

The Battle of Horno

Wherever minorities suffer at the hands of weak, incompetent or corrupt government, or are threatened by unscrupulous commercial interests, often masquerading under the guise of the common good, Horno has for many years been a beacon of hope. Horno is a symbol for shortsighted, ineffective policies governed by vested interests, for constitutional safeguards negated by corrupt governance and an irresponsible judiciary. Horno is also a symbol for the necessity of sustainable, intergenerational environment and energy policies, for human and minority rights policies that are more than mere lip service. Above all, Horno is a symbol for immaterial values common to all peoples, priceless values that, once lost, can neither be replaced nor compensated.



The early medieval village of Horno (in the Sorb language: Rogow) has been part of the traditional settlement area of the Sorb people for the best part of a thousand years. Their Slavic ancestors settled in Lusatia (German: Lausitz), near the present Polish/Czech border, before Germanization. Of some 60,000 Sorbs, two-thirds are predominantly Catholic and live in the southerly State of Saxony, and one-third, predominantly Protestant and also known as Wends, living in the State of Brandenburg. The Sorbs have experienced the decimation of their settlement area

and the dissipation of their language and culture as a result of the ruthless strip-mining of brown coal (lignite) during the course of the last century.

In the period from 1945-1989, 73 Sorb villages were destroyed and their inhabitants resettled in high-rise tenements along with migrants from all corners of the German Democratic Republic (GDR), who had flocked into the Lausitz attracted by work in the brown coal mining industry. Through this brutal disruption of traditional rural life and the resulting enforced assimilation, Sorb culture was dealt an almost mortal blow.

In 1989, political metamorphosis in the GDR conveyed the promise that no further Sorb villages would be sacrificed to brown coal mining. Apart from energy imports and nuclear reactors from the Soviet Union, the GDR was completely dependent on brown coal strip-mining for the generation of electricity and heat. Quite different conditions existed on the West German energy market. The Sorbs, and in particular the people of Horno (who had been informed in 1977 that their village was to be resettled in 1996), renewed their efforts to ensure that no further Sorb villages be destroyed. Their expectations initially appeared to be well founded. The protection of Sorb settlements from further destruction by brown coal mining was enshrined in the new Constitution (Article 25) of the State of Brandenburg.

What they could not foresee, however, was that not only would brown coal mining and electricity-production in the Lausitz be shortly privatised, but also energy policy itself. The destruction of Horno and the resettlement of its inhabitants were stipulated in the purchase contract from 1994 for the mining company, Lausitzer Braunkohle AG (LAUBAG). Thereafter, LAUBAG and its new West German shareholders were able to dictate conditions to the State Government, whose Environment Minister would admit to Horno representatives in 1997: "I'm being blackmailed!"

The solution to the problem of the constitutional protection of Sorb settlements from further destruction was characteristic for the morally-bankrupt State Government, whose mendacious dealings with the people of Horno have consistently reflected the vested interests of the mining industry and the mining union. The lie was propagated that the destruction of Horno was necessary in order to save jobs in the mining industry. The truth is, that more than 90% of jobs in Lausitz brown coal mining in 1990 have since been lost in a never-ending process of rationalization that has had nothing to do with Horno.

The Brandenburg Government announced that Article 25 of the State Constitution protected the Sorb settlement area, but not the settlements themselves! Horno could therefore be sacrificed, and its inhabitants compulsorily relocated within the settlement area, without the State Constitution being contravened! This shameful

reinterpretation of the State Constitution clearly revoked the intention of its founding fathers, which was to protect Sorb villages from further destruction through brown coal mining; but this was the only argument the Government could possibly put forward when the matter came before the State Constitutional Court, as would inevitably happen. The Government thereafter pursued a steady build-up of political pressure to ensure that the State Constitutional Court judges – all nominated by the political parties and elected by the State Parliament (*Landtag*) – toed the line.

The fight to save Horno has never revolved solely around the 300 or so inhabitants of the village, contrary to the claims of the Government, LAUBAG and the mining union ("Horno or 70,000 jobs!"). The village of Horno, atop the Horno Hill and just 500 metres from the River Neiße and Poland), is the gateway to the area around the border-city of Guben, a region rich in lakes and forests that has up to now been spared the ravages of strip-mining. Respecting the integrity of Horno would protect the Guben region from devastation. Such a course would also provide the local population with some hope of economic recovery in the future. The city of Guben, for instance, with some 30.000 inhabitants in 1990, lost 10,000 jobs after German reunification to plant closures in the chemical and textiles industries. In the last ten years, Guben has also lost 20 per cent of its population, mainly young people who have left to seek work elsewhere.

Whereas it had been official GDR policy to sacrifice the whole region of south-east Brandenburg to strip-mining, the West German energy concerns were given a free hand to carve up the East German brown coal mining and electricity-generating industry in line with their own interests. Their main interest, of course, was in getting their hands on the high-voltage distribution grid.

