THE RIGHT TO FOOD OF INDIGENOUS PEOPLES IN LATIN AMERICA

The fight of the Sawhoyamaxa in Paraguay and the Guarani-Kaiowá in Brazil for their rights
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## Abbreviations and glossary

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<td>ACP</td>
<td><em>Ação Civil Pública</em>, civil public action, lawsuit for the protection of consumers, the environment and other diffuse or collective interests</td>
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<td>General Comment</td>
<td>Interpretation of the normative content of a human right published by a UN body, in which the rights and the obligations states have to fulfill are identified. It is not legally binding but has authoritative character.</td>
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<td>AWZ</td>
<td>Committee on Economic Cooperation and Development of the German Bundestag</td>
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<tr>
<td>ACHR</td>
<td>American Convention on Human Rights adopted in 1969</td>
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<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights, body monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights by the States parties</td>
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<td>CIDH</td>
<td>Inter-American Court of Human Rights</td>
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<td>CIMI</td>
<td><em>Conselho Indigenista Missionário</em>, Indigenist Missionary Council of the Catholic Church in Brazil</td>
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<tr>
<td>Demarcation</td>
<td>Official recognition of indigenous territories and legal determination of their boundaries. In Brazil, the process can be divided into five stages (identification, declaration, demarcation, homologation, registration).</td>
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<tr>
<td>ESCR</td>
<td>Economic, social and cultural rights</td>
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<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<td>FUNAI</td>
<td><em>Fundação Nacional do Índio</em>, National Indigenous Foundation, Brazilian government body responsible for policies relating to indigenous peoples</td>
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<tr>
<td>FUNASA</td>
<td><em>Fundação Nacional da Saúde</em>, National Health Foundation in Brazil</td>
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<td>Homologation</td>
<td>Fourth stage in the demarcation process of indigenous territories in Brazil</td>
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<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>IBR</td>
<td><em>Instituto de Bienestar Rural</em>, Institute of Rural Welfare, Paraguayan land agency responsible for land tenure, replaced by INDERT in 2003</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights of the United Nations</td>
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<td>ILO</td>
<td>International Labor Organization, specialized agency of the United Nations</td>
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<tr>
<td>INDERT</td>
<td><em>Instituto Nacional de Desarrollo Rural y de la Tierra</em>, Paraguayan Institute of Rural and Land Development, replaced the IBR in 2003</td>
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<td>INDI</td>
<td><em>Instituto Paraguayo del Indígena</em>, Paraguayan Indigenous Institute</td>
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<tr>
<td>Justiciability</td>
<td>Possibility of bringing a case before a court or judge if a right was violated</td>
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<tr>
<td>MP</td>
<td><em>Ministério Público</em>, Brazilian body of independent public prosecutors</td>
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<td>MS</td>
<td>Mato Grosso do Sul, state in south-western Brazil</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<td>Rights of the third generation</td>
<td>Rights which emerged after civil and political rights (first generation) and economic, social and cultural rights (second generation) and include abstract and collective rights, such as the right to development, peace or a clean environment. The division into generations is common, but the term dimension would be more accurate to avoid hierarchization.</td>
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<td>TAC</td>
<td><em>Termo de Ajustamento de Conduta</em>, quasi-judicial agreement in Brazil which allows the <em>Ministério Público</em> to remedy rights violations by public authorities by moving them to commit themselves in a TAC to take measures and adjust their conduct to the legal provisions</td>
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<td>Tekohá</td>
<td><em>Tekohá</em>, term of the Guarani-Kaiowá for the land of their ancestors, where they can preserve their cultural identity and live according to their customs</td>
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<td>UN</td>
<td>United Nations</td>
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Executive Summary

Indigenous peoples in Latin America look back on a long history of exploitation and exclusion. Discrimination against them continues to this day in areas such as access to land, health care, education and political participation. Many communities live in abject poverty and have to fight for their ancestral lands, which the state or companies lay claim on, a situation that is currently being aggravated by the agrofuels boom. The demarcation, the official recognition of indigenous territories and legal delimitation of their boundaries, is making little progress. Since indigenous peoples are not able to feed themselves adequately without their means of subsistence, results are hunger and malnutrition. In countries such as Guatemala, 60 percent of indigenous children are chronically malnourished – a blatant violation of their right to food.

The reason for that is not a lack of availability of food, rather discrimination when it comes to accessing it. Latin America is the region with the highest inequality worldwide. Poverty and malnutrition among indigenous peoples are about twice as high as in the rest of the population. Multiple discrimination aggravates the situation: Indigenous women in rural areas are at a triple disadvantage due to their ethnicity, gender and origin. If indigenous peoples are affected by hunger, this means that states do not meet their obligations to respect, protect and fulfill the right to food of indigenous peoples. The displacement of indigenous peoples, the destruction of their living environment and the failure to demarcate their lands breach these obligations.

The rights of indigenous peoples, especially their collective land rights, are internationally protected by ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples. Their right to food is secured by the International Covenant on Economic, Social and Cultural Rights as well as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. At regional level, this right is enshrined in the Protocol of San Salvador to the American Convention on Human Rights. If their rights are violated, indigenous peoples can appeal to the Inter-American Commission on Human Rights with an individual complaint. The Commission can then forward the case to the Inter-American Court of Human Rights.

Brazil and Paraguay have ratified these international treaties. At national level, they have integrated the rights of indigenous peoples into their constitutions with separate catalogs. Paraguay has enshrined the right to food for children and senior citizens. In Brazil it became a fundamental constitutional right for the whole population in 2010. As far as the protection of indigenous rights in Brazil is concerned, the Office of Public Prosecutors (Ministério Público) plays a decisive role. If rights are violated, it can conclude a Termo de Ajustamento de Conduta (TAC), an agreement with public authorities about the steps to be taken to solve the problem.

Despite legal protection, the right to food of indigenous peoples is often violated. Since 1991, the Sawhoyamaxa in the Paraguayan Chaco have been fighting for their land, which is in the possession of a German citizen. They are living in miserable conditions alongside a highway without access to food and health care. Several children have already died. The Congress has refused to expropriate the land owner due to a treaty with Germany on the protection of capital investments. In 2006, the Inter-American Court ordered Paraguay to restitute the land and to care for the community. Currently, a solution seems to be emerging for purchasing the land.

In the Brazilian state of Mato Grosso do Sul, the Guarani-Kaiowá are fighting for access to their land. The demarcation has been delayed for decades and they were even displaced from areas which had already been demarcated. In the provisional camps, hunger, malnutrition, suicide and the assassination of indigenous leaders are a common occurrence. The implementation of the TAC, which was signed in 2007 and provides for the demarcation of 36 indigenous territories, is still pending.

FIAN has been working on these two cases since 2005. The human rights situation has been documented for both through the cooperation with local partner organizations and field visits. With urgent actions, open letters and meetings, FIAN exerts influence on the governments, urging them to fulfill their obligation to give back the territories. FIAN also called upon the German Federal Government to inform Paraguay that the bilateral treaty on the protection of capital investments allows for an expropriation of land if it is for “a public purpose or interest”. On speakers tours throughout Europe, representatives of the Sawhoyamaxa and the Guarani-Kaiowá described their communities’ desperate situation. With constant public relations work, FIAN is raising international awareness of these cases.
1 | Introduction

FIAN is committed to the aim that all human beings are able to live free from hunger and have access to the resources which enable them to feed themselves and lead a dignified life. But this right is denied to many people because they are excluded from access to food or means for its procurement due to discrimination and social inequality. This especially includes peasants, rural workers, the landless and women. The indigenous communities of Latin America are one group that deserves special attention because its rights have been violated for centuries and it is frequently exposed to discrimination, hunger and malnutrition.

Rights in theory – discrimination, displacement and hunger in practice

Indigenous peoples in Latin America continue to suffer from the consequences of the historical injustices which accompanied the colonization of the continent after 1492. They were displaced by the European conquerors, who gained control over their land and resources. Indigenous peoples were enslaved, exploited and their culture and way of life were suppressed. Warlike conflicts, massacres and diseases decimated the indigenous populations. The independent states emerging in the early 19th century also denied them their rights. The demand for land and the pursuit of economic growth led to the continuous displacement and oppression of indigenous groups. The colonial point of view that indigenous people had to assimilate into national society and that the state had the right to exercise control over their territories persisted. Indigenous peoples still belong to the poorest and most marginalized groups in Latin American societies. They are exposed to constant discrimination and violations of their rights, especially of their right to food.

Access to their traditional lands and resources is indispensable for the realization of the right to food of indigenous peoples. However, the demand for indigenous rights and the claim to their territories only started gaining momentum in the 1970s with the formation of indigenous movements and societies’ perception of them as political actors. The indigenous movements were growing while their claims for their rights became more insistent. Their demands were finally heard: The constitutions passed since the mid-1980s, after the end of the military dictatorships in Latin America, contain catalogs of indigenous rights, especially the right to their ancestral land. The aim is to compensate for historical injustices and acknowledge indigenous cultures (cf. Rathgeber 2004: 64-68). In 2008 and 2009, Ecuador and Bolivia even adopted constitutions that proclaim a plurinational state and the indigenous concept of *Buen Vivir*, the good life. A strong focus is on social rights, including the right to food.

When looking at indigenous rights it becomes evident that, although the legal protection at national and international level has progressed, implementation remains deficient. Whereas 500 years ago it was the colonial rulers who deprived indigenous peoples of their traditional living space, today indigenous land and natural resources are increasingly becom-
ing the target of local elites and transnational corporations. Indigenous communities are often displaced from their lands. The demarcation – the official recognition of their territories and legal delimitation of their boundaries – is often delayed or land and water are contaminated by corporate activities. Infrastructure projects are realized without consulting the indigenous peoples concerned, let alone obtaining their free, prior and informed consent (cf. DESA 2009: 87-88). The current agrofuels boom has serious consequences for indigenous rights in Latin America. Indigenous peoples are being displaced more and more often in order to make room for sugar cane and oil palms. The pressure on indigenous land areas in countries such as Brazil, Paraguay, Guatemala or Colombia is increasing and instead of food, agrofuels or animal feed is produced for the export to Europe. Hunger is the sad result.

Content of the publication

The focus of this publication are the challenges indigenous peoples in Latin America face when claiming and realizing their rights. First, data from several countries will highlight the food insecurity of indigenous peoples, because hunger and its causes can only be combated if they are made visible. It will then be illustrated that indigenous peoples suffer more severely from poverty and hunger than the rest of the population and that discrimination multiplies when the person is female or lives in rural areas. Another aspect will be made clear: If indigenous peoples face hunger because their access to land is denied or their livelihoods are destroyed, for example by public development projects, the Latin American states violate the right to food of their indigenous peoples by not fulfilling their state obligations.

The third chapter of this publication will begin by concentrating on the protection of indigenous rights and the right to food at international level because this is the legal basis indigenous peoples can refer to if their rights have been violated. There will be a focus on ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. This will be followed by an explanation of how the indigenous peoples of Latin America can make use of the Inter-American Human Rights System in order to claim their rights at regional level.

The obstacles indigenous peoples in Latin America encounter when claiming their rights will be illustrated with the example of two cases FIAN has been working on since 2005. They are representative of the fight of indigenous peoples for their traditional land as well as of their situation, which is characterized by poverty and hunger. The communities selected are the Sawhoyamaxa in Paraguay and the Guarani-Kaiowá in the Brazilian state of Mato Grosso do Sul. The legal protection of indigenous rights and the right to food will be outlined for both countries.

The Sawhoyamaxa in the Paraguayan Chaco were driven off their ancestral territory because the state had given away land to private owners as a result of wars and under the Stroessner dictatorship, which lasted from 1954 until 1989. After a long struggle and after bringing their case to the Inter-American Court of Human Rights, the 400 Sawhoyamaxa are on the verge of getting their land back, which is still in possession of a German citizen. FIAN’s work has concentrated on a treaty on the protection of capital investments between Paraguay and Germany which, according to the Paraguayan Congress, impeded the expropriation of the land owner.

