

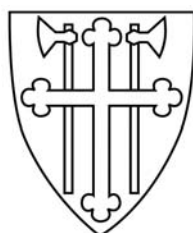
Parallel Information

The Right to Adequate Food and the Compliance of Norway with its Extraterritorial Obligations

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**Church of Norway Council on Ecumenical and
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Parallel Information

Presented by FIAN Norway, the Church of Norway Council on Ecumenical and International Relations, with the support of FIAN International, the Human Rights NGO for the right to feed oneself with ECOSOC consultative status.

Compliance of Norway with its International Obligations under the International Covenant for Economic, Social and Cultural Rights (ICESCR)

Special focus:

The Right to Adequate Food and Extraterritorial State Obligations

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Executive Summary

This is an executive summary of the parallel report elaborated in accordance with the fourth periodic report submitted by Norway to the UN Committee on Economic, Social and Cultural Rights. The parallel report is a result of cooperation between Norwegian NGOs, formulated by FIAN Norway, with contributions from Church of Norway Council on Ecumenical and International Relations, and financially supported by Norwegian Church Aid. The report analyses if Norway violates its obligation to respect, protect and fulfil the right to food, by specific examples. It focuses entirely on Norway's extraterritorial obligations under the ICESCR and Norway's implementation and compliance of these obligations.

According to the Norwegian Human Rights Act (1999), the ICESCR applies as Norwegian law. According to its Section 3, the provisions of the ICESCR "...shall take precedence over any other legislative provisions that conflict with them."

In the context of international human rights, extraterritorial obligations means that governments are obliged to ensure that their policies do not contribute to violations of human rights, including the right to food, in other countries. There is also an obligation to support particularly poor countries in the realisation of economic, social and cultural rights (ESC rights).

The responsibility of international cooperation is enshrined in ICESCR art. 2 (1), and is specifically emphasised in art. 11 (1) and art. 11 (2) recognising the right to food. The extraterritorial dimension of the ICESCR is also repeated in art. 23, which recognizes the importance of "international action for the achievement of the rights recognised".

Development cooperation

In 2003 the total Norwegian bilateral and multilateral cooperation was NOK 14,5 billions. This is 0,92 percent of Norway GDI. Today an increasing part of cooperation projects are multilateral. Basket funding is often done in cooperation with the International Monetary Fund (IMF) and the World Bank (WB). IMF and WB continue to focus on economic growth as the precondition for sustainable social services. We emphasise that all Norwegian funds must be used in conformity with the ESC rights, even if they are channelled through a multilateral institution. It is i.e. important that Norway should not support Poverty Reduction Strategy Papers (PRSPs) frameworks for bilateral development aid, unless it has been demonstrated that PRSPs adequately address the state's obligations to respect, protect and fulfil the right to food.

A main criticism to the Norwegian development aid is its lacks of assessing the most effective measures for realising the right to food, and how Norway can assist in undertaking such measures. This is in stark contrast to its human rights rhetoric and its focus on assisting the poorest of the poor. To stop hunger and malnutrition is the first of the UN Millennium Development Goals. Under the UN Millenium Project, Task Force 2 on Hunger has developed in its typology a useful understanding of those who are really hungry: 50 % of the hungry are marginalised smallholder farmers, and 22 % are landless labourers. The problems of these are particularly access to assets and productive resources, and lack of access to policy processes that could allow meaningful participation. In order to lift the poorest out of poverty, ODA must focus on food, agriculture and land reform. Today only 3,9 % of Norwegian development aid is channelled to the agricultural sector.

We are concerned that the Norwegian initiative to establish a High-level Commission on Legal Empowerment of the Poor to a large extent is based on the neo-liberal ideology of Hernando de Soto of formalising land properties. We recognize the importance of formalisation and titling of land. But we do not see it as a solution to all land conflicts.

Regarding Norwegian participation in intergovernmental organisations a new World Bank hydropower project in Laos, the Nam Theun 2, is of interest. The project is criticized for not having followed the Strategic Priorities in the report from the World Commission on Dams (WCD) which was established by the World Bank itself. There have been done more impacts analysis than ever before. Yet an analysis of Nam Theun 2's compliance with the WCD Strategic Priorities shows that the project fails to comply with

six of the seven Strategic Priorities outlined in the WCD report. Norway should not contribute to projects that are doubtful as regards human rights standard, neither through their position in the WB nor by giving Norwegian companies support through Garanti-instituttet for eksportkreditt (GIEK) or Eksportfinans.

Norwegian participation in the World Trade Organisation

Economic globalisation represents a challenge for ESC Rights. The liberalisation of global trade within the regime of the World Trade Organisation (WTO) has a significant impact on small farmers in the South. We acknowledge that Norway builds on a human-rights based approach to both development and trade, while at the same time engages in trade policies that cause negative effects on human rights in other countries. We will stress that the realisation of the right to food must be at the centre of any trade agreement in agricultural produce. Regulations must not contradict the human rights obligations of member states of the WTO.

An example of an ambiguous position that Norway has taken is the discussions in the TRIPS Council. The government has been passive in discussions in this Council, and they have not used opportunities to present written proposals with constructive solutions. The lack of support to the demand of developing countries in the TRIPS Council means that the Norwegian Government potentially restricts the possibilities of affected states to take effective measures to protect, respect and fulfil the right to food.

Norwegian companies abroad

Norwegian companies operating abroad are often competing with poor people regarding available resources, such as land or water. In this view, activities of Norwegian actors abroad are not adequately investigated regarding their possible impact on violations of ESC rights. The Government has an obligation to protect, and this obligation might also extend to Norwegian actors abroad. In those cases where Norway provides direct support through export credit agencies, the Norwegian human rights obligations are even more evident.

The parallel report exemplifies that also the Government as a private trade partner violates human rights.

The Government Petroleum Fond

We are concerned about the Petroleum Fund's engagement in companies which have been involved in threatening the livelihood and the adequate standard of living in many local communities. Aracruz Celulose in the State of Espirito Santo in Brazil is an example where the Fund is a shareholder. Norwegian investments in this company show a lack of mechanisms to prevent investments in companies violating human rights.

Public procurement

Regarding customer's rights, the Environmental Information Act (Miljøinformasjonsloven) was implemented in 2004. Access to information on environmental issues was evaluated as an important aspect in itself in a transparent and democratic society. The same assessment can be done regarding human rights. Transparency enables the customers to influence and monitor business actors. A chapter on human rights in this law will be a useful tool to strengthen human rights.

Recommendations for the Committee on the ESC Rights

The report has made an assessment of Norway's extraterritorial obligations under the ICESCR. We hope this is a meaningful contribution to the work of the Committee.

A. In its concluding observations, the Committee should ask the government of Norway to add a specific chapter on extraterritorial obligations in its future reports to the Committee.

In this chapter Norway should submit:

an assessment of the outcome of its policies regarding access to resources affecting vulnerable people in other countries, i.e. policies for finance, aid, trade and agriculture;

an assessment of the outcome of its aid-policies, the influence of decisions of its export credit agency and its debt policy;

an assessment of its role in international organisations. Such an assessment must include possible conflicts between Norway's obligations under the ICESCR on the one hand and policies and programmes of the WTO, IMF, World Bank and other intergovernmental institutions on the other hand.

The overall objective of this endeavour is to establish a routine for States Parties to report on their compliance with international obligations.

B. The Committee should recommend the Norwegian Government to act concerning on the following issues:

To stop hunger and malnutrition is the first of the UN Millennium Development Goals. Norway's development cooperation should focus on measures to realise the right to food for all. Access to productive resources is essential in this regard. Agrarian reform is one important mean to realise the right to food. It is necessary to recognise that land is more than a mere commodity. An agrarian reform may include formalisation of land ownership, but this only one of many measures. Collective land rights must be respected.

If a High-level commission on Legal Empowerment of the Poor is established, the commission must have a diverse composition and broad public hearings must be held. The Commissions work must focus on the realisation of human rights, in particular the right to food. An analysis of power and redistribution of land must be at the core of the commission's work. In Guatemala, Norway must not initiate a formalisation program on land rights without assessing how this will impact on the unjust distribution of land, as well as the collective ownership of land.

The Government should support the follow up of the FAO Voluntary Guidelines on the implementation of the right to food. The guidelines must actively be used as a check-list in bilateral and multilateral cooperation, unilateral actions and aid situations. The importance of access to productive resources and agrarian reform must be highlighted. Norway should report on relevant activities and achieved progress to the FAO Committee on World Food Security (CFS), according to Section III para. 17.

