

PRESENTATION BEFORE THE PRE-SESSIONAL WORKING GROUP OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Monsieur/Madame le/la Président(e), Members of the Committee

Thank you for this opportunity to present some of our concerns relating to the implementation of the Covenant on Economic, Social and Cultural Rights.

As many of you know, our concerns at 3D arise from the effect of trade agreements and trade-related policies on the enjoyment of human rights.

We are here to urge the Committee to raise these matters with States parties.

Most trade agreements are negotiated in secrecy, ignoring human rights principles such as transparency and participation. This is the case in international fora such as the WTO and in bilateral agreements. The positions of the States are not revealed and for most bilateral agreement no documents are made available to the public during the negotiation process.

There is a need to make impact studies of these agreements available to a wider array of actors internationally and nationally, to foster participation and empower civil society groups to influence both the negotiation and the implementation process.

Already implemented trade policy needs to be continuously assessed for a human right perspective, before further development of agriculture liberalization and IPR strengthening.

States have the obligation of non-retrogression, according to which states are not permitted, to remove, weaken or withdraw from legislation and programs, which implement their human rights obligations. It is essential that bilateral and multilateral trade agreements contain no provisions impeding the capacity of state parties to respect, protect, ensure or fulfil human rights both nationally and in other States. Measures need to be taken by all Parties (developed and developing countries) to make sure the negotiation process does not result in an agreement which threatens economic social and cultural rights for the most vulnerable segment of the population in developing countries. In particular the right to an adequate standard of living and the right to adequate food (Article 11), or the enjoyment of the highest attainable standard of physical and mental health and their right to access medicines (Article 12).

Today, we will focus on these issues, with regards to the Philippines, Nicaragua, Kenya and Sweden.

THE CASE OF THE PHILIPPINES AND FTAS

The Senate is currently conducting hearings on the Japan-Philippines Economic Partnership Agreement (JPEPA) as part of the ratification process. We are especially concerned about the effects it will have on the small farmers and fishermen.

While most local farmers are not in a position to access the Japanese market, since their produce may be unable to meet strict Japanese phytosanitary and other quality standards or given the lack of transport, storage and marketing infrastructure to bring fresh fruits to Japanese consumers, small

farmers and farm workers may even be worse off as the agri-business intensify their use of contract growing and farm lease arrangements. These arrangements put all the risk of cultivation on the contract growers.¹

Small fishermen are likely to be the worst hit of JPEPA as the free-trade pact allows Japan's factory ships and fishing vessels access to the Philippines' exclusive economic zone. A single Japanese factory ship could harvest as much as 50,000 metric tons of tuna a year. This would worsen the state of municipal fishermen who are already suffering from a declining share in total fisheries production. Over the period 1992 to 2005, the share of municipal fisheries to total fisheries production fell from 41% to just 27%, even as they accounted for 85% of operators in the sector.²

We would like the Committee to address the following issues to the Philippines on the potential negative impacts that rural workers, fishermen and their families will face as a result of the expansion of industrial agriculture and large scale fisheries that the bilateral trade agreement allows:

What measures have been taken to assess the impacts of the JPEPA on small farmers and fishermen?

Has available information outlining the negative effects of this agreement on economic, social and cultural rights been taken into account in the negotiation process?

The Philippines are planning to start a similar process with the US soon. As a result, the Philippines may be compelled to enact even more stringent IPR laws and engage in further liberalization of its agriculture.

Intellectual property rights on plant varieties encourage the expansion of industrial agriculture at the expense of sustainable agriculture that feeds rural workers and their families. Intellectual property rights will also make it more difficult for, or criminalize farmers, for exchanging and selling seeds with other farmers, a practice which is a fundamental part of many traditional farming cultures.

The Philippine Plant Variety Act (PVP) was approved in 2002, as a result of lobbying by the United States. The signing of the law did not elicit much public attention but the process on how the law was formulated and its substance became embroiled in some controversy later on. It was learned that one of the key influences in the passage of the law had been a program of the US Agency for International Development (USAID) called Accelerating Growth, Investment and Liberalization with Equity (AGILE). The US government had never hidden its agenda of pushing for the adoption of higher IPR standards, similar to US standards. The US had pushed for adoption of patents or at the very least UPOV-modelled system. Thus the Philippines, [...] adopted a PVP law that conformed largely to UPOV.