Of the 17 strip-mines in operation in 1989 only four – three in Brandenburg and one in Saxony – were mining brown coal in the year 2000. In many traditional mining areas, strip mines – and the power stations they supplied – were closed down. In the case of the Greifenhain mine, where villages had already been resettled, 200 million tonnes of brown coal were still recoverable when the mine was prematurely closed down in 1994. West German mining executives had early access to the old GDR mining plans, and gave no consideration whatsoever to the possibility of saving the villages on the devastation agenda. Their attitude was clearly spelled out: If you're against the destruction of villages, then you're against brown coal, and if you're against brown coal you're in favour of the loss of jobs in the region. However, not jobs but profits were their real motive. Bypassing Horno, for instance, might mean that profits would be cut by 100-300 million DM spread over six years. As a result, no attempt at all was made by either LAUBAG or the

Brandenburg State Government to avoid the destruction of centuries-old settlements.

Furthermore, the West German mining executives who arrived in the Lausitz in the early 1990s patently knew nothing of the existence of the Sorb minority, whose traditional homeland had been systematically devastated in the course of the previous forty-five years of strip-mining. Local mining managers, on the other hand, were well aware of the problem (in 1992 the Jänschwalde mine was operating right in the middle of the Sorb village of Grötsch (Sorb: GroŸišco), causing unbearable hardship to the inhabitants), but their only interest was in the continuation of strip mining, at whatever cost. And politicians in the newly constituted Brandenburg Parliament (*Landtag*) turned a blind eye to the problem, in the hope of outlasting it. The outcome was, that while the Brandenburg Government was pushing through the new State Constitution with its unequivocal protection of Sorb villages, at the same time it was drafting brown Coal Plans that foresaw the destruction of Horno and other villages!

With the privatisation of LAUBAG in 1994 it was announced – and is maintained up to the present day – that five of the previous seventeen strip-mines would remain in operation in the long term. But, as with "job security", this too is a falsity. At a meeting in Potsdam at the end of 1993 between representatives of the State Government and the head of the Federal Government's *Treuhandanstalt*, respon-sible for the sale of the East German brown coal industry, it was agreed that only three strip-mines should have a long-term future. This agreement has never been officially acknowledged, to avoid arousing mining workers. Yet in the LAUBAG purchase contract of 1994, certain details of which have leaked out over the years, the new owners were given the option of rescinding on two of the five so-called long-term strip-mines. One of the five mines – the Reichwalde mine in the Saxonian part of the Lausitz – no longer produces brown coal and has officially been on "hold" since the late 1990s. A second mine – the Cottbus-North mine in Brandenburg – is expected to be closed down once the neighbouring Jänschwalde mine, now threatening Horno, has proceeded over the Horno Hill in the direction of Guben.

The Jänschwalde power station, that is supplied by the strip-mine of the same name, burnt 25 million tonnes of brown coal in the year 2000 and thus emitted 23 million tonnes of CO₂ into the earth's atmosphere. The reality of continuing "disemployment" in brown coal mining is amply illustrated at the Jänschwalde mine, where mining is totally mechanized, and no more than a handful of people are directly employed on site at any one time. Approximately 40% of LAUBAG employees work in administration, another 35-40%% in the service area (transport, drainage, maintenance).

Planning procedures for brown coal strip-mining are carried out on two levels: the mining company submits outline mining plans (*Rahmenbetriebspläne*) for each mine to the State Mining Office (*Oberbergamt*), which has to approve them within the terms of the Federal Mining Act (*Bundesberggesetz*). Bearing in mind that the *Oberbergamt* is subordinate to the State Ministry of Economics, it is not surprising that it effectively colludes with the mining company. This circumstance is regularly reflected in the public statements of its officials.

The second planning level concerns the integration of mining company plans into the State Government's regional planning. The appropriate authority in Brandenburg rests with the Environment Ministry, which oversees the activities of the responsible Brown Coal Committee (*Braunkohlenausschuss*), a regional, indirectly elected body responsible for drawing up a Brown Coal Plan for each mining site.

In 1994, Horno filed its first court suit against LAUBAG's outline mining plan for the Jänschwalde mine, which had been approved in 1993. In a scandalous disregard for the Federal Constitution, which guarantees the right to be heard at court, the Horno suit was ignored – also because of its political implications! – by the Administrative Court (*Verwaltungsgericht*) in Cottbus for five years, being finally heard, and dismissed, at the end of 1998.

Horno also filed suit in 1994 with the Brandenburg State Constitutional Court against the Brown Coal Plan for the Jänschwalde mine, which had been approved by the State Government the previous year. In June 1995, the Constitutional Court declared the Brown Coal Plan to be unconstitutional and thus null and void, because the plan foresaw the dissolution of the Horno municipality. For such an act to be executed against the express will of the village inhabitants, the Constitution requires a specific law to be enacted by the *Landtag*, which did not in fact exist. This was Horno's first major success in its fight to save the community.

