

Implementation of the International
Covenant on Economic, Social and
Cultural Rights in Austria

Comments to the Third and Fourth
Periodic Report of
the Republic of Austria

Selected Issues

September 2005

Teil II: Extraterritorial Obligations

FIAN Austria & Protestant Development Co-operation (EAEZ)

IMPRESSUM:

Editors:

Evangelische Entwicklungszusammenarbeit

1180 Wien, Martinstr. 25

Tel: 01/ 408 80 73

Fax: 01/405 76 31

E-mail: office@evang-eza.at

www.evang-eza.at

FIAN Österreich:

1080 Wien, Laudongasse 40

Tel: 01/ 405 55 15/ 316

Fax: 01/ 405 55 19

www.fian.at

Coordination:

Lisa Sterzinger

E-mail: lisa.sterzinger@tele2.at

With contributions from:

Ute Hausmann, Gottfried Mernyi, Philipp Schneider,
Gertrude Klaffenböck, Lisa Sterzinger

Translation: Ute Hausmann, Jonathan Sharp,
Gertrude Klaffenböck, Lisa Sterzinger

Mit Unterstützung von:



Bildungskommission der
Evangelischen Kirche A.u.H.B. i.Ö.

INDEX

0. Introduction	4
1. Extraterritorial state obligations as a starting point for coherent policies aimed at poverty reduction world-wide	5
1.1 The issue of coherence in the Austrian context	5
1.2 Operationalising human rights obligations in coherence assessment.....	8
1.2.1 Assessing consistency of national policies with human rights standards	9
1.2.2 Introducing human-rights coherence in the European Union.....	10
1.2.3 Austria's international obligations in international finance institutions.....	10
1.3 Building a coherent human rights policy	12
2. The Right to Food in Austrian development cooperation	14
2.1 Austria's financial contribution to rural development	14
2.2 Rural development and access to land.....	17
2.3 Addressing interdependence: HIV/AIDS and the Right to Food	19
2.3.1 The HIV pandemic as a global challenge	19
2.3.2 Human Rights and HIV/AIDS.....	20
2.3.3 Access to palliative medication as a Human Right	22
2.3.4 AIDS – is it not a working field for Austria's International Cooperation?.....	23
3. Corporate social responsibility in the context of extraterritorial state obligations	26
3.1 Corporate social responsibility – the Austrian debate.....	26
3.2 Operationalising human rights obligations in the export financing scheme	28
3.3 The case of the Ilisu dam in Turkey	30
4. Overview of recommendations.....	32
Websites:	34

0. INTRODUCTION

THE COMPLIANCE OF AUSTRIA WITH ITS EXTRATERRITORIAL OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

FOCUS: THE RIGHT TO ADEQUATE FOOD

The government of Austria and especially the Austrian Development Agency (ADA) are currently discussing the introduction of a human rights approach to development. In this discussion, ADA is cooperating with the Ludwig Boltzmann Institute for Human Rights (BIM) as well as NGOs, for example by commissioning the assessment of bilateral development projects in the field of human rights and democracy¹ or by financing the ongoing FIAN project " Priority for Human Rights – Human rights in Austrian Development policy". ADA is planning to present its human rights policy by the end of 2005.

While welcoming the formulation of a human rights policy for Austrian development cooperation, FIAN is concerned that this policy will not address adequately the issue of coherence of other policy fields with development policy. However, the on-going debate has created the political space for addressing not only coherence with regard to development policy aims, but also with regard to existing human rights obligations, especially those stemming from the International Covenant on economic, social and cultural Rights (ICESCR).

We would therefore highly welcome if the Committee on economic, social and cultural Rights (CESCR) was to give guidance to the Austrian government on how to achieve coherence of all policies with respect to economic, social and cultural rights.

In this parallel report we aim to provide information on the on-going discussion on coherence in Austria, existing legal frameworks, institutional challenges and - as an area of special concern - the human rights assessment of Austrian private investments abroad. We also suggest that Austria, given its focus on land issues in its policy for rural development, can play an important role in implementing the FAO Guidelines on the right to adequate food. We also encourage the Austrian government to promote the establishment of binding international regulation of private enterprise activities with regard to human rights, based on the "*Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*", an international

¹ Ludwig Boltzmann Institut für Menschenrechte „Erhebung von Projekten der bilateralen ÖEZA im Bereich Menschenrechte und Demokratisierung“, Februar 2004

human rights document which is currently being debated in the UN Commission on Human Rights.

1. EXTRATERRITORIAL STATE OBLIGATIONS AS A STARTING POINT FOR COHERENT POLICIES AIMED AT POVERTY REDUCTION WORLD-WIDE

1.1 THE ISSUE OF COHERENCE IN THE AUSTRIAN CONTEXT

The Development Cooperation Act (2002) contains a coherence clause, which requires that the goals and principles of Austrian development policy are taken into account in all federal policies with possible effects in developing countries: "*The Federal Government, in the fields of policy it pursues that may have effects on developing countries, shall take into consideration the objectives and principles of development policy*" (§1(5) Development Cooperation Act). This definition of coherence includes all three aspects that, according to the DAC Guidelines on Poverty Reduction, are included in the concept of coherence²:

Policy co-ordination means getting the various institutional and managerial systems which formulate policy, to work together.

Policy consistency means ensuring that individual policies are not contradictory, as well as avoiding policies that conflict with the attainment of a given policy objective, in this case international poverty reduction.

Policy coherence goes further; it involves the systematic promotion of mutually reinforcing policy actions across government departments and agencies creating synergies towards achieving the defined objective.

Austrian development policy is guided by the following objectives:

1. combating poverty in developing countries by promoting economic and social development aimed at a process of sustainable economic activity and economic growth combined with structural, institutional and social change;
2. ensuring peace and human security, especially by promoting democracy, rule of law, human rights and good governance; and
3. preserving the environment and protecting natural resources that form the basis for sustainable development (§ 1 (3) Development Cooperation Act).

² OECD: DAC Guidelines on Poverty Reduction, p. 101

Also, any adopted measure must take into consideration

1. the aims of the respective governments and populations in the developing countries, with regard to the speed and kind of development process and their right to choose their own methods of development;
2. the integration of measures into the social environment, with specific regard being paid to cultural aspects and the use of appropriate technology;
3. equality between men and women;
4. in a suitable manner, the needs of children and of people with disabilities (§1(4) Development Cooperation Act).

While every minister is obliged to act accordingly, it is the responsibility of the Ministry for Foreign Affairs (MFA) to monitor and ensure compliance since the responsibility for enforcing the Act rests with the MFA. A Three Year Programme is giving guidance to the overall development policy of Austria. It is important to note that this Programme also includes the technical cooperation with Eastern Europe. The Three-Year Programme is not just an internal document of the MFA; rather the MFA draws it up in consultation with the Ministry of Finance, submits it annually to the Council of Ministers and communicates it to the Austrian parliament for information.

The current Three-Year Programme 2004-2006 continues the previous emphasis on water and sanitation, rural development, energy and the promotion of democratic development, with new initiatives planned in the area of the private sector and development³.

