

# Forum Menschenrechte



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## FORUM MENSCHENRECHTE

### Proposal for a Human Rights Complaint Mechanism for German development cooperation<sup>1</sup>

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1. In its Human Rights Policy dated 2011, the German Ministry for Economic Cooperation and Development (BMZ) stated that it would consider to set up a human rights complaint procedure for its development cooperation<sup>2</sup>. FORUM MENSCHENRECHTE (made up of 48 German NGOs working on human rights) strongly supports this initiative. A human rights complaint procedure for development cooperation will serve as an important tool to implement Germany's extraterritorial human rights obligations under international law<sup>3</sup> and to strengthen the human rights approach to development cooperation. By implementing an effective human rights complaint procedure, the German government will demonstrate international leadership for human rights.
2. FORUM MENSCHENRECHTE proposes that the German government establish a Panel of Independent Experts (more details below) who will be mandated to investigate cases in which individuals and groups claim that they have been – or are likely to be - negatively affected by projects, programs and policies supported by German development cooperation. The function of the Panel is to

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<sup>1</sup> This proposal has been consulted with partner organizations. However, as the proposal was only available in English, several partners have demonstrated their interest in commenting but have been unable to do so. In the future process, special attention should be given to include voices from other language backgrounds. FORUM MENSCHENRECHTE is grateful to the following individuals and organizations who have commented on the draft proposal: Peter Kayiira (Wake up and fight for your Rights, Madudu Group, Uganda), Ashfaq Khalfan ( International Secretariat amnesty international), Nicholas Lusiani (Center for Economic and Social Rights), Komala Ramachandra (Accountability Counsel, USA), Dominic Renfrey (ESCR-NET), Arn Sauer (TransInterQueer e.V.), Bret Thiele (The Global Initiative for economic, social and cultural Rights, USA), Instituto del Defenso Legal, Peru, as well as individuals from Suriname und Japan. FORUM MENSCHENRECHTE welcomes further comments. If you want to comment, please send an email to Ute Hausmann ([u.hausmann@fian.de](mailto:u.hausmann@fian.de))

<sup>2</sup> "Mechanisms of accountability which can be accessed by individuals or groups if they consider that their human rights have been infringed play an important role in human rights implementation. This applies in the context of development cooperation in the partner countries as well as in Germany. For this reason, and also drawing on the experience gained by other donors, the possibility of setting up a human rights complaints mechanism is being considered by the BMZ. The assessment will focus on strengthening ownership by the partner countries and safeguarding access for civil society organisations."  
[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)

<sup>3</sup> See "Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights"  
<http://www.icj.org/wp-content/uploads/2012/05/Maastricht-Principles-analysis-brief-2011.pdf>  
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investigate the role and institutional responsibility of German development actors in cases of alleged human rights violations and to make recommendations for reparation in case human rights have been infringed. The Minister for Development Cooperation shall be held accountable for the implementation of these recommendations and shall report accordingly to the Panel and to the responsible parliamentary committees. The Panel should play a strong role in monitoring the implementation of the recommendations.

3. A complaint procedure will support and not replace the obligation of development cooperation agencies to ensure that their programming is consistent with human rights standards. The implementation of human rights impact assessment in the planning, implementation, monitoring and evaluation of projects, programs and policies is indispensable to mainstream human rights based monitoring and documentation throughout German development cooperation. It is also necessary in order to assess whether German development actors have exercised human rights due diligence in their operations.
4. A German human rights complaint mechanism for development cooperation cannot and should not substitute judicial measures in the partner countries or in Germany. Neither should it substitute international judicial procedures and non-judicial monitoring mechanisms to remedy human rights violations. However, a human rights complaint mechanism for development cooperation has the potential to contribute to providing victims of human rights violations with effective remedies. In any case, such a mechanism should be seen as one element in guaranteeing to affected persons'
  - (a) Equal and effective access to justice;
  - (b) Adequate, effective and prompt reparation for harm suffered;
  - (c) Access to relevant information concerning violations and reparation mechanisms.
5. Transparency and the active, free and meaningful participation and consultation of beneficiaries – i.e. the rights-holders - as well as potentially affected groups (self-selected) in the programming stage is essential to ensure that critical voices are heard and that projects, programs and policies are rights-based, demand-driven and effectively benefit marginalized groups. During this stage, beneficiaries and affected groups must be informed about any grievance procedures at the project level as well as about the possibility and the logistics of filing a complaint with the Panel. It is essential that complaints can be filed at an early stage in order to prevent human rights violations.
6. Beneficiaries and affected groups should also be informed about other avenues for access to justice, such as judicial and other legal procedures and monitoring mechanisms such as national human rights institutions and state regulatory bodies. Information has to be provided in understandable forms and language.
7. It is for the victims of human rights violations to decide which judicial, quasi-judicial and non-judicial instruments they choose in their struggle, including international instruments to which Germany is a State Party.

