watch/Helsinki interview with Cornelia Schmalz-Jacobsen, Bonn, June 14, 1994.

### Citizenship Law

The German citizenship law dates from 1913 and is based on the concept of *jus sanguinis*.<sup>229</sup> Thus, access to German citizenship is based on the citizenship of one's parents, so children born in Germany in families that have lived there for three generations are not German citizens if neither parent has German citizenship. Although German citizenship can be acquired through the naturalization process, this process is extremely lengthy and rigorous. Naturalization requires ten years of habitual residence in Germany plus proof of the ability to speak German, integration into German culture, and understanding of the German political system, as well as the ability to support one's self from one's own income. Once these conditions are met, it still remains within the discretion of the competent authorities whether citizenship should be granted. The application form for German naturalization is also notoriously long and challenging. Consequently, few of the seven million foreigners living in Germany have applied for citizenship.<sup>230</sup>

Many long-term residents in Germany, particularly the large Turkish population, want to obtain German citizenship, but are unwilling to give up their Turkish citizenship because, by doing so, they would forfeit their inheritance and property rights in Turkey. German law does not provide for the possibility of dual citizenship in most cases. Some, including the federal commissioner for foreigners' affairs, have suggested that the citizenship law be amended to "permit naturalisation without renouncement of the previous nationality."<sup>231</sup>

There have been several legislative proposals for revising the citizenship law. Most recently, in January 1995, members of parliament for the Social Democratic Party (SPD) voted unanimously to introduce a bill that would make dual citizenship a possibility, reduce the time needed for naturalization, and give

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<sup>229</sup> While international law provides broad deference to governments to base citizenship on either *jus soli* or *jus sanguinis*, the increasing mobility of populations means that the use of *jus sanguinis* as the sole basis for granting citizenship risks creating a permanently subordinate population. As a result, Human Rights Watch favors as a matter of policy the availability of *jus soli* as a basis for citizenship for families with established roots in a country.

<sup>230</sup> Jacqueline Bhabha, "Letter from London: Recent European Immigration Developments," 70 *Interpreter Releases*, December 6, 1993, p. 1589. Approximately 200,000 foreigners have applied for naturalization during the past twenty years. *Ibid.*

<sup>231</sup> *Report by the Federal Government's Commission on Foreigners' Affairs*, p. 86.

citizenship automatically to third-generation immigrants. "The SPD's bill would entitle children of foreign parents to German nationality if at least one parent was born and lives in Germany — the so-called third generation. Immigrants would have the right to apply for naturalization after eight years of residence in Germany, or if they had grown up here as the child of foreign parents."<sup>232</sup> This bill is very similar to one supported by the Free Democratic Party (FDP), the coalition partner of the ruling Christian Democratic Union (CDU).

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<sup>232</sup> Kevin Liffey, "SPD Puts Bonn Government in Bind with Nationality Bill," *Reuters News Service*, January 18, 1995.

Dr. Faruk Sen, the director of the Center for Turkish Studies at the University of Essen, emphasized the need for government action to foster greater integration of the Turkish community. He commented that enacting a broader citizenship law would be an important step the federal government could take, pointing out that only three European countries have citizenship laws as restrictive as Germany's. He stressed that the citizenship issue has broad ramifications, not only regarding the specific issue of citizenship, but also for non-Germans' general feeling of belonging and acceptance in Germany.<sup>233</sup>

Dr. Wolfgang Richter echoed these views: "There are over six million [non-German permanent residents] here. They belong. The law shouldn't treat them as second class. They should have the right to vote and citizenship. Civil servant positions should be open to them."<sup>234</sup> Ulrike Haupt, in the office of the commissioner for foreigners' affairs in Berlin, called for adding elements of the *jus soli* principle to the German citizenship law. She pointed out that tying citizenship so strongly to ethnic descent plays a role in anti-foreigner feeling.<sup>235</sup> Former President von Weizsäcker specifically linked anti-foreigner sentiment to restrictive

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<sup>233</sup> Human Rights Watch/Helsinki interview with Professor Dr. Faruk Sen, Bonn, June 14, 1994.

<sup>234</sup> Human Rights Watch/Helsinki interview with Dr. Wolfgang Richter, Rostock, June 21, 1994.

