



RIGHT TO FOOD AND NUTRITION WATCH

2012

Who Decides About
Global Food and
Nutrition?

Strategies to Regain Control

IMPRESSUM

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www.rtfn-watch.org

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ACRONYMS

CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
CSO	Civil Society Organization
EC	European Commission
ESCR	Economic, Social and Cultural Rights
ETO	Extraterritorial Obligation
EU	European Union
FAO	UN Food and Agriculture Organization
GAIN	Global Alliance for Improved Nutrition
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
MDG	Millennium Development Goal
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	UN Office of the High Commissioner for Human Rights
PPP	Public-Private Partnership
RtAF	Right to Adequate Food
SCN	UN Standing Committee on Nutrition
SDN	Social Determinants of Nutrition
SUN	Scaling Up Nutrition
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous People
UNDP	UN Development Programme
UNEP	UN Environment Programme
UNICEF	UN Children's Fund
WFP	World Food Programme
WHA	World Health Assembly
WHO	World Health Organization
WTO	World Trade Organization

At first glance, the question “who decides about food and nutrition?” seems to be a rhetorical one. It would seem natural that the people themselves decided about what to eat and what not. The right to decide and to control which food to have is inherent to the human right to adequate food. This decision is to be taken by the rights-holders themselves. However, in reality, hundreds of millions of persons on this planet, and especially those most affected by hunger and malnutrition, have lost this decision power, at least in part.

The human rights approach, as outlined in the Right to Food Guidelines, “includes certain key principles: the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision making about policies on realizing the right to adequate food.”¹ In consequence, based on the principles of universality, interdependency, indivisibility and interrelation of all human rights, people are fully entitled to enjoy the rights to information and participation in decision making on food and nutrition issues, and to hold duty bearers accountable.

The *Right to Food and Nutrition Watch 2012* addresses the decision making process on global food and nutrition from this human rights perspective. The question “who decides?” includes the question “who is excluded from decision making?” Food and power are related. It is almost impossible to find one person among the powerful in society and politics worldwide who has not sufficient to eat. The tendency is that exclusion from economic and political decision making goes hand in hand with incidence of hunger and malnutrition. So, when considering the patterns of decision making regarding access to and control over food and nutrition within the whole food chain, including the concentration processes of food resources, we cannot avoid to talk about power relations between extremely unequal actors, including at the household level.

The Watch Consortium is particularly concerned about the trend of increasing influence and control of agribusiness and financial actors over food and nutrition, including their impact on food speculation and food producing resources. In fact, the phenomenon of land grabbing seems to be embedded into a broader process of a global rush on natural resources. Again, this is a problem of power, on the local, national and global level, but increasingly as well a problem of human rights, as people most affected by hunger and malnutrition lose terrain on both access to food resources and political decision making.

At the same time we observe a clear trend of governments’ and multilateral organizations’ increased recognition and promotion of the private sector and related philanthropic foundations as important stakeholders in the struggle against hunger and malnutrition, including through public private partnerships (PPPs), and as key investors in agriculture and sustainable development, without adequate public regulation of existing conflicts of interest.

On the other hand, social movements and other expressions of civil society have engaged in strategies to regain people’s control over food and nutrition. Several of these initiatives are analyzed in this *Watch* as well. A certain pattern of common denominators can be perceived: many of these struggles are rooted in the conviction of food and peoples sovereignty, and relate directly in their political action on food and nutrition to the use and strengthening of human rights instruments. Last but not least, they seem to follow a strategy to effectively occupy political decision space in local, national and global governance structures.

The *Watch 2012* presents several aspects of this overall panorama of social mobilization which, in essence, are about the effective primacy of human rights over vested interests, as enshrined in article 1 of the Vienna Declaration and Programme of Action adopted in 1993 by the World Human Rights Conference. Human rights are the most powerful tools to secure that the worldwide efforts against hunger and malnutrition are not reduced to short-term intervention strategies, but tackle the whole range of structural causes, establish strong accountability mechanisms, and empower people in their efforts to regain control over food and nutrition.

The Watch Consortium would like to thank all who contributed to this issue. We deeply appreciate the insights of the authors who made this publication a success. A special thanks goes to the Watch coordinator Léa Winter for her intense and excellent work, and

1 Paragraph 19. “Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.” Rome: FAO, 2004. www.fao.org/righttofood/publi09/y9825e00.pdf.

to the highly committed editorial board composed of Anne Bellows, David Kane, Stineke Oenema, Antonio Onorati, Maarten Immink, Biraj Patnaik, Fernanda Siles, Sara Speicher, Pablo de la Vega, Saúl Vicente, Bernhard Walter, and Martin Wolpold-Bosien. We would also like to highlight the support of Donna Ramírez who served as assistant to the coordinator. We are likewise grateful to the other members of the Watch Consortium for their valuable contributions to the design and content of the publication.

Yours sincerely,

Stineke Oenema, ICCO

Flavio Valente, FIAN International

Bernhard Walter, Brot für die Welt

Year after year millions of persons suffer from violations of their right to food; this is not only due to a lack of accountability but also to the loss of people's control over their food and nutrition. Allowing decision making to be in the hands of a powerful but reduced group has led to a centralized model of food supply, which in many cases results in famines, political abuse, or infringement on the State's basic obligations when it comes to human rights: to respect, protect, and fulfill them.

The time must come when those who are victims of selfish interests regain their legitimate sovereignty over food. It is unacceptable that communities (such as peasants, fisherfolk, pastoralists, or indigenous peoples) who have through centuries dedicated their lives to working the land, tending livestock, and fishing in seas and rivers in order to feed themselves and their families, are now being evicted and forbidden from pursuing not just their livelihood, but the basic means for their survival. This injustice is tolerated by those States who either lack a legal system that is able to protect its population, or by those who are involved in corrupted frameworks, where the inevitable abuse typically results in defenseless victims.

In order to set a model in which the right to food is protected and enjoyed by all in the near future, it is necessary to know who is in control of food and nutrition at the moment. Whether it is corporations or institutions, it is crucial to monitor their decisions in order to ensure their transparency and to have the chance of holding a leveled dialog between those in power and social movements. Together with this, advocacy and promotion of human rights is indispensable to guarantee that all States live up to the international standards set by the numerous committees and covenants on human rights which have been ratified by most countries during the past decades.

This *Watch* is divided into two different sections. The first comprises seven articles on different aspects of the control over food and nutrition, taking into account cases that affect people from different States and studying the latest advances in strategies to regain control. The second part consists of eight articles which monitor recent developments in specific regions and countries, denouncing different abuses by politicians and institutions, as well as the negative impact that weak legal frameworks have on human rights.

Article 1 follows up what has been discussed in the previous issues of the *Watch*. It also gives an insightful analysis on the importance of the work of the reformed Committee on World Food Security and assesses upcoming challenges and how these should be addressed. Article 2 raises awareness of the problematic process of agrofincialization, which allows speculation to take over the commodities market, resulting in violations of the right to food and severely affecting the purchasing power of the average consumer.

Articles 3 and 4 analyze the takeover of companies and corporations. These articles give critical attention to the growing trend of public-private partnerships (PPPs), such as the Global Alliance for Improved Nutrition (GAIN) and the Scaling Up Nutrition Initiative (SUN). These controversial associations can have dangerous implications which could be avoided by including a focus on social determinants of nutrition, and through a stronger and more effective implementation of corporate accountability in order to avoid conflicts of interests.

Through an interview with Angel Strapazzón from La Via Campesina, in article 5 we are introduced to the process and creation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. The article also highlights what is most relevant and innovative of the Guidelines as well as it notes the flaws and where the Guidelines fall short with respect to the expectations of civil society organizations.

One of the most vulnerable groups when it comes to the right to food is the indigenous population. Article 6 shows how even if most Latin American constitutions take their disadvantages into consideration and positively differentiate those communities, in practice the governments fail to comply with their obligations. In line with this subject, article 6a exemplifies this situation with a detailed description of how aggressively several soda and high-energy dense products companies have approached indigenous peoples in Mexico, leading to a worrying increase of diabetes and other illnesses due to unhealthy consumption patterns.

The last article of the first part, article 7, is a factual study on the recently adopted Maastricht Principles on extraterritorial obligations (ETOs) through which social movements can find new ways of holding States accountable for their lack of defending human rights when it comes to crossing borders.

Article 8 provides a new perspective on the Arab Spring. We learn how the legal chaos that preceded the uprisings had allowed corruption, which had translated into a flagrant violation of the right to land in countries like Tunisia, Egypt, or Yemen.

This year has witnessed yet another food crisis due to severe droughts which have caused famines all across the Horn of Africa and then spread to the Sahel. In article 9 we learn of the consequences of insufficient and/or ineffective aid as well as the need for governments and populations in those regions to take effective control over their food systems.

Article 10 reflects on the serious mistake of believing that agrofuels were the solution to environmental problems. The article proves how, in fact, they not only have a negative impact on the environment, but also raise agricultural prices and provide further incentive for land grabbing.

This year, Spain was examined by the Committee on Economic, Social and Cultural Rights (CESCR). Article 11 analyses how severe cutbacks on public expenditure have taken their toll on the implementation of the International Covenant on Economic, Social and Cultural Rights, and expands upon the Committee's worries about their negative impact on the most vulnerable groups.

After becoming part of NAFTA, Mexico's dependence on international agricultural products has taken a severe toll on rural areas. Article 12 documents on the loss of land and work of many of the Mexican peasants and elaborates on the concern of the Special Rapporteur on the right to food on the matter.

Article 13 proves how intensive agribusiness has left many Paraguayans without means or land. The new production model based on exporting soy beans and meat has deformed market prices and provoked an increase in poverty and hunger, as well as profoundly weakened democratic institutions.

Lastly, articles 14 and 15, on Bangladesh and the Philippines respectively, describe the feeble legal frameworks within these countries. In the case of Bangladesh the right to food is indirectly covered by insufficient governmental aid whereas in the Philippines the well-built legal structure is undermined by bureaucratic inefficiencies.

The members of the Right to Food and Nutrition Watch Consortium wish that this 2012 edition of the *Watch* will give voice to victims of injustice, and that the reader will use the information that is offered as a means to fight for human rights and join the cause of regaining control over food and nutrition in order to finally secure the right to food, as every human being is entitled to it.

The editorial board of the *Watch* 2012

WHO DECIDES
ABOUT GLOBAL
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Strategies to Regain
Control

01

WORKING TOGETHER TOWARDS A HUMAN RIGHTS FRAMEWORK FOR FOOD SECURITY AND NUTRITION—HOW FAR HAVE WE COME?

Martin Wolpold-Bosien¹

On the occasion of this fifth edition of the *Watch*, we will begin with a brief review of our own progress before assessing current initiatives towards achieving a human rights framework for food security and nutrition policies. Lastly, we will look into the challenges we have identified for the near future.

FROM WHERE DID WE START?

“National and global political decisions that fail to take the human rights obligations of States and intergovernmental organizations into account are the main reasons why hunger persists.”² The very first sentence of the preface of the “Zero Edition” in 2008 clearly marked the human rights perspective of the *Watch* from the beginning. At that time it was applied to the analysis of the world food price crisis that had made headlines early that year. Upon request of the newly appointed UN Special Rapporteur on the right to food, the Human Rights Council organized its first special session on the food crisis and the human right to food in May 2008. Social movements and civil society organizations (CSOs) demanded fundamental policy changes and stressed the need for “a food production system based on the principles of food sovereignty and human rights.”³

Although views on the causes and origins of the crisis were diverse, there was a growing international consensus on the need for a governance reform. In this context, the *Right to Food and Nutrition Watch 2009* was published under the title: “Who Controls the Governance of the World Food System?” On that occasion, emphasis was given to the reform of the Committee on World Food Security (CFS) which was successfully adopted in October 2009.⁴ In 2010, we examined several deeply concerning developments in the subjects of land grabbing and malnutrition as challenges for governance, including a first assessment of the CFS reform, and we also presented different perspectives towards a human rights based Global Strategic Framework for Food Security and Nutrition.⁵

The *Watch 2011* highlighted right to food accountability as a core element of the human rights framework for food and nutrition. The emerging worldwide right to food movement and the monitoring reports in the *Watch* editions since 2008 have made it very clear that the struggle against hunger entails access to justice, and that the current lack of accountability and prevalent impunity of right to food violations lead directly to chronic hunger. The progressive and sustained realization of the right to adequate food depends on the existence of strengthened accountability mechanisms on all levels which should be made available for rights-holders in their daily struggles.⁶

WHERE ARE WE NOW?

Regarding decision making processes within the CFS

The reform of the CFS is seen by social movements and civil society groups as an important achievement. This is particularly true in the case of small-scale food producer organizations and supporters of food sovereignty, human rights, and democracy. Many of them actively engaged in the year-long negotiation of the CFS reform thereby influencing its outcome in important ways.⁷

The vision of the reformed CFS is to strive towards “[...] a world free from hunger where countries implement the Voluntary Guidelines for the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.”⁸ The reform of the CFS

1 [Martin Wolpold-Bosien](#) is the coordinator of the Right to Food Accountability Program at the International Secretariat of FIAN and a member of the Right to Food and Nutrition Watch editorial board.

The author would like to thank Steineke Oenema and Carole Samdup for their valuable help in the review of the article. The content of the article is the sole responsibility of the author.

2 [Right to Food and Nutrition Watch: the World Food Crisis and the Right to Food](#). Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2008. 4.

3 Ibid. 9–10.

4 [Right to Food and Nutrition Watch: Who Controls the Governance of the World Food System?](#) Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2009.10–23.

5 [Right to Food and Nutrition Watch: Land Grabbing and Nutrition, Challenges for Global Governance](#). Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2010. 13–15,18–21, 33–45, 86–87.

6 [Right to Food and Nutrition Watch: Claiming Human Rights, the Accountability Challenge](#). Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2011. 98–100.

7 International Food Security and Nutrition Civil Society Mechanism. “Civil Society Working Document on the Global Strategic Framework for Food Security and Nutrition.” Dec. 2011. www.csm4cfs.org/files/SottoPagine/41/cso_working_document_on_the_gsf_december_2011_en.pdf. This document is available on the Watch website: www.rfn-watch.org/en/home/watch-2012/main-sources.

8 CFS, 35th Session. “Agenda Item 3: Reform of the Committee on World Food Security, Final Version” (CFS: 2009/2 Rev 2). Rome, 14, 15, 17 Oct. 2009.

set a new course for the Committee to become the foremost inclusive forum for global governance of food security and nutrition through the promotion of international coordination and coherence, and with the aim to eradicate hunger and malnutrition, particularly by strengthening the implementation of the right to food.

An important result of the CFS reform has been the increased level of participation of a range of civil society actors, including representatives from those constituencies most affected by hunger and malnutrition, such as the landless, agricultural workers, indigenous peoples, peasants, fisherfolk, pastoralists, women, youth, and the urban poor. All these and CSOs are able to interact with the CFS through the autonomous Civil Society Mechanism (CSM).⁹

The degree of trust and credibility that the CFS now enjoys among civil society organizations is a remarkable achievement as well as an asset that shows that participatory approaches to governance for food security and nutrition are possible within international decision-making processes. The declaration of the CSO consultation at FAO's African Regional Conference in April 2012 in Brazzaville states: "[w]e recognize the relevance and importance of the CFS and its inclusive method of work, and we request this approach be put into practice at all levels."¹⁰

The process towards the adoption of the FAO Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security by the CFS on 11 May 2012¹¹ is another good illustration of the new dynamics among the many stakeholders. A joint statement of civil society groups welcomed the new Guidelines, while also pointing out that they fall short in some areas that are key to the livelihoods of small-scale producers.

"Despite this, we call on governments and intergovernmental agencies to implement them and urgently improve governance of tenure for food security. We commend the process that was adopted for developing the Guidelines, which allowed civil society, and in particular representatives of food producers themselves, to participate at all stages including the negotiations, to draw attention to the real-life issues facing them and to make concrete proposals. It has been demonstrated that such a process is able to bring a wide variety of social actors to the debate and to seek solutions to difficult and contentious issues such as tenure of land, fisheries and forests. This approach should be emulated by the entire UN system."¹²

Similar participatory methodologies have been used for the elaboration of the Global Strategic Framework for Food Security and Nutrition (GSF). The respective CSM working group on GSF has been invited to contribute to each step of the elaboration, and has encouraged social movements and other civil society groups to contribute to the process. The final adoption of the GSF is scheduled for October 2012, but negotiations were already concluded by end of July.

Other consultation processes have been also launched, including research studies to be conducted by the High Level Panel of Experts (HLPE) to the CFS on a diversity of relevant topics such as price volatility, agricultural investment, agrofuels, climate change and social security, monitoring, and accountability.

An important limitation in this regard is that time and financial resources of CSOs, particularly social movements, have been insufficient to really take full advantage of the participation opportunities offered by the reformed CFS. While, in principle, social groups representing those most affected by hunger and malnutrition now have more political space than ever within the global governance structures on food and nutrition, in practice most are not in a position to really use it. The CSM has made laudable efforts to overcome this

9 The purpose of the CSM is to facilitate civil society participation in agriculture, food security and nutrition policy development at national, regional, and global levels in the context of the CFS. For more information visit www.csm4cfs.org.

10 African Civil Society Consultation. "Civil Society Declaration on Regional Civil Society Consultation for Africa." Brazzaville, 21–22 Apr. 2012. www.europafrica.info/en/cfs/regional-civil-society-consultation-for-africa-the-final-declaration-ety-organizations. This document and the other CSOs declarations coming from regional consultations are included in the document referenced in fn. 15.

11 Committee on World Food Security, 38th (Special) Session. "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (CFS 2012/38/2). Rome, 11 May 2012. <http://www.fao.org/docrep/meeting/025/md708e.pdf>. See also article 5 of this Watch.

12 International Food Security and Nutrition Civil Society Mechanism. "The Guidelines on the Tenure of Land, Fisheries and Forests Are a First Step, But Much More Is Needed to Ensure People's Rights to Land and Natural Resources." Rome, 11 May 2012. www.csm4cfs.org/policy_working_groups-6/land_tenure-6/. See also article 5 of this Watch.

situation, and some governments have responded by supporting those efforts, but there is still a huge gap to fill.

Another important consideration is the relevance of the CFS in a global governance structure that includes actors such as the G-8, G-20, UN High Level Task Force on the Food Crisis, and multilateral institutions. The analysis below illustrates that power relations between the global governance schemes on food security and nutrition are far from being resolved. It was interesting to note that in 2011, the CFS refused to automatically approve the Principles on Responsible Agricultural Investment (RAI) elaborated under the lead of the World Bank, and decided to conduct its own process on the matter, taking the RAI as one input within the multi-stakeholder setting of the CFS. On the other hand, a question, for example, on when trade liberalization and food security will be discussed within the CFS is still open. Will the WTO be in a position to accept guidance from the CFS?

The relationship between the CFS and related regional and national level structures also lacks clarity. Even in those countries where advanced, inclusive “CFS-like” governance structures are in place, as with the CONSEA in Brazil, the working relationship is unclear. This mainly affects, of course, civil society participation as national governments are the members of the CFS and can integrate their positioning at a national and international level as part of a defined institutional process within governmental entities.

Regarding policies with impact on the right to adequate food

The discussions during the GSF process have provided insight into how governments, intergovernmental institutions, and the private sector view the human right to food as a viable framework for discussions about food security and nutrition. Although there seems to be international consensus on the right to adequate food and the implementation of the Right to Food Guidelines, there is a strong tendency to ignore the full implications of a consequent human rights approach.¹⁵ Accepting a human rights framework does not allow for a “pick-and-choose-menu” approach on food security and nutrition. States and other actors are particularly reluctant to accept implications of the human rights approach when it comes to ensuring multi-sector coherence between programs and policies, paying attention to extraterritorial impacts of trade and investment law and policy, or to recognizing legal accountability mechanisms and effective remedies for those affected by persistent hunger.

Rejection of the human rights framework is particularly apparent within discussions related to:

- the role of trade liberalization and the conclusion of the Doha Agenda within the WTO;
- the role of international investment, particularly in agriculture and natural resources;
- the influence of bilateral trade and investment treaties;
- the role of public-private partnerships;
- the need to stop agrofuel expansion and associated land and natural resources grabbing;
- the need to stop promotion of the agribusiness model;
- the role of the agro-ecological approach as the main method for achieving sustainable food production;
- the need to reorient policy making away from forced global integration towards a system that offers more flexibility and ownership of food related policies at the regional or national levels, in the context of peoples and food sovereignty.

15 For more information on GSF’s accountability see: Golay, Christophe, and Michaela Büschi. The Right to Food and Global Strategic Frameworks: the Global Strategic Framework for Food Security and Nutrition (GSF) and the UN Comprehensive Framework for Action (CFA). Rome: FAO, 2012; “Factsheet 1; the Global Strategic Framework for Food Security and Nutrition: a Right to Food Perspective.” FAO, Mar. 2012; and “Factsheet 2; Human Rights—a Strategy for the Fight against Hunger.” FAO, Mar. 2012. www.fao.org/righttofood/news56_en.htm. These documents are available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

On the other hand, there are many areas of “agreement in principle” in which differences are mostly about wording and implementation. On these topics, civil society groups have emphasized the need to:

- implement progressively the human right to food through policies that are relevant for food security and nutrition;
- adopt policies that prioritize small scale food producers;
- implement the new Guidelines on Responsible Governance on Tenure of Land, Fisheries and Forests, including redistributive reforms;
- defend women’s rights by fighting all forms of discrimination;
- highlight the relation between human right to food, labor rights, living wages, and the right to an adequate standard of living;
- recognize the human rights dimension of social protection;
- frame nutrition policies within a human rights perspective with emphasis given to the social determinants of nutrition and nutrition sensitive development;
- mitigate climate change by addressing its causes;
- create food reserves for resilience.

Regarding monitoring and accountability

From the human rights point of view, it is of utmost importance to address the unresolved monitoring and accountability gap within the CFS. As noted in the CFS reform document, monitoring and accountability is one of the pillars of the reform.¹⁴

In this context, civil society groups have submitted preliminary proposals:

“A monitoring mechanism is established within the CFS that is mandated and equipped with the necessary political authority, independence and financial resources to monitor, on the basis of agreed upon methodological guidelines, the implementation of CFS decisions, standard setting and overarching frameworks by the different actors, especially governments, intergovernmental institutions and transnational companies.

[...] In the exercise of its mandate, the monitoring mechanism will contribute significantly towards an increased level of human rights accountability within the CFS, thereby correcting specific policy failures and incoherence, reducing uncoordinated responses at national, regional and international levels, and strengthening the CFS as the foremost inclusive, influential and effective international platform for food security and nutrition.”¹⁵

The UN Special Rapporteur on the right to food has given guidance on the matter. “It is the conviction of the Special Rapporteur that the CFS cannot meet its ambition [...] without monitoring and accountability mechanisms, including accountability of CFS Member States to discharge their human rights obligations in the context of achieving food and nutrition security.”¹⁶ He suggests five principles for the CFS monitoring and accountability system, including that adequate participation in monitoring procedures should be ensured. Such a system could take the “advantages of a multi-stakeholder peer-review mechanism analogous to the Universal Periodic Review (UPR) system of the Human Rights Council”¹⁷ or consider other solutions, “including the establishment of an independent monitoring mechanism—an Observatory—that would provide the CFS plenary with independent reports on the implementation of CFS decisions, like the HLPE provides the CFS plenary with independent expertise. Whichever the solution ultimately preferred, parallel reporting from civil society is essential to the credibility of the monitoring process.”¹⁸

Reaching consensus on the fact that the first of the five principles that will be applied to monitoring and accountability systems will be that they should be human-rights based,

14 “(ii) Promote accountability and share best practices at all levels [...] This will entail developing an innovative mechanism, including the definition of common indicators, to monitor progress towards these agreed upon objectives and actions taking into account lessons learned from previous CFS and other monitoring attempts.” Para 6. CFS, op. cit. fn. 8.

15 “Contributions from CSO Consultations at Regional Conferences to the GSF First Draft.” CSM Working Group on GSF. 15 May 2012. www.csm4cfs.org/files/News/45/contributions_from_cso_consultations_to_the_gsf_first_draft_final.pdf. This document and the other CSOs declarations coming from regional consultations are available on the Watch website: www.rtfri-watch.org/en/home/watch-2012/main-sources.

16 De Schutter, Olivier. “Mandate of the Special Rapporteur on the Right to Food: Submission to the Consultation on the First Draft of the Global Strategic Framework for Food Security and Nutrition of the Committee on World Food Security.” 8 May 2012. 4. www.srfood.org/images/stories/pdf/otherdocuments/20120508%20-%20srfff_commentsgsffirstdraft.pdf. This document is available on the Watch website: www.rtfri-watch.org/en/home/watch-2012/main-sources.

17 Ibid. 5.

18 Ibid.

with particular reference to the progressive realization of the right to adequate food is certainly an outstanding and encouraging result of the GSF consultations.¹⁹

WHERE DO WE GO FROM HERE:

As we review the advances and challenges in efforts to promote a human rights framework for food security and nutrition, we will promote the following four principles as priority issues:

Primacy of human rights: Although the inclusion of human rights terminology and references has increased significantly in international processes dealing with food security, it is still not fully understood and accepted that human rights are the primary responsibility of States and have primacy over any other policy area as enshrined in Article 1 of the Vienna Declaration and Programme of Action adopted in 1993 by the World Human Rights Conference. In this perspective, it was an important achievement that the Vision Statement of the reformed CFS states that “the CFS will strive for a world free from hunger where countries implement the voluntary guidelines for the progressive realization of the right to adequate food in the context of national food security.”²⁰

Qualifying policy coherence: the concept of coherence must be understood in terms of “human rights coherence.” In other words, government policies must be reviewed with the objective of ensuring they do not result in negative human rights consequences including on the right to food. This qualification is needed to avoid unintended effects resulting from having different policy objectives; policy coherence is not an end in itself. Unfortunately there are increasing examples of policy coherence that conspires against human rights, for example the European Union’s “Global Europe” strategy which is clearly biased towards economic interests. It has led to European Partnership Agreements and Association Agreements that ensure alignment of development policies with trade and investment objectives that actually marginalize human rights. This is not the type of policy coherence envisioned by civil society.

Human rights based monitoring and accountability: these terms have gained increasing acceptance among most actors in the food security and nutrition field. What do they mean in practice? If reduced to the mutual accountability between “donors” and “recipient” States, or monitoring of development projects from a technical implementation standpoint, these terms are far from reaching their potential. Again, a human rights qualification is needed. Although we know that States, intergovernmental institutions, and private actors are hesitant to accept monitoring mechanisms that assume legal accountability for human rights impacts, we also know that without such accountability, no substantial change in national and international policies can be expected. If we believe that hunger is largely a product of policy failures to meet human rights obligations, including extraterritorial obligations, we must insist on establishing and strengthening accountability mechanisms at all levels.

As a billion people experience hunger each and every day, the worldwide right to food movement faces a daunting struggle. Small-scale food producers, consumers, and civil society must join hands to occupy the newly emerged spaces of participative governance. They must join hands to demand an even greater voice at all levels of governance—local, national, and regional—but particularly at the global level where increased right to food coherence and accountability are most needed. We must join hands to strengthen our advocacy and monitoring capacities across issues, including land, water, fisheries, forestry, livestock, agriculture, rural development, biodiversity, environmental sustainability, income, nutrition, food distribution, food safety, women’s rights, labour rights, justiciability, and extraterritorial

19 Chapter V. “Global Strategic Framework for Food Security and Nutrition.” CFS, July 2012. (Version to be approved in October 2012). This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

20 Para 4. CFS, op. cit. fn. 8.

obligations. We must join hands to confront the activities of intergovernmental and transnational actors, including private actors. In all this, we will continue to combine and relate the right to food struggles on the local and national levels with long-term efforts at the global level, particularly those that defend and strengthen the international human rights system and its instruments. Together we will see the day when human rights standards are fully implemented within all governance processes related to food security and nutrition.

AGROFINANCIALIZATION: FOOD PRICE VOLATILITY AND GLOBAL VALUE CHAINS

Mauro Conti¹

Since the first food price crisis in 2007–2008 (and even more so in 2011, when food prices rose again to surpass the record highs of 2008), there has been a lot of discussion at international and institutional levels (United Nations, World Bank, International Monetary Fund, Committee for World Food Security, High Level Panel of Experts, etc.) on the causes and effects of food price volatility.

The dominant view of these international institutions does not take into account the important role of price volatility as a main cause of the food crises. This is due to a lack of distinction between the phenomena of high prices and of price volatility. The former refers to constantly rising in food prices which is due to trends in market supply and demand, and to other underlying economic fundamentals. Price volatility, on the other hand, represents continuously changing prices within a short period of time. There is a sharp division between the effects stemming from the increasing market demand leading to higher prices and speculative effects that result in price volatility. One must dwell on some key aspects of what is referred to as *financialization* to better understand the difference between an increased demand and speculative effects, and how they relate to the causes and effects of food price volatility.

While the traditional organization (19th–20th centuries) of the production system of industrial capitalism tended to invest money to produce goods that, once sold, allowed restoring that investment, finance capitalism reduces the traditional circuit to a money-money circuit, sidestepping the material production and therefore reducing the time of investment. The economy of developed countries is in a stage of maturity where real investment opportunities decrease, so the money resulting from the traditional circuit (money-goods-money) remains accumulated in liquid form (mobile financial capital). Due to this, there's an increasing competition among accumulated capital in liquid form that is moving quickly in search of returns in new market increasings. This mobile financial capital is not an investment in real assets (long-term investment), but in financial activities (short-term investment) giving immediate returns by speculating on the exchange value (prices) of real assets. Real assets, composed of fixed capital and human capital, are not valued in the real returns, but are depreciated to transfer to the financial system part of their monetary value, and this transfer of value almost always operates through compression of the workers' living standards and the price of labor.

The role of financial speculation is absent in mainstream analyses and almost secondary throughout the civil society organizations (CSOs) recommendations, which only call for greater transparency in financial markets.² The only hint of financial speculation is with respect to agrofuels, which are recognized as a main source of volatility and of high prices.

AGROFUELS, OIL, AND PRICE CORRELATION

In most studies, the effect of agrofuels on food price volatility is based on supply/demand criteria: given a certain supply capacity, if a portion of agricultural products is shifted from food consumption to agrofuels production, there will be a supply shock with a consequent increase in market price. However, if the demand for agrofuels comes in addition to that of agricultural products, there is a demand shock with a consequent increase in price and quantity produced. In other words, an increase in competition between agricultural production of agrofuels and of food for human consumption means that the availability of the latter is reduced, and thus food prices rise.

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² "Proposals for Next Steps on Food Price Volatility (FPV)." [International Food Security and Nutrition Civil Society Mechanism](#). 28 Dec. 2011. www.csm4cfs.org/files/Pagine/11/cso_proposal_for_next_steps_on_fpv_en.pdf.

Nevertheless, the imputation of demand shocks to agrofuels is misleadingly widespread. While recognizing the importance of the role of agrofuels in the current food crisis, it is hard to support this hypothesis, since supply or demand shocks do not explain in any way an increase in price volatility, which corresponds to a series of price changes in opposite directions, not predictable and not explainable through the supply/demand fundamentals. Agricultural production has been in constant growth since 1960, and when the food crisis erupted in 2007 food supply was more than able to meet the demand of the current world population.³

In spite of this, the global number of undernourished people has grown over recent years,⁴ which clearly demonstrates that discrimination in the access (physical or economical) to adequate food is the main root cause of hunger. An alternative analysis on the role of agrofuels in price volatility is supported by an almost perfect correlation (0.93)⁵ in international markets between oil prices and the FAO Food Price Index⁶ since 2005.

Although it is clear that the industrial agricultural model is increasingly dependent on fossil fuels (through fertilizers, costs of transport, machinery, and other energy sources used) they do not account for 93% of the cost of inputs since most of the world's agricultural production still uses methods based on biological cycles. Therefore, this argument is not sufficient to explain the correlation.

However, it is still an interesting analysis given that the correlation between oil prices and agricultural products derives from a process of financialization that attributes a price to a value in a completely independent manner from the real economy and the underlying economic fundamentals such as supply and demand.

The analysis of price and cost correlation refers to two different transmission channels: the first one is financial, while the second is embedded in the production system and in supply chains. The mechanisms of transmission are therefore a central issue within the analysis.

