



## **Confronting the Global Food Challenge**

finding new approaches to trade and investment that support the right to food

Bridging the Divide:  
a human rights vision for global food trade

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## Introduction

Global food and agricultural systems are in crisis. An already simmering hunger crisis exploded early in 2008. At the same time, predictions on how climate change will undermine food security in already poor regions, especially sub-Saharan Africa and small island states, are alarming.<sup>1</sup> Almost a billion people are already living with extreme hunger. Climate change is not just affecting agriculture but is also affected by agriculture: as a sector, agriculture is estimated to be the second largest contributor to global greenhouse gas emissions.

Meanwhile, a large influx of speculative investment on commodity markets exacerbated the food price crisis earlier in 2008. Farmers and commodity processors alike complained that the tools they rely on to finance their production were no longer working, distorted by the flood of speculative capital. With the financial crisis now crippling banks' role as lenders and borrowers, credit for farmers, traders and food distributors will be much harder to obtain in the future.

This year all eyes turned to the food crisis. A summit of world leaders, a special UN taskforce, emergency sessions at the UN General Assembly, and G8 pledges for increased aid were all part of the global response to the food crisis. The human rights community responded with a special session at the Human Rights Council and a report by the newly appointed Special Rapporteur on the Right to Food. The message is clear: it is time for a new vision for food and agriculture.

Eradicating hunger is an obligation that governments must fulfil as part of their international human rights treaty obligations.<sup>2</sup> The human rights framework provides many of the guidelines needed for undertaking this mammoth task and for ensuring that governments and international organisations respond with policies that put people at the centre. Importantly, human rights require governments to prioritise the most vulnerable groups, ensure no discrimination and pay attention to the outcomes of policies. To date, governments have failed to consider human rights obligations when they negotiate trade agreements.

This paper explains the importance of using human rights to build a global trading system. It explains why existing trade rules undermine human rights and makes proposals for a trading system that would instead support food systems that protect, promote and fulfil human rights. The paper focuses on the universal human right to food, as one of an indivisible body of human rights, encompassing civil, political, economic, social and cultural rights.

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<sup>1</sup> By 2020, in just 11 years time, the Intergovernmental Panel on Climate Change (The IPCC is the most authoritative scientific body on climate change) estimates that somewhere between 75 million and 250 million people in Africa will have their food supply threatened by climate change.

<sup>2</sup> The International Convention on Economic Social and Cultural Rights (ICESCR) recognises “the fundamental right of everyone to be free from hunger.”

## Human Rights: a basis for better trade rules

“ Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care.”

*Universal Declaration of Human Rights*

A human rights framework offers a powerful basis for making policies and laws that improve human welfare. There are six dimensions of the framework that are worth underlining in relation to global trade rules:

- 1) **Human rights are universal, indivisible and interdependent.** Human rights belong equally to everyone. Human rights cannot be realized in isolation from one another. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.<sup>3</sup>
- 2) **Human rights are legally binding on all states.** All states have ratified at least one of the international human rights treaties and are required to uphold and protect human rights. Some states include human rights in their national laws and constitutions.<sup>4</sup> Twenty-two countries mention aspects of the right to food in their constitutions.<sup>5</sup> This provides an important legal recourse in the event the right to food is violated.
- 3) **Human rights emphasize equality and non-discrimination.** “All human beings are born free and equal in dignity and rights.”<sup>6</sup> They cannot be discriminated against on the basis of sex, race, colour or religion. In practice, equality means that states have to pay particular attention to the needs of the most vulnerable; and non-discrimination means paying attention to outcomes, not just process. Applying the same rules to dissimilar populations can worsen the situation of the disadvantaged. This is not an acceptable outcome within a human rights framework. Governments’ over-riding obligation is to improve the condition of excluded and marginalized groups.
- 4) **Human rights enshrine the principles of participation, accountability, and transparency.** Human rights start with people. The realization of human rights depends on people having a voice in public policy making. Without active citizenry, including social movements, trade unions and civil society organizations, human rights have little meaning.
- 5) **Human rights imply international and extraterritorial obligations.** The question of whether states have an obligation to recognize and protect human rights outside their borders is an area of debate. In his recent report to the Human Rights Council, the UN Special Rapporteur on the Right to Food, Olivier de Schutter, says, “States should not only respect, protect and fulfil the right to adequate food on their national territories; they are also under an obligation to contribute to the realization of the right to food in other countries and to shape an international environment enabling national Governments to

<sup>3</sup> Office of the High Commissioner for Human Rights, *What are Human Rights?*  
<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

<sup>4</sup> FAO, *The Right to Food in Practice: implementation at the national level*  
[http://www.fao.org/docs/eims/upload/214719/AH189\\_en.pdf](http://www.fao.org/docs/eims/upload/214719/AH189_en.pdf)

<sup>5</sup> [http://www.fao.org/righttofood/kc/maps/Map1\\_en.htm](http://www.fao.org/righttofood/kc/maps/Map1_en.htm)

<sup>6</sup> Article 1, Universal Declaration of Human Rights

realize the right to food under their jurisdiction.”<sup>7</sup> At a minimum, states should ensure that the policies and actions of the international organisations they belong to are consistent with the fulfilment of human rights. States are also required to meet their commitment to provide international assistance and cooperation “to the maximum of available resources”.<sup>8</sup>

- 6) **Human rights are not associated with one type of economic system.** Human rights provide a framework for policymaking, law and action. But they do not dictate any one way of organizing markets or stimulating economic growth.

