



RIGHT TO FOOD
AND NUTRITION
WATCH

Claiming
Human Rights

The Accountability
Challenge

2011

IMPRESSUM

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LIST OF ABBREVIATIONS

ANoRF	African Network on the Right to Food
CAP	EU Common Agricultural Policy
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
CSO	Civil Society Organization
EC	European Commission
EPA	Economic Partnership Agreement
ESCR	Economic, Social and Cultural Rights
ETO	Extraterritorial Obligation
EU	European Union
FAO	UN Food and Agriculture Organization
GDP	Gross Domestic Product
GMO	Genetically Modified Organism
IAASTD	International Assessment of Agricultural Knowledge, Science and Technology for Development
ICARRD	International Conference on Agrarian Reform and Rural Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFPRI	International Food Policy Research Institute
IMF	International Monetary Fund
MDG	Millennium Development Goal
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	UN Office of the High Commissioner for Human Rights
PRSP	Poverty Reduction Strategy Paper
SCN	UN Standing Committee on Nutrition
TNC	Transnational Corporation
UN	United Nations
UNICEF	UN Children's Fund
WFP	World Food Programme
WHO	UN World Health Organization
WTO	World Trade Organization

PREFACE

The development and recognition of human rights are the outcome of centuries of struggles. People at risk, threatened or affected by violence, hunger, torture or discrimination, are the first and most important shapers of what is known and recognized today as human rights. Human rights have been instrumental in people's struggles, which have been reciprocally instrumental in the development of human rights standards.

This dialectic relation is also evident in the case of the right to adequate food: hundreds of millions of people at risk, threatened and affected by hunger and malnutrition, are struggling daily to survive, to somehow procure a proper meal for themselves and their family, to find a way out of poverty. Most of them do not know about their rights, or about the state's obligations to respect, protect and fulfill human rights. Most of them do not believe in the realization of these rights, and can in fact demonstrate from their own experience that their authorities have never cared about state obligations under international human rights law. After decades and centuries of discrimination and exclusion, why should the hungry suddenly believe that state authorities will perceive them as rights-holders?

The first and most crucial step in the promotion and protection of human rights is for victims of human rights violations to claim their rights, and to do so because they believe that these rights are real, and that these rights can make a difference in their daily struggle. If the right to adequate food is not useful to them, it will become irrelevant. The abstract concept of the right to food may look attractive in political and academic discourse and publications, but if it is not put into practice through the claims of rights-holders, the concept has little value. Human rights can significantly empower people, but only when they decide to use the human rights argument in their struggle.

From a human rights perspective, the causes for the protracted global food crisis can be seen as rooted in international and national public policies which have failed to meet obligations under the human right to adequate food. These policies, linked to the dominant development models, have neither prioritized people's access to the natural, financial and public resources required to produce food, nor to the jobs or income people need to adequately feed themselves and their families with dignity.

During the last 25 years, the human right to adequate food has undergone a staggering evolution. From being all but unknown to most people, it is now recognized by the United Nations (UN) and national constitutions. Some national governments consider it a cornerstone of food security and nutrition policies, and it has been incorporated as an essential standard in the political agendas of civil society organizations working for a world free from hunger around the world. Many organizations and movements have taken up the right to food as one of their political banners. However, world hunger figures show that the realization of the right to food has not advanced.

What, then, is missing? We believe that the gap or missing link between people's struggle for their rights and the increased recognition of the right to food approach in political agendas, is the lack of accountability for the realization and protection of the right to adequate food. If duty-bearers cannot be held accountable for performing in accordance with their obligations, this right cannot be enforced, and if a right cannot be enforced, it can no longer be called a right. If duty-bearers ignore their obligations and can commit human rights violations with impunity, these violations will most probably be repeated over and over again. This is why chronic hunger persists in a world of plenty.

It is precisely the persistence of gross violations of the right to food at the global level and

the near-total impunity enjoyed by their perpetrators which constitute the common concern of many movements and organizations engaged in the global right to food struggle. The challenge at hand is thus to promote and scale up accountability for the right to adequate food at all levels, and it is a challenge no single organization can tackle alone. All organizations and movements committed to this common goal must join forces in order to address it. *The Right to Food and Nutrition Watch 2011* is meant to make informed and substantial contributions to this process.

As publishers, we are proud that this year, three new organizations have joined the Right to Food and Nutrition Watch Consortium: the International Indian Treaty Council, the US Alliance for Food Sovereignty and the International Centre Crossroad (Crocevia). We are currently discussing ways to further strengthen and broaden networking around the common purpose of fostering right to adequate food accountability, with *the Right to Food and Nutrition Watch 2011* as an essential communication and monitoring tool.

The Watch Consortium would like to thank all who contributed to this issue. We deeply appreciate the insights of the authors who made this publication a success. A special thanks goes to the Watch coordinator Léa Winter for her intense and excellent work, and to the highly committed editorial board composed of Anne Bellows, Saúl Vicente, Maarten Immink, Stineke Oenema, Biraj Patnaik, Fernanda Siles, Sara Speicher, Bernhard Walter, and Martin Wolpold-Bosien. We would also like to highlight the support of Alex Schürch who served as assistant to the coordinator. We are likewise grateful to the other members of the Watch Consortium for their valuable contributions to the design and content of the publication.

Yours sincerely,
Stineke Oenema, ICCO
Flavio Valente, FIAN International
Bernhard Walter, Brot für die Welt

INTRODUCTION

People's movements all over the world are struggling for their rights, for social justice and against exclusion and discrimination. However, states and inter-state actors have all too often tried to avoid being held accountable for their policies and programs, actions and omissions. Accountability is currently the most pressing challenge in the struggle for the right to food and nutrition. Without a clear accountability mechanism, declarations of political will to fight hunger and malnutrition remain ineffective. Human rights and states' obligations are two sides of the same coin: without accountability there can be no enforcement of human rights principles, and consequently, human rights are not realized. Even worse, it is the lack of accountability that allows for the impunity of human rights violations, resulting in violations occurring over and over again.

As world hunger figures show, the realization of economic, social and cultural rights (ESCR), especially the right to food and nutrition, has hardly advanced. Realization of human rights depends on two main factors: people's capacity to claim their rights, and the states' capacity to comply with their obligations under international human rights law. Promoting human rights above all means strengthening people's capacity to hold state actors accountable, as well as pressuring state actors to assume accountability for their human rights obligations.

It is crucial to ensure physical and economic access to adequate food and nutrition in a dignified manner for every individual. The only way to reach this objective is through the development of strategies that take into account the principles of human rights and, in particular, involve the participation of the most affected people in the decision-making and implementation phases. In order to increase the accountability of duty-bearers, every person who knows that their right to food and nutrition has been violated must have access to legal recourse and receive support in claiming their rights.

Article 1 provides an overview of the different ways of claiming the right to food and nutrition. These strategies are further developed in the following articles.

Based on an interview with Henry Saragih, General Coordinator of La Via Campesina, article 2 describes how a social movement which has historically used a more direct, action-based approach is progressively developing a two-level strategy, incorporating the lobbying of governments at all levels, including at the United Nations. In 2009, the peasant organization adopted the *Declaration of Rights of Peasants – Women and Men* calling for provisions and mechanisms to address rights violations and discrimination against those who produce most of the food consumed in the world, but who are at the same time the most affected by hunger and malnutrition.

Article 3 explores the relation between women, nutrition and the right to food. Women are recognized as the key to household food security. However, gender discrimination has been associated with hunger, food insecurity, malnutrition and social instability. The article calls for the immediate inclusion of indicators to monitor specific risks encountered by women when attempting to fulfill their human right to adequate food and for the recognition of their capacity to claim their human rights as equal individuals with freedom and dignity.

Significant progress has been made on the ESCR justiciability front, especially regarding the right to food. As article 4 reviews several important decisions taken over the past years in India, Brazil and Colombia regarding the right to food, article 5 discusses the many barriers that still prevent the most vulnerable people from claiming their right to food effectively.

Historically, the chain of accountability from donor agencies to partner governments and from there to the citizens of recipient and donor countries has been weak. Article 6 makes clear recommendations to donor agencies for assessing right

to food and nutrition accountability. These recommendations mainly relate to the application of the human rights-based framework. The article provides a checklist of the issues that need to be assessed by donors as well as critical analyses of the recent Scale Up Nutrition Initiative (SUN) and of the use of therapeutic food for the prevention of malnutrition.

In an ever more interconnected world, people in one country increasingly face acts and omissions of governments of other countries that impact their enjoyment of human rights. Article 7 explores the definition and the jurisprudence of extraterritorial obligations (ETOs) of states and private actors, as well as civil society efforts to formalize them.

As with the previous edition of *the Right to Food and Nutrition Watch*, the second section of the publication is devoted to the monitoring of state compliance and social struggles at country and regional levels. This section has been organized this time by region and provides a special focus on the right to food and nutrition accountability situation in 15 countries.

The article on Latin America and the Caribbean offers the perspective of a Bolivian network of NGOs on the obstacles to the justiciability of the right to food and nutrition in their country; an analysis of the changes which occurred after the inclusion of the right to food in the Ecuadorian Constitution; an update on the violent ongoing conflict around the Marlin mine in Guatemala; an assessment of the right to food and nutrition situation in Haiti after the January 2010 earthquake; and an abstract of the fact-finding mission report on Honduras, which investigated the persecution of peasants in the Bajo Aguán valley.

Recently two European countries, Germany and Switzerland, had to report to the Committee on Economic, Social and Cultural Rights (CESCR) on the progress accomplished in the implementation and enjoyment of these rights in the respective countries. Article 9 provides a summary

of these sessions with a special emphasis on the recommendations made to each country by the Committee. In addition, the article includes a critical analysis of the European common agricultural policy with a special emphasis on its lack of transparency, especially regarding information on financial matters.

The article on Africa reports on the legal framework related to the right to food and nutrition in Togo and Niger, and on the different actions that can be undertaken by civil society to increase the accountability of their states. It also provides an update on the situation of victims of forced eviction in Uganda and their experience in using the OECD Guidelines for multinational enterprises in demanding accountability. In addition, this article assesses Cameroon's progress and challenges in advance of its presentation to the CESCR.

The last article focuses on right to food and nutrition accountability in Asia. Through the examples of China, Malaysia, Nepal and Pakistan, it offers an overview of the accomplishments and challenges faced by civil society in the region. Though the Supreme Court of Nepal recently made a landmark decision in favor of the justiciability of the right to food, farmers in China are still struggling to see their right to land respected. In Malaysia, the palm oil industry threatens the basic rights of indigenous communities, while in Pakistan, civil society is pushing for the development of a legal framework to hold the government accountable for fulfilling its people's right to food.

The members of the Right to Food and Nutrition Watch Consortium hope that this 2011 edition will provide insightful information to the people engaged in right to food and nutrition work. Though each country may be unique, sharing our experiences can enrich and inspire us in our own struggles to make the right to food a reality for all.

The Editorial Board of the *Watch 2011*

CLAIMING HUMAN RIGHTS: THE ACCOUNTABILITY CHALLENGE

CLAIMING THE HUMAN RIGHT TO FOOD AND NUTRITION!

CHRISTOPHE GOLAY¹

Victims of violations of the right to food and nutrition, and their defenders, have various venues and tools at their disposal to claim their rights. These include referral to national human rights institutions or national judges, communications to regional or international treaty bodies or to the United Nations Special Rapporteur on the Right to Food, and submission of parallel reports to the Committee on Economic, Social and Cultural Rights (CESCR) or to the United Nations Human Rights Council. These different ways of seeking remedies have been used by thousands of victims of right to food violations during the last twenty years. The objective of this article is to provide a brief overview of their experiences.

National Human Rights Institutions

The *Right to Food Guidelines*, adopted by member states of the FAO in 2004, recommend the creation of national human rights institutions in every country and the inclusion of the progressive realization of the right to food within their mandate.² Currently there is at least one such institution in more than a hundred countries.³ Varying in structure and mandate, examples include National Commissions, Offices of the Ombudsperson, Mediators, and *Defensores del Pueblo*. Some are competent to receive com-

plaints in the case of a violation of the right to food, and some can represent victims before the courts (see the case of Argentina below). Some of these institutions, like the South African Human Rights Commission, are also mandated to carry out annual evaluations of the progressive realization of the right to food in their country.⁴

Judges

The possibility of referring cases to judges when violations of the right to food occur varies from country to country.⁵ In most countries, the right to food is not recognized as a fundamental right and judges do not consider it justiciable. However, in some countries, victims may be able to use the courts to obtain justice for violations of the right to food. These cases may be based on the right to food itself or on other fundamental rights like the right to life or dignity. Examples include Argentina, South Africa, Colombia, India and Switzerland.⁶ The adoption of a framework law on the right to food increases possibilities of accessing justice through national courts.⁷

In Argentina, for instance, the *Defensor del Pueblo* appealed to the Supreme Court in order

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2 See *Right to Food Guideline 18* on national human rights institutions, www.righttofood.org.

3 The list of institutions is available at <http://www.ohchr.org/en/countries/nhri>

4 See the website of the South African Human Rights Commission, www.sahrc.org.za.

5 See article 5, written by A. M. Suárez Franco, in this publication.

6 See C. Golay, *The Right to Food and Access to Justice: Examples at the National, Regional and International levels*, FAO, 2009, available online in French, English, Spanish and Portuguese, http://www.fao.org/righttofood/publi_en.htm.

7 This is, for instance, the case in Guatemala and in Brazil, as in numerous other countries. See Olivier de Schutter, "Countries tackling hunger with a right to food approach", Briefing Note 1, May 2010, www.srfood.org/images/stories/pdf/otherdocuments/20100514_briefing-note-01_en.pdf. It is also worth noting that a framework law on the right to food is under discussion in India.

to force the state to provide food assistance and structural development to vulnerable indigenous communities in the Chaco Province.⁸ In South Africa, the High Court of the Cape of Good Hope Province annulled a law (the *Marine Living Resources Act*) that favored commercial fishing, in order to protect the right to food of traditional fishing communities.⁹ In Colombia, the Constitutional Court protected the right to food of internally displaced peoples (see Box 4c).¹⁰ In India, the Supreme Court has been putting pressure on state authorities since 2001 to implement the food distribution programs previously elaborated by the central government (see Box 4d).¹¹ Finally, in Switzerland, the Federal Court (Tribunal Fédéral) has developed important jurisprudence on the protection of the right to food of undocumented people and rejected asylum seekers.¹²

Regional Mechanisms

Africa, the Americas and Europe are home to the three main regional human rights protection systems. In Africa and the Americas, they have already provided access to justice for some victims of violations of the right to food although the success of state responses has been mixed.

In the Ogoni case, the African Commission on Human and Peoples' Rights found that the Nigerian government violated the right to food of Ogoni communities particularly because it had failed to supervise the activities of oil companies, both national and transnational. These activities had destroyed the natural resources of the Ogoni.¹³ However, the Commission was not able to ensure concrete responsive measures from government or from the oil companies. Although several years have passed since the Commission's decision, the living conditions of Ogoni communities have not improved.¹⁴

In the Americas, decisions issued by the Inter-American Commission and Court have enabled various indigenous communities to recover access to their traditional lands. For instance, the Inter-American Commission on Human Rights protected the rights of the Yanomani community (more than 10,000 people) which were threatened by highway construction projects and mining activities in Brazil.¹⁵ The Inter-American Commission also brought about an amicable settlement with the government of Paraguay enabling Lamexay and Riachito indigenous communities to recover their ancestral lands and receive food assistance until they could actually return to their lands.¹⁶ In two cases – *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*¹⁷ and *Sawhoyamaya v. Paraguay*¹⁸, the Inter-

8 Argentina, Corte Suprema de Justicia de la Nación, *Defensor del Pueblo de la Nación c. Estado Nacional y otra*, 2007.

9 South Africa, High Court, *Kenneth George and Others v. Minister of Environmental Affairs & Tourism*, 2007.

10 Colombia, Corte Constitucional, *Acción de tutela instaurada por Abel Antonio Jaramillo y otros contra la Red de Solidaridad Social y otros*, 2004.

11 India, Supreme Court, *People's Union for Civil Liberties Vs. Union of India & Ors*, 2001. See the website of the Right to Food Campaign in India, www.righttofoodindia.org.

12 Switzerland, Federal Court, *V. gegen Einwohnergemeinde X. und Regierungsrat des Kantons Bern*, 1995; *B. gegen Regierung des Kantons St.Gallen*, 1996; *X. gegen Departement des Innern sowie Verwaltungsgericht des Kantons Solothurn*, 2005; *X. gegen Sozialhilfekommission der Stadt Schaffhausen und Departement des Innern sowie Obergericht des Kantons Schaffhausen*, 2004.

13 African Commission on Human and Peoples' Rights, *SERAC, Center for Economic and Social Rights v. Nigeria*, 2001.

14 Commission, *Report of the African Commission on Human and Peoples' Rights Working Group of Experts on Indigenous Populations/Communities*, 21 April 2005, Doc.N.U. E/CN.4/Sub.2/AC.5/2005/WP.3, pp. 19-20.

15 Inter-American Commission on Human Rights, Brazil, Case 7615, Resolution 12/85, 5 March 1985; *Report on the Situation of Human Rights in Brazil*, 29 September 1997.

16 Inter-American Commission on Human Rights, *Enxet-Lamexay and Kayleyphapopyet (Riachito)*, Paraguay, 1999.

17 Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001.

18 Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, 2006.

American Court of Human Rights interpreted the right to property of indigenous peoples as including the state's obligation to recognize, demarcate, and protect the right to collective ownership of land, and in particular to guarantee indigenous peoples' access to their own means of subsistence.

The United Nations Treaty Bodies

Every UN human rights treaty includes a monitoring body comprised of independent experts. These treaty bodies supervise state measures to implement protected rights by examining periodic state reports. During these examinations, civil society organizations can submit parallel reports (see Box 4a). In many parallel reports related to the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR), non-government organizations (NGOs) – particularly FIAN – have denounced violations of the human right to food. The Committee on ESCR (CESCR) has often supported them, urging the state in question to take concrete measures to respect, protect and fulfill the right to food. For example, in 2007, the CESCR requested the Government of Madagascar to facilitate land acquisition by local farmers as well as to obtain the free, prior and informed consent of local people before signing any contract with foreign companies interested in buying or leasing land.¹⁹ Likewise, during Germany's examination in 2011, the CESCR requested the government to take concrete measures to ensure that export subsidies favoring German producers do not lead to violations of the right to food in other countries.²⁰

19 Committee on Economic, Social and Cultural Rights, *Concluding Observations*, Madagascar, 16 December 2009, Doc. ONU E/C.12/MDG/CO/2, par. 12.

20 Committee on Economic, Social and Cultural Rights, *Concluding Observations*, Germany, 20 May 2011, Doc. ONU E/C.12/DEU/CO/5, par. 9.

In addition to examining state reports, some treaty bodies can receive individual or collective complaints. For example, detainees or their relatives appealed to the Human Rights Committee to protect their right to food on the basis of the Optional Protocol to the International Covenant on Civil and Political Rights. They argued that violations of the right to food also violated their right to be treated with humanity and dignity as well as to be free from cruel, inhuman or degrading treatment. In *Mukong c. Cameroon*, the Human Rights Committee found that the detention conditions of Mr. Mukong, who did not receive food for several days, amounted to cruel, inhuman and degrading treatment.²¹ In various cases, the Human Rights Committee has protected the right to food of indigenous communities, who claimed the right of minorities to enjoy their own culture as defense against mining activities on their lands.²² In the near future, it will also be possible to present individual and collective cases, or cases on behalf of victims, to the CESCR based on the Optional Protocol to the ICESCR adopted by the General Assembly in 2008.²³

The United Nations Special Rapporteur on the Right to Food

The mandate of the United Nations Special Rapporteur on the Right to Food was established by the Human Rights Commission in 2000. Jean Ziegler held this position for eight years,²⁴ and in

21 Human Rights Committee, *Mukong v. Cameroon* (1994). See also Human Rights Committee, *Lantsova v. Russian Federation*, 2002.

22 Human Rights Committee, *Länsman et al. v. Finland*, 1994, par. 9.5.

23 This Optional Protocol was adopted by the United Nations General Assembly on 10 December 2008, but it shall only enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession. See C. Golay, *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, CETIM, 2008, available online in French, English and Spanish, http://www.cetim.ch/en/publications_cahiers.php.

24 See J. Ziegler, C. Golay, C. Mahon, S-A. Way, *The Fight for the Right*

May 2008, Olivier De Schutter succeeded him.²⁵ In order to promote and protect the right to food, the Special Rapporteur mechanism has three tools at its disposal: a) the submission of thematic reports to the Human Rights Council and the United Nations General Assembly; b) country missions *in situ* to supervise the protection of the right to food in the concerned country; c) communications to states when concrete cases of violations of the right to food occur, often on the basis of information received from NGOs and social movements. Most of the communications sent to states by the Special Rapporteur concern the lack of implementation of food assistance schemes or forced evictions or displacements of farming or indigenous communities for the benefit of companies involved in mining, oil and gas extraction, or for the exploitation of land or forest resources.²⁶ The Special Rapporteur on the Right to Food is an important resource for NGOs and social movements, since he is easily accessible (even by email or mail) and relies to a great extent on cooperation with civil society to fulfill the mandate.²⁷

Reports to the Human Rights Council for the Universal Periodic Review

The Universal Periodic Review (UPR) is the new mechanism of the United Nations Human Rights Council, established in June 2006.²⁸ This mech-

anism requires that all United Nations member states be evaluated every four years by their peers to determine if they are complying with the obligations to respect, protect and fulfill all human rights in their country. The examination is carried out on the basis of a state report (20 pages maximum), and two reports compiled by the High Commission for Human Rights based on information issued by United Nations bodies (10 pages) and on contributions from civil society (10 pages).

Since its first session in April 2008, the UPR has been used by numerous NGOs to denounce violations of the right to food. Global Rights, the Center for Economic and Social Rights, FIAN International and their partners have for example denounced violations of the right to food by the governments of Guinea,²⁹ Equatorial Guinea,³⁰ Congo-Brazzaville³¹ and Ghana.³² In their reports to the UPR, these NGOs highlighted violations of the right to food resulting from the exploitation of natural wealth and resources in these four countries, mostly by foreign companies. The reports emphasized that the states

to Food. *Lessons Learned*, London : Palgrave Macmillan, 2011. See also the website about the work of Jean Ziegler, www.righttofood.org.

25 See the website about the work of Olivier de Schutter, www.srfood.org.

26 See, for instance, Human Rights Council, Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, Addendum, Summary of communications sent and replies received from governments and other actors, 11 February 2010, UN Doc. A/HRC/16/49/Add.1.

27 All the necessary information about sending a communication to the Special Rapporteur is available online, <http://www2.ohchr.org/french/issues/food/complaints.htm>.

28 See Melik Özden, *The Human Rights Council and its Mechanisms*,

CETIM, Critical Report no. 1, 2008, available online in French, English and Spanish, http://www.cetim.ch/en/publications_cahiers.php.

29 CODDH, CECIDE, Global Rights, *Dégradation de la situation des droits de l'homme en Guinée*. Rapport conjoint des organisations de la société civile à l'Examen périodique universel du Conseil des Droits de l'Homme des Nations Unies, May 2008.

30 Center for Economic and Social Rights, Individual Submission to the Office of the High Commissioner for Human Rights on the Occasion of the Sixth Session of the Universal Periodic Review, December 2009. *Equatorial Guinea. A Selective Submission on Compliance with Economic, Social and Cultural Rights Obligations*, www.cesr.org/downloads/CESR-individual%20submission-Equatorial%20Guinea-December%202009.pdf.

31 Rencontre pour la Paix et les Droits de l'Homme, Commission Justice et Paix, Global Rights, *Exploitation du Pétrole et Les Droits Humains au Congo-Brazzaville*, Rapport à l'intention de la 5ème session de l'Étude Périodique Universelle de la République du Congo, novembre 2008.

32 FIAN International, *Human Rights Violations in the Context of Large-Scale Mining Operations*, submission presented to the UN Human Rights Council on the Occasion of the Universal Periodic Review of Ghana in May 2008.

had not applied a sufficient portion of income generated by such activities to programs designed to fulfill the human right to food of their populations.

To conclude, it is important to underline that thousands of victims have used at least one of these ways of seeking remedies for violations of the right to food. In many cases, their effort led to small but real improvements. In a few cases

– for example in the Ogoni case – the impact was minor or non-existent. One of the important tasks for right to food defenders in the years to come will be to share more information about these different cases and try to understand why some succeeded and others failed to improve the effective enjoyment of the right to food by the victims of violations.

LOBBYING THE UN TO ADVANCE PEASANT RIGHTS

ALANA MANN¹

Overview

Lobbying is an increasingly valuable tool in the arsenal of social movements. Successful lobbying on an international level is contingent on alliances with human rights organizations, coupled with lobbying of national governments by local groups. In this article, the experience of La Via Campesina (LVC) member Serikat Petani Indonesia (SPI) illustrates how a two-level strategy incorporating direct action on the ground and the lobbying of governments through formal and informal channels is promoting the recognition of the human rights of peasants and the accountability of governments and private actors.

In Indonesia, land grabbing is not a new phenomenon. Colonization brought farmlands under foreign control and previously independent farmers became agricultural workers. Today, another insidious form of land grabbing has emerged through market liberalization and privatization that places the power to grab land in the hands of transnational corporations (TNCs) and governments. Under the guise of false solutions to the multiple crises of energy, hunger and climate, including agrofuels and the reduction of carbon emissions (REDD), small-scale farmers are deprived of access to land, water and other natural resources.

With the aim of preventing further violations of peasants' rights and the aggravation of an epidemic of undernourishment which now directly affects approximately one billion people, La

Via Campesina and allied organizations are advancing *The Declaration of Rights of Peasants – Women and Men*.² The Declaration calls for a new instrument within the UN human rights system to provide clear standards that recognize the human rights of peasants all over the world. This framework must include provisions and mechanisms for addressing violations and discriminations in all their different manifestations.

The Indonesian Case

In Indonesia, the expansion of state and privately owned rubber and palm oil plantations is increasingly impacting on the rights of peasants. Forced evictions are occurring in nearly every province, frequently resulting in the criminalization of peasants. In the case of the 28-year-long land dispute concerning Rengas, in the South Sumatra Province, villagers are denied access to their own land as a plantation company attempts to claim 2,386 hectares of fertile land for the production of sugar cane. According to LVC, in 2009, peasants who resisted the land grab were victims of threats and violence by the police, but these actions remained in impunity.