Two years later, in June 1997, the Brandenburg Parliament enacted the so-called "Horno Law" (*Braunkohlengrundlagengesetz*), which robbed Horno of its municipal status and incorporated it into the neighbouring community of Jänschwalde. Up to this point, the Horno village council had steadfastly refused all demands to discuss resettlement, maintaining that the destruction of Horno was economically unnecessary, environmentally harmful and socially disruptive. This policy had proven most helpful to the Horno cause. But the "Horno Law" now forced Horno to give up its absolute refusal to consider resettlement, simply because the "Horno Law" not only dissolved the municipality, it also laid down a relocation site for "New Horno". The new site was just a few hundred metres from

the Jänschwalde power plant, and would have become mandatory were Horno not to choose an alternative site.

In a remarkable demonstration of discipline and leadership the Horno representatives – led by the indefatigable Bernd Siegert, who, with the overwhelming support of the villagers, has spearheaded the campaign to save Horno since 1990 – painstakingly carried out a number of polls of village opinion on the resettlement issue. The government poll, laid down in the "Horno Law", was initially boycotted; but with a view to keeping the community together, 60 per cent of the Horno people ultimately voted for a site 18 km south, near the town of Forst, as a "backup site", should resettlement prove to be unavoidable. A number of people did not want to relocate to Forst under any circumstances, choosing instead the town of Peitz for relocation. The LAUBAG Company, which for years had sought by all manner of means to split the Horno community and destroy the solidarity and resistance of the population, seized upon this opportunity to put pressure on those families not desiring to relocate to Forst, to sell out.

In the meantime, Horno had again filed suit with the State Constitutional Court against the Brandenburg Government's "Horno Law". Furthermore, one of the political parties in the Brandenburg *Landtag* – the Democratic Socialists (PDS), of whom a clear majority had rejected the "Horno Law" – also filed suit before the State Constitutional Court, claiming that the new law violated Article 25 of the Brandenburg Constitution ("Rights of the Sorbs"). The central argument on the Government's part was, as already mentioned, that the Brandenburg Constitution protected the Sorb settlement area but not the settlements themselves, and that the "rights of the Sorbs" were not subjective basic rights, but rather objective constitutional aims, similar to the "right to work".

Not only did the Constitutional Court have to decide the issue of Article 25; there was a clear constitutional requirement concerning the parliamentary passage of legislation. In short, the Court had to be convinced that during the legislative process all arguments pro and contra the proposed bill had been accounted for and "weighed up" fairly. This constitutional requirement, which is a central pillar of parliamentary democracy, gave Horno supporters considerable cause for optimism, since the entire legislative process had been little more than a farce. Before the Horno bill had even been brought before parliament, two of the political parties – the governing Social Democrats (SPD) and the Christian Democrats (CDU), who together commanded a large parliamentary majority – had publicly declared that they would vote in favour of the "Horno Law". In effect, the legislative process was a mere formality, numerous hearings conducted just for the record, the result a forgone conclusion. Such a procedure constituted a flagrant violation of the

constitution. The Constitutional Court judges could not fail to recognize what was going on.

Towards the end of the legislative process, a major scandal erupted involving the SPD parliamentary leadership, which, in open contempt of parliamentary procedures, was determined to prevent any development that might hinder passage of the Horno bill. The parliamentary Environment Committee had the task of supervising passage of the Horno bill through parliament; in particular, at the end of the legislative process, before the final vote in parliament, it had to draw all the strands of parliamentary inquiry together and make a recommendation to the *Landtag*. Shortly before the Environment Committee was due to vote on its recommendation, the SPD leadership got wind of the fact that a majority of Committee members would vote against the Horno bill, and that the Committee would therefore recommend to Parliament that the bill be rejected. The result was, that the day before the key Committee meeting the SPD withdrew those of its Committee members, who intended to vote against the bill and replaced them with "yes"-men. The SPD leadership had actually requested CDU leaders to do likewise, but the CDU leadership had rejected this out of hand. The following day the Committee then decided by a majority of six to four votes to recommend the acceptance of the Horno bill. This scandal of the manipulation of the Environment Committee was carried and criticized in all newspapers, and could not escape the notice of the judges of the Constitutional Court.

During the year between the passing of the "Horno Law" and the hearing of the PDS case by the State Constitutional Court, political pressure on the Court increased. The mafia-like alliance of compromised State politicians, an unscrupulous mining industry that had a hundred years of experience in West Germany of neutralizing and utilizing politicians, and a mining trade union that had traditionally worked hand-in-hand with mining industry bosses, seized every opportunity to insinuate, that the future not only of the mining industry, but also of the Lausitz region, and even of Brandenburg itself, depended on the destruction of Horno.

