

International Trade: How Does It Affect Human Rights? Why Should We Be Interested? What Can We Do?

Organized by 3D - > Trade - Human Rights – Equitable Economy and FORUM-ASIA
during the Commission on Human Rights,
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Meeting Report

Moderators: Caroline Dommen (3D) and Rashid Kang (FORUM-ASIA)

Speakers: Sally-Anne Way (IUED), Nils Rosemann (consultant, human rights and development), Béchir N'Daw (UNAIDS), Davinia Ovett (3D), Diana Bronson (Rights and Democracy), Jacques-chai Chomthongdi (Focus on the Global South) and Simon Walker (OHCHR)

About 40 participants from all over the world, including academics, representatives of international organizations, ecumenical alliances, developing country representatives and human rights advocates from Africa, Europe, Latin America and South East Asia, attended the event.

Caroline Dommen, 3D, introduced the event by explaining that the aim of the discussion is to flag to human rights advocates how trade and trade rules can impact on human rights, why it is necessary for human rights advocates to get involved, and what advocates can do to ensure that trade rules do not undermine human rights.

She also introduced the *Practical Guide to the WTO for Human Rights Advocates* published by 3D → Trade - Human Rights - Equitable Economy and FORUM-ASIA in December 2004, which is designed to help advocates deepen their knowledge of the issues outlined in the discussion, and also gives pointers for action.

Rashid Kang, FORUM-ASIA, spoke about the work of FORUM-ASIA on trade and human rights issues, including regional workshops on the issue and the collaboration with 3D on the *Practical Guide to the WTO*.

I. How Does Trade Affect Human Rights? Why Should We Be Interested?

Sally-Anne Way, IUED, spoke about the effect of agricultural trade liberalization on the right to food. She said that the implementation of agricultural trade liberalization measures so far, as well as the negotiations under the WTO Agreement on Agriculture (AoA), have produced a situation that is unbalanced and essentially unfair to developing countries. Many developing countries, especially LDCs, have liberalised well beyond WTO commitments while industrialised countries still heavily protect their agriculture through subsidies and tariff structures.

Sally-Anne noted that liberalization can result in increasing food insecurity and poverty, particularly when liberalization is unilateral. Small farmers are particularly vulnerable when they are in competition with cheaper subsidized agricultural production from developed countries. When 60 – 80% of the population is dependent on agriculture – which is still the case in many developing countries – there can be a dramatic impact on the right to food of the majority of the population.

Agricultural trade agreements should therefore contain special safeguards that:

- 1) protect human dignity and the right to food;
- 2) ensure trade liberalization does not lead to the entrenchment of discrimination;
- 3) ensure governments can maintain their capacity to ensure food security and the right to food;
- 4) contribute to a just international and social order.

She finished by calling attention of human rights advocates to the fact that many negotiations relating to agriculture trade are now taking place outside the WTO multilateral forum and may not, therefore, recognize the safeguards that are being developed and negotiated at the multilateral level in the WTO.

Nils Rosemann spoke about the impact of services liberalization on economic, social and cultural rights, with a particular focus on the right to water and access to essential services. Transnational corporations (TNCs) who take control of the provision of water often have a monopoly over the provision of water and lack accountability. Indeed, following privatization and liberalization of water services governments find it very difficult to regulate TNCs and meet their human rights obligations. However, he noted that water services are not yet covered by the WTO GATS agreements despite the EU's request to many developing countries to open up water service provision to international competition. He encouraged the participants to look at the General Comment on the Right to Water, interpreting article 11 of the International Covenant on Economic, Social and Cultural Rights.

Nils drew the attention of the audience to two situations where human rights principles were used in campaigns against cases where services liberalization hindered access to water services. In Manila, the Philippines, in 1998, two international conglomerates were granted a 25-year concession agreement for the provision of water. The price of water increased. This led to a protest movement by civil society, which invoked human rights principles to counter the TNCs. The second example was from Pakistan, where the right to water for personal use was invoked to counter Nestle PurLife plans to extract ground water.

Béahir N'Daw, UNAIDS, spoke about the impact of trade-related intellectual property (IP) rules on access to affordable medicines, an inherent element of the right to life and the right to health. UNAIDS advocates that the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and the flexibilities and safeguards therein, be viewed in the context of public health and other social interests. UNAIDS also encourages governments to fully use these flexibilities in order to ensure access to affordable essential medicines and the realization of human rights. He warned that more stringent IP protection may lead to prohibitively high prices of essential medicines, including HIV medicines. He gave the example of the advocacy work of UNAIDS in Guatemala relating to the US-Central American Free Trade Agreement (CAFTA), a bilateral trade agreement which contains a number of strict IP rules that go beyond the TRIPS Agreement and may limit access to affordable medicines.