The second case concerns the lack of access to land of approximately 30,000 Guarani-Kaiowá in Brazil, which has resulted in hunger and violence. In the past, the group was driven off their traditional land in the state of Mato Grosso do Sul to make room for large-scale agriculture. The reservations, which the government had demarcated for the Guarani-Kaiowá from 1915 to 1928, are overpopulated. The stagnant demarcation of their territories is closely connected with the interests of local elites and the expanding sugar cane industry. FIAN attempts to advance the implementation of a quasi-judicial treaty providing for the demarcation of the Guarani-Kaiowá territories. The case is an explosive issue because the violence against indigenous leaders and activists is currently escalating.

Finally, a short outlook will be given on the challenges and chances indigenous peoples in Latin America face in their struggle for their rights. FIAN will continue campaigning for the realization of the right to food and will demand that hunger is combated by facilitating indigenous communities’ access to their traditional land.
Worldwide, there are around 5,000 indigenous peoples in 90 countries. More than 370 million people belong to an indigenous community (cf. DESA 2009: 1, 84). According to estimates of the Economic Commission for Latin America and the Caribbean (ECLAC), the indigenous populations in Latin America amount to 30 to 50 million members. 642 indigenous peoples are officially recognized, 222 of them in Brazil, 81 in Colombia and 72 in Peru. The highest percentage of indigenous people was registered in Bolivia at the beginning of the millennium with 62 percent, followed by Guatemala and Peru. In absolute numbers, Peru has the largest indigenous population with 8.5 million members, followed by Mexico and Bolivia (cf. CEPAL 2007: 163-164). Brazil and Paraguay, whose indigenous communities are the focus of this publication, are the two countries with the smallest percentage of indigenous citizens. It is remarkable that malnutrition is especially widespread in countries with a large indigenous population, such as Bolivia with 27 percent of malnutrition, Guatemala with 22 percent and Peru with 16 percent (cf. FAO 2011: 47).

The causes of hunger and malnutrition have already been mentioned: Indigenous peoples continue to suffer from the consequences of historical exploitation and political and economic exclusion. They are constantly exposed to discrimination and their access to education, health care and political participation is severely restricted compared to the rest of the population – even if they numerically constitute the majority, such as in Bolivia or, according to unofficial estimates, in Guatemala.

Most indigenous communities are living in poverty or extreme poverty, one of the main causes of hunger and malnutrition. The relation between poverty and hunger is shown by data on chronic malnutrition in children under five years in Peru, which in 2009 amounted to around 18 percent on the national average. 37 percent of the children who had the misfortune of belonging to the poorest one-fifth of the country, which includes the indigenous population, suffered from chronic malnutrition, while only two percent of the lucky ones who were born into the richest one-fifth of Peru were malnourished (cf. INEI/UNICEF 2010: 50). In nearly all countries, the areas with high rates of poverty coincide with the areas populated by indigenous peoples. In Latin America, overall progress made in fighting poverty and hunger since the 1990s has hardly reached indigenous peoples (cf. DESA 2009: 27-28).

Another cause of hunger and malnutrition among indigenous peoples is the lack of access to land, which is crucial for the realization of their right to food. Access to ancestral territories is a prerequisite for their food security, ensuring their means of subsistence. Without the possibility of hunting, fishing, cultivating or collecting, a balanced diet is not guaranteed. In many cases, indigenous peoples are affected by hunger because states do not demarcate indigenous terri-

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<th>Indigenous population in Latin America</th>
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<td>Country</td>
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<td></td>
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<td>Peru</td>
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<tr>
<td>Mexico</td>
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<td>Bolivia</td>
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<td>Guatemala</td>
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<td>Colombia</td>
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<td>Ecuador</td>
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<td>Brazil</td>
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<td>Nicaragua</td>
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<td>Panama</td>
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<td>Paraguay</td>
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(cf. CEPAL 2007: 163, data around the year 2000)

Dealing with the right to food of indigenous peoples is a complex issue because these groups regard food as part of a greater whole which cannot be separated from their traditional land, the natural resources, their culture or social organization. Devastating figures on the living conditions and the food situation of indigenous peoples reveal the current state of the realization of the right to food. Access to accurate data is very limited. Until recently, states did not separately record data on malnutrition, infant and child mortality or similar indicators for the indigenous population, a sign of the scant attention governments devote to the problems of this group (cf. Ziegler et al. 2011: 52).

In Latin America, seven percent of all children under five are underweight and 15.4 percent suffer from chronic malnutrition (cf. CEPAL/WFP 2009: 12). Among indigenous children, these figures are far higher and usually amount to
at least double. A comparison of hunger and malnutrition among indigenous peoples between the many Latin American countries is difficult because if data on indigenous people is available, it encompasses diverging periods and each country uses different measurements. Part of the time, chronic malnutrition (low height for age) is specified, other times being underweight (low weight for age). Sometimes figures are given for the entire indigenous population or sometimes only for children under five. It also makes a difference whether malnutrition among indigenous children is compared with the national average or the non-indigenous population. In the following, however, some countries will be mentioned as examples.

Brazil
In Brazil, chronic malnutrition among children under five years was at six percent nationwide in 2009 (cf. IBGE 2010: 18). This is a relatively low rate compared to other Latin American countries. In 2007, two percent of indigenous children were severely underweight and ten percent were underweight, while 16 percent were at risk. The place of residence is also decisive: In the indigenous health district of Ceará on the Atlantic coast, five percent of indigenous children were underweight, in the district of Vlhenah between Mato Grosso and Rondonia, however, 41 percent were affected by malnutrition (cf. FUNASA 2011). A 2006 study among 137 Guarani-Kaiowá children under five on the Caaraapo Reserve in the state of Mato Grosso do Sul found that 18 percent of the children were underweight and 34 percent chronically malnourished (cf. Picoli et al. 2006: 225). In 2010, 92 indigenous children died of malnutrition in Brazil (cf. CIMI 2011a: 110).

Paraguay
Malnutrition and hunger among indigenous peoples are also very common in Paraguay, where, just as in Brazil, the proportion of indigenous citizens among the total population is relatively low. In the Sawhoyamaxa, Yakye Axa and Xákmok Kásek communities, the lack of access to land and therefore to sufficient and adequate food caused the death of several children as a result of malnutrition and other related diseases. In Paraguay, about 29 percent of indigenous children under five suffered from chronic malnutrition in 2005, while another 29.4 percent of indigenous children were at risk of becoming chronically malnourished. Moreover, 9.8 percent of all indigenous children were underweight (cf. FAO/STP 2009: 20). With that, the rates of malnourished indigenous children might be even higher.

Peru
In comparison, in the South American country of Peru, which has a large indigenous population, there is an even higher prevalence of chronic malnutrition among indigenous children. The rates in areas with many indigenous inhabitants furnish evidence of that. In the department Huancavelica, where 56 percent of the children are indigenous, chronic malnutrition is at 43 percent; in Cusco, where 45 percent of the inhabitants are indigenous, 32 percent of the malnourished are children and in Ayacucho, where 53 percent of the children are indigenous, about 31 percent of all children are malnourished (cf. INEI/UNICEF 2010: 51).

Guatemala
Guatemala is another country with a very strong indigenous population but is located in Central America. It is one of the countries with the highest level of malnutrition in Latin America and worldwide. In 2009, 58.6 percent of Indigenous children were malnourished. Some years before, 69 percent of Indigenous children suffered from malnutrition. In the departments Sololá, Quiche and Huehuetenango, nearly 65 percent of all children were chronically malnourished, the rate of malnourished indigenous children might be even higher (cf. MSPAS 2009: 47).
2.1 | Hunger as a result of multiple discrimination

If a child in Latin America is born into an indigenous family, the probability of an early death, suffering from malnutrition and poverty and passing this fate on to their own children due to the lack of education and poor health is nearly twice as high as for a child born into a non-indigenous family. Additionally, if this child is an indigenous girl, her chance of growing up free from discrimination and hunger is even lower. Furthermore, if the child is born in a rural area, the risk of becoming malnourished increases once again – these factors add up to multiple discrimination.

Dealing with discrimination is essential because it is one of the main causes of hunger. Hunger does not originate from a lack of availability of food: In the last 40 years, every Latin American country would have had enough food available, with the exception of short drops, to feed all of its citizens with around 2,000 calories per day, either through national production or imports (cf. CEPAL/WFP 2009: 33). The causes of hunger are rather the inequality and discrimination with regards to access to food and means for its procurement. Worldwide, Latin America is the region with the highest inequality. The widest gap in income distribution exists in Bolivia and Brazil (cf. UNDP 2010: 26).

The United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibits any discrimination on the grounds of characteristics such as ethnicity, gender, language, religion or wealth. The non-discrimination rule creates an immediate duty for states and is not subject to progressive realization. Discrimination has to be stopped immediately irrespective of the resources available. Discrimination against indigenous groups in their access to food is prohibited (cf. Ziegler et al. 2011: 21-22). However, the reality of indigenous peoples in Latin America tells a different story. To this day, they are discriminated against and treated as second-class citizens – with grave consequences for their right to food. Meanwhile, their de jure discrimination has been eliminated. The de facto discrimination in everyday life, however, still impedes the exercise of indigenous rights. When children experience disadvantages in school because lessons are not held in their mother tongue, and indigenous adolescents drop out of school because they have to cut sugar cane to support their families, their chance at a life free from poverty and hunger is lower than for their non-indigenous peers.

Discrimination due to ethnicity

Discrimination due to ethnicity is a reality for the indigenous peoples of Latin America and it is proven by statistics. The difference between the poverty rates of indigenous peoples compared to the rest of the population is striking. Around the turn of the millennium, indigenous peoples in Paraguay were eight times more likely to live in poverty than their fellow non-indigenous citizens, in Panama their poverty rate was six times higher and in Mexico, Chile and Guatemala three times higher (cf. CEPAL 2007: 152). On average, indigenous workers in Latin America earn half of what their non-indigenous colleagues do. This gap is caused by discrimination and a lower level of education (cf. DESA 2009: 22), endangering the economic access to food, especially of members of indigenous communities who have to buy food because they are living in cities.

Data from Ecuador shows that indigenous peoples and especially children are more severely affected by malnutrition: 40 percent of indigenous children under five were chronically malnourished in 2006, while the national average was at 26 percent. Even among Afro-Ecuadorian children the rate was only eleven percent (cf. Nutrinet 2009). This trend is seen throughout Latin America. On average, infant and child mortality, one of whose main causes is malnutrition, was 70 percent higher among indigenous children. In Panama, 53 out of 1,000 indigenous mothers mourned the death of their child under five years, a rate three times as high as among non-indigenous mothers (cf. CEPAL 2010: 80, 90).

Education is an important factor in overcoming poverty and hunger. Malnutrition and child mortality decline with the number of years the mother has attended school. In Bolivia, there were 92 deaths per 1,000 live births among indigenous mothers with three years of education. If the mother went to school for more than seven years, this number dropped to 52 (cf. CEPAL 2010: 98). But it is precisely here, in regards to access to education, where discrimination takes place: In Paraguay, 27 percent of indigenous children under 14 years have never attended school, while this only applies to three percent of their non-indigenous peers. Reasons are the lack of money or schools (cf. PNUD 2007: 62).

Finally, discrimination in access to land is responsible for hunger among indigenous peoples, as the cases of the Sawhoyamaxa and Guarani-Kaiowá show. Statistics convey a clear message: In Guatemala, indigenous households only possess an average of 0.17 hectares of land, while other families own 1.04 hectares (cf. Ziegler 2006: 7). This is very serious since indigenous peoples in particular depend on access to land to feed themselves.

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<th>Malnutrition in children under five years</th>
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<td>indigenous</td>
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<td>Guatemala (2008)</td>
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<td>Peru (2000)</td>
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<td>Ecuador (2006)</td>
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<td>Bolivia (2003)</td>
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<td>Paraguay (2005)</td>
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<td>Brazil (2008)</td>
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(cf. sources in the text and CEPAL 2010: 80)
Indigenous women from Ecuador – Indigenous women and girls in rural areas are triply discriminated against.

