

THE GLOBAL FOOD CHALLENGE

TOWARDS A HUMAN RIGHTS APPROACH
TO TRADE AND INVESTMENT POLICIES





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AMINE RICE
LONG GRAIN
RICE PARFUME



TALISHA
NET WT. 25 KGS
PRODUCT OF THAILAND

AMERICAN
POPCORN

PACKED FOR
HANDS EXPORT & EXPORT
SERVICES
TEL: 0031 10 413 9402

25 kg

Gold



PREMIUM AMERICAN
LONG GRAIN RICE

ROYAL FEAST

THAI RICE
(THAI HOM)

100% SCENTED
PHOENIX
NET WT. 25 KGS
PRODUCT OF THAILAND



DIAMOND

BRAND
NET WT. 25 KGS
PRODUCT OF THAILAND

RICE
Special Selection
American Brand
Extra White
Product of Thailand
5 Kilos

Chicago
The Right Choice
Long Grain
White Rice, Hard
Product of U.S.A.
5 Kilos



Uncle Sam

5 KGS
ORIGINE: THAILAND
EXPIRY DATE: 2008



Asia's Finest
Fragrant Rice
Long Grain White Rice
Net Wt : 5 Kg
Prod : July 2008
Exp : July 2009



Asia's Finest
Thai Fragrant Rice
(THAI HOM MALI RICE)
Net Wt : 25 kg



THAI HOM MALI
RIZ PARFUMÉ
September 2008
September 2009

ROYAL FEAST



Net Wt. 25kg

Le-grain
JO

AI SUPER
THAI PARFUMÉ



DIAMOND

NET WT. 5 KGS
PRODUCT OF THAILAND

THE GLOBAL FOOD CHALLENGE: INTRODUCTION

It started with the tortilla crisis in Mexico. Slum dwellers had to renounce their daily staple food because of exploding corn prices. Their loud protest in January 2007 was just the first in a series of food riots¹ in about 40 countries. The last straw came in April 2008, in Haiti, when car tires burned in, barricades were built and the Prime Minister was overthrown. Finally the global food crisis was a story for primetime in the international media. An almost unprecedented price explosion for important agri-cultural commodities on the global market triggered the crisis. The price hikes were caused by growing use of commodities (such as soybean and maize) for agrofuels; excessive speculation on commodities Section 0 futures markets; increased meat consumption; poor harvests in the United States, Australia and Turkey; increased oil and energy prices; and, depleted food stocks. In the first half of 2008 alone, prices for food staples such as rice and cooking oil doubled (FAO 2009a).

Particularly in those countries that most relied on food imports, this international development was almost immediately reflected in the prices of food on grocery store shelves. And within these countries, the people who were most affected were the poor. Several hundred million more people joined the ranks of those unable to afford their daily food. The Food and Agriculture Organization (FAO) of the United Nations (UN) estimates that, because of higher food prices, the number of chronically undernourished people increased from 850 million to 915 million between 2005 and 2009. In June 2009, the news worsened: for the first time in human history the number of hungry people passed one billion. It is striking that record hunger in 2009 followed record grain harvests in 2008. FAO clearly stated: The increase in undernourishment is not a result of limited international food supplies (FAO 2009b). In 2009 the global grain harvest would only modestly fall short of the previous year Section 0s record output level of 2,287 million metric tons.

Instead, FAO identifies the main cause of still-rising hunger levels as the global financial and economic crisis, whose effects overlap with and worsen those of the food price crisis. Since autumn 2008, international agricultural commodity prices have dropped significantly but real domestic average prices for food staples are still 24 percent above June 2007 levels. As a consequence of financial market deregulation and speculation on commodity exchanges in industrialized countries, the economic crisis hit the global south with full strength. Scarcity of loans blocked badly needed invest-

ment in agriculture. Reduced orders and bankruptcies, especially in export sectors, destroyed the jobs of millions of people. And extreme inflation in a number of developing countries meant domestic food prices did not drop, despite lowering world market prices for agricultural commodities. To top it all off, the International Monetary Fund (IMF) says Overseas Development Aid (ODA) might decline by 25 percent in 2009 (FAO 2009b).

