

# FORUM MENSCHENRECHTE



## Joint UPR submission

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Some member organizations of the FMR will provide individual submissions.

FORUM MENSCHENRECHTE is a network of 53 German non-governmental organizations (NGOs) who are committed to better and more comprehensive protection of human rights – worldwide, in specific regions of the world, within countries and also within the Federal Republic of Germany. The FMR was established in 1994 following the World Conference on Human Rights Conference in Vienna.

*The following submission does not claim to comprehensively address all human rights issues of relevance in Germany. It focuses on areas and recommendations brought forward in the 3<sup>rd</sup> cycle, on UPR areas that are particularly important to the organisations who jointly contributed to this submission, and on several recent developments not addressed during the previous review. References to recommendations from the 3<sup>rd</sup> cycle (A/HRC/39/9/Add.1) are added in brackets.*

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## International norms and national human rights instruments

1. FMR welcomes the ratification of the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights. (155.4-6)
2. FMR welcomes the ratification of the ILO Convention No. 169. Now the government must approve a comprehensive, coherent, and interdepartmental strategy to regulate the specific obligations of German agencies for the protection of indigenous peoples' rights in the international context. (155.8)
3. FMR regrets that the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not been taken into consideration by Germany. (155.1-3)
4. FMR welcomes Germany's active engagement with the Human Rights Council and its mechanisms and Germany's annual voluntary contribution to the OHCHR. (155.12, 155.235)
5. Neither the commissioner on human rights and humanitarian aid in the Foreign Ministry nor contact persons for human rights in some other ministries have a mandate to ensure systematic and coherent implementation of UN conventions, recommendations, and guidelines by the government. FMR recommends that the government establishes such a national mechanism for reporting and follow-up (NMRF). (155.29-31)

## Poverty

6. Poverty in Germany reached a new record in 2021, with a **poverty rate** of 16.9 per cent.<sup>1</sup> 14.1 million people had to be counted among the poor, an increase of 840,000 compared to before the Corona pandemic. While people with low incomes often had to accept real income losses in recent years, higher incomes have grown. The richest half of the population owns 99.5 per cent of the wealth. FMR calls on the government to enhance efforts to address with a human rights-based approach the issue of social and economic disparity between those living in poverty and high-income segments of the population. (155.179-180)
7. There are currently 2.7 million single parents living in Germany. Among all families, the risk of living in poverty is highest for single-parent families. Women are particularly affected, as 88 percent of single parents are mothers. The record level of 21.3 percent of **poverty among children and young people** in 2021<sup>2</sup> means that every fifth child in Germany lives in poverty. Financial support for low-income families and single parents is often poorly coordinated. FMR calls on the government to establish a one-stop financial benefit such as a basic child allowance that covers all children's needs. (155.181, 155.199)

## Right to housing

8. According to 2022 official **homelessness** reporting around 178,000 people in Germany were housed due to homelessness<sup>3</sup>, for example in temporary overnight accommodation or in emergency and shared accommodation. The number of street homeless is estimated at about 37,000. FMR welcomes the government's goal to overcome homelessness by 2030 and calls on it to develop a corresponding action plan together with affected persons and stakeholders, and to implement it expeditiously. FMR calls on the respective state (*Länder*) governments to ensure that street homeless people without a fixed abode are given the **right to vote** in local elections in all German states.
9. FMR is concerned about the severe shortage of **affordable housing** and calls on the government to strengthen and expeditiously implement efforts to further address the human rights requirement for the availability of affordable housing.

10. The number of **social housing** units is declining every year (due to the expiration of social bonds) despite increased federal funding. At the same time, too few social housing units are being built. FMR calls on the federal and state governments to significantly increase and expeditiously implement their planned measures to promote social housing.

