



# Right to Food Journal

Supporting the Struggle for the Human Right to Adequate Food and Nutrition

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## Identifying the Patterns: Crimes and Abuses by TNCs

With the growing influence of transnational corporations (TNCs), the world is witnessing redefined modes of production and patterns of consumption that are causing negative social and environmental consequences. More and more, TNCs and other business enterprises are severely restricting the enjoyment of all rights.

Often involved in offenses against economic, social and cultural rights, as well as breaching civil and political rights, TNCs activities have been impeding the full realisation of the right to adequate food and nutrition of individuals and communities, especially of those most disadvantaged and marginalized.

As illustrated in numerous occasions, big business has the potential to adversely impact on peoples' food sovereignty. Yet, the existing frameworks fail to include clear and obligatory international standards on the duties of States regarding crimes and abuses by these societal actors.

States are failing to regulate, monitor, adjudicate and enforce judicial decisions regarding abuses perpetrated by TNCs, towards ensuring the liability of the involved companies and enable individuals and communities to access effective remedies.

*Continue reading...*

## Will Nepal Walk the Talk?

Nepal is one of the least developed countries in the world with a low Human Development Index. The devastating earthquakes in April and May this year worsened the situation, leaving affected districts in precarious status, both in terms of short-term relief and medium to long-term recovery and rehabilitation.

Parallel to these developments, Nepal's Government has formally adopted a new constitution, and expressed commitment towards the operationalization and formulation of necessary legislative and policy tools to improve the right to food and nutrition for all, as well as related rights.

*Continue reading...*

## A Charter City Amidst a Tattered Society

The first zones for employment and economic development, uniformly referred to as Charter Cities, will be soon set up in Honduras. Charter Cities are tiny states within the State: they are territories that are handed over to and administered by one or several countries or transnational corporations, thereby creating autonomous cities with their own legislation, oriented to trade, finance and business.

Criticism of this model argues that the transfer of the territory to serve multinationals and rich countries, radicalizes inequality and social exclusion.

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## Right to Land and Water, a Common Struggle

Although land and water are vital natural resources and part of our common heritage, incidents of grabbing are on the rise. Led by companies, governments, elites, and speculators, and often supported by international institutions and consortiums, the (mis-)appropriation of natural resources has become a global phenomenon.

In response to these threats, local communities and grassroots organizations have united under the umbrella of the Global Convergence of Land and Water Struggles, a key step towards reinforcing existing struggles and broadening the food sovereignty movement.

*Continue reading...*

## 2 Stopping the Corporate Snowball

The increasing influence of transnational corporations on public policy decision and implementation has been a major hotspot for civil society over the last few years. Like the proverbial snowball effect, the leverage of businesses has almost overgrown in the blink of an eye, subtly and effectively. Subtly, because, until just recently, its negative impact has been practically imperceptible to the wider public. Effectively, as in only a couple of decades big business has made it to infiltrate the international, regional, national and local political arenas, including the United Nations. This combination has led to a world where corporate abuse and impunity are far from exceptional.

With the power of corporations growing, civil society organizations, social movements and academia the world over are collectively speaking out and taking action. From the political and legal perspectives, human rights-minded individuals and groups engage in discussions and activities to stop the corporate snowball rolling. Whether it's mining industries razing lands and communities' livelihoods, or the footnote eroding the human rights component of a trade agreement, corporate capture is a reality we have to halt.

The Right to Food Journal 2015 intends to give a comprehensive overview of corporate activities and influence over policy-making. In order to do so, political and legal analyses of corporate capture are complemented with stories from the



*Devastated biodiversities - Emilia Ulhoa. The recent mining dam disaster in Mariana, Brazil, evidences the need to regulate business operations.*

ground. It is true that this topic has been widely argued, especially this year with the first session of the Open-ended Intergovernmental Working Group (IGWG) towards a Treaty on Transnational Corporations and other Business Enterprises with respect to Human Rights and in discussions at the Committee on Food Security (CFS) 42.

Yet, human rights abuses and offenses by corporations are so widespread that when one digs a little deeper, it seems like a bottomless pit. I wonder, for instance, how many know that cities solely governed by companies, where no national jurisdiction will exist, will soon become a reality. Referred to as Charter Cities, some have

maybe heard about these as an economic experiment that “will bring development to citizens.” Nevertheless, they probably are unaware that these “cities” will just be about making wealthy investors even richer and about companies taking over the role of States, thereby kidnapping people's sovereignty.

Examples of fighting back against this trend must also be extensively reported and promoted. The Global Convergence of Land and Water Struggles, featured in this year's edition, is a clear example of resistance, where local communities and grassroots organizations worldwide are asserting their rights and putting forward human rights-based solutions. This has also been the case of women in Latin America, who have been denouncing and combating the side effects of mining industry over their bodies and ecosystems. This growing movement may well serve as an inspiration for other local civil society groups, and a wake-up call for governments.

We will of course devote some thought to other key highlights throughout 2015. Following consecutive earthquakes, a recently approved constitution and UN Universal Periodic Review, Nepal could not be disregarded. The 2015 journey has been a life-changer for the country and we can all benefit from the lessons they have learnt.

I wish you an insightful reading and invite you to join the struggle for the realization of the right to adequate food and nutrition of all peoples.

**Anita Klum**  
President of FIAN International

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FIAN International is an international human rights organization that advocates for 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.

## Peoples' Sovereignty and the Primacy of Human Rights

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By Rolf Künemann

**The concept of human rights has an undeniable political origin. Human rights were introduced in politics in the 18th century at a moment where absolute monarchies were challenged by vast peoples' movements. Ever since the French Revolution, States have earned their legitimacy by people standing up for their human rights. As Abraham Lincoln would later refer to in 1863, legitimate States are "of the people, by the people and for the people."**

The people legitimize, instruct and limit the power of States under the condition that this ensures the realization of human rights. This is why we emphasize that human rights emanate from the people and have been central to the State constitution in modern societies. Having a constitutional role in modern international law, the UN Charter is in line with this notion. As expressed in its preamble, the Charter establishes an international political order that emanates from the peoples. Such political order is seen as a union of sovereign nations and their States, and it is based on human rights as well as on the duty to cooperate for peace and for people's protection and wellbeing. The UN Charter points to the cooperation between States as an obligation. Sovereign peoples recognize such international cooperation and interaction as legitimate, as long as this is in line with the purposes of the UN Charter, particularly concerning human rights. The primacy of human rights law over any other domain within international legal systems, including commercial and trade law, is a litmus test for legitimate cooperation of States.

This political vision is being threatened by the increasing influence of transnational corporations (TNCs) in policy-making, also referred to as corporate capture. The control of TNCs over public policy-making undermines peoples' sovereignty and the legitimacy of government. For instance, the Global Redesign Initiative, launched by the World Economic Forum in 2008, essentially implies the replacement of governments' mandates by the rule of big business, and undermines peoples' sovereignty. People's needs and rights are no longer reflected in national and international policies, but subjected to the interests of TNCs. Corporate capture advances if human rights are no longer seen as legal rights, but rather as values that actors can voluntarily subscribe to. This approach is becoming widespread, and can even be seen in internationally-led initiatives, like the UN Global Compact, which invites TNCs to voluntarily 'commit' to human rights. While TNCs hope to gain publicity by gracefully committing not to harm human rights values, they reject at the same time any attempt of States to cooperate internationally in regulating them to this effect. As a result, TNCs and their supporters distort the conceptual legal notion of human rights. Individuals' activities are normally regulated by criminal, civil and administrative law, as part of States' human rights obligations. The same thing should happen in the case of TNCs and other business enterprises.

TNCs are powerful. According to a research report by the Transnational Institute, 37 out of the 100 biggest economies in the world are TNCs. Their influence in politics harms democracy, and so too their resistance to binding regulation. Dismantling corporate power is therefore urgently needed, and can be achieved by legally regulating TNCs.

The Dismantle Corporate Power Campaign is an important initiative by Civil Society Organizations (CSOs) and social movements to

develop a comprehensive approach to controlling and reducing the power of TNCs and to establishing a new paradigm, by rethinking the corporate model itself. Corporations are designed to privatize profit and socialize risks and it is no surprise they have been 'successful' tools for capitalism. They can be run with comparatively little individual commercial risk and at the expense of ecological and social externalities.

States have the human rights obligation to protect people against any harm by TNCs, which involves both ensuring regulations that prevent harm caused by TNCs - and holding TNCs legally accountable, in case prevention does not suffice. In view of the existing gaps of State protection, trade unions have been playing a crucial role around workers' rights, as well as indigenous peoples and peasants' organizations, when it comes to defending their territories against invasions by corporations and other business enterprises.

