



Parallel Report submitted by

Germanwatch,

the **Center for International Environmental Law
(CIEL)** and

the **Global Initiative for Economic, Social and
Cultural Rights (GI-ESCR)**

to the

Committee on Economic, Social and Cultural Rights

on the occasion of the consideration of the
List of Issues for Germany during the
Committee's Pre-Sessional Working Group,
9 – 13 October 2017

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1. Submitting organisations

This Parallel Report is submitted to the Committee on Economic, Social and Cultural Rights jointly by the following organisations:

Germanwatch

Since 1992, the environmental and development organisation Germanwatch has been committed to sustainable global development within planetary boundaries and with the safeguarding of human rights for all. The worldwide consequences of German politics and economy are of specific interest.

The Center for International Environmental Law (CIEL)

The Center for International Environmental Law (CIEL) uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society.

Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)

GI-ESCR is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens.

This report is endorsed by the following additional organisations:

- **Terre des Hommes (Germany)** - <https://www.tdh.de/>
- **Forum Menschenrechte** - <http://www.forum-menschenrechte.de/>
- **Unabhängiges Institut für Umweltfragen (UfU)** - <http://www.ufu.de/>
- **Women Engage for a Common Future (WECF)** - <http://www.wecf.eu/>

2. Introduction

The adverse impacts of climate change constitute **one of the most significant global threats for the enjoyment of human rights** – especially the rights protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The magnitude of these impacts will keep increasing as temperatures continue to rise – governments must therefore ensure that they reduce emissions of greenhouse gases in a manner that prevents the most dangerous levels of temperature increase and avoids the very serious threats to economic, social and cultural rights. The Paris Agreement has set a temperature from "well below 2°C" and if possible even 1,5°C to prevent such large scale threats. Such emissions reductions can only be achieved if emissions from fossil fuel consumption are significantly reduced and if the majority of oil, gas and coal reserves remain unexploited.¹

Germany ratified the Paris Agreement on 5th October 2016 and submitted its Nationally Determined Contribution (NDC) jointly with other member states of the European Union. This joint NDC defines the emission reduction target that EU member states will seek to achieve collectively up to 2030.²

Germany is one of the main global emitters of greenhouse gases (GHGs) and is responsible for about 2.5% of global emissions of GHG.³ The country thus contributes to severe climate related

¹ See McGlade, C., & Ekins, P. (2015). The geographical distribution of fossil fuels unused when limiting global warming to 2 [deg] C. *Nature*, 517(7533), 187-190

² <http://www4.unfccc.int/ndcregistry/PublishedDocuments/European%20Union%20First/LV-03-06-EU%20INDC.pdf>

³ See http://unfccc.int/files/paris_agreement/application/pdf/10e.pdf

impacts within but especially outside the country as GHGs emitted anywhere can contribute to global warming everywhere.

This joint Parallel Report addresses the ICESCR obligations of Germany with respect to its climate change commitments and actions. In particular, it focuses on:

- **Germany's failure, to set goals and targets sufficient for a global strategy to stay well below 2°C or even 1,5°C**
 - **Its failure to significantly reduce energy related emissions and to implement the necessary instruments to reach even the insufficient own targets like committing to a roadmap for coal phase-out;**
 - **Its failure to reduce emissions in the transport sector;**
- **Germany's inadequate contributions to international climate finance.**

3. Linkages between Mitigation Policies and Obligations of Germany under the Covenant on Economic, Social and Cultural Rights

a. Climate Change and the Rights Protected under the Covenant on Economic, Social and Cultural Rights

It is clear that the consequences of climate change will have significant adverse impacts on the rights protected by the ICESCR. In his 2016 report the Special Rapporteur on human rights and the environment stated that "*climate change threatens the full enjoyment of a wide range of rights, including the rights to life, health, water, food, housing, development and self-determination*"⁴. Similarly, the World Health Organisation projects that increases in average seasonal temperatures and the frequency and intensity of heat waves will contribute to nearly 38,000 additional deaths per year as of 2030 and nearly 100,000 additional deaths per year as of 2050.⁵ WHO also estimates approximately 95,000 additional deaths per year on account of under-nutrition related to climate change of children aged five years or less by 2030⁶

