EDITORIAL *by Wilma Strothenke*

// The Human Right to Food perspective is crucial to address the immediate and root causes of the current World Food Crisis. FIAN has issued an open letter to States and intergovernmental organizations, asking them to, amongst others, urgently impose regulations on the present expansion of the market-led agricultural liberalization process as one of the structural causes for hunger and evictions; and to place a moratorium on the goals for agrofuel production, that would exacerbate a situation of multiple human rights violations, as affirmed by a FIAN-coordinated fact finding mission to Brazil in April. The lead article in this Right to Food Quarterly analyses the impact of agrofuels from a right to food perspective.

Some civil society based organizations and social movements recently have questioned human rights as a beneficial tool in their struggle for social justice. In response, Christian Courtis warns against discarding the idea of rights. The importance of civil society for the development of human rights is highlighted by Martin Wolpold-Bosien.

A major breakthrough for the justiciability of human rights was reached by the decision of UN member states in April to approve the text of an Optional Protocol to the International Covenant on ESC-Rights. Its formal adoption by UN Human Rights Council and General Assembly will help strengthen human rights worldwide and be an appropriate way of marking the upcoming 60th anniversary of the Universal Declaration of Human Rights. /

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RIGHT_TO_FOOD QUARTERLY

FIAN

The impact of agrofuels from a right to food perspective[1] *by Sofia Monsalve*

AGROFUELS AND HUMAN RIGHTS OBLIGATIONS

An increasingly important share of so-called bioenergy today is produced from agricultural crops, which are traditionally used for food and feed. The cultivation of non-food energy crops also requires land and water. This creates direct competition for the resources to feed the world's population in a situation where 854 million people are already suffering hunger and malnutrition, most of them living in rural areas. The effects of agrofuel production on the enjoyment of the Human Right to Adequate Food (RtF) of the most marginalized groups and communities should be considered before implementing policies and programmes which promote investment, trade and use of agrofuels. The States Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the community of States have legally binding obligations to the realization of the RtF. They must guarantee to poor rural communities secure access to -and control over- natural resources for food production. Moreover, States must enforce policies which foster adequate and enough food supply at local and national levels, and must guarantee that food is economically accessible for all persons. States have to regulate the economy and the markets according to these obligations and should not create incentives that can endanger the realization of the RtF and other human rights. The enforceability of the RtF vis-à-vis the interests of powerful economic actors (agribusiness, oil TNCs and car manufacturing companies) which are investing in agrofuels production is a major challenge to be tackled. If not properly addressed, already existing problems related to increasingly concentrated agro-food systems all over the world (land concentration, worsening labour conditions, and soil depletion) might be further exacerbated by the agrofuel boom. According to the core elements and obligations under the RtF as defined by the UN Committee on Economic, Social and Cultural Rights (CESCR), the major impacts of the agrofuels boom on the Right to Food observed so far can be analyzed from a human rights perspective.

LOSS OF FOOD AUTONOMY

According to the CESCR, a core element of the Right to Food is the direct availability of food from productive land or other natural resources, relating to the capacity of people to feed themselves by having secure control over land, water and other resources for food production. Forced evictions and lack of access to land and productive resources already constitute major patterns of violations of the RtF worldwide today [2]. Increased pressure on land and water triggered off by the aggressive expansion of energy crop monocultures is very likely to lead to further dispossession of natural resources controlled by marginalized rural groups. Oil palm plantations push deforestation and water contamination in areas where indigenous peoples' diet depends on the forest and the land, such as in Indonesia[3].As a consequence of forced evictions and violent usurpation of resources, countries like Colombia already count with near to three million internally displaced people. The massive and forced exodus of rural populations to live in the cities under precarious and inhuman conditions is a cruel reality in many countries.[4] Although the growth of industrial export-oriented monocultures is not the only factor, it is an important cause to explain this dynamic, which is further aggravated by the rise in agrofuels.

On the other hand, the renewed interest in land by powerful economic actors is going to complicate the implementation of agrarian reform policies needed to comply with State's obligations to realize the RtF when social groups, like for example landless people, do not have access to means for their subsistence. The notable deceleration of the agrarian reform program in Brazil in 2007 is self-explanatory in this regard. Patterns of highly unequal distribution remain an unsolved problem in Latin America, Southern Africa and Southeast Asia. The rise in agrofuels will aggravate this situation, as land prices are on the rise and agrarian reform policies based on legal dispositions, which only allow the expropriation of idle land for redistribution, might soon become ineffective when idle land is disappearing according to the rate at which investors of the agro-industrial sector put this land under their control.[5]

REDUCTION OF THE AVAILABILITY OF FOOD IN LOCAL, NATIONAL AND INTERNATIONAL MARKETS

The second dimension of the availability of food, as stipulated by the CESCR, refers to well functioning distribution, processing and market systems, aiming at bringing production and demand in balance.

States are obliged to take legislative measures and implement policies and programmes which effectively foster food security at all these levels. Unregulated expansion of energy monocultures endangers local, national and international food supplies and may amount to a violation of the RtF of the affected population.

The run for energy crops might imperil local food supply, by creating a lack of locally produced food in communities and higher dependency of food distributed through the market or through subsidised food supplies, leaving communities more vulnerable to crises and shocks. Regional dominance of energy crops can increase transaction costs for smallholders to get an additional income from their produce. Betting on energy crops is a risky business for them: cases in Brazil show that food insecurity among smallholders cultivating energy crops (sugar cane) doesn't seem to be unusual. All their labour capacity is absorbed by the arduous cash crop. They rely on their sole harvest earnings to eat the year round, making them very vulnerable.[6]

ECONOMIC ACCESS TO FOOD IS DETERIORATING

Food has to be economically accessible, referring to the affordability of any acquisition pattern or entitlement to procure food, without threatening other basic needs. Food prices and income levels for households spending a large share of their income on food are the main factors in determining the economic accessibility of food.