The Brandenburg Prime Minister, Dr. Manfred Stolpe - who had reneged on his 1992 promise to the people of Horno, that he would not act against their wishes - was particularly adept at cultivating feelings of dependence, at "pocketing" and manipulating those who found themselves within his sphere of influence or who sought his confidence. This talent he had acquired in former GDR times, when over a period of many years he had shuttled back and forth between the Protestant Church, which he served as President of the Consistory, and the Ministry for State Security (the "Stasi") for whom he was a trusted and highly-valuable informant;

and not only the President of the State Constitutional Court, Dr. Peter Macke, was under the "Stolpe spell".

The Constitutional Court convened on March 19th, 1998 for the public hearing of the PDS suit against the "Horno Law". Over breakfast that morning the judges were able to read newspaper reports on a demonstration held the previous day in Jänschwalde, a "human chain" from LAUBAG divisional headquarters to the power station: "5,000 miners – shoulder to shoulder" (*Lausitzer Rundschau*) "demonstrating for their jobs and the destruction of Horno" (*Berliner Morgenpost*).

At the beginning of the hearing a change in procedure was immediately apparent. The judge who had been chosen by the Court to formally prepare its opinion, and who would normally present the facts of the case at the commencement of proceedings, remained silent. In his place, the court president, Dr. Macke, presented the case. It was an ominous foreboding. The judge in question, the internationally renowned jurist, Professor Dr. Karl-Heinz Schöneburg, was the only one of the nine judges who was unquestionably qualified to illuminate the intention of the founding fathers of the Brandenburg Constitution, because he had been one of them! When the Court's judgement was then later released, it was painfully evident that Schöneburg's unique insights into the history and substance of Article 25 of the Constitution had been wilfully disregarded.

The Court had earlier announced its intention of hearing not only the PDS suit, but also, concurrently, the complaints filed by Horno and the DOMOWINA (Association of Lausitz Sorbs). Only on March 19th, however, did it become apparent that the court intended to rule on the question of Sorb constitutional rights without hearing the Sorbs themselves. The DOMOWINA had not been invited to attend the hearing. At the end of the day's proceedings the court President announced that the court's decision would be made known on May 14th. Following the hearing, however, lawyers representing the DOMOWINA strenuously protested to the court that the Sorbs had not been given an opportunity to present their case. As a result, a second public hearing was set for June 18th.

When the Court reconvened on June 18th, 1998 for the purpose of hearing representations from the Sorbs, its 130-page judgement had already been prepared. Ten hours of futile discussion ensued, in the course of which a representative of the State government announced to the court – waving a paper in his hand – that the previous day an agreement had been initialled by representatives of LAUBAG and VEAG on the one side and the State Government on the other, "guaranteeing 4,000 long-term jobs at the Jänschwalde complex – 2,500 at the Jänschwalde and Cottbus-North strip-mines and 1,500 at the Jänschwalde power station". It was the government's trump card, but Dr. Norbert Kirch, from the Ministry of Economics,

who played it, lied! An agreement – legally-non-binding and therefore worthless, as it turned out – had indeed been signed the previous day, but VEAG had not been a party to it! In fact, just a week earlier one of VEAG's directors, Dr. Dubslaff, had announced during a works meeting at the Jänschwalde power station, that in the long run only two-and-a-half times as many people would be employed at Jänschwalde as at the new power station at Schwarze Pumpe – where just 300 people were on the payroll!

In the early evening the Court announced its majority (7 to 2) verdict: The "Horno Law" did not violate the Brandenburg Constitution! Professor Schöneburg, in his minority opinion, described the court's decision as being "in violation of the Constitution". His voice trembling with emotion, he went on to say, that apart from himself, four other members of the Constitutional Committee that had formulated the Brandenburg Constitution were present in court that day, and that all shared with him the conviction that Article 25 of the Constitution was expressly intended to prevent the further destruction of Sorb villages.

Some time later one of the judges, Dr. Wolfgang Knippel, Vice-President of the State Constitutional Court, said of the Court's scandalous decision: "The important thing is that parliament remains capable of reaching decisions" (*"Das Wichtigste ist, dass die Politik entscheidungsfähig bleibt"*)! An incredibly comment – with which Knippel in effect disqualified himself from office – bearing in mind that the Constitutional Court had been called upon to rule on nothing less than the constitutional rights of the Sorb minority; its implication, of course, was that nothing in the Brandenburg Constitution was sacred, the Constitution being subordinate to political expediency.

People who are well acquainted with the President of the Constitutional Court, have remarked to the author of this *Paper*, that deep down he is torn apart (*"innerlich zerrissen"*) by the Court's decision. Rightly so! The President knows very well for what he and his colleagues are responsible: The Brandenburg legislature was white-washed, the Sorbs were betrayed and their constitutional rights trampled under-foot, and the people of Horno were left to their fate!