Governments have three kinds of obligations in relation to the realization of economic, social and cultural rights: to respect, protect and fulfil. Respect means ensuring no public policy, law or action interferes with people’s enjoyment of human rights. Protect means enforcing laws and public policy to prevent third parties, individuals or corporations, from depriving individuals of their access to human rights. In recognition that governments may not have the means to immediately realize everyone’s economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights, relies on the concept of “progressive realization.” This creates both immediate and ongoing obligations on governments to provide a legal and institutional framework that enables all people under their jurisdiction to enjoy their rights. This includes fulfilling human rights through the design and implementation of programmes that target vulnerable groups who may need assistance in realizing their rights because of poverty, racism, sexism, disenfranchisement (as non-citizens or former convicts) or other sources of social and economic exclusion.

The human rights framework is not perfect. One of its weaknesses has been its undue reliance on governments and courts as the primary locus for action for rights. It is important that the human rights framework incorporate a central role for citizen action as the engine of the development process and the means by which to hold the state accountable. Furthermore, human rights treaties and their interpretations do not provide all the answers on how to fulfil rights. How the market should be managed, how services must be delivered, which agricultural practices should be encouraged, and how to create jobs, is not the stuff of human rights obligations.<sup>9</sup> But human rights can provide the people-centered yardstick against which policies can be measured.<sup>10</sup>

<sup>7</sup> “Building Resilience: a human rights framework for world food and nutrition security,” A/HRC/9/23. 8 September 2008. Report of the UN Special Rapporteur on the Right to Food, Olivier de Schutter. Section IV, para. 24.

<sup>8</sup> Article 2, International Covenant on Economic, Social and Cultural Rights

<sup>9</sup> Gauri Sreenivasan “Human Rights and our Shared Agenda,” CCIC 2008 in [http://www.ccic.ca/aucourant/aucourant\\_fall\\_2008\\_2\\_e.html](http://www.ccic.ca/aucourant/aucourant_fall_2008_2_e.html)

<sup>10</sup> Carin Smaller, “Planting the Rights Seed: a human rights perspective on agriculture trade and the WTO,” 3D-trade-human rights-equitable economy and IATP, 2005

## Focus on the Right to Food

“ The core content of the right to adequate food implies: the *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals free from adverse substances and acceptable within a given culture; the *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”

*General Comment 12, the Right to Adequate Food*

The right to food is central to building food and agriculture systems. The content of the right to food is outlined by the Committee on Economic, Social and Cultural Rights in the form of a “General Comment.”<sup>11</sup> General Comments are guidelines for states on how to interpret the specific rights contained in the seven major UN human rights treaties.<sup>12</sup> In 2004, the 188 member countries of the FAO adopted the Voluntary Guidelines on the Right to Food. The FAO’s voluntary guidelines on the right to food provide a further instrument for governments that want to make the right to food a reality in the context of their national food security strategies.<sup>13</sup> Some countries, like South Africa and Brazil, have enshrined the right to food in their national constitutions. Others like Uganda, Guatemala, and Indonesia have national legislation that creates a legal obligation to fulfil the right to food.

Other economic and social rights affected by the food system include the right to health, work and life. The General Comment on the right to health, for example, says “the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”

Importantly, the General Comment on the right to food states: “the roots of the problem of hunger and malnutrition are not lack of food but lack of *access* to available food.” This is an important distinction. Free traders focus on supply, based on the assumption that the market will distribute supply according to demand. If food insecurity arises, the free trade response is to increase production. Governments that believe in this theory give considerable public resources to realizing this “natural” market response, by encouraging more land into cultivation or developing new technologies to raise yields or improving varieties of seeds, fertilizers and pesticides. Many governments are satisfied that food security is assured when there is enough food available to feed the population.

A rights approach goes much further, because the right to food makes explicit the requirement that the available food be affordable or otherwise accessible to every individual. The United States is food secure, but the government fails to protect its’ people’s right to food. The U.S. Department of Agriculture reports that some 11 percent of U.S. households (and 18 percent of U.S. children) lack access to adequate food at some point in the year. That statistic represents 12.6 million people. Yet, even after exports, the domestic supply of food in the U.S. could feed everyone in the country twice over.<sup>14</sup>

<sup>11</sup> <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9?Opendocument>

<sup>12</sup> These include the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of Racial Discrimination Against Women, the Convention Against Torture, the Convention on the Elimination of Racial Discrimination and the Convention on Migrant Workers. See [www.ohchr.org](http://www.ohchr.org)

<sup>13</sup> <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>

<sup>14</sup> Sophia Murphy, *Securing Enough to Eat*, International Institute for Sustainable Development (IISD), January 2005

Nepal is food insecure but the government is taking steps to realise the right to food. A new government, formed after the end of a decade of civil war, included the right to food sovereignty in their interim constitution. On 25 September 2008, the Supreme Court of Nepal, recognizing this right, ordered the Government of Nepal to immediately supply food to 32 food-short districts. The Court found immediate action necessary because over three million people were suffering from food scarcity as a result of soaring food prices. The Government also increased the budget to the Nepal Food Corporation, a state enterprise that supplies food to districts that need it most.



## The WTO: in conflict with human rights?

The multilateral trade system now in place depends on free market economics. It is in tension with a human rights framework in important ways.

