

On the occasion of the 60th Anniversary of the Universal Declaration of Human Rights (UDHR) on December 10th, we must remind ourselves how important the fight is to secure human rights for all. The interviews with former UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari and current UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, highlight the efforts of those working to integrate human rights into international policies and those on the ground trying to assert these rights.

In the struggle to realize the right to food, it is crucial to examine the root causes of why so many suffer from hunger. Olivier de Schutter, UN Special Rapporteur on the Right to Food, and Armin Paasch discuss the shortcomings of the international response to the World Food Crisis.

There are also advances to report. A supreme court decision in Nepal has ordered that those suffering from severe food shortages be relieved by the Government, and in Brazil, the judicial branch has intervened to help end human rights violations against prisoners.

Still, new challenges arise. The current financial crisis will further affect the realization of human rights. Social movements and civil society organizations must put ever more pressure on Governments and the international community to fulfill their human rights obligations in order to make the UDHR a reality.

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RIGHT TO FOOD QUARTERLY

The sharp increase of the prices of food commodities on international markets in 2007-8 is attributable not only to short-term causes, such as bad harvests or to speculation by governments and private actors. Its causes are structural: the crisis has its origin in the inability of supply to meet growing demand, itself the result of population growth, change in dietary habits, and a boom in agrofuels production.

It is tempting to move swiftly from the diagnosis to the prescription: since production does not meet demands, it should be boosted, and urgently so. It has been announced that the global food production should increase 50% by 2030, and doubled by 2050, in order to meet the exponential increase in demand, and compensate for the imbalance in E.U. and U.S. policies between the growth in demand and the supply response that is further exacerbated by increased production of agrofuels. We should therefore (so the prescription says) massively invest in agriculture, link producers in developing countries to the high-value markets of the OECD countries in order to provide incentives for productivity gains, and improve access of agricultural producers to inputs – fertilizers, pesticides, and improved seeds – whose prices have become unaffordable for many smallholders.

This discourse is dominant. Whether it is the best informed may be doubted. The 850 million people whose right to food was violated even before the sudden increases in prices were not lacking food because too little was produced. Located primarily in developing countries, particularly in Sub-Saharan Africa and in South Asia, these persons are hungry because their purchasing power is insufficient to allow them to buy the food which is available on the markets. Even doubling the global production of food will not solve their problem.

Almost 50% of the large mass of hungry people are smallholders, living off less than two hectares of land. One fifth are landless labourers. One tenth are pastoralists or fisherfolk. And 20% are the urban poor, who often have arrived in the cities as a result of the massive rural flights of the last 25 years. Within those groups, women and girls are disproportionately affected, both because of the societal discrimination they are subjected to, and because of the inequalities within the household. The question is not simply whether global supply shall be able to meet global demand – but also whether the current reform of the global food system shall meet the needs of those who are hungry. Or, to put this in other terms: strengthening our ability to produce food should not only serve to produce more, but also to increase the incomes of the poorest, in particular smallholders who are unable to live off the land they cultivate.

But governments are growing schizophrenic. The solutions proposed for the increase of global agricultural production – particularly a new ‘green revolution’ requiring reliance on costly inputs made affordable by providing support to farmers and a lowering of barriers to trade and improved market access – may not benefit those who most need the support. These solutions could instead, if we do not carefully weigh them against available alternatives, favor the concentration of land in the hands of the few larger producers, and further marginalize smallholders; increase the dualization within farming, between the small number of large, well-connected, agri-industries, whose access to public support and political influence is already

disproportionate, and the vast majority (85% globally) of smallholders who can barely survive on the crops they produce; and favor export crops, meant to respond to the solvent demand abroad, above all for food crops, meant for local consumption. If this were to be the outcome of the crisis, the lowering of the prices of food commodities which would result from production increases could meet the immediate needs of the urban poor, but the production system would again not be a sustainable one, and little progress would be made, in reality, in combating hunger.

Basing the search for solutions to the global food crisis in the right to food, means that governments will have to devise such solutions taking into account the needs of those who are most vulnerable: public initiatives should ensure that they will benefit them, rather than the quantity of agricultural commodities available for those who can pay. Solutions can be found that reinforce the ability of smallholders to produce while at the same time protecting them from the consequences of the volatility of international prices and the risks of unfair competition from agricultural producers of industrialized countries that are subsidized by taxpayers’ money and strengthen smallholders’ abilities to negotiate prices with the large agri-business firms which impose their prices on producers. Solutions can also be found that facilitate more environmentally friendly forms of agricultural production- using inputs less dependent on oil and companies with patents on plant varieties.

Solutions based on the right to adequate food should aim at this primary objective : to put an end to the massive, daily violations of this right, stemming not from an insufficient quantity of food produced, but in a system of production whose limits have become clear. The institutional implications of recognizing the right to food as a human right asserted in international law, may contribute to this aim, by favoring the establishment of recourse mechanisms against governments violating their obligations towards the right to food, by strengthening the rights of landusers or the rights of women to have equal access to productive resources, or by affirming the responsibilities of companies towards the right to food. This is upholding the right to food. This is providing medicine to governments who face so many conflicting demands that they may have lost a sense of direction.

Olivier De Schutter is the UN Special Rapporteur on the Right to Food.