Climate change will detrimentally impact the rights to health, food, housing, water and sanitation and **these foreseeable impacts trigger human rights obligations and responsibility among all duty bearers.**⁷ The ICESCR requires States to take affirmative action to protect rights. Failure to prevent foreseeable human rights harm caused by climate change, including mobilizing maximum available resources in an effort to do so, constitutes a breach of this obligation.⁸ The Special Rapporteur has underlined that: '*The foreseeable adverse effects of climate change on the enjoyment of human rights give rise to duties of States to take actions to protect against those effects. Human rights*

⁴ A/HRC/31/52 - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 2016. *ibid.*

⁵ Human Rights Council, '*Analytical Study on the relationship between climate change and the human right to everyone to the enjoyment of the highest attainable standard of physical and mental health*', UN Doc. A/HRC/32/23 (6 May 2016) at para. 1

⁶ World Health Organization, '*Quantitative Risk Assessment*'; see also Human Rights Council, '*Analytical Study*', *op. cit.* at para. 20.

⁷ Human Rights Council, '*Analytical Study*' at para 32.

⁸ *ibid.* at para 48.

*obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.*⁹

Through the Paris Agreement, governments have committed to reduce temperature increase to ‘well below 2°C’ and to pursue efforts to keep it below 1.5°C.¹⁰ In a joint report to the UN Climate Change process, several UN Special Rapporteurs to the Human Rights Council have highlighted that **human rights legal obligations require that States take actions to mitigate the causes of climate change so as to maintain the increase of temperatures to a maximum of 1.5°C of warming.**¹¹

The Committee on Economic, Social and Cultural Rights has also recognised these risks and the consequential State obligations and has urged States to **take measures to mitigate and adapt to climate change**¹², **including in relation to coal mining and fossil fuel extraction**¹³. In addition, the Committee has recognised State obligations to protect indigenous peoples and communities living on or near land used for fossil fuel extraction activities, from violations of their Covenant rights.¹⁴

b. Germany’s climate change mitigation efforts

Inadequacy of the mitigation targets

The climate policy objectives of the European Union also apply to Germany. In addition, Germany has defined national-level targets, of 40% reduction in GHG emissions by 2020, at least a 55% reduction by 2030, and 80-95% reduction by 2050, compared to 1990 levels¹⁵. In 2016, Germany has a domestic long-term low GHG emissions development strategy entitled "Climate Action Plan 2050", outlining a path towards a decarbonized society, which also encompasses intermediate (2030) and sectoral goals.¹⁶ These targets do not reflect a fair contribution to the global effort necessary to limit global warming to well below 2°C, let alone 1.5°C.

As the largest EU member state, Germany does also bear a particular responsibility for formulating overall European energy and climate goals, which are significantly lower than the EU's fair share of the global effort.¹⁷

Emission trends incompatible with the mitigation targets

Germany will, in most likelihood under current policies, miss by a significant margin its goal to reduce GHG emissions by 40% by 2020 compared to 1990 levels. According to the figures provided by the government, the level of German GHG emissions has stagnated since 2009. Consequently, the German federal environmental agency expects 2016 emissions to be only 27.6% below the reference level of 1990.¹⁸ Considering that Germany failed to reduce its emissions for eight consecutive years, it

⁹ A/HRC/25/53

¹⁰ Paris Agreement, Article 2.1.a

¹¹ *The Effects of Climate Change on the Full Enjoyment of Human Rights*, Joint paper by five mandate holders of the HRC (2015), available at

http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/202_109_130758775867568762-CVF%20submission%20Annex%201_Human%20Rights.pdf

¹² E/C.12/AUS/CO/4 (CESCR, 2009)

¹³ E/C.12/AUS/CO/5 (CESCR, 2017), paragraph 12.