In recent decades, the correlation of agricultural commodity prices with the price of oil was just 0.07, whereas its correlation with commodity average prices was 0.23.⁷ However, after the large-scale adoption of new ethanol-based agrofuels by the U.S. transport sector the correlation of agricultural products with the price of oil increased to 0.93.⁸ In fact, it is widely believed that the U.S. agrofuels industry was boosted by the combination of high fuel costs and the adoption of the U.S. Energy Policy Act in 2005, with the subsequent introduction of a futures contract on ethanol at the Chicago Board of Trade. When the ethanol future contracts were introduced, over-the-counter (OTC) derivatives⁹ were exempted from any regulation designed to limit the ability of market participants to manipulate the market (i.e. position limits),¹⁰ following the adoption of the U.S. Commodity Futures Modernization Act.¹¹

INCREASE OF SPECULATION WITH COMMODITIES

Deregulation in the financial sector encouraged the expansion of complex financial derivatives including commodity index funds, and the demand for these products by institutional investors increased still further (especially after the subprime crisis). Moreover, the number of future contracts traded globally on commodity exchanges increased by more than five times between 2002 and 2008.¹² This occurred due to other markets drying up one by one: the dotcoms disappeared in 2001, the stock market collapsed soon after, and the U.S. housing market crashed in August 2007. As each bubble burst, large institutional investors moved on to more traditional and stable markets, negatively correlated to shares and bonds in order to provide themselves a good hedge against inflation.

- 3 Rosegrant, Mark W, et al. Global Food Projections to 2020. Washington D.C.: International Food Policy Research Institute, 2001. www.ifpri.org/sites/default/files/publications/gfp.pdf.
- 4 FAO, IFAD, and WFP. The State of Food Insecurity in the World: How Does International Price Volatility Affect Domestic Economies and Food Security? Rome: FAO, 2011. This document is available on the Watch website: www.rtfri-watch.org/en/home/watch-2012/main-sources.
- 5 Chefurka, Paul. "Food Prices and Oil Prices." Approaching the Limits to Growth. 15 May 2011. www.paulchefurka.ca/Oil_Food.html.
- 6 "The FAO Food Price Index is a measure of the monthly change in international prices of a basket of food commodities. It consists of the average of five commodity group price indices (representing 55 quotations), weighted with the average export shares of each of the groups." (FAO, 2012). www.fao.org/worldfoodsituation/wfs-home/foodpricesindex/en/.
- 7 Newell, J. "Commodity Speculation's 'Smoking Gun.'" Probalytics: Probability Analytics Research. 17 Nov. 2008.
- 8 Chefurka, op. cit.
- 9 Contracts where both parties could be speculating since neither party is obliged to hedge against a pre-existing risk.
- 10 The highest number of options or futures contracts an investor is allowed to hold on one underlying security. Exchanges and/or regulatory bodies establish different position limits for each contract based on trading volume and underlying share quantity.
- 11 Senate and House of Representatives of the United States of America. 106th Congress, 2nd Session. "Commodity Futures Modernization Act of 2000" (H. R. 5660). 14 Dec. 2000. www.cftc.gov/ucm/groups/public/@lrrulesandstatutoryauthority/documents/file/ogchr5660.pdf.
- 12 Lilliston, Ben, and Andrew Ranallo, eds. Excessive Speculation in Agriculture Commodities: Selected Writings from 2008–2011. Minneapolis: Institute for Agriculture and Trade Policy, 2011. Table 23B. www.iadb.org/intal/intalcdi/PE/2011/08247.pdf.

Commodity index funds¹⁵ enabled investors to yield from different commodity futures markets without having to invest directly in each single commodity futures. Commodity index funds are predominantly traded OTC, consequently they are customized bilateral contracts made directly between two contracting parties without the transparency of being traded on an open exchange at the stock market.

Index speculators were not interested in buying underlying goods or in short-term movements in the prices of futures: their strategy was “going long,” continuously buying back futures contracts purchased at a lower price and resold at a higher price before their deadline, reinvesting in futures with later maturities. Financial analysts fed this process by providing forecasts of further price increases.

The real market players were encouraged to increase their agricultural reserves in anticipation of future earnings, thus increasing farm prices by reducing supply in accordance with the traditional speculative approach.

Raising futures prices was possible because over the last decades the financial market deregulation and the limits on speculative positions that were established by the Chicago Board in the 30s (in order to avoid market distortions created by possible prevailing hedging positions), were not enforced for those who worked on the indices (index speculators), i.e. those who were regarded as traders.

Despite the difficulty of obtaining official numbers, several independent estimates in March 2008 pointed to \$200 billion invested in *bullish*¹⁴ positions on commodities by the index funds: nearly 40% of the total with an additional 30% belonging to regulated speculators. This left only 30% of open positions to traders, with a clear divergence between the expectations of index speculators and those traders who decided not to draw anymore on futures.¹⁵ In fact, to operate in the futures market you must have available funds to ensure the maintenance of margins against market fluctuations that tend to lower them: until the expiration of the futures’ contract, the ratio between margin and price of the future should be fixed—if the price increases, the difference must be paid immediately, under penalty of forfeiture of the contract. The *bullish* positions of index speculators in the futures’ market (avoiding short-selling and trading on the raw assumption that commodities have the same tendency as stocks to rise over the long run), created difficulties in maintaining margins for smaller operators, forcing them to close their positions.

According to estimates by the U.S. Department of Agriculture, price volatility, credit crunch and rising costs of inputs resulted in nearly eight million acres no longer being farmed.¹⁶

An independent estimate calculated that, in soybeans, the speculative positions have effectively bought 59.1% of the domestic 2007 crop, while in wheat the figures are even higher at 83.6%.¹⁷ Betting against them as never before were the agents dealing with physical commodities.

Thus, the changes in food prices did not necessarily reflect movements in market supply and/or demand, but were driven to a significant extent by speculation that greatly exceeded the liquidity needs of commodity markets to execute the trades of commodity users.

Parallel to what happened in the oil market, food prices have collapsed in the agricultural futures market since September 2008, when the House of Representatives approved a bill that imposed limits on swaps and futures’ contracts on commodities and prohibited the activities of foreign traders, even with the initiative lately stalling in the Senate.¹⁸

The policy solutions that are needed to avert another crisis must address both the problems affecting underlying financial market fundamentals, and the conditions under which speculation is allowed to take place in essential food commodities in order to limit the effects of those movements in market fundamentals.

- 15 A commodity price index is a fixed-weight index or (weighted) average of selected commodity prices, which may be based on spot or futures prices. It is designed to be representative of the broad commodity asset class. Investors can choose to obtain a passive exposure to these commodity price indices through a total return swap. The advantages of a passive commodity index exposure include negative correlation with other asset classes such as equities and bonds, as well as protection against inflation.
- 14 Bull is an investor who thinks that a specific security or an industry will rise; investors who take a bull(ish) approach will purchase securities under the assumption that they can be sold later at a higher price. A “bear” is considered to be the opposite of a bull: bear(ish) investors believe that the value of a specific security or an industry is likely to decline in the future.
- 15 Masters, Michael. (testimony of). Committee on Homeland Security and Governmental Affairs United States Senate. 20 May 2008. www.hsgac.senate.gov/imo/media/doc/052008Masters.pdf?attempt=2.
- 16 8 million acres is slightly larger than the entirety of Belgium and slightly smaller than the entirety of Moldova. USDA. “Net Farm Income and Costs: 2009 Farm Sector Income Forecast.” *Economic Research Service*. 12 Feb. 2009.
- 17 Epstein, Gene. “Commodities: Who’s Behind the Boom?” *Wall Street Journal*. 31 Mar. 2008. http://online.barrons.com/article/SB120674485506173053.html?reflink=wsj_redirect#articleTabs=article%5D1.
- 18 Sivini, Giordano. “Scommesse sulla fame: Finanza, agribusiness e crisi alimentare.” *Foedus* 24 (2009).

This became evident in a quantitative study¹⁹ that took into account the resumption of speculative movements in 2010 and managed to accurately distinguish between the effects of the introduction of ethanol and the effects of speculation, demonstrating that the two sharp peaks in 2007/2008 and 2010/2011 were specifically due to investor speculation, while an underlying upward trend was due to increasing demand from ethanol conversion. The study indicated that claims that speculators cannot influence grain prices are shown to be invalid by direct analysis of price setting practices of granaries.

The reserves of grain and other agricultural products may have an impact on the speculative behavior of real markets; the fact that many reserves of food are controlled by multinational corporations which are vertically and horizontally integrated should be taken into consideration. These corporations, despite being originally trade oriented, have earned the most profits within the financial market in the last years.²⁰

So it is not the constant growth in demand for food that affects the reserves, but it is due to volatile peaks that reserves are reduced to a minimum.²¹ Depletion of reserves is a consequence of speculation, which commonly generates volatility, so the reconstitution of the reserves affects the supply and demand mechanism, but cannot influence price volatility generated in the financial market. The only function of reserves here is to intervene in food security emergencies generated by price volatility and reduce the market power of global production networks along which prices transmitted from financial markets to product and local markets.

Even though, at first, large farms may have benefited from higher prices, as seen in the United States, in the long run they had difficulties avoiding the effects of price volatility and high borrowing costs,²² thus suffering from the price differential between stock market and real market prices, from the rising production costs due to the oil peak, and from soaring consumer prices.²³

The farmers in developing countries distilled false messages from volatile prices, and this led to bankruptcy and the abandonment of production by many small farmers investing and borrowing for expanding their production during the rising prices, and risking of being wiped out as global food prices drop. The origin of such crisis structurally stems from a model that works to transform food into mere commodity status and source of profit.

While in past decades agribusiness determined agricultural prices by monitoring global production networks and appropriating value along the global value chains, in recent years financial investors joined and replaced agribusiness transnational corporations in the sale of rights on future prices of agricultural products, thus creating the conditions for the development of the speculative bubble in the spring-summer 2008. At the same time, financial speculation created the conditions through which agribusiness could increase its profits by means of price management transferred from the futures market to the real market, upon which it could exercise full control of the latter.

CONCLUSION

Actual food price volatility is essentially originated by speculation on financial markets. But the transmission of price volatility on real markets, from the Chicago Board of Trade to each local market around the world, depends on how agribusiness market power controls the global value chains and global production networks. The agribusiness formation is the result of multiple dispossession processes that have penetrated world agriculture causing the expulsion of millions of peasants, the marginalization of millions more, and subordination to the "empires" of those who still carry out agricultural activities. With the price crisis, the emphasis placed by international organizations on food security is an attempt to start a new

19 Lagi, Marco, et al. "The Food Crises: a Quantitative Model of Food Prices Including Speculators and Ethanol Conversion." New England Complex Systems Institute. 21 Sept. 2011.

20 GRAIN. "Corporations Are Still Making a Killing from Hunger." Seedling. 20 Apr. 2009.

21 Lagi, et al. op. cit.

22 New York Times, 22 Apr. 2008 refers the case of Fred Grider, a farmer who owned 1,500 acres of land near Bloomington, Illinois. When deciding what to grow, he had purchased futures contracts and paid margins, but prices went up by forcing him to reintegrate them every day. "If you have contracts for 50 thousand bushels and the price goes up 20 cents you have to sign a check for \$10 000."

23 Polgreen, Lydia. "West African Villagers Stake Their Fortunes on the Future Price of Rice." New York Times. 25 Jan. 2009.

process of dispossession through the further privatization of land and other natural resources needed for food production, and further development of agribusinesses.

It was stressed here that there is a close relationship between production and financial processes, because financialization uses the underlying assets and production facilities to extract real value. But it is necessary to return to the earlier mentioned strong dependence of the industrial agriculture model on fossil fuels that affect about 30% of production costs: industrial seeds, fertilizers, retail chains, and intensive use of resources. This dominant and aggressive approach modifies traditional agriculture and makes it more and more dependent on agribusiness practices and on a capital-intensive approach.

Throughout the last food price crisis agribusiness and financial capital extended their control over the most important resources of the planet, given that the production of food is key to the regulation of economic activities, real wage levels, and the reproduction of labor force in every part of the world. In fact, even after the first food prices crisis (2007–2008), the reduction in producer prices has not been transmitted to consumer prices, thus continuing to erode the purchasing power of consumers, such as the *Wall Street Journal* wrote: “grain costs down, groceries not.”²⁴

24 Kilman, Scott, and Lauren Etter. “Grain Costs Down, Groceries Not.” *Wall Street Journal*. 13 Mar. 2009.

TWO CONTEMPORARY CHALLENGES: CORPORATE CONTROL OVER FOOD AND NUTRITION AND THE ABSENCE OF A FOCUS ON THE SOCIAL DETERMINANTS OF NUTRITION

Claudio Schuftan and Radha Holla¹

A focus on the social determinants of nutrition (including its political determinants) is imperative to revitalize global nutrition policies and embed them well within the human rights framework. Yet due to the increasing influence of private corporations and philanthropies over public policy (especially through various forms of multi-stakeholder initiatives) and policy implementation (particularly through public-private partnerships), these determinants are being ignored. As our analysis will show, the multi-stakeholder initiative Scaling Up Nutrition (SUN) provides a good example of this, as is also featured in Article 4 of this publication. Here, we additionally focus on the neglect of the social determinants of nutrition (SDN) in current global nutrition policy making.

The SDN correspond to the conditions in which people are born, grow, live, work, and age, including the nutrition services available to them. These circumstances are shaped by the distribution of wealth, power, and resources at global, national, and local levels, which are themselves influenced by policy choices.

In 2008, the World Health Organization (WHO) report of the Commission on Social Determinants of Health made three overarching recommendations which also apply to the field of nutrition, namely: to improve daily living conditions; to tackle the inequitable distribution of power, money, and resources; and to measure and assess the impact of concerted efforts.² These recommendations were also directed to the private sector. Yet these essential measures, as well as the other structural roots of hunger such as income maldistribution; unemployment; lack of access to education, health services, and sanitation; racial discrimination; and no access to productive resources are rarely, if ever, mentioned by private sector actors who are also, in principle, bound by them.

On the other hand, in the area of nutrition, public private partnerships (PPPs) often end up reinforcing increasingly globalized food chains that contribute to the corporate-led homogenization of diets across the globe with its dire impacts on local food systems and on household food security across population groups. The UN Special Rapporteur on the right to food, Olivier De Schutter, has clearly explained the problem of how the private sector tries to use technical solutions for what are fundamentally social problems. (*See Box 1*)

BOX 1

“Countries committed to really scaling up nutrition should begin by regulating the marketing of commercial infant formula and other breast-milk substitutes, [...] and by implementing the full set of WHO recommendations on the marketing of breast-milk substitutes and of foods and non-alcoholic beverages to children [...]. This pleads in favor of [...] address[ing] the full range of factors causing malnutrition, rather than narrowly focus[ing on] initiatives that address the specific needs of a child’s development [...]. [I]nterventions [...] targeting pregnant or lactating women and children under two years old, while vital, do not substitute for addressing the structural causes of undernutrition [...]. The violations of women’s rights, gender inequality and the lack of women’s empowerment are another major factor explaining poor nutritional outcomes [...]. Nutrition interventions should be but one part of broader-based strategies for the realization of the right to adequate food. [...]

The Special Rapporteur sees no reason why the promotion of foods that are known to have detrimental health impacts should be allowed to continue unimpeded: these

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2 Marmot, Michael, and Richard Wilkinson. [Social Determinants of Health](#), 2nd ed. New York: Oxford University Press, 2006.

products reduce the life expectancy, in particular, of the poorest segment of the population who are also the least nutritionally literate [...]. [An] international code of conduct regulating marketing food and beverages in support of national efforts might be desirable in order to take into account the international nature of commercial promotion of energy-dense, micronutrient-poor foods and beverages. [...]

[I]t is high time to recognize the real tension that exists between a strategy that promotes processed foods, enriched with nutrients to the point that diets become medicalized, and a strategy that promotes local and regional food systems, as well as a shift towards foods that are less heavily processed and thus more nutritious.”³

CORPORATE CONTROL OVER NUTRITION THROUGH PUBLIC PRIVATE PARTNERSHIPS

The private sector and some international NGOs have gained unprecedented influence in global governance while States have seen a clear decline in their influence. The ostensible explanation given for the close interaction with the corporate and private sector⁴ is the “scarcity” of public funds. However, this scarcity applies only to funding development as sufficient public funds are made available for corporate bailouts.⁵ One key result of this increased influence has been the making of PPPs the number one strategy to manage the health and nutritional needs of the world’s population.

In recent years the UN has emerged as one of the principal proponents of PPPs (more often than not contracted with for profit entities). These PPPs are considered by many to be a necessary and ideal instrument to fund development work. However, a deeper analysis reveals the multiple (sometimes contradictory) agendas and conflicting interests involved.

PPPs have further reinforced selective programs by focusing on non-sustainable techno-centric and market-based solutions to single issues while not addressing the social determinants of health and nutrition. PPPs have shown to be incapable of promoting and supporting horizontally-integrated sector-wide approaches with an explicit commitment to strengthening local service delivery systems and to respond to locally determined needs. The necessity of building new alliances with civil society, with people’s organizations and with social movements in fostering the right to nutrition⁶ reasserts the central place democratic participation should have in decision making in the provision of all social services. Because the partner supplying the finance in these projects tends to have a disproportionate amount of power in decision making, democratic participation cannot be guaranteed in the PPP model. Another basic flaw is that PPPs often focus on piecemeal technical and market-driven solutions that provide clear benefits for participating corporations, but questionable benefits for target populations while ignoring the social roots of their problems, as is clearly evident in the SUN Initiative. (Also see Article 4 of this publication).

BOX 2

The Scaling Up Nutrition Initiative

The SUN initiative “seeks to promote targeted action and investment to improve nutrition for mothers and children in the 1,000-day period from pregnancy to age 2, when better nutrition can have a life-changing impact on a child’s future [...] [in] addition to encouraging Governments to adopt national plans to scale up nutrition in their various sectoral policies [...]”⁷

3 Human Rights Council, 19th Session. “Report Submitted by the Special Rapporteur on the right to food, Olivier De Schutter” (A/HCR/19/59). 26 Dec. 2011. Para. 16, 17, 18, 19, 42, 43. www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.59.English.pdf; This document is available on the Watch website: www.rtfw-watch.org/en/home/watch-2012/main-sources.

4 Here we include donor organizations such as the Bill and Melinda Gates Foundation and civil society organizations such as Save the Children, who receives funding of over a million US dollars from each of the following food and pharma corporations: Green Mountain Coffee, Kraft Foods and the Kraft Foundation, Merck, the PepsiCo Foundation, Procter and Gamble, Reckitt Benckiser, and the Wal-Mart Foundation. Other corporations that donate to Save the Children include GlaxoSmithKline, Starbucks Corporation, Johnson and Johnson, Cadbury plc, General Mills and Pfizer. According to the Save the Children Website the PepsiCo Foundation and Kraft Foods donations are used primarily for managing malnutrition in rural India and Bangladesh. www.savethechildren.org/site/c.8rKLIXMGlp14E/b.6148397/k.C77B/Corporate_Partners.htm.

5 Shah, Anup. “Free Trade and Globalization.” *Global Issues*. 7 Nov. 2011. www.globalissues.org/issue/58/free-trade-and-globalization. The author worked out that based on information provided by the BBC, Bloomberg and UPI in February 2009, corporate bailouts in the US amounted to \$9.7 trillion, and in Europe to \$1.4 trillion; in contrast, the actual aid given to poor countries since 1970 was \$2.6 trillion, while outstanding promised aid for the same period was \$3.5 trillion.

6 Here we use the “right to nutrition” rather than “right to food” as we feel that this denomination better reflects the different causes of malnutrition that link food, care and health. All of the latter are necessary conditions for good nutrition, but none of them alone or any two together are sufficient conditions. Sufficiency requires that all three conditions be met at the same time. Food, care and health are recognized human rights in the Convention on the Rights of the Child (Jonsson, Urban. “An Approach to Assess and Analyze the Health and Nutrition Situation of Children in the Perspective of the Convention on the Rights of the Child.” *International Journal of Children’s Rights* 5 [1997]: 367–381).

7 Human Rights Council, 19th Session. “Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter” (A/HCR/19/59). 26 Dec. 2011. Para. 13 and 14.

While this is a laudable goal, the methods chosen by SUN to meet this goal are controversial. In 2010, SUN identified several interventions including breastfeeding, introduction of complementary feeding after six months of age, improved hygiene practices, improved agricultural practices, micronutrient supplementation and others as having a direct impact on the nutritional status.⁸ SUN's *Framework for Action* spells out that \$2.9 billion will be spent on the promotion of good nutritional practices while \$6.2 billion will be spent on preventing and treating malnutrition with special foods.⁹

"[...] SUN includes the establishment of partnerships linking business, civil society and Government to foster scaling up nutrition through nutrition-sensitive interventions along the value chain at the country level. Private-sector interventions include the production of fortified food products, the promotion of nutritionally healthy behaviors, the shaping of work environments allowing women to ensure good nutrition for themselves and their children, ensuring that lower-income groups can access nutritionally valuable products, and building local capacity through the transfer of knowledge and technology."¹⁰

The Special Rapporteur on the right to food, while welcoming the progress made through SUN, has called for an explicit alignment of its initiatives with human rights, including the right to food. (*See Box 1*)

"Some of these partnerships [in SUN] are supported by the Global Alliance for Improved Nutrition (GAIN). A public-private partnership, GAIN itself was launched at the 2002 special session of the General Assembly on children."¹¹ Initially, it invested in large-scale staple food fortification. GAIN provides technical assistance to multi-national, regional or national manufacturers allowing, as they claim, for these enterprises to procure high quality vitamin and mineral premixes at the best price, combined with a revolving fund mechanism which provides the requisite financing to assist partners in purchasing premixes. "[GAIN has] established links with 600 companies across 36 large projects in more than 25 countries to improve access to missing micronutrients in diets. According to GAIN promoters, it reaches nearly 400 million people with nutritionally enhanced food products."¹² This indicates that market-based solutions can play an important role in sustainable improvements in food quality for low-income populations.

One reason companies partner with GAIN is to reach potential customers who are too poor to constitute a solvent market in the short-term. Where things go wrong in what GAIN actually ends up doing is precisely due to these partnerships. GAIN's Business Alliance includes corporations such as Unilever, Ajinomoto, Britannia, Cargill, The Coca Cola Company, DSM, Danone, MARS, PepsiCo, Kraft Foods, and Bel, many of which have been indicted by civil society organizations with human rights breaches, including violation of international laws and codes and thus contributing to malnutrition.¹³ In GAIN, the role of the governments is to buy these enriched products year after year to feed their malnourished. In doing so, they spend their limited health and nutrition budget on products, rather than investing in long-term solutions like diversification of agriculture and diets, family farms, and in tackling the SDN. For instance, ready-to-use therapeutic foods (RUTF), fortificants, and infant formulas are too often used inappropriately and can increase health and nutritional problems, by over- and under-nutrition.¹⁴ RUTF should only be used in the treatment of severe-acute malnutrition, when other solutions cannot be applied; never to be used for prevention.^{15,16} Furthermore, the marketing and consumption of these substitutes or of related products, in place of a freshly cooked nutritionally balanced meal, contributes to major public health problems.

- 8 Horton, Susan, et al. Scaling Up Nutrition: What Will It Cost? Washington, D.C.: The World Bank, 2010.
- 9 Scaling Up Nutrition: a Framework for Action, Apr. 2011. 6.
- 10 Human Rights Council, op. cit. Para. 14. These special foods, especially in the context of severe acute malnutrition, are generally termed Ready-to-Use Therapeutic Foods (RUTF) and are, mainly, referring to a paste of peanuts, milk powder, sugar and selected micronutrients. Besides being culturally inappropriate in many places where malnutrition occurs in vast populations, the packaged paste also disassociates malnutrition from the SDN, and instead medicalises it, linking its prevention and management with a "medicine" that needs to be produced centrally, with superior technological oversight. For more information, the reader is referred to World Public Health Nutrition Association's World Nutrition which has been carrying several articles, commentaries and correspondence related to RUTF. <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/PolicyBriefNutrition.pdf>.
- 11 Ibid.
- 12 Ibid.
- 13 For more information on civil society organizations denounces regarding breaches of human rights caused by corporations visit: Corporate Watch www.corporatewatch.org; ICDC Legal Update, Jan. 2012. www.ibfan.org/art/LU-Jan_2012-ICDC.pdf; Business and Human Rights www.business-humanrights.org; Killer Coke www.killercoke.org; Global Exchange www.globalexchange.org/corporateHRviolators#; International Labor Rights Forum www.laborrights.org; and Organic Consumers Association www.organicconsumers.org.
- 14 FAO. Final Report of the International Scientific Symposium on Biodiversity and Sustainable Diets. Rome: 3–5 Nov. 2010. www.fao.org/qa/humannutrition/29186-021e012ff2db1b0eb6f6228e1d98c806a.pdf.
- 15 International Baby Food Action Network (IBFAN). "Statement on the Promotion and Use of Commercial Fortified Foods as Solutions for Child Malnutrition." Indian Pediatrics 49 (2012): 295–296. www.bhmi.org/Article/Indian-Pediatrics-IBFAN-Statement-on-SAM.pdf.
- 16 Gupta, Arun, Claudio Schuftan, Flavio Valente, Patti Rundall, and Radha Holla. "Ready to Use Therapeutic Food Is Not the Solution to Malnutrition." Letter. World Nutrition 3.4 (Apr. 2012): 3, 4, 168–171. www.wphna.org/2012_apr_wn6_rutf_letter.htm. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

Good nutrition is about accessing a healthy diet that includes a wide range of fruits and vegetables which, in most cases, are more expensive than (fast) foods rich in oils, salt, sugars and fats. Any society where a healthy diet is more expensive than an unhealthy diet is a society that must mend its food system. This is even more imperative where the poorest are too poor to feed themselves in a manner not detrimental to their health.

The SUN Roadmap, which details the means by which national, regional and international actors will work together to establish and pursue efforts to make nutrition interventions more substantial and effective in countries with a high burden of malnutrition, prioritizes mostly technical interventions, all of which are “top-down.” We cannot find anything substantial related to the right to nutrition in the SUN Roadmap. SUN ignores the fact that there are right-holders and duty-bearers involved in social interactions, and that it is only their direct engagement that will move the process of realizing this right forward.

However, the most unacceptable component of the SUN initiative is its complete silence on SDN. The proposed “pro-poor” orientation does not address disparity reduction; rather it “targets” the poor. In the absence of any consideration of the SDN, this “nutrition with a human face” victimizes them as if they are responsible for their malnutrition and then throws them a crumb of bread.

People experience poverty and the violation of their right to nutrition differently, according to their gender, age, caste, class and ethnicity. For us, in nutrition work, poverty is multi-dimensional. It relates to powerlessness, to exclusion and thus to discrimination, to exploitation, to victimization and to violence. It is also related to migration, to forced displacement, to rising urbanization, and to loss of livelihoods. Yet, the SUN Initiative in its call for nutrition to be placed more at the center of development, refuses to accept this, with all the implications this carries.

WHO DRIVES SUN AND THE GLOBAL NUTRITION AGENDA?

In the past, the UN Standing Committee on Nutrition (SCN) primarily set the global nutrition agenda. In early 2009, the World Bank, together with UN entities such as UNICEF, UNDP, the SCN, and donors such as the United Kingdom (UK) and Canada’s development agencies, the Bill and Melinda Gates Foundation, Save the Children-USA, Hellen Keller International, and others developed the Global Action Plan for Scaling Up Nutrition Investments. This plan created space for the private sector to play an increasingly important role in driving the nutrition agenda. It should be remembered that the Gates Foundation owns large amounts of stocks/shares in Coca Cola, McDonald’s, Exxon Mobil, BP, Caterpillar, and Wal-Mart.^{17,18,19}

Donor agencies have consistently tried to steer SCN’s work on nutrition. In 2011, Irish Aid (the Government of Ireland’s programme of assistance to developing countries) gave SCN 300.000€ exclusively for SCN’s work on the SUN Initiative—a sum without which SCN would not have been able to continue functioning. Thus, keeping the SUN Initiative alive has been an overarching need for the SCN and a built-in conflict of interest that does not really allow the SCN to take a critical stand on SUN’s shortcomings, as is its mission and mandate.

Though SCN has recognized SUN’s weaknesses (mainly the lack of attention to the human right to nutrition and HR-based approaches and the little clarity of the role and actual behavior of the private sector), it was felt that these weaknesses would be best remedied by SUN participant countries themselves. But this has not happened. The efforts of some

17 Bill & Melinda Gates Foundation Trust Historical Stock Holdings. www.dataroma.com/m/hist/p_hist.php?f=GFT.

18 Several of the other so-called CSOs that are partnering and funding the SUN Initiative are also being given funds by the corporations above mentioned. For instance, the funds for Save the Children’s interventions in nutrition in India and Bangladesh come primarily from Pepsico (see footnote 4).

19 Stuckler, David, Sanjay Basu, and Martin McKee. “Global Health Philanthropy and Institutional Relationships: How Should Conflicts of Interest Be Addressed?” *PLoS Med* 8. 4 (Apr. 2011). www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1001020.

civil society individual SCN members to introduce human rights language were vetoed by the donors backing the Initiative, and up to today, attempts to include HR concerns in the Roadmap have had little success.

The limited opposition to the corporate takeover of nutrition, as exemplified by SUN, raises concerns about corporations' short- and medium-term impact on local nutrition systems. This includes their capacity to achieve measurable and sustainable results, their disregard of the SDN and of the right to nutrition, as well as their contribution to a fragmented, vertical approach in global nutrition governance. A critical reflection and action on the governance role of global PPPs has emerged,^{20,21,22} but added poignancy is sorely needed.

States should protect the right to nutrition by adopting measures that reduce the negative public health impacts of the existing food systems. Moreover, States should take immediate measures to make a progressive transition to more sustainable diets. Some WHO recommendations on this include: using taxation to encourage healthy diets, revising the existing system of subsidies, and regulating marketing practices.²³

Much more grassroots activism will also be needed to make sure that global standards are not influenced by corporations trying to assure private profits as they act purportedly in the realm of the public interest. Broadening such an effort has been the guiding principle of the People's Health Movement (www.phmovement.org) and of the International Baby Food Action Network (IBFAN) (www.ibfan.org).

STRATEGIES TO REGAIN CONTROL

Grassroots organizations and people's movements have identified several strategies for people to regain control over food and nutrition. Here we review some available options presented in no particular order of priority. The list is by no means complete. Many other action points were insinuated in this article's body and are not repeated here.

- Use a SDN approach and the concept of food sovereignty²⁴ instead of food security; the SDN and food sovereignty are closely related.
- Establish links with groups working to oppose transnational corporations hegemony and join hands with them in rejecting the corporations' executives' calls for corporate social responsibility and instead, based on the principles of human rights, demand and monitor corporate social accountability regarding corporate violations on the SDN.
- In the area of international aid, identify local alternatives that can be made by communities themselves, to the single solution of using ready-to-use therapeutic food (see footnote 8) as is being promoted not just for the treatment of acute, severe malnutrition, but also for its prevention.
- Reject the concept of the private sector as a stakeholder in discussion and dialogues as well as decision making processes that are aimed at public good. The primary stakeholder is the right-holding public; the role of the private sector is of a duty-bearer.
- Work with lawyers and judges on the legal aspects of the right to adequate food and nutrition on their use of this right in court.
- Insist on claim holder participation in the design, implementation and monitoring of all development projects/programs.

20 Richter, Judith. "Public-private Partnerships for Health: a Trend with No Alternatives?" *Development* 47 (June 2004): 43–48.

21 Richter, Judith. "Public-private Partnerships and Health for All—How Can WHO Safeguard Public Interests?" *GOSPP Policy Brief* 5 (Sept. 2004). www.ibfan.org/art/538-5.pdf.

22 Utting, Peter, and Ann Zammit. *Beyond Pragmatism: Appraising UN-Business Partnerships*. Geneva: UNRISD, 2006.

23 In May 2004, the 57th World Health Assembly (WHA) endorsed the WHO Global Strategy on Diet, Physical Activity and Health (DPAS) in its resolution 57.17. http://apps.who.int/qa/ebwha/pdf_files/WHA57/A57_R17-en.pdf.

24 Food sovereignty is a term coined by members of Via Campesina in 1996 to refer to a policy framework advocated by a number of farmers, peasants, pastoralists, fisherfolk, indigenous peoples, women, rural youth and environmental organizations to define their own food, agriculture, livestock, and fisheries systems, in contrast to having food largely subject to international market forces. It signifies looking at food as a human right, protecting natural resources, reorganizing food trade, ending the globalization of food, promoting social peace and democratic control.

