

# ***Implementing the Human Right to Food: Domestic Obligations and the International Trade in Agriculture***

**Report of an inter-sessional workshop held September 11, 2003 in Cancun, Mexico  
On the occasion of the 5th WTO Ministerial Meeting**

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**This brief paper reports on attempts to develop Voluntary Guidelines for the Implementation of the Right to Food through the auspices of the UN Food & Agriculture Organization (FAO).**

**More information is available from: <http://www.dd-rd.ca/frame2.iphtml?langue=0&menu=m01&urlpage=english/commdoc/publications/globalization/Food/Main.html>**

## **Draft Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security**

*"The debate about whether there is a human right to food is superfluous. Our task is to agree on how to implement the right, not to debate if it exists".*

Hartwig de Haen

The Guidelines process is an essential part of transforming the ideals expressed in the Universal Declaration of Human Rights (UDHR) into practice at both the national and international level. It is a continuation of a process that started in 1966 with the adoption of the two International Covenants - on Economic, Social and Cultural Rights (ICESCR), and on Civil and Political Rights (ICCPR) - supplemented by an array of more specific conventions.

The Guidelines will provide national governments with a roadmap for domestic implementation of the human right to food. At the same time, however, they must provide guidance on the international dimension of human rights obligations, including international cooperation. In other words, the Guidelines should serve as a practical guide not only for incorporating the right to food into national law and policies, but also for creating an international environment conducive to their implementation.

Guidelines.

## **Converging Goals: FAO, WTO and UN Human Rights System**

Much of the workshop discussion centred on the interdependence of the multilateral processes governing the world's economy and social development. Bearing in mind the objectives set forth by the UN Millennium Development Goals(2), with the first goal being to reduce by half (by 2015) the proportion of people who suffer from poverty and hunger, panellists emphasized that the mandates of the FAO, the WTO and the UN Human Rights system converge in important ways.

The objectives of sustainable development and raising living standards are contained in the preamble to the WTO's founding document, the Marrakesh Agreement. They complement the FAO's mandate to raise standards of living and to encourage sustainable agriculture and rural development. The Universal Declaration of Human Rights instructs governments to create "an international order" conducive to the realization of all human rights (article 28). With regards to the right to food specifically, the ICESCR requires that governments develop programs and take measures in relation to "methods of production, conservation and distribution of food" including "developing or reforming agrarian systems". Moreover, the ICESCR calls upon governments to take into account the problems of "both food-importing and food-exporting countries" as they develop programs related to implementation of the right to food.

Taking these converging goals into consideration, it is clear that effective international governance would encourage collaborative efforts between the WTO, the FAO and the UNCHR in order to protect, respect and fulfil the human right to food. Such collaboration would certainly amplify individual programs designed to meet a common development agenda - the Millenium Development Goals, including the elimination of hunger from our world.

## **The Nature of State Obligations**

*"While acknowledging that the right to food can be realized progressively, states do have a core obligation to ensure that people under their jurisdiction have access to the minimum essential food needed to ensure their freedom from hunger."*

Caroline Dommen, 3D--Trade-Human Rights-Equitable Economy

The UN Committee on Economic, Social and Cultural Rights (the Committee) has elaborated on the nature of state obligations under the ICESCR in General Comment 3 (The Nature of State Parties Obligations) and upon the domestic obligations of governments in General Comment 9 (Domestic Application of the Covenant). While the General Comments are not binding upon states, they are generally considered to be the primary authoritative interpretations of treaty obligations. General Comment 3 emphasises that while the right to food, along with all other economic, social and cultural rights, is to be realized progressively and in accordance with available resources, it is nevertheless subject to two important immediate obligations. The first is the commitment to guarantee that programs and strategies designed to implement the right to food will be undertaken "without discrimination". The second is a commitment to "take steps" in a deliberate and concrete manner within a reasonable timeframe.