Given this human rights-threatening situation, there is a clear need to create international law via treaties that help States to jointly regulate TNCs. Such an initiative was started by a number of States in the Human Rights Council (HRC) in September 2013. Soon afterwards, to support this initiative, CSOs and social movements founded the Treaty Alliance, which is comprised of a large and growing group of human rights organizations, platforms, social movements and affected communities. A strong mobilization effort by the Alliance has resulted in the collection of more than 600 signatures - from at least 90 countries - in support of a Joint Statement and ensured the presence of numerous national and international organizations in Geneva in June 2014, when the HRC set up an Intergovernmental Working Group (IGWG) in charge of drafting a binding international instrument on TNCs and other business enterprises with regard to human rights. When the IGWG had its first meeting in July 2015, the Treaty Alliance carried out important advocacy activities and submitted substantial inputs. The IGWG is seen by many in the Alliance as a historic opportunity to regulate TNCs.

When it comes to the Treaty, an underlying understanding and solidarity amongst members of the Alliance is complemented by an enriching diversity of views and concepts. A treaty, of course, can only be one of the elements in a larger strategy to safeguard human rights and defend peoples' sovereignty against corporate capture. In order to implement the primacy of human rights, further awareness has to be raised about the link between human rights and peoples' sovereignty. By doing so, people may better understand that human rights are also about politics and not only a domain of law or a moral discourse. This would also enable people to better recognize the tendencies and strategies involved in eroding human rights and peoples' sovereignty by big business.

If corporations become too powerful to be governed by sovereign peoples, they should be dismantled. With the initiative taken by the HRC and supported by the Treaty Alliance and others, there is hope that the legal implementation of human rights and their primacy will move forward in the field of transnational business activities.

**Rolf Künemann is FIAN International's Human Rights Director and serves as the Secretary of the ETO Consortium.**

## 4 Identifying the Patterns: Crimes and Abuses by TNCs

Ana María Suárez Franco and Daniel Fyfe

**Transnational corporations (TNCs) have become leading actors in accelerating global trade during the last decades, thereby redefining modes of production and patterns of consumption, as well as prompting social and environmental consequences. There is an increasing number of cases of TNCs and other business enterprises severely restricting the enjoyment of all rights.**

These societal actors have been involved in offenses against economic, social and cultural rights, as well as breaching civil and political rights. Despite the principle of the indivisibility and interdependency of human rights, enshrined in the International Bill of Human Rights, TNCs have impeded the full realisation of the right to adequate food and nutrition of individuals and communities, especially of those most disadvantaged and marginalized.

### TNCs THREATS AND OFFENSES AGAINST THE RIGHT TO FOOD AND NUTRITION

TNCs and other business enterprises have the potential to adversely impact on peoples' food sovereignty. Extractive industries, agribusinesses, programs for the compensation of CO2 emissions, tourism and megaprojects are some of the main causes of forced evictions and displacements of people from public lands, forests, grazing lands and mobility routes which they use to collect or produce food.<sup>1</sup>

In addition to denying people access to productive resources, business activities also negatively affect the access to natural resources and harm ecosystems, which are crucial for communities to feed themselves and their families. The spreading of agro-chemicals not only destroys crops and poisons animals but also harms the health of agricultural workers and food consumers.<sup>2</sup> The destruction of food, crops, animals and other goods required for the nutrition of individuals or communities, can condemn entire communities to hunger, malnutrition and in some cases also to starvation.

The human right to adequate food and nutrition is further jeopardized by TNCs' labour practices, based on the subcontracting of cheap workforce. Agricultural workers, for instance, are victims of modern forms of slavery, forced labor, non-payment of wages, illegal detention, and unsafe working conditions.

On top of that, rural women workers are severely discriminated, with unequal pay, social marginalization and sexual harassment. The human rights defenders and trade unionists that raise their voices against these injustices are physically and psychologically harassed and criminalized through private armed forces and are prevented from a due process of law.

TNCs' commercial practices, including advertising, can also severely harm the enjoyment of the right to adequate food and

nutrition. By dumping their products on small food producers' markets, they impede the economic subsistence of farming communities who are unable to compete with the prices of imported products.<sup>3</sup>

Furthermore, to maintain low costs and high profit, these products may be unsafe, causing physical and mental diseases to the consumers, including diabetes, obesity and depression.<sup>4</sup> Breast milk substitutes, highly-industrialized and with elevated levels of added sugar, are an example of such harmful products, which have been aggressively promoted by some TNCs, failing to comply with the International Code of Marketing of Breast Milk Substitutes.<sup>5</sup>

Additionally, the access to adequate food and nutrition is harmed by price-fixing cartels, buyer cartels or other cartels, when companies manipulate food and agricultural prices, rendering basic food products too expensive for many families.<sup>6</sup> The abusive loan conditions imposed on small farmers, as well as the speculation with land and other natural resources, which cause food price volatility, further contribute to the impoverishment and high rates of suicide of small farmers – one finds such cases in countries like India,<sup>7</sup> Belgium and France.<sup>8</sup> Finally, TNCs' complicity with States in food blockades during armed conflicts has deadly consequences by impeding entire populations from accessing food.<sup>9</sup>

### THE HURDLES TO STOPPING IMPUNITY

Unfortunately, the victims of such human rights offenses are often left without any effective legal remedy. Meanwhile, a great number of TNCs continue to operate with gross impunity. A series of structural hurdles to stopping impunity and achieving remedy for victims have been observed. Amongst them, one finds the lack of regulation, monitoring, investigation and sanction of businesses in the countries where the harm takes place, due to States' lack of will or capacity.

Many States lack effective criminal, civil and administrative mechanisms capable of holding national and transnational

1 Illustrated by cases such as Mubende and Benet in Uganda, el Hatillo in Colombia, Guarani-Kaiowá in Brazil, and Sawhoyamaya in Paraguay. More information at [www.fian.org/what-we-do/case-work/](http://www.fian.org/what-we-do/case-work/).

2 For instance, see the case of the victims of soya cultivation in Paraguay at [www.rel-uita.org/index.php/es/agricultura/transgenicos/item/5289-soja-transgenica-y-la-violacion-de-los-derechos-humanos](http://www.rel-uita.org/index.php/es/agricultura/transgenicos/item/5289-soja-transgenica-y-la-violacion-de-los-derechos-humanos).

3 "Ghana chicken case: EU exports destroying local markets," in: Coomans, Fons and Rolf Künnemann, *Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights*, Cambridge, 2012, p.17.

4 Cedeno, Marcos Arana and Xaviera Cabada. "Nutrition Policies Taken Hostage by Multinationals and Conflicts of Interest: The Obesity and Diabetes Epidemic in Mexico," in *Right to Food and Nutrition Watch 2015*, available at [www.rtfn-watch.org/fileadmin/media/rtfn-watch.org/ENGLISH/pdf/Watch\\_2015/RtFNWatch\\_EN\\_web.pdf#page=70](http://www.rtfn-watch.org/fileadmin/media/rtfn-watch.org/ENGLISH/pdf/Watch_2015/RtFNWatch_EN_web.pdf#page=70). On cases regarding depression generated by the use of pesticides in the production of food, see [www.environmentalhealthnews.org/ehs/news/2014/oct/pesticides-depression](http://www.environmentalhealthnews.org/ehs/news/2014/oct/pesticides-depression).

5 IBFAN. *Breaking the Rules 2014. Evidence of Violations of the International Code of Marketing of Breastmilk Substitutes and subsequent resolutions compiled from January 2011 to December 2013*, available at [www.babymilkaction.org/wp-content/uploads/2014/05/BTR14inbrief.pdf](http://www.babymilkaction.org/wp-content/uploads/2014/05/BTR14inbrief.pdf).

6 On prices speculation and the involvement of the financial and investment sectors, please see: de Schutter, Oliver, "Food Commodities Speculation and Food Prices," September, 2010, available at [www2.ohchr.org/english/issues/food/docs/Briefing\\_Note\\_02\\_September\\_2010\\_EN.pdf](http://www2.ohchr.org/english/issues/food/docs/Briefing_Note_02_September_2010_EN.pdf).

7 See the documentary *Seeds of Debt*, available at [www.danwatch.dk/nyhed/filmen-du-ikke-maa-se/](http://www.danwatch.dk/nyhed/filmen-du-ikke-maa-se/). Read the Concluding Observations of the CESCR to the state of India UN. Doc. E/C.12/IND/CO/5 8 August 2008, par 69.

8 For more information on the cases of suicides of farmers in Belgium and France, please see [www.rtf.be/info/societe/detail\\_suicide-des-agriculteurs-un-phenomene-mondial-indicateur-for-d-une-detresse-qui-s-accroit?id=8025294](http://www.rtf.be/info/societe/detail_suicide-des-agriculteurs-un-phenomene-mondial-indicateur-for-d-une-detresse-qui-s-accroit?id=8025294) and [www.euronews.com/2015/10/02/farmers-suicides-the-rising-human-cost-of-the-eu-s-agriculture-crisis/](http://www.euronews.com/2015/10/02/farmers-suicides-the-rising-human-cost-of-the-eu-s-agriculture-crisis/).