Gender discrimination

The risk of hunger and malnutrition increases when members of an indigenous group belong to another group that is traditionally discriminated against. This concerns indigenous women above all. They encounter serious obstacles in realizing their rights; for example: lack of access to education, health services and land as well as disproportionately high rates of poverty (cf. OSAGI/UNPFII 2010: 1). Although indigenous women do not form a homogeneous group since they are embedded in different contexts and cultures, they often share the fate of double discrimination. In many indigenous communities, women are responsible for the cultivation, preparation and distribution of food. However, they have either very little or no access to the necessary resources. Moreover, they are often faced with discrimination in their own communities, for example regarding their participation in decisions (cf. Knuth 2009: 48).

Discrimination against women is in part not even fully legally eliminated. In Guatemala, article 139 of the Código de Trabajo, the national labor code regulating agricultural work, describes rural women as their husbands’ helpers. Although a working contract is obligatory, women’s salaries are often not paid directly to them but the male workers receive them as part of their pay (cf. CSDA 2010: 60). Usually, indigenous women are paid less for their work because they are disrespected due to their ethnicity. They often work as domestic workers and are exploited, humiliated and their salary is retained. Discrimination of indigenous women is reflected by higher rates of malnutrition in several countries. In Guatemala, for example, of 14,739 cases of acute malnutrition in 2010, 54 percent of the cases affected girls and 46 percent boys (cf. SEGEPLAN 2011: 74).

Discrimination due to the place of residence

Another factor for discrimination is living in the countryside. Hunger and malnutrition have a rural face: Three quarters of the hungry worldwide live in rural areas, most of them are peasants. Ironically, people suffer from hunger in areas where food is produced because they do not own enough land to feed themselves. The fertile soil is cultivated by large land owners. In Peru, 33 percent of the children under five in rural areas were malnourished in 2009, while only ten percent of children living in cities were affected (cf. INEI/UNICEF 2010: 50).

The indigenous population in particular suffers from this kind of discrimination because they usually live in the countryside. In Latin America, hunger and malnutrition are more widespread among indigenous peoples living in rural areas than among those living in cities, although their situation in urban areas is still precarious enough. In Ecuador, 45 percent of indigenous children under five living in rural areas suffer from chronic malnutrition, while only 21.6 percent of indigenous children in urban zones are affected (cf. Nutrinet 2009). Child mortality is also more frequent in the countryside. Indigenous women and girls in rural areas are hit the hardest: They face threefold discrimination due to gender, ethnicity and origin.
2.2 | Hunger as a violation of the right to food

Hunger is not a problem of availability of food but of lack of access to it due to inequality and discrimination. It has social, political and economic causes which can be directly addressed by states. Thus, malnutrition among indigenous peoples is not a fate that has to be accepted as the result of century-long exclusion but as a consequence of inactivity or intervention by the state and therefore a violation of the right to food.

All states have the obligation to respect, protect and fulfill this right of their citizens and their indigenous peoples and to provide for the availability of food, access to it and its adequacy. This especially applies to states which have ratified the ICESCR and consequently all Latin American states except Cuba. If indigenous peoples struggle with hunger, it is a sign of noncompliance with these state obligations (cf. CESCR 1999: 5). In the following, the three levels of these obligations will be explained with regard to the right to food of indigenous peoples. The division is not to be understood as a strict separation, the obligations are interrelated and only if all of them are met can the full realization of the right to food be guaranteed.

States have to respect the right to food of indigenous peoples!

The normative content of the right to food is clarified by General Comment 12, which was issued by the UN Committee on Economic, Social and Cultural Rights (CESCR). Although it is not legally binding, it constitutes an authoritative interpretation and clearly identifies the obligations states have to fulfill so as not to violate the right to food. The obligation to respect requires states to respect existing access to food of the population and to refrain from violating it through their actions (cf. CESCR 1999: 5). Measures that cut off indigenous peoples’ existing access to food are prohibited. Since the aim is that citizens become active subjects who individually or collectively satisfy their needs with their own efforts and means and realize their right to food, states must not obstruct access to the resources necessary to do so (cf. Eide 1998: 4).

In the case of indigenous peoples, the resources concerned are mainly land. A violation of the obligation to respect occurs when the state displaces indigenous peoples from their land or implements development and infrastructure projects that destroy natural resources with which indigenous peoples feed themselves. This applies when water bodies used for fishing or watering fields are contaminated (cf. Ziegler et al. 2011: 57). This obligation is also violated when states do not obtain the consent of indigenous communities before carrying out projects on their land. All measures and laws concerning the right to food of indigenous peoples require prior consultation with affected indigenous peoples (cf. Knuth 2009: 31).

An example of how the obligation to respect is violated is the construction of the hydroelectric dam Belo Monte by the Brazilian government. In the Amazon region on the Xingu river, the world’s third largest dam will be built. As a consequence, 516 square kilometers of land, an area as big as Lake Constance, will be flooded. The dam will almost completely dry up a 100 kilometer stretch of the Xingu, known as the Big Bend. The diet of several thousand indigenous inhabitants living on the river bank, including the Kayapó, Asurini and Juruna peoples, consists mainly of fish. Due to the eventual accumulation of water, the river fish stocks are in danger of extinction or extreme reduction, since these fish avoid standing water. This will result in a shortage of food and thus hunger among the indigenous population (cf. GfbV 2010). In April 2011, the Inter-American Commission on Human Rights ordered Brazil to stop construction work as indigenous peoples had not yet been sufficiently consulted (cf. IACHR 2011). However, Brazil continues the works on the dam and thus endangers the indigenous peoples’ right to food.

States have to protect the right to food of indigenous peoples!

Secondly, states are obliged to protect the right to food of indigenous peoples. They have to ensure that companies and individuals do not restrict the access to food of their citizens (cf. CESCR 1999: 5). Thus, states have to actively protect the right of their indigenous peoples to feed themselves as well as protect their access to the resources necessary for this from interventions by third parties. If communities are not able to defend their rights against more powerful stakeholders themselves, the state has to act as a protector, just as in the case of civil and political rights (cf. Eide 1998: 4). States are obliged to protect the right to food by enacting laws or measures and by enforcing their observance with the aid of the police and a functioning justicial system (cf. CESCR 1999: 6-7). The contamination of water and land through pesticides or industrial waste deprives indigenous peoples of their means of existence. Their territories are often international companies’ target for plantations or infrastructure and mining projects. If states grant licenses for the use of indigenous land, they have to obtain the free, prior and informed consent of affected peoples. Food and water resources may not be destroyed (cf. Ziegler 2011: 57-58).

In the Peruvian Amazon, the Argentine oil company Pluspetrol has been destroying the means of existence of the indigenous population in the department Loreto for the last 40 years. From 2006 to 2010, they were responsible for 78 oil spills which contaminated the tributaries of the Marañón River. In 2010, new accidents occurred in June and September on the Marañón River, thousands of dead fish were washed ashore. The right to food of the Achuar, Urarina, Kichwa and Kocama peoples living there is threatened by the contamination (cf. ciencias.pe 2010). These groups’ main diet is fish and they use the river water for drinking and preparing food. Around 30 percent of the Kocama children are malnourished (cf. Moiola 2011). In 2004, FIAN had already protested against the contamination of the rivers in the district Uarina and called upon the Peruvian authorities to protect the right to food of the indigenous peoples from the activities of Pluspetrol.
States have to fulfill the right to food of indigenous peoples!

Thirdly, states are obliged to fulfill the right to food. This includes the obligation to facilitate access to food as well as the obligation to provide food (cf. CESCR 1999: 5). The first aspect requires states to take positive measures for the support of indigenous peoples which enable them to feed themselves. The ICESCR explicitly names the need for a reform of agrarian systems to realize the right to food and to achieve efficient utilization of natural resources. Agrarian reforms to end land concentration and the demarcation of indigenous territories contribute to the fulfillment of the right to food of indigenous peoples. The establishment of a minimum wage covering basic needs as well as the support of small-scale farmers are further measures by which states can enable their citizens to feed themselves.

The second aspect includes the obligation to provide food when people are not able to feed themselves with the available means and are threatened by hunger. States are then bound to provide food directly through food aid or cash transfers. The obligation to directly provide food applies both under normal circumstances and during disasters. Groups who are disproportionately affected by poverty and hunger have to be supported with social security benefits to secure their access to food (cf. Eide 1998: 5). However, these measures have to remain temporary exceptions, otherwise they will create dependency. When directly providing food to indigenous peoples, the cultural adequacy of food is very important since some traditions do not allow for the consumption of certain foodstuffs (cf. Knuth 2009: 34).

The state of Guatemala breaches its obligation to fulfill by not providing sufficient quantities of food: In the Corredor Seco in the south with its mainly indigenous population, droughts destroyed nearly the entire harvest in 2009 and 2010. The people are too poor to buy food. In 2009, the national emergency plan PCEA for the provision of food aid was implemented. Every family was to receive a package each month, which was to last for 30 days between April and August. But the distribution did not start until August and 462 people starved to death. The responsible authority had been informed months in advance about threatening crop failures (cf. FIAN 2011a: 10). In reaction, the Guatemalan Human Rights Ombudsman filed a petition with the Constitutional Court. At the end of August 2009, the Court announced the verdict that the inactivity of the state had violated the right to life and food (cf. PDH 2010: 57-58). Once again in 2010, the Guatemalan state reacted too late: 6,575 people died from malnutrition and related diseases (cf. PDH 2011: 14).

Caring for the food security of indigenous peoples is not a task which states can fulfill at their discretion, rather it is their human rights obligation. The right to food is enshrined in international treaties. The States parties to them have to respect, protect and fulfill this right. If the right to food of indigenous peoples in Latin America is violated, they can refer to legal protection at international level, regional level in the Inter-American Human Rights System and at national level.

The matter of indigenous rights is inextricably linked to the question of collective rights. Members of indigenous groups do not only have individual rights, but are also holders of collective rights. They are intended to secure the well-being, survival, culture and special ways of life of the group as a whole (cf. Stavenhagen 2009: 9). Collective rights belong to the rights of the third generation because they emerged after civil and political rights and economic, social and cultural rights (ESCR), which protect individuals. This third generation encompasses the rights to development, peace and to a clean environment. With the exception of the African Charter on Human and Peoples’ Rights, these rights have not yet found their way into binding international treaties. The problem lies in their justiciability because the normative content is not clearly defined and the question of who the right-holders are – the state or the international community – remains open (cf. humanrights.ch). With indigenous collective rights, the identification of right-holders is easier. All members of an indigenous people or community are right-holders and are entitled to these collective rights as a group. An indigenous collective right can be the collective expression of a corresponding individual right, such as the right to collective land ownership, or it can take on a new dimension, such as a people’s right to self-determination, culture or to development. Collective rights offer additional protection to the group beyond the individual rights of each member (cf. Knuth 2009: 18).

3.1 | Protection at international level

The international framework for the protection of indigenous rights is still relatively weak. The only legally binding international treaty on indigenous rights is Convention 169 of the International Labor Organization (ILO). This convention and the UN Declaration on the Rights of Indigenous Peoples are still the only treaties that focus exclusively on the special needs of indigenous peoples, which have been ignored in general treaties. By the middle of the 20th century, the international community had realized that indigenous peoples needed separate instruments to protect them from exploitation and to secure their living environment in the modern state. ILO Convention 107 from 1959 was the first attempt, but it also tried to force indigenous peoples to assimilate in order to
achieve a homogeneous society. Gradually, it became clear that this paternalistic viewpoint was obsolete. ILO Convention 169 was the result of a revision that was completed in 1989 (cf. Stavenhagen 2009: 5).