¹⁴ E/C.12/AUS/CO/5 (CESCR, 2017); E/C.12/FIN/CO/6 (CESCR, 2014); E/C.12/CAN/CO/6 (CESCR, 2016)

¹⁵ <https://www.umweltbundesamt.de/daten/klimawandel/klimaschutzziele-deutschlands#textpart-1>

¹⁶ http://unfccc.int/files/focus/application/pdf/161114_climate_action_plan_2050.pdf

¹⁷ www.umweltbundesamt.de/daten/klimawandel/europaeische-energie-klimaziele

¹⁸ www.umweltbundesamt.de/daten/klimawandel/treibhausgas-emissionen-in-deutschland#textpart-1

is most unlikely to achieve an additional 12,4% reduction in the 4 years left before the end of this commitment period. New estimates expect that Germany will only reach a 30-35% reduction until 2020¹⁹.

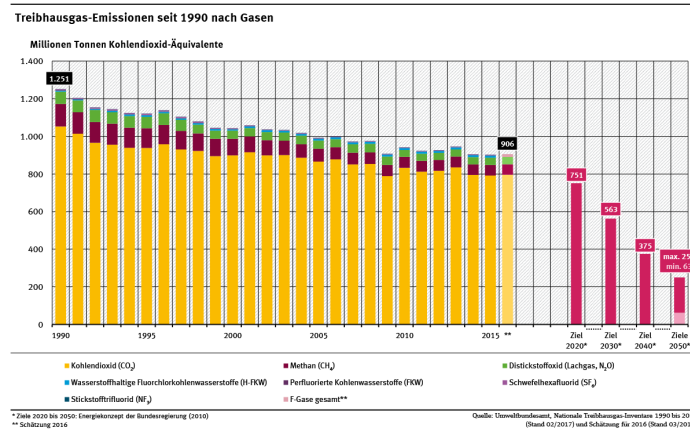


Figure 1: German emissions of greenhouse gases since 1990 (source: German Ministry for the Environment)

Inadequacy of sectoral policies

This situation is caused to a large extent by the **German energy sector, which is responsible for 50% of GHG emissions and where no decisive reduction of emissions has been achieved since 2009.**²⁰ The main reason is a nearly constant share of coal, especially lignite, in the German energy mix in the last years, due to a lack of decisive action by the German government to address this major source of pollution. While a part of this can be explained by the phase out of nuclear power, Germany has exported very much electricity in the last years. So even the increased share of renewable energies in the German energy mix did not lead to a significant decrease in GHG emissions.

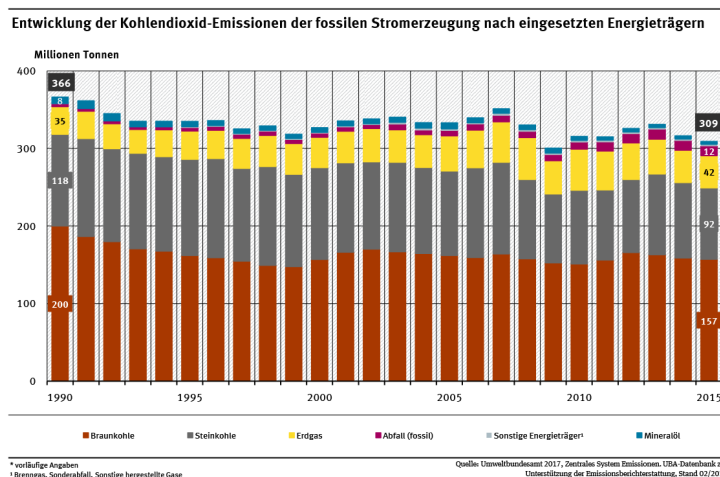


Figure 2: Carbon dioxide emissions emitted through the production of energy from fossil fuel resources (source: German Ministry for the Environment)

In the energy sector the current government **failed to agree on a clear roadmap for the phase out of coal (including lignite - the fossil fuel providing the most polluting source of energy).** Such a