9 For instance, see the case of Comunidad San José de Apartadó, in Colombia. More details available at [www.pbi-colombia.org/field-projects/pbi-colombia/about-pbi-colombia/accompanied-organizations/peace-community-of-san-jose-de-apartado/](http://www.pbi-colombia.org/field-projects/pbi-colombia/about-pbi-colombia/accompanied-organizations/peace-community-of-san-jose-de-apartado/).

companies liable for human rights offenses and abuses. Furthermore, where mechanisms are available, the implementation of protective judicial decisions is often undermined by undue corporate influence on the authorities responsible for implementing them. The lack of legal aid, the obstacles to collecting evidence and the inequality of arms in the judicial process between the victims and the perpetrators represent further barriers to the access of effective and timely remedy for victims.

Although access to justice is difficult in cases related to diverse kinds of business enterprises, the major challenges to obtaining a remedy concern the prevention and reparation of harm by TNCs. These difficulties especially result from their multinational nature and strategies they have developed in order to 'escape' justice across the borders of national States.<sup>10</sup>

Home and host States' reticence to regulate TNCs and other enterprises of transnational character and to provide effective remedies to victims of corporate human rights abuses have prompted the elaboration of different international regulatory frameworks. However, these frameworks fail to include clear and obligatory international standards on the duties of States regarding crimes and abuses by TNCs and other business enterprises, ignoring their territorial and extraterritorial human rights obligations.

#### HOW STATES ARE FAILING

States have failed to regulate, monitor, adjudicate and enforce judicial decisions regarding abuses perpetrated by TNCs, towards ensuring the liability of the involved companies and enable individuals and communities to access effective remedies. The undue influence and lack of cooperation of States where the parent companies of TNCs are headquartered, impedes States from effectively complying with their obligation to protect human rights and to enforce judicial decisions.

Furthermore, the home States of TNCs - or those where controlling legal entities are based - very often fail to comply with their extraterritorial obligations to protect and respect human rights, by influencing the drafting of laws that are favorable to the investments of their "national companies", which cause harm to human rights beyond their national borders.<sup>11</sup>

An additional hurdle to stopping impunity and achieving a remedy for victims stems from the complex nature of global supply chains, where manufacturing and services are subcontracted at different levels. Currently, difficulties exist in determining the liability of the diverse legal entities involved in human rights abuses, such as the companies in a parental-filial relationship, a contractual relationship, a supply chain relationship or those who have a business link with the company directly involved in

an abuse.<sup>12</sup> The absence of clear rules vis-à-vis the corporate veil has also made it more difficult to determine the liability of common shareholders.

Last but not least, the inclusion of arbitration clauses in investment and trade agreements has opened the door for companies to present claims against States when the latter decide to suspend the implementation of such agreements in order to protect the human rights of their citizens.

The arbitration tribunals, as private justice mechanisms in which the application of human rights and the access to traditional justice systems are fully excluded, are blocking the compliance of States with their international human rights obligations, causing systematic violations to these rights, including the right to food and nutrition.<sup>13</sup>

Corporate impunity and States' non-compliance with their international human rights obligations have spurred civil society to claim for an international binding instrument. This will hopefully oblige States to regulate and sanction activities of TNCs and other businesses in their or in other countries' territories where they exercise jurisdiction.<sup>14</sup>

And with the Treaty, human rights-minded individuals and civil society groups aim to put an end to such corporate impunity and ensure adequate remedy for the affected individuals and communities.

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<sup>10</sup> For more details, please see: "Difficulties in obtaining remedies for the victims of the 1984 Bhopal disaster in India", available at [bhopal.org/wp-content/uploads/2015/03/Amnesty-report.pdf](http://bhopal.org/wp-content/uploads/2015/03/Amnesty-report.pdf).

<sup>11</sup> See report from The Working Group on Mining and Human Rights, *The impact of Canadian Mining in Latin America and Canada's Responsibility: Executive Summary of the Report submitted to the Inter-American Commission on Human Rights* at [www.dplf.org/sites/default/files/report\\_canadian\\_mining\\_executive\\_summary.pdf](http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf). See also [www.escri-net.org/corporateaccountability/corporatecapture](http://www.escri-net.org/corporateaccountability/corporatecapture).

<sup>12</sup> It was the case of the Rana Plaza disaster in Bangladesh. For more information, please see [www.cleanclothes.org/news/press-releases/2013/09/09/brands-failing-victims-of-bangladesh-disasters](http://www.cleanclothes.org/news/press-releases/2013/09/09/brands-failing-victims-of-bangladesh-disasters).

<sup>13</sup> See, for instance, the case of Chevron vs. Ecuadorian citizens on alleged oil pollution. More information available at [business-humanrights.org/en/texacochevron-lawsuits-ecuador](http://business-humanrights.org/en/texacochevron-lawsuits-ecuador).

<sup>14</sup> See *Extraterritorial Obligations Maastricht Principles, 2011*, Principle 9, "Scope of jurisdiction" at [http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23).

## 6 A Role for the Private Sector in Tackling Malnutrition?

by Flavio Valente and Laura Michéle

**Deregulation and privatization policies of recent decades have placed an unprecedented level of market control and corresponding economic power in the hands of a few large transnational corporations.<sup>1</sup>**

With this economic and financial clout has come a claim to political power, most comprehensively expressed in the Global Redesign Initiative of the World Economic Forum, which calls for the complete remodelling of global governance, and in particular the UN, into a public-private partnership model, in which corporations and selected non-governmental organisations would have an equal or even greater say as States in questions of global governance.<sup>2</sup>

At the same time, national governments, the UN and NGOs are increasingly looking to the corporate sector to fill funding gaps and come up with economic solutions to global problems. The corporate sector, so the core of the argument, is simply a too influential player to be left out. The questions how it could come to be so powerful and why public funds for social goods are drained are left aside in the call for private sector participation.

One strategy for bringing the private sector into the public policy domain, reinforcing their claim that they are 'part of the solution' rather than the problem, has been the promotion of a multitude of highly fragmented public-private 'partnerships' or 'multi-stakeholder' initiatives.

The Scaling-up Nutrition Initiative (SUN), which has come to effectively replace the former UN Standing Committee on Nutrition, is one key example in the food and nutrition area (alongside others such as the New Alliance for Food Security and Nutrition and AGRA). Backed with heavy funding from the Bill and Melinda Gates Foundation,<sup>3</sup> SUN in the name of 'inclusiveness' opens the door for influential food and beverage corporations,<sup>4</sup> some of which participate directly or through GAIN in its policy and strategy-setting lead group, to define the global nutrition agenda.

The involvement of the private sector – this is to say large transnational corporations – has fundamental consequences for the policy choices made, as these are pushed even further away from the needs and rights of those most affected by hunger and malnutrition, such as small-scale food producers, and in particular women, to prioritize the business interests of powerful food and beverage companies and agribusinesses.

This ultimately means more of the very policies and directions that lie at the heart of malnutrition: the promotion of the agro-industrial model of food production, unethical marketing of foods such as breastmilk substitutes and promotion of junk food, the privatization of vital natural resources such as land, water and seeds, and ultimately the commodification of food and nutrition, and their detachment from humans and nature.

Involvement of the corporate sector brings with it an obvious bias towards technical, market- and product-based approaches to hunger and malnutrition and risks diverting attention and funds from (non-profitable) strategies that tackle the root causes/ social determinants of malnutrition. At the same time, it distracts from and suppresses any meaningful discussion on the role of the private sector in causing malnutrition, and the urgent need for regulatory measures to prevent and hold corporations accountable for practices that interfere with the enjoyment of the right to adequate food and nutrition and other fundamental human rights.

Another major concern from a human rights perspective is the erosion of the accountability of governments (duty bearers) towards their citizens (rights-holders) and, ultimately, the undermining of the social contract between States and people, as corporations step into the shoes of States.

This is not to say that private companies have no role to play in tackling malnutrition - they certainly have. However, this role does not consist in interfering with or taking over public functions - which should be left to those who have been elected for this purpose and represent public not private interests - but rather in changing their own practices to avoid creating conditions which undermine the enjoyment of the right to adequate food and related human rights.

This implies, first and foremost, ensuring compliance along supply chains with national and international norms and standards related to labour and contracting, tenure rights, marketing, non-discrimination, environment, and natural resources, among others, that protect these rights. Moreover, they should stop interfering with measures aimed at the promotion and protection of these human rights and make their own contribution to these: by paying taxes.

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1 This article was originally published in German by MISEREOR, *Gesunde Ernährungssysteme*. Available at [www.misereor.de/fileadmin/publikationen/dossier-gesunde-ernaehrungssysteme-2015.pdf#page=7](http://www.misereor.de/fileadmin/publikationen/dossier-gesunde-ernaehrungssysteme-2015.pdf#page=7).

2 See Readers' Guide to the Global Redesign Initiative of the University of Massachusetts for a summary of the key proposals of the WEF, available at [www.umb.edu/gri](http://www.umb.edu/gri). The full report is available at [www.weforum.org/issues/global-redesign-initiative](http://www.weforum.org/issues/global-redesign-initiative).

3 Other major funders include the European Union, Canada and Ireland. See SUN progress report 2014, available at [scalingupnutrition.org/progress-in-the-sun-movement/progress-in-the-sun-movement](http://scalingupnutrition.org/progress-in-the-sun-movement/progress-in-the-sun-movement).

