



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

Ref.: Pol

(please quote when answering)

Note No.: 150 /2024

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 of Human Rights and has the honour to refer to the communication sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the right to education; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of internally displaced persons; the Independent expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls transmitted 17 May 2024.

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

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith the response to the communication.

The Permanent Mission 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 of Human Rights the assurances of its highest consideration.

Geneva, 16. Juli 2024



Response of the Federal Republic of Germany

to the

Joint Urgent Appeal from Special Procedures - Office of the High Commissioner for Human Rights

Ref.: AL DEU 3/2024

The Hamas' terrorist attacks on 7 October 2023 left 1,200 dead and thousands wounded, countless women, youth and children became victims of the most horrific sexual violence and 240 hostages were taken, many of them held until today. Germany condemns Hamas' massacres in the strongest possible terms.

Israel has the right to defend itself and Israel's security is at the core of German foreign policy. While Israel has the right to protect itself against ongoing attacks, it must do its utmost to protect civilian lives and respect the limits of self-defence and international humanitarian law at all times.

At the same time, Germany has always been a strong supporter of the rights of the Palestinian people. This is – alongside Israel's security the second principle that has guided Germany's response to the Middle East conflict in general – and to its current escalation in particular.

Germany remains committed to a two-state solution as the only path towards lasting peace in the Middle East. Germany has provided significant support to Palestinians living in the occupied Palestinian territories for decades. Germany recognises the right of Palestinians to self-determination, to be exercised in the territories that came under occupation in 1967. It has firmly condemned attempts to undermine the two-state solution, such as through the expansion of illegal settlements.

Like the UN Security Council, Germany fully endorses the comprehensive deal outlined by President Biden that would lead to an immediate ceasefire in Gaza, the release of all hostages, a significant and sustained increase in the flow of humanitarian assistance throughout Gaza, and an enduring end to the crisis, with Israel's security interests and safety for Palestinian civilians in Gaza assured.

Regarding the questions about arms exports to Israel:

On 8 and 9 April 2024 the oral hearing in the Hague on the application for provisional measures in the International Court of Justice proceedings Nicaragua v. Germany took place. The German litigation team provided a detailed account of German arms export control and exports to Israel, excerpts of which are referenced below.

The German legal framework on the manufacturing, marketing and export of war weapons ("Kriegswaffen") and other military equipment is four-layered and strict. The German Constitution itself, the highest law of the country, monitored by the robust Federal Constitutional Court, prohibits export of weapons without a licence by the Federal Government.

Following these provisions, Germany applies the War Weapons Control Act, its Foreign Trade and Payments Act, the EU Common Position and the Arms Trade Treaty as binding law.

The German Federal Government's "*Political Principles on the Export of Weapons and other Military Goods*" of 2019 explicitly seek to "*design a restrictive weapons export policy within the framework of*

Germany's international obligations". These principles are "*general administrative rules*" in the sense of the German Constitution. With these, the Government binds itself and limits its discretion. The principles refer to the EU Common Position.

Further, the export of weapons and military equipment is, to the extent feasible, subject to parliamentary control. The Federal Government informs Parliament about final licensing decisions that have gone through the Federal Security Council and about the kind, number of goods, recipient country and involved German enterprises. Such reports also cover the total volume of the transactions, unless in individual instances constitutionally protected interests prohibit such disclosure. The German four-tiered legal and political control regime of exports of arms and military goods is robust. It is democratic, as transparent as possible given the sensitivity of the material involved, and it is subject to parliamentary and, to some extent, judicial oversight.

All German exports of military technology and equipment to Israel (or to any other country) are subject to strict licensing requirements. Among these, German law distinguishes between two categories: "*war weapons*" (Kriegswaffen) and "*other military equipment*" (sonstige Rüstungsgüter). "*War weapons*" comprise, for example, combat aircraft or tanks but also automatic weapons and certain corresponding ammunition and essential components. These war weapons require two licences before export under the War Weapons Control Act and under the Foreign Trade and Payments Act. The other category — "*other military equipment*" — is broad; it goes much beyond "*weaponry*" in the usual sense. It includes, for example, defence equipment against chemical hazards, protective gear such as helmets or body protection plates, communication equipment, camouflage paint and components, parts and other equipment of a subordinate character. Outside standardized categories for routine deliveries, not only war weapons, but also all "*other military equipment*" under German law require an individual licence for export. And such individual licence can only be granted following a case-by-case assessment of an individual application on the basis of binding criteria.

