



Gaps & Opportunities for Germany in Business & Human Rights

Areas of focus for the German National Action Plan

Briefing Note | October 2015

As the fourth largest economy in the world, Germany is uniquely positioned to provide sorely-needed leadership to ensure companies respect human rights worldwide. However, there is an urgent need for the German Government to take steps to mitigate and remedy human rights abuses by German companies abroad, particularly through their supply chains and business relationships.

This briefing note provides new evidence on German companies' human rights performance based on four years' of data on allegations of abuses and advances. Using this analysis, it makes recommendations for key areas of focus for the German National Action Plan on Business and Human Rights (NAP).

Business & Human Rights Resource Centre sought responses to 88 allegations of human rights abuse by German companies between 2011 and 2015.¹ Key findings from these allegations include:

- 81 out of 88 of allegations of abuse occurred outside of Western Europe.
- More than a third of allegations were linked to supply chains or business relationships.
- More than a third of allegations were against companies in the clothing and technology sectors, primarily related to labour rights and the right to privacy respectively.

Germany's decision to develop a NAP is a positive step by the government and an opportunity to take on a leadership role in business and human rights both regionally and globally. While only six governments have developed a NAP on business and human rights to date,

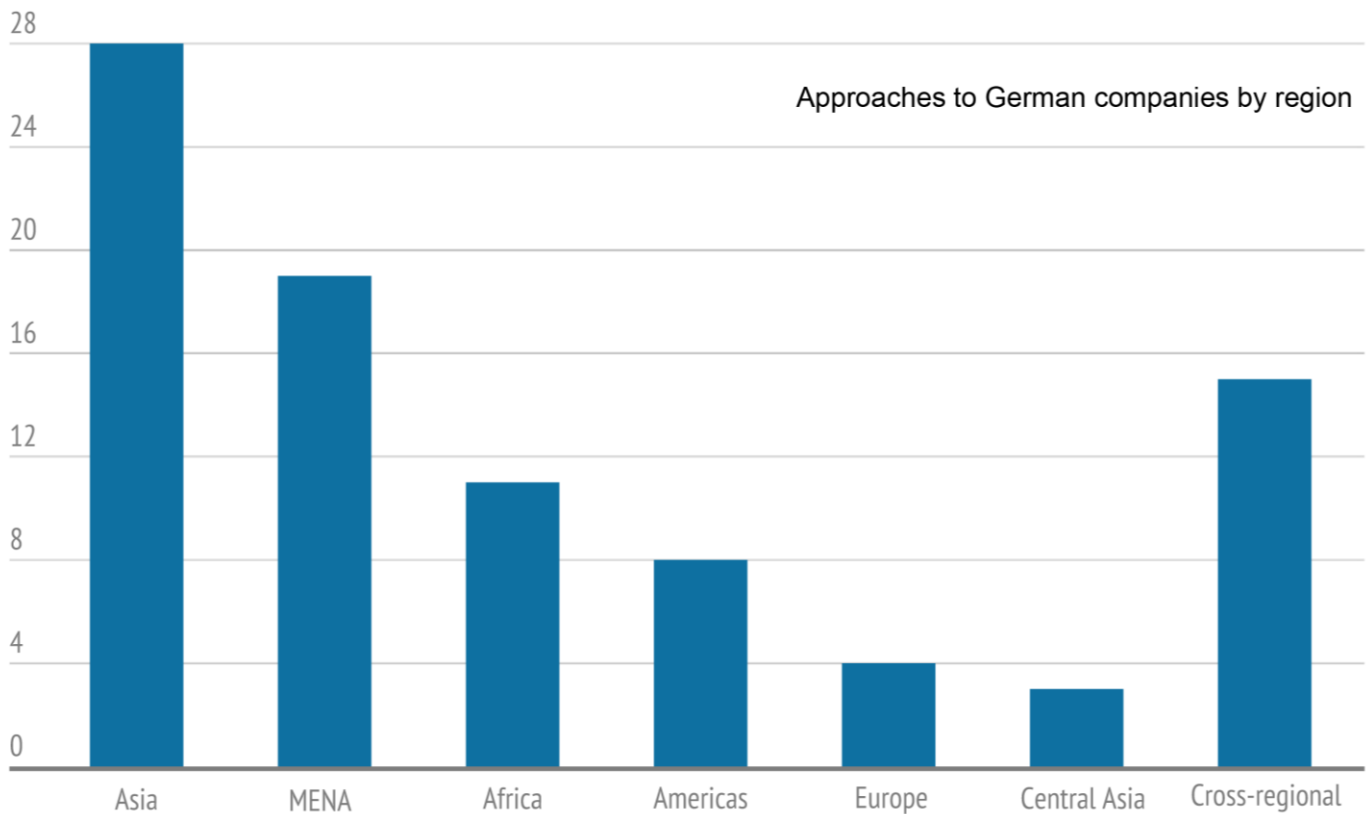
more than a dozen have committed to developing one. A strong German NAP has the potential to set a vital precedent as other countries embark on the process.