States are obliged to secure economic access to food to all their citizens through different strategies and measures, encompassing the promotion of fair working conditions and adequate salaries for workers, food subsidies, price controls, social security schemes and others.[7]

The recent diversion of food crops for agrofuels production, together with other factors like droughts in producer countries, low reserves, changes in consumer habits and financial

speculation betting on an increase of agricultural prices, has had an important role in the recent price increase for some agricultural products like maize, rice and vegetable oils.[8] Poor people spend a large share of their household budget on food (up to 50-70%).The sudden rise in food prices registered recently and their consequences explain the surge of food riots in various countries. In Mexico, for example, poor urban consumers depending for more than half of their diet on tortilla calories recently experienced a 400% price increase due to maize import scarcity from the USA and speculation.

FOOD AID IN DANGER

Food also has to be physically accessible, implying access for physically vulnerable persons, disaster victims and people relying on a specific territory for their livelihoods like indigenous peoples or pastoralists. Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters.[9]

Recently, UN World Food Program (WFP) officials declared agrofuels one of the main causes for the increasing difficulty to deliver food aid, whether purchased locally or from food surpluses of exporting countries. Both possibilities are becoming scarcer. Furthermore they announced that higher food prices strongly reduce their capacities. The WFP estimates that due to the rise in prices, an additional 500 million dollars on top of the existing budget of 2, 9 billion dollars would be needed in order to finance the necessary projects in 2008, not considering possible emergencies.

INCREASE IN EXPLOITATION OF NATURAL RESOURCES

In order to secure long-term food security, the sustainability of food availability and access has to be guaranteed. This implies both the sustainable use of natural resources necessary for food production, and the economic sustainability based on income and prices.

According to the FAO Voluntary Guidelines for the implementation of the RtF[10], States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry.

Converting land or forest areas to energy crop monocultures also has an impact on greenhouse gas emissions and the sustainable use of natural resources. Deforestation due to monocultures such as oil palm and soya in countries with tropical forests like Indonesia, Malaysia, Colombia or Brazil, has proven highly destructive regarding climate change. Furthermore, monocultures often mean contamination of soils, rivers, subterranean and spring waters, due to intensive use of chemical fertilizers and pesticides. Monocultures are also thirsty and access to irrigation water is concentrated in the hands of the most powerful. One litre of sugar cane ethanol for example takes at least twelve litres of water.[11]

FINAL CONSIDERATIONS

Agrofuels will not solve the problem of hunger in the world. On the contrary, they threaten to worsen an already critical situation. States and the international community have committed to acheiving the Millennium Development Goals as a matter of high priority[12], Halving the number of people suffering hunger world-wide is highlighted as goal number one. In this sense, States and the international community, should dedicate the maximum of their available resources to policies and programs aimed at fighting hunger as stipulated the ICESCR before embarking upon a policy promoting agrofuels,. Within these policies the proposal of food sovereignty is emphasized. According to it the promotion of food production has to be prioritised on the part of the small producers for the local and national consumption, the policies of agrarian reform which they guarantee to rural marginalized groups, access to and control on land and other productive resources, the policies of agro-ecological production which assure sustainable use of the natural resources for food production and which revalue the traditional and indigenous knowledge of production and nutritional culture. Policies and programs which encourage the decentralized use of biomass for the local production of energy could be compatible with the human rights and the vision of food sovereignty.

The energy problems of our societies cannot be solved without the total fulfilment of human rights. Considering the obligations imposed to the States and to the community of States through the RtF and other human rights, the States that wish to promote energetic policies of agrofuels will have to put into practice the principle of precaution, by means of a pre-award survey of these policies' impacts at local, national and international level.

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1 The article is an extract from a working paper of FIAN International written by Jonas Vanreusel, Roman Herre, Sofia Monsalve.

2 See FIAN/La Via Campesina. 2004, 2005,2006. Annual Report on peasants' rights' violations. www.fian.org.

3 Friends of the Earth (2008) "Losing Ground: The human rights impact of oil palm plantation expansion in Indonesia" www.foe.co.uk/resource/reports/losingground.pdf.

4 Mingorance, Fidel / Minella, Flaminia / Le Du, Hélène. 2004. El cultivo de la palma africana en el Chocó. Human Rights Everywhere, Diócesis de Quibdó.

5 FEDERATION OF INDONESIAN PEASANT UNION (FSPI) 2006. Agrarian Conflict and Violence Toward Peasants in Indonesia. Case study presented at the occasion of the International Conference on Agrarian Reform and Rural Development (ICARRD).

6 O Estado de Sao Paulo, 4 de julho 2007. Cana toma espaço de alimentos. Conab admite que milho, soja e trigo vêm perdendo áreas em MT, MG, SP e no PR, Fabíola Gomes.

7 Cf.: General Comment No.12, Art.11, paragraph 13: http://www.fao.org/righttofood/common/ecg/51635_en_General_Comment_No.12.pdf.

8 Down to Earth. Biofuel fever . N°74 August 2007.

9 General Comment No.12, Art.11, paragraph 15: http://www.fao.org/righttofood/common/ecg/51635_en_General_Comment_No.12.pdf.

10 Guideline 8E: ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e01.pdf.

11 For environmental impacts of agrofuels please refer to German Advisory Council on the Environment (SRU) (2007), Climate Change Mitigation by Biomass, Berlin.

12 The first report of the hunger task force of the Millennium Project developed a typology of the hungry worldwide. This first report was published in New York, April 2003. See also the excellent overview present by International Fund for Agricultural Development (IFAD) in 2001: Rural Poverty Report 2001. The Challenge of Ending Rural Poverty, Rome. See: http://millenniumindicators.un.org/unsd/mi/mi_goals.asp.

Getting rid of rights? Not a good idea... *by Christian Courtis*

It is not easy to intervene in a debate about the "limits" of the rights discourse, because, as reflected in the October 2007 Seedling review entitled "Biodiversity, Rights and Livelihood"[1], it involves a number of different and conflicting arguments.

On the one hand, there seems to be a radical conceptual argument: that the very notion of right is inevitably linked with property. The argument suggests that to use the language of rights necessarily means the commodification of every other human value, or that it is impossible to ensure any right which is not individual property.