**ILO-Convention 169**

The Convention came into force in 1991 and has already been ratified by 22 states, most of which are Latin American. It comprises civil and political rights as well as ESCR. Despite the low number of States parties, the Convention enjoys a high international standing. Although ILO Convention 169 does not explicitly enshrine the right to food, it obliges states to take measures which ensure the realization of indigenous peoples’ ESCR and respect their social and cultural identity. These rights also include the right to food. The Convention enshrines individual rights of indigenous group members, for example individual rights of indigenous workers and craftsmen, as well as their collective rights as an indigenous people. Among the latter are the right to their traditional territories, to consultation, preservation of their culture, customs, institutions and the customary law as well as the right to make their own priorities for the process of development.

The protection of indigenous land rights in the Convention is of special importance for the realization of the right to food of indigenous peoples. Article 13 to 19 protect indigenous peoples’ access to the land which they have traditionally owned, occupied or used and acknowledge peoples’ spiritual relationship to the land, which goes beyond a relation to tangible goods. States have to recognize communities’ rights to their traditional land and their right to participate in the use of natural resources. They have to take measures to identify the land and to create mechanisms at national level regulating indigenous land claims. If the constitution grants a state the right to mineral resources, affected indigenous peoples have to be consulted before the exploration and exploitation if their territories are concerned and the consequences of the extraction have to be evaluated. An adequate compensation for affected communities is obligatory.

With respect to consultation, article 6 of the Convention states that this has to be carried out in good faith and in an adequate form, with the aim of achieving consent or agreement of the community concerned. Consultation is also mandatory in the planning stage of development projects. Article 16 prohibits the relocation and displacement of indigenous peoples. A relocation is only permitted with free, prior and informed consent of the affected group. Land of the same quality or compensation has to be provided. A consultation can only be effective and achieve its aim if refusal is also possible. Otherwise, the consultation is reduced to a mere informative meeting and does not protect indigenous rights.

Moreover, according to ILO Convention 169 states have to ensure access to health services and the extension of social security schemes to indigenous peoples. This is important
since welfare systems often discriminate against minorities. Through social protection, such as poverty reduction programs through benefits in kind or cash, indigenous people can be provided with the minimum of food (cf. Knuth 2009: 26).

The UN Declaration on the Rights of Indigenous Peoples

In 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples after over 20 years of tough negotiations. In the Working Group on Indigenous Populations (WGIP), representatives and diplomats of UN states, non-governmental organizations (NGOs) and indigenous peoples had been working for many years on a draft that would be acceptable to all parties. For the first time, indigenous peoples were able to bring in their viewpoints in this form at UN level. In the debates, the positions of the government representatives, aiming at vague wording clashed with indigenous groups calling for the enshrinement of certain rights (cf. Stavenhagen 2009: 6-7). Countries such as Brazil refused the right to self-determination and to resources on indigenous territory. In June 2006, the UN Human Rights Council approved the draft. In the General Assembly vote that followed, 11 states abstained, among them Colombia as the only Latin American country. The USA, Canada, Australia and New Zealand rejected the Declaration (cf. Meents/Rathgeber 2009: 13-14), but have meanwhile recognized it.

With the approval of 144 states, it is the broadest international response to indigenous issues and with provisions on self-determination or land and resource rights, it goes beyond ILO Convention 169. It explicitly recognizes the historical injustices suffered by indigenous peoples. Although the Declaration is not legally binding, it can serve as a framework to establish international minimum standards for the protection of indigenous peoples (cf. Knuth 2009: 24). It does not mention the right to food, but it contains norms on the right to land and subsistence activities. Article 26 enshrines the right of indigenous peoples “to the lands, territories and resources which they have traditionally owned, occupied, (...) used or acquired“ (UN 2008: 22). Land that has been confiscated, used or damaged without their consent has to be restituted or compensated for. In addition, the Declaration includes the right to the protection of the environment and the productivity of indigenous lands as well as the prohibition of hazardous materials disposal on their territories.

In comparison with ILO Convention 169, the UN Declaration strengthens collective rights of indigenous peoples and their consultation rights. Instead of a simple consultation, article 19 includes the right of indigenous peoples to free, prior and informed consent with respect to all legislative and administrative measures concerning them. Article 32 explicitly prescribes the obligation to obtain their consent to projects affecting their lands, territories and especially mineral resources. However, the Declaration does not determine the precise course of the consultation procedure.
Protection through general treaties

Apart from these documents dedicated specifically to indigenous rights, indigenous peoples can refer to general international treaties if their right to food is violated. Article 11 of the ICESCR contains the right to an adequate standard of living, including adequate food and the right to freedom from hunger. The right to food of indigenous children is also protected by the UN Convention on the Rights of the Child (CRC). It enshrines the right to an adequate standard of living and obliges states to take appropriate action to support parents and, if necessary, to provide material support programs for nutrition (article 27) and to fight disease and malnutrition (article 24).

Article 2 explicitly states that the rights of the Convention are valid for all children without any discrimination, irrespective of the child’s ethnicity or language. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is also valid for all women and obliges states to care for adequate nutrition during pregnancy and lactation (article 12) and to guarantee adequate living conditions, especially for women in rural areas (article 14).

3.2 | Protection in the Inter-American Human Rights System

The Inter-American Human Rights System originates from the Charter of the Organization of American States (OAS) from 1948, which has been ratified by all 35 North and South American states and provides for the creation of the Inter-American Commission on Human Rights (IACHR). Also at regional level, work on a special document for the protection of indigenous rights is in progress. In 1997, the Commission submitted a proposal for an American Declaration on the Rights of Indigenous Peoples, which is currently being discussed in the Permanent Council of the OAS in a working group with the participation of indigenous representatives. On the basis of the UN Declaration, it should take the regional peculiarities into account and tailor the regulations to the indigenous peoples of the continent. Once again, the negotiations are very slow, countries like the USA and Canada do not unconditionally accept the UN Declaration as a basis. Once it is approved, the Declaration will further strengthen the rights of indigenous peoples in Latin America.

For the indigenous peoples of the continent, the regional protection of human rights is important for claiming their rights. In many cases their last hope is to be granted justice through the Inter-American institutions when justice has been denied at national level. But first, obstacles have to be overcome because a lawsuit is connected with financial burdens, which the victims can hardly manage without the help of NGOs. Costs of lawyers, official expertise and traveling expenses for several thousand kilometers are incurred. Furthermore, indigenous peoples are often unaware of the existence of the Human Rights System. Nevertheless, many indigenous communities have been successful at filing a petition with the Inter-American Commission, for example the Sawhoyamaxa.

Protection of the right to food

Regarding the protection of the right to food, article 34 of the OAS Charter binds states to take measures for increasing the availability of food to secure adequate nutrition as well as for the achievement of other objectives, for example education and adequate housing for all. The American Declaration on the Rights and Duties of Man from 1948 enshrines, in addition to other ESCR, the right to the preservation of health through food-related measures in article XI, but is not legally binding.

The legally binding basis of the Human Rights System is the American Convention on Human Rights (ACHR), which was adopted in 1969, came into force in 1978 and has been ratified by 24 states. It includes a catalog of civil and political rights. ESCR are not explicitly listed, but in article 26, states commit themselves to take measures towards the realization of these rights that derive from the ESCR norms of the OAS Charter and hence, the right to food. In article 33, the ACHR creates the basis for the Inter-American Court of Human Rights (CIDH), which is important for the justiciability of these rights. It stipulates the organization of the Court, its competences, functions and procedures as well as the same provisions for the Inter-American Commission on Human Rights.

The most important regional instrument for the protection of ESCR is the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights – the Protocol of San Salvador, that was approved in 1988 and came into effect in 1999. Up to now, it has been ratified by 16 states, most recently by Honduras in fall 2011. Although the protection offered by the Protocol is not as broad as that offered by the ICESCR, it encompasses a catalog of fundamental ESCR, for the implementation of which the States parties have to take necessary measures. Article 12 certifies the right of everyone to adequate nutrition. To secure this right and to eradicate malnutrition, the States parties commit themselves to improve methods of food production, supply and distribution and to achieve stronger international cooperation. Article 3 of the Protocol reaffirms the principle of non-discrimination relevant for indigenous communities.

The individual complaint procedure

If their human rights are violated, indigenous peoples can use the two-stage individual complaint procedure, in which the Commission precedes the Inter-American Court. The individual complaint, regulated in article 44 ACHR, allows for individuals, groups of persons and legally recognized NGOs to lodge petitions with the Commission against a State party when one of the rights protected by the ACHR has been violated. A precondition is that all remedies under domestic law have been exhausted and that the petition is lodged with the Commission within six months after the final national judgment was pronounced. According to article 46, this does not apply if a fair trial was not possible in the claimant’s state of origin or if the sentence was unjustifiably delayed.

According to the procedure regulated in article 48 ACHR, the accused state is requested by the Commission to furnish information within a certain time frame. After the time limit...
has elapsed, the Commission decides on the admission of the case. If the petition is admitted, the investigation is opened and the claimants can submit further observations within three months. The state has to comment on these within a period of three months. The Commission can also initiate investigations in the respective country. It also offers a friendly settlement to the parties involved. In case a settlement cannot be reached, the Commission deliberates the case and draws up a non-public report. If it does not ascertain a rights violation, the case is closed. If a state is found guilty of a violation, the Commission makes recommendations and sets a time limit within which the state has to report on the measures taken. If the Commission concludes that the recommendations have been ignored, it can forward the case to the Court granted the state concerned has recognized the Court’s competence as stated in article 62 ACHR. 22 states have already done this. In urgent cases, the Commission can also issue precautionary measures (medidas cautelares) to prevent irreversible damage to individuals.

An obstacle for the justiciability of the right to food is the restriction through article 19(6) of the Protocol of San Salvador, which states that the individual complaint procedure is only admissible in the case of a violation of the right to education (article 13) and of trade union rights (article 8). The only possibility for indigenous peoples to enforce their right to food is by referring to civil and political rights, such as the right to life. With reference to these rights, the Court justified its judgment on the starvation of several Sawhoyamaxa children. In its past sentences, the Court mainly stated the violation of the right to a fair trial and judicial protection (article 8 ACHR), to life (article 4) and physical integrity (article 5) and the right to personal liberty and security (article 7) (cf. Blome 2011: 18). This considerably restricts the justiciability of the right to food, creates hierarchies among the ESCR and contradicts the indivisibility and universality of human rights.

An argument for the justiciability of the right to food is that article 26 ACHR refers to the ESCR which are protected in the OAS Charter. But the Commission and the Court have always avoided the reference to this fact, even when protecting ESCR. For example, the Commission has issued precautionary measures regarding the right to health and housing. In the case of a petition against El Salvador filed by the HIV patient Odir Miranda, who did not receive medication, the Commission even accepted an individual complaint to the right to health (cf. Suárez Franco 2010: 173-182). Since the question of the justiciability of the other ESCR in the Protocol of San Salvador has not been conclusively answered, their legal protection remains weak. Indigenous peoples who have found other ways of claiming their rights before the Court prove that the right to food is nevertheless justiciable. Good argumentation and the reference to civil and political rights can lead to success.
4 | The rights of indigenous peoples in Paraguay

In 2008, according to official statistics Paraguay had 108,308 indigenous inhabitants, who form a relatively small proportion of the population with 1.7 percent. They are subdivided into 20 peoples and the five language families Guaraní, Guaicuru, Lenguí, Maskoy, Mataco Mataguayo and Zambo (cf. DGCC 2008: 2-4). The largest groups are the Ava Guaraní, Pai Tavyterá and Mbyá of the Guaraní. More than half of the indigenous peoples live in the eastern region (Oriente), the rest of them in the western part of the country (Gran Chaco). Most indigenous inhabitants settle in the departments Boquerón and Presidente Hayes, more than 90 percent live in the countryside. Of the 412 indigenous communities in Paraguay, 75 percent have legal personality, a precondition for the acquisition of land titles. In 2002, however, only 223 communities were in possession of their own territory, 90 did not own land titles for the land they resided on and 95 were landless (cf. DGGEC 2003: 13-24). The case of the Sawhoyamaxa shows how serious the consequences of the lack of access to land are for indigenous peoples and especially for the enforcement of their right to food.

