

Access to land and water:

# Key elements of the human right to food?

*The debate on economic, social and cultural human rights is still relatively new, as is the question of whether access to land and water actually constitutes such a right at all. And yet, does the discussion actually help us to handle problems relating to hunger and a lack of water supplies any better? Does development cooperation benefit from it, or does enshrining access in the form of rights lead to overly complex distribution problems and economic inefficiency?*

Michael Windfuhr  
FIAN International  
Heidelberg, Germany  
windfuhr@fian.org



Photo: GlobalAware

The end of the Cold War was a contributory factor behind the launch of extensive international work on economic, social and cultural human rights (ESC rights). In particular, the United Nations' human-rights system has intensified its work on ESC rights. So, too, have experts in international law and non-governmental organizations. An understanding of these rights and their violations has thus developed quickly in recent years. The responsible UN expert committee (ESC Committee) has highlighted the importance of access to productive resources, including land, as a major prerequisite for implementing the human right to food. The right to water for personal use has also been confirmed as part of both the right to food and the right to health.

The true importance of the international interpretation of human rights standards is reflected in on-site human rights work in these thematic areas. Violations of the right to food and water are often the concrete manifestation of poor governance.

The state is obliged to employ the maximum of resources at its disposal in order to generate access to water for all.

State infringement of the right to food is a key cause of hunger and malnutrition. Thus, a human-rights based approach to access to land and water can be extremely expedient, since it allows affected groups to measure government action against the yardstick of human rights standards and to demand responsible redress mechanisms.

Neither access to land nor access to water are mentioned specifically in the International Pact on Economic, Social and Cultural Rights (IPESCR). Nonetheless, various institutions have come up with an interpretation. The UN Committee on ESC rights, which gives legal interpretations (General Comments) of the various rights and articles of the IPESCR, has played a central role in this process. And the work

of various UN special rapporteurs as well as the development of international research and literature on ESC rights, coupled with the work of human rights organizations, have all contributed to this interpretation.

### Access to land is decisive for combating hunger

Ever since the 1996 Global Food Summit in particular, the significance of land access has been an issue. The Plan of Action drawn up in Rome contains an entire chapter on the theme of access to land and its importance for very poor population groups in rural areas. The General Comment on the right to food that was ratified in 1999 – also in the follow-up to the Global Food Summit – defines the right to food as the right to access productive resources or income-generating opportunities. The special feature of General Comment no. 12 is the fact that it specifically places the importance of economic and social access to income-earning opportunities at the heart of the right to food. Thus, the right to food is predominantly defined as the right to be able to feed oneself and not as a right to a free supply of foodstuffs. In this sense, access to land and the positive framework conditions for using land have a key function in rural regions.

Also, General Comment no. 12 describes in detail which obligations accrue to individual states. The state has both negative (non-performance of action) and positive obligations which, in the interim, have all been incorporated into international law as a threefold catalogue of duties: respect, protection, and an obligation to perform. In negative terms, the state is obliged to desist from all activities that would destroy ongoing access to productive resources (duty to respect). In positive terms, the state is obliged to protect access to productive resources from interference by third parties, i.e. it has to ensure that small farmers are not driven from their land as a result of conflicts over land (duty to protect). The state is further obliged to see to it that the largest feasible number of people is able to access productive resources and income-generating options as rapidly as possible. In Article 2, the pact calls on all states to employ the maximum amount of resources available to this effect.

The state has the task of generating good framework conditions conducive to making people self-reliant. However, General Comment no. 12 also states that, in addition to generating good framework conditions, the state has the duty to look after those people who are unable to exploit

productive resources. Many of these population groups, where hunger is endemic, are either too old or too young, or otherwise prohibited from successfully harnessing productive resources. For HIV/AIDS orphans, who may well live with their grandparents, access to land is often only of secondary importance.

A brief glance at the problems relating to hunger and malnutrition show the relevance of this interpretation of the right to food. The Hunger Task Force set up by the United Nations to identify ways of attaining the Millennium Development Goals (MDGs), and thus of reducing by half the proportion of people suffering from hunger by the year 2015, recently presented the latest typology of hunger (2003). Today still, more than three-quarters of all people suffering from hunger worldwide live in rural regions. At present, around 50 percent of the world's hungry are small farmers, two-thirds of whom live under particularly marginal conditions. On the one hand, they do not have adequate access to land (often only parts of a hectare) and, on the other, they are marginalized in other respects. They mostly live in remote areas where they lack access to markets, capital, input factors and the latest research findings. Another 22 percent of the world's hungry are landless families in rural regions. Many of them have irregular incomes as workers in the agricultural or informal sectors. For these two groups, the issue of adequate access to land is of exceptional importance. As a rule, they have no other means of earning an income, not even in the long term. Land-access problems are also growing worse in many rural regions of the world. Conflicting interests in land use, such as urban growth, land use for open-cast mining and tourism infrastructure etc., are trends that, according to the Hunger Task Force, are aggravating the marginalization of these groups and are partly responsible for making the small

farmers switch to steep slopes and regions that are very difficult to farm sustainably.