Several German companies have stepped up on human rights in the past four years. For example, adidas Group introduced a revised grievance mechanism that applies to its suppliers, and Deutsche Telekom is implementing a human rights due diligence framework based on the UN Guiding Principles on Business and Human Rights.

However, more action is needed to address the human rights impacts of German companies. The Government of Germany must take action to:

- Improve access to judicial and non-judicial remedy for victims of German companies' abuses.
- Strengthen German companies' due diligence throughout their supply chains.
- Strengthen the government's and business' constructive role at international and EU-level initiatives.

See page 5 for a full list of detailed recommendations.



Introduction

This briefing provides new analysis to feed into the German Government's consultation process on its NAP by offering recommendations based on an overview of key advances and shortcomings by German companies since 2011.

Germany's strong economic position relies heavily on multinational companies with sizeable exports, global production and wide-reaching supply chains. Can Germany use its position as a global leader to drive economic growth that respects human rights worldwide?

The German NAP process presents a significant opportunity for this. The process is run under the auspices of the Federal Foreign Office, with a steering group that includes other ministries and outside stakeholders. Following consultations with multiple stakeholders, the German Institute for Human Rights released a [National Baseline Assessment](#) in May 2015, which points out strengths and weaknesses for the enforcement of human rights within Germany's business community, and in German companies' business activities abroad. The German Government is also holding a number of thematic multi-stakeholder consultations through November 2015.

Guiding the NAP: our approaches to companies

A number of German companies lead on business & human rights and the government has also taken several important actions – see page 4 for an overview of these

advances.

Despite important advances, challenges remain for both the government and businesses, with allegations of abuses by German companies reported worldwide. [Business & Human Rights Resource Centre](#) has invited German companies to respond to allegations of abuse 88 times between 2011 and 2015. German companies responded to 89% of invitations, which is higher than the global average response rate of 70%.² Although the high response rate is encouraging as it illustrates a willingness to engage, the allegations reveal trends of on-going concerns and the need for bold actions by companies and the government.

Where are the abuses occurring?

The vast majority of allegations of abuses by German companies concerned incidents abroad, with most cases taking place in the Asia & Pacific region (32% of allegations), followed by Middle East & North Africa (22%), cross-regional allegations (17%), Africa (12%), Americas (9%), and Central Asia (3%). Only 5% of alleged abuses took place in Europe. This global distribution of allegations illustrates German companies' global footprint and demonstrates the importance of preventing and remedying abuses occurring abroad.

According to [recent analysis](#) by our legal accountability team, out of 210 leading human rights lawsuits against companies, only 18% were litigated in OECD countries regarding extraterritorial abuse and only two were brought in Germany.³ Yet, more than 44% of responses

Business & Human Rights Resource Centre sought concerning extraterritorial human rights allegations were linked to OECD-based companies. This accountability gap suggests that OECD countries, including Germany, are failing to provide access to judicial remedies for victims of abuses involving companies headquartered there.

