Extraterritorial State Obligations

List of Issues in response to the

5th Periodic Report of the Federal Republic of Germany on the implementation of the

International Covenant on Economic, Social and Cultural Rights

Submitted by

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October 2010
Preface

In 2001, Bread for the World, 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 policies fields like 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 of German policies and actions on economic, social and cultural rights in other countries and a series of reports have been published. In addition, there is a lively debate on extraterritorial obligations and human rights abuses by private companies.

With this submission we highlight extraterritorial obligations in three policy fields that have been addressed by the UN Committee on Economic, Social and Cultural Rights before - either in its Concluding Observations on the 4th state report or in General Comments. It is our suggestion that the Committee address these issues in its dialogue with the German government. The organisations submitting this report intend to present a full parallel report to the Committee before the session in May 2011.

1. Human rights obligations in the context of trade 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”. Each signatory state to the International Covenant on Economic, Social and Cultural Rights (ICESCR) must therefore as far as possible create a favorable environment, 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”. At the UNITAR High Level Panel on Human Rights and Trade in September 29 2010 in Geneva, UNHCHR 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”. 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”.

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1 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
3 Ibid. Para. 36.
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, Germany points out in its present state report 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 Rechtswirksamkeit”. 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.

In the past five years, several studies of international organisations and NGO have raised serious doubts about the compliance of European trade and agricultural policies (Common Agricultural Policy – CAP) with human rights obligations of the member states of the EU under the right to food. Case studies have documented that European tomato paste, chicken parts and dairy products had been exported at prices below its production costs and 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 producers in Burkina Faso, Bangladesh and Cameroon found it more and more difficult to compete with imports, were partly wiped out of the markets and lost incomes up to a degree that many farming families could not feed themselves adequately any more. Both the pressure exerted by the IMF and the EU (in bilateral Free Trade Agreement – FTA) and the CAP the continuing dumping effects of the CAP are serious matters of concern.

a) Trade liberalisation under the pressure of IMF conditionalities and bilateral Free Trade Agreements (FTA)

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 again and again faced import surges of tomato paste and poultry meat of which a large proportion has come from the EU. As a case study by FIAN, Germanwatch and Send Foundation shows, these exports squeezed out the poultry keepers in Ashaiman, close to the port of Tema. 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 hence 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, become increasingly indebted, and have therefore become even more vulnerable to external adversities. Their right to food is no longer fulfilled.

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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 1990’s. On the one hand it was the Ghanaian government who 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).\(^8\)

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)\(^9\) with the EU, which the government initialed on December 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 out of trouble. 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 Ghana had the right up until now, according to the rules of the WTO, 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 from raising 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 nor the EU and its member states. German NGO 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 taken place up to now.

The EPAs are just one example of bilateral trade agreements the EU is currently pushing for. Under its trade strategy “Global Europe: Competing in the World” of October 2006 the European has been negotiating similar agreements with India, South Korea, Colombia, Peru, the Andean Community, the Association of Southeast Asian Nations (ASEAN), Central America and others. Following a public consultation, the European Commission (EC) has announced to publish a reformed European trade policy in autumn 2010. In August 2nd 2010, the German government submitted a position paper to the EU Trade Policy Committee, where it outlines its views on the further development of the EU’ trade strategy.\(^10\) Human rights, food security, poverty alleviation or Millennium Development Goals (MDG) are neither addressed nor even mentioned in this paper.

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\(^8\) 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.

\(^9\) 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 been initialed 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.

\(^10\) 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.
b) Dumping exports caused by misled European Agricultural Policies

The case of dairy exports illustrate 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. 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 into the shelves of supermarkets. Hence, income generation and the fulfillment 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. 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 in this country there were no dairy farmers that could be damaged. Shortly after this statement, news agencies reported about 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. Seven million people, whose livelihoods depend on small scale dairy farming, according to Oxfam estimates, faced income reductions of 16 percent in average 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 subsidized exports of the EU have led to violations of the right to food among marginalized smallholders in Bangladesh.