It is also worth noting that the crafting of the PVP law did not undergo broad consultations with stakeholders that could have brought out the opinions and perspectives of different sectors, especially farmers and civil society groups. Public hearings were indeed conducted but they took place in Metro Manila, and most of the participants came from government agencies, academia and public research institutions, and from the seed industry. There were very few representatives from civil society and farmers' groups, who later on complained that their recommendations were never taken on board in the final version of the law.³

The human rights impacts of the implementation of the PVP Act should be assessed before a

¹ Ibon Media, 11 October 2007 <http://info.ibon.org/index.php?option=com_content&task=view&id=206&Itemid=51>

² *Ibid.*

³ SEARICE. *TRIPS and the Philippine Experience*, Blog entry, 24 April 2007 <<http://searicepr.blogspot.com/2007/04/trips-and-philippine-experience.html>>

stronger IPR regime is considered. Also, it is important that the process by which any new IP standard is introduced be compatible with human rights principles, particularly as regards transparency and public participation.

Trade-related intellectual property (IP) rules can also affect access to affordable medicines. Of greatest concern are patents, which grant exclusive rights over the manufacture, use or sale of an invention. Patent rights can keep prices of drugs artificially high for a period of time. TRIPS-plus rules risk dismantling the flexibilities reaffirmed by the Doha Declaration to promote access to medicines for all.

We therefore recommend that the Committee ask the Philippines delegation about the way the government has been monitoring the effects on human rights of IP standards enacted since 2000.

What measures has the Philippines government taken to ensure that trade negotiators are upholding human rights, particularly the right to health, to an adequate standard of living and to food for the most vulnerable groups?

THE CASE OF EPAS - KENYA AND SWEDEN (AS MEMBER OF THE EU)

Kenya along with other African Caribbean and Pacific (ACP) Group of States are currently negotiating new trading arrangements and agreements, known as Economic Partnership Agreements (EPAs), with the European Union (EU). The basis and principles underlying these negotiations are contained in the Cotonou Partnership Agreement

Human rights defenders and small scale farmers have instituted proceedings in the Kenyan Constitutional Courts challenging the Economic Partnership Agreements (EPA) under Section 84(1) of the Constitution of Kenya and various international human rights instruments against the Government of Kenya for violations of the fundamental rights and freedoms of the individual and contraventions of the provisions of the Constitution of Kenya and the international instruments.

What measures have been taken to ensure that trade negotiators are defending a position which takes into account the obligation of non-retrogression of human rights, particularly the right to health, an adequate standard of living and access to food for the most vulnerable groups?

This same question must be posed to Sweden which, as a member of the EU, is equally responsible to ensure that this trade agreement will not adversely affect the realisation of human rights, either in Sweden or in Kenya. In addition to its human right obligations, Sweden's commitment to the Millennium Development Goals, make the monitoring of this trade agreement an imperative.

THE CASE OF NICARAGUA AND CAFTA

CAFTA-DR has been in force in Nicaragua since 1 April 2006.

CAFTA-DR and the right to work/right to food for rural Nicaraguans:

Despite of the existence of the Program for Rural Development (Pro-Rural), whose stated objectives are to increase the country's agricultural productivity and provide support for the vast majority of Nicaraguan farmers⁴ whose land-holdings are not large enough to allow them to compete in the agro-export sector,⁵ this government funding program is largely inaccessible to the farmers it is designed to help, as producers themselves must provide 20% of the capital for any

⁴ According to the Centre for Rural and Social Promotion, Research, and Development (CIPRES), 96% of Nicaragua's 233,000 agricultural producers are small and medium-sized farmers; Witness for Peace, Ortega Government Shows Some Response to Civil Society Demands, Nicaragua, March 2007, available at <<http://americas.irc-online.org/am/4117>>

⁵ Stop CAFTA Coalition, *Monitoring report: DR-CAFTA in Year One*, 12 September 2006, <http://www.cispes.org/cafta/CAFTA_Monitoring_sept12.pdf>

given project.⁶ Needless to say, this stipulation prices the majority of farmers – approximately 70% of whom live in poverty⁷ - out of the funding pool.

The tariff reductions required by CAFTA-DR pave the way for an influx of imports of subsidized US agricultural products, against which small and medium sized Nicaraguan farmers will have great difficulty competing. With increasing numbers of consumers buying cheaper North American goods, and without any tangible government support, the majority of Nicaragua's agricultural producers will find it even more difficult to earn enough money to buy adequate food⁸ and will therefore be unable to realize the right to feed themselves.

