
EJF Position on the National Action Plan Business and Human Rights in Germany



Thai fishing vessels trans-ship their catch under cover of darkness to a mothership off a remote island in the Andaman Sea. Some crew members aboard these vessels were later identified as victims of human trafficking. © EJF

Germany is preparing new guidelines for companies to improve due diligence systems to avoid human rights abuses in their international supply chains. The National Action Plan for Business and Human Rights (NAP) was presented by the Federal Government in December 2016, and requests companies to examine their human rights policies and standards by 2020. The NAP is an opportunity for Germany to become a leading nation in addressing and avoiding human rights abuses in the business sector. Success, however, depends on the active commitment of companies, and the recognition of the particular risks in the global seafood industry. If assessed and implemented effectively, the NAP would allow Germany to use its significant market influence to stamp out human rights abuses in the fisheries industry worldwide. This position paper sets out the importance of the NAP, explains the need for particular attention to be paid to seafood imports and gives recommendations to government and industry.

The NAP is based on the UN Guiding Principles on Business and Human Rights¹ which is the first international framework on human rights and business with a focus on the responsibility of companies to enact human rights due diligence. Before 2020, the implementation of the NAP will be reviewed, and companies failing to improve measures will be supported to do so. **The Environmental Justice Foundation (EJF)** welcomes the decision of the Federal Government to launch the NAP. For it to be effective, it is critical that the unique risks of human rights abuses in the seafood supply chain are recognised and addressed in its implementation.

¹ United Nations (2011) https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf



So-called 'trash fish' is dumped on the deck of a Thai trawler operating in the Andaman Sea. It's used to make fishmeal which goes into feed for shrimp and livestock. © EJF

The key objectives of the NAP in Germany are to:

- make the UN Guiding Principles on Business and Human Rights applicable in practice for all stakeholders, such as companies whose operations have an international dimension,
- highlight duties and responsibilities of the State and business respectively,
- guarantee policy coherence, and to
- ensure that German businesses remain sustainable and competitive.

EJF has conducted field based research and published reports, briefings and films, documenting severe cases of human trafficking and forced, bonded and slave labour in the global seafood sector. Carrying out field operation and research directly in the global seafood sector at sea and on land enables EJF to communicate violations against environmental justice as a first hand witness. Identifying, addressing and fighting human rights abuses in the global seafood sector is a shared responsibility between public and private sector actors across the world, but there is a significant role within this for enterprises in major importing States like Germany.

The UN Guiding Principles on Business and Human Rights

In June 2011, the United Nations Human Rights Council (UN HRC) endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). It represented the result after years of research and consultation lead by UN HRC Special Representative John Ruggie. It is the first globally accepted standard covering the responsibilities of states and businesses in preventing and addressing business-related human right abuses. The UNGPs is based upon three pillars:

1. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms,
2. the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights,
3. the need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles are designed to apply to all states and to all business enterprises, regardless of size, sector, location, ownership and structure. The implementation of the Guiding Principles is through individual National Action Plans (NAP).

The need for a toolbox to address challenges in the German seafood sector

With a volume worth 24.4 billion Euro per year, the EU is the largest market for fisheries products in terms of value worldwide and few states are as important in international trade as Germany, which in its own right is the world's sixth largest seafood importer. 87 per cent of fish consumption in Germany is from imports from more than 100 countries². Among them are countries in which EJF has documented severe human rights abuses in the seafood sector, such as Thailand. Thailand is an important trade partner to Germany for seafood, especially when it comes to tuna. A recent study has shown that, despite decreasing amounts of direct tuna imports from Thailand to Germany, there is a strong flow of indirect imports, via consignments arriving in the Netherlands which are then shipped to Germany³.

EJF's research and work in Thailand has been a key factor in driving action and change over recent years, alongside a warning from the European Commission that Thailand risks losing access to the EU market for its seafood products. This pressure from the EU has helped secure a comprehensive reform of the country's laws, helping to work towards sustainable, legal and ethical fisheries. European industry has played an important role in supporting this effort.

Across the world, EJF has documented a clear link between human rights abuses and illegal, unreported and unregulated (IUU) fishing. The latter devastates the marine environment and local fishing communities and it undermines food security and development in some of the world's poorest and most vulnerable countries. Fishers, by the nature of their work, operate in an isolated and precarious position, making them vulnerable to trafficking or forced and bonded labour onboard fishing vessels.⁴ Where there is inadequate fisheries management, fishing activities lead to a damaging decline or even full exhaustion of marine resources. Overfishing and illegal fishing ravage the marine environment, making it more expensive to catch increasingly scarce fish. The pressure on vessel operators to cut costs incentivises the use of migrant workers who are often from poorer, developing countries where insufficient domestic employment opportunities push people to seek work abroad. A race to the bottom in labour costs can ultimately lead to workers being forced into bonded labour or slavery, being paid little to no money for exhausting and hazardous work.⁵

The role of the NAP in stopping imports of fish caught by victims of human rights abuses

The NAP can play a positive role in raising awareness of human rights issues in supply chains linked to the German market. It highlights the responsibilities that market States and companies have to avoid, deter and fight human rights abuses worldwide, stating that *"companies operating in global supply and value chains are exposed to risks arising from a lack of transparency and the frequently inadequate respect for human rights and for labour, social, and environmental standards"*.⁶

Although the NAP does not legally compel businesses to implement specific measures to improve due diligence systems, the NAP and the competent Federal Ministries and authorities request key companies to evaluate their corporate due diligence systems with regards to human rights by 2020. In parallel, governmental agencies will assess the progress companies are showing. The goal is that at least 50 per cent of companies in Germany with more than 500 employees will have incorporated human rights considerations into their due diligence systems. If this target is not met by 2020, the Federal Government will consider introducing legal requirements.