General Comment 9 focuses on the legal nature of state obligations. In particular it emphasises the importance of legal redress to ensure government accountability. The Committee has acknowledged that there is considerable flexibility in just how governments will protect the right to an effective remedy at the national level, but also maintains its right to evaluate strategies during the reporting process required by

ratification of the ICESCR. Moreover, it emphasises that remedies must be "accessible, affordable, timely and effective".

General Comment 12, devoted specifically to the right to adequate food, describes how the three levels of states' human rights obligations - to *respect*, *protect* and *fulfil* - apply specifically to the right to food. It further defines the requirement to *fulfil* as encompassing an obligation to facilitate (pro-active engagement) and to provide (in the case of natural or other disasters). The tripartite typology provided in General Comment 12 lays out the framework for national policies designed with regards to the right to food.

Finally General Comment 12 also addresses the international dimension of the right to food, stating that states should take "joint and separate action to achieve the full realization of the right to adequate food" and that they should "in international agreements whenever relevant, ensure that the right to adequate food is given due attention".

## International Obligations

*"Small island states and most least-developed countries are food importing countries. They are in need of assistance for their agricultural sectors... it is a question of the means to produce adequate food, not of the means to purchase food from large exporting countries."*

Gowreeshankursing Rajpati, Chief Agricultural Negotiator, Government of Mauritius

In order to advance as promptly and effectively as possible toward national food security within a climate of global economic interdependence, there is a pressing need to outline a global strategy that will encompass states' obligations at both the national and international levels as described in General Comment 12. While the right to an international order suggests that this point of view would be generally accepted and applied, the reality is that certain countries are in a position to influence international rules and processes and others are not. The obligation to "take steps" at the international level therefore applies differently to countries with different degrees of development. For those fortunate states with strong economies, there is a particular obligation to evaluate the impacts that their commercial activities have on weaker states. For the states with weaker economies, the requirement is to ensure that international agreements they sign do not threaten domestic policies aimed at fulfilling their human rights obligations.

Although the primary responsibility for the promotion and protection of human rights rests with national governments, the Monterrey Consensus reminds us that "domestic economies are now interwoven with the global economic system" and that "...national development efforts need to be supported by an enabling international economic environment".<sup>(4)</sup> However, a pure national focus should not obscure or undermine the importance of international obligations that stem from the effects of economic interdependence and policies of intergovernmental organizations such as the WTO.

## The Role of Human Rights in the Negotiation of Trade Agreements

*"It is intolerable that international rules have failed to produce development and yet they are still permitted to exist".*

Miguel Rosseto, Minister for Agrarian Development, Brazil

In the current WTO negotiations, the link between international trade and food security is acknowledged in

the draft Agreement on Agriculture modalities through provisions for special and differential treatment, proposals for special safeguard mechanisms, the introduction of a "special product" category and the suspension of tariff reduction requirements for all least developed countries. In fact, such measures result directly from the WTO's 4th Ministerial Meeting in Doha, when delegates committed themselves to the objectives of a fairer trading system and, when dealing with developing countries, to "take account of their development needs, including food security and rural development".<sup>(5)</sup> Furthermore, WTO delegates noted that "non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture".<sup>(6)</sup>

Despite the Doha commitment, the second draft Ministerial text submitted for approval in Cancun failed to meet its promise. Instead, it maintained progressive tariff reduction requirements for developing countries while providing few, if any, timetables for developed countries to reduce their trade distorting domestic support to farmers. As a result, developing countries will continue to see their agricultural sectors devastated by competition with highly subsidized farmers in the United States and European Union. As history has shown, this situation will surely lead to more rural displacement, loss of livelihood and food insecurity.

The negative consequences of such agricultural trade policies pursued by developed countries have, in fact, affected local communities around the globe. However, their capacity to mitigate the effects of trade distortions on human rights are minimal given the high percentage of their populations dependent on agriculture as a source of income, the general weakness of their economies and the heavy debt burdens many of them face.