Norway should increase its contribution to bilateral and multilateral development cooperation.

Norway must ensure that funds provided to IFIs, such as the World Bank and IMF, are not spent in a matter that violates human rights, especially the right to food.

Norway should be asked about its position in the World Bank's board concerning the Nam Theun 2-project. Prior to accepting such dam projects, the Government must ensure that the project procedures are in accordance with the Strategic Priorities from the World Commission on Dams. This has not been the case with the Nam Theun 2. Therefore Norway should not support this project, nor provide assistance to Norwegian companies through its export credits.

Norway should not pressure their partners in bilateral projects to open up their markets on services. This has been a problem in trade talks related to the GATS Agreement in WTO.

Norwegian embassies are the executive branch of foreign affairs in both bilateral and multilateral cooperation. Additionally, they act as advisers for Norwegian companies. Therefore at least one person at the embassies should have human right-competence.

Norway should more actively disseminate information on the OECD Guidelines for Multinational Companies, as well as its Norwegian contact point. Norway should also establish a broad-based commission with a mandate of assessing the possibilities of appointing an ombudsperson on extraterritorial obligations. The ombudsperson shall monitor Norwegian bilateral and multilateral engagements and Norwegian companies abroad. Norwegian companies should be encouraged to support the realisation of economic, social and cultural rights when they operate abroad. The

government must investigate companies, such as Cermaq in Chile, when informed about human rights violations. Violations must immediately be stopped, preferably without withdrawing the company.

The investments by the Government Petroleum Fund should not be limited geographically. Investments should contribute to the progressive realisation of the right to food worldwide. We encourage the Ethical Council to exclude Aracruz Cellulose from the investment universe as they have impeded human rights for decades.

The Norwegian Government should elaborate rules for procurement in the public sector. Such rules will demonstrate that the Government is concerned with human rights. This will raise awareness in the Norwegian public sector regarding their choice of contractors.

The Government should add a chapter concerning human rights to the Norwegian Act on customers' rights regarding information on environmental issues. The chapter will be a useful tool to increase awareness of human rights violations related to production.

Part I

I 1. Introduction

1. This report will analyse whether Norway violates its obligation to respect, protect and fulfil the right to food, by specific examples. It focuses entirely on Norway's extraterritorial obligations under the ICESCR and Norway's implementation and compliance of these obligations.
2. Ratification of human rights instruments establishes obligations on States, at both national and international level. This is clear from art 2(1), as well as art. 11(1) and 11(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. More specifically, this report addresses especially the international obligation to support the realisation of the right to food. The right to be free from hunger is a fundamental human right¹. This means that the state has an obligation to ensure, at the very least, that people do not starve. To halve the number of people suffering from hunger is the first of the UN Millennium Development Goals (MDGs). The strong relationship between the MDGs and human rights must be emphasized, and is confirmed by those working in the field of human rights and development cooperation.²
4. This parallel report is a result of cooperation between Norwegian NGOs, formulated by FIAN Norway, with contributions from Church of Norway Council on Ecumenical and International Relations, and financially supported by Norwegian Church Aid.
5. Within the context of the examination of state parties' reports to the Committee on Economic, Social and Cultural Rights (CESCR), FIAN International has since 1999 undertaken analyses on international actors' impact on States' ability to comply with their obligations under the ICESCR. This has been done on a regular basis in all its parallel information to the CESCR. In 2001, FIAN, together with Bread for the World and the Development Service of the German Protestant Church, elaborated a full report on Germany's extraterritorial obligations. In 2004, a number of Spanish NGOs, coordinated by FIAN Spain, presented two parallel reports to the CESCR; one on the right to food and one on the right to water. Both of the reports included a chapter on extraterritorial obligations.
6. The organisations presenting this report have contributed to the understanding of ESC rights for years. FIAN has on a regular basis included other NGOs and social movements from all parts of the world in reporting on governments' compliance with ICESCR obligations under the right to adequate food. The Church of Norway Council on Ecumenical and International Relations have for years advocated for and adopted a human rights based approach to development.
7. The fourth periodic report submitted by Norway under articles 16 and 17 of the Covenant has no information on Norway's compliance with its extraterritorial obligations. As a response to paragraph 3 of the CESCR Revised General Guidelines, international obligations are treated as a part of the development cooperation. The obligation to report on extraterritorial obligations is not mentioned in

¹ Access to adequate food is recognised as both an individual right and as a collective responsibility. The 1948 Universal Declaration of Human Rights proclaimed that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food...". The ICESCR developed these concepts, stressing in art. 11(1) "the right of everyone to ... adequate food" and specifying in art. 11 (2) "the fundamental right of everyone to be free from hunger".

² See p. 3 in Report of the Technical Workshop on a human rights based approach to development and to the CCA/UNDAF, Geneva, 23 and 24 September 2004, at <www.undg.org> (under 'Achieving the MDGs', find 'Human Rights / Action 2', then document 'Review of 2003 CCAs and UNDAFs from Human Rights Perspectives')

the Revised General Guidelines, however. At this early stage of the development of the concept of extraterritorial obligations, no state report to the CESCR has applied a human rights framework to analyse the impact of its international assistance, but we presume that Norway will have an analysis on such obligations in their next report to the CESCR.

8. The concept of extraterritorial obligations is in a process of development, which implies that the content is being clarified through discussions done by many academics³ and non-governmental organisations⁴. The CESCR has, in its General Comments and Concluding Observations, elaborated on the concept, most comprehensively in paragraphs 7 through 10 of General Comment No 2, paragraphs 13 and 14 of General Comment No. 3, as well as the sections on international obligations and obligations of others than state parties in General Comments 12 through 15.
9. In the context of international human rights, extraterritorial obligations means that governments are obliged to ensure that their policies do not contribute to violations of human rights, including the right to food, in other countries. There is also an obligation to support particularly poor countries in the realisation of economic, social and cultural rights. Addressing Norway specifically, the Norwegian Government has an obligation to respect, protect and fulfil all human rights in all areas of its policy making, also when the policies are primarily affecting people outside of Norway.
10. The obligation to respect implies that states refrain from any action or policy that might impede the realisation of ESC rights in countries in the South. This means that development projects supported by Norway, bilaterally or multilaterally, must not violate any human rights. In all development projects, Norway must therefore ensure that the human rights of both beneficiaries and other groups and individuals affected by the projects are respected. The Government must for instance not be involved in projects that result in the loss of livelihoods and violations of the right to food, such as forced evictions without due compensation. Additionally, in intergovernmental organisations where Norway is a member, the Government must oppose decisions that may obstruct or hinder the realisation of ESC rights.
11. The obligation to protect requires that States ensure that all companies and other entities subject to its control respect the enjoyment of human rights and the national laws in other country. Thus, Norway has an obligation to regulate the action of domestically based corporations with activities abroad. For instance, when people's livelihood is destroyed, and when workers' rights such as the right to organize are not ensured, this may result in the violation of the right to food. Norwegian companies operating abroad are often supported financially by the Norwegian state, through export credit agencies. This makes the Norwegian Government all the more responsible for the conduct of these companies. We will in part II 4 on Norwegian companies provide examples where we find that Norway has not been observing its obligations on the protect level.
12. States have an obligation to support the fulfilment of the right to food in poor countries. Developing states that do not possess the necessary resources for the full realisation

³ Skogly, S. 2003. The obligation of international assistance and co-operation in the International Covenant on Economic, Social and Cultural Rights. pp. 403-420, in Bergsmo, M. (ed.): *Human Rights and Criminal Justice for the Downtrodden. Essays in honour of Asbjørn Eide*, Martinus Nijhoff Publishers, Leiden

Coomans F. and M.T. Kamminga (eds). 2004. *Extraterritorial application of human rights treaties*. Intersentia, Antwerpen

The Expert Seminar on The Extraterritorial Scope of Human Rights Treaties in Maastricht in January 2004 elaborated on the concept; also at the Annual meeting of the Association of Human Rights Institutions (AHRI), 17 to 19 September 2004 had a plenary session on *Third state obligations under the ICESCR: towards a normative framework for development co-operation*, based on a presentation by Wouter Vandenhole.

⁴ NGOs who have produced studies are i.e. the International Council on Human Rights Policy, FIAN, Bread for the World and the Evangelischer Entwicklungsdienst, The Ethical Globalization Initiative.

of the right to food are obliged to actively seek international assistance, and wealthier states have an obligation to help. Depending on the availability of resources, this requires that developing states cooperate with other countries to support their fulfilment of the right to food. Thus, there is an obligation for wealthy countries to provide international aid to countries in the South, in situations where they are unable to realise the absolute minimum norms of ESC rights independently, and in situations of disaster relief and humanitarian assistance⁵. Norway's obligation to support the fulfilment of human rights obligations, including the right to food, is connected to the promotion of programmes and policies, bilaterally and multilaterally, that guarantee everyone's access to food, water, education, health services etc. This can be achieved through a human rights based approach to development.

