



Deutsches Institut
für Menschenrechte

Submission

Rights to freedom of peaceful assembly and of association in the context of climate justice activism

Call for inputs by the Special Rapporteur on the rights to freedom of peaceful assembly and of association for his report to be presented at the 76th session of the General Assembly

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1 Climate justice activism in Germany (Question 1)

1.1 Examples of climate justice activism

Germany has a strong climate justice movement composed of diverse actors and forms of association – reaching from loose movements or alliances to registered civil society organisations (CSOs), such as Fridays-for-Future Germany¹, Ende Gelände², AusgeCO2ht³, Extinction Rebellion⁴, BUND – Bund für Umwelt und Naturschutz Deutschland e.V.⁵, Germanwatch⁶, Greenpeace Germany⁷, Naturschutzbund Deutschland e.V.⁸, Gegenstrom Berlin⁹, Robin Wood.¹⁰

Climate justice activism predominantly focuses on demanding more ambitious climate action from the Government in view of its commitments under the Paris Agreement of limiting global warming below 1.5°C/max. 2°C. The Government has been criticised for having adopted national greenhouse gas (GHG) emission reduction targets that won't suffice to achieve the goal of climate neutrality by 2050.¹¹ The demands of the climate justice movement include ending state subsidies for fossil energy sources, an immediate coal phase-out (currently planned for the year 2038), an appropriate carbon pricing/CO₂ tax on all GHG emissions, and meaningful participation in the drafting and implementation of climate policies.¹²

Germany has a strong Fridays-for-Future movement, which is organised on a grassroots level, with over 600 active local groups,¹³ and which organises demonstrations and other forms of protest activities throughout the country. The so-called “global climate strikes”, for example, took place in September 2020 and March 2021, and the number of participants regularly reached six figures before the Covid-19 pandemic.¹⁴ Since July 2020, Fridays-for-Future activists in Augsburg (Bavaria) have been hosting a climate camp, which they set up right next to the Augsburg City Council in cooperation with other climate initiatives like “Ende Gelände” (“here and no further”), “Extinction Rebellion”, “Greenpeace”, “Grüne Jugend” (“Green Youth”, youth organisation of the German Green Party “Bündnis 90/Die Grünen”).¹⁵

“Ende Gelände” – a broad alliance of people from the anti-nuclear and anti-coal movements ranging from citizens' initiatives, CSOs, left-wing political groups and other

¹ **Fridays-For-Future:** <https://fridaysforfuture.de/forderungen/> (accessed 12 May 2021).

² **Ende Gelände:** <https://www.ende-gelaende.org/en/about-us/> (accessed 12 May 2021).

³ **Ausgeco2ht:** <https://ausgeco2ht.de/ueber-uns-2/> (accessed 12 May 2021).

⁴ **Extinct Rebellion:** <https://extinctionrebellion.de/wer-wir-sind/> (accessed 12 May 2021).

⁵ **BUND:** https://www.bund.net/ueber-uns/?wc=25098&utm_term=%2Bbund%20%2Bumwelt (accessed 12 May 2021).

⁶ **Germanwatch:** <https://germanwatch.org/en/mission-statement> (accessed 26 May 2021).

⁷ **Greenpeace:** <https://www.greenpeace.de/ueber-uns/greenpeace-stellt-sich-vor> (accessed 25 May 2021).

⁸ **NABU:** <https://en.nabu.de/about/index.html> (accessed 26 May 2021).

⁹ **Gegenstrom:** <https://gegenstromberlin.org/ueber-uns/> (accessed 12 May 2021).

¹⁰ **Robinwood:** <https://www.robinwood.de/wer-wir-sind> (accessed 12 May 2021).

¹¹ **Arens, Christof / Bierwirth, Anja / Koska, Thorsten / Thema, Johannes / Wagner, Oliver** (2019): Die Debatte um den Klimaschutz. Mythen, Fakten, Argumente, p. 2, <http://library.fes.de/pdf-files/fes/15665.pdf> (accessed 19 May 2021).

¹² **Initiative Klima-Mitbestimmung-Jetzt:** <https://klima-mitbestimmung.jetzt/> (accessed 26 May 2021).

¹³ **Baron, Udo** (2020): “System Change not Climate Change”: Die Klimaschutzbewegung und der Linksextremismus, In: Die Kriminalpolizei (2020/Juni). <https://www.kriminalpolizei.de/ausgaben/2020/juni/detailansicht-juni/artikel/system-change-not-climate-change> (accessed 25 May 2021).

¹⁴ **Tagesschau** (25 Sep. 2020): “Fridays for Future“-Demos auf der Straße. <https://www.tagesschau.de/inland/klimademos-start-101.html> (accessed 27 May 2021); according to Fridays-for-Future Germany, 1.4 million people took part in the demonstration in September 2019.

¹⁵ **Climatecamp Augsburg Information-Website:** <https://augsburg.klimacamp.eu/> (accessed 19 May 2021).

groupings – have played a significant role in the context of protests against lignite mining. The alliance has, amongst other activities, been occupying the Hambach Forest (Hambacher Forst) in North Rhine-Westphalia since 2014 to prevent deforestation for the opencast lignite mine Hambach. Tree occupations, barricades, protest camps and house squatting are key means used for the protest concerning the Hambach Forest.¹⁶ “Ende Gelände” describes itself as an anti-capitalist movement and mainly uses civil disobedience actions in form of blocking the coal and gas industry.¹⁷

Since 2015, “Ende Gelände” has organised one or two large-scale protest actions in German lignite mining areas each year. For example, in November 2019, the alliance carried out a “mass action of civil disobedience” in the Lusatian lignite mining area in Brandenburg and Saxony in the form of blockades and occupations. Since the beginning of 2020, “Ende Gelände” has been focusing on resistance against the commissioning of the “Datteln IV” hard coal-fired power plant close to Dortmund (North Rhine-Westphalia).¹⁸

Furthermore, in order to prevent the coal and gas industry from expanding and building new constructions, “Ende Gelände” activists and other associations perform occupations of their infrastructure like in March 2021 in “Industriepark Brunsbüttel” (“industrial park”) in Schleswig-Holstein.¹⁹

1.2 Role and impact of the rights to freedom of peaceful assembly and of association

In order to make their demands heard and achieve their goals, climate justice activists use peaceful assembly as their main tool. Assemblies are held in form of demonstrations, non-violent protest actions, climate camps, and civil disobedience, also in form of “mass actions of civil disobedience” where coal and gas infrastructure are blocked. Accordingly, the right to freedom of assembly enables climate activists to contribute to the formation of public opinion and has been invoked vis-à-vis restrictions imposed by state authorities. Digital activism is used in form of protest emails and the organisation of online petitions. Additionally, climate activists and movements like Fridays-for-Future have used strategic climate litigation to achieve their goals and, thus, contributed to a recent landmark decision of the Federal Constitutional Court (see below).