### **International Obligations Within the Tripartite Typology**

As is stipulated in General Comment 12 (para.15), "The right to adequate food, like any other human right, imposes three types of obligations on States parties: the obligation to respect, to protect and to fulfil." These obligations are not confined to the national arena, but are also related to states' activities and responsibilities within the international community. Paragraph 19 of General Comment 12 calls upon governments to repeal or suspend legislation or policies which are "manifestly incompatible with pre-existing legal obligations relating to the right to food" and requires that each state "take into account its international legal obligations regarding the right to food when entering into agreement with other States or with international organizations".

1. The obligation to **RESPECT** "existing access to adequate food requires that States parties not take any measures that result in preventing such access".<sup>(7)</sup> Hence, this is a duty to abstain from supporting any policy or decision that may hinder or violate the full realization of economic, social and cultural rights in other countries. This includes policies of individual governments as well as those of inter-governmental bodies such as the IMF, the World Bank and the WTO. Accordingly, states should ensure that international agreements to which they are party, do not undermine the promotion and protection of human rights at home or anywhere else in the world.
2. The obligation to **PROTECT** requires that the State take measures to ensure that individuals are not deprived of their access to adequate food. States do not leave their human rights obligations at the door when they participate in deliberations within multilateral institutions such as the WTO. They must continue to negotiate rules that are compatible with their obligations under the ICESCR. This implies more than simply refraining from support of policies or programmes that would obstruct or

violate the ICESCR. Rather, it requires a more proactive role for each State. The obligation to protect access to food also involves protection against third parties such as powerful economic institutions or transnational corporations.

3. The obligation to **FULFIL** requires that States engage in activities designed to strengthen access to and utilization of resources which provide food security for their people. States must, therefore, take steps to limit the impact of trade distortions on domestic agriculture sectors. They may not claim, for example, that the terms of such agreements are beyond their control and that resulting violations of the right to food are accordingly beyond their control. Instead, they must take steps to ensure that agreements with other States or multilateral institutions respect human rights obligations, including the right to food.

While the international aspect of the obligation to fulfil also includes delivery of food aid, the General Comment 12 is clear that such aid must "not adversely affect local producers and local markets" and that it should be "culturally acceptable to the recipient population".

### **The all too familiar experiences of farmers**

*"We need to ask ourselves why farmers, living and working on fertile land, are so often the people who are suffering from hunger".*

Henry Saragih, La Via Campesina

Approximately 75-80% of people living in developing countries earn their living from agriculture. This contrasts with approximately 5% in Canada and even less in the United States. Farmers account for the majority of poor people in developing countries. Their experiences are notably similar and they illustrate the ways in which international trade has impacted on the ability of small farmers in developing countries to protect their livelihoods and ensure food security for themselves and their communities.

For example, Jamaica's dairy market was liberalized in order to fulfill the requirements of the World Bank's adjustment policies. This opened the door to foreign imports, mostly from Europe, "where an estimated 4 million euros a year were spent subsidizing exports for Jamaica".<sup>(8)</sup> European dumping of milk powder in Jamaica (at prices well below production costs due to export subsidies) has forced Jamaican dairy farmers to throw away fresh milk which they cannot sell because cheap subsidized milk powder from the EU has flooded the market. Moreover, the largest dairy processor in Jamaica - Europe-based Nestle - has cut its use of locally-produced milk, switching to cheaper imported milk powder. It has even threatened to leave Jamaica if tariffs were raised on imports. In such circumstances, the freedom of Jamaican citizens to protect standards of living, including adequate food, is not respected.