The current Three Year Programme names two fields of action for coherence

- a) International Trade: "In accordance with the coherence principle of the Development Cooperation Act, the Federal Ministry for Foreign Affairs will include development policy in Austrian preparations for the sixth WTO Ministerial Conference in Hong Kong."⁴
- b) Private sector: MFA "will continue to manage the Private Sector and Development Platform and coordinate development policy instruments in accordance with the demand for coherence in the Development Cooperation Act." and "To make it easier for Austrian companies to invest in partner countries, all available financing and economic instruments such as investment guarantees, export loans and start-up assistance should be better coordinated with development cooperation⁵." (see Chapter 3 for discussion)

³ Ministry for Foreign Affairs: THREE-YEAR-PROGRAMME 2004–2006 ON AUSTRIAN DEVELOPMENT POLICY, Revised Version, Vienna 2004

⁴ *ibid*, p. 49

⁵ *ibid*, p.37

These quotes already illustrate the need to introduce standards which can be employed to measure the consistency of policies with development policy objectives. The expression "include development policy in Austrian preparations" does not include any information regarding the objectives to be achieved in the negotiations at the WTO Ministerial Conference. International trade rules can have effects on all the major objectives of Austrian development policy. However, what is especially interesting in the case of Austria is the guidance given by the principle that any measures must take into consideration "the aims of the respective governments and populations in the developing countries, with regard to the speed and kind of development process and their right to choose their own way of development". This shows that standards should be developed not only regarding outcome, but also regarding process.

Standards and guidelines are important to guide those responsible in the ministries when assessing the coherence of a specific policy with overall development policy objectives. The DAC Guidelines on Poverty Reduction are helpful in that they include a list of policy issues that are relevant, but they lack standards as well as guiding principles on how to measure possible effects⁶. Coherence was a major issue of discussion in the DAC Peer Review on Austria in 2004. Among other issues the authors of the final report mention that "The Ministry for Foreign Affairs (MFA) acknowledges its lead and co-ordinating role in coherence work stipulated in the Development Co-operation Act, but admits that it lacks staff and analytical capacity to deal with coherence issues in a systematic rather than an ad hoc way."⁷ While the development of standards and indicators lies at the heart of measuring consistency, the question of institutional capacity and procedures is as important.

⁶ OECD: DAC Guidelines on Poverty Reduction , p. 103

⁷ OECD: DAC Peer Review, Austria, 2004, p.43

1.2 OPERATIONALISING HUMAN RIGHTS OBLIGATIONS IN COHERENCE ASSESSMENT

“Unfortunately today, there is also an increasing lack of coherence in government policies which can mean for example, that whilst they remain committed to a rights-based approach to development, at the same time, they might engage for instance in trade policies that could have negative effects on human rights in other countries.⁸” This statement by Jean Ziegler, Special Rapporteur on the Right to food in this year’s report to the UN Human Rights Commission shows that the issue of policy coherence is not only a challenge to poverty reduction but also to the realisation of human rights, especially economic, social and cultural rights.

Neither the Development Cooperation Act nor the Three Year Programme explicitly mention economic, social and cultural rights. As the new human rights policy has not yet been published, there is no information as to which approach ADA is taking towards economic, social and cultural rights. The lack of commitment to esc-rights so far indicates that they will not be automatically included in any coherence assessment. At the same time, esc-rights standards present an effective ground on which to build coherence assessment procedures.

It is important to state that an assessment of human rights coherence of policies affecting people in other countries with human rights standards cannot be sub-ordinated to an assessment of coherence with development objectives. What lies at the core of the human rights debate on policy coherence is the notion of extraterritorial obligations as they stem from international human rights treaties, but also more generally from the UN Charter and the Universal Declaration of Human Rights. Regarding the Right to Food, the UN Committee on Economic, Social and Cultural Rights (CESCR) in its 1999 General Comment No.12 stated that “States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.” In the FAO Guidelines on the implementation of the Right to Food, the FAO member states have emphasised that there is an international dimension to implementation.

⁸ E/CN.4/2005/47, para 40

UN Special Rapporteur on extraterritorial obligations regarding the Right to Food

“From the perspective of the Special Rapporteur, to fully comply with their obligations under the right to food, States must respect, protect and support the fulfilment of the right to food of people living in other territories. The obligation to respect is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries. The obligation to protect requires States to ensure that their own citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not violate the right to food in other countries. The obligation to support the fulfilment of the right to food requires States, depending on the availability of resources, to facilitate the realization of the right to food in other countries and to provide the necessary aid when required.⁹”

1.2.1 ASSESSING CONSISTENCY OF NATIONAL POLICIES WITH HUMAN RIGHTS STANDARDS

The recognition of the obligation to respect the rights of people in other countries is the starting point of an assessment of human rights consistency of policies and their implementation. Such an assessment will have to include the identification of the potentially affected groups in other countries. It will also have to investigate the effect on other governments’ abilities to protect and fulfill the rights of the people living in their territories. If negative effects are identified, there has to be an assessment of whether these effects can be mitigated on the national level to an extent that no rights will be violated. If the assessment shows that there is a risk of rights being violated, the policy should be revised.

The Austrian government should introduce a human rights approach to its assessment of coherence as a contribution towards meeting its obligations under the Covenant. Guidelines for the assessment should be established based on international human rights standards. The government should report regularly to the parliament.

⁹ E/CN.4/2005/47, para 48

1.2.2 INTRODUCING HUMAN-RIGHTS COHERENCE IN THE EUROPEAN UNION

The Three Year Programme recognises that “the European Union is also an important actor in a number of coherence issues of direct relevance to development cooperation (economy, trade, migration, environment) ¹⁰ ». This fact was also recognised by the DAC Peer Review.

Within the EU, the principle of policy coherence has been introduced in Article 130V of the 1992 Treaty of Maastricht. It obliges the Community to take account of its developmental objectives in the policies that it implements, which are likely to affect developing countries. Institutional mechanisms have subsequently been adapted for this purpose, including the grouping under the code name RELEX of the various directorates involved in the EU’s external policies.

In the response of the Ministry for Foreign Affairs to a parliamentary inquiry about the implementation of the coherence principle¹¹, the ministry responded that there was a need to improve the implementation of the “3 Cs”: coherence, coordination and complementarity, at the EU level. The ministry identified three major obstacles: historical developments, national interests and administrative hurdles. She continued to say that Austria can contribute both on the expert and on the political level to underline the importance of these processes and the need to speed them up

FIAN is supporting the DAC Peer Review’s suggestion that “Austria’s EU presidency in 2006 provides a particular opportunity for raising coherence issues at the EU level¹².” FIAN suggests that the specific contribution of Austria could be the introduction of human rights coherence at the European level.

1.2.3 AUSTRIA’S INTERNATIONAL OBLIGATIONS IN INTERNATIONAL FINANCE INSTITUTIONS

Austria is a member of the World Bank, the International Monetary Fund (IMF) and regional financial institutions. To ensure influence while being a rather small economy, Austria has teamed up with nine other countries in the World Bank. This group of ten is represented by one executive director. The post of the executive director (ED) rotates between Austria and Belgium (previously on a two-year, now on a four-year basis).

¹⁰ Ministry for Foreign Affairs: THREE-YEAR-PROGRAMME 2004–2006 ON AUSTRIAN DEVELOPMENT POLICY, Revised Version, Vienna 2004, p. 41

¹¹ GZ.BmaA-AR.8.14.01/0008-VII/2005

¹² OECD: DAC Peer Review, Austria, 2004, p.43

The Austrian ED handed over to the Belgium ED in November 2004. This constellation raises special questions not only on how to promote Austrian interests in the World Bank and other international finance institutions (IFIs), but also on how Austria can comply with its human rights obligations in the IFI context.