- Denounce PPPs given their inherent clear conflict of interest and their being considered as a prime policy model.
- Create a similar long-term watch dog mechanism as the one used by IBFAN to monitor the junk food and beverages industries.²⁵
- Work towards ensuring that the SUN Initiative once and for all handles the issue of conflicts of interest and that policy making on behalf of public health follows the principles of democratic governance. The reform of SUN also needs to cover human rights principles of accountability, participation, and non-discrimination.
- Also keep pressuring the SUN Initiative to include actions on the SDN and a more decidedly rights-focused approach as its new roadmap is being prepared; become a SUN watchdog.
- Actively participate in the debate and design of the post-MDGs global strategy for development; critique the fact that goals are easy to set, but the crucially important processes needed to reach the goals have been neglected.
- Lobby for the UN Special Rapporteur on the right to food position to become a permanent position within the UN system to provide a dedicated and progressive focal point for action.
- Transpose into domestic legislation the International Code of Marketing of Breast-milk Substitutes and the subsequent World Health Assembly (WHA) resolutions on the marketing of breastmilk substitutes and of foods and non-alcoholic beverages to children and ensure that these laws are effectively enforced.
- Impose taxes on soft drinks (sodas), and on junk foods, in order to subsidize access to fruits and vegetables and educational campaigns on healthy diets.
- Review the existing systems of agricultural subsidies taking into account the public health nutrition impacts of current allocations, and use public procurement schemes for school-feeding programs and for other public institutions to support the provision of locally sourced, nutritious foods, with particular attention to poor producers and consumers.
- Increase support to farmers' markets and urban and peri-urban agriculture, and ensure appropriate infrastructure to link local producers to the urban consumers.
- Reform the Standing Committee on Nutrition to ensure its public-interest agenda and human rights focus are preserved, as well as to make it representative of UN agencies and of civil society. The latter's voice must be heard throughout the UN system.
- In the sourcing of foods and in nutrition-based interventions, ensure that local food chains are involved and that living wages are paid to workers and fair prices are paid to farmers so as to guarantee the right to nutrition of all people affected by and involved in the interventions.

We reiterate, the SUN Team, and claim holders, and duty-bearers involved in SUN will have to do some hard thinking: should the SUN Initiative be just improved in its form as a multi-stakeholder initiative with the private sector as a partner, with no conflict of interest safeguards and pretending SUN is a movement? This position should be challenged as a policy paradigm rather than calling for its reform in terms of its implementation. Recasting the SUN agenda by basing all interventions on the human rights principles of accountability, participation, and non-discrimination, and ensuring that these interventions fit under broader national strategies for the realization of the right to nutrition in order to improve

²⁵ It is naïf to think we can break corporate control over decisions in the food and nutrition field in the short run. But we need to mount a long-term strategy and plan to deal with it with benchmarks of what we want to achieve year by year in the coming years.

countries' ability to contribute to sustainable, long-term solutions may be an insufficient call to change the SUN's Roadmap. Such a call does not really correspond with the political analysis FIAN, IBFAN, and the People's Health Movement are making.

Finally, we need to understand that the two challenges (corporate control over food and nutrition and the absence of a focus on the social determinants of nutrition) presented in this article will only be addressed if all of us, in all corners of the world, recognize that things will not change if we continue with our every day business as usual. What conclusions you draw from this recognition is up to you. We hope to be able to count on you for what lies ahead.

CONFLICTS OF INTEREST AND HUMAN RIGHTS-BASED POLICY MAKING: THE CASE OF MATERNAL, INFANT, AND YOUNG CHILDREN'S HEALTH AND NUTRITION

Lida Lhotska, Anne C. Bellows, and Veronika Scherbaum¹

The global community is searching for new approaches to address the uneven progress towards achieving the Millennium Development Goals (MDGs) to halve poverty and hunger and to reduce maternal and child mortality by 2015. As encouraged through the UN Global Compact and the Global Alliance for Improved Nutrition—GAIN (launched in 2000 & 2002, respectively), these approaches are increasingly linked to what are sometimes called multi-stakeholder initiatives (MSIs) and sometimes public-private partnerships (PPPs). Resource-strapped public sector actors, bodies, and institutions have formed these MSI/PPP constituencies by including the private sector and industrial giants, whose interests lie first and foremost in profit-making.² Close cooperation between public and private sector actors in the MSI and PPP model creates a multitude of conflicts of interest.

The fundamental unaddressed political issue is whether the massive promotion of “multi-stakeholder” corporate social responsibility (CSR) initiatives and dialogues, as well as public-private “partnership” ventures, can be reconciled with the UN agencies’ duty to promote the public interests. This obligation is enshrined in their constitutional mandates and core functions, in particular, in their mandate to respect, protect, and fulfill human rights.

MULTI-STAKEHOLDER INITIATIVES: UNDERMINING RIGHTS-BASED AND LEGALLY-BINDING ACCOUNTABILITY MECHANISMS

MSIs and PPPs have been used to undermine international regulatory measures that hold business sector actors accountable for not respecting human rights principles. Examples are the 1981 International Code of Marketing of Breast-milk Substitutes (the Code) and subsequent relevant World Health Assembly (WHA) resolutions. The MSI and PPP models undermine the Code’s aim to protect the health and lives of the youngest “consumers” and the informed decision-making of those who make decisions on their behalf. Moreover, MSIs/PPPs undermine internationally agreed public health policies, such as the 2002 Global Strategy on Infant and Young Child Feeding.^{3,4} Today, with UN backing, the private sector continues to press for “voluntary,” i.e. non-legally binding, measures to “self-regulate” its conduct. The Global Compact, the best known UN-business initiative, presents itself as “a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption.”⁵ However, powerful business actors, such as the International Chamber of Commerce, have successfully used the Global Compact in their opposition to the UN *Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights*—work that has been done under the auspices of the Human Rights Commission and aimed at developing an overarching, legally-binding international human-rights framework to regulate harmful business practices.⁶

BOX 1

The “Children’s Rights & Business Principles Initiative”: undermining legally-binding corporate accountability?

UNICEF together with Save the Children and the UN Global Compact developed the Children’s Rights & Business Principles Initiative, launched globally on 12 March 2012.⁷

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² As Ann Zammit explains, the term “partnerships” “covers a multitude of activities and relationships, perhaps best conceptualized as a special case of ‘close’ rather than ‘arms-length’ relationships” between public and private sector actors. (Zammit, Anne. [Development at Risk: Rethinking UN-business Partnership](#). Geneva: UNRISD in collaboration with the South Center, 2003.)

³ The Global Strategy calls for exclusive breastfeeding for six months, followed by continued breastfeeding for two years or beyond with adequate and safe complementary feeding.

⁴ World Health Organization. [International Code of Marketing of Breast-milk Substitutes](#). Geneva: WHO Office of Publications, 1981. www.who.int/nutrition/publications/code_english.pdf.

The Initiative is based on the Global Compact Corporate Social Responsibility model and appears to ignore concerns voiced in the UN Joint Inspection Unit 2010 evaluation of the Global Compact that “reporting and self-evaluation mechanism [of Global Compact] does not provide adequate and effective monitoring and verification of actual implementation of the [10 Global Compact] principles by [corporate] participants.”⁸

Parallel to this initiative, a General Comment on Children’s Rights and Business is being prepared in the Committee on the Convention on the Rights of Children (CRC). The Committee’s work is to oversee States parties’ progressive realization of their obligations to take measures to regulate and control corporate activities to prevent the violations of child rights (including the right to adequate food) and to facilitate redress for violations by businesses when they occur.

There is a risk that the Initiative, which poses no mandatory obligations on industry and which benefits from the support of UNICEF and Save the Children, will undermine these efforts of the CRC Committee⁹ as the Global Compact undermined and sidelined the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.

CONFLICTS OF INTEREST AND ROLE OF INDUSTRY

There are various guidelines on cooperation between UN agencies and the business community. They include, for instance, the UN Guidelines on Cooperation between the United Nations and the Business Community (2000/2009);¹⁰ the WHO Guidelines on Working with the Private Sector to Achieve Health Outcomes (2000);¹¹ and the WHO Policy on WHO Engagement with Global Health Partnerships and Hosting Arrangements (2010).¹²

These documents contain a number of useful tenets for UN business arrangements. These arrangements should not “diminish the UN’s integrity and independence.” They should “advance UN goals,” be based on a “clear delineation of responsibilities and roles,” and be “transparent.” “Information on the nature and scope of cooperative arrangements should be available to the public at large.”¹³ However, there is a clear gap between such guidelines and UN agencies’ practices.

Moreover, despite reference to conflicts of interest in several UN documents, the United Nations family has no comprehensive ethical and policy framework to help adequately deal with both individual and institutional conflicts of interest and to help differentiate appropriate from inappropriate roles for business.^{14,15}

We present two definitions that may help to better understand and address this issue:

- “[An individual] conflict of interest is a set of conditions in which professional judgment concerning a primary interest [...] tends to be unduly influenced by a secondary interest.”¹⁶
- “Institutional conflicts of interest arise when an institution’s own financial interest or those of its senior officials pose risk of undue influence on decisions involving the institution’s primary interest.”¹⁷

Conflicts of interest do occur in MSIs and PPPs, for example, when the wish of UN agencies to attract private sector resources (secondary interest) conflicts with their duty to work towards the fulfillment of their “core missions” as expressed in their constitutional mandates and functions (primary interests).

5 For more information visit: www.unglobalcompact.org/.

6 cf. Richter, Judith. Building on Quicksand: the Global Compact, Democratic Governance and Nestle. Geneva: IBFAN-GIFA, CETIM, Berne Declaration, 2004a. 40–42.

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7 “A Call to Business to Respect and Support Children’s Rights.” Online Posting. 12 March 2012. www.unglobalcompact.org/news/197-05-12-2012.

8 Fall, Papa Louis, and Mohamed Mounir Zahran. United Nations Corporate Partnerships: the Role and Functioning of the Global Compact (IU/REP/2010/9). Geneva: UN Joint Inspection Unit, 2010.

9 IBFAN Comments on the Children’s Rights & Business Principles Initiative can be found at www.info.babymilkaction.org/news/policyblog/CRBPcomment.

10 “Guidelines on Cooperation between the United Nations and the Business Sector.” UN, 2009. www.unglobalcompact.org/docs/news_events/9_1_news_archives/2009_11_23/un_business_guidelines.pdf. This document is available on the Watch website: www.rfti-watch.org/en/home/watch-2012/main-sources.

11 WHO Executive Board, 107th Session. Provisional agenda item 8.5. “Guidelines on Working with the Private Sector to Achieve Health Outcomes; Report by the Secretariat” (EB107/20). Geneva: World Health Organization, 30 Nov. 2000. www.apps.who.int/gb/archive/pdf_files/EB107/ee20.pdf.

12 “Policy on WHO Engagement with Global Health Partnerships and Hosting Arrangements.” WHO, 2010. www.apps.who.int/gb/ebwha/pdf_files/WHA65-REC1/WHA65_REC1-P4-en.pdf.

13 UN op.cit.

14 cf. Richter, Judith. op. cit. (2004b). 11–50.

15 In a Statement of Concern, the 148 national, regional and global networks and NGOs working in public health called on the UN to develop such a framework: www.info.babymilkaction.org/sites/info.babymilkaction.org/files/COIC145%20.pdf. This document is available on the Watch website: www.rfti-watch.org/en/home/watch-2012/main-sources.

16 Thompson, Dennis F. Restoring Responsibility: Ethics in Government, Business and Health Care. Cambridge: Cambridge University Press, 2005. 290.

17 Lo, Bernard, and Marilyn J. Field, eds., Institute of Medicine. Conflict of Interest in Medical Research, Education and Practice. Washington, D.C.: National Academies Press, 2009.

Conflict of interest policies and laws are of a very particular nature: “[w]hether they are at the individual or the institutional level, conflict of interest policies seek to *prevent* compromised decisions [...]”¹⁸

The 2002 Global Strategy on Infant and Young Child Feeding (Global Strategy),¹⁹ which backs up Code implementation, tried to address risks posed by conflicts of interest in infant and young child nutrition by, e.g., defining appropriate roles for infant food manufacturers. The aim was to prevent interactions between policy makers and baby food companies that pose too great a risk of business influence on public policy making.²⁰ The Global Strategy limited the role of manufacturers to: a) conforming at every level with the Code; and b) meeting the specific quality, safety, and labeling standards set by the Codex Alimentarius.²¹

Why then were some infant food manufacturers invited to participate in certain PPPs beyond these stipulated roles? For example, DANONE, the second largest infant food manufacturer, was on the Board of Directors of GAIN, until forced to step down.²² DANONE continues to be GAIN’s partner despite being a known Code violator.²³ Originally launched in 2008 to focus on micronutrient deficiencies, GAIN has since become an influential player in the infant and young child nutrition field.

The policy shift towards closer cooperation between the UN and the corporate sector has created an environment in which there seems to be no alternative to having private sector actors as “partners” and “stakeholders” in any public initiative. There is insufficient scrutiny of the actual conduct of corporate “partners”, e.g. baby food manufacturers; all seem accepted. Thus the private sector actors can easily use UN initiatives to gain influence in public policy making arenas that intersect with their market goals, and, at the same time, “bluewash”²⁴ their tarnished images through association with the UN. In 2011, for example, the UN Secretary General called on all actors to contribute to the 2010 Every Woman Every Child Initiative²⁵ in terms of policy, service, and product delivery, and through financial support.

BOX 2

Nestlé’s commitment to the UN Every Woman Every Child Initiative

In early 2011, the UN Initiative’s website announced:

“Nestlé commits to expanding nutrition education to teenage girls in all its milk villages in India before they reach the age of marriage, so that they will have the nutritional knowledge to best feed their children when they reach childbearing age. Nestlé also aims to double the number of countries covered by its “Healthy Kids Global Program” launched in 2010, and already has programs in over 50 countries reaching 5 million children [...]”²⁶

In authors’ opinion, allowing the world’s largest baby food manufacturer to educate teenage girls on infant and young child feeding contradicts the fundamental aim of the Code which is to protect caregivers from biased information and unethical marketing practices. The Code specifically prohibits contact between manufacturers and pregnant women and mothers of infants and young children. The company sidesteps that Code provision by engaging with young women and girls, defining them as future mothers, and promoting communication about pre- and post-natal nutrition before they become pregnant. This can also be seen as a violation of Article 24 of the Convention on the Rights of the Child, whereby States are to ensure that parents receive proper information about breastfeeding and the risks of artificial feeding.

18 Idem (emphasis added).

19 WHO. *WHO Global Strategy on Infant and Young Child Feeding*. Geneva: WHO Office of Publications, 2003. www.who.int/maternal_child_adolescent/documents/9241562218/en/index.html.

20 Richter, Judith. *Conflicts of Interests and Policy Implementation: Reflections from the Fields of Health and Infant Feeding*. Geneva: IBFAN-GIFA, 2005. www.ibfan.org/art/538-1.pdf.

21 WHO. op. cit. fn. 19, Para 44.

22 Lhotska, Lida. *Whatever Happened to Health for All? Ups and Downs of Protection of Breastfeeding, Regulation of Transnational Corporations and Health for All*. Geneva: IBFAN-GIFA, 2008.

23 Evidence of violations of the International Code of Marketing of Breastmilk Substitutes and subsequent resolutions can be found at www.ibfan.org/art/dano-p1.pdf.

24 “Bluewash” refers to corporations that wrap themselves in the blue UN flag in order to improve their social image (adapted from Greenwash Fact Sheet. CorpWatch, 22 March 2001. www.corpwatch.org/article.php?id=242).

25 The UN 2010 Every Woman Every Child Initiative is presented as designed to accelerate progress towards women’s and children’s health and the achievement of MDG 4. www.everywomaneverychild.org/.

26 For Nestlé original commitment see “Analysing Commitments to Advance the Global Strategy for Women’s and Children’s Health.” *PMNCH*, 2011. (Web-Annex 1) 27. www.who.int/pmnch/topics/part_publications/Web_Annex_1_-_29_09_2011.pdf.

Some concerns within the UN must have been raised, as the original commitment was reworded. Today, the UN Initiative's website states:

"Nestlé's commitment to Every Woman Every Child is anchored in continuing and scaling up a host of programmes, including the expansion of Nestlé Healthy Kids Global Programme (HKP) [...] HKP has been designed to address today's complex health challenges, such as poor nutrition and obesity, by teaching school-age children the value of good nutrition and physical activity."²⁷

This case study raises fundamental questions: why does the UN accept a commitment that goes beyond the roles defined for infant food manufacturers by the Code and the Global Strategy? Why does it give its blessing and confer its image on a known Code violator? Why does it allow a corporation to take on a role of a nutrition educator for children? Why does it not challenge the company to refrain from marketing infant foods in violation of the Code?

CSR INITIATIVES AND (PP) PPPS: MANUFACTURING A GOOD IMAGE

Public relations (PR) are an integral part of the exercise of power in our society. The PR industry provides avenues to those who control it to seed ideas, set expectations and the conceptual agenda of society or, as the influential PR practitioner Edward Bernays popularized it, to "engineer consent."²⁸ Multi-Stakeholder CSR and PPP initiatives use PR to manufacture social discourse supportive to their goals. In this way, MSIs and PPPs have prevented, replaced, or sidetracked efforts to develop legally binding regulatory tools and structures for human rights-based approaches to hold powerful business actors accountable for their practices. The semantical power behind "voluntary" or "shared" codes of conduct, employed by MSIs and PPPs, implies beneficence when in fact it undermines the development and implementation of legally-binding human rights instruments. The use of the term "voluntary" must be rejected. Instead, such CSR initiatives should be referred to as "legally non-binding."

BOX 3

Powerful (PP)PPPs: the Scaling Up Nutrition (SUN) Initiative' Attempt to Engineer a Social Movement Image

The World Bank, UNICEF, WHO, and WFP along with some country partners, some civil society organizations, and bilateral agencies launched the Scaling Up Nutrition (SUN) initiative in 2010. SUN immediately began to present and legitimate itself as a popular social movement, "[t]he overall intention of this communications strategy is to encourage pride and satisfaction for public participation in a social movement to empower households and communities for better nutrition."²⁹

In 2012, SUN issued a press release at the World Economic Forum in Davos in which the UN Secretary General's Special Representative for Food Security and Nutrition and Coordinator of SUN, David Nabarro, states, "[SUN] means sound, principled, people-private-public partnerships that empower societies for optimal nutrition." In other words, he magnified the PPP of private-public partnerships to a 5P approach (adding "principled" and "people") insisting that SUN includes civil society and social movements, and operates in an ethical, *if not legally accountable*, fashion.³⁰

27 For more information visit:

www.everywomaneverychild.org/commitments/business-community.

28 See e.g. in Richter, Judith. Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen Action. New York: Zed Books, 2001. 149–150.

29 Nabarro, David. Introducing the Policy Brief: "Scaling Up Nutrition: A Framework for Action". Revised April 2010. www.sarcasticweb.org/sun/dmdocuments/SUN_Introducing_Policy_David_Nabarro.pdf.

30 Private Sector Engagement, Toolkit, Work in Progress, 8 Sept. 2011. www.scalingupnutrition.org/wp-content/uploads/2011/05/DRAFT8-Private-Sector-Engagement-Toolkit_090911.pdf.

Our concerns regarding SUN center on:

- Inadequate conflict of interest safeguards: SUN proposes to minimize conflicts of interest through “shared common codes of conduct,” in reality meaning legally non-binding measures, potentially arrived at in “partnership” with private sector actors.
- Participation of the baby food industry: SUN fails to rule out participation by manufacturers of products falling under the scope of the Code. SUN’s member EPODE, for example, has Nestlé as its core partner.
- Manufacturing of a misleading image: suggesting that SUN is a social movement reflects either a serious misnomer, or calculated appropriation of the social discourse to manufacture support in households and communities by convincing them that SUN is a “bottom-up,” grassroots construction of a broad popular social movement.

In his recent report to the Human Rights Council, the Special Rapporteur on the right to food also pays attention to SUN and GAIN.³¹ He is concerned that these initiatives are not aligned within a human rights framework and they “overlook the entitlements that have been established under international law for women, children, minorities, refugees and internally displaced persons, and other groups that may be subjected to marginalization and discrimination.” He calls on SUN for “an explicit alignment of its initiatives with human rights, including the right to food” (para 15). He also emphasizes that “[c]ountries committed to scaling up nutrition should begin by regulating the marketing of commercial infant formula and other breast-milk substitutes, in accordance with WHA resolution 63.23” (para 16), and urges the private sector, “consistent with its responsibility to respect the right to adequate food,” to “[c]omply fully with the International Code of Marketing of Breast-milk Substitutes abstaining from promoting breast-milk substitutes” (para 51.a.).

In conclusion, CSR should not be seen as a “voluntary” commitment. In fact, business actors must abide by public policies and codes adopted at international level, for all persons, everywhere in the world, with respect to everyone’s human rights over their lifetime. An appropriate business contribution and a good indicator of their genuine respect for mother and child nutritional well-being and the most local of food systems, i.e. breastfeeding, would be their full compliance with the International Code of Marketing of Breast-milk Substitutes and relevant WHA resolutions and adherence to their roles defined in the Global Strategy on Infant and Young Child Feeding.

Interactions with the private sector are not new. However, most recently, multi-stakeholder initiatives (MSIs) and public-private partnerships (PPPs) have enabled commercial actors to permeate inappropriately into the responsibilities of public interest actors. This multiplies situations of conflicts of interest resulting in increased risks to the integrity and independence of public sector actors in public policy making. The development of adequate international and national legally binding measures that set the rules of engagement with the powerful economic actors and business-interest non-governmental organisations³² is essential to ensure adequate protection against their negative impacts and conflicts of interests. CSR initiatives must not be allowed to interfere with the development of legally binding measures that hold the private sector accountable for their practices.

The CRC General Comment on Children’s Rights and Business has the potential to become a crucial tool to develop frameworks of justice and accountability. These frameworks

31 Human Rights Council, 19th Session. “Report of the Special Rapporteur on the Right to Food to the Human Rights Council” (A/HRC/19/59). 26 Dec. 2011. www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.59_English.pdf. This document is available on the Watch website under article 5: www.rtfr-watch.org/en/home/watch-2012/main-sources.

32 Paluzzi, Joan E. “Dualities of Interest: the Inter-Organizational Relationships between Disease-Specific Nonprofits and the Pharmaceutical Industry.” *International Journal of Health Services* 42.2 (2012): 323–339.

should include legally-binding regulations of harmful practices of the private sector actors, both within and outside of national borders.

To help counter the undue influence of these actors, readers should consider:

- challenging the PPP/MSI model and demanding clear distinction between appropriate and inappropriate roles for businesses;^{33,34}
- joining actions that call on the UN to develop a comprehensive ethical [and] policy framework to deal with individual and institutional conflicts of interest;
- using conflict of interest lenses in international and national policy-making and programme design, as well as in their implementation;
- engaging in alternative reporting to the CRC Committee when their country comes up for review, and using that opportunity to communicate local experience and perspective on the need for strengthening national Code implementation;³⁵
- holding their government accountable for following up on the CRC recommendations;³⁶
- monitoring and documenting Code violations³⁷ and sharing complaints with governments, the International Baby Food Action Network,³⁸ and violating companies.

33 Richter, Judith. "WHO Reform and Public Interest Safeguards: an Historical Perspective." *Social Medicine* 6.3 (2012): 141–150.

34 "The Greed Revolution, Mega Foundations, Agribusiness Muscle In On Public Goods" ETC Group Communiqué 108 (2012). www.etcgroup.org/sites/www.etcgroup.org/files/ETComm108_GreedRevolution_120117.pdf. This document is available on the Watch website: www.rtfw-watch.org/en/home/watch-2012/main-sources.

35 "A Guide to NGO Submissions." NGO Group for the Convention on the Rights of the Child. 2006. www2.ohchr.org/english/bodies/crc/partners.htm. Shared reports together with IBFAN-GIFA.

36 All past and future country CRC reviews are listed on this link, including concluding observations and recommendations issued by the Committee: www2.ohchr.org/english/bodies/crc/sessions.htm.

37 For Code monitoring forms see: www.ibfan.org/code_watch-form.html.

38 IBFAN's International Code Documentation Center (ICDC) at ibfanpa@tm.net.my keeps a global database on Code violations.

THE RECENTLY ADOPTED GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS: A TURNING POINT IN THE GLOBAL GOVERNANCE OF NATURAL RESOURCES?

Sofia Monsalve Suárez¹

Last 11 May 2012 the UN Committee on World Food Security (CFS) endorsed the FAO Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.² Developed in an inclusive and participatory process which lasted more than 3 years, these Guidelines are the first international instrument which applies an ESC-Rights based approach to the governance of land, fisheries, and forests.

THE FORERUNNERS OF THIS INITIATIVE FROM A CIVIL SOCIETY ORGANIZATION PERSPECTIVE

Social movements representing rural women, peasants and family farmers, fishing communities, indigenous peoples, landless people, rural and urban workers, migrants, pastoralists, forest communities, and youth, together with civil society organizations (CSOs) have been demanding for decades equitable and sustainable access to and control over natural resources for food production. In the World Food Summit in 1996 in Rome they presented the vision of food sovereignty and recalled the essential role of an agrarian reform and comprehensive rural development policies in combating hunger. In December 2004 they gathered at the World Forum on Agrarian Reform in Valencia, Spain, to call for the recognition of land as commons. This Forum paved the way for the International Conference for Agrarian Reform and Rural Development (ICARRD) organized by the FAO in March 2006, in which governments committed to apply a participatory approach based on economic, social, and cultural rights for the equitable management of land, water, forests, and other natural resources within the context of national legal frameworks, focusing on sustainable development and overcoming inequalities in order to eradicate hunger and poverty. At the International Forum on Food Sovereignty (Nyeleni) in Mali in 2007, social movements and other CSOs continued to build a common vision about the use and management of natural resources in which the right to territory and self-determination is guaranteed for all peoples. In April 2010, during the World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia, foundations of alternative models of interaction between human beings and nature were delineated to forge a new system that reestablishes the harmony between nature and human beings.

Nearly two decades of building alternatives came to bear fruits in the Guidelines on Governance of Tenure of Land, Fisheries and Forests. Social movements and other CSOs came well prepared to contribute to the formulation of new principles and framework policies for the governance of land, fisheries, and forests. Following the inclusive and participatory spirit of ICARRD, the FAO created the conditions for enabling particular representatives of social movements to actively participate right from the start and throughout the entire process. The International Facilitation Group was established by the International Planning Committee for Food Sovereignty (IPC)³ in 2009 to make possible the autonomous organization of civil society in this process. The self-organized consultations allowed developing CSO's own proposals which were presented as input to the official process. This document, "the CSO Guidelines,"⁴ condenses CSO's visions and aspirations on how land and natural resources should be governed to achieve food sovereignty. This document will

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2 CFS, 38th (Special) Session. "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (CFS 2012/38/2). Rome, 11 May 2012. <http://www.fao.org/docrep/meeting/025/md708e.pdf>. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

3 The International Facilitation Group was coordinated by FIAN International and consisted of 26 members from all continents and representing the following organizations: World Alliance of Mobile Indigenous Peoples (WAMIP), Friends of the Earth International, CENESTA, Asian Peasant Coalition, International Collective in Support of Fishworkers (ICSF), International Indian Treaty Council (IITC), Crocevia, World Forum of Fish Harvesters and Fish Workers (WFF), Focus on the Global South, Arab Group for the Protection of Nature, IMSE, La Via Campesina, MAELA, National Indigenous Peasant Movement of Argentina (MNCL), Network of Farmers' and Agricultural Producers' Organizations of West Africa (ROPPA), Pesticide Action Network Asia and the Pacific (PAN-AP), Housing and Land Rights Network of Habitat International Coalition (HIC-HLRN). After the creation of the Civil Society Mechanism of the CFS in May 2011, this group became a CSM working group and more organizations such as Action Aid, Oxfam and others joined the group.

provide valuable guidance on how CSOs can interpret the officially agreed Guidelines. Furthermore, the regular exchanges among many organizations provoked by this process paved the way to discuss how to react to the new wave of land grabbing. The Dakar Appeal against Land Grabbing, launched at the World Social Forum in 2011, was the result of this dialog and has served to mobilize resistance against the dispossession and concentration of natural resources. This appeal was officially submitted to the governments during the negotiations of the Guidelines.

Several CSOs proposals got the support of governments and found their way into the Guidelines; while in a number of issues CSOs remained isolated and in disagreement with the consensus reached by member States to the CFS. As stated in a joint statement⁵ on the occasion of the adoption of the Guidelines last 11 May 2012, CSOs welcome the Guidelines but are aware that they fall short in some areas that are key to the livelihoods of small-scale producers who are the source of most of the food consumed in the world. In the following we will briefly identify the main Guidelines' strengths and weaknesses from the point of view of CSOs.

WHAT ARE THE USEFUL ELEMENTS CONTAINED IN THESE GUIDELINES?

The Guidelines are anchored in the existing obligations under international human rights law, explicitly mentioning the Universal Declaration of Human Rights (UDHR). They establish principles of implementation such as human dignity, non-discrimination, equity and justice, gender equality, the holistic and sustainable approach with regards to the management of natural resources, and consultation and participation which made clear that the tenure of land, fisheries and forests is not a business matter but a fundamental right that must be recognized, respected, and guaranteed. Moreover, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers acting in defense of land, fisheries and forests; and guarantee the access to justice and the right of appeal, including restitution, indemnity, compensation and reparation. Chapter 9 reiterates some of the rights of indigenous peoples enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Moreover, a series of provisions uphold the equal tenure rights for women.

The Guidelines are emphatic in calling the States to provide legal recognition for legitimate tenure rights, particularly customary and informal tenure rights which are not currently protected by law; and that all forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions. The Guidelines also call for the recognition and protection of the commons including their related systems of collective use and management.

The Guidelines contain provisions seeking to protect local communities, indigenous peoples, and vulnerable groups from land speculation and land concentration; and to regulate land markets to protect social, cultural and environmental values. Additionally, there is a chapter (14) dedicated to the issue of restitution and an entire chapter (15) dedicated to the issue of redistributive reforms of the tenure of land, fisheries, and forests for social, economic and environmental reasons, where a high degree of ownership concentration is combined with a significant level of rural poverty.

- 4 "Civil Society Organizations' Proposals for the FAO Guidelines on Responsible Governance of Land and Natural Resources Tenure." Heidelberg: FIAN International, 2011. www.fian.org/resources/documents/others/cso-proposals-fao-land-guidelines?set_language=en. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.
- 5 International Food Security and Nutrition Civil Society Mechanism. "The Guidelines on the Tenure of Land, Fisheries and Forests Are a First Step, But Much More Is Needed to Ensure People's Rights to Land and Natural Resources." Rome, 11 May 2012. www.csm4cfs.org/policy_working_groups-6/land_tenure-6/. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

WHAT ARE THE LIMITATIONS OF THE GUIDELINES?

The text of the Guidelines was agreed by governments. In order to reach consensus, the text is often general and ambiguous, trying to accommodate conflicting views. Even though CSOs managed to get support from governments to insert some of their proposals into the text, others were not taken into account or were modified. The fact that the Guidelines do not cover water ranks among the major shortcomings of the Guidelines. The preface, however, briefly mentions that States may wish to take these Guidelines into account in the responsible governance of other natural resources inextricably linked to land, fisheries, and forests, such as water and mineral resources.

The Guidelines apply mainly to the issue of tenure and not to the use and management of natural resources. Certainly, tenure and use can be analytically two different things; however, in real life, these two dimensions are closely linked. Many problems related to the access and control of natural resources by small-scale food producers are linked to the problems of governance of use and management. Nomadic pastoralists are a case in point: if their ways of using pastures and raising cattle are not recognized, protected, and promoted as important activities to ensure food security and sustainable management of certain ecosystems, a mere formal recognition of their tenure rights will not be sufficient to ensure that nomadic pastoralists remain in their territories. Economic policies that claim to “develop their empty, underutilized lands” or to “modernize their forms of livestock keeping” can become in the end a major driver for dispossessing them from their lands. Regrettably, this dimension was only obliquely dealt with in a couple of paragraphs.

The Guidelines accept the large-scale transfer of tenure rights, in other words, land grabbing. However, the text contains several safeguards to control this option and its impacts. Unfortunately, CSOs proposal to put a ban on land grabbing was not accepted due to prevailing belief among the States that acquiring tenure rights constitutes investment and that this type of investment is essential for development. However, the safeguards agreed in paragraphs 12.5, 12.6 and 12.10 could be tactically used at local/national level to organize resistance.

The Guidelines have not further consolidated the rights of indigenous peoples, as enshrined in UNDRIP and other international instruments, in the context of tenure. In fact, some governments tried to water down the UNDRIP provisions and fiercely opposed the inclusion of provisions related to restitution into the text of the Guidelines. Similarly, the right to return in post-conflict situations was not reaffirmed. Therefore it is of utmost importance to interpret and apply the Guidelines in a manner that is fully consistent with relevant international human rights instruments. Indeed, any provision not consistent with international human rights standards would be without effect.

