

Submission to the UN Committee on Economic, Social and Cultural Rights

## **Extraterritorial State Obligations**

**Parallel report in response to the**

**5<sup>th</sup> Periodic Report of the Federal Republic of Germany on the  
implementation of the**

**International Covenant on Economic, Social and Cultural Rights**

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## **Preface**

In 2001, Brot für die Welt, Evangelischer Entwicklungsdienst and FIAN presented a first parallel report on Germany's extraterritorial obligations under the International Covenant on Economic, Social and Cultural Rights. Since then there has been a lively debate in Germany on the nature of extraterritorial obligations and the question of how extraterritorial obligations can be implemented by the German government in policy fields such as trade, investment and export promotion policies, development cooperation, or as actor in international financial institutions. Non-governmental organisations have been very active in analysing the impact that German policies and actions have on economic, social and cultural rights in other countries and a series of reports have been published.<sup>1</sup> In addition, there is a lively debate on extraterritorial obligations and human rights abuses by private companies.

In our submission to the pre-session working group in November 2010, we highlighted extraterritorial obligations in three policy fields that had been addressed by the UN Committee on Economic, Social and Cultural Rights before - either in its Concluding Observations on the 4<sup>th</sup> state report or in General Comments. In this submission we have included an additional chapter on export and investment promotion policies.

The German Ministry for Economic Cooperation and Development is currently revising its Human Rights policy. A first hearing with NGOs has been held but the process is at too early a stage to be subject to this report. However, we are looking forward to presenting further information related to Germany's extraterritorial obligations in the context of development cooperation during the NGO Hearing on May 2, 2011.

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<sup>1</sup> See for example: Brot für die Welt / EED / FIAN: Germany's extraterritorial human rights obligations in multilateral development banks. Introduction and case study of three projects in Chad, Ghana and Pakistan, 2006; Brot für die Welt / EED / FIAN: Germany's extraterritorial human rights obligations: Introduction and six case studies, 2006

## **I. European Trade and Agricultural Policies threaten the Right to Adequate Food**

### ***1. Human rights obligations in the context of trade and agricultural policies***

Human rights obligations have to be taken into account in the regulation of agricultural trade. General Comment No. 12 states that strategies for the implementation of the right to food at national level “should address critical issues and measures in regard to *all* aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food”.<sup>2</sup> Each signatory state to the International Covenant on Economic, Social and Cultural Rights (ICESCR) must therefore create a favorable environment as far as it is possible, including trade policy, so that domestic small farmers can market their produce and earn an income sufficient to feed their families. According to General Comment No. 12, this also applies to the international level: “States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end”<sup>3</sup>. At the UNITAR High Level Panel on Human Rights and Trade in September 29, 2010 in Geneva, UNHCHR’s Navanethem Pillay reiterated: “Indeed, I cannot overemphasize that all human rights principles and the responsibilities that flow from them also apply, *mutatis mutandis*, to intergovernmental organizations and mechanisms, including an international trade regime”.

In the context of the ongoing hunger crisis, on March 26, 2008, the UN Human Rights Council emphasized “that all States should make every effort to ensure that their international policies of a political and economic nature, including international trade agreements, do not have a negative impact on the right to food in other countries”.<sup>4</sup> In the same year, former German Minister of Development Cooperation, Heidemarie Wieczorek-Zeul acknowledged: “If agricultural export subsidies have the effect that in developing countries not enough is grown to feed people in times of crisis, then that is not just a moral problem. It is a violation of the right to food”.<sup>5</sup>

In its concluding observations to the previous report submitted by Germany, the CESCR encouraged the State party to “introduce ‘human rights impact assessments’, comparable to environmental impact assessments to ensure that the provisions of the Covenant are given due attention in all legislative and administrative policy and decision making processes.” (E/C.12/1/Add.68, para. 32) Making reference to this recommendation, in its present state report, Germany points out that systematic checks of the coherence of new legislative measures with higher law, such as constitutional, EU and international law, are mandatory under § 46 of the “Gemeinsame Geschäftsordnung” for all federal ministries at an early stage. The report announces that the obligations under UN human rights covenants will be mentioned explicitly in the new edition of the “Handbuch der Rechtsförmlichkeit”. Additionally, § 44 of the same “Gemeinsame Geschäftsordnung” obliges the respective responsible ministry to assess, in consultation with other ministries, the likely desired or undesired impacts of a bill before this bill is passed to the parliament.

### ***2. The Common Agricultural Policy (CAP) of the EU***

The CAP has been criticized for decades for subsidising exports of European agricultural products, for undermining market access of farmers in developing countries and for putting pressure on world market prices. Dumping exports of wheat, beef and milk powder were reported to have a direct impact on farming communities in developing countries, especially in Africa, because products were often sold at artificially low prices that local producers were

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<sup>2</sup> UN Committee on Economic, Social and Cultural Rights (CESCR). 1999. *General Comment 12, The Right to adequate Food (Art. 11)*. Twentieth Session. Para. 25, emphasis in the original.

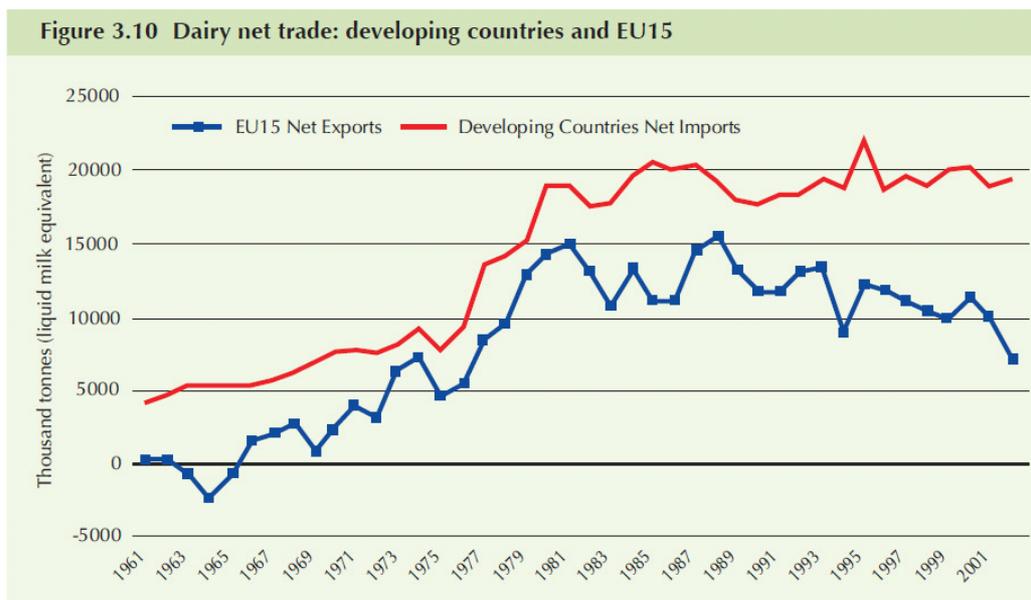
<sup>3</sup> *Ibid.* Para. 36.