<sup>235</sup> Human Rights Watch/Helsinki interview with Ulrike Haupt, Berlin, June 22, 1994.

citizenship laws and urged Germany to combat xenophobic sentiment by making it "easier for foreigners to get citizenship."<sup>236</sup>

Those who advocate liberalizing the citizenship law are well aware that a legislative change would not end prejudice against foreigners. They acknowledge that prejudice based on skin color would not evaporate in the face of a certificate of citizenship. However, it would allow a significant number of people otherwise deemed "foreign" to become officially German. As they apply for and occupy public positions, they will be visible symbols for the current day and role models for the future.<sup>237</sup> They will change the message sent today, when the absence of foreigners from the police forces and other government positions clearly indicates the peripheral role to which foreigners have been consigned in German society.

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<sup>236</sup> Fisher, "Acceptance Urged by Germans...", *The Washington Post*.

<sup>237</sup> Human Rights Watch/Helsinki interview with Cornelia Schmalz-Jacobsen, Bonn, June 14, 1994; Human Rights Watch/Helsinki interview with Wolfgang Richter interview, Rostock, June 21, 1994.

Liberalizing access to German citizenship and permitting dual nationality would have a profound impact in another way. It would provide many long-term residents with the right to vote. In a democracy, those who run for public office need to be responsive to the will of the electorate. As Dr. Sen pointed out, politicians who now might overlook the concerns of large groups of individuals who cannot vote will be unlikely to ignore the same groups if they have the ballot.<sup>238</sup> If protection against discrimination and violence is a high priority of a significant segment of the voting population, their elected representatives will be more likely to work hard for improvements in those areas.<sup>239</sup>

### **Immigration Law**

There has been much political rhetoric in Germany as to whether Germany is a homogeneous or a multicultural society, whether it is a land of immigration or not, and whether steps should be taken to integrate newcomers into German society. Indeed, many in the sizeable Turkish community in Germany speak perfect German and have never even been to Turkey. The suggestion that they are somehow temporary sojourners in Germany is obviously incorrect. This is also true for many of the 500,000 Italians and 350,000 Greeks and one million citizens of the former

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<sup>238</sup> Ines Sprenger, of the office of the Commission for Foreigners' Affairs for the state of Brandenburg, also emphasized this point. Human Rights Watch/Helsinki interview with Ines Sprenger, Potsdam, June 22, 1994.

<sup>239</sup> Human Rights Watch/Helsinki interview with Professor Dr. Faruk Sen, Bonn, June 14, 1994.

Yugoslavia whose families first came to Germany as guest workers several generations ago.

Despite the reality of a large "immigrant" population in Germany, there is no general immigration legislation. German law provides no routine method for people from other countries to apply to become permanent residents and ultimately citizens of Germany. European Union law mandates that nationals of European Union states be allowed to seek work and reside in Germany.<sup>240</sup> The German Constitution also allows ethnic Germans to return to Germany<sup>241</sup> and allows those who flee political persecution to seek asylum in Germany in certain instances.<sup>242</sup> For all those who fall outside of these special categories, however, there is no legal route to immigrate to Germany.

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<sup>240</sup> The Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11, 36-38, art. 48,52.

<sup>241</sup> Article 116, *Grundgesetz*.

<sup>242</sup> Article 16a, *Grundgesetz*.

Schmalz-Jacobsen has proposed that Germany establish immigration quotas that would allow people from different parts of the world to apply to move permanently to Germany.<sup>243</sup> Many others also support such a law.<sup>244</sup> Jochen Rössler, in Mecklenburg-Vorpommern, commented: "Politicians often say Germany is not an immigration country, but actually it is. Germany needs immigrants because its population is declining. Mecklenburg-Vorpommern alone lost 100,000 in population in the last year."<sup>245</sup> Dr. Manfred Rissman, a member of parliament from Rostock, echoed that view: "We are an immigration country. We need an immigration law and policy."<sup>246</sup>

Ines Sprenger, in the office of the commissioner for foreigners' affairs for the state of Brandenburg, was adamant: "The government must acknowledge that Germany is an immigration country. The emphasis should not be on foreigners, but

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<sup>243</sup> Craig R. Whitney, "German Aide Faults Policy on Foreigners," *The New York Times*, May 29, 1994, p. 9.

