

Parallel Report

Austria's Extraterritorial State Obligations on ESCR

Austria's 5th State Report

on the International Covenant on Economic, Social
and Cultural Rights (ICESCR)



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Via Campesina Austria – ÖBV
WIDE Austria

Coordination Group

Gertrude Klaffenböck (FIAN Austria)
Philipp Salzmänn (FIAN Austria)

Contact

FIAN Österreich,
Schwarzspanierstrasse 15/3/1
1090 Wien

Editorial Team

Gertrude Klaffenböck, Philipp Salzmänn, Ana Maria Suárez Franco

Translators

Rosalind Eccles, Charlotte Head, Larissa Kersten

Layout

Philipp Salzmänn

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List of Abbreviations

ADC – Austrian Development Cooperation

ADA – Austrian Development Agency

BMeiA – Austrian Foreign Ministry

BMF – Austrian Federal Ministry of Finance

CAP – Common Agricultural Policy

CSO – Civil Society Organization

CSR – Corporate Social Responsibility

ECA – Export Credit Agency

ESCR – Economic, Social and Cultural Rights

ETOP - Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights

ICESCR - International Covenant of Economic, Social and Cultural Rights

IFIs- International Financial Institutions

ODA – Official Development Assistance

OeEB – Oesterreichische Entwicklungsbank AG (Development Bank of Austria)

Executive Summary

“The human rights of individuals, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States. The advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world.” With regards to these human rights challenges, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (ETOP)¹ were adopted in 2011 by a group of experts in international law and human rights. These reflect international law and standards that clarify the extraterritorial obligations of States with a focus on economic, social and cultural rights. In this Parallel Report, the extraterritorial obligations of the Austrian State are analyzed from a human rights perspective.

Chapter 1 deals with Austria’s obligation of International Assistance and its extraterritorial obligations to fulfil economic, social and cultural rights in the context of development cooperation.² NGOs working on development³ draw attention to the shortcomings of the quality and quantity of Austrian Development Cooperation (ADC) focusing on the programmable bilateral ADC.

In 2012, Austria’s Official Development Assistance contribution – despite Austria’s commitment since 1970 in the context of the United Nations General Assembly Resolution and its many confirmations on national and international level⁴ to spend 0.7% of Gross National Income (GNI) on ODA – amounted to merely 0.28% of the GNI.⁵ Additionally, an effective ODA does not have to be necessarily consistent with human rights and therefore needs to be adjusted accordingly.

The effectiveness of the ADC is diminished by the structural weaknesses within Austria concerning the internal fragmentation⁶ and the lack of geographical focus.⁷

In the context of its non-discrimination obligations⁸ – in particular with regard to gender equality and equal opportunities of people with a disability – there has been criticism by organizations concerning the practices of Austrian development policy in this regard. NGOs criticize the qualitative weakness in the implementation of gender equality goals⁹ in the ADC.

The Development Cooperation Act¹⁰ does recognize the rights and needs of persons with disabilities within development policy, but disability as an overarching issue is not yet enshrined.¹¹

Austria has to ensure and secure the development and implementation of a coherent, human rights-based and gender-equal development strategy, guarantee a minimum budget for its ADC, as well as significantly increase the means of programmable ODA disbursements. Moreover it should ensure that these means of the ODA are merely utilized correspondent to the aims of the development policy and allocation of resources and that the selection of projects is based on human rights impact assessment.

In Chapter 2, based on examples of two country case studies (Ethiopia and Sierra Leone), Austria’s engagement, and that of the ADA and OeEB in the frame of International Financial Institutions, are analyzed with regard to their impacts on human rights, and specially on ESCR.

The ADA has been taking part in financing the Protection of Basic Services (PBS) program with about €5.7 million since 2008,¹² which is financed by a donor consortium and administered by the World Bank.¹³ According to a request by the Anuak, an indigenous people, to the Inspection Panel of the World Bank, the Anuak community in the Gambella Region of Ethiopia had been severely harmed by the PBS program.¹⁴ According to the complaint, the regional government in Gambella, by implementing the PBS program, applies the “Villagization Program Action Plan”,¹⁵ a resettlement program which has been carried out by force many times before and resulted in the eviction of their communities from their ancestral land as well as to gross violations of human rights (including arbitrary arrest and detention, torture in custody, rape and other sexual violence, destruction of property, impediment of access to food etc.).¹⁶ Austria remains, as a member of the World Bank, responsible for its own conduct regarding its human rights obligations. Although Austria proactively fulfills its role within the Board of Executive Directors of the World Bank concerning the Anuak

complaint the case demonstrates various shortcomings from a human rights perspective especially regarding the lack of effective monitoring and, if needed, corrective mechanisms. Based on the bilateral ADA financing mechanism, Austria has a direct human rights responsibility.

The OeEB finances, via the Emerging Africa Infrastructure Fund Ltd (EAIF), a project of a Swiss energy enterprise in Sierra Leone with €10 million.¹⁷ This project, for which about 14,300 hectares of land were leased,¹⁸ endangers the food security of the local rural population.

A study as of September 2012¹⁹ points out that the realization of the energy enterprise's project takes away the access to land and water from the local population for a period of at least 50 years – the duration of the land lease agreement.²⁰

The critique of civil society in the context of Austria's involvement in international organizations and the IFIs is directed towards, in particular, the omissions of the OeEB and ADA during the negotiation and decision phase for credit provision/financing to conduct an impact assessment on human rights and to take the results of the assessment as a basis for decision making. Human rights monitoring mechanisms have to be implemented for the entire period of the project, it means ex ante and ex post and such impact assessments should be the basis for corrective measures, including those who mean to stop the project. In cases of human rights violations or risks of violations, OeEB and ADA should provide adequate human rights complaint procedures and remedy mechanisms.²¹

Chapter 3 elaborates on the role of Austria as an EU Member State and focuses in particular on the EU energy and climate (change), and agricultural policies from a human rights perspective.

Austria does transfer competences to the EU, however, it needs to undertake all possible steps to ensure that the EU is acting consistently with Austria's international human rights obligations and state obligations under Austrian national law and assumed international human rights obligations.²²

The current target quota of agrofuels (10% of renewable resources in each Member State's transport energy consumption)²³ cannot be met by current Austrian or EU common agricultural production without importing raw materials and processed agrofuels.²⁴ The promotion of agrofuels has been shown to be an essential driving factor for large-scale land acquisitions.²⁵ These (investment deals) often threaten the access to and control of land by the local population, harm biodiversity and the environment (in general) and thereby endanger in particular the realization of the right to adequate food in the invested countries.²⁶

Austria, as an EU Member State, is jointly responsible for the development and implementation of the Common Agricultural Policy (CAP) as well as for the external trade strategy of the EU. Austria, continuously producing a surplus in its milk sector, approved the reintroduction of export subsidies during the milk price crisis of 2008/2009.²⁷ This led to an increase in exports of subsidized milk powder to countries of the Global South, which is then sold at a price below the production costs of local milk producers and thereby leads to a crowding-out of local products from the market.²⁸ Vis-à-vis this dumping problem, the human rights impacts of the external trade strategy of the EU have to be assessed.

Austria should have taken the opportunity during the currently negotiated reform of the CAP to advocate a reduction of the adverse impacts on human rights of the EU agricultural policy. However, Austria maintains that the instrument of export subsidies should be kept. The opinion of the Committee on Development of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on financing, management and monitoring of the Common Agricultural Policy was rejected by the plenum and one of the current power holding parties of Austria as a Member of European Parliament (MEPs).²⁹ Austria supports the proposal of the Commission to increase the competitiveness of the EU agricultural sector and to, for example, reduce barriers to investment offensives for further increase in production and thereby additional food exports.³⁰ Austria rejected the European Commission's proposal of a bundle of measures that could contribute to the reduction of over-production and thereby exports, such as by making the payment of subsidies dependent on the fulfillment of environmental criteria.³¹

By not conducting an appropriate assessment of the impacts of energy or agrofuel policies and by not sufficiently regulating investors and agricultural industrial enterprises, which are active in agrofuel production, it needs to be taken as an indication that Austria is withdrawing itself from the compliance of its human rights obligations. To fulfil its obligation to protect, Austria should modify its position in agricultural policies, and advocate for the abolition of export subsidies and financial incentives for over-production.

In Chapter 4, Austria's export and foreign investment promotion and corporate social responsibility policies will be briefly introduced, and Austria's human rights obligations will be illustrated using as an example an (Austrian) company which is contributing as an important consortium partner to the construction of two dam projects – one in Turkey and the other in Brazil.

The extraterritorial obligations of Austria to protect cannot be complied with just by application of the voluntary Corporate Responsibility Policies, as evidenced by a number of reports by Austrian NGOs.³² The ETOs are obligatory and not mere voluntary rules. From a civil society perspective, ambitious state regulations are necessary regarding the human rights responsibilities of enterprises - more so if enterprises conduct business outside of the EU and the control as well as the visibility of their actions is not fully possible.

The Austrian government played a very supportive role in getting the Ilisu dam project in Turkey started. In the process of the project 199 settlements were flooded and the livelihoods of up to 78 thousand people were affected.³³ Even though the Austrian government withdrew from the project in 2009 as a response to civil society pressure, this example highlights that before the implementation of the project, no adequate impact assessment on human rights was conducted. One Austrian enterprise is still involved in the project and ignores its adverse impacts on the livelihoods and economic, social and cultural rights of the people in these regions. The same company is one of the main beneficiaries of the Austrian export promotion system. The joint responsibility of this company for human rights-breaching actions has not yet been investigated or sanctioned by the Austrian government.³⁴

In 2011, the same Austrian company confirmed its involvement in the large dam project Belo Monte in Brazil.³⁵ Because of this project, the indigenous groups living in the affected regions are facing massive consequences such as forced resettlements and the loss of their livelihoods. The Office of the District Attorney (Ministério Público Federal, MPF), the body of federal prosecutors, brought a public civil claim regarding the violation of the right to property and access to land as well as the right to physical, social and cultural continuance of indigenous groups in the region.³⁶

Because of the dam project at Belo Monte, and the way it has been implemented, fundamental human rights of affected indigenous peoples, river communities and residents of Altamira are at risk of being violated.³⁷ Even though no liability was guaranteed for the concrete project, the company benefits massively from Austrian export promotion.³⁸ However, no measures are known to have been set by the Austrian government to examine whether the Austrian company has undertaken any precautionary measures for the Belo Monte project to ensure that human rights of the people in this region are respected, and/or any measures have been undertaken by the Austrian authorities to hold the enterprise accountable and ensure access to preventive recourse mechanisms to the communities at risk.

According to its obligations to protect, the Austrian government needs to ensure that non-State actors are jointly responsible for human rights-violating activities, and in case of violation the Austrian government shall hold them accountable.

The provision of export guarantees by the state needs to be based on human rights impact assessments and to be linked to the obligation of companies to respect human rights during the entire length of the project and beyond.

¹ FIAN (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne.

² Austria, as well as a number of other countries, committed itself in 1970 in the context of the United Nations (UN) General Assembly Resolution to spend 0.7% of Gross National Income (GNI) on Official Development Assistance (ODA). Principle 33 of ETOP includes the obligation to provide international assistance and Principle 29 of ETOP the state obligation to create an international enabling environment conducive to the universal fulfillment of economic, social and cultural rights, including in matters relating to development cooperation.

³ AG Globale Verantwortung, ÖFSE, WIDE Austria, Licht für die Welt, Koordinierungsstelle der Österreichischen Bischofskonferenz für internationale Entwicklung und Mission (KOO)

⁴ On international level, e.g., UN Millennium Declaration 2000, Monterrey Consensus 2002, EU Obligations for its Member States 2005, UN Security Council 2008; on national level, e.g., in governmental programs, budget speeches, and in the Three-year Programme of Austrian Development Cooperation, see KOO and AG Globale Verantwortung (2011): Factsheet Österr. Entwicklungsfinanzierung, 09/2011, pp. 1 – 2.

⁵ OECD (2013): Development Co-operation Directorate (DCD-DAC), <http://www.oecd.org/dac/aidtopoorcountriesslipsfurtherasgovernmentstightenbudgets.htm> [online: 21.04.2013].

⁶ See chapter 1.2.2

⁷ Ibid.

⁸ See ICESCR Articles and their interpretation by the ICESCR Treaty Body, like the General Comment No. 16 on “[t]he equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3)” and No. 20 on “[n]on-Discrimination in Economic, Social and Cultural Rights (Article 2.2)” and the CEDAW convention as well as ETOP 2 and 32; CRPD, Article 4. 1.b and CRPD, Article 32. 1. A.

⁹ Austrian Development Agency (2012): Evaluation of the Austrian Development Cooperation (ADC) Gender Policy between 2004–2011. Final Report, http://www.entwicklung.at/uploads/media/Final_Eval_Report_Gender.pdf [online: 18.06.2013].

¹⁰ BGBl. 65/2003, Section 1, Para. 4.

¹¹ Stellungnahme des Österreichischen Monitoringausschusses zur Umsetzung der CRPD in der Entwicklungszusammenarbeit, April 2012

http://monitoringausschuss.at/cms/monitoringausschuss/attachments/5/7/1/CH0914/CMS1322123068495/ma_sn_eza_fi_nal.docx [Zugriff: 18.06.2013]; Entschließungsantrag „Rechte und Bedürfnisse von Menschen mit Behinderungen in der Entwicklungszusammenarbeit“, Dezember 2012 http://www.parlament.gv.at/PAKT/VHG/XXIV/A/A_01900/index.shtml [online: 18.06.2013].

¹² Ibid., p. 10.

¹³ Ibid.

¹⁴ Inclusive Development International (2012): Policy and Legal Analysis of the Ethiopia PBS Request for Inspection, Anuak Request for Inspection Panel, para. 12, <http://www.inclusivedevelopment.net/wp-content/uploads/2012/09/Legal-and-Policy-Analysis-for-Anuak-Request-for-Inspection.pdf> [online: 21.06.2013].

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ OeEB website, OeEB loan to the Emerging Africa Infrastructure Fund Ltd., <http://www.oeb.at/en/projects/Pages/emerging-africa-infrastructure-fund.aspx> [online: 21.07.2013]; Emerging Africa Infrastructure Fund (2013): Fund Structure, <http://www.emergingafricaffund.com/about-us/fund-structure.aspx> [online: 21.07.2013].

¹⁸ Addax Bioenergy: Q&A: Addax Bioenergy sugarcane ethanol project in Makeni, Sierra Leone, http://www.addaxbioenergy.com/uploads/PDF/Addax_Bioenergy_FAQ_June_2013.pdf [online: 21.07.2013].

¹⁹ SiLNoRF / Bread for All (2012): Concerns of civil society organisations and affected land users on Addax Bioenergy, http://www.breadforall.ch/fileadmin/deutsch/2_Entwicklungspolitik_allgemein/C_Wirtschaft%20und%20MR/Landgrab/CSO_Concerns_Addax_120925.pdf [online: 21.07.2013].

²⁰ Anane, M. Abiwu, C. (2011): Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone,

http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniques/Independent%20Study%20Report%20Addax%20Final.pdf [online: 31.07.2013].

²¹ See ETOP 37 and 38

²² *Matthews v United Kingdom* (1999), Appl. No. 24833/94, ECtHR, para. 32; see also *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* (2005), Appl. No. 45036/98, ECtHR, para. 154.

²³ The EU takes a key role in this regard and adopted in 2009, in the context of the Directive on the promotion of the use of energy from renewable sources, a 10% share of energy from renewable sources in transport by 2020. See EU (2009): Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDF> [online: 18.06.2013].

²⁴ Ibid.

²⁵ Europafrica (2011): (Bio)fueling Injustice?, p. 49, http://www.europafrica.info/file_download/13/europafrica_2011_report.pdf [online: 18.02.2013].

²⁶ Ibid.; SiLNoRF / Bread for All (2012): Concerns of civil society organisations and affected land users on Addax Bioenergy,

http://www.breadforall.ch/fileadmin/deutsch/2_Entwicklungspolitik_allgemein/C_Wirtschaft%20und%20MR/Landgrab/CSO_Concerns_Addax_120925.pdf [online: 21.07.2013].

²⁷ Misereor (2011): Wer ernährt die Welt? Die europäische Agrarpolitik und Hunger in Entwicklungsländern, p. 21.

