

ACCESS TO LAND AND PRODUCTIVE RESOURCES

Towards a human rights approach using the FAO Voluntary Guidelines on the right to food



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1. Introduction

At the World Conference on Agrarian Reform and Rural Development in 1979 there was a strong consensus about the urgency of providing a firm response to the precarious situation that hundreds of thousands of marginalized peasants and rural landless workers were living in. With the adoption of the structural adjustment policies during the 80s and 90s, however, this consensus vanished and was replaced by national and international agendas of agrarian, agricultural and rural development policies that focused on macroeconomic reforms to attract foreign investment and promote export agriculture. Nowadays, the precarious situation of the small and medium scale farmers as well as that of rural landless workers has become more acute. The Millennium Project Hunger Task Force¹ showed that 50% of the people suffering from hunger in the world are small peasants who only have marginal and insecure

access to land and productive resources. Rural landless workers constitute 22% of those suffering from hunger. These figures demonstrate once again that hunger is an eminently rural phenomenon and that it is essentially related to the marginalization of rural families and their lack of secure access to productive resources. The Millennium Project Hunger Task Force uses the term “marginal” to describe the multifaceted nature of the extremely precarious situation that these families endure: marginal because they live in geographically remote and ecologically fragile areas, without access roads nor markets; marginal because they do not have access to credit or rural extension services; and experience political marginalization.

Given that agrarian reform has long since been missing from national and international agendas, the issue is beginning to make its way back onto the agenda as different initiatives show, among those, the International Conference on Agrarian Reform convened by the FAO in Brazil in March 2006. We consider the human rights-based approach to the question of land and agrarian

¹ See UNDP. 2003. Halving Global Hunger, Background Paper of Task Force on Hunger. UNDP, New York. www.unmillenniumproject.org/documents/tf02apr18.pdf. Pg. 15

reform is indispensable in this process. In fact, on the one hand, we are witnessing powerful social mobilization in various parts of the world demanding land and agrarian reform as a right. On the other hand, concrete legal instruments within the framework of the United Nations and the FAO are already available which clarify the application of a human rights based approach to the question of land and agrarian reform. In particular, we refer to the "Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security" (henceforth referred to as VG) adopted by the Council of the FAO in November 2004.

International human rights law does not explicitly recognize land as a human right. Only Convention 169 of the International Labor Organization (ILO) and the UN Declaration on the Rights of Indigenous Peoples explicitly recognize the right to land and territory of indigenous populations. However, the former Special Rapporteur on Economic, Social and Cultural Rights, Danilo Türk, confirmed in 1990 "It is increasingly recognized that land rights and agrarian reform are often central to the realization of human rights. The fulfillment of various economic, social and cultural rights show a direct relationship to land, such as the right to food, the right to housing, the right to an adequate standard of living, the right to culture, the rights of indigenous peoples and others. The Special Rapporteur is fully aware of the delicate nature and controversy surrounding issues relating to land issues internationally, yet feels convinced that the time has come to give this fundamental issue the serious attention it deserves. No question is more central to power relations within society or to issues of equality and income distribution than land"². Different UN organs and those within the Human Rights system have been developing the relationship between access to land, agrarian reform and the economic, social, cultural and environmental rights of the most marginalized groups. In fact, the Committee on Economic, Social and Cultural Rights (CESCR) has been addressing the issue of land and agrarian reform with increasing intensity in its concluding observations which form part of the state reports that all States Parties to the International Covenant on Economic, Social and Cultural Rights are required to produce periodically on the progressive realization of these rights. The Special Rapporteur on the right to adequate housing, Miloon Kothari, recently recommended that the Human Rights Council recognize the right to land as a human right³. Despite such progress, there is still a long way to go before states recognize effectively that access to land and agrarian reform entail human rights obligations, these obligations thus remain legally vague for the most part.

The aim of this document is to contribute to clarifying

human rights obligations related to access to land and agrarian reform. We believe that clarifying existing obligations will enable a better analysis of the violations of the right to food related to access to land, it will improve case documentation and contribute to improving the efficiency of the justiciability and enforceability of the right to food with regard to access to resources. On the other hand and based on FIAN's twenty year experience in documenting violations of the right to food connected to land access, we propose a set of practical recommendations for governments in the spirit of contributing to the application of land policy and agrarian reform with a human rights based approach.

We will first provide an overview about the main entitlements of marginalized social groups regarding land and natural resources according to international human rights law. We will then systematically interpret the VG with reference to land and productive resources analyzing the complete text of the VG in light of the main international instruments - both hard law and soft law - explicitly referred to in the VG⁴. This interpretation will also include resolutions by the UN General Assembly and the Human Rights Commission as well as General Comments published by the Human Rights Committee on Economic, Social and Cultural Rights (CESCR), and the progress reports published by the Special Rapporteurs on the Right to Food and the Right to Housing⁵. Owing to the relevance and the specific nature of land issues and issues surrounding indigenous population territory, we will also resort to the ILO Convention 169 on the Rights of Indigenous and Tribal Peoples.

² Cf. Commission on Human Rights. 1990. Realization of Economic, Social and Cultural Rights. Progress report prepared by Mr. Danilo Türk, Special Rapporteur. U.N.Doc. E/CN.4/Sub.2/1990/19, paragraph 121.

³ Cf. Human Rights Council. 2007. Report by the Special Rapporteur on adequate housing as component of the right to adequate living, Miloon Kothari. U.N. Doc A/HRC/4/18, paragraphs 25-31.

⁴ The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Rome Declaration on World Food Security, the World Food Summit Plan of Action, the Millennium Development Goals.

⁵ The Habitat International Coalition (HIC) has developed a comprehensive list of sources of international human rights that recognize rights to land. See www.hic-mena.org.

2. International human rights law and access to land and natural resources of the poor

We will now turn to the entitlements of marginalized social groups regarding land and natural resources tenure according to international human rights law. Key hard law references are the following:

- Article 17 of the Universal Declaration of Human Rights (UDHR) which enshrines the right to property as the right of everyone to own property alone or in association with others, as well as the right not to be arbitrarily deprived of property. Different regional human rights treaties also safeguard the right to property.
- Article 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) which enshrines people's right to self-determination to pursue their economic, social and cultural development as well as their right to be in no case deprived of their own means of subsistence.
- Article 27 of ICCPR protects the rights of ethnic, religious or linguistic minorities, which has been interpreted to include protection of traditional livelihoods and natural resources.⁶
- Article 11 of ICESCR recognizes the fundamental right to be free from hunger and the right of everyone to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
- Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides for the elimination of discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development. In particular, women have the right to access agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.
- Articles 13-19 of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples safeguard in a comprehensive way the rights of indigenous peoples to their lands and territories. The concept of land encompasses the notion of territories, considered the lands used, owned or occupied by a community or people for the production and reproduction of their forms of social, environmental and economic development, traditions, religions, cultures – their way of life (Art. 13). The Convention recognizes the rights of indigenous and tribal peoples over the lands, territories and resources

they traditionally own or otherwise occupy and use and provides for a range of protective measures, especially against forced evictions and the arbitrary removal of their land (Arts. 7, 14, 15, 16, 17, 18). While ratifications of the Convention are not numerous, similar provisions were included in the UN General Assembly's Declaration on the Rights of Indigenous Peoples of 2007.

- Article 54 of the I Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, and article 14 of the II Protocol Additional to the Geneva Conventions and relating to Protection of Victims of Non-International Armed Conflicts, prohibit to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive. Article 55 of the I Protocol enshrines furthermore the protection of the natural environment in warfare against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
- Both the American Declaration and Convention on Human Rights guarantees the right to property and to housing. The American Declaration of the Rights and Duties of Man adopted in 1948, includes property rights as it states that "every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home" (Art. XXIII). The American Convention of Human Rights regulates property rights in Art. 21 and security, autonomy, the preservation of culture, human dignity, economic and social development, and other fundamental values are justifications for granting protection to the right to property, as interpreted by the Commission and the Court. Protection can be positive ("everyone has the right to own property") or negative (protection against arbitrary deprivation or unjustified interference).⁷ The American Convention recognizes the right to privacy, which comprises the right to be protected against the arbitrary of abusive interference with his

⁶ See UN Human Rights Committee, *L'ansman v Finland* (No. 2) (Communication No. 671/1995), Views of 30 October 1996,

⁷ The General Assembly Resolution 41/132 and Commission Resolution 1987/17 considered that no State, group or person should be engaged in any activity or perform any act aimed at the destruction, *inter alia*, of the right to own property. They also urged States to protect the right of everyone not to be arbitrarily deprived of their property. Cited in the complete final report on the right of everyone to own property alone as well as in association with others, submitted by Mr. Luis Valencia Rodríguez, independent expert, to the forty-ninth session of the UN Commission on Human Rights, para. 131 E/CN.4/1994/19.

home (Art. 11), as well the right to housing by its Art. 26. It is important to note the explicit reference in Article 26 of the American Convention to the Charter as amended by the Protocol of Buenos Aires, as that amendment added to the Charter the new Section VII, including Article 31 (now Article 34) and the reference to adequate housing. Many economic and social standards are enumerated in Article 34(k) of the Charter, including the right to adequate housing which is clearly an implicit economic and social standard set forth in Article 34(k) of the Charter.