4 See "SUN Business Network Company Commitments" (2015) for a list of SUN business partners and their commitments, available at [sunbusinessnetwork.org/sun-resources/sbn-company-list/](http://sunbusinessnetwork.org/sun-resources/sbn-company-list/).

## A Charter City Amidst a Tattered Society

7

by Ismael Moreno

**Before the end of his term, the nationalist President Porfirio Lobo Sosa (2010-2013) toured through South Korea, Singapore, Hong Kong and Kuwait, seeking alliances for the implementation of the so-called Charter Cities, an initiative by the American economist Paul Romer. In June 2014, Honduran government officials and mayors of the municipalities of Nacaome, Alianza and Amapala Valle department - where the first City Charter will be built - traveled to Korea, invited by the International Cooperation Agency of Korea (KOICA).<sup>1</sup>**

Charter Cities are tiny states within the State: they are territories that are “released and handed over to third parties.” In the 2010-2013 legislative period, the Honduran National Congress, comprised by a majority of lawmakers that supported the 2009 coup d’État, approved the Charter Cities’ bill. Citizen opposition saw this as an act of treason to the country and forced the Supreme Court to declare this bill as unconstitutional in October 2012.

The President of Congress at the time, initiated proceedings against the judges who declared Charter Cities as unconstitutional. This process culminated in a new coup, with the Congress illegally removing four judges of the Supreme Court<sup>2</sup> and approving a new version of the bill, with cosmetic adjustments, thereby leaving intact this traitorous plan.

For the political and business elite, Charter Cities are not uncommon. They are an extended form of the maquila industry, imposed since the 90s: real tax havens where human trafficking is practiced with policies that ignore the Labor Code and dismiss workers arbitrarily. Within their territories, Hondurans are treated as “domesticated animals” without rights. Nor has it been unusual to set up cities under foreign control: the banana enclaves, which dominated and shaped Honduran society in the twentieth century, were a state within a State. This would end up defining the politics, economy, law, and even the customs, of the occupied State.

The so-called Organic Law on Zones for Employment and Economic Development allows pieces of territory to be handed over and administered by one or several countries or transnational corporations, thereby creating autonomous cities with their own legislation, oriented to trade, finance and business. They are territorial zones with their own regulations established by their new owners, and aimed at attracting investment, creating jobs and managing their own taxation systems, security and administration of justice.

For the President of Congress - the most fervent promoter - Charter Cities are “autonomous areas with territories that are regulated by a Constitutive Charter or General Law, and which are based on free trade, the defense of individual rights and the protection of private property.”<sup>3</sup> In the words of Paul Romer, this is about “establishing the first city in the history of mankind that truly enjoys economic freedom to create jobs, and independently from the government’s generation of wealth.” According to its supporters, Charter Cities will turn the country into one

of the world’s richest territories. They claim that true wealth is achieved when the model is driven independently from the national government.

According to the Organic Law, zones for employment and economic development - Charter Cities - “have legal personality; establish special systems of public administration; can issue their own laws, subject to approval by Congress by a simple majority; have their own jurisdiction and can sign treaties and international agreements on trade and cooperation, which will be ratified by Congress. Budget, collection and administration of fees and taxes, and the conclusion of contracts shall be governed by its Constitutional Charter.”<sup>4</sup>

In the view of Romer, the main obstacle to growth in countries like Honduras, comes from ‘bad laws’ that prevent and hinder investments. What should take a country out of such a backwards thinking approach is to end with those bad laws. This involves removing all legislation that protects human rights, defends the natural resources and private and public ownership from the greed of foreigners. With this approach, the way to development is to break with national laws and create new laws to encourage investment from other countries and corporations that destroy the national government. Lawmakers have given way for Honduras to become an experimental laboratory pushing for an economic, political, legal and social enclave of the XXI century globalized capitalism.

Criticism of this model argues that the transfer of the territory to serve multinationals and rich countries, radicalizes inequality and social exclusion. Thus the gap between those who live in Charter Cities and the rest of the territory, rather than reduce social unrest, will widen political polarization, social violence and crime.

A Charter City within the territory of a country with an economic, social and politically failed society will increase inequality and deepen imbalances to unsustainable extremes. Cities cannot be sustained in the failed societies without paying high human and social costs.

For constitutional lawyer Carlos Hernandez “Charter Cities are the cynical expression of an oligarchy which, feeling triumphant, persists in pursuing acting behind the rule of law [...] are a form of domination, the new mask of the enclave model, whereby multinationals, in association with the national oligarchy, seek to develop its infiltration and dominance within the national territory.”<sup>5</sup>

Agreeing with Berta Cáceres, leader of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), “what a contradiction a Charter City amidst a tattered society.”

**Ismael Moreno is human rights activist and director of Radio Progreso in Honduras.**

1 This article was originally written in Spanish.

2 In its ruling of November 5, 2015, the Inter-American Court of Human Rights determined the reinstatement of the deposed judges. The decision is available, in Spanish, at [www.corteidh.or.cr/docs/casos/articulos/resumen\\_302\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_302_esp.pdf).

3 Moreno, Ismael. “Una Ciudad Modelo en una sociedad en harapos”, *Revista Envío*, available, in Spanish, at [www.envio.org.ni/articulo/4322](http://www.envio.org.ni/articulo/4322).

4 These norms are established in the Organic Law. Available, in Spanish, at [www.tsc.gob.hn/leyes/Ley\\_zonas\\_empleo\\_desarrollo\\_eco\\_2013.pdf](http://www.tsc.gob.hn/leyes/Ley_zonas_empleo_desarrollo_eco_2013.pdf).

5 Moreno, Ismael. “Una Ciudad Modelo en una sociedad en harapos”, *Revista Envío*, available, in Spanish, at [www.envio.org.ni/articulo/4322](http://www.envio.org.ni/articulo/4322).

## 8 The Impact of Mining Industry on Women's Rights in Latin America

by Lina Solano Ortiz

**In the last decade, the mining industry has expanded rapidly in Latin America. Investments by transnational corporations in mining have skyrocketed in the region and, despite last year's cool down phase, Latin America still accounts for the largest investment in the sector worldwide.<sup>1</sup>**

Far from the rhetoric of 'responsible mining' - environmentally friendly and eradicating poverty - the 'mining locomotive' advances in Latin America subjugating rights and fundamental freedoms, as well as deepening further entrenching domination, exploitation, oppression, discrimination and inequality.<sup>2</sup>

With such an expansion of the industry, socio-environmental conflicts and resistance to mining industry are running in parallel, particularly amongst peasant and indigenous communities, where women have emerged as leading actors.<sup>3</sup>

Thousands of Latin American women are living with the terrible impact of mining. Mining takes away their rights and also the conditions for a dignified existence. Women are left without their territories and livelihoods - be it by dispossession or pollution, preventing the development of their productive activities and reproduction. Mining industry makes them more dependent and vulnerable, thereby facilitating the control and exploitation over their bodies.

It has been observed that in the territories where the mining industry is based, patriarchal structures are reinforced and spaces are masculinized. This causes further discrimination and violence against women in both the private and public spheres.<sup>4</sup> One suspects that ultimately the result of the multiple impacts of mining on women will be the loss of rights and fundamental freedoms, deeper poverty and precarious living conditions, exploitation and oppression, discrimination and exclusion. Already now, it is clear that in long-standing mining conflicts, there are continuous violations of women's rights, and an alarming increase of killings, disappearance, torture, sexual abuse, imprisonments and criminalization.<sup>5</sup>

Wary of this prospect - or in many cases affected already - women across Latin America are standing up and are joining the resistance. Mining impacts women aggressively from the very moment that a transnational corporation takes over a territory, with the blessing and official permission of the sovereign government.

The case of Ecuador is a good example to illustrate how the industry of mining erodes the rights of women from the early stages of its activities. Unlike most Latin American countries, mining has not yet developed large scale projects in Ecuador and so, the process of dispossession of territories is relatively recent. When the handing-over of the Ecuadorian territory to transnational companies started in the 80s and 90s via mining concessions, communities were not informed or consulted.

This decision was taken behind their backs and without any consideration for the rights, needs and interests of the dwelling population, least of all women.

Communities discovered similar illegal and illegitimate handing over some years later and started to stand up for their rights with the resistance movement taking place on national dimensions in 2006-2007. Yet, so far repression and criminalization have been the only way that the State and local governments have responded to the demands of the - legitimate - owners of the invaded territories.<sup>6</sup>

Considering that the Ecuadorian people in general, and the peasant and indigenous communities in particular, were already exempted from any decision-making, one can imagine how it was for women: with the prevailing patriarchal structures, they were simply denied participation. But despite obstacles, they found the space to become active defenders of their rights and of Mother Earth, and be the protagonists of the organization and mobilization of the resistance. By default, however, this also made them key target of repression and criminalization.

