

AGRARIAN REFORM: A HUMAN RIGHTS OBLIGATION

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Struggles of control and ownership of land continue to be a key feature of contemporary political conflicts in different parts of the world. Today in many parts of Africa, Asia, Latin America land reform as a human rights obligation, and as a policy measure for social justice and rural economic development, has yet to be fully realised. Furthermore, the rise of neo-liberal policies has created an increasingly unfavourable environment for agrarian reform. Different trends in land tenure transformation are happening. In many countries the implementation of agrarian reform policy is avoided, while at the same time collective reformed sectors, or old communal lands are privatised or state farm collectives are dismantled. Only a few cases remain where a modest advance in land reform implementation can be observed. It is therefore increasingly necessary to start again a broad discussion about agrarian reform. Moreover, it is very timely to talk about the human rights obligations of states to guarantee access to productive resources for all those suffering from landlessness, hunger and malnutrition.

Introduction: Hunger is created by lack of access to productive resources:

In October 1999 the international organisation of small farmers, tenants and landless people “La Via Campesina” and FIAN-International, the international human rights organisation for the right to feed oneself, began an international campaign for agrarian reform. Both organisations recognise the urgent need to strengthen agrarian reform processes in many national contexts as well as the need to bring the issue of agrarian reform higher up on the international agenda.

- For “La Via Campesina” the missing, or insecure access to land, the often denied right to produce for those who till small plots of land, insecure tenant regulation and the lack of access to markets or credits are problems which small farmers, tenants and landless labourers all over the world face. Modern agriculture may produce marketable products, which can be shipped around the world at small prices, but all too often the many people living from the land, who are the backbone of most societies in the world, are forgotten in agricultural policies.
- For FIAN ensuring access to productive resources is the essential obligation to guarantee the fundamental human right to feed oneself. Agricultural policies denying access to land, fishing grounds or an adequate income to secure an adequate standard of living or national, or international policies removing a minimum security for those who are living from their lands are the most important reasons why hunger and malnutrition prevail in a world amidst abundance.

Hunger is still basically a rural phenomenon. Eighty percent of the world’s hungry live in rural areas. Rural poverty forces people to move to the growing mega-cities. The majority of the hungry and malnourished are not victims of natural disasters or of climatic circumstances, but are hungry because of “man-made” reasons. Certainly the major causes of hunger and malnutrition in many countries are civil wars and internal conflicts. These often long-term, protracted internal conflicts create millions of internally displaced people, destroy harvests as well as major parts of the rural infrastructure. Therefore, as well as these extreme conditions,

every analysis of hunger must study the processes leading to marginalisation of people or certain groups within societies. It is poverty, which is the single most important factor explaining hunger and malnutrition, and poor are those groups or persons inside societies, who lack sufficient income - may it be obtained through farming, fishing, work or transfer income.

In rural areas lack of access to land or other productive resources like fishing grounds is a central cause of the high incidence of hunger and malnutrition. Most processes leading to the marginalisation of people or groups begin with a lack of access to productive resources, mostly access to land. Access to land does not automatically mean ownership. A secure tenant regulation can also offer access to an income in dignity. On the other hand, access to land does not automatically guarantee that people can get a sufficient food supply or income to have their right to adequate food guaranteed. Access to land must therefore be accompanied with sufficient access to other input factors, like access to water, credit, transport, markets etc.

Access to land is a human rights obligation:

Combating hunger and malnutrition is more than a moral duty or a wise policy of states pursuing good governance, it is a human rights obligation. This was impressively recognised by most of the states during the World Food Summit in November 1996 in Rome, where the states formulated in the Rome Declaration a strong commitment to combat hunger and malnutrition:

“We the Heads of State and Government, or our representatives, gathered at the Word Food Summit ... reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.

We pledge our political will and our common and national commitment to achieving food security for all and to an ongoing effort to eradicate hunger in all countries...

Poverty is a major cause of food insecurity and sustainable progress in poverty eradication is critical to improve access to food...”

