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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food

**Report submitted by the Special Rapporteur on the right to food, Jean Ziegler,
in accordance with Commission on Human Rights resolution 2003/25***

* This document is submitted late so as to include the most up-do-date information possible.

Summary

The Special Rapporteur on the right to food submits his fourth report to the Commission, as well as his mission reports to Bangladesh and to the Occupied Palestinian Territories as addenda to the present report.

The Special Rapporteur calls urgent attention to the fact that progress in reducing hunger and malnutrition has virtually come to a halt. He urges all States to meet their commitments to eradicate hunger and realize the right to food. It is scandalous for over 840 million people to be suffering from undernourishment in a world that already produces more than enough food to feed the entire population.

In this report, the Special Rapporteur opens with an introduction and overview of his activities over the last year, before moving on to further develop the conceptual background to his work on the right to food. In the light of the failure of trade talks in Cancún, Mexico, the Special Rapporteur revisits the issue of international trade and food security. He looks at the reasons why international trade in food and agriculture is not necessarily benefiting the vast majority of the poor and marginalized people, but rather creating even greater marginalization and inequality. He examines the negative impacts of the current imbalances and inequities in the global trading rules under the World Trade Organization, as well as the potential negative impacts of powerful transnational corporate monopolies that are exercising increasing control over food and water systems. In sections II and III, he seeks to analyse new and positive developments emerging to address these concerns - the concept of "food sovereignty" and the development of stronger human rights obligations for transnational corporations.

The section on "food sovereignty" examines this new concept which is emerging from civil society as an alternative model for agriculture and agricultural trade. "Food sovereignty" treats trade as a means to an end, rather than an end in itself, giving primacy to food security and the right to food for the poorest, rather than export-oriented industrial agriculture. Food sovereignty seeks to reclaim sovereignty over decision-making on agricultural and food security policy, challenges the imbalances and inequities in current global rules on agricultural trade, and draws a common position for peasant farmers in the developed and developing world.

The section on transnational corporations and the right to food builds on a chapter presented in his last report to the General Assembly (A/58/330). This section takes as its starting point the fact that, in many regions of the world, transnational corporations now have unprecedented control over food and water systems, yet there is no coherent system of accountability to ensure that they do not abuse this power. Just as human rights were developed to put limits on abuses of power by Governments, they must now be developed to circumscribe abuses of power by large corporations. This section again outlines the legal framework that seeks to compel corporations to respect human rights obligations, particularly the right to food, illustrating such a framework with examples. The section also highlights the adoption by the Sub-Commission on the Promotion and Protection of Human Rights of the proposed Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.2). The Special Rapporteur urges the Commission to adopt these norms at its present session.

The present report closes with a summary of the conclusions and recommendations of the Special Rapporteur.

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Introduction

1. The Special Rapporteur on the right to food submits his fourth report to the Commission on Human Rights, in accordance with Commission resolution 2003/25. He also submits reports of his missions to Bangladesh and the Occupied Palestinian Territories as addenda to the present report (E/CN.4/2004/10/Add.1 and Add.2, respectively).

2. The mandate of the Special Rapporteur was first outlined by Commission resolutions 2000/10 and 2001/25. His mandate was extended for a further three years by Commission resolution 2003/25, endorsed by the Economic and Social Council.

3. As the Special Rapporteur has outlined in all his reports, the right to food is a human right, protected under international human rights and humanitarian law. It has been authoritatively defined in general comment No. 12 of the Committee on Economic, Social and Cultural Rights as follows: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement".¹ Inspired by the general comment, the Special Rapporteur has adopted a working definition of the right to food as follows:

"The right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear" (E/CN.4/2001/53, para. 14).

4. However, the Special Rapporteur would again call attention to the fact that, despite the numerous commitments of Governments to eradicate malnutrition, widespread hunger and malnutrition persist throughout the world, as do violations of the right to food. The Food and Agriculture Organization of the United Nations (FAO) shows that progress in reducing world hunger has virtually come to a halt. In fact, data from 1998 to 2000 estimate that the number of undernourished people around the world increased to 840 million.² Promises made by Governments at the World Food Summit in 1996 to halve the number of victims of undernourishment are not being met. Few countries have been able to report progress.³ It is still a tragedy that every seven seconds a child under the age of 10 dies directly or indirectly of hunger somewhere in the world⁴ and more than 2 billion people worldwide suffer from "hidden hunger", or micronutrient malnutrition: children and adults are left mentally and physically stunted, deformed or blind, condemning them to a marginal existence. Hunger repeats itself through the generations, as undernourished mothers give birth to children who will never fully develop, condemning whole countries to underdevelopment. All this in a world which, according to FAO, already produces more than enough food to feed its population.

