

Submission on Extraterritorial Obligations under the CESCR covenant

Submitted by

European Center for Constitutional and Human Rights (ECCHR)

Centro de Estudios Legales y Sociales (CELS)

Terra de Direitos

Fundación Tierra

Base Investigaciones Sociales (BASE IS)

Bischöfliches Hilfswerk Misereor

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 on

September 8th to October 3rd 2025

Submitted 30th June 2025

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Presentation of submitting organisations

The *European Center for Constitutional and Human Rights (ECCHR)* is a German independent, non-profit legal and educational organization dedicated to enforcing civil and human rights worldwide.

Centro de Estudios Legales y Sociales (CELS) is an Argentine human rights organization founded in 1979 to promote and defend the effective enforcement of human rights.

Terra de Direitos is a Brazilian non-profit civil association dedicated to upholding economic, social, cultural and environmental human rights, as well as safeguarding human rights defenders.

Fundación TIERRA is a Bolivian nongovernmental organization dedicated to researching and addressing agrarian, rural and environmental challenges in support of Bolivia's peasant and indigenous population.

Base Investigaciones Sociales (BASE IS) is a non-profit civil association and research center founded in June 1989, dedicated to social science research and the dissemination of knowledge about the rural reality in Paraguay, as well as capacity building for rural communities in the country.

Misereor is the German Catholic Bishops' Organization for Development Cooperation. For over 60 years, Misereor has been committed to fighting poverty in Africa, Asia and Latin America.

Introduction

This joint submission focuses on Germany's extraterritorial obligations under the International Covenant on Economic, Cultural and Social Rights, in relation to the regulation of private actors domiciled in Germany. It highlights the negative impacts on several rights that arise from toxic exposure to pesticides and genetically modified soy seeds by the agrochemical corporations, and the limited access to justice in Germany for individuals affected by these harms. Although in its last concluding observations of the sixth periodic report of Germany the CESCR recommends the adoption of a regulatory framework that ensures that all companies domiciled in Germany's jurisdiction identify, prevent and address human rights abuses in their operations inside and outside the State's party jurisdiction (recommendation 8), we have identified that this recommendation is not fulfilled by agrochemical companies domiciled in German territory such as Bayer AG, whose agroindustrial business model in South America is associated to food and water shortages and pollution, massive deforestation, biodiversity loss, negative health impacts and land conflicts with local indigenous and peasant communities. The German State should engage in a wider monitoring process of the systematic negative impacts on the rights enshrined in the ICESCR that assures that companies domiciled in its territory are following their due diligence obligations.

In this submission we will address the regulatory gaps on the downstream value chain of Germany's National Action Plan on Business and Human Rights, and the impacts these regulatory gaps have in Covenant rights and access to justice as listed:

- 1. Germany's failure to respect its extraterritorial obligations to regulate the (downstream) human rights impacts of businesses based in Germany** 1
- 2. Toxic exposure and systemic harms of agrochemical corporations** 2
- 3. Access to justice** 4

1. Germany's failure to respect its extraterritorial obligations to regulate the (downstream) human rights impacts of businesses based in Germany

ICESCR: Art 2 (1)

Concluding observations of the previous report: Recommendation No. 7

Question:

1.1 How does Germany plan to address the regulatory gap for the imposition of corporate due diligence obligations in downstream value chains?

Explanatory note:

1. Although the German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz, LkSG) has entered into force in January of 2023, it still exhibits many deficiencies, both as regards its content and its enforcement through the German supervisory authority,¹ one of which relate to the exclusion of the downstream supply chain.
2. The German legislator has not explicitly defined whether the German Supply Chain Act covers only the upstream or also the downstream supply chain of businesses' activities. However, the German supervisory authority, the Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA), seems to interpret the Act to exclude the downstream supply chain entirely. It considers that Germany merely faces (soft law) due diligence obligations with regards to the distribution, transport, storage or sale of their products and services under the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.²
3. This regulatory gap also prevents individuals affected by adverse human rights impacts of downstream business activities, of which agrochemicals are a major example, from accessing remedies under the German Act.
4. As a result, Germany is in breach of its obligation to take steps to the maximum of its available resources to progressively realise the rights recognized in the ICESCR, including its extraterritorial obligations to protect and respect the Covenant rights.³ In particular, Germany must take the appropriate legislative measures to ensure an effective protection of right holders against abuses linked to the activities of corporations domiciled in Germany, and to provide them with effective remedies.⁴

¹ For a more detailed analysis (in German – soon to be published in English), see <https://www.ecchr.eu/publikation/zwei-jahre-lieferkettengesetz-ein-erfahrungsbericht/>.