Certainly, many of the nuts and bolts of the modern notion of a "right" were developed in the context of the establishment of the capitalist market in the XVIII and XIX centuries, and were related the translation of economic transactions in legal terms. But reducing the notion of rights to this idea is clearly not correct. Even traditional civil and political rights, such as freedom from torture, the right to a fair trial, freedom of expression or the right to vote can be difficult to understand under the framework of property rights. Saying that converting access to food, education, health care or housing into rights will necessarily transform these into property contradicts exactly the meaning of these rights, which is in fact the opposite – to free them from commodification, to limit their mercantilization. The reality has been that, while rights such as the rights to health, housing, food or education have been declared for a long time, very little attention was devoted to defining them, providing them with content and with real remedies in case of violation. The radical critique of the notion of rights will actually have the effect of discouraging the efforts of conceiving economic, social and cultural rights as fully-fledged rights.

Moreover, asserting – as some participants of the debate do – that there is a need to transcend the notion of individual rights, and to put in place collective rights, actually requires the notion of right as something that cannot be equated with property.

Equating rights and property rights actually freezes the emancipatory potential of the idea of rights, by defining them as inevitably linked to a historically contingent phase of their development –therefore denying their flexibility and their possibility of being redefined according to different substance and contexts. The notion of rights is also not contradictory with the idea of access to public goods. Even the right to property implies the notion of access to public goods, such as police, courts or property registration authorities, which also depend on availability of public funding. When asserting a right to food, or a right to health, we also assert the need for protection from abusive state or third party action, as well as the need for public action that will facilitate, promote or provide access to public goods.

Another series of arguments points out that globalization, or a number of policies that implement market globalization and privatization, are destroying or severely altering the culture, the identity and the productive activities of traditional communities. The argument seems to assert that this is due to the same notion of right. But this is not accurate. One could agree that part of the problem is the extension of unqualified or absolute property rights to a number of areas, but in order to limit this extension, what is required is a legal basis to restrict property rights. Economic, social and cultural rights, and human rights in general, can actually play this countervailing role. But in order to do this, it is necessary to build on the idea of rights, not to discard it.

Another version of the same argument says that traditional communities are put into a corner by economic globalization as a result of having resorted to the language of rights and the legal mechanisms. But globalization also affects communities that have not resorted to the language of rights or the legal mechanisms, and channel their claims through the language and mechanisms of politics or of direct mobilization. Should we then say that the language or the mechanisms of politics or of direct mobilization are the cause for their suffering? In fact, the language and mechanisms of rights and law, of politics or of direct mobilization are just means of framing and expressing interests and claims within a power struggle, directed to maintain autonomy and traditional cultures and economies. Completely disregarding the language of rights and legal mechanisms results in abandoning a possible field for struggle, and leaving them ready for their complete takeover by the interests of economic globalization.

What is needed to defend the claims of traditional communities and marginalized people is not to oppose, but rather to articulate legal, political and mobilization strategies. Victories in the political field or in the streets are highly likely to be ignored if they are not translated at all in the law, and – even better – in terms of rights that empower people to claim them through legal mechanisms. We should be, of course, aware of some limitations of the language of rights – which, due to its formal character, may not completely capture all the richness of social life – and of legal mechanisms – which, because of their technical character, regularly require the mediation of lawyers. But this is no reason to do away with the notion of rights altogether: the fact that there are also limitations in the language and means of politics and mobilization has never lead us to renounce using them.

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1 „What's wrong with rights", in http://www.grain.org/seedling_files/seed-07-10.pdf

Civil society's role in promoting the right to food *by Martin Wolpold-Bosien*

Based upon FIAN's experience in promoting and defending the right to food, this article analyses the role of civil society organisations focussing on the different functions they have assumed throughout the last two decades.

Given that the last World Food Day in 2007 was officially dedicated to the right to food by the FAO, an astonishing development of this right throughout the last twenty years can be traced. When, in 1987, Prof. Asbjorn Eide presented his report on the right to food, or when in 1986 FIAN was founded by a small international group of persons gathered to reach a concrete utopia, the concept was only known by very few people and the field was unknown even to the large majority of the human rights community. Nowadays, the topic has become increasingly important in the UN-Human Rights System, in the FAO, among academics, governmental sectors in different parts of the world and also in the community of human rights defenders. The role of civil society in this context can be seen as catalyst and facilitator in awareness-raising processes.

The dynamics between the political-conceptual development, on the one hand, and concrete action to defend rights, on the other hand, which is the daily struggle against the causes of hunger in several local and national contexts is important for the realisation of the Human Right to Food and Economic, Social and Cultural Rights (ESCR) in general. The conceptualization of these rights has been assumed by social actors in many countries and has proved to be useful. The Right to Food has served in many cases as an impact tool for defending the rights of communities and persons. The concrete function of civil society has been to defend the right and its conceptual development at academic and international levels.

Civil society organizations encouraged the inclusion of the Right to Food in texts resulting from political summits, as shown in the World Food Summit 1996, where the importance of the Right to Food was recognized. With the World Food Summit Plan of Action, the concept and best instruments for the implementation of the right were clearly defined. Also, in 1997, it was civil society organizations who produced a Code of Conduct on the Right to Adequate Food, which had an impact on the elaboration of the General Comment 12 by the Committee on Economic, Social and Cultural Rights in 1999; and in 2002, when an Intergovernmental Working Group was commissioned in the World Food Summit: five years later for the elaboration of a set of Voluntary Guidelines for the Right to Food. With their active participation, the CSOs mobilized and generated political will.

Another example is the Alternative Forum to the Rome Summit of 1996. It established the International Planning Committee for Food Sovereignty by civil society organisations. Vía Campesina and FIAN launched the Global Campaign for Agrarian Reform in order to accompany the agrarian reform process of the World Food Summit Plan of Action with the focus on the relation between food sovereignty and the right to food. The International Conference on Agrarian Reform and Rural Development then, which took place in March 2006, adopted an Agrarian Reform in favour of these concepts and in contrast to the concept of land markets promoted by the World Bank. Although the contribution of civil society to these topics should not be overestimated, criticism and proposals coming from civil society do have an influence on the generation of political will and decisions.