- The African Charter on Human and Peoples’ Rights recognizes the rights to property and the African Commission on Human and Peoples’ Rights has further derived rights to housing and food from this right combined with other Charter rights and in accordance with their mandate under Article 60 and 61. Article 21 further recognizes the duty of the State to protect the natural resources of peoples: “1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law...5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”

3. Access to land and Civil and Political Rights

Paragraph 19 of the VG stresses the universal, interdependent and indivisible nature of human rights. In this way, it emphasizes that achieving food security is the result of the realization of existing rights, that the application of the principles of human rights form an integral part of the process, and that citizens are holders of rights and not merely passive recipients. In this sense, respect for and protection of the civil and political rights contained in the International Convention on Civil and Political Rights (ICCPR) such as the right to live and not to be arbitrarily deprived of life (art. 6); the right to freedom from torture or to cruel, inhumane or degrading treatment or punishment (art. 7); the right to freedom from slavery, servitude, forced or compulsory labor (art. 8); the right to liberty and security of person, and not be to subjected to arbitrary arrest or detention (art. 9); the principle of equality of all persons before the law and the right to due process (articles 14 and 26); the right to freedom of expression; and the right to freedom to seek, receive and impart information (art 19); the right of peaceful assembly (article 21); the right to freedom of association (art. 22); the right to take part in the conduct of public affairs (article 25), are absolutely crucial in the political process of making decisions and implementing policies and programs related to access to land and agrarian reform.

Recognizing and supporting landless movements, peasants’ movements, indigenous peoples’ movements and pastoralists’ movements as rights holders fighting for land and agrarian reform should be a fundamental condition of any policy or program on land access and agrarian reform. The importance of the full enjoyment of civil and political rights in order to guarantee land, agrarian reform and rural development policies that fulfill economic, social and cultural rights is evident every time a peasant leader is murdered for claiming the right to land of her or his community, every time a rural worker is arbitrarily deprived of her or his liberty for forming a trade union, every time families and communities are brutally evicted from their land, and, every time, given the deadlock of institutional channels for effectively claiming the fulfillment of the agrarian reform, public and peaceful protest demonstrations and forms of direct action - such as peacefully occupying land that is not fulfilling its social function – every time these demonstrations are violently suppressed.

According to the former UN Special Representative on Human Rights Defenders, Ms Hina Jilani, the second most vulnerable group when it comes to the danger of being killed because of their activities in the defense of human rights, are defenders working on land rights and natural resources. She recorded that in the Philippines alone, more than 14 defenders working on issues of land rights and agrarian reform have reportedly been

killed during 2006⁸. Ms Jilani also drew attention to the fact that defenders working on land rights often organize themselves in the form of social movements which are usually broad grassroots-based movements with a more horizontal organizational structure than for instance most NGOs. According to her, these movements and the defenders who are actively involved in those movements have faced several specific challenges. She particularly highlighted the accusations of not being properly registered and therefore deemed illegal, whereas the reason behind the non-registration often is that the movements do not have the organizational structures that are needed to enable registration with the authorities, such as a permanent headquarters or a secretariat. Another continued challenge is that defenders engaged in social movements are accused of “forming criminal gangs” and the like.⁹

Via Campesina, the international peasants’ movement that speaks out on behalf of small and medium-sized farmers, rural landless workers, rural women and indigenous communities, identified the need to denounce the severity of the human rights violations suffered by peasants and decided to periodically publish a report on these violations. The first report emphasized:

“Peasant leaders are often involved in conflicts over land – they are also the same people who face political persecution, harassment, death threats and killings. Many struggles for better implementation of economic, social and cultural rights incur parallel violations of civil and political rights. Six major areas of violations of civil and political rights will be highlighted here.

1. The right to organize collectively as trade unions for landless laborers or in peasant organizations is, in many countries, difficult to exercise. The right is recognized in both international human rights treaties. Arbitrary detentions of peasant leaders take place regularly. Half of all trade union leaders in the world killed each year are killed in Colombia. Many of them have worked in rural areas with agricultural laborers and with peasant organizations. Peasant leaders should be seen as human rights defenders, because they are defending economic, social and cultural rights as well as civil and political rights of their communities.

2. The number of peasants killed is still far too high, particularly in conflicts over land. In Brazil alone in the first half of 2003, 31 peasants were killed in land conflicts by armed forces employed by big landowners and corporations. In Brazil, these cases have been well documented by the Land Pastoral Commission (CPT), which publishes an overview of land conflicts and their impacts annually.

3. Peasant leaders face political persecution and harassment in many countries. Conflicts in rural areas, such as land conflicts, are often difficult to solve, long term, and protracted. The remoteness of rural areas often makes it easier to harass peasant leaders with impunity, while a similar problem in an urban area of the same country would often not occur, with urban areas bringing more public control of government and private actors responsible for harassment, threats and political persecution.

4. The majority of today’s armed conflicts are fought in rural areas. The victims are generally rural communities and peasant families. These conflicts often result in internally displaced people and communities. Armed conflicts prevent peasant families from earning an income from their economic activities, but they also directly affect the right to life and a secure environment.

5. In many rural areas of the world, smallholder peasants are discriminated in their access to justice. Courts are often far away, costs of using them are excessive, and education levels of rural families often prevent legal access. Even if access to justice is possible in many countries, court procedures are too slow to provide timely justice. Studies from the University in Bonn, Germany, show that for India alone currently more than 35 million cases concerning land conflicts are pending in Indian courts. In many of these trials, the process has been so slow that the smallholder peasants involved have already left the region.

6. As a result of the discrimination of access to justice, but also linked to the division of power in rural areas, the impunity of those responsible for violations against peasants and their organizations is evident. Impunity is, in fact a common feature in rural areas. The remoteness of regions and the marginalization of many rural areas contribute to a lack of control on the part of government institutions which impedes the ability to guarantee human rights, similarly, it is difficult for non-governmental organizations and public media”.¹⁰

The high rate of violence and repression in many rural areas in the world, the rampant impunity with which the crimes and human rights violations are committed against peasant and indigenous rights defenders, the absent rule of law, and corruption are extremely serious problems that can not be ignored by states and the international community when discussing land and agrarian reform.

The VG specify how to integrate civil and political rights in a human rights approach to land and agrarian reform. The first guideline on democracy, good governance, human rights and the rule of law provide important elements. Guideline 1.2 emphasizes how

8 Human Rights Council (2007). Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani. A/HRC/4/37.

9 Ibidem.

10 Cf. La Vía Campesina / FIAN. 2004. Violations of Peasants’ Human Rights. 2004. Heidelberg, Madrid. Pgs: 10,11

citizens are rights holders and stresses the importance of guaranteeing the full enjoyment of fundamental liberties and civil and political rights as a necessary condition for the progressive realization of the right to adequate food.

1.2 States should promote democracy, the rule of law, sustainable development and good governance, and promote and protect human rights and fundamental freedoms in order to empower individuals and civil society to make demands on their governments, devise policies that address their specific needs and ensure the accountability and transparency of governments and state decision-making processes in implementing such policies. States should, in particular, promote freedom of opinion and expression, freedom of information, freedom of the press and freedom of assembly and association, which enhances the progressive realization of the right to adequate food in the context of national food security. Food should not be used as a tool for political and economic pressure.”

To promote civil and political rights, the VG consider different measures mainly related to the right to information and participation. Guideline 11.5, for example, establishes: “States should provide information to individuals to strengthen their ability to participate in food related policy decisions that may affect them, and to challenge decisions that threaten their rights.” Access to information on policies and programs on land access and agrarian reform such as public spending in these programs, the objectives, goals, mechanisms, etc are crucial information in order to guarantee government transparency and accountability.

The VG also urge states that have established the right to adequate food in its legal systems to inform the general public of all its rights and channels of recourse they are entitled to (VG 7.3); and to raise public awareness of these guidelines as well as continuously providing and improving access to them and to relevant human rights laws and regulations, particularly in rural and remote areas (VG 11.10).

On the other hand, the VG promote the right to participation and consultation in different aspects. In this regard, Guidelines 3.1, 3.8 and 3.9 refer to the adoption of a national human rights based strategy for the progressive realization of the right to adequate food. Guideline 5.2 refers to the involvement of relevant communities in all aspects of planning and execution of activities related to the right to food. Guideline 5.4 guarantees the representation of groups most affected by food insecurity in the institutions responsible for this issue. Guideline 11.11 calls upon states to empower civil society by providing them with the means necessary to participate in the application of the VG, through capacity building, for example. Guideline 18.1 asks states to encourage civil society organizations and individuals to contribute to monitoring activities undertaken by national human rights institutions with respect to the progressive realization of the right to adequate food.

In applying the VG, it is important to take into account the right of rural women to participate in the elaboration and implementation of development planning at all levels (article 14, paragraph 2a of CEDAW), it is particularly important to eliminate discrimination against women in rural areas.

Guideline 1.4 guarantees equal protection under law and that due process is guaranteed in all legal proceedings to all individuals and human rights defenders of the right to adequate food. The definition provided by the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani, includes landless peasants and indigenous people as potential human rights defenders: “A second important issue concerns the validity of the arguments being presented. It is not essential for a human rights defender to be correct in his or her arguments in order to be a genuine defender. The critical test is whether or not the person is defending a human right. For example, a group of defenders may advocate for the right of a rural community to own the land they have lived on and farmed for several generations. They may conduct protests against private economic interests that claim to own all of the land in the area. They may or may not be correct about who owns the land. However, whether or not they are legally correct is not relevant in determining whether they are genuine human rights defenders. The key issue is whether or not their concerns fall within the scope of human rights. Human rights defenders must be defined and accepted according to the rights they are defending and according to their own right to do so.”¹¹ There is no doubt then that peasants and indigenous people fighting for land and the realization of their economic and social rights are human rights defenders and should enjoy the same legal protection and should be guaranteed due process in all legal proceedings they are involved in. Guideline 1.5 recommends that states, in addition, legally assist defenders of the right to food.