<sup>4</sup> UN Human Rights Council. 2008. Seventh Session, Agenda Item 3: A/HRC/7/L.6/Rev.1. Para. 17.

<sup>5</sup> Wieczorek-Zeul, H. 2008. “Menschenrechte und Entwicklung”. Aufsatzreihe der SPD: “Gerechtigkeit durch Recht. 60 Jahre Allgemeine Erklärung der Menschenrechte”. August 21.

unable to compete with. Moreover, they had a long term detrimental effect on productivity of agriculture in these countries.

Indeed, a new MISEREOR report confirms that the CAP is one of the main factors for developing countries to become net food importers.<sup>6</sup> The most drastic decrease in world market prices for agricultural products occurred between the mid 1970s and mid 1980s, when the EU reduced its food imports and became a main exporter of some main staple foods. Comparing the trade balances of the EU with those of Africa clearly shows that the shift of the latter from net exporters to net importers occurred during the same period, for example of grain and dairy products. Many countries became heavily reliant on imports for securing sufficient food supply for their populations.



FAO (2006): World agriculture towards 2030/2050, p. 49

The reasons for this were manifold: The decrease in world market prices, to a large extent caused by subsidised exports, signalled to many governments that it was cheaper to import food than to support domestic food production. This incentive to choose an import based food security strategy coincided with the Structural Adjustment Programs (SAP) promoted by the International Monetary Fund (IMF) which entailed the opening of markets to imports and the simultaneous reduction of public spending in the agricultural sector. At the same time, international donors of development started to neglect agriculture and rural development. Between 1980 and 2003, the proportion of Official Development Aid (ODA) decreased from 18 to 3 percent.<sup>7</sup>

There is an emerging consensus that these strategies were important structural factors behind the food crisis of 2008. “The availability of cheap food on the international market was one of the factors that contributed to reduced investment and support to agriculture by developing countries (and their development partners), which is generally put forward as one of the reasons for the recent crisis”.<sup>8</sup> World market prices for agricultural products had skyrocketed and made it very difficult for many developing countries to secure agricultural imports, to maintain domestic food prices at a reasonable level and to secure access to food for poor consumers. The dramatic result of the food price crisis and the subsequent financial

<sup>6</sup> Reichert, Tobias: Wer ernährt die Welt? Die europäische Agrarpolitik und Hunger in Entwicklungsländern, MISEREOR, Aachen 2011.

<sup>7</sup> High-Level Task Force on the Global Food Security Crisis (HLTF): Comprehensive Framework of Action, New York 2008.

<sup>8</sup> FAO 2009a: Country Responses to the Food Security Crisis: Nature and Preliminary Implications of Policies Pursued, Rom 2009, p. 24.

crisis was that the number of chronically malnourished people increased from 850 million to over one billion within one year. In 2010, FAO still estimated that 925 million people were facing chronic hunger. In February 2011, the World Bank estimated that the recent sharp increase in agricultural commodity prices had again driven an estimated number of 44 million people into poverty since June 2010.<sup>9</sup>

While many officials of the EU and the German government tend to admit past problems of the CAP, they often claim that these problems have already been solved by reforms that have been made since 1992. Their main argument is that export subsidies reduced from 10.2 billion to 649 million Euros between 1993 and 2009.<sup>10</sup> However, recent case studies done by NGOs and international organisations show that European tomato paste, chicken cuts, and dairy products are still being exported at prices below their production costs and have undermined local market prices in the importing countries. As a result, many local small scale poultry keepers in Ghana, Cameroon and Benin, tomato producers in Ghana and dairy farmers in Burkina Faso, Bangladesh and Cameroon found it more and more difficult to compete with imports. In some cases farmers were wiped out of the markets and lost incomes to the degree that many farming families could no longer adequately feed themselves (see more details of selected cases below).

Analyses show that direct export subsidies are no longer the main instrument causing dumping, but have been replaced by other mechanisms which conform with the Agreement on Agriculture (AoA) of the World Trade Organisation (WTO). Instead of directly subsidising exports, today, the CAP ensures access to agricultural raw material at artificially low prices to European agribusiness companies and exporters. The figures are impressive: While in 1986-88, producer prices within the EU were 71 percent above world market prices, this difference had decreased to nine percent in 2007-2009.<sup>11</sup> For food processors within the EU this means that they can purchase raw material at much lower prices. This is one important reason why they are still in a position to export end products at prices far below the production costs. According to Oxfam, in 2007, dairy products were exported at prices which only covered 50 percent of average production costs. Under these circumstances, European exporters do not rely on export subsidies in order to be internationally competitive.

The main reform measures which led to this decrease in producer prices were the reduction of intervention prices, a modest tariff reduction for some products and the progressive augmentation of the milk quota (ceiling for overall milk production) in spite of stagnating domestic consumption in Europe. The EU claims that these measures reflect a stronger market orientation of the CAP and that they have reduced its trade distorting effects. A closer look reveals that low producer prices have been made possible only through a heavy increase in direct payments to the farmers themselves. These direct payments currently amount to 39 billion Euro per year. Even though 32 billion of these payments are decoupled from production and only depend on the number of hectares held by the respective farm, they still have a strong effect on prices. According to German government, direct payments make up 40 percent of the incomes of German farmers on average.<sup>12</sup> It is obvious that the current export orientation of the CAP would be impossible to maintain if direct payments were cut. It would mean that producer prices would have to increase to secure incomes of farmers with the indirect effect of increasing export prices. Or a large part of European farmers would immediately have to give up and production (and exports) would decrease significantly.

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<sup>9</sup> World Bank: Food Price Hike Drives 44 Million People into Poverty, Press Release, 15.2.2011.

<sup>10</sup> Common press release of German Ministeries for Development Cooperation (BMZ) and for Agriculture and Consumer Protection (BMELV): "Aigner und Niebel vereinbaren enge Zusammenarbeit bei Entwicklungspolitik und Welternährung", 9.6.2010.

<sup>11</sup> OECD: Agricultural Policies in OECD Countries at a Glance, 2010, S. 50.

<sup>12</sup> BMELV: Stellungnahme der Bundesregierung zur Mitteilung der Europäischen Kommission „Die GAP bis 2020“, 28.1.2011, S. 4.

There are additional policy tools within the CAP that reinforce its dumping effects. The so called “second pillar” of the CAP involves yearly spending of 21 billion Euros and is foreseen for the years 2007 to 2013 (co-financing of member states included). Even though this second pillar was initially meant to support rural development and ecological goals, only 46% of the abovementioned amount is spent on these objectives. One third is spent within the axis “Improvement of competitiveness of agriculture and forestry”<sup>13</sup>, which, for example, involves covering up to 40 percent of the costs for new barns. Many of these support measures reduce production costs of the farms and increase their production capacities and therefore involve the risk of distorting trade.