- 1) **Discourages State Intervention:** For over two decades, the multilateral trade system has been driven by a vision of the economy that reduces the role of the state in the market. The state is discouraged from intervening. Under the human rights framework, states are the duty-bearers of rights and cannot be relieved of these obligations. States are required to take legislative, administrative and budgetary measures to deliver economic, social and developmental outcomes that protect people's rights. Human rights law requires states to "take steps individually and through international assistance and cooperation," and to use "the maximum of their available resources."<sup>15</sup> In some cases the State may be required to intervene in the market, even if this creates trade distortions, in order to protect human rights.
- 2) **Uses a Trade Yardstick.** The WTO insists on all policy being minimally trade-distorting as if trade was somehow an end in itself. It isn't. Positively encouraging the realization of human rights would make a far more sensible basis on which to assess countries' policies.
- 3) **Ignores the Most Vulnerable Groups.** The goal of the multilateral trading system is economic growth, and growth in the overall volume of trade is often used as a proxy for improved welfare. This is inadequate from a human rights perspective. Human rights require states to implement policies that target specific groups who are not enjoying human rights, not just to improve overall welfare.
- 4) **Dictates One Economic Model.** Twenty-five years of trade regulation has pushed a specific vision for economic development (based on open markets, deregulated capital movements, and restrictive intellectual property rights). A human rights framework does not dictate what particular economic policies a government should follow. But it does require governments to pay attention to outcomes when they put policies into practice.
- 5) **Lacks Participation and Transparency.** Despite some recent improvements, multilateral (and bilateral) trade negotiations fail to meet a minimal level of participation and inclusion from affected people. Indeed, WTO member negotiators, and even trade ministers, can find themselves excluded from key negotiations at various times. A human rights framework pays attention to process as well as outcomes: people must be able to express their preferences, and to debate and change policies and laws.

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<sup>15</sup> Article 2, International Covenant on Economic, Social and Cultural Rights

## Putting Trade in the Right Place

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

*General Comment 12, the Right to Adequate Food*

Most food is consumed in the country where it is grown. Trade plays a relatively minor role in food and agricultural systems. Over the past three years, an average of 18 percent of wheat, 7 percent of rice and 12 percent of corn were traded internationally.<sup>16</sup> Over the same period, an average of 5 percent of pork, 10 percent of poultry and 12 percent of beef and veal were traded internationally.<sup>17</sup> The United States, one of the world’s biggest exporters of food, exports just less than one third of its agricultural production. Most countries export far less. Despite its minority role, international trade and investment requirements dictate food and agricultural policies. Most smallholder producers must now compete with imported food in their local markets. These imports, often priced by factors that have no relationship to local conditions (supply, demand, input costs, consumer preferences, etc.), have a big impact on local prices.

For more than two decades, governments, international financial and trade institutions, and bilateral donors have used the free trade theory that dominates trade policy thinking to inform their food and agricultural policies. Both the World Bank and International Monetary Fund condition their loans to developing countries on the recipient government’s reducing trade barriers, deregulating currency markets, implementing export-oriented development strategies and minimizing the role of the state. The UN has often provided nuance and caution, but rarely has its institutions (and more especially, its leadership) challenged the underlying assumption that globalization through free trade and capital flows is the only path to successful development.

Most developing country governments had little choice but to follow the Bank and IMF prescriptions. In so doing, they moved away from a development path rooted in agriculture, which for most countries would have helped to secure the right to adequate food. Instead, these governments expanded existing export strategies, either forsaking diversification to focus on one or two commodities (cocoa in Ghana, cotton in Burkina Faso, or bananas in Ecuador), or moving into new exports, such as shrimp (Bangladesh and Thailand), green beans (Kenya) or cut flowers (Uganda and Kenya). Most low-income countries have paid too much attention to export crops and too little attention to domestic food crop sectors.<sup>18</sup> The cost is not just in the money spent on producing, processing and transporting exports, but also in the concomitant failure to invest in domestic food crops and support for local markets (including roads, storage and processing facilities).

Since 1950, world food production has soared. More recently, barriers to food trade have been dismantled. Governments, and, more especially, transnational agribusinesses, have more access to global commodity markets than ever before, access that is secured not just in law (because WTO members are constrained in how they can limit food imports and exports) but also in technology: the equipment, the know-how, the communications and the transportation systems that make global trade work. And yet, the number of hungry people continues to increase, and the right to food has not been realised.

<sup>16</sup> <http://usda.mannlib.cornell.edu/usda/fas/grain-market//2000s/2008/grain-market-09-12-2008.pdf>

<sup>17</sup> <http://usda.mannlib.cornell.edu/usda/fas/livestock-poultry-ma//2000s/2008/livestock-poultry-ma-04-01-2008.pdf>

<sup>18</sup> Oliver Morrissey, “What types of WTO-compatible trade policies are appropriate for different stages of development?” in *WTO rules for agriculture compatible with development*, FAO 2007

## A New System of Rules for Trade in Agriculture

Existing multilateral rules for food and agriculture are primarily contained in the WTO's Agreement on Agriculture. There are many rules in other WTO agreements that relate to food and agriculture including the General Agreement on Tariffs and Trade, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Subsidies and Countervailing Measures, the General Agreement on Trade in Services, and the Agreement on Trade-Related Aspects of Intellectual Property Rights. This paper is not exhaustive. It reviews the overarching question of governance (five principles, explored in the section "The Guiding Principles") and eight areas for trade regulation ("The Trade Toolkit"), in an attempt to create the building blocks for a trading system rooted in a human rights framework and the realization of the right to food.

### A) The Guiding Principles

" Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all."

*General Comment 12, the Right to Adequate Food*

A human rights approach to governance emphasizes a number of core principles: coherence, flexibility, accountability, transparency, participation, monitoring, assessment, and access to effective judicial remedies.

#### 1) Be Coherent

A first essential challenge for building trade rules on a human rights framework is establishing the priority of human rights over trade obligations. While the legal case is there, established by the Vienna Convention on the Law of Treaties,<sup>19</sup> the reality is more complicated because political will and the possibilities for legal redress conspire to give the edge to trade rules. Under the human rights conventions and protocols, abuses can be documented, described and discussed. But there is no punishment for breaking the law. Under the WTO system, the dispute settlement system can enforce rules by threatening trade or financial penalties for failure to comply. As a result, trade agreements consistently trump human rights treaties. Most governments are more loyal to their trade commitments than they are to their human rights obligations.