Furthermore, if the rural situation continues to prevent farmers from being able to accrue sufficient income, many will be forced to leave their land and migrate to cities elsewhere in Central or North America.

This is a violation of the right to work which, for the 38% of the economically active population involved in the production of basic grains, fruits and vegetables,⁹ implies an obligation to ensure that farm work in particular is remunerative.

What measures are being taken to ensure that the increasingly competitive environment wrought by CAFTA-DR will not negatively affect small and medium size farmers' right to enjoy an adequate standard of living (and thus fulfil their right to food and right to work)

CAFTA and the right to health

In spite of international and constitutional provisions outlining the Nicaraguan government's commitments in this area,¹⁰ the country's health sector is in desperate need of major capital investment if the right to health of much of the country's population is to be met.¹¹ According to a report published by the Pan-American Health Organization and the WHO, the principal problem with the Nicaraguan health system is the lack of medicines – even prior to CAFTA-DR there were simply not enough funds allocated to the purchase of adequate quantities of medicines in the national budget.¹² In addition, poverty constraints – faced particularly by people living in rural areas¹³ and the 10% of the population who are of indigenous decent,¹⁴ - mean that even when medicines are available, 6 of every 10 homes are forced to [STOP EATING TO BUY MEDICINES].¹⁵

⁶ *Ibid.* NB: Ortega has initiated a Zero Hunger program designed to revitalize small-scale agriculture, providing small-farmers with livestock, seed, low-interest credit, technical assistance etc – the pilot scheme which involves 750 families has been very successful. However, even if plans to expand the project to reach 15,000 farms over the next 5 years succeed, this will only provide support for a mere 6 % of Nicaragua's farming population - Witness for Peace, *op. cit.*

⁷ Centro Nicaragüense de Derechos Humanos, *Derechos Humanos en Nicaragua 2006, Managua: CENIDH, 2007* <http://www.cenidh.org/files/cenidh_final.pdf>

⁸ Currently, 54% of the population do not have the economic means to buy adequate food; Centro Nicaragüense de Derechos Humanos, *Ibid.*

⁹ According to the Nicaraguan Statistics and Census Institute; Stop CAFTA Coalition, *op. cit.*

¹⁰ Art. 9 of the National Constitution guarantees the right to health of Nicaraguans and outlines the State's responsibility in establishing basic conditions for the promotion, and protection of this fundamental right - C.E. Lopez Hurtado, *La Salud: Un Derecho Humano*, Managua: Organizacion Panamericana de la Salud en Nicaragua/Organizacion Mundial de la Salud, 2007

<http://www.ops.org.ni/index.php?option=com_remository&Itemid=34&func=fileinfo&id=304>

¹¹ C.E. Lopez Hurtado, *Ibid.*

¹² *Ibid.*

¹³ 70% of rural population live in poverty; Centro Nicaragüense de Derechos Humanos, *op. cit.*

¹⁴ Indigenous populations are largely concentrated in the Autonomous Regions of the Caribbean Coast, 70% live in poverty, 41% in extreme poverty; *Ibid.*

¹⁵ According to the Federation of Health Workers (FETSALUD); *Ibid.*

CAFTA-DR intellectual property provisions include numerous “TRIPS-plus” measures which expand patent rights and impede the production of generic medicines.¹⁶ Stronger IP rules require increased funding for the health sector, as greater amounts of expensive patented medicines will have to be purchased and more money will be required to adequately subsidize these drugs. Additional funds may be particularly hard for the Nicaraguan government to find, given the loss of tariff revenue as a result of CAFTA.¹⁷

In the face of more stringent IP rules and consequent increased funding that CAFTA-DR imposes, what measures are being taken to improve access to medicines, and thereby ensure the right to health of the Nicaraguan population?

¹⁶ 3D→Trade-Human Rights-Equitable Economy, *3D Information Note No. 8: UN Human Rights Body Gives Credence to Costa Rica’s “No” Coalition: Government Advised to Assess the Impact of CAFTA-DR on the Enjoyment of Economic, Social and Cultural Rights*, November 2007 <http://www.3dthree.org/pdf_3D/CostaRicaCAFTA.pdf>

¹⁷ Stop CAFTA Coalition, op. cit.