### **General Criteria for the Human Rights Complaint Mechanism**

1. The procedure has to be independent of the BMZ and implementing agencies.
2. Accessibility has to be guaranteed, paying special attention to marginalized groups and gender relations.
3. A complaint to the human rights complaint mechanism may not restrict the right of the complainant to seek judicial remedies.
4. In order to be consistent with the principle of country ownership, the procedure should focus on the actions and omissions of German state actors and other non-State and private actors, where they partner in the delivery of aid or where they have entered into contractual relations in the context of development cooperation with the respective German state actors, including with regard to the terms of any assistance provided to a partner country.

5. Any complaint that relates solely to the conduct of partner countries in which German actors or funding are not implicated, will not be admissible. The procedure will refer complainants to national and international complaints mechanisms that have the mandate to address their complaint.
6. The procedure may examine complaints relating to the conduct of German state actors with respect to their multilateral policy positions and votes as members of international organizations, as well as the terms attached to voluntary financial contributions provided to such institutions.
7. The process has to be transparent, clear, predictable, effective and prompt.
8. The procedure has to provide for binding and enforceable decisions regarding the obligation of German state actors to provide for adequate, effective and prompt reparation for harm suffered as a result of the conduct of German state actors, individually or jointly with other actors.
9. Investigative competences have to be granted to ensure access to internal documentation of the BMZ and implementing agencies.
10. The mandate of the procedure should ensure that investigators can visit the country and the affected parties in question, with the German state actors required to facilitate such visits. It should also ensure that investigators can have personal contact with the victim(s) and have the possibility to personally and directly evaluate facts and circumstances.
11. Complainants should have the right to request the use of dispute settlement methods, including good offices, conciliation and mediation. The role of the procedure would be to facilitate such a process. However, good offices, conciliation and mediation must not be a compulsory step in the process.
12. Special measures shall be taken to ensure the safety of the complainants, prevent intimidation or any other undue influence on their decision to use the complaint mechanisms, and to protect them from further harm.
13. The procedure must play a strong role in monitoring the fair implementation of the recommendations.

### **Proposed Mandate and Structure of the Panel of Independent Experts**

#### Accessibility<sup>4</sup> and Transparency of the Complaint Procedure

1. The procedure must be financially and logistically accessible and must take into account the situation of marginalized groups and socio-cultural and gender relations.
2. German embassies and consulates should establish a human rights contact point where information and advice is provided concerning the functioning of the procedure as well as other mechanisms like the OECD Guidelines for Multinational Enterprises or the EU Guidelines on Human Rights Defenders.
3. The procedure has to be well-known to potentially affected people and groups, and they have to be informed about the procedure during the programming stage, well in advance before any operations start. Immediately after a complaint has been received, complainants must be informed about the rules of procedure in order to make the process predictable.
4. As many of those affected by human rights violations belong to marginalized groups, it cannot be expected that they always are in a position to provide a detailed human rights analysis of their situation or provide written complaints. It should therefore be considered sufficient if complainants can describe the harm they suffer<sup>5</sup>. The procedure should accept complaints written in local language or verbally.

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<sup>4</sup> The question of accessibility is the one that raised most concerns during the consultation of this paper. This demonstrates the need to actively engage partners of the Global South in the development of criteria and methods how accessibility can be effectively guaranteed.

<sup>5</sup> In the case of the Accountability Mechanism of the Asian Development Bank, complaints are asked to respond accordingly: "We believe that due to this Project, we have suffered or are likely to suffer the following:"

5. Complainants should have the ability to work with and appoint civil society organizations and individual representatives during all stages of the complaint procedure.
6. The complaint procedure should be guided by the best interests of the child, taking into account the need for child sensitive procedures and having regard for the rights and views of the child, the views being given due weight in accordance with the age and maturity of the child.
7. The procedure has to be transparent, which includes public documentation throughout the process. The procedure must balance transparency and confidentiality in the interest of the complainants.
8. The Panel's website will include a list of all complaints received by the, and once found eligible and with the consent of the complaining party, the full text of the complaint will be placed on the website. Updates and interim reports will also be placed on the Panel's website in a timely manner. Meeting notes will be made public, with the consent of the complaining party.
9. All rules and procedures of the Panel will be available on the Panel website, and in translation to those languages where the German development authority functions. Reviews of these rules and procedures will be done periodically and publicly, with civil society and affected community consultation.