The need to look at trade and finance in a broader context has been recognized by UN member states. For example, the continuing Financing for Development process, due to meet for a second High Level Meeting in Doha at the end of November, is explicitly about measuring trade, investment and financial flows from a development perspective. But a lack of political will, particularly from industrialized countries, makes the forum ineffectual. Until governments are willing to use human rights language as a basis for their trade positions, it will be impossible to shift global trade rules to where they should go.

<sup>19</sup> [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

An alliance of forty-six developing countries<sup>20</sup>, known as the G33, was the first to bring human rights into the WTO. In 2005 the group issued a Ministerial Communiqué that stated, "addressing the problem of food and livelihood security as well as rural development constitute a concrete expression of developing countries' right to development."<sup>21</sup> Their goal was to introduce a special safeguard mechanism and a category of special products into the revised rules for the Agreement on Agriculture. It was a radical and strategic moment. First, the proponents openly promoted the measures on the grounds that they were necessary to meet social and developmental objectives (not commercial ones). Secondly, the group has been willing to fight for the right to be allowed to raise tariffs over existing bound levels so as to realize these objectives, a proposal that has met hard resistance from many WTO members (industrialized and developing alike). Winning such fights will be essential if trade talks are to move towards supporting a human rights framework.

A number of institutions other than the WTO play a role in trade policy and they too will have to change if they are to be supportive of a human rights framework. The Bretton Woods Institutions (the World Bank and International Monetary Fund) have both played a central role in shaping developing countries' trade policy through the conditions they impose on their loans and development grants. These institutions ignored mounting evidence that their economic prescriptions were leading to social and economic dislocation and distress—i.e. ignored human rights violations. The push to put trade on a sounder footing will have to include changes to interventions by the Bretton Woods Institutions.

The trade system needs to learn to operate in a wider multilateral context. Governments allowed the WTO to isolate itself from other parts of the multilateral system, at the expense of coherence with vital areas of policy, including managing and abating climate change and biodiversity loss; enforcing international labor rights; ensuring universal access to affordable medicines; protecting endangered species; and, much, much more. Bringing trade back into the UN fold, rather than allowing it to affect all areas of policy from an isolated outpost, is an essential step in reform of the trade system.

## 2) Discipline Bad Trade Practices

Trade rules should focus on disciplining bad practices: dumping, excessive speculation, unchecked market power, rather than on promoting a particular vision of how trade should be structured. The WTO membership (over 150 countries and climbing) is vastly varied. Some countries are recovering from decades of civil war and misrule. Others industrialized a long time ago, but need considerable investment in their economies to modernize, replace failing infrastructure and to train workers to use new technologies and systems.

The differences are not just material, though that matters—in some countries poverty affects a minority of people while in others a majority of their people live in or uncomfortably close to poverty. The differences are also cultural, social, ecological and physical. Some countries are mountainous or land-locked or islands. Some countries have a tradition of collective land ownership; others continue to operate what is effectively a system of bonded labor in agriculture, locking in privilege for a small number of landowners at the expense of large population of disenfranchised and impoverished workers. In all of this, the potential for trade,

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<sup>20</sup> Antigua and Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, China, Congo, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Rep. Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe

<sup>21</sup> <http://www.tradeobservatory.org/library.cfm?refid=73101>

and the context in which global trade rules work, varies from country to country. These circumstances require a flexible system of trade rules. Human rights will help governments focus on how people are affected (are trade rules impoverishing poorer countries or vulnerable populations within countries?) rather than conformity with a uniform set of rules that mask important differences from a human rights perspective.

### 3) Establish Accountability, Transparency and Participation

“ Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas.”

*International Covenant on Civil and Political Rights*

“ Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”

*Universal Declaration of Human Rights*

Governments are required to provide information to their people when they enter trade negotiations and sign trade agreements. After years of campaigning and public pressure by civil society organisations, transparency in international trade negotiations has improved. Some WTO member states make negotiating documents available to their constituencies and allow them on their delegations during negotiations. The WTO Secretariat has also taken important steps to improve transparency by publishing most negotiating documents on their website and opening some of their dispute panels to the public. But most of these efforts are informal and not guaranteed under WTO law. And governments are selective about what information they make publicly available. Access to information remains largely dependent on the good will of the holders of information. Furthermore, bilateral and regional trade negotiations, which have multiplied exponentially in the past ten years, remain highly secretive and closed to the public.

People have the right to participate in trade policymaking and raise concerns about the possible impact of trade agreements. Some governments have taken steps to realise this right. The governments of Uganda, South Africa and Brazil, for example, have set up consultations for national stakeholders on the Doha Agenda, which allow trade unions, farmers, business group and other civil society organizations to input into their government’s negotiating position. But the vast majority of people are still excluded from participating in decisions on their country’s trade agenda.

### 4) Conduct Monitoring and Assessments

“ State parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments.”

*General Comment 12, the Right to Adequate Food*

Existing human rights mechanisms require states to submit periodic reports on the measures taken to realise human rights. Human Rights monitoring and development is overseen by the regular meetings of the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR), and a well-developed treaty-body system. Concerns about the impact of trade agreements or particular policies can be raised under these mechanisms. Human rights do not

need to be brought into the WTO. Civil society organisations like the NGO 3D-Trade-Human Rights-Equitable Economy are active in this field. There have been a number of questions raised and recommendations made by different Human Rights Committees on the impact of trade agreements on the realisation of human rights.<sup>22</sup> 3D, for example, made a submission to the Committee on Economic, Social and Cultural Rights about the right to food in India. They were concerned with the Indian government's trend towards stricter intellectual property protection and the negative impact on the right to food.<sup>23</sup>

The WTO also has a review mechanism called the Trade Policy Review Mechanism, which monitors the implementation of WTO Agreements. To date, no government has raised human rights concerns under this mechanism. Civil society organisations do not have access to its procedures. The International Trade Union Confederation, however, prepares shadow reports to the Trade Policy Review Mechanisms to highlight concerns about the impact of trade agreements on labor conditions. Civil society organizations focused on food and agriculture could do the same.