5. In this introduction, the Special Rapporteur reports on his activities to promote and monitor the right to food over the last year, before moving on to discussing further conceptual issues related to the right to food. In his last report to the Commission in 2003 (E/CN.4/2003/54), the Special Rapporteur examined conceptual issues related to water as part of the right to food and the development of new international guidelines on the right to food. Over the year, the Special Rapporteur also submitted a report to the General Assembly (A/58/330), which he presented in New York in November 2003. The report addressed issues of gender and

the right to food, and looked at the responsibilities of transnational corporations with respect to the right to food. In this report, the Special Rapporteur will revisit the responsibilities of transnational corporations and will look at the emergence of a new concept with relevance to the right to food: the concept of food sovereignty.

6. The Special Rapporteur submits his report on the mission to Bangladesh from 24 October to 4 November 2002 as an addendum (E/CN.4/2004/10/Add.1). He welcomes the positive cooperation of the Government of Bangladesh prior to and during the mission, as well as the ongoing cooperation in the follow-up to the mission. He also submits his report on the mission to the Occupied Palestinian Territories undertaken from 3 to 12 July 2003 as an addendum (E/CN.4/2004/10/Add.2). He welcomes the cooperation of both the Government of Israel and the Palestinian Authority in facilitating his mission. He recognizes the concerns of the Government of Israel with respect to an unfortunate incident regarding the handling of a preliminary version of the report, but reiterates that these circumstances were beyond his control, as he has explained in a letter to the Chairperson of the Commission.

7. In 2003 the Special Rapporteur requested invitations from the Governments of the Democratic People's Republic of Korea, Eritrea, Ethiopia, Haiti, India and Myanmar to carry out country missions, and also approached the Governments of Peru and South Africa, which have issued standing invitations to special procedures. Subsequently he received invitations from the Governments of Ethiopia and Haiti, and consultations are under way with a view to scheduling missions to Ethiopia and South Africa in early 2004. He has also been informed by the Government of India that his request is under active consideration, and hopes that this mission will materialize in early 2004. He regrets that the Government of the Democratic People's Republic of Korea and the Government of Myanmar have failed to respond to his urgent requests to carry out missions to those countries in response to Commission resolutions 2003/10 and 2003/12.

8. During the year the Special Rapporteur also issued a number of communications to Governments regarding reports of alleged violations of the right to food, in Argentina, Brazil, Colombia, Honduras, India, Myanmar and the Philippines. He thanks the Governments of Argentina, Colombia and India for their replies and hopes to receive responses from other Governments.

9. While monitoring allegations of violations, the Special Rapporteur has also followed positive developments with respect to the right to food. These have included developments in Brazil's *Fome Zero* (Zero Hunger) programme and initiatives in Sierra Leone. In following up on his mission to Brazil undertaken in 2002, the Special Rapporteur has maintained close contacts with the Brazilian authorities and urged President Luiz Inácio Lula da Silva in January 2003 to adopt a rights-based approach to his Zero Hunger programme (E/CN.4/2003/54/Add.1, para. 56). The Special Rapporteur has, further, followed positive developments in Sierra Leone and a member of his team participated at the "Symposium to operationalize the right to food in Sierra Leone" held in Freetown in May 2003. These developments have been highlighted in his report to the General Assembly (A/58/330, paras. 60 and 61).

10. In accordance with his mandate, the Special Rapporteur has also contributed to the follow-up process of the World Food Summit: five years later, which aims to develop voluntary guidelines on the right to adequate food under the auspices of FAO. The Special Rapporteur and his team attended meetings of the Intergovernmental Working Group (IGWG) in March and September 2003, and submitted three contributions with a series of recommendations on the form and content of the draft voluntary guidelines to FAO.⁵ It is vital that these guidelines provide concrete and practical advice on how to implement the right to food, and that they strengthen, rather than weaken the current legal protection of the right to food. In February 2003, he also participated in an expert consultation organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare its submission on the draft voluntary guidelines to the IGWG. His research team has participated in a number of meetings with non-governmental organizations (NGOs) to raise awareness and encourage civil society participation in the development of these guidelines.