13. Norway's human rights obligations in international organisations, such as the agencies and programs of the United Nations, the International Monetary Fund (IMF), the World Bank and the World Trade Organisation (WTO), should also be understood within the context of the obligation to respect, protect and support the fulfilment. The obligation to respect and protect is relevant in regard to projects financed by international organisations and directly approved by member states. One example is the construction of large dams. In part II 2 and II 4 we will provide examples of violations of the right to food in such projects. The obligation to protect is also applicable when Norway participates in the elaboration of international treaties or other international documents, which might affect the possibility to ensure the full enjoyment of human rights. Human rights set minimum standards for state behaviour and are to be adhered to when states negotiate, sign and ratify international agreements. Norway must ensure that international organisations apply existing human rights standards in their work.
14. This study concentrates on specific cases on the right to adequate food and related ESC rights. It intends to describe some examples where Norwegian policies or companies negatively affect the rights of people in other countries. Firstly, the aim is to highlight that there are challenges in regard to extraterritorial obligations, and to indicate that existing procedures are inadequate. Secondly, the aim is to identify areas in which Norwegian policies in intergovernmental organisations have not addressed the negative impact of these organisation's policies, programmes and projects. The report includes recommendations on how to better assess these effects of Norwegian policy.

Part I 2. The Character and Content of Extraterritorial Obligations

15. According to the Norwegian Human Rights Act (1999)⁶, the ICESCR applies as Norwegian law. According to its Section 3, the provisions of the ICESCR "...shall take precedence over any other legislative provisions that conflict with them."
16. The implementation of ESC rights is primarily related to the territory of a state party to the Covenant. Since 1966, when the ICESCR was adopted, structures and relationships in the international society have gradually, but dramatically changed. The globalisation process has set the stage for a new focus on the extraterritorial dimensions of the ICESCR. Globalisation is characterised by an increase in international transaction between growing numbers of actors. As a result of privatisation, liberalisation and deregulation, private actors have increased their influence over global trade regimes, whereas the states' tasks are reduced in number. When the ICESCR was drafted, the states were the main actors on the international arena. Today, private actors have a substantial impact on the actual enjoyment or the lack of enjoyment of the human rights. Two crucial questions arise from these observations. Firstly, how can a state party to the ICESCR be

⁵ See CESCR General Comment No. 14, para. 45.

⁶ The Human Rights Act of May 21st 1999 No.30, Menneskerettsloven. <www.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf>

held responsible for the conduct of these non-state actors who often act extraterritorially, or whose conduct have extraterritorial effects? Secondly, how shall one assess the extraterritorial human rights effects of states' policy in relevant policy areas, *also* if the policy is primarily domestic?

17. The legal instruments of ESC rights do not contain any territorial or jurisdictional limitations. On the contrary, there are explicit commitments to cooperation for the realisation of ESC rights of all individuals without limitations. Therefore, it cannot be argued that extraterritorial obligations do not exist.⁷
18. By comparing art. 2 in the ICESCR with art. 2 in the International Covenant on Civil and Political Rights (ICCPR), there may be a rather substantive difference regarding extraterritorial obligations between the two Covenants. ICCPR is more firmly linked to the national borders in terms.
19. The ICESCR art. 2(1) contains the following passage:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

It seems that the drafters of the Covenant have envisioned that the fulfilment of these rights has an extraterritorial dimension, in addition to the domestic dimension.

20. This indicates that the importance of international cooperation was already regarded as essential when the ICESCR was drafted. The extraterritorial dimension of the ICESCR is also repeated in art. 23, which recognises the importance of "international action for the achievement of the rights recognised".
21. Additionally, international cooperation is specifically emphasised in art. 11 (1) and art. 11 (2) recognising the right to food. General Comment No. 12 on the right to food distinguishes three levels of international obligations (paragraph 36 through 41). Firstly, states have to ensure that their own political measures do not violate the right to food in other countries. Secondly, states have to support other countries in gaining access to food and to provide adequate food aid for these countries where necessary. Such food aid should be organized in a way that it does not have negative repercussions on local producers and markets. It is also important to ensure that the beneficiaries of the food aid can return to self-sufficiency in the long term. Thirdly, states have to ensure that the right to food is adequately considered in international agreements. Regarding the issue of trade and human rights in the agricultural sector, levels (1) and (3) are of particular importance. The first level can be illustrated by an expansive trade policy supported by export subsidies. Such policies bears the risk of negatively affecting the right to food in other countries, as local production capacities and self-sufficiency is effectively undermined. The third level makes direct reference to the role states should play in the negotiation of international agreements. The obligation is defined in more detail in a provision of paragraph 19 in the same General Comment. It asserts that states violate the right to food if they sign agreements with other states or with international organisations without considering the international obligations imposed by the right to food.
22. According to international human right law, states also have human rights obligations in intergovernmental organisations (IGOs). Increasingly, IGOs act on their own account without specific instructions from states parties. However, in principle the states are legally responsible for activities carried out by IGOs. This is especially important to recognise in cases impeding the

⁷ An analysis on the extraterritorial obligations can be found in paragraphs 33 through 59 of E/CN.4/2005/47 (The right to food: Report of the Special Rapporteur Mr. Jean Ziegler)

enjoyment of human rights. This report will focus on Norway's extraterritorial obligations in regard to its role as a state party in international organisations. States have an international obligation to respect, protect and support the fulfilment of ESC rights in cases where they participate directly in the development of a particular policy of an international organisation. This includes for instance the participation in the World Bank's board of executive directors.⁸

Part II Compliance of Norway with its Extraterritorial Obligations

II 1. Norwegian participation in the UN

23. Norway had an important and pro-active role in the ground-breaking work of the intergovernmental working group elaborating the FAO Voluntary Guidelines on the Right to Food.⁹ These guidelines provide guidance on how to implement the right to food in several relevant sectors. It is an important checklist. We encourage the Government to disseminate and apply the Voluntary Guidelines.
24. With regards to extraterritorial obligations,¹⁰ a mutual understanding on the need for certain minimum standards on companies' conduct has been developing in the context of the Norwegian KOMpakt (The Consultative Body for Human Rights and Norwegian Economic Involvement Abroad).¹¹ We urge the Norwegian Government to be more pro-active in building support for the UN Norms, particularly through a formal approval in the Commission on Human Rights.

II 2. Development cooperation

25. Norway is an important international donor to developing countries. It is therefore important to assess the Official Development Assistance (ODA) in the context of Norway's extraterritorial obligation to respect, protect and support the fulfilment of the ESC rights, and specifically the right to adequate food. This report will assess the amount of resources available (quantity), and if the ODA is allocated to support the implementation of ESC rights (quality of development cooperation).
26. As the government writes in its report to the CESCR, Norway aims at providing almost the same amount of multilateral and bilateral assistance. Regarding 2005, Norway increased its contributions to the World Bank with 29,2%. By comparison, the increase to the UN was only 7%. The numbers clearly show an increased focus on the World Bank. This report will illustrate that some programmes financed by the World Bank actually violate the right to food.
27. In order to achieve the MDG Norway should make an important contribution now. More than 50 Norwegian NGOs have in their joint political statement¹² suggested that Norway should spend 2 % of the GDI on multilateral and bilateral assistance. The Platform also recommends that Norway allocate more funds to strengthen the UN.