²⁸ Ibid.; AgrarMarkt Austria (2011): Marktbericht, No. 10, 07.01.2011, p. 25.

²⁹ Committee of Development: Opinion 2011/0288(COD),

<http://www.votewatch.eu/en/decision-on-the-opening-of-and-mandate-for-interinstitutional-negotiations-on-financing-management-a-33.html> [online: 03.07.2013]

³⁰ Bauernbund: GAP: Position des Bauernbundes – Gemeinsame Agrarpolitik 2014 – 2020, http://elisabeth-koestinger.eu/uploads/media/Positionspapier_des_BB_zur_GAP_nach_2013.pdf [online: 03.07.2013].

³¹ Kern, Martina/ Jakob Auer (2012): Die Leistungen der heimischen Landwirtschaft sind beeindruckend,

<http://www.jungbauern.at/25404/?MP=61-17476> [online: 03.07.2013]; Siffert, Josef (2012): Wlodkowski: Hauptaufgabe der Bauern ist Nahrungsmittelproduktion, Landwirtschaftskammer Österreich, 06.09.2012,

<http://www.agrarnet.info/?+Wlodkowski++Hauptaufgabe+der+Bauern+ist+Nahrungsmittelproduktion+&id=2500%2C1735357%2C%2C%2Cc2V0PTU%3D> [online: 03.07.2013].

³² See chapter 4.2.1 of the report

³³ Kudat, A (2006): Review of Resettlement Action Plan (RAP) for the Ilisu dam and hydro-electric power project, internal paper for the Swiss Export Credit Agency.

³⁴ Eberlein, C./Wenidoppler, T. (2013, forthcoming): Ambitions and limits to prevent massive forced migration in Turkey's Ilisu dam project, In: Cernea, M. (Ed.): Sociological Knowledge and Development Pathologies.

³⁵ Andritz (2011): Andritz to supply major equipment for Belo Monte hydropower plant,

<http://www.andritz.com/index/hydro/hy-news/hy-news-detail.htm?id=5589> [online: 20.06.2013].

³⁶ Ministerio Publico Federal. Referencia: Inquerito civil Publico, <http://www.prpa.mpf.gov.br/news/2011/BeloMonte-21-09-2011.PDF> [online: 20.06.2013].

³⁷ Ministerio Publico Federal: Referencia: Inquerito civil Publico, <http://www.prpa.mpf.gov.br/news/2011/BeloMonte-21-09-2011.PDF> [online: 20.06.2013].

³⁸ Belo Monte – österreichische Förderung für naturzerstörendes Österreichs Unternehmen (12294/ AB),

http://www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_12294/index.shtml [online: 20.06.2013].

Introduction

“Without the acceptance and implementation of extraterritorial obligations, human rights cannot be universally realized, nor can they play a substantial role in the regulation of globalization or in clarifying differentiated State responsibilities.”¹

“The human rights of individuals, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States. The advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world.”² Global wealth and simultaneous poverty, as well as socio-economic and gender inequalities, continue to increase worldwide. Moreover, individuals and communities face continuing deprivation and denial of access to essential land, resources, goods and services by State and non-State actors alike. In this way countless individuals are denied their economic, social and cultural rights.

“States have recognized that everyone is entitled to a social and international order in which human rights can be fully realized and have undertaken to pursue joint and separate action to achieve universal respect for, and observance of, human rights for all.”³ Article 2.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates the obligation of State Parties to the Covenant “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Despite the universality of human rights many States interpret their human rights obligations as being merely confined to their own territory. Human rights protection is severely weakened by this territorial confinement of rights to within domestic territory - a situation that has only worsened in our increasingly globalized world over the last twenty years.

In this context and with regard to human rights challenges, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (ETOP) were adopted in 2011 by a group of experts in international law and human rights. These reflect international law and standards that clarify the extraterritorial obligations of States with a focus on economic, social and cultural rights.

In this Parallel Report, the extraterritorial obligations of the Austrian government and its bodies will be analyzed from a human rights perspective. The first chapter deals with Austria’s obligation of International Assistance and cooperation. In the second chapter, based on examples of two country case-studies (Ethopia and Sierra Leone), Austria’s engagement within International Financial Institutions and their impacts on human rights are analysed. Chapter three elaborates on the role of Austria as an EU Member State and focuses in particular on the EU energy and climate, and agricultural policies from a human rights perspective. In the fourth chapter Austria’s export and foreign investment promotion, and corporate social responsibility policies will be outlined, before illustrating Austria’s human rights compliance with its ETOs, with examples based on two dam projects (Ilisu and Belo Monte).

¹ The Vienna+20 CSO Declaration, adopted in Vienna on 26.06.2013, <http://viennaplus20.files.wordpress.com/2013/04/vienna20-cso-declaration-final.pdf> [online: 04.07.2013].

² FIAN (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p.3.

³ Ibid.

1. Austrian Development Cooperation

Based on its GDP per capita, Austria was in 2011 the third wealthiest country of all EU Member States according to Eurostat.⁴ In the Austrian Foreign Ministry's Three-Year Program on Austrian Development Policy (2013-2015) – the program through which the Austrian Foreign Ministry determines Austrian development policy – it is stated that showing solidarity and taking responsibility are important parts of Austrian foreign policy; and enabling a dignified life in all parts of the world is “our obligation”.⁵ Furthermore, it is claimed that the development policy is committed to human rights and the rule of law.⁶ In this chapter, a human rights-based quantitative and qualitative analysis of the Austrian Development Cooperation (ADC) will be undertaken.

1.1 Austria's Obligation to International Assistance

Article 2.1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) enshrines the obligation of State Parties to the Covenant “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Austria, as well as a number of other countries, committed itself in 1970 in the context of the United Nations (UN) General Assembly Resolution to spend 0.7% of Gross National Income (GNI) on Official Development Assistance (ODA). This commitment of 0.7% of the GNI has, despite being confirmed many times on national and international level,⁷ and being repeatedly reaffirmed for completion in the near future, never been fulfilled.

The Maastricht Principles provide important principles in the context of ODA⁸ and include the obligation to provide international assistance (ETOP, Principle 33)⁹. In the context of the State's obligation to fulfil and to create an international enabling environment, it is laid out in principle 29 that States “must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfillment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and *development cooperation*”¹⁰ (emphasis added). Thereby multilateral and bilateral agreements as well as international standards need to be elaborated, interpreted, applied and regularly reviewed. Furthermore, every State can achieve its obligation via “measures and policies (...) in respect of its foreign relations, including actions within international organizations, and its domestic measures and policies”¹¹.

⁴ Eurostat (2012): Press Release, 180/2012, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-13122012-AP/DE/2-13122012-AP-DE.PDF [online: 20.06.2013].

⁵ Three-Year-Programme 2013-2015, p. 5, http://www.entwicklung.at/uploads/media/ThreeYearProgramme_13-15.pdf [online: 08.07.2013].

⁶ *Ibid.*, p. 15.

⁷ On international level, e.g., UN Millennium Declaration 2000, Monterrey Consensus 2002, EU Obligations for its Member States 2005, UN Security Council 2008; on national level, e.g., in governmental programs, budget speeches, and in the Three-year-programmes of Austrian Development Cooperation, see KOO and AG Globale Verantwortung (2011): Factsheet Österr. Entwicklungsfinanzierung, 09/2011, pp. 1 – 2.

⁸ ODA “flows comprise all official Austrian development disbursements which are accredited by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD).” See ADC, Financing, http://www.entwicklung.at/austrian_development_cooperation/en/ [online: 14.07.2013].

⁹ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 10.

¹⁰ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 9.

¹¹ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 10.

The political responsibility and the strategic outlook of the development policy is the responsibility of the Austrian Foreign Ministry, also named the Ministry of European and International Affairs (Bundesministerium für europäische und internationale Angelegenheiten (BMeiA)), whose department VII.1 coordinates multilateral development cooperation. The Austrian Development Agency (ADA) is responsible for the implementation of bilateral programs and projects of the ADC.¹² The ADA took on the responsibility as a private agency in January 2004 from the department VII of the BMeiA to ensure the planning, financing and implementation of programs and projects of the ADC.¹³

Economic, social and cultural rights (ESCR) have to be, according to Article 2.2 of the ICESCR, “exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” According to General Comment No. 20 of the UN Committee on Economic, Social and Cultural Rights, discrimination “undermines the fulfillment of economic, social and cultural rights for a significant proportion of the world’s population. Economic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.” Under Article 3 of the ICESCR as well as Article 3 of the International Covenant on Civil and Political Rights (ICCPR) States have the obligation “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights.” Also, the Maastricht Principles decree that “States must at all times observe the principles of non-discrimination, equality, including gender equality, transparency and accountability.”¹⁴ With regard to international cooperation, States have to “prioritize the realization of the rights of disadvantaged, marginalized and vulnerable groups” when fulfilling ESCR.¹⁵ The Development Cooperation Act¹⁶ includes a coherence clause which demands that the goals and principles of the ADC should be considered by any other federal policy especially regarding its impact on developing countries. Nevertheless it does not explicitly mention ESCR.

There is as an obligation to do no harm and to care for policy coherence with economic and social human rights, due to Article 1.2 of the ICESCR: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of law. In no case may a people be deprived of its own means of subsistence.” In this regard, international (development) cooperation has an important role to play in assisting developing countries in fulfilling the human rights of individuals and peoples.

Within this human rights framework Austria is bound to provide International Assistance. Many civil society organizations¹⁷ (CSOs) draw attention to the shortcomings of the quantity and quality of the ADC via their human rights work. In the context of non-discrimination – in particular with regards to gender equality and equal opportunities of people with a disability – there has been criticism by organizations regarding the practice of Austrian development policy. The following chapter will further elaborate on these shortcomings especially focusing on the programmable bilateral ADC.

¹² ADC (2013): Activities, http://www.entwicklung.at/austrian_development_cooperation/activities/en/ [online: 12.07.2013].

¹³ ADA (2010): Unternehmenskonzept, http://www.entwicklung.at/uploads/media/ADA_Unternehmenskonzept_2010.pdf [online: 20.06.2013].

¹⁴ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 5.

¹⁵ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 10.

¹⁶ BGBl. 65/2003, Section 1, Para. 4.

¹⁷ AG Globale Verantwortung, ÖFSE, WIDE Austria, Licht für die Welt, Koordinierungsstelle der Österreichischen Bischofskonferenz für internationale Entwicklung und Mission (KOO)

1.2 Quantity and Quality of Official Development Assistance

1.2.1 Quantity

Even though Austria has become one of the richest countries among European States over the last ten years, it has not fulfilled its self-committed obligation of contributing 0.7% of its GNI to ODA. Now, based on the argument of the sovereign debt crisis, the fulfillment of these obligations has been further postponed. The Budget of the Austrian government for 2011-2014 envisages a further controversial reduction of ODA contributions of €83 million until 2014¹⁸, a retrogressive measure. In the meantime, the Federal Financing Act has been extended for 2013-2016. The Act sets upper limits¹⁹ in the context of individual subdivisions of the budget, which practically exclude any increases of ODA expenses before 2017, what would at least mean a stagnating contribution to in the realization of ESCR in partner countries and beyond.

In 2012, Austria made ODA contributions of €865 million. This is an increase of 6.1% (€796 million) from 2011. Despite this increase, which is based on higher announcements of debt relief measures, these amounts to merely 0.28% of the GNI.²⁰ Although the amount of multilateral ADC has been increased, shortcomings can be observed from a human rights perspective when it comes to the performance of ADC (see chapter 2 in this report).

The Development of Austria's ODA in comparison to ADC/ ADA



Source: ADC: Austrian Official Development Assistance. Translated by the author. http://www.entwicklung.at/facts_figures/en/ [online: 13.07.2013]

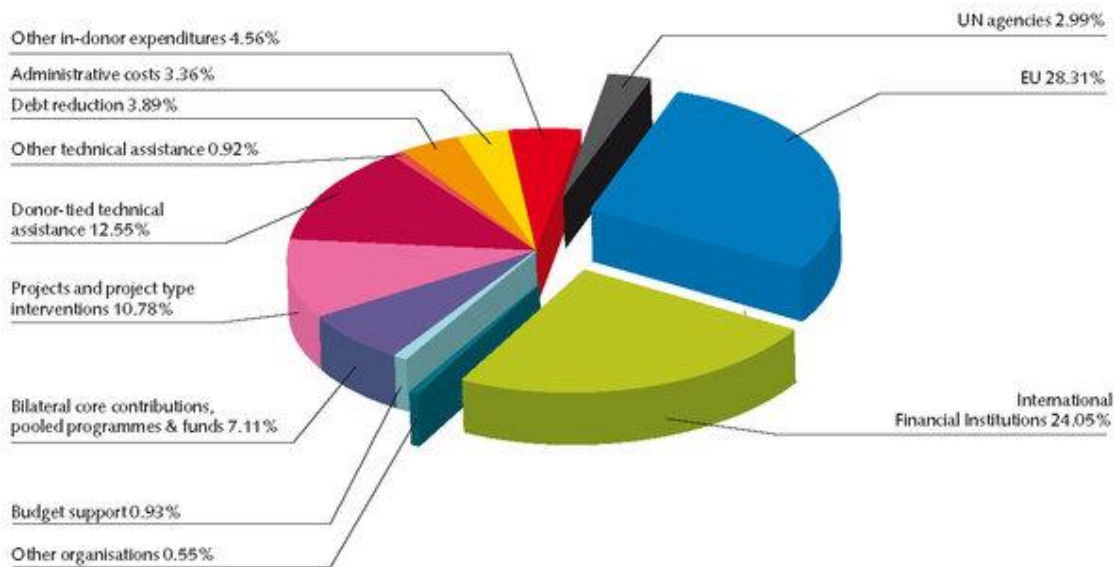
¹⁸ See for figures and following figures ÖFSE (2012): Die Zukunft der Österreichischen Entwicklungspolitik, pp. 61-67.

¹⁹ Ibid., p. 65.

²⁰ OECD (2013): Development Co-operation Directorate (DCD-DAC), <http://www.oecd.org/dac/aidtopoorcountrieslipsfortherasgovernmentstightenbudgets.htm> [online: 21.04.2013].

Main components of Austrian ODA 2011

Disbursements in %



	€ mill.	in %		€ mill.	in %
Bilateral ODA	352.48	44.10			
Grants	352.49	44.10	Budget support	7.40	0.93
			Bilateral core contributions, pooled programmes & funds	56.81	7.11
			Projects and project type interventions	86.13	10.78
			Donor-tied technical assistance	100.32	12.55
			Other technical assistance	7.33	0.92
			Debt reduction	31.12	3.89
			Administrative costs	26.88	3.36
			Other in-donor expenditures	36.49	4.56
Loans and equity investment*	-0.01	0.00			
Multilateral ODA	446.82	55.90	UN agencies	23.91	2.99
			EU	226.27	28.31
			International Financial Institutions	192.22	24.05
			Other organisations	4.42	0.55
Total ODA	799.30	100.00			
0.27% of GNI					

* Loans and equity investment recorded a negative result in 2011. As negative amounts are difficult to depict in a pie chart and considering the very small volume with no effect on percentage distribution, this figure is not shown.

Source: ADC: Austrian Official Development Assistance, http://www.entwicklung.at/facts_figures/en/ [online: 13.07.2013]

ODA expenses are significantly below the average of EU Member States (0.42% in 2012) and way behind what was committed internationally. The government justifies the low ODA disbursements by the financial crisis and austerity measures, which have affected all public expenditures. Under Article 2.1 of the ICESCR all signatory States, including Austria, are under the obligation of International Assistance and cooperation. In the context of the obligation to fulfil, Principle 33 of the ETOP highlights the obligations of States to provide international assistance²¹ and according to principle 29

²¹ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 10.

of ETOP, States have to create an international enabling environment conducive to the fulfillment of ESCR, none the less Austria's contribution to such environment seems to be inadequate.²²

In a similar manner the Austrian based section of Women in Development Europe, WIDE Austria, criticizes the low level of funding for programmable development cooperation which affects gender-sensitive measures very negatively.²³ In recent years, Austria has drastically cut its funding for UN organizations that work on women's rights, especially in the area of sexual and reproductive rights, like UN Women, UNFPA, UNAIDS and UNDP.²⁴

Funding channelled through institutions other than ADA show even a much lower share of gender-sensitive programs, as the overall data for bilateral development cooperation, published by OECD DAC, demonstrates: Only 16% of bilateral ADC is qualified as "support of gender equality" (2010/11), compared to an average of OECD DAC members of 32% of total bilateral aid allocated to this sector.²⁵ With \$1 million in 2011, the support of women's equality organizations and institutions is extremely low.