1.3 Impact and successfully used tools over the last 5 years

Climate activism in Germany has played a significant part in moving the topic of climate change high up the political agenda and into the public debate. This has put pressure on the Government to act – in 2019 the Federal Climate Change Act (Bundes-Klimaschutzgesetz)²⁰ was adopted, and in 2020 the Coal Phase-out Act (Kohleausstiegsgesetz).²¹ Both Acts, however, have been heavily criticised by climate

¹⁶ Schink, Alexander (2019): Hambi bleibt? In: Natur und Recht 2019 (41), pp. 77-82 (77).

¹⁷ Ende Gelände: <https://www.ende-gelaende.org/en/about-us/> (accessed 27 May 2021); Spiegel Online (22 May 2020): Linksextremismus: “Ende Gelände” wehrt sich gegen Vorwürfe des Verfassungsschutzes. <https://www.spiegel.de/panorama/verfassungsschutz-vorwuerfe-gegen-ende-gelaende-sind-teile-der-bewegung-linksextrem-a-7c5ad2d7-7c3e-4b1a-8a17-adf940c1f6d3> (accessed 27 May 2021).

¹⁸ Baron (2020), op. cit.

¹⁹ Ende Gelände: <https://www.ende-gelaende.org/news/pressemitteilung-vom-22-03-2021/> (accessed 17 May 2021).

²⁰ Translation available under http://www.gesetze-im-internet.de/englisch_ksg/index.html (accessed 28 May 2021).

²¹ <https://www.gesetze-im-internet.de/kohleausg/Kohleausstiegsgesetz.pdf> (accessed 27 May 2021).

activists for being insufficient for meeting Germany's commitments under the Paris Agreement.

Most recently, the climate justice movement has been credited with the great success of the decision²² of the Federal Constitutional Court from 24 March 2021 regarding several constitutional complaints against the Federal Climate Change Act (2019). Among the complainants²³ were Fridays-for-Future activists.²⁴ The Court found that the rights of the younger generation in Germany are at risk because the Federal Climate Change Act does not establish any concrete rules for climate protection beyond the year 2030. The Court ordered the German lawmakers to set GHG emission reduction targets for the period after 2030 by the end of 2022. The German Government reacted swiftly and tabled a draft law to revise the Federal Climate Change Act, which includes new reduction targets for the years 2030, 2040 and 2045. The law is expected to be passed by German Parliament before the Federal Elections in September 2021.

2 Challenges and threats for climate justice activism in Germany (Question 2)

2.1 The challenge and threat of stigmatisation as extremism

One challenge climate activists, movements and associations are facing is being associated with "extremism". Since 2016, the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz), i.e. the domestic intelligence agency, declared "Ende Gelände" to be an association influenced by the "Interventionistische Linke";²⁵ the Office classifies the latter as an autonomous group that serves as an interface between militant groups, non-violent left-wing extremists and non-extremist groups.²⁶ According to the Federal Office for the Protection of the Constitution, the Hambach Forest, where "Ende Gelände" has been active, has become a focal point of left-wing extremist criminal offences. The Federal Office states that groups active in the Hambach Forest involve civil society activists, militant environmental activists and violence-oriented left-wing extremists, and that the violent fraction of the activists determines their character.²⁷ State authorities, like the President of the Berlin Office for the Protection of the (Berlin) Constitution, consider that associations like "Ende Gelände" are not primarily concerned with the climate but rather – under that disguise – serve anti-fascist and anti-capitalist efforts. In his view, this assessment can be drawn from one of their mottos "System Change not Climate

²² **Federal Constitutional Court** (29 Apr. 2021): Press Release. Constitutional complaints against the Federal Climate Change Act partially successful. https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html;jsessionid=3FA8B69EC87EB34D4F78B15959D97623.1_cid386; Entire decision https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/DE/2021/03/rs20210324_1bvr265618.pdf;jsessionid=74CD9550979DECBF40CDE9EDB9C62EF0.2_cid377?__blob=publicationFile&v=2 (accessed 19 May 2021).

²³ **Federal Constitutional Court** (2021): Göppel et al. v. Germany, 1 BvR 2656/18; Yi Yi Prue et al. v. Germany, 1 BvR 78/20; Steinmetz et al. v. Germany, 1 BvR 96/20; Neubauer et al. v. Germany, 1 BvR 288/20.

²⁴ For a more detailed summary of the applications and decision of the Federal Constitutional Court please see **European Network of National Human Rights Institutions (ENNHRI)** (2021): Climate Change and Human Rights in the European Context, p. 51 et. seq. http://ennhri.org/wp-content/uploads/2021/05/ENNHRI-Paper-Climate-Change-and-Human-Rights-in-the-European-Context_06.05.2020.pdf (accessed 19 May 2021).

²⁵ **Federal Ministry of the Interior, Building and Community** (2019): Verfassungsschutzbericht 2019, p. 142. https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/sicherheit/vsb-2019-gesamt.pdf?__blob=publicationFile&v=10 (accessed 25 May 2021).

²⁶ *Idib.*, p. 152.

²⁷ **Federal Office for the Protection of the Constitution** (2020): Analyse - Radikalisierung im gewaltorientierten Linksextremismus, Stand 22.07.2020, p. 13. https://www.innenministerkonferenz.de/IMK/DE/termine/to-beschluesse/2020-06-17_19/analyse.pdf?__blob=publicationFile&v=2 (accessed 18 May 2021).

Change”.²⁸ According to an article by a member of the Federal Police, the security authorities in North Rhine-Westphalia assumed that the “Interventionistische Linke” and “Ende Gelände” have the same influence on the German Fridays-for-Future movement.²⁹ A commentator who serves at the Lower Saxony Office for the Protection of the (Lower Saxonian) Constitution states that the “Interventionistische Linke” has offered its support to the Fridays-for-Future movement in organising and carrying out the climate protests. According to the article, the “Interventionistische Linke” has also acted as co-organiser and registrant of demonstrations together with a regional Fridays-for-Future group.³⁰ A spokesperson of the Fridays-for-Future movement emphasised, however, that Fridays-for-Future “won't allow [themselves] to be taken over”.³¹

The classification as “extremist” can not only lead to societal stigmatisation, but also to legal and financial disadvantages, such as when an association loses its “non-profit” status. The latter happened to the “Association of Persecutees of the Nazi Regime – Federation of Antifascists” in 2019 after the Bavarian Office for the Protection of the (Bavarian) Constitution had found the association to be “influenced by left-wing extremism”.³² (For more details on the consequences of losing the “non-profit” status, please refer to the answer provided under question 5).