At the national level, it is essential for government to develop processes to ensure that their trade policies are coherent with their human rights obligations. Trade policies or trade agreements that are found to undermine human rights should change. Impact assessments should be undertaken before new agreements are signed. The European Union has started conducting Sustainability Impact Assessments for trade agreements. There are no human rights criteria for these impact assessments. The Office of the High Commissioner for Human Rights has also been working on a methodology for human rights impact assessments but a lot more work and political will is needed to turn this into a reality.

## 5) Create Effective Judicial Remedies

“ Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels.”

*General Comment 12, the Right to Adequate Food*

There are currently insufficient legal remedies at the national and international levels for the violation of human rights, including the right to food. At the international level, UN members recently approved the Optional Protocol on Economic, Social and Cultural Rights. The instrument will provide a complaints mechanism for individuals whose economic, social and cultural rights have been violated. This is an important mechanism to raise concerns about human rights violations and to name and shame governments at the international level. But the mechanism has no teeth. It will not be able to impose judicial remedies.

<sup>22</sup> See <http://www.3dthree.org/en/page.php?IDpage=49> and <http://www.3dthree.org/en/page.php?IDpage=23>

<sup>23</sup> [http://www.3dthree.org/pdf\\_3D/3DIndiaIPfoodCESCR2008.pdf](http://www.3dthree.org/pdf_3D/3DIndiaIPfoodCESCR2008.pdf)



## B) The Trade Toolkit

This section proposes a range of tools that could help governments to respect, protect and fulfil human rights. The tools to respect and protect human rights include border measures, international competition law, anti-dumping rules and managing volatility. The tools to fulfil human rights include subsidies, food stocks, food aid and state trading enterprises.

### 1) Border Measures

One of the explicit goals of the trade system is to ratchet tariffs down. This is one of the five foundational principles elaborated by the WTO to describe its mission.<sup>24</sup> WTO rules for agricultural tariffs require WTO members to bind and reduce tariffs and convert all border measures into ordinary customs duties.<sup>25</sup> The rules also call for the substantial reduction of the overall level of tariffs, and encourage members to enter into periodic tariffs reduction negotiations.<sup>26</sup> The rules give countries the flexibility to reduce or eliminate tariffs but not to increase them beyond the levels set when they joined the WTO, or agreed to under the Uruguay Round if they were already members in 1994.

The refusal to countenance tariff increases on principle is a mistake and is in tension with states obligation to protect human rights. The WTO tariff provisions create a right for exporters to access foreign markets: there should be no such right. Many developing countries argue they bound tariffs at inappropriate levels in 1994 and they want the chance to revise those bindings. Others are arguing more generally that there are situations in which tariffs may need to rise to meet development priorities that are more important than satisfying the imperative to increase global trade volumes. To meet its obligations to protect the human right to food, the state needs to maintain some control over trade flows, including through tariffs.

Border measures can be used constructively for a number of goals. Tariffs can help keep domestic markets more stable, helping to manage external volatility that disrupts the supply and cost of food on local markets. For large integrated economies, such as the European Union or the United States, the use of tariffs has to be subject to multilateral disciplines, to ensure that any domestic problems that arise are not dumped on the outside world. For instance, both the E.U. and the U.S. have allowed (and even encouraged) their exporting firms to dump surplus agricultural commodities at less than cost of production prices on world markets, destroying agricultural output in developing countries. But for the majority of countries who neither buy nor sell enough in world markets to affect world prices, allowing tariff policy to maintain some local stability in prices can protect local capital investment, local jobs and local food production, all of which are necessary to realize the right to an adequate standard of living, including food, health and work.

Tariffs are not a magic solution to domestic economic problems. Tariffs can be abused, and their misapplication can cost economies dramatically in lost opportunities—either for new investment and innovation, or to keep domestic firms competitive and accountable. Nonetheless, tariffs play a central role in many developing country economies, and for their governments in particular: some states earn 50 percent or more of their revenues from tariffs.<sup>27</sup> For countries with small

<sup>24</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)

<sup>25</sup> Article 4 paragraphs 1 and 2, Agreement on Agriculture. Article 4.2 instructs countries to use ordinary customs duties and bans the use of other types of border measures including quantitative import restrictions, variable import levies, minimum import prices etc... except under special conditions laid out in Article 5 Annex 5

<sup>26</sup> Article 28bis, General Agreement on Tariffs and Trade (GATT) 1947

<sup>27</sup> Over the period 1985-1994, taxes from international trade represented 20 percent of total revenue in 26 out of 42 countries in sub-Saharan Africa. Over the period 2000-2003, trade taxes represented more the 50 percent of the total

economies and a small tax base, tariffs provide an essential revenue stream that can be important to progressively realise economic, social and cultural rights.<sup>28</sup>

## 2) International Competition Law

“Violations of the right to food can occur through direct action of States or other entities insufficiently regulated by States. These include, [...] failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of the State to take into account international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.”

*General Comment 12, the Right to Adequate Food*

In an open market, prices provide signals to buyers (and sellers) about what price they should charge (or pay). Effective competition is a necessary attribute of a functioning market. Yet globalization along the lines set out by the WTO, the World Bank and the IMF have undermined some fundamental aspects of competition, while prioritizing a very narrow definition of competition that has given the concept a bad reputation. That agenda, first promoted (and effectively blocked by civil society protests) at the OECD, defined competition policy as allowing foreign firms to compete with domestic firms without discrimination. In practice, the dismantling of barriers to trade and capital flows has concentrated significant economic power in the hands of a small number of global firms; there is nothing fair, or competitive, about forcing developing country private sectors to compete with these giants, some of whom have sales worth more than whole national economies.