CONCLUSIONS: THE IMPORTANCE TO USE THE GUIDELINES AS A TOOL FOR STRUGGLE

Considering the growing privatization and commodification of nature, it is urgent to strengthen and broaden legal frameworks at national and international level that recognize, respect, protect, and guarantee individual and collective access to natural resources for marginalized social groups, who are at the same time key actors for the stability and

sustainability of our societies. In this sense, the Guidelines make an important contribution since they are anchored in the UDHR, the UNDRIP, and the principles and interpretations of human rights. The Guidelines also specify and give more visibility to the rights of peasants, pastoralists, and fisherfolk to land, fisheries, and forests. The references to the international human rights instruments included in the document will make the document legally relevant at national and international level, even though the title of the document still contains the word “voluntary.”

The reformed CFS has proven its capability to include in its agenda and deal with key issues in the fight against hunger and food insecurity, such as the issue of natural resources for food production; to create effective institutional conditions so that the constituencies most affected by hunger and food insecurity can discuss on equal footing with their governments, other international agencies and the private sector about possible solutions to controversial issues; and to forge intergovernmental agreements in a reasonable period of time. The high degree of participation and inclusiveness in this process is unprecedented in intergovernmental negotiations and should be emulated by the entire UN system so that democratization of decision making processes at international level in other processes and fields related to food and agriculture becomes reality.

No agreement or treaty is enforced automatically, regardless of how positive and progressive its content may be. Popular pressure, mobilization and organization to demand its enforcement are the elements that give life to these documents and make them work in the search of social change. CSO have therefore committed to use the Guidelines to advance their struggles on the ground.

BOX

The FAO Tenure Guidelines and the Principles for Responsible Investment in Agriculture (RAI)

As a response to mitigate the risks posed by land grabbing, the World Bank, the UN Conference on Trade and Development (UNCTAD), the International Fund for Agricultural Development (IFAD), and the FAO drafted the Principles for Responsible Investment in Agriculture (RAI). CSO heavily opposed RAI as an attempt to legitimize land grabbing.⁶ When RAI was submitted to discussion in the CFS, it decided that it would first adopt the Guidelines and then start a participatory consultation on principles for agricultural investment to which RAI would be one input among others. The CFS also decided that these principles ought to be consistent and complementary with the Guidelines. The consultation on investment in agriculture started on 2 July 2012. As an input for the discussion, we would like to highlight key elements contained in the Tenure Guidelines which are absent in RAI and would need to be taken into account for drafting any principles on agricultural investments.

- The Guidelines are anchored in existing obligations under international human rights law (paragraphs 1.1 and 2.2). Thus, the Guidelines do not follow corporate social responsibility schemes as RAI does, but clearly outline the role of the States in respecting, protecting, and fulfilling legitimate tenure rights (particularly of marginalized groups), highlighting their regulatory powers to comply with these obligations.

6 [Right to Food and Nutrition Watch: Land Grabbing and Nutrition, Challenges for Global Governance](#), Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2010. 36–37.

- Given the fact that smallholder producers and their organizations in developing countries provide a major share of agricultural investments that contribute significantly to food security, nutrition, poverty eradication and environmental resilience, States should support investments by smallholders as well as public and private smallholder-sensitive investments (para 12.2). RAI does not contain such a recognition about the crucial role played by small-scale food producers to feed their communities and countries; and does not prioritize support for the investment by smallholders themselves.
- In paragraph 12.4, the Guidelines include in the definition of responsible investments the principle of no harm and respect for human rights as well as compliance with ILO standards. These features are absent in RAI. Moreover, besides ensuring food security, the Guidelines tie responsible investment to promote and secure local food production systems, something alien to RAI.
- Aware of the risks posed on legitimate tenure rights, human rights, livelihoods, and the environment arising from large-scale transactions in tenure rights, States are called to introduce special safeguards which could include introducing ceilings on permissible land transactions, and regulating how transfers exceeding a certain scale should be approved, such as by parliamentary approval. Most importantly States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors (para 12.6). The Guidelines recommend States to first consider alternatives to production and investment models which do not imply large-scale appropriation of resources. If in spite thereof they decide to allow large-scale transactions in tenure rights, they should clearly define them in the national context and introduce special safeguards addressing systemic risks. This stays in stark contrast to RAI. While RAI does not question the desirability of large-scale appropriation of resources and recommends micro-management of the risks entailed in it, the Guidelines recommend to first check other options, and to secondly put clear limits to it.
- The Guidelines require States to ensure the right to Free Prior and Informed Consent of Indigenous Peoples (FPIC) in this context (para 12.7). RAI, in contrast, does not include any mention to the indigenous peoples' right to FPIC. Furthermore, and with respect to the consultation of other non-indigenous groups, the Guidelines establish a new standard (para 3B.6) about how these consultations should be conducted. Moreover, the Guidelines make clear that it is the duty of States to ensure that affected people will be properly consulted and that independent and prior impact assessments are done, whereas RAI does not.
- The Guidelines highlight the responsibility of States investing or promoting investments abroad to ensure that their conduct is consistent with the protection and promotion of food security and their existing obligations under international human rights law. Para 3.2 also calls home States of transnational corporations to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. States should take

additional steps against human rights and legitimate tenure rights violations by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies. Such provisions can be useful for developing countries to increase the accountability of investor States and to get their support in effectively regulating the behavior of business enterprises.

- Finally, the Guidelines call non-state actors (including business enterprises) to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing upon human rights and legitimate tenure rights of others, as well as include appropriate risk management systems to prevent and address adverse impacts. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, if appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights.

RAI does not include any similar provisions on the last two matters since RAI conflates the role of different actors and does not spell specific obligations and responsibilities for business and investor States.

05 a

A STEPPING STONE TO A NEW CIVILIZATION

Interview with Angel Strapazzón

An interview with Angel Strapazzón from the Movimiento Nacional Campesino Indígena de Argentina (the National Movement of Indigenous Peasants of Argentina) and leader of the CLOC/La Via Campesina regarding the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests adopted last 11 May 2012 by the Committee on World Food Security (CFS). This interview was originally conducted in Spanish.

Question: What is La Via Campesina's assessment of the Guidelines and the process behind them?

Answer: La Via Campesina supported this process from the beginning. In Latin America they gave me the mandate to commit ourselves to work in the International Facilitating Team which had been established from the very first by the International Planning Committee for Food Sovereignty (IPC), and that later evolved into the Civil Society Mechanism (CSM). For us having achieved the goals that we had established has been very positive and actually has even surpassed our expectations. The mere fact that the document is based on human rights makes it the first international recognition of the right to land of the peasants as well as of the other food producing sectors, such as fisherfolk and pastoralists. We have been recognized

as economic, social, and cultural agents and that is a true achievement. The Guidelines have reversed the view on the part of the governments that we are the beneficiaries of charity or assistance. The fact that they include a chapter about agrarian reform and redistribution of resources underlines that it is not possible to develop as economic agents without land redistribution and control over natural resources. By the same token, the acknowledgement that legitimate and ancestral ownership of land, forests, and fisheries vouches for itself and not mandatorily through the recognition of formal institutions, gives us a platform for access to land through means of a different mechanism, which for us is essential. One should have access to land not by buying and selling, but rather by ancestral custom or common law, and by producing food to live on, or for local markets. It is not at all the same to produce food looking for profit than to be able to eat.

We know that this document has included various world views. It has realized our connection to land and forests. One of the principal objectives of the entire document, for example, is to eradicate hunger, I repeat, eradicate not reduce hunger. This verb indicates a different concept, a political focus, and a different political agenda, much more committed to justice. There are various concepts in this document and each one must be carefully considered, like the concept of worldwide rights, the holistic focus, or the sustainable use of natural resources. The Guidelines also recognize that, in order to eradicate hunger, peasants, fisherfolk, pastoralists, and indigenous peoples comprise four strategic sectors. Through this acknowledgement we reached a strategic goal and not merely a tactical one, as well as a different political view.

Q: What do you think of the interaction with States during this process?

A: I have a sixth sense for detecting simulation and I really think that the representatives from each government were listening to our positions, they consulted with their leaders in their capitals, and discussed what they had learnt from our meeting. We maintained a human relation between people with different concepts of life. There was a sincere attitude and desire to listen, to let oneself be convinced and to include our positions. Clearly there were some 4–5% of the people who had to answer to more rigid governments, and who were very insecure and fearful, although they should have felt fortified by their power. This experience allowed me to get to know countries which I had branded, and therefore we were able to overcome prejudices about how some large countries are. For example, China ended by acceding and agreeing despite its reticence toward human rights.

On our part we should learn to overcome rather than reproduce the view that the powerful have about anything different. We must draw out the humanistic side of the dialog with our enemies. Social movements should create sensitive and persuasive communication technologies to transmit our message. And, both the powerful countries as well as the social movements have the responsibility to build another civilization based on justice and tolerance.

THE RIGHT TO FOOD OF INDIGENOUS PEOPLES

Saúl Vicente Vázquez¹

According to the United Nations Permanent Forum on Indigenous Issues (UNPFII) the entire indigenous population adds up to close to 370 million people around the world. Although they represent almost 5% of the world's population, they actually make up 15% of the global poor. They also stand for a third of the 900 million indigents in rural areas.²

For years indigenous peoples have appealed to several UN bodies to demand the recognition of their rights, and have promoted their own processes of debate and reflection to define what exactly they consider to be their right to food and nutrition, as well as in which way they should recognize their practice of food sovereignty.

For that matter, in 2002 the Declaration of Atitlán was adopted by means of the Global Consultation in Guatemala. In this Declaration, it noted that:

“the content of the Right to Food of Indigenous Peoples is a collective right based on our special spiritual relationship with Mother Earth, our lands and territories, environment, and natural resources that provide our traditional nutrition; underscoring that the means of subsistence of Indigenous Peoples nourishes our cultures, languages, social life, worldview, and especially our relationship with Mother Earth. [...] The denial of the Right to Food for Indigenous Peoples [...] is a denial of our collective indigenous existence.

[...] Food Sovereignty is the right of Peoples to define their own policies and strategies for the sustainable production, distribution, and consumption of food, with respect for their own cultures and their own systems of managing natural resources and rural areas, and is considered to be a precondition for Food Security.”³

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted. It recognizes that all indigenous peoples are equal to all other peoples, as well as their right to self-determination (article 3),⁴ just as it is established by article 1 of the International Covenant of Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The right to food is, therefore, an essential component for self-determination, as is made clear when it is stated that “in no case may a people be deprived of its own means of subsistence.”⁵

Articles 10, 20, 29, and 31 of the UNDRIP emphasize the right, inter alia, to their own means of subsistence, to their collective rights, and to their lands and territories, which, in fact, constitute substantial elements of the right to food of indigenous peoples.

From this point on, there has been important progress in the States' constitutions and legislations on the right to food. Ecuador, India, Malawi, Mexico, Mozambique, Nepal, Nicaragua, and South Africa are examples of what has been mentioned above.⁶

Moreover, the majority of these countries include legal-normative frameworks in their legislations which, in greater or lesser degree, recognize other rights of indigenous peoples which constitute fundamental elements for the right to food. In Latin America fourteen States have ratified the 169 Covenant of the International Labor Organization (ILO), however, the totality of Latin American States have adhered to the UNPFII.

Some cases of important progress can be found in Bolivia, for example, where there was a formal recognition of the Plurinational State, the Mother Earth Law (Ley de la Madre Tierra), the Indigenous Territories Titling (Titulación de Territorios Indígenas), and the inclusion of the principles and the regulations of the UNDRIP in the national constitution. In Venezuela, indigenous peoples have legal recognition together with the right to political representation and to their lands and territories. Ecuador claims to be a Plurinational State since 2008 and has a Law of the Indigenous Peoples and Nationalities (Ley de Pueblos y Nacionalidades Indígenas). To cite some relevant cases, Colombia, Mexico, and Nicaragua had already incorporated a constitutional acknowledgement of indigenous rights even before the UNDRIP was adopted.

- 1 [Saul Vicente Vazquez](#) is an independent expert and a member of the United Nations Permanent Forum on Indigenous Issues. The author would like to thank Pablo de la Vega and Ana María Suarez Franco for their valuable help in the review of the article. The content of the article is the sole responsibility of the author. This article was originally written in Spanish.
- 2 Department of Economic and Social Affairs. [State of the World's Indigenous Peoples](#). New York: UN Publications, 2009. www.un.org/esa/socdev/unpfi/documents/SOWIP_web.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.
- 3 “Declaration of Atitlán.” [Indigenous Peoples' Consultation on the Right to Food](#). Atitlán, 17–19 Apr. 2002. 2. www.fao.org/righttofood/common/ecg/25411_en_Atitlanen.pdf.
- 4 143 States voted in favour of the UNDRIP; however, Australia, Canada, New Zealand, and the United States opposed, 11 abstained, and 34 were not present in this historical day. United Nations General Assembly, 107th plenary meeting, “Declaration on the Rights of Indigenous Peoples” (61/295). 13 Sept. 2007. www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.
- 5 Article 2. UN General Assembly. “International Covenant on Economic, Social and Cultural Rights” (2200A XXI). 16 Dec. 1966. www2.ohchr.org/english/law/cescr.htm.
- 6 De Schutter, Olivier. “Significant Progress in Implementing the Right to Food at National Scale in Africa, Latin America and South Asia.” [SRFood](#). May, 2010. www.srfood.org/images/stories/pdf/otherdocuments/20100805_briefing_note_01_en_ok.pdf.

Along those lines, different UN agencies and organizations have developed policies, strategies, and directives as a way to implement the UNDRIP. Such is the case of the Policy on Indigenous and Tribal Peoples and the recently adopted Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

However, unfortunately there is a significant breach and lack of enforcement between what is consigned in these legal-normative frameworks and what is observed by the States in practice. In this respect there are the following three examples:

1. In Brazil, according to Amnesty International: “on 1 June 2011 Brazil’s environmental agency approved the construction of the Belo Monte dam on the river Xingu in the Amazon area. The decision has defied an order from the Inter-American Commission on Human Rights to suspend the construction of the Belo Monte dam until the rights of local Indigenous communities are fully guaranteed.”⁷
2. Canada remarked how “the Declaration does not change any Canadian legislation. It represents an expression of political, not legal, commitment. Canadian laws define the limit of Canada’s compromise with the Declaration.”⁸
3. As reported in the 2011 *Watch*, in 2010, in Guatemala, the Inter-American Commission on Human Rights granted a temporary suspension of activities of the Marlin mine given that the Maya Mam and Sipakapa communities had submitted a complaint that the mine had began its activities without their free, prior, and informed consent; as well as denouncing that the mine was a severe threat to their lives, their personal integrity, their properties, and the environment. In June 2011, the Guatemalan State declared that they would not comply with the Inter-American Commission’s order to suspend the mine activities in which work is currently active.⁹

Coupled with this is the fact that there is much more poverty to be found among indigenous peoples than among the rest of the population, and it has been ever increasing during these past years. This increase has been most noticeable in Mexico, compared to the rest of the countries in the region. In Guatemala, the Human Development Report 2008 showed that 73% of the indigenous population was poor, of whom 26% were extremely poor; this can be compared to a 35% of general non-indigenous population poverty, with 8% in extreme poverty.¹⁰ In Panama, indigenous peoples have the same Human Development Index as Haiti, which is the poorest country of the region. The high mortality rate from malaria among the indigenous Yanomamis of Alto Orinoco in Venezuela worried the government to the point where they had to promote the Yanomami Health Plan (Plan de Salud Yanomami); however, during the last two years there have been clear deficiencies due to inattention, which has left the community in an endangered state once again. This poverty scenario is also present in developed countries such as Canada, where it is believed that 20,000 people belonging to the First Nations of Canada are living without running water or sewerage.¹¹

Another issue that is currently affecting indigenous populations is existence of land grabbing by agribusiness enterprises. Aside from the well-known case of Africa, Latin America is also prone to have land grabbing cases in countries such as Argentina, Brazil, Colombia, Jamaica, Paraguay, or Peru. According to GRAIN magazine, in 2011 the Japanese company Sojitz Corporation established a subsidiary firm, Sojitz Buenas Tierras del Sur, to produce crops that were to be exported to Japan. Through this venue, they are planning on expanding the cultivated area by 200,000 ha in Argentina, Brazil, and other countries in South America by the year 2017, which would affect indigenous territories as well; furthermore, it counts with the support of the State-owned Nippon Export and Investment Insurance for the risk insurances.¹²

This echoes the words of Special Rapporteur James Anaya: “[t]oday the Declaration remains more of a reminder of how far there is to go in bringing justice and dignity to the

- 7 Amnesty International. Sacrificing Rights in the Name of Development: Indigenous Peoples under Threat in the Americas. London: Amnesty International Publications, 2011. 6. www.amnesty.org/en/library/asset/AMR01/001/2011/en/252e5768-5d1b-4078-9d29-4a4c7b3df619/amr010012011en.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.
- 8 Wessendorf, Kathrin, ed. *El Mundo Indígena 2011*. Lima: IWGIA, 2011. 59.
- 9 *Right to Food and Nutrition Watch: Claiming Human Rights, the Accountability Challenge*. Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2011. 64–66.
- 10 Mikkelsen, Cæcilie, ed. *El Mundo Indígena 2010*. Lima: IWGIA, 2010. 96.
- 11 Wessendorf, op.cit. 58–67.
- 12 “GRAIN Releases Data Set with Over 400 Global Land Grabs.” *GRAIN*. 23 Feb. 2012. www.grain.org/es/article/entries/4479-grain-releases-data-set-with-over-400-global-land-grabs.

lives of indigenous peoples than a reflection of what has actually been achieved on the ground.”¹³

Establishing the Civil Society Mechanism (CSM) in the Committee on World Food Security (CFS) is in fact an important step towards those goals, just as the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests, in which there is a chapter on indigenous peoples. And this is not all, there is also the Indigenous Peoples Forum created within the context of the International Fund for Agricultural Development (IFAD). The UNPFII is an essential body for the implementation of the UNDRIP.

Spreading the word of the different international instruments on the rights of indigenous peoples, continuing with processes of reconciliation of the national laws and constitutions with the UNDRIP, as well as the need to encourage further processes of consultation and free, prior, and informed consent within the indigenous communities are some of the different activities that the various agents could promote in order to fully guarantee the right to food of indigenous peoples and their food sovereignty.

13 Anaya, James. “It’s Not Enough to Support the Declaration on the Rights of Indigenous Peoples, Says UN Expert.” UNSR.JAMESANAYA. 9 Aug. 2010. www.unsr.jamesanaya.org/esp/compress/its-not-enough-to-support-the-declaration-on-the-rights-of-indigenous-peoples-says-un-expert.

06 a

BITTER REALITY FUELLED BY SUGAR: HIGHER RISKS AND THREATS FOR INDIGENOUS PEOPLES IN MEXICO

Marcos Arana Cedeño and Xaviera Cabada¹

Since the North America Free Trade Agreement (NAFTA) was enforced in 1994, the severe obesity and diabetes epidemic in Mexico has rapidly grown and reached worrisome proportions.² Currently, more than 35 million adult Mexicans (almost 40% of the total adult population) are overweight or obese, and the increase of nutrition-related diseases poses a serious challenge for the health system.³

In 1999, 22.9% of school-age children were obese and almost a third of women between 12 and 49 years old were overweight, of these 21.2% were obese.⁴ By 2006, these figures rose to 36.9% and 32.4%, respectively.⁵ In addition, diabetes-related mortality rates tripled between 1980 and 2005, reaching 63/100,000 in 2011.⁶ Today the medical cost of diabetes accounts for 15% of the overall national health budget, while the overall cost of nutrition-related disorders reaches \$2 billion.^{7,8}

As a possible explanation of this disturbing phenomenon, academics and NGOs denounced the fact that the vast majority of public schools had no drinking water.⁹ Instead, the sale of soft drinks was widespread in the school premises and their consumption was promoted by many school authorities, who had agreements with soft drink companies so that schools would provide space for sales and advertising in exchange for school supplies or financial benefits.^{10,11}

The situation in the indigenous regions of Mexico is by far more serious. Data show that overweight and obesity rates are growing faster within the poorest quintile,¹² in which the great majority of the indigenous population is encompassed. In these regions, the persistent high prevalence of malnutrition coexists with a rapid increase of obesity and diabetes type II.^{13,14}

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It is precisely in these indigenous regions where the most aggressive and unregulated marketing practices of sweetened soft drinks take place. These include a generalized 35% price reduction, abundant promotion in both Spanish and indigenous languages, giant ads associating the consumption of soft drinks with traditional symbols of prestige, as well as numerous sale points within and around schools.¹⁵

According to a phenomenon known as the *Barker effect*, the early exposure to “nutritional stress” such as malnutrition, leads to a higher risk of obesity, diabetes, and other degenerative disorders in later stages of life.¹⁶ For this reason the indigenous populations which show still a high prevalence of low birth weight and other forms of malnutrition, should be considered vulnerable and actively protected against such commercial pressure.

Significant changes resulting from the dismantling of traditional agriculture have substantial effects, such as reduced physical activity, migration, and profound changes in food culture. The last two have facilitated the penetration and high consumption of soft drinks and other energy-dense processed foods with poor nutritional value, with devastating effects on the economy, culture, and health of indigenous people.

In addition to being insufficient, educational activities and nutritional counseling conducted by government health institutions are undermined by the abundance of printed advertisements showing the government’s alliance with soft drink companies. In Chiapas, the state government logo is printed on vending machines that sell soft drinks with messages promoting their consumption. These machines can be seen in public places and government offices, including the entrance to hospitals and buildings of the local public health administration.

In short, the State has neglected its responsibility to implement effective measures to regulate the commercial aggressiveness of soft drink companies, as well as to meet the basic need for access to safe drinking water.

During the launch of the official report of his visit to Mexico in 2011, the UN Special Rapporteur on the right to food stressed the need for developing a comprehensive policy linking agricultural and trade policies to combat poverty and to promote healthy eating environments, especially in schools.¹⁷

The Special Rapporteur warned about the consequences of an excess of soda consumption throughout the country, and proposed imposing a tax on soft drinks and high-energy products.¹⁸ This proposal is similar to the one recently presented by the Organization for Economic Cooperation and Development (OECD).¹⁹ Such proposal includes a 20% tax on soft drinks which in Mexico could generate annual returns equivalent to \$175 million. This money could be used to provide access to safe drinking water in schools and public spaces, starting with the country’s poorest communities, particularly indigenous ones.

The increase of obesity and diabetes rates is being fuelled by a silent epidemic which has remained unnoticed: sugar addiction. There is now plenty of scientific evidence of the addictive effect of sugar,²⁰ as well as warnings that its negative consequences are more serious and last longer when this addiction begins early in life.

Exclusive breastfeeding during the first six months followed by continued breastfeeding along with complementary feeding based on local foods with no addition of sugar or salt constitute the best means to ensure the best nutrition for proper growth and development. Additionally, this represents the most effective way to prevent sugar addiction and lays the foundations for life-long healthy eating habits.

Oportunidades, Mexico’s largest nutrition programme, distributed 8,239 tons of a ready-to-use food supplement called *Nutrisano* aimed for children under two years of age in low-income families nation-wide, including a large proportion of the country’s indigenous population.²¹ This product was formulated to provide 30% of daily nutritional requirements and is supplemented with iron, zinc, and other nutrients. Nevertheless, due to its high sugar content²² and the need for it to be diluted in water, *Nutrisano* not only contravenes international

- 2 The mortality rate due to diabetes rose from 21.8 to 36.2 deaths per 100,000 from 1980 to 1995 in a period of fifteen years before NAFTA to an increase of 74% in the first ten years after. “Mortality records 1980–2005.” *Secretaría de Salud, Dirección General de Información y Estadística*. For information from 2000 to 2008, see: www.sinais.salud.gob.mx/mortalidad/index.html.
- 3 “Encuesta Nacional de Salud y Nutrición.” *Instituto Nacional de Salud Pública y Secretaría de Salud*, México, 2006. www.insp.mx/ensanut/ensanut2006.pdf.
- 4 “Encuesta Nacional de Nutrición.” *Instituto Nacional de Salud Pública y Secretaría de Salud*, Cuernavaca, 2001. www.nutricionemexico.com/encuestas/ENN-99.pdf.
- 5 Ibid.
- 6 See fn. 2.
- 7 Córdova-Villalobos, José A., et al. “Las enfermedades crónicas no transmisibles en México: sinopsis epidemiológica y prevención integral.” *Salud Pública de México* 50.5 (2008): 419–427. www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0036-36342008000500015&lng=es.
- 8 Zhang, Ping, et al. “Global Healthcare and Expenditure on Diabetes for 2010 and 2030”. *Journal on Diabetes Research and Clinical Practice* 87 (2010): 293–301.
- 9 Oria, Maria, and Kristin Sawyer. *Joint U.S.-Mexico Workshop on Preventing Obesity in Children and Youth of Mexican Origin: Summary*. Washington D.C.: National Academic Press, 2007.
- 10 “An alternate report on the Right to Education in Chiapas.” *The Citizens Observatory on the Right to Health, School, Water and Health OBSCIUDES*. Apr. 2010.
- 11 Hawkes, Corinna. “Marketing Activities of Global Soft Drink and Fast Food Companies in Emerging Markets: a Review.” *Globalization, Diets and Noncommunicable Diseases*. New York: WHO, 2002. i-78.
- 12 Ávila, Abelardo C., Jesús J. Flores, and Gabriela Rangel. *La Política Alimentaria en México*. México: CEDRSSA, 2012.
- 13 Fernald, Lia C., and Lynnette M. Neufeld. “Overweight with Concurrent Stunting in Very Young Children from Rural Mexico: Prevalence and Associated Factors.” *European Journal of Clinical Nutrition* 61 (2007): 625–632.
- 14 Olaiz, Gustavo, et al. “Diabetes Mellitus en Adultos Mexicanos. Resultados de la Encuesta Nacional de Salud 2000.” *Salud Pública de México* 49 (2007): 331–337.
- 15 The Citizens Observatory for the Right to Health (OBSCIUDES) identified in September 2011, 165 sale points of soft drinks in a distance of 42.5 km in the indigenous region of Tenejapa, in the Highlands of Chiapas. This is one soft drinks sales point every 257.5 meters.
- 16 Young, Lorraine. “Imprinting of Genes and the Barker Hypothesis.” *Australian Academic Press* 4.5 (2001): 307–317.
- 17 “Report of the Special Rapporteur on the Right to Food, Olivier de Schutter. Mission to Mexico.” UN Human Rights Council. 17 Jan. 2012. www.srfood.org/images/stories/pdf/officialreports/20120306_mexico_en.pdf. This document is available on the Watch website under article 12: www.rfn-watch.org/en/home/watch-2012/main-sources.

recommendations, but also represents additional risk for infants and young children during emergency relief situations, where it is often used.^{23,24}

A recent Pan American Health Organization (PAHO) and World Health Organization (WHO) expert consultation on the marketing of food and non-alcoholic beverages to children stressed the responsibility of governments to protect the health of children. It called for the implementation of policies through legal provisions as well as for the monitoring of their effects and effectiveness free of conflict of interest.²⁵ The protection of the indigenous population of Mexico urgently demands similar provisions.

- 18 Hawkes, op. cit.
For more information on the concept known as 'Coca-Colisation' see: Toribio, Laura. "Desayunan con refresco el 70% de niños rurales." *Excelsior*. 8 Mar. 2012. www.excelsior.com.mx/index.php?m=nota&seccion=tendencia-lo-mas-leido&cat=412&id_nota=816606#.T1jC2gT9OWw_mailto.
- 19 OECD, Obesity Update 2012. www.oecd.org/dataoecd/1/61/49716427.pdf.
- 20 Avena, Nicole, et al. "Evidence of Sugar Addiction: Behavioural and Neurochemical Effects of Intermittent, Excessive Sugar Intake." *Neuroscience and Biobehavioral Reviews* 32 (2008): 20–39.
- 21 Hernández, Mauricio, Bernardo Hernández, and Jose E. Urquieta. *Evaluación externa de impacto del Programa Oportunidades*. Cuernavaca: Instituto Nacional de Salud Pública, 2006. www.sedesol.gob.mx/work/models/SEDESOL/Resource/1650/1/images/salud_educacion.pdf; see also: "Suplementos alimenticios, auditoría financiera y de cumplimiento." *Auditoría Superior de la Federación*. Mexico, 2010. www.asf.gob.mx/Trans/Informes/IR2010i/Grupos/Desarrollo_Social/2010_0926_a.pdf.
- 22 Nutrisano contains 104 Kcals per 44 grams.
- 23 Dewey, Kathryn, and Chessa Lutter. *Guiding Principles for Complementary Feeding of the Breastfed Child*. Washington, D.C.: PAHO-WHO, 2007.
- 24 Arana, Marcos. "Cuando la ayuda lastima: Las prácticas inadecuadas de alimentación infantil durante las situaciones de emergencia." *Cuadernos de Nutrición* 2 (2010): 57–64.
- 25 PAHO. *Recommendations from a Pan American Health Organization Expert Consultation on the Marketing of Food and Non-alcoholic Beverages to Children in the Americas*. Washington D.C.: PAHO, 2011.

STRATEGIES TO REGAIN CONTROL: THE EXTRATERRITORIAL OBLIGATIONS PRINCIPLES

Rolf Künneemann¹

Human rights defenders (including intergovernmental and non-governmental organizations), independent experts, and academia have identified gaps in the right to food protection which have become more severe in the context of globalization during the past twenty years; these include:

- the lacking regulation and accountability of transnational agribusiness corporations;
- the financial speculation with food and land preventing marginalized and disadvantaged people's access to food;
- foreign and domestic land grabbing displacing marginalized and disadvantaged communities;
- the lacking human rights accountability of intergovernmental organizations (IGOs), in particular international financial institutions (IFIs);
- the lacking application of human rights law in the face of investment and trade law that impacts negatively on food and agriculture;
- the missing implementation of obligations to respect, protect, and fulfill the right to food abroad [inter alia through international cooperation and assistance].

States hold certain obligations to observe the human rights of persons outside of their territorial scope. These extraterritorial obligations (ETOs) have often gone unrecognized either in law or in policies and practices of many States. States have tended to limit obligations to their own territory, which does justice neither to the regulatory needs of the international community nor to upholding the principle of universality of human rights.

This reductionism to territorial obligations has led to a vacuum of human rights protection in a number of international political processes and a paucity of regulations based on human rights in order to promote their protection. The situation is particularly challenging in the field of the human right to food: the reasons for hunger and malnutrition are to a considerable extent related to an international food regime geared to the interests of agribusiness and “investors” rather than to the implementation of the right to food of the hungry. The Right to Food Guidelines provided by the FAO in 2004, however being a remarkable document outlining the right to food policies for States, fell short when it came to elaborating extra-territorial issues. Nonetheless, extraterritorial factors bear considerable responsibility for hunger and malnutrition worldwide. Among these factors are the high dependency on food imports in a situation of rising and volatile world food prices, global food speculation, the agrofuel boom, the capture of markets (food, inputs, and land) by foreign food and agrobusiness companies, and the refusal by international policy makers to promote a real paradigm shift towards peasant-based productive and sustainable agriculture along the lines of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD).² A right to food analysis can trace these factors to policy failures in the international and national food regimes.³

Along the lines of what has been discussed above, this article draws attention to the recent Maastricht Principles on Extraterritorial Obligations in the area of Economic, Social and Cultural Rights. It introduces the main features of this document and points to the necessity to promote and apply ETOs for regaining control of food and agricultural systems. A thorough application of the Maastricht Principles to the Right to Food is beyond the scope of this introductory article.

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2 The IAASTD was conducted between 2002 and 2008. It was the largest joint scientific endeavor on the perspectives of food and agriculture. For more information visit: www.iaassessment.org.

3 Brock, Andrea, and Armin Paasch. [International Responses to the Food Crisis](#). Heidelberg: FIAN International, 2009. www.fian.org/resources/documents/others/international-responses-to-the-food-crisis/pdf.

EXTRATERRITORIAL OBLIGATIONS

International cooperation is at the heart of the UN paradigm and of modern international treaty law: in the 1960s it was already noted that international law had moved from a “law of coexistence” to a “law of cooperation.”⁴ The purpose of such cooperation is not, of course, to pave the way for a global financial aristocracy or for the corporate capture of international governmental institutions. The purpose of the “law of cooperation” is to realize human rights and solve economic, social, cultural and humanitarian problems.⁵ When it comes to human rights, cooperation turns into an obligation. What exactly does this imply—and who shall, then, enforce such a duty? If the duty to cooperate on human rights is breached, the community of States will have to provide the pertinent sanctions and remedies. The obstacles to such strengthening of human rights law are not legal, but political: the building of sanctioned regimes for international trade and investment law over the past two decades⁶ makes the development of sanctioned systems in the field of human rights even more urgent; they are necessary to screen commercial law and other fields of international law for compliance with international human rights law, not forgetting the importance of restoring justice for the victims.