The Federal Office for the Protection of the Constitution is tasked with identifying and assessing threats from political extremism, terrorism and espionage activities.³³ Similar rules exist on the level of the states of the federation (Länder). Climate activists who are associated with extremists potentially run the risk to be monitored by state authorities. In the context of climate activism, the Conference of Interior Ministers has expressed the need for the Federal Office for the Protection of the Constitution to improve its ability to analyse and forecast (medium- and long-term) extremist endeavours and their effects on politics and society in the sense of an “early warning system” in addition to identifying violent and terrorist activities. Therefore, the Conference of Interior Ministers initiated measures to strengthen scientific-analytical capabilities and to present a concept for an analysis and forecast, with the participation of the scientific community, of the connectivity of (right-wing and) left-wing extremist positions to democratic sectors of society.³⁴

The Conference of Interior Ministers explains the need for this “early warning system” as follows: By increasingly influencing democratic areas of society the left-wing (and right-wing) extremists undermine trust in state action and thus weaken society's demarcation against extremist positions. The Ministers view the confrontations around

²⁸ **Gutmann, Andreas** (2021): Ende Gelände für Systemkritik? Der Verfassungsschutz nimmt die Klimabewegung ins Visier. In: *Kritische Justiz* 2021 (54), pp. 82-84 (82-83).

²⁹ **Goertz, Stefan** (2019): Der Hype um Greta und der Klimaschutz. Linksextremisten wollen profitieren. In: *Deutsche Polizei* 2019, pp. 30 -32 (30). [https://www.gdp.de/gdp/gdp.nsf/id/dp201910/\\$file/DP_2019_10.pdf](https://www.gdp.de/gdp/gdp.nsf/id/dp201910/$file/DP_2019_10.pdf) (accessed 18 May 2021).

³⁰ **Baron**, (2020), op. cit.

³¹ *Ibid.*

³² **Austermann, Nele / Fischer-Lescano, Andreas / Gelhaar, Julia / Vetter, Tore** (2020): Rechte Ab-Gründe. In: *Kritische Justiz* 2020 (53), pp. 115-134 (116).

³³ **Federal Ministry of the Interior, Building and Community** (2019), op. cit., pp. 15-16. The Federal Office for the Protection of the Constitution has the competence to act when, inter alia, “activities are directed against the free democratic basic order” (Section 3 of the Federal Act on the Protection of the Constitution, *Bundesverfassungsschutzgesetz*).

³⁴ **Standing Conference of Interior Ministers and Senators of the States (IMK)** (2018): Sammlung der zur Veröffentlichung freigegebenen Beschlüsse der 209. Sitzung vom 28. bis 30. November 2018 in Magdeburg, pp. 53-54 https://www.innenministerkonferenz.de/IMK/DE/termine/to-beschluesse/20181128_30/beschluesse.pdf?__blob=publicationFile&v=2 (accessed 18 May 2021).

the Hambach Forest as examples of the left-wing extremist side, in which an anarchist-influenced squatter scene succeeded in closing ranks with the democratic ecological protest. They consider that the – sometimes openly propagated – extremist goals of the squatter scene were pushed into the background in the public perception. In addition to the threat of violent extremism and terrorism, the Conference of Interior Ministers opine that this development poses the danger that extremist positions will lose their stigma, the liberal constitutional state will be delegitimised, and the pluralistic society will be destabilised, which they want to counteract.³⁵

Scholars have argued that the Offices for the Protection of the Constitution refer to a loosely defined notion of “extremism” which goes beyond their mandate to protect the so-called “free democratic order” (freiheitliche demokratische Grundordnung) and, thus, stigmatise radical political opinions even if its proponents act non-violently.³⁶

2.2 Restriction through legal framework governing assemblies

The legal framework governing assembly is the German Federal Assembly Act. Since 2006 each federal state (Bundesland) is also allowed to pass its own assembly law, which is then applicable instead.³⁷ Seven out of the 16 states have enacted assembly laws. The different regulations create legal uncertainty with respect to participation in assemblies that take place in more than one state or for participants that have to travel through several states.

Generally, in German assembly law a distinction is made between public indoor assemblies and public outdoor assemblies. The law provides legal bases for restrictions and foresees that public outdoor assemblies have to be registered 48 hours before they are held. An exception applies to so-called spontaneous assemblies, which do not need to be registered in advance. The assembly may be prohibited or – as an ultima ratio – dispersed if there is a direct danger for public safety or public order. This is the case when assemblies are not peaceful, and criminal offenses take place. It leads to the challenge that civil disobedience, i.e. the deliberate violation of law for a vital social purpose, can render an assembly not to be protected by law. This happened repeatedly to the climate activist actions in the Hambach Forest resulting in removal orders regarding the activists’ treehouses.³⁸

2.3 The challenge of uncertain legal reasoning concerning climate protest camps

One challenge for climate activists is the legal uncertainty concerning protest camps and whether they are generally protected by the right to freedom of assembly and fall under the assembly law. The case law of the German Federal Constitutional Court does not clarify to what extent and under what conditions the right to freedom of assembly protects the construction of infrastructure facilities, including the long-term use of public facilities. Furthermore, in the case of protest camps planned for a certain

³⁵ Ibid.

³⁶ Gutmann, (2021), op. cit., p. 83.

³⁷ The following federal states have passed their own assembly law: Bavaria (2008), Berlin (2013, 2021), Lower Saxony (2011), Saxony (2012), Saxony-Anhalt (2009), Schleswig-Holstein (2015). North Rhine-Westphalia is currently in the process of enacting its assembly law. The draft of the North Rhine-Westphalia Assembly Act is controversial (please refer to the answer provided under question no. 4).

³⁸ Administrative Court Aachen (2021): Judgement of 16.04.2021, 5 K 3922/18, BeckRS 2021, 7654; Administrative Court Aachen (2019): Order of 21.08.2019, 5 L 1783/18, BeckRS 2019, 21130.

duration, it is not clear whether and to what extent the authorities may lawfully impose restrictions in terms of duration and intensity.³⁹

In 2017, the Administrative Court Aachen (North Rhine-Westphalia) and the Federal Administrative Court differentiated between places where a common opinion is expressed, and areas used exclusively for overnight accommodation and/or sanitary facilities. They ruled that if these can be distinguished from each other, the latter are only considered as “preliminary/preparatory measures”; however, they fall in the “pre-field” (Vorfeld) of the freedom of assembly and are therefore protected by that right.⁴⁰

When a protest camp predominantly aims at forming public opinion, it falls under the full protection of the freedom of assembly. This was clarified by the Administrative Court Augsburg (Bavaria) in 2020 concerning the climate camp in question (as outlined under question 1).⁴¹ The Court held that the activists were drawing the public’s attention to current climate policy through their permanent presence at the venue and displaying banners on the topic of “climate justice”. In addition, activities such as chants and speeches, public surveys and lectures on the assembly topic took place. Thus, the Court was convinced that it was irrelevant that additional actions and workshops were offered, which were not directly related to the assembly theme of “climate justice”. According to the Court, the permanent camping on public ground also falls under the protection of the right to freedom of assembly, in particular, as there is no time limit for an assembly.⁴² Consequently, the protection of the camp through the freedom of assembly must not be undermined by the application of the street and road laws.