In February 2005, the Austrian Federal Ministry for Finance (FMF) published strategic guidelines for Austrian engagement with international financial institutions¹³. The aim of the guidelines is to improve the promotion of Austrian political positions in IFIs with the goal of improving the efficiency and coherency of IFIs regarding development. The guidelines also discuss the promotion of Austrian economic interests in IFIs. To implement the guidelines, separate planning and coordination instruments will be developed on each IFI.

In the guidelines, human rights are mainly discussed in the chapter on good governance. The promotion of good governance in developing countries is seen as an important activity of IFIs. Austria is orienting its own definition of good governance along the lines of the European Union, which includes human rights as defined in international agreements. While most IFIs are concentrating their activities on a reduced, technical approach to good governance, Austria is supporting an interpretation of the IFI's statutes which will enable IFIs to include the promotion of democratisation and human rights in their policies on good governance. Austria is also promoting that all policies and programmes supported by IFIs should pay attention to good governance. All country programmes should be based on a detailed analysis of political stability as well as the human rights situation in the country. Also, IFIs should earmark more resources for good governance¹⁴.

While these are valuable initiatives, it is disappointing to see that the guidelines do not address the question of compatibility of policies promoted by IFIs with human rights. They address neither the direct responsibilities of IFIs with regard to human rights, nor do they discuss the obligations of the Austrian state. In his report to the Human Rights Commission, the Special Rapporteur on the Right to Food states that "it is evident that decisions taken by a Ministry of Agriculture or a Ministry of Finance within WTO, IMF and the World Bank are acts of the authorities of a State that can produce effects outside their own territory. If these effects lead to violations of the right to food, then these decisions must be revised." (para 52)

¹³ Ministry for Finance: Strategischer Leitfaden des BMF für die internationalen Finanzinstitutionen, Februar 2005

¹⁴ *ibid*, p. 16

In the implementation of the guidelines on Austrian policies regarding IFIs, the Austrian Ministry for Finance should pay special attention to improving internal control mechanisms regarding human rights within IFIs, like for example the Inspection Panel of the World Bank. Also, policies promoted in IFIs should be included in a human rights consistency assessment to ensure coherence.

1.3 BUILDING A COHERENT HUMAN RIGHTS POLICY

Following the understanding of DAC, a full fledged coherence policy does not only include an assessment of possible negative effects, but also identifies responsibilities in all policy areas to promote poverty reduction world-wide. The same applies to the realization of human rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2.1. obliges the states parties to cooperate internationally to realise the rights of the Covenant. Development cooperation is an important aspect in this regard, but not the only one. Especially the strengthening of the international human rights system is of extreme importance, but also the mainstreaming of human rights in all fields of international politics. For example, Austria has played an important role in the development of the FAO Voluntary Guidelines on the implementation of the right to adequate food. Despite meagre allocated financial means within the two Austrian ministries (Agriculture and Foreign Affairs) the process was adequately supported by coordination, expertise and by the dedication of concerned officials. The process of formation of the FAO Voluntary Guidelines on the right to adequate food also shows how important these contributions by national governments are for the progress of implementing the right to adequate food on international level.

In the FAO Voluntary Guidelines for the Right to adequate food, guidelines and codes for practices are included for policy – areas exceeding the direct responsibilities of the ministry for Agriculture, Forestry and in Environment in Austria. In this regard a follow-up process for the competent implementation in areas like development -, agriculture -, finance-, economic- and international policies should be introduced. A coordinated process for the introduction and implementation of standards as well as an examination of programmes and policies in bi- and multilateral development cooperation, in agricultural trade – and in economic policy could be the first steps. Besides that, in Austria there are no national institutions or political structures developed, which could examine compliance with Human rights standards on a regular basis. During the international year of Human Rights 1998 Human Rights – coordinators were introduced in all ministries. Until now, an institutionalized process of permanent observation and regular investigation of compliance with standards of the Right to food at national and

international level, and in which NGOs, HR institutes and other stakeholders are involved, is still missing.

DAC Recommendations on Coherence¹⁵

- In order to monitor and ensure policy coherence for development, the MFA will need
 - a detailed strategy or policy framework (e.g. for the MDGs and poverty reduction) from which it can gauge the development impact of other policies,
 - the means to engage analytical capacity, and
 - the staff to initiate and organise effective coherence work.
- The Three-Year Programme should include a chapter on policy coherence specifying the areas where the MFA/Section VII wants to achieve progress in the short and medium term (coherence agenda).
- The Federal Ministry of Agriculture, Forestry, Environment and Water Management could be a special partner for the MFA in coherence work because of its lead role in Austria's Strategy for Sustainable Development and its responsibility for agriculture as a major area for coherence concerns.
- Coherence work requires public awareness building and Austrian NGOs can play a proactive role in drawing attention to policies which might be incoherent with development co-operation objectives.

The Austrian government should develop a human rights policy and a human rights action plan which among other issues sets out the initiatives to be taken to promote economic, social and cultural rights world-wide. There should be an annual report on the activities of the government in the field of human rights.

As effective coherence- work can be fulfilled only with adequate financial and human resources, an increased budget should be provided for this purpose.

¹⁵ DAC Peer Review, Austria, 2004, p.13

2. THE RIGHT TO FOOD IN AUSTRIAN DEVELOPMENT COOPERATION

Following the Special Rapporteur on the Right to Food, states which have ratified the ICESCR have "the obligation to support the fulfilment of the right to food". This obligation "requires States, depending on the availability of resources, to facilitate the realization of the right to food in other countries and to provide the necessary aid when required". The FAO Voluntary Guidelines on the implementation of the Right to adequate Food in Section III also emphasise the importance of development cooperation. Rather than evaluating existing programmes for food security, this section is intended to highlight some of the issues to be considered when discussing Austria's contribution to fulfilling the right to food in other countries.

2.1 AUSTRIA'S FINANCIAL CONTRIBUTION TO RURAL DEVELOPMENT¹⁶

Austria is one of the wealthiest nations, but its Official Development Aid (ODA) is lamentably low: only 0.2% of GDP was spent in 2003, which amounts to 447 Mill Euro. Bilateral ODA amounts to 202 Mill Euro, multilateral ODA to 245 Mill Euro. According to preliminary information of OECD Austria's ODA will be 0,24% of GDP in year 2004. In May 2005 the Minister for Foreign Affairs announced plans for the increase of expenses for Development cooperation up to 0,51% of GDP in 2009 – as agreed within EU member states. Already in 2005 a percentage of 0,45% of GDP (1.072 Mill €) should be reached.

However, development NGOs criticise the fact, that in year 2005 the major share of increase of ODA is dedicated to debt-releases for Iraq and that there are no additional means provided for new programmes and projects. NGOs also repeatedly denounced the lack of poverty-orientation of the Austria's ODA - and within Development's budget-allocation.¹⁷

The policy formulated in the Three Year Programme applies mainly to the programmes and projects under the supervision of the Ministry of Foreign Affairs and the Austrian Development Agency. With 58.49 Mill Euro, this is only a small portion of the overall budget. The budgets administrated by Section VII (Development Cooperation, Cooperation with Middle- and East European Countries, Coordination of international Development Politics) of Ministry of Foreign Affairs represent only 11% of total ODA, therefore the share for designable core-policies is really low.

¹⁶ Statistics are based on ÖEZA-Statistik as published by ADA: www.ada.gv.at.