It would be unfair to say that the world Section 0s governments and the international community remained passive in the face the food crisis. In 2008, this global human disaster (which was a long time in the making) finally attracted the public attention it deserves. A range of international conferences like the High Level Conference on World Food Security organized by the FAO in June 2008 in Rome, a High Level Conference in January 2009 in Madrid and the G8 Summits in 2008 and 2009 made it clear that hunger had reached the top of the international agenda. Since April 2008, the reaction of the international community to the food crisis has been coordinated by the High Level Task Force on the Global Food Crisis (HLTF), which was initiated by UN Secretary General Ban Ki-moon and which is composed of all UN organizations dealing with food and agriculture, as well as the World Bank, the IMF and the World Trade Organization (WTO).

In July 2008, the HLTF released a Comprehensive Framework for Action (CFA). The document sets out the joint position of HLTF members on proposed action to overcome the food crisis (HLTF 2008). Like other recent reports of intergovernmental organizations (IGOs), such as the World Development Report 2008 of the World Bank (WB 2008a), the CFA recommended that policy-makers pay more attention to agriculture and increase their support for the sector for smallholder farmers in particular. The CFA calls for developing countries to increase public spending in agricultural and rural development to at least 10 percent of the budget, and for developed countries to increase the percentage of ODA dedicated to food and agricultural development from 3 percent (where it is today) to at least 10 percent within the next five years. These are proposals that point in the right direction. Also welcome is the declared objective to strengthen social protection systems. All of these measures, against the backdrop of soaring food prices, are more important than ever. On the other hand, social movements and NGOs are critical of the CFA for promoting the old paradigm of trade liberalization, ignoring the need for land reforms

and more sustainable methods of production and following a very narrow understanding of social security (FIAN International 2008). There is still a lot of work to be done to get the global policy agenda right.

The declarations and promises were followed by action (Brock and Paasch 2009). Since June 2008 alone, the World Food Programme (WFP) has spent \$5.1 billion USD on food aid (the larger share) and, to a lesser degree, on cash for work programs. The World Bank set up a Global Food Crisis Response Programme (GFRP) in 2008 to grant immediate relief to those countries that were hit particularly hard by high food prices and to assist countries to meet higher production and marketing costs (WB 2009). The World Bank announced a rapid financing facility of \$1.2 billion USD to this end. The budget was increased to \$2 billion USD in April 2009 (WB 2009). FAO launched its Initiative on Soaring Food Prices (ISFP) in 2007. Between June 2008 and September 2009, it mobilized around \$37 million USD of its own resources and received an additional \$311 million USD in funding to assist governments to take emergency measures, in efforts to increase local production in the current planting season as well as to expand plantings in the dry season. FAO has also supported governments with policy advice (HLTF 2009).

The question arises, however, as to why these joint efforts have not had the expected result of lessening the food crisis. The main focus of these international responses to the food crisis is the distribution of food aid, hybrid seeds and fertilizers. The measures are by and large focused on increasing productivity. Yet the FAO itself has said that lack of food is not the reason for the food crisis. The authors of this publication argue that fundamental causes of hunger are instead to be found in unfair market structures. The articles focus in particular on global trade and investment policies that have impoverished and marginalized landless farm workers, smallholder farmers, pastoralists, indigenous people and slum dwellers, and particularly women within all these social groups. Moreover, these policies have led to severe violations of human rights, particularly the universal human right to food. This basic human right is enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR has been ratified by 160 states. The right to adequate food establishes clear legal obligations for states and the international community, which, according to international law, precede other legal obligations states may have, for example in the areas of trade and investment (see chapter 1 by Olivier De Schutter).

However, governments and intergovernmental organizations (IGOs) are still largely neglecting these human rights obligations and risk repeating many of the same errors that caused the food crisis. The papers compiled in this publication analyze some of these errors: the displacement of farming communities from their local markets through a combination of export dumping by industrialized countries and forced market access in developing countries (see chapters 2 by Tobias Reichert and 3 by Armin Paasch); forced land evictions of small-scale farmers and rural workers as a result of investment in large scale plantations for cash crops or agrofuels and insecure land rights (see chapter 4 by Rolf Künemann) and a systematic neglect and discrimination of women, who make up around 70 percent of the hungry, in food and agriculture policies (see chapter 5 by Alexandra Spieldoch). The right to food of these marginalized food producers and poor urban consumers was further undermined through excessive speculation in the future markets in the context of the mortgage and more general financial crises (see chapter 6 by Peter Wahl). Furthermore, man-made climate change is heavily threatening harvests in poor countries in Africa, Latin America and Asia and will hit hardest those who are already facing hunger. (see chapter 7 by Thomas Hirsch, Christine Lottje and Michael Windfuhr).