The roots of this case and others can be traced back to complex and unfair land titling schemes that are particularly discriminatory against vulnerable groups, including the poor and indigenous peoples. According to Henry Saragih, who is also the Chairperson of the Indonesian Peasant Union, 60% of land ownership in Indonesia is informal. While the Indonesian Constitution

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² La Via Campesina, *The Declaration of Rights of Peasants – Women and Men*, Document adopted by the Via Campesina International Coordinating Committee in Seoul, March 2009. The Declaration is available on the CD enclosed in this publication and at the following address: <http://viacampesina.net/downloads/PDF/EN-3.pdf>

of 1945 (Article 28) enshrines people's right to a decent livelihood, and the Basic Agrarian Law of 1960 incorporates individual rights to ownership, use of land and communitarian rights, these commitments are not recognized in practice and are subject to corruption and bribery at various levels of administration.

Peasants are criminalized under the 2004 'plantation law' (UU No.18/2004) which sanctions the incarceration of those who unwittingly trespass on plantation land. Plantations often lack clear boundaries and gradually encroach further on forested areas that have traditionally sustained local populations. Indigenous peoples who rely on forests to collect wood and other resources such as wild fruits and medicinal plants are particularly affected. Trespassers are subject to charges under criminal law, including imprisonment. Once charged, peasants have limited access to affordable legal assistance and are frequently denied information regarding legal processes. Sometimes warrants of arrest are not produced and there is a lack of transparency regarding the sentences handed down by the courts

SPI is campaigning for a waiver of the plantation law, and calling for authorities to respect the right of peasants and indigenous Indonesians to access forests for the resources they need to sustain decent livelihoods. Insisting on fair process in court matters, including the provision of information, advice and support for those charged, SPI is also defending the right of peasants to legal justice. This struggle has led to the genesis of the Declaration of Rights of Peasants.

The Origins of the Declaration

SPI started using human rights mechanisms to defend farmers in 1998 when the 32-year Suharto regime was overthrown in a peoples' revolution. The regime subjected citizens to years of forced evictions, expropriation of land and extra-judicial killings. A 'reform era' followed,

leading to the rebuilding of civil society as various human rights and agrarian reform movements began to join forces. Today, working with other peasants and peoples' organizations in Indonesia, SPI has developed a strategic approach to the drafting of new laws to replace those of the Suharto regime.

The collaboration of civil society groups culminated in a national conference on agrarian reform and the rights of peasants, which reported to the regional (South-East Asian) meeting of La Via Campesina in 2001. At this regional meeting it was recognized that peasants throughout Asia were experiencing common problems, resulting in the drafting of the Declaration of Rights of Peasants.

Internationally, the Via Campesina members agreed to pursue an international convention recognizing the specific, distinct rights of peasants at the 2008 Mozambique Conference. In 2009, the 60th anniversary of the Universal Declaration of Human Rights, the Declaration of Peasants' Rights was adopted by the Via Campesina International Coordinating Committee (ICC) in Seoul. The Declaration has been included in the report "Discrimination in the Context of Right to Food", adopted by the UN Human Rights Council in Geneva in January 2010. La Via Campesina claims that the Declaration fills a gap in UN human rights policy, stating:

"The struggle of the Peasants is fully applicable to the framework of international human rights which includes instruments, and thematic mechanisms of the Human Rights Council, that address the right to food, housing rights, access to water, right to health, human rights defenders, indigenous peoples, racism and racial discrimination, women's rights. These international instruments of the UN do not completely cover nor prevent human rights violations, especially the rights of the peasants."³

3 La Via Campesina, *The Declaration of Rights of Peasants – Women and Men*, op. cit., p. 3.

The Declaration of Rights of Peasants serves as a vital instrument in lobbying activities designed to initiate a process of negotiation with a view to the development and ratification of binding legal instruments that enforce compliance by states on national and international levels. Given the increasing and characteristic pattern of violations against peasants, including land grabbing and the deprivation of access to vital resources such as water and seeds, it is time to fully recognize the distinctive rights of peasants. Accordingly, La Via Campesina is pursuing a dual strategy – combining formal lobbying activities in the UN arena and encouraging members to pressure their own governments while maintaining their traditional activism in the field.

Alternative spaces for policy-making

The current human rights system lacks strong sanction mechanisms, and despite its claims to universality, it still has limitations in the case of vulnerable groups. However the UN human rights system is vital in reinforcing the claims of La Via Campesina members and in developing alternative understandings of international regulatory frameworks. Hence the call for an International Convention on the Rights of Peasants.

In this regard, the FAO, despite its shortcomings, also provides an important alternative space for policy-making in favor of peasants concerning agriculture and trade. La Via Campesina reports that “the FAO is in a situation of crisis, the US and the EU are not willing to finance the institution, blocking reforms and initiatives that respond to the FAO mandate (to reduce rural poverty),” yet recognizes that “at the same time the institution has built strong links with organizations from Civil Society and [sic] demand support in order to keep the institution ‘alive’.”⁴ As a political power center where

normative rules are established, the UN provides a venue for social movements to deploy a two-level strategy or play a “multi-level game”⁵ by making claims within national public spheres and the supranational arena.

Lobbying the UN – Challenges and Opportunities

The implementation of normative frameworks established by the UN through organizational structures such as working groups and conferences, and discursive structures such as statements and charters, serves to mobilize, integrate and globalize social movement claims. Yet the UN, while providing spaces for peoples’ organizations to voice their concerns, is a countries’ club. Power blocs such as the United States, Canada and the European Union are formidable opponents to social movements campaigning on issues concerning trade, climate and the environment. La Via Campesina likens the arena to a boxing ring in which the ‘heavy-weights’ of the UN compete, at an undeniable advantage, against the ‘feather-weights’ – peoples’ movements and the countries of the Global South.

The majority of countries in the Global South are supportive of the *Resolution on the Right to Food*⁶ as their populations are largely poor and rural. Only 2 – 3% of peasants live in countries situated in the Global North. While this small minority still need the protections offered by the recognition of rights, developed countries perceive that the struggle for peasant rights is not their struggle, and shy away from the very word

index.php?option=com_content&view=article&id=892%3AAla-via-campesina-policy-documents&catid=14%3Apublications&Itemid=30

5 F. Passy, “Supranational Political Opportunities as a Channel of Globalization of Political Conflicts: The Case of the Rights of Indigenous People”, in D. Della Porta, H. Kriesi & D. Rucht (Eds.), *Social Movements in a Globalizing World*, London, Macmillan, 1999.

6 The Resolution on the Right to Food is available at the following address: <http://www.fao.org/righttofood/KC/downloads/vl/docs/A-RES-59-202.pdf>

4 La Via Campesina, *La Via Campesina Policy Documents: 5th Conference*, 2009, p.13, available at <http://viacampesina.org/en/>

‘peasant’. La Via Campesina states, “they seem to fear giving too much political weight to a large number of people whose trade has largely remained outside the capitalist economy”.⁷ Ironically, the threats imposed by industrial agriculture, for example the dispossession of farmers of their seeds and the associated decline in biodiversity, are no less severe in the Global North.

La Via Campesina stresses that peoples’ movements in the Global North and South must lobby on the national level to move their political projects forward in the UN arena. Very important is the role of regional forums where countries such as Indonesia can influence countries in South-East Asia. At the UN in Geneva, lobbying activities are strategic in intent and execution. Informal meetings with country representatives are pursued in conjunction with attendance at formal parallel events. Lobbying activities target supportive UN members, Special Rapporteurs and Advisory Committee members. La Via Campesina members refer to those particularly supportive of the Right to Food Resolution who are also influential in regional groupings as ‘Class One’ targets.⁸

Lobbying activities serve to disseminate information and build the credibility of peoples’ movements through the presentation of empirical evidence, data and testimony. Allies in

Geneva supply essential support to the lobbying activities that La Via Campesina is engaged in through the application of legal frameworks in the identification of human rights violations against peasants. The conclusions of the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD) and the 2008 International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) further strengthen the empirical basis that underpins lobbying against land-grabbing. The ICARRD Declaration “highlight[s] the importance of higher, secure and sustainable access to land, water and other natural resources and of agrarian reform for hunger and poverty eradication”.⁹ The framework of the IAASTD is also underpinned by a human rights discourse that poses the central question: who will produce food, how, and for whose benefit? Within this rights-based framework:

“...the right to food and design of a supporting social system is not perceived as the privilege of the few, but is recognised as the right of all. States and international agencies are obligated to respect, protect, and fulfil the right to food. These responsibilities include the obligation to ensure that no violations of rights occur, that private actors are controlled as necessary, and that states and other actors cooperate internationally to address structural impediments to fulfilling the right to food.”¹⁰

La Via Campesina recognizes the political opportunity provided by the IAASTD and has since leveraged its findings in lobbying to support claims that peasant and farmer-based production can solve the food crisis by rebuilding

7 H. Saragih, “Why the International Day of Peasants’ Struggles is Important”, www.guardian.co.uk, 18 April 2011, par. 4, available at http://www.guardian.co.uk/global-development/poverty-matters/2011/apr/18/international-day-peasants-rights-grow-food?CMP=tw_t_iph

8 ‘Class One’ is a term used within La Via Campesina to describe those member states of the UN Human Rights Council which support the initiative on the rights of peasants in the UN. Current supporters (including member states and non-member states) are Belarus, Bolivia, Brazil, China, Cuba, Djibouti, Ecuador, Indonesia, Nicaragua, Peru, Sri Lanka, Uruguay, Venezuela, Vietnam, Algeria, Haiti, Kenya, Nigeria, Zambia, Syria, Sudan, Malaysia, Russia, Costa Rica, Lebanon, Burkina Faso, Angola, Panama, Palestine, the Philippines, Tanzania, Lao, the Dominican Republic, Ghana, Mozambique, Namibia, Myanmar, South Africa, Jordan, Niger, Congo, Timor Leste, Portugal, Croatia, Spain, Switzerland, Thailand, Cape Verde, Senegal, Austria, Norway, Luxembourg, Mauritius.

9 La Via Campesina, *Land Grabbing Causes Hunger! Let Small-scale Farmers Feed the World!*, 13 October 2010, available at <http://farmlandgrab.org/post/view/16316>

10 M. Ishii-Eitemann, “Food Sovereignty and the International Assessment of Agricultural Knowledge, Science and Technology for Development”, *Journal of Peasant Studies*, Vol. 36, No. 3, 2009, pp. 689-700, p.697.

national food economies. The movement joined 90 co-signatories in addressing an open letter to Jacques Diouf, former Director-General of the FAO, drawing his attention to the conclusion of the Assessment that “business as usual is no longer an option”.¹¹ La Via Campesina claims that the reaction of the WTO, World Bank and G8 governments to the food crisis has been disastrous as the policies that they call for, including further trade liberalization, food aid and a second green revolution in Africa, are at the root of the current crisis. The answer to the crises of climate change and escalating food prices is a system based on small producers using sustainable and local resources in production for domestic consumption. Accordingly, peasant and farmer-based sustainable agriculture has to be “supported and strengthened”.¹²

The recent findings of the UN Human Right Council’s Advisory Committee for the study on discrimination in the context of the right to food and the preliminary study on the advancement of the rights of peasants and rural workers provide further evidence to support the recognition of peasant rights. In January 2011, La Via Campesina congratulated the Committee on the

study for having “set standards of anti-discriminatory policies and strategies for peasants, particularly women” and suggested that the study be the basis for the elaboration of a new Convention on the Rights of Peasants.¹³ Engagement in this constructive process would not be possible without the tireless lobbying activities of members in their own countries and abroad.

Back in the Ring...

In conclusion, lobbying activities add a new dimension to La Via Campesina’s strategies. The movement is in the early stages of developing lobbying skills, however, the learning curve has been steep. While member organizations around the world still deliberate and plan direct action based on local contexts and priorities, they are encouraged to actively lobby their own governments. To many the process may appear bureaucratic and time-consuming but most recognize the value of ‘insider’ strategies that influence decision-makers, even if progress is incremental. Lobbying is proving to be one way in which the featherweights can land a few well-timed and effective punches in the international arena.

11 D. Stabinsky, *Open letter to Jacques Diouf, Director-General, Food & Agriculture Organization of the United Nations*, 22 September 2009, available at http://www.agassessment-watch.org/docs/IAASTD_letter_to_FAO_and_reply.pdf

12 La Via Campesina, *Proposal to Solve Food Crisis: Strengthening Peasant and Farmer-based Food Production*, 28 April 2008, available at <https://www.foodfirst.org/en/node/2109>

13 La Via Campesina, Oral intervention, 6th session of the UN Human Rights Council Advisory Committee, delivered by Muhammad Ikhwan, La Via Campesina, Geneva, January 2011, unpublished.

GENDER-SPECIFIC RISKS AND ACCOUNTABILITY: WOMEN, NUTRITION AND THE RIGHT TO FOOD¹

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ANNA JENDEREDJIAN AND ROSEANE DO SOCORRO GONÇALVES VIANA²

Overview

As a key cross-cutting demographic issue, gender has been recognized for its correlation to vulnerability to hunger, malnutrition and food insecurity.³ This neither means that all women and girls are food insecure and hungry, nor that all men are food secure. Rather, women and girls, as a subset of the food insecure – especially small scale food producers, the impoverished across urban and rural spaces, indigenous peoples and political minorities – represent a cross-cutting demographic category that experiences increased and specific gender-based risks.⁴

Yet, when so many now call for inclusion of women and for a gender perspective in food security, as well as for advocacy on behalf of the right to adequate food,⁵ why is the status of

women and girls in terms of food security not improving? What stands in the way of the capacity of governments and civil society organizations to make a difference in this particular and endemic disparity of opportunity and of nutritional well-being experienced by women and girls? What are the gender dimensions of the worsening condition of hunger worldwide, especially since the food speculation crises of 2008 and 2011, caused by inadequate food access as opposed to inadequate supplies?⁶

Background

Countless studies identify women as the key to household food security.⁷ Women have culturally gendered roles as caretakers of family health and an adequate family diet. In much of the world, they make significant contributions to the ma-

1 This report, and especially its recommendations, benefits from the insights and contributions of Flavio Valente and Ana María Suárez Franco. Daniela Núñez also provided research and review support.

2 The authors are all affiliated with the Department of Gender and Nutrition at the Institute of Social Sciences in Agriculture, University of Hohenheim.

3 Women account for 70% of the world's population living in poverty and are disproportionately vulnerable to malnutrition, poverty and food insecurity. See World Bank, FAO, IFAD, *Gender in Agriculture Sourcebook*, 2009. <http://siteresources.worldbank.org/INTGENAGRLIVSOUBOOK/Resources/CompleteBook.pdf>; UNHCR, *Discrimination and Right to Food*, A/HRC/AC/6/CRP.1, Human Rights Council, Advisory Committee, 2011. *Study on discrimination in the context of the right to food*, A/HRC/AC/6/CRP.1, Sixth Session, 17-21 Jan 2011, Limited distribution Dec 2010.

4 UNDP, *Halving Global Hunger, Background Paper of Task Force on Hunger*, New York, UNDP, 2003. www.unmillenniumproject.org/documents/tf02apr18.pdf.

5 See e.g., I. Rae, *Women and the Right to Food: International Law and State Practice*, Right to Food Unit, UN Food and Agriculture Organization, 2008. http://www.fao.org/righttofood/publi08/01_GENDERpublication.pdf; Human Rights Council,

Advisory Committee, *Study on discrimination in the context of the right to food*, A/HRC/AC/6/CRP.1, For Sixth Session, 17-21 Jan 2011, Limited distribution Dec 2010. http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CRP.1_en.pdf; UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 34, The Right to Adequate Food*, April 2010, No. 34. <http://www.unhcr.org/refworld/docid/4ca460b02.html>; FIAN International Press Release, 17 December 2009 on eve of CEDAW 30th anniversary. <http://www.fian.org/news/press-releases/one-of-the-most-frequent-human-rights-violations-womens-and-girlsright-to-food/?searchterm=women%20and%20food%20security>.

6 The Cordoba Declaration on the Right to Food and the Governance of the Global Food and Agricultural Systems 2009. http://www.fao.org/righttofood/news_pdf/news35_cordoba_declaration_EN.pdf

7 See e.g., A.R. Quisumbing and L.C. Smith, "Intrahousehold Allocation, Gender Relations, and Food Security in Developing Countries," Case study #4-5 of the program: "Food Policy for Developing Countries: The Role of Government in the Global Food System," P Pinstrup-Andersen et al. (eds.), 2007.

majority of foods for household consumption and for local market retail. A large body of research confirms both that women invest a greater proportion of their income into household welfare and that women's relative decision-making power in the household (often influenced by their relative income status) is correlated with household well-being.⁸

Gender discrimination plays a key role *not only* in the vulnerability to food insecurity faced by women and girls, but it has been positively associated with social instability and hunger more generally. The 2003 UN *Women, Peace, and Security* study found that increasing violations of women's rights constituted a reliable indicator of escalating intra-national conflict and associated increase in violence against women.⁹ The Secretary General's 2009 Report of the same name identified special needs of women that are associated with conflict escalation, prevention, resolution and peace-building and include violations associated, i.a., with: a) sexual violence, b) security and access to social services for women and children, c) access to political participation, and d) access to education.¹⁰ Avenues to addressing structural violence against women, including individual complaints procedures, facilitating

compliance and accountability through legal mechanisms,¹¹ have progressed but are still in their infancy.

Empirical evidence that links women and a gender analysis to conditions of peace and security is based largely on individual case studies. A consistent review comparing nations links gender discrimination and hunger in the *Global Hunger Index* (GHI).¹² The GHI compares global hunger statistics with the 2008 Global Gender Gap Index,¹³ which is made up of four sub-indices that measure gender equality, namely economic participation, educational attainment, political empowerment, and women's health and survival. Of these sub-indices, gender disparities in access to education and health show the strongest correlation with hunger statistics for the entire population. Notably, the health and survival categories included WHO estimates of "the number of years that women and men can expect to live in good health, by taking into account the years lost to violence, disease, malnutrition or other relevant factors".¹⁴

The structural exclusion of women in economic and political life framed the underpinnings of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) when it was drafted, signed (1979), ratified, and increasingly grounded in a global movement to defend women's rights. It is curious

8 See International Food Policy Research Institute (IFPRI), *Women. Still the Key to Food and Nutrition Security*, 2005, <http://www.ifpri.org/sites/default/files/pubs/pubs/ib/ib33.pdf>; G. Kent, "A Gendered Perspective on Nutrition Rights", *AGENDA*, 2002, 51:43-50; S. Maxwell and M. Smith, "Household Food Security: A Conceptual Review", in S. Maxwell and TR Frankenberger (eds), *Household Food Security: Concepts, Indicators, Measurements*, 1-72, NY, UNICEF, 1992; S. Lemke et al., "Empowered Women, Social Networks and the Contribution of Qualitative Research: Broadening our Understanding of Underlying Causes for Food and Nutrition Insecurity", *Publ Health Nutr*, 6(8), 2003, pp. 759-764; S. Lemke, N. Heumann and A.C. Bellows, "Gender and Sustainable Livelihoods: Case Study of South African Farm Workers", *Intl J Innovation Sust Dev*. 4(2/3), 2009, pp. 195-205.

9 United Nations, *Women, Peace, and Security*, UN Publ., 2002. <http://www.un.org/womenwatch/daw/public/eWPS.pdf>. Report arising from Resolution 1325, 2000.

10 UN Secretary General, *Women and Peace and Security*, S/2009/465, September 2009. Available at: <http://www.un.org/Docs/sc/sgrep09.htm>.

11 R. Manjoo, *15 Years of the Special Rapporteur on Violence Against Women (1994-2009), Causes and Consequences: A Critical Review*, 2011.

12 IFPRI, *2009 Global Hunger Index: The Challenge of Hunger. Focus on Financial Crisis and Gender Inequality*, Deutsche Welthungerhilfe, IFPRI, Concern Worldwide, and World Economic Forum. <http://www.ifpri.org/sites/default/files/publications/ghi09.pdf>

13 R. Hausmann, L.D. Tyson and S. Zahidi, *The Global Gender Gap Report*, World Economic Forum, 2008. <https://members.weforum.org/pdf/gendergap/report2008.pdf>

14 R. Hausmann, L.D. Tyson and S. Zahidi, *The Global Gender Gap Report*, World Economic Forum, 2009, p. 4. http://www.astrid-online.it/Le-pari-op/Studi--ric/WEF_Global-gender-gap-report-2009.pdf.

that women's right to adequate food did not receive greater attention. It was perhaps thought that the path to eliminate discrimination against women lays in areas "outside of the kitchen," not in analyses of women's work and capacity there. Noting that the universal Covenants of the 1950s and 1960s were not being equally realized for all persons, CEDAW inspired demands for other special groups' rights, including the rights of children (1989) and of indigenous peoples (ongoing). And yet, turning a blind eye on the unpaid reproductive and household-based work, especially by women, i.a. of feeding family members (along with the biological work of childbearing and the cultural challenge of child raising) reflects an elitism and perhaps also cultural insensitivity about women's dignity and their needs, desires, and capacity to escape food-related work.

Gender-specific risks and monitoring

We present four issues necessary to the integration of gender and nutrition into the right to adequate food. These issues are relevant to the development of tools for evaluating the progressive realization of the inclusion of a gender-based approach to the right to adequate food and for leveraging the development of improved policies and programs in the context of violations of this right.

First, gender and nutrition have gotten lost in the work and advocacy of right to adequate food because of the historically fragmented approach to human rights and global objectives such as the MDGs. Notwithstanding the excellent contribution by Isabella Rae in 2008, *Women and the Right to Food*¹⁵

and others,¹⁶ there has been an inability to capture and act upon the complexities of gender discrimination. The absence of a rights claim to adequate food in CEDAW, compounded by the paternalistic domination of the food and health industries, has frustrated our ability to understand, describe, and act upon the needs of women and girls, as well as on behalf of nutrition for all persons in the context of the right to adequate food. Rae points to the legal and institutional separation between work on women's rights through the 1979 CEDAW Convention and work related to the right to adequate food according to the ICESCR of 1966. This separation further frustrates the development of monitoring and accountability mechanisms that specifically address dimensions of gender and the right to food. In our next three points, we introduce the impact of intimate and structural violence that patrols discrimination and impedes change in gender relations or gender mainstreaming (point 2); the complex and interconnected needs and intersecting violations faced by women and children during pregnancy, lactation and infancy (point 3); and the overlapping needs of environmental sustainability, family nutrition security, maternal/child health, economic autonomy arising from successful local food systems, and social justice wherein women, among others, can participate in civic life and democratically claim their right to adequate food without experiencing violence or discrimination at home or in public (point 4).

We argue, for example, in favor of developing institutional bridges between the right to food and women's rights and propose, among other things, that CEDAW consider the development of a General recommendation on the right to adequate food and nutrition for all women and their entire families and communities (i.e.,

15 I. Rae, *Women and the Right to Food: International Law and State Practice*, Right to Food Unit, UN Food and Agriculture Organization, 2008, p. 1.

16 e.g. FIAN Deutschland, *Recht auf Nahrung: Realität für Frauen?* Köln, FIAN Deutschland e.V., 2005. http://www.fian.de/online/index.php?option=com_remository&Itemid=160&func=startdown&id=93.

include women who are not pregnant or lactating as well as all adult males).

Our second point focuses on violence against women and girls. Female economic and social exclusion is magnified through, and often orchestrated by, women's and girls' particular vulnerability to well-documented experience with physical, psychological, and socio-economic violence and harassment. Within the context of a determined social blindness to it, this violence is perpetrated both in private households and in public spaces. Being historically tolerated, and often contemporaneously condoned, violence exists as an invisible social structure that serves to subdue women's freedom and autonomy to realize their human rights on an equal footing with males. Indeed the veil of silence over violence against women and the limited attempts to see, understand, and address it by more elite social members draw parallels to the fetishization (or concealment) of the economic and political violence of hunger and food insecurity more generally.¹⁷ Gender mainstreaming grew out of CEDAW at a time when CEDAW did not incorporate the subject of violence against women and girls. The excitement over a legal and political strategy to integrate women into public life did not anticipate the resistance and retaliation leveled against women who move into traditional men's spaces, especially in countries and societies that have not begun to acknowledge and take action against violence against women. In our work, we have learned that to centralize women in the human right to adequate food, food and nutrition security, and food sovereignty, violence against women must be acknowledged, anticipated, and protected against. To this end, for example, monitoring and accountability mechanisms developed by the Special Rapporteur for

Violence against Women¹⁸ and through the FAO *Voluntary Guidelines*¹⁹ need to consider where violence and women's right to adequate food intersect, i.e., where violence against women must be addressed and monitored in the context of benchmarks and indicators that evaluate whether the right to adequate food is being progressively realized or not.

In a report of surprising transparency, the 2005-2006 National Family Health Survey, India revealed that 34% of women between 15 and 49 years of age experienced physical violence at some point since age 15; in 85.3% of the cases, the husband was responsible.²⁰ Abuse of wives and young children for "disciplinary" purposes typically has a more customary, rather than a formal and legally condoned, character.²¹ Devastatingly for women's health and empowerment, more women even than men, i.e., 54% of women versus 51% of men, tolerate the idea and the practice of hitting or beating a wife as deserved punishment for various transgressions.²² If we hope to mainstream women into food security policy, then at the very least, they should not grow up expecting to be beaten if they disagree with a man or an elder female in-law. Governments must therefore follow and expand India's example and report on violence against women. Our third point addresses gender discrimination and the limitations of legal and social imagination in connection with women's biological needs vis-à-vis their reproductive well-being and their

18 See footnote 11, p. 24.

19 UN FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, 2005. <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>.

20 India, *National Family Health Survey*, Chapter 15: Domestic Violence, pp. 497 and 500. <http://www.nfhsindia.org/chapters.html>.

21 See, e.g., "UAE Court Says Okay to Wife-Beating," *The Times of India*, 19 October 2010. http://articles.timesofindia.indiatimes.com/2010-10-19/middle-east/28215789_1_uae-court-chief-justice-falah-al-hajeri-gulf-countries.