² See BAFA, FAQ on the German Supply Chain Act, 6.8., available at: <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html#doc3a956fcc-c35e-4655-a96a-6a39a1a0a2cfbodyText10>.

³ E/C.12/GC/24

⁴ See CESCR, General Comment No. 24, E/C.12/GC/24, para. 14.

5. In this sense, apart from extending the scope of application of the German Supply Chain Act, the German state should also refrain from taking any measures that might weaken or even abolish the Act in its current form⁵, as this would violate its non-regression obligation with regard to a variety of Covenant rights following from Art. 2 para. 1 ICESCR.⁶

2. Toxic exposure and systemic harms of agrochemical corporations

ICESCR: Art 2 (1) in conjunction with Art 11 and 12

Concluding observations of the previous report: Recommendation No. 7 and 8⁷

Question:

- 2.1. What are the measures that Germany is taking for controlling toxic exposure related to agrochemical companies domiciled in its territory and operating in the Latin American Southern Cone?

Explanatory note:

6. Bayer AG is a German domiciled company, and it is the most important player in the genetically modified (GM) seeds and pesticides market in the Southern Cone of Latin America.⁸ Through its Crop Science business, Bayer is engaged in the production, marketing and distribution of GM soybeans and toxic pesticides, including glyphosate (under brands such as Round Up). Indigenous, peasants' and other rural communities living in soy cultivation areas in the Southern Cone are experiencing severe adverse human rights abuses and environmental impacts as a result of the predominant agro-industrial model based on high levels of land concentration, GM soy seed cultivation and the intensive use of toxic pesticides.⁹ The

⁵ As has been agreed upon in the 2025 Coalition Agreement of the new German government, see <https://www.institut-fuer-menschenrechte.de/publikationen/detail/schutzniveau-des-lieferkettengesetzes-erhalten>, line 1909 ff.; see also recent statements by German Chancellor Friedrich Merz going even beyond the Coalition Agreement and demanding the complete abolition of the German Supply Chain Act and the European Directive (CSDDD), <https://www.tagesschau.de/wirtschaft/weltwirtschaft/lieferketten-reform-koalition-100.html>.

⁶ See German Institute for Human Rights, Statement: Maintaining the level of protection of the German Supply Chain Act – On the non-regression principle under the ICESCR (in German), <https://www.institut-fuer-menschenrechte.de/publikationen/detail/schutzniveau-des-lieferkettengesetzes-erhalten>.

⁷ E/C.12/DEU/CO/6, para. 7.

⁸ Bayer AG, "Soybeans Latin America," accessed March 27, 2024, https://www.bayer.com/sites/default/files/BayerFieldShowcase2022_Leading%20in%20LATAM%20Soybeans.pdf, 6-9; Lianos, I; Katalevsky, D, "Merger Activity in the Factors of Production Segments of the Food Value Chain: - A Critical Assessment of the Bayer/Monsanto merger," *Centre for Law, Economics and Society Policy Papers*, January 2017, https://discovery.ucl.ac.uk/id/eprint/10045082/1/Lianos_cles-policy-paper-1-2017.pdf.