⁸ On acts of international organisations, see J. Pauwelyn 2003 *Conflict of Norms in Public International Law*, Cambridge University Press, 143-147, 290-293 and 324-326

⁹ Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security, adopted at the 127th Session of the FAO (UN Food and Agriculture Organisation) Council, Rome, 22 to 27 November 2004 as CL 127/10-Sup.1

¹⁰ E/CN.4/Sub.2/2003/12/Rev.2, adopted 26 August 2003

¹¹ See <www.odin.dep.no/ud/mr/english/KOMPakt/032111-990042/dok-bn.html>

¹² Platform 2005 for Norwegian NGOs in the Forum for Environment and Development. See <http://www.forumfor.no/v_bibliotek/89.pdf>

28. In 2003 the total Norwegian bilateral and multilateral cooperation was NOK 14,5 billions. This is 0,92 percent of Norway GDI. According to the ICESCR art. 2(1):“Each State Party to the present Covenant undertakes to take steps, ..., to the maximum of available resources,...”. The Norwegian contribution is above the standards set by the UN in 1970 of 0,7% of the GDI. Few other countries so far have reached this standard. Yet there are certain special aspect regarding Norway which we would like to highlight.
29. Norway has an extraordinary strong financial situation, being the only country in the world without debt. Thus, it necessary to ask whether Norway has *additional* available resources to assist particularly the least-developed states to fulfil their obligations under the ICESCR. Is 0,7% of GDI an appropriate level, when the Norwegian Government Petroleum Fund has approximately NOK 1 000 billion invested abroad? The Petroleum Fund is the third largest fund in the world. The Fund consists of the revenues provided by petroleum activities. The Fund is constantly increasing because no values are withdrawn. The revenue is said to secure Norwegian pensions for the coming generations. According to its guidelines¹³, the Fund cannot invest in the poorest countries. We encourage the government to not limit its investments geographically. Investing in the South can be a valuable contribution to reach the MDGs. The fund may i.e. be used to support micro credit institutions in the South. Especially women projects should be encouraged. This can be an alternative to investments in multinational corporations.¹⁴
30. The Ministry of Foreign Affairs is in charge of the Norwegian development aid. NORAD (Norwegian Agency for Development Cooperation) is the advisory organ for development policy and projects. The Norwegian embassies are the executive branches coordinating projects. The embassies decide which project should be supported by Norwegian development assistance. For embassies in states where Norway has development cooperation, we therefore recommend that at least one staff person is a human rights expert. It is important that the embassies can secure that projects both aim to – and actually contribute to - realising basic human rights. Additionally important is that the human rights expert is consulted in commercial activities where Norway (including Norwegian companies) is involved in order to ensure that due respect is paid to human rights. This expert should provide human rights training to the other staff members.
31. Norwegian development policy focuses on budget support and sector funding. This is supposed to be democratic aid. According to the White Paper No 35 “Fighting Poverty Together”,¹⁵ the main focus is to improve the education- and health- sector. We welcome that the Norwegian Government wants development cooperation to contribute to social and economic development.
32. In our view, the main consequences of sector programmes and basket funding are positive. Funds from different donors are placed into one basket. Thus less time is needed for reporting. A negative consequence, though, is a more complex situation regarding responsibility. Especially in situations where a project violates the right to food. Who is then to be held accountable? The donor countries have, in addition to the recipient country, the responsibility to secure that ESC rights are not violated. Norway can therefore be held accountable for human rights violations related to such programmes. This is in accordance with the international obligations of states.
33. Today an increasing part of cooperation projects are multilateral. Basket funding is often done in cooperation with the International Monetary Fund (IMF) and the World Bank (WB). IMF and WB continue to focus on economic growth as the precondition for sustainable social services. We emphasise that all Norwegian funds must be used in conformity with the ESC rights, even if they are channelled through a multilateral institution. An important question to be asked is therefore: Are the development policies applied by IMF and WB at risk of impeding the realisation human rights? Said

¹³ See <<http://odin.dep.no/fin/english/topics/p10001617/p10002777/006051-990433/dok-bn.html>>

¹⁴ Later in the report we will discuss the ethical aspect of the fund's investments.

¹⁵ See <<http://odin.dep.no/ud/engelsk/publ/p10001859/032181-040002/dok-bn.html>>

differently; is the formal endorsement of the Poverty Reduction Strategy Papers (PRSPs) by the Boards of the IMF and the WB an adequate guarantee that human rights have been duly taken into account, and hence a framework which Norway should apply in order to support the fulfilment of its international human rights obligations? In order to answer this question it is necessary to elaborate on a few important aspects of a human rights based approach to development.

34. There is an increased recognition of the inseparability of a sustainable poverty-alleviation strategy and the implementation of human rights. Therefore human rights assessments must be made in all phases of designing development projects. One must ask if the project effectively strengthens the enjoyment of human rights and if human rights will be violated as a result of the project, particularly for the most vulnerable. A rights based approach to development must also focus on implementing measures which are most suited to help people realise their human rights.
35. A rights based approach must aim at strengthening both civil society and state institutions. Participation, information and accountability are crucial elements. A rights based approach is important for legitimising struggling groups claiming their rights. It is equally important to enable civil society to know their rights and ways of claiming their rights. For their claims to be adequately addressed, states must have the capacity to deal with the claimants. In order to develop and carry out relevant programs to implement all human rights, the capacity of states must be strengthened.
36. Economic globalisation has led to a weakening of the state, particularly in poorer countries. This weakening of many states is partly due to requirements in the structural adjustment programmes or their successor programmes by the IMF. However, while a shrinking state can represent problems for human rights fulfilment, the size of the state institutions is only an indication of the problem. Most crucial for the enjoyment of human rights is a reliable, pro-poor delivery of services, an environment which allows people themselves to enjoy their human rights, as well as institutions and mechanisms providing effective remedies if violations occur.
37. When developing PRSPs, states are given detailed stipulations on how to employ public resources. These can interfere with a country's ability to fulfil its human rights obligations. Despite several efforts to better link the PRSPs to human rights,¹⁶ there is still a gap between the two. It is uncertain if the PRSPs are contributing to the realisation of human rights, or if they on the contrary impede the enjoyment of human rights. Norway must not support PRSPs frameworks in its development aid, unless it has been demonstrated that PRSPs adequately address the state's obligations to respect, protect and fulfil the right to food.
38. In its development cooperation Norway focuses on education and health. Conclusions from investigations of previous programmes by the WB and IMF show as follows: "Structural adjustment programs have led, in the worst of cases, to a sharp deterioration in public spending for health care and education, while, even in the best of cases, there has been inadequate improvement in spending levels."¹⁷ Servicing the foreign debt has been given priority over spending for social-service provision.
39. Another main criticism to the Norwegian development aid is its lacks of assessing the most effective measures for realising the right to food, and how Norway can assist in undertaking such measures. This is in stark contrast to its human rights rhetoric and its focus on assisting the poorest of the

¹⁶ The *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*, were originally drafted by Paul Hunt, Manfred Nowak and Siddiq Osmani; see <www.unhchr.ch/development/povertyfinal.html>.

¹⁷ SAPRI Report 2002, p. 169, see <www.saprin.org/SAPRI_Findings.pdf>. The full title of the report is *Policy Roots of Economic Crisis and Poverty, A Multi-Country Participatory Assessment of Structural Adjustment*. The Report is based on the Joint World Bank/Civil Society/Government Structural Adjustment Participatory Review Initiative (SAPRI) and the Citizens' Assessment of Structural Adjustment (CASA).

poor¹⁸. To stop hunger and malnutrition is the first of the UN Millennium Development Goals. Under the UN Millennium Project, Task Force 2 on Hunger has developed in its typology a useful understanding of those who are really hungry: 50 % of the hungry are marginalised smallholder farmers, and 22 % are landless labourers¹⁹. Their problems are particularly access to assets and productive resources, and access to policy processes allowing meaningful participation. In order to lift the poorest out of poverty, ODA must focus on food, agriculture and agrarian reform. Priority must be given to achieve sustainable administration of natural resources. This is important for health and economic development of the poorest. Today only 3,9 % of Norwegian development aid is channelled to the agricultural sector. However, an independent, national commission recommended that this proportion should be increased to 15 %.²⁰ FAO asks countries to destine 20 % of their ODA to programs for food security and for rural and farming development. The Norwegian government adopted an action plan in 2004 endorsing the objective of increasing the proportion of aid to the agriculture sector, but it is not willing to set a quantitative measure.²¹ Since 1999 the increase to this sector has only been 1,2 %. We are concerned that the mentioned increase is limited and not of significant value.