4.1 | The protection of the right to food of indigenous peoples in Paraguay

Paraguay has ratified all international treaties which are relevant for the right to food and the protection of indigenous rights. Article 141 of the Paraguayan constitution of 1992 states that all international treaties approved by a law of Congress form part of the domestic legal system. According to article 137, only the constitution ranks above international treaties. Under article 142, international treaties concerning human rights cannot be renounced, except by the procedures established for constitutional amendments.

Ratification of international treaties

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<td>ICESCR</td>
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<td>Women’s Rights Convention</td>
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<td>Convention on the Rights of the Child</td>
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<td>Protocol of San Salvador</td>
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<td>ILO-Convention 169</td>
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At national level, Paraguay has a medium to high standard in the constitutional protection of the right to food since it is enshrined for specific groups or can be derived from other rights (cf. FAO 2006: 147). If an indigenous middle-aged woman takes a look into the constitution, she will search in vain for an article that explicitly protects her right to food. Her children, however, will discover article 53. It gives parents the right and the duty to feed their underage children and article 54 obliges society and the state to guarantee children a comprehensive development and the full exercise of their rights by protecting them against undernourishment. Also, senior citizens affected by hunger can count on the protection of their right to food by the constitution. Article 57 reminds society and state authorities of their duty to promote the well-being of senior citizens in relation to food.

Since the constitution does not contain an article protecting everyone’s right to food, citizens can base themselves on articles from which the right to food can implicitly be deduced. Article 4 secures the right to life, article 6 the quality of life, which has to be promoted by the state through plans and policies and article 68 guarantees the right to health as a fundamental right. If a person suffers from hunger, these rights are violated.

Protection of indigenous rights

Chapter V of the constitution specifically deals with the protection of Paraguay’s indigenous peoples. Indigenous communities’ access to land plays a fundamental role in the realization of the right to food. Article 63 guarantees indigenous peoples the right to preserve and develop their ethnic identity in their respective living environment. Article 64 assigns them the right to collective ownership of land of the size and quality sufficient for their specific lifestyles. The state has to provide this land free of charge which is nonforfeitable and may not be divided, transferred to third parties or leased. The removal of indigenous groups from their land without their express consent is prohibited. Moreover, article 66 protects indigenous peoples from the degradation of their living space, environmental contamination and economic exploitation.

In addition, the Estatuto de las Comunidades Indígenas, which dates back to 1981 under the Stroessner dictatorship and was only slightly modified in 1996, is still in force. The statute created the basis for the recognition of indigenous peoples, their claims to their land, regardless of whether it is owned by the state or private owners and for the foundation of the indigenous authority Instituto Paraguayo del Indígena (INDI), which belongs to the Ministry of Education. Up to that point, the Paraguayan land agency Instituto de Bienestar Rural (IBR) had been responsible for indigenous territorial claims. In 2003, the IBR was transformed into the Instituto Nacional de Desarrollo Rural y de la Tierra (INDERT). In the early 1990s, however, INDI was strengthened with staff and financial resources. A power struggle over the competence in indigenous land issues erupted, from which INDI emerged victorious. With respect to the procedure for the acquisition of land titles, the statute declares that indigenous communities must first elect a leader who represents the community...
in legal affairs. When he has been recognized by INDI, the legal personality for the community can be requested at the Ministry of the Interior. Land titles cannot be claimed until then (cf. Wicker 1999: 38, 40).

The statute has not yet been brought up to international human rights standards, although the Inter-American Court had ordered Paraguay to adjust domestic law and to create effective mechanisms through which indigenous peoples can claim their territories in 2005 and 2006 (cf. CIDH 2006: 92). In the case of the community Xákmok Kásek, in 2010, the Court sentenced Paraguay once again and set a deadline of two years for the state to make national law on land restitution conform to international norms. Effective access to land would facilitate the realization of the right to food of indigenous peoples.

4.2 | The Sawhoyamaxa’s fight for their rights

The indigenous community Sawhoyamaxa in Paraguay is an example of how indigenous peoples can successfully claim their right to food in the Inter-American Human Rights System if it is denied at national level. The Sawhoyamaxa belong to the South Enxet of the Maskoy language family. In 2002, there were around 5,800 South Enxet living in 17 communities in the Paraguayan Chaco in the department Presidente Hayes west of the Paraguay River. Eight of the communities do not own land or land titles (cf. DGEEC 2003: 20-24). The 400 members of the Sawhoyamaxa community are also deprived of their traditional territory in the Chaco region. At the end of the 19th century, the Paraguayan state had sold land to British businessmen without the knowledge of the indigenous peoples living there. After the Chaco War between Bolivia and Paraguay (1930 to 1936), more and more non-indigenous settlers flocked to the Northern Chaco (cf. CIDH 2006: 30-31). During the Stroessner dictatorship (1954 to 1989), land was given away to friends of the regime or was sold at a bargain price to investors, among others to German tax exiles.

Since their territory was in private ownership, the Sawhoyamaxa were cut off from their farm land, plants and animals which had served as their means of subsistence. They were hired on cattle estates in the area, worked under poor conditions and lived there in extreme poverty without access to medical care. To put an end to that misery the community organized themselves and started proceedings to claim their land in 1991. As soon as the farmers learned of the territorial claims, the situation of the indigenous workers further deteriorated. Therefore, the Sawhoyamaxa settled close to their territory alongside the road running from Pozo Colorado to Concepción. The largest settlements are Santa Elisa and Km. 16 (cf. I.c.: 31-33, 47).

When the Sawhoyamaxa’s long-standing legal fight for their territory started, the IBR was still responsible for land tenure problems and claiming land was a case of administrative procedure. All territorial indigenous issues had to be filed with the IBR and INDI. At first, it took INDI nearly two years to recognize the leaders of the community as their legal
representatives. Only after seven years of hard efforts did the Sawhoyamaxa obtain legal personality, a precondition for claiming land titles (cf. l.c.: 34-36).

Treaty with Germany on capital investments impedes land restitution

The territory claimed is in possession of the German large land owner Heriberto Rödel, who in the 1970s cheated German investors out of their money by selling fictitious land in Paraguay and who was sent to prison for some years in 1982. Rödel had always refused to sell the Sawhoyamaxa territory. At first, the land was registered under the name of the corporations COMPENSA and Urbana Inmobiliaria, then Rödel fictitiously signed it over to the dummy companies Roswell and Kansol. In 1996, only after constant pleading of the indigenous community did the IBR officially call upon Rödel to sell the land – without success. In 1997, the lawyers of the Sawhoyamaxa filed an application with INDI for the expropriation of Rödel. The case file was passed to and fro between the IBR and INDI. In 1999, the IBR declared that an expropriation did not lie in its power and handed the case back to INDI. Requests for preliminary injunction filed by the Sawhoyamaxa in 1993 and 2002 because Rödel was cutting down forest were likewise passed on too late by the authorities. Although a court issued the preliminary injunctions, 1,200 hectares of forest were lost (cf. l.c.: 9, 36-47).

Since the attempt with the IBR did not lead to results, the Sawhoyamaxa also approached the National Congress. In 1997, with the support of two deputies, their leaders introduced a bill to the Chamber of Deputies of the Congress with the aim of expropriating Rödel, again in vain. In 1999, with the aid of a senator, the indigenous community introduced a new bill of condemnation to the Senate of the National Congress, intending to expropriate Rödel by declaring the land of social interest and handing it over to INDI, which would then sign it over to the Sawhoyamaxa. At the end of 2000, the Commission dismissed the draft (cf. l.c.: 44-45). The main argument against it was a treaty on the protection of capital investments Paraguay had signed with Germany in 1993. It protects capital investments in the respective country from expropriation and nationalization. It was ignored, however, that article 4 allows for an expropriation “for public purpose or interest” if compensation is paid. The Spanish version of the treaty is open to interpretation here, but Paraguay did not seem to be interested in any clarifications (cf. Brot für die Welt et al. 2007: 15-18; FIAN 2011b).

While one decade passed without any progress, the situation of the Sawhoyamaxa, who were living on the side of a highway, steadily deteriorated. Although the Paraguayan President declared a state of emergency for the community in 1999, it did not change their precarious situation since the state only sporadically delivered insufficient amounts of food. The next medical center is located 46 kilometers away and there is no access to clean drinking water. Being cut off from their natural living environment and without the possibility of hunting or collecting food, the Sawhoyamaxa are not able to feed themselves. Due to the lack of access to food and medical care, 45 community members, most of them children, died from curable diseases such as measles or diarrhea (cf. CIDH 2006: 27-29, 47-57).
The Inter-American Court as the last hope

By being inactive, the Paraguayan state has violated international treaties in which it has committed itself to the realization of the right to food. The refusal to guarantee access to indigenous territories violates the constitution, the indigenous statute and ILO Convention 169. In May 2001, after having unsuccessfully exhausted every possibility at national level, the Sawhoyamaxa, upon the advice of the human rights organization Tierraviva, concentrated their efforts on the Inter-American Human Rights System. With the support of Tierraviva, the indigenous community filed a petition with the Inter-American Commission against the state of Paraguay. The case was forwarded to the Inter-American Court in February 2005. The Court confirmed the primacy of the ACHR over the treaty on the protection of capital investments and all bilateral trade agreements and stated that an expropriation for public purpose or interest could apply to land restitution to indigenous communities (cf. CIDH 2006: 76-77).

The Court ruled in its judgment of March 2006 that the Paraguayan state had violated the right to life (article 4 ACHR) and the protection of the child (article 19), the right to fair trial and judicial protection (article 8 and 25) and the right to property (article 21). Although the Court did not base its sentence on ESCR, it still protected the right to food through a broad interpretation of the right to life. The Court ruled that the state was responsible for the deaths because it had not guaranteed access to land, which is why the community lost its means of subsistence. Moreover, the state did not provide sufficient food (cf. l.c.: 77-84, 105).

Paraguay was ordered to restitute the 14,404 hectares of land of the Sawhoyamaxa within three years. During that time, the state has to regularly provide food, health care, drinking water and school materials and to install a communication system for reporting emergency cases. These measures must be implemented immediately. Within two years after the restitution of the land, the state has to establish a community development fund of one million US Dollars and complete projects in the areas of sanitation, drinking water, education, agriculture, health and housing. Effective mechanisms for claiming the restitution of ancestral lands have to be established in domestic law. The state has to pay 20,000 US Dollars per family for the death of 19 children. The death of other persons remained unpunished because Paraguay had not yet recognized the competence of the Court when the deaths occurred, or the cases had not been included in the petition to the Commission (cf. l.c.: 100-106).

In its 2009 resolution, which includes the results of an examination of compliance with the judgment, the Court stated that Paraguay had not observed the orders regarding the restitution of the land and the establishment of a development fund. The relatives of the victims only received part of the compensation. In addition, the death of at least 21 other persons was ascertained as the state had not ensured sufficient food and medical care (cf. CIDH 2009). After long inactivity, the new government of Fernando Lugo, who put an end to the 61-year reign of the Colorado Party, slowly but surely brought fresh momentum into the case. The former bishop Lugo had made indigenous issues one of the topics of his election campaign. In February 2009, he installed the Inter-Institutional Commission on Compliance with International Judgments (CICSI), which worked out a plan of action. In 2011, the families of the 19 deceased Sawhoyamaxa finally received compensation from the state.