<sup>244</sup> It is not within Human Rights Watch/Helsinki's mandate to take a position on the type of immigration law that is best for a given country. There are also few international law principles that provide guidance and create specific government obligations. However, we welcome all such legislative initiatives that are designed to contribute to greater tolerance.

<sup>245</sup> Human Rights Watch/Helsinki interview with Rössler, Schwerin, June 20, 1994.

<sup>246</sup> Human Rights Watch/Helsinki interview with Rissman, Rostock, June 21, 1994.

on immigrants. Immigrants have the right to vote, and politicians have to respond to them."<sup>247</sup> Ulrike Haupt, in the office of the commissioner for foreigners' affairs for Berlin, stressed both the need for immigration legislation and the need for Germany to develop a perception of itself as an immigration country. She criticized the politicians who proclaim Germany is not a country of immigration. This leads the "population to think that the 6.5 million foreigners here must be illegal."<sup>248</sup>

#### **Anti-discrimination Law**

Despite the numerous reports of rampant discrimination against non-Germans, there is little legal recourse. There is no general anti-discrimination statute in Germany. As a result, individuals can engage in egregious and overt discrimination against foreigners without fear of legal penalty. As the federal commission on foreigners' affairs has observed, although the German constitution prohibits discrimination on the basis of nationality, race or origin and includes the principle of equal protection before the law, these provisions are only binding on the state, not on private persons. Although these constitutional provisions do have "an effect in relations between private persons through general legal concepts anchored in the German Civil Code," those who wish to obtain a legal remedy in cases of discrimination are often faced with obstacles because "their rights are not expressly anchored in law."

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<sup>247</sup> Human Rights Watch/Helsinki interview with Ines Sprenger, Potsdam, June 22, 1994.

<sup>248</sup> Human Rights Watch/Helsinki interview with Ulrike Haupt, Berlin, June 22, 1994.

For this reason, specific antidiscrimination legislation, as it exists in Great Britain for example, could lead to substantial improvements. Legislation of this kind could also lay the foundation for setting up special public agencies to monitor observance of the ban on discrimination. The positive effect such legislation could have on the way racism and xenophobia are dealt with in society should not be underestimated.<sup>249</sup>

Foreigners, including long-time permanent residents, are confronted with discrimination on a daily basis. Günter Apel, the commissioner for foreigners' affairs in Hamburg, emphasized the need for an anti-discrimination law to provide a remedy for the myriad incidents of daily racism that foreigners report to him. For example, non-Germans described being denied automobile insurance and rental apartments, suffering blatant discrimination in employment, being denied admission to public restaurants, shops and discotheques, and access to public services solely because of their "foreign" status. Others reported being charged higher insurance rates and higher rents for the same reason.

Insurance companies appear to be particularly discriminatory in their treatment of foreigners. As discussed earlier in this report, insurance companies have refused to provide fire insurance because "foreigners" are more likely to be the target of arson. Similarly, a number of insurers do not offer their agents a commission for insurance contracts with foreigners.<sup>250</sup>

In August 1994, the German weekly *Der Spiegel* reported that foreign customers of banks in Germany, and especially black Africans, experience discrimination when trying to open a bank account, and sometimes have their applications denied. For example, an internal memorandum from the Hypotheken

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<sup>249</sup> "Report by the Federal Government's Commission for Foreigners' Affairs...", March 1994, pp.74-5.

<sup>250</sup> "Report by the Federal Government's Commission for Foreigners' Affairs...", March 1994, pp.74-5.

und Wechsel Bank in Munich makes clear that employees are to be on guard when dealing with Africans:

Black Africans often take advantage of the fact that they can not be clearly identified from the identification card that they present. An identification card can therefore be used by many people, without being noticed. Such cases call for particular caution.<sup>251</sup>

Foreigners may also be discriminated against in housing. The Commission on Foreigners' Affairs reported that "in some cases, landlords refuse on principle to conclude leases with people who are not of German origin. Sometimes, this is even stated in newspaper advertisements for accommodations."<sup>252</sup>