As a consequence of soaring food prices and widespread protests in more than 40 countries this year, hunger has finally attracted the public attention it deserves. A range of international conferences – like the High Level Conference on World Food Security of the UN Food and Agriculture Organisation (FAO) and the G8 Summit – make it clear that hunger has reached the top of the international agenda. Since April 2008, the reaction of the international community to the food crisis has been coordinated by the *High Level Task Force on the Global Food Crisis* (HLTF), which was initiated by UN Secretary General Ban Ki-moon and composed of UN organisations dealing with food and agriculture issues, as well as the World Bank, the International Monetary Fund (IMF) and the World Trade Organisation (WTO). In July 2008, the HLTF released a *Comprehensive Framework of Action* (CFA) which is meant to set out the joint position of HLTF members on proposed action to overcome the food crisis.¹

The CFA deserves our attention for three reasons: a) As it apparently reflects the consensus of the UN and Bretton Woods institutions, the CFA might have a major impact on food and agriculture policies internationally. b) Although the CFA contains various positive recommendations, others are problematic from the perspective of the human right to food. c) The CFA was developed and decided almost without consultation of Civil Society Organisations (CSO). FIAN is convinced that a broad debate on the HLTF is necessary in order to make sure that the policies therein serve their declared goal.

AMBIGUOUS UN STRATEGY

Like other recent reports of IGOs, the HLTF recommends giving greater attention to agriculture in public policies and to increase support especially to smallholder farmers. The call of the CFA on developing countries to increase public spending in agricultural and rural development to at least 10%, and to increase the percentage of Overseas Development Aid (ODA) to be invested in food and agricultural development from 3% to at least 10% within the next five years, points in the right direction. The same is true with regard to the declared objective to strengthen social protection systems. Both measures, against the backdrop of soaring food prices, are more important than ever.

However, FIAN has considerable doubts on whether the analysis and the recommended actions provided in the CFA are sufficient to address the immediate problems we are facing. Lessons learnt in many years of struggle for the human right to food, lead us to conclude that the majority of actions suggested in the CFA will not contribute to the realisation of the human right to food for all, as international law requires. For the following reasons, they will rather contribute to cementing existing power structures that are the source of violations of the human right to food worldwide.

RIGHT TO FOOD NOT JUST A RHETORIC ORNAMENT

Although the CFA repeatedly mentions that adequate food is an internationally recognized human right, it fails to draw the necessary conclusions. It lacks any reference to legal remedies for the victims to claim the realization of this right. It fails to recognize that not only states but also IGOs and therefore the members of the HLTF, have obligations under the right to food. It neglects basic human rights principles, such as accountability, non-discrimination, participation and empowerment. Instead of recognizing demonstrations by hungry people as a legitimate means to claim the right to food, the CFA conflates social movements with criminal groups “ready to harness popular frustrations into a challenge against the state and its authority”. The disregard of basic democratic principles is underlined by the fact that the decision on the CFA has not been taken by governments, let alone parliaments, and relevant CSOs have not been meaningfully consulted.

This lack of understanding of basic human rights principles is reflected in the narrow and exclusive focus of the recommendations on social protection systems, which carry a high risk that many of those most in need will be excluded.² By recommending a narrow targeting and regular screening “to filter out those who have graduated beyond the eligibility threshold”, it fails to recognise that the ultimate goal of any social protection system is to guarantee the human right to food. The approach of the CFA sacrifices effectiveness on the altar of efficiency. Universal programmes or basic income programmes, which would avoid such pitfalls and still provide reasonably targeted cash transfers without selection, are not even mentioned. By proposing food for work programmes and other alternatives to unconditional assistance, it tries to make sure that even the poorest have to “pay” in one way or the other for transfers which are a matter of life or death.

Although the CFA claims to provide targeted support to smallholder farmers, it does not recommend any convincing action to remedy existing and avoid future discrimination of this very group which is especially vulnerable to hunger. It fails to address gender issues as well as the question of how disempowered segments of society gain the right to be heard in the formulation of national policies. The CFA does not mention the worldwide ongoing process of land grabbing and massive violent dispossession of rural communities due to heavy investments in extractive industries, tourism, large infrastructure projects, industrial development projects and last but not least agrofuels.³ The need for comprehensive and redistributive agrarian reforms in order to fulfil the right to food of the poor is totally ignored. Neither does the CFA address the discrimination of smallholder farmers arising from the domination of the whole food supply chain by a few transnational companies (TNC) which have considerably increased their profits during the last year, often at the expense of their suppliers.

¹ See <http://www.un.org/issues/food/taskforce/Documentation/FINAL%20CFA%20July%202008.pdf>

² Künemann, Rolf and Ralf Leonhard: A Human Rights View of Social Cash Transfers for achieving the Millennium Development Goals, Brot für die Welt and EED (ed.) in cooperation with the working group “Social Cash Transfers” of Brot für die Welt, EED, FIAN International and Medico International, Bonn/ Stuttgart 2008, <http://www.fian.org/resources/documents/others/a-human-rights-view-of-social-cash-transfers-for-achieving-the-mdgs/pdf>

³ FIAN International: “Agrofuels in Brazil”, Heidelberg 2008: <http://www.fian.org/resources/documents/others/agrofuels-in-brazil/pdf>

DOGMATIC FREE TRADE APPROACH

Although the CFA suggests a review of trade and taxation policies, it forecloses the result: more liberalisation at all levels, especially the reduction of tariffs, subsidies and export restrictions. The CFA condemns export restrictions as one of the main reasons for the food crisis, without distinction or consideration of circumstances that might justify the use of such instruments to secure stable domestic food prices for the poor. The announcement of the HLTF of a general lobbying for trade liberalisation raises concern that the CFA might even lead to further violations of the right to food instead of avoiding them.

Evidence of numerous studies shows that tariff reduction has often caused import surges of food and thereby heavily reduced local market access, incomes and food security of smallholder farmers. For example, in the cases of rice farmers in Ghana, Honduras and Indonesia,⁴ as well as tomato and chicken farmers in Ghana,⁵ the right to food has clearly been violated through the reduction of import protection and support to small producers. While tariff reductions might be appropriate as a temporary measure to secure necessary food imports in LDCs in times of soaring food prices, in most cases it is not an adequate strategy for food security and the realisation of the right to food in the long run. Further trade liberalisation would rather increase imports and thereby suffocate current efforts to reanimate domestic and smallholder led food production and increase import dependency of poor countries, making them more vulnerable for price fluctuations in the international markets.