Besides the World Food Summit, where the states committed themselves to put the Right to adequate food into the centre of all policies to eradicate hunger, the states are also legally obligated to guarantee the right to adequate food. In the Universal Declaration of Human Rights from 1948 it is stated that

“Everyone has the right to a standard of living adequate for health and well-being of himself and of his family, including food, clothing, housing and medical care.....” (Art. 25, UDHR).

After the adoption of the Universal Declaration two legally binding international Covenants were developed, the Covenant on Civil and Political Rights and the Covenant of Economic, Social and Cultural Rights (ICESCR). The ICESCR is currently ratified by more than 140 states. Article 11 of the ICESCR contains the right to adequate food and moreover asks the states parties to reform agrarian systems in such a way that guarantees the right to adequate food.

“The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.....

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems “

In the Plan of Action of the World Food Summit, which explicitly reinforced the right to adequate food, the states requested the FAO and the High Commissioner for Human Rights to “clarify the content of the right to adequate food and the fundamental rights of everyone to be free from hunger” (objective 7.4, Plan of Action). The states especially asked to “better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realise these rights as a means of achieving the commitments and objectives of the World Food Summit”. In the meantime this definition has been provided by the Committee for Economic, Social and Cultural Rights (CESCR) in its 1999 General Comment on the right to adequate food, which gives an authoritative interpretation of the Covenant’s provisions.

“The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement....

...Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes”.

In its definition of the right to adequate food the CESCR highlights that for the realisation of the right to adequate food physical and economic access is the most important element. Economic access is specified in para 13 as particularly important for groups such as landless persons. This clearly illustrates that discussing the right to adequate food involves not only talking about calories or proteins, it also means talking about how a person can have real access to food in dignity - either by having an income allowing the purchase of adequate food or by having access to resources, specifically productive land.

Economic marginalisation and powerlessness are the main reasons for hunger. That is why states have to change their policies and therefore why many governments are so unwilling to really fight hunger and malnutrition since it requires substantive changes in their policies. Human rights give all landless families, and marginalised groups, the backing of international law in their struggle with their governments on access to economic possibilities, access to land for the landless and security of existing access to land. The strength of the human rights approach is that it necessitates the discussion of rights and state obligations. Discussions about food security were often guided by questions like “How much food is produced worldwide or in a certain region?” The rights approach starts with the question “Who controls the access to food?” and makes economic access to food producing resources a legally enforceable claim. Under the right to adequate food every states is therefore obliged to develop a national legal and policy system giving legally protected, enforceable access to food to every individual.

What such an obligation entails and how it can be operationalised, is obviously country-specific, since circumstances can vary. However, a comprehensive picture can be reached by specifically identifying those groups which have no access to adequate food. The General Comment requires states to identify the specially vulnerable groups, the non identification of the vulnerable groups is, therefore, already a violation of the right to adequate food. Through the right to adequate food states are obliged to give to the hungry and malnourished the right and the possibility of controlling their own access to food, i.e. to transfer efficient rights of access to productive resources to the individuals. The governments are obliged to develop national legislation and policies or as the General Comments calls it: a national implementation strategy, which recognises the specific situation of the vulnerable groups of society.

“The strategy should give particular attention to the need to prevent discrimination in access to food or resources for food. They should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families ...; maintaining registries on rights in land (including forests).”

With respect to the vulnerable groups states have three different levels of obligations.

- They have the obligation to respect the right to adequate food under all circumstances for everyone under their jurisdiction. In doing so states have to respect physical and economic access to adequate food. The obligation to respect means that the state must not take political or other measures destroying existing access of vulnerable populations, and must respect land rights.
- Moreover states have to protect everyone under their jurisdiction from having their access to food being undermined by a third party. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations or large landowners, do not deprive individuals of their access to adequate food. This involves the protection of the freedom to feed oneself and include the need to regulate other actors, through, inter alia the adoption of legislation and administrative measures that protect the access to adequate food, for instance land registration, security of land tenure etc.
- Whenever an individual or group lacks access to adequate food, states have the obligation to fulfil this access. This requires States to provide for vulnerable populations within their jurisdiction, using strategies that ensure the long-term ability of people to realise this right for themselves. Long term ability to realise the right to adequate food especially involves access to land. The General Comment outlines the obligation to fulfil by highlighting that a “state must pro-actively engage in activities to strengthen people’s access to and utilisation of resources and means to ensure their livelihood”.