Civil society seeks ways for social networking, searching for alternatives against the challenges posed by globalization. Human rights, in particular the Right to Food, can be seen as a legalistic instrument, that, when in use, contribute rather to the stabilization of unfair conditions instead of enabling their transformation. However, the possibility to experiment with the struggle for human rights and to learn lessons from the struggle for ESCR, and in particular for the Right to Food, allowed social movements to perceive the right as a useful argument and to pass on this experience to other social struggles, such as for land and water, of women and indigenous peoples. With the concept of Food Sovereignty, a conceptual-political agreement among peasant movements has been found that does not deny the differences and diversity among the various regions. The concept is flexible enough to be adjusted to different national realities and, at the same time, is an imperative applicable as alternative to the massive rise of free-trade agreements like the Economic Partnership Agreements or the association agreements promoted by the European Union.

The development of the Right to Food is based primarily upon the recognition of ESC-Rights as human rights of equal value. An increasing number of social actors interpret this right from a non-moralistic point of view, that is, a right that cannot be claimed loses its *raison d'être*. The rights' exigibility includes the revision of national legislation and policies regarding their due coherence with the right to food obligations assumed by the State; it also includes the justiciability of the right to food; and proposals of new instruments at the international level, such as the Optional Protocol to the International Covenant on ESC-Rights. In this context, civil society promotes the exigibility of the right to food and is the guard of its quality.

Monitoring the right to food, that is, its follow-up regarding fulfilment is extremely important. The aim is to have a "social eye" that monitors State policies. For example, civil society produces and submits parallel reports to the Committee for Economic, Social and Cultural Rights and promotes the debate at national level - a classical function of a so called human rights "watchdog".

As a consequence of the aforementioned functions, civil society promotes change and is a source for generating new concepts and instruments aimed at achieving better rights protection. When policies provoking hunger or structures that foster the impunity of right to food violations are discovered, one of the functions of civil society is to promote political reforms and institutions that guarantee the full coherence of the right. As the documentation on violation cases of the right to food demonstrates, there is an increasing number of transnational companies that adopt measures in their respective countries with severe implications, including right to food violations, in third countries. The question of extraterritorial obligations - State obligations of the country where the company has its headquarters - aimed at protecting victims in third countries, is crucial and has gained importance in the cooperation between academic bodies and human rights organizations. Thus, the constant generation of new concepts continues to be a crucial function of civil society.

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The Right to Food and Mining in West Africa *by Ibrahima Aidara*

West Africa has been the target of mining for over a thousand years. However, in the 1990s the region experienced a gold rush when member countries were advised by the World Bank to engage in economic reforms and open up their investment market to attract more foreign direct investment (FDIs). Since then, most West African economies have become dependant on mineral resource extraction, with devastating effects on rural livelihoods.

In the year 2000, gold surpassed cotton as Mali's top export. In 2005, Ghana recorded a significant increase in mineral production with gold taking over from cocoa as the leading foreign exchange earner. Gold is the most important mining product in the region, followed by diamonds, bauxite and phosphate. Despite big promises for development made by mining companies, mining countries have experienced growing impoverishment. Mali with its substantial gold reserves remains 174th of 177 countries in the 2005 UNDP Human Development Index. Roughly 70 percent of Malians live with less than $1 per day, and 90 percent live below the $2 per day poverty line. This data indicates that any potential benefits from gold mining have not trickled down to the population at large. A recent World Bank report strongly questioned the developmental value of large-scale gold mining in Ghana, noting that the industry's contribution to foreign exchange has been minimal with no benefit to local communities. So the huge FDI in mining sector did not bring any significant change that would enable the translation of mineral wealth into building the productive capacity of individual countries and local communities living on top of the mineral resource.

DEVASTATING EFFECT ON FOOD SECURITY

Large-scale mining is a challenge to small-scale agriculture in the region. In Ghana, nearly 30 percent of the country's land surface has been licensed to more than 200 mining companies for their activities, including at least 2 percent of the country's dwindling forest reserves. According to the FAO there is already today a large cereal deficit in countries like Nigeria and Ghana, which will have a significant impact on regional cereal markets and push up prices. Large-scale mining is in competition with food as well as cash crop production. In Mali, for example, exports of gold increased by 47.4 percent from 1996 to 2002, while cotton exports declined by 38.6 percent during the same period. Nevertheless, the agriculture sector as a whole still accounts for 36 percent of GDP while gold accounts for just 10.7 percent. Of an estimated 5.2 million working people in Mali, 3.9 million work in the agricultural sector. But in mining areas, farm land is becoming increasingly scarce. Farmers whose land has been taken over have usually been given cash compensation for their crops and the loss of their livelihood, as opposed to new land and the means to continue farming. For instance, the Wassa West district in Ghana has seen the population of farmers reduced to 48% of pre-mine numbers. Industrial mining in its current context is deteriorating rural communities' sources of livelihood in West Africa. Conflicts mainly revolve around land user rights; resistance to relocation/resettlement schemes for communities affected by mining; disagreements over the level of compensation for local infrastructure, land and crops affected by mining; pollution of communities' water sources; destruction of cultural sites.

Women are the most affected by extractive operations. Domestic activities such as collecting water, washing clothes and bathing children, expose them to great risks from contaminated water. Environmental degradation from mining, including deforestation and water pollution also imply a greater work-load for women, who need to walk further and spend more time each day gathering clean water and firewood for example. Pollution poses particular risks for pregnant and lactating women and their infants. The loss of traditional livelihoods, such as agriculture and gathering, due to mining often diminishes the resource-base upon which many rural women earn an income or otherwise provide for the basic food-security needs of their families. Women rarely benefit directly - neither from jobs created in industrial mining nor from compensation payments.

ACCOUNTABILITY AND COMMUNITY RIGHTS

Conflicts mainly arose by the national mining codes, which strengthen the benefit of private companies and only pay minimal attention to economic and social rights of local communities and environment protection. Furthermore, the "race to the bottom" trend supports investors, which seek to play countries against each other – as a result, countries in competition establish low regulatory standards. There is also a growing influence of international financial institutions, companies and foreign governments on national development priorities, imposing natural resource extraction as a priority. West African governments are institutionally weak and have a lack of implementation mechanisms to ensure that central decisions are acted upon. Development analysts have attributed the failures of extractive industries in reducing poverty at least in part to a lack of clarity on how governments spend budgetary resources. Many governments and large companies in West Africa are now taking an active role in the Extractive Industries Transparency Initiative (EITI)[1]. Besides this initiative, CSOs have started the campaign "Publish What You Pay"[2]. This is a necessary first step towards a more accountable system for the management of revenues in resource-rich developing countries, and for the reduction of poverty and corruption in these places.