BROAD DEBATE AND HUMAN RIGHTS

MONITORING NECESSARY

Both the content of the CFA and the way it was decided raise serious questions on the legitimacy of this programme. In order to make sure that its policies support the realisation of the right to food, UN organisations must enable a broad consultation on the CFA involving the social groups most affected by the food crisis, prior to any implementation. This refers to the identification of the causes of the food crisis, the definition of public policies and programs needed and their implementation at the international and national level. Furthermore, the implementation process must be monitored out of a human rights perspective, equally involving CSO and the Human Rights Council. Otherwise, the UN strategy bears the risk of contributing more to the problem of hunger than the solution.

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4 Paasch A. (ed.), Garbers F. & Hirsch T. 2007: Die Auswirkungen der Liberalisierung des Reismarkts auf das Recht auf Nahrung. Fallstudien aus Ghana, Honduras und Indonesien. Brot für die Welt (Hg.) in cooperation with FIAN and Globales Ökumenisches Aktionsbündnis: Stuttgart. <http://www.fian.de/fian/index.php?option=content&task=view&id=175&Itemid=211>

5 Issah M. 2007: Right to Food of Tomato and Poultry Farmers. Report of an Investigative Mission to Ghana. FIAN, Send Foundation, Both Ends, Germanwatch & UK Food Group (Hg.): Heidelberg. <http://www.fian.org/resources/documents/others/right-to-food-of-tomato-and-poultry-farmers-ghana>

Launch of Right to Food and Nutrition Watch

Until recently, there was no international periodical review that monitored state actors' actions related to the realization of the right to food. The launch of the *Right to Food and Nutrition Watch*, published jointly by Bread for the World, ICCO and FIAN International, aims to fill this void.

The Zero Issue of the *Watch* deals with the topic "The World Food Crisis and the Human Right to Food". Peter Mann from World Hunger Year writes, "All of us who struggle to end hunger and build food sovereignty have been given a remarkable tool in the Zero issue of the *Right to Food and Nutrition Watch*. The review provides a penetrating analysis of the shift to industrial-scale agrofuels as a growing threat to the right to food worldwide. We are introduced to key statements of the social movements creating food sovereignty, and informative case studies of global food insecurity. The *Right to Food and Nutrition Watch* provides the kind of knowledge that leads to action."

In addition to discussing the affect of the expansion of agrofuels on the right to food, the *Watch* gathers articles and country monitoring reports from different experts and regions (the Americas, Asia, Africa and India) and sheds new light on practices that continue to impede the realization of the right to food, such as mining and the mismanagement of social cash transfers. UN experts on human rights and the right to food also give their input on recent UN documents and sessions.

Olivier de Schutter, UN Special Rapporteur on the Right to Food, comments: "The great merit of the *Right to Food and Nutrition Watch* is that it collects, in one single volume, developments related to the right to food which are currently scattered across institutions and organisations, which all too often work alongside one another without seeking synergies and coordination between their activities. In the future, this publication should encourage benchmarking between them, and improve the coherence of global governance of food and nutrition issues. It also constitutes a practical way to encourage mainstreaming of the human right to feed oneself across different policies, and gathers articles and country monitoring reports from different experts and regions."

Plans are currently in the making for the second issue of the *Watch*, and the Consortium encourages any groups or individuals interested in making a contribution to get involved in the creation.

The *Watch* Consortium includes: Bread for the World, ICCO and FIAN International; Habitat International Coalition, Peoples' Health Movement, World Alliance on Breastfeeding Action and OMCT (World Organization against Torture); further supported by Rights and Democracy and Act International.

Published in October 2008, 84 pages plus accompanying CD. The *Watch* can be downloaded for free at: www.fian.org

Prepared by Nikki Smirl, FIAN International Secretariat.

People facing violations of their rights to food and housing, don't make a distinction between the two

Interview with Miloon Kothari, former UN Special Rapporteur on the Right to Adequate Housing

Smirl: What were some of your major successes during your tenure as Rapporteur?

Kothari: The step the UN took in 2000 to appoint a Special Rapporteur was a significant recognition that there was a major crisis in the world regarding the right to adequate housing. The establishment of this mandate provided the opportunity to elaborate what the crisis meant. One of the contributions, we made is that we decided to include access to civic services, protection from forced evictions and displacement as essential elements of the right to housing. Another contribution of the mandate was to work closely with civil society. From the beginning, I had decided that it would be an occasion to bring forward civil society voices, and the perspectives and insights of campaigns on these issues around the world. In the beginning when I was conceptualizing the work I decided that I did not want to treat the right to housing as just an economic, social and cultural right but to send a very clear message of indivisibility of rights. We also looked at civil and political human rights such as the right to participation, the freedom from inhumane and degrading treatment, the right to security of person and the home. The mandate also contributed to creating an environment where other Special Rapporteurs could also begin to look at housing issues within the scope of their own work – this has also assisted, through joint work, on substantiating the indivisibility of human rights.¹

The other breakthrough that happened during the mandate was, because of the four year focus on women and housing and land, we were also able to work very closely with women's rights organizations that had also been working primarily on civil and political rights. The time span that I had and the possibility I had of carrying out 13 country missions all over the world and the unexpected support from the international and national media (the right to housing isn't necessarily seen as an exciting issue in the media) all contributed to the successes. Also it was decided during the mandate that it was very important for me to play a more constructive role and therefore the standard setting has helped. There is a legacy that has been left and I am happy with that work and the statement by the new Rapporteur, Raquel Rolnik, indicating that she will follow the conceptual basis established and continue to develop the mandate along the lines we elaborated in the seven years of work. The new Rapporteur has a stronger mandate both conceptually and in terms of the activities, including reporting to the General Assembly, which I did not have when I started. The strength of the housing mandate now within the Council, in itself bodes well for all those across the world still struggling for their right to housing

Smirl: Do you think there has been a major change in the actors responsible for human rights violations during your tenure as Rapporteur?

