Parallel report

Extra-Territorial Human Rights violations in the context of supporting large scale agrarian investments:

The case of Kaweri Coffee Plantation Ltd. in Mubende/Uganda

Reference: Consideration of reports submitted by States parties under article 18 of the Convention, Seventh and eighth periodic reports of States parties due in 2014- Germany (UN Doc. CEDAW/C/DEU/7-8)

FIAN

1. Introduction

This report is submitted by FIAN Germany in cooperation with International Secretariat of FIAN. FIAN is a human rights organization and advocates for the realization of the right to adequate food. FIAN has national sections and individual members in over 50 countries and consultative status to the United Nations.[1]

In this submission FIAN draws the attention of the Committee to the high risk for rural women's and girls' rights violations through land grabbing, exemplified on the case of the illegal eviction against four peasant communities in Mubende/Uganda due to the establishment of a coffee plantation of the local company Kaweri Coffee Plantation Ltd.(KCP), a 100% subsidiary of the Neumann Kaffee Gruppe (NKG) based in Hamburg/Germany. The eviction and its consequences have been thoroughly documented by FIAN since 2002[2] and other different sources[3]. The case is exemplary for other cases where the German Government supports large scale agricultural investments in countries of the Global South[4]. FIAN observes ignorance by the German Government, its development agencies and development banks of integration and mainstreaming of a gender perspective in all agricultural and rural development policies as described in CEDAW GR 34 para 36 (a).

2. Summary of the Kaweri case

In August 2001, the inhabitants of the villages Kitemba, Luwunga, Kijunga and Kiryamakobe (approximately 4,000 peasants) in Madudu Sub-county were violently expelled from the land of 2,524 hectares they have been living on for years. The army of Uganda forced them to leave their premises because the parastatal Uganda Investment Authority (UIA) wanted to lease it to the KCP, a 100% subsidiary of the NKG based in Hamburg/Germany. The eviction was described by the evictees as particularly cruel. The inhabitants were threatened and forced to leave at gunpoint and several of those being evicted were beaten

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1 http://www.fian.org/about-us/who-we-are/

2 See for instance, FIAN Netherlands, Land grabbing in Uganda, http://wphna.org/wp-content/uploads/2014/04/2012-07-FIAN-land-grabbing-in-Uganda-Fact-sheet.-Mubende.pdf

3 See for instance: Business and human rights ressource centre, http://business-humanrights.org/en/kaweri-coffee-part-of-neumann-gruppe-lawsuit-re-forced-eviction-in-uganda#c86308 ; International Comission of Jurists http://icj2.wpengine.com/wp-content/uploads/2014/01/CRC-germany-submission-FINAL-10-Jan-2014.pdf para 24-36 ; Deutsch Welle: The Mubende Coffee Plantation and the bitter taste of eviction, http://dw.com/p/2V5R6

4 For example: Addax case in Sierra Leone, the case of Feronia in Congo, the case of Agrivision in Zambia; summaries of those cases are available in the study "land grabbing and human rights: The involvement of European corporate and financial entities in land grabbing outside the European Union", European Parliament 2016: http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578007/EXPO_STU%282016%29578007_EN.pdf

in the process. The soldiers set houses on fire and demolished them, including the fully equipped private clinic of the community and six churches. Movable properties were looted and crops were cut down and uprooted. The Kitemba Primary School (a formal school of the villages) has since then been used as the headquarters of NKG/KCP and this has created negative consequences on the education of the children at primary and secondary school.

Following the eviction there was an increase of illnesses and deaths as most of the evictees were cut off from their access to food, shelter, clean water and health care.[5]

Today many of the evicted live in extreme poverty near the NKG/KCP since the eviction has destroyed their means of livelihood. Some of them have found temporary access to land in part of the neighbouring Block number 103, where they have built the new settlement Kyengeza. This enables them to do small-scale farming, work as daily workers at KCP or work as informal laborers in surrounding gardens. However, the small plots of land are insufficient to provide adequate food to satisfy their needs[6].

In 2002 the evictees took their case (Civil Suit No. 179 of 2002) at Nakawa High Court (Kampala). The case had been delayed at the High Court for eleven years before the judge ruled in favor of the evictees on 28 March 2013. However, after the appeal of NKG/KCP against that judgment the Court of Appeal (Civil Appeal No. 144 of 2013 arising out of H.C. Civil Suit No. 179/2002) has set it aside and has referred the case back to the High Court Nakawa. Since High Court Nakawa has been dissolved in 2016 year, the case is now pending at High Court Kampala (Civil Suit No. 2563/2016). Until today, the affected communities did not get their land back and have not been compensated for all damage caused by the eviction[7]. There is a risk that the evictees could face again a long delay and the remaining elderlies fear that they will die before being compensated.