In 2021, the Higher Administrative Court Bremen argued in line with the Augsburg Court, but emphasised that a protest camp with extensive infrastructure facilities set up in public areas for a long period of time significantly impairs the public. Therefore, the longer such impairments last and the more intensive they are, the more weight has to be given to the need for regulations under roads and street law. Thus, when a certain level of duration and intensity of a special use of public spaces is reached, organisers must obtain a special use permit under roads and street law, as the public interests protected by the roads and street law are not outweighed by the right to freedom of assembly anymore.⁴³

2.4 Most common restrictions including operation and access to funding

(Please also refer to the answer under question no. 5.)

In January 2019, the German Federal Tax Court provided a restrictive interpretation of the statutory criteria for civil society organisations (CSOs) to benefit from tax privileges

³⁹ **Federal Constitutional Court** (2020): Order of 30.8.2020, 1 BvQ 94/20. In: Neue Zeitschrift für Verwaltungsrecht 2020, pp. 1508-1512; **Federal Constitutional Court** (28.07.2017): Press Release concerning the order of 28.06.2017 - 1 BvR 1387/17. https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2017/byg17-051.html;jsessionid=40639C9372D919481F263C73E13D2E4C.2_cid386 (accessed 19 May 2021).

⁴⁰ **Administrative Court Aachen** (2018): Judgment of 04.07.2018, 6 K 1117/18, BeckRS 2018, 15433; **Federal Administrative Court** (2017): Judgment of 25.10.2017, 6 C 46/16, in: Neue Juristische Wochenschrift 2018, pp. 716-723.

⁴¹ **Administrative Court Augsburg** (2020): Judgement of 06.11.2020, 8 K 1179/20.

⁴² **Administrative Court Augsburg** (10.11.2020): Press Release. https://www.vgh.bayern.de/media/vgaugsburg/presse/pm_2020-11-10_klimacamp_november2020.pdf (accessed 19 May 2021).

⁴³ **Higher Administrative Court Bremen** (2021): Order of 04.05.2021, 1 B 215/21.

(as non-profit associations benefitting to the public) with the effect of narrowing the enabling environment of certain civil society activities. Through this restrictive interpretation by the Court, in Germany CSOs registered as non-profit associations benefitting to the public can only engage in activities aimed at influencing public opinion, public policy and political decision-making if this activity is related to one of the privileging grounds enumerated in the Fiscal Code and if this ground is mentioned in the statutes of the CSOs. As a consequence, e.g. a sports club posting statements or calls for participation in a rally against racism and discrimination could risk losing its privileged status.⁴⁴ Furthermore, these “political activities” can only be accessory activities to the overall activities of the association in its respective field.

The status as non-profit association benefitting to the public also functions as a guarantor of perceived trustworthiness and provides tax benefits to donors (refer to question 5). In many cases it is also an eligible criterion for gaining access to both public and private funding, and to access to municipal infrastructure, such as sports facilities.

In late 2018/early 2019 the CSO Environmental Action Germany (Deutsche Umwelthilfe e.V. - DUH) came under attack by the Christian Democratic Union (CDU), the largest party forming the federal (coalition) government, because of its activities, in particular its legal actions against various cities for failing to implement clean air policies (the DUH has the legal right to initiate actions without being affected themselves, i.e. group claims).⁴⁵ The court cases included requests for coercive detention of responsible (top) politicians for failure to comply with court decisions requiring federal states to continue their clean air action plans.⁴⁶ In December 2018 the CDU at its party congress accepted three motions requesting an inquiry into DUH's status as a non-profit association benefitting to the public, requesting that a withdrawal of the right to initiate group claims be examined, and requesting that public funding for DUH be withdrawn.⁴⁷ While these motions did not result in concrete governmental action against DUH, they create chilling effects for civil society if a particular CSO is singled out in such a way for exercising its legal rights.

3 Challenges and threats for particular groups in Germany (Question 3)

Challenges and barriers for children and young people

As outlined under question 1, Germany has a strong Fridays-for-Future movement. It mainly consists of children and young people (pupils and students), who – before the Covid-19 pandemic – frequently raised their demands during regular protests taking place on Fridays, which is a regular school day in Germany. Many politicians and members of the federal and of state Governments as well as several school

⁴⁴ This puts associations in a vulnerable position as explained by the **UN Special Rapporteur on the rights to freedom of peaceful assembly and of association**, UN Doc. A/70/266, para. 83.

⁴⁵ **Deutsche Welle** (08.11.2018): Bonn, Cologne ordered to ban older diesel vehicles. <https://www.dw.com/en/bonn-cologne-ordered-to-ban-older-diesel-vehicles/a-46212672> (accessed 26 May 2021).

⁴⁶ **Deutsche Welle** (03.09.2019): EU court considers jail time for German politicians over dirty air. <https://www.dw.com/en/eu-court-considers-jail-time-for-german-politicians-over-dirty-air/a-50271112> (accessed 28 May 2021).

⁴⁷ **Allianz Rechtssicherheit für politische Willensbildung** (“Alliance Legal certainty for political decision-making”). <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/attacken-auf-umwelthilfe-gehen-weiter/#more-1476> (accessed 26 May 2021).

authorities and schools, have reacted to the young activists' absence from school with threats of serious sanctions for violating compulsory school attendance. In doing so, they failed to recognise that the rights of children to freedom of opinion and freedom of assembly guaranteed in the UN-CRC, – as two individual rights that are key enablers of social participation – rank as constitutional rights in Germany.

When it comes to peaceful assembly and association rights for climate defenders, children and young people lack an enabling environment to exercise these rights. The right to be heard (Article 12, UN-CRC) is not yet comprehensively understood in Germany in the sense of the UN-CRC, which contains children's right to be heard and to have their views considered. This right should be understood broadly and is by no means restricted to specific procedural situations or individual cases. Rather, it is the foundation for a universal right of children to participate in the political and social life of their communities and of society at large. The engagement of children who actively defend their human rights is a special form of social participation.