Farmers' voices from across continents describe similar trends and patterns related to trade and food security. The following testimonies of farmers from developing countries illustrate the common experience: <sup>(9)</sup>

*The biggest threat right now is the displacement of our local food production by the cheap imports... the politicians believe that they will keep the people happy by giving them access to this so-called cheap food. But those of us who are working down the road already have experience. In the poultry industry,*

*for example, when we started up our breeder program here to produce the hatching eggs, the US poultry industry said they could produce a dozen hatching eggs at 8\$ a dozen... our producers said they would do it for 12\$ a dozen so the pressure was on our producers to either do it for less or get out of the industry because there was no government support for it - so they folded. ... if you don't have the money, you can't play the game.*

Mrs. Wendy Lee Yuen, age 44, Trinidad and Tobago

*The threat, the biggest danger, is the indiscriminate growth of imported products. We compete against wheat flour and milk imported from the US and other countries but we do not export our products. And we cannot have a balanced diet if we do not have the resources. The imported products destroy our consumer habits. With the little we have, sometimes we buy imported products like spaghetti and cans of milk because it lasts longer.*

Mr. Everardo Orellana Villaverde, age 42, Peru

*We have some knowledge of government policies. We are worried because we do not have the technology to compete against the agricultural policies, nor the support from our government. We do not think we will enjoy the benefits that the free trade organization talks about. The only thing we are clear about is the huge advantage that the big agribusinesses and multinationals have over us small and medium scale producers. The government has to review these unfair trade policies.*

Mr. Roberto Acosta Reyes, age 44, Honduras

*For coffee, the competition comes from Nestlé Philippines itself, which now has its own coffee plantation in Mindanao. Competition from transnational corporations is a major threat, more than typhoons or pests. We are not optimistic about the situation. We feel that the situation would get worse with the low prices of produce and high prices of inputs and commodities. More and more farmers are forced by circumstances to sell off their lands. But we will remain peasants even in these circumstances. (...) For peasants like us, land, after all, is life...*

Mr. Renato Alvarez, age 56, the Philippines

*The WTO has destroyed agriculture. Foreign companies have come into agriculture and made the social life of the peasants change. They make peasants depend on their seeds rather than local seeds. The peasants cannot compete with other countries' agricultural products. The only solution is to reject WTO, World Bank, IMF, TNCs and government policies, which neglect peasants. Protecting the local market and starting to do the farming naturally or organic farming is what we need.*

Mr. M. Yunus Nasution, age 32, Indonesia

*I have been farming my entire life. The government does give some support for food and clothing. Without the subsidy of the government, the work is not enough to support the family. I don't have enough food for my family, I depend on the government.*

Mr. Demewez Mengesha, age 39, Ethiopia

*Will things improve? With us, it works from year to year. We can't predict... Governments and NGOs can direct their efforts to help the peasants. It is the peasants that form the base of development. And it is the peasants who are the poorest. The important thing is to pass on the message, because what the government says doesn't represent our situation. Mr. Adama Donigolo, age 62, Mali*

## **Justiciability**

*"An hour's drive from Jaipur and ... people had no food at all. Just miles away, the godowns of the Food Corporation of India were full of grain, some of it rotting and a feast for rats. This is the spectre of starving India".*

Colin Gonsalvez, Attorney and Director of the Right to Food Campaign in India

The UDHR is clear on the importance of judicial remedies. It states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (article 8). The CESCR's General Comment 9 points out that failure to provide judicial recourse for violations of economic, social and cultural rights would disadvantage the most vulnerable groups of society and therefore be discriminatory:

*The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society (para.10).*

General Comment 12 also encourages states to develop and maintain mechanisms to monitor the implementation of the right to food, including access to courts, tribunals, human rights commissions or ombudsmen to seek remedies for the violation of this right. The General Comment stipulates that victims of violations of the right to food "should have access to effective judicial or other appropriate remedies at both national and international levels" (para.32) and that "Courts would then be empowered to adjudicate violations of the core content of the right to food by direct reference to obligations under the Covenant" (para.33).

The right to food is not simply just a matter of social justice - it is international law binding on the 147 states that have ratified the ICESCR. An intrinsic component of a human rights framework for food security is the obligation of national governments to produce a legislative response to the goal of the realization of the right to food. Although some 20 countries have embedded the right to food in national legislation and even - as is the case with South Africa<sup>(10)</sup> - in their constitution, these legal protections mean nothing when there is no viable means to claim them.