Today, West African mining communities have no say or meaningful participation in the decision making regarding national mining policies. But in countries like Senegal, Mali, Nigeria and Liberia, there is a growing civil society movement around mining issues and governments have started to recognize them as key stakeholders in mining policy reform process. Communities affected by the operations of TNCs, demand that they must be able to exert their rights to participate effectively and meaningfully in mining policy reform processes; to manage their local natural resources necessary to sustain their livelihoods; and to hold governments accountable for securing these rights through good governance practices.

Ibrahima Aidara is Regional Governance Advisor and Extractive Industries Program Officer at Oxfam America – West Africa Regional Office.

1 EITI "encourages" government and private companies as well as CSOs to "voluntarily develop a framework to promote transparency of payment and revenues".

2 This campaign calls for the mandatory disclosure of tax, fee and royalty payments made by oil, gas and mining companies to governments for the extraction of natural resources on a country-by-country basis.

IBSA II – Beginning of a national test phase in Colombia, Ghana and Spain

by Ana-María Suárez Franco

Since 2004 the University of Mannheim (Prof. Eibe Riedel) in cooperation with FIAN International has been developing the IBSA Project (Indicators, Benchmarks, Scoping and Assessment). Main objective of this project is the identification of several indicators which should serve to improve the information provided in the state reports presented periodically to the UN Committee on ESCR. On the basis of the indicators set out in IBSA, states will set up specific realisation benchmarks related to the different ESC-Rights. These benchmarks will be negotiated with the Committee in order to guarantee that they are not too low (scoping). After a specific period of time the Committee will assess how the particular state has managed to achieve the benchmarks. The Committee will use the information obtained from this analysis for the formulation of its recommendations to the respective state.

During the first project phase (2004-2006) 36 indicators were selected for the specific case of the Right to Adequate Food, which have been considered relevant to monitor the realization of the right in its different dimensions. In the first phase different experts of UN Agencies - OHCHR, FAO-, civil society organizations and academia participated. At the end of this first project phase the importance of having a national test phase to validate the indicators in the field was clearly identified.

In order to allow the national test phase, the Federal Ministry on Agriculture, Food and Consumer Protection decided to finance the second part of the project, as it did during the first part of the project. Ghana, Colombia and Spain were selected as countries for the test phase. Between January 23-25, 2008, experts from these three countries met the IBSA Team in Heidelberg, FIAN staff members and FAO experts of the Right to Food Unit. During the meeting, the experts got familiarized with the IBSA-process and criteria for the validation of the indicators during the national test phase were selected. During the next 6 months the indicators will be validated with governmental authorities and civil society organizations in each one of the states. By July, the definitive list of indicators will be adopted. National reports on the validation process will be presented during an expert's workshop in Mannheim in October 2008.

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Breakthrough for universal social justice

by Sandra Ratjen

After five years of difficult negotiations, UN member states approved the text of an optional protocol to the International Covenant on Economic, Social and Cultural Rights which will provide for complaints and inquiry mechanisms to guarantee the rights set forth in the Covenant. No other international legal text guarantees a comparably comprehensive range of economic, social and cultural rights as the International Covenant. The adoption of the Optional Protocol, which will have repercussions on national jurisdiction and help strengthen the protection of human rights worldwide, is conceived as an historic step towards more international social justice.

The new complaints mechanism will allow victims of human rights violations, such as violations of the rights to health, education, food and housing, to address the UN Committee on Economic, Social and Cultural Rights if they were not able to obtain relief in their own country. The possibility of this has existed for more than thirty years with the International Covenant on civil and political rights. With the compromise reached on April 4 in Geneva, the international community of states affirms for the first time that economic, social and cultural rights are equally enforceable just as, for example, the freedom of expression or the right to a fair trial.

Up until the very end of negotiations, opponents to the enforceability of economic, social and cultural rights like Canada, the USA, Australia, and New Zealand tried to weaken the text of the new instrument that was to be adopted. Also, European states such as Denmark, the Netherlands, Sweden, Greece and the UK took an obstructive stance. However, African and Latin-American countries, as well as several Asian and European countries, maintained their support for a strong Optional Protocol encouraged by a broad global coalition of civil society organisations. The result of the negotiations within the working group reflects the concessions made to the "sceptical" states and carries traces of a difficult negotiation on restrictive wording, such as article 8.4 which was the subject of a highly controversial dispute. Indeed, this provision on the choice of states concerning policy measures to implement the rights of the Covenant can be considered as the trade off for the comprehensive approach which the adopted text is following in general. In its closing statement, the NGO coalition made clear that this provision must not be interpreted as limiting the Committee's ability to decide upon violations of the rights, as many obligations of states do not require proactive measures, but can be complied with by the mere refraining of doing harm[1].

FIAN International, among others, has been demanding the adoption of such a treaty since the early 1990s. As a member of the international NGO coalition, FIAN has high hopes that the new treaty will soon be formally adopted by the UN Human Rights Council and General Assembly and subsequently ratified by a large number of states, to be of effective use for victims of human rights violations.

Sandra Ratjen is Advocacy Coordinator and responsible for the Optional Protocol negotiations at FIAN International

1 Details about the reading of the text by the International NGO Coalition can be found in its final statement on www.fian.org

Guarani Kaiowá – a people wants peace *by Roseane do Socorro Gonçalves Viana*

We hope that one day we will have the opportunity to sleep without fear, in peace, without having to carry the weight of the sentiment to be tormented every day. *Graciela Santos, Guarani, 20 years old*[1]

Before the Portuguese colonization started in the XVI century, more than 5 million indigenous were living on the territory that today forms Brazil. Since then, the indigenous have been physically and culturally exterminated by the colonial model and by the trade system. The Guarani Kaiowá population today comprises about 27.500 persons in the Brazilian state of Mato Grosso do Sul.

