

Towards a Just, Rights-Based and Sustainable Food System setting the context of international agriculture trade

The Human Rights Challenge

Caroline Dommen

Director, 3D -> Trade - Human Rights - Equitable Economy

I The human rights framework

1. Human rights are legally binding on States. Most are contained in international legally-binding treaties, many are enshrined in national constitutions and some exist as customary international legal norms.

Relevant international treaties include:

- 1989 Convention on the Rights of the Child (192 States parties)
- 1966 Covenant on Economic, Social and Cultural Rights (150 States parties)
- 1979 Convention on the Elimination of Discrimination against Women (179 States parties)
- 1981 African Charter on Human and Peoples' Rights (Banjul Charter)
- 1969 American Convention on Human Rights (25 States parties)
- Others, including the UN Charter, Conventions of the International Labour Organization, etc.

2. Economic and social Rights such as the right to food are real rights. Even though Economic, Social and Cultural Rights (ESCR) are less well-known than civil and political rights like the right to life or the right to freedom of expression, they are just as legally binding.

3. The right to food is one of the human rights most directly affected by agriculture trade. The most detailed and authoritative description of its content is set out by the Committee on Economic, Social and Cultural Rights (Committee, or CESCR), the body that supervises the International Covenant on Economic, Social and Cultural Rights (Covenant, or ICESCR). The ICESCR is a legally-binding treaty and therefore the right to food is binding on the 150 States that have ratified it. The right to food is set out in many country's constitutions. It is also justiciable, i.e. it has been upheld in court cases nationally and internationally.

The right to food requires States to ensure:

- availability of food
- accessibility of food
- adequacy of food.

The Covenant on ESCR recognizes that States may not be able realize the right to food immediately and so provides for ‘progressive realization’ of the right.¹ It does however impose immediate obligations on States:

- to ensure non-discrimination in the realization of the right
- to avoid backward steps in terms of enjoyment of the right (‘non-retrogression’)
- to have a policy in place towards the realization of the right.

Resource constraints do not free a government from these obligations. The Covenant provides that States must take steps to the maximum of its available resources, and this is to be interpreted to include resources available through international assistance and cooperation.

International cooperation thus plays an essential role in relation to the right to food. As the General Comment on the right to food specifies, States should take steps to respect the enjoyment of the right to food in other countries, and to ensure that the right to food is given due attention in relevant international agreements. General Comments are considered authoritative interpretations of the rights contained in the Covenant.

The General Comment on the Right to Food is highly recommended reading for policy guidance for advocates working towards a fairer and more sustainable international food system.²

II Why use the human rights framework in trade?

1. States themselves have agreed to be bound by human rights standards
2. Human rights standards are applicable to all economic actors (including private companies, international organizations, and States)
3. Human rights put humans at the centre of policy-making
4. Respect for human rights means respecting procedural requirements including the obligations to ensure transparency and public participation
5. Human rights provide mechanisms for accountability. These mechanisms are unique in that they can be claimed by individuals or groups (unlike most international complaints procedures such as the WTO dispute settlement system, which can only be triggered by States)
6. The international dimension of human rights protection provides framework for international solidarity
7. Human rights require States to cooperate internationally for the realization of human rights obligations
8. Human rights addresses equity within countries as well as between countries
9. Strategic value: a human rights approach does not defend or attack any particular form of government, political or economic system, but focuses on the rights themselves.

¹ In its Article 2, the Covenant on Economic, Social and Cultural Rights says that ‘Each State party must ‘take steps individually and through international assistance and cooperation (...) to the maximum of its available resources with a view to achieving progressively the full realization’ of the rights in the Covenant.

² UN Committee on Economic, Social and Cultural Rights, General Comment No. 12: *The right to adequate food*, 1999, available at <www.ohchr.org/english/bodies/cescr/comments.htm>

III What can Human Rights introduce into international food policy?

Human rights offer a strong and credible tool for bringing people back into trade policy:

- (a) human rights insert people's choices including non-economic values such as community, sustainably, tradition into economic policy-making
- (b) human rights will assess policies on the basis of disaggregated data, i.e. will explicitly measure who benefits and who loses from a particular policy
- (c) human rights requires policies must be elaborated with broad public participation
- (d) human rights requires that international economic policies give the means to governments to take the steps necessary to protect and promote human rights, i.e. (i) economic policies that do not impoverish developing countries or increase their dependence on richer countries, and (ii) policy space to take public-interest promoting measures.

Accountability of economic actors:

- (a) human rights requires accountability and responsibilities of private sector and governments
- (b) this entails prior assessment of likely outcomes of a particular policy proposal.