According to EJF findings, seafood products bear a particularly high risk of being produced in connection with human trafficking, slavery and forced labour. The opaque nature of the global seafood industry presents particular challenges that require collaboration between States and industry to address. However, the NAP does not yet specify or define what sectors, markets, commodities or countries of origin have high risks of being connected to human rights abuses. This process should be carried out by the year 2020 in dialogue with businesses, civil societies and trade unions. Apart from that, regular surveys and assessments on companies' level should show what progress businesses are making in implementing the NAP.

Companies involved in global seafood supply chains should be given a clear policy framework in which they will be supported to develop their own standards to avoid human rights abuses. Due to the strong links to IUU fishing and unsustainable fishing practices, businesses addressing risks stemming from human rights abuses in seafood supply chains must also work towards increased transparency, environmental standards and sustainably managed food sources.

2 FAO (2018) SOFIA, <http://www.fao.org/3/I9540EN/i9540en.pdf>, p. 55.

3 Mundy (2018), http://www.iuuwatch.eu/wp-content/uploads/2018/02/TDA_report_IUUwatch_LQ.pdf, p. 92.

4 See inter alia INTERPOL warning on human trafficking links to the fishing industry, <https://www.interpol.int/News-and-media/News/2017/N2017-057>

5 Learn more about the EJF campaign on combating seafood slavery <https://ejf.org/what-we-do/oceans/combating-seafood-slavery>

6 Federal Foreign Office (2017) <https://www.auswaertiges-amt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschen-rechte-engl-data.pdf>, p. 4.

Recommendations towards the implementation of the NAP in Germany

- **Germany and other EU Member States as well as the European Commission should continue working on national adaptations of the UN Guiding Principles on Business and Human Rights.** Given the European Union is the largest market for fisheries products with very complex retail chains in different Member States, it is the obligation of each importing state and the European Commission to make businesses responsible for their behaviour. The European Union and its Member States can become a world leader in combating human rights abuses in the seafood industry by implementing the UN guidelines and in doing so recognising the unique risks posed by seafood imports.
- **The Federal Foreign Office should carefully evaluate how businesses implement the NAP by reviewing their due diligence systems, and should include seafood in their evaluation process as a commodity with high risk of human rights violation worldwide.** It is vital in this process to actively work together with importers, processors and retailers. At the end of this evaluation, unless there is widespread voluntary adoption of the principles in the NAP by German business (particularly those operating in high risk sectors like fisheries), the Federal Government should consider to legally mandate the application of the NAP by business to ensure a level playing field.
- **The Federal Government should adhere to the NAP objective of policy coherence, and take advantage of Germany's influential position in global trade to:**
 - acknowledge that serious human rights abuses continue in the global fishing industry, and that such abuses are often connected to IUU fishing,
 - publicly support human rights for migrant workers, and support international efforts of implementing and enforcing binding laws and conventions in fisheries to guarantee their workers rights, in particular ILO Convention C188.⁷
 - support increased transparency in the global seafood sector to reduce the risk of IUU fishing and associated human rights abuses. This should include supporting the establishment of a global record for fishing vessels according to the FAO initiative⁸, based on the International Maritime Organization's numbering scheme.
- **Businesses in the seafood sector should take immediate action to evaluate possible risks of human rights violation in their supply chains and to implement sound due diligence systems to address and eradicate such risks.** In their efforts to introduce these measures, businesses should seek active exchange with their own and foreign governments, authorities, business partners, suppliers and civil society organisations. EJF suggests the following market tools for businesses in the seafood sector:
 - *An Advisory Note for the UK Supply Chain on how to avoid Illegal, Unreported and Unregulated (IUU) fishery products.* Designed as a guide for importers and retailers on how to avoid risks of IUU fishing in their supply chain, which is closely connected to human rights violations in the global seafood sector. A similar document is being prepared with leading German seafood importers for release in 2018.⁹
 - *Exercising due diligence in establishing the legal origin of seafood products and marine ingredients – Importing and processing – PAS 1550:2017.* The development of this Code of Practice with leading European NGOs and businesses gives detailed recommendations to importers and processors to identify and address the risk of illegal and unethical seafood in their supply chains.¹⁰

The Environmental Justice Foundation is working to end illegal fishing and the associated human rights abuses in world fisheries, and to shine a spotlight on the global problem of slavery at sea.

Find out more about our Oceans campaign <https://ejfoundation.org/what-we-do/oceans>

NEWS

FILMS

REPORTS

⁷ ILO, C188 - Work in Fishing Convention, 2007 (No. 188) http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188.

⁸ FAO Global Record <http://www.fao.org/global-record/en/>

⁹ An Advisory Note for the UK Supply Chain <https://ejfoundation.org/resources/downloads/EJF-Advisory-Note-low-res-final.pdf>

¹⁰ PAS 1550:2017 <https://shop.bsigroup.com/ProductDetail?pid=00000000030337167>