Since 2003, the EU has been the world’s leading exporter of agricultural goods. In 2007, 25 percent of meal products reached ACP countries alone, a proportion which was double as high as 10 years prior.<sup>14</sup> In the same year, according to Oxfam, 68 percent of EU dairy exports reached the markets of developing countries.<sup>15</sup> Between 2005 and 2008, dairy exports to LDCs increased by 45 percent and to West Africa by 48 percent. In 2009, when the EU re-introduced export subsidies for dairy products, the exports of whole milk powder to West Africa increased again by 16 percent.<sup>16</sup> EU annual exports of pork meat to the Ivory Coast increased from 5,000 to 35,000 tons between 2000 and 2006.<sup>17</sup> These figures illustrate that, for some products, EU agricultural exports are still on the rise. The cases described below will show that they sometimes have a detrimental effect on the right to food of vulnerable farming communities in the targeted countries.

The frequent argument of EU and German officials that these EU exports are important to meet growing food demands is difficult to maintain. Almost 80 percent of protein feedstuff used for meat and dairy production in the EU, especially soybeans, is imported. Recent calculations show that 19 million hectares are used for the production of this feedstuff in other countries, especially in Brazil, Argentina and Paraguay.<sup>18</sup> This area represents 18 percent of agricultural land used within the EU. Taking into account virtually all land imports and exports, the EU is using 34 million hectares in addition to its own agricultural land. It is therefore questionable that European agriculture is really contributing to meeting the global food demand. It uses land that otherwise could serve for producing staple food for local consumers. And, by increasing exports of meat and dairy products, the EU contributes to an increase in the consumption of these products, which is one of the trends that might threaten global food supply in the future.

Against this backdrop the current reform of the CAP for the period from 2013 to 2020 is highly relevant for achieving an enabling environment for the realization of the right to adequate food. The reform is a unique opportunity to address the negative impact of the CAP described above. Unfortunately, the negative impacts of EU agricultural exports and imports of feedstuff are not addressed in the communication of the European Commission from November 18 of 2010, which outlines the options for a CAP reform.<sup>19</sup> On the one hand, the Commission suggests tying direct payment to stricter ecological criteria, which may indirectly lead to a reduction of overproduction and mitigate some of the problems. On the other hand, the Commission claims that EU agriculture must maintain its production capacity, contribute to the growing demand for food and increase its international competitiveness and points to “the opportunity for EU food exporters”. Some of the proposed reforms, such as the definitive

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<sup>13</sup> OECD: Agrarpolitik in den OECD-Ländern: Monitoring und Evaluierung 2009, S. 121.

<sup>14</sup> Reichert, Tobias, ibidem: p. 22.

<sup>15</sup> Oxfam Germany: Hintergrundinfos EU-Milch-Politik, Oxfam 2009, S. 1:  
[http://www.oxfam.de/sites/www.oxfam.de/files/Factsheet\\_Exportsubventionen\\_Milch.pdf](http://www.oxfam.de/sites/www.oxfam.de/files/Factsheet_Exportsubventionen_Milch.pdf)

<sup>16</sup> Rechert.

<sup>17</sup> Calculated by EED on the basis of data from EUROSTAT and the Ministry of Agriculture of Ivory Coast.

<sup>18</sup> Witzke, Harald von and Steffen Noleppa: EU agricultural production and trade. Can more efficiency prevent increasing “land grabbing” outside of Europe? Humboldt University, Berlin 2011: p. 19.

<sup>19</sup> Europäische Kommission: Die GAP bis 2020. Nahrungsmittel, natürliche Ressourcen und ländliche Gebiete – die künftigen Herausforderungen, KOM(2010) 672/5.

abolition of the dairy quota, the extension of the intervention period and the maintenance of export subsidies raise deep concerns that dumping could in fact continue.

In discussions with NGOs, German government denies any negative impact of EU exports on local markets in developing countries. It also approved the reintroduction of export subsidies for dairy products in 2009. During the international conference of agriculture ministers in January 2009 in Berlin, the German minister for agriculture, Ilse Aigner, promised that developing countries would not be the target of subsidised exports. As figures later showed, this promise was not kept (see example of Bangladesh below). In the debate on the CAP reform, Germany is among those member states that try to avoid any substantial change. In a position paper of March 31, 2010, German government largely defended the status quo. According to this position, export subsidies should only be phased out if an overall agreement is reached in the Doha Development Round of the WTO, which, at this point in time, is highly unlikely. This means that export subsidies will probably continue to have a negative impact on the right to food and an adequate standard of living in developing countries even after 2013. In a reaction to the above mentioned communication of the Commission, Germany maintains the same position.<sup>20</sup> Furthermore, it opposes the positive recommendation of the Commission of tying direct payment to stricter ecological criteria by pointing to possible additional bureaucratic burdens. It thereby opposes the only reform proposed in the Communication that might contribute to improving the international economic environment for realising the right to food for small scale farmers in developing countries.

### **3. The EU Trade Policy**

The CAP is not the only reason why EU agricultural exports reach the markets of developing countries. Another important reason is the fact that many developing countries have opened up their markets for imports. It was first in the early 1980s when the IMF forced many developing countries to deregulate agricultural trade in the framework of structural adjustment programs (SAP). Since 1995 the Agreement of Agriculture (AoA) obliged these countries to convert all border measures in tariffs, to define ceilings for these tariffs and to reduce them by an average of 24 percent by 2004.

In recent years, the EU has been and/or is still negotiating bilateral Free Trade Agreements (FTA) with the ACP countries, Columbia and Peru, Central America, South Korea, India and others. In all these negotiations, by referring to GATT article XXIV, the EU is asking for the liberalisation of “substantially all trade” on a reciprocal basis. A definition of “substantially all trade” does not exist in the WTO. Nevertheless, in the negotiations on Economic Partnership Agreements (EPA), the EU continues to insist that ACP countries abolish 80 percent of import tariffs towards the EU even though many of these countries are LDCs with very high incidences of hunger and malnutrition.

The FTAs already agreed upon (but not yet ratified) oblige Columbia and Peru to dismantle 90 percent respectively, and South Korea to dismantle 97 percent of import tariffs. The EU is insisting on a similar level of tariff reductions in the case of India, which is the country with the highest number of malnourished people in the world. In most of these cases, even for remaining products that are classified as “sensible”, the EU insists on a “standstill clause” which would freeze tariffs at the currently applied level even when an increase would be allowed under WTO rules.

NGOs have raised serious concerns that these far reaching commitments would undermine policy spaces of many countries to adequately protect their markets from products directly or indirectly from the EU. In many cases such protection is necessary to protect market access, incomes and the right to adequate food of farming communities. This is why, in the case of

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<sup>20</sup> BMELV: Stellungnahme der Bundesregierung zur Mitteilung der Europäischen Kommission “Die GAP bis 2020”, 28.1.2011.

the ACP countries, German NGOs have asked the German government to conduct Human Rights Impact Assessments (HRIA) of the EPA or Interim EPA before such agreements are signed and ratified. So far, Germany has not responded to this request and has not undertaken any such HRIA or requested the EU to do so.