Under Article 3 of the ICESCR State parties of the Covenant are under the obligation to ensure the equal rights of men and women, and are thereby under the obligation to create conditions that allow men and women the enjoyment of all human rights in equal manner. According to Maastricht principle 29a bilateral and multilateral agreements must contribute to an environment that is conducive to the fulfillment of ESCR.²⁶ According to principles 32c and 33 of ETOP Austria has to recognize the principle of non-discrimination, including gender equality, in its ADC as well as in its effort to provide international assistance.²⁷

Taking into account the self-committed obligation of contributing 0.7% of its GNI to ODA the developments described in this section highlight that the quantity of Austria's ODA-contributions is too insignificant and therefore Austria fails to meet its obligations to fulfill ESCR extraterritorially. Additionally, it has to be noted that a quantitatively appropriate ODA does not have to be necessarily consistent with human rights and therefore should be adjusted accordingly.

1.2.2 Human rights approach to development

Austria has – as have the majority of donor countries – been actively involved in the debate on the effectiveness and quality of development assistance.²⁸ Principles and indicators were agreed upon in Paris in 2005, in Accra in 2008 and in Busan in 2011.²⁹ However, according to Concord's AidWatch Special Report 2012, which scrutinizes the performance of EU Member States, actual actions taken to achieve these commonly agreed aims are rather moderate.³⁰

²² ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 9.

²³ BMeiA (2012): ODA-Report 2011, http://www.entwicklung.at/uploads/media/ODA-Bericht_2011.pdf [online: 18.06.2013].

²⁴ WIDE (2012): Frauenförderung in der Entwicklungszusammenarbeit - Fact Sheet, <http://www.wide-netzwerk.at/images/publikationen/2012/wide-fact-sheet-frauen-in-der-eza.pdf> [online: 18.06.2013].

²⁵ OECD DAC (2013): Aid in Support of Gender Equality and Women's Empowerment - Donor Charts, <http://www.oecd.org/dac/stats/Aid%20in%20support%20ENG%20for%20web%20March%202013.pdf> [online: 18.06.2013].

²⁶ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, pp. 9 – 10.

²⁷ Ibid., pp. 10 - 11.

²⁸ For the framework of the OECD Aid Effectiveness Agenda, see <http://www.oecd.org/dac/effectiveness/> [online: 13.07.2013], including conferences in Accra (2008) and Busan (2011).

²⁹ Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, <http://www.oecd.org/dac/effectiveness/34428351.pdf> [online 13.07.2013], pp. 9 – 11; Busan Partnership for Effective Development Co-operation, <http://www.oecd.org/dac/effectiveness/busanpartnership.htm> [online 13.07.2013].

³⁰ Concord (2012): AidWatch Special Report 2012 – On the post-Busan development effectiveness agenda, <http://aidwatch.concordeurope.org/static/files/assets/bc1e99da/report.pdf> [online: 13.07.2013], pp. 8 – 11.

An evaluation of the implementation of the Paris Declaration (Case Study Austria), which was published in late 2010, revealed that structural weaknesses within Austria, such as internal fragmentation and lack of geographical focus, had diminished the effectiveness of the ADC.³¹

Internal fragmentation of the ADC: The Ministry of European and International Affairs (BMEiA) has the political responsibility for development policy. The implementation of bilateral ADC, and bilateral programs and projects in general, is the responsibility of the Austrian Development Agency (ADA), whose budget, however, is only about 10% of the entire ODA disbursements. Only this share is shapeable according to the principles and focus of the Austrian development policy. Of this share only half is relevant for defined effectiveness aims. Seven further ministries contribute to and are responsible for activities accountable to the Austrian ODA. The major contribution comes from the Federal Ministry of Finance (Bundesministerium für Finanzen, BMF), which in 2011 was responsible for about 65% of the Austrian ODA. The finances of debt relief measures, as well as contributions to International Financial Institutions, and to development cooperation are administered by the BMF.³²

A coherent and binding strategy for the Official Development Assistance, which includes all state actors, does not exist. The effectiveness of informal working groups of ministries as an instrument for creating a coherent policy is overstated. The instrumentalization of development cooperation for the aims of the Austrian export economy, as well as the linkages to migration issues, are misinterpreted as measures of development policy coherence. Due to lack of coherence the impact of disbursements is rather insignificant.

Lack of geographical focus of ODA: A further factor hampering effectiveness is the lack of geographical focus of the overall ODA. In 2009, 126 countries received ODA from Austria. Of the top ten receiving countries in 2009, only two were focus countries of the ADC.³³ In 2011, 133 countries received development assistance, and only four focus countries of the ADC were among the top ten countries.³⁴ This is due to the lack of overall strategy of all involved actors as well as the minor share of the directly shapeable bilateral ADC of the entire ODA, which is in addition distorted due to incorporating debt relief and refugee and education costs retrospectively into the bilateral ADC.³⁵

Austria's ODA has been increasingly focused on contributions to multilateral facilities and institutions, whereas the share allocated to bilateral facilities and institutions was reduced.³⁶ Among the bilateral donor countries of the OECD Development Assistance Committee, Austria comes third regarding the country program development cooperation and next to last regarding concentration, according to the evaluator of the effectiveness study (2010)³⁷. Since Busan, Austria has become more active in this area and implements more measures for reducing fragmentation, via measures such as forcing the division of labor within the EU.

While gender-sensitive development cooperation has most fruitfully been built up in partner countries in Central America (89% of funding for Nicaragua was gender-sensitive on average 2010/11, where Austrian cooperation will expire by the end of 2013), and Africa (Uganda 87%,

³¹ Wenger, B (2011): Evaluation of the Paris Declaration, Phase 2 - Case Study Austria, Final Report, May 2011, <http://pd-website.inforce.dk/content/pdf-countryreports/austria.pdf> [online: 18.06.2013]

³² Ibid.

³³ Ibid.

³⁴ Austrian Foreign Ministry (2012), ODA-Report 2011, http://www.entwicklung.at/uploads/media/ODA-Bericht_2011.pdf [online: 18.06.2013].

³⁵ Ibid.; Wenger, B (2011): Evaluation of the Paris Declaration, Phase 2 - Case Study Austria, Final Report, May 2011, <http://pd-website.inforce.dk/content/pdf-countryreports/austria.pdf> [online: 18.06.2013]; OECD (2013): DAC Statistics, http://webnet.oecd.org/dcdgraphs/CPA_donor/ [online: 18.06.2013].

³⁶ Austrian Foreign Ministry (2012), ODA-Report 2011, http://www.entwicklung.at/uploads/media/ODA-Bericht_2011.pdf [online: 18.06.2013].

³⁷ Wenger, B (2011): Evaluation of the Paris Declaration, Phase 2 - Case Study Austria, Final Report, May 2011, <http://pd-website.inforce.dk/content/pdf-countryreports/austria.pdf> [online: 18.06.2013]

Ethiopia 76%, Burkina Faso 77%), it remains much lower in other regions.³⁸ Many NGOs as well as WIDE criticize that NGOs have not been involved in the choice of new partner countries of ADC (middle income countries in the Black Sea/South Caucasus region).

The lack of commitment and coordination at the highest political level hampers effective implementation and important reforms, respectively: The government has failed so far to follow national and international advice³⁹ according to an evaluation of the work of the Austrian Development Agency from 2008⁴⁰, the DAC Peer Review from 2009⁴¹, and the Evaluation of the Paris Declaration (Case Study Austria) from 2010⁴², which amongst others requested higher means, new positioning, consolidation of fragmented competencies and a mid-term policy.⁴³ What should be taken into account within the context of development effectiveness is that an effective ADC – whether on bilateral or multilateral level – should make an effective contribution to the realization of ESCR.

1.2.3 Gender and women's rights in Austrian Development Cooperation

Regarding gender-sensitive programs and projects within the programmable bilateral ADC, there has been a significant decline since 2008, due to the severe budgetary cuts for the Austrian Development Agency (ADA) through the Ministry of European and International Affairs (BMeiA). In numbers, new ADA commitments for gender-sensitive programs – that is, support of programs for the empowerment of women and gender equality or as a primary or a significant secondary goal within a project/program, according to the OECD DAC Gender Marker – have been halved from €80 million in 2008 to €40 million in 2011. Furthermore, this massive decrease in quantity is accompanied by a decline in the proportion of gender-sensitive programs (from 73% in 2008 to 53% in 2011).⁴⁴ The Austrian government has committed itself to direct 75% of ADA funding towards gender-sensitive programming.⁴⁵

WIDE recognizes the efforts to promote women's rights in partner countries of ADC through measures financed and/or implemented by the ADC (mainly done through ADA, often in cooperation with NGOs). Though, according to ADA, important steps have been made in recent years and remarkable singular pilot programs have been implemented. A recent evaluation of the gender policy of the ADC⁴⁶ notes very serious shortcomings in the programmable ADC:

Regarding new approaches (followed by the OECD Paris Declaration in 2005), the evaluation states that “[t]he new aid modalities are a challenge for all donors and there are as yet no consolidated good practices. The rise of GRB⁴⁷ is directly related to the recognition that established gender

³⁸ OECD DAC (2013): Aid in Support of Gender Equality and Women's Empowerment - Donor Charts, Austria, <http://www.oecd.org/dac/stats/Aid%20in%20support%20ENG%20for%20web%20March%202013.pdf> [online: 18.06.2013].

³⁹ KOO und AG Globale Verantwortung (2001): Factsheet Österr. Entwicklungsfinanzierung, 09/2011, pp. 4 – 5.

⁴⁰ Breier, H.; Wenger, B. (2008): Schlussbericht: Die Tätigkeit der Austrian Development Agency, http://www.entwicklung.at/uploads/media/ADA_Evaluierungsbericht_2008.pdf [online: 18.06.2013].

⁴¹ OECD/DAC (2009): Peer Review Austria, <http://www.oecd.org/dac/peer-reviews/42857127.pdf> [online: 18.06.2013].

⁴² Wenger, B. (2010): Evaluierung der Pariser Deklaration: Fallstudie Österreich. Zusammenfassung, http://www.entwicklung.at/uploads/media/Evaluierungsbericht_Pariser_Deklaration_deutsche_Zusammenfassung.pdf

⁴³ See footnotes 36, 37 and 38.

⁴⁴ BMeiA (2012): ODA-Bericht 2011, http://www.entwicklung.at/uploads/media/ODA-Bericht_2011.pdf [online: 18.06.2013], p. 43.

⁴⁵ Austrian Development Agency (2012): Evaluation of the Austrian Development Cooperation (ADC) Gender Policy between 2004–2011. Final Report, http://www.entwicklung.at/uploads/media/Final_Eval_Report_Gender.pdf [online: 18.06.2013].

⁴⁶ Ibid.

⁴⁷ GRB: Gender Responsive Budgeting.

mainstreaming techniques apply to the aid format of project and programs, but fail in complex donor recipient arrangements reaching into regular budgetary processes.”⁴⁸

A principal remark of this evaluation is that “[g]ender as power relation tends to be sidelined, men hardly enter the picture, gender equality tends to be understood as equal share with women catching up rather than men giving up privileges of power. In a context of poverty gender mainstreaming has a beneficiary bias.” In terms of effectiveness, the report notes that “the stipulation of the gender guidelines has barely come to fruition. In the absence of funds for gender training and staff development mechanisms, gender training is ad hoc, depending on the gender desk, raising issues, but with little connections to operating levels and without skills training. Periodic reviews and evaluations do render certain gender insights. However, monitoring and evaluation (M&E) mechanisms and supervision systems are not available. It is therefore virtually impossible for ADC to track progress, allow for adaptive management, record gender equality and women’s empowerment results, document good practices, and feed into learning processes. Along with the absence of noticeable gender commitment on the part of the MFA⁴⁹ and ADA senior management, this makes for a lack of accountability. (...) Gender is often not sufficiently anchored in log frames and therefore in danger of being sidelined in evaluations.”⁵⁰

As a conclusion of the evaluation it could be stated that “[t]he sustainability of ADC gender policy interventions is precarious.” WIDE agrees with the aforementioned aspect of the ADA evaluation and criticizes the qualitative weakness in the implementation of gender equality goals in the ADC. The ICESCR Articles and their interpretation by the ICESCR Treaty Body, like the General Comment No. 16 on “[t]he equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)” and No. 20 on “[n]on-Discrimination in Economic, Social and Cultural Rights (Article 2.2)”, as well as the CEDAW convention and principles 2 and 32 of ETOP, should be used as guiding principles of the Austrian Development Cooperation.

1.2.4 Rights of Persons with Disabilities in Austrian Development Cooperation

Austria ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2008 and thereby committed itself to create all policies, legislation and administrative customs and practices in a barrier-free and inclusive way.⁵¹ The CRPD sets out the obligations and principles of the previous international human rights treaties and declarations such as the Universal Declaration of Human Rights, the ICESCR and the Vienna Declaration in the context of the rights for persons with disabilities. State parties to the CRPD are explicitly required to ensure that “international cooperation, including international development programs, is inclusive of and accessible to persons with disabilities” (CRPD, Article 32.1a).⁵² The underlying principles of the CRPD, which include participation of persons with disabilities in all political areas, accessibility, equality of opportunities, inclusion and non-discrimination, are relevant also for international cooperation, humanitarian help and development assistance.

The Austrian Development Cooperation Act⁵³ does recognize these rights and needs within development policy; however, a human rights approach is not yet noticeable within the law.

⁴⁸ Austrian Development Agency (2012): Evaluation of the Austrian Development Cooperation (ADC) Gender Policy between 2004–2011. Final Report, p.3, http://www.entwicklung.at/uploads/media/Final_Eval_Report_Gender.pdf [online: 18.06.2013].

⁴⁹ MFA – Ministry of Foreign Affairs. Full name: Federal Ministry for European and International Affairs.

⁵⁰ Austrian Development Agency (2012): Evaluation of the Austrian Development Cooperation (ADC) Gender Policy between 2004–2011. Final Report, http://www.entwicklung.at/uploads/media/Final_Eval_Report_Gender.pdf [online: 18.06.2013], p. 3.

⁵¹ “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities” (CRPD, Art. 4. 1.b).

⁵² See also CRPD, Preamble lit. I and t; and Article 28.

⁵³ BGBl, 65/2003, Section 1, Para. 4.

Disability as an overarching issue, which has to be respected within the entire development cooperation, is not yet enshrined.⁵⁴

The ADC Three-Year Program (2013-2015) does emphasize that rights of persons with disabilities have to be included within the programme work; however, “disability” is not yet a cross cutting issue. To be in line with the CRPD, the ADC has begun taking relevant actions. The ADA has an appointed representative for disability and adapts internal guidance. Moreover, a working group consisting of NGOs and specialists in administration and research and teaching, which deals with the inclusion of persons with disabilities in development cooperation, has been established.⁵⁵ The “National Action Plan on Disability 2012-2020” includes a chapter on development cooperation. However, the plan is missing a concrete allocated budget and clear indicators which can measure the progress of the implementation of inclusive development cooperation.⁵⁶

1.3 Conclusions

- According to the Maastricht Principles, Austria is under the obligation to create through international cooperation – on a bilateral as well as a multilateral level – an enabling environment conducive to the fulfillment of ESCR.⁵⁷
- Austria should ensure and secure the development and implementation of a coherent and human rights based development strategy, so that the means of the ODA are merely utilized correspondent to the aims of the development policy and the allocation is based on a human rights impact assessment.
- Despite a budget consolidation, Austria should guarantee a minimum budget for development cooperation and the means of programmable ODA disbursements have to be increased significantly.
- The ICESCR articles and their interpretation by the ICESCR Treaty Body, like the General Comment No. 16 on “[t]he equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3)” and No. 20 on “[n]on-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)”, as well as the CEDAW convention and the principles 2 and 32 ETOP, should be used as guiding principles of the ADC.
- The Austrian government should commit itself to direct 75% of ADA funding towards gender sensitive programming. To reach this aim, it is necessary to learn lessons from the evaluation of the ADA gender policy and to implement concrete guidelines and other measures to monitor progress regarding gender equality and to promote institutional learning among the all the actors in development cooperation.