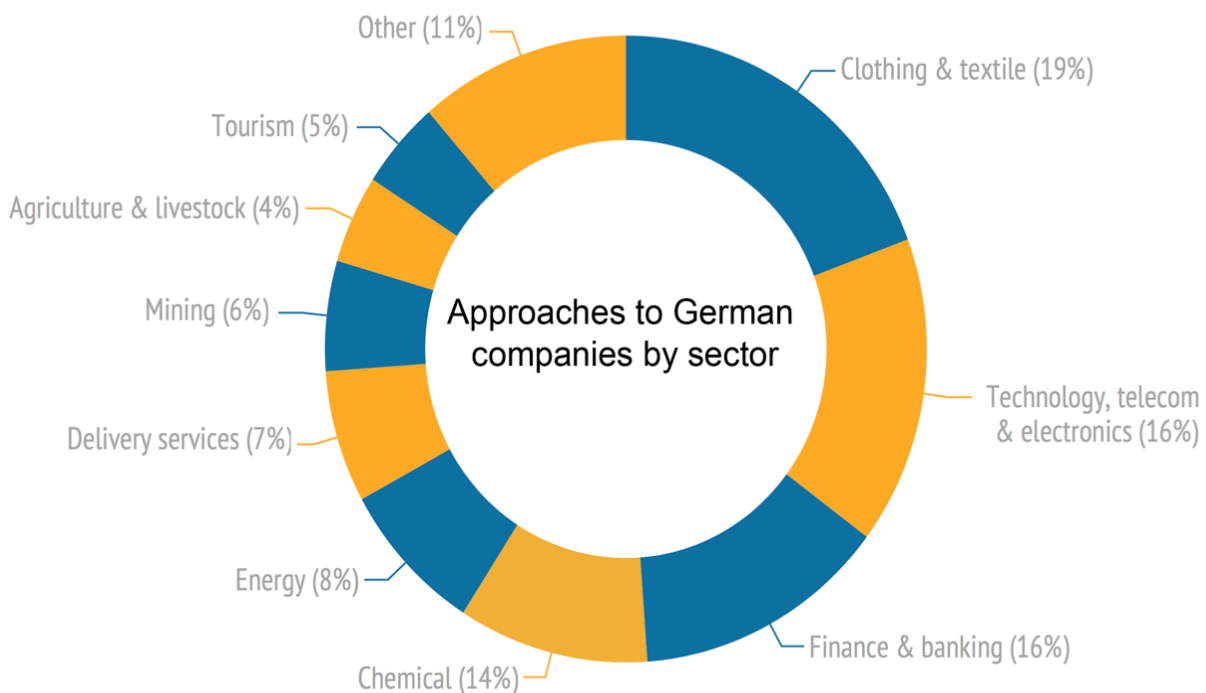
Which sectors are most implicated? What human rights are abused?

More than a third of all German companies that we invited to respond to allegations of human rights abuse belong to only two sectors: Clothing & textile (19% of cases) and Technology, telecom & electronics (16%).

Labour rights abuses in supply chains featured prominently in these cases, especially in the clothing & textile sector. One third of all company responses were related to supply chain concerns and 18% of all cases contained labour rights allegations. In the clothing sector, labour and workers' rights issues were magnified, as they were related to 16 out of 17 allegations regarding clothing & textile companies. Labour rights concerns ranged from calls for a living wage and allegations of forced labour, to deadly working conditions and restrictions on freedom of association. For example, NGOs accused **C&A**, **Karl Rieker** and **KiK** of partial responsibility for the Bangladesh Tazreen factory fire in November 2012, which killed 112 workers and injured 300. The German

National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises [examined the complaint](#). The complainants and Karl Rieker reached an agreement on supply chain due diligence. But the complainants were not satisfied with the level of protections put in place by KiK, and raised concerns about the partiality of the NCP process. European Center for Constitutional and Human Rights is currently supporting a [lawsuit](#) brought by four victims affected by another factory fire in Pakistan at Ali Enterprises, seeking compensation from KiK.