On November 9<sup>th</sup> 2010, the European Commission published its new trade strategy “*Trade, Growth and World Affairs*”.<sup>21</sup> This new master plan is intended to be the tangible expression of the external dimension of the Europe 2020 strategy and thus an important contribution to “smart, sustainable and inclusive growth”. Starting from the premise that, as early as five years from now, 90% of growth will be taking place outside Europe, Trade Commissioner Karel De Gucht declared: “My aim is to ensure that the European economy gets a fair deal and that our rights are respected so that all of us can enjoy the benefits of trade”.

The strategy confirms the reduction customs tariffs for EU agricultural and industrial exports as an important goal towards achieving a “fair deal”. Additionally, in the services sector, the EU announces to seek, “by all means available, [for] greater openness for its service providers”. Furthermore, the Commission wants trade agreements – particularly those with Canada, Singapore and India – to include more protection and market liberalization for European investments. Regarding public procurement, the Commission wants to “continue to press for more opening of procurement abroad and [...] in particular fight against discriminatory practices. Another Commission priority is securing “sustainable and undistorted supply of raw materials and energy”; to this aim it intends to exploit and develop trade rules “to the maximum”. And finally, in the area of intellectual property rights for European companies, the Commission ideally wants free trade agreements to offer “identical levels” of protection to those existing within the EU. Human rights concerns regarding many of these demands, which are frequently voiced by NGOs, are not mentioned in the EC strategy.

On August 2<sup>nd</sup> 2010, the German government submitted a position paper to the EU Trade Policy Committee, where it outlined its views on the development of the EU’s trade strategy.<sup>22</sup> German government defined ten priorities it wanted to see included in the EC communication. Among these priorities are the opening of markets through the elimination of trade barriers for goods from European companies, deregulating services, ensuring access to raw material, ensuring investment protection, strengthening of intellectual property rights, and the opening of international procurement markets. Human rights, food security, poverty alleviation and Millennium Development Goals (MDG) are neither addressed nor even mentioned in this paper.

Furthermore, the position of Germany on the reform of the General System of Preferences (GSP) is a matter of concern. This system currently gives preferential EU market access to developing countries, and especially to LDCs (“Everything but Arms”) as well as those countries which have ratified and implemented human rights treaties, labor rights standards of the ILO and treaties on environment protection (GSP+). In its position paper, Germany proposes “that the EU’s interests in terms of raw materials should also be taken into account during the upcoming GSP reform – as long as poorer and poorest developing countries are not adversely affected.” This request would mean that, in addition to the above mentioned criteria, developing countries would be requested to improve European companies’ access to their raw materials, for example by reducing or abolishing export tariffs. The result would be a reduction of these state’s public revenue, which would negatively affect policy spaces for progressively realizing social human rights. It would also mean that policy spaces to regulate the use of raw materials in the public interest would be reduced. The exceptions proposed for “poorer and poorest countries” could mean that only LDCs should not be affected. Under the

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<sup>21</sup> European Commission 2010a : Trade, Growth and World Affairs. Trade Policy as a Core Component of the EU’s 2020 Strategy, Brüssel 2010.

<sup>22</sup> German Government: A Trade Policy to Foster Competition, Growth and Jobs - Position paper by the German Federal Government on the further development of the EU’s trade strategy, 2.8.2010.

perspective of the right to food and other economic, social and cultural rights, this is unacceptable because even the majority of hungry people live in developing countries, not in LDCs.

#### 4. Documented Cases of Violations of the Right to Food through EU agriculture and trade policies

##### 4.1. Poultry and Tomato exports to Ghana

The case of **poultry and tomato producers in Ghana** illustrates very clearly how forced tariff liberalization is contributing to violations of the right to food. FAO's data show that since the opening of the market in 1992, Ghana has repeatedly faced import surges of tomato paste and poultry meat, of which a large portion has come from the EU.<sup>23</sup> As a case study by FIAN, Germanwatch and Send Foundation shows, these exports pushed out the **poultry** keepers in Ashaiman, close to the port of Tema.<sup>24</sup> While they had formerly earned their living by selling eggs and chickens for meat, the latter mainstay completely disappeared within a few years for all those interviewed, due to the unbeatably cheap imported chickens. While in 2004, according to the FAO, Ghanaians offered their poultry meat for sale at around €2.60 per kilo, the European meat was sold at a loss for €1.50 per kilo. In the case of the **tomato** farmers, the displacement of local producers has taken a more complicated form because fresh tomatoes compete with a different product: canned tomatoes and tomato paste. In the past 10 years, the imported tomato paste has found its way into cooking and eating habits, primarily in the towns, and thus increasingly competes with the domestic fresh tomatoes. Moreover, the cheap imports prevent Ghana from developing its own tomato industry with processing facilities that would be essential for stable sales for the local farmers. The result is that many families of tomato farmers and poultry keepers in the communities concerned have to reduce their meals in number, volume and quality over a number of months, while becoming increasingly indebted, and have therefore become even more vulnerable to external adversities. Their right to food is no longer fulfilled.

One key factor in this development is the opening of the market and the dismantling of state support as part of the Structural Adjustment Programs (SAPs) in the 1990s. On the one hand, it was the Ghanaian government which implemented these policies, but on the other hand, this happened primarily because of the corresponding credit conditions of the **International Monetary Fund (IMF)**. Moreover, in 2003 the IMF prevented a tariff increase for poultry imports from 20 to 40 percent that had been decided in the parliament (Act 641).<sup>25</sup>

Currently, there is great concern that any such increase in tariffs on imports from the EU will generally no longer be possible for Ghana in the future. According to the **Interim Economic Partnership Agreement (IEPA)**<sup>26</sup> with the EU, which the government initialed on December

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<sup>23</sup> FAO. 2007. Commodities No. 2. Import Surges in Developing Countries: the Case of Rice. *Briefs on Import Surges*. Rome.

<sup>24</sup> Paasch, A. 2008. Devastating Floods – Man Made. European Trade Policy violates Right to Food in Ghana – Chicken and Tomatoes. Bonn: Germanwatch, FIAN, Both Ends and UK Food Group.

<sup>25</sup> As the IMF report on the consultations on the poverty reduction strategy in Ghana expressly states: “The authorities have committed that these tariff increases will not be implemented during the period of the proposed arrangement” (IMF 2003). On May 9, 2003, the IMF agreed to a three-year credit amounting to 185.5 million Special Drawing Rights (SDR) (\$258 million USD) as well as additional aids within the framework of the Initiative for Highly Indebted Poor Countries (HIPC) amounting to over 15.15 million SDR (around \$22 million USD). And on May 12, only three days later, the directive to repeal Act 641 was published. The same consultations that had led to the granting of the funds “convinced” the Ghanaian government to bring the tariffs back down to the previously applied level.