## Equality and non-discrimination

11. Germany urgently needs to address pressing issues of gender equality. As of 2020, the **gender pay gap** stands at 18.3 %. Very few women sue for equal pay with male colleagues, and those who do encounter significant difficulties. Legislation on pay transparency is insufficient. Germany must bring its anti-discrimination legislation in conformity with EU legislation and human rights standards, including the right of associations to initiate civil proceedings and longer time limits while setting standards for higher, more deterrent compensations. Training for judges and lawyers is crucial to overcome the disregard of courts for existing legal standards. (155.42, 155.175, 155.170, 155.168)
12. Women are underrepresented in political parties, parliaments, leadership positions and decision-making bodies at all levels of politics, society, and science. Germany must ensure meaningful participation and **representation of women and girls** in decision-making at all levels of socioeconomic and political life, whilst also promoting the rights of Black, Indigenous and People of Colour (BIPOC), LGBTQI\*+ communities, and other groups that face marginalisation and systemic discrimination. Progress is only possible with binding quotas. (155.174, 155.48, 155.41-43, 155.168, 155.37-38, 155.51)
13. There is no sustainable trend to abolish or transform the German segregated school and education system. In recent years, the number of pupils in special schools has increased. Because of the constitutional cooperation ban to finance education in states there is no effective financial support from the federal level for inclusive standards in schools and educational institutions. FMR calls on the federal and state governments to live up to their commitment to reach an **inclusive education system** (155.188, 155.191)
14. **Independent living of persons with disabilities** includes to decide whether, how, from whom and where medical and assistance services be provided. A new law effective since 2023 (Intensivpflege- und Rehabilitationsstärkungsgesetz) threatens to restrict ambulant services and free choices for ventilated people at their own home. Germany must grant all persons with disabilities equal access to adequate health care regardless of their living form or house. (155.183)
15. More than 320,000 persons with disabilities are working in sheltered workshops on a segregated marketplace with restrictive rights and no minimum wage. FMR regrets that there is no intention to change the legal framework for inclusion or strengthen persons with disabilities for the general marketplace. Germany must ensure **equal access to work and an inclusive marketplace** for everyone. (155.209, 155.210, 155.211)

## Racism and racist violence

16. Policy approaches against **racism and right-wing extremism** must be separated more strongly. Otherwise, measures against structural discrimination and the prevention of racist police violence will not receive the necessary attention or will not be implemented at all.
17. The legislature should remove the outdated and misleading term "race" from the **prohibition of discrimination in Article 3 of the Basic Law** and replace it with the prohibition of "racial discrimination". Sexual identity should also be included in the grounds of discrimination. (155.60, 155.105, 155.110)

18. The practice of **racial profiling** in Germany has been ruled a human rights violation by the European Court of Human Rights (ECHR)<sup>4</sup>. FMR calls on Germany to eliminate the provision on warrantless identity checks under Section 22(1a) of the Federal Police Act and to insert objective criteria for concrete suspicion as a basis for personal checks, with the aim of reducing the number of warrantless identity checks. (155.80-84, 155.78, 155.136)
19. The European Commission against Racism and Intolerance (ECRI) and UN CERD recommend the establishment of institutionally **independent complaints mechanisms** such as police commissioners or clearing houses at the federal and state levels. These should be supplemented by a low-threshold network of contact persons at the police for groups of People of Colour, Sinti and Roma, Jewish, Muslim, Black and LGBTIQ\* people affected by discrimination. (155.122, 155.126)
20. FMR welcomes the creation of the office of a Commissioner for Antiziganism. However, for the recognition of **antiziganism** as an independent form of racist discrimination towards Sinti and Roma, public programs against disadvantages due to racial marking in access to education, work, housing, and health care must be developed and implemented in dialogue and with the significant participation of Roma and Sinti. Asylum applications of Roma refugees must be examined on an individual basis and without bias, considering cumulative discrimination and the existence of antiziganism in their countries of origin. (155.213, 155.215)
21. The **prosecution and punishment of hate crimes** is inadequate. Both law enforcement and the judiciary are insufficiently able to recognise and react to hate and racist, prejudice-based motives. As homophobic and transphobic hate crimes were left out from the motives in Section 46 (2) Criminal Code, these crimes hardly find attention in the practice of police and prosecutorial investigations. Due to the lack of expertise in determining racist motives, the government should consider establishing specialized public prosecution offices to specifically pursue hate crimes. (155.62, 155.72, 155.97-97, 155.124, 155.246, 155.248, 155.250-251)
22. So far, there is no nationwide programme against **anti-LGBTIQ\* violence** that includes targeted measures for prevention, education, and training for the police and judiciary. FMR calls on Germany to address the rise in hate crimes, particularly with regard to racist crimes, but also to crimes against the LGBTIQ\*+ community, persons with disabilities and women. (155.56, 155.109-110)

