

Towards a Democratic and Globally Just Resource Policy

The Federal Republic of Germany depends on the import of metallic, mineral and fossil fuel resources. The extraction of these raw materials takes place at the expense of the environment and leads to human rights violations. The German Federal Government does not take these consequences adequately into account. Instead, it supports the industry because of concerns around security of supply.

Today's global challenges call for a different, a democratic and globally just raw-materials-policy. The goals must be to:



reduce raw material consumption

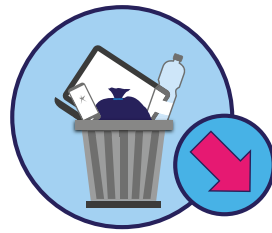


effectively protect human rights



protect and strengthen civil society

On the following pages, the NGOs that have joined forces in the Working Group on Raw Materials (*AK Rohstoffe*) explain and clarify their demands:



Reducing the Consumption of Resources

On a global level, patterns of consumption and production are ecologically not sustainable and lead to increasing social inequality. 'Earth Overshoot Day' marks the date on which humanity's resource consumption for the year exceeds Earth's capacity to regenerate those resources that year. In 1990, humanity had consumed one year's resources on December 7th; ten years later, in 2000, November 1st marked this day; in 2010, it was August 21st and in 2016, 'Earth Overshoot Day' already occurred on August 8th. According to scientists at the United Nations Environment Programme, an equitable consumption of resources per person per year would be around six tons. In Germany alone, however, the total material consumption per capita currently figures at 40 tons per year.

If the global rise in temperature is to be limited to less than two degrees, possibly even to 1.5 degrees, as stated in the Paris Agreement, then our global CO2 budget will only last for a few more years. Lignite emits the most greenhouse gases per power unit. Germany is not only the largest miner of lignite, but also imports about 90 percent of its hard coal from countries in which coal mining frequently causes severe human rights violations.

The debates on subjects such as the Internet of Things, Industry 4.0, Smart Home, electric mobility or non-recyclable produce from the chemical industry demonstrate that both industrial and economic policies do not take into account the rising demand for many raw materials. Instead, they count on efficiency savings, while ignoring planetary boundaries.

At the same time, both precautionary environmental policies and the environmental management of enterprises still aim at decreasing environmental costs (so-called end-of-pipe technologies) rather than working towards an actual – and highly necessary – reduction in raw materials and energy use. Sufficiency, consistency, and gradual increases in raw materials efficiency by a factor of 10 belong to the most well-known and efficient measures for reducing raw material consumption. Tax incentives can promote investments in sustainable infrastructure, the use of secondary raw materials, and design concepts that build on reuse and easy maintenance. The Sustainable Development Goals (Goal 12 in particular) can help in putting these strategies into practice, and provide an impetus to action for the German Federal Government and the European Union.

THE WORKING GROUP ON RAW MATERIALS DEMANDS THE FOLLOWING:

An absolute decrease in raw materials consumption to a sustainable and globally just level. This decrease in consumption must be the objective of the German Government at the German and European level, with agreed binding and absolute targets. These detailed objectives must be created with the involvement of civil society. Progress must be continually monitored on the basis of significant indicators.

Fossil fuel phase-out. The German Government should phase out the exploitation and use of new fossil resources (particularly gas and oil obtained through fracking), and pass legislation that leads to the graduated, but fastest possible, phase-out of electricity generation from lignite and hard coal. Likewise, the Government must end the promotion of new coal mining projects abroad through KfW IPEX, is a German government-owned development bank, as well as the federal foreign trade promotion for coal projects.

Create economic incentives for reduced consumption. Taxing raw materials can generate long-term economic incentives that stimulate efficient production and innovation. The G20 is the appropriate forum for advancing the coordination of such instruments, and should be setting a good example. Currently, however, its member states account for four fifths of global resource consumption. In the short term, taxes on primary building materials, nitrogen, and fossil fuels, can be implemented. The resulting tax revenues could be used to lower other taxes and duties, such as ancillary wage costs. Any revenues raised must be invested in the rapid replacement of non-sustainable infrastructure, and in the promotion of less resource-intensive products and services, which will in turn provide further

incentives for sustainable economic management. In accordance with the *"polluter-pays-principle"*, this system of economic incentives will only work if the companies that extract resources bear the costs of all damages. In addition, the government must ensure that all public procurement, without any minimum threshold value, aligns with ecological and social criteria for sustainability.