40. Guideline 8 in the FAO Voluntary Guidelines for the realisation of the right to adequate food²² deals with access to resources and assets. To realise the right to food of peasants and landless labourers, they need access to productive resources, such as land, water, seeds, credits and knowledge. Access to land for the poor, and especially women, is highlighted in Guideline 8(d). It is also stressed that special consideration should be given to the situation of indigenous communities. As a means to fulfil this aims, land reform is explicitly mentioned in 8(b). Agrarian reform is also recognised as a necessary measure in art. 11.2(a) of the ICESCR. It is important that both men and women have equal rights to own and till land. Due to structural injustice done to women, Norway should especially promote access to land for women.
41. Norwegian development aid has as its main beneficiaries the poorest of the poor. In order to assist this target group, the donors have to identify their problems and possibilities. NORAD and the Ministry of Foreign Affairs must make such identification of the poor and vulnerable a priority in all countries where Norway is a donor country. This identification must be gender sensitive. In addition, Norway must identify the adequacy of possible programs addressing poverty. Norway can assist in such programs, both by economically strengthening the countries' capacity to implement its policy as well as addressing the issue legally and politically. It is important not to limit this exercise to the poverty reduction strategy papers.
42. Norway is sensitive to the importance of land ownership, and especially women's need to own land. Norway has therefore taken an initiative to establish a High-level Commission on Legal Empowerment of the Poor. We welcome an initiative to address access to land of peasants and landless labourers. A commission on legal empowerment of the poor should include debates about

¹⁸ Ministry of Foreign Affairs. 2004. *Fighting Poverty Together*
<<http://odin.dep.no/ud/engelsk/publ/p10001859/032181-040002/dok-bn.html>>

Ministry of Foreign Affairs. 2004. *A Plan of Action. Fighting Poverty through Agriculture. Norwegian Plan of Action for Agriculture in Norwegian Development Policy*. <odin.dep.no/filarkiv/210699/agriculture.pdf>

¹⁹ See <www.unmillenniumproject.org/who/task02.htm>.

²⁰ The text in Norwegian <http://odin.dep.no/ud/norsk/dok/andre_dok/veiledninger/032171-990040/ved003-bn.html>

²¹ The text in Norwegian <odin.dep.no/ud/norsk/dok/andre_dok/handlingsplaner/032171-220008/ind-bn.html>. A summary in English can be found at <odin.dep.no/filarkiv/210699/agriculture.pdf>.

²² Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security, adopted at the 127th Session of the FAO Council, Rome, 22 to 27 November 2004 as CL 127/10-Sup.1

agrarian reform and the need to strengthening states' capacities and political will to secure the fundamental human rights of the poor.

43. We are concerned that the High-level Commission initiative to a large extent is based on the neo-liberal ideology of Hernando de Soto at Institute for Liberty and Democracy of formalising land properties. There has been a strong debate in Norway on de Soto's solutions for combating poverty through formalising the informal sector. His approach has been criticised on certain issues. We will only highlight two of several critiques here. Firstly, de Soto's model is too uniform. It does not address the different situation and needs of individual states. Secondly, the model does not take into consideration the existing power structures. In order to have an agrarian reform that contributes to the realisation of the right to food, power structures must be addressed. Productive and economic resources must be redistributed if the MDG are to be reached. By not addressing the power relationship in a given country, de Soto's model may contribute to maintaining poverty, and thus violate human rights.
44. We recognise the importance of formalisation and titling of land. But we do not see it as a solution to all land conflicts. If included in a more comprehensive agrarian reform, land titling can make a difference for a substantial number of people living in poverty. It is, however, essential to look upon formalisation and titling as possible means to realise the right to feed oneself, and not as means per se. Formalisation and titling of land must be embedded in an understanding that land is more than a mere commodity. Land has multifunctional meanings in economic, political and cultural sense. Further, owning land is not the only way of using land; there might be different rights of use for the same plot (such as tilling the land, fetching wood from the trees, fetching water from the river, crossing the land with your sheep – all this for different users). The overall objective must be the realisation of the right to feed oneself. If local culture, power structures and survival strategies are not adequately addressed prior to land titling, increased food insecurity might be the result. Collective rights to land are especially important in many local contexts and must therefore be taken into consideration.
45. If carried out, the High-level Commission on Legal Empowerment of the Poor must have as its priority a focus on realizing the basic human rights of the poor, and should particularly focus on food, water and shelter. An analysis of power and redistribution of land must be at the core of the commission's work. Related to this, the Commission should elaborate on how the international community can strengthen states' capacity to implement programmes securing everyone's right to food, water, shelter etc. The Commission must have a diverse composition and its work must include public hearings.
46. Recently the Norwegian government decided to support de Soto's model of formalising land ownership in Guatemala. In Guatemala landownership is highly skewed. About two percent of the land-owners control almost sixty percent of the land, whereas fifty percent of the land-holders possess only three percent of the land. It is essential that this inequality is addressed prior to a process of formalising land ownership. The Norwegian Government must therefore assess whether the approach adopted within de Soto's model takes into consideration collective land rights, rights of indigenous peoples and women's rights. Indigenous peoples and women's rights to land must be respected and protected against third parties. Community organisations, NGOs and scholars in Guatemala and in Norway must be invited to contribute to such assessment.
47. These concern which apply generally, are aggravated as a result of already undertaken agricultural sector reforms in many countries which have failed to take into account existing socioeconomic differences, and, as a result, rural poverty and inequality have increased.
48. Norway, as a major donor country, must actively promote the need for agrarian reform in the World Bank, IMF and UN bodies such as FAO. It is crucial that the poor, both women and men, are sufficiently empowered so that they may contribute to the negotiations. As a first step, already

existing legislation on land use and ownership must be identified. In many countries, such as Brazil, Philippines and India, agrarian reform programmes do exist, but are not fully implemented. In international forums, Norway can encourage IGOs and other donor countries to strengthen the implementation capacity of states.

49. Norway must criticise the World Bank for not having the poorest of the poor as their priority in their land reform policy²³. A land reform based on a willing buyer – willing seller, is not a rights based approach, since the focus is not on the victims of human rights violations, but on land markets. The World Bank policy on land reforms has directly and indirectly affected the ownership, control and use of productive land, and has further skewed the distribution of wealth and incomes in rural areas²⁴
50. The World Bank's and other international financial institutions' involvement in large hydropower projects has been criticised heavily in the past. Critics claim that the projects do not contribute to poverty reduction. In many cases they have actually lead to increased poverty and decreased sustainable development.²⁵
51. We will illustrate this by the example of Norwegian participation in a project financed by international financial institutions (IFI) on building a hydropower dam in Laos.²⁶ The first illustrative example is the dam construction by the Asian Development Bank²⁷ in Theun-Hinboun, which started in 1994.²⁸ Theun-Hinboun Power Company (THPC) is a joint venture between Electricité du Lao (Edl) (60%), MDX/GSM Thailand (20%) and Statkraft Norfund Power Invest (SNPI) (20%). SNPI is 100 % owned by the Norwegian Government. Among others the Norwegian aid agency NORAD contributed \$ 7 million to the project. Financing was also provided by Scandinavian export credit agencies. A Norwegian consultancy, Norconsult, made an Environment Impact Assessment (EIA) on the basis of which the project was approved, even though concern was raised that the project had failed to safeguard the interest of Laotian citizens.
52. In 1994, the Laotian Government signed a licence agreement with the THPC that limited the company's obligation to provide compensation and environmental mitigation to \$1 million. The amount was based on an assumption of minimal environmental impacts, as predicted in the original EIA by Norconsult. It was a so-called run of the river project and the people should get help to get

²³ Deininger, K. 2003. *Land Policies for Growth and Poverty Reduction. A World Bank Policy Research Report*. World Bank and Oxford University Press.

²⁴ See for instance the following:

Borras, Saturnino 2003. Questioning Market-Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa. *Journal of Agrarian Change*, vol. 3, N° 3, July 2003.

Deere, C. D. & M. León de Leal. 2001. *Empowering women: land and property rights in Latin America*. Pittsburgh, University of Pittsburgh Press.

FIAN & Via Campesina 2004. *Global Campaign for Agrarian Reform. Working document: Commentary on land and rural development policies of the World Bank*. Heidelberg, Germany.
<http://www.fian.org/fian/index.php?option=com_doclight&Itemid=100>

Syllow E. & M. L. Mendonca (eds). *The Destructive Agrarian Reform Policies*. Social Network for Justice and Human Rights. <<http://www.social.org.br/cartilhas.htm>>

²⁵ FIAN, 2004. *The World Bank's Influence on Mining Laws in Africa*. <www.fian.org>

²⁶ The projects have constantly been investigated by The Association for International Water and Forest Studies (FIVAS) and International River Networks. <www.fivas.org> and <www.irn.org>

²⁷ In the ADB Norway share a seat in the Board with the other Nordic countries, The Netherlands and Canada. In practice the Nordic group instruct the executive director jointly

²⁸ International Rivers Network. 1999. *Power Struggle. The impacts of Hydro-Development in Laos*. Inkwork Press, USA

an income, through new alternative activities. Norplan did a new environmental impact analysis in 1996, commissioned by NORAD. This analysis strongly criticised the project and revealed that the environmental mitigation costs would be much higher than originally envisioned. The first EIA analysis had not taken the people living downstream into consideration. These people experienced a loss in the fish catches of about 40-60 %, loss of riverbank vegetable gardens, loss of dry season drinking water sources and transportation difficulties. The dam was completed in 1998. Today thousands of Laotian citizens are still suffering from the harmful impacts caused by the project.