11. Among other efforts to raise awareness of the right to food during the year, the Special Rapporteur maintained active working relationships with United Nations organizations, other international bodies and NGOs. The Special Rapporteur published a short book on the right to food.⁶ The Special Rapporteur and his team have also worked to raise awareness amongst NGOs and university students through teaching a seminar at the University of Geneva's Institute of Development Studies on the "Theory and practice of the defense of economic, social and cultural rights". A number of outstanding leaders in the human rights academic field participated in the seminar by making presentations on their key fields of expertise, including Giorgio Malinverni, Professor of constitutional law at the University of Geneva, Andrew Clapham, Professor of international law at the Graduate Institute of International Studies in Geneva, Eric Sottas, Director of the World Organization Against Torture, and Jean-Daniel Vigny, Minister of the Permanent Mission of Switzerland to the United Nations Office and other international organizations at Geneva.

12. In accordance with his mandate, the Special Rapporteur also kept abreast of new research in the field of food and water. He has particularly followed the work of a non-profit NGO called Antenna Technologie, based in Geneva. Antenna is working to develop simple, low-cost and sustainable technologies to improve the lives of poor communities around the world. To fight malnutrition, Antenna has developed a simple and sustainable method to cultivate the natural micro-organism, spirulina. This is a microalga that can be dried and added to food, to treat micronutrient deficiencies in children and adults. Spirulina is a rich source of protein and micronutrients, particularly vitamin A (beta-carotene), vitamin B12 and iron, and can help fight against the illnesses induced by malnutrition, including blindness and stunted mental and physical development. Antenna Technologie helps communities in Burkina Faso, the Democratic Republic of the Congo, India, Senegal and around the world, to set up small-scale shallow basins in which to grow the spirulina. Antenna also provides lessons on how to treat and disinfect drinking water to save children and adults from water-borne diseases. Antenna has developed a method for producing chlorine using water, salt and continuous electrical power from a device powered by cheap solar-powered, rechargeable batteries. This chlorine can then be used to disinfect rain- and other types of water, so that it can be used safely as drinking water, or as a disinfectant for surfaces or clothing. Other NGOs working around the world have also developed appropriate technologies affordable to the poorest. Sanjit Bunker Roy of the Barefoot College, for example, has developed low-cost, sustainable techniques to improve poor communities' access to safe drinking water through techniques for "rainwater harvesting" which

collect rainwater from the roof and drain it into an underground or overground storage tank. The Special Rapporteur believes that more research and support for such NGO initiatives are urgently needed for the development of low-cost appropriate technologies that have the potential to significantly transform peoples' lives.

13. In the conceptual arena, the Special Rapporteur has also continued to examine emerging issues with respect to the right to food. He has addressed numerous issues in his reports to the Commission and the General Assembly. In the present report, he will examine two thematic issues: food sovereignty, and transnational corporations and their responsibilities. These are two of the key issues that are animating the debate on international trade and food security.

I. TRADE AND FOOD SECURITY: THE FAILURE AT CANCÚN

14. From 10 to 14 September 2003, trade representatives from countries all over the world gathered in Cancún, Mexico, for the latest round of World Trade Organization (WTO) negotiations over the rules of international trade. Agriculture and food security were high on the agenda. But on the last day of the meeting, after frantic and frustrated negotiating, the talks collapsed in acrimony. Many observers suggest that the main reason for this was the intransigence and double standards of the developed countries of the North on the question of agriculture and food security, and the failure of the WTO Agreement on Agriculture to meet the needs of the poorer, developing countries to ensure their own food security.

15. Today, agricultural trade is far from being free, and even further from being fair. Many developed countries continue to protect and subsidize the production of basic, staple foods. Many developing countries are becoming dependent on food imports, and are subjected to unfair competition from developed-country products sold at prices below the cost of production. This displaces local production of basic foodstuffs and farming livelihoods in those countries. This also has important implications for the realization of the right to food. The present section examines background issues related to international trade and food security, before moving on to discuss food sovereignty and the right to food in the next section.