These and other root causes of hunger were the subject of the international conference The Global Food Challenge Finding Approaches to Trade and Investment that support the Right to Food that took place in November 2008 in Geneva.² The year 2008 marked the 60th anniversary of both the adoption of the Universal Declaration of Human Rights and the creation of the international trading system through the General Agreement on Tariffs and Trade (GATT) and WTO. The participants of this conference 130 representatives of social movements and NGOs from 40 countries analyzed concrete cases of violations of the right to food through unfair trade and investment policies and their underlying structural problems. Beyond analysis, the conference aimed to identify alternative ways to integrate human rights principles in trade and investment policies and reconcile their distinct and sometimes competing legal regimes (see chapter 10 by Sophia Murphy and Carin Smaller). Existing human rights instruments that can already be used to influence trade and investment policies were assessed (see chapter 8 by Elvira Domínguez Redondo and Magdalena Sepúlveda Carmona) and the need for new instruments discussed (see chapter 1 by Olivier De Schutter and chapter 9 by Christophe Golay).

This publication compiles background papers that were presented at the conference as well as some more recent material that develops some of the arguments presented during the conference. Brot für Alle, Brot für die Welt, the Ecumenical Advocacy Alliance (EAA), the FoodFirst Information and Action Network (FIAN), Germanwatch, the Heinrich Böll Foundation and the Institute for Agriculture and Trade Policy (IATP) decided to publish this book in order to make the analyses and approaches discussed in the conference accessible to a broader audience. The publishers are aware that there are no easy solutions for the food crisis, yet they hope to feed a debate that is attracting more and more interest and that remains front and center of any agenda for social justice and environmental sustainability.

¹ The term food riot is used because food was in all cases one of the main reasons for the riots, even though it was often not the only one.

² The conference was initiated by the Ecumenical Advocacy Alliance (EAA), FoodFirst Information and Action Network (FIAN) and the Institute for Agriculture and Trade Policy (IATP). The conference was held under the auspices of the UN Special Rapporteur on the right to food. It was co-organized by a broad group of civil society organizations including: ActionAid, Agency for Cooperation and Research in Development (ACORD), Brot für Alle, Brot für die Welt, Canadian Food Security Policy Group, East and Southern Africa Small Scale Farmers Forum (ESAFF), Eco-Fair Trade Dialogue, Equipo Pueblo-Social Watch Mexico, ESCR-Net, International Gender and Trade Network (IGTN), Heinrich Böll Stiftung, Lutheran World Federation (LWF), Network of Farmers Section O and Agricultural Producers Section O Organization of West Africa (ROPPA), NIYEL, Oxfam International, Social Watch, Working Group in Trade and Agriculture (Hemispheric Social Alliance), World Alliance of YMCAs, and the World Council of Churches.

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EXECUTIVE SUMMARY

In November 2008, the Ecumenical Advocacy Alliance (EAA), FoodFirst Information and Action Network (FIAN) and the Institute for Agriculture and Trade Policy (IATP) jointly hosted an international conference: “The Global Food Challenge – Finding New Approaches to Trade and Investment that support the Right to Food.” The conference was held under the auspices of the UN Special Rapporteur on the right to food, Olivier De Schutter. The event received the support and advice of a broad group of civil society organizations, including ActionAid, the Agency for Cooperation and Research in Development (ACORD), Brot für Alle, Brot für die Welt, the Canadian Food Security Policy Group, the East and Southern Africa Small Scale Farmers Forum (ESAFF), the Eco-Fair Trade Dialogue, Equipo Pueblo-Social Watch Mexico, the International Network for Economic, Social and Cultural Rights (ESCR-Net), the International Gender and Trade Network (IGTN), the Heinrich Böll Stiftung, the Lutheran World Federation (LWF), the Network of Farmers’ and Agricultural Producers’ Organization of West Africa (ROPPA), Niyel, Oxfam International, Social Watch, the Working Group on Trade and Agriculture of the Hemispheric Social Alliance, the World Alliance of YMCAs, and the World Council of Churches.

The conference offered a rich forum of learning, dialogue and debate. The event brought together 130 people from 40 countries, in a year that proved a watershed in global policies governing food and agriculture. The year, 2008, was the 60th anniversary of both the adoption of the Universal Declaration of Human Rights and the establishment of the international trading system through the General Agreement on Tariffs and Trade (GATT), an agreement that much later gave rise to the WTO (in 1995). It was also a year of sky-rocketing food prices, in global commodity markets and local bodegas alike, price hikes that prompted civil unrest in almost 40 countries, and that toppled a few governments as well. Too much of the same policy that went before persists, and in too many places the crisis is only deepening as levels of hunger continue to rise in the context of the global financial and economic crisis. But there is a marked change in the tone of the official government discourse, and a marked change in the way in which people – policy makers, policy advisors, and the public – are talking about food and agriculture. The conference provided a discussion of the food price crisis and the structural causes that led to it, particularly in the world of global trade, investment and finance. Conference participants agreed that trade, investment and finance must be regulated to support the realization of the right to food.