II. What Can We Do?

The second half of the event focused on the human rights strategies that can be used to meet the challenges posed by trade policy.

Davinia Ovetz, 3D, spoke about how 3D has used human rights rules and mechanisms to provide additional tools to advocates working on the issue of IP and access to medicines. 3D has prepared parallel reports for the UN human rights treaty bodies (treaty bodies), on countries reviewing their IP rules or negotiating agreements with countries that are pushing for strict IP rules. The treaty bodies can make recommendations to States encouraging them to respect the right to health when negotiating or implementing trade agreements. They can also encourage states to conduct impact assessments of trade rules on human rights. The Committee on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) have made very useful

recommendations to States facing pressure in trade negotiations to adopt strict IP rules, which risk increasing the cost of medicines.

Other human rights mechanisms that can help achieve greater accountability in trade agreements are the special procedures of the Commission on Human Rights. The Special Rapporteur on the Right to Health has made strong recommendations to States, such as saying that States should carry out human rights impact assessments before signing on to trade agreements. **Sally-Anne Way** agreed that this was a useful tool and commented that the Special Rapporteur on the Right to Food has made recommendations concerning the need for trade agreements to respect the enjoyment of human rights, particularly the right to food.

Jacques-chai Chomthongdi, Focus on the Global South, spoke of the experience of FTA-Watch, a civil society campaign against the Free Trade Agreement in Thailand. The Thai government has entered into a number of bilateral and regional trade negotiations that will impact on many aspects of its economy, and livelihoods of people around the country. The US-Thailand Free Trade Agreement negotiations have raised the most concerns, as there is a lack of transparency and participation in the negotiation process. The impact of IP rules on access to affordable medicines is an issue of great concern, as the US has requested that the Thai government adopt strict IP rules that would limit the ability of the Thai government to manufacture or import cheaper medicines. The National Human Rights Commission requested the government over a year ago to release information on the negotiations, but they have received no response. The Senate Committee on Foreign Affairs has made similar requests and the House of Representatives has requested a consultation process, as provided for under the Thai constitution.

Thai civil society groups, coordinated by FTA Watch, are preparing a parallel report to the UN treaty bodies on the lack of transparency and accountability in the US-Thailand FTA negotiations. It is important for Thai civil society to use these international human rights mechanisms, to give international recognition to their campaign. The recommendations that will follow from the treaty bodies can then be used to raise awareness about trade issues at the national and regional level.

Diana Bronson, Rights & Democracy, spoke about using regional human rights mechanisms in the Americas to achieve greater accountability in trade decision-making processes. She gave the example of a submission to the Inter-American Commission of Human Rights by seven NGOs from Latin and North America in November 2004. The submission focuses on the impact of regional economic integration on the enjoyment of human rights in the Americas. The submission refers to three case studies: one on the impact of the liberalization of water services in Bolivia, the issue of foreign investment and toxic waste in Mexico and the impact of strict IP rules in bilateral and regional trade agreements on access to affordable medicines in Ecuador. She also referred to the request made by NGOs to the Special Rapporteur on Freedom of Expression of the Inter-American Commission to include information on the impact of liberalization on human rights in his report to the Summit of the Americas in December 2005.

Simon Walker, OHCHR, ended the session by outlining the development of human rights impact assessments. He noted that in respect to trade rules and policies the use of human rights impact assessments is still very theoretical. The objective of an assessment is to promote a choice of rules and policies that will bring about positive human rights outcomes. As assessment takes the norms and standards of human rights legislation and develops indicators to give effective standards. These can be used to judge positive and negative effects of trade rules, such as the impact of the liberalization of hospital services under GATS on access to affordable health services. Human rights impact assessments can also be used in relation to civil and political rights by looking at the process of the formulation of trade rules in relation to access to information and transparency. He noted that assessments can be undertaken at different stages, such as before a rule is adopted or after a period of implementation. He also commented that both social science techniques and economic analysis are required to establish an effective methodology for human rights impact assessments.

The UN Working Group on the Right to Development has agreed that it is necessary to develop the tools necessary to carry out human rights impact assessments and recommends that states should develop and use them in the context of WTO negotiations. He recommended that civil society get involved in the activities of this Working Group.

Following the presentations, a participant asked the panelists whether it would be a good strategy to work within the WTO, in order to raise the awareness of WTO Member States about their human rights obligations.

Simon Walker said that one way of making WTO Members aware of their human rights obligations would be to include a proposal for human rights impact assessments of trade rules in the WTO Trade Policy Review Mechanism.

Jacques-chai Chomthongdi responded by saying that it would depend upon whether WTO Members would be sensitive to these issues being raised in the WTO context.

Diana Bronson commented that it is important to convince national governments to take into account their human rights obligations when they negotiate trade rules in the WTO.