<sup>26</sup> Originally the EU had insisted on “comprehensive” EPAs, which would also include areas such as services, investments, intellectual property rights and procuring bodies. However, it was only possible to implement this form of EPA politically with the Caribbean states. Other states, such as Ghana, Uganda and Zambia, could only be persuaded to make agreements on the trading of goods. These agreements are called interim agreements, as they are only seen as a preliminary stage to comprehensive EPAs. However, even these agreements have only

13, 2007, Ghana is obliged to reduce the tariffs for over 80 percent of imports to zero by the year 2023. It is probable that tomatoes and poultry will not belong to these 80 percent, but will instead be exempted from the lowering of the tariff because they will be protected as “sensitive products.” But even in the latter case, the farmers are not yet safe. Even for these products, a Standstill Clause in the agreement forbids Ghana to raise the tariff over the level currently applied.

In concrete terms, this means that while according to the rules of the WTO, Ghana has had the right to increase its tariffs on tomato or poultry imports from 20 to 99 percent (the level at which it bound those tariffs), the government would be forbidden to raise its tariffs on European imports once the IEPA is ratified by the EU, its member states and Ghana. Ghana would thereby lose freedom of action in its trade policy, freedom it needs to protect the right to food of the tomato and poultry farmers hurt by dumped imports.

Because of serious concerns and public protests, so far, the IEPA has not been signed nor ratified by Ghana, the EU, or its member states. German NGOs have urged the German government to undertake a Human Rights Impact Assessment (HRIA) of this and other IEPA with other ACP countries before these agreements are passed to the German parliament (Bundestag) for ratification. Such HRIA, however, has not yet taken place.

#### **4.2. The cases of dairy exports to Burkina Faso and Bangladesh**

The case of **dairy exports** illustrates how the current design of the CAP of the EU continues to limit local market access of small scale farmers in developing countries and sometimes even leads to violations of their right to adequate food. A case study commissioned by MISEREOR in 2005 documented the devastating effects of EU dairy exports on livelihoods of **Peul Nomads in Burkina Faso**.<sup>27</sup> By that time, European milk powder was sold in Burkina Faso at a price around 30 Euro cents per litre. This price was not only 18 cents below average production costs of German creameries, but also between 7 and 10 cents below the local production costs of small dairy producers in Burkina Faso. The effect was that creameries in Burkina Faso almost exclusively used imported European milk powder for the production of yogurt, and that domestic dairy products never found their way onto the shelves of supermarkets. Hence, income generation and the fulfilment of the right to food of small and marginalised dairy producers, who make up 10 percent of the population of Burkina Faso, were seriously hindered by dumped exports from the EU.

Similar distortions were recently documented by Oxfam Germany in a case study on **dairy producers in Bangladesh** in 2009.<sup>28</sup> In January 2009, the European Commission (EC), with the consent of the German government, reintroduced export subsidies for dairy products. In an interview with the German newspaper Frankfurter Allgemeine Zeitung (FAZ), German Minister for Agriculture, Ilse Aigner, defended subsidies for dairy exports to Bangladesh with the argument that there were no dairy farmers that could be damaged. Shortly after this statement, news agencies reported public protests of Bangladesh dairy farmers against cheap imports and low producer prices. An Oxfam study documented that producer prices had actually decreased dramatically since the reintroduction of EU export subsidies. According to Oxfam estimates, seven million people, whose livelihoods depend on small scale dairy farming, faced average income reductions of 16 percent as a result. Bangladesh was the fifth biggest importer of subsidised skimmed milk powder from the EU in 2009. Again, there are serious concerns that subsidised exports of the EU have led to violations of the right to food among marginalized smallholders in Bangladesh.

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been initialled so far, in other words neither signed nor ratified. Despite the great political pressure, 43 of the 78 ACP states have not even consented to interim agreements.

<sup>27</sup> Reichert, Tobias: Von Milchseen und Schleuderpreisen. Die europäische Milchpolitik und ihre Folgen, Misereor, Aachen 2005.

<sup>28</sup> Oxfam Deutschland: „Abgedrängt“: Niedrige Milchpreise treffen Ärmste am härtesten. Billigimporte von Magermilchpulver in Bangladesch, Oxfam 2010.

In 2009 alone, the EU spent 181 million Euro on direct export subsidies for dairy products.<sup>29</sup> However, export subsidies are not the main reason for dumping any more. The main reason, as described above, is the extreme decline of producer prices within the EU as a result of **CAP reforms** since 1992.

## **5. Recommendations**

1. The German government should commission a comprehensive Human Rights Impact Assessment (HRIA) on the current impact of the Common Agricultural Policy (CAP) on the right to food, including, inter alia the cases of milk producers in Burkina Faso and Bangladesh and the poultry and tomato producers in Ghana. Based on this HRIA, it should take measure to address human rights problems in these specific cases.
2. Germany should modify its position on the ongoing CAP reform according to the findings of this HRIA. It should propose reforms of subsidies and market measures that end dumping exports to developing countries and reduce the virtual external land use for feedstuff and energy purposes of the EU.
3. Germany should propose that a complaint mechanism is established at the EU where rural communities can request an independent investigation when they feel that their right to food has been negatively affected by the CAP.
4. The German government should commission HRIAs on “Economic Partnership Agreements” (EPA) with ACP countries such as Ghana, and all other bilateral Free Trade Agreements (FTA) which are currently being negotiated. These HRIAs should incorporate standards and criteria related to both process and result.
5. The German government should make sure that such FTA and loan conditions of the IMF do not limit the policy space of developing countries to protect market access, incomes and the right to adequate food. Germany should propose that human rights clauses in trade agreements should allow the revision of provisions within these agreements that have shown to have a problematic impact on economic, social or cultural rights.
6. In the upcoming reform of the General System of Preferences (GSP) Germany should not propose any measures that tie preferential market access for developing countries to the condition of ensuring European companies’ access to raw materials.

## **II. Human Rights gaps in the promotion of exports and foreign investment**

In the following chapter we explain the existing export and investment promotion instruments and give examples of how the promotion of export and investment via these instruments can affect economic, social and cultural rights in other countries. We lay out what the human rights gaps in the existing procedures of granting export guarantees are, and how the German government resists development in this field. We recommend that it is part of the duty of care to carry out an extensive human rights risk assessment in order to identify human rights risks and find ways to avoid them. The state party has to ensure that this is done regardless of whether or not it relates to an export or an investment. If an export guarantee is accorded, it has to be ensured that the companies fulfil their duty of care with respect to human rights during the entire length of the project and the government needs to ensure that the persons whose economic, social and cultural rights are affected by a supported project have access to effective remedies, including the possibility to address the state party via a complaint procedure.

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<sup>29</sup> Agrar-Europe 23/10, 7.6.2010, EU-Nachrichten p. 8.