In Germany, political engagement of children and young people is still often dismissed as civil disobedience, or it is assumed that the engaged children have been politically instrumentalised.⁴⁸ When dealing with the political engagement of children, classic patterns of discrimination become apparent: children are not taken seriously in their commitment; they lack a safe environment for their engagement; they do not necessarily know all their rights; and they do not have the necessary time or financial resources for proper engagement.⁴⁹ The lack of trust in the maturity of children can also be observed in the current debate on including children's rights into the German Basic Law (the German constitution) - children are often not perceived as the holders of their own rights.⁵⁰

Self-organisations of children and young people can significantly contribute to ensuring that the concerns of children, as independent rights holders, are more strongly recognised. Thus, children's participation in society requires an environment that is conducive to all forms of self-organisation.⁵¹ In Germany, for example, this would have to include providing safe spaces at demonstrations where children are present.⁵²

According to German law, every assembly must have an organising head. The age of majority is not a prerequisite for this, but rather the capacity to act in a legal sense. This is measured according to the individual case and personal maturity.⁵³ However, what violates Article 15 of the UN-CRC is that stewards for maintaining order

⁴⁸ **Gerbig, Stephan** (2021): Kinder als Menschenrechtsverteidiger:innen - Anforderungen an ein förderliches Umfeld für das Engagement von Kindern. In: MenschenRechtsMagazin 2021 (1), pp. 68-79 (71).

⁴⁹ See **Lundy, Laura / Templeton, Michelle** (2018): Children Human Rights Defenders: The Views, Perspectives and Recommendations of Children Across the World, 2018, p. 9. https://www.childrightsconnect.org/wp-content/uploads/2018/09/DGD-REPORT_WEB_en_def_web.pdf (accessed 18 May 2021).

⁵⁰ **National CRC Monitoring Mechanism** (2021): FACTSHEET - Children's Rights into the Basic Law. https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Fact_Sheet/Factsheet_Childrens_Rights_into_the_Basic_Law.pdf (accessed 26 May 2021); **National CRC Monitoring Mechanism** (2019): Parallel Report to the Committee on the Rights of the Child on the Combined 5th and 6th Periodic Reports of the Federal Republic of Germany, Chapter 4.5. https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/BERICHT/Parallel_Report_CRC_October_2019.pdf (accessed 26 May 2021).

⁵¹ **National CRC Monitoring Mechanism** (2019), op. cit.

⁵² **Gerbig** (2021), op. cit., p.72.

⁵³ **Dietel, Alfred** (2011): § 7 VersG. In: Dietel, Alfred / Gintzel, Kurt / Kniesel, Michael (eds.): *Versammlungsgesetze. Kommentar.*, 2011. Köln: Carl Heymanns, § 7 VersG, para. 9.

(Ordner_innen) must be of age. This should at least not be the case if the demonstration was initiated by children and young people, as this would create an asymmetry of power.⁵⁴ Finally, access to information and remedies is often not given to children. Complaint bodies for children and young people are not widely available and easily accessible at the national level. Domestic courts and the complaints mechanisms at European or international level (OPIC) are only accessible to children with high barriers and professional support. Overall, there is also too little human rights education at all levels (school, university, training as well as further education), which forms a further impediment for children and young people exercising their right to peaceful assembly effectively.

4 Specific examples of rights violations in Germany (Question 4)

4.1 Laws that restrict peaceful assembly and association rights

As stated under question 2 the right to freedom of assembly can be restricted by the law, i.e. responsible authorities may impose conditions where and when they serve a legitimate aim, are necessary and appropriate. Accordingly, it is common to impose conditions on assemblies for the benefit of the activists' and/or public health and safety and other public interests. In a case concerning a climate camp, restrictions were imposed in order to meet the requirements of fire protection law as well as roads and street law.⁵⁵

However, it has been disputed whether this has always been the main goal of the authorities when enforcing these laws in the context of climate protests. In a particular case of an eviction in the Hambach Forest, the regulatory authorities declared the tree houses built by activists to be physical structures under German building law. The responsible authorities shut down the huts due to fire protection deficiencies referring to building law provisions. Even media outlets that are generally perceived as politically conservative described this procedure as being a "legal trick" in order to get rid of the activists.⁵⁶ The courts have ruled in this and similar cases, that the eviction order was lawful. In particular, the right of assembly could not block the order under building law, since the gatherings in question were qualified as violent/not peaceful and thus not falling under the protection of the right to assembly.⁵⁷

As response to the Covid-19 pandemic, the right to freedom of assembly is restricted by infection control regulations.⁵⁸ These include wearing of masks, maintaining distance and adhering to requirements concerning contact tracking, i.e. the organisers of an assembly need to ensure that contacts can be tracked back in case of an infection with Covid-19 by participants of the assembly. In order to comply with these requirements, "Ende Gelände" submitted a concept for an anonymised contact

⁵⁴ Gerbig (2021), op. cit., p. 74-75; Gerbig, Stephan (2019): Thank you, Greta & friends! Procedural aspects on the climate crisis-related communication to the UN Committee on the Rights of the Child. <https://voelkerrechtsblog.org/de/thank-you-greta-friends/> (accessed 26 May 2021).

⁵⁵ Higher Administrative Court Saarland (2021): Order of 26.03.2021, 2 B 84/21.

⁵⁶ Welt (13.09.2018): Als die Staatsgewalt über den Hambacher Forst kam. <https://www.welt.de/politik/article181523268/Raeumung-Als-die-Staatsgewalt-ueber-den-Hambacher-Forst-kam.html> (accessed 18 May 2021).

⁵⁷ Higher Administrative Court Münster (2018): Order of 14.09.2018, 7 B 1354/18, BeckRS 2018, 22108; Administrative Court Aachen (2021): Judgment of 16.4.2021, 5 K 3922/18, BeckRS 2021, 7654; Administrative Court Aachen (2019): Order of 21.8.2019, 5 L 1783/18, BeckRS 2019, 21130.

⁵⁸ Higher Administrative Court Saarland (2021): Order of 26.03.2021, 2 B 84/21.

tracking system for one of their planned climate camps in September 2020. A legal dispute ensued,⁵⁹ and the competent court ruled against the climate activists, as it found it necessary for them to record the names and addresses of camp participants instead of anonymous tracking.⁶⁰

North Rhine-Westphalia is currently in the process of enacting its assembly law, which is controversial. The proposed law provides for restrictions that appear to be intended to limit climate activism. While it has to be noted that the law itself might not be unconstitutional, the explanatory memorandum reveals problematic considerations.

Critics⁶¹ have particularly raised concerns that the explanatory memorandum of the draft legislation explicitly refers to events that have occurred in the context of climate justice activism:

Firstly, the draft law introduces strict restrictions of demonstration sites. The explanatory memorandum states that “places of assembly with an inherent significant hazard potential, such as mine perimeter roads, may be inadmissible, as for example the ‘Garzweiler II’ open pit mine”.⁶² This is a place where climate protests repeatedly took place in the past.