This book has been written for two reasons. First, to capture the papers and presentations made at the conference in a format designed to reach more people over a longer period of time. Second, to mark the necessity of continuing these debates with a view to realizing significant changes to the rules and public policies that govern trade and investment, in order to make such economic tools more supportive of the realization of the human right to food.

The book is organized in four sections: Fundamentals; Case Studies on Trade, Investment and the Right to Food; New Challenges and Threats; and, Human Rights Based Alternatives and Tools. The following pages offer a brief summary of each of the ten chapters.

THE FRAGMENTATION OF INTERNATIONAL TRADE, INVESTMENT AND HUMAN RIGHTS LAW

The first section, Fundamentals, includes two chapters. Chapter 1, written by Olivier De Schutter, the UN Special Rapporteur on the right to food, proposes a framework for a human rights approach to the negotiation and implementation of trade and investment agreements. In the first part De Schutter recalls the sources of international human rights law, especially the UN Charter, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. He argues that, within international law, human rights have a specific normative status. This implies that any international treaty, for example on trade and investment, which conflicts with human rights obligations of states, should either be considered void, or not be applied to the extent that there exists such a conflict. Human rights, such as the right to adequate food, impose three types of obligations to any state: to respect the rights which individuals enjoy, to protect these rights from being infringed by the acts of private parties, and to fulfill these rights for any person that does not currently enjoy them. The state must not only comply with these obligations towards the persons on its national territory, but also towards persons situated outside its borders. De Schutter claims that these extraterritorial obligations (ETO) should guide the negotiation and implementation of trade and investment agreements.

In the second part of chapter 1, De Schutter points out the practical problems with enforcing human rights over other international obligations, despite their higher standing. This difficulty arises from the fragmentation of international law into self-contained regimes and the

separate development of “trade law,” “investment law” and “human rights law.” In the absence of coordination among these regimes, the fact that trade and investment rules are often enforced by sanctions, while human rights obligations are not, gives trade and investment rules the de facto advantage. De Schutter proposes four mechanisms to avoid or overcome conflicts between the different regimes while ensuring the primacy of human rights: 1) the insertion of exception clauses and flexibilities in trade and investment treaties allowing states to comply with their human rights obligations without having to fear economic sanctions; 2) Human Rights Impact Assessments (HRIA) done before new regulations are passed into law to evaluate the potential impacts of trade and investment agreements that are still in negotiation; 3) “harmonization through interpretation,” which means that trade and investment treaties must be interpreted, to the fullest extent possible, as being coherent with human rights obligations; and, 4) sunset or “rendezvous” clauses that, based on HRIsAs done after new rules take effect, allow for a revision of a treaty where it appears to have a negative impact on human rights.

Chapter 2 by Tobias Reichert shows that, in absence of the mechanisms proposed by De Schutter, deregulation remains the panacea of trade and investment negotiations. Reichert first looks at the evolution of multilateral and bilateral trade and investment agreements, and their implications for agriculture and development in developing countries. The continuing push for more market access for agri-businesses based mostly in developed countries has had many negative implications for the food security and livelihood possibilities of local people across the developing world. At the same time, as the chapter shows, the governments of industrialized countries have still not addressed the problem of dumping food and feed at prices below the costs of production. Structural distortions in world market prices continue unchecked. Indeed, in response to the global financial crisis, export supports of various kinds are again on the rise.

The chapter sets out the main provisions of the WTO Agreement on Agriculture and looks at the proposals now in negotiation among WTO members for changes to the agreement as part of the so-called Doha Agenda. The chapter looks at the effects of liberalizing trade on developing countries’ food security and agricultural development. It discusses the trend towards more regional agreements as multilateral negotiations have stalled, and the relatively less favorable position that developing countries find themselves in in such nego-

tiations. The effect of the existing rules has been to limit the tools that developing countries might use, such as border measures to block dumped commodities, without effectively limiting the domestic support typically used by rich countries to insulate their agriculture from world markets, or, worse, to subsidize the activities of their exporting firms. In the face of increasing challenges from the crises of hunger, climate, energy and the world economy, Reichert calls for more targeted government intervention to support the realization of the right to food. He says the discussion needs to focus on consideration of which types of intervention are supporting domestic and international food security and which ones can be harmful.