16. Despite preaching the benefits of free trade in agriculture, the European Union, the United States of America, Japan and other industrialized countries still heavily protect their agriculture in order to ensure the production of basic staple foods. In the European Union, "the average European dairy cow has a bigger annual income than half the world's people", and it is estimated that 70 per cent of subsidies go to 20 per cent of Europe's largest farms.⁷ In Japan, the over-quota tariff on imported rice was 491 per cent in 1999.⁸ In the United States, the 2002 Farm Bill recently authorized the spending of US\$ 180 billion to be paid out over a 10-year period as "emergency measures", mainly in support of staple cereal crops. In his address to the Future Farmers of America in Washington on 27 July 2001, President George W. Bush stated that:

"It's important for our nation to build - to grow foodstuffs, to feed our people. Can you imagine a country that was unable to grow enough food to feed the people? It would be a nation subject to international pressure. It would be a nation at risk. And so when we're talking about American agriculture, we're really talking about a national security issue."⁹

17. In the same speech, President Bush argued against “the trade barriers, the protectionist tendencies around the world that prevent our [U.S.] products from getting into markets”. Nobel Prize winner in economics Joseph Stiglitz described the United States Farm Bill as “the perfect illustration of the Bush administration’s hypocrisy on trade liberalization”. Civil society organizations criticize the Farm Bill as benefiting only rich, large farmers and agribusiness corporations - only farmers with incomes of US\$ 2.5 million or more will not receive subsidy payments.¹⁰

18. Meanwhile, developing countries have been persuaded into unilaterally liberalizing their agricultural sectors, often under the programmes of the International Monetary Fund (IMF) and the World Bank, rather than the WTO Agreement on Agriculture, only to find that the promised benefits of “free trade” in agriculture have not materialized. Instead, their farmers have often been devastated by artificially low prices created by the “dumping” of subsidized agricultural products, as in the cases of Mexico and Zambia described below. A well-regarded international think-tank, the International Food Policy Research Institute (IFPRI) shows that subsidies to farming in the Organization for Economic Cooperation and Development (OECD) countries, which totalled US\$ 311 billion in 2001 (or US\$ 850 million per day) displaces farming in the developing countries, costing the world’s poor countries about US\$ 24 billion per year in lost agricultural and agro-industrial income. In terms of “who is most to blame” for these losses, IFPRI argues that, of the total amount of agricultural trade displaced by industrialized country policies, the European Union countries are responsible for half. The United States is responsible for a third, with Japan and other high-income Asian countries causing another 10 per cent.¹¹

19. While some developed countries (with the notable exception of Australia) continue to protect agriculture as a question of national security, food security or multifunctionality, many of the poorest developing countries are left at a severe disadvantage, as they cannot afford to subsidize their agriculture, but must reduce tariffs and open up to unfair competition from subsidized products of the developed countries. A pattern of trade is beginning to emerge where the developed countries dominate the production of food staples like rice, maize and wheat, milk and meat, while poor, developing countries produce tropical cash crops, like coffee, cotton, or flowers in order to trade to buy their food (tropical products on which the many developed countries still impose high, complex tariffs or tariff escalation). The 49 least-developed countries have shifted from being net food exporters to being net food importers over the last 30 years, and the costs of their food imports have risen from 45 to 70 per cent of their total merchandise exports, making it increasingly difficult for many of these countries to pay for their food imports.¹² This leaves these countries unable to produce their own food, but also unable to guarantee an income to buy their own food, leaving them increasingly vulnerable to food insecurity and severely affecting their ability to guarantee the realization of the right to food.

20. For several developing countries that have liberalized their agricultural sectors, the experience has not been a positive one. Whilst farming livelihoods have been devastated when opened up to competition for imports sold at below-cost-of-production, consumers have not always benefited from lower prices. Zambia, for example, undertook radical trade liberalization under a programme of structural adjustment in the 1990s, liberalizing well beyond its WTO commitments (lowering tariffs, eliminating subsidies for its staple crop, maize, and dismantling agricultural extension and marketing support systems). Such rapid changes left Zambian farmers without a way to sell their crops, particularly in more remote areas, as a vibrant private sector failed to emerge. An IMF evaluation recognized that the liberalization in agriculture caused

hardship for poor Zambians, with maize consumption falling 20 per cent between 1990 and 1997 as a result of increased poverty.¹³ At the same time, whilst farm prices for maize fell, maize prices paid by consumers increased.¹⁴ In Mexico, where maize has been a traditional crop for thousands of years, the North American Free Trade Agreement has left Mexican farmers extremely vulnerable to competition from subsidized United States maize. A study by the United Nations Development Programme (UNDP) estimated that 700,000 to 800,000 livelihoods have been lost as a consequence of trade liberalization and the subsequent fall in maize prices.¹⁵ Another study expects that up to 15 million Mexican farmers and their families (many from indigenous communities) may be displaced.¹⁶ As was the case in Zambia, while the maize price for Mexican farmers fell by almost half, the consumer price for maize rose by 279 per cent in real terms.¹⁷ Farming livelihoods have been devastated by lower prices, yet consumers have also suffered simultaneously from higher prices. The intended greatest beneficiaries of trade liberalization - the consumers - have not always benefited.