Foreigners also report that they are sometimes denied admittance to restaurants, shops or discotheques. For example, Virgilio Vincente, who has lived in the eastern city of Magdeburg since the 1980s when he left Mozambique to become a contract worker in the GDR, stated:

I also don't go to restaurants. Nevertheless, I recently had trouble with the owner of a snack-bar. . . . Some friends from Mozambique and I wanted only to use the telephone booth next to it. The manager came immediately and asked "What do you want here? No nigger can come in this snack-bar."<sup>253</sup>

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<sup>251</sup> "Wie ein Bankräuber," *Der Spiegel*, Nr. 32, August 8, 1994, p. 58.

<sup>252</sup> *Ibid.*, p. 73.

<sup>253</sup> "Hier kommt kein Neger rein," *Der Spiegel*, Nr. 25, June 20, 199, p. 54.

Roland Blödgen, who works with Moroccans in Düsseldorf, reported that landlords frequently charge foreigners higher rent.<sup>254</sup> A Turkish teenager, who was born in Berlin and carries a German passport, spoke of the discriminatory policies at most discotheques: "If I show my German identification, I can go right in. My friends [with Turkish passports] have to stay outside. People with foreign i.d.'s must hand over their i.d.'s before they go in."<sup>255</sup>

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<sup>254</sup> Human Rights Watch/Helsinki interview with Roland Blödgen, of FIZ, Flucht-und Immigrationszentrum in der BRD, Düsseldorf, June 15, 1994.

<sup>255</sup> Human Rights Watch/Helsinki interview with youth, Berlin, June 22, 1994.

Dr. Richter in Rostock decried the surcharge in auto insurance rates for foreigners.<sup>256</sup> Many others also complained about the discrimination in insurance rates, and some added that insurance companies often refuse outright to insure foreigners.<sup>257</sup> As mentioned earlier, at least one company has refused to provide fire insurance to a home for ethnic Germans being resettled from the East because there is a greater risk of arson attacks in neighborhoods where homes for asylum seekers and other foreigners are located. Some private landlords have used a similar rationale in refusing to rent to foreigners.<sup>258</sup> No anti-discrimination law prohibits these and other blatant incidents of discrimination against foreigners in Germany.

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<sup>256</sup> Human Rights Watch/Helsinki interview with Wolfgang Richter, Rostock, June 21, 1994.

<sup>257</sup> Discussion with several Germans and non-Germans at the International League for Human Rights, Berlin, June 22, 1994.

<sup>258</sup> See discussion of case studies.

## **XII. THE LEGAL STANDARD**

### **INTERNATIONAL LEGAL REQUIREMENTS**

Germany has obligations under international human rights law, as well as under German law, to protect all individuals within its territory from violence, including a specific obligation to protect minorities from violence due to racial or ethnic identity. The Federal Republic has ratified the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, which states:<sup>259</sup>

[T]o prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national origin, to equality before the law, notably in the enjoyment of . . . [t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group, or institution. . . .<sup>260</sup>

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<sup>259</sup> Signed by Germany on February 2, 1967, and ratified on May 16, 1969.

<sup>260</sup> Article 5(b), United Nations International Convention on the Elimination of all Forms of Racial Discrimination.

Germany has also ratified the International Covenant on Civil and Political Rights.<sup>261</sup> The Covenant requires parties to protect all individuals within their territories:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>262</sup>

The Covenant also guarantees:

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<sup>261</sup> Signed by Germany on October 9, 1968, and ratified on December 17, 1973.

<sup>262</sup> Article 2(1), United Nations International Covenant on Civil and Political Rights. (emphasis added)

Everyone has the right to liberty and security of person.<sup>263</sup>

In addition, the Federal Republic of Germany has been a participating state in the Organization on Security and Cooperation in Europe (OSCE).<sup>264</sup> OSCE countries agree:

[T]o commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property. . . .<sup>265</sup>

### NATIONAL LEGAL REQUIREMENTS

The Constitution of the Federal Republic of Germany places many requirements on the government. It guarantees certain fundamental rights for everyone, citizen or not:

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<sup>263</sup> Article 9(1), United Nations International Covenant on Civil and Political Rights.