⁵⁴ Stellungnahme des Österreichischen Monitoringausschusses zur Umsetzung der CRPD in der Entwicklungszusammenarbeit, April 2012,

http://monitoringausschuss.at/cms/monitoringausschuss/attachments/5/7/1/CH0914/CMS1322123068495/ma_sn_eza_fi_nal.docx [online: 18.06.2013]; Entschließungsantrag „Rechte und Bedürfnisse von Menschen mit Behinderungen in der Entwicklungszusammenarbeit“, Dezember 2012 http://www.parlament.gv.at/PAKT/VHG/XXIV/A/A_01900/index.shtml [online: 18.06.2013].

⁵⁵ OEAR (2013): Alternative Report on the implementation of the UN Convention on the Rights of Persons with Disabilities in Austria, <http://www.ohchr.org/Documents/HRBodies/CRPD/9thSession/AustrianNCWithDisabilities.DOC> [online 18.06.2013], pp. 78 et seq.; Unabhängiger Monitoringausschuss zur Umsetzung der UN-Konvention über die Rechte von Menschen mit Behinderungen (2012): http://monitoringausschuss.at/cms/monitoringausschuss/attachments/1/6/5/CH0914/CMS1371135362158/ma_sn_eza_fi_nal.docx [online 18.06.2013].

⁵⁶ BMASK (2012): National Action Plan on Disability 2012-2020 – Strategy of the Austrian Federal Government for the Implementation of the UN Disability Rights Convention, http://www.bmask.gv.at/cms/site/attachments/7/4/9/CH2092/CMS1359980335644/nap_behinderung-web_2013-01-30_eng.pdf [online 14.07.2013]; Licht für die Welt (2012): Zum Nationalen Aktionsplan Behinderung 2012-2020, 24.07.2012, http://www.ots.at/presseaussendung/OTS_20120724_OTS0172/licht-fuer-die-welt-zum-nationalen-aktionsplan-behinderung-2012-2020-wichtiger-schritt-aber-zu-viele-fragen-sind-noch-offen [online 18.06.2013].

⁵⁷ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, pp. 9 – 10.

- Austria's direct support to local women's and gender equality organizations and institutions, as well as the funding for multilateral (mainly UN) organizations that promote women's rights, including sexual and reproductive rights, should be increased massively.
- Other Austrian development actors like the Ministry of Finance should improve their transparency and actively implement measures to reach similarly ambitious gender equality goals like BMeiA within the Austrian Development Agency.
- A twin-track-approach – including projects supporting persons with disabilities while at the same time mainstreaming disability in all program work – should be introduced in the ADC.
- Dialogue and consultation with civil society and Disabled People's Organizations specifically, both in Austria and in partner countries, take place only sporadically and should be extended to become more formal and regular.
- Regarding Austria's international cooperation with other States, the realization of the rights of disadvantaged, marginalized and vulnerable groups should have priority according to the Maastricht Principles.⁵⁸

⁵⁸ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 10.

2. Austria and International Financial Institutions

2.1 Austria's Extraterritorial Obligations within International Financial Institutions and International Organizations

Austria's involvement within international organizations and International Financial Institutions (IFIs) has to be analyzed based on (its) human rights obligations. On a bilateral level, priority countries of the Austrian Development Cooperation (ADC) are supported via general budget support and sector financing. Moreover, Austria, together with other donor countries, has been involved in financing pooled funds. According to the strategic guidelines of the Austrian Federal Ministry of Finance (BMF) for the cooperation with the IFIs, which determine the strategy of Austria's cooperation with the IFIs, questions of human rights and democracy as parts of a well-rounded governance should be integrated to a large degree into the governance policy of the IFI.⁵⁹

The Oesterreichische Entwicklungsbank AG/ Development Bank of Austria (OeEB) was founded as an official development bank of Austria in 2008 and works under the public mandate of the Republic.⁶⁰ The OeEB is answerable to the aims and principles of the Austrian development policy according to the Development Cooperation Act.⁶¹

Under principle 29 of the Maastricht Principles, bilateral and multilateral agreements –on investment, for example – have to contribute to the development of an international environment conducive to the universal fulfillment of ESCR. According to the Maastricht Principles, Austria as a member of the World Bank “remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially.”⁶² Moreover, Austria needs to ensure that the World Bank acts in line with international human rights obligations of Austria.⁶³ According to principle 19 of ETOP, Austria must take action “jointly through international cooperation, to respect the economic, social and cultural rights of persons within their territories and extraterritorially”. To fulfill ESCR extraterritorially, Austria must, according to principle 32 of ETOP, “a) prioritize the realization of the rights of disadvantaged, marginalized and vulnerable groups; b) prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights; c) observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of non-discrimination and equality, including gender equality, transparency, and accountability; and d) avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives.”⁶⁴

The Human Rights Manual on the Implementation of the Human Rights Based Approach in ADC, which is primarily aimed at the personnel of the Austrian Development Agency (ADA), focuses on three sectors with regard to the work of ADC: Integration of a human rights-centered perspective as a main principle, human rights as a sector of intervention, and human rights in the political dialogue.

⁵⁹ BMF (2009): Strategischer Leitfaden des BMF für die Internationalen Finanzinstitutionen, Vienna, p. 47, http://www.bmf.gv.at/WipoEUInt/sterreichunddieInte_8424/StrategischeLinie/Finanzinstitutionen_2009_WEB%281%29.pdf [online: 06.05.2013].

⁶⁰ OeEB (2013): About OeEB, <http://www.oe-eb.at/de/ueberblick/seiten/default.aspx> [online 17.07.2013].

⁶¹ BMF (2013): Oesterreichische Entwicklungsbank AG, <https://www.bmf.gv.at/wirtschaftspolitik/int-finanzinstitutionen/oeeb.html> [online 21.04.2013].

⁶² ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 7.

⁶³ Ibid.

⁶⁴ Ibid., p. 10; see also General Comment No. 3, supra note 29, paras. 12, 10 and 9; General Comment No. 19, supra note 178, para. 31; General Comment No. 15, supra note 91, para. 16; General Comment No. 14, supra note 89, para. 54.

In particular, the first two sectors have a strong link to the right to (adequate) food.⁶⁵ Also, the Development Co-operation Act (DAC Act) interconnects the realization of Austria's aims of development policy to the advancement of the rule of law and human rights.⁶⁶ The Three-Year Program on Austrian Development Policy (2013-2015) requires policy coherence as the interaction of various policy fields for development.⁶⁷

Although the multilateral ODA was increased, criticism from civil society in the context of Austria's engagement within international organizations and IFIs is directed in particular towards the neglect of the OeEB and the ADA in taking human rights obligations into account when financing single projects and programs as well as funds, and towards the absence of human rights-based monitoring mechanisms.

In its concluding observation of 2006 the CESCR noted that it “welcomes the publication, in February 2005, by the Austrian Federal Ministry for Finance, of strategic guidelines for Austrian engagement with international financial institutions reinforcing the need for coherence between the human rights approach and the policies of international financial institutions.”⁶⁸ The following case studies highlight the problematic human rights situations resulting out of Austria's engagement within international organizations and IFIs.

2.1.1 Case Study Anuak community in Gambella region/Ethiopia

In the period 2010-2012 about 40% of the Ethiopian population was undernourished and Ethiopia was the biggest receiver of food aid worldwide.⁶⁹

2.1.1.1 Actors involved

Ethiopia has been a priority country of ADC since 1993. In order to better cooperate with the local governmental bodies and the local population, the Austria Development Agency/ADA established a coordination office in 1996 in Addis Ababa.⁷⁰ One of the priorities of Austrian Development Cooperation in Ethiopia is sustainable food security.⁷¹

Besides the thematic focus, the ADA is a major co-financing partner to the Protection of Basic Services (PBS) program, which is financed by a donor consortium and administered by the World Bank.⁷² The PBS program is divided into three project phases (PBS I to PBS III) which constitute a single continuous program that seeks to ensure uninterrupted support to basic services and

⁶⁵ ADA (2010): Human Rights Manual – Manual on the Implementation of Human Rights Based Approach in ADC, Wien, http://bim.lbg.ac.at/files/sites/bim/HUMAN_RIGHTS_Manual__July_2010.pdf [online: 20.07.2013]; see also Ludwig Boltzmann Institut website, <http://bim.lbg.ac.at/en/development-cooperation/new-release-handbuch-menschenrechte> [online: 20.07.2013].

⁶⁶ Entwicklungszusammenarbeitsgesetz inklusive EZA-Gesetz-Novelle 2003, Federal Law Gazette Voll 49/2002, http://www.entwicklung.at/uploads/media/EZA_Gesetz.pdf [online: 20.07.2013].

⁶⁷ Three-Year Programme 2013-2015, p. 19, http://www.entwicklung.at/uploads/media/ThreeYearProgramme_13-15.pdf [online: 08.07.2013].

⁶⁸ CESCR (2005): Concluding Observations of the Committee on Economic, Social and Cultural Rights. Austria. E/C.12/AUT/CO/3

⁶⁹ FAO (2012): State of Food Insecurity in the World - Economic growth is necessary but not sufficient to accelerate reduction of hunger and malnutrition, Rome, p. 46, <http://www.fao.org/docrep/016/i3027e/i3027e.pdf> [online: 20.07.2013].

⁷⁰ Ibid.

⁷¹ ADA (2012): Länderinformation Äthiopien, p. 9, http://www.entwicklung.at/uploads/media/Laenderinfo_AEthiopien_Sept2012.pdf [online: 21.04.2013]; see also ADC website, http://www.entwicklung.at/countries_and_regions/east_africa/ethiopia/en/ [online: 20.07.2013].

⁷² Ibid.

infrastructure for basic needs. Since 2008, the ADA has co-financed this program (PBS II) with about €5.7 million as part of the programmable bilateral ODA.⁷³

Also Austria is involved on a multilateral level: The Executive Directors of the World Bank and their staff are organized into 25 offices with office codes ranging from EDS01 through EDS25.⁷⁴ Austria is one of 10 members of EDS10. Austria's representative reacted very responsive to CSO concerns on the situation of the Anuak in Gambella region and criticized that the World Bank did not apply its "Social Safeguard policies" on involuntary resettlement⁷⁵ in an earlier phase.⁷⁶

2.1.1.2 PBS Program and its Implementation

On the 24th of September 2012 representatives of the Anuak, an indigenous people, made a request to the Inspection Panel of the World Bank. These representatives asserted that the Anuak community in the Gambella Region had been severely harmed by the PBS program. The harms suffered, which are brought forward in the written request, occurred during the implementation of the second phase of the program (PBS II).⁷⁷ According to the project list of the ADA, all approved €5.7 million fall into this second phase.⁷⁸ The Ethiopian Ministry of Finance and Economic Development (MOFED) is listed as the contract partner.⁷⁹

According to the request, the regional government in Gambella implemented the "Villagization Program Action Plan", which commenced mid-2010 during the second phase of the PBS.⁸⁰ Villagization is a program of the Ethiopian government that contributed to the hunger crisis of the 1980s, and which was re-activated to resettle 1.5 million people in the regions of Gambella, Afar, Somali, and Benishangul-Gumuz by 2013.⁸¹ In the Gambella region, the resettlement program has been carried out by force and the eviction of people from their ancestral land was accompanied by gross violations of human rights (including arbitrary arrest and detention, torture in custody, rape and other sexual violence, destruction of property).⁸² According to the request, the newly allocated land was not fertile, promised basic services and facilities were either not provided or were not operational, and access to food was massively impeded.⁸³

Although the World Bank officially denies any connection between PBS and villagization, the Bank's Inspection Panel argues in its Eligibility Report that "the two programmes depend on each other, and may mutually influence the results of the other."⁸⁴ The Inspection Panel presented its report and

⁷³ Ibid., p. 10.

⁷⁴ World Bank (2013): Executive Directors Website. <http://go.worldbank.org/K9EGQN2J30> [online: 21.06.2013].

⁷⁵ World Bank (2013): Social Safeguards. Involuntary resettlement. <http://go.worldbank.org/MRNITY6XN0> [online: 11.06.2013].

⁷⁶ Correspondence between FIAN Austria and Austria's Federal Ministry of Finance.

⁷⁷ Inclusive Development International (2012): Policy and Legal Analysis of the Ethiopia PBS Request for Inspection, Anuak Request for Inspection Panel, <http://www.inclusivedevelopment.net/wp-content/uploads/2012/09/Legal-and-Policy-Analysis-for-Anuak-Request-for-Inspection.pdf> [online: 21.06.2013].

⁷⁸ ADA (2013): Project-list, approved contracts since 01.01.2010, search key-word PBS, [http://www.entwicklung.at/zahlen_daten_und_fakten/projektliste/?no_cache=1&tx_sysfirecdlist_pi1\[test\]=test&tx_sysfirecdlist_pi1\[mode\]=1&tx_sysfirecdlist_pi1\[sort\]=band%3A0&tx_sysfirecdlist_pi1\[pointer\]=1](http://www.entwicklung.at/zahlen_daten_und_fakten/projektliste/?no_cache=1&tx_sysfirecdlist_pi1[test]=test&tx_sysfirecdlist_pi1[mode]=1&tx_sysfirecdlist_pi1[sort]=band%3A0&tx_sysfirecdlist_pi1[pointer]=1) [online: 21.06.2013].

⁷⁹ Ibid.

⁸⁰ Inclusive Development International (2012): Policy and Legal Analysis of the Ethiopia PBS Request for Inspection, Anuak Request for Inspection Panel, para. 12, <http://www.inclusivedevelopment.net/wp-content/uploads/2012/09/Legal-and-Policy-Analysis-for-Anuak-Request-for-Inspection.pdf> [online: 21.06.2013].

⁸¹ Human Rights Watch (2012): "Waiting here for death" - Displacement and "Villagization" in Ethiopia's Gambella Region, p. 2, http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf [online: 20.07.2013].

⁸² Inclusive Development International (2012): Policy and Legal Analysis of the Ethiopia PBS Request for Inspection, Anuak Request for Inspection Panel, para. 22, <http://www.inclusivedevelopment.net/wp-content/uploads/2012/09/Legal-and-Policy-Analysis-for-Anuak-Request-for-Inspection.pdf> [online: 21.06.2013].

⁸³ Ibid., para 24.

⁸⁴ Inspection Panel (2013): Report and Recommendation. Ethiopia: Protection of Basic Services Program Phase II Project. http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/EthiopiaPBS3_RandR.pdf [online: 21.08.2013].

recommendations to the Board of Executive Directors which approved this recommendation in July of 2013 and agreed on further investigations.⁸⁵ According to the Inspection Panel's investigation plan the investigation will inter alia focus on the connection between PBS and the Villagization program and on the accusations of the Anuak requesters. The Panel expects to submit the Investigation Report to the Board of Executive Directors in early 2014.⁸⁶

2.1.1.3 The Right to Food

A report by Human Rights Watch points out that widespread human rights violations were found at all stages of the Villagization program.⁸⁷ The program is increasingly implemented in parts of Ethiopia, where land is taken for big agro-industrial projects.⁸⁸ Since the beginning of this century, the use of land for commercial agricultural projects in Ethiopia has been increasing rapidly. While the majority of investors are still from Ethiopia, transnational enterprises are increasingly active since 2002 in the Ethiopian agricultural sector, and produce flowers, food such as rice, sesame and vegetables, and sugarcane and jatropha for the production of agrofuels.⁸⁹ The political agricultural framework conditions of Ethiopia, which are determined via measures such as the Growth and Transformation Plan (GTP), the Plan for Accelerated Sustained Development and to End Poverty (PASDEP) and the Agricultural Investment Support Directorate (AISD), can be seen as a key reason for the increase in foreign direct investments (FDIs).⁹⁰ The large-scale and export-oriented agricultural projects as well as the commercialization of small-scale farmers -due to these investments- are a central element of the national development strategy.⁹¹

The national sector-programs of partnering countries are a key orientation framework for the ADC regarding food security and the creation of sustainable agricultural development.⁹²

The practical implementation of the Villagization program, incompatible with the principles of the ADA/ADC, hinders access to productive resources, such as land, and leads to the impairment of the right to food as well as a degradation of the livelihoods of the persons affected – and in no case to the improvement of the provision of basic services. Furthermore, the mass evictions violate the Ethiopian Constitution⁹³ as well as the rights of indigenous peoples in international human rights law.⁹⁴

In its briefing on food security the ADC refers to essential elements of the right to food, as enshrined in Article 11 of the ICESCR, as their “strategic concerns and principles”.⁹⁵ The realization of the right to food as well as the recognition of the principle of food sovereignty are outlined by the ADC as

⁸⁵ World Bank (2013): Inspection Panel Investigation of the Ethiopia: Promoting Basic Service Phase III. Initial Investigation Plan, August 2013.

http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/InvestigationPlan_EthiopiaPBSIII_August7_2013.pdf
online: [11.08.2013]

⁸⁶ Ibid.