VIOLATIONS OF THE HUMAN RIGHT TO FOOD THROUGH TRADE AND INVESTMENT POLICIES

The connection between agricultural trade and investment, on the one hand, and human rights, particularly the right to food, on the other, is normatively acknowledged by states. But there is no consensus as to the question which trade and investment policies are to be seen as being in accordance with human rights. Section 2 therefore examines concrete cases, where the right to food has been violated through trade and investment policies.

In Chapter 3, Armin Paasch briefly introduces a methodology proposed for case based HRIAs of trade policies. The chapter then summarizes the results of empirical case studies on the impact of trade policies on selected farming communities in Ghana, Honduras, Indonesia, Uganda and Zambia conducted on the basis of this methodology. Studies on rice gave clear evidence that the forced deregulation of trade in Ghana, Honduras and Indonesia contributed considerably to the violation of smallholders' right to adequate food. Increased and under priced imports have considerably lowered access of rice farmers to local town markets and driven down the price which they received from traders, processors and costumers. The result was that families lost their permanent access to adequate food. Opening of markets and the privatization of agricultural services in these countries, mainly implemented in the framework of structural adjustment programs forced on them by the IMF, are identified as main structural reasons of the imports surges registered by the FAO. Moreover, dumping and misallocated food aid by rice exporters from the United States enabled U.S. companies to access local markets abroad.

A similar pattern was observed in the cases of chicken and tomato farmers in Ghana, who were affected by import surges from the EU and other countries. The new Interim Economic Partnership Agreement (EPA) with the EU will force Ghana to further open its market for European imports and, in the case of so called "sensitive products," it will freeze tariffs at the current low levels and thereby limit Ghanaian policy space to protect the right to food of small holders. Other case studies on dairy farmers from Uganda and Zambia do not provide evidence of import surges and the displacement of farming communities through misled trade policies. However the EPAs, the increased EU dairy quota (associated with increased exports) and the reintroduction of EU export subsidies in January 2009 are posing major risks to the right to food of these farmers in the future. The author argues that upcoming bilateral free trade agreements between the EU and South Korea, India, ASEAN, Central America and others pose the same kind of threats to already vulnerable and marginalized farmers' right to food.

Chapter 4 by Rolf Künemann, looks at how the provisions of bilateral investment treaties lock in privileges for foreign investors that undermine local people's ability to secure their access to a livelihood, including the means to secure adequate food for themselves and their dependents, and thus their basic human right to adequate food. Governments and IGOs have rightly identified underinvestment in agriculture as one of the main reasons for hunger in general and for the rise in food prices in 2007 and 2008. Investing in agriculture is a must. Yet not just any kind of investment will do. In many cases, investment can directly lead to hunger. For example, large scale plantations that grow cash crops and exploit their workers; or the lease of land to produce feedstock for agrofuels that leads to forced evictions of small scale farmers or rural workers from their traditional land, can both result in serious violations of the right to food. The new phenomenon of large-scale land acquisitions by foreign investors is rightfully denounced as "land grabbing" by many NGOs (and has been criticized by several IGOs as well). Strong and enforceable rules are needed to ensure such contracts respect people's fundamental rights. The author insists that states have "extraterritorial obligation" for human rights implementation – that a state cannot just ensure the human rights of its own citizens, but must also ensure its companies and people are not responsible for violating human rights in other countries.

The chapter looks at a range of investment projects, in Kenya, Malawi, Uganda, Nigeria and Paraguay.

In each case, the role of investment agreements (and, in some cases, the lack of any domestic legislation governing foreign investment) in the violation of human rights is reviewed. Künemann proposes five criteria to assess investments from a right to food perspective. They are: 1. After the investment is made, the people affected by the project have access to adequate food and resources; 2. All project-affected persons have access to natural resources and to knowledge systems and production methods which are ecologically and economically more sustainable than they were before; 3. The number of people who enjoy access to adequate food or productive resources increases; 4. The resource and food needs of future generations have been taken into consideration; and, 5. The justiciability of the right to food and resources has been strengthened.