A revealing light was thrown on this infamous judgement by a decision of the Constitutional Court of the State of Saxony from July 2000 in a similar case: The village of Heuersdorf, near Leipzig, had, like Horno, fought for many years against devastation and enforced resettlement in the interest of brown coal mining. In March 1998, the Saxony *Landtag* passed the so-called "Heuersdorf Law", which robbed the community of its municipal independence and incorporated the 270 inhabitants into the town of Regis-Breitingen. Heuersdorf filed a complaint against the new law with the Saxony Constitutional Court, which in July 2000 declared the

"Heuersdorf Law" to be incompatible with the State Constitution, and thus null and void, necessitating the reinstatement of Heuersdorf's municipal independence. Of particular interest from the Horno point of view was the Court's reasoning for throwing out the "Heuersdorf Law":

The court explicitly criticized the bill that the government had put before the *Landtag*, which had "insufficiently taken account of changes made possible by the liberalization of the European electricity market, which had been evident at the time the bill was passed." The government's bill had been based in part "on the model of a closed utility market", a basic assumption that was "untenable". Increased electricity consumption in eastern Germany as a consequence of forecast economic growth – itself a matter of dispute between economists during the legislative process – "would not necessarily result in an increase in sales of VEAG electricity". What was missing in the government's bill – "an indispensable link" – was the prognosis that would justify the devastation of Heuersdorf. Not only had the consequences of the liberalization of the European electricity market been inadequately weighed up during the legislative process, but also the "uncertain chances of success regarding the introduction of an amendment to the Energy Economy Act, providing for the protection of brown coal production and brown-coal-based electricity generation".

(Shortly after the Constitutional Court in Saxony had announced its decision, the State Government summoned representatives of leading economic institutes to Dresden, asking each of them to prepare an expert opinion confirming the economic necessity of destroying Heuersdorf. Every one of these institutes declined to do so!)

Faced, as it was, with the self-same arguments, the Brandenburg Constitutional Court could and should have declared the "Horno Law" to be unconstitutional, quite apart from the question of Sorb constitutional rights! Throughout the two-year legislative process the Government had repeatedly argued – in the face of contrary findings voiced by a number of renowned economic experts, they themselves supported by a minority of politicians from all parties – that the liberalization of the European electricity market would have no ill-effect on the market for brown coal or electricity generated from brown coal, and that the above-mentioned amendment to the Energy Economy Act would produce the desired result, namely the protection of the brown coal market – which, in the course of events, it did not! The Government routinely rejected all expert opinion that would defeat its main purpose, namely the dissolution and devastation of Horno. The Government based its whole argumentation on the opinion of a single economic institute, which had been retained to provide the accommodating argumentation that the government required to achieve passage of the Horno bill. When Horno subsequently put the

same arguments before the judges of the Constitutional Court, the majority of them likewise turned a deaf ear to any reasoning that weakened the Government's case.

The Brandenburg Constitutional Court could and should have declared the "Horno Law" to be unconstitutional. There are two reasons, why it did not do so: Firstly, the political pressure in the conservative State of Saxony was less pernicious than in social-democratic Brandenburg. Secondly, the majority of the Brandenburg judges lacked moral and professional integrity!

In December 1998, thirteen Horno citizens, together with the DOMOWINA, the Association of Lausitz Sorbs, filed suit at the European Court of Justice for Human Rights against the German Federal Government, claiming violation of their rights under the European Convention on Human Rights. They maintained that there was no justification for the infringement of these rights, in particular not on grounds concerning the public good, because there was no urgent necessity for either the mining of brown coal under Horno or the production of electricity in the Jänschwalde power plant, that would legitimise the destruction of their home village of Horno. Furthermore, the supply of electricity would be assured and jobs not endangered by bypassing Horno.

In May 2000 the European Court rejected the Horno suit. The Court confirmed a serious encroachment on the rights of the Horno people, but denied a violation of their human rights, because the Federal Government justified the devastation of Horno as being necessary to protect the well being of the State of Brandenburg. The Court also judged the encroachment on the human rights of the Horno people to be reasonable, because they had been offered resettlement as a community just 20 kilometres away. So far as the property rights of the Horno people were concerned, the Court referred to legal processes before German courts, concerning expropriation, which were not yet exhausted. The Strasburg decision was a bitter blow for the people of Horno, especially because the Federal Government's response to the Horno suit had done nothing less than condone the Brandenburg Government's entire handling of the Horno dispute. So far as the property rights of the villagers were concerned, the Court's reasoning took no account of a key tactic on the part of both LAUBAG and the State Government, which was to force through the resettlement of Horno before the residents could fight against expropriation in the Courts.