The most immediate basis for extraterritorial obligations (ETOs) is the universality of human rights: human rights are not only vested in human beings in the territory of the State under consideration, but in all human beings. What does this imply for States’ obligations towards persons outside their territories? While the “do no harm” principle in international law was established long ago, obligations towards persons abroad that require more than just “doing no harm” provide greater challenges. Cooperation—in the broad political sense of the word—provides criteria for answering these questions.

Given the fundamental importance of human rights (and of the obligation to cooperate) as constitutional elements of the international community and the UN, it may come as a surprise that ETOs have not received more attention among States, within civil society, or even within the legal sector. International legal experts have in fact developed this field of law to a considerable extent over the past twenty years. There are two major reasons for this seeming contradiction. Firstly, the standards on ETOs are scattered in different instruments and documents of international law. Therefore, the underlying Principles have not always been clearly visible. In addition, the structure of ETOs that has already emerged in international human rights law has never been consolidated. Secondly, some human rights treaties limit the obligation to ensure human rights to “persons within the jurisdiction” of the duty-bearing States, where “within the jurisdiction” was all too often simply interpreted as “within the territory.” This state of affairs used to be a formidable impediment for the application of human rights to address the human rights problems of globalization. Human rights were kept from assuming their legitimate role as the political and legal foundation of an international social order where everybody can enjoy their human rights.

Regaining control over major policy fields with a strong global component, such as food and nutrition policies, is necessary to strengthen democratic States so as to make them more accessible and accountable. This strengthening of States requires reinforcing their obligations by spelling out ETOs. This may seem paradoxical in the old paradigm of the international law of coexistence, as it appears to weaken the policy options of States and their sovereignty. However, in the new paradigm of the law of cooperation⁷ (in particular in view of the human rights obligation to cooperate), the strengthening of ETOs in fact increases the policy options of a community of States: they can now—as a community—solve problems that they are otherwise unable to solve and achieve goals they are otherwise unable to achieve. In this sense the community of States is not different from a human community. A human community is not just a sum of individuals (“coexistence”); a community is structured

4 Friedmann, Wolfgang. *The Changing Structure of International Law*. London: Stevens & Sons, 1964. 60.

5 UN Charter. Article 1.5. www.un.org/en/documents/charter/chapter1.shtml.

6 The WTO, other trade agreements and bilateral investment treaties include mechanisms that provide judicial or arbitration procedures that can lead to hefty and costly sanctions.

7 Kimminich, Otto. *Einführung in das Völkerrecht*. München: KG Saur Verlag GmbH & Co, 1987. 111, 320, supra n. 2.

by ties, rights and duties, moral or legal, and in this form reaches a level of organization that creates options for coherent action that would otherwise not exist. ETOs provide additional tools to regain democratic control over policies that otherwise might amount to violations of human rights. Some great regulatory challenges were mentioned above that are relevant for the implementation of economic, social, and cultural rights and in particular the right to adequate food.

THE MAASTRICHT ETO PRINCIPLES

The contradiction found between the growing importance of ETOs and the two previously discussed obstacles to their application did not go unnoticed, either in the human rights community or in academia and among legal experts. On 28 September 2011, after several years of study, about forty legal experts from all parts of the world, convened by Maastricht University and the International Commission of Jurists, issued a document entitled “Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights.”⁸ This document identified and consolidated the Principles underlying these obligations in international law. Although the title may sound rather technical, the document has far-reaching implications and paves the way for human rights to assume their legitimate role as basic international law. The Principles provide the so desirable consolidation mentioned above, allow for the much needed regulation of international global activities and operationalize the duty to cooperate.

The Maastricht ETO Principles are not only significant as a legal document, but are of great political importance. Everybody interested in regaining democratic control in the face of globalization should study it—civil society, governments, intergovernmental organizations, and business leaders. Those interested in a deeper legal analysis should consult the legal commentary that will be published by the Human Rights Quarterly in November 2012.

The Maastricht ETO Principles focus on ESCR. They complement and deepen two previous ESCR-documents that resulted from the joint convening by Maastricht University, the International Commission of Jurists, and others.⁹ These two Maastricht documents proved seminal to the development of the UN doctrine on ESCR and of human rights as such. This third Maastricht document is likely to have a similar impact.

ETOS TO RESPECT, PROTECT AND FULFILL HUMAN RIGHTS

The Maastricht Principles introduce three categories of human rights obligations (respect, protect, fulfill) as essential for understanding ETOs. In fact, the three central parts of the ETO Principles are III Obligations to Respect, IV Obligations to Protect, and V Obligations to Fulfill. In order to understand this classification it should be recalled that people “enjoy a human right” (say, the right to food or to political participation), if the corresponding quality of life is a reality for them. In that case they have access to adequate food or participate politically in the way stipulated by the respective right. Every human right provides a claim to the secure enjoyment of that right.¹⁰ In that light, and as we will analyze in depth below, the obligation to respect means that duty-bearer must not impair any existing secure enjoyment. This demands that duty-bearer avoid certain activities. Furthermore, the States’ obligation to protect the enjoyment of human rights requires certain actions—namely those that protect the secure enjoyment of human rights from it being impaired by others (other States, business enterprises, neighbors, etc.). Lastly, the obligation to fulfill the enjoyment of a human right refers to situations where the rights-holders are not in secure enjoyment of their rights. In the context of the right to food, the fulfill-obligation requires States to ensure that people can access resources and means to feed themselves and, if this is beyond

8 “Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights.” 28 Sept. 2011. www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources. For more information visit the Maastricht Centre for Human Rights: www.maastrichtuniversity.nl/web/show/id=596286/langid=42.

9 The 1986 Limburg Principles on the Realization of Economic, Social and Cultural Rights and the 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

10 This is implied by Maastricht Principle 15 and its concept of real risk. See fn.8.

the possibility of the rights-holders, to provide access to adequate food directly.¹¹ A breach of one or more of these obligations is a violation of human rights.

Extraterritorial respect-obligations relate mainly to States' activities that directly impair the secure enjoyment of human rights abroad. Examples of such direct interference could be dam construction projects implemented by States that bar the flow of water into a neighboring State, as is the case with the dams built on the river Brahmaputra (China, India), Tigris (Turkey/Iraq) or Ganges (India, Bangladesh). Another example (from the field of civil and political rights) is torture outside the territory through rendition (a practice attributed to the USA in recent years). The extraterritorial respect-obligations extend also to State measures that impair the secure enjoyment of human rights abroad only indirectly—namely by impairing a foreign State's capacity to meet its human rights obligations.

One example is the *Aguas Argentinas* case, where a consortium of European and Argentine companies running the privatized water and sanitation systems in Buenos Aires, led by a French transnational corporation, requested in 2003 extensive compensation from Argentina at the International Centre for the Settlement of Investment Disputes (ICSID)¹² under the country's bilateral investment treaties with France and others: Argentina had frozen utility rates in the middle of a severe economic crisis 1999–2002. These freezings were meant to secure poor people's right to water, but interfered with the investors' profit expectations.¹³

Bilateral investment treaties are meant to pave the way for the operation of transnational corporations (TNCs), and many of them unduly restrict the State's policy space for meeting their obligations under ESCR. It is usually the policy space of the host State, in this case, Argentina. The conclusion of this treaty by France indirectly impaired the economic and social rights of people in host States and thereby breached its extraterritorial respect-obligation. An indirect impairment would also be any State measure that “knowingly aids, assists, directs, controls or coerces another State or IGO to breach their ESCR-obligations.”¹⁴ In this context many examples come to mind—such as the measures taken to make aid-dependent African States accept structural adjustment programmes or “economic partnership agreements” or the “advisory role” of foreign countries and IGOs in the shaping of mining laws or land markets in African countries to the detriment local people's ESCRs.

The obligation to protect means first of all an obligation to regulate third parties in order to ensure that they do not abuse human rights. While regulation of third parties' effects on people's human rights inside the State's own territory is always obligatory, regulation of third parties' abuses abroad is obligatory only under certain circumstances such as those specified in Principle 25. Firstly, regulation is obligatory whenever a real risk of impairment originates within the duty-bearer's territory. An example of this is a firm on a border polluting a river flowing into a neighboring country and destroying drinking or irrigation water sources in the neighboring country. Secondly, regulation is obligatory where the non-state actor has the nationality of the State concerned. An example here is the obligation of the home State to regulate and persecute child sexual abuse by its nationals with victims abroad. As far as business enterprises are concerned, the Maastricht Principles identify an obligation to regulate if the abusing enterprise, or its parent controlling company, “has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned.”¹⁵ This clarifies many cases in the field of “human rights and business” by clearly pointing out the extraterritorial obligations of the home State (the State where the TNC is registered or has its headquarters). It also rejects any argument that would relief parent companies from their responsibilities for companies they control. Moreover, it goes beyond the obligations of home States, but includes States where the TNC has substantive business activities. Thereby, the Maastricht Principles provide a broad basis for protection against agrobusiness corporations with a number of States obliged to exercise

11 Para 12.5. CESCR, 20th Session. “General Comment 12” (E/C.12/1999/5). Geneva, 1999.

12 The ICSID is an institution of the World Bank Group. Its primary purpose is to provide facilities for conciliation and arbitration of international investment disputes between member countries and investors.

13 Coomans, Fons, and Rolf Künnemann. *Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights*. Cambridge, Antwerp, and Portland: Intersentia, 2012. 39–52.

14 Maastricht Principle 21. See fn.8.

15 Maastricht Principle 25. See fn.8.

regulatory powers in the context of a single abuse. In the past, TNCs have tried to prevent such regulation altogether or they tried to keep it limited to the victims' State, benefiting at the same time from the fact that regulatory powers of victims' States are curtailed through investment treaties. The ETOs show that States are obliged to close those loopholes and to reject such corporate policies with determination.

Fulfill-obligations are owed to persons or communities that lack secure enjoyment of the human right to food. In general, they consist of obligations to fulfill those persons' access to resources (fulfill-facilitate) and obligations to provide the enjoyment of the right directly, if persons are not in a position to make use of such resources (fulfill-provide).¹⁶ The extraterritorial fulfill-obligations are dealt with on two levels. There is first of all the obligation to create an enabling international environment—a global legal, social and economic environment that facilitates the States to implement their territorial obligations towards the victims of hunger and malnutrition. Principle 29 makes clear that such an environment requires shaping trade and investment, as well as finance, environmental and development regimes in a way that does not interfere with States' efforts to implement their territorial obligations, but—in fact—facilitates such policies. The second level of the ETO to fulfill, say the right to food, is related to individual and joint measures more immediately addressing the efforts of States to meet their territorial fulfill-obligations through bilateral or multi-lateral cooperation and assistance.

States have an obligation to contribute to the fulfillment of the right to adequate food abroad, commensurate with their economic capacities and with their influence in international political decision-making.¹⁷ This action has to be taken separately and—where necessary—jointly: States must cooperate to mobilize the maximum of available resources to this effect. It should be noted that States that are not in a position to fulfill the right to food with their own resources carry a duty to seek international assistance.¹⁸ For the extraterritorial obligation to provide international assistance¹⁹ Maastricht Principle 32 provides principles and priorities for the extraterritorial fulfillment of the right to adequate food: These include the right to self-determination and the right to participate in decision making. In all fulfillment measures, priority has to be put on the right to food of disadvantaged and marginalized groups, and on the core content of the right to food. This core content includes 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—and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.²⁰ Implementing these priorities requires a thorough reform of current practices in international cooperation and assistance.

Last but not least, the right to an effective remedy, of course, is essential for ETOs as human rights obligations. ETOs are not morals, but are grounded in law. "States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. In those cases where the harm resulting from alleged violations has occurred within the territories of different States than those in which the related harmful conduct was originated, any State concerned must provide remedies to the victim."²¹ This should be read together for example with the ETOs to protect against abuses by transnational agribusiness under the circumstances described above. It then becomes clear that not only the victims' States, but all States in which agribusiness corporations have carried out harmful activities have to open up their courts to the victims. When land grabbing in one country, for example, was planned and prepared in another country (for example the home country of the parent corporation), and this other country breached its protect-obligation, the home country has to allow for remedies.

16 CESCR, *op. cit.*

17 Maastricht Principle 31. See fn.8.

18 Maastricht Principle 34 See fn.8.

19 Maastricht Principle 33. See fn.8.

20 Para 12.8. CESCR, *op. cit.*

21 Maastricht Principle 37. See fn.8.

CONCLUSION

ETOs are necessary to address international food and agricultural regimes on the basis of human rights. ETOs, of course, are not sufficient to regain control over these regimes. However, they represent an important tool for any such right to food strategy. Going further into the details of the ETO Principles and developing their systematic application to the right to food is beyond the scope of this article. The primacy of human rights law—although not explicitly mentioned in the document—implies that international treaties that are not consistent with human rights are void. Time has come to establish national and international food and nutrition regimes that respect, protect, and fulfill human rights. Regaining control over the respective policies means not only participation in the respective decision-making, but also the use of remedy mechanisms addressing those acts and omissions of States that violate the human right to adequate food abroad. Economic internationalization must not be allowed to proceed faster than the effective implementation of the ETO Principles. To the extent that such safeguards are ignored, internationalization and—even more so—globalization policies violate human rights, and destroy democracy.

NATIONAL AND REGIONAL REPORTS: Monitoring the Human Right to Food and Nutrition

LAND GRABS OF THE ARAB SPRING: CHRONICLE OF CORRUPTION AS STATECRAFT

Joseph Schechla¹

The people's land has been a subject central to the Arab awakening. Much of the media have focused more on the mass mobilization in urban centers and the priority of reestablishing central State institutions. However, a subtext to that story is the deep and complex corruption schemes that characterize the defunct regimes, including their endemic land grabbing practices.

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- 2 UN General Assembly, "International Covenant on Economic, Social and Cultural Rights" (2200A XXI). 16 Dec. 1966. www2.ohchr.org/english/law/ceschr.htm.
- 3 Articles 2.3 and 16. UN General Assembly, "International Covenant on Civil and Political Rights" (2200A XXI). 16 Dec. 1966. www2.ohchr.org/english/law/ccpr.htm.
- 4 ICESCR, op. cit. Article 13.
- 5 ICCPR, op. cit. Article 25.
- 6 Article 9.9. Committee on World Food Security, 38th (Special) Session. "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (CFS 2012/38/2). Rome, 11 May 2012. www.fao.org/docrep/meeting/025/md708e.pdf (see article 5 of this Watch); Guideline 3: Free, Prior and Informed Consent (FPIC). "Civil Society Organizations' Proposals for the FAO Guidelines on Responsible Governance of Land and Natural Resources Tenure." Heidelberg: FIAN International, 2011. www.fian.org/resources/documents/others/cso-proposals-fao-land-guidelines?set_language=en; Tamang, Parshuram. [An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices](#). (Contribution to Workshop on Free, Prior and Informed Consent). New York: UN Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues. 17–19 Jan. 2005.
- 7 Article 8. UN General Assembly, "Resolution 217 A (III) Universal Declaration of Human Rights." Paris, 10 Dec. 1948. www.un.org/en/documents/udhr/; Article 2, para 3 (b). UN General Assembly, op. cit. fn. 3; and UN CESCR "Agenda Item 3: The Domestic Application of the Covenant, General comment No. 9" (E/C.12/1998/24). Geneva, 16 Nov.–4 Dec. 1998. www.unhcr.ch/tbs/doc/nsf/0/4ceb75c5492497d9802566d500516036?OpenDocument.

This article considers four States undergoing transformation as part of the Arab Spring initiated in the form of popular uprisings. It considers the legally liable State as the entity defined by (1) the territory (land and its corresponding natural resources); (2) the people (or peoples) who inhabit the territory; and (3) the institutions that manage relations (rights and obligations) among the peoples, the territory, and its natural resources as government and other public institutions.

These aspects of statecraft are subject to the seven over-riding principles of the International Covenant on Economic, Social and Cultural Rights (Articles 1–3),² which guide the State to ensure that all of the enshrined rights are respected, protected and fulfilled by implementing self-determination, nondiscrimination, gender equality, the rule of law, progressive realization (nonretrogression), the maximum of available resources, and international cooperation.

This article reviews official-level investigations on the privatization of national resources in four States, which led to the impoverishment of their citizens. While the treaty-bound principles explain "how" specific rights are elaborated in the Covenant, the specific rights concerned are those that are highlighted by the pattern of violations taking place across the Middle East/North Africa (MENA) region. The immediate problems addressed in this report relate to common housing rights conditions across the region that arise from a failure to apply the over-riding principles of implementation. These amount to common violations of specific elements of the right to housing and related human rights including:

- access to public goods and services, ranging from poor water quality and distribution to urban planning as a public service;
- habitability of housing in the form of squalid living conditions for millions;
- secure tenure guaranteed by law, the violation of which often manifests in the denial of property through government-imposed forced evictions, destruction and/or confiscation.

In certain cases, corruption in the land sector has affected the human right to food and food sovereignty directly by monopolistic practices and denying needy citizens access to land as an essential productive resource. In addition, the mismanagement of the State's land resources has violated related "process" rights, including rights to:

- information³ and education⁴ related to equitable access to land necessary for realizing the rights to adequate housing and food;
- participation⁵ and the principle of free, prior, and informed consent of the affected populations;⁶
- access to justice, including justiciability of the concerned economic, social and cultural rights.⁷

Extreme human rights violations across the region are characteristic of the dramatic deprivation resulting from occupation and demographic manipulation of entire regions, as in the occupations of Palestine and Western Sahara. However, similar practices prevail within territorial States, notably involving Sudanese territories (e.g., Darfur and Nuba Mountains of South Kordofan) and Iran's Persian Gulf coast region of Arab Ahwaz. The composite of

these human rights conditions and corresponding State obligations outline that there is an urgent need to ensure sustainably good governance within States and across the region.

The long chronicle of opposition to regimes in Bahrain, Egypt, Libya, Morocco, Syria, Tunisia, Yemen and other States tell of various forms of land grabbing by political and military elites. Taken together, these opposition movements form a common narrative that promises now to reshape new constitutions, legislation, policy formulation, social mobilization and transitional justice processes for years to come.

This article presents examples of *how* land grabbing has taken place, as revealed in recent national investigations. Now public information, these chronicles of dispossession in Bahrain, Egypt, Tunisia, and Yemen exemplify the decay of statecraft affecting the correspondent human rights obligations, including ICESCR enshrined norms for assuring access to productive agricultural lands and fisheries that local communities need for subsistence.

When surveying the emerging pattern, a focus based on agricultural and fishery resources exclusively may leave a false impression. The impetus for the confiscations of agricultural and coastal lands, and other fraudulent deals does not emanate from the elite's passion for farming and fishing but from a pursuit of self-enrichment by all means. A witness of prime land grabbing by the family of Tunisia's former first lady characterized the practice: "They took the people's lands," she said. "The Trabelsis are like cockroaches. They fed on everything."⁸ While land grabbing is standard for the embattled regimes, that aspect of State corruption is integral to a wider global phenomenon.

TUNISIA

As a final act of Tunisia's Ben Ali regime in January 2011, the outgoing presidency established three committees to guide the transition, including a National Commission for Establishing the Facts about Corruption and Embezzlement. In November of last year, the Commission issued its fact-finding report, which characterized the system as "a set of interrelated elements interacting with each other so that the movement of any element has implications for the rest of the elements."⁹ The report explained how corruption gradually spread and tightened its grip on all State institutions distorting the economy, the judiciary, political institutions, and social development.

With available information, including that provided by victims, the Commission ascertained that the majority of corruption took place at the intersection of administrative authorities and economic institutions; fraudulent land deals were at the forefront of corruption cases. The Commission uncovered the mechanisms of corruption to shed light on just how the executive, for example, re-zoned agricultural or fallow land for construction, or from one type of built-up land to another, thus, multiplying the economic value of the land several times for the land-holding members of the former president's extended family and their close associates. The Real Estate Bureau is implicated in forging titles to land suitable for construction and illegally turning over State land for privatization at cheap prices, sometimes for a symbolic one dinar, as has been the case with farms turned over to ministers and others close to the former president.¹⁰ This practice arbitrarily annulled standing contracts between the State and local peasants who had cultivated the land for many years.¹¹ By preventing them to access the land, the right to adequate food and nutrition of these people was unequivocally violated by the authorities.

This practice was also linked to transactions subject to State-sponsored nepotism that served the ruling elite, by licensing certain economic activities ranging from distribution of automobiles and industries, such as manufacture and sale of sugar and alcohol; and the importation of certain grains, fruits, and various other goods under the monopolistic control of the president's entourage. These measures sank many independent Tunisian enterprises

8 "Cockroach Trabelsis." [HLRN Violation Database \(VDB\). www.hlrn.org/violation.php?id=o2hqZQ](http://www.hlrn.org/violation/Database(VDB).www.hlrn.org/violation.php?id=o2hqZQ), citing Daraghi, Borzou. "Neighbors in Tunisia express disgust over former first lady's family." [Los Angeles Times](http://www.losangelestimes.com). 17 Jan. 2011.

9 The Commission received more than 10,000 files, investigated over 5,000 and referred about 500 cases to the judiciary. Certain administrative institutions did not cooperate with the Commission, such as the Ministry of Justice and, to a lesser extent, the Central Bank, which refused to provide information for the crucial 2006–2010 period. "National Fact-finding Commission Report." [National Commission to Establish the Facts about Corruption and Embezzlement](http://www.nationalcommissiontunisia.org/IMG/documents/RapportCorruption_CJCM.pdf). Nov. 2011. www.hlrn.org/img/documents/RapportCorruption_CJCM.pdf. (Quote translated from Arabic by the author). This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

10 Ibid. 56.

11 Ibid. 12.

into bankruptcy and eroded the national economy.¹² Much essential food production and distribution in Tunisia came directly under the control of the ruling clique not only by land grabbing. Beyond the production side, distribution and importation also formed part of a ubiquitous and integrated system involving most economic fields within the State, encompassing trade in everything from wheat to second-hand clothing.

These revelations at the source of the Arab Spring have echoed across the region, shedding new light on the nexus between corrupt governance and the mismanagement of land.

EGYPT

With the 2011 fall of Egypt's former president and his cabinet members, several trials pursued some prominent figures involved in land corruption led by the Mubarak clan. Their methods included land speculation, investment in real estate, privatization of public sector companies, construction, capital investment, public procurement, and maximizing profits from health-sector investments that coincided with the deteriorating public health system.

Land grabbing, real estate fraud, and corresponding human rights deprivation already had reached the level of national discourse well before opposition forces converged on Tahrir Square. The National Center for Land Use had reported in 2007 that the land mafia already had seized some 16 million feddans (67,200km²) of the Egyptian people's land and lost some 800 billion Egyptian pounds (98€ billion) through illicit privatization.¹³

No official body along the lines of the Tunisian Commission was established out of the Egyptian revolution comprehensively to investigate the extent of the corruption regime and the individuals involved. However, cases of land grabbing have come to light recently from further reports leaked by government agencies or published as news from cases pending before the courts.

In March 2011, Egypt's Central Bank issued a letter revealing the names of 138 people involved in corruption and influence peddling.¹⁴ The Attorney General ordered their assets frozen; some of these figures are still awaiting trial.

In December 2011, the auditors of the New Urban Communities Authority reported how former President Husni Mubarak, Prime Minister Ahmad Nazif, and other ministers took State property and granted lands and villas to senior officials, select companies, and elites of other Arab States. These deals were the subject of direct executive orders at far less than the actual value and were, thus, in violation of the law.¹⁵

Land ownership by foreigners is prohibited by law. However, notorious beneficiaries of this legal breach include Saudi Prince Walid Bin Talal's Mubarak-era acquisition of 100,000 feddans (42,008 ha) in the Toshka southern desert irrigation and development project. In June 2011, Egypt's Ministry of Agriculture ultimately permitted the prince to retain and eventually own 25,000 feddans (10,502 ha).¹⁶

In March 2011, author Faruq Abdul-Khaliq published his analyzed systematic corruption in Egypt, recounting how corruption has shifted from individual deviations to the social structure, affecting all entities of State and society. Grand-scale corruption permeated 16 fields, especially construction, land allocation, infrastructure and the distribution of apartments in new cities. The Ministry of Housing illicitly allocated land valued at 136.1 billion Egyptian pounds (16.6€ billion) to favored businessmen.¹⁷ All such operations had the backing of the president himself, his ministers, and the premiers.¹⁸

YEMEN

Corruption in land across Yemen, especially in the provinces of Hudaida and Aden, also formed a main factor in the outbreak of the popular revolution and the overthrow of the

12 Ibid. 13.

13 "Report on the 'Corruption' in Egypt: the Egyptian Government Has Allocated Land to Cronies Space Equal to an Area of 5 Arab Countries." *Citizen Gate*, Mar. 2012. www.muwaten.net/?p=563. (Available only in Arabic).

14 "Egypt: Names of 138 Personalities Who Looted Egypt." *HIC-MENA News*, 11 Mar. 2011. www.hic-mena.org/arabic/news.php?id=pHBkZg. (Available only in Arabic).

15 "Report 755: Report of the Urban Communities Authority Reveals the Involvement of Sulaimān and Shafiq in State-land Grabbing." *al-Ayam al-Masriyya*, 22 Apr. 2012. www.alayam-almasria.com/default_ar.aspx?id=11488. (Available only in Arabic); excerpts of the original document www.ayam25.com/index.php?option=com_content&view=category&id=1:2010-12-09-22-46-00&layout=blog&Itemid=3. (Available only in Arabic).

16 "Prince Alwaleed and Minister of Agriculture Sign Contract for Toshka Land." *AMEinfo*, 8 June 2011. www.ameinfo.com/267536.html.

17 Abd ul-Khaliq, Faruq, *The Economics of Corruption in Egypt: How Egypt and Egyptians Became Corrupt (1974–2010)*. Cairo: al-Shuruq International Library, 2011. www.hlm.org/img/documents/corruption%20economic%20of%20egypt.pdf. (Available only in Arabic).

18 Namely, Prime Ministers Atif Ubaid and Ahmad Nazif, serving from 1999–2004 and 2004–2011, respectively.

- 19 Haydara, Jamal, and Salih al-Humaydi. "South Yemen: A Land Looted and Persons Homeless" paper delivered at [MENA Land Forum III: Land, People's Sovereignty and Self-Determination](#). Cairo, 15–17 Jan. 2012.
- 20 "Hilal—Basra Report. 'Part One' Names [of] Looters of Residences and Government Establishments after the 1994 War." al-Yaman al-Said. 1 May 2012. www.yemensaeed.com/view.php?id=6105. (Available only in Arabic).
- 21 "The Territory of Hodeidah Warns of New Yemeni Movement." [Al Jazeera](#). 20 Apr. 2010. www.aljazeera.net/NR/exeres/B5B8B2FF-DE25-4FF8-9BBD-2FA492D53430.htm. (Available only in Arabic).
- 22 Violation Database. HLRN. www.hlrn.org/violationsearch.php.
- 23 "Yemen: (Hilal-Basra) Report the Names of Land Grabbers." [HIC-MENA News](#). 1 May 2012. www.hic-mena.org/news.php?id=pG9taQ. (Available only in Arabic).
- 24 Sherif el-Sayed, Ibrahim. "Territorial and Coastal Usurpation." [The Secretariat and Four Associations Forum](#). 10 Nov. 2005.
- 25 "State's Property: National Fights Go on until Citizens' Lands Restored." [al-Wasat News](#). 12 May 2010. www.alwasatnews.com/2805/news/read/420213/1.html. (Available only in Arabic).
- 26 Aziz, Sahar, and Abdulla Musalem. [Citizens, Not Subjects: Debunking the Sectarian Narrative of Bahrain's Pro-Democracy Movement](#). Washington DC: Institute for Social Policy and Understanding, 2011. www.ispu.org/pdfs/640_ISPU%20Report_Bahrain_Aziz_Musalem_WEB.pdf. This document is available on the Watch website: www.rfn-watch.org/en/home/watch-2012/main-sources.
- 27 "Bahrain: Royal Land Seizures, Poor Housing at Root of Unrest." [HIC-MENA News](#). 3 Apr. 2009. www.hic-mena.org/news.php?id=o5FrbA==.
- 28 "Report of the Parliamentary Committee to Investigate Public and Private Property of the State." March 2010. www.hlrn.org/img/documents/amlak-2-4-t.pdf. (Available only in Arabic). This document is available on the Watch website: www.rfn-watch.org/en/home/watch-2012/main-sources. See also "Bahrain Public Lands Sold and Rented to Private Investors." [The National](#). 25 Mar. 2010. www.thenational.ae/news/worldwide/middle-east/bahraini-public-lands-sold-and-rented-to-private-investors.

former Yemeni president. The problem has been so severe in the southern region that it has sparked a resurgence in the secessionist movement there.

Escalated land grabbing by officials and the military was the subject of an important parliamentary investigation in 2008. The eventual 500-page report revealed how fifteen influential military and political figures actually stole much of the lands in five governorates: Aden, Dhala, Taiz, Abyan, and Lahj.¹⁹ The authors recommended that then President Ali Abdullah Salih choose between patronizing his fifteen loyal accomplices in the recent wave of land grabs, or instead seeking legitimacy with the 22 million citizens of Yemen. He chose the former.

The parliamentary study did not disclose the culprits' names, nor have any of those figures been tried. However, in 2012, after Sālih's fall, parts of that report were leaked. It revealed the confiscation of 1,357 houses and 63 government properties in Aden alone.²⁰

A second parliamentary committee issued another report in April 2010 dealing with encroachments on land in Hudaida Province favoring 148 political, economic, religious, and tribal leaders. There, 63% of the province's agricultural lands have been taken from local producers.²¹

That latter report recorded 400 cases of infringement. The committee also had received 106 complaints from citizens of armed gangs establishing themselves on the stolen lands. The findings pointed out that certain officials who maintained their official posts for long periods were a principal factor in the land grabbing trend. It also recommended the arrest, trial, and punishment of all those who sell fake deeds or unlawfully claim ownership, whatever their status.

The Habitat International Coalition's Housing and Land Rights Network has already recorded numerous cases of land grabbing and appropriation of land by force in Yemen and other countries.²² The south Yemen land confiscations alone are reported to amount to a land area equal to the entire neighboring country of Bahrain. Parliament's 2010 report warned that unlawful land acquisition would spawn new unrest in Yemen and threaten social peace for years to come.²³

BAHRAIN

The case of Bahrain is outstanding in its severity, as it is the country with the smallest land base (760 km²) and is largely dependent on food imports. That area includes more than 70 kilometers of the Bahrain coast reclaimed over the past thirty years, increasing the land-mass by over 10%.²⁴ However, more than 90% of the newly created land has been privatized despite legal prohibitions, turning the coastline into the private property of the ruling family.²⁵ Because of the commercialization of coastal land, many of Bahrain's traditionally small family fisheries have lost their livelihood, and the country, a heritage.²⁶ Moreover, nearly half of the island nation's landed property remains foreclosed to Bahrainis while occupied by United States military bases and the U.S. Navy's Fifth Fleet.

Over the years preceding the 2011 uprisings against the Al Khalifa ruling family, youth and regime opponents had been protesting the lack of housing and livelihood prospects that result from the self-enrichment by the "royals" and their supporters.²⁷ The rulers' confiscation of lands and all access to the sea, coinciding with material discrimination in the provision of public goods and services in favor of the minority Sunnis, became an issue of such contention that the Council of Deputies (lower house of parliament) undertook a 2010 investigation into the privatization of public lands and resources. The study identified 65 km² of public land valued at more than \$40 billion transferred to private hands since 2003 without proper payment to the public treasury.²⁸

The Bahraini parliamentary study uncovered how the system has functioned. Bahraini land grabs especially have involved State property that the king has transferred

to private parties at the expense of the general citizenry through a repertoire of sixteen corrupt techniques.

The available data have confirmed that some of the State properties were privatized without any payment or other return to the State. The king has made royal gifts of property intended for public benefit, such as reclaimed land, which is constitutionally banned from privatization. By mid-2008, private parties had taken 94% of this land for “special projects.”²⁹

The parliament’s report also revealed cases of seizure and forgery of title deeds as part of an organized and systematic policy of land fraud. Cases of bribery, exemplified by the royal-controlled Alba (Aluminium Bahrain, BSC) company,³⁰ became notorious. The official investigation alleged that, over the years, the prime minister’s advisor Shaikh Isa bin Ali al-Khalifa has received bribes estimated at \$2 billion (an amount equivalent to the State budget for one full year). The king then issued royal pardons for the defendants, even while the cases were still before British and U.S. courts.³¹

CONCLUSION

It remains to be seen how these revelations will affect policies and practices in the new governments across the region. However, each of the sources cited here also contained proposals for permanent anticorruption bodies and follow-up at the legislative, executive, and judiciary levels to prevent, investigate and prosecute land grabbing and related fraud. What is relatively certain is that in the future, such looting of productive resources will be the subject of increased scrutiny.