Beginning in the 1940s, the Southern region of Mato Grosso do Sul has increasingly been occupied by farmers coming from all over the country. During the 1970s the production of soya, as well as cattle breeding for exportation rose steadily. Given these new circumstances, the presence of indigenous people became dispensable and disliked by the farmers. Step by step, the Guarani Kaiowá suffered from a process of displacement and expulsion from their land. They were forced to live in decreasing areas and at roadsides. The territorial conflicts cause violence, death and criminalization of the indigenous. Leaders, adolescents and children face hunger and misery.

The Report on Violence against the Indigenous Peoples in Brazil, published by the Indigenous Missionary Council CIMI in 2006, indicated that the Guarani Kaiowá people in Mato Grosso do Sul is one of the most affected by territorial conflicts. In 2007, 48 indigenous people were killed in this state. The Guarani Kaiowá suffer from the violation of various human rights: the consumption of contaminated water causes diseases and even leads to death, lack of adequate nutrition, criminalization of indigenous leaders, the illegal and undeserved appropriation of cards indigenous receive as beneficiaries of social programmes. Furthermore, non-indigenous manage to claim government benefits which are actually destined for the indigenous. As a consequence, the truly disadvantaged do not receive any financial support and the public funds do not reach out to them. Between 2005 and 2007, 53 children died of malnutrition. This was widely disseminated by the media. The psycho-social disequilibrium caused by violence and human rights violations, led to an increase in alcoholism and suicide among the Guarani Kaiowá.

Although the Brazilian Constitution is a legal mark for the provision of indigenous rights, the Brazilian state does not fulfil what is written down in its own Magna Carta. The right to a dignified life is denied to the indigenous. Some urgent actions have been taken, like the distribution of basic food baskets, the government programme "Carteira Indígena" that includes various proposals for local development, "Bolsa Família"[2], among others. Some difficulties have been experienced during the implementation of these actions due to a lack of knowledge and because the programmes were not adapted to the reality of the Guarani Kaiowá.

In January 2008, a group of organisations[3] visited the Guarani Kaiowá who are camped at the roadside of the state highway *MS 289*. The camp is located in the municipality of Coronel Sapucáia. This is regarded as the most violent municipality of Brazil. The inhuman situation the people are living in has been denounced by the coordinator of the State Forum for Food and Nutrition Security in Mato Grosso do Sul. The report of this visit indicated various human rights violations, among others, the discrimination in medical consultation, lack of regular distribution of food baskets, criminalization of indigenous leaders.

What the Guarani Kaiowá Graciela Santos says, expresses the suffering of all Guarani Kaiowá: **„Although we struggle hard to be recognized and to receive a little bit of respect, we are still the target of humiliation and aggression. For the majority of people who do not know us, it is easy to say that we demand with filled bellies, that we receive various benefits from the government and that we live a good life. But they seldom know that we are living in misery and abandonment."**

Maintaining the cultural identity, guaranteeing the human right to adequate food, eradicating discrimination and criminalization are duties of the State. Society holds responsibility in this process as well, since it has a historical debt vis à vis the indigenous people. This case is supported by the *Face it Act Now Campaign,* which is run by FIAN in various European countries. To join this campaign, please consult the webpage www.face-it-act-now.org

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1 published in the jornal Dourados Agora, on 29 June 2006

2 Family grant, a government programme of direct cash transfers to low-income families

3 CIMI, CDDH, FESANS, Campo Grande News, MultiPress Comunicação

Turning land and water into poisonous gold in Ghana

by Ute Hausmann and Mike Anane

This is a story about the struggle of farming communities in Ghana, it is about the increasing destruction of vast stretches of fertile lands, streams and rivers, lush green forests and rich water bodies in the interest of a large mining company. In 2004, the South African gold mining company AngloGold bought the former Ghanaian state-owned Ashanti Goldfields Company. Ashanti's traditional stronghold operations in Obuasi in the Ashanti region of Ghana had left behind an enormous legacy of decades of environmental destruction and displacement of farmers from their lands. For the communities living on its Iduapriem concession in Ghana's western region the story is no different, the human suffering had reached unbearable levels since the company started operations in the early 1990s.

Teberebie, one of the affected communities, is a village of 700 inhabitants on the Iduapriem concession, very close to the mining pits. The villagers have lived here since 1999, when they were resettled to make room for the mining operations. Although they are farmers,they have not received replacement land to make up for their loss. So they took over the little land that was left near the village and continued to walk all the way back to those fields that had not yet been taken over by mining. Land had become scarce and difficult to reach. Today, the situation is becoming even worse as huge dumps of waste rock increase in size and height next to the village eating up the little land that was left for farming. For the farmers, access to land is increasingly becoming a mirage. In February 2006, a farmer was seriously shot and wounded by a soldier when he and others tried to pass to their fields but were blocked by private security and military personnel who had been called in following a misunderstanding between the company and the farmers over the use of an access road to their farms.

Loss of land and income is not the only problem of the communities living on the concession, which covers 1.800 hectares. Since mining operations started in the area, many streams have ceased to exist, remaining water sources are polluted and boreholes are deficient. Although the affected communities have complained to Anglogold Ashanti about the lack of water the company has failed to act. So has the Environmental Protection Agency (EPA) which is responsible for monitoring the extraction of water and water quality in mining operations. What the communities urgently need is regular supply of safe drinking water as well as capacity building to enable them monitor water quality independent of Anglogold Ashanti Iduapriem and the Environmental Protection Agency.

FIAN has supported the communities since the year 2000, One major focus of international support was to influence the actions of the private lending arm of the World Bank, the International Finance Corporation (IFC), and European state financial institutions who have financed the Iduapriem mine for many years. When the restructuring of the IFC loan came up in 2003, the affected communities, FIAN and the Wassa Association of Communities affected by Mining- WACAM- urged IFC to negotiate a Community Action Plan (CAP) between the company, IFC and the affected communities. The implementation of the CAP was to be monitored by a Monitoring Advisory Group (MAG), of which the communities as well as FIAN and WACAM are members. In addition, a Resettlement Action Plan was set up to ensure that the villagers of Teberebie would get replacement land. When AngloGold took over in 2004, implementation of these plans came to a halt. The company paid off the European investors who were asking critical questions and it was not until the shooting of the farmer in early 2006 that the MAG was set up. Meanwhile, the communities continued suffering as poverty and hunger increased and children dropped out of school. Despite several meetings by the MAG since its inauguration in 2006 and numerous promises made by the company, the situation remains as bad as ever.