¹⁹ [https://www.agora-](https://www.agora-energiewende.de/fileadmin/Projekte/2015/Kohlekonens/Agora_Analyse_Klimaschutzziel_2020_07092016.pdf)

[energiewende.de/fileadmin/Projekte/2015/Kohlekonens/Agora_Analyse_Klimaschutzziel_2020_07092016.pdf](https://www.umweltbundesamt.de/daten/energiebereitstellung-verbrauch/energiebedingte-emissionen#textpart-3)

²⁰ www.umweltbundesamt.de/daten/energiebereitstellung-verbrauch/energiebedingte-emissionen#textpart-3

roadmap is necessary to ensure both the reduction of emissions from the energy sectors and the organisation of a just transition of the sector and for its workers in a manner that respects and protects their social and economic rights. Without a clear exit strategy Germany will not be able to achieve its mid- and long-term emissions reduction goals. Different studies find that Germany would have to phase out coal well before 2040 or even 2030 to be able to fairly contribute to the achievement of the international objectives set in the Paris Agreement, to which it has committed itself.²¹ Despite the comparably fast growth of renewable energies share in final energy consumption, they are not expanding quickly enough to limit global warming to well below 2°C – let alone 1.5°C.²² This is also related to recent changes in the policy framework and a cap for renewable energies, which have slowed their growth.

The situation is even more worrisome in the transport sector, responsible for 18% of German GHG emissions²³, where emissions have essentially not been reduced at all since 1990, contrary to the reduction obligation. This sector was responsible for GHG emissions of 160 million tonnes of CO₂equivalent (CO₂e) in 2014 compared to 163 Mio. t CO₂e in 1990. According to the Federal Environmental Agency's near term forecast, GHG emissions in the sector even rose by 1,8 Mio. tonnes (1,1%) in 2016 compared to 1990 levels²⁴. By 2030, 42 - 40% CO₂ reduction in the transport sector is to be achieved according to the Climate Action Plan²⁵.

Challenges for the Right to Health resulting from the absence of adequate policies

In addition to Germany's high emissions and the resulting climate impacts, coal combustion also leads to severe health issues. According to the "Europe's Dark Cloud" study,²⁶ the quick phase out of German lignite coal power plants which are not in line with the new EU regulation²⁷ could prevent 4350 premature deaths per year in Europe through the emissions of atmospheric pollutants.

The transport sector causes air pollution through nitrogen dioxide (NO₂), especially generated by diesel cars, with severe impacts on health. Since 2000 air pollution has hardly improved in Germany. This is partly attributable to the growing share of diesel cars. Therefore the European limit values for air quality are not met in many German cities. According to the European Environmental Agency, high air pollution is the most serious environmental health risk in Europe. For Germany, it expects more than 10,000 premature deaths by nitrogen dioxide alone.²⁸ In its concluding observations on the United Kingdom, the Committee on the Rights of the Child noted that the lack of adequate measures to curb atmospheric pollution had implications for the right to health of children in and outside of the UK.²⁹ Consequently, Germany fails to uphold its obligations under the Covenant on

²¹ www.greenpeace.de/files/publications/160222_klimaschutz_paris_studie_02_2016_fin_neu.pdf
www.agora-energiende.de/fileadmin/Projekte/2014/Kraftwerkspark-im-Einklang-mit-Klimazielen/Agora_Klimaschutzbeitrag_des_Stromsektors_2040_WEB.pdf

²² Burck et al.: (2017) Climate Change Performance Index 2017 G20 Edition. Bonn. Germanwatch

²³ http://www.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Klimaschutz/klimaschutzplan_2050_bf.pdf

²⁴ <https://www.umweltbundesamt.de/daten/verkehr/emissionen-des-verkehrs#textpart-4>

²⁵ http://www.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Klimaschutz/klimaschutzplan_2050_bf.pdf

²⁶ www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/Europes_dark_cloud_report_2016.pdf

²⁷ <http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=OJ%3AL%3A2017%3A212%3ATOC>

²⁸ https://www.greenpeace.de/files/publications/20160216_greenpeace_factsheet_diesel_problem_0.pdf

²⁹ Committee on the Rights of the Child, "Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland" UN Doc. CRC/C/GBR/CO/5, para 68.