Three months after the Constitutional Court decision from June 1998, the Brandenburg Government, as expected, passed a new Brown Coal Plan for the Jänschwalde mine. This time, in order to illustrate that it was not only Horno that had a vital interest in halting the Jänschwalde mine, it was the village of Grieben (Sorb: Grešna), 2 km to the north of Horno, which filed suit with the State

Constitutional Court. The threat to Grieben posed by the Jänschwalde mine is in a way even greater than that for Horno; for it is planned to narrowly bypass Grieben with the strip-mine, with the effect that the village with its two-hundred inhabitants will be forced to live in a narrow corridor between the strip-mine to the west and the River Neiße and Poland to the east. The Jänschwalde Brown Coal Plan is Grieben's death certificate. If the mine proceeds over the Horno Hill, Grieben will wither away, its inhabitants forced to leave their homes without any form of compensation, and without even the "opportunity" of resettlement. This was the basis of the Grieben lawsuit, but it was also claimed that the State Government's Brown Coal Committee was not democratically empowered, the Government having usurped the power of Parliament.

In June 2000, the State Constitutional Court granted the Grieben claim and declared the second Jänschwalde Brown Coal Plan to be unconstitutional and thus null and void, on the grounds that the democratic legitimisation of the Brown Coal Committee was inadequate. The Court failed to rule, however, on the vital question of whether the brown coal plan infringed Grieben's constitutionally guaranteed right of self-determination.

As a result of this latest ruling, in the absence of a legally binding Brown Coal Plan for the *Jänschwalde* mine, there is no legal basis for either the resettlement of Horno or the effective isolation and slow death of Grieben. It is the Horno viewpoint, that without a legally binding Brown Coal Plan, which takes account of constitutional provisions concerning Sorb settlements and regulates the expulsion and resettlement of the people of Horno, LAUBAG's outline mining plan is without legal basis. The problem is, that the scandalously-long delays in dealing with cases before the Administrative Court – the Federal Constitutional Court in Karlsruhe has described such delays as unconstitutional, because the constitutionally guaranteed right access to court is violated – effectively deny the people of Horno the right of having this matter decided at the highest level, the Federal Administrative Court (*Bundesverwaltungsgericht*).

The Administrative Courts bemoan their high workload and complain that they need more judges. This is undoubtedly true, but not the whole answer. When one considers that it took five years for the Administrative Court in Cottbus to hear Horno's suit against LAUBAG's outline mining plan, it is interesting to reflect upon the fact that after the CDU was fined 41 million DM by the President of the Federal Parliament (*Bundestag*) in 2000 because of illegal financial transactions, the appeal filed by the CDU with the Berlin Administrative Court was heard and decided within a couple of months! The Brandenburg Government, which has not only refused to appoint urgently-required additional judges, but even plans to reduce their number, is of course quite happy with the situation that its policies, such as in

the case of Horno, cannot effectively be challenged at court. The President of the Brandenburg State Constitutional Court, Dr. Peter Macke, described the situation in an interview with the *Berliner Zeitung* on March 10th, 2001 as follows: "In no other *Land* in the new federal *Länder* [formerly the GDR] is the judiciary treated so badly as in Brandenburg". The State of Brandenburg was "threatened with a judicial crisis".

In the meantime, the Brandenburg Government has been working for a year on new legislation to comply with the Constitutional Court's ruling, and sometime in 2002 a Brown Coal Plan for the Jänschwalde mine will for the third time be declared to be binding by the State Government. Under the proposed new law, however, parliament would delegate the decision on whether or not the resettlement of villages is "unavoidable" to the government, in contravention of the established legal principle (in German: *Wesentlichkeitsprinzip*), that far-reaching political decisions have only to be taken by elected representatives. As soon as the government again passes the Brown Coal Plan, Grieben will once more file suit at the State Constitutional Court.

At the Administrative Court in Cottbus a Horno resident is fighting the compulsory acquisition of his woodland by LAUBAG. He has also filed suit at the Federal Constitutional Court in Karlsruhe against the decision of the Brandenburg Administrative Appeal Court, which annulled the temporary injunction order granted to him by the Administrative Court in Cottbus in August 2000.

Since 1994, when suit was first filed with the Administrative Court in Cottbus against the Mining Office's approval of LAUBAG's outline mining plan, the Horno people have claimed violation of their property rights under the Federal Constitution. The Administrative Courts – that have a notorious reputation in Germany for their industry-friendly interpretation of federal mining law – have consistently refused to acknowledge that the outline mining plan impinges on the property rights of people threatened by the operation of the respective mine. The courts have routinely adopted the expedient view, that approval of the outline mining plan does nothing more than confirm the proposed operation of the strip-mine within certain geographic parameters – in the case of Horno, the running of the *Jänschwalde* mine over the Horno Hill with the resultant destruction of Horno – and does not entitle the mining company to destroy property in the path of the proposed mine, for example private property in Horno. This attitude circumvents the reality of the situation facing the people affected. The argument is, that it is not the outline mining plan that embodies the ultimate threat to private property – in Horno – but rather the subsequent technical plans to be submitted by LAUBAG, each covering a two-year period. Thus, it is only the LAUBAG technical plan for 2004/2005, detailing the destruction of property in Horno, which would open the

way for legal redress against expropriation. Before then, the people of Horno have no way to initiate legal proceedings against expropriation; the first step lies with LAUBAG!