Recently, FIAN was alerted by local community members who alleged that the mining company was discharging raw waste water, including faecal matter, from the company's residential housing into streams in the area which also serve as sources of drinking water for the communities. Samples of the effluents taken by FIAN and analysed by the Water Research Institute in Ghana (part of the Council for Scientific and Industrial Research) showed that the effluents were not safe to be discharged into the environment as they were heavily contaminated with pathogenic bacteria. Under pressure through various media reports that followed the detailed presentation of the laboratory results at a press conference organised by FIAN Ghana as well as an international FIAN urgent action, AngloGold Ashanti launched a media release on April 28, 2008, in which the company apologised to the affected communities. The company has also announced a mine-wide environmental assessment and has invited FIAN-Ghana "to visit the site to re-examine issues of concern regarding food security in the vicinity".

The case of the Iduapriem gold mine has been taken up as a key case of the European campaign Face-It-Act- Now. Further updates can be read at www.face-it-act-now.org.

Ute Hausmann is responsible for mining at FIAN Germany, Mike Anane is Coordinator of FIAN Ghana

Unconstitutionality declaration of the Forestry law in Colombia

by Ana-María Suarez Franco

On January 24, 2008, the Colombian Constitutional Court launched a press release announcing its judicial decision to declare the Forestry Law unconstitutional. This law was adopted in 2005, accompanied by strong confrontation with environmental movements and NGOs, which alleged that the interests of indigenous and Afro Colombians had been neglected. The law allowed for unreasonable exploitation of large areas of territories. The majority of these territories belongs the indigenous and Afro-Colombian communities, who have been living there for hundreds of years. They obtain their food and water from these forests and practice their cultural lives there. The law also eliminated the former regulation, which was more protective and had strong regulations in order to fulfil improved forest management and use.

The main argument by the Constitutional Court to declare unconstitutionality of the Law was that due consultations did not take place despite being foreseen as a fundamental right of these communities in the Colombian Constitution and in the ILO Convention Nr. 169.

In its decision the tribunal reiterated its jurisprudence regarding the Constitutional Block *(Bloque Constitucional)*. The Constitutional Block doctrine recognizes that Human Rights Conventions ratified by the Colombian State are part of the constitution and should be used as parameter to determine the constitutionality of acts or laws of lower hierarchy. According to this doctrine the constitutional dispositions shall be interpreted also according interpretations of these covenants developed by respective international monitoring bodies (See Constitutional Decision T-1319/2001).

According to the Constitutional Block doctrine, the ILO Convention 169 has in Colombia a constitutional hierarchy and is obligatory for legislators, administration officers and judges. It shall be taken into account to interpret constitutional dispositions related to the consultation of these kind of communities (Art. 330 Colombian constitution). According article 6 of ILO Convention Nr. 169 governments shall consult interested populations trough adequate procedures and through its representative institutions, when they take legislative or administrative measures which can directly or indirectly affect these populations. For the Court the right to consultation attempts to ensure the territorial rights of these populations, the protection of their cultural, economic and social values and their livelihoods as human groups. In the analysed law the Court identified that this requisite was not met, since the Government did not carry out consultations in an adequate manner. According to the Court it can not be argued that the general participation of the whole population in the legal process is sufficient to comply with this requisite. In line with the respective international standards, specific mechanisms addressed to the specific populations are required. In such cases the government shall explain the content of the law draft to communities potentially affected by the law, its scope, and the manner in which the new law could affect or benefit them. This is in order to allow the communities to express their concerns regarding the drafted law. The non-compliance of consultation under these conditions is a violation of the constitutional rights of the communities. As the Group of Public Interest of the Universidad de los Andes - claimant of the unconstitutionality of the law - expressed (Revista Semana 08.02.08) the previous consultation is not just a formality during the legislative process, but a legal instrument, which allows the participation of cultural minorities in decision making processes of issues which will affect them. It is the warranty of a real democracy in the state.

Finally, through the allegation of the respect of the right of indigenous and Afro-Colombian communities to participate in consultations, the right to food of these communities has been indirectly protected, since the unconstitutionality declaration of the law hinders forest- projects under conditions which threat the access to their food and water sources. This example shows that very often the interconnection of rights can help to obtain the protection of ESCR also when these are not called directly.

Finally, according to this argumentative line it is possible to conclude that consultation should also be considered as requisite for the implementation of all macro-projects which could affect the rights - including the right to food - of communities. According to this, the allegation of this right can be considered an adequate advocacy instrument. It can be used by human rights defenders in cases in which big agro-fuels projects or agro-business projects threaten the rights of communities and do not take into consideration their participation in decisions on the implementation of projects.

Ana-María Suárez Franco is Coordinator of the Programme Justiciability of the Right to Food at FIAN International

Marking World Food Day 2007 on Human Rights Day in Norway

by Wenche Barth Eide, Ida-Eline Engh and Chris Mzembe

The marking of World Food Day 2007 in Norway was organised by a group of NGOs and academics in Oslo between December 10 and 12, 2007: *The human right to adequate food in Africa – how to make it happen?* Given the WFD theme this year the timing was chosen to coincide with UN Human Rights Day commemorating the adoption of the Universal Declaration on Human Rights on 10 December 1948. This underlined the need to address the right to food within the context of all human rights, especially economic, social and cultural rights, and to promote a human rights-based approach to development.

An afternoon symposium on 10 December was followed by a seminar on December 11 and 12. The arrangement was a collaborative undertaking by the International Project on the Right to Food in Development (IPRFD), FIAN Norway, Plan Norway, the Oslo-based Development Fund, and the Research Group on Development and Human Rights at the University of Oslo. It put into practice a recent recommendation for closer cooperation between Norwegian academia and civil society organisations regarding rights-based development. Furthermore, it explored mechanisms to synergise advocacy and other efforts regarding the right to food within the two constituencies in the North and the South. Financial support came from NORAD, Plan Norway, ForUM, the Norwegian South Africa Programme, and Akershus University College.