Monitoring the enjoyment of civil and political rights, particularly the right to live and not to be arbitrarily deprived of life, the right to freedom from torture, the right to freedom from torture or to cruel, inhuman or degrading treatment or punishment, the right to freedom from slavery, servitude and forced or compulsory labor; the right to liberty and security of person, the right to freedom from arbitrary arrest or detention; the right to equality before the law and the right of due process; the right to freedom of expression including the freedom to seek, receive and impart information; the right of peaceful assembly, to freedom of association; the right to take part in the conduct of public affairs of the rural population are absolutely crucial in the political process of making decisions and implementing policies and programs related to access to land and agrarian reform.

¹¹ Cf. Special Representative of the Secretary General on Human Rights Defenders – Who are Human Rights Defenders, at: <http://www2.ohchr.org/english/issues/defenders/who.htm>

4. Access to land and the right to adequate food

Paragraph one of the VG makes reference to the core content of the right to food and states: "these Voluntary Guidelines aim to guarantee the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals; physical and economic accessibility for everyone, including vulnerable groups, to adequate food, free from unsafe substances and acceptable within a given culture; or the means of its procurement." The object of the VG therefore is to guarantee the availability of food or **the means of its procurement**.

Paragraph 8 of the CESCR's General Comment 12 clarifies the core content of the right to adequate food and establishes that it covers:

- The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
- The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights;

Availability refers to the possibilities **either for feeding oneself directly from productive land or other natural resources**, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand (GC 12, paragraph 12).

With regard to accessibility, the CESCR considers accessibility to encompass both economic and physical accessibility: Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. The Committee explicitly stresses that socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programs to guarantee economic accessibility to food.

Physical accessibility implies that adequate food must be accessible to everyone, referring to physically vulnerable individuals; people living in disaster-prone areas and other specially disadvantaged groups. Indigenous population groups whose access to their ancestral lands may be threatened are explicitly mentioned in the GC (GC 12, paragraph 13).

Based on this interpretation it is clear that the direct availability of food by cultivating land is part of the core content of the right to adequate food of individuals and rural groups wanting to exercise their right in this way. Direct availability of food by cultivating land implies economic access to productive resources: access to land and access to other productive resources needed to work the land are necessary. This implies that access to land in order to be able to cultivate it and to be able

to feed oneself, or to take advantage of other natural sources of food form part of the core content of the right to adequate food.

The former Special Rapporteur on the Right to Food, Jean Ziegler, also emphasized this interpretation of the right to food, in his own words "the right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear." ¹²

In his report presented to the UN General Assembly in 2002¹³ the former Special Rapporteur on the Right to Food elaborated on the relationship between access to land, agrarian reform and the right to food. The Rapporteur affirms that access to land and agrarian reform must form a key part of the right to food¹⁴ given that "access to land is often fundamental for ensuring access to food and to a livelihood, and therefore freedom from hunger"¹⁵. The Rapporteur interprets paragraph 2 of article 11 of ICESCR concerning reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources as promoting agrarian reform to encourage small scale farming since small scale farms are more efficient than large ones and better protect the environment¹⁶.

4.1 ACCESS TO LAND AND THE OBLIGATIONS OF STATES PARTIES TO ICESCR

4.1.1 General legal obligations

Within the obligations of the States parties to the ICESCR, the CESCR distinguishes the obligations of immediate fulfillment from the obligations of progressive fulfillment. The General Comment 3 (GC 3) which deals with the nature of the obligations of the States parties clarifies that the progressive character of the fulfillment of the rights recognized in the Covenant is a recognition of the fact that the total fulfillment of all of the economic, social and cultural rights, in general, cannot be achieved in a short period of time. However, this does not mean that the States can indefinitely delay the fulfillment of their obligations, and in this sense, the GC 3 enumerates a series of general obligations for the imminent protection of economic, social and cultural rights. Among these obligations are the following: i) the obligation to not take any regressive measures; ii)

¹² Commission on Human Rights. The Right to Food. Report prepared by Mr. Jean Ziegler, Special Rapporteur on the Right to Food, in accordance with the Commission on Human Rights resolution 2000/10 U.N. Doc. E/CN.4/2001/53, paragraph 14

¹³ UN General Assembly. The Right to Food. Report prepared by Mr. Jean Ziegler, Special Rapporteur of the Commission on Human Rights in accordance with the resolution 56/155 of the General Assembly, 15th February 2002. U.N. Doc. A/57/356

¹⁴ Ibid. paragraph 30

¹⁵ Ibid. paragraph 24

¹⁶ Ibid. paragraph 30

the obligation to take deliberate and concrete legislative and administrative measures that aim to fulfill the obligations; iii) the obligation to adopt measures in a reasonably short time; iv) the obligation to use the maximum of available resources, be they the resources existing in the State as well as the resources of the community of States; v) the obligation to guarantee the exercise of one's right without suffering discrimination; vi) the obligation to give priority in State's action to the most vulnerable groups with the most urgent needs, vii) and the obligation to guarantee the core content of all rights.

The former Special Rapporteur for the Right to Adequate Food has indicated on basis of GC 12, part of the obligations under the right to food - namely, the obligation to respect, the obligation of non-discrimination and the obligation to provide a basic minimum subsistence - should be made immediately effective, since they are not subject to progressive realization¹⁷.

Applied to the concept of land access, we could say that independent of the resources and the level resources of States' parties, that States are obliged to i) not destroy existing access to land; ii) to apply non discriminatory policies and programs related to access to land; iii) to give priority to the most marginalized groups like women, landless and indigenous peoples; iv) to take deliberate and concrete legislative and administrative measures, and in a reasonably short time.

4.1.2 Specific legal obligations

Paragraph 17 of the VG refers to the obligations that states have under the relevant international instruments relevant to the progressive realization of the right to adequate food, and affirms that:

17. States Parties should respect existing access to adequate food by not taking any measures that result in preventing such access, and should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food. Furthermore, State Parties should promote policies intended to contribute to the progressive realization of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. On the other hand, States Parties should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves.

In this respect, paragraph 15 of GC 12 establishes that the right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to

fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfill (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly.

Due to the close connection between access to land and the right to food, these three types of obligations can be directly applied to access to land, given that this forms part of the core content of the right to food and is particularly important for peasants, indigenous peoples, fisherwomen and fishermen, pastoralists, and people living in rural areas and who have no alternative options for earning a living. The former Special Rapporteur on the Right to Food has already adopted this interpretation and considers it to be clear that governments should respect, protect and fulfill access to land¹⁸.

The VG also adopted three levels of obligations with respect to access to land as shown in guideline 8.1.

8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources (own emphasis).

¹⁷ Human Rights Commission. 2002. The right to food. Report presented by the Special Rapporteur for the Right to Food, Mr. Jean Ziegler, in compliance with Resolution 2001/25. U.N.Doc E/CN.4/2002/58, paragraph 45.

¹⁸ Ibid. paragraph 30

4.2. OBLIGATION TO RESPECT ACCESS TO LAND AND COROLLARY OF PROHIBITING FORCED EVICTIONS AND ARBITRARY DISPLACEMENTS

The obligation to respect then imposes on States Parties to the ICESCR, and therefore all public organs and their agents, the obligation to abstain from carrying out, supporting or tolerating any practice (such as forced evictions and crop destruction due to different causes), policy (such as environmental protection creating natural reserve zones that forcibly evict communities with ancestral rights and/or custom) or legal measure (such as discrimination based on gender in land access), alone or in association with others, which destroys access to land and productive resources of a person or a group or which erodes the legal status of having right to gain access to land.

The obligation to guarantee security of land tenure and to abstain from undertaking or promoting practices of forced evictions and arbitrary displacement is a corollary of the obligation to respect access to land and productive resources. The issue of forced eviction has been addressed extensively by institutions and organizations dedicated to working on the right to housing. Given its relevance and its usefulness in order to better understand the obligation to respect access to land, we shall now introduce the right to adequate housing and the standards developed with respect to forced evictions and arbitrary displacements.

4.2.1 Right to adequate housing and the obligation to respect access to land

Given that the VG assume the principle that all human rights are universal, indivisible and interdependent and are inter-related (paragraphs 7 and 19), it is relevant to include in this interpretation the right to adequate housing since access to land and agrarian reform is inextricably linked to the right to housing. The right to housing has been interpreted by the CESCR as “the right to live in security, peace and dignity everywhere”. The Committee has emphatically stated that the right to adequate housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity (GC 4). In this sense, it is obvious that in order to live in security, peace and dignity somewhere access to land needs to be guaranteed. GC 4, paragraph 8, explicitly says: “Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;”¹⁹

¹⁹ The former Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, has emphasized in his different reports that access to land is part of the right to adequate housing, and that it is one of the aspects that should be prioritized. According to the Rapporteur, there is a clear and intrinsic link between access to land and the right to adequate housing since land is often a necessary and sufficient condition upon which the right to adequate housing of many individuals and even whole communities are totally dependent.

In his 2005 report to the Commission on Human Rights dedicated to analysing

GC 4 also signalizes that all individuals should enjoy a certain amount of security of tenancy which guarantees legal protection against forced eviction, harassment and other threats; and it categorically affirms that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (paragraph 18).