Kothari: If you look at the violations to the right to housing and land, the gravest violation, is the issue of evictions and displacement. For that, I would say certainly either as acts of commission or omission, governments are primarily responsible.

But over the years in which I have been Rapporteur, I have also seen the growth of privatization, the growth of market speculation, which is now really astronomical and has created huge global dislocations, speculations in land and property and irresponsible mortgage lending. There is more of a private sector role, or market role, in violations. It's been coupled with, and it's much related obviously, with the growth of what in my reports are called the housing and land mafia which govern a lot of the speculation that takes place in cities and where there is participation of politicians. I tried to say in the mandate, however, that we should not only look at what appear to be gross violations, such as forced evictions, but also the violations that a very much larger number of people suffer from because they are forced to live in inadequate and insecure conditions. In India, there are 60-70% of people living in slums and they are living in very poor conditions, including lack of access to water, sanitation and electricity. In any country where that kind of situation is allowed to continue or even get worse, I would certainly consider that a violation to the right to an adequate standard of living, including housing. Violations are, of course, part of daily life and there are many, many different actors responsible, but in my mandate I strongly supported the international law position that ultimately it is the State, even if there are private sector actions, that is responsible for regulating, for monitoring, for persecutions that are necessary, and that is what we need to see more of.

Smirl: You have written about how mixed income housing can be a positive step toward the fulfillment of the right to adequate housing. In “developing” countries such as India do you think there are reasons why mixed income housing would not work?

Kothari: In developing countries the history has been of mixed income, and when I talk about mixed income it is mixed land use, so you don't have exclusively rich neighborhoods and exclusively poor neighborhoods. The developing countries have always had a history of people living side by side, with the exception of countries like South Africa, where you had clear systems of apartheid. Actually I am a strong proponent of mixed-use neighborhoods. This position is even more important today as we see a very clear phenomenon of moving away from mixed usage largely because the kind of investment coming into cities or the kind of development policies that are there and because of land and property speculation. You actually now have the phenomenon of what I call rural and urban apartheid where you are seeing distinct neighborhoods of rich and poor and the rich neighborhoods becoming gated communities and the poor being shifted out of cities. Very large-scale evictions and land speculation have resulted in this phenomenon. In developing countries, in particular, there is a very strong dependency that higher income people have on lower income people, whether it's for domestic work or transport or whatever and it doesn't make sense to me that we create cities where the poor, or where the labor, has to come from far away to go to work. It's also a way of creating opportunities for land and property speculation, because if you have only exclusive zones, what happens with that, as we see in some cities in the world, is that even the poor neighborhoods, Mumbai is a perfect example; it has become astronomically expensive. You know, a small house in a slum

¹ For the text of these standards see the 2007 annual report at: <http://www2.ohchr.org/english/issues/housing/annual.htm>

in the city of Mumbai is worth a lot. That creates a situation of more exclusion because less people have access to land. Plus it's important to have mixed land use and mixed housing, because of the trends in the market situation, in mortgages and prices of property in housing. This is happening in developed countries as well, in the United States and Canada, even middle income and some higher income people have affordability problems whether it's renting or buying. There has to be a system where there is some mixed use and that there is cross subsidization, which is an idea that has been tried in Brazil, for example, where taxes from predominantly richer neighborhoods are used to subsidize civic services in poorer neighborhoods. It is not a good idea economically, nor is it a good idea in terms of avoiding social conflict to have just exclusive neighborhoods.

Smirl: It is no question that the right to food and housing are interlinked. Can you elaborate on how the two are connected?

Kothari: For the five years review of the World Food Summit, held in Rome in 2002, I submitted a statement essentially linking the two human rights². There is a very strong link. If you do have the right to adequate housing or right to a secure place to live and you are paying more than 30% of your income for the mortgage or rent than you have to compromise and you they don't have enough money left over for food, so it compromises their right to food. There are also situations where you can have a good place to live, but if you do not have access to productive resources, you do not have access to food, and then your right to food is compromised. Also you can have the ability to feed yourself but you do not have a secure, safe place to live (you can be homeless for example) or have been displaced from your home then your life is compromised. So the indivisibility issue is very important for right to housing and right to food and other congruent rights. There's also a very strong overlap of land rights. Because if you don't have the right to land and the right to water, then both the right to housing and the right to food are compromised. If you look at small peasant movements, if you look at indigenous movements and if you look at farmers, if you look at fisherfolk, you know both rights are very important, you cannot separate them. And this recognition has become very strong even within the large civil society organizations like FIAN and Habitat International Coalition. There is more and more joint work going to develop this link and push forward the gaps that are there in international law, for example, on the right to land, and also to promote the struggle of groups like Via Campesina and groups working against displacement. This linkage has been recognized and is going to be an area of joint work with the new Rapporteurs on right to food, indigenous, housing, extreme poverty. It's very important for us to remember that when we conceptualize and articulate these rights that our primary learning comes from the ground. If you speak to people on the ground that are facing this on a daily basis, they don't make the distinction- its academics and human rights lawyers who do that, you know.

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World food crisis high on agenda at

European Social Forum

by *Lina Andéer and Jennie Jonsén*

From September 17-21 2008, the fifth European Social Forum (ESF) was held in Malmö, Sweden. Around 15,000 people from all over the world came to take part in the five days of seminars, workshops, cultural activities and demonstrations. High on the agenda was the world food crises and its impact on food production, the power of TNCs and European policies. FIAN Sweden was one out of many organisations that arranged seminars on the struggle for food sovereignty and the right to food.