Strengthen the circular economy. There need to be legally binding targets to avoid waste, increase the recycling of textiles, electrical appliances, bulk waste and the proportion of returnable packaging. The capacity of products to be reused, repaired, and recycled must be enhanced through product design (for electronics, this means both for hardware and software). The German Government must promote the European Union's Ecodesign Directive, and ensure that its full potential is realised. It must also reduce contaminants in production.

A modern mining law for the 21st century. The German Federal Mining Act (Bundesberggesetz, BBergG) automatically gives priority to extraction over other interests. This prioritisation of mining must end. Instead, the BBergG must be redesigned as a modern sectoral planning law based on planning procedures with a consideration of all interests.

Renunciation of deep sea mining. Given this desired reduction in resource consumption, we demand that the German Government refrains from supporting deep sea mining. It is impossible to assess the full consequences of this activity for nature and humanity, and as such the political processes for regulating this industry are highly insufficient.



Effectively Protect Human Rights

Germany has responsibility to respect, protect and fulfil civil, political, economic, social, and cultural human rights with regard to mining activities globally. On the one hand, this applies to both German companies importing metal and energy raw materials, and German companies having a share in resource projects or their financing. On the other hand, this applies to the German Government, which facilitates access to resources for German companies. This was precisely the purpose of the resource partnerships and agreements that the German Government has negotiated with Mongolia, Kazakhstan, Chile and Peru. Through instruments of foreign trade promotion, particularly guarantees for untied finance credits and Hermes export credit guarantees, the Government supports German companies in securing imports (mineral resources) and exports (mining, drilling or ancillary equipment). Within the framework of EU negotiations on trade and investment protection agreements, the German Government insists on abolishing export duties while simultaneously demanding far-reaching protective measures for German foreign investments. The UN Guiding Principles on Business and Human Rights stress the duty of states to protect society from violations of human rights perpetrated by companies. In a similar vein, the Guiding Principles highlight the companies' obligation to respect human rights along the entire value chain. The Guiding Principles also stress the need for rights and obligations to be matched to appropriate and effective remedies when breached.

Although the proposed EU regulation on due diligence for EU imports of tin, tantalum, tungsten and gold from conflict areas is a first step in this direction, it falls short in many respects. The focus rests solely on the financing of armed groups, whereas other acts within the context of mining that lead to human rights violations are not examined. Only first importers of ores and metals are covered, whereas the vast majority of companies that use these raw materials – such as the car and electrical industry – are absolved from responsibility. To make matters worse, companies must primarily report on their methods of implementing due diligence, but not on the identified risks themselves. So far, the proposed legislation does not foresee any measures to impose sanctions against companies that conduct no or poor due diligence.

THE WORKING GROUP ON RAW MATERIALS DEMANDS THE FOLLOWING:

A binding law on appropriate due diligence for human rights in global business. Companies must be required to examine the consequences of their activities and business relations with regard to human rights along the entire value-added chain, with measures to counteract any negative implications. Companies should be fined if they are not able to provide information on the assessment of risks and consequences to the relevant German authority. In the case of avoidable damage, the Government must give victims the opportunity to sue the responsible companies for compensation in German civil courts. Companies which do not fulfil their human rights obligations must be excluded from public procurement and export credit assistance for five years.

A binding EU regulation on the responsible procurement of raw materials from high-risk and conflict areas for upstream and downstream companies. In implementing the planned EU regulation, the German Government must consider the full range of measures, including fines, to enforce the companies' compliance with due diligence. Two years after the regulation will have come into force, the German Government must use the proposed review process to advocate for the closing of all known loopholes. To ensure this, due diligence must be expanded to cover both the processing industry and retail trade ('downstream'); all raw materials must be included; penalty fines must be introduced where there are violations; and mandatory reporting to the public must be designed in a way that explains the methodology used to assess risk and its consequences in a comprehensible and verifiable way.

Audits within the framework of human rights due diligence must be documented transparently and be publicly accessible. The German Government must oblige companies to document and publish their human rights audits (including the questions and results) in a way that is comprehensible for the public and civil society. Moreover, affected persons, or their advocating legal advisers and NGOs, must be granted full access to risk audits and impact assessments.