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5 Gertrud Falk and Wolfgang Sterk, The Mubende case, http://www.fian.org/fileadmin/media/publications/The-case-Mubende-2004.pdf , page 10

6 ActionAid Uganda 2008: Effects of MNCS on Food Security.
Interview with Elina and Jovann Sebahinzi, 29.3.2014.
Michael Enger 2012: Documentary "Coffee to Go – with the taste of eviction", http://www.fian.org/en/library/multimedia/coffee-to-go-with-a-taste-of-eviction/

7 Ibid.
Interview with Peter Baleke Kayiira, May 2013, http://www.fian.org/en/library/multimedia/uganda-mubende-peter-kayiira-interview/. Presentation by Peter Baleke Kayiira during the Side Event "Access to justice and corporate complicity in human rights abuses", organised by International Commission of Jurists and FIAN International, 31st May 2013, Palais des Nations, Geneva, http://www.fian.org/en/library/multimedia/uganda-mubende-peter-kayiira-interview/, minutes 14:23 – 31:00.

3. Involvement of the Government of Germany in the Kaweri case

The German Government has supported the investment of NKG/Kaweri Coffee Plantation Ltd. in several ways:

1. From October 2000 until May 2003 by a Public Partnership Project and the head of the German Ministry for Economic Cooperation and Development to which the German Government has contributed 0.316 Million Deutsch Mark (approx. 160,000 Euro)[8]
2. On 24th August 2001, three days after the forced eviction, the German Ambassador, Klaus Holderbaum, attended the opening ceremony of NKG/KCP which was conducted by the President of Uganda, Yoweri Museveni, and the owner of NKG, Michael R. Neumann.[9]
3. In 2002, the African Development Bank has granted 2.5 million US-Dollar for a period of 4 years to KCP. Germany is a member of the Executive Council of the Bank[10].
4. Since August 2003, FIAN has informed the German Ambassador in Uganda about the situation of the evictees. In 2004, FIAN and two representatives of the evictees had a first meeting with the German Ministry of Foreign Affairs on their case. In 2009, the evictees together with FIAN submitted a complaint to the German National Contact Point for violations of the OECD Guidelines on Multinational Companies by NKG. The German National Contact Point is integrated into the department of External Economic Promotion of the Ministry of Economy and Technology. On March 30th, 2011, the OECD National Contact Point closed the case. In its final declaration, the National Contact Point twisted the situation and demanded mainly from the evictees efforts to solve the case[11].
5. On June 25th, 2013, the former German Minister of Economic Cooperation and Development intervened and demanded from FIAN Germany to reconsider our presentation of the case[12]. He wrote: “The Kaweri plantation is the largest German investment in Uganda and it receives attention and good-will from the German government.” We have not

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8 Deutsche Entwicklungszusammenarbeit mit Uganda: Kurzfassung zur Evaluierung „Public-Private Partnership (PPP) - Länderstudie Uganda“, February 2002. This document does not indicate an author’s name or publisher. According to our research is an evaluation done by consultancies in behalf of the German Ministry for development cooperation (BMZ).

9 New Vision, 25.08.2001; http://www.newvision.co.ug/print_article/new_vision/news/1027730/museveni-launches-giant-coffee-farm?print=true

10 African Development Bank. Press Release No. SEGL3/B/45/02, 26.6.2002

11 Federal Ministry on Economy and Technology: Final Declaration on the complaint in accordance to the OECD-Guidelines for Multinational Companies, March 30th, 2011.

12 Letter of former German Minister of Economic Cooperation and Development to FIAN Germany, 25.6.2013

received any information that the government has opposed that statement.

4. Women Rights violations resulting from the eviction in the case of KCP Ltd.

4.1. The Rights to adequate food and Land (Art. 14/ GR No. 34)

Germany violated and continues violating the right to adequate food enshrined in CEDAW Article 14 (General Recommendation No. 34).