#### Composition of the Panel of Independent Experts

1. Experts for the panel are selected by a selection group which includes representatives of civil society and parliament. The composition of the selection group represents as diversity of social actors with specific regard to marginalized groups. It should be considered to include representatives of civil society from the Global South in the selection group.
2. The experts should have a proven track record of working on human rights in a diverse cultural setting. The composition of the Panel should be interdisciplinary and balanced in terms of expertise related to human rights, gender, cultures, environment and cross-cultural communication and should represent a diversity of actors.
3. The demonstrated independence of the experts is imperative to avoid any conflict of interest.
4. The experts will serve for a fixed time period, such as 4-5 years, that is renewable only once.
5. In executing their duties related to the assessment of individual cases, the panel has the means to appoint short-term advisors.
6. Members of the panel should not be employed or act as consultants for German development cooperation within a significant time period following the end of their service on the Panel.

#### Powers of the Panel

1. The Panel has the competency to receive requests for investigation presented by individuals or groups who claim that they have been – or are likely to be - negatively affected by projects, programs and policies supported by German development cooperation. Where a submission is submitted on behalf of individuals or groups, this shall be with their consent unless the author can justify acting on their behalf without such consent.
2. The Panel has the competency to investigate the merits of these requests. Based on a preliminary investigation of such merits, it can decide to further investigate the case presented, or not. The Panel can decide not to accept complaints when claimants cannot demonstrate that they have suffered or are likely to suffer harm.
3. The Panel has the competency to require interim measures when necessary to prevent irreparable harm.
4. The Panel has the competency to receive all information from the BMZ and implementing agencies that is necessary for an assessment whether German development cooperation has been implicated in the case presented.

5. The Panel has the competency to request information from and enter into dialogue with state authorities and other relevant actors in the partner country. Such dialogue will be unconditionally facilitated by the German government.
6. The Panel has the competency to enter in personal contact with the victim(s) and/or witnesses, and has the competency to personally and directly evaluate the facts and circumstances, including through a visit to the country in question. The BMZ has to ensure that this right is guaranteed in the respective contracts with the partner countries.
7. In its assessment, the Panel can take into account any other information provided by third parties, including community and non-governmental organizations and international and national human rights institutions.
8. The Panel will make its assessment on the basis of international human rights treaties to which Germany and/or the partner country is a party as well as human rights standards contained in general international law. The Panel will also take into account human rights relevant strategies and directives developed by the BMZ for implementation by the implementing agencies. It will pay special attention to gender issues, the rights of women, children, elderly people, disabled people, LGBTI, migrants, indigenous and historically excluded/ marginalized groups and to the impact of environmental degradation on human rights.
9. In each case, the Panel will present its human rights assessment of the role and responsibility of the BMZ and implementing agencies and make decisions regarding their obligation to provide for, or to contribute to the provision of adequate, effective and prompt reparation for harm suffered. The Panel can also include a human rights assessment of the role and responsibility of non-state and private actors involved in the context of the complaint.
10. The Panel has the competency to present policy recommendations to the BMZ in order to avoid similar cases. In order to ensure human rights policy coherence, the Panel also has the competency to present policy recommendations also to other state agencies involved.

#### Secretariat and Funding

1. The Panel will be supported by a permanent secretariat.
2. Members of the Panel are remunerated on a per diem basis and are reimbursed for their expenses.
3. Funding will be provided by the Ministry for Economic Cooperation and Development, and independently managed by the Panel secretariat. Budgetary resources shall be sufficient for the Panel to carry out its duties.
4. In order to strengthen its capacity, the Panel may organize forums with other actors, in particular other national or international monitoring mechanisms that assess development cooperation.

#### Implementation and follow-up

1. The final report and decisions of each case are addressed to the Minister for Economic Cooperation and Development who has the duty to implement these decisions and report to the Panel and the respective parliamentary committees concerning implementation within a timeframe requested by the Panel.
2. The final report and decisions will be made public and will be translated into the native language of the complainants and other affected groups.
3. The Panel can at any time request information on the status of implementation of decisions and – at the request of the complainants – take up the case again. The complainants will regularly informed about the status of implementation. This information will also be made public.

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