Secondly, the explanatory memorandum states that the legislator aims to “strengthen the principle of peacefulness of assemblies” and clarifies that a public call to commit the criminal offenses of trespass or breach of peace as expression of civil disobedience “for example against the regulations on energy policy and their implementation in the areas of lignite mining and power plants” renders the assembly to be unpeaceful warranting restrictions or even the prohibition of the protest.⁶³ According to the counter-initiative “NRW Versammlungsgesetz stoppen”, comparing civil disobedience with criminal offenses seems to be tailor-made for associations like “Ende Gelände” that use blockades as one of their main strategies to engage in climate justice activism.⁶⁴

Thirdly, the draft law broadens the scope of the existent general prohibition of militantly aggressive appearance during protests. The prohibition is extended to a

⁵⁹ **Higher Administrative Court Münster** (2020): Order of 23.09.2020, 13 B 1422/20, Neue Zeitschrift für Verwaltungsrecht Rechtsprechungs-Report 2021, pp. 162-166.

⁶⁰ The responsible health department did not agree with the submitted contact tracing method of the activists, who had devised the system themselves. The court decided that the proposed system did not meet the required rapid traceability of contacts, and that the contact details of the participants had to be deposited. The police announced that they would disperse the event if the contact details of the participants would not be available by a certain date. In the end, the activists complied with the order. See **Neues Deutschland** (25.09.2020): Weder von Corona noch von der Polizei zu bremsen. <https://www.neues-deutschland.de/artikel/1142293.ende-gelaende-weder-von-corona-noch-von-der-polizei-zu-bremsen.html> (accessed 18 May 2021).

⁶¹ The proposed law has been criticised by the counter-initiative “NRW Versammlungsgesetz stoppen” (“stop NRW assembly law”), an alliance of left-wing associations, such as “Ausgecoh2lt”, “Interventionistische Linke Düsseldorf/Cologne”, “Naturfreundejugend NRW”, “BUNDjugend NRW”, see <https://www.nrw-versammlungsgesetz-stoppen.de/2021/04/21/aktiv-gegen-die-klimagerechtigkeitsbewegung-das-neue-versammlungsgesetz-in-nrw/#more-227> (accessed 20 May 2021); as well as by the Green Party (“Bündnis 90/Die Grünen”), one of the parliamentary groups of the political opposition in the state parliament of NRW (“Landesparlament”), see <https://gruene-fraktion-nrw.de/presse/schaeffer-versammlungsrecht-muss-die-versammlungsfreiheit-staerken/> (accessed 20 May 2021).

⁶² **State Parliament of North Rhine-Westphalia** (2021): Parliamentary Paper 17/12423, p. 68. <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD17-12423.pdf> (accessed 25 May 2021).

⁶³ **State Parliament of North Rhine-Westphalia** (2021): Parliamentary Paper 17/12423, p. 55. <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD17-12423.pdf> (accessed 25 May 2021).

⁶⁴ **Initiative “NRW Versammlungsgesetz stoppen”**: <https://www.nrw-versammlungsgesetz-stoppen.de/2021/04/21/aktiv-gegen-die-klimagerechtigkeitsbewegung-das-neue-versammlungsgesetz-in-nrw/#more-227> (accessed 25 May 2021).

similar appearance of the participants of the protest, which conveys a willingness to use violence and therefore has an intimidating effect on external observers. Here the explanatory memorandum refers to “clothing of the same kind, including overalls of the same colour (as at the Garzweiler demonstrations in the summer of 2019)”.⁶⁵ These Garzweiler demonstrations were held by “Ende Gelände” activists wearing white overalls. Critics have pointed out that the explanatory memorandum draws dubious comparisons between protests of today’s climate activists and marches by national socialist groups like SS during the Weimar Republic.⁶⁶

4.2 Violent repression and criminalisation of climate peaceful protests

In general, the right to freedom of assembly is guaranteed in Germany; there are no known cases of violent repression or systematic criminalisation of climate activists. However, there are individual cases where climate activists face hardship due to their activism.

The activists have developed the so-called “no-ID” strategy to counter the intimidation companies exercised on activists by conducting civil lawsuits with enormously high claims against them.⁶⁷ The particular challenge for climate activists which then ensued is the fact that there is no legal certainty to how they will be treated by the public authorities. In some cases, activists who did not identify themselves (“no-ID”) were held in custody in the past.

In North Rhine-Westphalia, police is allowed to hold people in custody for up to seven days if they refuse to identify themselves. Since 2019, when this law was enacted, four climate activists have been affected by this law.⁶⁸ The problematic situation around the “no-ID” strategy can be shown in another case concerning three activists who were sentenced to two months imprisonment without parole, because of unlawful entering of a mining site. After they had given their identification in the appeal proceedings, the proceedings were discontinued.⁶⁹

Another example of legal uncertainty follows from the following case: In October 2020 activists abseiled from freeway bridges to demand the preservation of the Dannenröder Forest (Hesse) and the deconstruction of the A3/A5/A661 freeways, which led to the closing off of the freeway for several hours by the police. While Gießen prosecution did not see a violation of the criminal code by the activists,⁷⁰ the Frankfurt am Main prosecution charged them with coercion.⁷¹ Of particular note is also that the District Court of Wiesbaden approached the no-ID strategy by offering the defendants to provide their counsel with powers of summons and service (instead of identifying themselves). The District Court of Frankfurt am Main did not follow this

⁶⁵ **State Parliament of North Rhine-Westphalia** (2021): Parliamentary Paper 17/12423, p. 77. <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD17-12423.pdf> (accessed 25 May 2021).

⁶⁶ **Green Party (“Bündnis 90/Die Grünen”)**: <https://gruene-fraktion-nrw.de/presse/schaeffer-versammlungsrecht-muss-die-versammlungsfreiheit-staerken/> (accessed 25 May 2021).

⁶⁷ **Verleih, Waltraut / Theune, Lukas** (2021): Landgericht Frankfurt am Main: Untersuchungshaft wegen Autobahnblockade. In: *Kritische Justiz* 2021 (54), pp. 94-98 (95).

⁶⁸ **Netzpolitik.org** (13.12.2019): Klima-Aktivistinnen präventiv eingesperrt. <https://netzpolitik.org/2019/vier-klima-aktivistinnen-praeventiv-eingesperrt/> (accessed 20 May 2021).

⁶⁹ **Leipziger Zeitung** (06.05.2021): Zwei Jahre nach Baggerbesetzung: Landgericht Cottbus stellt Verfahren gegen Klimaaktivist/-innen ein. <https://www.l-iz.de/politik/region/2021/05/zwei-jahre-nach-baggerbesetzung-landgericht-cottbus-stellt-verfahren-gegen-klimaaktivist-innen-ein-388815> (accessed 17 May 2021).