On the 15th of September, 2011, over five years after the judgment and after long negotiations with Heriberto Rödel under the mediation of the Attorney General and thanks to the continuous efforts of Tierraviva, a contract on the sale of the 14,404 hectares of land was finally concluded. It was signed by Rödel’s lawyers, the Attorney General, the president of INDI and the Sawhoyamaxa (cf. Tierraviva 2011a). Thus, the path has been cleared for the return of the Sawhoyamaxa to their territory. The strategy of insisting on the right to their traditional land had paid off. While the Sawhoyamaxa leader had contemplated alternative land offered by the state in the end, particularly the women of the community had always refused this. How long the definite restitution of the land will now take is not yet foreseeable due to bureaucratic obstacles. If the purchase is not concluded by the end of 2011, there is a risk that the funds will no longer be available in the national budget (cf. Stahn 2011). In November 2011, the CIDH once again rebuked Paraguay in an official hearing, in which representatives of the Sawhoyamaxa were present accompanied by Tierraviva, for not meeting the deadline for the restitution of the land (cf. Tierraviva 2011b). In general, however, the Sawhoyamaxa seem to have finally won the long fight for their territory.

4.3 | FIAN’s support of the Sawhoyamaxa

Since 2005, FIAN has continually worked on the Sawhoyamaxa case, since 2007 also supported by the volunteer local group Hamburg. To this end, FIAN has mainly conducted lobbying and advocacy activities. Since the treaty on the protection of capital investments between Germany and Paraguay was the main reason for denying the Sawhoyamaxa their traditional lands, the case was also politically relevant in Germany. This is why the first approach of FIAN’s work was to seek a dialogue with the German Federal Government. In May 2006 and November 2007, FIAN representatives visited the Federal Foreign Office and the Federal Ministry of Economics and Technology to hold talks. Moreover, FIAN contacted the German parliament’s Committee on Human Rights and held talks with the former chair of the Committee on Economic Cooperation and Development (AWZ), Thilo Hoppe. Eriberto Ayala, a delegate of the Sawhoyamaxa, came to Germany in December 2008 at the invitation of FIAN and met representatives of the German Federal Government, German ministries, the AWZ and the former German Agency for Technical Cooperation.

The aim of these contacts was to persuade the German government to send an official diplomatic note to Paraguay, stating that the treaty on the protection of capital investments is not an obstacle for the expropriation of German property if it is done for public purpose or interest. FIAN called upon the Foreign Office to follow the example of Austria, whose government had communicated this to Paraguay regarding
a similar treaty. Deputies of the German parliament could be convinced to suggest a diplomatic note to the Foreign Minister. Before her trip to Paraguay in 2008, the head of the South America division of the Federal Ministry for Economic Cooperation and Development was also asked by FIAN to stress the German government’s position on the treaty in talks with Paraguayan authorities. Although the German government refused to issue an official note, the Paraguayan government was verbally informed that Germany did not consider the treaty on the protection of capital investments an obstacle for the expropriation if compensation is paid. FIAN has always reminded the German Federal Government of its extraterritorial state obligations because by ratifying the ICESCR it does not only have to respect, protect and fulfill rights on its own territory, but also has to ensure that German policies and the activities of German citizens and companies do not violate human rights abroad (cf. Brot für die Welt et al. 2007: 17–18).

The second approach of FIAN’s work is aimed at the Paraguayan government. Since there is no local FIAN section in the country, FIAN Germany undertook the task of communicating to Paraguayan politicians the German Federal Government’s position regarding the treaty on the protection of capital investments and of pressing the Paraguayan government to restitute the land. In letters to the responsible authorities, for example INDI, INDERT as the institute replacing the IBR and the Ministry of Environment, FIAN refuted the argument that the treaty was prohibiting an expropriation. In April 2009 and March 2010, FIAN representatives also called on the Paraguayan embassy in Berlin. Moreover, in 2008, an urgent action was issued in which FIAN requested President Lugo to enforce the judgment of the CIDH. In the similar case of the Yakye Axa community, FIAN succeeded in making the voice of the indigenous citizens heard and bringing their plight to international public attention by handing over 17,000 protest postcards to the Paraguayan government.

For FIAN’s work, the close contact to local NGOs and the Sawhoyamaxa in Paraguay is essential to coordinate the course of action and concrete plans and to find out what kind of support the people concerned really need, especially because a local section does not exist there. This helps to avoid that actions have a counterproductive impact on local efforts. Therefore, FIAN was in close contact with the NGO Tierraviva, which represents the Sawhoyamaxa in legal affairs, which in turn is in close contact with the community.

Another approach for the enforcement of the rights of the Sawhoyamaxa is making the case public. With newspaper articles, educational campaigns and events, FIAN informs the public about the case and brings it to international attention. On the Day of Peasant’s Struggle in April 2009, FIAN carried out public protest activities in front of the Paraguayan embassy in Berlin in cooperation with Amnesty International. Despite the conclusion of the contract which provides for the restitution of the land to the Sawhoyamaxa in September 2011, FIAN together with the local group Hamburg will continue to follow the case in order to monitor how the return to the territory takes place, if the court sentence is fully complied with and if the Sawhoyamaxa are able to enforce their right to food.

5 | The rights of indigenous peoples in Brazil

In Brazil, more than 800,000 citizens are indigenous, but at 0.4 percent, indigenous peoples only make up a very small proportion of the population. There are 220 different peoples and more than 70 uncontacted groups. They are distributed throughout the whole country, more than half of them, however, live in the North or Central-West Region, especially in the Amazon (cf. FUNAI 2011a). According to the Indigenist Missionary Council CINI, in 2011, there were 1,024 indigenous territories in Brazil, of which only 359 were officially registered, around 300 were in one of the stages of the demarcation process and for 323 territories the demarcation had not yet started. There are 35 reservations nationwide which were allocated by the state and usually do not correspond to the traditional areas. They are often completely overpopulated (cf. CINI 2011b: 62). Although Brazil has vast stretches of land at its disposal, the traditional territories of indigenous peoples are highly disputed. Cattle breeding, the sugar cane industry and the cultivation of soy are increasingly leading to the displacement of indigenous communities. Without access to land or resources, Brazil’s indigenous peoples are often not able to realize their right to food and they are threatened by hunger.

5.1 | The protection of the right to food of indigenous peoples in Brazil

Brazil has ratified all international treaties in the UN and Inter-American Human Rights System which are relevant for the right to food. ILO Convention 169 was adopted by the Brazilian Congress in 2002 after over ten years of discussion. Brazil had always rejected the term ‘peoples’ of the convention, fearing that it could lead to claims to self-determina-

**Ratification of international treaties**

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According to article 5 of the Brazilian constitution, international human rights treaties form part of domestic law after they have been approved by Congress. With that, the constitution provides a framework for the justiciability of the right to food and Brazilian judges could directly base their sentences on international human rights instruments. In practice, this rarely happens because, in this relatively conservative justice system, ESCR are regarded by most judges as not being justiciable (cf. Ziegler et al. 2011: 140).

In 2010, the right to food of all Brazilian citizens was incorporated into article 6 of the constitution by amendment, hence the constitutional protection of the right to food is high. It now holds the status of a fundamental social human right alongside preexisting rights, such as the right to education, health and housing. According to article 5 of the constitution, these rights possess immediate applicability. The reform was the result of several years of discussion in Congress and was promoted by the country’s strong social movements, which had put the right to food on the political agenda with their constant protests and mobilizations. Today, Brazil is considered by many a positive example of the implementation of the right to food. Former president Lula da Silva declared the fight against hunger a priority in 2003 and his program Fome Zero helped many Brazilians escape poverty and hunger. Furthermore, the Brazilian food security framework law, which created a food security system in 2006, enshrines the right to food (cf. FAO 2010: 12-14). Despite progress made, innumerable citizens, especially those of indigenous origin, are still suffering from hunger in Brazil.

The constitution also protects the right to food of specific groups. Article 227 enshrines the state’s obligation to secure the right to food of children and adolescents. Article 208 guarantees programs for the provision of school meals and health assistance for students under the age of 18. Moreover, article 7 protects the right of urban and rural workers to a legally established minimum wage capable of satisfying their basic living needs, for example food. Indigenous children or rural workers can refer to these rights when they suffer from hunger.

**Special protection of indigenous rights in Brazil**

Chapter VIII of the constitution is dedicated to the rights of indigenous groups. The separate treatment of their rights is essential due to their distinct ways of life and culture and because indigenous land rights permit compensating for historical injustice. Since access to land is crucial for indigenous peoples’ ability to feed themselves, the land rights in the constitution are of utmost importance for the realization of their right to food.

Article 231 enshrines the right of Brazil’s indigenous population to their traditional lands and the duty of the state to demarcate and protect that land. The constitution of 1988 scheduled a time limit of five years for the demarcation of
indigenous territories. Indigenous peoples possess exclusive usufruct of the riches of the soil, rivers and lakes in their territories. Hydric resources and their energetic potential as well as mineral riches may only be exploited with the authorization of Congress, if the communities concerned have been consulted and if they participate in the revenues. Indigenous peoples must not be compelled to leave their territories, except in the case of catastrophe. Actions of third parties with the aim of occupying indigenous land or exploiting its natural resources are null and produce no legal effects. Article 232 rules that occupiers of indigenous land or exploiting its natural resources must not be compelled to leave their territories, except in the case of catastrophe. Actions of third parties with the aim of occupying indigenous land or exploiting its natural resources are null and produce no legal effects.

Additionally, the Estatuto do Índio has been in force in Brazil since 1973. The statute dates back to the times of the military dictatorship and has not yet been adapted to ILO Convention 169 or the constitution of 1988. In 1991, a legislative project for a new statute was elaborated, but the project has not been concluded. Since 2009, it has been waiting in the Chamber of Deputies for its voting. The legislative text is therefore outdated and Brazil’s indigenous peoples were not able to participate in the elaboration process. This is why they advocate drawing up a completely new text with their participation (cf. Pires 2011).

Mechanisms for claiming indigenous rights

When it comes to claiming indigenous rights, the Public Attorneys Office, the Ministério Público (MP), plays an important role. It has an autonomous mandate independent of the three powers to investigate rights violations through the government branches and to prevent these violations. The Public Ministry is active at federal and state level. In almost every municipality, there is at least one representative with whom all citizens can lodge their complaints about rights violations committed by public authorities or private entities. The MP disposes of mechanisms to remedy rights violations and to defend human rights. If it gains knowledge of a human rights violation against indigenous peoples, it is obliged to take action (cf. FAO 2010: 22).

The agreement Termo de Ajustamento de Conduta (TAC) is one of its instruments which serves to move public authorities to commit themselves by contract to adjusting their conduct to the legal provisions within a certain time limit. At first, the MP collects evidence of the alleged rights violation, meets with those responsible as well as with the victims and prepares a TAC. The agreement is signed in public by all parties concerned. If the commitments are not met, the MP can request that a court holds the authority in breach of the contract accountable (cf. FAO 2010: 23). In 2007, for example, the MP signed a TAC with the Brazilian Health Foundation Fundação Nacional da Saúde (FUNASA) because of the poor state of health care for the indigenous people Pataxó in the state of Minas Gerais. It obliged the FUNASA to elaborate expert opinions on the shortcomings in health care, to analyze the water quality in the communities and to provide medicine. If it does not comply with the provisions, a fine of 500 Real per day will incur (cf. MPF 2007). A TAC can also help indigenous peoples to defend their rights, including the right to food, against the action or inactivity of public authorities.

Another procedure at the MP’s disposal is the civil inquiry (inquérito civil). It serves to investigate rights violations reported by citizens. The result can be recommendations to the state and public authorities or the elaboration of a TAC. This inquiry is an administrative procedure, leading to the collection of evidence which can provide a basis for the MP to appeal to a court (cf. FAO 2010: 23).

The Ação Civil Pública (ACP), the public civil action, is a mechanism for claiming ESCR in court. It can be applied when a danger or damage threatens the environment, consumer protection or any public interest concerning a group or society as a whole. An ACP can be filed by the MP or any NGO devoted to the protection of the environment, consumers or other collective interests. In 2007, the MP in the state of Alagoas filed an ACP against the municipality of Maceió because the rights of the
children and adolescents of Orla Lagunar had been violated. They did not have access to social security programs and were suffering from malnutrition. The court decided in favor of the ACP and ordered the municipality to care for the nutrition of the children (cf. FAO 2010: 24). The ACP can also be used to defend collective interests of indigenous peoples. Unfortunately, budget constraints and the small number of prosecuting attorneys at federal and state level make it difficult for the MP to fully perform its tasks. In addition, only one-sixth of the attorneys at federal level work on ESCR. Thus, the right to food does not receive the necessary attention (cf. Ziegler et al. 2011: 140).