With a focus on Africa, the arrangement aimed to mobilise renewed interest and commitment to promoting and protecting the human right to adequate food - on the Norwegian political agenda and in international and regional organisations in Africa. It sought to gain insights into the preparedness and capacities of states as primary duty bearers and of donor partners as co-responsible together with governments in fighting hunger and malnutrition in all forms.

African participants came from the Uganda Human Rights Commission, UNDP South Africa, the University of the Western Cape in South Africa, Plan in Malawi, Zimbabwe and Plan's Strategic Framework for Africa, Federation of African Nutrition Societies, and Institute of Agricultural Research in Sierra Leone. FAO was also represented by the Coordinator of its Right to Food Unit. Regrettably FIAN International was at the last minute unable to attend.

The outcome was a set of recommendations to guide attempts to boost political and practical interest and measures towards the realisation of the right to adequate food in Africa. This includes strengthening attention at organisations with regional influence such as the AU, NEPAD, the African Commission on Human and People's Rights. To follow-up the recommendations, a North-South committee of twelve persons will now seek to catalyse various processes to this end while keeping track of other initiatives to foster complementarity.

Wenche Barth Eide, IPRFD; Ida-Eline Engh, FIAN Norway; Chris Mzembe, Plan Norway.

Victory after 12 years of struggle for their land in the Philippines

by Yifang Tang

The struggle to gain back their ancestral land they lost to San Miguel Foods Inc. (SMFI) ended when the Sumilao farmers entered the 50- hectare land for the first time after 12 years in March 2008. 50 hectares within the contested 144-hectare property were given to the farmers through a deed of donation from the SMFI, while the remaining 94 hectares are yet to be taken from an adjacent property, which would be purchased by the company and offered to the Department of Agrarian Reform under the Voluntary Offer-to-Sale (VOS) scheme of the national agrarian reform program. Although the Sumilao farmers did not get the entire area they had been claiming, the farmers are overjoyed and are tilling the land today. Through their resolve to claim the land and the public support they were able to gain, the issue of agrarian reform was put back in the center of public debate and opinion, and their story inspired many more fellow peasants to do the same.

Prior to this victory, on October 15, 2007, 50 Sumilao farmers started a march dubbed as "Walk for Sumilao Land, Walk for Justice" from Sumilao to Manila, a distance of 1500 km, to bring their case to the President and the Department of Agrarian Reform (DAR). FIAN launched its urgent action (0720UPHL) in November 2007, in supporting the farmers' struggle for their land. Many FIAN members worldwide participated in the urgent action and received replies from the DAR and the Office of the President. A separate letter was also sent to the Secretary Pangandaman of the DAR by FIAN Philippines.

Opinions vary on whether or not the case of the Sumilao farmers is a success since 94 hectares would be given outside the original 144 hectares and also because the land will be given under the VOS scheme and not the mode of compulsory acquisition (CA), as it should have been. The main difference being that under the mode of CA, land is "compulsorily" acquired by the state and sold to identified beneficiaries under the market price, while in the case of VOS, the landowners come forward and "voluntarily" offer land for land coverage. The incentives behind the VOS are the financial advantages the landowners get: the cash portion of the compensation given by the state to the landowners is increased by five percent, while the bond portion is correspondingly decreased by five percent. Also, the land can be sold either under the market price as in CA or at the market price, depending on several factors such as the quality and productivity of the soil. If the landowners do not agree to the amount computed by the state, they have the possibility to ask for a higher price.

In the case of Sumilao, the farmers will have to pay for the 94 hectares at its present market value. Nonetheless it was a victory for the Sumilao farmers: "This is the land that we have struggled for. This is ours finally" (Rene Penas, leader of Sumilao farmers, when he entered the property).

FIAN would like to thank the participants of our urgent action for supporting the Sumilao farmers. We will observe the case until the 94 hectares are actually distributed to the farmers.

Yifang Tang is responsible for South-East Asia at FIAN International

PUBLICATIONS

The right to adequate food in India

This report, aimed at providing detailed information concerning the right to food in India, is the outcome of several years of FIAN and civil society work. As elaborated in this report, food availability is not the problem in India. There is plenty of food to feed every man, woman and child; yet there are several reports of starvation death from the country as case studies indicate. The problem lies in the accessibility of food to those most vulnerable to hunger and starvation and the failure of the State to take effective steps to prevent such a situation. The Government of India has designed several policies and schemes to support the most vulnerable sections of the Indian society to overcome hunger and malnutrition. These are efforts by the Government of India which have to be acknowledged. However, there are still numerous shortcomings in the policies and schemes and with regard to their implementation.

The report, elaborated by FIAN India in collaboration with other civil society organisations and FIAN International, has been presented as a parallel report to the UN Committee on ESC-Rights in May 2008.

FIAN International, April 2008, 144 pages, English

Download at www.fian.org

A Human Rights View on Social Cash Transfers for achieving the Millenium Development Goals

Study by eed, Bread for the World, medico international and FIAN International, March 2008, 68 pages, English and German

Download at www.fian.org

Screen State Action against Hunger

Manual on how to use the Voluntary Guidelines on the Right to Food to monitor public policies

FIAN/ Welthungerhilfe, January 2008, 56 pages, English and Spanish

Download at www.fian.org

Right to Food of Tomato and Poultry Farmers in Ghana

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FIAN International and Germany, Send Foundation of West Africa, Germanwatch, Both Ends, UK Food Group, December 2007, 28 pages, English

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La Justiciabilidad del derecho a la alimentación en Guatemala

Jurisprudential analysis of the right to food in Guatemala

FIAN Austria and International, October 2007, 158 pages, Spanish

Download at www.fian.org

Reforma Agraria en Paraguay

Factsheet on the state of agrarian reform in Paraguay

FIAN International and La Via Campesina - Global Campaign for Agrarian Reform, October 2007, 4 pages, Spanish

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

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