⁷⁰ **Gießener Anzeiger** (20.10.2020): Autobahn-Blockade bei Reiskirchen war keine Straftat. https://www.giessener-anzeiger.de/lokales/kreis-giessen/landkreis/autobahn-blockade-bei-reiskirchen-war-keine-straftat_22451204 (accessed 20 May 2021).

⁷¹ **Verleih / Theune** (2021), op. cit., pp. 94-95.

approach, but instead ordered remand detention, inter alia on the grounds of risk of flight.⁷²

Additionally, these climate activists faced repression while being in remand detention. A remand detention facility prohibited the imprisoned activists to receive funds from the “Rote Hilfe” (“red help”). The “Rote Hilfe” is an association for the support of left-wing activists who have come into conflict with the law during their political activity. It is listed as a left-wing extremist group by the Federal Office for the Protection of the Constitution. Even after the lawfulness of the receipt was judicially confirmed, the remand detention facility refused to pay out the received money to the detainees.⁷³ The same detainees were woken up every other hour each night – allegedly – to protect them from suicide, which made it impossible for them to sleep more than one and a half hours in a row.⁷⁴

4.3 Killings, harassment, and intimidation against climate defenders, affected communities and climate protest leaders

In Germany, there are no systematic killings, harassment or intimidation against climate defenders taking place, neither by state nor non-state actors. However, there are cases where climate activists have faced online intimidation as well as harassment and physical attacks. In July 2020 in Halle (Saxony-Anhalt) Fridays-for-Future activists have been assaulted during a demonstration. A Fridays-for-Future activist explained that a man – assumably (based on his appearance) a right-wing extremist – punched a demonstrator in the neck, the perpetrator escaped and allegedly the police did not interfere.⁷⁵

4.4 Role of companies, particularly the fossil fuel industry

While there are no known systematic threats from companies, there are conflicts between activists and companies or third parties linked to the companies. In October 2018, for example, there was a beating between security guards of the RWE (Rheinisch-Westfälisches Elektrizitätswerk AG – Rhine-Westphalian electricity company) and climate activists. RWE is the company that owns the Hambach Forest. Police investigated the individuals involved and RWE distanced itself from the incidents, claiming the security guards were hired through a third-party security company.⁷⁶ Also in October 2018, RWE refused to make areas of the Hambach Forest available for a registered large-scale demonstration (20,000 participants) by invoking its property rights. The activists called on the authorities to enforce their right to assembly which, according to the activists, they could meaningfully exercise only on the area in question.⁷⁷

⁷² Ibid., p. 95.

⁷³ Ibid., p. 97.

⁷⁴ Ibid.

⁷⁵ **Radio corax** (15.07.2020): Rechtsextremer Angriff auf Fridays For Future Halle. <https://radiocorax.de/rechtsextremer-angriff-auf-fridays-for-future-halle/> (accessed 17 May 2021).

⁷⁶ **Stern** (05.10.2018): RWE-Sicherheitsleute prügeln sich im Hambacher Forst mit Aktivisten - so reagiert der Konzern. <https://www.stern.de/panorama/gesellschaft/hambacher-forst--rwe-sicherheitsleute-pruegeln-sich-mit-aktivisten-8389620.html> (accessed 26 May 2021).

⁷⁷ **FragDenStaat** (22.07.2019): Antrag an Behörden: So wollte RWE den Hambacher Forst räumen lassen. <https://fragdenstaat.de/blog/2019/07/22/rwe-raeumungsantrag-hambacher-forst-2-juli-2018/>; **Greenpeace** (03.10.2018): Press Release. <https://www.greenpeace.de/presse/presseerklaerungen/rwe-blockiert-grossdemonstration-behoerden-muessen-versammlungsfreiheit> (accessed 26 May 2021).

5 Recommendations to States and businesses in Germany (Question 5)

5.1 Recommendations to states

Where states provide tax privileges to non-profit associations benefitting to the public, the grounds for such privileges should cover promotion and protection of human rights, climate protection, and promotion of democracy and rule of law.⁷⁸ Such privileges should also be available to such associations even if they engage in influencing public opinion, public policy and the political decision-making process as long as they and their activities are not aiming at obtaining political power (e.g. participation in elections).⁷⁹

In Germany, a ruling by the Federal Tax Court of January 2019 narrowed civil society space through a restrictive interpretation of the statutory criteria for civil society organisations (CSOs) to benefit from tax privileges (as non-profit associations benefitting to the public).⁸⁰ Although the question has not yet been finally settled as the case is now being considered by the Federal Constitutional Court, this judgment has affected the ability of a number of organisations to function and proceed with their work in order to actively participate in democratic discourse and social welfare has been affected or at least jeopardised.⁸¹

The tax privilege provides the status “non-profit association benefitting to the public” and is generally considered as a confirmation of trustworthiness. As donors benefit from tax privileges, this status also ensures wider acceptability and better access to donations, but also to public funding as this status is often an eligibility criterion for accessing public funds.

In Germany, these tax privileges are available based on a limited number of grounds explicitly provided for by law. As the number of grounds has been extended over the years and oftentimes based on advocacy work by interested parties, they lack coherence. Thus, climate protection has only been added recently and while promotion and protection of human rights is not a privileged ground, promotion of equality between men and women (“Gleichberechtigung von Frauen und Männern”) is. Furthermore, although the law does not explicitly prevent CSOs from engaging in activities that are considered “political”, that is to influence public opinion, public policy and political decision-making, the above-mentioned judgment severely limited the ability of CSOs to engage in such activities (see question no. 2).

In Germany, an alliance of European, national and communal civil society organisations and private foundations (Allianz “Rechtssicherheit für politische Willensbildung”) calls for the national law providing tax privileges to non-profit

⁷⁸ See recommendation made in this regard by the **UN Special Rapporteur on the rights to freedom of peaceful assembly and of association**, UN Doc. A/70/266, para. 83.

⁷⁹ See recommendation made in this regard by the **UN Special Rapporteur on the rights to freedom of peaceful assembly and of association**, UN Doc. A/68/299, paras. 9, 44.

⁸⁰ **Federal Tax Court** (2019): Judgment of 10.01.2019, VR 60/17. <https://www.bundesfinanzhof.de/de/entscheidung/entscheidungen-online/detail/STRE201910035/> (accessed 26 May 2021). For a critical account of the ruling also see **Leisner-Egensperger, Anna** (2019): Shrinking spaces für den Dritten Sektor: Reformbedarf zur Abgabenordnung. In: Zeitschrift für Stiftungs- und Vereinswesen, 2019 (6), p. 205-210.