⁸⁷ Human Rights Watch (2012): “Waiting here for death” - Displacement and “Villagization” in Ethiopia's Gambella Region, http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf [online: 20.07.2013].

⁸⁸ Human Rights Watch (2012): “Waiting here for death” - Displacement and “Villagization” in Ethiopia's Gambella Region, http://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf [online: 20.07.2013].

⁸⁹ Engels, Bettina/ Dietz, Kristina (2011): Land Grabbing analysieren: Ansatzpunkte für eine politisch-ökologische Perspektive am Beispiel Äthiopiens, In: Peripherie, Nr. 124, Vol. 31, pp. 407 et seq..

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² OEZA (2012): Fokus: Ernährungssicherheit - International vereinbartes Ziel und Menschenrecht, p. 9, http://www.entwicklung.at/uploads/media/Fokus_Ernaehrung_Mai2012_01.pdf [online: 21.04.2013].

⁹³ Constitution of the Federal Democratic Republic of Ethiopia, Article 40, <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004722.pdf> [online: 11.06.2013].

⁹⁴ United Nations Declaration on the Rights of Indigenous People, 2008, Article 8 (2b), http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf [online: 11.06.2013].

⁹⁵ OEZA (2012): Fokus: Ernährungssicherheit - International vereinbartes Ziel und Menschenrecht, p. 8, http://www.entwicklung.at/uploads/media/Fokus_Ernaehrung_Mai2012_01.pdf [online: 21.04.2013].

guiding principles within their Three-Year Program (2013-2015),⁹⁶ and identified as being fundamental for a sustainable improvement of the livelihoods of the poorer parts of the population, for access to productive resources (in particular land), and for food security in the framework of agricultural development.⁹⁷

According to the project list of the ADA, all approved €5.7 million fall into second phase.⁹⁸ During the financing negotiation and decision phase, the ADA should avoid any potential adverse effects of the investments in the funded countries on the realization of human rights via an impact assessment on human rights. Furthermore, monitoring and complaint mechanisms based on human rights criteria should be implemented if monetary flows are directly funding the projects.⁹⁹

With about three-quarters of the labor force engaged in the agricultural sector, one of ADA's priorities is sustainable rural development and food security. The ADA wants to engage in an improvement of land tenure security by supporting the current land certification process.¹⁰⁰

According to the Maastricht Principles, Austria remains, as a member of international organizations such as the World Bank, "responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially",¹⁰¹ and should ensure that the World Bank is acting consistently with Austria's international human rights obligations.¹⁰² In line with the ETOPs an to prevent violations of ESCR as in the case described above, the ADA should implement human rights-based monitoring mechanisms. In the case of ongoing programs human rights impact assessments have to be undertaken and its results shall serve as basis for the adoption of all needed corrective measures in order to ensure the observance of human rights.

The Inspection Panel of the World Bank approved the request of the Anuak representatives and asked for a thorough investigation.¹⁰³ We recognize and appreciate the supportive and proactive role Austria fulfilled within the Board of Executive Directors of the World Bank regarding the CSO's concerns and their awareness of the Anuak situation for the Inspection Panel as well as criticising the World Bank for not applying its Social Safeguards regarding involuntary resettlement¹⁰⁴ in the above described case. Nevertheless, the case shows the necessity of implementing effective human rights impact assessments and the monitoring of ongoing ADC projects on multilateral level. Also corrective measures and remedy mechanisms in case of human rights violations should be implemented within the programmable bilateral ADC. According to the information in possession of FIAN Austria the ADA is waiting for a risk analysis and the necessary documentation in order to decide on co-financing PBS III¹⁰⁵, which it had pledged in autumn 2012. FIAN Austria recommends that ADA will not only withhold financial support to the third phase of the PBS program but also will undertake its own

⁹⁶ Three-Year Programme 2013-2015, p. 25, http://www.entwicklung.at/uploads/media/ThreeYearProgramme_13-15.pdf [online: 08.07.2013].

⁹⁷ OEZA (2012): Fokus: Ernährungssicherheit - International vereinbartes Ziel und Menschenrecht, p. 8, http://www.entwicklung.at/uploads/media/Fokus_Ernaehrung_Mai2012_01.pdf [online: 21.04.2013].

⁹⁸ ADA (2013): Project-list, approved contracts since 01.01.2010, search key-word PBS, [http://www.entwicklung.at/zahlen_daten_und_fakten/projektliste/?no_cache=1&tx_sysfirecdlist_pi1\[test\]=test&tx_sysfirecdlist_pi1\[mode\]=1&tx_sysfirecdlist_pi1\[sort\]=band%3A0&tx_sysfirecdlist_pi1\[pointer\]=1](http://www.entwicklung.at/zahlen_daten_und_fakten/projektliste/?no_cache=1&tx_sysfirecdlist_pi1[test]=test&tx_sysfirecdlist_pi1[mode]=1&tx_sysfirecdlist_pi1[sort]=band%3A0&tx_sysfirecdlist_pi1[pointer]=1) [online: 21.06.2013].

⁹⁹ See ETOP 14 (Impact assessment and prevention) and ETOP 37-39 (Obligation to provide effective remedy)

¹⁰⁰ ADA (2011): Austrian Development Cooperation with Ethiopia, http://www.entwicklung.at/uploads/media/Ethiopia_Folder.pdf [online: 25.04.2013].

¹⁰¹ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 7.

¹⁰² Ibid.

¹⁰³ World Bank (2013): Inspection Panel Investigation of the Ethiopia: Promoting Basic Service Phase III. Initial Investigation Plan, August 2013.

http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/InvestigationPlan_EthiopiaPBSIII_August7_2013.pdf [online: 11.08.2013]

¹⁰⁴ World Bank (2013): Social Safeguards. Involuntary resettlement. <http://go.worldbank.org/MRNITY6XNO> [online: 11.06.2013].

¹⁰⁵ E-Mail conversation between FIAN Austria and the manageress of ADA. 09.01.2013.

assessment and monitoring from a human rights perspective. This is deemed useful, as the World Bank's Inspection Panel investigation plan does not directly include human rights abuses.¹⁰⁶

2.1.2 Case study Sierra Leone

2.1.2.1 Sell Off of Agricultural Land in Sierra Leone

Until now, land deals with investors completed in Sierra Leone add up to about one million hectares of land – this is about 18% of land suitable for cultivation. The cumulative impact of these land deals on food security, access to water, and the human right to food and water for the wider population has not been yet assessed.¹⁰⁷ “CSOs are concerned about the huge conflict potential over land for subsistence food production in Sierra Leone, a country that is still recovering from war.”¹⁰⁸ Agrofuels are also produced for export, “in a country which is not food self-sufficient and where malnutrition affects one third of the population.”¹⁰⁹ In this context, the ongoing sale of fertile agricultural land is of great concern.¹¹⁰

The OeEB finances via the Emerging Africa Infrastructure Fund Ltd (EAIF), a project of a Swiss energy enterprise XX¹¹¹ in Sierra Leone. The OeEB and the Emerging Africa Infrastructure Fund (EAIF) signed a credit of €10 million on 25th June 2010. The EAIF, founded in 2002, finances infrastructure projects in Sub-Saharan Africa. The fund is owned by the Private Infrastructure Development Group (PIDG). The PIDG was created by a consortium of donor-institutions. The ADA is also a member¹¹². Besides the OeEB also the private financing body of the World Bank, the International Finance Corporation (IFC) as well as the African Development Bank provided credits and have a shared responsibility for the consequences and risks and increased thereby the volume of the fund to \$600 million.¹¹³ 52% of the project of the energy enterprise involved is financed through development banks, therefore the development banks – including the OeEB – carry a joint responsibility for the consequences and risks.

A precontract was signed between the energy enterprise and the government of Sierra Leone in February of 2010, and the first land lease agreements in April of 2010. The company expects to be in full production by 2014.¹¹⁴ The total project area extends to 14,300 hectares of land in the north of the country. The land lease agreement is set out for a period of fifty years, with a potential extension of twenty further years. The company is preparing to develop a plantation of sugarcane, an ethanol refinery and a biomass power plant.¹¹⁵

¹⁰⁶ World Bank (2013): Inspection Panel Investigation of the Ethiopia: Promoting Basic Service Phase III. Initial Investigation Plan, August 2013.

http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/InvestigationPlan_EthiopiaPBSIII_August7_2013.pdf online: [11.08.2013]

¹⁰⁷ SiLNoRF / Bread for All (2012): Concerns of civil society organisations and affected land users on Addax Bioenergy, p.2, http://www.breadforall.ch/fileadmin/deutsch/2_Entwicklungspolitik_allgemein/C_Wirtschaft%20und%20MR/Landgrab/CSO_Concerns_Addax_120925.pdf [online: 21.07.2013].

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ The enterprise got anonymized.

¹¹² OeEB website, OeEB loan to the Emerging Africa Infrastructure Fund Ltd., <http://www.oeeb.at/en/projects/Pages/emerging-africa-infrastructure-fund.aspx> [online: 21.07.2013]; Emerging Africa Infrastructure Fund (2013): Fund Structure, <http://www.emergingafriicafund.com/about-us/fund-structure.aspx> [online: 21.07.2013].

¹¹³ Emerging Africa Infrastructure Fund (2013): Fund Structure, <http://www.emergingafriicafund.com/about-us/fund-structure.aspx> [online: 21.07.2013].

¹¹⁴ Addax Bioenergy: Q&A: Addax Bioenergy sugarcane ethanol project in Makeni, Sierra Leone, http://www.addaxbioenergy.com/uploads/PDF/Addax_Bioenergy_FAQ_June_2013.pdf [online: 21.07.2013].

¹¹⁵ Ibid.

2.1.2.2 The Right to Food

The Sierra Leone Network on the Right to Food (SiLNoRF) and Affected Land Users Associations (AFLUAs), as well as groups within communities whose land is directly affected by the activities of the energy company involved, have monitored the human rights, social and ecological impacts of the project by the company in Sierra Leone since 2010. SiLNoRF concluded that the project endangers local food security. Huge tracts of land were leased with serious consequences for the local population. The study by SiLNoRF and Bread for All as of September 2012¹¹⁶ points out that the energy company took on large scale areas of fertile, well-watered land, despite promises to use only “marginal” lands.¹¹⁷ Additionally, about 4000 hectares of scrubland have to be cleared for the project. The long duration of the land lease agreement (50 years) is “dispossessing a whole generation of people of their land.”¹¹⁸ The food security of people from Tonkolili and Bombali is no further ensured, and they lose the access to land and water.¹¹⁹

2.1.2.3 The Right to Water

A human rights impact assessment of the involved company’s bioenergy project in Sierra Leone with regards to the right to water was undertaken in September of 2011 by WaterLex. The analysis was based on publicly available documents and statements by the company.¹²⁰ WaterLex concluded that various aspects of the project pose a high risk of impeding the human right to water for the local population. According to the report the project will extract about 26% of the water from the River Rokel during the driest months, February to April, with little consideration of the water usage of local people downstream. Even though the project is only in its beginning phases, the access to water for several communities is already negatively impacted.¹²¹ For these reasons the report questions the validity of the prior informed consent of the affected communities.¹²² Moreover, the report highlights the lack of effective accountability mechanisms in cases of right to food and right to water violations.¹²³

The bilateral and multilateral agreements of Austria, including investment agreements, should, according to principle 29a of the Maastricht Principles, contribute to creating an international environment conducive to the universal fulfillment of ESCR.¹²⁴ This means that the OeEB, which is operating as a development bank under the mandate of the Austrian government, has to abide by Austria’s human rights obligations, when financing single projects, programs or funds. The Sierra Leone case shows the necessity of having effective human rights complaint procedures as well as remedy mechanisms.

¹¹⁶ SiLNoRF / Bread for All (2012): Concerns of civil society organisations and affected land users on Addax Bioenergy, http://www.breadforall.ch/fileadmin/deutsch/2_Entwicklungspolitik_allgemein/C_Wirtschaft%20und%20MR/Landgrab/CSO_Concerns_Addax_120925.pdf [online: 21.07.2013].

¹¹⁷ Ibid. p.2, see also Anane, M. Abiwu, C. (2011): Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone, p.8, http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniques/Independent%20Study%20Report%20Addax%20Final.pdf [online: 31.07.2013].

¹¹⁸ Anane, M. Abiwu, C. (2011): Independent Study Report of the Addax Bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone, p. 7, http://www.brotfueralle.ch/fileadmin/deutsch/01_Service/Medien_Texte/Mediencommuniques/Independent%20Study%20Report%20Addax%20Final.pdf [online: 31.07.2013].

¹¹⁹ Ibid.

¹²⁰ Waterlex (2012): Sugarcane-to-Ethanol Project compliance with the Human Right to Water, http://www.waterlex.org/resources/documents/2011-HRIA_AddaxBioenergy.pdf [online: 19.06.2013].

¹²¹ Ibid., pp. 2 and 6.

¹²² Ibid., pp. 2 and 11.

¹²³ Ibid., p. 12.

¹²⁴ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, pp. 9 – 10.

2.2 Conclusions

- When making decisions on the financing of single projects, programs or funds, the Austrian Development Bank (OeEB) and the Austrian Development Agency (ADA) should take into account their obligations to respect, protect and fulfill human rights. Decisions on the financing of projects/programs/funds should be made respecting the ESCR of the most vulnerable groups of the local population. According to the Maastricht Principles, Austria remains, as a member of international organizations such as the World Bank, “responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially”,¹²⁵ and should ensure that the organization is acting consistently with Austria’s international human rights obligations.¹²⁶
- The OeEB and ADA should prioritize projects/programs/funds that strengthen and support the local food production and assist and not impede local peoples’ access to land. Austria should, according to principle 32 of the Maastricht Principles, prioritize the realization of the rights of disadvantaged, marginalized and vulnerable groups. Furthermore, human rights norms including the rights to self-determination and participation should be respected.
- The OeEB and ADA should implement monitoring mechanisms based on human rights criteria – not only when directly financing projects, but also when private agricultural projects are financed via funds/programs. During the negotiation and decision phase for credit provision, a human rights impact assessment on human rights in the investment-destination countries should be conducted. The results of those impact assessments shall guide the respective decisions to avoid adverse consequences. According to principle 21 of the Maastricht Principles Austria shall abstain from supporting international organizations via partial financing which are breaching its obligations as regards ESCR. In particular the local coordination office in Ethiopia should document and forward information on local happenings which raise concerns regarding human rights and linked to the ADC.
- If a group is adversely supported by the ADC/OeEB or affected via multilaterally financed agricultural projects or development programs, a human rights complaint mechanism and a human rights revision clause should be implemented, so that the complaint can be dealt with and the contract eventually modified accordingly.
- The FAO Guidelines on the Responsible Governance of Tenure shall be applied practically within the ADC and be taken into account as a criterion for granting.

¹²⁵ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 7.

¹²⁶ Ibid..

3. Austria as an EU Member State: EU Climate Policy and Common Agricultural Policy

According to principle 15 ETOP, Austria remains responsible for its own conduct in relation to human rights obligations as a Member State of the European Union. Austria does transfer competences to the EU, however, it needs to undertake all possible steps to ensure that all relevant organizations are acting consistently with the international human rights obligations of Austria. The European Court of Human Rights (ECtHR) held that the European Convention on Human Rights (ECHR) does not exclude the transfer of competences to international organizations, if the rights of the ECHR continue to be “secured”. “Member States’ responsibility therefore continue even after such a transfer.”¹²⁷

The concept of extraterritorial state obligations proves to be particularly important with regard to the agricultural-, climate- and energy strategies of the EU and its member States. Austria’s human rights obligations are discussed in the following sections using the examples of agrofuels as well as agricultural trade strategies and the Common Agricultural Policy – in particular regarding their impacts on the realization of ESCR.