A global report of Transparency International (TI) for 2011 confirmed that public awareness on issues of corruption has increased following the uprisings in the countries of the Arab Spring.³² However, TI also reported a decline in the perception of such practices continuing in those countries, especially Egypt, Tunisia and Yemen.³³ Paradoxically, anecdotal evidence suggests that various forms of land grabbing actually have increased during current instability across the region.

Internal land grabbing, as well as of other means of plundering natural resources and wealth, has been institutionalized and systematized over the decades-long rule of the region’s regimes, which has contributed to the outbreak of serial uprisings across the Middle East and North Africa (MENA).

Land fraud is a common manifestation of failed governance globally, as emphasized in several recent reports on the risks and manifestations of corruption in the land sector.³⁴ For example, in MENA, Iraq, Kuwait, Lebanon, and Morocco were among the 69 countries that TI surveyed in 2009. The MENA countries had the highest percentage (40%) of respondents who reported paying a bribe in the previous twelve months.³⁵ By charting corruption by government service, the land sector ranked third most corrupt across the composite of 69 countries polled from all regions.

Fully two thirds of the world hold poor land-titling practices whereby the title is neither related to maps or registries, nor linked to financial institutions or backed by law.³⁶ Such conditions often are not sustainable over time, and typically lead to disputes and housing and land rights violations, including population displacements, loss of food security, natural environment, and national heritage. The administration of land is not only a matter of registering titles, but it is also about linking information and harmonizing legal systems with human rights as well as fostering equity in access to services and means of subsistence.

The Arab Spring and its aftermath are teaching us the importance of decent governance in land administration as a pillar of sustainable statecraft. In the MENA region, corrupt land-administration practices have taught a costly lesson indeed.

- 29 “Report of the Parliamentary Committee.” op. cit. 21.
- 30 Bowman, Dylan. “Alba Suing US Firm for Over \$1Bn.” *Arabian Business*. 2 Mar. 2008. www.arabianbusiness.com/alba-suing-us-firm-for-over-1bn-151370.html; Broomhall, Elizabeth. “Bahrain Royal Accused in \$6m UK Corruption Case.” *Arabian Business*. 31 Oct. 2011. www.arabianbusiness.com/bahrain-royal-accused-in-6m-uk-corruption-case-427874.html.
- 31 “Former Alba Employees Pardoned.” *Gulf Daily News*. 19 Jan. 2012. www.gulf-daily-news.com/NewsDetails.aspx?storyid=521929.
- 32 al-Khashaly, Abbas. “Transparency International: the Arab Revolutions Increased Awareness of Corruption and the Combating It Takes Time.” *Deutsche Welle*. 1 Dec. 2011. www.dw.de/dw/article/9799/0,,15571320,00.html. (Available only in Arabic).
- 33 “Perceptions of Corruption 2011.” *Transparency International*. www.cpi.transparency.org/cpi2011/results/.
- 34 “Study on the Challenges of Fraud to Land Administration Institutions.” *UN Economic Council for Europe (UNECE)*. 2011. www.unece.org/index.php?id=24802.
- 35 “Global Corruption Barometer, 2009.” *Transparency International*. 7. Figure 3. www.transparency.org/content/download/43788/701097.
- 36 UNECE, op. cit.

FAMINE IN AFRICA: A PERSISTENT OUTRAGE

Huguette Akplogan-Dossa¹

Since the second half of 2011 drought has ravaged the Horn of Africa. This last crisis, in a long line of food crises, has wrought its share of havoc: destruction of agricultural lands, death of livestock, mass displacement of the population, loss of human life. Since the start of 2012, the crisis has spread to the Sahel region. The chronic famines still befalling Africa and other parts of the world bring shame to our globalized world, which has grown ever richer and more capable.

In these regions, which are highly sensitive to food insecurity, a slight fall in agricultural output, a rise in political instability, or variations within international markets can have a significant impact on the lives of millions.

Although the latest early warning systems put in place by various international organizations gave adequate warning, the leaders of these countries were incapable of coping. They had to seek international assistance, which also failed in its obligations. Though drought caused the crisis, human error made it a life and death situation for so many people.

THE SITUATION IN 2012

In the eastern part of the Horn of Africa, the most dire cases are Ethiopia, Somalia, the Sudans, and Kenya. In these countries, agricultural production falls far short of the population's needs. In Kenya, only 20% of the land is arable while the population is expanding by one million each year.² Moreover, the hundreds of thousands of refugees arriving from neighboring Somalia place additional strain on resources: "[e]ighty kilometers from Kenya's border with Somalia, the Dadaab Refugee Complex—already the world's largest refugee camp—has seen on average 1,500 exhausted and starving men, women and children arrive each day. Fleeing from famine that is now gripping a large portion of southern Somalia largely inaccessible to aid workers, thousands of refugees have walked days—or even weeks—to reach help. The United Nations estimates that over 12.4 million people are in urgent need of humanitarian aid, including food, water and medical care, across the drought-stricken eastern Horn of Africa."³ Meanwhile, the conflict between North and South Sudan and the consequent mass displacement of people have significantly aggravated the situation. In South Sudan the number of victims of food insecurity has risen from 3.3 million in 2011 to 4.7 million in 2012.⁴ In this context of violence, humanitarian organizations have found it hard to reach those in need and lives have been lost.⁵

In the beginning of 2012, several Sahelian countries announced a grain shortage for the year.⁶ Niger, Burkina Faso, and Mali are the most at-risk countries. The emergency programs put in place by the authorities in Niger and Mali (irrigation subsidies, grain distribution, etc.) have not yet filled the gap. In Burkina Faso water holes and grazing lands are drying up, which has led to migration of people within the country and into neighboring countries. All these factors added to the political instability in Niger and Mali have caused a serious crisis. Survival strategies, such as the sale of livestock to procure grain and eating only one meal a day, are frequently observed.⁷

In crisis areas, people are forced to depend on international food aid, but food aid distributed by humanitarian organizations or through governmental emergency measures is rarely adequate. Emergency rations are often composed of staple foods (powdered milk, oil, grain—mainly wheat—and industrial high protein paste) and do not satisfy the specific needs of various groups, such as newborns, children, pregnant women, lactating mothers, and others. To survive, millions of people are forced to adopt an exhausting rhythm of migration and adaptation. Unable to produce their own food, aid beneficiaries lose their dietary habits. This dietary imbalance can lead to malnourishment, particularly among those who are most vulnerable: "[i]n Chad, Burkina Faso, Mali, Mauritania, Niger, and northern Senegal the level of malnutrition varies between 10% and 15%, and in some regions even

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The author would like to thank Bernhard Walter and Peter Prove for their valuable help in the review of the article. The content of the article is the sole responsibility of the author. This article was originally written in French.

2 "Kenya Faces Chronic Food Shortages." *Feed the Future*, July 2012. www.feedthefuture.gov/country/kenya.

3 Shah, Rajiv. "On the Ground in the Horn of Africa." *USAID*, 9 Aug. 2011. <http://blog.usaid.gov/2011/08/on-the-ground-in-the-horn-of-africa>.

4 Ahmed, Shukri, and Stanlake Samkange. "FAO/WFP Crop and Food Security Assessment Mission to South Sudan." *FAO, and WFP*, 8 Feb. 2012. <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp244901.pdf>.

5 "Race Against Time to Reach the Hungry in South Sudan." *World Food Program*, 22 Feb. 2012. www.wfp.org/stories/race-time-hungry-south-sudan.

6 In Niger, the grain deficit amounts to about 18% of the national needs. Consequently, 35% of households suffer from food insecurity, of which 8.5% suffer from "severe" food insecurity. Moreover, 23.1% of the population is deemed "at risk" and can fall into food insecurity if nothing is done to help them. "Situation Alimentaire au Burkina – Mali – Niger." *Afrique Verte International*, Feb. 2012; and www.cilss.bf.

7 Ibid.

- 8 Fomba, Harouna. "Crise alimentaire au Sahel: Oxfam tire la sonnette d'alarme." *Afrik*, 12 Mar. 2012. www.afrik.com/article25051.html.
- 9 Ibid.
- 10 "Sahel Food Crisis 2012: State of Financing." OCHA, 10 June 2012. <http://ochaonline.un.org/UrgencesEmergencies/Sahel2012/FundingSahel2012/tabid/7801/language/fr-FR/Default.aspx>.
- 11 "Operational Priorities." *World Food Program*, May 2012. <http://documents.wfp.org/stellent/groups/public/documents/communications/wfp248217.pdf>.
- 12 The latest progress concerning the detailed program for African agricultural development (PDDAA): 15 West African countries have effectively signed, which brings the total number of signatory countries to 24. Eighteen countries have investment plans. Most of the States affected by the food crisis have signed the Program, which forces them to attribute 10% of their yearly budget to agricultural investment. Ouedraogo, Roukiattou. "7ème Réunion du PDDAA: les parties prenantes réfléchissent sur leur responsabilité mutuelle." *Nepad*. www.nepad.org/fr/foodsecurity.
- 13 "Agriculture for Development; Report on Development throughout the World." *World Bank*, 2008. Cited in: <http://partners.cta.int/INADES%20Formation%20SG/Documents/Contexte%20de%20l%27agriculture%20familiale%20en%20Arique.doc>.
- 14 According to a study by CNOP and Via Campesina, in 2011 the Ethiopian government leased or sold 3.6 million hectares to foreign companies in India, Saudi Arabia, Europe, and Israel while at the same time humanitarian organizations were searching for funds to offset the growing famine caused by rural populations' loss of means of subsistence. Kenya, Tanzania, Niger, and other east African and Sahel nations are not immune to this land-grabbing phenomenon which leads rural populations to poverty and exile. "Stop Land Grabbing; Notes from the Workshop on Land Grabbing." *CNOP Via Campesina*, and *CJ*, 8–9 Feb. 2012.
- 15 For more information, see data at www.fao.org/news/story/en/item/50519/icode.
- 16 "Farming Money: How European Banks and Private Finance Profit from Food Speculation and Land Grabs." *Friends of the Earth Europe*, 12 Jan. 2012. www.foeurope.org/farming-money-jan2012. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.
- 17 "A Dangerous Delay: the Cost of the Late Response to Early Warnings in the 2011 Drought in the Horn of Africa." *Oxfam*, and *Save the Children*, 18 Jan. 2012. www.oxfam.org/en/policy/dangerous-delay. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

exceeds the emergency threshold of 15%. Over one million children are at grave risk of malnutrition."⁸

By losing control of their food systems, these States become dependent on the international community and humanitarian organizations for the food security and right to adequate food of their people.

This notwithstanding, the aid is essential to the survival of millions of people. It is estimated that \$700 million in aid are necessary in the Horn of Africa. The amount of aid provided, however, falls far short.⁹ In the Sahel region, only 43% of the \$1.5 billion needed to avert the worse were provided.¹⁰ Indeed, as with the World Food Program, funding for emergency programs has been drastically cut in the wake of the financial crisis and is no longer sufficient.¹¹ The situation, which remained critical in some of these countries at the beginning of June 2012, could improve generally following this year's rainfall. However, preventive actions are needed in the months to come.

THE MECHANISM OF FAMINE

Today, thanks to predictions given by early warning systems, droughts, even when aggravated by climate change in Africa, are no longer unavoidable.

The current crises were avoidable, and thousands of lives could have been spared. The blame rests first and foremost with the affected States, which do not invest enough in long-term preventative measures to offset seasonal and long-term climatic fluctuations. Even though agriculture is deemed of the highest priority by many of the region's governments,¹² the reality in the field does not reflect this. Rather, it is apparent that the authorities lack any vision and do nothing to develop sustainable small-scale production, which constitutes about 80% of agricultural production on the continent and employs 60% of the active population in Sub-Saharan Africa.¹³

The vulnerability of these countries is not unavoidable given their agricultural potential and existing resources. In spite of this, some States such as Ethiopia make poor agricultural development choices by giving over large tracts of arable land to international companies which produce mainly for export.¹⁴

However, it is important to note that against speculation on raw materials in local and international markets, the influence of financial institutions on national budgets, bad agricultural and rural development strategies inherited from previous governments, political instability, and the impact of climate change on crops and livestock the governments of these countries have little they can do.

The international community's responsibilities should not be neglected. Since the critical rise in food prices in 2008, the price of staple foods has remained very high.¹⁵ The international financial crisis has also led to a spate of speculation on raw materials.¹⁶ The high prices drain the budgets of countries suffering from food insecurity because these countries must import a majority of their food. Thus the chronic vulnerability of this region is reinforced.

Additionally, the lack of response in most of the affected areas to the warning signs (drought, deteriorating political climate, alarms raised by early warning systems) and to the predicted needs once the crisis had begun is scandalous and should be denounced and condemned. A report by Save the Children and Oxfam on the international community's slow response to the food crisis in the Horn of Africa emphasized that the early warning systems functioned properly by giving precise and timely forecasts of the imminent crisis.¹⁷ But national and international leaderships felt they lacked absolute certainty and decided not to react. They preferred to risk lives and superfluous costs rather than act and risk their finances and reputations. In addition, the erroneous and artificial distinction between emergency humanitarian relief and long-term development slowed the response of humanitarian actors. Especially with regards to areas of chronic vulnerability like the Horn of Africa, the

report suggests that analysis and management of risks should be integrated into long-term programs from the start. In other words, droughts should be considered inherent to the environment and not come as unexpected blows.

Under international law, concerned States must act, “to the maximum of [their] available resources” to realize the Economic Social and Cultural Rights of their population, but other States are also obligated to provide, “international assistance and co-operation, especially economic and technical.”¹⁸ The international community’s emergency actions should focus on funding small-scale producers and encouraging off-season cultivation.

CONCLUSION

The repeated and ongoing food crises in Africa limit the capacity for self-determination of the region’s populations and prevent them from operating their own choices regarding their nutritional needs. This pattern illustrates the immoral priorities and self-destructive mechanisms in today’s world. The absence of regulation aimed at speculation on raw materials leads to deaths. The quest for profit at all cost must be prevented.

All parties must reflect on their actions and react so these tragedies no longer occur. The region’s States must regain control over their food systems and enforce agricultural and economic policies which emphasize the needs of their populations. It is their responsibility to find solutions adapted to their nations. It is also the responsibility of all other States to assist them. Strong support for small-scale farming and the creation of reserves would have a noticeable impact on local production of food. It would also soften the effects of price fluctuations on local markets and thus prevent the worsening of future crises.¹⁹

Raising the awareness of actors at all levels of the climate induced challenges in Africa must be a priority. United Nations organizations must revise their investment and development programs in this part of the world, and they must demand that members respect their human rights obligations. It is also essential to give humanitarian workers the means of fulfilling the needs of suffering populations. As for civil society, its role is to inform its peers on the importance of the fight for food security and the realization of the right to adequate food.

At present, thousands of people are dying in Dadaab and elsewhere. The world community has the responsibility to come together to save them.

18 Article 2.1. UN General Assembly.
“International Covenant on Economic, Social
and Cultural Rights” (2200A XXI).
16 Dec. 1966. [www2.ohchr.org/english/law/
cescr.htm](http://www2.ohchr.org/english/law/cescr.htm).

19 Chad and Burkina Faso were able to lessen
the effects of the crisis by quickly redirecting
investments towards off-season cultivation.

10

FUELED BY HUNGER

Pascal Erard¹

From Nestle to the WTO and from Unilever to the World Bank² an increasing number of voices are joining civil society in criticizing agrofuels,³ which were once hailed as a miracle cure for climate change, greenhouse gas emissions, and dwindling fossil fuel reserves. In reality, the political incentives promoting agrofuels harm the environment and jeopardize the human right to food.

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2 "Joint Statement on Agrofuels by Food and Beverage Companies; G20 Governments Must Address Agrofuels as a Cause of Food Crisis." Nestle, Olayan, PepsiCo, and Unilever. 3 Nov. 2011. [www.nestle.com/Common/NestleDocuments/Documents/Media/Statements/G20_letter_nestle_biofuels%20\(2\).pdf](http://www.nestle.com/Common/NestleDocuments/Documents/Media/Statements/G20_letter_nestle_biofuels%20(2).pdf); and "Price Volatility in Food and Agricultural Markets: Policy Responses." FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTF. 2 June 2011. www.unctad.org/en/docs/2011_G20_FoodPriceVolatility_en.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

3 In October 2011, the Committee on World Food Security (CFS) recommended that the relevant parties "review biofuels policies —where applicable and if necessary— according to balanced science-based assessments of the opportunities and challenges they may present for food security so that biofuels can be produced where it is socially, economically and environmentally feasible to do so. In line with this, [the CFS mandates] the HLPE, with full consideration of resources and other CFS priorities, to conduct a science-based comparative literature analysis, taking into consideration the work produced by the FAO and Global Bioenergy Partnership (GBEP), of the positive and negative effects of biofuels on food security." FAO Council, 143rd Session. "Report of the 37th Session of the Committee on World Food Security (Rome, 17–22 October 2011) (CL 143/2)." Rome, Nov. 2011. §50-i. www.fao.org/docrep/meeting/024/mc497E.pdf.

4 Directive 2009/28/EC. European Parliament and the Council. "On Promoting the Use of Energy from Renewable Sources and Amending and Subsequently Repealing Directives 2001/77/EC and 2003/50/EC Text with EEA Relevance." 23 Apr. 2009. www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:01:FR:HTML.

WHAT ARE AGROFUELS

First generation agrofuels are made from raw agricultural products: biodiesel is produced from oleaginous plants (rapeseed, jatropha, palm, soy, sunflower, etc.) and ethanol is produced from grains (wheat, corn, etc.), sugar beets, or sugarcane. Biodiesel is mixed with diesel and ethanol with gasoline.

Second generation agrofuels (made from plant by-products such as wheat or corn stalks, or from plants like specially cultivated poplar for that purpose), as well as third generation agrofuels (e.g. algae based) are still under development. Their commercial viability has not yet been ascertained, and some may pose the same social or environmental dangers as first generation agrofuels.

Industrial agrofuels refer to agrofuels which are produced through intensive, large-scale monoculture by corporations. This contrasts with locally produced, sustainable agrofuels which are produced on a small scale in farming communities. Such production can create new sources of income for local populations and increase their access to energy sources. The present article only discusses industrial agrofuels.

AGROFUELS: LIQUID DESPAIR

Compared to what was promised, these new types of fuel are very disappointing. The European policy of support for agrofuels was launched in 2003 and reinforced in 2009 with the adoption of the European Renewable Energy Directive (RED).⁴ Its objectives are laudable: by 2020, 20% of the energy consumed in Europe should come from renewable sources. In the transport sector 10% should come from renewable sources. European countries have elaborated national plans which rely primarily on agrofuels to achieve these objectives.

In 2008, agrofuels represented 3.3% of the fuel used in the transport sector.⁵ To triple this share by 2020, the European Union (EU) will not only have to implement costly subsidies, it will also have to rely massively on imports. An analysis by the Institute for European Environmental Policy (IEEP) of the energy strategies adopted by European member States shows that by 2020 72% of agrofuel used will be biodiesel and 28% will be ethanol.⁶ The study concludes that 41% and 50% respectively will need to come from imports.

Consequently, European policy contributes to the explosion of agrofuel production around the world. The International Energy Agency (IEA) indicates that between 2000 and 2010 production increased 625%, from 16 to 100 billion liters.⁷ Ever more land is needed to feed this expansion. According to the United Nations Environmental Programs (UNEP), the amount of land devoted to agrofuel production nearly tripled between 2004 and 2008, from 13.8 to 35.7 million hectares.⁸ If this trend continues, the IEA estimates that by 2040 one hundred million hectares will be needed to sustain the objectives set by European member countries.⁹

In a joint study published by members of research institutes and civil society¹⁰ agrofuels are named as one of the main reasons for the proliferation of purchases of very large tracts of land, sometimes called "land grabbing." Between 2001 and 2011, this phenomenon increased dramatically and reportedly touched 203 million hectares (equivalent to four times the area of France). Africa has been the continent most affected by land-grabbing. The study reviewed transactions amounting to 71 million hectares and found that agrofuel

- 5 Munting, Monique. Impact de l'expansion des cultures des agrocarburants dans les pays en développement. Brussels: CETRI, 2010.12. This study was done for the Belgium administration (DG Environment).
- 6 Bowyer, Catherine. Anticipated Indirect Land Use Change Associated with Expanded Use of Agrofuels and Bioliqids in the EU: an Analysis of the National Renewable Energy Action Plans. London: IEEP, 2010. [www.ieep.eu/assets/731/Anticipated-Indirect-Land-Use-Change-Associated-with-Expanded-Use-of-Biofuels-and-Bioliqids-in-the-EU - An Analysis of the National Renewable Energy Action Plans.pdf](http://www.ieep.eu/assets/731/Anticipated-Indirect-Land-Use-Change-Associated-with-Expanded-Use-of-Biofuels-and-Bioliqids-in-the-EU-An-Analysis-of-the-National-Renewable-Energy-Action-Plans.pdf).
- 7 International Energy Agency. Technology Roadmap: Agrofuels for Transport. Paris: IEA, and OECD, 2011. 11. www.iea.org/publications/freepublications/publication/Biofuels-Roadmap.pdf.
- 8 Bringezu, Stefan, et al. Towards Sustainable Production and Use of Resources: Assessing Agrofuels. Nairobi: UNEP, 2009. 63. www.unep.org/pdf/biofuels/Assessing-Biofuels-Full-Report.pdf.
- 9 International Energy Agency, op. cit. 25–26.
- 10 Anseeuw, Ward, et al. Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project. Rome: ILC, 2012. 19, 24–25. www.alimentterre.org/ressource/land-rights-and-the-rush-for-land. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources. For more information, see: www.landportal.info/landmatrix.
- 11 “The State of Food Insecurity in the World, Addressing Food Insecurity in Protracted Crises.” FAO, 2010. 11. www.fao.org/docrep/013/i1683e/i1683e00.htm.
- 12 “(Bio)Fueling Injustice: Europe’s Responsibility to Counter Climate Change without Provoking Land Grabbing and Compounding Food Insecurity in Africa.” EuropAfrica, 2011. www.europafrika.info/fr/publications/forum-alternativo-mondiale-dell-acqua. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.
- 13 UN Millennium Project. Halving Hunger: It Can Be Done; Summary of the Report by Expert Group on Hunger. New York: The Earth Institute at Columbia University, 2005. 4–6. www.unmillenniumproject.org/documents/HTF-SumVers_FINAL.pdf.
- 14 High Level Panel of Experts on Food Security and Nutrition (HLPE). HLPE Price Volatility and Food Security Report 2011. Rome: CFS, 2011. www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE-price-volatility-and-food-security-report-july-2011.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources; and FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTF, op. cit.
- 15 United Nations Economic Commission for Africa of the Social and Economic Council, 7th Session. “The State of Food Security in Africa” (E/ECA/CFSSD/7/2). Addis Ababa, Oct. 2011.3. <http://new.uneca.org/Portals/rio20/documents/cfssd7/CFSSD-7-0024-ORE-The-Status-of-Food-Security-in-Africa.pdf>.
- 16 This is an updated version of Monique Munting’s Table. Munting, op. cit. 56. See also FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTF, op. cit.

production was the primary purpose; it is the reason behind 40% of transactions globally and 66% of transactions in Africa. Meanwhile, Africa is one of the world regions most affected by food insecurity. One in three people suffer from hunger.¹¹ The EuropAfrica report,¹² which analyses the situation in terms of human rights and the extraterritorial obligations of States, concludes that land grabbing for the purpose of producing agrofuel violates the human rights of people in Africa.

As the report highlights, the purchase of large tracts of land primarily profits national or international corporations which practice large-scale monoculture production. Rural communities are often forced off their lands and denied access to such vital resources as water. This is done in spite of the fact that 80% of the billion people who suffer from hunger in the world are small-scale farmers and their families for whom their land is the main source of food and income.¹³ Moreover, instead of feeding the people of a country, land-grabbing aims mainly to produce for export even in countries where there is insufficient food. Land-grabbing therefore constitutes a violation of the right to food of the affected populations and worsens food insecurity worldwide.

Additionally, both agrofuel production and the consequent misappropriation and grabbing of land contribute to the rise and volatility in food prices.¹⁴ In Africa, for example, poor families spend 50 to 75% of their income on food.¹⁵ Any rise in the price of food therefore endangers the right to food of vulnerable people and swells the ranks of the starving.

Although, as the table below¹⁶ clearly shows, the role of agrofuels in the rise of food prices is widely demonstrated and accepted, the governments which encourage their production and use deny the evidence.

Institution	Agrofuels contribute to the rise in food prices	Impact of this contribution
OECD	YES	“biofuel support policies have a significant impact on global commodity prices” ¹⁷
IMF	YES	70% responsible for the rise in price of corn, 40% responsible for the rise in price of soy ¹⁸
IFPRI	YES	30% responsible for the rise in price of grain ¹⁹
Study coordinated by the FAO and the OECD for the G20	YES	“a significant factor” for the rise in food prices ²⁰
Government of the United States of America	“negligible contribution” ²¹	2–3%
European Commission	“negligible contribution” ²²	< 4%

As a result of this situation, the June 2011 report prepared for the G20²³ and coordinated by the FAO and the OECD recommends that all subsidies favoring agrofuels as well as the restrictive production and consumption objectives simply be dropped.

Besides, it is worth asking whether agrofuels are even good for the planet. The answer is no. Although agrofuel development policies were put in place to reduce greenhouse gas emissions in the transport sector, current research shows that their use would actually increase emissions.²⁴ Indeed, if by 2020 all national agrofuel development objectives have been realized, and related changes in land usage are taken into account,²⁵ the IEEP estimates that emissions will be 80 to 167% higher than from fossil fuels alone.²⁶ Numerous

other scientific studies confirm this problem including those mandated by the European Commission. One of the most recent studies mandated by the Directorate General for Trade of the European Commission concludes that “emissions related to land use changes driven by biofuel policies are a serious concern.”²⁷ Further, in terms of environmental protection, “agrofuel does not represent the best way to respect our climate obligations.”²⁸ At its 2 May 2012 meeting, the College of European Commissioners, which is divided on the issue, asked the Directorate General for Energy and Climate to prepare recommendations to remedy the problem.²⁹

RESPECTING THE RIGHT TO FOOD: AN OBLIGATION FOR THE EU

To this end, the French Committee for International Solidarity (CFSI) makes the following ten recommendations to the EU.

Regarding the Renewable Energy Directive (RED):

1. Cancel the 10% target for renewable energy incorporation in transport.
2. Eliminate all support for first-generation industrial biofuels, whether subsidies or tax exemptions.
3. Invest in an ambitious energy saving and energy efficiency improvement policy.
4. Act in all relevant international bodies to bring an end to all production and consumption targets for first-generation industrial biofuels, as well as all forms of support for them.
5. Strengthen research into second- and third-generation biofuels and promote those that have true positive impact on the environment, the development of the poorest populations and the realization of human rights.

Regarding the respect of the right to food and the EU Policy Coherence for Development (PCD):

6. Make PCD a way for the EU to better ensure that all its policies respect human rights and, in particular, its extra-territorial obligations to populations in other countries.
7. Systematically assess the impacts on human rights and development, before the adoption of and as part of the monitoring of implementation of policies that may affect the interests of developing countries.
8. Set up a complaint system for those who believe their rights have been violated by an EU policy.
9. Act in all relevant international bodies to promote PCD and so that States better fulfill their extra-territorial obligations in regard to human rights.
10. Involve civil society and, in particular, farmers organizations in developing countries in the main stages of this process.

The EU and its member States have the legal obligation to respect, protect, and fulfill human rights not only within their borders but also beyond them. They must also align their policies with their development objectives in the Global South. The RED, however, largely ignores these obligations. The Commission is only required to address a biennial report to the Parliament and European Council on the impact of the directive, namely on food prices and access to land. The first of these reports is expected by the end of 2012. This should be the perfect time to ask the EU to review its mistakes.

17 “Economic Assessment of Agrofuels Support Policies.” OECD, 2008.

18 Cited by Mitchell, Don. *A Note on Rising Food Prices; Development Prospect Group Working Paper*. Washington D.C.: World Bank, 2008.

19 Rosegrant, Mark W. *Biofuels and Grain Prices Impacts and Policy Responses*. Washington D.C.: IFPRI, 2008.

20 FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTF, op. cit. 10.

21 Public statement. Cited by Munting, op. cit.

22 Ibid. However, there is internal dissent. Agrofuels could have, “a high cost: a human cost paid by the poorest consumers of the world, who may face higher foods costs or shortages,” according to a European Commission document cited by Reuters, 5 Mar. 2010.

23 FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTF, op. cit. 27.

24 Institute for European Environmental Policy, op. cit.

25 This transition leads directly or indirectly to deforestation.

26 Institute for European Environmental Policy, op. cit.

27 Laborde, David. *Assessing the Land Use Change Consequences of European Biofuel Policies; Final Report*. Washington D.C.: IFPRI, 2011. 85. www.trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148289.pdf.

28 Ibid. Quoted in “Agrocarburants et le CASI.” *Transport et Environnement*, May 2012. www.transportenvironment.org/node/3011.

29 “Toujours pas de décision sur les agrocarburants.” *Euractiv*, 4 May 2012. www.euractiv.fr/decisions-biocarburants-article.

CUTBACKS ON PUBLIC SPENDING POLICIES AND SOCIAL RIGHTS VIOLATIONS: THE SPANISH CASE

Laia Fargas Fursa¹

In May 2012, Spain was examined by the United Nation's Committee on Economic, Social, and Cultural Rights (CESCR) to assess their fifth periodic review, in accordance to the obligations assumed within the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by Spain in 1977.

Close to twenty civil society organizations (CSOs) issued an alternative report so as to contrast the information provided by the Spanish authorities.² This report indicated the most important breaches of economic, social, and cultural rights that have resulted from the governments public expenditure cutbacks since the current economic recession began.

After hearing the Spanish State's representatives and meeting with CSOs in Geneva, the CESCR issued their concluding observations on 21 May 2012, in which many strong recommendations were made giving voice principally to the claims submitted by the CSOs. Among other issues, the CESCR declared being greatly worried by the fact that the measures that have been adopted by the Spanish government have proven to be highly insufficient when it comes to reducing the negative effects on the enjoyment of economic, social, and cultural rights due to the economic crises, especially for the most vulnerable groups.³

Moreover, the need of a human rights approach when defining strategies for economic recovery was also highlighted. An example in this case would be to base the overcoming of the recession on policies that respect the principles of progressive realization and non-retrogression to allow an effective fulfillment of the ESCR. Furthermore, the Committee warned of the importance of adopting a national program to fight poverty, as well as complying with Spain's international commitment of not reducing the 0.7% of its gross national product destined to the Official Development Assistance.

The following sections summarize the issues which the CESCR considers to be of utmost concern.

THE INCREASE IN LABOR INSECURITY AS A RESULT OF LABOR MARKET COUNTER-REFORMS

The successive labor market reforms that have been implemented over the last few years have not given the expected effects. Such a statement can be proved by the fact that there has been an alarming increase in the unemployment rate, with almost 5.3 million unemployed and one of the highest rates among developed countries (22.85%).⁴ Unemployment severely affects youth, immigrants, gypsy peoples, and the disabled. In this regard, the Committee specifically asks Spain to take measures that will protect worker's rights in order to avoid regression. Another recommendation is in reference to the freezing of the minimum inter-professional wage, as it does not guarantee a dignified quality of life, and it should be updated together with the real cost of life for a worker.

DISCRIMINATION AGAINST THE MOST EXCLUDED SECTORS IN THE ACCESS TO THE RIGHT TO HEALTH

Spain's rate of public spending on health in relation to its GDP is one of the lowest compared to other countries of the EU.⁵ Aside from that, there also exist inequalities among the several autonomous communities with respect to health services and in the way in which budget cutbacks have been carried out for the last two years.

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2 "Joint Submission to the Committee on Economic, Social and Cultural Rights on the Occasion of the Review. Spain's 5th Periodic Report at the 48th Session. Executive Summary." Civil Society Organizations. May 2012. www.cesr.org/downloads/Parallel%20Report%20CESCR%2048%20session%20Spain%20March%202012.pdf. This document is available on the Watch website: www.rfn-watch.org/en/home/watch-2012/main-sources.

3 Committee on Economic, Social and Cultural Rights, 48th Session. "Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant; Concluding Observations of the Committee on Economic, Social and Cultural Rights" (E/C.12/ESP/CO/5), 30 Apr.–18 May 2012. This document is available on the Watch website: www.rfn-watch.org/en/home/watch-2012/main-sources.

4 Encuesta de Poblacion Activa. Insituto Nacional de Estadistica. www.ine.es/prensa/epa_tabla.htm.

5 OCDE. "Health at Glance: Europe 2010." OECD Publications, 2010. 106. www.ec.europa.eu/health/reports/docs/health_glance_en.pdf.