The compliance with human rights-oriented due diligence must be determined as a basic, binding condition for foreign trade promotion (*Außenwirtschaftsförderung, AWF*). The German Government must plan their own examination of any projects' due diligence, with regard to human rights, and not only in cases with 'likely grave human rights violations'. In principle, it must exclude companies that have been proved to conduct poor or no human rights due diligence for five years from foreign trade promotion. Supported companies should be obliged to publish environmental and social impact assessments, as well as possible subsequent measures, so that affected persons can verify whether these are appropriate and being enacted. Sectors that are highly problematic with regard to human rights and environment, such as the coal sector, must be excluded from foreign trade promotion by the German Government.

Introduction of corporate liability in criminal law. Besides Greece, Germany is the last EU member-state without such a criminal law. An integral part of this law should be the assisted access for the victims of human rights violations.

EU trade policy must be reformed fundamentally. In the future, the German Government should advocate for impact assessments concerning human rights to be conducted even before negotiations on trade and investment agreements start; and that these recommendations are taken into consideration in the negotiating mandates. Moreover, human rights exemption and re-opener clauses must guarantee that trade agreements do not impose restrictions on those states which protect human rights. The possibility of generating larger revenues and regulating export volumes by export duties must be maintained. In addition, investors should not receive special treatment, and as such investor-state-dispute-settlement (ISDS) clauses should be deleted from trade and investment agreements, and should not be replaced by an investment court system (ICS).



Protect and strengthen civil society

An active civil society is crucial for exposing human rights violations and environmental destruction in mining areas; for advocating the interests and participation of communities affected by mining; and for holding human rights violators to account. However, civil society's space for action is increasingly being diminished worldwide. NGOs, activists, and human rights defenders who deal with the human rights, social and ecological impact of mining projects are being increasingly intimidated, criminalised or even assaulted. More and more of our colleagues assume the risk of being murdered.

Mining projects often occur in regions claimed by Indigenous Peoples, and are synonymous with the displacement of local people from their ancestral lands. ILO Convention 169, which confirms the essential role of Indigenous Peoples in decisions concerning their territories, has still not been ratified by Germany.

The German Government's resource policy has considerable influence on the conditions under which resources in the Global South are mined. The framework for these activities, however, is mostly established in opaque committees and proceedings. Trade associations have privileged access to resource policy decisions, from which civil society is excluded. D-EITI (the German implementation process of the Extractive Industry Transparency Initiative) is a process for ensuring transparency of cash flows in the extractive sector. Civil society is integrated into this process, and as such it should not be decoupled from other current debates on resource policy.

THE WORKING GROUP ON RAW MATERIALS DEMANDS THE FOLLOWING:

Protect and strengthen civil society worldwide. We call upon the German Government to prioritise the protection of civil society and human rights over economic interests. It must demand the protection of civil society in all international agreements related to mining projects and trade, as well as monitoring its implementation. Within the context of the companies' human rights due diligence, the Government must mandate companies to actively oppose the repression of civil society. Moreover, we call upon the German Government to actively defend and strengthen civil society – politically and financially – and to promote access for civil society's stakeholders to redress under the law.

Protect and strengthen Indigenous Peoples' rights. We ask the German Government to finally ratify ILO Convention 169, the only binding document under international law that guarantees a comprehensive and worldwide recognition of Indigenous Peoples' rights. This could be done as a supportive ratification – similar to what the EU member Spain has done already in 2007. In addition, the German Government has to ensure that German companies respect the land rights, rights to participation, consultation, and free, prior and informed consent (FPIC) of Indigenous Peoples in their economic activities. Of course, these rights must also be recognised in the context of the German foreign trade promotion, economic, trade, environmental and development policy.

Transparency and fair negotiation processes in resource policy, instead of privileged access for the industry. We demand transparency in German resource policy by including access to parliamentarians and civil society at large. The privileged inclusion of the industry, for instance in the inter-ministerial

committee of resources (IMA, Interministerieller Ausschuss Rohstoffe), in the working groups of the Government, or on delegation visits, must be terminated immediately. Instead, the German Government must grant the equal access to all stakeholders in resource policy committees and decisions.

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