22 India, *National Family Health Survey*, *op. cit.*, pp. 474-486, especially p. 479.

17 A.C. Bellows, "Exposing Violences: Using Women's Human Rights Theory to Reconceptualize Food Rights." *Journal of Agricultural and Environmental Ethics*. 16(3), 2003, pp. 249-279.

capacity, dignity and autonomy. While maternity does pose distinct demands on women, these needs must not be allowed to define women's identity, rights, wants and choices. Further, in a more holistic approach to women's rights lies increased capability to address the complexity of requirements associated with pregnancy and lactation. Women need autonomy over decisions related to partnerships/marriage as well as choice, timing, and medical support related to their reproductive capacity. Indeed, women often receive blame for fertility and population stress on food resources at the same time that they have restricted access to birth control and related choices. Once in the reproductive cycle, women face unique and well-known health and nutritional needs, as well as legal identity²³ and rights questions that require more attention. The present day rate of maternal mortality is obscene and represents policy choices that clearly discriminate against the basic health care needs of women.²⁴ A key stumbling block in women's reproductive autonomy, health and nutritional well-being in the reproductive cycle is the inability of legal instruments, programmatic interventions, and monitoring and accountability mechanisms to express and address the co-existing independent and interconnected human rights and needs for food and nutrition of expectant and new mothers on the one hand, and fetuses and infants on the other. Food and nutrition access (e.g., food quality, quantity, acceptability), adequate evidence-based information, and related choices (e.g., with regard to breastfeeding and complementary feeding) impacts the physical and mental well-being of mother and fetus/

infant simultaneously. Further, not only fetuses and infants, but women as well are often treated as ineffective victims who need help and intervention, thus fostering programs that overlook mothers' engagement and capacity, and that simply assign externally sourced, pre-processed supplements to promote health.²⁵ Mothers and their children can hold the state accountable to its obligations as duty-bearer by demanding that the latter respect and protect the formers' rights to self-determination and dignity as claim holders instead of allowing external dependencies to develop. Sustainable alternatives for maternal/child food and nutrition autonomy can include the local promotion, production, processing, and sourcing of high quality foods and feeding practices (including breastfeeding) that maximize consumption of needed macro and micro-nutrients during the critical reproductive health and developmental period for women and children.

Emergency situations must not yield to market opportunities to interfere with capacity for low-cost, sustainable best practices controlled by women, notably breastfeeding. After the 2008 earthquake in the Sichuan Province of China, a UNICEF-certified baby-friendly hospital in Deyang City stopped breastfeeding support and training for new mothers and concurrently provided open access to donated short-term infant formula.²⁶ This practice limited women's autonomy and feeding choices by developing women's and infants' dependency on a processed breast milk replacement once the mothers' feeding capacity disappeared and the short-term emergency donations dried up. Governments must there-

23 By custom or law, legal and citizenship identity of mother and child can revolve around the father, impacting e.g., physical mobility, the nature of access to public resources, inheritance, etc.

24 S. Paruzzolo, R. Mehra, A. Kes and C. Ashbaugh, *Targeting Poverty and Gender Inequality to Improve Maternal Health*, Women Deliver & ICRW, 2nd Global Conference, 7-9 June 2010. <http://www.icrw.org/files/images/Targeting-Poverty-and-Gender-Inequality-to-Improve-Maternal-Health-Executive-Summary-en.pdf>.

25 See M. Latham, U. Jonsson, E. Sterken and G. Kent, Commentary: "RUTF stuff. Can the children be saved with fortified peanut paste?" *World Nutrition*, February 2(2), 2011, pp. 62-85; and "Policy Brief, Scaling Up Nutrition: A Framework for Action," *Food Nutr B*, 31(1), 2010, pp. 178-186.

26 H.G. Bengin, V. Scherbaum, E. Hormann and Q. Wang, "Breastfeeding After Earthquakes", *Birth* Vol 37 No. 3, 2010, pp. 264-65.

fore regulate the promotion and distribution of breast milk substitutes.

Fourth, there is a need to integrate gender, nutrition, and democratic governance approaches on diverse scales in strategies that promote small/regional farmers and agro-ecology. We are concerned about a) the artificial separation in policy, programs, trade, and ideology of “food” as something to produce and “nutrition” as something defined in terms of macro and micro-nutrient sufficiency and health; and b) the emphasis on the global-scale trade in food and nutritional products at the expense of support for holistic approaches to local and regional food production and consumption systems. The paternalism of policy that promotes food and nutrition aid dependencies instead of autonomy reinforces structures of uneven economic power that are reflected in uneven social relations, including, among others, gender discrimination. The findings of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) clearly show that the direction of current agricultural research coexists with growing food insecurity and hunger. To address development and sustainability goals, the IAASTD calls for, i.a., attention to women in agriculture, the inclusion of local knowledge in research, an integration of nutrition, health and agriculture objectives through diverse democratic participation (including by women) in food policy from the local to global levels, and greater equity and autonomy for smaller and (often) lower income farmers vis-à-vis international industrial concerns to promote local food security and self-determination.²⁷ Integrated

food systems that meet social needs and engender well-being could take the form, for example, of food policy councils that promote localized food systems (LFS) with smaller scale, ecologically-oriented, and regionally-based farmers and food system entrepreneurs. LFS take a community food security (CFS) approach that prioritizes social justice, including gender equity, and that promotes practical programming such as nutrition education and local food business development.²⁸ LFS and CFS address food security and nutrition security²⁹ through democratic approaches to agriculture, nutrition and public health planning that strive for healthy, just and sustainable local food economies. These democratic objectives provide ideal environments for adapting monitoring indicators to capture the rights-holders’ claims and shaping strategies to demand accountability on the right to adequate food.

Designed to address moderate to mild (not severe) forms of malnutrition, ready-to-use supplementary food (RUSF), has reached global attention and circulation as a food and nutrition “cure” that is typically not locally sourced or produced. Moving increasingly from malnutrition treatment to its marketing as malnutrition prevention, RUSF may be benefiting trade interests more than children’s health and at the same time, undermining capacity and autonomy in community-based and national food and nutrition systems. On behalf of women as farmers

27 IAASTD (International Assessment of Agricultural Knowledge, Science and Technology for Development), *Agriculture at a Crossroads. Synthesis Report*, Washington DC, Island Press, 2009. http://www.agassessment.org/reports/IAASTD/EN/Agriculture%20at%20a%20Crossroads_Synthesis%20Report%20%28English%29.pdf.

28 M.W. Hamm and A.C. Bellows, “Community Food Security and Nutrition Educators”, *Journal of Nutrition Education and Behavior*, 35(1), 2003, pp. 37-43.

29 With reference to K. Klennert (ed.), *Achieving Food and Nutrition Security. Actions to Meet the Global Challenge*, InWEnt, 2009 (3rd edition), the term “food security” was broadened to “nutrition security” or “food and nutrition security” (see p.25), to more accurately reflect the complexity of nutrition problems, including utilization of food, considering decisive factors such as health services, healthy environment and care for women and children. http://www.inwent.org/imperia/md/content/a-internet2008/portaliz/umweltundernaehrung/achieving_food_and_nutrition_security_2010.pdf.

who face discrimination in land access, inheritance, credit, governance, etc. and for the sake of their communities' food traditions and economies, governments should promote sustainable local food economies and limit market intrusion that leads to dependencies on non-local actors and medicalized nutrition substitutes for local food capacity.

In conclusion, it is necessary to move from the often empty rhetoric about addressing women's and girls' vulnerability to food insecurity and to a "real" change that recognizes their capacity, their contributions to agriculture and community food security and their right to claim their

human rights as equal individuals with freedom and dignity. Indicators of progressive realization that measure and keep track of women in the right to adequate food must be included in research and policy development. Monitoring and mechanisms to achieve state accountability must proceed with an understanding of the need, and the strategies for overcoming the specific barriers of discrimination, structural violence, maternal empowerment, and food system participation that women face when attempting to fulfill their human right to adequate food.

IMPLEMENTATION OF JUDICIAL DECISIONS ON THE RIGHT TO FOOD: A REVIEW

BIRAJ PATNAIK¹

The right to food is legally binding for the 160 States party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). In the last decade, the obligations of state parties concerning the right to food have been reinforced through the adoption of various instruments, most notably the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Right to Food Guidelines). In the interim decades since the ICESCR came into force in 1976, many state parties, in accordance with Article 2.1 of the Covenant, have either directly legislated on the right to food or incorporated it into their respective Constitutions.

South Africa, Brazil, Colombia, Bolivia, Ecuador, Moldova, Malawi and Belarus are examples² of countries where the right to food has been incorporated in the Constitution. In addition, some of these countries, like Brazil, have gone ahead and passed legislation specific to the right to food. This process is on-going in many countries where the right to food is either being legislated (as in the case of India) or being incorporated into the Constitution (Nepal).

Another recent trend that is noticeable across continents is the increasing judicial activism on the right to food. If the South African Constitution is the most progressive example of a constitutional guarantee on the right to food, and the Brazilian experience in the legislating of the

right to food provides a beacon for other countries, then the interventions by the Indian Supreme Court³ over the last decade in the *right to food case* stand out as a model for justiciability through the courts.

Since 2001, the Supreme Court of India has passed over a hundred orders in the longest continuing mandamus on the right to food anywhere in the world. It has, through its orders,⁴ universalized school meals for 120 million children, child feeding services for 160 million children below the age of six, brought maternity entitlements and pensions for widows, persons with disabilities and the aged, as well as other social assistance programs under the ambit of the right to food and sought to make the Public Distribution System – which provides 600 million Indians with subsidized food grains – more accountable. It has also now intervened to build and create thousands of shelters for urban homeless people across the country. In doing this, the Supreme Court has created a legal guarantee for the right to food that is justiciable in the courts.

While the Indian case is unique in many ways, it is by no means an isolated one on the justiciability of economic, cultural and social rights, or indeed, more specifically on the right to food. Interventions by courts in South Africa⁵, Argentina and Colombia⁶ are examples of judicial activ-

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2 For a more detailed exposition on the experiences of countries see: FAO, *Guide on Legislating for the Right to Food*, 2009.

3 *PUCL v. Union of India and Others* (Civil Writ Petition 196/ 2001). www.righttofoodindia.org.

4 *Legal Action on the Right to Food: A Tool for Action*. www.righttofoodindia.org

5 *Government of South Africa vs. Grootboom*, CCT38/00, Judgment of 21 September 2000.

6 See Box 4c on *The Colombian Constitutional Court's Response to the Accountability Challenge: the Case of the Displaced Persons* by César Rodríguez and Diana Rodríguez.

ism in economic, cultural and social rights. More recently, the Nepalese Supreme Court⁷ gave a judgment upholding the right to food.

There are two distinct trends that emerge while examining the legal judgments of various courts on the right to food. While a large number of judgments depend on the international instruments and covenants on the right to food, many courts, as in the case of India and South Africa, depend primarily on their own constitutional provisions to judge matters on the right to food. The Nepalese case on the other hand is an example of the use of both constitutional provisions, existing interim orders and extensive citing of international law for the enforcement of the right to food.

A newly increasing tendency is the intervention of quasi-judicial bodies in order to monitor and ensure justiciability of the right to food. Such instances include the Supreme Court

7 Judgement of April 2011 in a case filed by Pro Public, a public interest group. For more information, see Box 11c on the *Nepalese Supreme Court Decision on the Right to Food* by Basant Adhikari, as well as: http://www.fao.org/righttofood/news47_en.htm

Commissioners in India, set up specifically to monitor the right to food, the national and provincial/state-level human rights commissions across continents, and judgments by the Inter-American Court of Human Rights.⁸

It is a tragic irony that the institutional landscape of the justiciability of the right to food is at its vibrant best when hunger stalks the planet as never before. Judicial activism is not the final solution to the global crisis of hunger. The battle for the right to food is a political battle that has to be fought on all fronts.

The first box that follows presents the functioning of the CESCR and suggests ways for civil society engagement in order to highlight ESCR issues in their respective country by providing documents to the Committee. The recommendation of the Committee can often be used for strengthening their advocacy strategies. The three next boxes detail the steps taken by Brazil, Colombia and India in the implementation of judicial decisions on ESCR.

8 See Box 8c on Guatemala by Martin Wolpold-Bosien and Susanna Daag.

4a Guide to the Committee on Economic, Social and Cultural Rights

EIBE RIEDEL¹

The Committee on Economic, Social and Cultural Rights (CESCR), which consists of 18 independent experts and meets for two three-week sessions each year, is mandated to monitor reports which state parties have undertaken to submit once every five years on the

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implementation and enjoyment of the rights and freedoms enshrined in the International Covenant on Economic, Social and Cultural Rights (the Covenant). After receipt of the reports, a pre-sessional working group of five CESCR members, one from each regional group, drafts a list of additional questions to be put to the state parties for response within a stipulated period – usually six months. Thereafter, a dialogue with the state party is scheduled for nine hours in a subsequent public session of the CESCR. At each of the reporting stages – i.e. both for the pre-sessional review and for the subsequent formal examination and dialogue – civil society input is invited, and any civil society submissions received form part of the information for Committee members, alongside reports and information provided by other UN bodies and specialized agencies.

The dialogue stage is preceded by a hearing of civil society organizations on the first day of each session, in which information is especially invited on recent developments in the countries under review. The dialogue between the Committee and the state party itself usually takes the form of a constructive exchange, for the purpose of assisting state parties to meet their obligations under the Covenant. Recommendations, known as *Concluding Observations*, are made in the spirit of this exchange. Only in case of gross, massive and repeated violations will the CESCR adopt a ‘violations approach’, handing down much more strongly worded recommendations.

So-called “parallel reports” by civil society are especially valuable and influential if they contain a comprehensive analysis of the status of ESCR in the country in question. Generally, a comprehensive report will only be achievable through the collective work of a coalition of engaged NGOs and civil society organizations at the national level. The process of cooperation in collating such a report can produce additional benefits, including better coordination in the follow-up on CESCR *Concluding Observations* at the national level.

The CESCR also issues so-called *General Comments* on the way provisions of the Covenant ought to be interpreted in the light of the CESCR’s experience. So far, 21 such *General Comments* have been issued, on such topics as the rights to food, education, health, water, work, intellectual property rights, social security, equality, non-discrimination and participation in cultural life, but also on cross-cutting general topics, such as the effects of economic sanctions on ESCR, or the role of national human rights institutions.

The drafting of *General Comments* is often also informed and supported by consultation with NGOs and civil society organizations.

General Comments and *Concluding Observations* on each state report are only recommendatory, not legally binding, but state parties will usually take these recommendations very seriously.

With the advent of an Optional Protocol to the Covenant which will enter into force once ten states have ratified it (at the time of writing of this article, 35 states had signed, but only

three had ratified), a quasi-judicial individual complaint mechanism will look at concrete violations of Covenant rights. Even if – in examining such complaints – the CESCR will only express its views, the media attention attracted to such cases will undoubtedly enhance knowledge of ESCR at the national level.

Civil society organizations and national human rights institutions will definitely have an important role to play in this new procedure as well, certainly at the international level but especially at the national level, raising awareness and putting pressure on governments to meet their internationally agreed human rights obligations.

4b Enforceability of the Right to Adequate Food in Brazil

JÔNIA RODRIGUES DE LIMA¹

Recently Brazil has taken significant steps towards the recognition, the implementation and the enforceability of the right to adequate food. Law 11.947, which was passed in June 2009, ensures all state school students are provided with lunch containing products from family agriculture, to which at least 30% of the school's food budget must be assigned. The third National Human Rights Program (III Programa Nacional de Direitos Humanos) started in December 2009. This program includes structural measures as well as action programs aiming to improve the realization of the right to food. The most recent success was the incorporation of the right to food into Article 6 of the Federal Constitution in 2010, following the enactment of Amendment 64. 2010 also saw the publication of the first follow-up report on the realization of the right to food in Brazil, carried out through a participatory process by the National Council of Food and Nutrition Security (Conselho Nacional de Segurança Alimentar e Nutricional, CONSEA). The methodology it employs could be used advantageously in other countries as well.²

Although the law does not by itself guarantee the universal realization of the right to food, the consolidation of the legal framework around this right undeniably strengthens its enforceability, as well as the implementation of public policies favorable to its realization. However, in Brazil, a sizable part of the judiciary has ties with dominant political and

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² CONSEA, *A segurança Alimentar e Nutricional e o Direito Humano à Alimentação Adequada – indicadores e monitoramento, da constituição de 1988 aos dias atuais*, Brasília, CONSEA, 2010. The full report is available in Portuguese on the CD enclosed in this publication.

economic groups and suffers from a blatant lack of independence. This is reflected, for instance, by the stagnation of efforts to free up land for agrarian reform purposes and to demarcate and sanction land belonging to indigenous peoples and *quilombolas*.³ Advancements in this area are generally limited to the short-term and are hindered by political actions aimed at bringing the process to a halt. The analysis of numerous cases showed strong indications of partiality towards large land-owners on the part of the magistrates adjudicating these cases.

Likewise, the increasing tendency towards the criminalization of human rights defenders and social movements is a major obstacle to the protection of human rights. The phenomenon was highlighted by the United Nations Special Rapporteur on the right to food during his visit to Brazil in 2009.⁴ This discrimination is quite obvious in the Brazilian media's biased reporting on movements denouncing the structural social and economic wealth concentration and the State's incapacity to manage social conflicts. These movements are often portrayed as criminal, undermining their demands for accountability. This trend has escalated to a point where it has led to illegal detentions, forced evictions and assassinations.

Human rights violations and noncompliance to legislation are even more pronounced in the case of indigenous and *quilombolas* communities. Despite recent legislative advancements, these communities are victims of an elitist culture that denies them the right to their traditional lands, even though this constitutes an essential condition for the realization of their right to food. Their ownership of these lands is usually not acknowledged, which often leads to violence, affecting the physical integrity of these populations. In addition, their mobilization to recover their territories is increasingly criminalized, and the slow titling process of indigenous lands exacerbates the conflicts between the large land-owners and populations claiming their lands. As a result, families are subject to severe food insecurity and are left depending on food distribution, a situation which is far from conducive to the realization of the right to adequate food.

3 Descendants of African slaves.

4 *Report of the Special Rapporteur on the right to food, Olivier de Schutter, Mission to Brazil*, presented at the Human Rights Council, 13th Session, 2010, p. 10. Available at: http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add6_country-mission-brazil_en.pdf

4c The Colombian Constitutional Court's Response to the Accountability Challenge: The Case of the Displaced Persons

CÉSAR RODRÍGUEZ AND DIANA RODRÍGUEZ¹

On January 2004, the Colombian Constitutional Court rendered the most ambitious decision it has delivered in its two decades of existence: ruling T-025 of 2004. In this decision, the Court declared the situation of internally displaced persons (IDPs) as an “unconstitutional state of affairs” (ECI in Spanish).² In doing this, the Court determined that the close to five million persons – about 10% of the country's total population³ – who have been internally displaced as a consequence of the ongoing Colombian armed conflict are victims of a massive, protracted and reiterated violation of their rights, including their right to adequate food and access to land, as a result of structural failures of the government.

Ruling T-025 introduced several innovations that make it a remarkable decision in the Colombian and global contexts of constitutional law and economic, social and cultural rights. Given the topic of this article, this box focuses on one of these novelties:⁴ the three-fold strategy adopted by the Court and civil society to implement the decision.

To guarantee compliance with its orders, the Court retained its jurisdiction over the case and set up a process consisting of follow-up measures, which include public hearings and follow-up decisions concerning implementation. The 84 follow-up decisions issued between 2004 and 2010 evaluated the level of government compliance with the Court's orders, issued additional orders, and demanded government entities to submit periodical progress reports to the Court. Likewise, a number of follow-up decisions focused specifically on the most vulnerable groups within the displaced population, like women, children, and Afro-Colombians. The 14 public hearings involved the participation of IDPs, government

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2 In Colombia, any citizen may file a petition, or *tutela*, by virtue of which they directly request any judge in the country to protect their fundamental rights, if these are being violated and no other legal action can effectively be used to prevent the violation of rights from continuing. All *tutela* decisions are automatically sent to the Constitutional Court, which can review any case at its discretion. For more on the *tutela*, see Rodrigo Uprimny, “The Enforcement of Social Rights by the Colombian Constitutional Court: Cases and Debates” in Roberto Gargarella, Pilar Domingo and Theunis Roux (Eds), *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* Ashgate, 2007.

3 In ruling T-025 the Court protected all IDPs, past, present and future. At the time of the ruling there were close to three million IDPs, and their number has increased since then.

4 For more on the innovative nature of the ruling, see César Rodríguez-Garavito y Diana Rodríguez-Franco, *Cortes y Cambio Social: Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia*, Bogotá, Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2010, Chapter 1. This article is available in Spanish on the enclosed CD.

officials, academics, judges, and international organizations like the United Nations High Commissioner for Refugees (UNHCR).

The implementation of decision T-025 has also been ensured by civil society. The most significant contribution in this area was the establishment of the Civil Society Follow-up Commission on the Public Policy on Internal Displacement. Created as a permanent forum bringing together representatives of IDP organizations, NGOs, indigenous peoples, Afro-Colombian groups and academia, the Commission has played an active role in the implementation of the decision, notably through two national evaluation surveys, which measured the realization of IDPs' rights nationwide.⁵

The last component of the implementation strategy was the adoption of over a hundred outcome indicators to measure the effective enjoyment of rights by IDPs. The indicators were the result of a two-year collaborative process between the Court, the government and the Follow-up Commission.⁶

This continuous participatory process is the most explicit and systematic case in Latin America of a judicial and civil society strategy to assure the implementation of a structural decision.

5 The two National Verification Surveys are available at: www.codhes.org. The main findings of the survey are also presented in C. Rodríguez-Garavito y D. Rodríguez-Franco, 2010, *op. cit.*, Chapter 8.

6 For an in-depth analysis of the construction process of the outcome indicators, see C. Rodríguez-Garavito and D. Rodríguez-Franco, *Ibid.*, Chapter 7.

4d The Right to Food Campaign in India

BIRAJ PATNAIK¹

Despite significant economic progress making it the second fastest growing economy in the world, India lags behind in most human development indicators. Nearly half (46%) of Indian children are malnourished, a third of all babies are underweight at birth and two thirds of women are anemic. In 2010, India was ranked 67th out of 84 countries in the Global Hunger Index² and 119th out of 169 nations in the Human Development Index.³ Ironically, India has some of the largest food and employment programs in the world.

The Right to Food Campaign (RTF Campaign) in India originated in the landmark Indian Supreme Court case popularly called the *Right to Food Case*.⁴ Since 2001, the Supreme Court has passed over a hundred judgments in this case which have, *inter alia*, universalized school feeding and child care programs; created the conditions for the passage of the universal rural employment guarantee program, guaranteeing every rural household a hundred days of work at centrally determined minimum wages; created legal entitlements for social security; and now, helped create a series of legally justiciable rights for the urban homeless.

This case is not only unique because it is the longest continuing mandamus on the right to food in the world, but also because through it, the Supreme Court has perpetuated the monitoring of food and employment programs and created an independent monitoring mechanism, the Office of the Supreme Court Commissioners, to monitor the implementation of its orders.

Legal action on the right to food is backed by local activism through the RTF Campaign, an informal network of over 2500 trade unions, people's movements, grassroots civil society

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2 Global Hunger Index, *The Challenge of Hunger: Focus on the Crisis of Child Undernutrition*, Deutsche Welthungerhilfe (German AgroAction), International Food Policy Research Institute (IFPRI), Concern Worldwide, 2010.

3 Human Development Index, *The Real Wealth of Nations: Pathways to Human Development*, United Nation Development Programme (UNDP), 2010.

4 The *Right to Food Case*, technically known as *PUCL v. Union of India and others*, Civil Writ Petition 196/ 2001, was filed by People's Union for Civil Liberties asking for specific reliefs from the Supreme Court for the western Indian state of Rajasthan, which was reeling under a drought in 2001. The Supreme Court extended the petition to cover the entire country and has since passed more than a hundred landmark orders which have universalized school meals for 120 million primary school children, extended essential services for 160 million children under the age of six, intervened in the Public Distribution System and social assistance programs like maternity assistance and pensions for the aged. Last year, the Supreme Court extended this litigation to cover the urban homeless with directions to governments (national and state) to build one homeless shelter for every hundred thousand people, across the country.

organizations and legal activists across India. The Campaign mobilizes people in order for them to demand and exercise their right to food, especially in the context of Supreme Court orders and existing legislation on rural employment. The Campaign works closely with the legal team, the Court Commissioners, and other campaigns like the Right to Information Campaign, which pressures local and national government to fulfill its obligations on the right to food. In recent years, the Campaign has also worked on issues of food sovereignty, agricultural production and agrarian reform.

Over the past year, the battle for the right to food in India has reached a critical point. It has shifted from the streets to the Parliament, which is on the cusp of legislating the National Food Security Act. While activists and campaigners have welcomed the move, significant doubts remain over the Act's ability to fully realize the right to food if it limits itself to the "fulfill" dimension without equally stressing the "protect" and "respect" aspects.

The RTF Campaign has insisted that all entitlements created by the Supreme Court in the *Right to Food Case* must become justiciable rights in the legislation. In fact, the Campaign believes that the government must go beyond existing entitlements and focus on more programs for the vulnerable. It is an opportunity to reform all existing schemes and programs and make them more effective. The Act must look more broadly at nutritional security, including access to safe drinking water, sanitation and primary health care, not just food-provisioning programs. The position of the RTF Campaign and a significant sector of Indian civil society is that rights are universal, and therefore, when legislated, the right to food must create universal provisions for every citizen. Though specific entitlements can be differentiated to provide additional benefits to marginalized sections of society, universalism must be the cornerstone of the legislation.

Food security can never be achieved without addressing issues of production. The Act must contain provisions for revitalizing agriculture, encouraging small and marginal farmers and supporting agro-ecological production. It must prevent alienation of land from farmers for industry, real estate, or other non-agricultural uses. It must protect the interests of local farmers and disincentivize corporate takeovers of agriculture. The Act must provide a state guarantee for the procurement of produce from farmers at remunerative prices. State procurement efforts must also cover local nutritious millets so that their production is enhanced, and a more diverse and nutritious food basket can replace the staples, rice and wheat.

Many past programs have failed due to implementation problems. It is imperative that the proposed legislation have strong justiciable mechanisms and a monitoring system composed of institutions separate from those implementing the programs. The Act must encourage the proactive disclosure of information, create transparency, safeguard accountability, and penalize violation of the entitlements.

Only time will tell if the proposed food security legislation can achieve all these objectives and move India towards a future free from hunger.

THE CHALLENGES IN ACCESSING JUSTICE WHEN CLAIMING THE RIGHT TO ADEQUATE FOOD

ANA MARÍA SUÁREZ FRANCO¹

During the last decade, the recognition of the justiciability of economic, social and cultural rights (ESCR) has made great progress. This can be confirmed by analyzing the literature on the topic and the large body of jurisprudence regarding these rights created by national courts in developing countries.² In these countries, the judicial system seems to be used as a new channel by social movements and affected communities when directly elected political bodies fail to resolve social problems.³ Although decisions exclusively dealing with the right to food have been small in number in comparison to other rights such as the right to health, many complex decisions covering diverse rights related to a dignified life also include the protection of the right to food.⁴

These advancements, however, do not necessarily mean that communities or individuals affected by violations of their right to adequate food are guaranteed to get justice. In fact, thousands of victims of right to food violations are neither able to obtain the prevention of these violations, nor remedy when violations have been ascertained. Experience⁵ has shown that people living in conditions of poverty and marginalization are the most affected by the lack of access to effective justice for violations of their ESCRs.