53. Norway is complicit in the consequences of Nam Theun. Firstly, NORAD supported the dam construction without considering the real impacts on human rights. Additionally, the Norwegian state plays a central role as the 100 % owner of Statkraft Norfund, which is part of the joint venture THPC. Also Norconsult which did the first and insufficient analysis was partly owned by Statkraft Norfund. Secondly, the Norwegian government is responsible for our vote in the board of the Asian Development Bank (Norway representing one constituency together with other Nordic countries plus Canada and the Netherlands) and other IFIs (Norway representing one constituency together with other Nordic and Baltic countries). In this case it seems clear that Norway contributed to the violation of the human right to food for the affected population in Laos. The Theun-Hinboun-project is an example which shows severe lack of understanding of the consequences connected to dam constructions. People lost their livelihood and there were no adequate resettlement programs.
54. Presently, a new hydropower project in Laos, the Nam Theun 2, is of interest. This is the first big dam project the World Bank have started for many years. The project is criticized for not having followed the strategic priorities in the report from the World Commission on Dams that was established by the World Bank itself.²⁹ Again there is a strong impression that business interests are given priority, whereas the consequences for the affected people and the energy needs of Laos are not analysed sufficiently. Nevertheless, the board of the World Bank agreed on March 31st 2005 to support the Nam Theun 2-project. There have been done more impacts analysis than ever before, but an analysis of Nam Theun 2's compliance with the World Commission on Dams (WCD) strategic priorities shows that the project fails to comply with six of the seven strategic priorities outlined in the WCD report.³⁰ Additionally, the Nam Theun 2 is undemocratic because the population has not been given the opportunity to decide if they want the project. Norway should not contribute to projects that are doubtful as regards human rights standard. There are also possibilities that contribution might make Norway responsible for human rights violations occurring as a consequence of the project.
55. The process ahead of the board meeting also lacks transparency. The Norwegian companies that are interested in the project will normally be given financial support from either Garanti-instituttet for eksportkreditt (GIEK) or from Eksportfinans.³¹ In advance of providing credit, the Norwegian credit agencies should make sure that serious studies have been done and that proper procedures will be followed. The projects should, first of all, have a human rights approach. In project where the Norwegian state or other Norwegian actors participate, there should be guidelines to protect and ensure the fulfilment of human rights. If the project fails, Laos must honour the loans contract, through debt servicing.
56. We will look into the Governments role in the World Bank's 'Inspection Panel'. The mining project in Jharkhand in India is a positive example where Norway, together with other countries of the North,

²⁹ World Commission on Dams. 2000. *Dams and Development. A New Framework for Decision-Making. The Report of the World Commission on Dams.* <www.dams.org/report/>

³⁰ Imhof A. & S. Lawrence, 2005. *An Analysis of Nam Theun 2 Compliance with World Commission on Dams Strategic Priorities. Executive Summary.* International Rivers Network and Environmental Defense.

³¹ Two Norwegian export credit agencies, Eksportfinans owned 20% by the Government and Garanti Instituttet for Eksport Kreditt (GIEK) (garantist) owned 100 % by the Government

have voiced concerns regarding the project. The case has been discussed in the Inspection Panel the spring 2005 and the case will be followed up the coming autumn.³² According to our information, Norway has expressed concern regarding the project, and hence contributed to the assessment by the Inspection Panel.

57. The case regards human rights violations victimising the people of Parej East in the coal mining areas of Jharkhand. Since the mid 1990s, the World Bank has funded this coal mining project which is implemented by Central Coalfields Limited, a subsidiary of the state-owned coal company Coal India Limited.
58. The World Bank has received massive complaints from the locals. We find the social and economic consequences for the local population have not been adequately addressed before the decision to fund the project, and the project has been carried out despite warnings and recommendations by local and international NGOs. The inhabitants of the mining area have been resettled involuntarily. Not only have they lost their homes, but they have also lost their sources of livelihoods, formerly guaranteed by usufruct rights to forestland. In November 2002, the World Bank's Inspection Panel released a detailed report on the occasion of a complaint filed by the project affected people: It observed that the affected people had received inadequate compensation and were therefore lacking natural resources for food production as well as access to clean water and land. The World Bank and Central Coalfields Limited have not properly implemented the Inspection Panel's recommendations for the compensation of the affected population, with regard to many crucial points. The Bank Management has not followed most of these recommendations.
59. The World Bank did not want to stop the project but instead give the affected parties compensation and proceed in accordance with the given procedures. The extent and nature of the Bank's involvement on this issue will be reassessed by September 30, 2005. This experience illustrates that Norway can use its influence and make a difference.

III 3. Norwegian participation in the World Trade Organisation

60. In theory, international trade will result in better availability of goods, and the utilisation of each state's comparative advantage. In practice, the relationship between trade and human rights is much more ambiguous, however. This is largely due to the fact that international trade rules and regimes do not leave the poorer states enough flexibility to implement their human rights obligations. Trade regulations make it difficult for weaker states to take the necessary protection and implementation measures.
61. Economic globalisation represents a challenge for ESC rights. The liberalisation of global trade within the regime of the World Trade Organisation (WTO) has a significant impact on small farmers in the South. In many cases, the population is exposed to high price fluctuations. Many small farmers in developing countries can no longer compete with subsidised imports from industrial countries. In this regard, international trade regulations represent a danger for the realisation of the right to food.
62. It is not always easy to adequately document coherence problems between the objectives of development policy and the objectives of other policy areas, such as trade. It can be difficult to prove the specific effects of trade, agricultural or fishing policy measures. These processes are normally complex with overlapping chains of cause and effect. When examining the impact of

³² See the document 2005-0033/2 of 5 April 2005 from the World Bank's Vice Director and Corporate Secretary: <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/statusonoutstandingissues04052005.pdf>>

international trade rules, the role of human rights is therefore to focus on clearly defined minimum standards in human rights law.

63. A main criticism against the WTO trade regime is the removal of tariff barriers for food imports and exports, parallel to allowing rich countries to maintain their export subsidies. This represents a double standard. The richer, mainly Northern countries have developed complicated systems allowing them to bypass WTO rules and maintain many agricultural subsidies. Developing countries on the other hand are effectively stripped of any possibility to protect its own vulnerable sectors. Southern countries have to open up their domestic markets to heavily subsidised agricultural imports from the North. The consequences can be devastating. Cheap food imports have often destroyed local production of important staple foods and have increased poverty and unemployment in rural areas. At the same time, only very few developing countries have been able to increase their food exports³³. Rather, the liberalisation of trade and the subsequent orientation of local agriculture away from food crops for domestic consumption towards export-crops or horticultural production lead to an increase in the concentration of agricultural land in the hands of wealthy landowners and multinational companies.
64. Norway should promote a model of trade that does not violate the right to food of small-farmers and other groups that are particularly vulnerable and exposed. In this endeavour Norway should build stronger alliances with least-developed countries. Elements of this policy were elaborated at a seminar in 2000,³⁴ but this initiative has not continued. A sustainable and equitable world trade regime implies that poorer states are given enough leeway to design and implement policies that favour local food production in accordance with international human rights law. We stress that the realisation of the right to food must be at the centre of any trade agreement in agricultural produce. Regulations must not contradict the human rights obligations of member states of the WTO. This report tries to assess whether or not the Norwegian policy in the WTO can lead to violation of human rights. As a premise, we acknowledge that Norway builds on a human-rights based approach to both development and trade,³⁵ while at the same time engages in trade policies that cause negative effects on human rights in other countries.
65. The Universal Declaration of Human Rights is part of the International Bill of Rights and Art. 28 assert that: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised". As a matter of course an adequate international social order also includes the trade and financial system. This is also repeatedly stressed in the human rights system of the United Nations. In its 2001 statement³⁶ the Committee for ESC rights focused on the fight against poverty. It argued that the lack of a fair multilateral order for trade, investment and financial systems represents a global structural problem to poverty reduction. In addition, the High Commissioner for Human Rights has highlighted the effects of the WTO TRIPS agreement on human rights in her report to the Sub-Committee for human rights. She stresses that it is of vital importance that the approach to WTO rules is based on the human rights.³⁷ International agreements should not restrict the state's scope to such an extent that the state no longer is able to implement its human rights obligations.

³³ See i.e. Lømo, A. & H. Eldby. 2004 *Ekspor av landbruksvarer: En vei til utvikling i Sør?* Occasional Paper #43. Institutt for sosiologi og samfunnsgeografi, Universitetet i Oslo.