## Women's rights and gender equality

23. There is still no federal law that ensures adequate funding for the **protection of women against violence** and no national action plan to implement the Istanbul Convention. Funding for women's shelters and counselling centers is almost entirely based on voluntary services provided by the states and municipalities. To comply with the Convention, Germany must create at least 14,000 additional women's shelter places. As women and girls with disabilities are disproportionately affected by violence in any form, the number of inclusive and accessible shelters must also be significantly increased. (155.194)
24. Victims of **gender-based violence** and their legal representation continue to report that prevalent gender stereotypes and rape myths often lead to sexual offences not being reported in the first place, not being adequately and appropriately prosecuted, with proceedings often re-traumatizing. Although many courts have special chambers for **domestic violence**, lack of training often leads to cases being dropped by the public prosecutor's office. To ensure effective prevention of and accountability for gender-based and domestic violence, FMR calls for obligatory training for judges, prosecutors, and other professionals in the justice system. Administrative and judicial measures such as custody and visitation rights must be in accordance with the Istanbul Convention, in particular Articles 31

and 48. Protection orders on behalf of women who are affected by domestic violence must not be undermined by the father's claim for custody, but the right of access usually be excluded and/or limited by conditions. (155.123, 155.127, 155.194)

25. To protect women as well as all other marginalised groups affected by structural discrimination from violence online, Germany needs to put in place a law for the protection against **digital violence** that would enable court orders to block accounts, while also enabling civil society organisations to initiate legal proceedings. (155.195)
26. Relevant professionals in refugee care facilities often lack the knowledge to identify victims of **gender-specific violence**. Perpetrators are often in the same shelters or communities as the victims. FMR calls for qualified and regular training on gender-specific violence and gender-specific reasons for fleeing including corresponding protection measures for all professionals who work with refugee girls and young women. The protection of the victims must take precedence over the prosecution of the perpetrators. (155.192-193)
27. Regarding **sexual and reproductive rights**, the criminalisation of abortion continues to stigmatise doctors and thus reduces their willingness to perform abortions. FMR calls on Germany to address the lack of **sufficient and high-quality medical care for unintentionally pregnant persons**. Abortion must become a compulsory part of medical training and the costs must be covered by statutory health insurance beyond exceptional cases. Germany must take measures to protect those medical facilities performing abortions, and persons who access their services, from so-called pavement harassment. (155.182, 155.184)

## Children's rights

28. FMR calls on the government to incorporate **children's rights in the Basic Law**. In particular, the best interests of the child should be anchored as a primary consideration in all actions regarding children. (155.206)
29. Physical and chemical immobilization is legally used against **children and youths in facilities** for education in case they pose a danger to themselves or others since introduction of the new Section 1631b paragraph 2 of the Civil Code in June 2017. While the practice is limited and depends on a judicial decision, facilities use the practice in gray areas. FMR recommends that further awareness be raised in facilities and at court to protect rights of the children. (155.132)
30. The lack of qualified staff in social work and social pedagogy in **youth welfare institutions** often leads to inappropriate accommodation of unaccompanied minor refugees. In Baden-Württemberg, for example, it is possible for young people to be left alone at night with only security personnel present which increases the risk of sexual abuse. FMR calls on compliance with the standards set out in the law. (155.205)
31. In the field of **youth welfare ombudsmen services** have been incorporated into child and youth welfare legislation through the newly reformed Section 9a German Social Code VIII. However, not in every region there are ombudsman services and in other places the service is often not available for those seeking advice. The reformed law also grants young adults support up to the age of 21 in accordance with Section 41 Social Code No. VIII if they are still unable to cope independently. FMR calls on immediate implementation of the law. (155.199)
32. Germany still recruits minors as soldiers.<sup>5</sup> They receive the same military training with weapons as adult soldiers and are accommodated together with them.<sup>6</sup> Due to this practice, **underage soldiers in the Armed Forces** are subjected to serious violations of children's rights (sexual violence, degrading treatment, physical and psychological damage) and high dropout rates<sup>7</sup>. FMR urges the government to lift the minimum recruitment age for soldiers in the