This article does not claim to revive the theoretical discussion on whether to reject or defend

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This article has benefited from inputs given by Sandra Ratjen, Senior Legal Advisor on Economic, Social and Cultural Rights at the International Commission of Jurists and FIAN member.

2 See i.a.: F. Coomans, *Justiciability of Economic, Social and Cultural Rights: Experiences from Domestic Systems*, Antwerpen, Oxford: Intersentia (2006); M. Langford, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies*, Centre on Housing Rights & Evictions, Geneva, 2003; International Commission of Jurists, "Les Tribunaux et L'Application des Droits Economiques, Sociaux et Culturels", *Série Droits de l'Homme et État*, No.2, Genève, 2008. A. M. Suarez Franco, "Die Justiziabilität wirtschaftlicher, sozialer und kultureller Menschenrechte" in *Studien zum europäischen und öffentlichen Recht*, Frankfurt, Ed. Eibe Riedel, 2010.

3 R. Gargarella, P. Domingo, T. Roux, *Courts and Social Transformation in New Democracies*, Ashgate, 2006; M. J. Cepeda, "Judicial Activism in a Violent Context: The Origin, Role and Impact of the Colombian Constitutional Court," *Washington University Global Studies Law Review*, Vol 3, Special Issue, Washington D.C., 2004, pp. 529-699.

4 For specific judicial decisions on the right to food, see: C. Golay,

"The Right to Food and Access to Justice, Examples at the national, regional and international levels," *Right to Food Studies*, Rome, FAO, 2009; on the specific decisions in India, see: Human Rights Law Network, *The Right to Food*, New Delhi, January 2008. Some examples of comprehensive decisions also having an impact on the realization of the right to food are: Inter-American Human Rights Court, *Comunidad Mayagna (Sumo) Awas Tingni Vs. Nicaragua*, Decision of 31 August 2001, Serie C No. 79, available at http://www.corteidh.or.cr/pais.cfm?id_Pais=15; Colombian Constitutional Court, *Decision T-025 of 2004 on Internal Displaced People*; Inter-American Human Rights Court, *Comunidad Indígena Sawhoyamaya Vs. Paraguay*, Decision of 29 March 2006, Serie C No. 146, available at http://www.corteidh.or.cr/pais.cfm?id_Pais=5; Inter-American Human Rights Court, *Comunidad Indígena Yakye Axa Vs. Paraguay*, Decision of 6 February 2006, Serie C No. 142, available at http://www.corteidh.or.cr/pais.cfm?id_Pais=5; Estado de Alagoas, Poder Judiciario, 28° vara cível da capital – infancia e juventude, Proc. N°. 4.830/07, 10 September 2007, Dr. Fábio José Bittencourt Araújo; South African Supreme Court of Appeal (SCA) handed down judgment in the Mazibuko case, 25 March 2009; Colombian Constitutional Court, *Decision T-267 of 2011*, i.a.

5 Seminar organized in Berlin by Brot für die Welt and Amnesty International – Germany, 20-21 January 2010 and a series of seminars organized by FIAN International between 2007 and 2011 in Guatemala, Honduras and Bolivia, and discussions with law clinics in Argentina, Colombia and Mexico, in the framework of the IFSN Project financed by the European Commission.

the justiciability of ESCR.⁶ Its objective is to provide an overview of practical hurdles that marginalized people face when seeking access to justice, understood in the broader sense of a real, fair and equitable solution to violations of their right to adequate food through the use of quasi-judicial and judicial mechanisms.

The information included in this article derives from case analysis and field experience. The analysis is based *inter alia* on information exchanged with affected communities during the process of documenting cases and elaborating case strategies, and on workshops and seminars with judges, lawyers and other judicial officers, mainly at national level.

Although the obstacles in the way of obtaining justice can be very diverse and interrelated, their impact on achieving real justice will depend on the specific national legal culture, the manner in which the hurdles combine, their intensity, or the way in which such obstacles are influenced by other externalities. The following analysis presents an overview of the various hurdles related to specific levels. This is just a methodology to help better understand these hurdles and possible ways to overcome them; nevertheless it should be accepted that in dealing with a given social context, the best way to find possible solutions would be to analyze hurdles and challenges case by case.

1) Hurdles and challenges at rights-holders' personal or household level

- Rights-holders' lack of awareness
- Resignation to the injustice of the *status quo*
- Fear of reprisals against human rights defenders
- Mistrust of institutions in charge of appeal mechanisms
- Inability to claim rights while fighting for survival
- Economical and physical accessibility to competent authorities

One of the major obstacles that people have to overcome to claim their rights is the need to understand their position as rights-holders. This hurdle is especially present in the case of the right to food, with regard to which people hardly understand that situations of hunger and malnutrition very often do not just derive from their conduct or inaction, but from socio-political and economic structures which cause them to lose their access to resources or their capacity to feed their families. A head of family who is unable to feed her or his family might tend to think that hunger is a result of wrong decisions or lack action on their part rather than of structural factors.

People's lack of initiative to claim their rights can also derive from the fact that they do not perceive the *status quo* as a situation of injustice and from the cultural belief that this is the way things should be or have always been. This is clearly the case of women who suffer from discrimination at the hands of their families, communities or societies from birth, and who are not aware that they can call for change if this *status quo* of violence or discrimination prevents them from feeding themselves in dignity.

The main challenge in order to overcome these obstacles is the need for education of the

⁶ On the theoretical discussion, see i.a.: V. Abramovich, C. Courtis, *Los derechos sociales como derechos exigibles*, Madrid, 2002, p.15, 19; F. Coomans (Ed.), *Justiciability of Economic, Social and Cultural Rights*, Antwerpen, Oxford: Intersentia, 2006; A. Eide, C. Krause; A. Rosas (Eds.), *Economic, Social and Cultural Rights*, Boston, London, Dordrecht, 2001; J. Hausermann, "The Realisation and Implementation of Economic, Social and Cultural Rights", in Ralph Beppard (Ed.); R. Uprimny, C. Rodríguez, M. García, *Justicia Para Todos*, Bogotá, 2006; A. M. Suárez Franco, "Die Justiziabilität wirtschaftlicher, sozialer und kultureller Menschenrechte" in *Studien zum europäischen und öffentlichen Recht*, op. cit., p.57.

rights-holders, which would make them aware of their rights and of the possibilities available to them to lodge a complaint. One useful way of achieving this is the implementation of educational methodologies which are close to their realities. Creative participatory mechanisms which motivate people to use the knowledge they have and to acquire new knowledge and abilities are required to effectively build capacities.⁷ For example, asking people about problems they are experiencing in relation to the realization of their right to food, in the specific context of their town or community, and using their own examples to understand the attributes of the right and related state obligations, as well as to reflect on case advocacy strategies, can be more effective than presenting them a PowerPoint slide-show of purely theoretical concepts and hypothetical cases far removed from their own lives.⁸

A further obstacle is, on the one hand, the fear of reprisals by authorities involved or third parties acting against human rights defenders (for example through criminalization), and on the other hand, mistrust of the institutions or authorities in charge of appeal mechanisms. This is a bigger challenge, the solution to which will depend i.a. on the actors involved and on the intensiveness of threats and experiences faced by

the affected people. To overcome these obstacles, structural changes concerning the protection of the victims and of human rights defenders supporting them are required, as well as respectful and functioning sanction mechanisms for those causing intimidation. Simply experiencing real solutions will motivate rights-holders to trust in the institutional defense of their rights.

People's inability to claim their rights within the existing structures is also a challenge. A person suffering from hunger rarely has the capability to think in terms of a legal strategy to defend his or her rights, when she or he has to think of how to survive in conditions of scarcity and how to provide food, housing, or basic services for her or his family on the next day. Material freedom is a condition for people to be able to make use of complaint mechanisms.⁹ The contribution of third-party actors informing and supporting people in their legal action could help to breach the vicious circle. These actions should focus on increasing abilities. This has mainly been achieved by civil society organizations supporting not just a family, but helping to organize communitarian struggles and creating synergies for collective action against injustice impeding access to food and resources.

The most affected people also generally do not possess the capabilities required to read and understand information, particularly very complicated legal and procedural terminologies. Especially challenging are the circumstances for people in a situation of vulnerability, who are marginalized and do not have the capacity to access the authorities, either because the required procedures are too complicated for them, or because they do not have access to technologies needed in order to access procedural mechanisms or advisory services. Language can be an

7 P. Freire, *Pedagogia do Oprimido*, 13. ed., Rio de Janeiro: Paz e Terra, 1983; P. Freire, *Educação e mudança*, 23. ed., Rio de Janeiro: Paz e Terra, 1979; P. Freire, *Pedagogia da Autonomia: saberes necessários à prática educativa*, 7. ed., São Paulo: Paz e Terra, 1998; N. A. N. Berbel, *Metodologia da Problematização no Ensino Superior e sua contribuição para o plano da praxis*, Semina: v.17, 1996, n. esp., pp.7-17.

8 Another example is the experience of FIAN Mexico, who asked women from marginalized areas to write a diary compiling situations in the household they perceive as unfair. These situations were then discussed and analyzed in the community, so that the women could understand why such violent and discriminatory practices are not right and how and through which specific channels they could take action to claim for solutions. This type of activity can be used to develop monitoring abilities, which can then be applied to the monitoring of discriminatory and violent practices at community or national level.

9 R. Alexy, *Theorie der Grundrechte*, Baden-Baden, 1985, p. 466; A. Sen, *Development as Freedom*, New York, 1999.

additional hurdle. In these cases, culture-sensitive social services and legal aid can be a way to overcome the obstacle.

Furthermore, economical and physical accessibility to judicial bodies can be very difficult for marginalized or disadvantaged communities. When something as basic as transport to reach the legal institutions, often located very far, costs more than the resources a family depends on for its survival, people evidently cannot be expected to change their spending priorities. Therefore, at least authorities in charge of facilitating the process should be available in a nearby area. The existence of geographically accessible quasi-judicial or judicial institutions is necessary in order to guarantee people's access to justice. National human rights institutions – when they enjoy the necessary independence, have adequate capacities and mandate¹⁰ – as well as legal societies or legal aid institutions, that have local offices, can make a significant contribution to overcome this obstacle.

This situation is aggravated when judicial procedures or access to a lawyer imply a cost for the people. In these cases, pro bono or attorney mechanisms dealing with strategic litigation which are mobile and can adapt to the cultural needs should be supported, notably by the state, governmental or non-governmental agencies supporting development cooperation, democratization and the rule of law, and by academia.

2) Obstacles at the organizational and community levels

- Difficulties in decision making
- Disruptions in community unity
- Difficult relations between lawyers and community representatives

¹⁰ In order to become adequate tools for the promotion of ESCR, National Human Rights Institutions should be working in the light of the 1993 Paris Principles, «relating to the Status of National Institutions», with a broad mandate for action (see mainly Principles 2 and 3 a).

Although seeking justice can be easier for an organized community than for a single person or family, because it can create synergies to cover costs and to pay lawyers, or some family members can take care of children and older persons in the family while community representatives take care of procedural aspects, organization can also imply challenges. Difficulties in decision making, disruptions in community unity or difficult relations between the lawyer and community representatives can interrupt a legal process and impede the achievement of aimed objectives. In these events, even if good, affordable legal assistance is on hand, the process can be aborted before a favorable judicial decision is issued. Case strategy should not just consider the legal dimension. Organizational and educational dimensions, including strengthening the community, informing on the development of the process, on its risks and on the added value of an eventual judicial decision are essential to avoid organizational obstacles until a judicial decision is implemented. In many cases the presence of mediators who know the communities well (anthropologists, social workers etc.) can be an excellent support.

One of the challenges faced nowadays, especially in cases related to development mega-projects affecting indigenous communities and threatening them with massive land evictions, is to maintain the communities together during the preceding processes of public consultation. Although some judicial decisions have been taken in the last years to stop projects in which consultation did not take place in due form,¹¹ en-

¹¹ On previous consultations in due form, see: Mexico, *La Parota Case*, Decision of 19 April 2011, Tribunal Unitario Agrario (TUA) District 41, in juicio agrario de nulidad 360/2010; Argentina, Decision of 16 February 2011, Juzgado Civil N° 2 en lo Civil y Comercial de Cutral, Judge Mario O. Tommasi, *Case Co. Argentina Petrolera Piedra Del Águila SA. vs Curruhuinca Victorino Y Otros S/ Acción De Amparo*; Colombia, Constitutional Court Decisions: T-428/1992 *Resguardo indígena de Cristiania (Jardín, Antioquia)*, *Troncal del Café Case*; SU-039/1997 *Pueblo indígena U'wa, Bloque Samoré Case*;

terprises involved have been known to develop strategies to split and fragment the community, making it very difficult to eventually bring the case to court. Moreover, the balancing act that people in this situation have to perform between accepting the offered compensation or deal, however inadequate it may be, and going into resistance with the risk of getting nothing at all at the end of the process, may make it difficult to achieve community unity towards a long legal procedure. Adequate educational processes and information, as well as support (especially material) to the community are very helpful to confront such strategies. This task could be carried out mainly by national human rights institutions, state authorities dealing with the affected communities, NGOs working in relevant areas and development cooperation agencies.

3) Obstacles and challenges at the level of the legal framework, the structure of the administration of justice and legal practices

- Lack of implementation of the rule of law and the primacy of human rights
- Weakness of institutions in charge of protecting human rights
- Lack of coherence between the national legal framework and international human rights standards
- Lack of adequate remedies
- Lack of suitable accountability mechanisms for extraterritorial obligations
- Legal culture which stigmatizes or neglects human rights
- Limited application of human rights law to certain geographical or judicial competency areas

T-652/1998 *Pueblo Indígena Embera Katio, Urrá Case*; C-169/2001, *Circunscripción electoral – Comunidades Negras*; C-891/2002 *Sobre consulta del Código de Minas*; SU-383 de 2003, *Consulta en el caso de fumigaciones*; T-880/2006, *Pueblo Indígena Motilón Bari, Proyecto de perforación exploratoria Álamo I ECOPEPETROL*; C-030/2008, *unconstitutionality of Forestry Law 1021/2006 Ley General Forestal*.

It is only within the broader framework of the rule of law that access to justice for victims of violations of the right to food can really make sense. This framework should guarantee i.a. that there are strong institutions at the service of the protection of human rights, ensuring accountability and fighting against impunity. In the absence of these conditions, the judicial system can become just another empty promise generating mistrust and disappointment.

Although the right to food has been included in the Constitutions of at least 24 countries¹², and the International Covenant on Economic, Social and Cultural Rights has been integrated in the Constitutions of several others,¹³ national legal frameworks are often not in line with these internationally acquired obligations and in some cases, this lack of legal coherence becomes a structural cause of systematic violations. In fact state authorities tend to use domestic law to defend non-compliance with their international human rights obligations on ESCR, including the right to food. Such arguments are contrary to international law¹⁴ and to the right to effective remedies for victims of human rights violations. By its very nature, a human right only makes sense if it can be claimed, in particular through judicial remedies.¹⁵ The lack of adequate remedies can

12 For a full list of countries, see FAO, *The Right to Food Guidelines: Information Papers and Case Studies*, 2006, or <http://www.fao.org/docrep/meeting/007/j0574e.htm>. The last inclusions were in the constitutions of Ecuador, 2008; Bolivia, 2009; Brazil and Ghana, 2010. At the time of writing of this article, the incorporation of the right to food in the Mexican Constitution was in its final phase.

13 See A. M. Suarez Franco, "Die Justiziabilität wirtschaftlicher, sozialer und kultureller Menschenrechte" in *Studien zum europäischen und öffentlichen Recht*, op. cit., p.193.

14 See the Vienna Convention on the Law of Treaties, especially the principles of good faith that should drive states to accept being bound by treaties (Art. 26) and the prohibition of invocation of internal law provisions to justify the failure to perform a treaty (Art. 27).

15 H. Kelsen, *General Theory of Norms*, Oxford, 1991, p.136; H.Kelsen, *Reine Rechtslehre*, 2. Aufl, Vienna, 1960, p.140; R. Alexy, *Theorie der Grundrechte*, op. cit., p.467; R. Arango, *Der Begriff der Sozialen Grundrechte*, Baden-Baden, 2000, p.27.

even be a hurdle when justiciability mechanisms exist. Although in the current constitutional systems, or at least in the regional systems, mechanisms have increasingly been put in place to allow victims to bring their complaints to judicial or quasi-judicial bodies, there are still some situations in many countries and at international level in which impunity persists.

A first example is the fact that the Optional Protocol to the ICESCR, adopted by the UN General Assembly in 2008, is still not in force. At the time of writing of this article, only three states had ratified it.¹⁶ Ten ratifications are needed to ensure that the mechanisms intended by the Optional Protocol become a reality for victims of violations of Covenant's rights, including the right to food.

Other cases are the violations of extraterritorial obligations of states, understood as the human rights obligations that states have beyond their borders¹⁷ and/or violations caused by abuses incurred by transnational companies. This kind of violation still often remains unpunished due to the lack of adequate remedies. In order to overcome this obstacle, not only effective national judicial complaint mechanisms are to be implemented, but international standards are still to be developed, which would provide binding obligations as well as effective and specific remedy mechanisms to enable the victims to claim their rights when they are violated by actors outside of the state they live in.

Another obstacle we must consider is the more general legal culture,¹⁸ which in many countries tends to place procedural law above substantive rights. In this case, even in a situation where a violation can be clearly identified and the liability of the competent authorities is established, judicial authorities tend to raise obstacles grounded in procedural rules, such as terms or formalities. A good example of a measure to counteract this judicial culture is the clause included in the Colombian legal framework, which obliges judicial officers to give priority to the substantive right over procedural aspects.¹⁹ According to the respective rules, in the Colombian system, even a child can present a constitutional recourse simply by mentioning the violation. In this event, the judge is obliged to identify the applicable law, even if the plaintiffs did not include an explicit reference to specific constitutional provisions.²⁰

An additional structural obstacle, which can be observed in the Latin American context, is that progressive jurisprudence remains confined to the constitutional jurisdiction or to the high courts, and human rights are not applied by judges of lower hierarchies, judges in different jurisdictions, or do not permeate the system to the judges working in remote areas. This has been particularly problematic in cases in Central America in which peasant communities have taken possession of land to produce food for themselves and their families – in most cases lands not used by alleged owners or

16 Ecuador, Mongolia and Spain. On 19 May 2011, the National Parliament of El Salvador approved the ratification of the Optional Protocol to the ICESCR and at the time of writing of this article, the deposit of its instrument of ratification at the United Nations Secretariat was pending.

17 The term of Extra Territorial Obligations of states refers to the binding duty that states have to protect, respect and fulfill human rights beyond their borders. For more information, see: M. Gibney, S. Skogly (eds.), *Universal Human Rights and Extraterritorial Obligations*, Pennsylvania, 2010; M. Gondek, *The Reach of Human Rights in a Globalizing World: Extraterritorial Application of Human Rights Treaties*, Antwerp, Oxford, Portland, 2009.

18 Legal views in national contexts can be strongly conditioned by traditional conservative doctrine and scholars, which substantively influence the evolution of interpretation of the law. Universities are the "nests" where jurists can be taught to interpret law in a progressive manner, towards human rights protection. But they can also constitute a hurdle in the evolution of the understanding of law, maintaining lawyers very close to extreme procedural views and protecting the interests of specific elites, while important questions of justice and human dignity are forgotten or neglected.

19 Colombia, *Decreto 2591 of 1991*, Art. 3, available at: http://www.cnr.org.co/interior_otros/pdf/decreto_2591_91.pdf

20 *Ibid.*, Arts. 10 and 14.

lands promised to them by authorities within the framework of agrarian reform processes. In such situations, in the light of the right to food, they should not be evicted, but they used to be criminalized on the mere basis of criminal law. A good example of how to tackle this problem was the initiative of the Honduran Supreme Court which, however, was never implemented, but would have required that indications be given to judges on how to apply human rights law in land conflicts. Better communication channels for progressive jurisprudence are not only needed at international level, but also within national judicial systems. Moreover, protective judicial decisions, which play a decisive role in the progress of the protection of ESCR, should be disseminated nationally and internationally in order to stimulate such evolutions.²¹

4) Judicial officers and lawyers as individuals

- Lack of knowledge
- Lack of interest in changing social inequalities or patterns of injustice
- Lack of impartiality of judicial officers
- Unavailability of adequate legal material
- Lack of time

Together with the general legal culture, including the understanding thereof adopted by academia, the position taken by individual lawyers and judges regarding justiciability can also negatively influence the access to justice of victims of violations of the right to food. This position can either be influenced by lack of knowledge or by lack of interest in changing social

inequalities or patterns of injustice. In the specific case of judges, several explanations have been given, for example the lack of cases which are based on consistent legal arguments and evidence presented in courts, or the judicial system's lack of impartiality, which precludes them from protecting certain rights, due to political pressure or possible threats, including the danger of losing their employment, especially when their decision might affect specific circles of power.

In the Latin American region, some judges and lawyers also argue that this state of affairs is caused by the unavailability of more up-to-date legal material in their native languages or by the lack of time to dedicate to the analysis of ways to apply new international legal developments to their cases. In this context, capacity building of judges and lawyers on how to apply international human rights standards in their work can be a relevant measure. Moreover, experience has shown that one training unit is not enough to change the judicial and legal culture. It is a process which needs persistence, and if possible also the engagement of diverse actors, as well as enough resources (institutional and financial) to ensure an effective follow-up. Inputs given by an external actor can provide a good support, but only if the will to change is there, otherwise, if the targets for the information are not sufficiently interested in fighting injustice, it may well just turn into a loss of resources.

5) Implementation of judicial decisions

Even in cases in which a judicial decision is available, a better enjoyment of rights is still not guaranteed for the people concerned. The difficulties faced by people in having these decisions implemented constitute a great challenge. Although some tribunals, notably in South Africa

²¹ See for example: FIAN's *Right to Food Quarterly* at <http://fian.org/resources/documents/categoria-3>, which always include judicial landmark analysis on ESCR. In addition, tools such as the ESCR-Net Caselaw Database are very useful for the dissemination of emblematic judicial decisions in different languages, advancing in the protection of ESCR. See: <http://www.escr-net.org/caselaw/>

or in Colombia²², have implemented schemes to monitor the implementation of judicial decisions, reality has shown that quasi-judicial or judicial channels and judicial strategies alone are not enough to achieve real justice. Political and media strategies, which put pressure on the responsible authorities for the implementation of protective judicial decisions throughout the entire quasi-judicial or judicial process, are a crucial aspect of strategic litigation. Both national and international pressure can be a helpful tool in order to make responsible authorities accountable to the victims and comply with remedies that are adequate and acceptable to the victims, including restitution, reparation, compensation, satisfaction and/or assurance of non repetition.

Final Remarks

The analysis presented in this article, based on empirical information and exchanges with diverse actors involved in the different phases of the process of obtaining justice for cases of violations of the right to adequate food, shows the complexity of the issue.

Evidently, the process of accessing justice covers a broad field of work, from structural issues such as the implementation of the rule of law, to the very personal perception of rights and justice by affected individuals and communities. Obstacles are present in all areas and are very diverse in nature. Therefore solutions to these problems should be comprehensive, coordinated and use an interdisciplinary approach.

A wide range of social and political actors have it in their hands to design and implement measures which can contribute in an effective manner to a solution, especially in the area of the right to adequate food. Although some organizations and individuals are already engaged towards solutions, a huge task is still pending, which requires a sincere analysis, interactive communication, availability of human and financial resources and adequate coordination, including sharing experiences among different countries and actors. Moreover, working together to develop the articulated strategies required at local, national, regional and international level in order to overcome the numerous obstacles, should be on our agenda.

²² See for example the monitoring of Judicial Decision T-025/2004 of the Colombian Constitutional Court, as explained in C. Rodríguez-Garavito and D. Rodríguez-Franco, *Cortes y Cambio Social: Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia*, Bogotá, Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2010.

THE RIGHT TO NUTRITION¹: STRATEGIES TO HOLD MULTILATERAL AND BILATERAL DONORS ACCOUNTABLE

CLAUDIO SCHUFTAN AND URBAN JONSSON²

Most United Nations and bilateral donor agencies are not applying the human rights-based framework, despite the fact that this is their mandate (for the UN agencies) and the internationally expected approach to use (for bilateral donor agencies). In fact, quite a radical conversion or adjustment of their approach to aid in nutrition is indeed needed to reach that point.

Donors may be giving aid voluntarily, but in this day and age pressures have increased for them to comply with human rights tenets. Donors may be accountable in a variety of ways, e. g., through their budget allocation or through building capacity to work on realizing the right to nutrition. The accountability from donor agencies to partner governments and to the donor countries' citizens has been historically weak at best, but – with the shift in the development

paradigm now in the making – it is now legitimate to expect the donors to be accountable to work towards realizing the right to nutrition.

Accountability assesses the performance of duty-bearers against established human rights principles and standards; it informs donors of such assessments in order to guide them toward changing their behavior. Accountability, as a tool, should also have the power to impose sanctions of different types; however, it first attempts to foster a constructive dialogue. While there are different mechanisms of accountability, the most crucial is that they be made available to claim holders themselves. Having rights that are enforceable means recognizing that people mobilized by civil society organizations should be empowered to stake claims. Explanation and training need to be provided on the procedures that are to be used for complaining, on the steps that will have to be taken to verify the complaints and, on the steps that are to be taken to call for corrections. Claim holders must know their rights and they must have appropriate institutional arrangements available to them for pursuing the realization of those rights. In short, where there are no effective remedies, people's rights are not really realized.

The key right to nutrition issues that need to be assessed in donor agencies pertain to all aspects of their strategies, but mainly relate to their application of the human rights-based framework. In order to make donors comply with human rights-centered practices in their nutrition and other development aid programs, civil society organizations primarily, but also recipient governments should question donors' compliance with such practices. We thus always need to assess the human rights training of their staff;

1 We here use 'right to nutrition' rather than 'right to food' as we feel that this denomination better reflects the different causes of malnutrition that link food, care and health. All of the latter are necessary conditions for good nutrition, but none of them alone or any two together are sufficient conditions. Sufficiency requires that all three conditions be met at the same time. Food, care and health are recognized human rights in the Convention on the Rights of the Child (U. Jonsson, "An Approach to Assess and Analyze the Health and Nutrition Situation of Children in the Perspective of the Convention on the Rights of the Child", *Int.J.of Children's Rights*, Vol.5, 1997, pp. 367-381.