⁹ European Parliament, "The use of pesticides in developing countries and their impact on health and the right to food," January 2021, <https://www.europarl.europa.eu/cmsdata/219887/Pesticides%20health%20and%20food.pdf>; Valeria Saccone, "América Latina, un continente infestado por los pesticidas," *esglobal*, January 3, 2018,

systematic and widespread nature of these impacts and abuses raise alarms over the existing monitoring mechanisms and imposition of corporate due diligence obligations by the German State, which result limited particularly in relation to corporate actors that hold a meaningful global presence in red flagged business models, such as the pesticide market, in which Bayer holds a significant oligopolist position.¹⁰ The impacts we have identified are widespread in each country and in the region as a whole. They specifically impact vulnerable communities who have limited access to justice and who are in asymmetrical positions and capacities to advocate for regulatory measures that address human rights negative impacts of this business model.

7. Bayer's activities have systematic negative impacts in the following covenant rights, that need a wider monitoring process of the German State:

7.a. Right to health (art. 12): Noncompliance with regulations on the application of pesticides in the region have aggravated severe existing problems, generating serious consequences for the health of the members of communities neighbouring soybean fields in both rural and semi-rural settings. Poisoning has also led to serious chronic illnesses that have considerably affected the physical and mental health of the inhabitants, even connected to death.¹¹

7.b. Right to food (art. 11): The indiscriminate use of glyphosate-based products is related the loss in subsistence crops and dead farm animals in communities living next to genetically modified soy seeds plantations. This practice is reducing their food sovereignty and severely limiting the availability and accessibility of food for present and future generations. On the other hand, the crops that are not destroyed by the glyphosate spraying contain pesticide residues and, as such, diminish the quality of the food available to the communities. In addition, the large increase in land dedicated to soy cultivation implies a decrease in the availability and

<https://www.esglobal.org/america-latina-continente-infestado-los-pesticidas/>; BBC, "Las empresas que ganan millones vendiendo pesticidas peligrosos al mundo en desarrollo," *BBC News Mundo*, February 20, 2020, <https://www.bbc.com/mundo/noticias-51575375>; Claudio Mazzeo, "Pesticidas prohibidos persisten en aguas, suelos y fauna sudamericana," *SciDevNet*, April 7, 2020, <https://www.scidev.net/america-latina/news/pesticidas-prohibidos-persisten-en-aguas-suelos-y-fauna-sudamericana/>; Verzeñassi, D. et al, "Cancer incidence and death rates in Argentine rural towns surrounded by pesticide-treated agricultural land," *Clinical Epidemiology and Global Health* 20, March-April 2023.

¹⁰ Top 10 agribusiness giants: Corporate concentration in food & farming in 2025.

<https://etcgroup.org/content/top-10-agribusiness-giants>

¹¹ Valeria Saccone, "América Latina, un continente infestado por los pesticidas," *esglobal*, January 3, 2018, <https://www.esglobal.org/america-latina-continente-infestado-los-pesticidas/>; BBC, "Las empresas que ganan millones vendiendo pesticidas peligrosos al mundo en desarrollo," *BBC News Mundo*, February 20, 2020, <https://www.bbc.com/mundo/noticias-51575375>; Claudio Mazzeo, "Pesticidas prohibidos persisten en aguas, suelos y fauna sudamericana," *SciDevNet*, April 7, 2020, <https://www.scidev.net/america-latina/news/pesticidas-prohibidos-persisten-en-aguas-suelos-y-fauna-sudamericana/>; Verzeñassi, D. et al, "Cancer incidence and death rates in Argentine rural towns surrounded by pesticide-treated agricultural land," *Clinical Epidemiology and Global Health* 20, March-April 2023.

quantity of food, given the reduced space available for subsistence farming. These impacts exemplified in the case studies are also confirmed by additional reports, including UN bodies.¹²

7.c Right to land as part of the right to an adequate standard of living (art. 11): The right to land must also be understood as an essential element of the right to an adequate standard of living, in particular for indigenous peoples, peasants and people working in rural areas, where land constitutes the basis of their economic livelihood, autonomy and cultural identity.¹³ The right to land is necessary for the effective realization of other recognized human rights, such as the right to food.¹⁴ In the Southern Cone, communities neighbouring soybean fields, are suffering from illegal evictions, poisoning caused by illegal fumigations, and criminalization by soybean producers.¹⁵ This situation is deeply concerning, given the vulnerability of these populations, and is exacerbated by the fact that their profound traditional and spiritual connection to their land and territory presupposes access to territories of sufficient size to feed the entire population and maintain that relationship with their land – an expression of their right to life and self-determination.