Armed Forces to 18 years and prohibit all forms of military advertising targeted at children, in particular at schools.<sup>8</sup> (155.206)

### **Rights of Migrants, Asylum-seekers, and refugees**

33. Germany has a human rights obligation to protect Afghans that worked for the German troops and other German institutions in the last twenty years in Afghanistan. FMR calls on the government to open the visa for local staff for everyone in danger because of their ties to Germany as well as for their family members. FMR welcomed the intention of the **humanitarian admission program for Afghans** which officially started in October 2022. However, criticism concerns lack of transparency and blatant exclusions such as children and persons with illness or disability. FMR calls on the government to reform the program and in particular to include Afghans who already had to flee the country. (155.240)
34. **Family reunification** to people with subsidiary protection is still only possible to a limited quota of 1,000 people per month. FMR calls on the government to implement without further delay its announcement that the restrictions for beneficiaries of subsidiary protection would be lifted, the family reunification of siblings facilitated, and visa procedures accelerated. (155.237)
35. **Accelerated asylum proceedings** are implemented for asylum seekers from so called safe countries of origin. These make assessment of vulnerabilities and a thorough assessment of the individual risk of torture and ill-treatment upon return almost impossible and can result in violations of the principle of non-refoulement.<sup>9</sup> Rather, a systematic procedure for early assessment, as provided for in the EU Reception Conditions Directive<sup>10</sup>, must be established. This is urgently necessary in addition to the new asylum counseling provided for by the law and implemented by welfare organizations since 2023. FMR calls to discontinue accelerated asylum proceedings and to strengthen safeguards for children and other vulnerable persons in the proceedings and adherence to the principle of the best interest of the child.<sup>11</sup> (155.121, 155.240, 155.253)
36. Since a change in law in 2019, **asylum seekers must stay in centers of first reception** for up to 18 months under certain conditions, in some federal states even up to 24 months. Families can be held up to six months. In first reception centers access to medical care, independent counselling, education, and public institutions is more difficult.<sup>12</sup> Security service is allowed to enter rooms even at night and against the residents' will. FMR calls on the government to reduce the legally permitted duration of stay in centers of first reception and to ensure dignified living conditions. (155.60, 155.238, 155.253)
37. Germany also must stop **police interventions against refugees violating the basic right of inviolability of the home**. In particular, searches of refugee accommodation are often carried out without a judicial search warrant. This has now been legalized: Section 58 (5) of the Residence Act stipulates that when the police enter a refugee housing for the purpose of deportation, it does not need a search warrant. FMR calls on the government to repeal this law. (155.238)
38. In **detention pending forced return**, a person is deprived of his or her liberty without having committed a crime. This often fails to meet the high formal and substantive requirements that are placed on a detention order. Those affected often lack knowledge of the system and language, having no chance of defending their basic rights in court without professional assistance. Without the best interests of the children being considered and the right to family having been adequately assessed, detention pending forced return also affects families and minors. There are repeated cases of illegal detention of minors due to incorrect age assessments. FMR calls for the **mandatory involvement of lawyers in deportation detention**. The absolute prohibition of detention of minors pending forced return should be



unambiguously formulated in the relevant legal provision as well as an exemption for families and minors in airport proceedings. (155.128, 155.253)