Just how much competition is a good thing proves a tricky issue in practice. Competition issues grow even more complicated when borders are opened. Even states with relatively strict domestic competition laws are usually uninterested in holding accountable firms headquartered in their jurisdiction but operating abroad. At the same time, domestic markets vary enormously in size and economic might. National firms in the U.S. operate in an internal market of close to 300 million people, and are likely to dwarf even a monopoly in a small market such as Iceland or Canada (let alone in Mali or Niger). A practical solution to confronting giant private firms, in a globalized world, might be to maintain the monopoly, as dairy operators have in New Zealand and in Scandinavia. Yet without careful regulation, that solution might impose costs in local markets that are unacceptable, both for consumers and for producers.

Governments have a responsibility to protect the positive dimensions of competition: they should provide open and universal access to information, work against collusion among firms, and provide disempowered groups (including farm workers and smallholder producers) with the tools and information they need to redress unequal market power. From a human rights perspective, states are responsible to ensure that competition policy and regulation respects, protects and supports the fulfillment of the right to food, work and health. There is no equivalent right of transnational firms to compete in every local market.

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revenue for the Comoros, Gambia and Niger. In the same period, trade taxes represented more than 40 percent for Benin, Lesotho, Madagascar, Mali, Sierra Leone, Togo and Uganda.

<sup>28</sup> Peter Osakwe, “Emerging issues and concerns for African countries in the WTO negotiations on agriculture and the Doha Round,” in *WTO rules for agriculture compatible with development*, FAO 2007



### 3) Subsidies and Domestic Support

“ State Parties [...] shall take, individually and through international cooperation, the measures, including specific programmes, which are needed to improve methods of production, conservation and distribution of food.”

*International Covenant on Economic, Social and Cultural Rights*

Many agricultural subsidies are problematic, but not all subsidies result in unfairly traded exports. The subsidy classification system at the WTO is too politicized. Developed country negotiators have manipulated the different coloured boxes to suit their domestic needs. Support is classified according to the degree to which it distorts trade. Governments need better criteria for disciplining agricultural subsidies and support that take into account human rights objectives.

Economists Dorward and Morrison argue that considerable evidence supports the contention that the state needs to play a significant role in stimulating the transformation of agriculture, especially in the early stage of agricultural development. They conducted a review of a number of countries to compare their agricultural development strategies and to provide lessons for the least developed countries.<sup>29</sup> They found the support from the government was in many cases essential for a good outcome.

Dorward and Morrison argue the problem is not public support to agriculture *per se*, but rather that many policies to support agricultural development are conceived as temporary but become permanent as lobbies emerge to fight to continue the level of support. Multilateral rules could support a good final outcome, by establishing criteria to guide governments on when public investment and support for agriculture contributes to realising human rights and when it is time to eliminate programs that undermine human rights. The human rights treaty bodies could provide regular checks and balances on government policies to provide the impetus for change. Indeed, a multilateral system of rules offers a way to create a check on the entrenchment of too powerful local interests. The right framework would allow rules to evolve. The General Comment on the Right to Adequate Food says “State parties shall develop and maintain mechanisms to monitor progress towards the realisation of the right to adequate food for all, to identify the factors and difficulties affecting the degree of implementation of their obligations, and to facilitate the adoption of corrective legislation and administrative measures, including measures to implement their obligations.”

Annex 3 of the Agreement on Agriculture, also known as the amber box, lists the forms of domestic support that are considered to be the most trade-distorting and that members are required to reduce. Market price supports are included in Annex 3. Yet price supports can be an important policy tool to ensure stable food prices for consumers and a decent return for producers. Price supports also offer a way to manage production (governments could guarantee the price at X, but only for Y quantity of production). For a food system that is reeling from too much of some commodities (especially sources of sugar and fat) and too little of others (sufficient variety of fruits and vegetables), this kind of control could be useful.

There are some important provisions in the existing system of categorizing subsidies that could support the realization of human rights. Article 6.2 of the WTO Agreement on Agriculture allows developing country members to provide investment subsidies for agriculture and input subsidies for low-income or resource-poor farmers to encourage agricultural and rural development. This support could improve both availability and accessibility of food to these particular groups where poverty is extremely prevalent.

<sup>29</sup> Andrew Dorward and Jamie Morrison, *The Agricultural Development Experience of the Past 30 Years: Lessons for LDCs*, September 2000

#### 4) Food Stocks

WTO rules allow developing country governments to establish public stockholding for food security purposes, on condition that food purchases and sales are made at prevailing market prices. The way food prices jumped early in 2008 show the limitations of such demands; a government may not be able to afford a stock at prevailing prices, or may not believe those prices reflect “market fundamentals” (potential supply, real demand, the scope for substituting foods for one another, etc.) so much as temporary aberrations (excessive speculation, hoarding by traders, etc.) The provisions are too limiting. The withdrawal of the state from managing food stocks is one of the fundamental reasons that poor harvests and increased demand for specific crops triggered a global food crisis in 2008. Grain reserves protect world and local prices from market volatility in the face of cyclical supply shortfalls.<sup>30</sup>

In one of the most important policy changes of recent years, the U.S. government eliminated its programme of farmer-owned commodity reserves in 1996. The U.S. is a major grower of a number of agricultural commodities for world markets, and the shift in domestic policy had repercussions for producers around the world. Just twelve years later, the food price crisis has called into question that experiment to eliminate a basic area of public oversight of food and agriculture. Policy changes required under the conditionalities of structural adjustment programmes (and then poverty reduction strategies) designed by the World Bank and IMF have pushed developing countries to abandon national and regional grain reserves as well.