Chapter 5 by Alexandra Spielloch looks at both trade and investment from a gender perspective, considering the implications of policies of deregulation for women, who are disproportionately present among the hungry, among the landless and among the most marginal farmers. In many countries women make up more than 70 percent of food producers and, at the same time, globally, they make up around 70 percent of the hungry. They usually lack sufficient land rights under national law, they almost always receive lower wages than their male counterparts, and they are much more likely than men to have their rights as workers violated. Yet official strategies such as the UN High Level Task Force on the Global Food Security Crisis's Comprehensive Framework for Action (CFA) seem blind to gender issues and are silent on solutions to end gender discrimination in relation to food and agriculture policy.

Spielloch's paper makes three arguments, looking at what has failed and at how to develop food and agriculture policies that make a positive contribution to the right to food and to gender justice. The first is that the global food crisis and the long-term decline in agriculture over the last thirty years have worsened the situation for women producers and food providers globally. While many women have been able to benefit from global markets, too many are left out, unable to fully benefit from new opportunities because of their lack of social standing and because national legislation discriminates against women. Second, governments and institutions must prioritize gender in responding to the food crisis. Leaders need to increase funding and to adopt a rights-based approach to food and agriculture that includes a commitment to empower women. Third, women need the information and opportunity to be able to participate in

the formation of policy directives, and to take the lead in their implementation. Women's knowledge and engagement are invaluable. The chapter looks at some examples of successful projects spearheaded by women and makes recommendations as to what kinds of policy approaches can help to respond to the global food challenge from a gender perspective.

NEW THREATS AND CHALLENGES

The third section looks at two new threats to the realization of the right to food: unregulated speculation on commodity markets that disrupts normal supply and demand signals (chapter 6 by Peter Wahl); and, climate change, which threatens to disrupt agricultural production all around the globe, but in particular around the equator, where many of the world's poorest peoples are concentrated (chapter 7 by Thomas Hirsch, Christine Lottje and Michael Windfuhr).

In chapter 6, Peter Wahl looks at the effects of speculation. After decades of long-term declining prices in real terms, there are signs that agricultural commodity prices are likely rise, albeit modestly. There are many reasons for the change, rooted in structural trends such as increased energy prices, increased use of cereals for feed and fuel, global population growth, declining rates of productivity growth from existing agricultural technologies and the increased uncertainty in output due to climate change. These structural factors however do not fully explain the extent of the price hikes in 2007 and 2008, nor the subsequent continued volatility of agricultural commodity prices. An important element, external to supply and demand, was speculation on the futures markets in the context of the mortgage and more general financial crises. The speculative bubble was possible because of the deregulation of future markets over the past 20 years. Yet although there is discussion about how to re-regulate financial markets, for example at the September 2009 summit of the Group of 20 in Pittsburgh, the question of how to stem speculation on agricultural commodities has been ignored.

In his chapter, Peter Wahl reviews the different reasons given for the food price spikes in 2007 and 2008. He sets out the argument that the price spikes were what he describes as a "classic case of a speculative bubble." The damage done is real and deadly and the problem, argues Wahl, is not difficult to contain with regulatory measures (unlike the challenges posed by unsustainable diets, for example, or a food system dependent on

unsustainable use of freshwater resources). Wahl explains the distinction between speculation and investment and describes why, if left unchecked, speculation can destabilize the whole economy. In the last five to seven years, deregulation and the wider pattern of economic growth gave rise to a massive increase in the presence of speculative money in commodity markets (between 2003, the amounts increased from \$13 billion to \$260 billion USD). The effect was not only to drive prices very high very fast, but also to disconnect the market price from the “fundamentals” of supply and demand. The wider economic crisis, argues Wahl, drove institutional investors to move out of mortgage markets and into other sectors, including agricultural commodities, which in turn drove prices still higher.

Wahl argues that states are responsible for the protection and fulfillment of human rights, including the human right to food. The failure to regulate speculation is a failure to protect these rights. States have an obligation, argues Wahl, to protect people from speculation and excessive price volatility in the markets that determine the cost of food. He concludes his chapter with a recommendation for the implementation of two, linked, measures: a registry at the commodity exchanges that would exclude actors whose speculative activity was excessive; and, regulation of the traders who are authorized to operate at the exchange. The regulations would keep out speculators with no interest in the stability of the market long-term.

In chapter 7, Thomas Hirsch, Christine Lottje and Michael Windfuhr look at the changes in agricultural output linked to changes in weather patterns, particularly those associated with anthropomorphic climate change. The convergence of bad harvests in Australia, the U.S., Turkey and other countries in 2006/2007 has been identified as one factor behind the food price crisis. At the same time, evidence is growing that increased frequency of such bad harvests is due to climate change. The authors run through the evidence in support of the claims that anthropomorphic activity is affecting the climate.