In 2009 alone, the EU spent 181 million Euro on direct export subsidies for dairy products. However, export subsidies are not the main reason for dumping any more. The main reason is the extreme decline of producer prices within the EU as a result of CAP reforms since 1992. Whereas in 1986-88, European producer prices topped average world market prices by 71 percent, in 2007-2009 the difference shrank to 9 percent. For EU processors and exporters of agricultural products this guaranties access to low priced „raw materials“. This policy is often defended as a stronger market orientation by the EU and the German government. However, it is only through currently 39 billion Euros of direct payments that European farmers are in a position to accept such low producer prices which, in many cases, do not even cover their production costs. Oxfam estimates that, all in all, prices of EU dairy products cover only 50 of its production costs.

Currently, the EU is discussing a reform of the CAP for the time after 2013. In a position paper of March 31 2010 on this CAP reform, German government largely defended the status quo. According to this position, even export subsidies should be phased out only if an overall agreement is reached in the Doha Development Round of the WTO, which, at this point in time, is very unlikely. This means that export

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subsidies will continue to have a negative impact on the right to food and an adequate standard of living in developing countries.

Questions arising from the discussion above include the following:

1. Has the German government undertaken Human Rights Impact Assessments (HRIA) on “Economic Partnership Agreements” (EPA) with ACP countries such as Ghana, and other bilateral Free Trade Agreements (FTA) which are currently negotiated?
2. What has the German government undertaken to make sure that such FTA and loan conditionalities of the IMF do not limit the policy space of developing countries to protect market access, incomes and the right to adequate food of small scale farmers in Ghana and other countries?
3. What has the German Government undertaken to make sure that the reintroduction of EU export subsidies in 2009 would not threaten the right to food of small scale dairy farmers in developing countries such as Burkina Faso and Bangladesh?
4. What is the German Government undertaking to make sure that right to food in developing countries is given due attention in the reforms of the CAP for 2013 and the current reform of the EU trade policy?

2. 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 and 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. Right 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 authorized by the Board of Executive Directors of IBRD to conduct a full investigation into 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”\textsuperscript{15}. 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.”\textsuperscript{16}

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 for fossil fuel financing of the World Bank: 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 and that even the World Bank’s staff 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


\textsuperscript{16} Letter sent by Earthlife Africa and Vaal Environmental Justice Alliance to the World Bank on March 11\textsuperscript{th} 2010
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.

Questions arising from the discussion above include the following:

1. How does the German government take into account its human rights obligations when taking decisions on individual projects as member of the board of the World Bank?
2. How does the German government 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. Does the German government prioritise investments that ensure increased energy access for the poor and does it see it adequate for that purpose to require evaluation, tracking and public reporting of energy access for the poor?

3. Human rights obligations in development cooperation

In its 2009 Concluding Observations on Cambodia (E/C.12/KHM/CO/1), the Committee on Economic, Social and Cultural Rights highlighted in a very clear manner the profound problems related to access to land and evictions in Cambodia: “The Committee is […] concerned about the reports that the rapid increase in economic land concessions in the last several years even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival. (art. 1) (…) The Committee is gravely concerned over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land-grabbing. The Committee notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies. It is also concerned about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also concerned over reports of violence during the evictions, in some cases carried out by the police. […] (art. 11)”

a) Germany’s support to the land sector in Cambodia

Since 1995 German Development Cooperation has actively supported the Cambodian land sector through its technical cooperation branch GTZ. It recently recommitted its support to the sub-sector programs on Land Administration, Land Management and Land Distribution (together known as the Land Sector Program) for 2011 and 2012 with up to 4.000.000 Euro. One key issue of concern with regards to Germany’s human rights obligations is related to Germany’s ongoing support of the Land Titling System, despite mounting evidence that this system has denied due process rights to vulnerable households and communities and further weakened their tenure status. A second issue of concern relates to Germany’s pledged support for the implementation of the Circular on Resolution of Temporary Settlements on

Ibid.
Illegally Occupied Land in the Capital, Municipal and Urban Areas, which further strips vulnerable households and communities of their rights to due process in securing their tenure.