Obviously the full realisation of the right to adequate food by fulfilling people’s access to productive resources such as land requires resources. In many cases, compliance with these obligations can be undertaken by most states with relative ease, and without significant resource implications. In other cases, however, full realisation of the right may depend upon the availability of adequate financial and material resources. It is important to note that the Covenant on Economic, Social and Cultural Rights requires states to make use of the maximum of available resources to fulfil the implementation of the rights. Moreover the Committee on Economic, Social and Cultural Rights has noted that the obligation of progressive realisation of the rights requires state to move as expeditiously as possible towards their full realisation. Maximum of available resources and moving as expeditiously as possible are, thus, the requirements against which the state performance must be checked.

All this clearly shows that agrarian reform is a central obligation for states to fulfil the right to adequate food for these land seeking marginalised groups. The demand for agrarian reform is therefore not an old request from times when the political discourse was more radical. On the contrary it is a human rights obligation, which requires expeditious steps from governments. Without the implementation of agrarian reform policies, states will violate these vulnerable groups’ right to adequate food. It is important to realise that there is often no possibility of alternative sources of adequate income for the marginalised rural groups. Additionally one has to take into consideration the peoples’ choices. The International Covenant on ESC-Rights contain in Article 6 the “right to gain one’s living through work which he/she freely chooses...” meaning that states also must as far as possible respect peoples choices. Due to the fact that other income generating possibilities are seldom available, the lack of implementation of agrarian reform measures means continuous acceptance of hunger and malnutrition by the already most marginalised groups of society.

Policy options and human rights obligations:

Agrarian reform processes often mean conflict. Basically three types of arguments are used to avoid agrarian reform policies or to contest the whole idea of agrarian reform in general. It is worthwhile to discuss these arguments and to see how they relate to agrarian reform as a human rights obligation:

(1) Agrarian reform policies are often contested at the national level, because they involve the redistribution of property. Even if fair compensation is paid, which would be best practice, agrarian reform often requires expropriation measures, since large landowners seldom offer enough land on a voluntary basis. This often causes resistance amongst the economically powerful sectors of society, often those who are also members of parliament, who own local radio stations etc. It is therefore of utmost importance that a government pursues its agrarian reform policies with strength and conviction. Showing that agrarian reform is a human rights obligation can be politically a very strong argument to pursue policies against the resistance of powerful actors.

(2) A second argument often used stems from economic development theory. If a society invests most in the powerful and more entrepreneurial parts of the society, which in the rural sector would be in large agricultural units such as plantations etc., to achieve export earnings, the long term development of societies will be faster and in the long run the trickle down effect would ensure that it benefits the poor. This is neither true, like many examples show (those countries who did an agrarian reform like South Korea and Taiwan, developed much faster), nor valid generally (national conditions vary tremendously). It is also apparent that even in countries that have a booming economy, poverty is growing fast and the situation of poor people or groups is deteriorating (this has been illustrated by many UNCTAD reports from the last few years). It is the human rights approach that requires the orientation of policies towards guaranteeing and implementing the rights of most vulnerable groups immediately, an approach which is all too often forgotten in development logic. There is, however, a growing recognition of the need to eradicate poverty as the first and most important step towards any form of development.