Economic, Social and Cultural Rights regarding the protection of the right to life when it fails to regulate effectively pollution generated by road transport and in particular by diesel vehicles.

4. Human rights obligations and international climate finance

a. The duty to cooperate internationally to protect human rights in the context of climate change

In addition to their obligation to address and prevent domestic sources of pollution impacting human rights domestically or in third countries, **States have duties to cooperate internationally in order to contribute to the protection and realisation of economic, social and cultural rights.**

This duty is found in the text of the ICESCR which obliges parties to *'take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.'* In the context of climate change, **this duty to cooperate internationally includes the provision of climate finance, climate technology transfers and capacity building support to developing countries who do not have sufficient resources to undertake mitigation or adaptation measures** required to prevent climate-induced human rights harms.

This duty echoes one of the central tenants of equity in the climate change regime—the commitment of developed countries under the international climate regime to provide financial and technical support for the implementation of mitigation and adaptation policies in developing countries. The UN Framework Convention on Climate Change (UNFCCC) requires developed country parties listed in its Annex II (= members of the OECD) to provide financial and technological transfers to developing countries to support their mitigation and adaptation policies – noting that these resources must be new and additional.³⁰ All parties to the UNFCCC agreed in 2010 and confirmed during the Paris Conference that financial support provided by all developed countries should amount to 100 billion USD annually by 2020.³¹

For the provision of financial and technological transfers to fulfil the international legal obligation to cooperate in order to prevent climate-induced harms, **a significant portion of these funds must be allocated to adaptation actions.** The HRC has highlighted the need for states to enhance adaptation financing, in particular, for developing countries most vulnerable to the adverse effects of climate change.³² A recent report on global climate financial flows highlights that adaptation financing constituted only a total of 17 percent of all public climate finance in 2014.³³ Another forward looking study anticipated that, by 2020 only 24 percent of international climate financing will be attributed to adaptation financing.³⁴ The Paris Agreement also explicitly provides that the provision of climate financing should 'aim to achieve a balance between adaptation and mitigation.'³⁵

³⁰ UNFCCC, article 4.3 and 4.4.

³¹ Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1 (2010), para. 98.

³² HRC Resolution 32/33 on Human Rights and Climate Change, UN Doc A/HRC/32/L.34 (2016).

³³ Barbara K Buchner et al, *Global Landscape of Climate Finance 2015*, Climate Policy Initiative (2015).

³⁴ Additionally, another 9 percent of the finance is currently projected for mixed adaptation and mitigation projects. See Organisation for Economic Cooperation and Development, *2020 Projections of Climate Finance towards the USD 100 Billion Goal*, OECD Technical Note (2016) at 21.

³⁵ Paris Agreement, *supra* note 2, art 6.4.

b. Germany's climate finance contribution

Germany's contribution compared to its fair share of international climate finance

Germany's fair share of this international obligation is generally estimated to be 10 percent – an assessment shared by the federal government, which has stated that its fair share of the \$100 billion commitment made by developed countries in 2009 would be \$10 billion.³⁶ In 2014, the Chancellor announced that Germany would double its annual public climate finance contribution from \$2 billion to \$4 billion in 2020. This was the first such announcement from a major developed country and helped mobilize similar announcements from other governments. Germany also hosted the pledging conference for the initial resource mobilization of the Green Climate Fund (GCF) and was among the first countries to pledge to the GCF (EUR 750 million). As such, Germany has played an important role in moving international climate finance forward.

Nonetheless, the **planned contribution of \$4 billion of public climate finance annually by 2020 will still fall short of what is required to meet Germany's international obligations**, particularly with regards to support for adaptation for the most vulnerable populations in developing countries.