In its 5th periodic Report under the ICESCR the German Government highlights the Human Rights Action Plan of the BMZ. We welcome this effort by the BMZ to comprehensively address human rights in development cooperation. In deed we see that the FAO Voluntary Guidelines for the Progressive Realization of the Human Right to Food, that have been endorsed by the German as well as the Cambodian Government would be an effective tool to include human rights in the land sector. Nevertheless we see a mismatch between the declared human rights policy of the German government and the concrete support to the land sector in Cambodia.

**b) Support to land titling**

Overall, the approach to enhance security of land tenure through titling schemes can lead to increased loss of land by the poorest groups by exposing existing access to land to speculation or commercial pressure (see e.g. EU Land Policy Guidelines 2004 or Olivier de Schutter, Report to the Human Rights Council, 22 December 2009). In addition the process of titling itself is often biased against poor groups by not effectively addressing their de-facto land use/use rights or by obstacles for the poor to the registration system (e.g. costs, travel, illiteracy...) and instead reaffirming/strengthening rights of elites/powerful actors. Such an approach thus can have negative effects on the human rights to food and housing of these groups.

These overall concerns are fortified by on-the-ground-reports of international and Cambodian civil society organizations (CSOs) that state that the process of land registration (basis for obtaining a title) in Cambodia “is in no way transparent, equitable or accountable”. The titling excludes areas that are “likely to be disputed” (World Bank 2002 LMAP Project Appraisal Document, p.22). This exclusion effectively denies vulnerable groups access to the only system which would protect their land and property rights and secure their land tenure. Most affected are poor and vulnerable households and communities that reside on or depend on sought-after land for their livelihoods, and that are targeted for eviction or likely to be cut off these lands. In further cases, communities have been subsequently excluded from the titling because “the areas are deemed to be too complicated for the systematic titling process”.

Seven areas in Tonle Basac commune have been excluded by this justification in October 2009. Poor communities are living in at least three of the seven areas. This highlights the discriminatory and highly biased process.

A Parallel Report to the CESCR states: “In effect, possession rights are not being recognised for those households most vulnerable to forced evictions because they live on land that is sought after by powerful individuals and companies. Authorities have also refused to issue titles to such households despite evidence of valid possession rights. The land registration and titling system under the donor-funded Land Management and Administration Project (LMAP), which commenced in 2002, has thus far failed to provide secure tenure to many of the most vulnerable households”. The report further addresses the significant and problematic role of the international donors in the land sector, especially under the LMAP: “Donors should ensure that accountability for these projects is significantly improved, including through the implementation of rigorous monitoring systems and by making representations to the Government on the illegality of serious violations of the Covenant when they occur.”

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18 Letter sent by the Ministry of Land Management, Urban Planning and Contruction, October 6th 2009 (No: 372 PPMO/PHN)
19 The German Government has been informed about these cases by FIAN in June 2010.
21 Ibid., p.10
Through its contribution to an inherently discriminatory program that is actively excluding vulnerable groups from securing their tenure – without ever questioning or challenging this exclusion - Germany has entrenched and legitimized systematic inequality in the Cambodian land sector and thereby breached its extra-territorial obligations to respect and protect the human rights to food and housing. Against this background it should be a major priority of German DC to conduct an inclusive and comprehensive evaluation of their support to the Cambodian land sector. It should be noted, that until now there has been no evaluation of the impacts of this program on those who received title and those who have not.

Case Study: Boueng Kak Lake

In February 2007, the Municipality of Phnom Penh granted a 99-year lease to the private developer Shukaku Inc. over 133 hectares of prime city-centre real estate, including Boeung Kak lake and the surrounding land where until recently some 20,000 people resided. Boeung Kak lake has historically been one of the most important of seven natural lakes around Phnom Penh, dating back to the early 1900s. It has not only been a place of recreation and enjoyment for Phnom Penh’s residents, but it served as a natural reservoir for excess rainwater during the monsoon season. For many lakeside residents who grew morning glory or harvested fish and snails from the lake, it was also an important livelihood source.

The lease agreement is in clear violation of the Cambodian Land Law, which stipulates that State public property – including lakes, which have inherent public value – cannot be sold or subjected to long-term leases and that lessees must not damage the property or change its public function. In direct contravention of the Land Law, Shukaku began filling the lake in August 2008, with the stated intention of building a new ‘satellite city’ with private villas, shops and office buildings on the site. The filling of the lake has caused serious flooding in the surrounding villages, leading many families to pack up and leave because their homes have become uninhabitable.