39. Since the 1990s, Germany also has **expedited airport proceedings** when asylum seekers arrive by plane and either don't have proper documentation or are from a so called safe third country. The procedure must be concluded within 19 days, including the appeal. This fast pace does not allow for proper preparation or legal support of the applicants, heightening the risk of wrong decisions. During this border procedure the people cannot enter Germany. After the rejected asylum application, the person can be held in deportation detention. Families with children are not housed separately from adults, there are no child-friendly spaces. FMR calls on the government to stop applying this border procedure. (155.128, 155.253)
40. In recent years, the government has tightened the evidence requirements for proving illness as an obstacle to deportation to an extent that they are often impossible to fulfil. Mentally ill refugees are required to obtain a psychiatrist's opinion within short deadlines. By refusing to accept expert opinions from qualified psychotherapists who are not psychiatrists, Germany has effectively reduced the chances for the documentation of torture and for the identification and referral of victims of torture to appropriate rehabilitation. FMR calls on Germany to stop **deporting migrants despite severe illnesses** that cannot be treated in their home country. Authorities and courts in Germany must investigate indications of an illness-related obstacle to deportation and, if necessary, order a qualified psychiatric or psychotherapeutic opinion themselves. (155.236, 155.253-254)
41. As the German government pledged to support **search and rescue (SAR) operations**, FMR calls on the government to withdraw regulatory proposals by the Ministry of Transport that would effectively put an end to the much needed civil SAR by German NGOs.
42. To combat **human trafficking** and protect trafficked persons, Germany urgently needs far-reaching political coordination that focuses on the rights of trafficked persons. It is essential to establish a nationwide, securely financed support service for victims of all forms of human trafficking that is aligned with human rights standards. Greater attention by law enforcement agencies on combating human trafficking is urgently required. FMR welcomes the ongoing establishment of specialised departments and prosecutors' offices and cooperation with specialized counselling centres as an important step. (155.151, 155.160, 155.163)
43. FMR calls on the government to improve identification and registration procedures to identify **unaccompanied minors who are victims of trafficking** so that they can be provided with appropriate assistance. FMR calls for special protection measures for unaccompanied children, such as specialised facilities, adequate initial reception and transit facilities, and placement of unaccompanied children in foster care; specific training for youth welfare workers; a coherent guardianship system with a clear focus on ensuring the best interests of unaccompanied children in all aspects of their lives; guidance and training to field staff, including police and border guards, on the needs of children and on identifying victims of trafficking; and child-friendly information to better educate children about the risks of trafficking. (155.157, 155.160, 155.162)
44. In 2012, the Federal Constitutional Court explicitly stated that the basic right to be guaranteed a minimum subsistence level in human dignity applies equally to all people living in Germany, and that this basic right may not be relativized for reasons of migration policy. However, **social benefits for asylum seekers** continue to provide benefits in kind for food, clothing and accommodation, minimal medical care that is contrary to human rights, reduced cash benefits as well as sanctions with cuts in standard benefits by far more than half. FMR urges the government to fully implement the 2012 Court ruling and guarantee a minimum subsistence level in human dignity for asylum seekers. (155.34, 155.233)

45. For **birth registration** the parents must provide a very strong proof of identity, fatherhood and/or family name. Otherwise, only a substitute will be issued with the annotation that there is no proof of that fact, which is registered. A birth certificate will not be issued. Most of the refugees or people with no passport face this problem. FMR calls on the government to guarantee birth registration of newborn children regardless of their migration status (155.258-259).
46. The **assessment of age of unaccompanied minors** is of major importance under migration law and for youth welfare. In the frequent absence of identity documents, the primary procedure to determine the age is the “qualified visual inspection” and, if there is still doubt, the medical examination. The reliability of the methods and especially the medical examination is questionable and the procedures lack of transparent, uniform standards. Often the young people do not exercise their right to appeal against incorrect age determination because they are unaware of their rights and do not receive legal support. FMR calls to comply with the requirements of the law and to set uniform standards. (155.128)
47. **Undocumented migrants still have a heavily restricted access to the national health-care system** because health agencies are obliged to report undocumented migrants to the immigration authority which then initiates deportation. FMR calls for Section 87 of the Residence Act to be amended to ensure equal access to adequate health care for everyone, regardless of residence status. (155.34, 155.225, 155.232, 155.236)
48. Undocumented migrants must be granted **access to effective legal protection**. This requires an exemption of civil, labor and social courts, in particular, from the duty to report undocumented migrants to the immigration authorities pursuant to Section 87 of the Residence Act. (155.128)
49. For refugee children, the **right to education** and compulsory schooling is not sufficiently and consistently implemented in all cases. Federalist structures and different school organizations lead to inequalities but also offer different solutions. FMR calls on the federal and state governments to ensure the full implementation of all legal obligations. (155.190, 155.207)
50. FMR was pleased to see that with the beginning of the war in Ukraine, Ukrainian refugees were granted protection with fewer complications compared to previous refugee movements. However, there was a **discriminatory practice against refugees** who had lived in Ukraine but had a different nationality. They had to prove their need for protection in tedious and lengthy procedures. In some cases, their applications for protection were rejected and they were asked to leave the country. FMR reminds the government to effectively stop discrimination against refugees, migrants, and ethnic minorities. (155.60, 155.243)