Ensuring that climate finance addresses the needs of the most vulnerable

The government assumes that in addition to its \$4 billion, loans and mobilized private investments will account for the remaining \$6 billion in order to reach the total objective of \$10 billion. This makes it highly questionable that sufficient support for adaptation will be provided. At least half of all climate finance should be directed towards adaptation and most adaptation finance will need to be in the form of public grants, as adaptation activities - particularly if focused on the most vulnerable - most often do not generate the revenue necessary to repay loans or allow for a profitable private investment. Thus, around \$5 billion of public finance is necessary for adaptation alone in 2020, in addition to the amount of public finance that will continue to be needed for mitigation.

Consequently, **the level of public climate finance that Germany plans to deliver by 2020 will be inadequate to fulfil Germany's obligations under the International Climate Regime and the Covenant on Economic, Social and Cultural Rights**. German public climate finance thus needs to increase by 2020 - not only to provide the fair share of the country but also in a manner that ensures that sufficient funds are allocated to adaptation in line with Germany's obligations under international law. The necessary increase in reported climate finance has to correspond to a real increase in targeted support, rather than creative "labelling" that overestimates the climate relevance of the funded programs. Various studies on the use of the OECD-DAC-Rio markers have shown that Germany and other countries often apply climate-relevant Rio markers to projects with little or no climate relevance and thus report them as climate finance³⁷.

In order to fulfil Germany's obligations under the human rights obligation of international cooperation, climate finance needs to be focussed on the most vulnerable populations.³⁸ Germany has initiated important initiatives for climate related insurance instruments in the context of G7

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http://m.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Klimaschutz/bmub_cop_tops_20151130_bf.pdf

³⁷ <http://www.deutschklimafinanzierung.de/blog/2017/03/klima-oder-entwicklungsprojekt-eine-geschichte-von-definitionsschwierigkeiten-und-doppelmoral/>

³⁸ e.g. Declaration on the Right to Development, UN GA Resolution 41/128, 4 December 1986, UN Doc. A/RES/41/128.

("InsuResilience") and G20 ("G20 partnership"). However, these initiatives lack a clear definition of the most vulnerable populations, as well as a clear focus on a human rights based implementation. While the insurance industry generally defines vulnerability in terms of economic damages, such publicly supported initiatives should focus on the protection of the rights of those who are vulnerable due to existential risks for life, health, food, water, housing etc.. Additionally Germany has made no commitment for financing climate induced loss and damage, which cannot be avoided by mitigation and adaptation measures beyond the support of insurance related instruments.

Climate finance and the respect of the no-harm principle

The German government needs to ensure that climate projects or activities to which German funds contribute do not result in human rights violations,³⁹ Infringements of human rights have been reported in the past in relation to several projects promoted and implemented in the name of climate action and benefiting from international climate finance. **Germany must ensure that adequate safeguards, remedies and processes are in place to prevent any violations of the rights of indigenous peoples and local communities**, both in relation to bilateral assistance and funds that the country provides but also in the context of multilateral funds (such as the GCF) to which the country contributes.

5. Recommended Questions

Consequently, we urge the Committee on Economic, Social and Cultural Rights to request the government of Germany to provide additional information relating to the adequacy of its climate policy in the context of its legal obligations under the ICESCR. Suggested questions:

- 1. Please provide information regarding how Germany's climate change mitigation policies, including in relation to emissions from the energy and the transportation sectors, are compatible with the country's obligations under the Paris Agreement and the International Covenant on Economic, Social and Cultural Rights.**
- 2. Please provide information regarding how Germany's current contributions to international climate finance and plans to increase such contributions up to 2020 are compatible with the country's obligations under the Paris Agreement and the Covenant on Economic, Social and Cultural Rights – in particular in the context of finance for adaptation and loss and damage; as well as how the German government ensures that adequate safeguards and procedures are in place to prevent any violations of economic, social or cultural rights of local communities, associated with climate projects or activities to which German funds contribute.**

³⁹ Different examples of these kinds of projects can be found here i.a.: <http://www.deutschemklimafinanzierung.de>; www.urgewalt.org