21. Consumers have not always benefited because public monopolies have often been simply replaced by private monopolies. A World Bank study examined why lower prices for consumers have not materialized, finding that since 1974 agricultural commodity prices have fallen, but consumer prices have increased.¹⁸ The world price of coffee, for example, fell by 18 per cent between 1975 and 1993, but the consumer price increased by 240 per cent in the United States. The same study suggests that this seems to raise the suspicion of unfair trade in world commodity markets. Global commodity markets are increasingly dominated by fewer global transnational corporations that have the power to demand low producer prices, while keeping consumer prices high, thus, increasing their profit margins. Similar patterns occur at a smaller scale where, as even after the agricultural sector is liberalized, the number of private actors can be extremely limited. Consumers have often not benefited from the lower prices promised by free-trade advocates, either because a competitive private sector has failed to emerge or because of monopolistic practices by transnational agribusiness corporations increasingly in control of agricultural trade, processing and marketing.

22. This is the dynamic that leads to greater inequality as a few people or corporations get rich at the expense of the majority of farmers and consumers, in both the North and the South. The same dynamic is replicated between countries, and is one reason for the growing inequalities between developed and developing countries. Many commentators agree that the main beneficiaries of trade liberalization have been larger farmers and larger corporations, which have the capacities to take advantage of the economic restructuring. The poorest and most marginal, especially rural peasant farmers, are increasingly being left behind.

23. All this has left many countries and many people understandably distrustful of the promises of free trade for ensuring food security, particularly in the face of the “do as I say, not as I do” positions of the northern, developed countries. The increasingly familiar story of trade talks collapsing is a symptom of the current inequities of the global trading system, which are being perpetuated rather than resolved under the WTO, given the unequal balance of power between member countries. The failure of the talks in Cancún was largely due to the intransigence of the developed countries who refused to make concessions on agriculture, without the developing countries opening up even further to the corporations of the North through the “Singapore issues”. In the face of the lack of recognition of their demands, a group

of 22 countries acting together for the first time, led by the powerful nation of Brazil, stood firm in their positions and refused to be bullied by the rich countries. For this group of 22 countries, no deal was better than a bad deal at Cancún.

II. FOOD SOVEREIGNTY AND THE RIGHT TO FOOD

24. Believing that the inequities of the global agricultural trade system are a disaster for food security, particularly for poor countries and poor people, civil society organizations have questioned the whole paradigm of free trade in agriculture. Today, civil society organizations are calling for a new focus on “food sovereignty” that challenges the current model of agricultural trade, which they see as cultivating an export-oriented, industrial agriculture that is displacing peasant and family agriculture. In the light of the Cancún debacle, it is now imperative to examine and understand this emerging concept of food sovereignty. This chapter therefore examines the concept of food sovereignty, what it means and why it has emerged. The concept of food sovereignty is not the same as the concept of the right to food, but there are some close links between them.

25. So what does food sovereignty mean? So far, there are few academic studies or systematic papers on the concept of food sovereignty. Rather, it is a concept still in the process of being conceptualized and iteratively debated amongst civil society organizations, after first being proposed by the global social movement of peasant and family farmers, Via Campesina. For Via Campesina:

“Food sovereignty is the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; [and] to restrict the dumping of products in their markets.”¹⁹

26. Via Campesina had originally developed and introduced the concept in 1996, introducing it into the discussions at a parallel meeting held by NGOs and civil society organizations (CSOs) during the 1996 World Food Summit. Since 1996, the concept has gained support from other farmers and civil society organizations, both in the South and in the North. During the World Food Summit: five years later in 2002, a NGO/CSO “Forum on food sovereignty”, attended by representatives of over 400 civil society and farmer organizations, defined the concept of food sovereignty as:

“Food sovereignty is the right of peoples, communities, and countries to define their own agricultural, labor, fishing, food and land policies which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies.