The lease agreement also usurps the land rights of residents, many of whom have been living on the banks of the lake since the 1980s, and thus have strong legal claims to the land. As of September 2010, more than one thousand five hundred affected families have been coerced into accepting compensation for a fraction of market value for their homes and land, and the remaining roughly two thousand five hundred families are currently facing the threat of forced eviction. With over 20,000 people already evicted or under threat of eviction from the area, the Boeung Kak case may constitute the largest forced relocation of Cambodians since the Khmer Rouge evacuated Phnom Penh in 1975.

Boueng Kak residents have attempted to challenge this unjust development through the courts of Cambodia and by sending complaints to the competent Government authorities, but their domestic complaints have all been rejected.

In September 2009, community representatives submitted a complaint to the World Bank Inspection Panel, alleging that the World Bank breached its operational policies by failing to adequately supervise the Land Management and Administration Project (LMAP), which unfairly denied land titles to the Boeung Kak families shortly before the area was leased. Despite strong evidence to prove their legal rights to the land, Boeung Kak residents were excluded from LMAP when land registration was carried out in their neighborhood in 2006. The World Bank Inspection Panel is investigating whether the Bank breached its operational

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22 The term “inclusive” refers to a process of evaluation that actively includes civil society and directly involved groups in all phases of the evaluation: the planning phase/ the elaboration of terms of reference, conduction of the evaluation and aggregation the findings.
policies by failing to supervise the Government’s implementation of social and environmental safeguards tied to the project that were intended to ensure that a Boeung Kak scenario would not unfold. World Bank Management has since stated that the LMAP Resettlement Policy Framework should have been triggered in the Boeung Kak case, which - if implemented properly - would protect residents from forced eviction. The German Government however has been silent on the matter and has not responded to repeated requests for intervention by the affected community in support of their rights.

c) Support to the Circular on Resolution of Temporary Settlements on Illegally Occupied Land in the Capital, Municipal and Urban Areas (Circular 03)

In response to mounting pressure from civil society, the German and Cambodian governments agreed to five “milestones” that should be achieved by June 2010 in order for Germany to continue its assistance to the land sector. In August 2010 the German Ministry for Economic Cooperation and Development decided to renew its support to the Cambodian land sector, despite the voiced consensus of civil society organizations that most if not all of the milestones had not been achieved. Following a press release, the support is “contingent upon further strengthening implementation of Human Rights in the land sector,” however it is unclear what this will mean in practice.

The German Ministry for Economic Cooperation and Development (BMZ) highlighted as well that it will support the implementation of the Circular 03, despite the fundamental concerns related to the Circular that have been raised by civil society: “BABC and other housing rights groups are concerned that the Circular will be used as a mechanism to evict urban-poor residents, regardless of whether or not they satisfy the legal conditions of legal possession.” It remains unclear whether the German government has undertaken a human rights impact assessment before committing to support the circular.

Questions arising from the discussion above include the following:

1. How will Germany ensure that its support to the Cambodian land sector is in line with its obligations to respect and protect people’s rights to food and housing in Cambodia?
2. What will Germany do to make sure that its support is accountable and transparent for civil society?
3. Will the German government conduct an inclusive and qualitative evaluation of the land titling program in Cambodia to assess its medium-term impact on tenure security, access to land and natural resources with special regards to the most vulnerable groups?
4. Which measures will be taken and which instruments will be installed to support a comprehensive implementation of human rights in the land sector?
5. Why has Germany refused so far to support the Boeung Kak community in their efforts to have their land rights properly assessed through the land registration process, and be afforded protection from forced eviction through the implementation of the LMAP Resettlement Policy Framework?
6. How does Germany ensure that its support to the implementation of the Circular 03 will not contribute to illegal forced evictions and denial of due process rights for vulnerable groups?

23 Press Release of the embassy of the Federal Republic of Germany, Phnom Penh, 26th August 2010. Further information has not yet been made available despite requests.
24 Bridges Across Borders Cambodia: Comments on BMZ Milestones for Continued Cooperation in the Cambodia Land Sector, 2010