³⁴ The Discussion Papers presented at the seminar were disseminated to the Committee on Agriculture as G/AG/NG/W/36/REV.1 (Note on Non-Trade Concerns by 26 countries as well as the European Communities)

³⁵ Report to the Storting No 35 and discussion paper 6 in G/AG/NG/W/36/REV.1

³⁶ Statement of the Committee for ESC rights on poverty has the UN document no. E/C.12/2001/10

³⁷ The Impact of the Agreement Trade-Related Aspects of Intellectual Property Rights on Human Rights, Report from the High Commissioner, E/CN.4/Sub.2/2001/13.

66. An example of an ambiguous position which Norway has taken is the discussions in the TRIPS Council. The government has been passive in the discussions in this Council,³⁸ and they have not used opportunities to present written proposals with constructive solutions. Norway has an outspoken policy to act as a bridge between North and South. This has not been the case with the TRIPS agreement. As one example, the wording of art. 27.3(b) opens for a *review* of the provisions of this paragraph. However, Norway together with the industrialised countries, and independently of the wording, claims that this only includes a review of the implementation.³⁹ By stating that art. 27.3(b) only can be read in this way, Norway contributes to a lack of necessary harmonisation between the TRIPS Agreement and the Convention on Biological Diversity and other relevant treaties. This is highly problematic given the important principle the Norwegian delegation managed to include in the Plan of Action from the World Summit on Sustainable Development.⁴⁰
67. The lack of support to the demands of developing countries in the TRIPS Council signifies that the Norwegian Government potentially restricts the possibilities of affected states to take effective measures to protect, respect and fulfil the right to food.
68. In the GATS negotiations Norway claims that a number of countries in the South should open their markets to services, such as higher education, telecommunication, environmental services (including water) and energy. As Norway presents demand to the same states with which there is an established extensive developmental cooperation, this becomes a delicate issue to which more attention should be devoted.

III 4. Norwegian companies abroad

69. Norwegian companies operating abroad are often competing with poor people regarding available resources, such as land or water. Since the rights of vulnerable people often are violated, Norwegian activities using resources in the South might be problematic. The host country's ability to fulfil its human rights obligations can be threatened.
70. Activities of Norwegian actors abroad are not adequately investigated regarding their possible impact on violations of ESC rights. The government has an obligation to protect, and this obligation may also extend to Norwegian actors abroad. In those cases where Norway provides direct support through export credit agencies, the Norwegian human rights obligations are even more evident.
71. For Norwegian companies involved in projects abroad, a human rights assessment should be made before they can receive support from export credit agencies⁴¹. It is particularly important to secure that the right to food is not violated with regard to dam constructions and other big infrastructure investments. If the export credit agency learns about human rights violations committed by a supported company, this should be considered as a breach of the export credit contract.
72. Approximately 40 % of the values in the Oslo Stock Exchange are state controlled companies. Therefore the Government can give clearer guidelines in order to influence the conduct of many Norwegian companies regarding human rights. State controlled companies should also act as a good example regarding human right awareness and promotion.
73. As part of its extraterritorial obligations, Norway has to respect human rights and adequately regulate private actors. The Government should provide sufficient and adequate monitoring, and

³⁸ An exception to this is Norway's oral intervention in the 43rd TRIPS Council meeting in 2004; see IP/C/M/43, paragraphs 51 through 54.

³⁹ See TRIPS art. 71.1, where both meanings of the term 'review' appears.

⁴⁰ See UN/CONF/199/20, particularly paragraph 98, but see also adjacent paragraphs..

⁴¹ Two export credit agencies, Eksportfinans owned 20% by the Government and Garanti Instituttet for Eksport Kreditt (GIEK) (garantist) owned 100 % by the Government

establish instruments of regulation to be able to observe the activities of Norwegian actors abroad. An ombudsman on corporations was proposed in 1999,⁴² but was not included in the Human Rights Plan of Action.⁴³

74. Most of the large Norwegian companies operate abroad. The Norwegian Ministry of Trade and Industry owns 79 % of the shares in Cermaq Group. Cermaq Group owns companies in Canada, Scotland and Chile, and is the world's leading actor on salmon production. Cermaq Group is also a leading actor on production of feeds for salmonids and other marine species. By the end of 2004, the company had around 3000 employees, more than 1000 of them situated in Chile.
75. The Cermaq Group owns Mainstream Chile. At a Mainstream factory in Port Montt, Chile, the workers have tried to establish a labour union⁴⁴. This has been opposed by the leadership, who have fired or transferred workers trying to organise. Also alarming is the security situation for the divers. Mainstream Chile has been heavily criticised by Chile's Labour Inspection Authority⁴⁵. Compared to companies in Chile, the Norwegian controlled company Mainstream Chile has historically had the lowest rate of unionists.⁴⁶ At request from the Ministry of Fisheries and Coastal Affairs, the Norwegian Embassy in Chile looked into this matter in 2001. However their report is not made available to the Norwegian public. Requests made by the Norwegian Confederations Trade Union to read this report have not been met.
76. The factory's policy regarding labour unions violates Article 8 of ICESCR. State controlled companies should promote rather than weaken people's rights in countries where they operate. We encourage the Government to act on this case as they have known about the situation since 2001. Cermaq's business in Chile should be opened to legal investigations.
77. Norwegian companies should not close down their business if violations of ESC rights are identified. They should rather be encouraged by the Norwegian Government to support economic and social rights where they operate. Moreover, the Government must actively provide information on the OECD Guidelines for Multinational Enterprises.

III 5. The Government Petroleum Fund

78. The Petroleum Fund's Advisory Council on Ethics was established November 19th 2004 by a Royal Decree. The Ethical Guidelines for the Government Petroleum Fund were issued the same day. The Ethical Council is under the Ministry of Finance and engaged to advise the Ministry.⁴⁷ It is positive that the Fund, as the third largest fund in the world, has ethical guidelines. The ethical guidelines are based on two premises. Firstly, the Government Petroleum Fund is an instrument to ensure that a reasonable portion of the country's petroleum wealth will benefit future generations. Secondly, the Government Petroleum Fund should not make investments that constitute an unacceptable risk of contributing to unethical acts or omissions (such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental degradation).
79. The ethical basis for the Government Petroleum Fund is supposed to be promoted through various measures. One is the exercise of ownership rights in order to promote long-term financial returns.

⁴² For the study elaborating on this, see <odin.dep.no/ud/mr/naeringsliv/KOMPakt/032111-990045/dok-bn.html>

⁴³ See <odin.dep.no/ud/engelsk/publ/ p10001859/032001-040007/hov001-bu.html>.

⁴⁴ The case of the Norwegian Cermaq Group's branch in Chile has been investigated by Future in our hands (Norwegian NGO) the Norwegian Confederation of Trade Unions and Thomas Ergo, journalist in Dagbladet, a Norwegian newspaper.

⁴⁵ I.e. report from the autumn 2003.

⁴⁶ In 2002 only 7 % out of 945 workers were organised.

⁴⁷ See footnote 14.

The exercise of ownership rights shall primarily be based on the UN's Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises. Another measure is exclusion of companies from the investment universe where there may be an unacceptable risk of contributing to, among others, "serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation", or "other particularly serious violations of fundamental ethical norms."

80. We find that the concretisation of what constitutes "serious or systematic human rights violations" is unfortunate and biased. The Guidelines should therefore be reviewed. The phrase "serious or systematic" must encompass violation of ESC rights, such as the right to food or the right to health. The Ethical Council should investigate all reports of alleged violations of such fundamental rights. When the conduct of a company implies that it is complicit in or contributes to human rights violations, the company must be excluded if it does not show necessary changes within a strict time limit. The Council can issue such recommendations to the Ministry of Finance, which can exclude one or more companies from the investment universe.
81. We are concerned about the Petroleum Fund's engagement in companies threatening the livelihood and the adequate standard of living in many local communities. We will use Aracruz Cellulose in the State of Espirito Santo in Brasil as an example.⁴⁸ The Norwegian state is a shareholder in the company through investments made by the Government's Petroleum Fund, as well as through the state controlled bank DnB Nor.
82. Aracruz Cellulose is the world's leading producer of bleached eucalyptus pulp, used to manufacture paper products. Aracruz's forestry operations involve 252,000 hectares of eucalyptus plantations. The huge plantations run by Aracruz Cellulose have, since they were established in 1972, caused major problems for the local inhabitants. Native Indians of the Tupinikim- and Guarani-tribes have been expelled from their indigenous lands due to the establishment of the eucalyptus plantations. They now live in a small reserve. Only four out of a total of forty original villages remain in this area today. The tribes' access to land is very limited. Since 1979, the Tupinikim and Guarani have been fighting for the recovery of their lands, a right guaranteed by the Brazilian Constitution.
83. The eucalyptus plantation seriously affects the variety of species in the area and the locals' access to clean water. The plantations are very water-demanding and Aracruz has illegally been tapping rivers that used to supply communities, to only guarantee enough water for its plants of cellulose. Application of agrochemicals contaminating the water sources of the communities has made even the small amounts of water left inappropriate for domestic use. Keeping animals larger than hens is impossible due to the lack of land and water, and thereby further restricting the communities' ability to feed themselves. Aracruz Cellulose has also promoted persecution by the police of the neighbouring populations. Many have been arbitrarily arrested, and by removing their only source of income Aracruz has made these people unable to feed themselves.
84. Norwegian investments in this company show a lack of mechanisms to prevent investments in companies violating human rights. The Norwegian Petroleum Fund should withdraw their investments in companies where fundamental human rights to food and water are violated.