They then make the link to food security, arguing that the current focus on global food security issues is obscuring the differentiated impact of the likely changes. Scientists are predicting that agriculture in poor countries in Africa, Latin America and Asia will be hit the hardest by climate change. Those who live close to the equator in particular will be hard hit, and that is a belt that contains many poor countries with large food-insecure populations already. These are not countries with the resources to

pay for the adaptation that is now widely expected to be necessary. Within these countries, the first victims will be those who are already facing hunger or who are otherwise socially vulnerable. The authors argue for developing the tools and indicators needed to assess which populations will be most vulnerable to the effects of climate change, including household assessments of food insecurity.

The authors then look at some of the tools now in use to assess needs, such as National Adaptation Programs of Action. They look at some of the tools available at the local and community level to adapt to climate change. They argue for a rights-based approach to such policy planning, to ensure the government puts the interests of the most vulnerable populations first. Clearly adaptation strategies need policy input and financing at the global level as well. Negotiations on sufficiently ambitious and binding global goals to reduce greenhouse gas emissions, however, do not look likely to emerge any time soon. In the inter-governmental negotiations on the Adaptation Fund, the special needs and the right to food those vulnerable people are still widely ignored. The authors call for a rights-based approach to climate policy at every level: international, national and local.

HUMAN RIGHTS BASED TOOLS AND ALTERNATIVES

The fourth and final section looks at alternatives and tools that support the right to food. In chapter 8, Elvira Domínguez Redondo and Magdalena Sepúlveda Carmona analyze the extent to which existing human rights tools can be – and are – actually used to challenge trade and investment rules. First, the authors explore the different strategies used to scrutinize the relationship between human rights, trade and investment policies. Among others they highlight the efforts of the Office of the High Commissioner for Human Rights (OHCHR) which prepared a series of reports addressing subjects as trade and investment liberalization, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), agricultural trade and the liberalization of trade in services, and which requested states to undertake HRIAs on trade and investment. As first important steps in standard setting, the authors mention the Draft UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprise with Regard to Human Rights, the UN Global Compact and the OECD Guidelines for Multinational Enterprises and others, however point to the limited character of these guidelines as non-legally binding standards.

The second part of the chapter outlines the main UN human rights treaty-based and charter-based bodies that have used their competence and procedures to raise human rights concerns in the field of trade and investment. The authors emphasize the pioneering role of the UN Committee on Economic, Social and Cultural Rights (CESCR), which was among the first to join protest from civil society against the Multilateral Agreement on Investments (MAI). The CESCR has since raised concerns on trade and investment policies in many discussions with states, in Concluding Observations to periodic reports and in General Comments on the Rights to Health and to Food. Additionally, the authors consider the Human Rights Council (HRC) as a “privileged forum” to further develop the nexus of trade, investment and human rights. Its Public Special Procedures, such as the UN Special Rapporteurs on the rights to health, to housing, to food and on torture have been very active in addressing these issues and moving forward the international debate. Moreover, the Universal Periodic Review mechanism of the HRC, where the behavior of 48 states annually is reviewed, offers a good opportunity for states and human rights advocates to challenge trade and investment policies. Nevertheless, the authors conclude that, so far, long-established legal tools and techniques used to promote and protect human rights are ill-equipped to deal with these issues traditionally addressed by disciplines and methodologies unfamiliar to jurists and human rights experts. To address this challenge, they propose a few possible avenues, such as thematic discussions within the Treaty Bodies on the nexus of human rights obligations and trade and investment policies, seeking clarification from the International Court of Justice (ICJ) in relation to legal lacuna regarding trade agreements and human rights obligations, and complaints under conventions of the International Labour Organisation (ILO).

In Chapter 9, Christophe Gollay discusses the need to further strengthen the human rights standards and instruments for a specific group of people, namely peasants, defined by the global peasant movement *Vía Campesina* as “women or men of the land, who have a direct and special relationship with the nature through the production of food and/or other agricultural products.” Peasants represent around 70 percent of undernourished people worldwide. No other social group suffers as many violations of their rights to food, water, healthcare, education, work and social security. Gollay reminds that peasants, like all human beings, benefit from the protection of the rights enshrined in the International Covenant on Economic, Social and

Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). As a complement to this universal protection, women peasants and indigenous peasants also benefit from the protection granted by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and by the United Nations Declaration on the Rights of Indigenous Peoples.