Applications for export licences are scrutinized by different ministries by reference to conditions that are more stringent than those under international law. For every licence that is granted, the German Government carefully assesses whether there is a clear risk that the particular item subject to licensing would be used in the commission of genocide, crimes against humanity or grave breaches of the Geneva Conventions of 1949. This requirement follows from binding rules of German and European law, which exceed international requirements. This scrutiny is detailed, and it involves an inter-agency process with consideration by at least two ministries, the Federal Ministry for Economic Affairs and Climate Action and the Federal Foreign Office, and — depending on the content of the licence application potentially also the Ministry of Defence, and the Federal Chancellery, the Federal Ministry for Economic Cooperation and Development, the Federal Ministry of Finance, the Federal Ministry of the Interior and Community and the Federal Ministry of Justice. As regards these "*war weapons*", licences must be issued at the ministerial level and accompanied by a corresponding additional licence issued by the Federal Office for Economic Affairs and Export Control.

As mentioned above, there are two central categories of military equipment distinguished under German law: "*war weapons*" (including ammunitions and essential components) on the one hand, and "*other military equipment*" on the other. This is an important distinction because the risks associated with the export of war weapons are naturally much higher, which is a central factor in deciding on licences.

Ninety-eight per cent of the licences granted since 7 October 2023 have not concerned "*war weapons*", but "*other military equipment*". In four instances only Germany has eventually licensed the export of war weapons since October 2023. Of the total value of exports, for war weapons and

for other military equipment, to Israel since October 2023, almost eighty per cent was approved before the end of October 2023, in what the International Court of Justice has referred to as “*the immediate context*” of Hamas’ horrendous massacres. At that point and in this dramatic situation, Germany decided to prioritize pending licence requests.

Following October 2023, the total volume of exports has dropped sharply. In February and March 2024, the total volume of exports for war weapons and other military equipment approved by Germany was at around half a million and around one million Euros, respectively. These licences were issued, inter alia, for lenses for daylight observation binoculars, bonding devices for hydrogen storage on submarines and infrared protection systems for defence against guided missiles.

A limited number of requests for exports remain under review for the time being. They are reviewed by German authorities in light of the developing situation and of the potential impact that the particular item might have.

The entire transcript is available at <https://www.icj-cij.org/case/193>. We trust that this answers all questions raised. However, due to the ongoing proceedings at the ICJ Germany does not see itself in the position to elaborate further on this matter for the time being.

Regarding the questions about human rights due diligence measures:

Respect for human rights plays an important role in Germany’s foreign trade promotion. In particular projects supported by federal export credit guarantees and investment guarantees must comply with environmental, social and human rights standards. The German government expects companies to respect applicable human rights in their business dealings. Companies are required to follow the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and to fulfil their human rights due diligence obligations in accordance with the German National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights (UN Guiding Principles).

Through the National Action Plan for Business and Human Rights (NAP), the Government wishes to contribute to improving the human rights situation worldwide and to giving globalisation a social dimension in accordance with the 2030 Agenda for Sustainable Development. It identifies thereby the following core elements of enterprises’ due diligence in the field of human rights:

A human rights policy statement to address human rights issues of particular relevance to the enterprise and/or the sector in which it operates, citing the international reference instruments in the field of human rights and to describe the procedure used by the enterprise to exercise human rights due diligence. In particular, this includes the clear assignment of responsibilities within the enterprise, underpinned by the necessary training of staff employed in the relevant divisions.

Procedures for the identification of actual or potential adverse impact on human rights that serve to identify, to prevent or to mitigate potentially adverse effects of corporate activity on human rights. It is not – or not only – a matter of considering risks to the company’s own business activity but is primarily about risks to the human rights of those who may be affected by corporate activity, such as employees of the enterprise itself or of other companies in the supply chain, local populations and customers. Contextual circumstances such as the political framework and the presence of vulnerable groups of people (indigenous populations, for instance) should be factored into the analysis. The choice of method and the assessment of risks can be based on the analysts’ own research, interviews in-house, in subsidiary enterprises and/or with business partners and input from external specialists.

With the aid of this analysis, enterprises should determine whether an in-depth review is needed. The in-depth review should at least include local dialogue with actually or potentially affected parties and recourse to both internal and external expertise in the field of human rights.

On the basis of the results of the analysis, measures should be identified and incorporated into business activity. Such measures may, for example, comprise specialised training of particular employees in-house or with suppliers, adaptation of particular management processes, changes in the supply chain and participation in sectoral initiatives. In order for potential or actual impacts to be properly addressed, enterprises should define clearly where competence lies for particular issues and establish the corresponding review mechanisms. Depending on the type of impact, an enterprise itself can initiate remedial measures. To this end, objectives should be formulated and be communicated internally and externally as the relevant measure dictates. With the aid of effectiveness tracking, the enterprise should regularly review the efficacy of the measures it has taken and, to this end, engage in dialogue with affected stakeholders.