Most of the evictees were lawful customary tenants who are guaranteed security of occupancy under the 1998 Land Act of Uganda. According to this Act, Article 29(2-a), the evictees were bona fide occupants of the land. This means that they had occupied and utilized or developed the land unchallenged by the registered owner or agent of the registered owner for twelve years or more. One of the evicted women even holds a title of her land[13]. According to the evicted women, they have been able to feed themselves adequately before the eviction. Women and men had cultivated their parts of family owned land. Evicted women told FIAN that they had even enough money to pay for transport to hospitals and for other needs since they could sell parts of their harvest. Producing food and cooking it to feed as well as caring for the family is traditionally a women's task in the affected rural communities. Since polygamy is common in that area a married women is under a certain pressure to be able to offer her husband well prepared and sufficient meals to maintain his support of her and her children. Due to these predominant gender practices women are generally less mobile than men.

During two research missions in October 2014 and August 2016, FIAN has been informed by many of the evicted women that due to the forced eviction without compensation many families have separated and women, especially elderly women, have been left behind by men and have to take responsibility alone to feed children and disabled family members. Many can afford only one meal per day. During FIAN's research mission in October 2014 an evicted woman said: "After the eviction, we couldn't stay together as a family because we didn't have enough food." Another one reported: "Before the eviction my husband used to live together with me. I don't know where he lives now. I think that he left because I don't have enough money." An old woman said: "We eat once a day. If we are hungry, we take tea. If you eat twice a day, will you manage to eat the next day?"[14]

The constant lack of adequate food has negative impacts on the enjoyment of other social human rights by the affected women, especially on the right to health and the right to work. Many of them reported that they feel too weak to work.

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[13] Documentary: Coffee to go, minute 9:04, http://www.fian.org/library/multimedia/coffee-to-go-with-a-taste-of-eviction/

[14] Names of the women are known to FIAN but not published to avoid putting them at risk.

The state of Germany violated its extra-territorial obligation to protect the rights to food and land of Ugandan women by not conducting and demanding proper women rights' impact assessment before supporting NKG/KCP. It also breached its obligation to respect by supporting Kaweri in activities which derived in women's rights abuses.

4.2 The Right to water (Art. 14 h/ GR No. 34)

After the eviction 69% of the evictees lost access to clean water because the only clean water source they used before is located at NKG/KCP. In 2004 NKG/KCP built a pipeline from the plantation to Kyengeza village; however the water only runs sporadically and is not supplying enough water for the evictees. Since women are responsible within the families to care for water they are mainly effected because they have to queue long time at the tap and to walk long distances to collect potable water. Old women reported that they cannot carry water within those distances. So they either have to pay someone to carry water for them or they have to use unsafe water sources[15]. During FIAN's research mission in October 2014 an old woman said: "I get water from the tap in Kyengeza, but it is not available every day. Then I have to collect water from the well. The water is brown. We use it for cooking. Some people get stomach problems from it." Another woman reported: "When the tap doesn't have water I fetch from the pond but that water is bad. Sometimes the tap doesn't have water for one week." Another woman explained: "You can go to the tap to find a long line. You have to do your work first." Furthermore, the users have to contribute money to maintain the taps. A woman explained: "They also collect 1,000 UGX per house to repair the tap. If you don't have it you don't collect water there again."

While the impact of the unsafe water might be the same for men and women, the affected women in the case of NKG/KCP face additional discrimination because they have to spend more time and money for fetching water which they would need to spend for income generation or agriculture. In addition they do most of the care-work for family members who fall sick because of unsafe water.

Germany has violated its extra-territorial obligations by not regulating NKG and make sure that the evictees have sufficient, safe, reachable and affordable water.

4.3 Discrimination in matters relating to marriage and family relations (Art. 16 b, d/ Art. 14 b/GR 34, para 23)

Many evicted women report that the number of teenage pregnancies among their daughters has increased after the eviction. In October 2014, during a focus groups discussion, a woman said: "In this area the girl child has very many problems: If your child asks you for 1,000 Shilling you don't have it. She moves in the plantation, a man gives her them; it won't take long that she is pregnant."

[15] FIAN Germany, 2013: Coffee to Go - Die Vertreibung zugunsten der Kaweri Coffee Plantation in Mubende/Uganda und ihre Folgen, p. 14, (German only).

Another one said: “The problem with girls: They come from home without food and they have to pass through the plantation where there are many men. They buy for them a donut and the next day you hear she is pregnant.”

The reports of the women are reflected in statistics of the three health centers next to KCP and Mubende Regional Referral Hospital.

Although Uganda, and especially Mubende district, has a general high percentage of teenage pregnancies[16] one has to consider that the interviewed women unanimous said that the problem has increased since their eviction.