### Civil and political rights

51. New legislation in Germany expanded the **surveillance powers** of intelligence services, police, and law enforcement authorities. Insufficient control mechanisms raise significant concerns about the right to privacy, freedom of the press and freedom of telecommunications. The amended Federal Intelligence Service Act (BND Act, 2021) continues to violate fundamental rights, as foreign media professionals and their sources are not adequately protected from digital surveillance through intelligence services and misuse of the information collected in this way.<sup>13</sup> Since December 2020, source telecommunication surveillance under the Federal Police Act is used to monitor encrypted communications by using Trojan software. Of particular concern is the possibility to use source tapping preventively, i.e., before there is even a concrete suspicion<sup>14</sup>. FMR calls for these laws to be

amended in such a way that the law rules out disproportionate surveillance threatening sensitive journalistic work and sources. (155.104, 155-164-165)

52. A key issue in a complaint pending at the ECHR against BND mass surveillance is the allegation of violation of the **right to effective appeal**. If the almost impossible proof to be affected by secret strategic surveillance remains a prerequisite for the acceptance of complaints before German courts, the right to effective complaint remains damaged<sup>15</sup>. (155.165)
53. FMR calls on the Federal Office for Migration and Refugees (BAMF) to stop the **unlawful practice of analyzing cell phone metadata of asylum seekers**. Asylum seekers who are unable to produce a valid passport must hand over their phones which are then searched and inspected to verify the person's identity. The search and inspection of mobile phones represents a particularly serious and extensive encroachment on the privacy of those affected. (155.164-165)
54. The term "**hate speech**" is susceptible to being used as a broadly interpretable legal term easily instrumentalized for censorship of independent media. The Network Enforcement Act (NetzDG), intended to be an effective measure against hate speech and disinformation, can be misused as a blueprint for censorship in less democratic countries<sup>16</sup>. FMR calls on the government to ensure that the implementation of the Digital Services Act into German law (which will supersede the NetzDG) will adopt the DSA's rights based and systemic approach, while at the same time refraining from the application of an ill-defined notion of "hate speech". (155.140-141)
55. Since the last UPR in 2018, figures for **physical assaults against journalists** have risen sharply. Violence occurred in particular on the fringes of nationwide protests against Corona measures, right-wing populist events and rallies.<sup>17</sup> In dealing with these assaults, journalists often did not receive adequate support from the police. Increasingly concerning are defamatory and hate campaigns on the Internet and so-called "enemies lists" of right-wing circles<sup>18</sup> against journalists, where legal prosecution often remains inconsequential<sup>19</sup>. We therefore call for new regulatory frameworks to combat violence against journalists online and offline.
56. Numerous **obstructions to media work by the police**, in several cases even violent or verbal attacks by police officers on journalists, especially in the vicinity of demonstrations by right-wing groups and the corresponding counterdemonstrations<sup>20</sup> took place. FMR demands that the federal and state governments ensure the practical application of existing regulations on the street, within organizations and in the courtroom.