Enterprises should keep information at their disposal and communicate it, where appropriate, to external recipients in order to demonstrate that they are aware of the actual and potential impact of their corporate activity on human rights and are taking appropriate steps to address the situation. The form in which this information is communicated should be tailored to its recipients. Enterprises whose business activity poses a particularly high risk of adverse impacts should issue regular public reports on that subject. Such reporting may be done in the framework of the company's existing reporting format or take the form of separate reports focused on human rights.

For the early identification of (actual or potential) adverse impacts, enterprises should either establish their own grievance procedures or play an active part in external procedures. Such procedures may, for example, be established by sectoral associations. The mechanism should be structured to match the target group. Accordingly, the target group should be consulted when the procedure is being devised. When new mechanisms are established as well as when existing mechanisms are used, care should be taken to ensure that they provide a fair, balanced and predictable procedure which is accessible to all those who might be affected (for instance by eliminating linguistic or technical barriers). As an extra measure, consideration should be given to the creation of offices with which complaints can be lodged anonymously. The procedure should provide maximum transparency for all stakeholders and should comply with international human rights standards. Existing complaints offices within an enterprise or its environment should be screened for compliance with the criteria defined above. The grievance mechanism of each enterprise and its whole process of corporate due diligence should be subjected to regular practice-based reviews to assess their effectiveness.

The National Contact Points for the OECD Guidelines were upgraded to become the central grievance mechanism for external trade promotion projects. The detailed procedure for assessing applications for the provision of export credit guarantees, guarantees for direct investments abroad and untied loan guarantees will be further reinforced as regards respect for human rights; this will entail measuring the procedure against the specific requirements set out in the NAP. To this aim, human rights are treated as a separate point in project assessments. The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German National Contact Point for the OECD Guidelines for Multinational Enterprises.

Furthermore, the National Corporate Social Responsibility (CSR) Forum of the Federal Government, comprising representatives of the political and business communities, trade unions, civil society and academic professions was established and drew up an intersectoral “CSR consensus” paper on corporate responsibility in value and supply chains. The possibility to join the “CSR consensus” is open to all enterprises that operate in Germany. The list of companies that have joined will be updated continuously and made publicly available at www.csr-in-deutschland.de.

In addition, the Federal Government has installed a support and advisory service (www.wirtschaftsentwicklung.de/en/helpdesk-on-business-human-rights/) which advises companies of all sizes on the implementation of human rights due diligence processes.

The legal system of the Federal Republic of Germany contains numerous instruments that are focused primarily on the protection of human rights. They are binding on all enterprises. Where the business operations of an enterprise have an international dimension, procedures for identifying any actual or potential adverse impact on the human rights of people affected by its business activity should be developed and implemented.

Germany has fully transformed into domestic law its obligations to protect human rights under international agreements. This applies, for example, to the prohibitions of child labour and forced labour that are imposed by the ILO core conventions. If companies violate the applicable law in Germany in one of these points, they can be excluded from the award of public contracts. The Federal Government is already implementing a number of measures designed to promote sustainable public procurement by federal, state and local authorities and institutions.

In order to further increase the compliance of enterprises with the principles mentioned in the NAP the Federal Government took further action with the introduction of the Supply Chain Due Diligence Act, which entered into force in 2023. The act stipulates that companies with more than 1.000 employees in Germany have to prove that they have properly applied due diligence. This includes:

- Risk management: Companies have to put in place a management system for observing due diligence. It has to clearly define who is responsible for these standards and it has to be made part of day-to-day operations.
- Risk analysis: Companies analyse whether their actions can lead to violations of human rights or environmental standards. They must evaluate and prioritize the identified risks appropriately.
- Measures: Measures are taken to prevent or remedy these issues. The aim is to prevent, reduce or end any violation of human rights and environmental obligations at any point in the supply chain.
- Complaints procedure: Companies are to establish a complaints procedure so that human rights-related or environmental risks or violations can be reported.
- Reporting: Each company publishes a report every year on how it has fulfilled its due diligence obligations. This is made available to the public and to the responsible authorities in Germany.
- Scope: The due diligence obligations apply to businesses’ own operations and to their direct suppliers. They also apply to indirect suppliers when it comes to the complaints procedure and when the company has reliable information that there is a risk of violations.

- Rights of people affected: People who have been affected by human rights violations or environmental damage can be represented at a German court by German non-governmental organisations or trade unions. In cases of human rights violations, it is the law of the country where the violation occurred that applies. In cases of environmental damage, a choice is available. Possible violations can also be reported to the German monitoring authority responsible, the Federal Office of Economics and Export Control (BAFA).
- Monitoring: The monitoring body BAFA checks whether due diligence obligations have been observed. If it finds they have been violated, it can impose hefty penalties or fines.