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the compliance of their aid with human rights principles; their adherence to the legal obligations established by the Covenant on Economic, Social and Cultural Rights (ICESCR) and other pertinent documents; the way they conduct human rights assessments of their programs and projects; the inclusion of the most vulnerable groups, including women, in the consultation process – if the latter exists; the availability of complaints procedures for claim holders seeking redress, etc. A detailed checklist of the issues to be assessed in donors both at headquarters and at country level can be found in Box 6c.

Holding donors accountable has two distinct phases: *detection* (i.e., determining whether they are violating the right to nutrition), and *correction* (i.e., doing something with the information obtained to get duty-bearers to change their behavior). The assessment proposed in the preceding paragraph (as supplemented in Box 6c) is instrumental in the detection phase. The correction phase challenge calls for a caveat:

Indeed, accountability will only work if and when there is commitment to a change in behavior. Having outsiders telling donors what they ought to do, i.e., chastising them for not using the human rights-based (HRB) framework – when maybe they have never even heard of it – may not be productive. Active advocacy may have to start with an educational effort.

To get from the above assessment to a plan of action, the human rights-based framework prescribes going through:

- a *causal analysis* of what explains the reasons why donors have been reluctant to comply with the different processes that are key in applying the HRB framework (which can be assessed looking at what is proposed in Box 6c),
- a *pattern analysis* that identifies specific claim holders and duty-bearers and then identifies the often complex claim-duty

relationships among them, and

- a *capacity gap analysis* that identifies the gaps each donor has to comply with in order to address the processes and issues they are not addressing, so that specific corrective actions can inform their future plans of action.³

Since the challenge being addressed in this article is to get multilateral and bilateral agencies to comply with the human rights framework, all the lessons learned from the proposed assessment have to be incorporated into the most locally feasible and relevant plan of action, a plan that will include the global and national actions that are deemed necessary to have donors abide by the HRB framework. Civil society representation is essential in this exercise. The points of assessment proposed above are necessary, but not sufficient to come up with a final plan of action that is HRB and well adapted to the local context.

The concrete plan of action is to mobilize all pertinent actors of civil society and of government to confront donor agencies to, in no uncertain terms, demand the needed changes in their aid strategies and plans. We have no doubt that this is in the best interest of all recipient countries and especially the interest of their marginalized social groups. So, to sum up, if donors do not abide by human rights principles and standards in their nutrition projects, and there are no accountability mechanisms to ensure that claim holders get that to which they have a right, ultimately donor projects will for sure continue to miss addressing central entitlements pertaining to the right to nutrition.

As examples to illustrate the above, it is pertinent here to introduce and critique two very current international donor-based projects:

³ See United Nations Development Assistance Framework Guidelines 2010, <http://www.undg.org/?P=232>

- One on the recent World Bank-proposed Scaling Up Nutrition (SUN) Road Map, which very few other donor agencies have criticized and many have actually endorsed (see Box 6a);
- One on the approach being considered for adoption by some donor agencies in terms of using ready-to-use therapeutic foods

(RUTF) for cases other than acute malnutrition and emergency feeding situations (see Box 6b).

Underlying both critiques are cases of failure of donors to carry out their human rights role in an accountable manner both in relation to the rights of the child and the right to nutrition.

6a The Scaling Up Nutrition (SUN) Road Map: A Critique

The Road Map for SUN reflects the May 2010 World Health Assembly resolution 63.23 on infant and young child nutrition and is anchored in the guiding principles developed by the Standing Committee on Nutrition in 2009 in Brussels. This initiative is an attempt to coordinate the actions of all levels of actors in the field of nutrition.¹ However, not only does the document not present any new elements for a nutrition strategy, but it is filled with empty rhetoric; it also ignores the basic concepts of a meaningful rights-based approach to nutrition interventions. For example, SUN ignores the fact that there are claim holders and duty-bearers involved in the development process and that it is only the dialectical engagement of the two that will move the ‘nutrition process’ forward. Where the first section of the document claims that the SUN initiative will “ensure that nutrition policies are pro-poor, pay attention to people with specific nutritional requirements (especially children under the age of 2 years), are rights-based, offer integrated support (food, health, care and social protection), are participatory (building on local communities, engaging their institutions and are inclusive of women’s and children’s interests), and do no harm” (p.8), none of these subjects are further elaborated in the rest of the document.

The different interventions that are being requested for implementation are utterly ‘top-down’ and there is absolutely no reference made to anything resembling an Assessment, Analysis and Action approach.

A HRB causality analysis would reveal that disparity in nutritional status is rooted in processes of exploitation and power imbalances. This analysis is completely disregarded in the SUN document that, instead, calls for a naïve harmony and consensus among nutrition professionals (p.10) as opposed to actively engaging with local communities.

SUN prioritizes technical interventions over social, economic and political interventions. Its

¹ The document can be downloaded at the following address: <http://www.un-foodsecurity.org/node/768>

monitoring and evaluation approach includes only outcome and delivery-related impact indicators, and not the process indicators recognized as critical in the HRB approach (p.10). In addition, none of the Paris Principles² are mentioned as a basis for monitoring indicators.

Also, SUN's proposed benefit/cost estimates are unrealistic. The Bank is spending US \$12 billion a year (p.12) with an extremely limited scientific argument to back up such investments (p.12).

In conclusion, this document does not propose any real solution and lacks essential accountability elements. Moreover, since SUN is already a *fait-accompli*, both detection and correction activities will be a great challenge for us all – beginning now. Finally, considering the level of expertise and resources at the disposal of the authors it is hard not to blame SUN for its ideological bias.

² The Paris Principles are available at:
http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html

6b Ready-to-Use Therapeutic Foods: A Warning¹

‘Therapeutic foods are any appropriate nutritionally-enhanced food products made to be very energy and nutrient dense’. Ready-to-use therapeutic foods (RUTF) are a specific type of therapeutic foods – now almost always in the form of commercial products (e.g. Plumpy‘nut®) which in the last several years have leapt onto the nutrition scene. RUTF do play a role in the treatment of severe acute malnutrition and in emergency situations. There are, nevertheless, dangers in their inappropriate use, particularly when misused in the prevention of malnutrition. With the escalating engagement of private companies, these products are now moving onto the open market and are being aggressively promoted for direct use by parents. The promotion of these foods to the general public could be disastrous. Manufacturers will have to be held fully accountable for the consequences of such a move.

Indeed, commercially produced RUTF, bought and distributed by United Nations and bilateral agencies, as well as by NGOs, seriously risk undermining local foods and healthy feeding

¹ The references used for this article are the following: *Statement on the use of Ready-to-Use-Therapeutic and Supplementary Foods* from the participants at the WABA Global Breastfeeding Partners Forum, 17-19 October 2010, Penang, Malaysia; “RUTF stuff: Can the children be saved with fortified peanut paste?” M. Latham et al, *World Nutrition*, Volume 2, Number 2, February 2011.

habits such as breastfeeding, which for children from birth until the age of 24 months is the best safeguard against malnutrition. In addition, RUTF policies and programs are simply ‘top-down’ (recipients have not been consulted) and designed to be ‘market-friendly’. This course of action creates chronic dependence on an expensive, nowadays usually imported, commercial product, and that is a totally unsustainable option for most people who live in poverty; another issue for accountability here.

It is unrealistic, and even irresponsible, to suggest that RUTF could be provided worldwide to the many millions of children identified as having mild malnutrition or chronic hunger. Therefore, global and national actors must ensure: i) that RUTF products are used only where appropriate for the medical treatment of severe acute malnutrition, especially in disaster management, ii) that RUTF are not used as a preventive measure in stable populations, iii) that these products are preferably prepared from locally-produced foods and are not imported, and iv) that a universally agreed code of conduct/guidelines on the quality standards, composition and use of RUTF in all circumstances is developed.

Moreover, and most importantly, malnutrition is not just a food problem. Good child nutrition always simultaneously requires food, health and care. Leaders of countries afflicted with malnutrition need to address the underlying social determinants of child malnutrition much more comprehensively and to focus on more rational strategies. Governments will have to be made accountable to promote a people-centered, community-based approach to nutrition in which the capacities of those who live in poverty are strengthened in such a way that they can develop themselves. No commercial product should be promoted and distributed for the prevention of infant and child malnutrition when breastfeeding is available and locally-made foods are adequate.

These two case studies are just a small window to illustrate how good intentions are not enough to eventually reach the point where the right to nutrition is realized. Too many donors, for too many reasons, circumvent (or deliberately ignore) applying the HRB framework and what it stands for in 2011. Their foreign aid projects

thus run the risk of only marginally addressing the problems of malnutrition in the different recipient countries they partner with. We have already had decades of foreign aid in nutrition with marginal results. The time has come for donors to be made to change.

6c Checklist to Assess Donor Accountability in Relation to the Right to Nutrition

The aspects to be assessed to test donor accountability in relation to the right to nutrition should include going through the following items:

- Have donor agencies revised their development aid approach to comply with the HRB framework? Has any human rights expert helped them to comply? Has their staff been trained in the use of the HRB framework?
- In their nutrition work, do they use General Comment 12 on the Right to Food proactively? Do they use human rights principles explicitly (non-discrimination, participation/inclusion, transparency, accountability, equality, rule of law, empowerment)?
- Do they collect disaggregated nutrition data by gender, by socioeconomic group and by ethnicity?
- Do they use the terms ‘capacity analysis’, ‘claim or rights-holders’ and ‘duty-bearers’ in their lexicon? Do they identify claim holders’ and duty-bearers’ roles in their documents/projects? Do they distinguish between inability and unwillingness of duty-bearers to fulfill their human rights obligations?
- Do they prioritize their resources allocated for the needs of marginalized/excluded groups in the population? Do they support the organization of these groups?
- Do they combat active discrimination? Do they track discrimination claims made by claim holders? Do they make sure redress measures are available? Do they work with the national human rights commission or ombudsperson on this?
- In their nutrition projects, do they ensure gender balance and the empowerment of women and girls?
- In the monitoring and evaluation of their nutrition projects, do they focus on the implementation of human rights processes and outcomes related to human rights principles and standards? Do they insist claim holder representatives be involved in monitoring and evaluation?
- Do they work with civil society organizations, academicians, trade unions, members of parliament, women’s and youth organizations and with children on right to nutrition issues? Do they engage government agencies on right to nutrition discussions?
- Do they hold human rights/right to nutrition training courses in-house, for partner agencies, for civil society, etc.?

- Do they engage the media in their work on the right to nutrition?
- Does the staff receive unambiguous directives on the use of the HRB approach? If yes, do they abide by them?
- Have these agencies raised their voice with respect to free trade agreements (FTAs) and economic partnership agreements (EPAs) that have clear negative right to nutrition consequences?
- Do they openly voice their objections to the World Bank's nutrition projects that are not human rights-based in their approach?
- Do they consider nutrition as a social determinant of health? If so, how do they address it in a human rights-based manner?
- Are UN agencies' situation analyses based on the HRB framework?
- Are they contributing HRB nutritional assessments and proposals to the periodic United Nations Development Assistance Framework (UNDAF)?

ACCOUNTABILITY FOR VIOLATIONS BEYOND BORDERS

MARK GIBNEY AND ROLF KÜNNEMANN¹

The human right to food – as all other human rights – is universal: human rights apply to everyone, in every country of the world. The right to food implies legal obligations: states must respect, protect and fulfill access to adequate food. This means: they must not interfere with people's access to adequate food (respect-obligation); they must prevent others from doing so (protect-obligation); and they must ensure that access to food can as soon as possible be effectively enjoyed by those lacking such access (fulfill-obligation).

In order to realize the right to food in today's world, victims of violations must be able to hold foreign states and intergovernmental organizations (IGOs) accountable. For this matter, it must be clear that foreign states in fact do have human rights obligations towards persons outside their territories – extraterritorial obligations (ETOs). These obligations must also serve as the basic elements of a future rights-based international food regime. Unfortunately states still try to essentially limit their obligations under human rights law to persons on their own territories.

For those of us defending and promoting the human right to food, ETOs mean a sea change. Hardly any human right has closer links to ETOs than the right to food. Access to adequate food is affected by a myriad of cross-border activities including international speculation, investment and trade regimes, resource conflicts, land

grabbing, and activities that contribute to climate change. Moreover, international development assistance has a distinct impact on the viability and effectiveness of social income systems and peasant-oriented agricultural models at the national level. A clear understanding of ETOs in these policy fields is a prerequisite for future attempts to ensure accountability for violations.

Decades of ill-conceived economic and development policies (structural adjustment, export orientation to the detriment of local food production, deregulation of markets and speculative actors, etc.) have led to the recurrent food crises. Land grabbing is the latest and ugliest consequence of such policies as well as of the non-regulation of the financial system. Today more than ever, agricultural land is threatened by huge projects, most often run by transnational corporations, mainly agribusinesses, but sometimes also directly by foreign states. Most of these projects involve actions and omissions that breach ETOs under the right to food – and therefore violate the right to food across borders. Who is accountable? How can ETOs serve to strengthen accountability of transnational corporations, of IGOs such as the International Monetary Fund and World Bank, and of individual states acting abroad?

First of all, it must be clear that all states have to respect human rights abroad – and that they must do whatever they can to protect and fulfill them – without unduly interfering with foreign states' sovereignty. Home states of transnational corporations are subject to a protect-obligation that demands regulation of “their” companies operating abroad. The obligation extends to the negotiation and application of investment and trade agreements and to activities undertaken as members of IGOs. This allows a carry-over of primary human rights obligations from

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(state-based) treaty law to the activities of these institutions. Their self-proclaimed “freedom from human rights” collapses. Adopting this perspective allows us to identify state policies and actions that violate the right to food across borders. This opens the doors to accessing various accountability mechanisms to end these violations and to potentially receive reparation. IGOs carry obligations under the right to food. These are implied by the obligations of their governing states, and in particular by their ETOs. Since the majority of governing states are legally bound by these obligations, these states have to exercise due diligence so that an IGO action that, if committed by any of the governing states, would be a breach of an ETO of this state, is no longer permissible. This implies a corresponding obligation of the IGO.

It cannot be expected, of course, that accountability for breaches of ETOs will be higher than accountability for breaches of domestic human rights obligations. The fact that current human rights accountability mechanisms (parallel reports, complaints, special procedures) can be used does not mean that they will be used – unless there is political commitment to do so.

The human rights mechanisms of the UN are underutilized for ETOs. Applying ETOs in the state-focused UN human rights system allows human rights defenders to address right to food violations and abuses by foreign actors and by intergovernmental institutions under the current human rights treaty law.

ETOs also imply accountability mechanisms in domestic legal systems. Home states of transnational corporations should allow for legal remedy once companies abuse human rights abroad. Ultimately a World Court for Human Rights may be necessary to hold not only states to account, but also the IGOs of which they are part.

It is worth every effort to clarify and apply ETOs. This starts by addressing and rectifying some misconceptions about human rights:

a strictly territorial approach can easily lead to results that are the antithesis of human rights. A perfect example of this is extraordinary rendition, where a suspected terrorist is kidnapped in one state and then forcibly taken to another country where he is tortured (or worse). These practices have been carried out under the direction and control of the United States, which seems to operate under the belief that it bears no responsibilities for these atrocities on the basis that they are committed by foreign agents and on foreign soil.²

Another misconception relates specifically to the International Covenant on Economic, Social and Cultural Rights (ICESCR). As we will see in a moment, it has become quite natural to give the ICESCR a territorial reading, thereby limiting each state party’s obligations only to those within their own domestic realm. What this disregards is that the ICESCR emphasizes the duty to realize these rights through international assistance and cooperation – which, as Sigrun Skogly has concluded from her seminal study of the ICESCR’s drafting, was meant to overcome territorial limitations.³

In sum, notwithstanding repeated references in international human rights law to the fact that “everyone” has human rights and “no one” is to be denied such rights, the dominant approach has been to delimit states’ obligations by territory. However, a growing number of human rights scholars and practitioners have started to challenge this premise, positing that while the primary obligation to protect and fulfill human rights rests with the territorial state, this does

2 D. Marty, *Secret detentions and illegal transfers of detainees involving Council of Europe member states*, second report, Parliamentary Assembly, Council of Europe, 11 June 2007.

3 S. Skogly, *Beyond National Borders: States’ Human Rights Obligations in International Cooperation*, Antwerp, Intersentia, 2006. In addition, the Committee on ESCR has recently issued a Statement on the obligations of state parties regarding the corporate sector. It also points to ETOs. This Statement is available on the enclosed CD.

not exclude other countries from also having human rights obligations in that state as well.

In order to overcome these arbitrary limitations to the implementation of human rights, two related issues need to be addressed. The first involves the issue of state responsibility, while the second relates to effective avenues for accountability.

Responsibility

Under international law, a state is responsible for the unlawful actions and omissions that it carries out.⁴ In international human rights law, actions are breaches of respect-obligations, whereas omissions refer to failures to fulfill or to protect, which implies to intervene, regulate, monitor, investigate and repair. In a recent judgment in the case of *Bosnia v. Serbia*, the International Court of Justice applied this analysis and concluded that Serbia did not breach extraterritorial obligations to respect human rights.⁵ In arriving at its decision, the Court ruled that notwithstanding the extraordinarily close ties between Serbia and the Bosnian Serbs, the actions of Bosnian Serbs were not attributable to the State of Serbia because the Bosnian Serbs were not acting as state agents of Serbia, nor were they operating under the direction and control of Serbia. Even if the Court did not accept that the respect-obligation of Serbia had been triggered in this situation, the Court held in the same judgment that the extraterritorial obligation to protect applied. The Court asserted that Serbia had not taken measures to prevent the genocide in Bosnia. This judgment is an important step forward for extraterritorial obligations at the International Court of Justice. Apply-

ing this approach to the right to food implies that a state violates the right to food not only when it destroys people's access to food in a foreign country, but also when it avoids preventing others (on whom it has a profound influence) from doing so, for example in the case of land grabbing by corporations operating from its territory.

When looking at the extraterritorial application of the fulfill-obligation, a very telling event occurred a few years ago during the time that Professor Paul Hunt was the United Nations Special Rapporteur on the Right to Health. As part of his mandate, Hunt conducted a country study on Sweden.⁶ An important aspect of Hunt's study involved the issue of Swedish foreign assistance. As is commonly known, the Netherlands, Luxembourg and the Nordic States are the only countries that have met the United Nations guidelines of providing 0.7% of their GDP for foreign assistance. However, when Hunt asked Swedish government officials whether they saw a legal obligation to provide such aid, the answer was in the negative. Based on his reading of international human rights law, particularly the ICESCR, Hunt took strong exception with this answer:

“[I]f there is no legal obligation underpinning the human rights responsibility of international assistance and cooperation, inescapably all international assistance and cooperation is based fundamentally upon charity. While such a position might have been tenable 100 years ago, it is unacceptable in the twenty-first century (par.113).”

“Sweden, like other rich States, does not accept that it has a legal obligation of international assistance and cooperation (par. 114).”

States are duty-bound to cooperate internationally towards the full realization of the human right

4 J. Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge: Cambridge University Press, 2002.

5 Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007.

6 U.N. General Assembly, Human Rights Council, 4th Sess., *Report of the Special Rapporteur (Paul Hunt), The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Sweden, A/HRC/4/28/Add.2*, 28 February 2007. Available at: http://www.essex.ac.uk/human_rights_centre/research/rth/reports.aspx

to food. The respective measures therefore must not be seen as charity and have to be taken in a systematic and coordinated manner as expeditiously as possible.

Confronting the barriers to accountability

A different problem relates to where victims of human rights violations are able to press their claim. In his important study of the European Union sugar industry, Wouter Vandenhole found that the purposeful dumping of heavily subsidized EU sugar was having a devastating effect on sugar farmers throughout developing countries.⁷ Vandenhole concluded that by pursuing such policies with full knowledge of the negative human rights consequences that ensued, the EU (and its constituent states) was responsible for violating the subsistence rights of sugar farmers in developing countries.

Assuming Vandenhole is correct, the next question is this: where would sugar farmers be able to press their claim? In this example, one might naturally think that such a proceeding could be taken before the European Court of Human Rights. However, in its *Bankovic* opinion, the European Court displayed a severely limited view of ETOs. The case involved the death or injury of 32 civilians during a NATO bombing raid over Serbia, a country which was not a party to the European Convention on Human Rights. According to its interpretation of Article 1 of the European Convention,⁸ the Court ruled the case as being inadmissible on the grounds that the European States did not exercise a form of “effective control” over these Serbian civilians, and thus, they were not within the “jurisdiction” of the contracting parties.⁹ Although since then there

have been other judgements of the European Court which have overcome the limited view expressed in *Bankovic*, this case still serves as an indicator of the types of obstacles faced when promoting extraterritorial human rights obligations.

In many other cases as well a simple-minded approach to jurisdiction (essentially identifying jurisdiction with territory) has led to obstacles to clearly understanding ETOs – and has played in the hands of those politicians and businessmen who still feel they can do abroad what they must not do at home.

Holding the violators of extraterritorial obligations to account requires first of all a better understanding of ETOs and their consistent application in policy analysis, case work and advocacy. Civil society networks, such as the ETO Consortium, can be crucial in this context. The ETO Consortium was founded in 2007 and brings together human rights organizations, university institutes and institution-based individuals. The Consortium welcomes new members and invites readers to follow its activities at www.fian.org. By working together and broadening networks, states will increasingly understand that ETOs are a necessary ingredient for a right to food-based world order.¹⁰

A recent important step in confronting the barriers to accountability is the “Maastricht ETO Principles,” an international expert legal opinion emanating from a conference held in Maastricht in September 2011. 35 international legal experts finalized the Principles in Maastricht after years of study. The Principles will be issued by the International Commission of Jurists and Maastricht University in early 2012. The ETO Principles will serve as a key reference point for any court confronting extraterritorial violations of human rights. They will provide guidance for states, the UN, the human rights community and the public at large.

7 W. Vandenhole, “Third State Obligations under the ICESCR: A Case Study of EU Sugar Policy,” *Nordic Journal of International Law* 76, pp. 71-98, 2007.

8 Article 1 provides: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in [...] this Convention.”

9 *Bankovic et al. v. Belgium et al.*, App. No. 52207/99 ECHR, 2001, 41 I.L.M. 517.

10 R. Künnemann, *ETOs for a rights-based world order*, FIAN, 2010.

NATIONAL AND REGIONAL REPORTS: MONITORING THE HUMAN RIGHT TO FOOD AND NUTRITION

ADVANCING THE ENFORCEABILITY OF THE RIGHT TO ADEQUATE FOOD IN LATIN AMERICA AND THE CARIBBEAN

MARTIN WOLPOLD-BOSIEN¹

There is an abundant history of social struggles for justice, human rights, and against impunity in Latin America and the Caribbean. The tradition of social movements and individuals claiming their rights in the face of profound inequality and institutionalized discrimination has never ceased, though it was often silenced by waves of terrible repression. Through the daily struggle of individuals and people who remained firm in defending their rights, dictatorships and authoritarian regimes in the region have been overthrown and the impunity of those responsible for grave violence and serious human rights violations is beginning to fade.

The fight against hunger and its causes in Latin America and the Caribbean is a daily one for millions of women, men, girls and boys. At its core is an effort grounded in the belief that each person has, as part of their right to a dignified life, the right to adequate food. A growing segment of the population most affected by hunger and poverty, especially peasant and indigenous communities, has developed movements to strive for the enforceability of their rights in specific struggles. The case studies described in the articles on Honduras and Guatemala show how indigenous and peasant communities have focused on the defense and recuperation of land and territories as a means of realizing their right to food, and to ensure access to natural resources needed to achieve food sovereignty. However, we have observed with concern and indignation

that many of these efforts continue to be fiercely repressed, in violation of these communities' fundamental human rights.

Nonetheless, significant advances have been made, especially in regard to the recognition of the right to adequate food in national legal frameworks, such as in Bolivia and Ecuador. The constitutional recognition of the right to food marks significant progress for its enforceability and places emphasis on the accountability of state authorities. In addition, it has been shown that the human rights approach, particularly regarding the right to food, has been incorporated into national policies and plans for food and nutrition security, as in the case of Haiti. The question that follows then is how to ensure that such institutional frameworks produce tangible results for the many people who continue to live in poverty?

That is precisely the question that this year's *Right to Food and Nutrition Watch* has identified as the main challenge for Latin America and the Caribbean right now: if legal and political recognition of these important rights increases, what is the effect, in practice, on state institutions? To be sure, it is absolutely necessary that these institutions become and remain accountable under their obligations pursuant to international human rights law, both with regard to specific cases and national public policies. Indeed, only through effective accountability can the enforceability of these rights be realized. In this regard, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures that explicitly asked states to suspend mega mining projects (such as in the case of the Marlin mine in Guatemala), setting precedents

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for state accountability in the future. Although states' reactions to these measures have not been encouraging, civil society organizations have recognized their importance, as they reinforce the intimate link between legitimately claimed rights and state accountability.

The enforceability of the right to adequate food is making progress – albeit slowly – thanks to civil society mobilization and advancement in national political and legal frameworks as well as in the regional human rights system. However, it is important to note that enforceability is just one step in a much longer process to address

a fundamental and structural problem: the persistent impunity for violations of the right to food which, ultimately, allows for the consistent repetition of such violations. In this light, persistent chronic malnutrition is first and foremost a consequence of impunity for human rights violations. It is imperative that the mobilization of civil society to defend human rights, which has proven so effective in the fight for justice and against impunity pertaining to civil and political rights in Latin America and the Caribbean, be applied in the struggle against hunger and its causes as well.

8a The Enforceability of the Right to Adequate Food in Bolivia

AIPE¹

Bolivia is currently going through a time of great political and social change. In January 2009, a new Constitution aiming to make Bolivia a “Unitary Social State of Plurinational Community-Based Law” (“Estado Unitario Social de Derecho Plurinacional Comunitario”) was adopted by referendum. This came as the result of countless social struggles which have unfolded over many years, and have enabled various populations with unique identities, such as indigenous and native peoples, settlers, peasant and rural communities, women, boys, girls and adolescents to exercise social control, breaking free from a traditional model which has led to exclusion and discrimination, and which authorities used to circumvent accountability to these populations.

In the course of these struggles, social actors claimed greater space for their participation in the decision making in the political, social and economic life of Bolivia. To this end, some social actors organized into social movements which developed sufficient political and electoral strength to install the Evo Morales government in 2006, along with its new approach to development. Through their efforts, these social actors have better positioned themselves in order to claim their economic, social and cultural rights (ESCR) at the political level.