The CESCR deemed it necessary to clarify the implications of practices of forced evictions in terms of the obligations contained in the ICESCR and to determine the circumstances in which evictions are admissible, as well as stating the modes of protection necessary to guarantee respect for relevant resolutions of the Covenant. This work is contained in General Comment 7 (GC 7).

The committee stresses that forced evictions are *prima facie* incompatible with the requirements of the Covenant (GC 7, paragraph 1) and defines forced evictions as permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection (GC 7, paragraph 3). The committee emphasizes that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights; and stipulates that where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available (GC 7, paragraph 16).

Paragraph 9 of GC 7 establishes that legislation against forced eviction is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it.

the causes of homelessness, the Rapporteur elaborated in great detail on the relationship that exists between access to land and the right to adequate housing. Although the Rapporteur points out that the causes of homelessness affecting millions of individuals are diverse and multifaceted, he identifies lack of land as one of the main causes of homelessness, besides the varying degrees of land tenure insecurity, of restricted access to poor quality and marginal land, and the inadequate and insecure living and housing conditions. He also adds that inequality of land ownership both in urban and rural areas is an aggravating and central factor preventing the problem of homelessness from being solved. (E/CN.4/2005/48, paragraphs 22, 40, 41).

On the other hand, the Rapporteur warns that the problem of homelessness and landlessness can not be treated separately. Placing much emphasis on the indivisibility of human rights, the Rapporteur stresses that the failure of States to protect rural economy of small-scale producers is one cause of forced rural-urban migration, further exacerbating the already the atrocious urban housing situation. He adds that rapid migration to urban centres is not a product of industrial development occurring in cities, but rather the product of extreme rural poverty due to the historic phenomena of landlessness, land insecurity, and land conversions. (E/CN.4/2005/48, paragraphs 43-44).

GC 7 names women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups who all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. States are obliged then to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved (paragraph 10).

The CESCR admits that some evictions can be justified, for example, in case of such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant, the Committee also indicated that relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted, that all the legal recourses and remedies are available to those affected, and that they are in accordance with general principles of reasonableness and proportionality (paragraphs 11 and 14).

As stipulated in paragraph 13, States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.

Although appropriate procedural protection and due process are essential aspects of all human rights, GC 7 highlights that these are especially pertinent in relation to a matter such as forced evictions, which directly invoke a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid

to persons who are in need of it to seek redress from the courts (paragraph 15).

On the other hand, CESCR emphatically points out that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available (paragraph 16).

4.2.2 Basic principles and guidelines on evictions and displacements caused by development.

With the aim of specifying the human rights implications of the practice of forced evictions and displacements provoked by development policies, the UN Commission on Human Rights convened an expert seminar with a view to developing comprehensive guidelines on the respect of human rights in cases of development-based displacement²⁰. In his 2006 report to the Commission the former Special Rapporteur on the right to adequate housing provides a series of principles and guidelines for human rights on development-based forced evictions and displacements²¹. These guidelines are more comprehensive and more precise than those in GC 7. We shall now highlight the main aspects contained in these guidelines that are new.

After defining the scope and nature of the guidelines (paragraphs 1-10), the guidelines lay down strict criteria according to which eviction in exceptional circumstances, requiring full justification and due process is considered to be carried out in accordance with international human rights law (paragraph 21). It is important to stress that the guidelines consider a series of indications about specific preventive measures that States should take to avoid and/or eliminate underlying causes of forced evictions, such as regulation and intervention of the housing and tenancy markets, when necessary (paragraph 30); undertaking comprehensive and holistic impact assessments prior to the initiation of any project that could result in development-based eviction and displacement, including exploration of alternatives in strategies for such projects (paragraph 32); promoting adequate training in applying international human rights norms for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects (paragraph 34); amongst others.

Next the guidelines provide a detailed list of steps to be taken by States in order to protect human rights before, during and after evictions (paragraphs 37 to

²⁰ Commission on Human Rights. Expert Seminar on the Practice of Forced Evictions. Geneva 11-13 June, 1997, U.N. Doc. E/CN.4/Sub.2/1997/7

²¹ Commission on Human Rights. 2006. The Right to Housing. Report of the Special Rapporteur on the Right to Adequate Housing, Mr. Miloon Kothari. U.N. Doc E/CN.4/2006/41. Addendum

58). With regard to the remedies for forced evictions, the guidelines establish that all individuals threatened with or subject to forced evictions have the right to access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation (paragraphs 59-68).

With respect to monitoring, evaluation and follow-up, the guidelines urge States to actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions that occur within their jurisdiction and territory of effective control (paragraph 69). States should also entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law (paragraph 70).

Finally, the guidelines deal with international obligations related to forced evictions emphasizing that the international community has an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards (paragraph 71). In addition the guidelines urge international organizations to establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies (paragraph 72). Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions within their respective spheres of activity and influence (paragraph 73).

It is important to emphasize that the guidelines apply a resolute general perspective towards the treatment of evicted individuals, protecting in particular the rights of women (paragraphs 7, 15, 26, 29, 33, 34, 38, 39, 47, 50, 53, 54, 57 y 58).

4.2.3 Convention 169 of the ILO and the obligation to respect access to land of indigenous peoples

ILO Convention 169 deals with the rights of indigenous populations, and it could be said articles 13, 14, 15, 16 and 17 of ILO Convention 169 specifically address the obligations to respect access to land and territory of indigenous populations.

Article 13 1.

In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

Article 14 1.

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Article 16 1.

Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands, which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

As one can see, the obligation to respect indigenous populations' access to land and territory contains specific characteristics. The most relevant, without a doubt, is the recognition of the special importance of land for indigenous populations' cultures and spiritual values

and their relationship with the lands and territories and the collective aspects of this relationship.

Besides recognizing the right to property and possession of land and territories that indigenous populations traditionally occupy, ILO Convention 169 establishes in article 17 the duty to respect procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected; to consult the peoples concerned whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

Article 15 of the convention protects the rights of indigenous populations to the natural resources pertaining to their lands. These rights include the right of these peoples to participate in the use, management and conservation of these resources. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities. The aforementioned Declaration on the Rights of Indigenous Peoples affirms in article 26:

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Access to land and international humanitarian law

The Commission on Human Rights, the Committee on Economic, Social and Cultural Rights as well as the Special Rapporteurs for the right to adequate food and adequate housing have, on numerous occasions, addressed the issue of land access in situations of armed conflict and war where the destruction of houses and property, including land and crops, and food shortages are not always an indirect consequence of conflict. On the contrary, housing and land has been turned into strategic targets to attack.

In this respect the VG in guideline 16 on natural and man-made catastrophes states:

16.1 Food should never be used as a means of political and economic pressure.

16.2 States reaffirm the obligations they have assumed under international humanitarian law and, in particular, as parties to the 1949 Geneva Conventions and/or the 1977 Additional Protocols thereto with respect to the humanitarian needs of the civilian population, including their access to food in situations of armed conflict and occupation, inter alia,

Article 54 of the I Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, and article 14 of the II Protocol Additional to the Geneva Conventions and relating to Protection of Victims of Non-International Armed Conflicts, prohibit to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive. Article 55 of the I Protocol enshrines furthermore the protection of the natural environment in warfare against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

Recommendations

Respecting existing access to land and natural resources of rural communities, states could consider the adoption of policies, programs and measures to²²:

- Guarantee distinct individual rights to land and natural resources to women in individual, collective or communal land tenure systems.
- Give priority to demarcate indigenous lands and territories. Measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. States should also respect procedures established by indigenous peoples for the transmission of land rights among members of these peoples; and consult the peoples concerned whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
- Ensure that all persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law²³.
- Ensure that evictions only occur in exceptional circumstances and with full justification. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law²⁴.
- Prohibit the execution of evictions that are not in conformity with their international human rights obligations and apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner not fully consistent with applicable law and international human rights standards²⁵.
- Ensure that comprehensive and holistic impact assessments are carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm and must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society²⁶.
- Ensure that individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body
- Involve in urban or rural planning and development processes all those likely to be affected and include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate²⁷.
- Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary²⁸.

22 The following recommendations are taken from the Basic Principles and Guidelines on development-based evictions and displacements, Commission on Human Rights. Op. Cit. We shall cite the corresponding paragraphs; Guidelines on Evictions, paragraph X.

23 Guidelines on evictions, paragraph 17, 59

24 Guidelines on evictions, paragraph 21

25 Guidelines on evictions, paragraph 22

26 Guidelines on evictions, paragraph 32, 33.

27 Guidelines on evictions, paragraph 37, 38

28 Guidelines on evictions, paragraph 41

- Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated²⁹.
- Guarantee that the procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action. Neutral observers, including regional and international observers, should be allowed³⁰
- Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use³¹.
- The State should provide just compensation and sufficient alternative accommodation, or restitution when feasible, and must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions³².

²⁹ Guidelines on evictions, paragraph 42.

³⁰ Guidelines on evictions, paragraph 45,46.

³¹ Guidelines on evictions, paragraph 47, 48, 50.

³² Guidelines on evictions, paragraph 43, 52.

- States should ensure that a comprehensive resettlement policy in the event of eviction consistent with human rights principles.³³

4.3 OBLIGATION TO PROTECT ACCESS TO LAND

The public powers are obligated to protect access to land from attack or any infringement of the right to land on behalf of third parties such as landowners, companies, male relatives of women, and other private individuals and agents.

The VG refers to the power of protecting access to land in the following paragraphs:

8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forest, fisheries and livestock without discrimination.