(3) A third and very strong challenge to agrarian reform policies comes from the neo-liberal paradigm and its implementation by the International Financial Institutions through Structural Adjustment policies or trade policies. In many parts of Africa, Asia, Latin America today, land reform has yet to be fully realised, while the rise of neo-liberal policies has created an increasingly unfavourable environment for agrarian reform. There are different trends in land tenure transformation. While in many countries the implementation of agrarian reform is avoided (e.g. Brazil), the privatisation of collective reformed sectors (e.g. Mexico), or of old communal lands is being pushed (e.g. Bolivia, Peru, many African countries). In several cases a dismantling of state farm collectives can be observed (e.g. Eastern Europe, Vietnam). Only a few cases remain where a modest advance in land reform implementation can be observed (e.g. Philippines, South Africa). These new policies are challenging the ability of states to implement their human rights obligations in two ways:

- Firstly they lead to a destruction in the existing access of small farmers and other marginalised groups to productive resources, often with alarming results. In Mexico thousands and thousands of small farmers have had to leave the land during the last five years, because of the privatisation policy toward the old “ejido land” and because of a liberal trading regime, which is putting small farmers in direct competition with highly subsidised corn producers in the USA.
- Secondly the new proposed model of a “market based agrarian reform” with elements like reliance on land markets, the closure of old agrarian reform institutions etc., which is now being offered as an alternative to traditional agrarian reform policies is not cheaper as promised, but only functions when the state is heavily involved. There is also an increasing risk that poor farmers will be left with a high

debt burden after buying a small plot of land. When this policy is introduced as a replacement to all other forms of agrarian reform policies the few cases of modest advance in land reform will come to an end, too.

Another argument often used to challenge agrarian reform policies comes from a different angle, the discussions about achieving food security. Food security is often equated with the production of sufficient quantities of food, be it internationally (global food security) or at the national level (national food security). The population increases in many countries and worldwide is recognised as a threat to food security, because yields must increase. Several agricultural scientists believe that an adequate production of food worldwide can only be obtained through “modern” agriculture, meaning intensive production with many agricultural inputs like fertiliser etc. based on large scale farms, which are supposed to be more productive. The argument itself is not very convincing, as we will see. Moreover, this equation is lacking any human rights analysis of the situation.

(1) Firstly the argument does not reflect adequately the causes of hunger and malnutrition. People are not hungry or chronically malnourished because of too little food being produced. Although this can happen in situations of acute famine, linked to draughts or civil wars, the huge majority of people are hungry because they either do not produce food for themselves or they do not have enough income to buy it. A country like India is producing annual surpluses in cereal production and is exporting the surplus. At the same time it is the country with the biggest number of poor and hungry people worldwide, because people do not have access to productive resources. Increasing the yields of big farms and plantations may increase the surplus, but it will not decrease the number of hungry people.

(2) Secondly it is a myth that small farmers are less productive than huge producers using the latest agricultural technology. If small farmers have access to good framework conditions, such as affordable credits, good seeds and other agricultural inputs, access to marketing facilities and if they are not overtaxed by the government, as happens in many countries, their yields per hectare are often much higher than the yields in mechanised, modern agriculture. Small farmers in Egypt or Indonesia are producing more than double the yield per hectare that the latest technology can produce in the USA. On the other hand, if the conditions for production for small farmers are very poor, no support in infrastructure etc. is given, then their productivity can also be very low. However, there is no natural law which provides that only huge farms can produce enough food, in fact increasing concentration in the land tenure structures in rural areas will create more landless poor people, a process which will produce more hunger.

(3) For years the World Bank has been promoting its strategy of trade based food security. Main argument: If countries specialise in the production of the export products they can get the most returns for, the countries in general become richer and have the possibility of buying cheap imports. This argument of the World Bank - by the way not a very new argument - may be correct in theory, but does not reflect many countries’ social realities. If people lose their access to land, or if people do not have any economic access to productive resources at all, these people do not have an income to buy imported food. Talking about food security means also talking about people who suffer food insecurity, and discussing the problems of some individuals having access to food is talking about the implementation of the right to feed oneself.

(4) All those, who favour an agricultural model based on huge and productive modern agriculture also fail to give an answer to what will happen to those people who lose their access to land and become marginalised. Still the old economic hope prevails that in the long run enough growth can be created by the modern agriculture to lead to faster general economic growth. The hope is that such a development may also reach the poor sometimes. Human rights remind us that the implementation of a fundamental human right, like the right to adequate food cannot be postponed to the long term future. The fundamental right to be free from hunger requires states to act immediately. People losing access to land in a situation where no social security nets exist are often socially excluded. Human rights require governments to tackle their situation

immediately and to guarantee the right of each individual.