The situation of the women belonging to the Front of Women Defenders of Pachamama - advocating for the safeguarding of Mother Earth - who have seen their rights violated, is worth mentioning. Violence against them has been exorcised to silence their voice, and shut down resistance against major-scale mining projects.<sup>7</sup>

The last recorded act of violence against defenders of the Pachamama was committed on 20 October 2015 by police officers and security police, who attacked them during a demonstration against the Rio Blanco mining megaproject.<sup>8</sup> This illustrates the dangerous levels of intolerance and repression coming from the imposition of mega mining projects vis-à-vis women, and how the so-called concept of 'responsible mining' is rather fallacious.

Women who resist mining in Latin America continue to raise their voices against the reality of an industry that is imposed on them at the expense of their rights, and to seek strategies to ensure their protection, and the creation and /or strengthening of organizations and networks. This sentiment has led to the creation of key resistance platforms, such as the Latin American Union of Women (ULAM), an integrated network of communities affected by mining in different countries.

The key to success of their resistance is that these brave women do not take a backwards step. Contrary to what mining companies and those supporting expect, women are becoming more and more committed to fight for their territorial sovereignty and the primacy of their rights and needs, and against the undue and unjust activities of transnational corporations.

***Lina Solano Ortiz is sociologist and is part of the "Front of Women Defenders of Pachamama."***

1 The article was originally written in Spanish.

2 See the ruling of the Permanent Peoples' Tribunal on its session on the impact of the Canadian mining industry, available at [www.tppcanada.org/wp-content/uploads/Ruling-PPT-CanadaFINAL.pdf](http://www.tppcanada.org/wp-content/uploads/Ruling-PPT-CanadaFINAL.pdf).

3 Access the map on mining conflicts in Latin America, developed by the "Observatory on Mining Conflicts in Latin America", available, in Spanish, at [www.conflictosmineros.net/?start=6](http://www.conflictosmineros.net/?start=6).

4 Solano Ortiz, Lina, "Women, Violence and Mining Industry", available, in Spanish, at [defensoraspachamama.blogspot.com/2015/08/mujer-violencia-e-industria-minera-1.html](http://defensoraspachamama.blogspot.com/2015/08/mujer-violencia-e-industria-minera-1.html).

5 See the report of the hearing of the Inter-American Commission on Human Rights on the "Situation of Defenders of Women's Rights and the Environment in America," October 2015, available, in Spanish, at [issuu.com/fondodeaccionurgente-al/docs/informe\\_cidh\\_esp\\_2015](http://issuu.com/fondodeaccionurgente-al/docs/informe_cidh_esp_2015).

6 For more information, visit the website of "The Coordinator for Defending Life and Sovereignty in Ecuador", in Spanish, at [nomineria.blogspot.de/](http://nomineria.blogspot.de/).

7 Solano Ortiz, Lina, "Derechos violados, resistencia, criminalización", in *¿Por qué nos oponemos a la megaminería?*, March 2014, available, in Spanish, at [www.lattice.org/publ/por\\_que\\_nos\\_oponemos\\_a\\_la\\_megamineria.pdf](http://www.lattice.org/publ/por_que_nos_oponemos_a_la_megamineria.pdf).

8 For more information on the attacks suffered by the women human rights defenders, please see [www.frontlinedefenders.org/node/29972](http://www.frontlinedefenders.org/node/29972).



## Right to Land and Water, a Common Struggle

9

by Steering Committee, *Global Convergence of Land and Water Struggles - West Africa*

**Land and water are vital natural resources and part of our common heritage. While these must be secured, preserved and governed by each community for the common good of societies and the environment, incidents of grabbing are on the rise. Led by companies, governments, elites, and speculators, and often supported by international institutions and consortiums, the (mis-)appropriation of natural resources has become a global phenomenon.**

In response to these threats, local communities and grassroots organizations worldwide have been resisting by asserting their rights and putting forward human rights-based solutions. A key step towards reinforcing existing struggles and broadening the food sovereignty movement has been the creation of the Global Convergence of Land and Water Struggles. With the Malian Convergence against Land Grabbing (CMAT) as a main driving force, the Global Convergence was born at the African Social Forum, in Dakar in November 2014. A serene atmosphere enveloped the writing of the first declaration of the Convergence,<sup>1</sup> which was itself a collaborative effort. There was evidence of the common desire to resist and struggle together, in particular towards defending the rights of peoples vis-à-vis the grabbing of land and water. The main message was crystal clear: "Right to Land and Water, a common struggle."

A united front in the fight against the grabbing of natural resources was necessary, instead of having scattered struggles. The capitalist and neoliberal systems cause the same damage and we therefore needed to join our forces in one struggle. Just saying the words "water" and "land" was enough for everybody to understand that all is linked: Without water and land, communities are prevented from their dynamic local production of healthy food, based on agroecology and biodiversity, and from enjoying their human rights. No water or land would lead to the eventual disappearance of peasant seed systems, forests and ecosystems, and to more social injustice, exclusion and forced migration. In other words, without peoples' sovereignty over food, land and water, there is no future for humanity and planet earth!

The response of our international allies to give their support came swiftly, and the Convergence was opened for other social actors to join while the World Social Forum was taking place in Tunis, in March 2015. The result was the Dakar to Tunis Declaration of the Global Convergence of Land and Water Struggles, which sets out the vision, principles and aspirations of the Convergence amidst the solidarity of its members.

In the views of the Convergence, land, water and seeds are not only vital natural resources, but also part of people's common heritage. They are common goods and not commodities. They are human rights which are fundamental and crucial for life, and all people - disregarding age, gender, status or dwelling area - are entitled to them. States must represent the interests of the people. They have the duty to oppose any initiative that threatens human rights and peoples' sovereignty, including dispute settlement mechanisms between companies and governments, as contained within the - widely criticized - Transatlantic Trade and Investment Partnership (TTIP).

The control and access of peoples to land and water are essential to peace, to stop climate change and to guarantee fundamental human rights and a dignified life for all. An equitable distribution of land and water, with gender equality at its core, are essential to the vision of communities around food sovereignty. This vision equally applies to rural, urban and peri-urban populations and involves the relationship between producers and consumers, based on mutual solidarity and cooperation.

On this note, land and water management policies must enable the achievement of social equity, gender equality, public health and environmental justice instead of contributing towards even higher profits of a small selection of - already wealthy - entities and their supporters.

The Convergence reclaims lands, waters and seeds as well as the legitimate political spaces that its members, as rights-holders, have fought for. It calls for solidarity with and support for human rights defenders, including those who resist land and water grabbing, especially when they are criminalized. With this approach in mind, several West African organizations held a sub-regional conference last June. The International Training Centre and Resources in Agroecology of Nyéléni (Mali), which was built in 2007 to host the first Global Forum on Food Sovereignty, brought together more than 40 participants from eleven African countries.

As a result of the 3-day discussions, a sub-regional platform of the Global Convergence in West Africa was established, as well as an action plan aimed at fostering solidarity and strengthening struggles for land, water and seeds. The commitments made by the newly created sub-regional platform are indeed far-reaching: March 2016 will see a West African-wide caravan start a journey that will serve to get the voices of affected communities heard. The caravan will go through 11 countries, which will be leading key advocacy activities. With the finishing line in Dakar, the caravan will culminate its journey at an international conference around the right to food and nutrition. This initiative will be complemented with a 'Green Book' that will list both demands and proposals of the sub-regional platform and perform as the joint message vis-à-vis institutions and communities across West-Africa. Meanwhile, the Convergence will target other public policy spaces, such as the 2015 Paris Climate Conference (COP 21), to help raise our cause, and denounce the increasing control of corporations over natural resources and promote the real community-based solutions to the crises the world is facing.

The local and international willingness to support the West African caravan, as well as other initiatives around the Global Convergence, demonstrate that current approaches to natural resources need to change drastically. What's more, it also proves that, disregarding our origins and diversity, there is a common language and thought process when it comes to defend and struggle for human rights. A resisting spirit of uniting struggles is clearly infiltrating affected communities and strengthening their resolve.

***The Global Convergence of Land and Water Struggles is an initiative by grassroots organizations and social movements.***

<sup>1</sup> More information on the "Sub-regional -West Africa-Conference of the Convergence of Land and Water Struggles" at [www.fian.org/en/news/article/right\\_to\\_water\\_and\\_land\\_a\\_common\\_struggle\\_in\\_west\\_africa/](http://www.fian.org/en/news/article/right_to_water_and_land_a_common_struggle_in_west_africa/).

## 10 TNCs as Human Rights Holders: People's Sovereignty at Stake

by *Angélica Castañeda Flores*

**Are Transnational Corporations (TNCs), as legal entities, human rights holders like indigenous communities or trade unions?<sup>1</sup> Amid a context where TNCs see their influence in public policy spheres growing, the State of Panama raised this question before the Inter-American Court of Human Rights (IACoHR) last year.<sup>2</sup>**

Making use of its competence to consult the interpretation of the American Convention of Human Rights (ACHR),<sup>3</sup> Panama requested an advisory opinion about the reading and scope of article 1.2 which establishes that, for the purposes of the Convention, “person” means every human being.<sup>4</sup>

The request<sup>5</sup> involves a set of questions, including who human rights holders are and who is, therefore, allowed to file complaints regarding violations of their human rights before the Inter-American Human Rights System. In addition, one of these enquires if “legal entities” are human rights holders in terms of judicial protection, due process of law, rights to property and strike. Panama argued to pose this question under the rationale that “legal entities” are instruments used by human beings to achieve their legitimate purposes.