¹⁷see AGEZ Pressreleases from 2. März and 17. May 2005, and MFA Pressrelease: http://www.bmaa.gv.at/view.php3?f_id=8259&LNG=de&version=

This is mainly due to the fact, that financing of measures like debt-release, indirect costs for students from developing countries within their first year of studies, costs for asylum-seekers can – according to DAC - be taken into account. Consequently countries like Poland, Serbia and Montenegro and Egypt are the major beneficiaries of Austrian ODA - but non of the Least Developed Countries.

It is estimated that 80% of those suffering from hunger are living in the rural areas. Rural development oriented towards these people is therefore at the center of realising the right to food. However, Austrian spending on rural development only amounted to 3.92 Mill Euro in 2003. Of these, 1,205.590 Euro were spent on Mosambique¹⁸.

While Development policy describes combating poverty as one of the most important objectives, adequate allocation of necessary finance for this objective lags miserably behind. Austria is one of the most wealthy nations in the world (according to OECD the 6th wealthiest) so it can be expected from the government that a minimum of 0.7% of GDP is dedicated to improving the situation of the poor and poorest people. The current practices of dedicating the major share of increases to measures like debt-release might be allowed according to OECD – Guideline but is clearly missing the main objective of poverty-reduction like it is formulated for Austria´s Development Cooperation. A policy-area, crucial for combating poverty, like rural development, is not sufficiently endowed by financial means. While measures like debt-release or costs for asylum-seekers could be financed by other sources, the increase of budgets for Development Cooperation should result in additional financial means for Rural Development.

¹⁸ Hannes Manndorff, Barbara Nöst, Walter Reiter, Ester dos Santos José: Evaluation of the Country Programme Mozambique of the Austrian Development Cooperation Final Report, 28.7.04

Table 1: Programme and project aid:
Allocation by sectors 2001 – 2003 in Mill Euro

DAC Code	Description	2001	2002	2003
110	Education	8,34	9,66	7,91
120	Health	5,04	3,96	4,58
130	Demographic policy /-programmes and reproductive health	0,15	0,32	0,48
140	Water supply and sanitation	4,75	4,12	4,99
150	Government and civil society	5,72	7,77	7,40
160	Other social infrastructure and services	0,76	2,49	1,29
100	Social Infrastructure and Services	24,76	28,32	26,64
210	Transport and Storage	0,99	0,06	0,11
220	Communication	-0,03	0,08	0,05
230	Energy production and -distribution	1,98	1,25	1,49
240	Banking and financial services	1,33	0,68	0,26
250	Business and other services	0,15	0,06	0,04
200	Economic infrastructure and services	4,42	2,13	1,95
310	Agriculture, forestry and fishing	4,9	3,78	3,92
320	Industry, commerce, mining and construction	2,93	3,15	2,63
330	Trade and tourism	0,75	1,24	1,61
300	Productive sectors	8,58	8,17	8,16
410	General Environment protection	1,59	2,14	1,81
420	Support of women	0,44	1,22	0,97
430	Other multisectoral measures	7,99	7,63	7,20
400	Multisektorielle Maßnahmen	10,02	10,99	9,98
530	Other general Commodity and Programme aid	0	0	0
500	Commodity and programme aid	0	0	0
600	Action related to debt	0,96	0	0
700	Emergency Assistance	0,82	0,34	0,55
910	Administrative costs of donors	4,01	4,51	5,31
920	Core support of NGOs	2,46	1,52	0,74
998	Not assignable	7,4	6,33	5,14
900	Other and not assignable services	13,87	12,36	11,20
Total		63,42	62,32	58,49

Source: OEZA Statistik/TBK

As rural development is of crucial importance for worldwide poverty-reduction - up to 80% of the world's poor live in rural areas - the Austrian government should definitely allocate a higher share of budgets to Development - cooperation in rural development.

2.2 RURAL DEVELOPMENT AND ACCESS TO LAND

In June 2003, Austria published its sectoral policy on rural development in development cooperation¹⁹. The policy highlights land issues as a specific problem. Access to land is one of the issues highlighted in the FAO Voluntary Guidelines on the implementation of the Right to Food (Guideline 8). An evaluation of the implementation of the sectoral policy from a right-to-food-perspective could therefore be a valuable contribution to the implementation of the FAO Guidelines.

The sectoral policy points to the crucial issue that access to and control over land is regulated by coexisting legal systems. The policy suggests that customary law is a major disincentive (p.9). Also, the coexistence of modern and customary law leads to increased conflicts over land, which again are reinforced by increased migration (p.15). In order to help contain conflict, Austrian development cooperation is promoting democratisation and decentralisation to contribute to empowerment and participation (p.15). To address these problems, Austrian development cooperation is promoting land entitlement, land surveying and the participatory development of land utilisation plans.

In this context it is important to develop these programmes in a way which will effectively improve access to land for the landless and will not contribute to further accumulation of land within national elites. Sometimes (for example in the context of indigenous communities or peasants' cooperatives) land titles should be collective rather than individual to prevent the destruction of the community/cooperative by individual sales.

The sector policy outlines clearly the different target groups (see table 2). An evaluation of the effects of Austrian development cooperation's programmes dealing with land entitlement, land surveying and the development of land utilisation plans on the different target groups would be an important contribution to the implementation of the FAO Voluntary Guidelines.

¹⁹ Ministry for Foreign Affairs: LÄNDLICHE ENTWICKLUNG - Sektorpolitik der Österreichischen Entwicklungszusammenarbeit, Stand 02.06.2003

Table 2: Relating possible interventions with respective potentials of different target groups²⁰

<p>Target group A:</p> <p>Rural households with high potential of production and strong market-orientation including good possibilities for regular income from wage labour</p>	<p>Possible measures:</p> <p>Optimisation of techniques and technologies for increase and diversification of production, improvement of framework conditions for investment (eg storage, transport and communication), participation in decision-making processes at local and regional level</p>
<p>Target group B:</p> <p>Rural households with sufficient resources, a potential for surplus production and occasional possibilities of income from wage labour</p>	<p>Possible measures:</p> <p>Selected activities for increase and diversification of production, processing and refinement of products, improvement of access to markets and capital, setting up of possibilities for income generation , participation in decision-making processes at local level</p>
<p>Target group C:</p> <p>Resource poor rural households with low potential of income from wage labour</p>	<p>Possible measures:</p> <p>Stabilisation of food security through improvements in production and marketing, reduction of workload, securing access to information and participation in development processes of personal relevance.</p>
<p>Target group D:</p> <p>Marginalised population/groups, landless people, refugees</p>	<p>Possible measures:</p> <p>Humanitarian aid, ensuring individual and/or collective political and social rights, assignment of user rights respectively land titles</p>

²⁰ ibid. P 33

In Annex 2 the sector policy deals with questions that have to be answered before a project is approved. Two questions deal with the question of empowerment:

- What contribution does the project make regarding the articulation ability and assertiveness of the target group?
- In what way are local institutions and political representatives being made aware of their democratic responsibility towards the local population?

Taking a human rights approach it would be sensible to add the question of what are the existing legal, institutional and political conditions of the different target groups to claim their rights and in what way the project will influence these framework conditions.