“Food sovereignty means the primacy of people’s and community’s rights to food and food production, over trade concerns. This entails the support and promotion of local markets and producers over production for export and food imports.

“... Food sovereignty requires:

- **Placing priority** on food production for domestic and local markets, based on peasant and family farmer diversified and agro-ecologically based production systems;
- **Ensuring fair prices** for farmers, which means the power to protect internal markets from low-priced, dumped imports;
- **Access to land, water, forests, fishing areas and other productive resources** through genuine redistribution;
- **Recognition and promotion of women’s role** in food production and equitable access and control over productive resources;
- **Community control over productive resources**, as opposed to corporate ownership of land, water, and genetic and other resources;
- **Protecting seeds**, the basis of food and life itself, for the free exchange and use of farmers, which means no patents on life and a moratorium on the genetically modified crops; and
- **Public investment** in support for the productive activities of families, and communities, geared toward empowerment, local control and production of food for people and local markets.”²⁰

27. The first key element in the concept of food sovereignty is the reclamation of national and individual sovereignty over food security policy. CSOs charge that, under WTO Agreements, countries are losing control of their ability to decide their own food and agricultural policies. Countries have found themselves in a position where they are deprived of certain policy options (such as tariffs on food imports). Under WTO rules, it is also very difficult to reverse liberalization already undertaken. In this demand for reclaiming policy space, food sovereignty runs close to the concept of “multifunctionality”. The Norwegian proposal for example, suggests that “every country should be granted flexibility in national policy design to foster domestic agricultural production necessary to address domestic non-trade concerns”.²¹

28. Food sovereignty holds that each country should have the right to determine the extent to which it wants to be self-reliant in domestic production for basic food needs. A stable trading system can contribute to improving overall food availability, but food security cannot always be assured through food imports. Poor countries may not have sufficient foreign exchange. Poor people may not be able to afford to buy food imports, especially when this displaces local farming and therefore devastates rural incomes. The concept of food sovereignty is not anti-trade, but rather is against the priority given to exports and against the dumping of imported, subsidized food in local markets which destroys local farmers’ livelihoods. It seeks to guarantee food security first, by favouring local production for local markets. The central idea is that small-scale, peasant agriculture should be protected for its role in ensuring food security, employment, and environmental objectives - as long as that protection does not threaten the livelihoods of other farmers in other countries.

29. Food sovereignty does not rule out subsidized protection, but explicitly establishes a corollary right of importing countries to impose protective tariffs to protect themselves against dumping of any subsidized exports. As has been noted “one of the goals is to stop the race to the bottom in terms of price and the resulting disintegration of rural communities”²² in both the North and the South. Subsidies are therefore permitted, but only to support small farmers producing for domestic markets and not for export. Under the logic of food sovereignty, subsidies should never be permitted to large-scale farming or the export sector.

30. Food sovereignty emphasizes locally-oriented small-scale peasant agriculture producing for consumption inside the country, as opposed to the current model of export-oriented, industrialized agriculture. CSOs believe that the export-oriented model is forcing the industrialization of the food chain, precipitating the decline of small farms and peasant farming, in the North as well as in the South, to the benefit of the large agribusiness corporations.²³ Millions of farmers are losing their livelihoods in the developing countries, but small farmers in the northern countries are also suffering. In the United Kingdom of Great Britain and Northern Ireland, for example, 20,000 farm workers left agriculture in the year 1999, allowing ever-greater concentration of the land.²⁴ The same is happening around the rest of Europe and in the United States. Food sovereignty suggests that small-scale farmers have much in common, both in the North and the South. Food sovereignty is an attempt to find common ground and resolve the opposition that has been created through the issue of subsidies, by recognizing that subsidies have primarily benefited larger farmers and agribusiness corporations.