8.3 States should pay particular attention to the specific access related problems of women and of vulnerable, marginalized and traditionally disadvantaged groups, including all persons affected by HIV/AIDS. States should take measures to protect all people affected by HIV/AIDS from losing their access to resources and assets.

8.10 States should take measures to promote and protect the security of land tenure especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the complete and equal right to own land and other property, including the right to inherit land and other property.

4.3.1 Right to Housing and obligation to protect access to land

In the previous section we dealt with the aspects of the right to housing and the security of tenure related to the obligation to protect access to land. Now we will deal with the aspects of the right to housing and the security of tenure relative to the obligation to protect access to land.

Paragraph 8 of the GC (General Comments) 4 specifies that the legal security of tenure constitutes one of the basic criteria to determine when a certain form of housing can be considered "adequate housing" in a determined context with regard to the ICESCR. The tenure can take on a variety of forms, including rental (public and private), urban and rural cooperatives, leasing, sharecropping, occupation of land or property, communal and collective properties, emergency housing and informal settlements, including the occupation of public lands or private lands and properties. Paragraph 8a definitively says: "Notwithstanding the type of tenure, all persons should possess a degree of security of

³³ Guidelines on evictions, paragraph 55-58

tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and group.”

The security of the tenure must provide certain immunity and protection of its fulfillment against arbitrary alterations from the State or the market. It should also protect against, for example, unavoidable harassment, evacuations, arbitrary expropriations and transfers, sudden or excessive increase in the rents due to speculation, or in the case of the women, against being forced to leave the house due to domestic violence, etc.³⁴

4.3.2 Convention 169 of the ILO and the obligation to protect access to land of indigenous peoples

Some aspects of the obligation to protect access to land and the territory of indigenous people are explicitly recognized in Article 14, 17 and 18 of Convention 169 of the ILO:

Article 14.2.

Governments shall take necessary steps to identify the lands, which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

Article 17.3.

Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18.

Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offenses.

The non-demarcation of lands and indigenous territories, the lack of enforcement of laws that protect lands and indigenous territories, the division of indigenous lands and their distribution to families or individuals, the programs that increase landholdings such as the guarantee of loans, and the lack of protection of the integrity of the environment of the indigenous lands and territories have been currently identified as some of the main problems in protecting indigenous lands and territories.³⁵

34 Cf. Pisarello, Gerardo / Observatorio DESC. 2003. Vivienda para todos: un derecho en (de)construcción. El derecho a una vivienda digna y adecuada como derecho exigible. Icaria editorial. Barcelona. P. 100.

35 Cf. Human Rights Commission. 2000. The indigenous populations and their relation to the land. Final Working Document prepared by Special Rapporteur, Ms. Erica-Irene A. Daes. U.N. Doc E/CN.4/Sub.2/2000/25.

Recommendations

Besides the recommendations to avoid the forced evictions mentioned in the previous section, the States could consider adoption of the following measures, among others, in order to protect the access and the important goods for subsistence of the rural population such as land, water, seeds, forests, fishing, and the attack of livestock by third parties:

- Protection granted to small scale farmers, indigenous people against landgrabbers and theft of land and natural resources by more economically and politically powerful third parties.
- Apply appropriate legal sanctions against unauthorized intrusion into indigenous lands and all similar unauthorized use of the land by anyone other than the indigenous people.
- Prohibit the participation of third parties in the forced evictions and displacements. Civil or penal punishment of the people or entities responsible for the forced evictions that do not conform with the law and standards of international human rights as recommended in paragraph 9 de la VG 7 and paragraph 22 of the Basic Principles and Guidelines on Development-Based Evictions and Displacement.
- Protect the small property, the family property, the indigenous social and collective property from possible embargos by third parties and protection against private moneylenders.
- Prevent the discrimination to access to land by third parties, for example, in the sale, leasing, or allocation of land to certain ethnic groups, castes, women and youth.
- Prevent sharecropping and leasing contracts that exploit workers, for example, regulating the contracts, registering them, guaranteeing favorable conditions to workers in the distribution, sufficient periods of time, and the possibility of inheriting the contracts, etc.
- Protecting the smallholders against the large-scale renters so that they do not abuse their power and so that the interests of the powerful are not represented above all in the contracts.
- Protect the smallholders from the large-scale renters and ensure that they use sustainable practices with the land and natural resources and do not leave the land devastated after the contract ends.
- Protect the neighbors of big mining, industrial and agro-exporting projects, in order to guarantee access to water to the least powerful farmers and so that the ecosystem is not destroyed in a way that affects these neighbors.
- Protect women against abuses by relatives or members of a cooperative that deny them access to land and productive resources.

- Avoid and/or eliminate the underlying causes of the forced evictions committed by third parties related, for example, with the policies that affect land use (agrarian and agricultural policies, energy and road infrastructure, tourism, extractive industries, forestry, water and genetic resources, environmental, commercial and urban and rural development resources) which benefit, above all, powerful economic actors and promote the shift in land use for lucrative activities which gravely endangers the land tenure of the most marginalized groups. It is imperative to ensure the coherence of all policies that affect land use in a manner that strengthens the land tenure of the poorest, rural communities and strengthens the control of land and natural resources by these groups.
- Guarantee that the policies of land administration (tax list, registry, demarcation, title) adhere to the Basic Principles and Guidelines of Evictions and Development-Based Displacements and contribute to better security of the land tenure, especially for women and poor, rural communities. Clauses like inalienability, non negative prescription and non forfeitable of the indigenous lands, as well as the clauses that protect the security of the tenure of the sharecroppers and small leaseholders of land should be strengthened. The possible abolition of these clauses must be proven justified and would have to demonstrate that the tenure of the land of these groups is not put at risk. Privatization policies of communal and collective forms of land tenure should be discarded in the case of indigenous people and the application of these policies in other cases should be submitted to rigorous prior analysis regarding their potential impact, especially on women. The informed consent of the affected groups should also be undertaken.

4.4 OBLIGATION TO FULFILL ACCESS TO LAND

According to GC 12, the obligation to fulfill includes two aspects: On one hand, the obligation to *facilitate* which means that the State must try to initiate activities with the purpose of strengthening the resources and the means of the population so that they have improved access to land and productive resources. When an individual or group is incapable, for reasons beyond their control, of enjoying the right to adequate food by the means at their disposal, the State has the obligation to fulfill that right directly (paragraph 15).

The obligation to fulfill the access to land of indigenous peoples and of women is contained in Article 19 of Convention 169 of the ILO:

Article 19- National agrarian programs shall secure to the peoples concerned, treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) The provision of the means required to promote the development of the lands, which these peoples already possess.

And in Article 14.2 g, h of CEDAW:

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on basis of the equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

As mentioned in the introduction, the Hunger Task Force for the UN Millennium Project has shown that 50% of people that suffer from hunger in the World are smallholder farmers that only have marginal and insecure access to land and productive resources. On the other hand, rural workers without land constitute 22% of hungry people. Rural hunger and poverty are essentially related to the marginalization of the rural communities and families and this lack of secure access to productive resources. The Hunger Task Forces uses the term “marginalization” to refer to the extremely precarious situation that these families face, which is multifaceted: marginalization because they live in remote or ecologically fragile areas, without markets or access roads; marginalization because they have neither access to credit nor services of rural extension, and political marginalization³⁶.

According to a recent study about the subject³⁷, the primary factors responsible for this multifaceted marginalization are national factors interacting with international factors. First, we have the abandonment of the countryside and the lack of making the countryside a priority with regards to public investment by

³⁶ Cf. UNDP. Op. Cit. P. 15

³⁷ Cf. Windfuhr, Michael / Jonsén, Jennie. 2005. Food Sovereignty. Towards Democracy in Localized Food Systems. ITDG Edition, Rugby. About the same subject, see also Rosset, Peter. 2005. Agrarian Reform and Food Sovereignty. Inseparable Parts of an Alternative Framework. Paper prepared for the Civil Society Conference on „Land, Poverty, Social Justice and Development: Social Movements Perspectives,“ 9-10 January 2006, Institute of Social Studies (ISS), The Hague, The Netherlands.

national governments and the multilateral agencies of development. Secondly, the restrictions imposed on the States in the course of structural adjustment programs that were undertaken to strengthen agricultural exports, liberalize imports, and dismantle and privatize public services of rural extension and the support of production, including loans, supplies, technical consultation, and abolishing guarantees of prices and purchasing of harvests, plans for food storage, etc.³⁸ These restrictions, particularly those related to the liberalization of the agricultural commerce, became binding later within the framework of the Agreement on Agriculture of the World Trade Organization (WTO). Thirdly, resulting from the Agreement on Agriculture are distortions of the market that force small-scale producers from the South to compete with large-scale, subsidized exporters from the industrialized countries. Fourthly, as mentioned, industrialization of agriculture has consolidated into a model of production which monopolizes fertile lands and water, does not support sustainability of natural resources and has displaced small farmers to poor quality, and fragile lands. Finally, the study mentions the increasing corporate control over the world food system, in which vertical and horizontal processes of integration are happening on both the input and output sides of the food chain production that allows a few companies to exercise quasi-monopolistic control over certain markets. The study concludes: "Without addressing the structural causes of poverty, hunger and malnutrition, a fruitful and thorough discussion about how to reduce poverty cannot be undertaken. In meeting these challenges it will be necessary to address these causes, most of which are directly related to a system where local development, social and environmental goals- particularly with respect to marginalized smallholder farmers, pastoralists and fisher folk- are not adequately taken into consideration. For the majority of the rural poor, changes are needed to end the failure of national and international policies to increase the ability of countries and communities to define their own agricultural, pastoral, fisheries and food policies which are ecologically, socially, economically and culturally appropriate to their circumstances. These are the key areas for policy reform"³⁹.