<sup>264</sup> Until 1994, this group was known as the Conference on Security and Cooperation in Europe (CSCE).

<sup>265</sup> Paragraph 40.2, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, the principles of which Germany pledged to uphold.

The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.<sup>266</sup>

Everyone shall have the right to life and to inviolability of his person.<sup>267</sup>

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<sup>266</sup> Article 1(1), *Grundgesetz*.

<sup>267</sup> Article 2(2), *Grundgesetz*.

All persons shall be equal before the law. . . . No one may be prejudiced or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith or his religious or political opinions.<sup>268</sup>

### **OBLIGATION TO PROVIDE EFFECTIVE REMEDIES**

In addition to protecting foreigners, the German government has the obligation to provide an effective remedy to those individuals whose fundamental rights have been violated. International law obliges national tribunals to provide an effective remedy for acts violating the fundamental rights granted by the constitution or by other laws.<sup>269</sup>

The Convention on the Elimination of All Forms of Racial Discrimination specifies:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violates his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.<sup>270</sup>

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<sup>268</sup> Article 3(1), 3(3), *Grundgesetz*.

<sup>269</sup> Article 8, Universal Declaration of Human Rights, 1948; Article 2(3), International Covenant on Civil and Political Rights.

<sup>270</sup> Article 6, International Convention on the Elimination of All Forms of Racial Discrimination.

The International Covenant on Civil and Political Rights requires:

All persons are equal before the law. . . . [T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>271</sup>

### **LAW ENFORCEMENT OBLIGATIONS**

Under both international and national law Germany is obliged to protect foreigners and other minorities from racial or ethnic violence. To carry out this obligation Germany must provide effective law enforcement. Law enforcement forces should protect foreigners against violence by trying to prevent it from happening. When attacks on foreigners do take place, law enforcement officers have the obligation to respond effectively to put an end to the violence. After violence has been quelled, officials have the duty to investigate the crimes thoroughly and bring assailants to the judicial system for prosecution and conviction.

### **DUTY TO PROTECT ALL FROM VIOLENCE**

Under international law police officers must work to protect all individuals from violence:

Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.<sup>272</sup>

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<sup>271</sup> Article 26, International Covenant on Civil and Political Rights.

<sup>272</sup> Article 1, United Nations Code of Conduct for Law Enforcement Officials, G.A. Res. 169, U.N. GAOR, 34th Sess., Supp. No. 46 at 186, U.N. Doc. A/34/46 (1980). (emphasis added)

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.<sup>273</sup>

#### **DUTY TO PROVIDE EFFECTIVE TRAINING**

Deficiencies in police work call for more serious and sustained training efforts. Again, international standards are pertinent:

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<sup>273</sup> Article 2, Code of Conduct for Law Enforcement Officials.

In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. *Law enforcement agencies should review their training programs and operational procedures in the light of particular incidents.*<sup>274</sup>

#### **DUTY TO INVESTIGATE AND DISCIPLINE POLICE MISCONDUCT**

When police misconduct occurs, responsible authorities have the duty to investigate and impose appropriate disciplinary measures. The United Nations Code of Conduct for Law Enforcement Officials prescribes:

Every law enforcement agency . . . should be held to the duty of disciplining itself . . . and the actions of law enforcement officials should be responsive to public scrutiny.<sup>275</sup>

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<sup>274</sup> Paragraph 20, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at 116, U.N. Doc. A/Conf.144/28/Rev.1, U.N. Sales No. E.91.IV.2(1990). (emphasis added)

<sup>275</sup> Preamble, United Nations Code of Conduct for Law Enforcement Officials.

### XIII. CONCLUSIONS

The 1992 Human Rights Watch/Helsinki report concluded that Germany was facing an emergency situation. The incidence of crimes against foreigners was increasing in a geometrical progression. The violence was spiraling onward without even a pause — much less an end — in sight.