3.1 Austria and the EU: Energy and Climate Policy – based on the Example of Agrofuels

3.1.1 Access to Land: The Impact on the Right to Food in Developing Countries

Access to land and water is a key element of the human right to food, and is a vital for the livelihood of many people, particularly in rural areas of the Global South. Growing plants for the production of agrofuels (palm, soy, corn, wheat, rapeseed, etc.) requires large amounts of land and great amounts of water. Both are available in only finite quantities. The promotion and production of agrofuels at the EU level have been shown to be an essential driving factor for large-scale land acquisitions/land grabbing.¹²⁸ The World Bank estimates that about 33% of the agricultural projects in Africa are intended for agrofuel production.¹²⁹ However, according to the Land Matrix, cross-referenced acquisitions for agrofuel production amount up to 66%.¹³⁰ Based on the increased demand for land for the production of agrofuels, to meet the EU target quote of shares of agrofuels in each member’s transport energy consumption, more governments provide foreign and domestic investment into large swathes of land without consideration of traditional cultivation of this land by small-scale famers, nomadic people, cattle drovers etc. These traditional cultivations used to be the way to ensure food for their communities.¹³¹

These investment deals often threaten current and future national food security and essential local living conditions thereby causing various human rights violations by imposing export-led production models on countries that are already dependent on food imports (net-food importers); by ignoring the land usage patterns of the local population and by endangering their access to land; by harming biodiversity and the environment; and by pushing the rural population further into poverty.¹³²

¹²⁷ *Matthews v United Kingdom (1999)*, Appl. No. 24833/94, ECtHR, para. 32; see also *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland (2005)*, Appl. No. 45036/98, ECtHR, para. 154.

¹²⁸ EuropaAfrica (2011): (Bio)fueling Injustice?, p. 49,

http://www.europafrica.info/file_download/13/europafrica_2011_report.pdf [online: 18.02.2013].

¹²⁹ Ibid.

¹³⁰ W. Anseeuw, L. Alden, L. Cotula, M. Taylor (2012): Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project, IIED, CIRAD and ILC, p. 25,

http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf [online: 23.7.2013].

¹³¹ EuropaAfrica (2011): (Bio)fueling Injustice?, p. 54.

http://www.europafrica.info/file_download/13/europafrica_2011_report.pdf [online: 18.02.2013]; FIAN International

(2010): Land Grabbing in Kenya and Mozambique,

<http://www.fian.at/assets/StudieLandgrabbinginKeniaMozambiqueFIAN2010.pdf> [online: 18.02.2013]; Funk, Sarah/ Pichler,

Melanie (2011): Agrartreibstoffe im Fokus - Politikkohärenz aus der Perspektive des Rechts auf Nahrung, Task Group Recht auf Nahrung, Vienna.

¹³² Ibid.

3.1.2 Austria and Agrofuels

According to the Maastricht Principles¹³³ Austria has, in addition to its territorial obligations, an obligation to respect,¹³⁴ protect¹³⁵ and fulfill¹³⁶ ESCR in all situations extraterritorially in which actions or omissions to act might have foreseeable consequences on the enjoyment of these rights. Such foreseeable consequences are exemplified in current policies on agrofuels.

Agrofuels have been promoted since the beginning of the twenty-first century as an alternative to the dependence of fossil fuels, and as a contribution to combat climate change. The current target quota of agrofuels (10% of renewable resources in each members States' transport energy consumption)¹³⁷ cannot be met by current Austrian or EU common agricultural production. Therefore to meet the target quota the demand of imports in the area of agrofuels will have to increase significantly.¹³⁸ In Austria, in 2011, about 506 thousand tons of biodiesel and 103 thousand tons of bioethanol were consumed in transport, which amounts to a share of 6.75%. This is above the EU average of 4.5%.¹³⁹ In 2008, about 40% of agrofuels consumed in the EU were already imported from outside of the EU.¹⁴⁰ In order to meet the target share, it is strongly expected that the trend of increasing imports will continue. The World Bank estimates that the EU could import 53% of its agrofuels by 2020.¹⁴¹ Around the turn of the century, an interest group was created in Austria, which lobbied also in the context of the EU for an obligatory quota. Since 2005 agrofuels have to be added into by law; amongst the most important are canola/rapeseed (agrodiesel) as well as wheat and corn (agroethanol).¹⁴² The question of the impacts of agrofuels on human rights, in particular on the right to food – falls short in the controversial debate on E10 in Austria, with the exception of superficial mentioning of/links to/regards of world hunger.

3.1.3 Human Rights Obligations in the Context of Agrofuels

The EU and its Member States – including Austria – impair human rights through agrofuel policy in multiple ways:

- first, by not conducting an impact assessment of energy- or agrofuel policy on human rights;
- second, by violating the human rights of people in the Global South directly through these policies; and
- third, by insufficient regulation of investors and agrofuel industrial enterprises from and based in the EU, who could potentially be contributing to human rights violations in the Global South without being held accountable in Europe.

3.2 The Agricultural Trade Strategy and Common Agricultural Policy of the EU

¹³³ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 6.

¹³⁴ Ibid., in particular Principle 20 Direct interference.

¹³⁵ Ibid., in particular Principle 24 Obligations to regulate.

¹³⁶ Ibid., in particular for example Principle 29 Obligations to create an international enabling environment.

¹³⁷ The EU takes a key role in this regard and adopted in 2009 in the context of the Directive on the promotion of the use of energy from renewable sources a 10% share of energy from renewable sources in transport by 2020. See EU (2009): Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF> [online: 18.06.2013].

¹³⁸ Hoppichler, Josef (2010): Biomasse und Agro-Treibstoffe - Zwischen Irrwegen und Auswegen für ländliche Gebiete, In: Gruber, Petra (Hg.): Wie wir überleben! Ernährung und Energie in Zeiten des Klimawandels, Opladen: Barbara Budrich, p. 128.; Pichler, Funk, Sarah/ Pichler, Melanie (2011): Agrartreibstoffe im Fokus. Politikkohärenz aus der Perspektive des Rechts auf Nahrung. Task Group Recht auf Nahrung, Vienna.

¹³⁹ VCOE(2013): Press Release of 17.4.2013 – Biokraftstoffe kosten EU-Staaten und Autofahrer 10 Milliarden Euro pro Jahr!, <http://www.vcoe.at/de/presse/aussendungen-archiv/details/items/biokraftstoffe-kosten-eu-staaten-rund-10-milliarden-euro-pro-jahr-17042013> [online: 18.02.2013].

¹⁴⁰ Calculation based on data in Ecofys, Agra CEAS, Chalmers University, IIASA and Winrock, "Agrofuels Baseline 2008" Report to the EU in response to Tender No. TREN/D1/458/2009 (January 2012), pp. 42-43.

¹⁴¹ Mitchell, D. (2011): Biofuels in Africa: Opportunities, Prospects, and Challenges. The World Bank, p. 100.

¹⁴² FIAN (2011): Agrotreibstoffe im Fokus – Politikkohärenz aus der Perspektive des Rechts auf Nahrung, <http://fian.at/assets/Agrartreibstoffe-im-Fokus.pdf> [online: 18.02.2013].

Austria as a member State of the EU is responsible for the development and implementation of the Common Agricultural Policy (CAP) as well as the external trade strategy of the EU. The EU is the biggest importer of food and exporter of processed foods in the world, and the second largest exporter of milk products, pork and wheat, as well as the third greatest exporter of poultry. Thereby the EU exports to poor countries have significantly increased.¹⁴³

3.2.1 Export Subsidies of the CAP

The milk price crisis of 2008/2009 highlighted that the EU can re-activate measures of direct export subsidies at any time when the European producers have to be supported.¹⁴⁴ Austria, as a member State that continuously produces a surplus of milk (and is thereby reliant on exporting), approved the reintroduction of export subsidies. After the reintroduction of export subsidies for milk products, exports of milk powder to countries of the Global South increased immediately.¹⁴⁵ The subsidized milk powder is offered on local markets at a price below the production costs of local milk. In this way the local production is crowded out by the imported powdered milk. According to Oxfam estimates, about seven million people whose small enterprises depend on milk production experienced an income decrease of between 7% and 16% because of decreased market prices due to the price competition of cheaper milk powder imports. In 2009, Bangladesh was the fifth largest importer of subsidized milk powder from the EU.¹⁴⁶

3.2.2 CAP Reform – A missed Chance

Austria could have taken the chance during the currently negotiated reform of the CAP to advocate a reduction of the adverse impacts of the EU agricultural policy on human rights. However, Austria maintains that the instrument of export subsidies should be kept. The opinion of the Committee on Development of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on financing, management and monitoring of the Common Agricultural Policy (Decision on the opening of, and mandate for, interinstitutional negotiations on financing, management and monitoring of the CAP) was rejected by the plenum and one of the current power holding Parties of Austria as a Member of European Parliament (MEPs).¹⁴⁷ Austria supports the proposal of the Commission to increase the competitiveness of the EU agricultural sector and to, e.g., reduce barriers to investment offensives for further increase in production and thereby additional food exports.¹⁴⁸

Production and capacity increases, surplus production and export offensives are financed through taxes via the agricultural promotion system. Tax payments by Austrian and European citizens – the

¹⁴³ Wiggerthale, Marita (2011): Die EU exportiert – die Welt hungert - Warum die EU-Agrarpolitik auf Kosten armer Länder geht, Oxfam Deutschland, p. 5;

The EU requests from its potential trade partner countries, to liberalize about 80% of all trade with the EU within 15 years. Import tariffs are only allowed for sensitive products. However, provisions within Economic Partnership Agreements (EPAs) often do not allow even for sensitive products to raise import tariffs above levels already in place. See Paasch, Armin (2008): Verheerende Fluten – politisch gemacht, EU-Handelspolitik verletzt Recht auf Nahrung in Ghana – Die Beispiele Hühnchen und Tomaten, Germanwatch, p. 18;

To protect its own agricultural sector, the EU sets on average a tariff of 12.4%. The tariff for the food industry accounts on average 20.1%. Exports of cereals/grains from the EU to Least Developed Countries (LDCs), the poorest countries of the world, have increased from 2005 to 2008 by 265.2%, and milk products by 45.3%. See Wiggerthale, Marita (2011): Die EU exportiert – die Welt hungert - Warum die EU-Agrarpolitik auf Kosten armer Länder geht, Oxfam Deutschland, pp. 6 et seq..

¹⁴⁴ Misereor (2011): Wer ernährt die Welt? Die europäische Agrarpolitik und Hunger in Entwicklungsländern, p. 21.

¹⁴⁵ AgrarMarkt Austria (2011): Marktbericht, No. 10, 07.01.2011, p. 25.

¹⁴⁶ Misereor (2011): Wer ernährt die Welt? Die europäische Agrarpolitik und Hunger in Entwicklungsländern, p. 21.

¹⁴⁷ Committee of Development: Opinion 2011/0288(COD),

<http://www.votewatch.eu/en/decision-on-the-opening-of-and-mandate-for-interinstitutional-negotiations-on-financing-management-a-33.html> [online: 03.07.2013].

¹⁴⁸ Bauernbund: GAP: Position des Bauernbundes – Gemeinsame Agrarpolitik 2014 – 2020, http://elisabeth-koestinger.eu/uploads/media/Positionspapier_des_BB_zur_GAP_nach_2013.pdf [online: 03.07.2013].

CAP has a budget of about €60 billion per annum – finances an agricultural policy, whose adverse impact on the right to food in poor countries is evidenced by multiple studies.¹⁴⁹

The European Commission proposed a bundle of measures that could contribute indirectly to the reduction of over-production and thereby exports, such as by making the payment of subsidies dependent on the fulfillment of environmental criteria. Austria is vehemently opposed to the so called greening and based this position on their stance on fighting hunger in the world („Hunger in der Welt“).¹⁵⁰ Based on the projected increase in food demand, production capacities of the EU have to be effectively utilized and further expanded. Austria’s Federal Minister of Agriculture and other high ranking officials proclaim that it is the responsibility of the EU (and therefore Austria) to support food security in the global context.¹⁵¹

The argument that the EU and Austria have to contribute to „feeding the world“ is even more questionable if the imports of animal feed in the EU are taken into account. About 80% of animal feed for European meat production is imported. Imports of agricultural raw materials often contribute to an increased demand of products, which are produced under conditions which are questionable from an environmental and human rights perspective.¹⁵² A example is soy: After China, the EU is the second biggest importer of soy worldwide. Animal feed for European productive livestock currently requires about 17.5 million hectares of cultivable land in countries where soy is grown.¹⁵³ In this process, severe violations of the right to food are committed via evictions and dispossession of indigenous groups as well as of small-scale farmers.¹⁵⁴ Austria imports more than 500 thousand tons of soy per year, partly for production sectors which already produce more than demanded on the market (e.g., milk and beef). Despite this over-production, both sectors are ongoing expanded by public finances.¹⁵⁵

3.3 Conclusions

- Austria should fulfill its human rights obligations and should advocate a moratorium on the admixture on the EU level. The 10%-target for the quota of agrofuels in transport energy consumption should be suspended until all relevant and human rights impacts have been entirely and objectively assessed, and until relevant measures to reform EU agrofuel policy, to ensure that people in developing countries are not adversely affected, have been taken.
- Effective access to legal remedies for victims of human rights violations as a consequence of EU agrofuel policy should be guaranteed. An instance should be established that deals with the complaints of victims of EU policy in developing countries. Austria should take the lead in the establishment of such institution.
- At a national level Austria should amend the EU directive for renewable energy immediately and suspend the target for proportions of agrofuels in Austrian transport energy consumption until the human rights impacts at EU-level have been evaluated comprehensively and the agrofuel policy amended with the needed corrective measures to

¹⁴⁹ See, e.g., Wieggerthale (2011), Germanwatch (2008), Misereor (2011).

¹⁵⁰ Kern, Martina/ Jakob Auer (2012): Die Leistungen der heimischen Landwirtschaft sind beeindruckend, <http://www.jungbauern.at/25404/?MP=61-17476> [online: 03.07.2013]; Siffert, Josef (2012): Wlodkowski: Hauptaufgabe der Bauern ist Nahrungsmittelproduktion, Landwirtschaftskammer Östereich, 06.09.2012, <http://www.agrarnet.info/?+Wlodkowski++Hauptaufgabe+der+Bauern+ist+Nahrungsmittelproduktion+&id=2500%2C1735357%2C%2C%2Cc2V0PTU%3D> [online: 03.07.2013].

¹⁵¹ OTS (2012): Berlakovich: Sicherung der Ernährungsvorsorge hat oberste Priorität, 22.09.2012, http://www.ots.at/presseaussendung/OTS_20120922_OT50053/berlakovich-sicherung-der-ernaehrungsvorsorge-hat-oberste-prioritaet [online: 03.07.2013]; Siffert, Josef (2012): Wlodkowski: Lebensmittel-Produktion ist Hauptaufgabe der Landwirtschaft, 20.01.2012, <http://www.lk-ooe.at/?id=2500%2C1653195%2C%2C> [online: 03.07.2013].

¹⁵² Heinrich Böll Stiftung, BUND, Le Monde Diplomatique (2013): Fleischatlas, Berlin, http://www.bund.net/fileadmin/bundnet/publikationen/landwirtschaft/130108_bund_landwirtschaft_fleischatlas.pdf [online: 26.07.2013].

¹⁵³ Ibid., p. 40.

¹⁵⁴ Sarah/ Pichler, Melanie (2011): Agrartreibstoffe im Fokus - Politikkohärenz aus der Perspektive des Rechts auf Nahrung, Task Group Recht auf Nahrung, Vienna.

¹⁵⁵ Funds from the second pillar of the CAP, Rural Development, are provided for expanding production capacities.

ensure the primacy of human rights. Guaranteed minimum conditions should be that the policies have no adverse impacts on the population in developing countries and their human rights either directly (i.e., via further land-acquisitions) or indirectly (i.e., via volatile prices in general and increasing prices of basic foods).

- To fulfill its obligation to protect, Austria should modify its position in agricultural policies, and advocate for the abolition of export subsidies and financial incentives for over-production. Austria should take measures that guarantee that enterprises based in EU member State countries are not involved in dumping practices, and in the case they contravene, are held accountable.