38 Exhaustive studies about the impacts of structural adjustment programs conclude that these programs have exacerbated inequality in rural areas: The support of agricultural exports, import liberalization, the absence of the State in the lending of extension services, and support of production has benefited the large-scale producers, while at the same time excluding and/or depriving the most marginalized groups to access to productive resources like land, loans, etc. The income of the small-scale agriculturalists has not improved, and rather has worsened because at the same time the overhead and production costs have dramatically increased. In the same manner, the physical and economic access to food has notoriously worsened: the capacity to produce one's own food has decayed because of the high costs of production. The areas typically reserved for growing grains have had to yield to the cultivation of crops for export, thereby affecting the local food supply and increasing dependency on imports. The reduction of revenue and the increase of food prices demonstrates that, in these conditions, the access to food via the market channels is a pure illusion. The effects of these policies has been particularly negative for the agriculturalists as these policies have exacerbated the traditional discrimination against women regarding the access and control over productive resources. Finally, the favoring of monocultures for export, the intense use of chemicals and the concentration of land tenure caused by these policies has continued along with the process of the degradation of the environment and biodiversity. See The Structural Adjustment Participatory Review International Network (SAPRIN) 2002: The Policy Roots of Economic Crisis and Poverty: A Multi-Country Participatory Assessment of Structural Adjustment, in <http://www.saprin.org>.

39 Ibid. P. 12

In order to overcome the multifaceted marginalization that the poor, rural communities have been sentenced to, the VG contains diverse strategies and political guidelines to make funds available or to directly provide access to land, in certain circumstances, to those who have no land or insufficient access to land. These strategies and guidelines are also aimed at facilitating and strengthening the access to and use of land and productive resources by the most underprivileged groups. In order to fulfill the right to food and other economic, social and cultural rights of rural communities, it is very important to emphasize that it is not just enough to guarantee access to land, but also necessary to guarantee access to other productive resources and basic infrastructure, and it is essential to guarantee all of the necessary measures to ensure that communities can work the land in a sustainable manner and live a life of dignity with their work. The following are included among the strategies and policies that are recommended in the VG:

2.5 States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use, and, as appropriate, land-reform policies, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas

2.6 Where poverty and hunger are predominantly rural, States should focus on sustainable agricultural and rural development through measures to improve access to land, water, appropriate and affordable technologies, productive and financial resources, enhance the productivity of poor rural communities, promote the participation of the poor in economic policy decisions, share the benefits of productivity gains, conserve and protect natural resources, and invest in rural infrastructure, education and research. In particular, States should adopt policies that create conditions that encourage stable employment, especially in rural areas, including off-farm jobs.

3.6 In their poverty reduction strategies, States should also give priority to providing basic services for the poorest, and investing in human resources by ensuring access to primary education for all, basic health care, capacity building in good practices, clean drinking-water, adequate sanitation and justice and by supporting programmes in basic literacy, numeracy and good hygiene practices.

3.7 States are encouraged, inter alia and in a sustainable manner, to increase productivity and to revitalize the agriculture sector including livestock, forestry and fisheries through special policies and strategies targeted at small-scale and traditional fishers and farmers in rural areas, and the creation of enabling conditions for private sector participation, with emphasis on human capacity development and the removal of constraints to agricultural production, marketing and distribution.

4.5 States should, as appropriate, promote the development of small-scale local and regional markets and border trade to reduce poverty and increase food security, particularly in poor rural and urban areas.

8.4 States should promote agricultural research and development, in particular to promote basic food production with its positive effects on basic incomes and its benefits to small and women farmers, as well as poor consumers.

8.6 States should promote women's full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.

8.7 States should design and implement programmes that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations.

Guideline 8b: Land

8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

Guideline 8e: Sustainability

8.13 States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry.

Guideline 8f: Services

8.14 States should create an enabling environment and strategies to facilitate and support the development of private and public sector initiatives to promote appropriate tools, technologies and mechanization in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers, in particular poor farmers, and to address local constraints such as shortage of land, water and farm power.

Recommendations

Based on historical experience of agrarian reforms, the former Special Rapporteur for the Right to Adequate Food, enumerated a series of essential elements for the success of agrarian reforms, such as the radical reduction of inequalities in land distribution, the redistribution of land in not only quantity, but in adequate quality, secure property titles, accurately maintained land records, sufficient access to other inputs like credit, water, transportation, extension services and infrastructure, efficient and fair land administration bureaucracies that are not corrupt and adequately financed and the overcoming of political obstacles to reform⁴⁰.

Agrarian reform policies can thus apply redistributive measures, such as the introduction of a maximum limit to landownership or leasing, the expropriation of lands that do not fulfill a social function in strict accordance with the rule of law, etc. Measures of land distribution based on market mechanisms of voluntary buying and selling of lands are rather limiting and ambiguous in their impact and cannot replace measures that are genuinely redistributive. The costs of getting access to land must be bearable for the families and communities without land or with little land. Regarding this measure, it is recommended that the assignment of land be done without demand of payment, or at least with the subsidization of necessary payments and credits. Special measures to guarantee access to land to women and other groups that are discriminated against according to ethnicity, race or religion should be guaranteed. Measures of reparation or of positive discrimination with these groups, because of their historic discrimination regarding access to land, should also be contemplated. The infrastructure (water, irrigation, health, education, transportation, energy) of the distributed or redistributed land, as well as the extension services and credit for the production are fundamental elements of any agrarian reform program focused on human rights, and should be guaranteed. The distribution and/or redistribution of lands should preferably be made within the agricultural frontier and measures concerning the restoration of lands that have ecologically deteriorated should be contemplated. The policies of resource and land redistribution should not undermine, but rather strengthen, the rights of indigenous people, pastoral nomads, afro-descendants and other rural communities to their ancestral territories. The policies should rely on mechanisms of negotiation and dialogue among different communities in order to resolve conflicts about land and natural resources.

40 UN General Assembly. The right to food. Report prepared by Mr. Jean Ziegler, Special Rapporteur of the Human Rights Committee, in compliance with Resolution 56/155 of the General Assembly, February 15th, 2002. U.N. Doc. A/57/356, paragraph 25.

To obtain a general overview of the current discussion about agrarian reform policies, see Baranyi, Stephen / Deere, Carmen Diana / Morales, Manuel. 2004. *Tierra y desarrollo en América Latina. Perspectivas para la investigación sobre políticas*. Instituto Norte-Sur, Centro Internacional de Investigaciones para el Desarrollo, Ottawa, Canada. Akram Lodhi, A. Haroon / Borras, Saturnino / Kay, Cristóbal. 2007. *Land, Poverty and Livelihoods in an Era of Globalization*. London/ New York, Routledge. Rosset, Peter/ Patel, Rajeev / Courville, Michael (eds). 2006. *Promised Land: Competing Visions of Agrarian Reform*. Oakland: Food First Books. See also the documents from the World Forum on Agrarian Reform that took place in Valencia, Spain in 2004 <http://www.fmra.org>.

4.4.1 Application at the national level

The VG recommend that the States should consider adopting a national human-rights based strategy for the progressive realization of the right to adequate food in the context of national food security as part of an overarching national development strategy (guideline 3.1). The VG recommend that the national strategies could address access to resources and markets (guideline 3.3).

The former Special Rapporteur for the Right to Adequate Food has indicated that agrarian reform policies should be a key component the national strategies for food security, strategies in which access to land must be fundamental⁴¹.

The issues of access to land and agrarian reform should then form part of the national strategy for the progressive fulfillment of adequate food. As emphasized in the VG and the GC 12 in general terms, but which can also be applied specifically to access to land, the elaboration of these national strategies would have to begin with a comprehensive evaluation of the legislation, the policies and national and administrative measures in place relative to access to land and land tenures, the programs being executed, the systematic identification of existing limitations in these programs and the available resources. The States would have to formulate necessary measures to resolve any shortcomings and propose changes, as well as measures to apply and evaluate these changes (guideline 3.2). Particular attention should be paid to revise or create legislation against forced evictions, which should include measures that offer as much security of tenure as possible to occupants of the land, adjusted to the ICESCR. The circumstances in which evictions can be carried out should be strictly regulated.

These strategies, among others, could include objectives, targets, benchmarks, time frames, and actions to formulate policies, identify and mobilize resources, define institutional mechanisms, allocate responsibilities, coordinate the activities of different actors, and provide monitoring mechanisms with respect to the access to land. These strategies should, in particular, address the needs of the vulnerable and disadvantaged groups, as well as special situations such as natural disasters and emergencies. (guideline 3.3).

These strategies should also be transparent and inclusive, and be prepared and implemented in a participatory and accountable manner to civil society organizations, in particular agricultural associations that practice small-scale and traditional farming, women and youth associations; and with the obligation of promoting their participation (guidelines 3.8 and 3.9).

Also relevant for the national strategy are the provisions of the VG where respect is paid to the institutions involved in the fulfillment of the right to food. Guideline 5.1 recommends that States should assess the mandate and performance of relevant public institutions and, where necessary, establish, reform or improve their organization and structure to contribute to the progressive realization of the right to adequate food in the context of national food security. Guideline 5.2 calls on States to ensure the coordinated efforts of relevant ministries, agencies and relevant public offices, establishing, for example, national, intersectoral coordination mechanisms to ensure the concerted implementation, monitoring and evaluation of policies, plans and programs.