5.2 | The Guarani-Kaiowá’s fight for their rights

The 30,000 members of the indigenous people of the Guarani-Kaiowá, who are living in the state of Mato Grosso do Sul (MS) in southwest Brazil, have been subject to severe human rights violations for decades. They were expelled from their territories in the past to make room for agriculture. The Brazilian government planned to colonize the region and promoted the influx of farmers into the area. After the Paraguayan War (1864 to 1870), the government generously allocated land titles, a practice that accelerated under the Vargas government (1930 to 1945). The traditional territories of the Guarani-Kaiowá were of particular interest. From 1915 to 1928, the government had created eight indigenous reservations in MS. With a total area of 18,124 hectares, however, they were much smaller than the original territories and were widely dispersed. This disregarded the sociopolitical organization of the indigenous communities, who have strong ties to their Tekohá, the land of their ancestors, where they can preserve their cultural identity. It also restricted the use of wide stretches of land, which the Guarani-Kaiowá were used to and which was necessary to avoid tensions between groups. Indigenous villages and family groups who had once lived separately were now forced to crowd together on the reservations (cf. Mendonça/Sanches 2011).

In the 1950s and 1960s, conflicts with farmers did not occur frequently. The Guarani-Kaiowá were doing jobs for them, such as cutting down trees, and the forest offered an alternative to life on the reservations. The extension of soy cultivation and cattle farming in the 1970s exacerbated the situation. In the 1980s, the mechanization of agriculture deprived the communities of their areas of refuge and the demand for indigenous labor decreased. Monocultures and the use of pesticides destroyed the biodiversity of the land. Since the demarcation stipulated in the constitution of 1988 did
I am 52 and work at the San Fernando sugar mill. My leg has been hurt for a long time, since I had an accident. I have got a wife and kids, if I stop working, who will feed them? (…) I get up at 2 a.m. to work every single day to make 500 Real per month (200 euro). My only son was killed while he was working in the sugar cane fields, he died when he was 15 years old.

Orlando Juca, cane cutter, in the movie ‘The Dark Side of Green’ (c.f. vimeo)

not advance, the Guarani-Kaiowá were exposed to constant conflicts with the farmers and to forced evictions. Many of them had to escape to the overpopulated reservations (cf. Mendonça/Sanches 2011).

The current agrofuels boom mentioned in the beginning does further fuel the pressure on indigenous territories and delays the demarcation process. While in 2007/2008 only 300,000 hectares of land in the state of MS were planted with sugar cane, it will be one million hectares by 2012/2013. More and more capital is flowing into the production of ethanol. 40 new sugar cane mills will be built in MS, 16 mills are located on indigenous territories which are already being demarcated (see box on page 24 for the procedure) (cf. FIAN Brasil 2011a: 80). Without their means of subsistence the Guarani-Kaiowá have to work as day laborers under inhumane conditions. Around 10,000 indigenous workers cut sugar cane in the state of MS. Since 2004, 2,600 workers have been freed from slave-like working and living conditions (cf. CIMI 2011c: 22).

The living conditions of the Guarani-Kaiowá are miserable because they do not own enough land to lead a dignified life and to feed themselves. The eight reservations, together with the 24,000 hectares of land demarcated since the 1980s, amount to a total surface of 42,000 hectares. On average, every Guarani-Kaiowá has 0.9 hectares available, a small area compared to other indigenous peoples in Brazil. The highest population density is registered on the reservation of Dourados with 14,000 indigenous residents on roughly 3,500 hectares. On the overcrowded reservations, there is often no access to clean drinking water, food, fuels or medicinal plants. Many Guarani-Kaiowá preferred settling on the side of highways. After heavy rainfalls, however, the camps are often flooded, bearing the risk of disease. Out of desperation, several indigenous communities occupied their land, encountering the resistance of local farmers (cf. Mendonça/Sanches 2011).

Without access to land or with territory reduced in size, the Guarani-Kaiowá are not able to feed themselves adequately. This causes severe malnutrition in the communities. From 2003 to 2010, approximately 4,000 indigenous children in MS suffered from malnutrition (cf. CIMI 2011c: 16). From 2004 to 2008, 80 indigenous children died of malnutrition or related diseases (cf. Lopes 2008). In 2009, the child mortality rate of 41 deaths per 1,000 live births was twice as high among Guarani-Kaiowá children than on the national average. Their life expectancy was only 45 years, compared to 74 years on the Brazilian average (cf. FIAN Brasil 2011a: 80).

The government of the state of MS distributes food baskets, but they do not arrive regularly, do not cover the daily nutritional needs and disregard the eating habits of the Guarani-Kaiowá (cf. FIAN Brasil 2011b). It is ironic that more than 90 percent of the Guarani-Kaiowá with their long tradition of being food producers depend on food aid. In 2010, a fact-finding mission with the participation of FIAN discovered an increase in malnutrition among indigenous children despite the distribution of 13,000 food baskets per month. None of the families in the communities visited were receiving money from the national cash transfer program Bolsa Família (cf. Valente 2011: 8). Furthermore, the Guarani-Kaiowá do not want to depend on help, they want to be able to feed themselves.

Being confined to small spaces leads to tensions among the Guarani-Kaiowá which results in high alcohol and drug consumption or internal violence. From 2003 to 2010, 176 Guarani-Kaiowá in MS committed suicide, which accounts for 83 percent of all suicides among indigenous peoples nationwide. In the same period, there were 250 homicides and 190 attempted murders against members of indigenous communities, many of them in the context of land claims (cf. CIMI 2011c: 16-18). In November 2011, 40 masked gunmen burst into the community Guailviry near Amambai and killed indigenous leader Nísio Gomes. The community had reoccupied its traditional land because the demarcation of the area had ceased progress since 2008 and indigenous families had to camp on a roadside, arousing the displeasure of local farmers there (cf. CIMI 2011d).

Termo de Ajustamento de Conduta as sign of hope

In 2007, there seemed to be light at the end of the tunnel for the Guarani-Kaiowá’s fight for their land. The FUNAI and the Public Ministry (MP) signed a Termo de Ajustamento de Conduta (TAC). The agreement stipulates the identification and demarcation of 36 Guarani-Kaiowá territories in the south of MS. There had not been any provisions for the demarcation of these territories up to that point. They are located in the
basins of the rivers Amambai, Brilhante, Iguatemi, Dourados, Nandeva and Apa, respectively (cf. CIMI 2011c: 53). To this end, FUNAI set up six internal working groups with experts from both FUNAI and the Institute for Agrarian Reform (INCRA) as well as anthropologists. They were to elaborate reports on the identification of the territories which were to be concluded by June 2009. They were then to be forwarded to the Ministry of Justice, which is responsible for ordering the demarcation. The new time limit for this was the 19th of April, 2010, but all deadlines were ignored. The reasons were threats and violence against the working groups, farmers’ refusal to grant access to the land and the exertion of political influence on the government by the agribusiness (cf. FIAN Brasil 2011a: 79; 2011b). André Puccinelli, governor of MS since 2007, has even publicly rejected indigenous land rights (cf. CIMI 2011c: 11).

In July 2011, the court 2ª Vara Federal de Dourados laid down a schedule for the submission of the reports on the 36 territories. The last date was in January 2012. In December 2011, there was cause for joy: After countless delays, FUNAI published the final report of one of the six working groups in the Federal Law Gazette. With that, the identification as the first step of the demarcation process for the indigenous territory Panambi-Lagoa Rica in the municipalities Douradina and Itaporã was concluded. The territory has a size of 12,000 hectares and forms the greater area Brilhante Pega where 832 Guarani-Kaiowá live (cf. FUNAI 2011c). Now, the hope remains that the other five missing reports will follow soon.

Lawsuits impede land restitution

However, the reports are not a guarantee for the restitution of the territories. The demarcation law 1775/96 grants every citizen the right to appeal the identification works within 90 days of report publication. Lawsuits filed by large land owners often delay the demarcation procedure. By the end of 2009, there were 56 lawsuits pending in the courts of first instance in MS (Varas Federais) and 87 appeals in the Tribunal Regional Federal da 3ª Região. In 2009, a court granted an appeal of the Federation of Agriculture and Livestock FAMASUL and ordered the land owners and farmers to be informed before identification works start. The supreme court Supremo Tribunal Federal reversed this judgment in 2010 and assured the working groups the protection of the Federal Police (cf. MPF 2010). But the lawsuits set back the demarcation for several months. Only recently has the Justiça Federal de Mato Grosso do Sul dismissed a complaint of five municipalities that demanded the annulment of the TAC (cf. CIMI 2011c: 51, 53).

Furthermore, lawsuits filed by large land owners, often with the support of the government of MS, are pending with the Supreme Court. With a historic judgment in March 2009, the same court had paved the way for the homologation – the penultimate stage of the demarcation process consisting of the signature of the Brazilian president – of the indigenous territory Raposa Serra do Sol in the state of Roraima. After that decision, there was hope that the sentence could set a precedent. However, at the end of 2009 and 2010, the Court issued preliminary injunctions impeding the demarcation of Guarani-Kaiowá territories in MS (Taquara in the muni-

cipality of Juti and Arroyo Korá in Paranhos) as well as the Cacheoerinha area of the Terena people in Miranda. In the latter case, the ex-governor of MS claimed the land for himself (cf. CIMI 2011c: 52).

New setbacks and agribusiness gaining ground

In the case of the Guyraroká community in the municipality of Caarapó, which was driven off from their land in 1998 and then settled alongside a road until they occupied part of their territory in 2003, success was already imminent. After the declaration through the Ministry of Justice had been completed, the 11,401 hectares of land were about to be demarcated. But the physical implementation is still pending to this day. Moreover, a sugar mill was built near Guyraroká in 2010, which is operated by a subsidiary of Raízen, a joint venture of Shell and Brazilian sugar and ethanol producer Cosan. The sugar cane for the factory is grown on two farms located on the Guyraroká land. The sugar cane cultivation is financially supported by the government with funding from the Brazilian Development Bank (cf. CIMI 2011c: 60). This once again violates the rights of the Guarani-Kaiowá to their land. Moreover, the pesticides used on the crops cause diarrhea among the children and seem to be responsible for fish deaths and the disappearance of medicinal plants (cf. SI 2011).

The list of communities that have been fighting in vain for their land and realization of their right to food is long. According to FUNAI, there are currently around 24 provisional camps alongside highways in MS where Guarani-Kaiowá live under inhumane conditions without sufficient food (cf. CIMI 2011c: 34). But the indigenous peoples have not given up. In January 2011, in a letter to President Dilma Rousseff, their assembly Aty Guasu requested the restitution of the indigenous territories. In August, 500 Guarani-Kaiowá marched to Dourados and claimed their rights. The disregard of the TAC jeopardizes their life and violates the constitution, the ICESCR and ILO Convention 169.

5.3 | FIAN’s support of the Guarani-Kaiowá

FIAN Brazil has been supporting the Guarani-Kaiowá’s struggle in MS since 2005. The case was also forwarded to FIAN International and is supported by the European sections. For example, it was supported through the campaign FACE IT ACT NOW, which was started in 2007. FIAN’s strategy for the support of the Guarani-Kaiowá is coordinated with representatives of the indigenous people, FIAN Brazil, CIMI and other organizations. Firstly, the measures aim at achieving the demarcation of the 36 areas which had been specified in the TAC agreement of 2007 to enable the Guarani-Kaiowá to feed themselves by having access to their land. For the moment, FIAN is trying to advance this by lobbying for the conclusion of the anthropological reports. Secondly, FIAN’s measures intend to improve the nutrition situation of the Guarani-Kaiowá and to help them gain access to government programs and food aid in order to avoid more deaths and hunger. Thirdly, FIAN publicizes the violence against and criminalization of
indigenous communities and their leaders, many of whom have had to pay for the fight for their land with their lives or prison.