III 6. Public procurement

85. Every year the Norwegian public sector purchases goods and services for NOK 210 billions. This constitutes 18 percent of the BNP. The public sector is therefore an important customer. Despite focus in private sector on corporate responsibility, the Norwegian public sector has no criteria regarding human rights for public procurement. This is objectionable, also in light of an EC directive

⁴⁸ Several NGOs are supporting the struggling people, i.e. FIAN

which made it possible for the public sector to do social priorities when making decisions on public procurement.⁴⁹

86. In the private sector there are at least voluntary guidelines.⁵⁰ For private companies some NGOs and the Labour Organisation jointly organised an Ethical Trade Initiative (IEH). The programme is voluntary. Private companies participate and receive advice on how to respect, protect and support the fulfilment of human rights when they do business abroad. For the public sector no such alternative exists, even though it is one of the biggest consumers in Norway. Rules on public procurement should be elaborated.
87. The private companies participating in the IEH are successfully doing business according to the ethical guidelines. Therefore, these experiences could be used to establish ethical guidelines for the public sector. If a contractor violates the guidelines it is recognised as a breach of contract. Such breaches can be discovered by doing spot tests. Several private companies are now doing research on their contractors. This can also be done by the public sector. The Government should use their ethical social focus to inform their contractor that they consider human rights violations as a serious matter. One main challenge is to improve the social standards through the focus on producers and workers rights. The public sector's contribution to better ethics in trade can make a significant change.
88. What the public sector aims to do needs to be concretised and cooperation between the ministries must be established. Civil society groups wanting contact regarding ethical questions at the governmental level have experienced problems getting in touch with the responsible ministry. A better organisational structure would make it easier to hinder denial of responsibility and further to place the responsibility with the correct governmental office. Additionally, as the different ministries have different policy, there is a need for an inter-ministerial initiative.
89. Regarding customer's rights, a new Act on Environmental Information (Miljøinformasjonsloven) was implemented in 2004. The Act gives customers right to receive the information they want on products from both public and private sector.⁵¹ Access to information on environmental issues was evaluated as an important aspect in itself in a transparent and democratic society. The right to information about production methods and conditions gives the customers a possibility to choose where to invest his or her money.
90. The same assessment can be done regarding human rights. This will concern individual's right to an adequate standard of living, including adequate food, shelter, as well as the right to health and rights relating to trade unions. Transparency enables the customers to influence and monitor business actors. It has been evaluated as an important and useful tool to strengthen the environmental policy, and there is no reason to believe that this aspect will be less meaningful regarding human rights. A new chapter on customer's right to information related to human rights should be included in the law on the right to environmental information. This will be an important initiative for more adequately tracing and documenting human rights violations, and hence contribute to their prevention. The new chapter should give the customer a possibility to ask where the product is produced, how it is produced, with the possibility to hold the corporations responsible for the production's impacts on human right.

⁴⁹ Directive 2004/17/EC and 2004/18/EC.

⁵⁰ Initiativ for Etisk handel (IEH), <www.etiskhandel.no>

⁵¹ Environmental Information Act of May 9th, 2003 No 31, <www.odin.dep.no/md/english/doc/regelverk/acts/022051-200017/dok-bn.html>

Part III

Recommendations for the Committee on the ESC rights

In this report we have made an assessment of Norway's extraterritorial obligations under the ICESCR. We hope this is a meaningful contribution to the work in the Committee.

A. In its concluding observations, the Committee should ask the government of Norway to add a specific chapter on extraterritorial obligations in its future reports to the Committee.

In this chapter Norway should submit:

- 1) an assessment of the outcome of its policies regarding access to resources affecting vulnerable people in other countries, i.e. policies for finance, aid, trade and agriculture;
- 2) an assessment of the outcome of its aid-policies, the influence of decisions of its export credit agency and its debt policy;
- 3) an assessment of its role in international organisations. Such an assessment must include possible conflicts between Norway's obligations under the ICESCR on the one hand and policies and programmes of the WTO, IMF, World Bank and other intergovernmental institutions on the other hand.

The overall objective of this endeavour is to establish a routine for States Parties to report on their compliance with international obligations.

B. The Committee should recommend the Norwegian Government to act concerning on the following issues:

- 4) To stop hunger and malnutrition is the first of the UN Millennium Development Goals. Norway's development cooperation should focus on measures to realise the right to food for all. Access to productive resources is essential in this regard. Agrarian reform is one important mean to realise the right to food. It is necessary to recognise that land is more than a mere commodity. An agrarian reform may include formalisation of land ownership, but this only one of many measures. Collective land rights must be respected.
- 5) If a High-level commission on Legal Empowerment of the Poor is established, the commission must have a diverse composition and broad public hearings must be held. The Commissions work must focus on the realisation of human rights, in particular the right to food. An analysis of power and redistribution of land must be at the core of the commission's work. In Guatemala, Norway must not initiate a formalisation program on land rights without assessing how this will impact on the unjust distribution of land, as well as the collective ownership of land.
- 6) The Government should support the follow up of the FAO Voluntary Guidelines on the implementation of the right to food. The guidelines must actively be used as a check-list in bilateral and multilateral cooperation, unilateral actions and aid situations. The importance of access to productive resources and agrarian reform must be highlighted. Norway should report on relevant activities and achieved progress to the FAO Committee on World Food Security (CFS), according to Section III para. 17.
- 7) Norway should increase its contribution to bilateral and multilateral development cooperation.

- 8) Norway must ensure that funds provided to IFIs, such as the World Bank and IMF, are not spent in a matter that violates human rights, especially the right to food.
- 9) Norway should be asked about its position in the World Bank's board concerning the Nam Theun 2-project. Prior to accepting such dam projects, the Government must ensure that the project procedures are in accordance with the Strategic Priorities from the World Commission on Dams. This has not been the case with the Nam Theun 2. Therefore Norway should not support this project, nor provide assistance to Norwegian companies through its export credits.
- 10) Norway should not pressure their partners in bilateral projects to open up their markets on services. This has been a problem in trade talks related to the GATS Agreement in WTO.
- 11) Norwegian embassies are the executive branch of foreign affairs in both bilateral and multilateral cooperation. Additionally, they act as advisers for Norwegian companies. Therefore at least one person at the embassies should have human right-competence.
- 12) Norway should more actively disseminate information on the OECD Guidelines for Multinational Companies, as well as its Norwegian contact point. Norway should also establish a broad-based commission with a mandate of assessing the possibilities of appointing an ombudsperson on extraterritorial obligations. The ombudsperson shall monitor Norwegian bilateral and multilateral engagements and Norwegian companies abroad. Norwegian companies should be encouraged to support the realisation of economic, social and cultural rights when they operate abroad. The government must investigate companies, such as Cermaq in Chile, when informed about human rights violations. Violations must immediately be stopped, preferably without withdrawing the company.
- 13) The investments by the Government Petroleum Fund should not be limited geographically. Investments should contribute to the progressive realisation of the right to food worldwide. We encourage the Ethical Council to exclude Aracruz Cellulose from the investment universe as they have impeded human rights for decades.
- 14) The Norwegian Government should elaborate rules for procurement in the public sector. Such rules will demonstrate that the Government is concerned with human rights. This will raise awareness in the Norwegian public sector regarding their choice of contractors.
- 15) The Government should add a chapter concerning human rights to the Norwegian Act on customers' rights regarding information on environmental issues. The chapter will be a useful tool to increase awareness of human rights violations related to production.