¹ The Association of Institutions for Advocacy and Education – AIPE in Spanish (www.aipe.org.bo) – is a network for political reflection composed of 20 secular and non-profit institutions. It is recognized as the “network for food sovereignty” based on dignity, pluralism, complementarity and transparency, within a framework of human rights and participatory democracy, distinguishing AIPE from other organizations. You will find its 2009 report on the situation of the right to adequate food in Bolivia, in Spanish, on the enclosed CD. This article was originally written in Spanish.

The new Constitution recognizes a wide range of human rights, including the human right to adequate food in Article 16, and rights for indigenous and native peoples. Moreover, it includes the so-called “constitutional block” (Bloque Constitucional), which incorporates the human rights treaties ratified by Bolivia into the national legal framework. These elements contribute to making it a progressive Constitution which is grounded in the recognition of human rights and implements the international instruments.

Nonetheless, despite this breakthrough, justiciability mechanisms, such as the writ of amparo (acción de amparo), are not yet effective in guaranteeing adequate remedy to victims of violations of ESCR.

Indeed, Bolivia has not yet developed a culture of justiciability with respect to ESCR – one in which people are used to claiming their ESCR and judges apply international human rights standards on ESCR – and even less so for the right to food. Certainly the development of such a culture is a process requiring short, medium and long-term strategies, considering the fact that the justiciability of the right to food remains virtually uncharted territory, and that truly effective enforcement processes (which include justiciability) depend upon several factors that must be addressed in a comprehensive and cohesive manner.

Undoubtedly, one of the obstacles discovered in the short time since the AIPE Network (la Red AIPE) was established is that once a case of violation has been identified, it is difficult to maintain real commitment and willingness on the part of the victims to defend and support their cases diligently. This may be due to mistrust of existing judicial mechanisms and institutions, in which old practices have remained vested despite the reforms, as well as to a sense of resignation in the face of flagrant violations of the right to food and other ESCR.

In addition, the lack of knowledge of international human rights standards by judicial officers poses significant hurdles for victims presenting their claims. These hurdles are evident throughout the judiciary, notably in courts, as judges generally do not include a human rights analysis in their decisions. In fact, the Constitutional Court has been inoperational for almost two years. This is also the case in the quasi-judicial oversight institutions. The Ombudsperson (la Defensoría del Pueblo) hardly handles any cases related to the right to food and does not emphasize the subject in recommendations and decisions. Moreover, existing administrative remedies are not adequate for the protection of ESCR.

Furthermore, we have observed that to a great extent, cases of violation are not presented before the courts, and that judges do not have the capacity or the interest for generating new jurisprudence and legal precedents which would bring Bolivia’s jurisprudence in line with other countries in the region.² Moreover, academia has not been progressive and active enough to bring about changes in the way lawyers perceive ESCR. In this context, a pending

² For more information, please consult the Mission Report on the Human Right to Food in Bolivia published by Rights & Democracy. A draft of this report is available on the enclosed CD. The final report will be available at <http://www.dd-rd.ca> in October 2011.

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task for civil society is to present emblematic cases to the judiciary, within the framework of a well-constructed litigation strategy, in order to set new precedents. Organizations therefore need to develop their capacities to ensure that complaints are well-founded and cases strategically advocated, so that they can generate a change in or create new jurisprudence in relation to this right. Additionally, capacity building of lawyers and judges in the field of accountability, including justiciability of the right to adequate food, continues to be a challenge for state authorities and international cooperation.

Finally, obtaining political support for the justiciability of the right to food from recognized sectors and groups is essential. This requires a parallel advocacy strategy targeted at the authorities, the media, academics and others.

For these reasons, with the understanding that the enforceability of the right to food is a process that requires a comprehensive approach, we, as national institutions, are permanently working on the development of our capabilities in terms of training, network and alliance building, and efforts to improve accountability.

8b The Human Right to Adequate Food in the New Ecuadorian Legal Framework

ENITH FLORES¹

The Ecuadorian Constitution adopted in 2008 incorporates the right to adequate food within Article 13 of the Rights of the Good Way of Living (Derechos del Buen Vivir), or *Sumak Kawsay* in Quechua, which it defines as “the right of persons and community groups to have a safe and permanent access to healthy, sufficient and nutritional food, preferably produced locally and in keeping with their various identities and cultural traditions.” Article 13 also states that “the Ecuadorian State shall promote food sovereignty.” The Constitution thus aims to ensure cultural appropriateness and acceptability, one of the features of the right to adequate food – and enshrines this right as part of the Rights of the Good Way of Living.

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Another existing legal instrument is the Organic Law on Food Sovereignty (Ley Orgánica del Régimen de la Soberanía Alimentaria, LORSA), which was approved in 2009 and entered into force on 5 May of the same year. Based on the concepts of multidimensionality, intersectorality and participation, this law guarantees access to and use of water and land, the protection of biodiversity, the promotion of production, marketing and supply of food, as well as consumption and nutrition, among other relevant issues.

Despite the existence of this legal framework, the *de facto* situation is very different: the international food system is dominated for the most part by transnational corporations increasingly involved in the means of production, processing, and distribution of food through their control of the seeds, agricultural inputs, production processes and supermarkets. This has created critical structural limitations impeding the full realization of the right to adequate food of small peasants, who face marginalization or even exclusion.

Widespread export-oriented agricultural production has led to a serious shortage of basic foodstuffs for national consumption, such as grain, flour, dairy products, eggs and other animal products, which has left local populations without food and rural economies wholly unprotected.

Another compounding factor is the concentration of land and water in the hands of a few people. In the case of Ecuador, one-fourth of the production units (UPAS in Spanish) occupy just 1% of the arable land while larger properties greater than 100 hectares, which represent only 2% of the total UPAS, account for 43% of all arable land use.² Likewise, access to water is concentrated within the agro-export sector, which holds access to 67% of irrigation water, while the vast majority of the peasant population (86%) has access to just 22% of irrigation water for their production purposes. The agro-export sector is also reportedly the largest polluter of water sources.

Based on the current Constitution, the State has initiated programs, such as the National Plan for the Good Way of Living (Plan Nacional para el Buen Vivir), school and community food programs, and through the Land and Territory Plan (Plan Tierras y Territorio),³ policies pertaining to access to land and water. Nonetheless, civil society has yet to participate in these initiatives or have their collective demands incorporated into these laws, policies and programs.

These circumstances have created tension between government and civil society. Among other factors, the absence of a genuine agrarian reform benefiting small and medium sized producers and aimed at overcoming the structural causes of hunger and malnutrition has

2 FIAN Ecuador, *El Derecho a la Alimentación en el Ecuador: Balance del Estado Alimentario de la Población Ecuatoriana desde una Perspectiva de Derechos Humanos*, marzo de 2010. This report is available in Spanish on the enclosed CD.

3 N. Landivar García, M. Yulán Morán, *Monitoreo de Políticas de Redistribución de Tierra Estatal y el Derecho a la Alimentación de Posesionarios*, Informe 2010, FIAN Ecuador, Unión Tierra y Vida, Quito, febrero 2011. This report is available in Spanish on the enclosed CD.

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contributed to this situation. The lack of regulation in line with international and constitutional human rights standards for the equitable access to and use of water and land has led to this tension. Additionally, the limited scope and quality of food programs including the lack of timely delivery to those most in need are also to blame. Another fundamental contentious issue is the lack of inclusion of civil society proposals in state policies. Despite broad judicial guarantees enshrining the right to adequate food in the Constitution, these tensions have resulted in persecution by the national government against human rights defenders. This has led some organizations to accuse the government of only representing the interests of the economically powerful sectors of society.

A change in the style of governance and a reorientation of the current model of development towards one that is consistent with the concept of *Buen Vivir*, the implementation of a truly comprehensive agrarian reform to strengthen rural economies, and the constructive and critical participation of social organizations are among the recommendations put forth by FIAN Ecuador in order to achieve the right to adequate food, food sovereignty and autonomy, and the creation of a real plurinational State.

8C Guatemala Backs Open-Pit Gold Mining Project in Defiance of Precautionary Measures Granted by the Inter-American Commission on Human Rights

MARTIN WOLPOLD-BOSIEN AND SUSANNA DAAG ¹

On 20 May 2010, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures for the members of 18 indigenous communities in the Guatemalan Western Highlands, including the temporary suspension of activities of the Marlin mine operated by the Canadian company Goldcorp Inc.² One year later, and despite its announce-

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SUSANNA DAAG is the Executive Secretary of the European network Copenhagen Initiative for Central America and Mexico (CIFCA). She participated in the follow-up mission on the Right to Food in Guatemala in November 2010.

2 IACHR, *PM 260-07 – Communities of the Maya People (Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala*, May 2010. This document is available on the enclosed CD and at: <http://www.cidh.oas.org/medidas/2010.eng.htm>

ment of compliance in June 2010, the State of Guatemala has failed to implement these measures and therefore falls short of its obligations under international law. Furthermore, Goldcorp management has stated on numerous occasions that IACHR precautionary measures are not justified and lack evidence, thus arguing blatantly against state compliance with these measures.³

The IACHR's decision derives from a complaint submitted in 2007 by 18 Maya Mam communities on the involvement of the Montana Exploradora mining company a subsidiary of Goldcorp Inc. in human rights abuses in the municipalities of San Miguel Ixtahuacán and Sipakapa in San Marcos, Guatemala. The IACHR calls for the suspension of mining activities under the Marlin project and for the implementation of effective measures to prevent environmental contamination until the petition of the communities has been fully investigated.

In addition, it asks the State to decontaminate water sources and ensure access to water fit for human consumption, attend to the affected people's health problems, and take steps to guarantee the life and the physical integrity of the community members. Protection measures must be planned and implemented with the participation of the beneficiaries.

Following ratification of Convention 169 of the International Labour Organization (ILO) on indigenous peoples' rights, the State of Guatemala recognizes that any proposal affecting the lives and territories of indigenous communities can only be carried out with the communities' free, prior and informed consent. In practice, however, it has failed to acknowledge the more than fifty community consultations conducted in Guatemala since 2005 which express the indigenous populations' almost unanimous rejection of open-pit mining projects. At the 18 June 2005 community consultation, 97% of the Sipakapa population rejected the Marlin project. This was acknowledged in 2010 by the United Nations Special Rapporteur for Indigenous Peoples, James Anaya, and by a Committee of Experts from the ILO, who declared that the government had granted the license for the Marlin mine without the free and informed consent of affected indigenous communities.⁴

There is strong evidence of the mining project's negative impact on the indigenous communities' right to food and water, primarily due to its contamination and excessive use of water. Independent monitoring studies by the Commission on Peace and Ecology (COPAE) of the San Marcos Diocese indicate that the river water is contaminated with heavy metals.⁵

3 At the annual general assembly of Goldcorp shareholders on 18 May 2011, only 6% of shareholders voted in favor of a resolution to respect the decision of the IACHR. <http://goldcorpoutofguatemala.com/2011/05/19/goldcorp-asks-shareholders-to-ignore-international-consensus-to-suspend-operations-at-its-marlin-mine-in-guatemala/>

4 *Observaciones sobre la situación de los derechos de los pueblos indígenas de Guatemala en relación con los proyectos extractivos, y otro tipo de proyectos, en sus territorios tradicionales*, 4 March 2011, Versión no editada A/HRC/16/XX, <http://unsr.jamesanaya.org/special-reports/observaciones-sobre-la-situacion-de-los-derechos-de-los-pueblos-indigenas-de-guatemala-en-relacion-con-los-proyectos-extractivos>

5 The COPAE monitoring reports are available at the following address: <http://www.copaeguatemala.org/monitoreo.html>

A recent study published by the University of Michigan also found high levels of potentially toxic heavy metals in blood and urine samples from a group of people living close to the Marlin mine.⁶

The implementation of the Marlin project has also been accompanied by increasing social conflict and violence. Multiple attacks and intimidation against human rights defenders, community representatives, researchers and people associated to the church, who have spoken out against the Marlin project, have been documented.⁷

On 10 August 2010, the General Prosecutor of Guatemala initiated an administrative process to suspend operations of the Marlin mine in order to comply with the commitments made under international human rights law. However, almost a year later, on 20 May 2011, the Guatemalan Minister of Energy and Mines informed the communities that governmental reports show that the exploitation of the mine does not generate contamination or disease. The President of Guatemala is preparing to submit a resolution to the IACHR declaring the country's decision not to suspend the mine.

This decision undermines the obligations of the State of Guatemala under international law, considering that the American Convention on Human Rights stipulates that precautionary measures are granted for immediate application and until a final decision of the IACHR on the case is taken. If the issue is not resolved between the two parties before the IACHR, the case will be presented to the Inter-American Court of Human Rights. A ruling by the Court in favor of the communities would not only send a strong message on the accountability of the State of Guatemala, but also set an important precedent in international case law in the region.

6 The report by physicians from the University of Michigan is available at the following address: <http://physiciansforhumanrights.org/library/reports/guatemala-toxic-metals-2010-05-18.html>

7 APRODEV, CIDSE, CIFCA, FIAN international (coordinator), FIDH, OBS, OMCT and Via Campesina, *The Right to Food in Guatemala*, Final Report of the International Fact-Finding Mission, March 2010 and APRODEV, CIDSE, CIFCA, FIAN International y Via Campesina, *El Derecho a la Alimentación y la Situación de Defensoras y Defensores de Derechos Humanos en Guatemala*, Informe de Seguimiento, agosto de 2011. The follow-up report is available in Spanish on the enclosed CD.

8d Advancing the Human Right to Food in Haiti: Small Steps and Big Challenges

LAUREN RAVON¹

Prior to the devastating earthquake that hit Haiti in January 2010, human rights organizations, peasant groups and certain state institutions – notably the National Coordination on Food Security (Coordination Nationale de la Sécurité Alimentaire, CNSA) – were raising awareness of the right to food and advocating for stronger legislative and institutional mechanisms to protect, promote and fulfill this right based on Article 22 of the Haitian Constitution. They were working increasingly together with political actors seeking to advance food security and eradicate pervasive hunger in the country.

In November 2009, a coalition of 16 civil society organizations led by Haiti's national human rights institution (Office de la Protection du Citoyen), submitted a report for Haiti's Universal Periodic Review by the UN Human Rights Council.² The report included significant attention to the right to food and water. In addition, it recommended that the Haitian Parliament adopt framework legislation on the right to food to improve justiciability of the right and thus strengthen the State's institutional capacity to fight hunger.

Around the same time, Haitian civil society organizations launched a campaign calling for Haiti to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR). A coalition was set up and alliances were built with government officials and members of Parliament to support the ratification. The earthquake brought this campaign to a sudden halt and the general election that was scheduled to be held in February 2010 was postponed. As a result, both the Senate and House of Deputies no longer had quorum to adopt new legislation. While the Senate continued to function with ten Senators, the House of Deputies was entirely disbanded as of June 2010. The country's judicial system, which was already in serious need of reform, literally collapsed as a result of the earthquake. Given this institutional void, advocacy initiatives to improve the justiciability of the right to food had to be put on hold.

The rural economy was already facing considerable difficulties linked to the agricultural liberalization process and the lack of accompanying safeguard measures. Extremely low tariffs applied by the State for food imports, even though WTO agreements permit much higher rates, resulted in a glut of cheap food entering the country and destroying the livelihoods of many peasant farmers. As a result, Haiti, which was once self-sufficient in food

1 LAUREN RAVON was, at the time of writing, the Haiti country program officer at Rights & Democracy. Rights & Democracy is a Canadian institution promoting human rights and democratic development around the world (www.dd-rd.ca).

2 This report is available on the enclosed CD. The translation of this document has been kindly provided by Rights & Democracy.

production now produces significantly less domestically and relies upon imports for almost half the food it needs.

Despite the fragile political and economic situation in Haiti, some advances have been made. Thanks to civil society advocacy efforts, a national food and nutrition policy (Plan National de Sécurité Alimentaire et Nutritionnelle), which includes specific references to the right to food, was drafted by the CNSA and subsequently endorsed by the Ministry of Agriculture. During the Committee on World Food Security's annual conference at the UN Food and Agriculture Organization in October 2010, Haiti's Minister of Agriculture, Mr. Joanas Gué, acknowledged these positive steps and announced the government's intention to maintain a human rights perspective for the development of policies to end hunger.

As a new president and a new legislature take their place in 2011, civil society is expected to resume its advocacy efforts on behalf of the national food and nutrition policy, framework legislation and ratification of the ICESCR. Although it remains unclear how the new government will be able to respond given its weak institutions and multiple political challenges, the renewed efforts will be small but important steps towards ensuring state accountability for the right to food. Hopefully, they will open the door to a range of initiatives allowing the people of Haiti to claim their human right to food.

8e Violence and Forced Evictions Against Peasant Communities in el Bajo Aguán, Honduras

SILVIA GONZÁLEZ DEL PINO¹

Since the coup of 28 June 2009, respect and protection of human rights has been deteriorating in Honduras. The situation has been aggravated by the subsequent breakdown of constitutional order, as documented by multiple missions and reports of national and international human rights agencies.

One of the regions most affected by the tension and repression has been el Bajo Aguán.² The peasant movements of this region have been facing a situation of constant persecution and abuse since 2000, when they initiated a process to recover land used mostly in the production of palm oil.

The peasant communities report that a pervasive climate of fear and terror marked by continuous threats and hostilities such as abductions, torture and sexual violence perpetrated by the military, police and company security guards, is widespread in the region. Between January 2010 and June 2011 alone, 32 peasants were killed as a result of the agrarian conflict in el Bajo Aguán. Furthermore, it is believed that the murders of a journalist and his partner are linked to this conflict.³ According to testimonies received by human rights organizations, all of the reported violent actions and human rights violations directly involve private security guards working for businesses in the region, with the complicity of the police and military. However, as of June 2011, no one responsible for either planning or carrying out the acts has been arrested and tried. In effect, this has led to public security forces being cleared of any wrongdoing.

The forced evictions are ordered and executed in a manner that is in violation of established international human rights norms, particularly those relating to the right to food and the right to housing. In addition, a number of evictions have occurred without being presented in front of the relevant judicial bodies beforehand. Moreover, to date no one has been sanctioned for the violent form in which these evictions have taken place or for the destruction of private property and other goods.⁴

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2 This article is based on the report of the international fact-finding mission conducted by different international networks and organizations that visited el Bajo Aguán between 25 February and 4 March 2011. This report is available on the enclosed CD.

3 See the report of the international fact-finding mission, chapter 3.1.

4 *Ibid.*, chapter 3.6.1

Furthermore, according to local organizations, peasant arrest and detention is used by the authorities as a form of deterrence and pressure in order to attempt to weaken and terrorize the peasant movement, silence their demands, keep them confined to their own territories, and hinder social mobilization. For them, these detention orders issued in reaction to peasant resistance to their forced evictions are arbitrary and violate the right to freedom from illegal detention.

Despite the gravity and number of these violations, judicial authorities have not applied the necessary due diligence to identify and try those responsible for the planning and execution of the killings, crimes and other acts of violence committed against peasants. For example, as of late February 2011, the Office of the Prosecutor (la Fiscalía) has not prosecuted any of the killings of peasants during 2010. The only case that has an assigned file number is the investigation into the killings of five peasants in El Tumbador on 15 November 2010. When questioned about the responsibility for human rights violations resulting from the evictions, some prosecutors argue that it is the victims' duty to visit the Office of the Prosecutor and present evidence of damages and violations. They do not consider it part of the Office's scope of action. Yet they have taken legal measures against at least 162 organized peasants in the Bajo Aguán region, acting immediately upon the request of local landlords, and thus criminalizing social struggles. In this sense, the escalation of the conflict in el Bajo Aguán stems from recent court orders or from a lack of equal treatment by the justice system for peasants and their organizations.

The inaction of the Honduran judicial system violates the principle of equal treatment under the law, which renders peasants defenseless. It should be noted that impunity for violence to life in el Bajo Aguán encourages repetition as well as the systematic violation of inhabitants' most basic human rights.

EUROPE SHOULD HAVE THE LEADING ROLE IN THE FIGHT AGAINST HUNGER

STINEKE OENEMA¹

When speaking of the right to food and nutrition and its insufficient realization, Europe is usually not the first place that comes to mind. A quick glance at FAO's flagship publication, the *State of Food Insecurity in the World (2010)*,² is enough to see that there is not even a specific table on the number of undernourished people in Europe. However, this does not mean that the right to food in Europe has been realized for all. For example, as documented in this article, in Germany, welfare benefits for children of poor families are not sufficient for a well-balanced diet, while in Switzerland, emergency social assistance for vulnerable groups is not sufficient to allow a decent living. Although the figures are far less alarming than what can be observed in certain developing countries, they show that there are still many people in Europe for whom the right to food is not realized. However, neither of the two countries seems to directly acknowledge its responsibility as a duty-bearer to respect, protect and fulfill the right to food of its population. This is illustrated in Germany by a redefinition of "poverty" into "risk of poverty", while in Switzerland, many asylum-seekers are simply being neglected.

All signatory countries to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are obliged to regularly submit a report on the state of their realization of ESCR.

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2 *The State of Food Insecurity in the World (2010)* is available at the following address: <http://www.fao.org/publications/sofi/>

Germany submitted its 5th report in 2008; Switzerland had not done so for the last 12 years and finally submitted a combined 2nd and 3rd progress report in November 2010. Both reports triggered an important mobilization of human rights organizations to produce parallel reports that more closely reflect local realities. It is striking to note that in both countries, especially in the case of undocumented people and asylum-seekers, the right to food is in danger, all the more so as the context in Europe is one of growing xenophobia. In both countries, groups of people are deprived of possibilities to earn a living (they are not allowed to work) and are forced to turn to charity, which does not provide them with a sufficient allowance for a proper diet.

Besides their responsibility towards their own populations, European countries and the EU, because of their well-developed (trade) infrastructure, should also take into account the impact of their policies, especially in the areas of trade and agriculture, on the food and agriculture situation in countries in the South. As the world's biggest importer and exporter of agricultural products, Europe should also take an internationally leading position in the fight against food insecurity.³ Box 9c focuses on the Common Agricultural Policy (CAP), which is currently being reviewed. The CAP and especially its export subsidies has been under severe criticism for its impact on (smallholder) agricultural and food systems in southern countries, but also for the inequities in the distribution of CAP subsidies,

3 *The future of the European Common Agricultural Policy and development*, CONCORD European Food Security group, 25 January 2011

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as well as the lack of transparency thereof. If the CAP is to be reformed according to a rights-based approach, it should on the one hand comply with the principles of accountability, transparency and participation, and on the other hand its implementation should not hamper the realization of the right to food in any other region of the world. With regard to the accountability and transparency of the policy, the box below suggests that both in financial terms and in terms of the Council of the EU informing the European Parliament of key negotiations, CAP could be significantly improved. With regard to participation, apart from the interest groups criticized in the box, it is important to mention the impact assessment currently being carried

out for the new CAP. The results of this assessment should be seriously taken into account and complemented by more detailed impact assessments contributed by civil society organizations hereby trying to participate in the formulation process of the new CAP.

Finally, a reformed CAP should be coherent with the European framework for food security, stating both the right to food as well as the importance of smallholder agriculture. It will be interesting to monitor those EU member states in particular who strongly supported the *Voluntary Guidelines on the progressive realization of the right to food*, and their position regarding the reform of the CAP.

9a No “Land of Milk and Honey” – The Right to Food in Germany

INGO STAMM¹

In Summer 2008, the German government sent its fifth state report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to the UN-Committee. The report did not identify any severe problems in Germany. Referring to Article 11 of the Covenant – the right to an adequate standard of living, the responsible ministry mainly praised its political measures: some groups are at risk of poverty, but the provisions of the Social Code guarantee a life in dignity for all people living in Germany. This just about summarizes the content of the state report’s remarks.

In March 2009, the *ad hoc* network wsk-Allianz (Alliance for Economic, Social and Cultural Rights in Germany) was officially established, consisting of twenty member organizations, among which FIAN Germany, in order to produce a coordinated parallel report to the fifth report of the government. The goal was to make contributions to all articles of the

¹ INGO STAMM is part of the coordinating group of the Alliance for Economic, Social and Cultural Rights in Germany. He also contributed to the parallel report for FIAN Germany and the Social Service Agency of the German Protestant Church.

Covenant and to focus on the situation of the most vulnerable groups. The parallel report was completed at the end of 2010, after considerable organizational efforts.² It addresses a lot of new issues, and provides further information as well as criticism of the state report.

Among the crucial problems raised by the parallel report are those related to the right to food. Section 9 of the report deals with the right to an adequate standard of living, including the right to food, and focuses mainly on the reform of the Social Security Code in Germany. This reform is better known as the *Hartz-reform* and has led to a new rise of poverty in Germany. The parallel report shows that Germany is still trying to deny this fact through the use of arbitrary definitions of poverty and of the term “at risk of poverty” instead of “poor”.

Child poverty, for example, has become a severe problem in Germany during the last years. In 2010, children who depended on welfare benefits only had between € 2.76 and € 3.68 per day at their disposal for food and drink. This is by far not enough considering the standard of living in Germany. Already in 2007, the Research Institute of Child Nutrition in Dortmund found out that the benefits for children and youth according to the Second Book of the Social Code were insufficient for a well-balanced nutrition. The ruling of the Federal Constitutional Court (BVerfG) in February 2010 also criticized the calculation of benefits for children. The Court infers a basic right to be guaranteed a subsistence minimum that is in line with human dignity. The latest reform in 2011 has not improved the situation. The Alliance demands that human dignity and the respect and safeguard of human rights be the main focus when calculating the subsistence minimum.

The right to food of asylum-seekers, persons with a toleration visa and refugees in Germany is also in danger. According to the Asylum-seekers Benefits Law (AsylbLG), the amount of money that refugees receive for basic needs is between 27% and 47% below the benefit level of the Social Code. The affected people are totally dependent on the benefits, as they are usually not allowed to work. The AsylbLG was introduced in 1993 and has not changed since that time; the benefit rates within the law are still calculated in German Marks! Even though the government recently declared that the benefits for asylum-seekers are currently under review, it is quite clear that immigration issues are ranked higher than fundamental human rights such as the right to food. The organizations of the Alliance call for an immediate abolishment of the AsylbLG.