The current Three Year Programme for Development policy 2004 – 2006 will expire at the end of 2006. This would be a good starting point for re-prioritizing the policy-areas of most strategic importance for worldwide poverty-reduction and to begin with a coordinated and consistent process of implementing a Human Rights approach. The FAO Voluntary Guidelines for the Right to adequate food should be taken as the basic-framework for this process, especially for the sector-programme on rural development they should be taken as a reference-frame.

2.3 ADDRESSING INTERDEPENDENCE: HIV/AIDS AND THE RIGHT TO FOOD

2.3.1 THE HIV PANDEMIC AS A GLOBAL CHALLENGE

Since the first indications of HIV, about 25 years ago, more than 70 Mill people worldwide have been infected and about 26 Mill people have died. Currently up to 44,3 Mill people, amongst them more than 2 Mill children under the age of 15, are infected with the HIV-virus. ²¹ More than 90% of HIV-positive people are living in so called developing countries. The most affected region of the world is Sub-Saharan Africa, where every third person thus far is HIV-positive, while currently the highest increase in newly infected persons is to be found in Eastern Europe and Central Asia. On the global scale only 800.000 people, have access to antiretroviral medicines – 500.000 of them living in industrialised countries. In 2002 already the real demand for ART in so called developing countries was estimated to be for 5.500.000. ²²

²¹ http://www.unaids.org/wad2004/EPI_1204_pdf_en/Chapter0-1_intro_en.pdf am 18.7.2005

²² International Treatment Access Coalition, 2002, <http://www.who.int/hiv/pub/arv/pub24/en/>18.7.2005

Beside dramatic social and demographic consequences – especially in Sub-Saharan Africa – economic effects of the HIV-pandemic can also be observed. Along with other health-threatening factors, like contaminated drinking water, food-deficiencies, Malaria and tuberculosis, HIV/AIDS is one of the major reasons, why the UN-Millennium development goal to half poverty by 2015 will not be met, as long as efforts in fighting these risks are not intensified and no additional financial means from north-south cooperation are allocated to these purposes.

2.3.2 HUMAN RIGHTS AND HIV/AIDS

HIV/AIDS and Human Rights are interlinked in manifold ways. The reasons that HIV-infections could develop to such a widespread pandemic can mainly be found in circumstances like growing poverty, lack of prospects of a decent future for young people, inadequate health-provisions, limited access to adequate information concerning this infection, discrimination and violation against women as well as stigmatization and discrimination of infected and AIDS-affected persons.

The Right to Life, to Health and to Food are fundamental Human Rights and are well defined in internationally acknowledged Human Rights Instruments. These are among others the Declaration of Human Rights from 1948 (art. 25)²³, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (art. 11 and 12).

HIV/AIDS und Human Rights are linked in many different ways. Violations of Human rights augment the vulnerability of people to be infected with HIV/AIDS. Furthermore a strong impact of HIV/AIDS on the Right to Food is evident. Considering that today 80% of the people in the most affected countries depend on agriculture for their subsistence it becomes clear that HIV/AIDS is a real threat for people and their ability to feed themselves and maintaining sustainable agriculture. Nevertheless most of the response to the epidemic has come from the health sector.

Under section three, the FAO Voluntary Guidelines read:

²³ Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948: *Article 25*. "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."; *Article 28*. "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.", as in: <http://www.un.org/Overview/rights.html>

“Developed and developing countries should act in partnership to support their efforts to achieve the progressive realization of the right to adequate food in the context of national food security through technical cooperation, including institutional capacity building, and transfer of technology on mutually agreed terms, as committed in the major international conferences, in all areas covered in these guidelines, with special focus on impediments to food security such as HIV/AIDS.”²⁴

Estimates by the FAO ²⁵ say that in the nine hardest hit African countries the loss of agricultural labour force between 1985 and 2020 will be between 13% (Tanzania) and 26% (Namibia). A UNAIDS fact sheet cites an assessment of Zambia showing that households in which the head was chronically ill planted up to 53% less land than households without a chronically ill person. Due to the high costs of medical treatment and funeral expenses, households lack income for buying food. An April 2003 assessment from Zimbabwe showed that female -headed households suffer from the greatest food insecurity.²⁶ The HIV/AIDS epidemic and the food crises in Subsaharan - Africa mutually intensify themselves. Hence the FAO is currently developing a comprehensive HIV/AIDS strategy for the agricultural sector. In both the prevention and mitigation of consequences of HIV/AIDS the agricultural sector plays a decisive role. A healthy and varied diet strengthens the immunological system of patients, increases their quality of life and extends their life. Additionally the good nutritional status of a person decreases his/ her risk of being contaminated.

To provide availability and equal access to medical treatment is among state obligations in order to implement the right to health. At same time a functioning Health system with equal access for HIV/AIDS Patients is a precondition to achieve a way out of the food crises and to approach food security in the context of HIV/AIDS.

The UN Commission on Human Rights stated in its Resolutions 29 and 33 of 2003, that discrimination of HIV positive people because of their state of health is not permissible. Discrimination is a violation of their Human Rights.

Lack of access to adequate care and treatment of opportunistic infections as well as the missing of palliative antiretroviral therapy is a violation of Human rights. The right to access to HighlyActiveAntiRetroviral Therapy – HAART is to be understood as an element of the Right to Health which is defined in art. 12 of th ICESCRI.²⁷

²⁴ ftp://ftp.fao.org/unfao/bodies/council/cl127/J3345e1.pdf/p_28; CL 127/10-Sup.1

²⁵ www.fao.org/hivaids 31.8. 12:06

²⁶ www.unaids.org/html/pub/publications/fact-sheet03/fs_food_..._31.8.05/ 12:21

²⁷ Sonja Weinreich, Menschenrechte und die internationale Zusammenarbeit am Beispiel des Zuganges zu antiretroviralen Medikamenten für die AIDS-Behandlung, Social Watch Report Deutschland 2002, S. 25

Furthermore in its General Comment Nr. 14 to the right of the *highest attainable standard of health* ²⁸ the CESCR states:

“11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at community, national and international levels.”

2.3.3 ACCESS TO PALLIATIVE MEDICATION AS A HUMAN RIGHT

Different bodies of the United Nations have paid attention to the problem of lack of access to HAART in the most affected countries by HIV/ AIDS from a Human Rights perspective. The General Assembly on HIV/AIDS in 2001, the already mentioned resolutions of the UN HR commission as well as the report by Kofi Annan in 2002 on access to HAART on a global scale made plain that the fulfilment of international obligations in the context of HIV/ AIDS is more than urgent.

Increased international engagement is necessary, since poor countries cannot ensure access to HAART and other components of adequate healthcare with their own resources in order to implement economic, social and cultural rights. The contribution that has to be made by the state community and by individual states to facilitate extended access to HAART is often misunderstood as a humanitarian task and not as a Human Rights obligation.²⁹

But Human Rights instruments define responsibilities and obligations of states to international cooperation. State parties of the ICESCR are obliged to respect, protect and facilitate fulfilment of Human Rights of other countries' citizens.³⁰

²⁸ <http://www.ohchr.org/english/bodies/treaty/comments.htm>

²⁹ Attaran A., Sachs J., 2001, Defining and re-defining international donor support for combating the AIDS pandemic, zit. Lancet 357, S.57-61

³⁰ Weinreich S., Benn C., AIDS – Eine Krankheit verändert die Welt, 2004, S.73 / UNAIDS: HIV/AIDS and human rights, guideline no.6, September 2002

In this regard also the UN ESC committee in its General Comments has repeatedly referred to the legally binding obligations of nations who have ratified the ICESCR. As regards the price and patent policy for HAART the CESCR has stated that state parties have to respect the right to health of other countries' citizens and have to prevent third parties from violating this right. Hence, in this context states and multinational companies are duty bound to obey Human Rights treaties.³¹

An effective combating of HIV/ AIDS on a large scale requires a real change of living conditions for poor and marginalized people and also of gender relations, which increase vulnerability to HIV/AIDS. The UN-Millennium Development Goals indicate sustainable measures in order to achieve the urgently necessary changes.