- 6 Amnesty International has launched the campaign "Say No to Health Reforms That Can Cost Lives!" (¡No a las reformas sanitarias que pueden costar vidas!) for which they collect signatures, together with the organizations Red Acoge and Médicos del Mundo, to denounce the withdrawal of health coverage to migrants in irregular legal conditions, as it can endanger the lives of thousands of people; and they demand that the autonomous communities do not adopt retrogressive measures in the access to health, keeping health coverage available for all people.
- 7 The conditions in these centers are so severe that in 2012 there even have been two deaths; a man and a woman have died in centers in Madrid and Barcelona respectively. Defensor del Pueblo. ¿MENORES O ADULTOS? Procedimientos para la determinación de la edad. Madrid: Cyan, Proyectos Editoriales, 2011.
- 8 "Datos sobre el efecto de la crisis en órganos judiciales." Poder Judicial España. 29 Mar. 2012. www.poderjudicial.es/cjpi/es/Temas/Estadistica_Judicial/Informes_estadisticos/Informes_periodicos/ci.Datos_sobre_el_efecto_de_la_crisis_en_los_organos_judiciales_Cuarto_trimestre_de_2011_formato3.
- 9 For more information visit: www.quenotehipotequenlavidia.org.
- 10 Committee on Economic, Social and Cultural Rights, 16th Session. "General Comment 9: the Right to Adequate Housing (Art 11.1). Forced Evictions." 20 May 1997. www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50.
- 11 "Una política agraria común para el 1%." Veterinarios Sin Fronteras. May 2012. www.veterinariossinfronteras.org/mm/file/Una%20%20PAC%20%20para%20el%201%25%282%29.pdf; and "Beneficiarios e importes de las ayudas concedidas por el FEAGA." Ministerio de Agricultura, Alimentación y Medio Ambiente. www.fega.es/PwfGcp/es/financiacion_de_la_pac/financiacion_de_la_pac_en_espana_garantia_agraria_y_desarrollo_rural/publicidad_de_las_ayudas_concedidas_240.jsp.

However, with the goal of reducing health expenditure, the last health reform instituted by Decree Law 16/2012 entails a clear retrogression in the access to health services (with measures such as reduction in personnel and of salaries, imposing fees to users, restricting the hours of service, and prescription co-payment), especially for immigrants in an irregular condition and also for people who have not contributed to the system; as well as to the universalization of the Spanish health system.

The CESCR expressed the State's obligation of guaranteeing access to health services for all people living in its territory, whatever legal status they may have.⁶ There has been added emphasis to the need for "giving full effect to the new regulations to improve living conditions in the Placement Centers for Foreigners (Centros de Internamiento de Extranjeros)," ⁷ reproducing several CSO denunciations for overcrowding and poor sanitary conditions that these people must endure when confined in these centers.

THE ABSENCE OF A SOCIAL HOUSING POLICY AND FORCED EVICTIONS: TWO SIDES OF THE SAME COIN

Financial speculation brought about by the Spanish real-estate market originated a speculative bubble since the 1990's; the bursting of the bubble is one of the main causes of the current economic recession. The consequences of speculation were an exponential increase of housing prices (they doubled in one decade) which led to an over-indebtedness of the average family through high-priced and long term mortgages. This factor can also be explained by the fact that Spain has never developed effective access to social and affordable housing plans, thus having one of the lowest stocks of social rent housing in Europe.

To this, it must be added that the lack of access to loan regulation has brought about 349.438 foreclosures⁸ since 2007 due to the current Spanish mortgage law, according to the Judicial Power data. Thousands of families in Spain are losing their homes and are left in debt for life.

The constant refusal to implement a mandatory payment in kind on the part of the financial entities has brought CSOs to promote a popular legislative initiative⁹ (Iniciativa Legislativa Popular) to promote a normative change in that direction. This demand has been taken into consideration in the CESCR recommendations, as well as the need to increase the supply of social housing, and to implement a norm that guarantees full respect of human rights in cases of evictions.¹⁰

THE RIGHT TO FOOD AND FOOD SOVEREIGNTY

The right to adequate food was not covered explicitly by the CSOs alternative report; consequently there are no recommendations from the CESCR on article 11 of the ICESCR either.

Spain's food system has slowly concentrated production, distribution, and trade of food products; as it has also happened on a global scale. This new system involves severe damage to peasant family production, and to fisherfolk and farmers in all parts of the country.

In the scope of the EU, the inequality of the distribution of aid through the Common Agricultural Policy (CAP) has favored the subsistence of medium and large agricultural businesses. Large multinationals like Nestlé, Campofrío, or large supermarket chains like Lidl or Carrefour receive European aid. "Within the Spanish State only 16% of the CAP beneficiaries receive 75% of all the aid, which means that the other 84% of the beneficiaries have to share out the remaining 25% of the money."¹¹

In Spain, the abandon of the agricultural sector has been constant. In 1976, the active agricultural population made up some 25% of the total, a decade later it was 18%, and then in 2002 it only represented 7%; in the last few years it has only made up about 4%.¹² In Catalonia, alone, between 1962 and 1999 over 60% of the then existing farms have disappeared.¹³

Within the context of the recent economic crisis, the Red Cross had for the first time to call for food aid for Spain during the first half of 2012, when faced with the demand of people in a state of vulnerability. In the past year, both the Red Cross and Caritas have declared an increase of 20% over the previous year of people requiring food aid.¹⁴

The unsustainable food system has caused the growth of peasant movements, consumer cooperatives, and development and human rights associations which are working for food sovereignty in Spain. The fight to prohibit the planting of transgenic crops, the support for ecological agriculture (not only in producing but also in consuming), the promotion of local consumption, and the defense of lands threatened by speculation (as in the case of Eurovegas¹⁵ or the reform of the old port in Barcelona,¹⁶ among others), are some of the principal lines being followed to show that a more just alternative model exist that guarantees the right to adequate food for the Spanish people.

CONCLUSION

The Committee's recommendations have raised the alert regarding some of the policies that involve cutting public expenditure. At the same time, they have urged the Spanish State to adopt legislative measures to guarantee economic, social and cultural rights on a equivalent level to that of political and civil rights. Also, it was recommended that the State guarantee the essential content, however minimal, of all of the rights enshrined in the ICESCR when adopting austerity measures. Nonetheless, it should be pointed out that there was no express mention of the right to adequate food in these recommendations, nor in the alternative report, as has already been mentioned.

Finally, going back to the data from 2010, we affirm that in regard to achieving effective progress in the realization of the ESCR, the situation has deteriorated even more. Some data illustrating this statement could be the increase in the number of unemployed from 19.1% (March 2010) to 22.85% (December 2011)¹⁷ or the increase in people receiving food aid to over 2 million (5%) compared to 1.5 million in 2008.¹⁸

The recommendations that can be found in the article about Spain in the *Right to Food and Nutrition Watch 2010* which were made based on data from 2010 continue to be pertinent and urgent.¹⁹ As for the right to adequate food, we must continue to insist upon the necessity of tackling structural reforms on the part of the Spanish State in order to transform the present industrial food system, and to create a new model based on the respect, the protection, and the fulfillment of all human rights. To this end, we will continue to call for market regulation and for a social model of sustainable agriculture by means of agro-ecological production and the development of local markets to promote local consumption.

12 González, Enrique "La Unión Europea y la crisis alimentaria. Impactos de la política agraria común en el derecho a una alimentación adecuada." *Observatori DESC*. 2011. 69.

13 Badal, Marc, et al. "Arran de terra; indicadors participatius de Sobirania Alimentaria a Catalunya." *IEEEP-Entrepobles*, 2010. 60. www.ieeep.net/sobirania-alimentaria/documents/InformeFinal.pdf.

14 Hidalgo, Susana. "Sin dinero para comer cada día." *Público*. 16 June 2011. www.publico.es/espana/582200/sin-dinero-para-comer-cada-dia; and "Cruz Roja pide ayuda ... para España." *Prode*. 28 June 2012. www.prode.es/seccion/Noticias/pub/1949/v/-1.

15 For more information visit: www.aturemeurovegas.wordpress.com.

16 For more information visit: www.defenseportvell.wordpress.com.

17 Instituto Nacional de Estadística, op. cit.

18 See fn. 15.

19 *Right to Food and Nutrition Watch: Land Grabbing and Nutrition, Challenges for Global Governance*. Heidelberg, Stuttgart, and Utrecht: Brot für die Welt, FIAN International and ICCO, 2010. 79–82.

INEQUALITY AND DEPENDENCE IN POST NAFTA RURAL MEXICO

Marcos Arana Cedeño¹

Mexico is a country of great geographical and cultural diversity, but it also counts among those countries with greater social inequality. To a large extent, these inequalities prevail, and in some cases are deepened, by prolonged and recurrent economic crises.

For several decades, rural Mexico has been regarded as a static area of widespread poverty, yet the livelihoods of the people who live there have changed dramatically over the last two decades as a consequence of the North American Free Trade Agreement (NAFTA). This agreement was reached by the United States, Canada, and Mexico in 1994, and it instituted a fifteen-year schedule for the phasing out of tariffs as well as the suppression of a variety of fees and other hindrances to encourage free trade between the three North American countries. Yet Mexico's agricultural trade balance remained negative, primarily with the United States^{2,3} and the country became increasingly dependent on food imports to guarantee the food security of its population. In 1961, Mexico was highly self-sufficient in the production of major agricultural products (only 0.5% of the national supply of maize, 0.1% of rice and 1.3% beans were imported) and although a significant part of the production came from some highly productive regions, the rest of the production came from a countless number of producers and regions. In 2010, the percentages of imports were 23.6% for maize, 82.6% for rice and 7.2% for beans.⁴ In the cycle 2011–2012 the production of maize fell by 9% due to an extensive drought, so imports of maize rose by 6% in comparison with the previous year, reaching a total of 15.4 million tons metric of imported maize.⁵

During the first fourteen years of NAFTA (1994–2008) minimum wages lost a third of their purchasing power.⁶ Furthermore, agricultural revenues fell drastically: corn farmers lost 36.2% of revenues while bean producers lost 21% compared to those from the 1991–1993 period.⁷

Today Mexico has ceased to be a rural country. Only 22% of its 113 million inhabitants are still living in rural areas and less than a third of this population is linked to agricultural activities.⁸ But this is where poverty hits harder as more than 60% of the rural population live in poverty.⁹ The vast majority of the indigenous population is living outside the cities, below the poverty line. In Oaxaca, Chiapas, and Guerrero States, extreme poverty affects more than half of the population.¹⁰

LIBERALIZATION, POVERTY AND MIGRATION

Between 1991 and 1995, as a step to prepare the agricultural sector for the liberalization of the market demanded by the economic integration envisaged as part of NAFTA, Mexico made several changes in the constitution that significantly modified the characteristics of possession, use, and alienation of land. These changes stimulated the development of a new model of agricultural production based on industrial large scale production. These farming systems have not only concentrated considerable amounts of land, water, and economic resources, but also have been disproportionately benefited by governmental agricultural programs. The new agricultural policy has focused government support on strengthening the productive and exporting capacities of medium and large scale agricultural systems, which have received direct support and tax benefits significantly greater than those received by small producers, although the latter constitute the vast majority of producers, as 80% of Mexican farmers own less than five hectares of land.¹¹ Inherent to this type of production, the participation of multinational companies in these farming systems is significant: as owners, as part of the chains of production, or through the sale of agricultural supplies (pesticides, fertilizers, seeds) and machinery absorbed by these systems.

However, since 1994 the contribution of agriculture to the GDP shrank importantly so as its contribution to the country's total exports.¹² Basic grain imports without tariffs

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2 Espinosa, Luz, and Herlinda Madrigal. "Debilitamiento de la agricultura de alimentos básicos y cambios en el patrón de consumo de alimentos en el medio rural mexicano" in Salinas, Argelia, Ed. *Crisis Alimentaria, TLCAN y Soberanía en el México actual*. Mexico: Inst. Investigaciones Económicas, UNAM, 2008. 3–21.

3 "U.S.-Mexico at a Glance." U.S Department of State, 2011. http://mexico.usembassy.gov/eng/eatag glance_trade.html.

4 2010 data: "Balanza Comercial de México." Instituto Nacional de Estadística y Geología. Mexico, 2010. www.inegi.org.mx/prod_serv/contenidos/espanol/bvinegi/productos/continuas/economicas/externo/mensual/bcm/bcm.pdf; 1961 data: FAO Stats, 2010. www.fao.org/site/568/DesktopDefault.aspx?PageID=568#ancor.

5 Morales, Roberto. "Se dispara importación mexicana de maíz blanco en el 2011." *El Economista*, 19 Jan. 2012. www.eleconomista.com.mx/industrias/2012/01/19/se-dispara-importacion-mexicana-maiz-blanco-2011.

6 Calva, José L. *TLCAN: hacia una Etapa Superior de Integración Económica*. Mexico: Instituto de Investigaciones Jurídicas de la UNAM, 2008. www.biblio.juridicas.unam.mx/libros/6/2904/16.pdf.

7 Ibid.

8 IFAD. "Rural Poverty in Mexico." *Rural Poverty Portal*. www.ruralpovertyportal.org/web/guest/country/home/taqs/mexico; and Rosenzweig, Andrés. *El Debate sobre el Sector Agropecuario en el Tratado de Libre Comercio de América del Norte*. Serie de Estudios y Perspectivas. Mexico: UN Publications, 2005. www.eclac.org/publicaciones/xml/5/21085/Serie%202030-vf.pdf.

9 IFAD, op. cit.

10 Ibid.

increased more rapidly than envisaged in the treaty, and the amount of imports since 1995 has exceeded all estimates. The increasing imports of low cost US heavily subsidized grains provoked a marked decrease in the value of local agricultural production. This dramatically affected domestic grain producers causing significant losses that resulted in discouraging production and increasing poverty, especially among small-scale producers. This situation was aggravated by a simultaneous increase in the price of inputs for agricultural production, the decline of public investment for agriculture, the dismantling of CONASUPO, a government agency that provided services for the collection, storage and marketing of grain, as well as the cancellation of preferential loans for farmers.¹³

The increasing asymmetries between the majority of small-scale producers using traditional techniques of productivity aimed for self-consumption or local markets and the small segment composed by agro exporters and agroindustry have contributed to deepening social and economic inequality in the Mexican countryside. This power unbalance has been cemented by a multitude of government programs. On this issue, the UN Special Rapporteur on the right to food stated in his report on Mexico: “[...] some programs in support of agricultural production disproportionately benefit the wealthiest producers in the wealthiest part of the country, increasing inequality in the rural areas [...],” and that “agricultural spending is so regressive that it cancels out about half the redistributive impact of rural development spending.”¹⁴ The Rapporteur also noted that less than 8% of the resources used in agriculture are addressed to the most vulnerable producers.

This situation has also forced a significant internal migration. Every year Mexican fields witness the exodus of hundreds of thousands of young people who see no opportunities for development at home. Many regions of the country, which were productive thirty years ago, are now unproductive or uninhabited. Those who still live there are mainly women, children, and elderly people. In numerous rural communities, most of the income comes from *remesas* (remittances) or cash transfers from social programs implemented by the government. In fact, 10% of the households receive remittances which represent an average of 15% of their total income.¹⁵ According to government sources, more than 405.712 peasant families migrate seasonally from the poorest regions of the south and southeast of the country to work in crop fields in the north and the centre of Mexico.¹⁶ This mechanism provides endless supply of cheap labor for industrial agricultural systems. Besides its impact in eroding traditional rural communities, it provokes a strong use of child labor (on average, 24.3% of this migrant labor force are children).¹⁷ The use of child labor varies by type of crop and, in some cases, is higher than 50%.

Due to this process of loss of rurality, many of the cultural traits that were highly symbolic or functionally linked to agricultural activities have been eroded. Many of the cultural traits related to agriculture which still exist are embodied by indigenous peoples and their daily practices, consisting in countless forms of resistance, some of which have combined broader forms of resistance such as the Zapatista uprising in 1994 in the autonomous regions created in Chiapas and other parts of Mexico, as well as the movements “El Campo no Aguanta más” (The Countryside Stands No More) and “Sin Maíz no hay País” (Without Corn There Is No Country), which denounce the effects of NAFTA and claim for its renegotiation.^{18,19}

FINAL CONSIDERATIONS

The liberalization of trade due to NAFTA brought a detrimental effect on the most vulnerable producers mainly due to the dumping effect inflicted by the massive imports of subsidized products from the United States.

Nowadays, Mexico has lost its food self-sufficiency and its food sovereignty. Four-fifths of the rice and a third of the maize consumed in the country are already being imported.²⁰

- 11 Report of the Special Rapporteur on the right to food, Olivier de Schutter. “Mission to Mexico.” [UN Human Rights Council](#). 17 Jan.2012. 7. [www.srfood.org/images/stories/pdf/officialreports/20120306_mexico_en.pdf](#). This document is available on the Watch website: [www.rfn-watch.org/en/home/watch-2012/main-sources](#).
- 12 De Ita Rubio, Ana. [Los Impactos Socioeconómicos y Ambientales de la Liberación Comercial de los Granos Básicos en el Contexto del TLCAN: el Caso de Sinaloa](#). Mexico: Centro Mexicano de Derecho Ambiental, 2003. [www.vv.ccc.org/Storage/49/4114_Delta_es.pdf](#).
- 13 Acosta Reveles, Irma L. “Ingreso rural y ocupación agrícola en México en el marco del TLCAN.” [Revista Trabajadores](#) 67 (2008): 41–45.
- 14 De Schutter, op. cit.; and quoting “Agricultural and Rural Development Public Expenditures Review.” [World Bank](#). 2009. x.
- 15 Mestries, Francis. “Globalización, Crisis Agrícola y Migración Internacional.” [La Jornada del Campo](#). 12 Feb. 2008. [www.jornada.unam.mx/2008/02/12/exodo.html](#).
- 16 SEDESOL. [Tendencias recientes de la migración interna de los jornaleros agrícolas](#). Mexico: SEDESOL, 2006.
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- 18 Cleaver, Harry M. “The Zapatista Effect: the Internet and the Rise of an Alternative Political Fabric.” [Journal of International Affairs](#) 51.2 (1998): 621–640.
- 19 Turner, Bethany. “Corn Coalitions: Struggles for Food Sovereignty in Mexico.” [Politics and Culture](#). 27 Oct. 2010. [www.politicsandculture.org/2010/10/27/corn-coalitions-struggles-for-food-sovereignty-in-mexico](#).
- 20 Ávila Abelardo C., Jesús J. Flores, and Gabriela Rangel. [La Política Alimentaria en México](#). Mexico: CEDRSSA, 2011. 76.

Emergent phenomena pose additional threats that will very likely force Mexico to increase food imports during the next years. These have been caused by the severe drought that today affects vast productive regions of the country as well as the difficulties inflicted to farming by the violence perpetrated by criminal gangs.

Duplication of programs, lack of transparency and accountability, as well as the delivery of resources without a complete register of producers, political clientelism and corruption are some of the problems that aggravate this situation.

The allocation of resources to support small farmers whose aim is to strengthen their technical capabilities and promote more sustainable forms of production is still very incomplete. It is important to significantly increase the resources to support the poorest farmers of the country living in the most disadvantaged areas. This can be achieved by redirecting resources away from the programs that have not contributed to reduce inequality in the countryside.

Mexico spends a large amount of financial resources on food assistance programs, a big proportion of which are addressed to rural poor regions. Nearly all of the food purchased by the government for this purpose is imported or produced by large scale farmers in different regions of the country. Thus, the existence of multiple—and often overlapping—food assistance programs result in dependency and discouragement of local production. The program *oportunidades* spends the equivalent of \$60 million annually in food assistance.²¹ In Chiapas, one of the states with the highest number of poor farmers, resources for food assistance are bigger to those intended to support agricultural production of small farmers.²² This trend could be reverted if the programs to combat malnutrition included strengthening of the productive capacity of small scale farmers. However, achieving this purpose not only requires improving coordination between institutions and monitoring transparency in the use of resources, but also demands the establishment of recourse mechanisms.

In April 2011, after a long struggle waged for nearly two decades by farmers' organizations, academics, and NGOs, the right to food was incorporated into the Mexican constitution. During the forums and discussions that finally led to its adoption, innumerable data and testimonies on the causes and effects of inequality in the countryside caused by NAFTA were presented. The Mexican State has now the duty of implementing without delay effective measures to reduce them; undoubtedly, one of these must be the protection and encouragement of small scale production. These measures should include another old demand: the establishment of trade safeguards to protect domestic production of corn and beans. To a large extent, Mexican food sovereignty will depend on these measures. The contribution of organized civil society will be to expand and strengthen mechanisms for monitoring and verification of compliance with the new constitutional provisions.

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22 "Presupuesto de Egresos del Estado de Chiapas para el Ejercicio Fiscal 2012." *Government of Chiapas*. Mexico. 30 Dec. 2011. www.haciendachiapas.gob.mx/contenido/Marco_Juridico/Informacion/Estatal/Decretos/PDF_1decretos2012.pdf.

STRONG AGRIBUSINESS AND A WEAK STATE: THE EQUATION GENERATING HUNGER IN PARAGUAY

Milena Pereira Fukuoka¹

Over the past two decades, the agro-exporter economic model, historically predominant in Paraguay, has become even stronger. This is due not only to the growing international demand for livestock and grain for feed of various types of cattle, but also to a marked withdrawal on the part of the State in its control over monopolies, market regulation, coordination of the agribusiness policies, and the promotion of peasant agriculture since the early 1990s.

In 2008, Paraguay ranked sixth as world producer and fourth as world exporter of soy,² while in 2010 it ranked seventh as world exporter of bovine cattle.³

The main companies benefitting from soy production are foreign transnational firms, which are involved in the imports and sale of inputs along with the gathering and exporting of grain, oil, and flour. These companies work with a large margin of profit⁴ since the exports of grain are tax exempt and corporate income tax is quite low, especially in comparison to those of other countries in the region.⁵

The Paraguayan experience demonstrates exactly how a sharp increase in the production of commodities for exports—within the context of a global food system coupled with neoliberalism and a weakened State—generates selective economic growth. Thus, this record-breaking production and exportation of grain and meat has taken place along with a growth in poverty, a displacement of peasant and indigenous agriculture, the reduction of employment, an even larger concentration of income and land, an increase in environmental degradation, and the intensification of emigration from the country to the cities and other countries.

- Between 1991 and 2008⁶ the national agricultural area grew some 35%; however, the total number of rural estates shrank by 5.7%. This decrease affected the small and medium sized properties while the large rural properties grew. The statistics indicate that between 1991 and 2008 the expansion of the agricultural lands meant new areas open to cultivation or to cattle for the large agricultural properties. The most important growth, especially for the large agricultural holders, took place in the Western Region or Chaco, taking over old indigenous territories or lands with a fragile ecosystem balance. In the eastern region, the growth in area of the large farms had been occurred by adding new lands and displacing peasant and indigenous families from their farms and territory.
- The Gini Index for land concentration calculated by the FAO was 0.93 for Paraguay, the highest in the world. This number corresponded to data from the Agricultural Census of 1991. It can be estimated that it would now reach 0.94 considering the data from the Agricultural Census 2008,⁷ implying even more inequality.
- Along with this condition comes perhaps an even more difficult situation of illegal grants of lands to those who are not beneficiaries of the Agrarian Statute which were made during the Stroessner dictatorship (1954–1989) and the following regimes. According to official data, between 1954 and 2003 7.8 million ha (19.3% of the country) was granted to politicians and businessmen who supported the regime.⁸ Meanwhile, the country has continued until this very day without a unified cadastre of rural land ownership, demonstrating the State's weakness in providing even minimal legal guarantees.

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This article was written before the impeachment without due process in July 2012 which led to the dismissal from office of President Fernando Lugo.

2 "Commodities by Country." FAOSTAT. 2009. <http://faostat.fao.org/site/339/default.aspx> and <http://faostat.fao.org/site/342/default.aspx>.

3 "Paraguay cierra 2010 como séptimo exportador de carne." Última Hora. 24 Dec. 2010. www.ultimohora.com/notas/589434-Paraguay-cierra-2010-como-septimo-exportador-de-carne.

4 Palau, Tomas, et al. *Social and Environmental Impact of Soy in Paraguay*. Asunción: Base I.S, 2010. 7.

5 This is a consistent national tax burden of only 13% of the GDP while in Latin American it makes up an average of 19% of the GDP. "Trade Policy Review." Trade Policy Review Body, WTO, 23 Mar. 2011. http://docs.wto.org/imrd/gen_searchResult.asp?RN=0&se archetype=browse&q1=%28+%40meta%5FTitle+Paraguay%29+and+%28+%28+%40meta%5FSymbol+WT%FCFTR%FCG%FC%2A+%29%29&language=5.

6 National Agricultural Census. San Lorenzo: Ministry of Agriculture and Livestock, 2008.

7 Méndez Rheineck, Jorge, et al., *Sector Rural Paraguayo: una Visión General para un Diálogo Informado*, Asunción: UNDP, 2010. 58. www.undp.org.py/odh/fotos/publicaciones2/id8_pub1.pdf.

8 Truth and Justice Commission. *Final Report on Ill-gotten Lands*. Asunción: TJC, 2008.26.

- In regard to poverty the percentage of the population living in poverty and extreme poverty has been growing steadily since 1995, reaching its highest index for overall poverty in 2002. Right now 48.9% of the rural population lives beneath the poverty line, and the most severe pockets of poverty are found in rural areas rather than in urban environs.⁹
- At the same time it is estimated in the past few years that the annual rural-urban migration is of approximately 90,000 people.¹⁰ International immigration has also increased over and above the 2.3% annual population growth rate.¹¹

The deterioration of peasant and indigenous family agriculture has caused the decrease in a diversified production of food items for local consumption. Products that have formed part of national food base, like beans and peanuts, have been reduced by more than 20% and 30% respectively in the last twenty years despite the growth in population. Together with this, official data shows an increase in volume of food importation, specially fruits and vegetables. This data can be read as a reduction in food security for the general population, placing the civil society in a position of greater vulnerability if faced with a crisis.

Another central aspect is connected with food availability and its economic accessibility relative to the production and commercialization of meat. The country moved from exporting livestock products worth \$42.9 million in 1995 to exportation worth \$418 million in 2006. At the same time the consumption of meat per capita within the country—a figure which is based on an average, not taking social level into consideration—shifted from 77 kg per year in 1995 to 32 kg in 2005, which was the largest reduction in all Latin America.¹² An explanation to this decrease can be found in the official meat trade statistics. In 2010, over 1.75 million bovine cattle were slaughtered from which only 15.1% were destined for internal consumption.¹³ Unlike agricultural products, whose diversified production for local markets has decreased, bovine production has increased substantially. However, due to the great volume of exportations internal supply tends to cause excessively high prices, thus affecting directly the possibility of access to a choice of meat consumption level, especially in poor or extremely poor households, with all the negative nutritional impact involved.

Regarding food safety, the principal affectations generated by the predominant production pattern are closely related to the large amount of agrochemical substances used in monoculture. These negative externalities on food quality are increasing due to the fact that the government does not take adequate measures to control the imports and usage of such substances, or to protect the population and environment from their impact.

With relation to the groups whose right to food is most violated, the Indigenous Household Survey of 2008 indicates that 41.7% of indigenous children under the age of five suffer from chronic malnutrition,¹⁴ which is three times that of the national mean. Moreover, lack of access to water as well as natural disasters constitute severe problems for indigenous peoples who live in the Western Region or Chaco.

FOOD EMERGENCY

In January 2012, due to severe damage caused by a long period of drought, the executive power decreed a state of national food emergency for the production of peasant and indigenous family agriculture. This emergency situation lasted ninety days, during which the Ministry of Agriculture and Farming was in charge of coordination.¹⁵

During the month of February, the Ministry stated that the drought had caused losses of 30% to 70% to the family-owned estates' agricultural production. The strong impact of

9 "Principales Resultados de Pobreza y Distribución del Ingreso." Dirección General de Estadística, Encuestas y Censos Paraguay. 2011.

---. "Encuesta Permanente de Hogares." 2010.

10 Some 18,000 families from the more than 241,000 families living on lots of less than 20ha in the country. Palau, op. cit. 11.

11 Halpern, Gerardo. Etnicidad, inmigración y política. Buenos Aires: Prometeo, 2009. 87–88.

12 El Estado Mundial de la Agricultura y la Alimentación. Rome: FAO, 2009. www.fao.org/publications/sofa-2009/es.

13 SENACSA. Anuario 2010 Estadística Pecuaria. Yby Yaú: Senacsa, 2010.

14 Sanabria, Marta. "Desnutrición: Ainda un desafio." São Paulo, 2011.

15 Decree N° 8282, 17 Jan. 2012.

the last drought on peasant and indigenous agriculture, which includes small scale producers all over the country, highlighted their extreme vulnerability as well as the clear shortage of the necessary food and seed reserves.

PERSPECTIVES

Except for a few programs promoted by the Vice Ministry of Agriculture and the Social Affairs Secretariat, most of the economic and productive measures taken since 2008 have not met up with the expectations of revenue redistribution, employment generation, and food security. In fact, it is quite the opposite. The main governmental agencies have been promoting programs that tend to increase the exporting agro-farming model even further. Examples are: the objectives for 2014 published by the Board of the Meat and Leather Sector which were promoted by the Net of Investments and Exportations of the Ministry of Industry and Commerce; the unilateral authorization of the Ministry of Agriculture and Farming for transgenic corn testing, ignoring the competencies of the Environmental Secretariat; the public investments in agrofuels; State resources given for the production by those economical sectors with high income concentration; and the persistent tributary privileges towards the agro-exporter sector. Not only this, but there are also no signs of any progress regarding agrarian reform.

Along these lines, the judiciary power notoriously breaches its duties to control the legality of public policies and to protect those people who face a threat or violation of their rights, especially of those who are in a situation of great socioeconomic and cultural exclusion. The Paraguayan congress has not contributed to any advances in the respect, protection, and fulfillment of the right to adequate food. From a human rights perspective the country is missing effective monitoring mechanisms, particularly with respect to the compliance of the State's obligations entailed by the International Covenant on Economic Social and Cultural Rights (ICESCR). Moreover, the fulfillment of the participation and transparency principles in public policies is still quite weak.

Regarding the strategies promoted by the executive power, the adoption in 2009 of a Sovereignty and Food Security National Plan (Plan Nacional de Soberanía y Seguridad Alimentaria, PLANAL) has meant significant progress. Furthermore, the presentation of the Preliminary Draft for Sovereignty, Food and Nutrition Security, and the Right to Food (Anteproyecto de Soberanía, Seguridad Alimentaria y Nutricional, y el Derecho a la Alimentación) to Congress, which was written by the joint work of peasants and indigenous organizations between February and April 2012, should prove to be of importance. This draft identifies the main strategies to guarantee the right to adequate food at a national level, it builds the inter-institutional system for their implementation, and it regulates their enforcement mechanisms. Since 2011, the legislative power has the Parliamentary Front against Hunger (Frente Parlamentario contra el Hambre); it is quite likely, however, that adopting these policies successfully will require intensive civil monitoring.

THE RIGHT TO FOOD IN BANGLADESH— ANALYSIS AND CAMPAIGNING CHALLENGES

Zakir Hossain¹

Bangladesh is one of the most densely populated countries of the world. The total population of 150 million² lives within the country's area of 147,570 km² which results in a density of more than 1000 people per km². Due to lack of land, people are forced to settle in disaster prone areas like "Chars" (river islands and sandbanks disconnected from the mainland with little or no public infrastructure). Most parts of the country are lowlands of the Ganges-Brahmaputra floodplains which are frequently affected by severe floods. The floods erode some lands while siltation at other places leads to the emerging of new ones; thus, causing land conflicts. Additionally, tropical cyclones regularly threaten people and harvests. Climate change increases these threats and makes people migrate to the cities. Big coastal areas in the south are threatened by the predicted rise of the sea level. In Northern Bangladesh poor people are affected by recurrent "Monga," the hunger season between harvests. In many places people suffer from arsenic contaminated drinking water. Indigenous people experience discrimination and displacement, particularly in the Chittagong Hill Tracts area. Social exclusion of "Dalits" (people regarded as "untouchable") is prevalent throughout the country and the discrimination of women is widespread, having one of its main root causes in the traditional practices of dowry and early arranged marriages.

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2 The World Bank Data, 2012. <http://data.worldbank.org/country/bangladesh>.

3 Lin, Jiada, Chris Lentz, and Daniella Zalcmán. "Population Growth and Decline: a Comparative Study of Bangladesh and Kenya." Dan.Iella. www.dan.iella.net/cs/index.html.