⁸¹ **Allianz Rechtssicherheit für politische Willensbildung** (“Alliance Legal certainty for political decision-making”). <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/beispiele-fuer-gemeinnuetzigkeitsprobleme/> (accessed 26 May 2021).

associations benefitting to the public to be revised and modernised so as to reflect a contemporary understanding of what “activities of benefit to the public” means and how an enabling environment for CSOs can be secured in today’s world.⁸² In its 2020 Rule of Law Report, the European Commission pointed to this issue as well.⁸³

5.2 Recommendations to businesses

Businesses should include potential impacts on the right to peaceful assembly and association in the context of climate action in their general human rights due diligence. Businesses should do so when fulfilling their obligations under the future German supply chain law.⁸⁴ The draft supply chain law⁸⁵ introduces binding due diligence obligations for certain German businesses and foreign businesses with branch offices in Germany with a workforce of more than 3,000 (from 2023 onwards) / 1,000 (from 2024 onwards) persons. It is supposed to be applicable in Germany and abroad and covers the whole supply chain, that means the concerned business’ own business area, the direct supplier, and, under certain circumstances, the indirect supplier. With regard to human rights, the material scope of the draft law refers to the International Covenant on Economic, Social, and Cultural Rights, the Covenant on Civil and Political Rights, and the core labour standards of the International Labour Organization (ILO).

As to risks to be considered in the measures of diligence, the draft law explicitly mentions risks concerning the right to form and join trade unions, and risks related to the use of private or public security services negatively affecting inter alia the right to association or causing excessive force (Sect. 2 para. 2 no. 6 and 11). The draft also includes a catch-all clause, although with a relatively high threshold: “any act or omission (...) which has the potential to directly violate human rights in a particularly severe manner and the wrongfulness of which is obvious on sensible evaluation of all circumstances” (Sect. 2 para. 2 no. 12). Businesses should consider the right to peaceful assembly as falling under this clause and thus should take risks relating to this right into account when implementing their due diligence obligations.

Businesses that do not fall under the personal scope of the draft law should consider their potential negative impacts on the right to peaceful assembly and association when implementing the German National Action Plan on Business and Human Rights.

In line with the responsibility to respect human rights, including the right to peaceful assembly, businesses should consider making available spaces falling under their property for protests. These considerations should take into account whether participants have other reasonable means to achieve the purpose of the assembly, in

⁸² **Allianz Rechtssicherheit für politische Willensbildung** (“Alliance Legal certainty for political decision-making”). <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/forderungen/> (accessed 26 May 2021).

⁸³ **European Commission (2020)**: 2020 Rule of Law Report Country Chapter on the rule of law situation in Germany, 30.09.2020, SWD (2020) 304 final, p. 12.

⁸⁴ The draft bill is currently in the legislative process and debated in Parliament, and the final text of the draft is not available yet. At the time of this submission, it is likely, but not fully certain whether the bill will be adopted in the current legislative period, ending in September 2021.

⁸⁵ Government draft bill dated 03.03.2021 is available under https://www.bmas.de/SharedDocs/Downloads/DE/Gesetze/Regierungsentwuerfe/reg-sorgfaltspflichtengesetz.pdf;jsessionid=47086ED02C7E998EE0341A18D9A533A2.delivery2-replication?__blob=publicationFile&v=2 (accessed 28 May 2021).

accordance with the sight and sound principle, notwithstanding giving the right to property due weight.⁸⁶

6 Role of multilateral institutions (Question 6)

Bodies and processes within UNFCCC

Measures against climate change should be aligned with human rights in accordance with the Paris Climate Agreement (2015). Its Preamble reiterates the obligation of states to “respect, promote and consider their respective obligations on human rights when taking action to address climate change”. And according to Article 7 of the Agreement states should make climate adaptation measures participatory and transparent.⁸⁷ The guidelines for implementing the Paris Agreement, adopted at COP24 in December 2018, do not explicitly mention human rights as such, but do contain references to human rights principles and standards, such as access to information, transparency, accountability and participation (for which the right to peaceful assembly and associations rights are prerequisites).⁸⁸

The Paris Agreement establishes a number of reporting formats⁸⁹, where states can regularly report on their progress in implementing their obligations under the Paris Agreement. States should be encouraged to include human rights-related issues/challenges in their reporting, including those that might arise in the context of climate activism in their countries. This would increase state accountability and allow for the exchange of good practices among states, also in view of peaceful assembly and association rights in the context of climate action.

Some reporting formats, such as the so-called “global stocktake”⁹⁰, which will take place for the first time in 2023/2024, foresee the engagement of non-state actors. Submissions can be made by non-state actors, including civil society actors and National Human Rights Institutions, observer organisations to the United Nations Framework Convention on Climate Change (UNFCCC), regional institutions, and UN agencies and other international organisations - including international UN human rights bodies such as the UN treaty bodies. In both, the Human Rights Council's Universal Periodic Review (UPR) and the State Review process before different UN Treaty Bodies, states are required to report on or take action on climate change. This information can be used by state and non-state actors for global stocktaking and can include information on peaceful assembly and association rights in the context of climate action.

⁸⁶ Cf. **UN, Human Rights Committee** (2020): General comment No. 37 on the right of peaceful assembly (article 21), UN Doc. CCPR/C/GC/37, paras. 31 and 57.

⁸⁷ UN-Paris Agreement, https://unfccc.int/sites/default/files/english_paris_agreement.pdf (accessed 25 Jun. 2021).

⁸⁸ **UNFCCC**: FCCC/PA/CMA/2018/3/Add.1, decision 4/CMA.1, Annex I 4a (i), <https://unfccc.int/documents/193407>; FCCC/PA/CMA/2018/3/Add.2, decision 18/CMA.1, Annex 19 (b) and 106 (b, c), <https://unfccc.int/documents/193408>; FCCC/PA/CMA/2018/3/Add.1, decision 9/CMA.1, Annex, no. h, <https://unfccc.int/documents/193407> (accessed 25 Jun. 2021).

⁸⁹ Including the so-called “transparency framework” and “adaptation communications”. **UNFCCC**: FCCC/PA/CMA/2018/3/Add.1, decision 4/CMA.1, Annex I 4a (i); FCCC/PA/CMA/2018/3/Add.1, decision 9/CMA.1, Annex, no. h, <https://unfccc.int/documents/193407>; FCCC/PA/CMA/2018/3/Add.2, decision 18/CMA.1, Annex 19 (b) (accessed 25 Jun. 2021).

⁹⁰ **UNFCCC**: FCCC/PA/CMA/2018/3/Add.2, decision 19/CMA.1 no. 37, <https://unfccc.int/documents/193408> (accessed 25 Jun. 2021).

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