By early 1995 the crisis had not yet abated. The number of all right-wing crimes grew significantly between 1992 and 1993, from 7,121 to 10,561. However, there was a pause in the progression — and even a decrease in the number — of violent anti-foreigner crimes. Whether this is a momentary dip or the beginning of a decline in violent crimes directed at foreigners is impossible to know. The significant increase in non-violent crimes, which include criminal harassment and intimidation, as well as expressive conduct that Human Rights Watch/Helsinki believes should not be criminalized, indicates that there is still deep-seated hostility toward foreigners among some segments of German society.

Even if the 1993 and 1994 figures on violent xenophobic crime are the first step in a sustained reduction, the number of attacks on foreigners simply because they are foreigners still remains a serious problem. Attacks on long-term residents of Germany from Turkish, Greek, Vietnamese, Angolan, and other ethnic backgrounds, as well as on asylum seekers, are still substantially higher than they were ten years ago.<sup>276</sup> The population of Germany is currently 8 percent non-German. As long as a significant level of xenophobic crime continues to exist, too many of the seven million non-German inhabitants are at risk.

In addition to the continuing violence and racism directed at foreigners, other vulnerable groups have also come under attack by right-wing extremists. There are numerous reports of crimes against homosexuals, the homeless and the handicapped, as well as against Jews and those believed to be Jewish. Pointing out that the 1994 federal statistics on right-wing extremism indicated a drop in violent crimes, an editorial in the German news weekly *Der Spiegel* observed that:

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<sup>276</sup> *Verfassungsschutzbericht 1992*, p. 70.

This doesn't help the Ghanaian who was stabbed and thrown out of the commuter train [S-bahn]; the victims of a whole series of skinhead attacks in the streetcars and trains are not comforted by the statistics. The brutality has come out of the closet. It is as present as the police forces and civil resistance should be, but are not. . . . The target of attacks is no longer only the Turks or the Vietnamese and the black Africans, but anyone who is noticeably weaker — the homeless, the handicapped, the retired (elderly). . . . Only now that [the violence] can affect anyone in the public trains, the danger is clear.<sup>277</sup>

The German government's responses in the past two years to the huge upsurge in right-wing violence have had some positive effects. New programs to educate and train youth, and to bring together Germans and non-Germans have been initiated. The problem of faulty and inadequate police equipment identified in 1992 appears to be largely resolved. Efforts to reorganize and improve police leadership in the new federal states are underway. However, the issues of improving the training and revitalizing the motivation of police forces in the new states still need major attention and resources. Inadequate police work still plagues far too many incidents, and raises the specter that the police may be unwilling to protect foreigners.

Continued and increased attention must be devoted to the prosecution and conviction of perpetrators of anti-foreigner crimes. The number of prosecutions dismissed for insufficient evidence is alarmingly high. It suggests that the prosecutors' offices, as well as the police forces, are not preparing thorough cases. The criminal justice system is not functioning as an effective arm of society's efforts to punish criminal wrongdoers when almost 80 percent of the cases are dismissed before trial. Foreigners who despair that the authorities are indifferent to their fate find no consolation here.

When the miniscule percentage of convictions is compounded by lenient sentences for those found guilty of violent attacks on foreigners, the prospect of relying on the legal system to redress grievances grows slimmer. The members of the German judiciary are, of course, independent. Human Rights Watch/Helsinki expects government officials to respect that independence. Nonetheless, there is a role for government action in this sphere. It is important to communicate the sense

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<sup>277</sup> Heribert Prantl, "Die destruktive Dynamik rechtsextremer Gewalt," *Süddeutsche Zeitung*, October 15-16, 1994.

that violence against foreigners is a major societal problem that needs to be addressed seriously. It is important to clarify that the goals of the juvenile penal code can be achieved without ignoring the victims of "juvenile" violence or sending the message that they are expendable. It is important to emphasize that lenient sentences often convey the message that the crimes involved are not serious.

Human Rights Watch/Helsinki calls on the German government to use all the resources at its disposal to protect the safety and security of foreigners in Germany. The government's own statistics for the past five years demonstrate that right-wing violence has been and continues to be a serious problem. This problem appears to be especially serious in the eastern states, where the population has been isolated from non-Germans for the last forty-five years and any anti-foreigner sentiments that existed remained pent up, unable to be expressed, what is more, the tradition of a democratic police force that protects individuals from human rights violations has been absent in the eastern states.