## **1. Instruments for export and investment promotion**

Germany accords high importance to external economic promotion in its foreign affairs policy. Besides the political support and promotion of projects of German companies abroad, the federal government supports corporations financially in their export business. 185 billion Euros will be provided for this purpose in 2011. Germany protects the business activities of its companies abroad by means of export guarantees, investment guarantees and untied loan guarantees.

The only legal basis for this protection is the German finance/budget law which authorizes the federal ministry of finance to protect exports and direct investment in foreign countries. The budget committee of the German Bundestag is informed about specific guarantees that have been accorded if their amount is superior to 1 billion Euros. Further control by the budget committee or the Bundestag is not provided. The German federal government applies OECD guidelines when it examines the allocation of grant export guarantees, especially OECD's Recommendations on Common Approaches on Environment and Officially Supported Export Credits ("Common Approaches"). In addition to this, it examines the World Bank Safeguard Policies and, in some cases, the IFC Safeguard Policies. All these standards contain certain aspects relevant from a human rights perspective, but do not refer explicitly to the human rights contained in the International Covenant on Economic, Social and Cultural Rights. As a consequence, resettlements, for instance, are considered in the context of infrastructure projects, but the right to adequate housing is neither mentioned nor examined, thus disregarding important human rights questions and ignoring potential human rights problems. However, these standards are only applied to projects with a loan duration of at least two years and a volume of at least 15 million Euros. Projects with a shorter duration or a smaller volume are only examined if they imply particular environmental risks. Projects that are considered to be especially relevant from an environmental standpoint are published at least four weeks before the final decision. Particularly sensitive fields, especially arms exports, are subject to particular controls.

The examination of investment guarantees follows the examination of long term exports. In addition to this, companies are invited to respect the OECD Guidelines for Multinational Enterprises. However, the criteria for the examination of environmental and social standards are formulated in a less detailed way in comparison to export guarantees. The projects are not published prior to the decision. Untied loan guarantees that are especially accorded when it comes to secure business activities in the field of raw materials are examined for their environmental impact, according to the Federal Government. However, there is no transparency regarding which projects are examined and which projects have been financed.

## **2. Legal and political support for German investors – no space for Human Rights**

To this day, Germany has signed more than 130 bilateral investment agreements in order to protect German investments in foreign countries. These agreements give companies the possibility to appeal to an arbitration tribunal in case of investment loss due to state intervention (e.g. expropriation or expropriation-like interventions) and to ask for compensation for their investments. Besides the financial and legal aspects of external economic promotion, the German government supports the projects of German companies politically. An example is business trips that are accompanied by the German minister of economy. The most recent example is a business trip to Algeria that is scheduled for May 2011 and addresses to companies in the field of security. According to the ministry of economy, Algeria offers big business opportunities in the field of security technology and in the context of border security and anti-terror operations. Further political support is provided by German missions abroad that advise the companies in the countries at which the business activities are aimed. Furthermore, the German embassies abroad take action when the interests of German companies might meet obstacles.

## **2.1. The case of the German-Paraguay BIT**

The bilateral investment agreement between Germany and Paraguay is an example how legal and political support complement each other, in this case to the detriment of the right to land of peasants and indigenous peoples: Palmital is a settlement of 120 landless families. More than 10 years ago, they occupied an idle estate of 1003 hectares owned by several Germans living in Germany. The Palmital families applied for a transfer of the title under the agrarian reform provisions that require the land to either be sold by the owners or expropriated if the owners refuse to sell. When the agrarian reform authorities finally took action towards expropriation, the senate refused to give its consent, arguing that expropriation of the German owners would violate the 1993 bilateral investment treaty (BIT) with Germany. This followed an intervention of the German embassy in Paraguay with the Paraguayan authorities, which had referred to the BIT, creating the impression that Paraguay would violate the BIT if it expropriated the German citizens.<sup>30</sup>

Also in the case of the Sawhoyamaxa, the government of Paraguay argued that since the current owner of the land is a German citizen, expropriation of the land would breach the existing bilateral investment protection agreement between Paraguay and Germany. The Sawhoyamaxa indigenous community, traditionally living in the Paraguayan Chaco, has long been confronted with conditions of extreme poverty and marginalization. Since 1991, the leaders of the community have addressed several complaints to the Paraguayan administrative and judicial authorities, demanding the restitution of their lands. However, the state was not effectively addressing the problems and the Sawhoyamaxa were forced to live on the border of the road, without adequate food, sanitation, housing or medical care. As a consequence, the miserable living conditions lead to the death of more than 18 members of the community, most of them children and elderly people. The Sawhoyamaxa, represented by the NGO Tierra Viva, brought the case to the Inter-American Court of Human Rights (ICHR). In its decision of March 29, 2006 the Court declared the Paraguayan state in violation of the human rights to property, judicial protection, life and juridical personality before the law. On the one hand, the court argued that restitution of the land to the indigenous people can be considered a public interest issue and as such would fall under the exceptions foreseen in the bilateral agreement. On the other hand, the state cannot justify violations of its obligations under the Inter-American-Convention on Human Rights by pointing to its obligations under the investment protection agreement.<sup>31</sup>

So far, the German government has not revised its investment promotion policies and instruments in a way which would prevent a similar situation from occurring and effectively protect human rights.

## **3. Human Rights gaps in the procedures of the Export Credit Agency**

Germany's economy is highly export-oriented and public support of external economic activities is therefore a crucial aspect of German foreign policy. At the same time, the allocation of guarantees and securities by its Export Credit Agency (ECA) is not transparent because there is no unambiguous legal basis for the allocation of these guarantees and securities. As a consequence, there is no available and binding definition of the criteria according to which a project is worthy to be supported. Another consequence is that the allocation process is not transparent and only to a limited extent subject to control by the Bundestag.

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<sup>30</sup> Rolf Künemann "Foreign "Investment" vs. Agrarian Reform. The case of Palmital in Paraguay" in FIAN International, Right to Food Quarterly vol.2, nr.1., 2007

<sup>31</sup> Ana-Maria Suarez-Franco "Effectively realizing ESCR. The Sawhoyamaxa Decision of the Inter-American Court of Human Rights" in FIAN International, Right to Food Quarterly vol.2, nr.1., 2007

The federal government has repeatedly answered inquiries of the German Bundestag that it takes into account human rights aspects. It refers to examinations according to the Common Approaches, the World Bank Safeguard Policies and the IFC Performance Standards. However, none of these instruments contains guidelines for an examination from a human rights perspective. Only a few aspects concerning human rights are referred to indirectly, for example, the issue of forced resettlements of local populations in the context of infrastructure projects. But they do not contain a detailed examination of the supported project's potential or real impacts on the economic, social and cultural rights of the affected populations (see 2.2.). In addition, the Common Approaches define a threshold below which these standards do not have to be applied in the due diligence of the project (see 2.1.).