2.3.4 AIDS – NO WORKING FIELD FOR AUSTRIA'S INTERNATIONAL COOPERATION?

Austria's role in international efforts to combat the immunodeficiency HIV/AIDS has been rather modest. While on the national level a basic infrastructure for the consultation, testing, treatment and care of HIV positive people does exist, a further concept of an Austrian contribution to the control of the pandemic on the international level - except of joint EU-measures- is not visible. Also Austria's bilateral cooperation lacks strong commitment -expressed in financial resources and concrete strategies to face the immense challenges of HIV/AIDS in its partner countries.

In its sector-policy on rural development in development cooperation it is stated that HIV/AIDS will be an increasingly important issue. Education and awareness-raising measures have to be integrated in programmes for the rural population.³² This is a rather weak formulation and does not lead to concrete measures, a deficiency also displayed by the three year programme for one of Austria's focal countries, Mozambique³³. Mainstreaming HIV/ AIDS in its rural development programme would urgently require a revision of the sector policy on rural development in development cooperation according to FAO and UN AIDS recommendations.

In 2002 and 2003 16 AIDS related projects were sponsored by private donors, particularly in the field of reproductive health.

³¹ Sonja Weinreich, Menschenrechte und die internationale Zusammenarbeit am Beispiel des Zuganges zu antiretroviralen Medikamenten für die AIDS-Behandlung, Social Watch Report Deutschland 2002, S.26 / Sub commission on the promotion and protection of human rights: Globalisation and its impact on the full enjoyment of human rights

³²Ministry for Foreign Affairs: LÄNDLICHE ENTWICKLUNG - Sektorpolitik der Österreichischen Entwicklungszusammenarbeit, Stand 02.06.2003. P. 18

³³ „Landesprogramm Mosambique, Dezentralisierung, ländliche Entwicklung“- Beira, 2002

Since the Action against AIDS NGO network was founded in autumn 2003 Austria's development NGOs have made efforts to exchange experiences and to use resources and capacities more efficiently. An additional focus consists of active networking with self help groups and public AIDS assistance points in the whole country. Also important links to international networks have been built up, among them the World AIDS Campaign, the Action against AIDS Germany network, the Ecumenical Advocacy Alliance and the German Society for technical cooperation.

Organisations joining the Action against AIDS Austria Network claim in their advocacy work that the Austrian government should provide additional financial resources for effective prevention, and humane care for affected persons. Furthermore Government should plead for worldwide unlimited access to the medication which is essential to life and indispensable as well as for the procurement of the necessary generics for all people hit by HIV/AIDS.³⁴

Within Development Cooperation, the issue of HIV/AIDS plays a subordinate role. An analysis of bilateral and multilateral assistance in the area of HIV/AIDS control from 2000 to 2002 published by the Development Assistance Committee (DAC) of the OECD and of UNAIDS, shows a total amount of 7.7 million USD, that has been contributed by Austria for programmes and projects relevant to AIDS in the mentioned period of time.³⁵

Besides a modest 0.6 million USD for bilateral programmes and the only contribution to the GFATM (Global Funds to fight AIDS, Tuberculosis and Malaria) 6.6 Million USD (approximately 1 % of the whole assistance by DAC countries) were given for multilateral assistance between year 2000 to 2002. This amount was mainly spent on joint programmes of the European Community and of IDA (Industrial Development Agency). A few smaller amounts were given to regional development banks and to UNICEF.³⁶

Preliminary data of the Austrian Development Agency (ADA) show that in 2003 a total of only 1.245.000 EUR netto for 20 AIDS relevant programmes in 10 countries were provided³⁷, either directly or in form of co-funding with NGOs.³⁸ In 2002 and 2003 only 5 projects in Africa or Eastern Europe with AIDS relevant components were co-funded,

³⁴Vgl. Evangelische Entwicklungszusammenarbeit (Hg.), AIDS begegnen, Public Health, sozioethische und entwicklungspolitische Dimensionen der weltweiten HIV-Pandemie. Dokumentation des internationalen Studientages vom 26./27.2.2004 – www.aidskampagne.at

³⁵ OECD-DAC/UNAIDS, Analysis of aid in support of HIV/AIDS control 2000-2002, June 2004, p10-19

³⁶ *ibid.* p19

³⁷ these are: Ecuador, Sambia, Nicaragua, Ruanda, Uganda, Romania, Kenia, Republic of South Africa, Simbabwe, Ethiopia

³⁸ Statistics as published by ADA for 2002 and 2003, in which official financial assistance according to DAC – list of countries (ODA), Official Aid and NGO-contributions are included. (per June, 16th, 2005) Statistische Angaben der Austrian Development Agency für die Jahre 2002 und 2003, in denen öffentliche Finanzzuwendungen für Empfängerländer nach der DAC-Länderliste (ODA), Official Aid als auch NGO-Beiträge enthalten sind. Stichtag 16.Juni 2005

respectively supported with 70.000 Euro by the Federal regions, the so called "Länder".³⁹ New statistics for 2004, regrettably, are at this time not available.

In any case, Austria has, in relation to its economic power more possibilities to comply with its international Human Rights obligations particularly in the field of the Right to Health and the Right to Food which are both closely connected with the combat of HIV/AIDS.

The request of the Austrian NGO Network „Action against AIDS“ to augment the contribution to the GFATM has been commented on critically by the involved ministries. At international conferences on the "Replenishment Process" of the GFATM both in Rome and Stockholm only local staff of the Austrian embassies were present.⁴⁰

Facing the international dimension of the pandemic a coherent approach towards the combat of HIV/AIDS is an urgent need in Austria. The restructuring of Austria's Development Cooperation requires a clear share of competences between the new Austrian Development Agency, ADA and the Section VII, the department for Development Cooperation in the Ministry of Foreign Affairs. To facilitate effective action, the person in charge of WHO agendas in the ministry of health, the one in charge of FAO agendas in the ministry of agriculture, as well as the Human Rights Coordinators in these ministries should be involved in the elaboration of projects and programmes.

Also for the European Union an integrative - departments overlapping - approach with ESC Rights as a frame of reference is indispensable. In its presidency of the EU council during the first term of 2006 Austria could plead for such a comprehensive approach.

Sustainable measures for basic health, for health of women and for combating HIV/AIDS, Tuberculosis and Malaria should be integrated into the sector-programme for rural development as an important contribution to food security. The Austrian government should increase the budget-share dedicated to health and especially its contribution to GFATM has to be augmented up to the agreed share. At the international level, the Austrian government should lobby for unconditional access to life prolonging and indispensable medical treatment for all.