Technology companies were primarily implicated in abuses of the right to privacy and freedom of expression. Five companies headquartered in Germany (**Atis Systems**, **Elaman**, **FinFisher/Gamma Group**, **Trovicor** and **Utimaco**) were accused of selling technology to authoritarian governments that used the software to infringe on their citizens' right to privacy, and to facilitate other abuses including arbitrary detention and torture. Although the German OECD NCP accepted a case against Gamma Group and Trovicor, it found that there was not enough evidence to investigate. This is in contrast to the OECD NCP in the UK, which in a parallel case criticised Gamma Group for failing to carry out human rights due diligence before selling FinFisher software to the Bahraini Government. An [evaluation by the European Center for Constitutional and Human Rights](#) found that the German OECD NCP process was partial towards companies.



Regional & international Initiatives

At the EU level, several initiatives are underway to improve and increase transparency on companies' human rights due diligence: the [conflict mineral regulation](#) is under consideration by member states through the European Council. The [non-financial reporting directive](#) has been adopted by European Parliament; member states are currently transposing it into national law. These initiatives have the potential to change business behaviour throughout Europe and provide a model to the rest of the world. However, Germany is yet to demonstrate leadership in pushing for strong measures.

While lobbying at the government-company nexus is often opaque, civil society organizations have raised concerns about the nature of German business' approach to these initiatives. For example, a [recent report by PowerShift](#) challenges German business organizations' arguments against binding due diligence requirements for responsible sourcing of conflict minerals. Moreover, a [report by Corporate Europe Observatory](#) claims that German companies lobbied to exempt a large number of companies from the EU's mandatory non-financial reporting directive. These reports indicate an approach by some German companies and business associations that might be self-defeating, as the initiatives could reward several German companies that are advanced on human rights. There is a strong business case for German companies to play a more progressive role in EU initiatives.

Globally, the negotiations for a binding treaty on business and human rights began in July 2015. However, participation by the EU and European governments has been weak. NGOs have called for a [more active engagement](#) by these governments in the binding treaty process.

Advances by companies & governments

Company advances

A handful of German corporations have set leading examples in integrating human rights within their operations. For example, **adidas Group** recently released a revised [grievance mechanism](#), which extends to all suppliers, licensees and contractors. The mechanism encompasses investigation and remediation, as well as monitoring after the complaint is resolved and has been welcomed by experts in the field.

Some companies are partnering with NGOs to better integrate human rights into operations abroad. For example, [Tchibo's partnership with Save the Children](#) aims to combat child labour and improve access to health care through providing childcare and educational programs for harvest workers' families in coffee plantations in Guatemala.

Other German companies taking steps in the right direction on human rights include **Deutsche Telekom**

through its [human rights due diligence framework](#) and **Otto Group** through its [social programmes in its supply chain](#).

Sectoral advances

The [Roundtable Human Rights in Tourism](#) – a multi-stakeholder platform to advance human rights in tourism through a dialogue of largely German enterprises, organizations and institutions – recently sought to jointly tackle challenges in business and human rights abroad. When some of its member companies were linked by the Society for Threatened People to [human rights abuses in the tourism industry in Sri Lanka](#), the companies established a working group with the goal to investigate and mitigate the alleged abuses, in dialogue with the local affected communities. Based on the findings of this working group, the companies involved have committed to taking further steps to remedy the abuses.

Other sectoral initiatives in Germany include **Chemie³**, which promotes social standards in the chemical industry.

Global Compact Network

The [Global Compact Network Germany](#) serves as multi-stakeholder platform for dialogue and learning for the German signatories of the UN Global Compact - companies, civil society and government representatives. It fosters awareness-raising and capacity building within the German business and human rights community through trainings, workshops and webinars.

Government advances

The **Textile Partnership**, established in 2014 by the Ministry for Development Cooperation, aims to strengthen social, ecological and economic improvements along the supply chain within the German textile industry and its business conduct abroad. Initially major German companies were reluctant to take part, but the initiative [gained momentum in June 2015](#) when leading German textile federations and big names in the German textile industry joined. The partnership, consisting of textile and clothing industry, retailers, trade unions and civil society, covers approximately 40% of the German textile sector as of September 2015. The increase in participation is a step forward although concrete impacts are yet to be seen.