### **3.1. The case of the steelwork in Sepetiba, Brazil**

One recent example of the limitations of the current due diligence process involves a guarantee agreed upon and extended by the ECA on behalf of the German government for deliveries to a large Brazilian steel project in the bay of Sepetiba near Rio, built by ThyssenKrupp. A court case was launched by the state prosecution in December 2010 against the Brazilian ThyssenKrupp subsidiary on the grounds of violation of environmental standards, and against the responsible security company on the grounds of employing paramilitary forces. Among the people most affected by the steel plant are about 8,000 fishermen who used to live on fishing in the bay, which became impossible after works started in 2006. The amount of fish declined (allegedly due to the works bringing up heavy metals) and did not allow the fishermen to make a living off of fishing any longer. Thus, the project affects the right to food of the fishermen. Protests of the fishermen lead to death threats against at least one protest leader. Further environmental problems which could potentially deteriorate the living conditions of affected people are the result of flaws in the Environmental Impact Assessment, which did not look into cumulative effects of pollutants or the construction works destroying mangroves.<sup>32</sup> These problems may affect the right to health of affected people. Whilst the protests and problems were public at the time of the request for the guarantee, it was granted and the German government argues that the guarantee was justified.

### **3.2. The case of the Ilisu dam, Turkey<sup>33</sup>**

An example highlighting deficits in the state party's human rights due diligence despite the application of the Common Approaches is the Ilisu dam project in Turkey. The German government – together with the governments of Austria and Switzerland – pledged to only support the project if the Common Approaches and World Bank standards were met. As non-governmental organisations and international experts revealed the complete inadequacy of the Turkish laws governing expropriation and resettlement of people affected by dams, and of the Environmental Impact Assessment (EIA) and Resettlement Action Plan (RAP) prepared for the Ilisu project, the state party (here being the Austrian, German and Swiss ECAs representing their respective governments) undertook an exceptional effort and negotiated 153 conditions with the Turkish government in order to bring the project in line with international standards. While the conditions addressed some of the concerns regarding the rights covered by the Covenant, and the procedure to establish a committee of experts to monitor implementation of the conditions and to contractually provide for a withdrawal of the export credit cover in case of non compliance set a precedence for other projects, the process nonetheless shows continuing deficits in regards to human rights.

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<sup>32</sup> See also Christiane Gerstetter und Alexander Kamieth "Unternehmensverantwortung – Vorschläge für EU Reformen.. Eine juristische Analyse der Auslandstätigkeit zweier deutscher Unternehmen", Germanwatch, Mai 2010

<sup>33</sup> See also "Dam construction in Turkey and its impact on economic, social and cultural right", Parallel report in response o the initial report by the Republic of Turkey, March 2011

Most importantly, the impacts of the political situation in the region on the right of the affected population to participate in the planning of projects affecting their economic, social and cultural development were not properly addressed. While the Austrian, German and Swiss ECAs in their conditions demanded that the Turkish government consult with the affected population, they ignored the fact that the previous armed conflict and ongoing human rights violations effectively prevent the free expression of opinion and free participation in consultations. In fact, consultations were conducted in the presence of security forces; the project sponsors threatened to terminate the consultation when villagers voiced their opposition to the project; and agreements on alternative resettlement sites that were negotiated in the presence of the international experts were not met.

The state party also allowed for infringements on the right to take part in the cultural life, as it accepted the inundation of the 12,000 year old town of Hasankeyf, an outstanding feature of the region enshrining the heritage of more than 20 different cultures and fulfilling nine out of 10 criteria for a UNESCO natural and cultural heritage site. While the conditions stipulated the relocation of a few monuments to an archaeological park, scientific assessment had revealed early on that this was fully inadequate to preserve the cultural heritage at stake. As tourism attracted by the unique combination of natural and cultural features displayed in Hasankeyf constitutes the main income for the inhabitants of Hasankeyf, the destruction of this entity would also cause a severe reduction of income for the local population with no realistic alternatives in place. A case against the inundation of Hasankeyf was accepted by the European Court of Human Rights in 2006.

In addition, the Turkish government did not fulfil its extraterritorial obligation to respect the right to food and water of thousands of farmers downstream. As the Ilisu dam is planned on the Tigris river shortly before the border to Iraq, according to international law, the neighbouring country should have been informed and consulted at an early planning stage and an agreement on the use of the river should have been negotiated before a decision on the project was taken. The German government addressed the issue by merely demanding that the Turkish government provide information and extend an invitation for further talks to the Iraqi government. Given the history of Turkish water relations with its neighbours, which have seen threats to withhold water on political grounds, reductions of the water flow below agreed levels at the Euphrates river, and the Turkish objection to the Convention on the Law of Non-Navigational Uses of International Watercourses, this condition must be considered fully inadequate to safeguard the rights of the rural population, which depends on the Tigris river in Iraq. In fact, no agreement has been reached, while tensions over a lack of water in Iraq while Turkey was filling its dam reservoirs on the Euphrates river lasted for months in 2010.

### ***3.3. German opposition to Human Rights in international safeguard policies***

The OECD Common Approaches as well as the IFC Safeguard policies are being revised at the moment. So far, Germany has repeatedly opposed all efforts to include a stronger link to human rights in the Common Approaches and the IFC Safeguard policies.

Concerning the Common Approaches, the German government argues that human rights are being taken into account at a sufficient level through the existing guidelines. As we argued above, this is not the case. The UN Special Representative on Business and Human Rights, John Ruggie, addressed the OECD working group dealing with the review of the Common Approaches in September 2010 to underline that his research shows that the activities of companies may affect ALL internationally recognised human rights. He therefore insists that a human rights due diligence should be grounded in the International Bill of Human Rights and the ILO core labour standards. A second argument presented by the German government against enhanced human rights requirements is that the companies need to be able to handle the Common Approaches and that the Common Approaches need to take into account the limited influence of companies. However, limited influence cannot be a legitimate

reason to extend public support to projects in which human rights violations cannot be precluded. The German government's third argument against progress on human rights in the common approaches is that, currently, the most important thing is to involve emerging economies into the common approaches, and that they won't join if the common approaches are be strengthened, especially those concerning human rights. This concern was addressed by John Ruggie in his report from April 2010 where he argued „International cooperation can help level the playing field, but it must do so by raising the performance of laggards“.

#### **4. Recommendations**

It can be concluded that in the context of the promotion of export and foreign investment, the German government does not adequately take into account its international obligations according to articles 2(1) and 23 of the International Covenant on Economic, Social and Cultural Rights. Specifically, it has so far failed to institutionalise human rights due diligence procedures in its ECA and is currently undermining efforts within the OECD to strengthen Human Rights as part of the Common Approaches.