³⁹via local staff from: Vienna, Salzburg, Lower - and Upper Austria, Vorarlberg

⁴⁰ Vgl. auch Schreiben des Bundesministeriums für Auswärtige Angelegenheiten an Global Fund, WHO und UNAIDS vom 20. Juni 2005, BmaA-UN.7.08.029/0010-VII.1/2005

3. CORPORATE SOCIAL RESPONSIBILITY IN THE CONTEXT OF EXTRATERRITORIAL STATE OBLIGATIONS

3.1 CORPORATE SOCIAL RESPONSIBILITY – THE AUSTRIAN DEBATE

In Austria, the discussion of social corporate responsibility took root in the year 2002 with the foundation of the initiative "CSR Austria" by the Austrian Federation of Industries and the Ministry for Economic Affairs and Labour. In May 2003 the Austrian Chamber of Commerce joined the initiative. The initiative aims at achieving two goals⁴¹:

- Firstly to make evident how Austrian businesses work for state and society.
- Secondly to motivate entrepreneurs to intensify their efforts to that effect and at the same time to encourage them to communicate these efforts to a broader public.

In December 2003, the initiative issued a 'guiding vision' entitled "Economic success. Responsible Action". In response to this 'guiding vision' a coalition consisting of human rights, development and environmental NGOs presented their perspectives on social corporate responsibility⁴². They emphasised the importance of binding international standards as well as independent monitoring and the participation of trade unions and NGOs in CSR activities. The organisations also emphasised that there is a need for binding human rights and environmental standards for Austrian companies acting abroad. One suggestion is a "corporate responsibility bill".

The Three Year Programme on Austrian Development Policy in its chapter on "private sector and development" addresses the problem of missing or unenforceable national standards:

"We believe that every enterprise is responsible for what happens in a country as a result of its activities, all the more so as many third-world countries cannot set or enforce a reasonable level either in legislation or the application of standards. The standards laid down by the United Nations, OECD and European Union are good and comprehensive, but they are all based on the principle of voluntary application and are frequently much too imprecise to be used in specific instances. As they have no instruments of enforcement, however, a more precise definition cannot be expected in this way (as is the case within the EU framework for example).⁴³"

⁴¹ www.csr-austria.at

⁴² Amnesty international, AGEZ, AK, Ökobüro, ÖGB „Die soziale Verantwortung von Unternehmen (CSR) aus zivilgesellschaftlicher Perspektive“, 4.12.2003

⁴³ Ministry for Foreign Affairs: THREE-YEAR-PROGRAMME 2004–2006 ON AUSTRIAN DEVELOPMENT POLICY, Revised Version, Vienna 2004, p. 39

While non-implementation of international standards on the national level constitutes a major problem, States have the obligation to ensure that companies subject to their jurisdiction, including transnational corporations, do not commit crimes against the right to food or other rights in other countries. A "corporate responsibility bill" would serve to implement this obligation.

On the international level, the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms), approved by the UN Sub-Commission on the Promotion and Protection of Human Rights in August 2003, have the potential to level the field between competing companies, setting a common standard for monitoring and enforcement while favouring more equal conditions and just practices worldwide.

In Article 1 of the Norms which draw largely on existing human rights standards, but also on labor and environment standards and other corporate social responsibility initiatives, it is stated that:

"States have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups."⁴⁴

The Austrian government should take up the discussion about a "corporate social responsibility bill" and promote the establishment of binding international regulation of activities of private enterprises with regard to human rights, based on the "*Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*".

⁴⁴[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument) (vgl auch E/CN.4/Sub.2/2003/12/Rev.2, 26. August 2003, Artikel 1)

3.2 OPERATIONALISING HUMAN RIGHTS OBLIGATIONS IN THE EXPORT FINANCING SCHEME

In 2001, several Austrian NGOs joined together in the network "ECA-Watch" (ECA = Export Credit Agency) after it had become known that Austrian export guarantees contribute to human rights violations and environmental destruction in other countries. One major problem is the lack of transparency in the granting of guarantees which means that there is limited information of the extent to which Austrian taxpayers' money is contributing to human rights violations abroad. Austrian parliament has passed the amendment of the Export Financing Guarantees Act in summer 2005. Regretfully, human rights and environmental standards do not form part of this Act.

According to the Export Financing Guarantees Act 1981, the Minister of Finance is authorized to issue unconditional guarantees on behalf of the Republic of Austria for the payment of principal and interest on borrowings incurred by Oesterreichische Kontrollbank Aktiengesellschaft (OeKB) for the purpose of financing export transactions or for the purpose of refinancing such borrowings. OeKB is Austria's main financial and information service provider for the export industry and the capital market. OeKB was founded in 1946 as a specialised banking institution, whose shareholders are domestic commercial banks. Its services are available to companies and financial institutions as well as to agencies of the Republic of Austria.

The administration of export guarantees is carried out by OeKB as Agent of the Republic of Austria pursuant to the provisions of the Export Guarantees Act 1981 and the Export Guarantees Decree 1981, issued by the Federal Minister of Finance to regulate the implementation of the Act. The beneficiaries and the underlying contracts are specified in the legal framework. The contractual relations between the guarantor and the guarantee holders are set forth in the "General Business Conditions" for guarantees of the Republic of Austria under the Export Guarantees Act as well as in the individual guarantees.

There is major concern among NGOs that OeKB is bound neither by law nor by internal binding regulation to respect human rights and environmental standards when approving export guarantees. The OeKB is applying the OECD's "Common Approaches on Environment and Officially Supported Export Credits", but application is limited to the environmental assessment of projects ⁴⁵. At the time of writing this report, Austrian parliament is discussing the revision of the Export Financing Guarantees Act, which will expire by the end of 2005. The NGO network "ECA-Watch" is calling for amendments to

⁴⁵ Herbert Schaupp „Die Novelle des Ausfuhrförderungsgesetzes – für verbindliche Umweltstandards und erhöhte Transparenz“, Glocalist 76/2005, p. 10

the Act in order to ensure that human rights and environmental standards are observed in the granting of export credit ⁴⁶.

By supporting Austrian companies outside Austria, export credit touches both the extraterritorial obligation to respect and to protect the human right to food and other rights contained in the ICESCR enjoyed by people in other countries:

“The obligation to respect is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries. The obligation to protect requires States to ensure that their own citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not violate the right to food in other countries.⁴⁷”

This dimension has to be recognised in the revision of the Export Financing Guarantees Act on three levels:

1. Confirm the binding nature of human rights and environmental standards

Taking as a starting point the coherence clause, international human rights and environmental treaties as well as standards set by Austrian legislation, the EU, the EBRD, the Worldbank and the World Commission of Dams, the Export Financing Guarantees Act should recognize the obligation of the OeKB to respect and promote these standards.

2. Increase transparency and accountability

While parliament carries the final responsibility for policies on export promotion, it does not receive adequate information on projects financed by OeKB and therefore is not in a position to assume its control function. Transparency and reporting has to be substantially improved. This should be reflected in the revised Export Financing Guarantees Act.

3. Increase participation

According to the OECD Common Approaches for Export Credits, environmental information on category A and B projects should be disclosed by the Ministry of Finance 90 days before assumption of liability. The practice of the OeKB is that information is published 30 days before assumption of liability. Within this time frame it is practically impossible for Austrian NGOs to get into contact with organisations who support those communities potentially affected by the project. Also, consultation with the affected communities is not part of the Environmental Impact Assessment.

