

**QUESTIONNAIRE: UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS**

*Theme: "Large-scale development projects and human rights defenders"*

**To human rights defenders and national institutions** - Concise answers will be very much appreciated. Please provide examples to illustrate as much as possible and send additional materials if felt necessary.

Preliminary remark: The German Institute for Human Rights (GIHR) has mostly worked on promotion of HRDs abroad, esp. through development cooperation. Our answers thus focus on extraterritorial issues.

1. Please indicate what you see as the main challenges and opportunities of a human rights-based approach to development, with particular attention to large-scale development projects and the role, protection and effective participation of human rights defenders. What do you think are the best measures to mitigate the challenges? Kindly provide examples of good practices in this respect.

Development cooperation:

- main challenges: how to balance individual human rights of those threatened by resettlement with the broader development perspective (e.g. supply of resources supply, protection of biodiversity) and with issues of intergenerational justice/sustainability.  
- main mitigation measures: human rights do not provide a ready-made answer for these challenges. Given that decisions for large scale development projects are often complex, decision-making should be transparent, balanced and non-discriminatory. This is best realized by institutionalised participatory procedures, for which human rights provide the framework. It is of particular importance that those concerned can participate on equal footing. Prior to planning of large scale infrastructure projects, this will regularly require empowering them and strengthening their voice vis-à-vis their own government and, if applicable, vis-à-vis donors. Therefore, in addition to ex-ante inclusion in planning, ex-post avenues for redress and accountability have to be provided, such as e.g. the complaint mechanisms provided by international development banks. German development policy will consider the introduction of a complaint mechanism for German bilateral development cooperation  
([http://www.bmz.de/en/publications/type\\_of\\_publication/strategies/Strategiepapier305\\_04\\_2011.pdf](http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier305_04_2011.pdf), p. 21)

2. Please explain how, in your view, large-scale development projects can best be elaborated in order to the effective participation of human rights defenders. Please describe participation/consultation mechanisms in place and provide examples of good practices.

Development cooperation:

In Germany, large-scale development cooperation projects are predominantly implemented by Kreditanstalt für Wiederaufbau Entwicklungsbank (KfW). KfW has elaborated a "Guideline of KfW Entwicklungsbank for conducting business in an environmentally, socially and climate friendly manner ("Sustainability Guideline")", which, not unlike the World Bank safeguards, provides for public participation and involvement of the communities concerned. See 6.3., [https://www.kfw.de/media/pdf/download\\_center/konzernthemen/pdf\\_dokumente\\_nachhaltigkeit/49179.pdf](https://www.kfw.de/media/pdf/download_center/konzernthemen/pdf_dokumente_nachhaltigkeit/49179.pdf).

For further information on human rights in KfW, you might like to turn to Ms Helke Wälde, [helke.waelde@kfw.de](mailto:helke.waelde@kfw.de).

3. How do you think that human rights defenders can effectively monitor the impact of large-scale development projects? Please provide examples of successful experiences/ mechanisms in this regard and kindly address the issues below.

a. Kindly indicate how relevant information about large-scale development projects is made available and accessible to the public. Provide concrete examples if applicable.

Development cooperation:

- Effective monitoring requires among others access to information. Unlike the World Bank, Germany provides only very scarce information on the development projects it supports and information is spread over the websites of the Ministry and the implementing agencies GIZ (technical cooperation) and KfW (financial cooperation). (Website of the Ministry [http://www.bmz.de/en/what\\_we\\_do/countries\\_regions/index.html](http://www.bmz.de/en/what_we_do/countries_regions/index.html)). Germany has only recently begun to implement the International Aid Transparency Initiative (IATI, <http://iatistandard.org/>), which requires more systematic publication of project information. However, data provided is still scarce (see the website of the Ministry [http://www.bmz.de/en/what\\_we\\_do/approaches/transparency-for-greater-effectiveness/publication-in-accordance-with-the-IATI-standard/index.html](http://www.bmz.de/en/what_we_do/approaches/transparency-for-greater-effectiveness/publication-in-accordance-with-the-IATI-standard/index.html) and a comment by Civil Society (<http://www.publishwhatyoufund.org/updates/by-topic/iati/germany-publishes-iati-data-whats-next/>) as well as the UPR submission of the German Institute for Human Rights, Nr. 37, ([http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/UN-Dokumente/UPR\\_zu\\_Deutschland/Report\\_GIHR\\_on\\_UPR\\_Germany\\_2013\\_final.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/UN-Dokumente/UPR_zu_Deutschland/Report_GIHR_on_UPR_Germany_2013_final.pdf)).