Yet in fact, LAUBAG's outline mining plan for Jänschwalde from 1992, approved by the State Mining Office, foresees the destruction of Horno and the resettlement of its inhabitants. Furthermore, this mining plan formed the basis for all subsequent State Government plans and decisions – including the Jänschwalde Brown Coal Plan and the "Horno Law" – concerning the expulsion of the Horno people from their homes and village. Most important of all, approval of the outline mining plan is the first major move in the mining company's plan to cajole and demoralize people living in the path of the strip-mine; it is the opening shot in a campaign of psychological warfare, whose intention it is to drive people out of their homes and villages.

In 2000, the electricity utility VEAG was effectively bankrupt, having spent 16 billion DM since 1990 on the construction and modernisation of brown-coal-burning power plants in eastern Germany, which only aggravated excess capacities on the electricity market. VEAG's difficulties also had an adverse impact on the LAUBAG Company, which sells nearly all its brown coal to VEAG, and in the year to June 2001 posted an operating loss for the first time since privatisation in 1994. Furthermore, the Federal Cartel Office had ordered the major West German utilities to sell their interests in brown coal mining and electricity generating in the Lausitz. The search thus began for a buyer for LAUBAG and VEAG, with the intention of creating a "new, fourth force" in the German energy sector.

Towards the end of 2000 LAUBAG and VEAG were bought by the Hamburgische Electricitäts-Werke (HEW), whose controlling shareholder (71.3%) is the Swedish state-owned utility VATTENFALL. For a total purchase price of just 2.9 billion DM, VATTENFALL acquired the whole of VEAG, including "the world's most modern" brown coal power plant at Schwarze Pumpe on the Brandenburg/Saxony border, the entire East German high-voltage distribution grid, with LAUBAG thrown in for free.



Horno, Autumn 2001

LAUBAG mining excavators, approaching from a southerly direction, are now only 1,200 metres from Horno village. The Horno Hill is being dug up from under the feet of the Horno people, land and woodland in the hands of Horno families for centuries has been compulsory acquired and



destroyed. LAUBAG is systematically destroying the whole area between Horno and the mining site – every single tree! – in an all-out attempt to cajole the Horno people into finally accepting the inevitability of resettlement. Road access to the village is now also partly blocked; when the Horno people have to travel to Forst in the south, they must now drive through the neighbouring village



of Griefen, two kilometres to the north and then continue on the Horno bypass road. Behind this LAUBAG onslaught is a simple strategy: If the people of Horno succumb to the pressure of compulsory resettlement, they will have to dispose of their property to LAUBAG and rebuild their homes at the new site. They will not be able to build houses in Forst and at the same

time retain ownership of their property in Horno in order to fight against expropriation in the courts at a later date. LAUBAG will have achieved its aims without the risk of losing expropriation cases in the courts. Effectively, the Horno people are being robbed of their constitutional property rights with the connivance

of both the government and the judiciary. This is the point that Horno has now put to the Federal Constitutional Court.

Despite the fact that LAUBAG mining excavators are within sight and earshot of Horno, the courageous villagers have not lost hope of saving the village. The sixty families, who have chosen Forst as a "security site", fully support the strategy of the village council under Bernd Siegert, namely, to continue to fight to save Horno, while at the same time securing the best deal for the Horno community should all efforts to save Horno fail.

A year ago, at the end of 2000, Horno appointed a renowned Berlin lawyer to protect their interests and negotiate with LAUBAG an "outline agreement for a possible resettlement" – in fact an immoral contract for compulsory resettlement! – at the site in Forst. The first part of the contract, in which the entitlement of private householders to particular plots of land at the Forst site are secured by means of a preliminary reservation in the land registry that commits them to nothing, has been initialled. The second part of the contract, dealing with community buildings and related municipal matters, is currently being negotiated. If it comes to compulsory resettlement, the people of Horno have forced LAUBAG to accept a one-to-one, new-for-old exchange of properties. And – for the first time in the deplorable history of the destruction of villages for brown coal mining in Germany – a real new village will have to be built. But that stage has not yet been reached. **The fight goes on!**

Horno Alliance campaign in Sweden.

In February 2001, the Horno Alliance published an "International Appeal for Support" on the Internet, calling for letters protesting the compulsory resettlement and destruction of Horno to be sent to the President of VATTENFALL, Lars G. Josefsson and Prime Minister Göran Persson. Around the same time, Michael Gromm wrote to Lars G. Josefsson, advising him to compare the real costs of having the mine bypass Horno with the enormous loss of reputation and goodwill his company would suffer if it decided to proceed with the compulsory resettlement and subsequent destruction of Horno.

In view of Sweden's reputation for environmental protection and human rights, the Horno people hoped that VATTENFALL would live up to its own ethical standards, as expressed in its environment policy – *"We protect nature and focus on human health and safety. In accordance with our core values, our actions are characterized by respect for the cultures, customs and values of the countries where we operate"* and save Horno.