There are precedents illustrating that the right to food can be claimed through judicial process. For instance, in a case described in the workshop by Caroline Dommen, the African Commission on Human and People's Rights found the government of Nigeria had been guilty of violating its obligations under the ICESCR, including the right to food, because it had not taken any action to prevent private oil companies from destroying the food sources of the Ogoni people living in the Niger Delta. Dommen cited the African Commission decision, which stated:

*"The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens."*

The decision did not require that the Government of Nigeria provide financial compensation to the Ogoni people for the violation of their right to food, but it did provide a clear expectation that such violations would not re-occur.

## Conclusion

Keeping in mind that the right to food is embedded in international law, it should be an effective tool for both states and their citizens to fight hunger at home and abroad. We are reminded that even though the world already produces "more than enough food to provide an adequate diet for everyone", 840 million people in the world are undernourished and 6 million children under the age of five will die this year as a result of hunger and malnutrition.<sup>(12)</sup> Clearly, increased production is not the challenge we face. Instead it is the lack of political will to stop what the UN Special Rapporteur on the Right to Food, Jean Ziegler, has called, a "silent massacre". The Guidelines are an important step in developing practical approaches to implementing the human right to food. They will serve as a guide for governments seeking to meet their obligations at the program level. The Guidelines, however, are not a substitute for or a replacement of, the existing binding obligations that result from ratification of the ICESCR. The Guidelines, although voluntary, must be conceived within the framework of international law.

As Stuart Clark of the Canadian Foodgrains Bank reminded us in his closing remarks of the workshop, this era of globalisation has produced a common language for economic activity. We are still searching, however, for a common language and vision for the development of social policy. The diversity of cultures around the world is reflected in the various national and regional approaches to human development. In this sense, the body of human rights instruments can provide a common framework for global governance, both social and economic, by building on the consensus achieved in 1993 in Vienna when 171 governments declared that their first responsibility was the promotion and protection of human rights. The Guidelines process is a small step in that direction. Our challenge is to make it work for the benefit of all humankind.

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## Notes

1) The right to food is embedded in Article 25(1) of the UDHR and in Article 11 of the ICESCR, which recognizes "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". [Return](#)

2) UN Millennium Development Goals (MDG). All 191 United Nations Member States have pledged to meet these goals by 2015. [Return](#)

3) Economic and Social Council. *Economic, Social and Cultural Rights: Right to food - Mission to Brazil*. Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10. [E/CN.4/2003/54/Add.1](#) (3 January 2003), p.2. [Return](#)

4) Article 6, Monterrey Consensus of the International Conference on Financing for Development. Monterrey, Mexico, 18-22 March 2002. United Nations: A/CONF.198/11. [Return](#)

5) Paragraph 13 of the Ministerial Declaration: Doha WTO Ministerial 2001. Adopted on 14 November 2001 (WT/MIN(01)/DEC/1). [Return](#)



6) Ibid. [Return](#)

7) General Comment 12, para.15. [Return](#)

8) *Making Global Trade Work for People*, London and Sterling, Virginia: Earthscan Publications Ltd., 2003, p.121. [Return](#)

9) For sources of interview material, refer to: Lauren Posner. *Unequal Harvest: Farmer's Voices on International Trade and the Right to Food*. Rights and Democracy, 2001. [Return](#)

10) Others include Bangladesh, Colombia, Malawi and Ukraine. In South Africa, both the Constitutional Court and the Human Rights Commission have been used to enforce the right to housing, opening the door to similar procedures for other economic and social rights and the right to food in particular. [Return](#)

11) "Right to Food in India Campaign".

Note: This case was based on the right to life assertion in India's national constitution. This provision in the national constitution, however, is derived from international human rights law. [Return](#)

12) FAO: *The State of Food Insecurity in the World 2002*, "Foreword". [Return](#)