THE WORLD FOOD CRISIS –

TIME TO RETHINK AGRICULTURE

The challenges posed by the world food crisis to the agricultural sector and access to food, manifested when FIAN and three other organisations held a seminar on the world food crisis. Speakers from Brazil, India, Hungary and Sweden discussed the role of agriculture in solving the crisis. Unlike many other activities at the ESF, this seminar combined actors with different perspectives on agriculture policies and practices. The debate was heated, especially when questions were raised about whether there is a need for increased food production or more support to small-scale, organic farming. Lena Klevenås, secretary general of FIAN Sweden, pointed out that we need a fair distribution of food and productive resources, not an increase in food production. Geza Varga from Gaia Alapítvány in Hungary, remarked that food prices are closely linked to energy prices and that conventional farming will become more expensive as energy prices presumably rise, intensifying the food crisis in the future.

FOOD SOVEREIGNTY IN EUROPE

Another highlight at the ESF was a conference on food sovereignty, which was organised together with Via Campesina Europe. Representatives from Belgium, Turkey, Hungary, the UK and Mali were invited to share their experience about their local struggle for food sovereignty. The need for a better coordination within Europe in the struggle for food sovereignty was pointed out by several of the panellists. Gert Engelen from the European Platform for Food Sovereignty pointed out that there is a momentum right now for the food sovereignty movement to influence the reform process of the Common Agriculture Policy, (CAP), of the European Union. Patrick Mulvany from the UK Food Group, expressed his concerns with the loss of biodiversity, which is a result of the already "long-lasting" food crisis caused by the industrialisation of agriculture. Flavio Valente, the conference moderator, concluded that the liberalisation of policies is posing a threat to small-scale farmers around Europe, and the rest of the world. Valente also commented that the agro-industrial model, which limits biodiversity, gives control to the food industry and reduces the quality of food, is a major threat to the right to food.

Lina Andéer and Jennie Jonsén are staff members at FIAN Sweden.

² See <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/0BB8F8840F9B48AFC1256F58004970C4?opendocument>

Women defenders vibrant part of the human rights movement

Interview with Margaret Sekaggya, UN Special Rapporteur on the Situation of Human Rights Defenders

Hausmann: Ten years have passed since the UN Declaration on Human Rights (HR) Defenders. Are HR Defenders today better protected than they were ten years ago?

Sekaggya: I think that we can safely say that during the 10 years that have passed since the adoption of the Declaration, human rights defenders have become better protected. The Declaration on Human Rights Defenders opened new possibilities for protection. The Declaration is not, in itself, a legally binding document. However, it contains a series of principles and rights that are based on the human rights standards enshrined in other international instruments that are legally binding. The Declaration gains additional strength from the fact that it was adopted by consensus by the General Assembly, and therefore represents a very strong commitment by States to its implementation. The Declaration provides for the support and protection of human rights defenders in the context of their work. It does not create new rights, but articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders. In my daily work and in the communications sent to governments, I use the Declaration as a benchmark to measure progress in the situation of human rights defenders.

The fact that human rights defenders are better protected does not automatically mean that their situation has also significantly improved, far from it. In my work I can sense increased awareness both about the Declaration, and the particular situations defenders are facing. Although there has been good progress over the past years on various issues, still much remains to be done. In many places of the world, defenders face serious repercussions in their daily work, in many cases risking their own lives and the lives of their loved ones.

Hausmann: The HR Council has asked you to give special attention to women Human Rights Defenders. From your experience, what are the unique challenges that women human rights defenders face?

Sekaggya: Women defenders have been and are a vibrant part of the human rights movement. My predecessor, Ms Hina Jilani, and I have both identified various groups of defenders who are at particular risk of becoming victims of human rights violations. Among them are those defending the rights of indigenous peoples and minorities; those defending the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons; and of course women human rights defenders.

Defenders whose work challenges social structures, economic interests, traditional practices and interpretations of religious precepts face great risks. Women human rights defenders, in particular, are targeted by various social and private actors, such as religious groups and institutions, community or tribal elders, or even members of their own family. They become particularly vulnerable to prejudice, to exclusion and to public repudiation, not only by State forces but by social actors as well when they are engaged in the defence of women's rights. This can be particularly acute when women defenders are perceived as challenging cultural norms and social constructs on gender, femininity and sexuality.

In 2002 the then Special Representative spearheaded a three-year international campaign culminating in the World

Conference on Women Human Rights Defenders, held in Sri Lanka, which brought together leading gender experts and women human rights defenders from over 70 countries in the world. In her report to the 62nd session of the Commission on Human Rights, Ms Jilani emphasized that there is no better protection for women human rights defenders than the strength and support of their own movements and recommended that additional protection measures are therefore needed to provide women's rights defenders with a secure environment for their work. In her 2006 report to the General Assembly, she reiterated that women defenders and those defending LGBT rights face particular challenges. In numerous cases from all regions, police, military or government officials are the alleged perpetrators of violence, including sexual violence and death threats against women human rights defenders. The areas of threat to women human rights defenders identified included States, non-State actors, families and communities, and sexual and sexuality-based attacks.

Since the beginning of the mandate, specific attention has always been given to the situation of women defenders, both in thematic and country reports. The gender dimension of the defence of human rights is also one of the aspects that resolution 7/8 of the Human Rights Council (reviewing the mandate) requests me to address. I intend to fulfil this requirement in all aspects of my work.

Finally, in my first report to the General Assembly, presented in October 2008, I outlined my vision and priorities for the mandate entrusted to me. I also stressed that the analysis of the gender dimension of the work in defence of human rights is fundamental to address the protection needs and legitimacy gaps that may affect women defenders. Parameters like the level of participation, organizations and representation of women defenders, the prominence of women's rights on the agenda of defenders, and patterns of gender-based human rights violations against defenders are to be taken into account when assessing the situation of human rights defenders.