⁴⁶ ECA-Watch „NGO Forderungen zum AFG 2005“

⁴⁷ E/CN.4/2005/47, para 48

3.3 THE CASE OF THE ILISU DAM IN TURKEY

The case of the Ilisu dam in Turkey serves to illustrate the necessity to introduce binding human rights and environmental standards in the Austrian export credit scheme. The Ilisu dam on the River Tigris is part of the giant Southeast Anatolia Regional Development Project (Turkish acronym GAP), one of the biggest regional development projects in the world. The construction of the Ilisu dam alone would displace up to 78,000 mostly Kurdish people and destroy significant cultural heritage. Since 1984, the people living in the region have experienced armed conflict between the Turkish state and Kurdish guerrillas. It is estimated that 4,000 villages have been destroyed, that approximately three million people were forced to flee their homes, and that more than 30,000 people have died. Despite a ceasefire by the PKK since 1999 and the lifting of emergency rule, conflict returned to the region in June 2004⁴⁸.

The region is marked by widespread lack of food, clean, accessible water, sanitation and housing and no adequate welfare system, health care or education in place for poor families. Women and girls experience a special burden in this situation. There is a failure on the part of the authorities to assess and solve the problems of the large internally displaced population⁴⁹. Unemployment stands at 50% or above in all the major cities of the region. Almost 80% of the population live on small plots of land which barely allow them to feed their families or have no land at all⁵⁰. The land is largely owned by Agas (landlords), many of whom are also tribal chiefs. As a result, most of the compensation for land expropriation will benefit these landlords, who, by means of agri-business, will also benefit from the irrigation scheme connected to the dam⁵¹. The failure to prioritise land redistribution to the poor in the context of the development project is aggravating the already life-threatening situation of a large part of the population in the region. In addition, families relying on the river for fishing are losing physical access to food due to eviction from their homes, restricted fishing rights and the killing of marine life in the river and reservoirs.

Even today, the cities in the region have to deal with the large number of internally displaced people. In the town of Batman, emergency food parcels are given out regularly to ensure access to food. These parcels are private donations, the municipality does not receive the necessary resources from the central government to deal with the situation.⁵² The influx of people displaced by the dam will aggravate this situation.

⁴⁸ Maggie Ronayne „The cultural and environmental impact of large dams in southeast Turkey“ Fact Finding Mission Report, February 2005, p. 9f

⁴⁹ *ibid*, p. 17

⁵⁰ *ibid*, p. 20

⁵¹ *ibid*

⁵² *ibid*, p.76

When international attention was drawn to the disastrous effects of the Ilisu dam project and campaigns against the dam were organised in several countries, the international consortium building the dam withdrew from the project in 2002. However, in the year 2004 the Turkish government re-entered negotiations with the Austrian VA Tech. An agreement was reached in November 2004. Alstom Switzerland and the German building company Züblin are part of the new consortium. In February 2005, VA Tech was taken over by Siemens. The takeover of VA Tech and especially VA Tech Hydro would lead to the very strong position of Siemens in the market for hydro power plant equipment. Siemens therefore reached an agreement with the European Commission to sell VA Tech Hydro after the takeover (in early 2006) under a new name⁵³.

After the agreement was reached between the Turkish government and VA Tech in November 2004, the government is going ahead with the resettlement of the communities. A visit by ECA-Watch in June 2005 confirmed that the affected households are not well informed about the resettlement plans and that they have not been consulted.

It is not known to us whether VA Tech has approached OeKB for support in this project. However under the circumstances given, any support given by OeKB to this project would be contradictory to the Austrian state's obligation to respect the rights of the people affected by the construction of the Ilisu dam.

As the review of the Export Financing Guarantees Act in June 2005 did not include any obligation for the OeKB to respect and promote human rights and environmental standards, it should be revised again as soon as possible. In a new revision these obligations should be integrated as well as improvement of transparency and reporting to the parliament. The commenting period on projects should then be increased to 90 days and consultation with the affected communities should also be made mandatory in the Environmental Impact Assessment. A Human Rights – assessment for projects financed by OeKB should then be implemented, in which the consultation with affected communities should also be mandatory.

⁵³ „Siemens will VA Tech Hydro im Ganzen verkaufen“ derStandard.at, August 11th 2005

4. OVERVIEW OF RECOMMENDATIONS

- The Austrian government should introduce a human rights approach to its assessment of coherence as a contribution to meet its obligations under the Covenant. Guidelines for such assessment should be established based on international human rights standards. The government should report to the parliament on an annual basis.
- As suggested in the DAC Peer Review "Austria's EU presidency in 2006 provides a particular opportunity for raising coherence issues at the EU level⁵⁴." This special opportunity should be met by the Austrian government; another specific contribution of Austria could be the introduction of a human rights approach at the European level.
- In the implementation of the guidelines on Austrian policies regarding international finance institutions (IFIs), the Austrian Ministry for Finance should pay special attention to improving internal control mechanisms regarding human rights within IFIs, like for example the Inspection Panel of the World Bank. Also, policies promoted in IFIs should be included in a human rights consistency assessment to ensure coherence.
- The Austrian government should develop a human rights policy and a human rights action plan which among other issues sets out the initiatives to be taken to promote economic, social and cultural rights world-wide. There should be an annual report on the activities of the government in the field of human rights. To ensure effective coherency-work, the Austrian government should allocate more financial means and capacities for this purpose.
- The Austrian government should undertake an evaluation of the effects of Austrian development cooperation's programmes dealing with land entitlement, land surveying and the development of land utilisation plans on the different target groups. This would be an important contribution to the implementation of the FAO Voluntary Guidelines. The phasing out of the current Three Year Programme for Development policy in 2006 would be a good starting point for re-prioritizing the policy-areas of most strategic importance for worldwide poverty-reduction and to begin with a coordinated and consistent process of implementing a Human Rights approach. The FAO Voluntary Guidelines for the Right to adequate food should be taken as the basic-framework for this process, especially

⁵⁴ OECD: DAC Peer Review, Austria, 2004, p.43

for the sector-programme on rural development, they should be taken as a frame of reference.

- As rural development is of crucial importance for worldwide poverty-reduction - up to 80% of the world's poor live in rural areas - the Austrian government should allocate a definitely higher share of budgets to Development – cooperation in rural development.
- Sustainable measures for basic health, for health of women and for combating HIV/AIDS, Tuberculosis and Malaria should be integrated into the sector-programme for rural development as an important contribution to food security. The Austrian government should increase the budget-share dedicated to health and especially its contribution to GFATM has to be augmented up to the agreed share. At the international level, the Austrian government should lobby for unconditional access to life prolonging and indispensable medical treatment for all.
- The Austrian government should take up the discussion of a “corporate social responsibility bill” and promote the establishment of binding international regulation of the activities of private enterprises with regard to human rights, based on the *“Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights”*.
- As the review of the Export Financing Guarantees Act in June 2005 did not include any obligation for the OeKB to respect and promote human rights and environmental standards, it should be revised again as soon as possible. In a new amendment these obligations as well as the improvement of transparency and reporting to the parliament should be integrated. The commenting period on projects should then be increased to 90 days and consultation with the affected communities should also be made mandatory in the Environmental Impact Assessment. A Human Rights – assessment for projects financed by OeKB should then be implemented, in which the consultation with affected communities should also be mandatory

WEBSITES:

<http://www.ohchr.org>

www.dignityinternational.org

www.humanrights.at

www.escrprotocolnow.org

www.escr-net.org

www.bayefsky.com

www.bmaa.gv.at

www.ada.gv.at

www.agez.at

www.eca-watch.at

www.csr-austria.at

www.fian.org,

www.fian.de,

www.fian.at