4 "World Economic Outlook-2011." IMF, 2011. www.econstats.com/woe/V006.htm.

5 Haque, Muhammad Sayeedul, and Masahiro Yamao. "Can Microcredit Alleviate Rural Poverty? A Case Study of Bangladesh." *World Academy of Science, Engineering and Technology* 46 (2008). www.waset.org/journals/waset/v46/v46-113.pdf.

6 Iqbal, Ashiq, Towfiq Khan, and Tazeen Tahsina. *Macroeconomic Implications of Social Safety Nets in the Context of Bangladesh*. Dhaka: Centre for Policy Dialogue, 2008.

7 Article 15. The Constitution of the People's Republic of Bangladesh: www1.um.edu/humanrts/research/bangladesh-constitution.pdf.

Although poverty declined slightly during the last decade, more than 63 million people still continue to live below the poverty line.³ Bangladesh has recorded a GDP growth rate of around 7% during the last couple of years with a declining trend in poverty;⁴ however, this has not brought about a more equitable distribution of income. In fact, the distribution of income has become more unequal over time.

Indeed 40% of the population still remain below the poverty line and 25% are extreme poor,⁵ living with low levels of income and consumption, suffering from lack of access to basic services like education, health, safe water and sanitation, low levels of land ownership, etc. In addition, the persistence of disparity is eating up the prospect of both economic growth and stability.

The growth-obsessed dominant development paradigm successfully adhered by successive national political regimes has not only created income inequality but also made an "East-West divide" in terms of regional disparity. Several poverty pockets of the country still remain out of the "blessings" of the growth process.⁶ In these circumstances, it is essential to raise collective voices to formulate required policy and administrative reforms to ensure people's rights and dignity.

LEGAL AND POLICY FRAMEWORK

Food is a human right recognized in international human rights instruments such the International Covenant on Social, Economic and Cultural Rights (ICESCR), which was ratified by Bangladesh in 1998. Although the Constitution of the Peoples' Republic of Bangladesh mentions the "provision of the basic necessities of life, including food" in Article 15 (a), it is legally not considered as a constitutional right but as one of the "fundamental principles of State policy."⁷

There are, however, several articles of the constitution which contain fundamental rights of the citizens that can be related to the right to food, such as: the right to work (article 20), equality and equal protection of the law (art. 27), non-discrimination on grounds of race/religion/sex/caste/place of birth (art. 28), treatment in accordance with law (art. 31), life (art. 32), and freedom of expression (art. 39).

EXISTING SOCIAL SAFETY NETS (SSN)

Broadly, there are two types of safety net programs in Bangladesh: food based and cash transfer based. Food based programs are rather large compared to cash transfer programs. Altogether, the government runs 67 Social Security programs with particular target groups:

There are 33 grant programs, of which 21 are cash transfer assistance (long and short term) mainly destined to aid financially the most vulnerable groups and twelve are seasonal grants that take the form of in-kind transfers. The other 34 programs are classified in 23 social empowerment schemes, four programs dedicated to a micro-credit net, and seven programs for capacitating and job creation.

Not a single program has got nationwide coverage although social protection is highly needed across the country. Overlapping and duplication in terms of administration and supervisory departments and ministries as well as service recipients are very high. Inclusion of wrong people and exclusion of entitled people is common in practice. Leakage is widely reported and more prevalent among in-kind programs than among cash transfer programs.

The following steps should be considered to improve the programs:

- A national social safety net policy should be adopted as guideline for resource allocation.
- The government should keep the promise to spend at least 3% of the GDP on basic social security schemes.⁸
- Allowances for old age people, widows, distressed women, and financially insolvent disabled schemes should be integrated and have national coverage.
- A separate program should be developed to identify the hard to reach areas and groups and to achieve full national coverage of the safety net schemes.
- All the long term regular schemes should be brought under one umbrella or ministry so that implementation is more coherent and transparent.
- Targeting should be done following participatory appraisal methods involving government organisations as well as NGOs and community based initiatives.

FOOD PRODUCTION

Today around 63 million Bangladeshis still do not have sufficient food to eat, although Bangladesh has reached near self-sufficiency in food production.⁹ At the same time it is predicted that food production in Bangladesh will fall due to climate change effects.¹⁰ Moreover about 60% of farmers are functionally landless, women's right to land is restricted, and farm sizes are often too small to support a family. In addition, 1% of arable land is being lost each year due to climate change and urbanization.¹¹ Only 37% of the country's total area is arable land and 30% of the arable land is regularly subject to natural disasters, which means keeping the present food production sustained is an enormous challenge.¹² The following steps need to be taken urgently:

- Enact and enforce laws that guarantee all women the right to own land.
- Implement properly the existing land distribution acts.
- Ensure that corporations are held accountable for abuses of the rights to food, water, land and seeds.
- Expand employment generation programs significantly.
- Provide State support for small farmers with key tools and seeds, expanding irrigation, placing ceiling on land ownership, and promoting environmentally sustainable production.

8 Planning Commission. Sixth Five Year Plan FY2011–2015: Accelerating Growth and Reducing Poverty. Dhaka: Ministry of Planning of the Government of the People's Republic of Bangladesh, 2011. 167. www.plancomm.gov.bd/Six-Five-Year-Plan-2012/SFYP_Final%20Part_1.pdf.

9 Ahmed, Israq. "Aid Volatility and the Pattern of Education Spending in Bangladesh." Bangladesh Development Studies 34. 2 (2011).

10 "The Probable Impacts of Climate Change on Poverty and Economic Growth and the Options of Coping with Adverse Effect of Climate Change in Bangladesh." General Economics Division, Planning Commission, Government of the People's Republic of Bangladesh, and UNDP Bangladesh. May 2009.

11 "Day Observing Paper, Rural Women Day & World Food Day." Action Aid. 16 Oct. 2010. www.hunger-free-planet.org/what-we-do/world-food-day-2010/rural-womens-day-world-food-day-2010-country-by-country#bangladesh.

12 Khan, Asadullah. "Food Security for Bangladesh." The Daily Star, 29 Oct. 2011. www.thedailystar.net/newDesign/news-details.php?nid=208325.

CAMPAIGN ON RIGHT TO FOOD AND SOCIAL SECURITY

The Campaign on Right to Food and Social Security (RtF&SS) in Bangladesh is a network of concerned organizations and individuals committed to work towards establishing the people's fundamental entitlements. It was formally launched on World Food Day 2011 (16 October), with a public rally for effective market monitoring by the government to keep food prices stable and demanding that the right to food is recognized as constitutional right.

The campaign has decided to work on the following issues:

- Ensure proper implementation, distribution and monitoring of the social safety net programs in Bangladesh.
- Establishment of legal and policy measures (Social Security Bill, Constitutional Rights, 100 days Work Guarantee, etc.).
- Public interest litigation (PIL) on right to livelihood and food.
- Control and monitoring of food grains in the market (fighting cartel monopoly).
- Monitor land reform measures with the distribution of government land to landless people.
- Promote disaster risk reduction and monitor relief and rehabilitation operations after disaster.

The campaign has already gained national visibility with a number of activities, such as rallies, trainings, workshops, seminars, monitoring of safety net programs, and the preparation for filing court cases.

THE LEGAL FRAMEWORK GOVERNING THE RIGHT TO ADEQUATE FOOD IN THE PHILIPPINES

Aurea Miclat-Teves and Maria Socorro I. Diokno¹

In 2008 the Philippines was ranked as the fifth country in the world with the most number of hungry people, half of whom were women and children.² Out of about 95 million Filipinos, over 70% live on less than \$1.25 a day.³ Many Filipinos cannot meet their basic food needs because the daily minimum wage has not kept pace with rising food prices.

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Maria Socorro I. Diokno is the director of the Free Legal Assistance Group in the Philippines. She is an internationally recognized expert on human rights. She has a wide-ranging experience on human rights and has written extensively on the subject.

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2 Digal, Santosh. "Hunger Growing as 40 per Cent of Filipinos Lack of Food." *Asia News*. 11 June 2008. www.asianews.it/news-en/Hunger-growing-as-40-per-cent-of-Filipinos-lack-of-food-13682.html.

3 Papademetriou, Minas K., et al., eds. *Rice Production in the Asia-Pacific Region: Issues and Perspectives*. Bangkok: FAO, 2000. www.fao.org/docrep/005/x6905e/x6905e04.htm.

4 "First Quarter 2012 Self-Rated Hunger Incidence Survey." *Social Weather Stations*. 11 May 2012. www.sws.org.ph/.

5 Virola, Romulo, A. "One Family Per 100 was Lifted Out of Food Poverty in 2009." *National Statistics Coordination Board*. 8 Feb. 2011. www.nscb.gov.ph/poverty/2009/default.asp.

6 The results of the 7th National Nutrition Survey (NNS) in 2008 conducted by the Food and Nutrition Research Institute (FNRI) show that there was a significant increase in the proportion of children aged 0–5 years who were underweight (a direct hunger indicator) from 24.6% in 2005 to 26.2% in 2008. www.fnri.dost.gov.ph/images/stories/7thNNS/nns_result.pdf.

7 International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; Protocol II to Geneva Conventions; and the International Code of Marketing of Breast-milk Substitutes.

A survey conducted in March 2012 shows that 23.8% of Filipino households claimed to have experienced hunger or have gone hungry at least once in the past three months.⁴ This surpassed the 23.7% record high hunger rate in December 2008 in the middle of the food price crisis. The latest hunger figure translates to an estimated 4.8 million hungry families. Meanwhile, this first quarter data from the survey showed that 55% considered themselves poor and 37.3% considered themselves food-poor.

The number of Filipinos living in poverty increased by 4.4% between 2006 and 2009, from 22.2 million to 23.1 million.⁵ Slower economic growth in the Philippines and abroad, and a soft domestic labor market threaten to push more Filipinos into poverty.

As a result, the Philippines will most likely miss the Millennium Development Goals of halving the proportion of poor households living below the food threshold and halving the proportion of underweight children below five years old by 2015.⁶

In addition to the ratification of the most important international treaties dealing with the right to adequate food (RtAF),⁷ the government has adopted a vast array of laws purportedly to ensure the availability, accessibility and safety of food for its population. Yet it fails to realize the RtAF. This is due to certain provisions of various laws that are not coherent, not complementary, and at times, even in conflict with each other. These make the efforts of government to address the food problem highly unstable and the results unsatisfactory.

An assessment of the Philippine Legal Framework (PLF) governing the right to food was conducted in 2008.⁸ The review of the policies included the legally binding international instruments, the 1987 Constitution, and specific laws governing the RtAF. The Philippines Constitution does not explicitly recognize the RtAF nor does a specific law on the right to food exist. RtAF recognition is rather inferred from various provisions and constitutional intent regarding the improvement of the quality of life for all, social justice, agrarian reform, and rights of subsistence. The analysis of the different policies related to food focused mainly on three criteria—availability, accessibility and safety.

Food availability laws relate to agrarian reform, agricultural policy, and trade measures as determinants of people's access to land, agricultural productivity, and food supply. The main conclusions of the assessment were that in response to the accession of the Philippines to the 1994 General Agreement on Tariffs and Trade (GATT) and the inclusion of agricultural products to this commitment, the Philippines passed several laws that provided trade remedies that could mitigate unfair trade practices, or undesirable reactions to sudden surges in imports due to the opening of the Philippines' borders. These laws⁹ came even later than Republic Act (RA) 8435 that defines measures to modernize the country's agriculture and fisheries sectors to make them competitive in the market.¹⁰ The tariffication of quantitative restrictions in agricultural products similarly gave way to the passage of RA 8178 (Agricultural Tariffication Act).

These laws were meant to protect local producers from the vagaries of liberalized trading in agricultural products. However, the Agricultural Tariffication Act had the effect of repealing laws that provided for prohibitions and quantitative restrictions on the importation of agricultural products such as onions, potatoes, garlic, coffee, livestock, seeds, and tobacco.¹¹ In general, the Agricultural Tariffication Act removed the protection granted

- 8 De los Reyes, Virgilio, and Maria Socorro I. Diokno. *The Philippines' Right to Food: an Assessment of the Philippine Legal Framework Governing the Right to Food*. Rome: FAO, 2010. www.fao.org/righttofood/public10/PHILIPPINES_assessment_vol2.pdf. This document is available on the Watch website: www.rtfw-watch.org/en/home/watch-2012/main-sources.
- 9 Republic Act No. 8751 of the Philippines (Subsidies), Republic Act No. 8752 of the Philippines (Anti-Dumping) and Republic Act No. 8800 of the Philippines (Safeguard Measures).
- 10 Republic Act 8435 is also known as AFMA or Agriculture and Fisheries Modernization Act and took effect on 9 February 1998.
- 11 See Section 4 of Republic Act No. 8178 of the Philippines.
- 12 See Section 4 of Republic Act No. 8178 of the Philippines in relation to Section 25(10) of Republic Act No. 7607 of the Philippines. For the impact of the ASEAN Free Trade Agreement on the Philippines see also: www.seacouncil.org/seacon/images/stories/publications/afta_philippine.pdf. For the impact of the Agriculture and Fisheries Modernization Act see also: www.ifpri.org/sites/default/files/publications/ifridp00827.pdf.
- 13 De los Reyes, and Diokno. op. cit.
- 14 This is reckoned from 21 October 1972 upon the passage of Presidential Decree 27(1972).
- 15 Agrarian reform is very slow and has many backlogs. In Luzon Island alone, farmers reported 58,101.87ha of land have yet to be released under the agrarian reform program. Save Agrarian Reform Alliance. "Luzon-Wide Consultation and Assessment on Agrarian Reform/CARPER: Synthesis." *Focus on the Global South*. 11 Apr. 2012. www.focusweb.org/philippines/state-of-agrarian-reform-report-2012/article/585-luzon-wide-consultation-and-assessment-on-agrarian-reformcarper-synthesis.
- 16 Physical accessibility to food is made more difficult due to land grabbing. See report: Daniel, Shepard and Anuradha Mittal. *The Great Land Grab: Rush for the World's Farmland Threatens Food Security for the Poor*. Oakland: the Oakland Institute, 2009. www.oaklandinstitute.org/sites/oaklandinstitute.org/files/LandGrab_final_web.pdf.

to small farmers from importation of agricultural products that are produced in sufficient quantity in the country.¹²

The study also showed that there are no safeguards to cushion the negative effects of food price volatility that affects first the most vulnerable groups.¹³ In addition, it warned that the obligation to respect the RtAF could be seriously affected by the implementation of laws such as the Biofuels Act, if their implementation is not integrated into an over-all agricultural plan and a national food policy.

Regarding the status of Agrarian Reform in the Philippines, it appears that the redistribution of land under the agrarian reform program remains unfinished after more than 36 years.¹⁴ Access to land by farmers tilling or working on private agricultural land remains unreachable to around 1.4 million supposed beneficiaries working on 1.8 million hectares of land.¹⁵

Food accessibility laws incorporate both the physical and economic dimensions of access to food. Physical accessibility laws are so far limited to mobility such as ramps for persons with disabilities and do not focus on enhancing people's physical access to land to grow their own food.¹⁶ Existing laws on economic accessibility do not have sufficient impact as they do not make food affordable for everyone. Laws on prices just refer to the requirement of price tags, while price regulation or price control is only used during calamities or emergency situations. Laws on wages and income are insufficient and to some extent have negative effects like the one-year ban on wage hikes. Credit laws do not address easy access to loans for small holders but enumerate rigid requirements and guidelines. Worse, most existing laws are not properly or fully implemented. On the other hand, there are special laws for the most vulnerable; for example, one requires day care centers to provide a feeding program, nutritional monitoring, and supplementary feeding as it considers that food deprivation is a form of child abuse. Also, the Senior Citizens Law provides discounts for elderly people, especially on basic food items. However, the right to food of people with disabilities or people living with HIV and the specific obstacles they face are not legally recognized nor subject to particular attention. Widely discussed is the Government's Pantawid Pamilyang Pilipino Program (4Ps) Conditional Cash Transfer Program (CCT) that entitles all extreme poor families with children below 14 to receive financial support if regular health checks are received and the children attend school. The program improves children's economic access to food. Despite the remarkable coverage, the 4Ps CCT is criticized because of the limited quality and availability of the conditioned services and the focus on one aspect of poverty, whereas others are neglected. It is not part of a coherent food policy.

Food safety laws refer to the nutritive quality of food, safety standards and regulations, and sanitation that ensure that food available for consumption contains enough nutritive values and is free from contaminants and other harmful microorganisms. These include aspects of food fortification, salt iodization, breastfeeding/milk code or food safety standards, whose inspection, monitoring and regulation are the responsibilities of the Food and Drug Administration, National Meat Inspection Service, and Local Government Units.

In conclusion, the Philippine legal framework falls short of the imperatives for realizing the right to food. It does not sufficiently incorporate the State's human rights obligations to respect, protect and fulfill the right to food, including the State's obligations to provide or request international cooperation to do so. The main issues to tackle are:

- The lack of a national food policy to serve as overarching framework to address hunger that results in incoherent, non-complementary and even conflicting legal mechanisms. This situation has led to major problems in program planning and implementation.

- The weak political will of the government to eradicate hunger that is reflected in the national budget. In 2012 only Php70.8 billion (around \$1.65 billion) was allocated to the departments of agriculture and agrarian reform compared to Php106.9 billion (around \$2.8 billion) for the defense department.¹⁷
- Complaint and recourse mechanisms with regard to violations of the RtAF are formally in place but are insufficient and inefficient in practice.
- The national human rights institutions have limitations in their mandate and give less attention to economic, social, and cultural rights violations, especially of the right to food, in comparison with civil and political human rights violations.

STRATEGIES TO REGAIN CONTROL: MOVING FORWARD

The participation of all sectors in the design and implementation of changes affecting the RtAF is required. Therefore a consultation process at the local, national, and regional levels should be set up in order to review, revise, and monitor laws, policies, and programs related to food, and to conduct a massive information and education campaign on RtAF, including the development of a RtAF curriculum for training and education. This is necessary to be able to build a campaign on the RtAF to advocate for a coherent national food policy.

Three crucial steps may help resolve the complex, serious and persistent problems brought about by hunger:

- *First*, the adoption of a national food policy, with the full and active participation of all actors concerned, including those most vulnerable to hunger, along the lines recommended by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in *General Comment No. 12* (1999) and the FAO's Voluntary Guidelines on the Right to Food (2004).
- *Second*, using the national food policy to rationalize the legal framework governing food by synchronizing laws, addressing contradictions in policy objectives, correcting flaws and ambiguities, repealing laws that obstruct the realization of the RtAF, aligning the national budget to the national food policy, enhancing the mandates of the national human rights institutions, and improving the process of law-making.
- *Third*, capacity development on the right to adequate food, and the promotion of the rights based approach for the establishment and implementation of the national policy governing the right to adequate food for all and to monitor the State's human rights accountability.

In sum, what is most needed in the Philippines is a strong, right-to-adequate-food approach in order to straighten out the current legal framework which, through inefficient and unproductive measures undermines the efforts of civil society to claim their rights and monitor State actions.

The new focus must be consistent with the human rights system. This will allow the Philippines to overcome its historical trend of inequality and have the chance to base its development on consensus, inclusion, and dignity. Toward this end, various civil society organizations (CSOs) deemed fit to initiate a campaign focusing on the right to adequate food as a means of highlighting the issues and to encourage other sectors to participate in addressing the problems brought about by hunger and poverty in the country.¹⁸

¹⁷ General Appropriations Act, Fiscal Year 2012. www.dbm.gov.ph/?page_id=775.

¹⁸ Campaign on the Right to Adequate Food contact: Aurea Miclat-Teves, President, FIAN Philippines. E-mail: flan.philippines@gmail.com.

CONCLUSION

This year's issue of the *Watch* presents a panorama of correlations between the power of decision making and the persistence of hunger and malnutrition. These correlations are diverse and context-bound. However, there is a common denominator: **the likelihood that a social group is affected by hunger and malnutrition is determined by its influence in local, national and global decision making.**

The question of who decides about global food and nutrition is fundamental to improve food security and nutrition. Both analysis and action regarding the power to decide are determined by a fundamental choice of perspective which follows three key questions: what is the role of social groups affected by hunger and malnutrition in the current power play on food and nutrition? What is the role of the other concerned actors, particularly governments, intergovernmental institutions, and the private sector? **Which instruments and strategies have proven most effective for regaining people's control over those decisions that affect their food and nutritional situation?**

This choice of perspective is grounded in the human rights approach, which by definition is centered on the rights holders. A human rights analysis, as applied in the articles of the *Watch*, helps to identify the role of rights holders in relation to the performance of the duty bearers and other actors such as the private sector and to assess public policy. **Human rights action** has been instrumental to achieve, defend, and effectively use political space in local, national, and global governance on food security and nutrition.

The main conclusions that can be drawn from the 2012 issue of the *Watch* are as follows:

1. **Before you go hungry, you have already lost control.** We can no longer accept future food emergencies, conflicts, riots or even chronic hunger as consequences of natural disasters or anonymous market failures. We understand that these phenomena, which lead to terrible living conditions for hundreds of millions of people, actually are caused by the loss of control of people over their food and nutrition, and are linked to peoples' struggle for their right to self-determination and food sovereignty. There is a daily and desperate struggle for survival at the household, community, and national levels within a context of almost complete dependency, as described in the article on the food crisis in the Sahel region and East Africa. Sometimes the affected people have protested against the political and economic elites, as illustrated by the correlation between land grabbing and corruption during the Arab Spring. However, most of those at risk of hunger, as in the case of those suffering from increased food dependency in Mexico aggravated by trade liberalization, opt for migration. They suffer extreme levels of discrimination and exploitation to enable the survival of their families.
2. **Participative governance on food security and nutrition is possible.** With the reform of the Committee on World Food Security (CFS) in 2009, an innovative way of inclusive governance has been established, with a particular breakthrough for those civil society groups that traditionally have been excluded from decision making processes on all levels: peasants, smallholder farmers, agricultural and food workers, artisanal fisherfolk, pastoralists, indigenous peoples, landless, urban poor, and, in each of these constituencies, women and youth. Their representatives now have a recognized political space in global decision making on food security and nutrition, which indeed is a new model for people's participation in governance on all levels. In very clear terms, the Africa Regional Civil Society Organization consultation in Brazzaville in April 2012 stated: "[w]e recognize the relevance and importance of the CFS and its inclusive method of work, and we request this approach be put in practice at all levels."
3. **At the same time, there is an ongoing trend of increased and unregulated influence of corporate and financial actors over global food and nutrition chains.** This is intimately linked with financial speculation and the grabbing of natural resources. The current food price volatility is essentially caused by speculation in financial markets, but the effect of volatile prices on real markets depends on how agribusiness influences the global value chains and global production networks. Agribusiness and nutrition companies effectively use the unregulated space for

their profit-oriented purposes, or successfully use their influence in adjusting the rules to their interests and convenience, as is illustrated in the articles on Paraguay and Mexico.

4. There is a worrying trend that the lessons learned about the **social determinants of nutrition are increasingly sidelined by well-funded global public private partnerships (PPP)** that focus on direct short-term intervention strategies. While social determinants of nutrition correspond to the conditions in which people are born, grow, live, work, and age, including the circumstances regarding inequality of wealth and power, there is the clear tendency for company-driven strategies to replace the holistic approach by medicalized direct intervention, especially in the field of maternal, infant and young children's health and nutrition. UN bodies and governments are well advised to heed the multitude of conflicts of interest inherent in these global PPP initiatives. What is most needed is for existing regulations, such as the International Code of Marketing of Breast-milk Substitutes, to be enforced and human rights-based accountability frameworks strengthened, enabling people to hold governments and companies accountable including legally and financially at the local, national, and global levels.
5. **New and important human rights-based strategies to regain control have advanced** in the last few years with long-lasting repercussions on food and nutrition. The longstanding struggle for indigenous peoples' rights and the substantial progress achieved by the UN Permanent Forum of Indigenous Peoples is a telling example. The new Guidelines on Responsible Governance on Tenure of Land, Fisheries and Forests, adopted in May 2012 by the CFS after an inclusive and participatory process is the first international instrument that applies a human rights approach on tenure of natural resources. The Maastricht Principles on extraterritorial obligations in the area of economic, social, and cultural rights endorsed in September 2011 by legal experts from all parts of the world is a milestone in the globalization of the human rights struggle with strong implications in the field of food and nutrition. Beyond the initiatives for stronger right to food accountability mechanisms on the national level reported in the *Watch 2011*, there are new upcoming processes in the Philippines and Bangladesh.
6. The challenge ahead: **To occupy political space and fight for the primacy of human rights.** It is difficult to imagine a turnaround in policies on hunger without a fundamental change in the way social groups most affected by hunger and malnutrition are included in decision making. As it has been demonstrated throughout the *Watch 2012*, this is essentially a human rights struggle, focused on the promotion and protection of the right to adequate food within the context of the indivisibility of all human rights. This process is intimately linked to the struggle for people's self-determination and food sovereignty. This perspective recalls the need to expand right to food coherence and accountability, particularly in relation to those policies on trade, investment, energy, climate and primary resources that are currently conducted by OECD countries. The right to food of people around the planet has primacy over the need to fuel cars and economies in the European Union or North America. The newly created political spaces for inclusive decision-making on food and nutrition can and must be used.

LIST OF MAIN SOURCES AVAILABLE AT WWW.RTFN-WATCH.ORG

WHO DECIDES ABOUT GLOBAL FOOD AND NUTRITION?

Strategies to regain control

- 01
- CSM Working Group on GSF. “Contributions from CSO Consultations at Regional Conferences to the GSF First Draft.” 15 May 2012. English, French, Spanish.
 - De Schutter, Olivier. “Mandate of the Special Rapporteur on the Right to Food: Submission to the Consultation on the First Draft of the Global Strategic Framework for Food Security and Nutrition of the Committee on World Food Security.” 8 May 2012. English.
 - “Factsheet 1; the Global Strategic Framework for Food Security and Nutrition: a Right to Food Perspective.” FAO. Mar. 2012. English, French, Spanish.
 - “Factsheet 2; Human Rights—a Strategy for the Fight against Hunger.” FAO. Mar. 2012. English, French, Spanish.
 - Golay, Christophe, and Michaela Büschi. The Right to Food and Global Strategic Frameworks: the Global Strategic Framework for Food Security and Nutrition (GSF) and the UN Comprehensive Framework for Action (CFA). Rome: FAO, 2012. English.
 - “Global Strategic Framework for Food Security and Nutrition” CFS. July 2012. (Version to be approved in October 2012). English, French, Spanish.
 - International Food Security and Nutrition Civil Society Mechanism. “Civil Society Working Document on the Global Strategic Framework for Food Security and Nutrition.” Dec. 2011. English, French, Spanish.
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- FAO, IFAD, and WFP. The State of Food Insecurity in the World: How does international price volatility affect domestic economies and food security? Rome: FAO, 2011. English, French, Spanish.
- 03
- Gupta, Arun, Claudio Schuftan, Flavio Valente, Patti Rundall, and Radha Holla. “Ready to Use Therapeutic Food Is Not the Solution to Malnutrition”. Letter. World Nutrition 3.4 (April 2012): 3, 4, 168–171. English.
 - Human Rights Council, 19th Session. “Report submitted by the Special Rapporteur on the Right to Food, Olivier De Schutter” (A/HCR/19/59). 26 Dec. 2011. English, French, Spanish.
- 04
- “Guidelines on Cooperation between the United Nations and the Business Sector.” UN, 2009. English.
 - IBFAN Comments on the Children’s Rights & Business Principles Initiative. English.
 - “Statement of Concern.” Conflict of Interest Coalition. Sept. 2011. English.
 - “The Greed Revolution, Mega Foundations, Agribusiness Muscle In On Public Goods” ETC Group Communiqué 108 (2012). English.
- 05
- “Civil Society Organizations’ Proposals for the FAO Guidelines on Responsible Governance of Land and Natural Resources Tenure.” Heidelberg: FIAN International, 2011. English, French, Spanish.
 - Committee on World Food Security, 38th (Special) Session. “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (CFS 2012/38/2). Rome, 11 May 2012. English, French, Spanish.
 - International Food Security and Nutrition Civil Society Mechanism. “The Guidelines on the Tenure of Land, Fisheries and Forests Are a First Step, but Much More Is Needed to Ensure People’s Rights to Land and Natural Resources.” Rome, 11 May 2012. English, French, Spanish.
- 06
- Amnesty International. Sacrificing Rights in the Name of Development: Indigenous Peoples under Threat in the Americas. London: Amnesty International Publications, 2011. English, French, Spanish.
 - Department of Economic and Social Affairs of the United Nations Secretariat. State of the World’s Indigenous Peoples. New York: United Nations, 2009. English, French, Spanish.
 - United Nations General Assembly, 107th plenary meeting. “Declaration on the Rights of Indigenous Peoples” (61/295). 13 Sep. 2007. English, French, Spanish.
- 07
- “Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights”. 28 Sep. 2011. English, French, Spanish.

REGIONAL AND NATIONAL REPORTS: Monitoring the Human Right to Food and Nutrition

- 08
- Aziz, Sahar, and Abdulla Musalem. Citizens, Not Subjects: Debunking the Sectarian Narrative of Bahrain's Pro-Democracy Movement. Washington DC: Institute for Social Policy and Understanding, 2011. English.
 - "National Fact-finding Commission Report." National Commission to Establish the Facts about Corruption and Embezzlement. Nov. 2011. Arabic.
 - "Report of the Parliamentary Committee to Investigate Public and Private Property of the State." March 2010. Arabic.
- 09
- "A Dangerous Delay: The cost of the Late Response to Early Warnings in the 2011 Drought in the Horn of Africa." Full report. Oxfam, and Save the Children. 18 Jan. 2012. English, French, Spanish.
 - "A Dangerous Delay: The cost of the Late Response to Early Warnings in the 2011 Drought in the Horn of Africa." Summary. Oxfam, and Save the Children. 18 Jan. 2012. English, French, Spanish.
 - "Farming Money: How European Banks and Private Finance Profit from Food Speculation and Land Grabs." Friends of the Earth Europe. 12 Jan. 2012. English.
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- Anseeuw, Ward, et al. "Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project". Rome: ILC, Jan. 2012. English.
 - CFSI. "Are our Cars Running on an Empty Stomach? For an EU Policy Respectful of the Right to Food." May 2012. English, French.
 - "(Bio)Fueling Injustice: Europe's Responsibility to Counter Climate Change Without Provoking Land Grabbing and Compounding Food Insecurity in Africa." EuropAfrica. 2011. English.
 - FAO, IFAD, IMF, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN HLTf. "Price Volatility in Food and Agricultural Markets: Policy Responses." Policy Report, 2 June 2011. English
 - High Level Panel of Experts on Food Security and Nutrition (HLPE). Price Volatility and Food Security Report. Rome: CFS, July 2011. English and French.
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- Committee on Economic, Social and Cultural Rights, 48th Session. "Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant; Concluding observations of the Committee on Economic, Social and Cultural Rights" (E/C.12/ESP/CO/5). 30 Apr.–18 May 2012. English, French, Spanish.
 - "Joint Submission to the Committee on Economic, Social and Cultural Rights on the Occasion of the Review. Spain's 5th Periodic Report at the 48th Session. Full Report." Civil Society Organizations. May 2012. Spanish.
 - "Joint Submission to the Committee on Economic, Social and Cultural Rights on the Occasion of the Review. Spain's 5th Periodic Report at the 48th Session. Executive Summary." Civil Society Organizations. May 2012. English.
- 12
- Report of the Special Rapporteur on the right to food, Olivier de Schutter. "Mission to Mexico." UN Human Rights Council. 17 Jan. 2012. English, French, Spanish.
- 15
- De los Reyes, Virgilio, and Maria Socorro I. Diokno. The Philippines' Right to Food: an Assessment of the Philippine Legal Framework Governing the Right to Food. Rome: FAO, 2010. English.

The right to decide and to control which food to have is inherent to the human right to food. The *Right to Food and Nutrition Watch 2012* addresses the decision making process on global food and nutrition from this human rights perspective. The facts show that exclusion from economic and political decision making goes hand in hand with incidence of hunger and malnutrition. On the other hand, social movements and other expressions of civil society have engaged in strategies to regain people's control over food and nutrition. Many of these struggles are rooted in the conviction of food and peoples sovereignty, relate to the use and strengthening of human rights instruments, and follow a strategy to effectively occupy political decision space in local, national and global governance structures.

The *Right to Food and Nutrition Watch* monitors national, regional and global food security and nutrition policies from a human rights perspective, to detect and document violations and situations that increase the likelihood of violations, as well as the non implementation of human rights obligations and policy failures. The *Watch* provides a platform for human rights experts, civil society activists, social movements, the media, and scholars to exchange experiences on how best to carry out right to food work, including lobbying and advocacy.