Hausmann: The impunity of transnational companies for violations of HR is increasingly becoming an issue. The Declaration on HR Defenders does not reflect this. How can the UN address the responsibilities of the private sector?

Sekaggya: The mandate deals with the impunity of transnational corporations in the broad context of ending impunity against violations committed against human rights defenders. The inability to investigate, prosecute and convict perpetrators of attacks and violations against defenders exposes them to greater risks and strengthens the public perception that human rights can be violated with impunity. Breaking the vicious cycle of impunity is a fundamental contribution to the protection of defenders and of human rights more broadly. My predecessor acted on a number of cases where non-State groups harassed human rights defenders because of their activities in defence of economic, social and cultural rights. Most of these incidents have taken place in countries of Latin America, notably in Brazil, Colombia, and Mexico. For instance, in the report after her visit to Guatemala in 2002, Ms Jilani noted that it was alleged that members of private security firms, with the participation or acquiescence of the National Civilian Police (PNC), were

responsible for some of the killings of defenders active in the work to promote and protect land rights and labour rights (E/CN.4/2003/104/Add.2, para. 43).

I follow closely the work of Professor John Ruggie, the Special Representative of the Secretary General on transnational corporations and other business enterprises, and hope to build on his observations and achievements in my work as well.

Hausmann: Which are the issues that you want to highlight during your tenure?

Sekagya: I outlined my vision to implement my mandate in the report that I submitted to this year's session of the General Assembly. I intend to strengthen the analysis of trends and challenges affecting human rights defenders. In this regard, I am planning to regularly update the 2006 report of Ms Jilani to the then Commission on Human Rights. That report contains profiles of 118 countries with analysis and information about the situation of human rights defenders. This report, if regularly updated, could act as an important benchmark measuring progress.

I will maintain and strengthen the mandate's attention on defenders most exposed to violations and attacks. These defenders need specific and enhanced protection as well as targeted and deliberate efforts to make the environment in which they operate safer and more enabling. Groups of defenders in need of specific protection include: women defenders; defenders working on economic, social and cultural rights, as well as those working on the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people (LGBT); defenders working on past abuses; and youth defenders.

I also intend to intensify my efforts to follow-up individual cases that I have taken up in my communications. Yet another area where I am planning to intensify our efforts is the strengthening of the relationship with regional mechanisms for the protection of human rights defenders.

I also believe that more efforts are needed to improve the understanding of the rights and obligations contained in the Declaration on Human Rights Defenders. Ten years after its adoption, this instrument is still not known well enough by those who have the main responsibility for its implementation. Therefore, especially throughout this anniversary year, I will engage in various activities aimed at the popularisation and dissemination of the Declaration.

Ute Hausmann is the Policy Adviser at FIAN Germany.

Piloting right to food indicators

by Ana-María Suárez-Franco

The Indicators, Benchmarks, Scoping, Assessment (IBSA) project carried out by Mannheim University and FIAN International to develop indicators for the right to food is progressing. The usefulness of the indicators selected in the first phase was tested in 2008 among government officers and NGOs in Colombia, Ghana, and Spain.

On October 6th and 7th, 2008, national experts leading the test phase in each country presented their reports at a workshop. Kenneth Attafuaah and Martin Kpebu, Ghana, explained how the introduction of IBSA at national level is useful to increase awareness on the right to adequate food as a human right. Rodrigo Uprimny, Colombia, emphasized the need to find a balance among indivisibility and specificity of rights in the selection of indicators. Carlota Merchan, Spain, focused on applying indicators to the situations in industrialized countries.

All participants agree that IBSA is a useful methodology to provide more systematic country reports to the UN Committee on ESC-Rights. Pertinent tasks remaining are the disaggregating and interpreting of the data; piloting in countries with diverse economic and socio-political situations; and emphasizing the "BSA" contingent of the entire process. The indicators list and descriptions will be modified accordingly and presented in a Symposium in May 2009.

Ana-María Suárez-Franco coordinates the Justiciability Program and IBSA Project at the FIAN International Secretariat.

Brick kiln workers in India benefit from minimum wage increase

by Ida-Eline Engh

After months of closely monitoring a Supreme Court decision regarding an increase in the minimum wage of workers in the Indian State of Uttar Pradesh (UP), FIAN announces the successful implementation of the wage.

An estimated 1.4 million workers in UP will benefit from the February 2008 decision to increase the minimum wage from 58 to 100 rupees. FIAN UP and FIAN Norway, together with a group of brick workers, started a campaign in 2005 to demand the minimum wage increase, as the wages were not sufficient for workers to adequately feed themselves and their families. FIAN involved local community members, political representatives, local members of Parliament, members of the Legislative Assembly, local civil society organisations and administration in the campaign against local authorities reluctant to recognise the workers' rights. FIAN UP and FIAN Norway contributed to the success by working on the case documentation and dissemination of information, conducting workshops and organising press conferences to increase awareness on the issue. Financial contributions from NORAD made it possible to carry out the campaign.

FIAN will continue to monitor the situation and promote the workers' right to food.

Ida Eline-Engh, FIAN Norway.

Effort to redress food scarcity

INTRODUCTION

The right to adequate food and right to freedom from hunger are explicitly recognized by the International Covenant on Economic, Social and Cultural Rights developed in 1966. Though the 2007 Interim Constitution of Nepal has guaranteed right to food sovereignty as a fundamental right of citizens¹, poorer people in remote areas are still deprived from enjoying the right to food. The remote mountain regions of Nepal represent the most severe situations of hunger and food deficiency. There is need for strengthening the food supply system by ensuring availability sufficient food at affordable prices..