The “legal entities” Panama was referring to - trade unions, indigenous communities, NGOs, TNCs - are entities with different purposes. Both the Court and the Inter-American Commission of Human Rights have consistently applied art. 1.2 of the Convention to protect human beings and exclude legal entities from such protection.

Nevertheless, in previous decisions, the Inter-American system has recognized human rights in favor of collectives, as it has been observed with the right to ancestral territory/property of indigenous communities and the right of association of trade unions. Based on the existing jurisprudence, Panama asked if all collective/legal entities, including TNCs, could also be considered as human rights holders and would be, therefore, allowed to lodge complaints before the Inter-American Human Rights System.

What Panama was attempting to do is to deliberately tamper with previous jurisprudence by the Inter-American System, where indigenous communities and trade unions were favored. This would ultimately entitle TNCs to claim human rights violations. This endeavor is not an isolated move and must be analyzed within the current global wave of corporate capture. With the aim of benefiting themselves, TNCs have been arguing that they also are human rights holders and should be able to access human rights protection mechanisms.

But, human rights are the result of people's struggles, sometimes achieved at the expense of their own lives. The diverse

systems for the protection and promotion of human rights - international and regional - were created to defend people from abuses by States.

Currently, abuses are not only committed by States, but also by TNCs, whose activities lead to human rights abuses and crimes. In many cases, people cannot find justice within their own States, which adopt governance models that favor TNCs, and their last resource to address such harms are international and/or regional human rights systems.

Panama's request triggers the TNCs capture of the Inter-American Human Rights System, as it suggests that TNCs, and other legal entities like indigenous communities and trade unions should be protected equally.

On the other side of the Atlantic, the European Court of Human Rights interpreted that the term “person” in the European Convention of Human Rights (ECHR), includes “legal entities.”<sup>6</sup> Corporations have already been using the European system to protect their ‘corporate human rights’.<sup>7</sup> Some argue this interpretation breaches the Vienna Convention on the Law of Treaties, which requires that in case of doubt whether a natural or legal entity is protected under the ECHR, the rationale of the Convention must prevail. The ECHR is a convention on human rights and not on corporate rights: it is clear that “person” refers to “natural persons”!

The request of Panama involves endless discussions of legal technicalities<sup>8</sup> and years of jurisprudence by the Inter-American Human Rights System. Beyond technicalities, however, what is really at stake is people's sovereignty. People delegated their sovereignty to States to create a system to ensure protection against abuse and injustice which, as shown by the jurisprudence of the IACoHR, have been progressively triggered by TNCs interests.

A system that was created for the people should not place TNCs on the same footing. There is no possible analogy between protecting the growth of corporation's revenues and protecting the dignity of human beings.

***Angélica Castañeda Flores is FIAN International's Program Coordinator for Latin America.***

1 This piece was finalized before the Inter-American Court reaches/publishes its decision on the advisory request filed by Panama: [www.corteidh.or.cr/cf/Jurisprudencia2/busqueda\\_opiniones\\_consultivas.cfm?lang=es](http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=es) (last review in November 6).

2 The request was filed on April 28, 2014.

3 Art. 64 of the American Convention of Human Rights.

4 American Convention of Human Rights - Article 1. Obligation to Respect Rights - 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

5 Request available at [www.corteidh.or.cr/cf/Jurisprudencia2/solicitud\\_opiniones\\_consultivas.cfm?lang=es](http://www.corteidh.or.cr/cf/Jurisprudencia2/solicitud_opiniones_consultivas.cfm?lang=es).

6 Article 1 of Protocol 1 to the European Convention states that [E]very natural or legal person is entitled to the peaceful enjoyment of his possessions.

7 See *Yuko v Russia*. Ruling available at [hudoc.echr.coe.int/eng/?i=001-145730#{"item\\_id":\["001-145730"\]}](http://hudoc.echr.coe.int/eng/?i=001-145730#{).

8 In the public hearing on the request held on June 25, 2015, legal submissions revolves around rights holders, locus standi, individual and collective rights.

## Recognizing the Rights of the Rural World

by Henry Thomas Simarmata

Following worldwide efforts, 2012 saw the United Nations Human Rights Council (HRC) adopting resolution 21/19 on establishing a formal process to develop a declaration on the rights of peasants.<sup>1</sup> Like any other development within the UN Human Rights framework, this step forward merits a detailed discussion to clarify why and how the recognition of the rights of the rural world should take place. It is, therefore, crucial to emphasize why peasants and other people working in rural areas should be subject to protection by a specific human rights instrument. As part of this formal process, a thorough study should firstly answer some basic questions such as: **What constitutes the legal status of peasants and other people working in rural areas in relation to human rights? Should peasants attain the status of formal rights? How to formulate a justiciable setting of these rights?**

The resolution itself is based on the legitimacy of the HRC to develop specific human rights instruments to assess how UN Member States perform their human rights obligations and, therefore, represents an effort to move in this direction. In this sense, the forthcoming discussions on the declaration on the rural world should base its research on concrete cases and other existing protection mechanisms.

The range of cases may serve to show the State's failure to protect life and the livelihood of peasants and, for this reason, urge to develop an appropriate instrument by the HRC to address the issue of discrimination and extreme social vulnerability of these actors. The expansion of transnational economic and political activities in the last decades, have also worsened the States' abilities to protect the rights of peasants and other people working in rural areas - which still represent around 48% of the global population according to FAO data.<sup>2</sup> This problem comes from a failure to exercise both their domestic and extraterritorial obligations, also due to non-existent legal mechanisms to protect the rural world. Small-scale rural producers are indeed responsible for 70% of the world's food production.<sup>3</sup> As the former UN Special Rapporteur on Right to Food, Olivier de Schutter, pointed out in the 2008 report *Building resilience: a human rights framework for world food and nutrition security*, the global food crisis has had a severe impact on agricultural workers' livelihoods and States need to take measures to regulate and support them.<sup>4</sup> The final report presented to the HRC, entitled *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*,<sup>5</sup> also describes how they have been suffering systematic human rights violations that generate more severe social vulnerability, hunger and poverty. As highlighted in the report:

*Hunger, like poverty, is still predominantly a rural problem, and in the rural population, it is those who produce food who suffer disproportionately. In a world in which more*

*than enough is produced to feed the entire world population, more than 700 million people living in rural areas continue to face hunger. Describing this situation in its final study on discrimination in the context of the right to food, the Advisory Committee identified peasant farmers, small landholders, landless workers, fisher-folk, hunters and gatherers as among the most discriminated against and vulnerable groups.<sup>6</sup>*

Therefore, these marginalized groups must urgently be recognized and protected by the States in which they live. As for "recognition", this concept is quite a debate in international law: a State exists if the international community recognizes its very existence. One ventures that it will apply similarly in the case of the rights of peasants and other people working in rural areas, and the declaration will go through the following stages.

First, international parties will acknowledge the addressed group. Peasants and other people working in rural areas are characterized by their locality (rural area), the context of small-holding in their life and livelihood, and also by intersectional livelihoods - for example, rural women workers, indigenous groups and mobile indigenous peoples, nurturing the same natural sources over the years. Next, the non-discrimination framework or anti-discriminatory measures will be looked into. This will address long-standing discrimination, as drawn up in the adopted UN report on rights of peasants. Those include "(a) expropriation of land, forced evictions and displacement; (b) gender discrimination; (c) the absence of agrarian reform and rural development policies; (d) the lack of minimum wages and social protection; and (e) the criminalization of movements defending the rights of people working in rural areas."<sup>7</sup>

A key step will then be the recognition of the State obligation and on how this will be exercised domestically and in a transnational context. In international law, the connection between extraterritorial obligations of States will also be governed. This is ever more fundamental since contemporary forms of discrimination against peasants and other people working in rural areas happens when the State is less legitimized, cooperation among States is rudimentary, and economic activities are exploitative. Finally, the ecosystem where peasants and other people working in rural areas live will be a crucial topic for the declaration, as it represents the space of interconnection of groups and natural resources within a specific area. Bearing in mind that the destruction or exhaustion of natural resources in an ecosystem will also threaten groups living therein, it is no surprise that in the draft declaration the promulgation of the "right to land", "right to seed", "biodiversity", "traditional knowledge", and "food sovereignty" are proposed.

With the future declaration, peasants and other people working in rural areas will be the subject of realizing human rights. It will also be holistic, as it will recognize the existing and emerging connection of peasants with other key areas, such as land, seed, biodiversity, access to justice, and state obligation. Such recognition is a source of hopes towards the fundamental protection of the rural world.

**Henry Thomas Simarmata is Senior Advisor to Indonesian Human Rights Committee for Social Justice**

1 Resolution available at [www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/FirstSession.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/FirstSession.aspx).

2 FAO, FAOSTAT database, 2013. Available at [faostat.fao.org/site/291/default.aspx](http://faostat.fao.org/site/291/default.aspx).