3. Access to justice

ICESCR: Article 2 (1)

Concluding observations of the previous report: Recommendation No. 7 and 8.

Questions:

- 3.1. How does Germany guarantee the access to information and justice for individuals and communities whose economic, social and cultural rights have been abused abroad by companies domiciled in its territory?
- 3.2. What are the policies and regulations that, as part of Germany's National Action Plan on Businesses and Human Rights, the German State has enacted to ensure that companies domiciled in its territory protect human rights, and detect and prevent violations against human rights defenders and local communities in the context of business operations abroad, particularly in the Southern Cone?

¹² E.g. UN Human Rights Committee, Communication No. 2751/2016, *Norma Portillo Cáceres et al v. Paraguay*; UN Special Rapporteur on Toxics, UN Doc. A/HRC/45/12/Add2, para. 24.

¹³ CESCR, General Comment No. 26 on Land and Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/26 (2022), para. 18; CESCR, General Comment No. 12 to Article 11 ICESCR, 13; Arts. 17 and 18 UNDRIP; Arts. 10, 25 ff., United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); Human Rights Council, "Right to Land under the United Nations Declaration on the Rights of Indigenous Peoples: a human rights focus," July 15 2020, UN Doc. A/HRC/45/38, para. 5 ff.

¹⁴ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12 on Art. 11 ICESCR, UN Doc. E/C.12/1999/5 (1999); Article 16 of the United Nations Declaration on the Rights of Peasants (UNDRIP).

¹⁵ Global Witness, "Comidas Contaminadas".

- 3.3. Do the offices that handle human rights complaints related with businesses activity in Germany have enough capacity for promptly responding to the number of complaints that are filed?
- 3.4. Is the German government seeking to increase the budget of these offices (see above 3.3) to allow for prompt and high-quality responses that reflect gravity of the possible human rights violations of German domiciled business?

Explanatory note:

8. The widespread and alarming underreporting of cases of intoxication and human rights violations linked to the large-scale cultivation of GM soy and glyphosate-based pesticides across the Southern Cone represent a barrier on the access to justice from communities whose rights have been impacted through toxic exposure. Right holder's communities are most of the time responsible for gathering evidence of contamination by pesticides in the search for justice, facing additional economic and social barriers. In cases of application of pesticides by drones, it is even more difficult to identify information about owner, brand, responsible for use, among other information necessary to file a complaint. Those who seek further details—such as the origin of empty canisters or the specific products being applied to nearby fields—often face direct threats, further deepening the climate of fear and opacity.¹⁶

10. Besides the structural barriers right holders need to overcome for accessing to justice, they face long procedures, hindered by the lack of adequate resources granted by the German State for its functioning.¹⁷ In the case of the complaint against Bayer filed in April 2024 to the German OECD National Contact Point by some of the co-submitting organizations of the present submission, the decision on the complaint's initial assessment has not been issued yet, despite the fact that according to its procedural guidelines, the assessment should last around three months.¹⁸ This delay was justified by the German NCP on its lack of capacity to respond to a large number of complaints. The lack of capacity hinders the access to justice of complainants, eroding their capacity to organize their participation in the proceedings, and their trust on these multilateral proceedings. The German government must ensure that the NCP is provided with the human and financial resources necessary for the fulfilment of its responsibilities, all the more so given that this office handles complaints concerning human rights enshrined under the Covenant.

¹⁶ <https://www.terradedireitos.org.br/noticias/noticias/organizacoes-denunciam-para-onu-a-dificuldade-de-acesso-a-justica-nos-casos-de-contaminacao-por-agrotoxicos/24118>

¹⁷ <https://www.misereor.de/en/presse/press-releases/oecd-complaint-against-bayer-no-decision-for-a-year-those-affected-continue-to-suffer>

¹⁸ <https://www.ecchr.eu/en/case/bayers-agricultural-business-model-in-south-america-violates-oecd-guidelines/>