A study on food security situation conducted by the World Food Program (WFP) and the Government of Nepal revealed that a total of 24 districts are facing food scarcity. The study has further revealed that 16 districts are severe in terms of food security.² A similar Report of the Situation of Human Rights in Nepal in 2003, published by the National Human Right Commission, revealed that 51% of the people are not getting adequate food in Nepal. News reports have been highlighting the issue of food scarcity, malnutrition and even death due to food scarcity, specifically in the mountainous regions of Nepal. In this context, Pro Public, a human rights NGO had been following up on the situation and writing memorandums to the concerned government agencies to address the food scarcity situation. Unfortunately, the government has not paid due attention to this acute problem. As a result, a group of lawyers at Pro Public have filed a written petition in the Supreme Court of Nepal as Public Interest Litigation under Extra Ordinary Jurisdiction of the Supreme Court. This written petition led to an interim order issued to the defendants to immediately supply food to the districts of Nepal affected by severe food scarcity problem due to drought. In this case, the defendants are the Prime Minister and Council of Ministers and others, more specifically, the Minister of Agriculture and the Nepal Food Supply Corporation.

CONSTITUTIONAL AND LEGAL FOUNDATION

OF THE CASE

The 2007 Interim Constitution of Nepal has guaranteed right to life as fundamental right.³ Petitioners in this case argued that a violation of right to food is equivalent to a violation of right to life. The Interim Constitution has also guaranteed the right to food sovereignty as prescribed by law⁴. This provision is important to establish right to food of people and oblige the government to ensure food supplies to its people. In addition to this, the Interim Constitution further mentions in State Policies "The State shall pursue a policy which will help to promote the interest of marginalized communities...living below poverty line... with regard to education, health, housing, food sovereignty and employment"⁵. Petitioners also referenced various UN Resolutions and Declarations that Nepal has ratified as well as past Supreme Court decisions concerning the right to food in other parts of the world.

Consumer Protection Regulation 1999 made it the duty of the government to make regular supply and distribution systems of various consumer good⁶. Nepal Food Supply Corporation was established under Corporation Act 1964 as the government owned corporation with the responsibility of ensuring food supply and distribution as per the food policy of the Government of Nepal. It has the mandate of purchasing, storing, transporting and distribution of food in order to fulfill the food need of the people. But unfortunately, Nepal Food Supply Corporation failed to fulfill its responsibilities.

MAIN CLAIMS

- Mandamus for the enactment of appropriate legislation in order to guarantee people's access to food and freedom from hunger;
- Mandamus to immediately set up essential infrastructures such as transportation, storing facilities, and appropriate distribution system
- Mandamus to take special measures and mechanisms for emergency coping, taking into account Nepal's geographic and other situation
- Mandamus to provide food immediately to the elderly, children, pregnant and lactating women through special measures to safeguard their right to food and freedom from hunger;
- Interim order to take immediate action to supply food in the district which has been identified as a food security affected district by the study of WFP.
- Mandamus to provide compensation to the families of deceased and take departmental action against erring officials;
- Interlocutory order to create high level committee of experts including petitioner organization for the help of the court with an objective of conducting detailed study about the technical, administrative aspects and measures to be adopted for ensuring access to food and freedom from hunger.
- Necessary order to make payment of the cost incurred for filing and following up the case to the petitioner organization, because petitioner organization is compelled to come to the court due to failure of defendants to fulfill their legal obligations
- Give priority to this case for the hearing as it is Public Interest Litigation.

PROGRESS IN THE CASE

This case has been given priority in hearing. Now the case is under sub judge of Supreme Court for hearing. The Supreme Court has served a notice to the defendants to submit a written reply (Show Cause) to the court on the claims of petitioner, and an interim order has been issued to the defendants to immediately supply food in districts where food is severely insecure without any further delay.

Basant Prasad Adhikari is a Public Interest Lawyer in Nepal.

1 Article 18 (3), Interim Constitution of Nepal 2007

2 This report was published in Food Security Bulletin. 20 August 2008

3 Article 12, The Interim Constitution of Nepal 2007

4 Article 18 (3), id

5 Article 35 (10) id

6 Rule 11, Consumer Protection Regulation 1999

by *Katrin Geenen and Rolf Künnemann*

While states' obligations under human rights are often seen as being related primarily to persons in their respective territories, in times of globalization the implementation of human rights is increasingly influenced by acts or omissions of foreign states, of intergovernmental organizations, and transnational corporations. States' human rights obligations towards persons outside their territories, namely extraterritorial human rights obligations (ETOs), have therefore gained importance in the fields of development assistance, trade and investment, and the regulation of transnational corporations, and cross-border destruction. Conceptual clarity and legal practice, however, need to be improved.

In order to contribute to closing this gap in human rights implementation, the "ETO Consortium" was created in 2007. It currently consists of 30 NGOs, university institutes and individuals from different parts of the world – among them major human rights groups such as Amnesty, COHRE, ESCR-Net, FIAN, FIDH, HIC, and Human Rights Watch. Its purpose is to generate international debate and awareness on ETOs, and to work on the clarification of legal concepts and strategies. An important goal of the Consortium is to prepare a document of detailed legal guidelines on extraterritorial human rights obligations for economic, social and cultural rights that can be applied by all actors involved in human rights monitoring.

On September 26-27, the 2nd Conference of the ETO-Consortium was held in Heidelberg, Germany. Since the first gathering in November 2007 in Geneva, the ETO Consortium has not only grown in membership but also in the scope of its work. The 2008 annual meeting gave the Consortium Members the opportunity to reflect on the activities of the past year, as well as to exchange theoretical and practical views on the added value of the ETO concept for the protection of human rights and on obstacles faced in implementing ETO rights.