## **Business and Human Rights**

57. The scope of application of the 2021 Supply Chain Due Diligence Act which imposes mandatory **human rights and environmental due diligence obligations on corporations** is very limited. The obligations only foresee reduced and reactive obligations in the "deeper supply chain" and, thus, are not in line with the risk-based approach of the UN Guiding Principles on Business and Human Rights (UNGPs). As the Act lacks a regulation of civil liability it does not change the unsurmountable hurdles that those affected face when they try to achieve their right to reparation. The government must work for an ambitious EU Due Diligence Directive that meets the international standards of the UNGPs and provides access to effective legal protection for affected persons. (155.24, 155.17-18)
58. Although extraterritorial state obligations require a **human rights review of foreign investments** of German companies by the government, there are no such procedures in place. In the context of global financing instruments (development funds, foreign trade

promotion, climate protection funds etc.), ministries and embassies often lack basic knowledge about German involvement in high-risk financing. FMR calls upon the government to create clear procedural rules, competencies, and capacities to follow up on investments that are problematic from a human rights perspective. The government should support the negotiations for the UN Treaty to introduce binding human rights and environmental due diligence requirements for companies and foreign trade promotion. (155.19, 155.21-22)

59. Regarding German public banks such as KfW (Kreditanstalt für Wiederaufbau) and DEG (Deutsche Investitions- und Entwicklungsgesellschaft), FMR calls for adequate **human rights impact analyses of development investments**, including international biodiversity funding, direct engagement with project-affected people, in particular Indigenous Peoples, as well as transparency, enforcement and complaint mechanisms. (155.17)
60. The implementation of human rights in German development policy still falls short of international standards. The absence of a non-judicial accountability mechanism for the Development Ministry makes this particularly visible. FMR calls for the establishment of an **independent grievance redressal system** guided by Principle 31 of the UNGP. The right to remedy needs to be incorporated. (155.25)
61. Germany doesn't carry out **human rights impact assessments** for trade agreements and agricultural exports to developing countries, even though these can have negative **impacts on the livelihoods of peasants**. FMR calls on the government to ensure that food exports to developing countries do not threaten the livelihoods of local farmers. This requires prior human rights impact assessments for development projects and in agricultural, trade, investment, and financial policies. (155.177)
62. In the last five years, the German government has regularly approved big amounts of **arms exports** to countries involved in armed conflicts and in grave human rights violations like the six grave child rights violations in armed conflict<sup>21</sup> in contradiction of the German Political Guidelines on Arms Exports and the EU's Common Position on Arms Exports.<sup>22</sup> A new arms export control law is currently being drafted. FMR urges the government to include a right to sue for associations ("Verbandsklagerecht") in the law - as already in place in several European countries and essential for effective control of arms exports and compliance with national and European laws; to legally ban exports of arms, ammunition and related production facilities to countries involved in armed conflicts or serious human rights violations; to fix regular controls of the end use of exported German weapons and ammunition in the law; to use the UN definition of Small Arms and Light Weapons, following the obligation of the ATT<sup>23</sup>; and to significantly improve transparency and information on arms exports.<sup>24</sup> (155.14-16)

## Climate change and human rights

63. FMR calls on the government to expedite its plan to implement a package of measures ("Klimaschutzsofortprogramm") including clear roadmaps for all sectors that can close the compliance gap regarding the climate targets set out for 2030 in the Climate Protection Act, further strengthen its climate goals, and create a legal framework for climate adaptation that respects, protects and fulfils human rights. To **prevent climate change from undermining human rights** the government should discontinue financial incentives and investments by public or private actors in activities and infrastructure that are not consistent with low greenhouse gas emission pathways, including by compelling private capital flows to divest from fossil fuels. Germany needs to increase its international climate finance contributions significantly. Germany's climate finance should be provided in the form of grants not loans so as not to further indebt States. (155.117)

64. Germany's support for the "loss and damage" funding agreed at COP27 needs further commitment to urgently operationalize the fund. Addressing loss and damage should be based on a human rights approach. (155.116)

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<sup>1</sup> Der Paritätische Gesamtverband: [Armutsbericht 2022 \(aktualisiert\)](#).