In May 2011, the CESCR examined Germany’s fifth state report, and NGOs were given the opportunity for statements at the beginning of the session. The German NGO delegation was quite large – ten speakers and about 25 human rights defenders attended the meeting. The “constructive dialogue” between the German delegation – mainly representatives from

2 The Alliance parallel report and other contributions related to the right to food are available on the enclosed CD as well as at the following address, along with Germany’s report and the other NGOs’ parallel reports: <http://www2.ohchr.org/english/bodies/cescr/cescrs46.htm>

the Federal Ministry of Labor and Social Affairs – and the Committee was ambivalent. In his opening statement, the head of the German delegation declared that Germany would not ratify the Optional Protocol to the Covenant in the near future. Many Committee members criticized this decision and called on Germany's obligation as a "role model" for other states. The right to food was only discussed regarding school children, with members of the Committee asking for free meals at schools. The German delegation mainly referred to the latest reform of the Social Code, and the situation of asylum-seekers and refugees was not discussed in detail.

In its Concluding Observations, the Committee highlighted several aspects that are relevant to the right to food in Germany.³ It urged the state party to ensure that asylum-seekers enjoy equal treatment in access to non-contributory social security schemes, health care and the labor market. Also, it asked the state party to take concrete measures to ensure that children, especially from poor families, are provided with proper meals, which is not yet the case in all schools. In addition to recommendations on addressing the right to food at the national level, the Committee insisted that the German government fully apply a human rights-based approach to its international trade and agricultural policies, including by reviewing the impact of subsidies on the enjoyment of economic, social and cultural rights in food-importing countries. In this recommendation, the Committee drew attention to the FAO *Voluntary Guidelines on the Right to Food*. These Guidelines have the strong support of the German government, and it will be interesting to see how it will address this recommendation during the upcoming reform of the EU Common Agricultural Policy (CAP).

³ The Committee's Concluding Observations on Germany are available on the enclosed CD and as well as at the following address : <http://www2.ohchr.org/english/bodies/cescr/cescrs46.htm>

SWITZERLAND

9b Switzerland, Not Up to the Mark in Human Rights?

MARGOT BROGNIART¹

The French-speaking Swiss Coalition for Economic, Social and Cultural Rights was established in October 2009 at the instigation of two organizations: FIAN Switzerland and the Youth Resource Center on Human Rights (CODAP). The main goal of this coalition has been to review the situation of economic, social and cultural rights (ESCR) in the French-speaking region of Switzerland in order to complement the parallel report submitted by the national coalition for Switzerland's examination by the UN Committee on ESCR, in November 2010. A long awareness-raising campaign with human rights organizations was carried out to prepare a parallel report which reflects the local realities as closely as possible. This work gave rise to a participatory report towards which more than thirty associations and labor unions collaborated. This report is an essential collective tool that provides a thorough account of the state of affairs of ESCR in the French-speaking part of Switzerland.²

Although Switzerland has been a party to the International Covenant on ESCR since 1992, the Committee's experts highlighted the country's lack of compliance with its engagements. They regretted Switzerland's persistence in considering that most of the Covenant's provisions merely constitute programmatic objectives and social goals rather than legally binding obligations. The consequence of this position is that some of these provisions can neither take effect as domestic law, nor be invoked before a Swiss court.

The 35 subjects on which the experts issued recommendations reflect their concerns about undocumented persons, who are excluded from social assistance in some cantons and instead have to rely on emergency assistance (about CHF 10 per day), an unsuited amount for the realization of their rights, particularly the right to adequate food. The Committee also underlined the neglect with which many asylum-seekers are treated, and showed concern about the gender-related wage gap for work of equal value, the disregard for the right to strike, as well as about the unfair dismissals of workers belonging to a labor union. Shocked by the persistence of extreme poverty in Switzerland, the Committee called for the revision of the national anti-poverty strategy.

Switzerland was also subject to reproach concerning its extraterritorial obligations when

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2 The reports of the national and French-speaking Swiss coalitions are available in French on the enclosed CD as well as the concluding observations of the Committee. They are also available on the ESCR Coalition's blog, <http://desc.ifaway.net>, as well as on the website of the Office of the High Commissioner for Human Rights, along with the other reports submitted by civil society. <http://www2.ohchr.org/english/bodies/cescr/cescrs45.htm>

negotiating and concluding trade and investment agreements with partner countries, since some of these have already compromised the rights to health and to adequate food in various third-party countries. Furthermore, the Committee repeatedly raised the issue of growing xenophobia and discrimination in Switzerland, particularly towards the Roma, and requested the authorities to adopt strategies to protect cultural diversity. Finally, the Committee evidently encouraged Switzerland to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Following Switzerland's examination, the civil society coalitions, anxious to make sure that the Committee's recommendations are not forgotten, focused on their dissemination and launched a campaign to promote them and encourage their implementation by authorities, thus ensuring the effective realization of ESCR in Switzerland. This campaign includes developing a manual for the implementation of these recommendations and a number of workshops for the authorities.

At the same time, a study on the right to food in Geneva was carried out by a group of students from the Graduate Institute of International and Development Studies in partnership with FIAN Switzerland.³ This report describes the situation of the right to food as well as laws, policies and programs that encourage or impede the exercise of the right to food in Geneva. It also identifies the vulnerable groups (unemployed, single-parent families, "working poor", and undocumented persons) who resort to food aid, and proposes concrete recommendations to improve their situation. Based on this study, FIAN Switzerland is also going to launch an awareness-raising and advocacy campaign targeting the authorities, concerning the right to food.

³ This study is available on the CD enclosed as well as at the following address : <http://desc.ifaway.net/2011/01/19/etude-droit-a-une-alimentation-adequate-geneve/>

THE EUROPEAN UNION

9c The Right to Information and Participation in the Common Agricultural Policy (CAP)

ENRIQUE GONZÁLEZ¹

Since its implementation, the Common Agricultural Policy (CAP) has been characterized by a severe lack of transparency, especially in regards to financial matters. Despite the CAP being a public funds investment policy, for decades the European Union (EU) has denied access to information about the amounts and the recipients of aid. In spite of criticism and subsequent efforts to reform the CAP in order to address this issue and enhance the inclusion of civil society, it continues to fail to meet demands in this respect. This article will provide an overview of the main criticisms, reforms and challenges concerning the CAP.

In 2008, after much criticism about the need to enhance transparency on the use of funds and to improve financial management, the European Commission adopted a regulation that obliges its member states to publish the names of aid recipients and the amounts of aid disbursed.²

However, in 2009, the Court of Justice of the EU restricted the scope of the reform by prohibiting the disclosure of individuals' information, on the basis of the protection of personal privacy. As a result, in April 2011, the Commission adjusted its method in accordance with this decision.³ With this restriction, aid transparency currently applies only to legal entities. However, the transparency measures had begun to reveal profound inequities in the distribution of CAP subsidies. Indeed, these inequities have been criticized in recent decades by peasant and other right to food defense movements and organizations.

Despite some progress on the matter, the European Parliament, in a 2010 resolution concerning the state of the CAP reform, determined that conditions have not improved in terms of “transparency, legitimacy, or the simplification of financial resources allocated to agriculture.”⁴ In fact, difficulties in accessing information are not limited to financial mat-

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2 Commission Regulation (EC) No 259/2008, of 18 March 2008, *Official Journal of the European Union*, L 76/28. 19 March 2008.

3 Commission Implementing Regulation (EU) No 410/2011, of 27 April 2011, *Official Journal of the European Union*, L 108/24. 28 April 2011.

4 EU, European Parliament resolution of 8 July 2010 on the future of the Common Agricultural Policy after 2013 (2009/2236(INI)), para. T.

ters alone. Thus, in a resolution on agricultural trade, the European Parliament declared it unacceptable to resume negotiations with Mercosur “without making publicly available a detailed impact assessment and without engaging in a proper political debate with the Council and Parliament” and “regrets that the Commission has not yet informed Parliament about the negotiations for a free trade agreement between the EU and Canada, even though these negotiations commenced in October 2009.”⁵

In terms of participation, the Commission has developed a complex network composed of hundreds of expert groups and advisory committees. In the field of agriculture, there are nearly thirty committees, which makes it the sector with “the largest number of institutionalized consultation structures”, most of which “constitute real interest communities established around specific policies as they tend to have a stable character, meet regularly and their members are almost always the same.”⁶ These committees, funded by the European Commission, are composed of representatives of member states and independent consultants representing both public and private interest groups.

A clear example of the power of these interest groups is the acceptance of genetically modified crops by the Spanish government. This decision contradicts the position of the other EU countries, who address the risks posed by genetically modified organisms for the environment and human health by preventing their use on their territories. FIAN has denounced the failure to fulfill the right to environmental information represented by this decision as part of the growing “evidence of the direct influence exerted by the biotechnology industry on decision-making bodies of the Spanish government on this matter.”⁷

Given the increasing disrepute of the CAP, the European Commission introduced a new reform of the policy. In 2010, the Commission initiated a public consultation with the supposed aim of influencing the future direction of the CAP. The results demonstrated the need to “introduce transparency along the food chain along, with a greater say for producers.”⁸ However, various European civil society actors have complained that the reform so far has been guided by the interests of large corporations.

In turn, a representative of the European Economic and Social Committee, from the trade union field, said that the growing centralization of the design process for agricultural policy in the hands of the European Commission has raised troubling questions in the agricultural sector, because it signifies “a transfer of power not only from the European

5 EU, European Parliament resolution of 8 March 2011 on EU agriculture and international trade (2010/2110(INI)). paras. 46 and 57.

6 F. Morata, *Gobernanza multinivel en la Unión Europea*, VII Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública, Lisboa, Portugal, 8-11 Oct. 2002, p. 4.

7 The Right to Food and Nutrition Watch 2010, *Land Grabbing and Nutrition: Challenges for Global Governance*, Germany, October 2010, p. 81.

8 EU, European Commission, *The Common Agricultural Policy after 2013*, Public debate, Summary Report, p. 8.

legislative authorities but also from the social partners who until now were part of the mandatory consultation for defining and monitoring rural development policy.”⁹

Indeed, as required by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), the formulation and implementation of strategies regarding the right to food require compliance with the principles of accountability, transparency and popular participation. In the design of laws and policies, the authorities “should actively involve civil society organizations.”¹⁰

Reversing the dismantling of mechanisms that enable effective participation and access to information by peasant organizations and consumers constitutes one of the major current challenges facing the new CAP reform planned for 2013. Only by including these actors will it be possible to make the European agricultural policy sustainable, inclusive and socially just.

9 M. Sánchez Miguel, “Adaptación de la PAC al nuevo marco normativo europeo”, in *Revista Daphnia*, nro. 54, Madrid: ISTAS, 2011. <http://www.istas.net/daphnia/articulo.asp?idarticulo=1066>.

10 United Nations, Committee on Economic, Social and Cultural Rights, General Comments 12. The right to adequate food (art. 11). E/C.12/1999/5. 12 May 1999, paras. 23 and 29.

CLAIMING THE RIGHT TO FOOD AS A HUMAN RIGHT IN AFRICA

HUGUETTE AKPLOGAN-DOSSA¹

There is no dearth of arable land or natural resources in Africa, and yet the continent is still not able to cope with its population's food needs. More than half the population does not have access to adequate food and in Sub-Saharan Africa, every third person suffers from chronic hunger.² The main cause of this situation can be attributed to the abandoning since the 1980s of the agricultural sector by governments and by policies implemented under structural adjustment programs, despite this sector's predominant place in most African countries' economy.

However, in the last few years, the importance of rural development, particularly in combating food insecurity, has become more widely recognized and occupies a more central position in state policies. The 2003 Maputo Declaration on agriculture and food security, in which the signatory states committed themselves to allocating at least 10% of their national budgetary resources to agriculture and rural development policies, is a case in point at the regional level. Today, even the major donors and technical partners recognize that in Africa, the effect on poverty reduction is three times higher when

investing one dollar in agriculture than investing the same dollar elsewhere in the economy.³

While this situation may seem encouraging, the implementation of strategies to fight hunger based on human rights, and on the right to food in particular, is anything but widespread on the continent. Several international and regional legal instruments encompassing the right to food have been ratified by most African states, namely the ICESCR, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. The continent is also host to institutions such as the African Court on Human Rights and the Court of Justice of the Economic Community of West African States (ECOWAS), which included the review of human rights violations in member states in its jurisdiction in 2005. However, the right to food remains widely unrecognized and seldom respected, as was revealed by reports on the current situation of the right to food carried out in several member countries of the African Network on the Right to Food (ANoRF) between 2008 and 2010.⁴ These reports also showed that authorities at various levels generally do not make any arrangements towards integrating international conventions on ESCR into the national legal framework or towards guaranteeing their implementation. This situation is also often due to the administration's and the judiciary's lack of planning and means, as this article illustrates in the cases of Cameroon, Togo and

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² FAO, *The State of Food Insecurity in the World 2008: High food prices and food security – threats and opportunities*, Rome, FAO, 2008.

³ FAO, *Regional Strategic Framework for Africa (2010-2015)*, available online at the following address: <http://www.fao.org/docrep/013/am054e/am054e00.pdf>

⁴ These reports are available on the ANoRF website: <http://www.rapda.org>

CAMEROON

Niger. In these conditions, claiming ones rights remains arduous, particularly when confronted with the scale of the land grabbing issue in Africa, as demonstrated in the case of Uganda.

In order to ensure that the authorities are held accountable for cases of violations of the right to food, it is above all necessary to actively broadcast information on the subject and to advocate in favor of the assimilation of this right at all levels. The ANoRF, whose mission is to work towards the realization of the right to food for all in Africa, operates precisely bearing this fact in mind. Through its objectives, strategies, training sessions and advocacy activities, the ANoRF

endeavors to raise awareness about compliance with the right to food among the population and government officials. The Network also follows up on the implementation of recommendations from the reports on the current situation, in order to induce concerned governments to take responsive measures in case of violations of the right to food. In addition, in December 2010, the Network launched the Bamako appeal, urging African states to ratify the Optional Protocol to the ICESCR and beckoning civil society organizations and social movements to mobilize and support their respective countries in this process.

10a Challenges and Opportunities to Uphold the Right to Food in Cameroon

ANoRF-CAMEROON AND VALENTIN HATEGEKIMANA¹

Cameroon has a large rural population actively engaged in agriculture; it is capable of producing enough to feed the nation thanks to overall favorable conditions. Local communities and small-scale producers account for over 80% of the domestic food production and employ over 60% of the active population. This bodes well for making the implementation of the right to food possible in the country.

However, assessment of the country's right to food situation using the 2004 FAO *Voluntary Guidelines* indicates that the legal and institutional frameworks, as well as the development and implementation of agricultural policies, are major constraints for the realization of the right to food.

Cameroon has ratified several regional and international human rights instruments that protect the right to food, but they have yet to be incorporated into laws. This process should not just be limited to the passing of appropriate legislation, but also requires effective law enforcement processes that would enable judiciary actions in case of abuse. In this regard,

¹ VALENTIN HATEGEKIMANA is the African coordinator at the FIAN International Secretariat. He wrote this article based partly on the country report on the right to food prepared in 2010 by the National Coalition of the African Network on the Right to Food (ANoRF) in Cameroon. This report can be found on the enclosed CD and on the ANoRF website: <http://www.rapda.org/>

Cameroon's most binding legal instrument, its 1996 Constitution, makes no specific reference to the right to food and there is no legislation that explicitly refers to the promotion or protection of the right to food. The upcoming revision of Cameroon's Land Tenure Ordinance, which dates back to 1974, will be the ideal opportunity to incorporate elements from the recent Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests.²

In general, the duty-bearers in Cameroon are sensitive to the interests of rights-holders while designing, implementing and monitoring public policies. However, the authorities do not sufficiently promote the right to food. The Ministries of Agriculture, Rural Development and Livestock have been running over 70 projects and programs since 2007, but this has not made a significant dent in the general hunger and poverty level in the country. The Poverty Reduction Strategy Paper (PRSP) prepared ahead of Cameroon's qualification to benefit from the Heavily Indebted Poor Countries Initiative (HIPC) served as a road map, particularly for development in the agricultural and rural sectors, and sets goals to be attained as per the MDGs.

At the end of 2009, the government released a new policy document, the Growth and Employment Strategy Document. Also known as Horizon 2035, its implementation aims to make Cameroon an emerging nation within the next 25 years. In addition, the government has elaborated the Rural Development Strategy Document to provide guidelines.

Despite the existence of these policy documents and plans, monitoring systems are weak, implementation is only moderately effective, and citizen participation is low beyond the grassroots level even though communities have important stakes in the process. Their views and interests are generally not sufficiently taken into account during consultations and are thus not strongly reflected in the final documents. Moreover, opinions gathered during the information collection phase tend to get diluted in highly centralized and bureaucratic systems by the interest of those implementing the project. Feedback, transparency and accountability processes are from top to bottom with little or no initiatives to build local ownership of programs.

In Cameroon, over 17 Ministries are involved in the plans, programs and projects related to agriculture and rural development. Unfortunately, interaction among these actors is very limited. Some of them are assigned overlapping roles resulting in redundancy and often causing neglect. There is also a lack of synergy among the different key actors within the rural and agricultural development sector. This, combined with insufficient qualified personnel in the Ministry of Agriculture and other related government offices, is one of the main reasons for Cameroon's difficulty to effectively guarantee the right to food.

On the occasion of the 47th session of the Committee on Economic, Social and Cultural

² For more information on the *FAO Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests*, please consult: <http://www.fao.org/cfs/cfs-home/land-tenure/en/>

NIGER

Rights (14 November – 2 December 2011), Cameroon will be examined for its implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This represents a great opportunity for civil society activists to insist on the government's duty to protect, respect and fulfill human rights underlined in all ESCR instruments, including the respective General Comments. Critical issues such as the current land grabbing crisis which has led to the eviction of peasants from their land will also be addressed. The review also provides a unique opportunity to remind rights-holders and duty-bearers about the importance of involving rights-holders at the grassroots in the design, implementation and monitoring of public policies for the realization of the right to adequate food in Cameroon.

The creation of the Cameroon Movement on the Right to Food, affiliated to the African Right to Food Network, offers a big opportunity for engagement with duty-bearers, and to join forces in an effort to draft a landmark policy for the promotion of right to food. Strong mobilization by civil society activists is needed on many fronts to urge the government to make the right to food a reality for all Cameroonians.

10b A New Window of Opportunity for the Right to Food in Niger¹

ANORF-NIGER

Niger, one of the world's poorest countries, has been facing continual political instability and chronic food shortage for decades. Because of Niger's arid terrain and its relatively ill-equipped, heavily rain-dependent agriculture, food security has understandably been the main preoccupation of the country's successive governments. However, with a newly (and fairly) elected president recently taking office, the time to promote a food security strategy based on the right to food as a possible long-term solution to Niger's recurrent famines may have come.

¹ This article is summarized from a report produced by the National Coalition of the African Network on the Right to Food (ANoRF) in Niger and the NGO SOS-FEVVF, which is available in French on the enclosed CD, and from an article published by the Integrated Regional Information Networks (IRIN), *Niger: Chasing food security*, 29 March 2011. <http://www.unhcr.org/refworld/docid/4d9572a3c.html>

After the coup of February 2010, the military interim government drafted a new Constitution, which mentions every person's right to sufficient and healthy food in Article 12, and organized elections in the first quarter of 2011. It also took steps to develop a food security strategy by setting up the Higher Authority of Food Security (Haute Autorité à la Sécurité Alimentaire), and hosted an International Conference on Food and Nutrition Security (CISAN for its French acronym) in March 2011. The CISAN is to be an inclusive process where all actors concerned with food security, including politicians, local authorities, technical experts, scientists, representatives of agribusinesses, NGOs and the civil society, can exchange knowledge and experiences and propose strategies to cope with food insecurity.²

But uppermost, to develop a comprehensive strategy to defeat hunger, the lack of financial resources and support in the rural sector must be addressed. Although agriculture (essentially subsistence farming) contributes to more than 40% of GDP and employs the majority of the population, loans and investments are all but unobtainable in the rural sector since the late 1980s, when most farm credit systems went bankrupt and the State disengaged. In 2003, by signing the Maputo Declaration, Niger committed itself to allocating at least 10% of the national budget to agriculture and rural development policy implementation, but has failed to meet this target in recent years. This concrete engagement should be reminded to the authorities by a dynamic civil society advocacy campaign. The clarification of land ownership also represents an additional challenge to be tackled considering the persistence of customary law in the country. In these circumstances, the recent announcement made by the new president, Mahamadou Issoufou, of plans to invest about US\$ 2 billion to boost irrigation is encouraging.³

On the other hand, lack of awareness and information, particularly regarding human rights, is another major concern. Local human rights organizations have opened an information center, which holds training sessions, but at the state level, the Ministry of Agricultural Development only offers occasional training in farming techniques. This state of affairs is also partly responsible for the practically nonexistent involvement of the peasants themselves in the planning of rural development programs.

The legal framework also has to be reinforced. Niger is party to the International Covenant on Economic, Social and Cultural Rights since 1986, but has not been complying with its international obligations. According to Prof. Narey Oumarou, researcher in law and economics at the University of Niamey, incorporating the international instruments which recognize the right to food into the national legal framework, allowing courts to invoke them directly when adjudicating on violations of the right to food, could significantly increase the effectiveness of food security programs.

2 "Conférence Internationale sur la Sécurité Alimentaire et Nutritionnelle: Mettre fin à l'insécurité alimentaire", *Sahel Dimanche*, 25 March 2011. <http://nigerdiaspora.net/journaux/saheldimanche-25-03-11.pdf>

3 Reuters, 27 April 2011. <http://uk.reuters.com/article/2011/04/27/us-niger-challenges-idUKTRE73Q39F20110427>

TOGO

In conclusion, although government policies and programs currently remain limited to short or medium-term prevention measures linked to the frequent emergency situations caused by famines, significant steps have been taken to develop better structured and more inclusive strategies to tackle food insecurity. Duty-bearers should enhance the coordination of the various actors' efforts and adopt a broader conceptualization based on the right to food and accompanying instruments, such as mechanisms allowing people to hold the government accountable for fulfilling this right.

As the new civilian administration settles in, a window of opportunity is open for Nigeriens to make demands concerning their right to food.

10c Challenges to Guaranteeing the Right to Food and State Accountability in Togo¹

ANoRF-TOGO

Currently emerging from a protracted democratization process, Togo has recently seen its authorities work to improve the country's (historically poor) human rights record with a series of policies and programs, some of which directly concern the right to food. Considering its agricultural production potential, Togo should be self-sufficient in terms of food production. However, food insecurity and chronic malnutrition affect a large part of the population, especially in the poorest, mainly rural regions in the North of the country. It is also these populations who would become the main beneficiaries of rural development policies geared towards the right to food.

The Togolese Constitution does not contain any explicit reference to the right to food. However, Article 140 stipulates that treaties or agreements regularly ratified or approved have, from the time of their publication, a superior authority to that of laws provided, for each agreement or treaty, its implementation by the other party. Togo is hence obliged to implement, notably, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women

¹ This article is based on the report on the current situation of the right to adequate food prepared in 2010 by the National Coalition of the African Network on the Right to Food (ANoRF) in Togo. This report is included on the CD accompanying this publication and is available on the ANoRF's website: <http://www.rapda.org>. This article was originally written in French.

(CEDAW), the Convention on the Rights of the Child (CRC) and the Indigenous and Tribal Peoples Convention.

In practice, the transposing of these treaties to national law remains problematic. The main laws governing land tenure are outdated,² which makes them virtually impossible to implement, and it is imperative that they be revised to reflect current socio-economic realities. Land tenure remains widely regulated by customary law. Inheritance constitutes the main mode of access to land and women are for the most part excluded. The general lack of written documents certifying ownership is a source of conflict and forced evictions. Moreover, fast increasing land grabbing by wealthy and powerful city dwellers is threatening Togolese agriculture. According to the law, foreigners do not have the right to acquire land in Togo, but communities suspect Togolese landowners of buying land in order to make it available to them. At this pace, rural communities will soon be dispossessed of their lands to the benefit of immense private properties.

Several cases of harassment and even murders of indigenous farmers claiming their right to natural and productive resources have been reported, but seldom examined in court. Likewise, indigenous peoples' right to free, prior and informed consent concerning projects on their traditional lands and territories has notably been flouted in the case of phosphate mining projects and the Bangeli iron mine. Given the difficult working conditions for civil society organizations in Togo, there is a lack of documentation on these cases of violations and communities struggle to mobilize to claim their rights.

The State's lack of accountability and reaction towards these cases of human rights violations can be explained partly by the dearth of means (both financial and technical) and of competent staff available to the authorities, particularly the judiciary. In addition, institutions are characterized by a relatively high level of corruption. In these conditions, the effective implementation of human rights, including the right to food, remains difficult to achieve, all the more since this right is still widely unknown to most officials and people in charge of relevant institutions. The same can be said of the development of recourse and appeal mechanisms for administrative decisions affecting the right to food.

As part of a modernization program for the judiciary, the State plans to train additional magistrates, but the development of a proper communication strategy on the right to food would be necessary in order to better inform not only the officials responsible for the realization of this right, but also the populations and individuals who are entitled to it. The Poverty Reduction Strategy Paper (PRSP) also includes plans to redefine land tenure policy so as to integrate customary laws in a legal framework which would protect the rights of vulnerable groups.³

2 For example, the decree regulating expropriation for reasons of utility dates back to 1945.

3 IMF, *Togo: Full Poverty Reduction Strategy Paper 2009-2011*, p 53. Available online at the following address: <http://www.imf.org/external/pubs/ft/scr/2010/cr1033.pdf>

The National Program for Agricultural Investment and Food Security (Programme national d'investissement agricole et de sécurité alimentaire, PNIASA) initiated in 2008 and designated as a priority in national policies and in the PRSP, establishes the right to food as a central pillar of the strategy for the realization of food security. While the document remains vague concerning measures envisioned in order to guarantee and apply the various dimensions of the right to food, it is at least encouraging that authorities recognize its importance.

In 2007, the government also enacted the Interim Program for the Protection and Promotion of Human Rights (Programme intérimaire de protection et de promotion des droits de l'homme, PIPPDH), which includes *inter alia* a training program on human rights and the creation of a resource and information center. It also aims to increase civil society organizations' action capabilities and the participation of social movements in political and economic life. Furthermore, a National Human Rights Commission (Commission nationale des droits de l'homme, CNDH) has been in existence for more than twenty years and is responsible for promoting human rights, in particular through training programs for the members of professions most concerned.

It can nonetheless be regretted that none of these policies focus on the effective implementation of the Togolese government's commitments regarding human rights, resulting from its ratification of international treaties such as the ICESCR. It is also imperious for the right to food to be a part of a genuine global strategy for the promotion of human rights and state accountability, grounded in decentralized decisions and actual involvement of the communities in implementation processes.

Thus, the main challenges for Togo involve ensuring the implementation of the treaties guaranteeing the right to food ratified by Togo, conciliating customary and written law and changing the decision makers as well as the population's mentalities, so that the right to food is finally considered a guaranteed and enforceable right for every person.