The German Government has also shown regional and international leadership. In June 2015, Germany along with G7 leaders made a far-reaching [declaration](#) "*strongly support[ing] the UN Guiding Principles on Business and Human Rights*" and committing to "*take action to promote better working conditions by increasing transparency, promoting identification and prevention of risks and strengthening complaint mechanisms.*" The UN Working Group on business & human rights welcomed the declaration, along with NGOs, and called on the

governments to translate the commitment to concrete action.

In response to the refugee crisis in Europe, several major companies and industry federations, including Volkswagen, ThyssenKrupp, Bayer Munich and BDI, have recently spoken up in support of welcoming refugees into Germany. Although the government's approach is receiving mixed reactions, companies' statements of support and programmes to integrate refugees into their workforce set positive examples for a more welcoming environment for refugees in Europe. Government and business now face the challenge of taking effective steps to integrate refugees into the workforce while guaranteeing fundamental workers' rights and fair wages.

Conclusion

This briefing note illustrates the opportunities Germany has to take a leadership position in business and human rights – and the challenges its companies and government still face. The German Government demonstrates a willingness to lead and set a strong example for governments in Europe and around the world.

We recommend that the German NAP include measures to:

Improve access to judicial & non-judicial remedy for German companies' involvement in abuses at home and abroad:

- Engage in a peer-review of its OECD National Contact Point to realise its full potential to serve as an impartial complaints mechanism for victims of abuses (see Norway's peer review process).
- Consider adapting existing German law to enhance parent company liability for human rights abuses by subsidiaries abroad & throughout its supply chain (see bill in French parliament).
- Evaluate adapting existing German law on due diligence in other areas to human rights; provide greater access for victims to German courts (e.g. through legal aid).

Strengthen German companies' due diligence throughout their supply chains:

- Introduce standards for human rights due diligence for companies, including transparency requirements based on UNGP Reporting Framework (see bill in French parliament) and consider launching a governmental help-desk for human rights targeted at SMEs.
- Commit to only provide access to public procurement contracts or export credits to companies that have undertaken strong human rights due diligence and are not associated with rights abuses.
- Offer guidance to businesses to respect human rights, with a focus on high risk sectors: by enhancing information hubs, strengthening existing initiatives (Textile Partnership) and providing extra support to the IT sector to avoid abuse in surveillance & privacy.

Build on existing engagements & strengthen the German Government's constructive role in international and EU-level regulations and incentives:

- Lead efforts to ensure EU conflict minerals regulation retains effective and goal-oriented due diligence requirements.
- Work with other European governments to ensure national legislation transposing EU non-financial reporting and the use of comparable format for reporting to enable a better level of comparison among companies
- Work with G7 governments to implement the G7's commitment to improving working conditions, increasing transparency, and strengthening complaint mechanisms.
- Work with other European governments to engage in the process on a proposed binding treaty on business and human rights and build consensus among stakeholders.

We recommend German companies & the German Government to:

- Support rigorous business & human rights initiatives at the EU-level

Further Information

[Business and Human Rights Resource Centre](#) is an international NGO that tracks the human rights impacts (positive & negative) of over 6000 companies in over 180 countries making information available on its eight language website. We seek responses from companies when concerns are raised by civil society. The response rate is over 70% globally.

For further actions on business and human rights, see our [Government Action Platform](#) & [Company Action Platform](#).

Visit the German language [website](#), and sign up for our Weekly Updates [here](#).

¹ Note: Companies were approached for responses when no public statement was available about an allegation.

² Note: Business & Human Rights Resource Centre only approaches companies for responses if they have not yet put out a statement regarding an allegation publicly. Allegations are documented by NGOs and/or media. For more information, see here: <http://business-humanrights.org/en/company-response-rates>

³ The lawsuits referred to were: Danzer Group (re Dem. Rep. of Congo) and Lidl (re working conditions in Bangladesh). A third lawsuit was since added to the database: RWE (re climate change impacts in Peru).