3 GRAIN, Hungry for land: small farmers feed the world with less than a quarter of all farmland. Available at [www.grain.org/article/entries/4929-hungry-for-land-small-farmers-feed-the-world-with-less-than-a-quarter-of-all-farmland](http://www.grain.org/article/entries/4929-hungry-for-land-small-farmers-feed-the-world-with-less-than-a-quarter-of-all-farmland).

4 Report available at [www2.ohchr.org/english/issues/food/docs/A.HRC.9.23.pdf](http://www2.ohchr.org/english/issues/food/docs/A.HRC.9.23.pdf).

5 Document available at [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf).

6 Idem, p. 3.

7 Idem, p. 8.

## 12 Will Nepal Walk the Talk?

by Sarba Raj Khadka

**Nepal is one of the least developed countries (LDC) in the world with a low Human Development Index (HDI), ranking at 145th position.<sup>1</sup> Despite some improvements between 1995 and 2011, the prevalence of both underweight and stunted children is among the highest globally as well.<sup>2</sup> Although undernourishment has declined from 25.4% in 1990–92 to 16.0% in 2011–13, five of Nepal's nearly 30 million inhabitants are still undernourished.<sup>3</sup> In particular, maternal undernutrition is also a serious problem in the country, with 35% of women of reproductive age and 46% of children suffering from anemia.**

Since the devastating earthquakes on April 25, 26 and May 12, 2015, things have deteriorated. The situation in the affected districts is precarious, both in terms of short-term relief and medium to long-term recovery and rehabilitation.<sup>4</sup> Livestock, crops, food supplies, agricultural inputs and other assets have been lost.<sup>5</sup> According to the Ministry of Agriculture Development, the farming sector in 14 of the 31 affected districts has been highly damaged with a total loss of over 53,000 cattle and 135,187 tons of food stocked in farmhouses.<sup>6</sup>

On a positive note, on September 20th 2015, the Nepal Government, after more than seven years, formally adopted its constitution with an overwhelming majority. The government has already expressed strong commitment towards its operationalization and the formulation of necessary legislative and policy tools.

Together with other important human rights, such as the right to employment, the right to social security, the right to health and the right to housing, the constitution has enshrined the right to food and food sovereignty as fundamental rights.

### DISTRIBUTION OF SCARCE LAND RESOURCES

The majority of the Nepalese population lives in rural areas on smallholder-farms. A large section of indigenous people depend solely on natural resources for subsistence. However, land is becoming an increasingly scarce resource due to population growth and rapid urbanization. Around 37% of the land is in the hands of the most wealthy - around a 5% of the population, and who are not engaged in agriculture themselves. The gender dimension of land distribution is even more critical: men own 92% of land holdings.

Legislation regulating access to land in Nepal exists but either contains omissions or is not enforced, due to a lack

of genuine and coordinated efforts by responsible agencies coupled with a lack of political will. For example, the National Land Use Policy, introduced in 2012, aims to achieve social and economic development, as well as environmentally sustainable growth through scientific land reform, reclassification of land and formulation of plans and programs on land use.<sup>7</sup> However, the policy remains silent on granting tenure security to those individuals and groups who sustain their livelihoods on land, fisheries and forest and pasture areas.

Furthermore, the Land Act 2021 (1964) failed to bring any significant results. In particular, the provisions related to the maximum amount of land that may be owned by one land-owner<sup>8</sup> - the key aspect of this Act - have never been effectively implemented.<sup>9</sup>

### WILDLIFE CONSERVATION VERSUS HUMAN RIGHTS

Access to land is also directly constrained by Nepalese legislation. For example, natural resources found in forests, such as biodiversity, wood and water, play a vital role in rural people's day-to-day livelihoods. However, restrictions imposed by the establishment of national parks have severely limited rural populations' access to forests and other resources, causing a detrimental effect on their livelihoods.

The Forest Act (1993) and National Parks and Wildlife Conservation Act (1973) are the two central pieces of legislation governing access to, and management of, forests. Neither comply with Nepal's obligations under international human rights standards concerning the rights of indigenous peoples, particularly the rights set out by ILO Convention 169 (1989) and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) (2007).

Prior to the establishment of national parks or other protected areas, a human rights impact assessment should be carried out. Affected communities should be consulted by the state and their views should inform authorities' decisions. Communities should give their free, prior and informed consent and complaint mechanisms should be available during the entire process.

However, in practice in Nepal, existing benefit-sharing mechanisms are ineffective, indigenous peoples are insufficiently represented in land management, and consultation and compensation mechanisms for indigenous communities are inadequate or non-existent.<sup>10</sup>

For example, the Forest Act gives power to forest officials to remove, inter alia, houses or huts constructed on national forest land. The Act fails to oblige the Government to ensure procedural guarantees prior, during and after evictions, as required by international norms and standards.<sup>11</sup> This leaves

1 Human Development Report. Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience (2014), available at [hdr.undp.org/en/content/human-development-report-2014](http://hdr.undp.org/en/content/human-development-report-2014).

2 The number of underweight children declined from 44% to 29%, as well as of stunting from 64% to 40%.

3 Nepal Demographic and Health Survey (2011) available at [cbs.gov.np/wp-content/uploads/2012/02/Statistical\\_Report\\_Vol2.pdf](http://cbs.gov.np/wp-content/uploads/2012/02/Statistical_Report_Vol2.pdf).

4 FIAN International. *Earthquake Levels the Lives and Livelihoods of Thousands*. FIAN International, April 4, 2015, available at [www.fian.org/en/news/article/nepal\\_earthquake\\_levels\\_the\\_lives\\_and\\_livelihoods\\_of\\_thousands/](http://www.fian.org/en/news/article/nepal_earthquake_levels_the_lives_and_livelihoods_of_thousands/); *Persisting Food Shortages Highlighted as Monsoon Nears*. FIAN International, June 12, 2015, available at [www.fian.org/en/news/article/persisting\\_food\\_shortages\\_highlighted\\_as\\_monsoon\\_nears/](http://www.fian.org/en/news/article/persisting_food_shortages_highlighted_as_monsoon_nears/).

5 Rathaur, Harihar Singh. "Earthquake-Hit Families Faces Shortage of Food," *The Kathmandu Post*, August 26 2015, available at [kathmandupost.ekantipur.com/news/2015-08-26/earthquake-hit-families-face-shortage-of-food.html](http://kathmandupost.ekantipur.com/news/2015-08-26/earthquake-hit-families-face-shortage-of-food.html); FAO. *Earthquake's Impact on Food Security and Agriculture Likely Very High*. FAO, April 30 2015, available at [www.fao.org/news/story/en/item/285171/code/](http://www.fao.org/news/story/en/item/285171/code/).

6 "Nepal Needs 215,400 Tonnes of Food for Next 3 Months", *The Kathmandu Post*, May 20 2015, available at [kathmandupost.ekantipur.com/news/2015-05-20/nepal-needs-215400-tonnes-of-food-for-next-3-months.html](http://kathmandupost.ekantipur.com/news/2015-05-20/nepal-needs-215400-tonnes-of-food-for-next-3-months.html).

7 Section 5(1), *Nepal Land Use Policy 2012*. Ministry of Land Reform and Management (MLRM), Kathmandu, Nepal.

8 Chapters 3 and 4. *The Lands Act 2021* (1964). Available at: [www.lawcommission.gov.np/index.php?option=com\\_remository&func=fileinfo&id=620&Itemid=2&lang=en](http://www.lawcommission.gov.np/index.php?option=com_remository&func=fileinfo&id=620&Itemid=2&lang=en).

9 Section 5(1), *Nepal Land Use Policy 2012*. Ministry of Land Reform and Management (MLRM), Kathmandu, Nepal.

10 Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: *Report on the Situation of Indigenous Peoples in Nepal*. A/HRC/12/34/Add.3. 20 July, 2009, Para 32, 33, 34, 35, 36, 37 and 38.

11 The General Comment No. 7 of the Committee on Economic, Social and Cultural Rights (CESCR) and the UN Basic Principles for Development-based Evictions and Displacement in particular.

the population residing in and around national parks vulnerable to forced evictions, rendering the affected population homeless and perpetuating violations of their human rights, including the right to adequate food and nutrition.

#### ADVANCING THE RIGHT TO FOOD FOR ALL

On numerous occasions, FIAN International has recommended to the Government of Nepal to adopt all necessary measures to guarantee access to natural and productive resources, including production-related inputs to sustain livelihoods based on agriculture. With this in mind, priority should be given to the most disadvantaged and marginalized groups, such as, inter alia, women, indigenous peoples, dalits and communities affected by HIV/AIDS, in policies and strategies on access to resources.

Considering the increasing global trend of evictions, the authorities must also guarantee that indigenous and other communities dependent on forests and fisheries, are not evicted from their territories without adequate consultation, prior and informed consent, and compensation due to the creation of national parks, other protected areas, industrial or economic zones or development projects. Furthermore, FIAN suggests adopting a comprehensive national strategy to ensure food and nutrition security and right to adequate food for all.