10d Forced Evictions in Uganda: The Victims' Experience in Using the OECD Guidelines for Multinational Enterprises to Demand Accountability

ANTON PIEPER¹

In August 2001, the Ugandan army forcefully evicted more than 2000 people from their land in the Mubende district to make way for a vast coffee plantation operated by Kaweri Coffee Plantation Ltd., a subsidiary of the Hamburg-based Neumann Kaffee Gruppe. According to testimonies received by FIAN, people's houses were bulldozed, fields were laid waste, all the belongings of the local population were looted and the evictees had to leave their land at gunpoint.² To this day, the evictees continue to suffer from the loss of their land.

Since the time of their eviction, most of the displaced population have been living at the edge of the plantation in makeshift homes they have constructed there. In order to sustain their livelihoods, some evictees have been able to use nearby land for temporary small-scale farming, but this is insufficient to provide their families with adequate food. Moreover, because of the lack of income ensuing from these people's situation, the number of children who can attend secondary school has decreased.

The displaced citizens have been filing complaints against the Ugandan government and the Kaweri Coffee Plantation since 2002, demanding compensation and restitution of their land. However, the trial – to be held at Nakawa High Court (Kampala) – has been systematically delayed. In nine years, the Court's investigations have not made any substantial progress and the case is still pending.

On 15 June 2009, the evictees, who joined forces under the banner *Wake Up and Fight for Your Rights*, filed a complaint with the support of FIAN to the German National Contact Point (NCP) of the OECD Guidelines for Multinational Enterprises. They claimed that Neumann Kaffee Gruppe had breached OECD Guidelines through its involvement in the destruction of property without compensation to the persons concerned, its rejection of any dialogue with the persons concerned, and obstruction of court proceedings and of attempts to reach an extrajudicial settlement.

It took one and a half year after the complaint had been lodged before the first and (surprisingly) only joint meeting took place between the NCP, Neumann Kaffee Gruppe

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2 G.Falk, W. Sterk, *The Case Mubende*, FIAN International, March 2004. Available at: <http://www.fian.org/resources/documents/others/the-case-mubende/pdf>

representatives and the evictees. The company did not take part in talks initiated in 2010 by the Ugandan Attorney General to negotiate an extrajudicial agreement, nor did its representatives attend the last two court dates.

In April 2011, the NCP declared the closure of the complaint process against Neumann Kaffee Gruppe. This is particularly inappropriate at a time when it is necessary to maintain international attention on the case and encourage mediation between the parties that could lead to a fair and sustainable solution.

The final declaration is clearly biased in favor of Neumann Kaffee Gruppe and, adding insult to injury, the NCP calls on *Wake Up and Fight for Your Rights* and FIAN to stop public criticism of the eviction and its consequences.

Both the evictees and FIAN do not accept these demands to hold back information for the public in relation to human rights violations. Thus, campaigning will carry on in order to raise awareness about the severe human rights violations linked to the forced evictions in Mubende and their consequences for the concerned population's right to food. Several activities aimed to increase the pressure both on the Ugandan government and on Neumann Kaffee Gruppe in 2011.³ Local and international efforts are basically oriented towards the same theme as the *Right to Food and Nutrition Watch 2011*, namely supporting people in claiming their rights by holding state and private actors accountable under international human rights law.

This will hopefully encourage the rights-holders not to give up their fight for justice, and eventually lead to fair and just procedures that will ensure adequate compensation and restitution of their land rights.

³ See FIAN Statement of April 2011 available on the enclosed CD.

ACCOUNTABILITY FOR THE HUMAN RIGHT TO FOOD IN ASIA

CAROLE SAMDUP¹

Asia is home to more than half the world's population and most of its hungry people. According to the FAO, 578 million people suffer from chronic hunger and malnutrition in the region, far more than on any other continent.² At the same time Asia boasts high levels of wealth and economic growth and it produces much of the world's food including 90% of its rice.³ Why does so much hunger persist amidst so much plenty?

While the answer to our question lies in complex historical and political realities, lack of state accountability is a significant contributing factor. This section of the *Watch* highlights four country stories – from China, Malaysia, Nepal and Pakistan – that describe efforts by civil society and social movements to claim the human right to food through judicial and administrative processes at the national level. The stories reveal in stark reality that national recourse mechanisms are too often ineffective. Even when administrative processes are engaged as in the case of China, or when national courts rule on specific cases as in Malaysia, delays and political interference limit their usefulness and can place the claimant at risk.⁴ When claims are based on constitutional provisions as in Nepal and Pakistan, court decisions are not systematically

implemented and the nature of state obligations is often misinterpreted.

Unlike the Americas, Europe and Africa, Asia has no regional human rights procedure that can provide support when national processes have been exhausted. Regional cooperation agreements do exist in the areas of trade and security – most notably the South Asian Association for Regional Cooperation (SAARC), the Association of South East Asian Nations (ASEAN) and the Shanghai Cooperation Organization (SCO). However, these bodies do not include human rights monitoring or adjudication mechanisms. The ASEAN Intergovernmental Commission on Human Rights was inaugurated in 2009 but it lacks both independence and punitive authority and has been widely criticized by civil society as ineffective.⁵

In the absence of effective recourse mechanisms at the national and regional levels, accountability for right to food violations in Asia has been sought from the international human rights protection system. Human rights defenders have appealed to both the Universal Periodic Review procedure at the UN Human Rights Council and the various treaty body review processes by submitting parallel reports and testifying before the relevant committees.⁶ In some cases, they have even sought justice from the international financial institutions. For example, small-hold farmers from Malaysia and Indonesia

1 CAROLE SAMDUP is Senior Advisor for Economic and Social Rights at the International Centre for Human Rights and Democratic Development (Rights & Democracy) in Canada. www.dd-rd.ca

2 FAO, *The State of Food Insecurity in the World 2010*. By contrast, the FAO reports 239 million hungry in Sub-Saharan Africa. <http://www.fao.org/docrep/013/i1683e/i1683e.pdf>

3 Asia Rice Foundation. www.asiarice.org

4 For a more promising case example, see the article on India by Biraj Patnaik (Box 4d).

5 Forum-Asia, *Hiding Beyond its Limits: Performance Report on the First Year of the AICHR 2009-2010*. http://www.forum-asia.org/index.php?option=com_content&task=view&id=2658&Itemid=42

6 For example, in 2009, Chinese human rights defenders questioned government claims about the reduction of malnutrition. See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CNSession4.aspx>

CHINA

succeeded in obtaining a moratorium on World Bank financing for oil palm production based on violations to the rights of indigenous peoples.⁷

⁷ The moratorium was lifted in April 2011 after having been in effect only eighteen months. See <http://in.reuters.com/article/2011/04/01/idINIndia-56064820110401>. The moratorium was the result of an internal audit of the World Bank, and is available online at the following address: http://www.cao-ombudsman.org/uploads/case_documents/Combined%20Document%201_2_3_4_5_6_7.pdf

But such successes are rare and insufficient. As our four country stories clearly demonstrate, ensuring state accountability for right to food violations in Asia will require the steadfast efforts of civil society, social movements and legal experts working together across the region.

11a The Struggle for Land and the Right to Food in Rural China¹

Throughout the change and upheaval of past decades, China's rural communities have remained at the bottom of the country's development hierarchy. While China now claims near self-sufficiency in national food production, growing rural-urban disparity has led to increasing vulnerability for the millions of people who depend on small-scale agriculture for their basic food and nutrition, particularly in the far western regions of the country. As urban China has been transformed by economic growth, in the countryside farmers must still bear hardships or, more literally, "eat bitterness" (*chi ku*).

In rural China, access to adequate food is inextricably linked to access to land. According to the UN Special Rapporteur on the Right to Food, China has lost 8.2 million hectares of arable land since 1997. While this is due partly to climate change and natural disasters, it is also true that large swathes of the countryside have been transformed by state-led policies in support of urbanization, infrastructure and industrial development. As a result, more than fifty million farmers have been displaced from their land over the past twenty years, according to official sources. Land is either requisitioned by the State (*zheng di*) or occupied (*zhan di*) by industrial ventures, often illegally. Speculative land acquisitions by government officials are also widespread, inspired by the rising value of land in China. Compensation to

¹ This article is summarized from research carried out by Rights & Democracy over the past several years. Rights & Democracy is a Canadian institution promoting human rights and democratic development around the world. www.dd-rd.ca
For more information on the right to food situation in China, you can consult the preliminary observations and conclusions of the Special Rapporteur on the Right to Food after his mission to China in December 2010 on the enclosed CD. The mission's full report will be available in March 2012 on the Rapporteur's website: <http://www.srfood.org>.

those evicted is nearly always inadequate, based on agricultural yields rather than the market value of the land. Battles over land seizures and compensation arrangements are common and often violent.

In this context, access to justice for small farmers is highly problematic. Even though China is party to the International Covenant on Economic, Social and Cultural Rights, the capacity of Chinese farmers to defend their interests and claim their rights is constrained by a lack of civil and political rights, poverty, and unequal social status. Many farmers lack sufficient land documentation, rendering judicial redress illusory. Moreover, there is no independent judiciary in China and few evicted farmers can afford lawyer fees. Even if a farmer has the funds to take his or her case to court, convincing the court to accept the case, disentangling the myriad of complex compensation regulations and keeping local government officials from interfering in the process present serious obstacles.

These circumstances often lead farmers to turn to petitioning (*xinfang zhidu*) as a means to claim their rights. Petitioning is a process – protected in Article 41 of the Chinese Constitution – whereby citizens, either individually or collectively, make appeals directly to authorities in an effort to obtain remedy for grievances or complaints against local officials. In theory, the right to petition is viewed as a kind of check-and-balance mechanism that provides some degree of state accountability. However, in practice the system is slow and ineffective. Moreover, when farmers appeal to central authorities in Beijing, they are met with bureaucratic delays, harassment and pressure to take their grievance back down to the local level where they confront vengeful reactions from officials who routinely inflict violence upon the “trouble-makers.”

And yet, Chinese farmers continue to speak out for their rights, demonstrating a great degree of courage, tenacity and imagination in extremely difficult circumstances. Their fight for security of land-use rights is a fight for their right to food and also for the stability and viability of rural China.

11b Protecting the Human Right to Food for Indigenous Communities in Sarawak, Malaysia: The Accountability Challenge

IRENE FERNANDEZ¹

The island of Borneo is home to one of the world's last remaining virgin rain forests, which for centuries has provided food to indigenous peoples on the island. Over the course of the past thirty years, Borneo's rainforest has steadily been cut down and transformed into vast plantations that produce approximately 90% of the world's palm oil.

Malaysia's largest state, Sarawak, is located along the northwest coast of Borneo. Sarawak enjoys a high degree of autonomy within Malaysia with full authority over land policy and management. The Chief Minister of Sarawak has been in office for 28 years and is accused of cronyism and corruption related to the allocation of land permits and concessions to the palm oil industry.² These land concessions have displaced indigenous peoples from their land and territories.

Approximately 67% of Sarawak's population is indigenous. For centuries, indigenous communities obtained their food from the rainforest by hunting, gathering and fishing. Decreased access to the rainforest has therefore resulted in decreased access to traditional foods. In Malaysia, the customary rights of indigenous peoples are legally protected in the Constitution. However, in practice these rights can be extinguished upon payment of compensation, no matter how small the amount or how absurd the conditions. As a result, the survival of indigenous communities in the rain forest continues to be threatened by large-scale palm oil production.

The expansion of palm oil plantations is facilitated by the state government through the issuing of "provisional leases" to companies. Such leases commonly require that indigenous communities give up rights to their land for sixty years. During the sixty-year period, the state government serves as "trustee" of the land. Although the government issues the provisional lease directly to the company, the communities must negotiate the terms of compensation on their own and often under intimidation and harassment by local authorities. The result is highly un-equal agreements in which communities give up many of their constitutionally-protected rights. In one documented example, the community was required to sign

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² www.bloomberg.com, 24 August 2009.

NEPAL

over all claims to its land “in perpetuity” in exchange for a compensation of \$50 per family. In addition, the agreement required the community to assume full responsibility for any future protest activities, even if they were carried out by individuals or groups not party to the compensation agreement. Further, although the agreement allows community access to the forest for hunting and fishing purposes, an application for permission to enter the area must be submitted in advance to the company’s security force.³

Several indigenous organizations including the Sarawak Dayak Iban Association and the Sarawak Indigenous Lawyers Association have sought remedy for such practices through judicial processes. While Sarawak courts have reiterated native land rights as pre-established rights based on custom, and there has been a Federal Court ruling giving recognition of such rights, approximately 200 challenges to concession agreements currently await consideration. In examples where cases have been heard and decisions have been favorable, they have not been implemented. The Malaysian Human Rights Commission is also investigating complaints but cannot implement its recommendations. Moreover, the Commission is a federal body while the state government has sole jurisdiction over land governance.

The challenge of accountability for indigenous peoples in Sarawak remains unresolved and the number of disputes between communities and companies continues to increase. Unless the government ceases its practice of granting land concessions and makes a concerted effort to resolve the backlog of existing complaints, the indigenous peoples of Sarawak will continue to experience violations of their human rights to food, land and genetic resources.

³ Some excerpts of the agreement can be consulted on the enclosed CD.

11c Nepalese Supreme Court Decision on the Right to Food BASANT ADHIKARI¹

On 19 May 2010, the Supreme Court (SC) of Nepal made a landmark decision in favor of the justiciability of the right to food, in response to a public interest petition filed by a group of human rights lawyers. The petitioners, on behalf of Pro Public (a Nepalese public interest

¹ BASANT ADHIKARI is a human rights lawyer in Nepal and works for UNDP Kathmandu in Participatory Constitution Building in Nepal. Over the years, he has commissioned several researches and studies in legal issues focused on economic, social and cultural rights and their justiciability. He is also a member of FIAN Nepal.

NGO), had been monitoring right to food violations through news reports and studies on the situation of food security. Several of these revealed that out of 75 districts, 32 were food-insecure and 16 were extremely vulnerable in terms of food security. However, the government was not responding to the crisis, which resulted in a violation of the right to food.

In this context, the petitioners invoked the extraordinary jurisdiction of the SC of Nepal to oblige the government to take all necessary and appropriate steps in order to ensure access to food in the affected districts. The petition was based on the constitutional provisions guaranteeing the fundamental right to food sovereignty and the right to a dignified life, and referred to all relevant international human rights instruments. In examining the case, the Court focused on interpreting the right to food and freedom from hunger in view of Nepal's commitments to international human rights instruments and existing constitutional provisions, and also referred to the right to life and personal freedom. It rightly observed that number of rights such as the freedom of profession or business, the right to employment and social security, and the right to food sovereignty – as well as the rights to food, water, housing, health and education – are prerequisite to making the right to a dignified life meaningful. To be sure, the 2007 Interim Constitution of Nepal recognizes all these rights as fundamental rights. Therefore, every individual should have access to adequate food in order to enjoy a dignified life.

One of the most interesting and important aspects of this SC decision is that it concluded that the government of Nepal is bound by the relevant international human rights treaties to which it is a party,² and is under the obligation to ensure the right to food of its population. Based on the treaties, the SC determined that the right to food and freedom from hunger is interlinked with many other rights, particularly the right to employment, social security and the basic necessities of life, and it is therefore the government's duty to ensure its progressive realization.

However, the Court observed that guaranteeing the right to food does not mean providing food free of cost to every individual. It concluded that the State has the obligation to take specific steps in order to improve the standard of living, which includes the realization of the right to food. It also observed that the availability of food is not sufficient for realizing the right to food; rather, food should be accessible and affordable to the people. This can be achieved with the State acting as a facilitator, regulator or custodian, enabling people to satisfy their food needs by themselves.

Interpreting Article 18 of the Interim Constitution of Nepal, the Court clearly observed that the right to food, health, housing, education and social security are all basic human rights

2 These include the International Covenant on ESCR, in particular Article 6(2), Article 9 and Article 11, the Universal Declaration of Human Rights, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, the Universal Declaration on the Eradication of Hunger and Malnutrition and the 1969 Declaration on Social Progress and Development.

PAKISTAN

and the State has the obligation to ensure their progressive realization. Citing General Comment 12 of the Committee on ESCR, the SC obliged the government of Nepal to ensure availability, accessibility and adequacy of food to satisfy the dietary needs of individuals, taking into account their age, living conditions, health, sex, etc. Therefore, it must ensure a regular supply of foodstuffs to the districts vulnerable to food insecurity. The Court also took judicial notice that the government had enforced the interim order it had issued in September 2008 on the same case.

With this watershed decision, the SC of Nepal not only requires the authorities to be well prepared to cope effectively with food crises in the future, but most importantly, it reaffirmed the State's constitutional duty to guarantee the realization of the right to adequate food for its population.

11d Pakistan's Accountability Challenge – A Legal Framework for the Right to Food

SHAFQAT MUNIR¹

In Pakistan, where almost half the population does not have access to sufficient food for an active and healthy life, the right to food has fast emerged as a challenge of food governance accountability. However, a mandatory legal framework is needed for people to actually claim this right, as none currently exists. This is the challenge for human rights campaigners.

Recently, Pakistan has faced two major disasters, the 2005 earthquake and the 2010 flash floods, which have brought millions of people to the verge of hunger. The UN World Food Programme, other UN agencies, the European Union and international donors have provided these people with humanitarian food aid. However, this type of intervention does not encourage the realization of their fundamental right to food. Although the three pillars of food security – availability, access and use – provide a basis to promote the people's right to food, they are not sufficient unless they are established as rights.

Article 38, sub-clause (d) of Pakistan's Constitution reads, "The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such

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citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.” Moreover, Pakistan is signatory to several international conventions relating to food and hunger.

In spite of these international commitments and the obligation inscribed in Article 38 of the Constitution, Pakistan lacks a legally binding mechanism through which people can claim their right to food, and there does not seem to be any short or long-term plan to implement one.

At present, food is a commodity and its price varies at the mercy of market forces. With the recent food inflation and price increases to double-digit figures, the destruction of crops due to the floods and the slow pace of reconstruction, 6.94 million more people have been added to the poverty count and are feared to have had to skip their one, or even their half meal per day. They have little money to spend on food at the market, and in the absence of a framework guaranteeing food as a fundamental right, they are unable to procure even the basics. The federal and provincial governments have introduced subsidy schemes to provide basic staples but only on an *ad hoc* basis and without any legal framework.

I.A. Rehman, the director of the Pakistan Human Rights Commission, sounded a powerful call for the right to food when he said that it needed to be made an ‘enforceable right’ in Pakistan: “People need to be able to claim this right through the court by filing writ petitions. Every person in Pakistan ought to be fed. We shouldn’t have starving people.”²

In July 2011, FIAN Pakistan Group hosted the first ever national right to food conference to highlight the challenges of putting in place a legal framework to hold the government accountable for fulfilling its people’s right to food. FIAN Pakistan launched a campaign to follow up on the conference outcomes.

This campaign for proper legislation will last three years, during which time the people of Pakistan will be informed about their right to food and the government’s duty in realizing their demands for this right. The campaign should raise awareness and mobilize citizens to put pressure on the government to provide a legal framework to ensure availability and access to food as a right.

² See interview in: R. Tanweer, “Roti before kapra and makan: Fighting for food as a basic right”, *The Express Tribune*, 28 March 2011. <http://tribune.com.pk/story/138653/roti-before-kapra-and-makan-fighting-for-food-as-a-basic-right-lhr-city/>

CONCLUSION

CLAIMING HUMAN RIGHTS – THE ACCOUNTABILITY CHALLENGE

What are the key conclusions to be drawn from this year's issue of the *Right to Food and Nutrition Watch*?

First, a genuine worldwide right to food movement is emerging. The articles and boxes give evidence of an increasing variety of actors engaged in claiming their human rights, especially the right to adequate food. These efforts are based on the conviction that their rights, although often denied in the past, are real and can therefore be claimed. Most struggles are generated by communities and social groups affected or threatened by violations of the right to adequate food and other human rights. Social movements and other civil society groups have taken the lead to address injustice, demanding specific actions from state, inter-state and private actors, towards respect, protection and fulfillment of their human rights. Today, the global movement to claim the right to food, the right to water, the right to nutrition, the right to land, and to defend territories of indigenous peoples, fight for living wages for rural and urban workers, end gender discrimination as well as social exclusion, repression and criminalization, is a reality. This movement is diverse in nature but strong, increasingly connecting groups and communities from the local to global levels.

Second, the struggle against hunger entails access to justice. The authors give an impressive overview of ways in which access to effective justice is denied when it comes to claiming the right to adequate food. Almost all the articles give examples of efforts made by communities and social groups to have their rights realized. Factors that hinder or block these efforts

included economic interests, legal constraints or simply unfair power relations. Although the obstacles to the realization of human rights are very diverse, they have a common denominator: the fundamental challenge of enforcing the related obligations of those involved. Success in attaining rights depends on the effective enforcement of the relevant obligation. The key factor that determines whether a human rights claim succeeds or fails is whether the perpetrators of the violation can or cannot be held accountable.

Third, there is an urgent need for increased right to adequate food accountability. This is the common message that emerges from the articles in this issue of the *Watch*. In short, the argument is: the first *conditio sine qua non* for the realization of the right to adequate food (and all human rights) is that the rights-holders should know about their rights and be empowered to claim them. Then if the obligations of responsible actors are clearly defined and a proper accountability framework including judicial recourse mechanisms is in place, the respective right can be effectively claimed. Without effective accountability as a second *conditio sine qua non*, enforcement of human rights obligations depends on the individual attitudes of involved actors and whether they want to comply with human rights standards or not. This is why private sector actors prefer self-regulatory monitoring mechanisms, thus avoiding human rights-based accountability.

Fourth, the current lack of accountability and prevalent impunity directly lead to chronic hunger. It is not an exaggeration to note that so far, 99% of worldwide violations of

the right to adequate food have ended in impunity and continue to do so, as the violations are usually not investigated, nor are the perpetrators brought to court, or punished. How many of those who have been identified as perpetrators of classic right to food violations, such as forced evictions of communities from their lands, or the systematic undermining of household food security in Southern countries through food export dumping by Northern countries, have been held accountable? How many of them have been prosecuted, sentenced and sent to prison? Several articles in this issue point to the fact that the right to adequate food has made steps towards being recognized as a justiciable right, applied by national courts and regional human rights bodies. However, even landmark decisions need to be implemented and again, states have been reluctant to comply with clearly defined obligations under international human rights law.

Essentially, we are faced with two possible courses of action: strengthening accountability, or allowing impunity to prevail, which encourages repetition of human rights violations. Politicians are undoubtedly correct when they say that the right to adequate food is the most violated right on this planet. But what is being done to remedy the situation? There should be a common commitment to ensuring right to adequate food accountability. When formulating global declarations such as the Millennium Development Goals in 2000, governments did not define an effective accountability mechanism in case the goals are not achieved. What will politicians say in 2015? They will regret that due to policy failures of their predecessors between 2000 and 2010, MDG 1 was not met. Without strengthened accountability, action against chronic hunger is not effective.

Fifth, what are the key steps towards defining an agenda to strengthen right to adequate food accountability? Drawing from the articles included in this *Watch*, the following essential elements can initially be identified as a basis for broader discussion:

- The struggle of those communities and social groups most affected by hunger and malnutrition needs to be supported, and violations of their rights need to be documented and brought to public attention. It is important that stakeholders in this effort clearly recognize **the leading role of the rights-holders** such as peasants, pastoralists, fisherfolk, workers, the landless, indigenous peoples, ethnic groups, women, youth and other social movements. There is a huge potential to build on those civil society-led initiatives and social movements, rooted and trained in harsh conflicts at all levels, to network, join forces and scale up the worldwide struggle for the right to adequate food.
- The gaps in the existing **right to adequate food accountability frameworks need to be identified**, at local, national, regional and global levels, in relation to specific ongoing political processes as documented in this *Watch*. These include, for example, constitutional and legislative reviews, assessments of global nutrition strategies, efforts to overcome gender discrimination and to strengthen peasants' rights, impact assessments of mining projects on indigenous peoples, monitoring of the effects of land grabbing, the expansion of agrofuels and investment in agriculture, review of agricultural policies and models, evaluations of the functioning and dismantling of social welfare systems, identification of restrictions to right to food justiciability efforts,

precise definitions of extraterritorial state obligations and, in particular, the right to adequate food accountability gaps related to transnational corporations.

- It is essential to formulate a **joint global civil society agenda towards right to adequate food accountability** which responds to the identified gaps and facilitates the ongoing initiatives as exemplified in the contributions to this issue as well as previous issues of the *Watch*. This will involve intense work and requires cooperation between national right to adequate food accountability strategies and their counterparts at the regional and global levels. The agenda should begin with existing campaigns on different relevant topics such as: advancing justiciability and the ratification of the Optional Protocol to the ICESCR;

mobilizing against the global expansion of land grabbing and agrofuels; promoting gender equality in relation to natural resources, wages and nutrition; contributing to a human rights-based Global Strategic Framework for Food Security and Nutrition; questioning the problematic current global nutrition strategies; fostering the application of extra-territorial obligations; and strengthening civil society-led monitoring of national and international policies within the framework of the *Right to Food and Nutrition Watch*.

Achieving right to adequate food accountability will require broad and complex efforts. Yet we need to take on this challenge and join forces worldwide if we want to make substantial progress towards overcoming hunger.

CONTENTS OF THE CD

CLAIMING HUMAN RIGHTS: THE ACCOUNTABILITY CHALLENGE

Additional documents related to the articles:

- 02 **Lobbying the UN to Advance Peasant Rights**
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- 4b **Brazil**
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- 8d **Haiti**
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- More information about the members of the Watch Consortium
- and a lot more!

Accountability is currently the most pressing challenge in the struggle for the right to food and nutrition. Without a clear accountability mechanism, declarations of political will to fight hunger and malnutrition remain ineffective. Human rights and states' obligations are two sides of the same coin: without accountability, there can be no enforcement of human rights principles and consequently, human rights are not realized. Even worse: it is the lack of accountability that allows for the impunity of human rights violations, resulting in violations occurring over and over again. *The Right to Food and Nutrition Watch 2011* has a clear message: there is an urgent need to strengthen right to adequate food accountability at local, national, regional and global levels.

The Right to Food and Nutrition Watch intends to monitor food security and nutrition policies from a human rights perspective, to detect and document violations and situations that increase the likelihood of violations, as well as the non implementation of human rights obligations and policy failures. The WATCH provides a platform for human rights experts, civil society activists, social movements, the media, and scholars to exchange experiences on how best to carry out right to food work, including lobbying and advocacy.

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