In April 2008, FIAN Brazil carried out an international fact-finding mission in Brazil with the support of CIMI to get an idea of the situation of the Guarani-Kaiowá in MS. FIAN France, Belgium and Holland participated. Another mission in March 2010 with the participation of FIAN documented an increase in malnutrition among Guarani-Kaiowá children and the lack of government assistance (cf. Valente 2011: 8).

The international pressure built up by FIAN, its partner organizations and other NGOs increased the Brazilian government’s willingness to dialogue. In April and June 2010, the Secretary General of FIAN International met with representatives of government institutions and a member of the Presidential Cabinet in two high level meetings. As a consequence of the national and international attention the situation of the Guarani-Kaiowá was receiving, ex-President Lula publicly declared the solution of this conflict as one of his priorities for 2010. Nevertheless, he did not conclude the demarcation of the 36 areas stipulated in the TAC during his term in office. One result of FIAN’s interventions is that, after the high level meeting in June 2010, the Public Ministry decided to take immediate steps in order to grant the TAC legal validity (cf. Valente 2011: 8). In October 2011, FIAN Brazil addressed a letter to President Rousseff reminding her of the government’s obligation to implement the demarcation of the territories (cf. FIAN Brasil 2011a).

Moreover, FIAN pursues the objective of maintaining the visibility of the case in Europe and to create a broad international awareness which influences the Brazilian government to treat the demarcation as a priority. In October 2008, FIAN Brazil, together with CIMI and representatives of the Guarani-Kaiowá, paid a visit to the European FIAN sections. In December 2010, another Brazilian delegation came to Germany, Norway, Switzerland and the European Parliament to shed light on the situation of the Guarani-Kaiowá. In Berlin, a press conference was organized and Anastácio Peralta, leader of the Guarani-Kaiowá, met with the Commissioner for Human Rights of the German Federal Government, Markus Löning.

Urgent actions and letters of protest

In spring 2005, on the occasion of the starvation of several Guarani-Kaiowá children, the first of many urgent actions was directed at ex-President Lula and the Brazilian judiciary. In regular urgent actions, FIAN called upon the government to implement the demarcation of the territories of the Guarani-Kaiowá and to take measures against hunger and malnutrition in order to meet the obligations laid down in international treaties regarding the realization of the right to food.

In 2008, FIAN organized a postcard action, requesting ex-President Lula to restitute the lands of the Guarani-Kaiowá. In March 2009, the 2,500 postcards were handed over to the President of the National Council on Food and Nutrition Security (CONSEA) in Brasília, who forwarded them to Lula’s Cabinet. In February 2010, FIAN International received a response...
from the Brazilian Federal Ministry of Social Development and Combat Against Hunger (MDS), which, however, FIAN International considered insufficient. The most important statement of the letter was the recognition that the conflict could only be solved by effectively dealing with the problem of the lack of access to land.

In October 2010, another urgent action was issued, since the demarcation of the indigenous territory Ypo’i had not progressed and several Guarani-Kaiowá had occupied part of the São Luiz Farm in Paranhos in August 2010. After the land owner had denied the National Health Foundation FUNASA access to the indigenous community and therefore denying them medical care, a three-year-old child died from the consequences of dehydration, malnutrition and pneumonia in September 2010. FIAN requested the government to demarcate the Ypo’i and to ensure the provision of sufficient food (cf. FIAN International 2010).

Moreover, in September 2011, FIAN International sent an open letter to the Brazilian Federal Regional Court Tribunal Regional Federal da 3ª Região, requesting the prevention of a repeated eviction of the Guarani-Kaiowá of Nhaderu Laranjeira in the municipality of Rio Brilhante. A couple of days before, a judge of the court 2ª Vara Federal de Dourados had granted the land owner the possession of the land and ordered that FUNAI had to arrange for the 120 indigenous group members to leave the land. In May 2011, the community had returned to the area for the third time. Since their last displacement in fall 2009, they had been settled alongside the highway BR-163, where two community members were fatally hit by a car. The Nhaderu Laranjeira is also one of the areas whose demarcation is stipulated in the TAC and should have been concluded long ago (cf. FIAN International 2011).

Additionally, in November 2011, after Guarani-Kaiowá leader Nsio Gomes of the Tekohá Guairiwas executed and abducted by masked gunmen, FIAN International sent a letter to President Rousseff asking her to immediately care for the security of the Guarani-Kaiowá, to bring the culprits to justice and to advance the demarcation as provided for in the TAC.

In the future, taking the Guarani-Kaiowá case analogous to the Sawhoyamaxa to the Inter-American Commission on Human Rights could be a strategic option (cf. Valente 2011: 8). Although all remedies under domestic law have to be exhausted first, article 46 ACHR also permits a petition if a fair trial was not possible in Brazil, access to the courts was denied or if the sentence was un justoifiably delayed. This applies to the case of the Guarani-Kaiowá because the demarcation of some areas has been pending for decades and the TAC has not been implemented since it was agreed upon in 2007. Meanwhile, indigenous children are suffering from malnutrition and are dying. A clear strategy would have to be developed first because the multitude of territories and cases which are concerned are all stuck in different stages of the demarcation process. Furthermore, taking a case to the Inter-American Human Rights System also involves financial hurdles. Until then, FIAN will maintain the pressure on local, national and international decision-makers (cf. Valente 2011: 8).

During the last couple of years, progress has been made in Latin America at legal and institutional level to protect the right to food and indigenous rights. Numerous national constitutions, ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and the ICESCR offer a comprehensive framework for safeguarding indigenous rights to land and food. Furthermore, several states have created institutional structures to combat hunger in their own countries. In 2005, for example, Guatemala installed the food security system Sistema Nacional de Seguridad Alimentaria y Nutricional (SINASAN) by law. In Brazil, the law Lei Orgânica de Segurança Alimentar e Nutricional (LOSAN) set up the food security system SISAN in 2006.

The problem, however, lies in the discrepancy between the rights of indigenous peoples on paper and in public discourse on the one hand, and their actual realization on the other hand. Closing this implementation gap will be one of the future challenges. Governments’ expressions of will finally have to be followed by actions and transformations in everyday life, which is still heavily marked by discrimination against the indigenous population.

First of all, it is necessary to make discrimination and the extent of hunger and malnutrition of indigenous peoples visible. States often do not have disaggregated or current data on the nutrition situation of indigenous peoples. Data broken down by ethnicity or gender is the basis which enables governments to fight hunger and discrimination with targeted policies. Without detailed knowledge of who the vulnerable groups are and where they live, measures do not have the desired impact and possible progress cannot be monitored or evaluated.

Another step towards achieving the realization of the right to food of indigenous peoples is their integration into government programs to alleviate hunger. Since indigenous peoples are disproportionately affected by malnutrition and their living conditions as well as their relationship to nature and nutrition differ from the rest of the population, it is indispensable to use a differentiated approach and practice positive discrimination by giving them special attention. A fundamental problem that has to be solved is indigenous peoples’ access to national welfare programs. This is frequently denied because they lack birth certificates or identification documents and because their physical access to public authorities is still not guaranteed.

The main challenge for the realization of the right to food of indigenous peoples is the protection of their access to their ancestral territories, which enables them to feed themselves independently of external help. The shortcomings of
government policies to alleviate hunger are owed to the fact that they hardly tackle structural causes of hunger, such as inequality and the lack of access to land and other resources. The realization of agrarian reforms or the demarcation of indigenous territories will meet the resistance of local elites in Latin American countries in the future as well. The demand for land for the cultivation of plants to produce agrofuels or soy for the animal feed industry is further increasing, thus the increased pressure on indigenous territories.

Despite these conflicting interests, Latin American states are obliged to comply with their obligations as States parties, among others, to the legally binding ILO Convention 169 and to implement the demarcation of indigenous territories. And this does not only apply in cases where this has already been ordered by judgments of the Inter-American Court. Agreements on the identification and demarcation of indigenous territories, such as the TAC in Brazil, have to be implemented within the stipulated period since any delay in granting access to land can lead to hunger, malnutrition and deaths. Respect for indigenous peoples’ rights has to become a priority for states and they have to make it their chief business to protect them from third party interventions.

In the light of the implementation gap mentioned, another challenge will be the improvement of the justiciability of indigenous rights, including their right to food. At national level, effective mechanisms are necessary which are able to provide quick remedial action in the case of rights violations. The Inter-American Human Rights System can only be the last option because this path is not only lengthy, but is also a financial burden indigenous communities can hardly shoulder without support. Therefore, there need to be public authorities within the vicinity of the indigenous communities whose duty it is to defend indigenous rights. These rights remain “toothless” as long as they are merely proclaimed in the constitution but offer neither procedures indigenous peoples can resort to when their rights are violated nor hold the responsible persons accountable. The case of the Sawhoyamaxa, who have unsuccessfully tried to claim their land at national level for more than a decade, has shown that effective mechanisms were not available. If necessary, domestic legislation has to be changed to establish these procedures.

To be able to use these mechanisms, however, indigenous peoples need to be informed of their role as right-holders in the first place. Human rights education can empower them and help them understand that they must not regard social benefits provided by the state as a favor, but as the state’s human rights obligation. If it is clearly defined which instruments they can use when duty-bearers do not fulfill their tasks, indigenous peoples can effectively claim their land rights and the right to food.

Cases such as that of the Sawhoyamaxa, however, also show that even if indigenous peoples win their case before the Inter-American Court because national mechanisms were not available, the realization of their rights is nevertheless not yet guaranteed. For the Court cannot impose penalties on states that do not respect the ruling. Constant human rights work can support indigenous peoples in claiming their rights and can raise awareness of rights violations.

A special focus on indigenous issues in government policies and programs is indispensable for Latin American countries in order to succeed in meeting their state obligations and to fulfill the rights of indigenous peoples. To this end, in the future, the Voluntary Guidelines on the Right to Food, which were adopted by the Food and Agriculture Organization of the United Nations (FAO) in 2004, can provide opportunities as well as serve as a great tool for governments. Although the guidelines are not legally binding, the unanimous adoption by 187 states gives them great importance. They offer states guidance on what has to be done in the main policy areas to realize the right to food. Thereby, they explicitly refer to indigenous peoples in connection with access to resources in guideline 8. Guideline 8.1 states that special attention must be devoted to indigenous peoples and their relationship to natural resources. Guideline 8B recommends to states that they take measures to protect the security of land tenure and to establish policy and legal mechanisms to promote agrarian reforms and access to land. Disadvantaged groups, such as women, the poor and especially indigenous peoples, have to receive particular attention (cf. FAO 2005: 16-18). In further guidelines, they are implicitly taken into account under the term “vulnerable group”.

A chance for the realization of indigenous peoples’ right to food could be its recognition as a collective right. Under international law, it is still considered an individual right. Many indigenous peoples, however, regard it as a right which is exercised collectively, as Latin American indigenous peoples have clearly stated in the Declaration of Atitlán. ILO Convention 169 already enshrines several collective rights. The UN Declaration on the Rights of Indigenous Peoples was the first step towards the acceptance of the right to food as a collective right: Article 1 gives indigenous peoples the right to fully and collectively enjoy all human rights enshrined in international treaties and the Universal Declaration of Human Rights. Article 25 of the latter is dedicated to the right to food. The recognition of the right to food as a collective right would better protect indigenous peoples’ interests and customs which secure their access to food. This includes the collective land tenure of indigenous peoples, the protection of their activities, such as hunting and fishing, and the cultural adequacy of food provided for them (cf. Knuth 2009: 17-18). FIAN will continue to fulfill its mandate and to support indigenous communities in Latin America in their fight for the realization of their right to food.
Sources


The Right to Food of Indigenous Peoples in Latin America


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Guarani-Kaiowá women of the community Nhanderu Marangatu, Brazil. © Suki Ozaki.