To keep the fathers of the babies of teenagers responsible, according to the interviewed women, some families offer them not to report them to the authorities if they marry the teenage daughter which includes paying a bride price. One evicted woman said: “Because of poverty some parents see it as an advantage to get money from that man who has made the child pregnant. They demand three million Shilling. When they get the money from that man they plan that the girl marries him. That child has not got married because of love. They end up not being together, so the child comes back home.”

According to the interviewed evicted women, another impact of the eviction is the increase of domestic violence due to the extreme poverty caused by the eviction. In October 2014, one reported: “Sometimes men even don't care for health of their children. When a woman reports to the police he buys medicine and later beats her for having reported him to police.”

Germany neglected the human rights of the affected rural women and girls by not assessing women rights’ impacts before backing support to NKG/KCP. Germany has not ensured that victims of human rights abuses committed in relation with the plantation have access to effective remedies. By supporting the investment through GIZ and AfDB, Germany also breached its obligation to respect the human rights of the affected people.[17]

5. Violations of Germany’s extra-territorial obligations

The Government of Germany has the obligations to guarantee the rights under CEDAW as set out in Article 2 of the Covenant and to refrain from violating those rights intra- and extra-territorial as recognized in CEDAW’s GR No. 28, para 36 and GR 34 Par 13[18].

[16] http://www.monitor.co.ug/News/National/Teenage-pregnancy--The-pain-of-child-mothers/-/688334/1910850/-/h55g0dz/-/index.html;http://www.irinnews.org/report/100399/uganda-teen-pregnancies%E2%80%99-plan-under-fire

[17] (CorA- Netzwerk et al., 2014; CESCR, 2015; FIAN, 2016)

[18] See: http://www.etoconsortium.org/en/news/news/un-treaty-bodies-elaborate-on-states-etos-under-icescr-and-cedaw-132/

In its Concluding Observations June 2015 the UNCESCR has expressed its concern about case of NKG/KCP and about the fact that the legal redress they could obtain did not include restitution of land rights. The UNCESCR recommended Uganda[19], "to ensure that the rights of the Mubende community are restored". Since Germany has supported NKG/KCP, it has the extra-territorial obligation to support the implementation of the above mentioned recommendation. However, we are not aware that Germany supports the UNCESCR recommendation. For example, during the UPR of Uganda in the UN Human Rights Council in November 2016, the German Government has not picked up FIAN's submission on the case to ask Uganda to implement the recommendation of the CESCR.

In its Concluding Observations of 12 November 2012 the UNCCPR has expressed its concern that measures taken by Germany "to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards… may not be sufficient in all cases"[20]. Consequently, the UNCCPR has recommended Germany: "The State party is … encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad." Until today, Germany has not provided access to remedies for the evictees.

The recently concluded National Action Plan for Business and Human Rights does not contain the aim to abolish procedural and substantive legal obstacles for victims of human rights violations under involvement of German based companies abroad, neither the German Ministry for Economic Cooperation and Development has installed a complaint mechanism for victims of violations of its extraterritorial state obligations.

6. **Recommendations**

The CEDAW committee should recommend to Germany:

- To implement the recommendation of the UNCCPR to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad;
- To set up binding regulations in compliance with CEDAW and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and GR 34, for business enterprises operating abroad;
- To establish procedures to receive complaints through German Embassies that are easily accessible and usable for victims of violations

19 UN Doc E/C.12/UGA/CO/1, para 30, 30 (b)

20 UN Doc CCPR/C/DEZ/CO/6, para 16

and abuses of human/women's rights in the context of German development cooperation and investments of private companies based in Germany. These procedures should feed into the respective complaint mechanisms that ensure prevention and remedy in line with existing Human Rights Standards;

- To make women rights' impact assessments in accordance with CEDAW and GR 34 compulsory for any support of large scale agricultural projects abroad;

- To support stronger monitoring efforts related to women and girls rights at other relevant bodies like the Committee on World Food Security at FAO and Executive Councils of Development Banks.

For the specific case of Kaweri Coffee Plantation Ltd.:

- To actively support the implementation of the above mentioned recommendation of UNCESCR to restore land rights of the evictees, especially women's land rights;

- To establish a human rights monitoring process with participation of the victims and in coordination with the Ugandan government, to investigate the impacts of the NKG/KCP activities on the human rights of the community members and adopt the needed measures to protect those affected, prevent new abuses and provide remedies.

- To refrain from any political and financial support of NKG/KCP until the case is solved.