The national strategies will have to define goals and concrete timeframes with respect to central aspects of land access such as the security of land tenure and protection against forced evictions, the demarcation of lands and indigenous territories, to facilitate or provide access to land for the most marginalized groups, and guarantee adequate infrastructure for the small-scale and medium-scale landholders. Only with clear goals and timeframes, with mechanisms of policy formulation and transparent and participative decision-making, with allocation of resources and responsibilities, and with strong mechanisms of citizen monitoring is it possible to hold governments accountable for the fulfillment of the legal obligations related to access to land.

In order to effectively realize the strategies, taking into account that institutions of agrarian reform, land tenure, farming and rural development have sufficient resources and sufficient highly qualified personnel is a necessary condition. This guideline is especially important given the dramatic decrease in public investment at the national level and the decrease in international aid given to agricultural and rural development from the 1980s on⁴². In some countries a considerable decrease of the capacity of agrarian reform institutions has been observed through the slashing of mandates, functions, personnel and resources.⁴³ In this sense, guideline 12.3 is extremely important because it calls on States to protect basic social programs, such as agrarian reform and land access, from budget cuts; and the guideline 12.4 which urges States to utilize internal savings, external resources and new financial sources for these types of programs.

On the other hand, the institutional and intersectoral coordination is also a central aspect to strengthen the access and control over land and productive resources by the poorest, rural sectors. On several occasions, while the ministries or the agrarian reform institutions deal with granting access to land to poor families, other ministries and institutions dealing with agricultural policies or with the decisions related to investments in rural development such as mining, dams and electrical

41 UN General Assembly. The right to food. Report prepared by Mr. Jean Ziegler, Special Rapporteur of the Human Rights Committee, in compliance with Resolution 56/155 of the General Assembly, February 15th, 2002. U.N. Doc. A/57/356, paragraph 22.

42 Cf. FAO. 2005. The state of food and agriculture. Rome.

43 For further illustration, see the case of The Colombian Institute for Rural Development (INCODER) in Colombia. See Revista Semillas. Tierra y Territorio. N°30/31, December 2006, Bogotá.

infrastructure, road infrastructure, tourism, water policy, etc. endanger or destroy the access of the most marginalized communities. In order to guarantee the access to and control over of the land of these communities, it is fundamental to ensure the coherence of all policies that affect land use and the coordination of all ministries and institutions with the goal of reaching this aim.

4.5 LEGAL FRAMEWORK AND RESOURCES

With respect to the legal framework, the VG invite States to consider, in accordance with their domestic legal and policy frameworks, whether to include provisions in their domestic law, possibly including constitutional or legislative revisions, that facilitate the progressive realization of the right to adequate food in the context of national food security (guideline 7.1). Administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies accessible, in particular, to members of vulnerable groups may be envisaged (guideline 7.2).

GC 12 recommends that, “States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations” (paragraph 29).

Every person or community that has been victim of a violation of human rights related to land access should be able to rely on legal resources or another effective measure at both national and international level. All victims of these violations should have the right to adequate reparations, which could consist of restitution, indemnity, or guarantee that the offense will not be repeated.

As it stipulates in GC 7, before any forced eviction can be carried out, particularly those that affect large groups of people, the States parties should attempt to consult with all interested parties about all possibilities that allow them to avoid, or at least minimize, the necessity to resort to force. Additionally, the States parties should establish resources or legal procedures for those affected by the eviction order and should also safeguard that all affected people have the right to due indemnification of their personal goods or goods from which they could have been deprived.

Although due process, and all that which due process implies, are essential aspects of all human rights, the GC 7 highlights that it has special relevance regarding the issue of forced evictions which maintains direct relation with many of the rights recognized in the international covenants on human rights. The CESCR deems that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

The incorporation of the international instruments in which the right to land and territory of indigenous peoples is recognized into the domestic legal ordering, particularly Convention 169 of the ILO, can considerably extend the reach and effectiveness of the corrective measures, which is why it must always be encouraged. The incorporation allows that the courts judge the cases of violations to the human rights obligations related to access to land, at least the fundamental obligations, directly invoking the ICESCR, Convention 169 of the ILO and other treaties. Special attention should be paid to putting in place adequate procedures within the national legal system to resolve the vindications of land formulated by indigenous peoples.⁴⁴

The States parties should encourage the judges, arbiters and other legal consultants to contribute to performing these functions and that they pay serious attention to the violations of the human rights obligations related to access to land.

4.6 MONITORING

Guideline 17 deals with issues of monitoring, indicators and benchmarks and invites States to establish mechanisms to monitor and evaluate the application of these guidelines towards the progressive realization of the right to adequate food in the context of national food security, in accordance with their capacity and by building on existing information systems and addressing information gaps (guideline 17.1).

⁴⁴ For an analysis about the main problems related to the recognition of indigenous rights to land and territory, see the Human Rights Commission. 2000. Indigenous populations and their relation to the land. Final Working Paper Document prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes. U.N. Doc E/CN.4/Sub.2/2000/25.

As expounded earlier, independent monitoring mechanisms are essential to integrate into a comprehensive human rights approach to land. With respect to this, the VG recommend mechanisms such as the evaluation of the impact of policies and national programs on the realization of the right to food (guideline 17.2); the development of a set of processes, impact and outcome indicators, relying on indicators already in use, so as to assess the implementation of the progressive realization of the right to adequate food; and the establishment of appropriate benchmarks to be achieved in the short, medium and long-term (guideline 17.3). These indicators could enable States to implement legal, policy and administrative measures, detect discriminatory practices and outcomes, and ascertain the extent of political and social participation in the process of realizing that right (guideline 17.4).

In order to evaluate the progressive realization of the right to food with respect to access to land and productive resources, four types of situations could be identified: regression, stagnation, insufficient progress, and sufficient progress. To determine which of these situations a State incurs in a determined period and regarding a determined group (indigenous, farmers, women, youth, pastoralists, nomadic groups, other ethnic and rural groups) or in general, the following catalogue of questions could prove useful in evaluating the progressive realization of the access to land⁴⁵:

- Total number of people/families without land.
- Total number of people/families with insufficient land.
- Total number of people/families renting land.
- Total number of people/families with insecure land tenure.
- Total number of persons submitted to forced labor/slavery in rural areas
- Percentage of the group in question that suffers from discrimination regarding adequate access to land.
- Percentage of the group in question without land, with insufficient land, renting land, and with insecure land tenure.
- Public spending on access to land or agrarian reform programs as part of the general budget.
- Public spending on policies to secure land tenure (demarcation of indigenous lands, tax list, registry, agrarian jurisdiction, etc.)
- Public spending to strengthen the small-scale agriculture and indigenous productive projects (extension services, credits, commercialization, guarantee of prices, subsidies, etc.) related to the general budget and with relation to the total farming and forestry budget.
- Availability of resources and operative capacity of the institutes of agrarian reform and land tenure.
- Amount of public lands.
- Amount of public lands grabbed by large landowners and companies.
- Amount of unproductive lands or those that serve no social function.
- Degree of concentration of land tenure.
- The extent of the theft of natural resources (forests, water, genetic resources, etc.): number of families/communities affected, quantification of the affected resources.
- Degree of access to water for private consumption and irrigation, and for drainage and sewage systems.
- Percentage of the group in question with problems to access to water and sanitation services.
- Degree of access to public services such as health, education, transportation, channels of communication, and energy.
- Percentage of the group in question with problems in accessing these public services.
- Degree of access to extension services (agricultural inputs, loans, marketing, technical assistance).
- Percentage of the group in question with problems in accessing these services.
- Percentage of people/families that live in marginal lands, either fragile or ecologically unsound.
- Number of land conflicts.
- Number of forced evictions, number of people affected.
- Number of people actually concerned with legal protection against the arbitrary expulsion or any other type of eviction.
- Laws related to security of the tenure, security of occupation and protection against eviction. Laws that prohibit all types of eviction.
- Measures adopted, among other circumstances, during programs of territorial reorganization, rural development projects, tourist and mining investments, construction of dams and road infrastructure, etc., that guarantee protection against expulsion and provide for new housing and productive lands, on basis of a mutual agreement, on the part of any person that lives on or near the places in question.
- Availability of resources and operational capacity of agrarian courts, agrarian judicial offices and other similar judicial and semi-judicial agencies in charge or dealing with land conflicts.

⁴⁵ Cf. Pisarello, Op. Cit. P. 110,111. The catalogue that we next presented was developed from the catalogue that Pisarello proposes to monitor the progressive fulfillment of the right to adequate housing.

- Number of people threatened, harassed, arbitrarily detained, jailed, or assassinated in the struggle to defend their right to land.
- Degree of impunity of crimes committed against defenders of the right to land.
- Degree of the fulfillment of the right to information, consultation and participation in access to land and agrarian reform programs, and in agricultural programs and programs that affect land use.
- Degree of fulfillment of the right to legal protection and due process in situations of forced evictions and displacement.

Degree of recognition of territorial rights of indigenous people:

- Degree of recognition of the particular importance land and territories possess with respect to the spiritual and cultural values of the indigenous people, and a degree of recognition of the collective aspects of this relationship.
- Degree of recognition of the property rights and rights of possession of land and indigenous territories.
- Existence of legal mechanisms to solve land claims made by indigenous people.
- Degree of protection of land and natural resources of the indigenous people against attacks by third parties.
- Existence of agrarian reform programs, recovery of territories, stabilization and expansion of indigenous territories.