The Conference was hosted by FIAN International, which also serves as the secretariat to the Consortium's steering group. One of the core features of the Consortium is the collaboration between academia and civil society groups. All aspects of the work on ETOs are carried out jointly between members of these two groups. Case work is also an important building block of the Consortium's work as it provides evidence on how acts and omissions by states affect the enjoyment of economic, social and cultural rights in other states. The case studies presented at the Conference highlighted that breaches of extraterritorial states obligations can take various forms such as the co-financing of dam or mining projects lacking proper rehabilitation and compensation in the framework of bilateral or multilateral development cooperation, the failure to exercise due diligence in the context of World Bank policy advice leading to the destruction of livelihoods, or the signature of international agreements in trade and investment which destroy access to food and resources for vulnerable groups. One valuable outcome of the discussions of the case studies was the identification of possible weak spots in the arguments regarding ETOs. Only if legal concepts such as jurisdiction, responsibility and accountability have been clarified with regards to ETOs, will it be possible to effectively tackle the respective violations. This task of clarification had been started by two topical working groups of the Consortium who presented the state of their work during the Conference in Heidelberg.

The Consortium was able to draw conclusions on initial lessons learned from the empirical studies, which led to a new agenda on conceptual issues for 2008/2009. In order to fill existing gaps in the case work regarding diversifying areas, obligations and types of human rights, the Consortium decided to adopt new cases. Challenges for the coming year, include clarification of states' ETOs in intergovernmental organizations and states' obligations regarding the regulation of transnational corporations.

The next ETO conference will be held at Lancaster University in September 2009. This will be an opportunity for the Consortium to bring its work to the next level by mainstreaming the ETO concept into the human rights world and related fields, as well as by exploring government opinions on ETOs.

Katrin Geenen is a research assistant of the Program on Extraterritorial State Obligations at FIAN International Secretariat. Rolf Künnemann is Coordinator of the Program.

Federal intervention requested to end HR violations in Brazil

by *Tamara Moreira Vaz de Melo*

In October 2008, the Brazilian Federal Prosecutor General, Dr. Antônio de Souza, petitioned Brazil's Federal Supreme Court (STF) for an intervention of the Federal Government in the State of Rondonia. The request was based on provisions of the Federal Constitution, which authorize this exceptional measure to protect the dignity of the human person. This is the first time in Brazil that an intervention in a State has been requested due to systematic human rights violations.

In his request, the Federal Prosecutor General reported on a series of rebellions, slaughter, violent deaths, extra-judicial executions, and torture since 2000 in the Prison José Mario Alves, known as Urso Branco. He reported further on the ill-treatment of prisoners, inadequate sanitary conditions, inadequate access to water, meals and medical treatment, among other things. In 2002, Global Justice and the Justice and Peace Commission of the Archdiocese of Porto Velho (CJP) denounced the absence of State control over the prison and human rights violations of the prisoners to the Inter-American Commission. In the same year, the Brazilian State was ordered by the Inter-American Court of Human Rights to carry out provisional measures to protect the prisoner's human rights, including an investigation of the reported crimes. The proceedings underway in the Inter-American Human Rights Protection System, directly contributed to the Federal Prosecutor General's request. The petitioning organizations hope that the Federal Supreme Court judges will soon reach a decision in favor of the intervention request.

The decision will also influence the analysis of the complaint presented to the Inter-American Commission. More than 100 deaths occurred inside Urso Branco during the 6 years since the Inter-American Court decided provisional measures.

Tamara Moreira Vaz de Melo is a lawyer at Justiça Global

PUBLICATIONS

Access to Land and Productive Resources

Analysis of how to develop a human rights approach using the FAO Voluntary Guidelines on the right to food.

FIAN International, November 2008,
32 pages, English (Spanish may 2007).
Download at www.fian.org

The right to food and the struggle against hunger in Nicaragua: One year of the Zero Hunger program

This report assesses how the Zero Hunger program in Nicaragua has contributed to State's obligations related to the ICESCR.

FIAN International/Bread for the World/Misereor, September 2008, 38 pages, Spanish (Executive Summary in English)
Download at www.fian.org

Right to food of milk and honey farmers: Report of an investigative mission to Zambia

Investigation of whether the right to food of milk and honey farmers is being violated by trade agreements in Zambia, and assessment of honey and milk as poverty alleviating sectors.

FIAN International/Germanwatch/Both Ends/CSTNZ/UK Food Group, October 2008, 31 pages, English.
Download at www.fian.org

Parallel Report: The right to adequate food in the Philippines

Analysis of the causes of hunger and poverty in the Philippines and the role played by the Philippine Government in right to food violations.

FIAN International/Bread for the World/ICCO/EED, September 2008, 37 pages, English
Download at www.fian.org

Agrofuels in Brazil

Report of the fact-finding mission to Brazil on the human rights impact of public policies regarding agrofuels.

FIAN International, July 2008, 74 pages, English and Portuguese (Executive Summary in Spanish)
Download at www.fian.org

Aid effectiveness and the human right to adequate food

An input to the discussion that took place on occasion of Third High Level Forum on Aid Effectiveness in Ghana.

FIAN International, August 2008, 37 pages, English
Download at www.fian.org

The FAO and its work on land policy and agrarian reform

An examination of the effects of World Bank and FAO policies regarding land and agrarian reform.

Transnational Institute/11.11.11, September 2008, 56 pages, English. Download at www.fian.org or at www.tni.org

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FIAN International is the international human rights organization that advocates the realization of the right to food. We are a non-political, non-for-profit organization with sections and members in more than 50 countries. We expose violations of people's right to food and strive to secure access to the resources that people need in order to feed themselves now and in the future. We envision a world free from hunger, in which every man, woman and child can fully enjoy their human rights in dignity.