The three categories of obligations are a decidedly useful instrument when it comes to describing what responsible government action towards these groups actually means: namely, respecting access to food when designing national policy measures; protecting these groups against expulsion, e.g. through legal security, land registers etc. and endeavouring to improve access to productive resources as rapidly as possible by initiating agricultural reform processes. If a state wishes to secure the right to food for the seriously food-insecure and thus hungry population groups, respect for the access to land along with the protection and promotion of this access constitutes a core element of its legal duties.

### The land issue as seen by economists

Economists in particular repeatedly argue against such obligations, based on the fear that the state's room for manoeuvre would be too greatly curtailed if obligations were to be laid down in detail. Would the allocation of more land to small farmers not lead to a large group of poorly competitive units? Would it not be better to establish large-scale farms that are able to compete on the world's market and generate rural jobs? Would it not make more sense to face up to the need for a fast change in structures? For this reason, a counter-model has been propagated, for some time now, that essentially

A Philippine farming family that is fighting to assert its right to land.



Photo: FIAN

## State infringements of the right to food are often prime causes of hunger and undernourishment.

focuses on the development of land markets that could lead to the improved use of land resources and facilitate productive investments, also from abroad, in the mining or agricultural sectors. Agricultural reforms could be promoted in such an environment by granting small farmers and the landless loans to buy land on the market. Two facts that are often mentioned in this context include the often weak and corrupt agricultural reform institutions in the countries concerned and the fact that land markets are operating below par. Furthermore, experience with a concept geared mainly to land markets and to the voluntary generation of access to land has been extremely disappointing. In many regions, the demand for land is so great that the prices for land have shot up. The land put up for sale is often of poor quality. The particularly disadvantaged and marginalized groups are scarcely in a position to take on a high debt burden and, in any case, have virtually no access to the credit they would need. Nor do they have any access to agricultural extension services. On the contrary, in many rural regions, the generation of land markets leads to investments in other forms of land use and thus actually increases the number of conflicts over land.

The special strength of the human-rights based approach lies in its capacity to focus on the impacts of policy measures on particularly disadvantaged groups. State obligations are described in a way that leaves a lot of scope in the selection of instruments; however, the impact the choice of instruments has must be analysed in every case. For this reason, it would be interesting to examine how, for example, a rapid structural change would affect the right to food of particularly hard-hit groups. It is undoubtedly important not to obstruct processes of structural change. However, these processes

should be designed such that they will not ultimately violate the right to food. Human rights standards in this sense are a yardstick for measuring responsible government action.

### The state has to secure access to safe water

The debate on access to water, i.e. the right to water, has to be approached from a slightly different angle. With regard to the right to water, the ESC Committee's General Comment differentiates between access to drinking water and access to water for irrigation, whereby General Comment no. 15 (November 2002) revolves around the issue of access to water for personal needs. The core element of the right to water centres on securing a minimum supply of safe water in the long term. State obligations accruing from the right to water are described using the same threefold category employed for the right to food. The state has to respect continued access to drinking water and must not disrupt this through any measures of its own; it has to protect access to drinking water from activities by third parties who, for example, contaminate such water or wish to use the water resources for other purposes. And the state is also obliged to employ the maximum of resources at its disposal in order to generate access to water for all. If water supply systems are privatized, the state must implement sufficient regulation to ensure that the right to water is not violated.

Drinking water also has the character of a public good, with the attendant conflicts surrounding its usage. Case studies can readily elucidate this: If the water resources available to an entire community are essentially consumed by a newly built beverage factory, and if no other water supplies exist concomitantly, then no water is left to supply the population. If a region's water resources are depleted through overexploitation and contamination, or if rivers are re-routed or water-catchment basins displaced to make way for large-scale mining projects, leaving the people without any access to drinking water, then it is clear that state measures will have to weigh up the importance of water usage between the various parties competing for access and, at the same time, will have to take account of the minimum standards inherent in the right to water. Under certain circumstances, access to land can also have the character of a public good, especially where the resources are used jointly, e.g. village commons.

### Conclusion

The human rights approach alters the perspective on issues of access to land and water. The state has obligations, especially towards highly disadvantaged groups, relating to both the short- and long-term provision of food and drinking water. The state is obliged to demonstrate that it is doing all it can, and using all the resources available to it, to implement the right to food and water as quickly as possible. The beneficiaries have the right to have the state-instigated measures subjected to legal scrutiny. The human rights approach does not prescribe to the state which instruments it has to use, but directs attention to population groups with special needs, and demands a differentiated assessment of instruments, especially in terms of their effects on these groups. Generating and securing access to productive resources and drinking water are core elements of the right to food.

These houses in Honduras were destroyed as part of a forced eviction plan.

Photo: FAO