A grain reserve is anathema to the processing and trading firms that rely on cheap commodities for their business. It is also anathema to free trade purists. However, political support for food reserves has sprung up in surprising corners in 2008. For instance, the heads of state of the G8 countries wrote in a communiqué from their summit in July, “We will explore options on a coordinated approach on stock management, including the pros and cons of building a 'virtual' internationally coordinated reserve system for humanitarian purposes.” At the September session of the UN General Assembly in New York, Bangladesh called for the establishment of a global food bank, echoing a regional initiative agreed to by the SAARC countries (Afghanistan, India, Bangladesh, Sri Lanka, Pakistan, the Maldives, Bhutan and Nepal) in August.<sup>31</sup> Even the World Bank recently advocated in favor of establishing international grain reserves.<sup>32</sup>

Local ownership and control issues will still need to be addressed in such a global project. The recent report of the UN Special Rapporteur on the Right to Food to the Human Rights Council also called for, “... the constitution of strategic grain reserves at the national, or preferably at the local level,” highlighting concerns among many social movements that food security starts with sovereign control over food production and distribution. In any event, such measures should be seen as strengthening the global trading system by building predictability and avoiding the peaks and troughs that are widely acknowledged by most commentators to exaggerate disparities in short-term supply and demand.

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<sup>30</sup> *De la Torre Ugarte, D. & Murphy, S. (2008), “The Global Food Crisis: Creating an Opportunity for Fairer and More Sustainable Food and Agriculture Systems Worldwide,” Discussion Paper 11, EcoFair Trade Dialogue. <http://www.ecofair-trade.org/>*

<sup>31</sup> SUNS. “Development: Is a food bank answer to the crisis?” New York, 7 Oct (IPS/Thalif Deen)

<sup>32</sup> <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/0,,contentMDK:21936922~pagePK:64165401~piPK:64165026~theSitePK:469372,00.html>

## 5) Manage Volatility

A food supply that guarantees access to food at all times needs to manage volatility. Between September 2006 and June 2008, average food prices on international markets increased by 73 percent. By September 2008 prices had plummeted to a nine-month-low.<sup>33</sup> Both producers and consumers are better off when prices are not too variable; prices should not be rigid, but farmers run considerable financial risks when they plant a crop, while poor consumers spend too much of their income on food to make it easy for them to absorb sharp price increases. The theory of building a single global market was to reduce volatility by giving every country access to a global supply. In practice, the effort to build a single market has had quite another effect: it has given the richest consumers access to that global supply, undermining the claims of those who are less well off to keep a share of their land, water and agricultural productive capacity.

The volatility of global food and agricultural markets undermine local and national food systems. When world prices are low, cheap imports (often at dumped prices) flood into local markets destroying local production and the livelihoods of producers who are not able to find alternative sources of income. Food aid donations jump, though less food aid is needed. In times of high world prices, on the other hand, countries that depend on the world market to feed their people are unable to afford the increased food import bills and food aid contributions drop, sometimes dramatically. This is unacceptable under human rights law, which requires governments to take steps to ensure economic and physical access to adequate food at all times

## 6) State Trading Enterprises

The availability of food “refers to the possibilities [...] for well functioning distribution, processing and market systems that can move food from where it is needed in accordance with demand.”

*General Comment 12, the Right to Adequate Food*

A number of countries have long histories of state-run enterprises in the agricultural sector. Most developing countries with large rural communities used State Trading Enterprises (STEs), including China, India, Indonesia, Kenya, the Philippines and Malaysia. Since the 1990's these enterprises have been subject to significant reform. In many poorer developing countries, STEs were dismantled under the structural adjustment programs of the World Bank and the IMF in the 1980's and 1990's. Among developing countries, significant STEs now only exist in Indonesia, Philippines and Malaysia although they are still used to varying degrees in other developing countries.

State trading enterprises (STEs) have the potential to distort trade and more importantly from a human rights perspective, have been regarded as highly corrupt and inefficient in many developing countries. Lamon Rutten from the UN Conference on Trade and Development (UNCTAD) provides an example of the Food Corporation of India as an STE that performed important functions but did so inefficiently. “The presence of food mountains around its warehouses amidst hunger, and its burgeoning operational costs have been contentious.”<sup>34</sup>

However, STEs can play an indispensable role, particularly in countries where hunger and poverty are widespread, by supporting rural communities, guaranteeing stable prices for the poor, trading of key staple crops, and ensuring proper food distribution to where it is needed. Rutten ultimately advocates for STEs in developing countries because of their role in ensuring food

<sup>33</sup> <http://www.fao.org/worldfoodsituation/FoodPricesIndex/en/>

<sup>34</sup> Lamon Rutten, “Roles and status of state supported trading enterprises in developing countries,” in *WTO rules for agriculture compatible with development*, FAO 2007

security, food self-sufficiency and market functions.<sup>35</sup> In Asia, for example, the public food distribution system has helped increase availability and affordability of rice and the proportion of undernourished people declined from almost 40 percent to 15 percent over a period of 40 years.<sup>36</sup>

Creating a role for the state in trading and distribution can be used to support the realization of the right to food. The broader human rights framework has to be used alongside to ensure the institutions remain legitimate, transparent and accountable to the people they are established to serve.

## 7) Anti-dumping Rules

Current WTO rules tackle dumping by allowing countries to tax imports that are sold for less than the prices in the home market. The rules ignore the problem of dumping that starts at the farmgate, with farmers who are not paid a fair price in the domestic market. U.S. production of key export commodities, including corn, soybeans, rice and cotton, are consistently sold at less than the cost of production prices in domestic markets.<sup>37</sup> The Ecumenical Advocacy Alliance and the Foodfirst Information and Action Network (FIAN), conducted three cases studies (one each in Honduras, Ghana and Indonesia), to demonstrate how the dumping of rice on world markets has undermined the right to food.<sup>38</sup> The research found that as a result of liberalization all the countries had experienced surges of rice imports. Farming communities lost income, many farmers quit farming, and their access to food was less secure than it had been in previous decades. The studies acknowledged that food is one of the last things that people will cut back on, but at the "hungry times" (before the next harvest, when stocks from the last harvest are running low) people cut back on both the number of meals they ate and the nutritional content of the meals.