<sup>2</sup> Der Paritätische Gesamtverband: [Armutsbericht 2022 \(aktualisiert\)](#).

<sup>3</sup> [Bundesministerium für Arbeit und Soziales: Ausmaß und Struktur von .ohnungslosigkeit, Der Wohnungslosenbericht 2022;](#)

<sup>4</sup> Basu v. Germany, 215/19.

<sup>5</sup> From 2011 till 2022, the German Armed Forces have recruited over 17,000 17-year-old boys and girls as soldiers, in 2022 there were 1,773 recruited. Answer of the government to the question of member of parliament Žaklin Nastić et al, [Drucksache 20/5754](#), 20.2.2023;

<sup>6</sup> terre des hommes Germany e.V./ Kindernothilfe e.V./ World Vision Germany e.V.: [Shadow Report Child Soldiers 2020](#), October 2020;

<sup>7</sup> Ministry of Defense, answer to the question of member of parliament Frank Heinrich, 2021, Doc.Nr. 1980034-V267.

<sup>8</sup> Concluding Observations of the UN Committee on the Rights of the Child to Germany (2022), CRC/C/DEU/CO/5-6.

<sup>9</sup> CAT/C/DEU/CO/6, Para 25.

<sup>10</sup> Directive 2013/33/EU.

<sup>11</sup> See also CRC/C/DEU/CO/5-6, para 40a, 16.

<sup>12</sup> CRC/C/DEU/CO/5-6, para 39 b. CAT/C/DEU/CO/6, para 28, 29.

<sup>13</sup> <https://www.reporter-ohne-grenzen.de/themen/internetfreiheit/kritik-am-bnd-gesetz>, last access February 3, 2023.

<sup>14</sup> <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/fragen-und-antworten-zur-staatstrojaner-klage>, last access February 3, 2023.

<sup>15</sup> <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/neue-verfassungsbeschwerde-gegen-bnd-gesetz>, last access February 3, 2023.

<sup>16</sup> <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/un-anhoerung-kritik-aufgreifen>, last access February 3, 2023.

<sup>17</sup> [https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste\\_2021/FINAL\\_Nahaufnahme\\_Deutschland\\_-\\_RSF.pdf](https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste_2021/FINAL_Nahaufnahme_Deutschland_-_RSF.pdf) .

<sup>18</sup> [https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste\\_2020/Nahaufnahme\\_Deutschland\\_2020\\_n eu.pdf](https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/Ranglisten/Rangliste_2020/Nahaufnahme_Deutschland_2020_n eu.pdf), last access February 3, 2023.

<sup>19</sup> <https://correctiv.org/in-eigener-sache/2019/11/27/angriffe-auf-die-faktencheck-redaktion-von-correctiv/>, last access February 3, 2023.

<sup>20</sup> <https://www.reporter-ohne-grenzen.de/nahaufnahme/2022>, last access February 3, 2023.

<sup>21</sup> For example to Egypt, Saudi-Arabia, UAE, Brazil, India, Indonesia, Thailand and Singapore.

<sup>22</sup> Study "[Small Arms in Small Hands – German Arms Exports Violating Children's Rights](#)" (issued by terre des hommes Germany and Bread for the World, October 2020); [Written Statement on the Implementation of the Optional Protocol on the involvement of children in armed conflict \(OPAC\) by Germany](#)" (by terre des hommes Germany, submitted to the UN-CRC in August 2022); Study „[Less guns, more youth: armed violence, police violence and the arms trade in Brazil](#)“ (by terre des hommes Germany & Switzerland and Instituto Sou da Paz, 2021).

<sup>23</sup> Study "[Small Arms in Small Hands – German Arms Exports Violating Children's Rights](#)" (issued by terre des hommes Germany and Bread for the World, October 2020) p. 21.

<sup>24</sup> See terre des hommes Germany : [Stellungnahme zu den Eckpunkten des Rüstungsexportkontrollgesetzes](#), November 2022.