In June and August 2001, Horno Alliance spokesman Michael Gromm travelled to Stockholm for discussions with three of the political parties represented in the

Swedish Parliament (*Riksdag*). At this time, there was very little awareness in Sweden either of VATTENFALL's involvement in brown coal strip-mining in eastern Germany, or of the threat to Horno, or even of the existence of the Sorb minority and the wholesale destruction of its traditional settlement as a result of brown coal strip-mining. The word Wend, however, has existed in the Swedish language for over 400 years; from 1540 to 1973 Swedish kings had the official title "*Svea, Göta och Wendes Konung*" – King of the Swedes, the Goten and the Wends! In discussion with the political parties it was decided to hold a hearing of Horno representatives in the Swedish Parliament in September 2001.

At the end of June, Michael Gromm caught up with Lars G. Josefsson – who had refused to meet him in Stockholm earlier that month – at a press conference in Berlin, where he asked the VATTENFALL president whether he was not prepared to launch the new "fourth force" on the German energy market with a new policy decision incorporating the strategic decision not to compulsorily resettle the Horno people and subsequently destroy their village. Josefsson replied, that this was a "German problem ... a long way from us up in the north". In previous statements to the press, he had also said that VATTENFALL would not involve itself in the day-to-day business decisions of its German operating companies. In the course of the following three months, as the pressure grew, this attitude would change. Horno quickly became a Swedish problem, and statements by Josefsson and Swedish Government Ministers changed accordingly. Senior Government officials also voiced their concern in conversations with MPs that Sweden's reputation would suffer as a result of "this VATTENFALL-Horno matter".

On September 27, 2001, a Hearing of representatives of the Horno Village Council and the Sorb Council at the Brandenburg State Parliament (Landtag) took place in the *Riksdag*. The Hearing had been initiated by MPs from five of the seven political parties in Parliament: Ewa Larsson and Ingegerd Saarinen from the Green Party (*Miljöpartiet de gröna*), Eva Flyborg from the Liberal Party (*folkpartiet liberalerna*), Åke Sandström, Center Party (*Centerpartiet*), Inger Strömbom, Christian Democrats (*Kristdemokraterna*) and Sture Arnesson, Left Party (*Vänsterpartiet*).

During the three-week period before the hearing, the two largest daily newspapers in Sweden – *Expressen* and *Aftonbladet* – devoted altogether nine pages to reports on VATTENFALL and Horno, which were all highly critical of Vattenfall's involvement in brown-coal strip-mining in eastern Germany in general, and in particular of the planned compulsory resettlement and destruction of Horno.

On October 5, 2001, the same group of MPs introduced a cross-party motion into the Swedish Parliament [LINK]. The draft resolution proposes:

"Parliament resolves, that the Government order Vattenfall AB by means of a shareholder's directive to fulfil its own environment-related ethical principles and thus save the officially listed and protected Sorb village of Horno in eastern Germany and prevent the compulsory resettlement of its inhabitants."

Green Party MP Ewa Larsson also brought a further individual motion before Parliament, proposing that Parliament convey to the Government its opinion that Sweden not involve itself in brown coal strip-mining in Germany.

It is not yet known when the Swedish Parliament will vote on both motions. The five political parties – including the Green and Left Parties that are part of the present Government coalition – have 136 (38%) of 349 seats in Parliament. The remaining two parties are the Social Democrats (*Socialdemokratiska arbetarepartiet*) with 131 seats, and the Moderate Party (*Moderata samlingspartiet*) with 82 seats.

On October 18, 2001, Swedish Prime Minister Göran Persson gave a lecture at the Humboldt University in Berlin on "European Challenges – the Swedish perspective". Following his talk, he was asked by Michael Gromm, firstly, if his Government regarded the activities of Swedish state-owned companies on the global market with indifference, and secondly, if he was conscious of the fact that the morally-reprehensible compulsory resettlement of the Sorb village of Horno will not only ruin Vattenfall's reputation but also considerably damage Sweden's reputation for environmental and human rights protection. Prime Minister Persson replied as follows: *"We are aware of this matter. We take it seriously; there was a meeting with the village in the Swedish Parliament a couple of weeks ago. We are watching the situation closely."*

On November 18, 2001, Ewa Larsson (Green Party) and Sture Arnesson (Left Party) will be visiting Horno.

The first stage of the Horno Alliance campaign in Sweden has been highly successful. Within the space of just three months, the Swedish population has been made well aware of the threat to Horno, and thus of the threat to Sweden's reputation. Following the Hearing in September, media interest has continued. A Swedish TV team visited Horno in October, and its report was shown early in November in a major news programme, together with interviews with Prime Minister Göran Persson and Industry Minister Björn Rosengren.

The pressure on both VATTENFALL and the Swedish Government must now be intensified. Now, in mid-November 2001, the second stage of the Horno Alliance campaign begins.

Michael Gromm

Horno, November 2001