Yet the desperate situation of millions of peasants shows that this protection is still insufficient. Gollay argues that a Peasant Rights Convention could strengthen the position of peasants in international law by recognizing in a single document their numerous rights that have already been recognized in other international instruments, and by giving coherence and visibility to these existing rights. Furthermore such a convention would strengthen their rights against the growing control over food and productive resources exercised by multinationals and could push governments to take action against the discrimination faced by peasants. To that end, in June 2008, *Vía Campesina* adopted The Declaration of the Rights of Peasants – Men and Women, which was developed after seven years of internal discussion and consultation of its member organizations and human rights experts. Following the model of the UN Declaration on the Rights of Indigenous Peoples, the *Vía Campesina* declaration reaffirms the existing civil, political, economic, social and cultural rights of peasants, and reinforces them by incorporating new rights, such as the right to land, the right to seeds and the right to the means of agricultural production. The UN was slow to respond to the demands of *La Vía Campesina*. It was only with the work of its Special Rapporteur on the right to food in response to the global food crisis, that peasants’ rights were really discussed by the United Nations. In 2009, *La Vía Campesina* was invited by the Human Rights Council and the UN General Assembly to give its point of view on the food crisis and the way in which it might be remedied. The UN is a long way from adopting a Peasant Rights Convention but the experience of indigenous peoples shows that it is possible.

Chapter 10, the final chapter, by Carin Smaller and Sophia Murphy, looks at the tensions between the demands of (and assumptions implicit in) the global trade system with those created by human rights obligations. The authors propose a reconciliation that would give human rights the deciding role in shaping trade and investment relations among states. They argue that there are a number of features of human rights law that are especially pertinent to trade regulation, including its

universal, indivisible and interdependent nature; its forming a binding set of laws on all signatory states (which is all members of the UN); the centrality of a number of principles, including equality, non-discrimination, accountability, transparency, and participation; and, the extraterritorial obligations created by human rights law. In contrast, the authors point to a number of areas where the WTO system creates barriers to the respect and fulfillment of human rights. These include the trade system's push to limit the state's role in the economy, even though it might be necessary to correct market outcomes that discriminate against the poor, and the way the system ignores the effect of trade regulations on the most vulnerable populations, despite the obligation under human rights law to help the most vulnerable populations first. Despite some recent improvements, multilateral (and bilateral) trade negotiations fail to meet a minimal level of participation and inclusion from affected people.

The paper concludes with some ideas for a new and different basis for the regulation of international trade in food and agriculture. Echoing the points made in chapter 1, the authors call for coherence in a system that gives first place to human rights obligations. The authors propose the WTO focus on disciplining poor trade practice (such as dumping and regulated concentrations of market power) rather than promoting a single vision of how trade should be organized. The authors argue for accountability, transparency and participation to be founding principles of the trade system, and for formal monitoring and assessment that considers human rights concerns be formally included. The final recommendations look at proposed content for trade regulation. They call for a fresh look at border measures and their possible contribution to policy objectives related to the realization of human rights; for competition law that addresses concentrations of market power in global commodity and food markets; for a fresh look at what kinds of public investment and support are needed to build resilient and lasting food systems (including a role for public stocks and for state trading enterprises); and for disciplines to eliminate dumping and to better manage food aid.

As editors, we trust you will find the book a useful addition to a growing literature of critical writing on how best to make trade and investment serve just and ecologically resilient outcomes rooted in human rights. Bonne lecture!



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THE GLOBAL FOOD CHALLENGE –

TOWARDS A HUMAN RIGHTS APPROACH TO TRADE
AND INVESTMENT POLICIES

The number of undernourished people in the world has set a scandalous new record of one billion in 2009, in spite of a record grain harvest in 2008. This book argues that the “Global Food Challenge” requires a fundamental reshaping of international trade and investment policies and rules to put human rights, particularly the right to adequate food, at the centre of economic policy. The authors analyse the incoherence in international policy created by the separation of international human rights from trade and investment regimes. They analyse concrete cases of human rights violations of landless farm workers, smallholder farmers, pastoralists, indigenous peoples and slum dwellers; and, they look at the discrimination suffered by women in particular. All through misguided trade and investment policies, which have contributed as root causes of the global food crisis. The book also looks ahead to some of the new challenges confronting governments’ ability to realize the right to food, such as unregulated speculation and climate change. It finally proposes new and strengthened human rights instruments and new ways to integrate human rights principles into trade and investment policies.