(5) Often it is said that agrarian reform policies are too costly and the processes are taking too much time. It is true that the implementation of agrarian reform measures do often require a lot of resources - most needed is the often scarce resource of political will. These arguments, however, cannot be used to challenge agrarian reform as a human rights obligation. States are obliged to use the maximum of available resources and should move as expeditiously as possible to achieve the full realisation of the right to adequate food. Resources usually include both land financial as a means of compensation etc. Most of the countries worldwide have more than enough resources to implement agrarian reform. Moreover, the Covenant on Economic, Social and Cultural Rights mentions twice the need to also seek international co-operation, if national resources are scarce. What the states should do is prove that they have conducted the policies necessary to implement the right to adequate food especially for vulnerable groups, and that they are achieving positive results (progressive implementation) over time. Human Rights are not asking for the impossible, but require the use of available resources in a way that helps vulnerable groups see their rights implemented.

(6) Another argument used to challenge the implementation of agrarian reform measures is also used to challenge generally the possibility of implementing economic, social and cultural rights. Specific obligations such as agrarian reform would prescribe too many state activities and limit unnecessarily the policy choices of national governments. This argument lacks conviction when more closely examined. Agrarian reform can be implemented by different means, different policy options or measures. The human rights obligation requires states to pursue policies which guarantee access to productive resources. Governments must implement these policies by using the maximum of available resources and must move as expeditiously as possible towards the full implementation. It is the result that counts not the prescription of certain specific policy measures.

Agrarian Reform must be sustainable:

Agrarian reform from a human rights perspective requires more than just the distribution of land. Beneficiaries need a set of conditions, which determine whether they can make use of the land given and become self-reliant or whether they will just build up debts and run into severe economic problems after a while. Firstly, beneficiaries need security of tenure, which requires land registration. They need access to affordable credit facilities, to rural infrastructure, agricultural advisory services, access to new information and technologies, education and marketing assistance as well as access to agricultural inputs. It is also important to mention the fact that all these elements must be available without any form of discrimination. If these framework conditions are not available access to land is economically not sustainable. Often arguments are heard, that small farmers some years after the land distribution fail to survive economically because their units are too small. Here again the answer is: If the framework conditions offer a favourable environment small farmers can become very productive and successful. Demanding these conditions does not mean asking for a huge amount of agricultural subsidies. These conditions are framework conditions, which all forms of economic activities need as normal support from the state. Without infrastructure, investment in education (training) and research, access to credits no business will survive.

Non-implementation of agrarian reform is in many cases also a reason for an environmentally unsustainable land tenure pattern. Small farmers could be forced to crop on marginal lands like on hills or in dry-areas because the ownership of good and fertile lands is highly concentrated. Production in these marginal areas can lead to soil erosion or desertification. In other countries implementation of agrarian reform is avoided by resettling landless peasants in areas not viable for long term agricultural production, as is the case in Brazil. In Brazil many landless families received land in rainforest areas, which can only be used for a few years. Furthermore, small farmers are often blamed for being responsible for environmental degradation processes. This is unreasonable since the reason for their use of the lands, which are hardly suitable for agricultural

production, is the non-implementation of agrarian reform measures. Land distribution must therefore be done in a manner which avoids environmental damage. If well done, agrarian reform can be supportive to an environmentally sound development.

Agrarian Reform is a human rights obligation. States are obliged to use the maximum of available resources to implement policies, which allow each individual to have access to productive resources in dignity. Human rights do not prescribe certain policy measures. States are free to choose their own strategies, providing they can prove that they are conducting adequate policies for vulnerable groups and that they are implementing the rights progressively. Too often poor or vulnerable groups are not adequately reflected in economic development thinking. It were the Summits of the UN of the 90th, in Copenhagen, Rome, Beijing and Vienna which highlighted the need to tackle the problem of poverty first. Agrarian reform is a central element of every strategy to combat poverty. It provides people with access to productive resources, allowing them to have adequate access to food in dignity.