4. Austria's Export and Investment Promotion and Corporate Social Responsibility Policies

The following chapters focus on the existing Austrian 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. It will be explained what the human rights gaps in the existing procedures of granting export guarantees are, and how the Austrian government resists development in this field. Also, it will be shown how Austrian CSR policies are not effective in ensuring compliance with Austria's extraterritorial obligations and explain with a concrete example the need for a regulatory, rather than mostly voluntary, framework for Austrian-based transnational corporations conducting business abroad.

4.1 Instruments for Export and Investment Promotion

Austria accords high importance to external economic promotion in its foreign affairs policy.¹⁵⁶ Besides the political support and promotion of projects of Austrian companies abroad, the federal government supports corporations financially in their export business and protects the business activities of its companies abroad by means of export guarantees, investment guarantees and loan guarantees. The legal basis for this protection are the two Export Financing Guarantees Acts (AusfFG, AFFG)¹⁵⁷ which authorize the federal Ministry of Finance to support exports and direct investment in foreign countries via the Export Credit Agency (ECA) OeKB.¹⁵⁸

As the law shows,¹⁵⁹ these measures are solely meant to strengthen Austria's international trade without substantial coherence with the aims of international development cooperation (as established in the Development Cooperation Acts¹⁶⁰, for example, and also in the Maastricht principles 28 – 32¹⁶¹). Stipulations for the protection of human rights, such as the obligatory Human Rights Impact Assessments in the context of Austria's extraterritorial obligations (ETOP 36-37¹⁶²), are not enshrined in the law. For years, Austrian human rights, development cooperation and environmental organizations have advocated for taking into account human rights in the destination country within the export promotion strategy¹⁶³; however, until now without success.

¹⁵⁶ See for example the presentation of Austria's internationalization strategy 2011 – 2013 by the Austrian Federal Ministry for Economic Affairs and the President of the Austrian Chamber of Commerce on July 4, 2011: The aim is to secure Austria's position among the top five per-capita export countries within the European Union and to step-up to the first three in the long term. Moreover, the Ministry of Finance and the Austrian Chamber of Commerce, Wirtschaftskammer Österreich (WKO) want to win about 2000 new exporters. http://www.ots.at/anhang/OTS_20110704_OTSO105.pdf [online: 20.06.2013].

¹⁵⁷ See Bundesgesetz betreffend die Übernahme von Haftungen für Rechtsgeschäfte und Rechte (Ausfuhrförderungsgesetz – AusfFG): <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006677> [online: 20.06.2013]; Bundesgesetz betreffend die Finanzierung von Rechtsgeschäften und Rechten (Ausfuhrfinanzierungsförderungsgesetz – AFFG): <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006271> [online: 20.06.2013]; About €95 billion out of the federal budget are provided for guarantees and subsidized loans. This amounts to about a third of the national GDP (2011 GDP, current prices, was € 300.71 billion). http://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/bruttoinlandsprodukt_und_haupttagregate/jahresdaten/019505.html [online: 20.06.2013]. Additionally, export credits are re-financed. In 2011 the total sum of re-financing amount to about more than €54 billion. (OeKB Jahresbericht 2011)

¹⁵⁸ In Austria the Oesterreichische Kontrollbank AG (OeKB) takes on, under the mandate of the Austrian Federal Government, the role the official export credit agency. See also: <http://www.oekb.at/en/about-oekb/Pages/default.aspx> [online: 20.06.2013].

¹⁵⁹ Ibid.

¹⁶⁰ Bundesgesetz über die Entwicklungszusammenarbeit (Entwicklungszusammenarbeitsgesetz, EZA-G) <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001847> [online: 03.07.2013], § 1, Abs. 5.

¹⁶¹ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, pp. 9 et seq..

¹⁶² ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, pp. 9 et seq..

¹⁶³ See, e.g., ECA Watch Österreich (2009): NGO Forderungen - Novelle des österreichischen Ausfuhrförderungsverfahrens.

4.1.1 Human Rights Gaps in the Promotion of Exports and Foreign Investment

The allocation of guarantees and securities by Austria's ECA is very lacking in transparency. On the one hand there is no available and binding definition of the criteria according to which a project is worthy to be supported. On the other hand, even the budget committee of the Austrian Parliament is informed only about specific guarantees¹⁶⁴, which means in practice that information on the vast majority of the annually undersigned export guarantees and export loans is neither available to the public nor to the Austrian parliament.

The Austrian Ministry of Finance has answered parliamentary requests as well as civil society information requests under the Austrian Environmental Information Act (UIG) as to whether it takes into account human rights aspects within its official export promotion that Austria applies OECD guidelines when it examines the allocation of grant export guarantees, especially OECD's Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence ("Common Approaches"). But the recommendations only apply to a very small portion of the Austrian ECA's export promotion and all remain soft law, with no set procedures for accountability or remedies.¹⁶⁵

Within the current version of the Common Approaches (with the exception of a mention of human rights in the preamble) only a few aspects concerning human rights are (indirectly) referred to, 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. 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.¹⁶⁶ The actual assessment of projects for which ECA coverage is applied for and will fall under the agreement of the Common Approaches, follows the World Bank Safeguard Policies and, in some cases, the IFC Performance Standards. While the latter explicitly refer to human rights since their latest revision, which came into force in 2012, they do not demand that projects are not supported in the case of human rights violations. In addition, they are only applied to a minor portion of ECA applications.¹⁶⁷ Companies are invited to respect the OECD Guidelines for Multinational Enterprises.¹⁶⁸ However, there is once again no set procedure (including for accountability or remedies) on how to deal with companies or cases that do not comply with these guidelines or which directly breach human rights.

Neither with regard to the ECA (OeKB) nor with regard to its subsidiary, the OeEB, Austria has an accountability mechanism, which is determined by principle 36 of ETOP¹⁶⁹.

The transparency criteria according to the Aarhus Agreement in the framework of the Environmental Information Act via the BMF, regarding the obligation to inform, are to a major degree fulfilled; however, these are relevant for information on the environment, but normally exclude human rights information on state-funded export credits and guarantees. A national contact point is established

¹⁶⁴ Austria follows the transparency criteria of the OECD Common Approaches (see below) which only apply to projects with a loan duration of at least two years and a volume of at least 10 million Euros. Out of these, projects that are considered to be especially relevant from an environmental or social standpoint (so-called "Category A" projects) are published at least 30 days before the final decision. Projects considered less harmful are published ex post (Cat. B) or not at all (Cat. C).

¹⁶⁵ Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, <http://www.oecd.org/officialdocuments/displaydocument/?cote=TAD/ECG%282012%295&doclanguage=en> [online: 20.06.2013].

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ OECD (2011): Guidelines for Multinational Enterprises,

<http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm> [online: 20.06.2013].

¹⁶⁹ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 11.

within the framework of the OECD Guidelines for Multinational Enterprises (MNE) for complaints in the context of Austrian enterprises acting transnationally; however, a formal complaints mechanism via governmental institutions for human rights problems with ECA- and OeEB-supported export projects is entirely missing. Consequently, according to principle 38 of ETOP, mechanisms and remedies capable of leading to a cessation of ongoing violations of ESCR, and “adequate reparation, including, as necessary, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition”, are missing.¹⁷⁰

4.1.2 The Case of the Ilisu Dam in Turkey

An example highlighting deficits in the state party's human rights due diligence, despite the application of the OECD Common Approaches, is the Ilisu dam project in Turkey. This project has already been brought to the attention of the Committee in 2011 in a report and a lunch briefing conducted by CounterCurrent, FIAN Germany and others, when the Committee assessed compliance with the Covenant by the German and Turkish governments.¹⁷¹ As the Austrian government was involved in this project from 2007 to 2009 through its national ECA OeKB, this case is also relevant for this report to the CECSR on Austria.

The Ilisu dam project, situated on the River Tigris in the mainly Kurdish-populated south-eastern part of Turkey is currently one of the most contested dam projects in the world. The Ilisu reservoir would flood a total of 199 settlements and affect the livelihoods of up to 78,000 people¹⁷² (excluding downstream impacts, for example on the Mesopotamian Delta in Iraq). The impact would be felt far downstream and hydrologists have warned of a drastic deterioration in water quality. The Ilisu dam would impact approximately 400 km of the riverine ecosystems rich in biodiversity with rare and endangered species, once again also affecting the livelihoods of people who depend on fishery or small-scale farming in the fertile Tigris valley.¹⁷³

Responding to heavy civil society criticism on their possible project involvement, the Austrian government had pledged to only support the project if the Common Approaches and World Bank standards were met. The state party (here being the Austrian, German and Swiss ECAs representing their respective governments) undertook an exceptional effort and negotiated 153 set Terms of Reference (ToR) with the Turkish government in order to bring the project in line with international standards. The implementation of the ToR was to be monitored by independent expert panels (Committees of Experts – CoE) concerning human rights, environment and cultural heritage protection.¹⁷⁴

Even so, while the contractual ToR 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 prevented the free expression of opinion and free participation in consultations, and therefore the prior informed consent. As the Ilisu dam is planned on the River Tigris shortly before the border with Iraq, according to international law, the neighboring country should have been informed and consulted. The Austrian government addressed the issue by merely demanding that the

¹⁷⁰ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 12.

¹⁷¹ See also “Dam construction in Turkey and its impact on economic, social and cultural rights”, Parallel Report or ‘parallel report’ in response to the initial report by the Republic of Turkey, March 2011.

¹⁷² Kudat, A (2006): Review of Resettlement Action Plan (RAP) for the Ilisu dam and hydro-electric power project, internal paper for the Swiss Export Credit Agency.

¹⁷³ IEG /Ilisu Environment Group (2005): Ilisu dam and HEPP. Environmental impact assessment report.

http://www2.dsi.gov.tr/ilisu/ilisu_ced_eng.pdf [online: 29.07.2012].

¹⁷⁴ Before the initiation of the ToR process, non-governmental organizations and international experts had 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. For a detailed description of the ToR process and the dynamics that eventually led to the withdrawal of the Austrian, German and Swiss governments from the Ilisu project see for example: Eberlein, C.; Drillisch, H.; Ayboga, E. and Wenidoppler, T (2010): The Ilisu dam in Turkey and the role of export credit agencies and NGO networks, Water Alternatives 3(2), pp. 291-312 <http://www.eca-watch.org/sites/eca-watch.org/files/Art3-2-17.pdf> [online: 20.06.2013].

Turkish government provide information and extend an invitation for further talks to the Iraqi government. The Turkish objection to the Convention on the Law of Non-Navigational Uses of International Watercourses argued that this condition must be considered fully inadequate to safeguard the rights of the rural population, which depends on the River Tigris in Iraq.¹⁷⁵

While the Austrian government withdrew from the Ilisu project after three years of engagement in 2009, due to high public pressure and the repeated non-fulfillment of the contractual terms of reference concerning human rights, environment and cultural heritage,¹⁷⁶ the case also shows that many of these issues were not addressed adequately in the first place. The Common Approaches in no way provide an adequate framework for the decision-making process towards officially supporting large-scale infrastructure projects from a human rights point of view.

Austria's government played a crucial role in getting the project started: There is clear and detailed documentation from the independent CoE commissioned by the Austrian, Swiss and German ECAs on the continuing (and fundamental) flaws of the project setup, particularly concerning human rights issues. One Austrian company decided to remain in the project, with no consideration whatsoever for the social, cultural, and environmental impacts that they were contributing to. They even took over the other exporter's contracts in 2010 despite the informed and considerate judgment of their own countries' ECAs, that the Ilisu project is moving toward causing a serious social disaster. The same company which is simultaneously involved in at least three other large dam projects with documented breaches of economic, social and cultural rights) remains one of the main beneficiaries of the Austrian export promotion system and the Austrian government has taken no steps towards a change in this.¹⁷⁷

4.1.3 Activities of Austrian Enterprises Abroad and Austria's Obligation to Protect

According to the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights, States have to take action "to protect economic, social and cultural rights of persons within their territory and extraterritorially."¹⁷⁸ Equally, States must take necessary measures to ensure that non-State actors, "such as private individuals and organizations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures."¹⁷⁹ "States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: a) the harm or threat of harm originates or occurs on its territory; b) where the non-State actor has the nationality of the State concerned."¹⁸⁰

The Principles are highly relevant to the activities of private enterprises abroad. Austria needs to take precautions that domestic enterprises, during their commercial activities abroad, do not become involved in activities that nullify or impair the enjoyment of economic, social and cultural rights.

¹⁷⁵ Ibid.

¹⁷⁶ Detailed documentation of the shortcomings that ultimately led to the ECA's withdrawal from the project can be found in the final reports by the ECA's Committee of Experts:

CoE (Committee of Experts), 2009a, Comment of the Project Implementation Unit on the Fourth Site Visit Report of the CoE-CH. 01.07.2009; CoE (Committee of Experts), 2009b, Report on the Field Visit and Evaluation Workshop of the Committee of Experts – Resettlement, 7-12 June, 2009 ; CoE (Committee of Experts), 2009c, Subcommittee on Environment Report; Biodiversity, EMP and related aspects. Fourth site visit June 4-12, 2009; CoE (Committee of Experts), 2009d, Report of the Sub-Committee on Cultural Heritage – Fourth site visit May 18-23, 2009.

¹⁷⁷ Andritz (2010): Andritz to supply electromechanical equipment for Ilisu hydropower station, Turkey. 06.15.2010.

<http://www.andritz.com/hydro/hy-news/hy-news-detail.htm?id=5679> [online: 20.06.2013].

¹⁷⁸ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 8.

¹⁷⁹ Ibid., Principle 24.

¹⁸⁰ Ibid., Principle 25.

Currently there are no effective measures in place to ensure this, as the two following examples will highlight.

4.1.4 Austria's CSR Policies

During the financial crisis the European Commission released "A renewed EU strategy (2011-2014) for Corporate Social Responsibility,"¹⁸¹ which has consequences beyond the indicated timeframe. According to this framework the implementation of corporate responsibility should remain primarily privately organized, as it is stated within the framework that the "development of CSR should be led by enterprises themselves."¹⁸²

Austria (beside all other EU member States) was asked to take on the task to develop a national CSR plan, and commenced with it in 2012. Thereby the EC communications on such soft law initiatives as ISO 26000, Global Compact, Principles for Responsible Investment, GRI, EMAS, ISO 14001, respACT Guidelines, ONR 192500, etc., are particularly relevant. It is obvious that these guidelines, based on their voluntary nature and due to the modest targets set (which partly clearly undermine minimum standards), cannot lead to effective measures for more corporate responsibility and in any case are adequate binding tools to held responsible private actors involved in human rights violations. Therefore, these guidelines cannot be sufficient to build a basis for corporate social responsibility and are not in line with the state obligations to protect (ETOP, principles 23 – 27).¹⁸³

From a civil society perspective¹⁸⁴, ambitious binding legal state regulations are necessary regarding the responsibility of enterprises - more so if enterprises act outside of the EU and control, as well as the visibility of their actions, is not fully possible. Also, principle 24 of ETOP states that in this context, "States must take necessary measures to ensure that non-State actors [...], such as [...] transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures."¹⁸⁵

4.1.5 Case Study Belo Monte in Brazil

In the Brazilian federal state of Pará, construction work for the world's third largest hydroelectric power plant Belo Monte is currently underway on the Xingu River. In April of 2013, 25% of the project had been realized, according to a government report.¹⁸⁶ In order to construct the power plant with a planned installed capacity of 11 gigawatt, the Xingu River is supposed to be retained and the majority of water, which is currently flowing through "Volta Grande", is supposed to be diverted via two canals. Plans for a hydroelectric power plant on the Xingu have been in place since the 1970s. Its realization has been, however, for a long time hindered by massive protests of affected indigenous groups. Under the government of Luiz Inácio Lula da Silva, the project Belo Monte became a key project of "Programs to Accelerate Growth" (Programa de Aceleração do Crescimento, PAC).

In 2010, the Consortium Norte Energia SA won the project bid to construct/build and operate Belo Monte. In 2011, preliminary construction work was suspended twice by court decisions of the federal court of Pará. These were in both instances overturned at higher instance courts. The power plant "is expected to start operations of its first unit in early 2015."¹⁸⁷

¹⁸¹ European Commission (2011): A renewed EU strategy 2011 – 2014 for Corporate Social Responsibility, COM(2011) 681, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>, [online: 27.07.2013].

¹⁸² Ibid., p. 7.

¹⁸³ Ibid., pp. 8 et seq..

¹⁸⁴ See Network Social Responsibility (NeSoVe), ECA Watch Austria and Development Cooperation Agency of Katholische Jungschar

¹⁸⁵ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 8.