Guideline 18 recommends that States include the right to adequate food in the mandate of the national institutions of human rights defenders of the people (ombudsman). In this sense, it is very important that these institutions keep in mind that the access to land is part of the right to food and adequate standard of living and of indigenous rights, and fulfillment should imply monitoring with respect to these rights.

4.7 INTERNATIONAL OBLIGATIONS

Section 3 of the VG concerns itself with international measures, actions and agreements. Paragraph 2 of this section highlights that national development efforts should be supported by an enabling international environment, the international community and the UN system, including the FAO, as well as other relevant agencies and bodies according to their mandates. These organizations are urged to take actions in supporting national development efforts for the progressive realization of the right to adequate food in the context of national food security.

Paragraph 1 of Article 2, paragraph 1 of Article 11 and Article 23 of the ICESCR imposes on the States parties the obligation to recognize the fundamental role of international cooperation and assistance, and

of adopting joint measures, or in some cases individual measures, to achieve complete realization of economic, social and cultural rights and in particular, the right to an adequate standard of living. This obligation implies the recognition of the role of international assistance and cooperation in order to fulfill those rights intimately linked with land access. In fact, within the framework of the policies of structural adjustment and of policies to combat poverty, international cooperation has been very active and influential in the design and support of the implementation of certain land policies around the world in the last decades⁴⁶.

Starting from the international obligations of the States parties with respect to the right to food contained in GC 12, the General Comment 15 about the right to water, specifies even further the character of these obligations. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State parties' jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction (paragraph 31). Secondly, steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries (paragraph 33). Thirdly, the States parties should facilitate realization of the right to water in other countries, for example through provision of available resources (paragraph 34). States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water (paragraph 35). States parties should ensure that their actions as members of international organizations take into account the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures. (paragraph 36).

According to the former Special Rapporteur on the Right to Food, even though the primary responsibility in guaranteeing human rights ultimately rests on the national

⁴⁶ See World Bank. 2003. Land Policy Research Report- Land Policies for Growth and Poverty Reduction. Washington. European Union. 2004. EU Land Policy Guidelines. Guidelines for support to land policy design and land policy reform process in developing countries. Approved by the EU Minister Council in November 2004. Gesellschaft für Technische Zusammenarbeit (GTZ) 1998. Land Tenure in Development Cooperation. Wiesbaden.

government, in the current climate of globalization and of strong international interdependence, it is of utmost importance that all countries ensure that their policies will not have repercussions that violate the human rights in other countries. In order to achieve complete fulfillment of obligations with relation to the right to food, the States should respect, protect and promote the fulfillment of the right to food of people that live in other territories⁴⁷.

These obligations could also be applied with respect to access to land. On basis of these obligations, we present next a way that these obligations could be handled.

In order to fulfill their international obligations related to land access, the States Parties must respect the fulfillment of rights related to access to land, such as the right to food and the right to adequate housing, in other countries. The international cooperation demands that the States abstain from any measure that prevents, directly or indirectly, the exercise of these rights in other countries. The activities undertaken within the jurisdiction of a State Party should not prevail over the ability of another State to ensure that those in their jurisdiction can exercise their rights.

Examples where the obligation to respect is infringed would be cases in which State's banks finance the construction of a pipeline, or a dam, mining or tourist project in another country, leading to forced evictions of the local communities and destruction of the resources they need to survive. Another example of a violation would be when a State signs a bilateral investment treaty with another State, which contains clauses that impede or limit the ability of one of the parties to apply legislation that guarantees access to land to the population- for example, if this treaty were to prohibit the expropriation of lands to foreign citizens that do not fulfill their predicted social function according to the law is prohibited and lands were not redistributed to those that have no land⁴⁸.

The States Parties must adopt measures to prevent their own citizens and companies from violating the economic and social rights of the people and communities of other countries. Failures to fulfill this obligation occur when land companies, and mining, tourism or construction and infrastructure companies limit the access to land of rural communities. Since the human rights obligations related to access to land include commitments to environmental sustainability, the obligation to protect these human rights should also include the protection of the communities' lands from overexploitation and unsustainable use by leasing companies and investors.⁴⁹

Based on the availability of resources, the States Parties must facilitate the fulfillment of access to land in other countries, for example, facilitating financial and technical assistance and lending a necessary help when asked. The international assistance should be lent in a manner compatible with the Covenant and other human rights norms and should be culturally appropriate and sustainable.

As already mentioned, the international cooperation in land policies has been an important field of cooperation in the last few years. This international assistance, while in some cases has positively contributed to the fulfillment of rights related to access to land, in other cases has had negative impacts in the enjoyment of these rights. Meanwhile, the lending of this assistance presents serious problems, proving the assistance in many cases incompatible with the ICESCR. Next, we will present the main institutional and structural problems that we have detected during several years of monitoring the international cooperation within land policies. On basis of these observations and dispositions of the ICESCR, we will identify some criterion that must be kept in mind in order for the international assistance to be lent in a manner compatible with the ICESCR.

A large part of the bilateral agreements regarding cooperation in land policies is carried out with little transparency, limiting access to documents related to negotiations, and excluding the groups of peasants, indigenous populations and rural women affected by the policies from negotiations and decision-making. This leads, in some cases, to lending States imposing land policies and programs that favor certain groups, but that are in flagrant violation of the rights of the local communities. In this sense, the obligation to inform those affected about measures to be adopted and those in question of being adopted, and the right to participate in the design and implementation of land policies, must be applied not only to the State in whose jurisdiction the affected people live, but also in the States lending the international assistance.

On the other hand, the international assistance rarely relies on monitoring and surrendering of accounts. To successfully obtain information about the bilateral cooperation projects related to land policies and rural development, and their financial breadth and impact, has proven to be quite an arduous task. In many cases, governments do not want to make this information public; in others, this information is simply not elaborated and, therefore, is not accessible. In order to be able to monitor the progressive fulfillment of rights related to access to land which involves international assistance, it is imperative that the lending State reveal all information relevant for the cooperation within land policies, that this information demonstrates clear and verifiable goals of the planned lending, and that independent mechanisms of monitoring and complaint are created that allow the affected groups to make it known when their rights have been violated.

47 See Human Rights Commission. 2006. The right to food. Report of the Special Rapporteur on the Right to Food, Jean Ziegler. Doc. ONU: E/CN.4/2006/44, paragraphs 28-38.

48 See Bread for the World / FIAN / EED. 2005. Globalizing economic and social human rights by strengthening extraterritorial state obligations. Seven Case Studies: Effects of the German policies on human rights in the south. Stuttgart, Heidelberg, Bonn.

49 Ibid.

The States Parties must ensure that their actions as members of international organizations fully consider their human rights obligations related to access to land. Therefore, the States Parties that are members of international financial institutions, as well as the International Monetary Fund, the World Bank, and the regional development banks, should adopt measures that safeguard that their lending policies, international credit agreements, and other international measures consider these obligations.

The notes we made above with respect to bilateral assistance are also valid for multilateral assistance. Even if institutions like the World Bank grant, in relative terms, better access to information than other financial and governmental institutions, it is still insufficient. Referring to the participation of those affected and of social movements, as well as the national autonomy to define own land and rural development policies and poverty reduction strategies, experiences with the conditionalities imposed by the World Bank have been negative. The World Bank has prescribed its policies and strategies to numerous countries, has given clear instructions to governments about the measures that should be taken with respect to receiving loans; and has excluded from this process rural social movements and other civil society organizations working on behalf of the rights of the most disadvantaged⁵⁰.

Privatization and deregulation policies have been particularly problematic for land tenure, so too have been market-based mechanisms (policies) for access to land because they have resulted in the loss of rural communities' land access and dispossession, in the destruction of productive capacity of small-scale food producers, and not in the redistribution of land to the landless, causing, in some cases, a further reconcentration of land tenure⁵¹.

To sum up, international cooperation in land and rural development policies should be guided by basic human rights principles contained in the right to food, such as:

- Giving priority to rural communities that are extremely marginalized and with most urgent needs (in international cooperation).
- Refraining from destroying existing access to land and productive resources of rural communities. At all costs, refraining from encouraging or supporting forced evictions.

- Adopting policies and acting in a non-discriminatory manner against rural women and ethnic minorities.
- Refraining from encouraging regressive measures effecting the enjoyment of the right to food, such as policies that hinder resource redistribution, that encourage land tenure insecurity or that dismantle institutions supporting peasant, indigenous and small-scale production.
- Guaranteeing the effective participation of groups in question in the design and implementation of land policies and rural development. Guaranteeing access to monitoring mechanisms and independent complaint systems that allow affected groups to assert their rights when they see these rights violated.

50 See FIAN/La Via Campesina. 2004. Comment on World Bank land and rural development policies. Working Document. Global Campaign for Agrarian Reform. Heidelberg, Tegucigalpa.

51 For an analysis of the impacts of these policies, see *ibid.* Borras, Saturnino. 2003. Questioning Market-Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa. *Journal of Agrarian Change*, vol. 3, N° 3, July 2003. Borras, Saturnino / Kay, Cristóbal / Akram Lodhi, A. Haroon. 2005. Property Rights Reforms and State-Society Interaction. *Towards Poverty Eradication and Development: Historical Overview and Alternative Perspectives*. ISS/UNDP Land, Poverty and Public Action Policy Paper No.1. The Hague, The Netherlands. Rosset, Peter/ Patel, Rajeev / Courville, Michael (eds). 2006. *Promised Land: Competing Visions of Agrarian Reform*. Oakland: Food First Books. See also the documentation of the World Forum on Agrarian Reform in Valencia, Spain in 2004 <http://www.fmra.org>.

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