



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva



www.humanrightslogo.net

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Note No.: 52/2021

Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit herewith a response by the Federal Republic of Germany in reply to the Joint Communication from Special Procedures, AL DEU 4/2021, dated 5 February 2021.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 1 April 2021



To the
Office of the High Commissioner for Human Rights
Palais Wilson
Geneva



Federal Foreign Office

Joint Communication from the Special Rapporteur on the situation of human rights defenders, the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

regarding information concerning a series of attacks, including death threats, against Mr Camille Occius, Haiti

Response by the Federal Republic of Germany

31 March 2021

- 1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

Germany shares the concerns of Special Procedures about the deteriorating human rights situation in Haiti.

In its exchanges with the Haitian authorities, the German Embassy in Port-au-Prince regularly addresses the subject of shrinking spaces for human rights defenders, both bilaterally and in joint meetings with our partners, especially those from the EU.

The private commercial contract between DERMALOG and the Haitian Government has been the subject of public interest in Haiti since its signature. From the outset there were allegations of corruption, but the facts put forward focused exclusively on violations of Haitian tender procedures and doubts as to whether the authorities had lawfully applied the public security exception to this contract. Germany is not aware of any information indicating that DERMALOG, one of the world market leaders in biometric identification systems, acted unlawfully.

- 2. Please provide any information you have about the legal domicile of the company DERMALOG Identification Systems GmbH.*

According to information available on the internet, DERMALOG Identification Systems GmbH resides in Hamburg/Germany:

DERMALOG Identification Systems GmbH, Mittelweg 120, 20148 Hamburg, Germany
CEO/Managing Director: Günther Mull
Commercial Register: AG Hamburg HRB 69547 (AG = *Amtsgericht* = local court)

3. Please highlight the steps that your Excellency's Government has taken, or is considering taking, to ensure that any business or enterprise domiciled in your territory and/or under your jurisdiction conducts effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.

In December 2016, the German Government adopted the National Action Plan (NAP) for Business and Human Rights as a policy framework for implementing the UN Guiding Principles on Business and Human Rights in Germany. In its NAP, the German Government has established the expectation vis-à-vis “all enterprises to introduce the process of corporate due diligence in a manner commensurate with their size, the sector in which they operate, and their position in supply and value chains. This applies especially when they operate in countries where the rule of law is not enforced or is only partly enforced.” Building on this, the NAP spells out in detail the five core elements that enterprises are required to implement. These elements are: (1) a human rights policy statement, (2) procedures for the identification of actual or potential adverse impacts on human rights, (3) measures to ward off potentially adverse impacts and review of the effectiveness of these measures, (4) reporting, (5) a grievance mechanism.

From 2018 to 2020, the German Government conducted a multiannual, large-scale empirical study to monitor the state of implementation by German businesses with more than 500 employees (“NAP monitoring”). The study showed that the voluntary approach had not yielded sufficient traction. As a consequence, the German Government elaborated a draft law on mandatory human rights due diligence. The Cabinet of Ministers adopted the draft on 3 March 2021; it will now be discussed by the German Parliament with the aim of adoption by this summer. The draft law is designed to require larger companies based in Germany to apply appropriate human rights and (to some extent) environmental due diligence in their supply chains. The due diligence obligations, once adopted by parliament, will take effect for companies with at least 3000 employees on 1 January 2023. From 1 January 2024, the law will also apply to companies with at least 1000 employees. The due diligence obligations were designed to be comprehensive and practicable for the companies.

In addition to these measures, for several years the German Government has been supporting businesses in many ways with putting human rights due diligence into practice. To this end, the German Government has continuously engaged in a structured dialogue with stakeholders such as business associations, trade unions and non-governmental organisations. Several multi-stakeholder initiatives have been set up and facilitated by the

German Government in order to promote sector-specific guidelines, foster a common understanding of due diligence and drive forward cooperative projects for improved due diligence in supply chains. These include dialogue platforms and alliances for action in the garment sector, the automotive sector, mechanical engineering, agricultural supply chains and tourism. The German Government has established a novel Help Desk for businesses, dedicated to the UN Guiding Principles, which has already provided information and counselling on human rights due diligence to several hundred companies free of charge (*"Helpdesk Wirtschaft & Menschenrechte"*). The German Government commissioned and published an in-depth scientific study on identifying human rights risks in global supply chains in German industry sectors.

German Government programmes for development cooperation have been complemented by a large variety of measures and partnerships aimed at supporting sustainability standards throughout global supply chains in many countries and different sectors. This includes help for partner governments to design their own national action plans. One crucial element with a specific link to promoting and strengthening compliance in the private sector is the German Government's essential support for the Alliance for Integrity. The Alliance is an initiative with a global perspective, driven by a number of national and multinational companies, business associations, public institutions, civil society organisations and international organisations.

The German Government has strengthened the institutional set-up and increased the resources available to the National Contact Point for the OECD Guidelines for Multinational Enterprises. Germany actively contributes to the work of the OECD Working Party on Responsible Business Conduct and several working groups on sectoral OECD guidance.

The German Government has continuously funded competent non-state organisations in order to support the services they offer to assist companies through information, training and exchange platforms; these include the German Global Compact Network and the Business and Human Rights Resource Centre.

Moreover, Germany is constantly seeking ways to support the valuable work of international organisations and institutions and is engaging with them in order to contribute to further developing and disseminating international standards for Business and Human Rights and Responsible Business Conduct. Engagements and partnerships include the UN Working Group on the issue of human rights and transnational corporation and other business enterprises as well as activities by the ILO and the OECD, UNDP and UNICEF.

A central online platform providing an overview of German Government activities in the field of business and human rights is www.wirtschaft-menschenrechte.de. Parts of this website are also available in English.

4. Please describe the guidance, if any, that the Government has provided to business enterprises based in Germany on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, clarifying the connection between corruption and human rights risks and impact, consulting meaningfully with potentially affected stakeholders, and remediating any adverse impacts. In particular, please indicate whether guidance, if any, was provided to DERMALOG prior to the start of its operations in Haiti.

On the general part of the question we kindly ask you to refer to the comprehensive answer to question 3.

Before entering the Haitian market, DERMALOG approached the German Embassy in Port-au-Prince and has since maintained contact. The Embassy informed the company, inter alia, about the complex situation in Haiti and the need to scrupulously adhere to tender procedures and transparency.

5. Please indicate the steps that your Excellency's Government has taken or is considering taking to ensure that business enterprises domiciled in its territory and/or under its jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to, including the alleged corruption case of the DERMALOG project in Haiti.

The establishment of effective and accessible corporate grievance mechanisms / internal complaints procedures is one of the core elements of the German Government's human rights due diligence concept for businesses. This has been reflected in the German National Action Plan on implementing the UN Guiding Principles and in the draft law adopted by the German Government in March 2021 (please refer to the comprehensive answer to question 3). In 2018, the German Government organised a full-day workshop with national and international experts and a variety of stakeholder representatives dedicated to the issue of good corporate grievance mechanisms. Through establishing and facilitating ambitious UNGP-related multi-stakeholder initiatives in various industry sectors, the German Government has made grievance mechanisms and remedial action an essential and ongoing topic of discussion and action in the field of business and human rights.