¹⁸⁶ Usina Hidrelétrica Santo Antônio (2013): Eixa Energia, http://www.pac.gov.br/pub/up/pac/705-PAC7_energia.pdf, [online: 20.06.2013].

¹⁸⁷ Norte Energia: About the Belo Monte Hydroelectric Power Plant, p. 6, http://www.blogbelomonte.com.br/wp-content/uploads/2011/11/FOLHETO_ingles_16.pdf [online: 20.06.2013].

4.1.5.1 The involvement of Austrian state and non-state actors in the Construction of Belo Monte

In 2011, the company involved,¹⁸⁸ which receives regular Austrian government export-related assistance, confirmed that it had received an order from Norte Energia to supply turbines, generators, auxiliary equipment and other hydro-mechanical equipment, of an aggregate worth of €330 million.¹⁸⁹ Belo Monte is currently the largest and (probably) most contentious large dam project in the Brazilian Amazon area, but it is not a unique case: The Multi-Year Plan (2012 – 2015) of the Brazilian government (Plano Plurianual 2012 – 2015) includes the construction of about 15 large hydroelectric power plants in the Amazon Basin as well as studies and project plans for a further 24.¹⁹⁰ The ten-year decentralized Energy Plan (Plano Decenal de Energia 2011-2020) envisages 22 new hydroelectric power plants in the Amazon Basin.¹⁹¹ With these (expansion) plans the involved company seems to have great hopes for its business: According to an interview with the executive director of the Brazilian subsidiary, Sérgio Parada, the involved enterprise aims for a leading position in the Brazilian market/aims to be the market leader in Brazil.¹⁹²

4.1.5.2 Rights Violations due to the Belo Monte Project

The involved company committed (itself) voluntarily to a number of Corporate Social Responsibility (CSR) and sustainability obligations.¹⁹³

The violation of rights of affected indigenous peoples: The constitution of Brazil (Article 231), the ILO Convention No. 169 as ratified by Brazil in 2002 as well as the UN Declaration on the Rights of Indigenous Peoples, grant indigenous peoples affected by big infrastructure projects the right to be consulted. The constitutional right of the affected indigenous communities to a hearing was massively violated according to a 2010 published report on the human rights platform, “Plataforma Brasileira de Direitos Humanos Econômicos, Sociais, Culturais e Ambientais (Dhesca).”¹⁹⁴ According to the Inter American Commission on Human Rights (IACHR) of the Organization of American States (OAS), the licensing process should be immediately suspended and the construction work stopped, until certain minimum conditions are met (to conduct consultation, provide/permit access to relevant documents in an accessible format, adopt measures to protect the life and physical integrity of the members of the indigenous peoples and to prevent the spread of diseases and epidemics among indigenous communities).¹⁹⁵ The Committee of Experts on the Application of Conventions and Recommendations of the ILO, requested the Brazilian government to: first, take the necessary measures to carry out consultations with the affected indigenous peoples, in accordance with Articles 6 and 15 of Convention No. 169 on the construction of the Belo Monte Dam, before the

¹⁸⁸ Enterprise had been anonymized

¹⁸⁹ Andritz (2011): Andritz to supply major equipment for Belo Monte hydropower plant, <http://www.andritz.com/index/hydro/hy-news/hy-news-detail.htm?id=5589> [online: 20.06.2013].

¹⁹⁰ Plano Plurianual 2012-2015, <http://www.planejamento.gov.br/noticia.asp?p=not&cod=7571&cat=155&sec=10> [online: 20.01.2013].

¹⁹¹ Ministerio de Minas e Energia: Plano Decenal de Expansão de Energia 2020. Sumário, <http://www.mme.gov.br/mme/galerias/arquivos/noticias/2011/SUMARIO-PDE2020.pdf> [online: 20.06.2013].

¹⁹² Valor Econômico: Andritz busca a liderança no Brasil, 21.01.2013, [online: 20.06.2013].

¹⁹³ The involved company is a member of an internet platform for Corporate Social Responsibility and sustainable development „respACT - Austrian business council for sustainable development“ (www.respect.at) and supports the principles of the platform. See also: <http://www.andritz.com/de/group/gr-about-us/gr-sustainability.htm> [online: 20.06.2013].

¹⁹⁴ Plataforma DhESCA (2010): Relatoria nacional do direito humano ao meio ambiente, <http://www.xinguvivo.org.br/wp-content/uploads/2010/10/Relatorio-da-Plataforma-DHESCA-sobre-viola%C3%A7%C3%B5es-dos-direitos-humanos-do-projeto-Belo-Monte.pdf>, [online: 20.06.2013].

¹⁹⁵ Inter American Commission on Human Rights (2011): Comunidades Indígenas da Bacia do Rio Xingu, Pará, http://www.xinguvivo.org.br/wp-content/uploads/2010/10/Carta_otorgamiento_corregida_peticionario1.pdf [online: 20.06.2013]; see also OAS: Precautionary Measures, 2012, PM 382/10 – Indigenous Communities of the Xingu River Basin, Pará, Brazil, <http://www.oas.org/en/iachr/indigenous/protection/precautionary.asp> [online: 27.07.2013].

possible harmful effects of that plant are irreversible; and second, in case their interests were adversely affected, to see to what extent these can be mitigated and appropriate compensation be given.¹⁹⁶ The affected indigenous groups are going to be confronted with massive consequences such as forced re-settlements and the loss of their livelihoods. This is why the Office of the District Attorney (Ministério Público Federal, MPF), the body of federal prosecutors, brought a public civil claim on the 17th of August 2011 regarding the violation of the right to land as well as the right to physical, social and cultural continuance of indigenous groups in the region.¹⁹⁷ On the 23rd of August 2012 the construction was stopped by the federal regional court (Tribunal Regional Federal da 1^a Região).¹⁹⁸ Already on the 27th of August 2012, the construction stop was suspended by the highest instance court, the Supreme Court (Supremo Tribunal Federal).¹⁹⁹ A final decision by the Supreme Court is expected to be held in 2013.

Human trafficking for sexual exploitation: In the Altamira region, women were forcefully held captive, in close proximity to the construction site for sexual exploitation. The Parliamentary Inquiry Commission for human trafficking (Comissão Parlamentar de Inquérito do Tráfico de Pessoas) got involved,²⁰⁰ to investigate the sexual exploitation in Altamira and at other construction sites of the power plant Belo Monte.²⁰¹

4.1.5.3 Austria's Extraterritorial Obligations to Protect Human Rights in the Case of Belo Monte

Because of the dam project at Belo Monte and the way it has been implemented, the fundamental human rights of affected indigenous peoples, river communities and residents of Altamira are severely impacted: Besides not fulfilling the right to be consulted, for the affected indigenous population, the rights to an adequate standard of living, the right to adequate food, and the right to health have been impaired. Based on the obligations to protect as described above, the Austrian government is obliged to verify whether Austrian non-State actors are (jointly) responsible for the (rights-violating) activities and must in this case stop these.

The response of the Austrian Ministry of Finance to an inquiry by the Parliament, as of the 10th of September 2012, demonstrates that from the 1st of January 2008 to the date of the response, the public sector took on risk adjusted guarantee fees of €1.7 million for the involved company.²⁰² Even though no liability was guaranteed for the concrete project, the company benefits massively from Austrian export promotion.

¹⁹⁶ OIT (2012): Brasil, Aplicacion del Convenio 169, <http://www.politicaspúblicas.net/panel/oitinformes/informes169/1596-ceacr-brasil-2012.html> [online: 20.06.2013]; Indigenous Peoples' issues (2012): Brazil: ILO says that the Government Violated Convention 169 in the case of Belo Monte. 05.03.2012.

http://indigenouspeoplesissues.com/attachments/index.php?option=com_content&view=article&id=14164:brazil-ilo-says-that-the-government-violated-convention-169-in-the-case-of-belo-monte&catid=23&Itemid=56 [online: 20.06.2013]

¹⁹⁷ Ministerio Público Federal. Referencia: Inquerito civil Público, <http://www.prpa.mpf.gov.br/news/2011/BeloMonte-21-09-2011.PDF> [online: 20.06.2013].

¹⁹⁸ Aguirre Talento (2012): Obras de Belo Monte sao retomadas apos liminar concedida pelo STF, <http://www1.folha.uol.com.br/mercado/1144403-obras-de-belo-monte-sao-retomadas-apos-liminar-concedida-pelo-stf.shtml> [online: 20.06.2013];

ORF (2012): Baustopp für umstrittenes Kraftwerk, <http://vorarlberg.orf.at/news/stories/2545724/> [online: 20.06.2013].

¹⁹⁹ Noticias STF (2012): Belo Monte: ministro Ayres Britto defere liminar requerida pela AGU, <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=216344> [online: 20.06.2013].

²⁰⁰ Melo, Karine (2013): CPI do Tráfico des Pessoas vai á regioao de Belo Monte apurar exploracao sexual de mulheres, Agencia Brasil, 19.02.2013, <http://agenciabrasil.ebc.com.br/noticia/2013-02-19/cpi-do-traffic-de-pessoas-vai-regiao-de-belo-monte-apurar-exploracao-sexual-de-mulheres> [online: 20.06.2013].

²⁰¹ Canuto, Luiz C. / Câmara, Rádio (2013): CPI aprova convocacao do presidente do consorcio da Usina de Belo Monte, 06.03.2013, <http://www2.camara.leg.br/camaranoticias/noticias/DIREITOS-HUMANOS/436930-CPI-APROVA-CONVOCAO-DO-PRESIDENTE-DO-CONSORCIO-DA-USINA-DE-BELO-MONTE.html> [online: 20.06.2013].

²⁰² Belo Monte – österreichische Förderung für naturzerstörendes Österreichs Unternehmen (12294/ AB), http://www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_12294/index.shtml [online: 20.06.2013].

However, no measures are known to have been set by the Austrian government to prove whether the domestic involved company contributes to human rights violations via the Belo Monte project – or at least, in the sense of principle 2 “Complicity” of the UN Global Compact benefits, benefits as a accomplice. According to principles 24 and 25c ETOP,²⁰³ the Austrian government should halt support for the involved company in the above described case and should actively seek to disable their participation in the Belo Monte project. However, for this there are currently no measures and mechanisms envisaged. Moreover Austria should ensure the availability of effective mechanisms to provide for accountability in the discharge of their extraterritorial obligations, including the monitoring of compliance with their human rights obligations (see EOTP 36).²⁰⁴

4.2 Conclusions

- Concrete aims in relevant areas (protection of workers, environmental protection, protection of consumers, etc.) including minimum standards and benchmarks should be defined by Austria at the highest levels. Furthermore, specific measures for achieving these should be defined, existing law should be reviewed and an investigation of gaps in the protection of human rights undertaken. Primarily, human rights obligations, which go beyond mere voluntary corporate social responsibility, should be integrated in all relevant law and in all collectively agreed treaties for all enterprises.²⁰⁵ These should also contain monitoring and complaints mechanisms, as described in principles 36 and 37 of ETOP.²⁰⁶
- An additional complementary list of criteria on the basis of existing standards (e.g. ILO) should be the basis for Austrian promotion of export and foreign investment policies, guarantee and public procurement policies, but should also function as benchmarks for the application.
- Irresponsible enterprises should sanctioned and be excluded from public procurement.
- In the context of the promotion of export and foreign investment, the Austrian 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 institutionalize human rights due diligence procedures in its ECA.
- According to ETOP37, Austria “must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority (...) for violations of economic, social and cultural rights, even though if this violations are caused with the participation of Austrian enterprises beyond Austrian borders.”²⁰⁷
- Austria has an obligation to carry out extensive human rights risk and impact assessments in order to identify human rights risks and find ways to avoid them. The state should ensure that this is done regardless of whether or not it relates to an export or an investment (see ETOP, principle 15). 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. According to principle 14 of ETOP, “states must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights. The results of the assessment must be made public. The assessment must also be undertaken to inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies.” The described obligation to obtain information in order to identify and assess the potential impact of state conduct is referred to in the Commentary on Article 3 (“Prevention”) of the International Law Commission’s Draft Articles on

²⁰³ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 8.

²⁰⁴ Ibid., p.11.

²⁰⁵ NeSoVe (2013): Für verbindliche gesellschaftliche Verantwortung statt freiwilliger (CSR-)Geschäftemacherei! - Anmerkungen zum österreichischen Nationalen Aktionsplan CSR, Februar 2013.

²⁰⁶ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 11.

²⁰⁷ ETO-Consortium (2012): Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Cologne, p. 11.

the Prevention of Transboundary Harm from Hazardous Activities, 2001. The access to information, which is a precondition for the realization of principle 14 ETOP, has been recognized by the Human Rights Committee²⁰⁸, the Inter-American Court of Human Rights²⁰⁹ and the European Court of Human Rights.²¹⁰

²⁰⁸ General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. GAOR, Hum. Rts. Comm., 102d Sess., paras. 18–19, U.N. Doc. CCPR/C/GC/34 (2011).

²⁰⁹ Reyes et al. (2006), Inter-Am. Ct. H.R. (ser. C) No. 151, para. 77.

²¹⁰ Társaság a Szabadságjogokért v. Hungary (2009), Appl. No. 37374/05, para. 26, 35 (2009).
http://www.brandenburg.de/media/lbm1.a.2628.de/EGMR_37374_05.pdf [online: 11.03.2013].

5. Recommendations

The organizations preparing this report kindly request the Committee to consider the following recommendations as aspect that could be included in the Concluding Observations to the Austrian state:

- The human rights of individuals, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States. The advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world. Without the acceptance and implementation of extraterritorial obligations, human rights cannot be universally realized, nor can they play a substantial role in the regulation of globalization or in clarifying differentiated State responsibilities. Therefore, Austria should accept and implement its extraterritorial obligations to help building a social and international order in which human rights can be fully realized, including the application of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.
- The Austrian government should ensure that Austrian ODA is contributing to the realization of ESCR and human rights generally, taking into account needed measures to ensure gender coherence and priority to disadvantaged and marginalized groups such as persons with disabilities.
- When making decisions on financing single projects, programs or funds, the Austrian Development Bank (OeEB) and the Austrian Development Agency (ADA) and other actors/entities acting on behalf of Austrian government should take into account their obligations to respect, protect and fulfill human rights beyond its borders. Decisions on the financing of projects/programs/funds should be based on a human rights impact assessment especially with regards to the ESCR of the most vulnerable groups in the local population. For this purpose, OeEB and ADA (and others) should develop and implement thorough and effective monitoring mechanisms based on human rights – not only when directly financing projects, but also projects of non-state actors are financed via funds and/or programs. Accordingly these projects/programs funds should be provided with complaint mechanisms and/ or other effective remedies, by which state and non-state actors can be held accountable.
- The EU and its member States – including Austria - should conduct an impact assessment of energy- and agrofuel policy on human rights. Effective access to legal remedies for victims of human rights violations as a consequence of EU agrofuel policy have to be guaranteed. A committee should be established that deals with the complaints of victims of EU policy in developing countries. At national level Austria should adopt all necessary measures towards the amendment of the EU directive for renewable energy immediately and suspend the target for proportions of agrofuels in Austrian transport energy consumption until the human rights impacts at EU-level have been evaluated comprehensively and the results integrated into agrofuel policy
- The Austrian government should implement human rights impact assessments in order to identify risks or negative consequences on human rights and find ways to avoid them. Additionally, the government should ensure that private sector enterprises headquartered in its territory also provide adequate complaint procedures and remedy mechanisms in the case of violations of human rights.
- Austria has an obligation to carry out extensive human rights impact assessments in order to identify human rights risks and find ways to avoid them. If an export promotion is accorded by Austria, it has to monitor if the company meets its due diligence duty with respect to human rights during the entire length of the project and beyond. If human rights violations occur in the course of a specific subsidized project, Austria has to provide complaint mechanisms for the people whose rights are breached/ affected.

Contributing Organizations

Austrian Research Foundation for International Development - ÖFSE

Coordination Office of the Austrian Bishop's Conference for International Development-KOO

Development Cooperation Agency of Katholische Jungschar- DKA

ECA Watch Austria

FIAN Austria

FIAN UK Seed group

Global Responsibility - Platform for Development and Humanitarian Aid

Light for the World

Network Social Responsibility - NeSoVe

Via Campesina Austria - ÖBV

WIDE Austria