Among the issues contributing to this problem is chronic overproduction in developed countries that has made dumping endemic. Linked to overproduction is the overwhelming power of a small number of food processing and retail companies, whose interests are served by abundant and therefore cheap supplies of agricultural commodities. These firms have sufficient market power to dominate prices in a number of markets, particularly in their purchases from farmers.

WTO rules to address agricultural export dumping are inadequate. It is complicated and time-consuming for countries to take action against dumping within the trade system. A country must have domestic anti-dumping laws in place to impose import duties on dumped products, a first hurdle that many developing countries fail. Then, the plaintiff must take their complaint to the WTO Dispute Settlement Body, a course that takes up to four years and hundreds of thousands of dollars in legal fees. There are very few quick remedies for governments prepared to act to protect human rights if livelihoods are lost: anti-dumping actions are slow and the outcome unsure.

<sup>35</sup> Rutten elaborates on the types of activities undertaken by STEs in developing countries. For food security this includes public distribution systems and welfare schemes, stocking food reserves and intervening in times of crisis. For food self-sufficiency this includes domestic purchases to incentivize production of crops critical for domestic security and providing an impetus for higher investment in agriculture. The market functions of STEs include providing a market and a price for producers, as investors, negotiators of prices with buyers, providing competitive loans, better freight rates, longer-term forward contracts, and robust agricultural infrastructure including warehouses, transportation and distribution. Lamon Rutten, "Roles and status of state supported trading enterprises in developing countries," in *WTO rules for agriculture compatible with development*, FAO 2007.

<sup>36</sup> <ftp://ftp.fao.org/docrep/fao/007/y5650e/y5650e00.pdf>

<sup>37</sup> <http://www.tradeobservatory.org/library.cfm?RefID=48532>;

<http://www.tradeobservatory.org/library.cfm?RefID=26080>; <http://www.tradeobservatory.org/library.cfm?RefID=26018>;

<http://www.tradeobservatory.org/library.cfm?RefID=25825>;

<sup>38</sup> [http://www.e-alliance.ch/trade\\_policiesandhunger.jsp](http://www.e-alliance.ch/trade_policiesandhunger.jsp)

WTO rules against dumping should be strengthened and simplified. They can be strengthened by reviewing the definition of dumping and ensuring that dumping margins are measured against production costs and not against domestic prices. Countries should also have access to stop-gap measures that allow the imposition of safeguard measures to prevent subsidized agricultural commodities damaging local markets while investigations of reported damage are underway.<sup>39</sup>

## 8) Food Aid

“ Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programs must be safe and culturally acceptable to the recipient population.”

*General Comment 12, the Right to Adequate Food*

The inclusion of food aid disciplines as part of the negotiations on agriculture within the Doha Agenda has given the WTO a kind of “first among equals” status in multilateral food aid circles, despite the peripheral interest and experience of trade officials with food aid. Trade officials (especially from countries that export crops such as wheat) are worried that food aid (most especially U.S. food aid) is used as a tool to subsidize exports. This relatively minor concern has been allowed to dominate food aid negotiations in other arenas, including at the Food Aid Convention. Meanwhile, the few simple steps that could ensure food aid is not so easily used to displace local production continue to be rejected, first and foremost by the U.S. in concert with some of the recipients of food aid.

Food aid is not a strong human rights tool, but it does offer a tool to address the most immediate obligation on states with regard to the right to food: that people not starve in times of crisis. Food aid provides an important social safety net and if guided by proper targeting and timing requirements, as well as respect for cultural preferences, it plays an important role. Nonetheless, food aid can also be disruptive and even destructive of long-term food security by undermining local production and local markets. These effects have been well documented. Trade rules can contribute by insisting that food aid meet some relatively simple but essential criteria to avoid abuse or unintended damage to already fragile food systems.

<sup>39</sup> This was a proposal put forward by the Group of 33 developing countries at the WTO who defend food and livelihood security and rural development.

## Conclusion

The world is ready for a new vision for food and agriculture. There is no shortage of ideas for how to charter this new path. The solutions will differ for each country depending on their particular circumstances and stage of development.

The challenge for each government, their citizens, and for the international organizations that have a say in food and agriculture policies, is to find the right mix of policies and regulations that serve the many and varied goals of the food system. The goals include an end to hunger, improved access to healthy and affordable food for consumers, a decent wage for farm workers, fair and remunerative prices for farmers, a framework to encourage investment, innovation and the transfer of technology, and a more equitable distribution of wealth along the food chain.

The human rights framework provides an important set of guidelines to embark on this path. Human rights are indispensable to ensure a people-centered approach to food and agriculture. The production-centered approach has failed to ensure access to adequate food for all. The trade-centered approach stimulated growth in a handful of countries, but failed to alleviate poverty, or offer a viable development path for the poorest countries.

Furthermore, human rights law provide an important set of checks and balances to ensure that one policy targeted at one specific group, say urban settlers, will not negatively impact another group, say farm workers, or that one country's agricultural development strategy does not undermine another country's development strategy. The periodic review of each country's implementation of their human rights obligations provides an important space for governments to review and reform outdated policies that no longer serve the needs of the poorest and most vulnerable people.

A new vision for food and agriculture requires active citizens and responsive governments. It also requires a set of multilateral institutions that are capable of changing as new challenges arise, working together, and tackling global issues as a complex, overlapping, messy whole. Now is the time to be truly daring.