Recommendations from the first Universal Periodic Review (UPR) review in 2011 made around the right to adequate food and nutrition and other related rights during the first cycle have remained marginally implemented, if at all. In 2012, the Government of Nepal developed an Action Plan on Implementation of the UPR Recommendations, but it was hugely deficient in offering corresponding indicators to measure the outcomes. Nor were there adequate consultations and collaborations with different stakeholders at sub-national and national levels held at the time of the development of the action plan. The UPR Outcome Document was neither formally translated into the local language, nor disseminated across the country, making it difficult for grassroots activists to monitor the implementation of the recommendations.

In November 2015, Nepal's human rights status was examined for the second time by the UPR Working Group. While the country was generally commended for the adoption of the new Constitution, States pointed out that the implementation strategies for international human rights instruments was needed, as well as the strengthening of the national legislative and institutional frameworks.

The recommendations presented during the session, when 55 States exchanged views on Nepal's performance towards realizing human rights, covered different important aspects. These included the need for overcoming discrimination, protecting vulnerable groups, reducing poverty, improving the standard of living, facilitating access to water for rural populations or building on successful programs for the creation of jobs and assistance to the most vulnerable.

A high number of recommendations related to implementation strategies of international human rights instruments, and to the strengthening of the legislative and institutional framework. It was further suggested by UN State counterparts, that the

Government of Nepal should adopt a comprehensive national strategy to ensure food and nutrition security and the right to adequate food for all, particularly targeting the marginalized and disadvantaged groups. For its part, Nepal has accepted most of the recommendations while others, it claims, are in the process of implementation.

This time, both government and civil society are more aware about the UPR process and its possible positive implications. A monitoring and planning process towards the implementation of the recommendations is already in place, so past shortcomings are not repeated.

*Sarba Raj Khadka is FIAN Nepal's Chairperson.*

## 14 Tea Plantations, a Trigger for Hunger

by Yifang Slot-Tang

**Plantation workers the world over suffer discriminatory working conditions and systematic violations of their right to food and nutrition. Particularly in the case of tea plantation workers, not only are statutory minimum wages rarely paid to them, but many also often face deplorable working and living conditions, including long working hours, abominable sanitary facilities, exposure to hazardous pesticides, lack of access to clean drinking water and no provision of adequate medical care.<sup>1</sup>**

India, the second largest tea producer in the world,<sup>2</sup> employs some 1,2 million workers in tea estates, making the tea industry the second largest employer in the organized manufacturing sector. Of the total tea produced in 2007, 76% was produced in the North-East Indian states - mainly Assam and West Bengal, and 24% in the southern states of Tamil Nadu and Kerala.<sup>3</sup>

The dropping of tea leaf prices in the late 1990s, coupled with rising oil prices, triggered many tea plantation companies to cut wages and divert or siphon off investments. As a consequence, many plantations were abandoned or closed, leaving tens of thousands of workers in destitution. By the beginning of 2000, a spate of hunger deaths ignited across the tea plantation regions, especially in West Bengal, making national headlines across India.

Who are tea plantation workers? In India, most of them are Adivasis - India's indigenous people, who are fourth generation descendants of indentured migrants originally from Bengal, Bihar, Orissa and Madhya Pradesh. They were brought by colonial planters 150 years ago to work on the plantations. The workers' living conditions under colonial rule were akin to slavery; they were flogged, abused, and freedom of movement was unknown to them.

Today, 70 years after India's independence, tea workers are still entirely dependent on plantations and planters for their sustenance and basic needs - including food, water, and housing, as they live and work in an enclave. While the Plantation Labour Act (1951) guarantees related welfare provisions, many studies imply that only very few tea plantation managers fully implement them. The tea industry is one of the few industries today that is family-based and depends mainly upon women to work in the tea beds.

Unlike men, who dominate positions that are often better paid, such as factory workers and supervisors, women tea workers, who compose more than half of the workers' population, are mostly field workers engaging in the labor-intensive task of plucking tea leaves. As daily wagers, they are paid according to the piece-rate for which a minimum quantity is fixed. Currently the average daily wages are INR. 115 in Assam<sup>4</sup> and INR.95 in

West Bengal,<sup>5</sup> which equate 1,622 and 1,341 EUR respectively - minimum wage for unskilled agricultural worker is INR.221.

There is no statutory minimum wages for tea plantation work in Assam or in West Bengal. The wages which consist of cash and subsidized food rations are negotiated by plantation owners, trade unions, and the State. Due to abysmal wages and the rise of global food prices witnessed in the recent past, workers cannot buy the food they need, and are thus forced to consume less. Women workers sacrifice their intake of food for their family's sake. They also suffer from lack of sufficient and adequate drinking water and denial of maternity leave. Lack of sufficient wages and appalling working and living conditions are the reasons why the rates of stunted children in tea producing regions are far above national average.

Having no other means for alternative livelihood, nor land to sustain themselves, or savings at hand, tea workers exclusively depend on their wages and subsidized ration to feed themselves. As a state party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), India is duty-bound under international law to protect and fulfill the right to food and nutrition of its tea workers and their families: The Government of India, especially the state governments of Assam and West Bengal, must protect this right by ensuring that plantation owners do not deprive tea workers' access to food, thereby guaranteeing that the Plantation Labour Act is duly implemented.

In addition, the Government of India must establish a living wage which does not threaten or compromise the attainment and satisfaction of other needs of tea workers - such as health, housing, and education, and provide alternative livelihood options in order to strengthen the right to food and nutrition of the tea plantation workers. Of course, special protection must also be given to the most vulnerable groups, women and children, comprising maternity protection, childcare, provision of crèches, and wage payment to women without discrimination. The Government must comply with its human rights obligations.

**Yifang Slot-Tang is FIAN International's Coordinator for South East Asia and Case Work.**

1 Very often these wages are set even far below the poverty line defined by the World Bank. See *Harvesting Hunger – Plantation Workers and the Right to Food*, available at [www.misereor.de/fileadmin/redaktion/studie-plantagenarbeiter\\_-\\_harvesting\\_hunger\\_-\\_plantation\\_workers\\_and\\_the\\_right\\_to\\_food\\_-\\_2014.pdf](http://www.misereor.de/fileadmin/redaktion/studie-plantagenarbeiter_-_harvesting_hunger_-_plantation_workers_and_the_right_to_food_-_2014.pdf).

2 FAO, *World tea production and trade: Current and future development*, 2015, available at [www.fao.org/3/a-i4480e.pdf](http://www.fao.org/3/a-i4480e.pdf).

3 Van der Wal, Sanne, *Sustainability Issues in the Tea Sector*, Amsterdam, SOMO, available at [www.csringreece.gr/files/research/CSR-1290005987.pdf?user](http://www.csringreece.gr/files/research/CSR-1290005987.pdf?user), p. 70.

4 "Wages of tea workers in Assam revised to Rs 155 per day," *The Economic Times*, Feb 26, 2015, available at [articles.economicstimes.indiatimes.com/2015-02-26/news/59541797\\_1\\_tea-workers-tea-plantation-assam-chah-mazdoor-sangha](http://articles.economicstimes.indiatimes.com/2015-02-26/news/59541797_1_tea-workers-tea-plantation-assam-chah-mazdoor-sangha).

5 "A rally of hope – the struggle for minimum wages intensifies," *Bengal Update News*, available at [bengalupdatenews.com/politics/national/a-rally-of-hope-the-struggle-for-minimum-wages-intensifies/](http://bengalupdatenews.com/politics/national/a-rally-of-hope-the-struggle-for-minimum-wages-intensifies/).

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by the Global Network for the Right to Food and Nutrition



## GLOBAL NETWORK FOR THE RIGHT TO FOOD AND NUTRITION

The Global Network on the Right to Food and Nutrition (GNRtFN) was launched in 2013. It is one of the outcomes of a long journey of peoples, social movements, civil society organisations (CSOs), human rights defenders, experts, academics and research institutions, struggling for the full realization of the human right to adequate food and nutrition (RtAFN) in the wider context of the indivisibility of human rights and people's sovereignty.

The GNRtFN is the result of a broad consultative process that took into account the aggravation of the chronic world food crisis, which has unleashed massive land grabbing processes that are leading to the eviction and threat of eviction of millions of small-scale food producers, majority of them women.

There have been persistent gross violations of the RtAFN at the global level and almost absolute impunity of perpetrators. Given

that no single social movement or organization can tackle all these challenges alone, the GNRtFN opens a political space for dialogue and debate, as well as for building synergies and pursuing joint actions at the global level. Network members actively support the existing struggles of social movements, communities and groups, fighting against the violation of their right to adequate food and nutrition and related universal, interdependent and indivisible individual and collective human rights.

With some activities already behind it, the Network will detail all its forthcoming undertakings on its future website ([www.gnrtn.org](http://www.gnrtn.org)), expected for March 2016. The site will also serve as an online platform to highlight the latest developments on the right to food and nutrition across the world.

For more information, contact [secretariat@GNRtFN.org](mailto:secretariat@GNRtFN.org)

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