While the government has recognized that right-wing and xenophobic violence is a problem and has taken efforts to address the problem, more needs to be done. The deficiencies in police work that are especially pronounced in the eastern states must be addressed promptly. The pairing of police forces from the new states with those in the old states has not been sufficient. Improving the training and motivation of the police officers in the new federal states requires immediate action. Foreigners in Germany must not face violence and other criminal attacks for the next generation while the police forces gradually improve. The situation demands additional resources to forge a solution now.

In addition, troubling evidence exists of patterns of active police brutality toward foreigners in some cities. The complaints about police abuse of foreigners are too numerous and come from too many individuals and from too many different sources to be dismissed as insignificant. Assertions by officials within the police departments that there are few cases where abuse can be proved do not resolve the matter. These trouble spots require investigations by independent authorities. Independent investigations will indicate whether police brutality against foreigners exists and punish those who engage in it if it does. Independent investigations will also send the message that government authorities will not wink at such misconduct, but will work to extirpate it.

When police work inadequately protects foreigners, either due to incompetence, lack of energy, or hostility on the police force, it must be investigated and corrected. Disciplinary measures must be imposed on the appropriate police officials. This applies to instances of "active" misconduct, such as mistreating, beating, or otherwise abusing people. It also applies to instances of "passive" misconduct, such as failing to respond in a timely manner to reports of

violence against foreigners or to vandalism and attacks on asylum shelters. Investigations have begun in several cities where reports of police brutality have been particularly severe. However, these investigations have been started long after such reports began to surface and, to date, have resulted in few criminal charges or convictions.

Government leaders, both federal and state, must live up to the promise that the protection of foreigners in Germany is of the highest priority. They must recognize that summoning the political will to protect the least powerful in society is a true test of democratic values. Statements that inadvertently or otherwise suggest that foreigners somehow contributed to the violence directed against them or that the violence against foreigners is somehow justified must be countermanded with the direct message that xenophobic crimes are intolerable in a just society and will not be tolerated in Germany. The Federal Republic of Germany's sustained commitment to democratic values during the past half century demands no less.

## **APPENDIX A**













## **APPENDIX B**

### **HUMAN RIGHTS WATCH'S POLICY ON HATE SPEECH**

Human Rights Watch condemns all forms of discrimination on such arbitrary grounds as nationality, race, gender or religion. In many countries, anti-discrimination efforts take the form of laws penalizing the communication of group hatred on these or other grounds.

Such laws are often justified on the grounds that they curb racial and ethnic violence. But there is little evidence they achieve their stated purpose, and they have often been subject to abuse. Many governments and other actors that encourage or exploit group tensions use "hate speech" laws as a pretext to advance a separate political agenda or to enhance their own political power. In a number of countries, the chief targets of "hate speech" laws have been minority rights activists fighting discrimination by the same majority that administers the laws — or, as in the case of South Africa, by the dominant minority. . . .

We therefore view as suspect any action by governments to criminalize any expression short of incitement to illegal action and consider any law or prosecution that is not based on a strict interpretation of incitement to be presumptively a violation of the right of free expression.

In evaluating "hate speech" laws and prosecutions to ensure that they do not infringe on the right to freedom of expression, Human Rights Watch will take the following factors into account:

- Expression should never be punished for its subject matter or content alone, no matter how offensive it may be to others.
- Any restriction on the content of expression must be based on direct and immediate incitement of acts of violence, discrimination or hostility against an individual or clearly defined group of persons in circumstances in which such violence, discrimination or hostility is imminent and alternative measures to prevent such conduct are not reasonably available. For this purpose, "violence" refers to physical attacks; "discrimination" refers to the actual deprivation of a benefit to which similarly situated people are entitled or the imposition of a penalty or sanction not imposed on other similarly situated people; and "hostility" refers to criminal harassment and criminal intimidation.

- Reasonable limitations on the time, place and manner of expression shall not be enforced so as to prevent the effective communication of any information or point of view. The means chosen to implement such limitations should be the least restrictive available to accomplish a legitimate end unrelated to the content of the expression.
- Abusive conduct may not be insulated from punishment simply because it may be accompanied by expression, nor may it be singled out for punishment or punished more heavily because of the expression.