b. How can defenders complain if they feel that human rights are unduly restricted or violated in the context of the implementation of large-scale development projects? Kindly provide concrete examples of mechanisms in place to seek redress at every stage of the process, that is, assessment, design, implementation, monitoring and evaluation.

Domestic level:

- The German administrative justice systems provides for legal avenues against administrative acts.  
- Public consultation has been an obligatory part of public construction works (Baugesetzbuch). However, in Germany, over the last years, several large scale development projects (Stuttgart 21 - train station, new Berlin-Brandenburg airport) have met considerable public protest. This triggered a new discussion about public participation in large-scale development projects. The government has reformed public participation in public planning procedures (for the law <http://dip21.bundestag.de/dip21/btd/17/096/1709666.pdf>, for prior hearings in the Bundestag see [http://www.bundestag.de/dokumente/textarchiv/2010/32466920\\_kw48\\_de\\_stuttgart21/index.html](http://www.bundestag.de/dokumente/textarchiv/2010/32466920_kw48_de_stuttgart21/index.html), [http://www.bundestag.de/dokumente/textarchiv/2012/39239837\\_kw24\\_pa\\_verkehr/index.html](http://www.bundestag.de/dokumente/textarchiv/2012/39239837_kw24_pa_verkehr/index.html) and <http://www.bundestag.de/bundestag/ausschuesse17/a04/Anhoerungen/Anhoerung25/Protokoll.pdf>).

Development cooperation:

Persons affected by Germany's bilateral development projects cannot effectively bring complaints in Germany so far. The Ministry for Economic cooperation and Development is currently considering the establishment of a human rights-based complaint mechanism for bilateral development cooperation. This would strengthen the rights of the population in the partner country and contribute to the prevention and to the early solution of human rights issues.

c. How do you ensure that human rights defenders can peacefully voice their opposition to development projects without fear of intimidation or violence of any sort?

Development cooperation:

- institutionalised participation
- Meetings between development agencies in partner countries and HRDs

4. How, in your view, can business and corporations involved in large-scale development and investment projects be best monitored regarding corporate social responsibility principles and their engagement with human rights defenders? What is, in your view, the role of defenders in this process and how could their capacity to engage be strengthened?

- Corporations and businesses should be legally obligated to make certain non-financial disclosures regarding the sustainability and human rights impact of their business activities. We support the proposal of the European Commission in this context:

[http://ec.europa.eu/internal\\_market/accounting/non-financial\\_reporting/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm)

- NHRIs or similar national institutions should be given a mandate to inspect and investigate the business activities of enterprises if necessary and to publicly report on their findings.

- Defenders play a critical role as advocates for persons directly affected by business activities. They must be given access to existing legal and non-legal grievance mechanisms through standing rules in procedural law or in the procedural rules of e.g. the OECD national contact point.

5. How, in your view, should development cooperation programmes integrate the role of human rights defenders and the notion of a safe and enabling environment in recipient countries? How do you think can the expertise of human rights defenders on the ground be best used to design, implement, monitor and evaluate development cooperation programmes? How should security/protection concerns be addressed when necessary?

Development cooperation:

- Integration: regular consultations, both within specific programmes as well as on the general political level (e.g. Malawi, where donor/EU embassies organised an NGO consultation for reviewing underlying principles of budget support)

- negotiate for inclusion of all stakeholders, incl. HRDs, with the respective countries

- address security concerns by asking HRDs how to approach them

- financing: secure stable, easily accessible and flexible financing for HRDs.