1. From a human rights perspective it is necessary to adopt an unambiguous legal basis on the national level for the allocation of public guarantees and securities. This legal basis has to include Germany's human rights obligations, especially in accordance with the International Covenant on Economic, Social and Cultural Rights. On this basis, the state party should safeguard that those persons whose human rights are affected by a supported project have access to effective remedies, including the possibility to address the German government via a complaint procedure.
2. It is part of the duty of care to carry out an extensive human rights risk assessment and to implement a procedure to identify human rights risks and find solutions to avoid them. The German government has to ensure that every request for support is examined with regard to the project's human rights implications, regardless of whether or not it relates to export or an investment. If a guarantee is accorded, it has to be ensured that the companies fulfil their duty of care with respect to human rights during the entire length of the project. Throughout the duration of the guarantee or security, companies should regularly give accounts of the situation which are made available to all interested parties.
3. The German government should assess the possible impact of its bilateral investment agreements on economic, social and cultural rights in other countries and instruct its embassies to take into account its extraterritorial obligations when promoting German investments, especially those that involve conflicts over land.

### **III. Human rights obligations in international financial institutions**

The Committee on Economic, Social and Cultural Rights issued in its Concluding Observations of August 2001 the following recommendation: *"The Committee encourages the State party, as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in articles 2 (1), 11, 15, 22, and 23 concerning international assistance and cooperation."* (E/C.12/1/Add.68, para. 31)

In its state report the German government addresses this recommendation. The government reports that it has used its influence in the World Bank Group to orient its programs towards poverty reduction strategies in developing countries. The government stresses the importance it gives to assuring high social standards in the World Bank Group and especially stresses the new safeguards for indigenous peoples and its commitment for the World Bank Group, acknowledging the ILO core labour standards. However, the German government

does not illustrate how it deals with human rights concerns in relation to individual projects financed by the World Bank, or how it takes into account its extraterritorial human rights obligations when taking decisions on policies as well as individual projects on the Board of Executive Directors of the four lending institutions of the World Bank Group (IBRD, IFC, IDA, MIGA).

The necessity of taking human rights into account when taking decisions on individual projects is illustrated exemplarily by the US\$ 3.75 billion loan the Board of Executive Directors of the International Bank for Reconstruction and Development (IBRD) approved in April 2010 for the South African energy utility Eskom to help build the 4,800 MW coal-fired power plant Medupi in Lephalale. The German Executive Director of the World Bank voted in favour of the loan, despite the project having been largely criticised beforehand by civil society for several reasons, including the negative impact on economic, social and cultural rights. Directly after approval by IBRD, community members living in the project area in Lephalale in Limpopo Province through groundWork and Earthlife Africa – two non-governmental organisations based in South Africa – submitted a complaint to the Inspection Panel of the World Bank. In August 2010, the Inspection Panel was authorised by the Board of Executive Directors of IBRD to conduct a full investigation of the alleged violations of World Bank Policies. This indicates that at the time of approval by the Board, the Board did not fully take into account the impacts of the project on the affected communities.

While the complainants argue that the project “violates the human rights of the communities, and are inconsistent with the South African Constitution and the African Charter on Human and Peoples’ Rights”, the World Bank management claims that it is “not within the Bank’s mandate to determine compliance of government actions with government’s legislation” and that “this allegation can only be tested before a South African court that has jurisdiction to opine on the Constitution of South Africa”<sup>34</sup>. So far, it is not clear whether the Inspection Panel will follow this line of argument and not assess the impact of the project on human rights as protected in the South African Constitution and international human rights treaties. However, even if it does make this assessment, the German government will still be left with the responsibility to make an assessment on its own in order to comply with its own obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), irrespective of the fact that South Africa has not yet ratified ICESCR.

One of the key issues of concern related to this project is access to electricity for the poor. The World Bank and its Executive Directors have been informed through letters from civil society that the Medupi plant will mainly benefit big industrial users, not the poor:

*“The current consumption level of the poor in South Africa is less than 5 percent of the electricity grid, in contrast to the 38 largest corporations that consume 40 percent. South Africa provides the cheapest electricity supply in the world to its biggest industrial consumers. In fact the poor are paying far more for their electricity than are the export-oriented metals and mining industries, and these industries repatriate the vast bulk of their profits abroad. (...) Claims that this loan will alleviate energy poverty are inaccurate. Eskom projects that free basic electricity (FBE) for South Africa’s poorest will increase from 50 to 70 kWh per month, yet after using this amount, they pay more per unit of electricity than the residents of rich areas and four times more than industry. (...) The National Energy Regulator, South Africa (NERSA) just approved a tariff increase of 25% every year for three years to help raise funds for Eskom’s expansion program. This will double household bills and is unaffordable to most South Africans. By any calculation, the World Bank’s loan will not alleviate energy poverty in South Africa, but rather aggravate poverty and worsen ongoing inequities in access to electricity.”<sup>35</sup>*

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<sup>34</sup> Inspection Panel Report and Recommendation. South Africa: Eskom Investment Support Project (IBRD Loan No. 78620) (INSP/R2010-0003), June 28, 2010

<sup>35</sup> Letter sent by Earthlife Africa and Vaal Environmental Justice Alliance to the World Bank on March 11<sup>th</sup> 2010

A recent report by Oil Change International, “Energy for the Poor?”, shows that the lack of focussing on energy access for the poor is symptomatic of the World Bank’s fossil fuel financing: reviewing the fossil fuel lending of the fiscal years 2009 and 2010 showed that none of the 26 fossil fuel projects clearly identified access to energy for the poor as a direct target. They also showed that even the World Bank’s staff responsible for assessing which of their projects met their own definitions of improving energy access found that no coal or oil projects can be classified as improving energy access.

In addition, Earthlife Africa and Vaal Environmental Justice Alliance claim that the World Bank did not take into account the cumulative impacts on the environment and the rights of local communities located near the mines where the coal will be sourced. The loan will open up new coal mines to feed the Medupi plant and related projects, in a country whose water table and air are being polluted by the coal industry, posing a grave threat to the right to water and health of communities as well as to the environment.

*“Eskom’s consumption of water for cooling makes it South Africa’s most wasteful user, and this in a drought-prone country with a long-term scarcity challenge. Acid mine drainage will result from these activities when water comes into contact with the exposed ore body of the coal mines leaving water high in dissolved metals and sulphates. Scientist Anthony Turton said that Mpumalanga’s acid mine drainage problem was likely to erupt within the next two years. Wits University geologist Terence McCarthy said that the acid mine drainage from collieries, combined with the explosion of new coal mining applications could render Mpumalanga a ‘total wasteland’ within a century. The increased sulphate levels in dams and rivers due to coal and gold mining has rendered the water unfit for human consumption<sup>36</sup>”*

## **Recommendations**

1. The German government should take into account its human rights obligations when taking decisions on individual projects on the board of the World Bank and the IMF.
2. The German government should assess projects that come up for decision on the World Bank board in relation to their economic impacts on the most vulnerable sections of society and on economic, social and cultural rights of those affected by the project.
3. The German government should prioritise investments that ensure increased energy access for the poor and shall, for that purpose, require evaluation, tracking and public reporting of energy access for the poor.

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<sup>36</sup> Ibid.