31. Food sovereignty also embodies a call for greater access to resources by the poor, especially women, challenging what is perceived as a growing concentration of ownership of resources. Food insecurity, like poverty, is usually the result of a lack of access to productive resources, rather than the overall availability of food. Food sovereignty calls for equitable access to land, seeds, water, credit and other productive resources so that people can feed themselves. This implies challenging existing relations of power and distribution, through for example, engaging in agrarian reform. It also implies challenging the increasing concentration of ownership of agricultural trade, processing and marketing by transnational agribusiness corporations through, for example, improving competition law (anti-trust law) at a transnational level and through the prohibition of the appropriation of knowledge through intellectual property-rights regimes. It calls for recognition of communities’ rights to their local, traditional resources, including plant genetic resources, and for protection of farmers’ rights to exchange and reproduce seeds.²⁵

32. Finally, the concept of food sovereignty also recognizes the right of countries to refuse technologies considered inappropriate, on the basis of the precautionary principle. It also recognizes the right of consumers to be able to decide what they consume, and how and by whom it is produced. This means that consumers should be able to choose food produced in their own countries, without this being seen as a restraint on trade. It also means that consumers should be able to choose whether they want to eat genetically modified organisms (GMOs) products; labelling for genetically modified ingredients may be seen as an indirect trade barrier. Food sovereignty demands the protection of consumer interests, including regulation for food safety that embodies the precautionary principle and the accurate labelling of food and animal feed products for information about content and origins. It also demands the participation of consumers, as well as producers, in standard-setting, whether at national level or international

level. For instance, the FAO/World Health Organization Codex Alimentarius Commission, which sets international standards for food safety recognized by WTO, is criticized by CSOs for failing to include the participation of small producers and consumers, and being rather heavily influenced by the lobbying and participation of the large agribusiness, food and chemical corporations. Food sovereignty seeks to redress this balance.

33. Therefore, how is food sovereignty linked to the concept of the right to food? For the Special Rapporteur, the right to food means that Governments are legally bound as States parties to the International Covenant on Economic, Social and Cultural Rights to ensure food security for their citizens, in any political or economic system. Governments are legally bound to respect, protect and fulfil the right to food, when they have ratified the International Covenant. They are duty-bound to finding the best way of ensuring food security for all their people, as the right to adequate food is only realized “when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”.²⁶ In the face of mounting evidence that the current world trading system is hurting the food security of the poorest and most marginalized, and generating ever-greater inequalities, the Special Rapporteur believes that it is now time to look at alternative means that could better ensure the right to food. Food sovereignty offers an alternative vision that puts food security first and treats trade as a means to an end, rather than as an end in itself.

34. As the right to food is a legal obligation, it requires States parties to do everything in their power to respect, protect and fulfil the right to food. The right to food is a basic human right that must be respected in the formulation of all agricultural and food policies. Mauritius invoked the right to food in a paper presented to the negotiations on the WTO Agreement on Agriculture on developing countries and “non-trade concerns” in 2000.²⁷ Mauritius argued that the negotiations on the Agreement of Agriculture must take non-trade concerns into account, and non-trade concerns include the legal commitment to the right to food. In Mauritius’ view, the Government has a clear legal obligation to promote the right to food, citing article 11 of the International Covenant on Economic, Social and Cultural Rights, which must be considered in WTO. International trade law should respect the commitments that States have already made under the international human rights law. If trade rules threaten the right to food, then those trade rules should be challenged on the basis of human rights law. The right to food therefore provides an important legal basis for the fight for food sovereignty.

III. TRANSNATIONAL CORPORATIONS AND THE RIGHT TO FOOD

35. New developments in human rights are expanding the traditional boundaries of human rights to examine the responsibilities of transnational corporations. In his report to the General Assembly (A/58/330), the Special Rapporteur opened discussion on new legal developments within human rights, which he builds on below with examples. He also highlights the work of the Sub-Commission on the Promotion and Protection of Human Rights on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.2) as the most important new development. Such emerging human rights standards for transnational corporations are highly relevant for the development of the concept of the right to food, given growing corporate control in the

agribusiness, food and water sectors. As the report of the Secretary-General on the impact of the activities and working methods of transnational corporations (TNCs) submitted to the Sub-Commission in 1996 stated, “the global reach of TNCs is not matched by a coherent global system of accountability” (E/CN.4/Sub.2/1996/12, para. 72).

A. Increasing control by transnational corporations over food and water systems

36. According to UNDP *Human Development Report, 2002*, “global corporations can have enormous impact on human rights - in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes”. Today, the top 200 corporations control around a quarter of the world’s total productive assets. Many transnational corporations have revenues far exceeding the revenues of the Governments of the countries in which they are operating. The United Nations Conference on Trade and Development (UNCTAD) records that “twenty-nine of the world’s 100 largest economic entities are transnational corporations”.²⁸ Concentration has produced huge transnational corporations that monopolize the food chain, from the production, trade, processing, to the marketing and retailing of food, narrowing choices for farmers and consumers. Just 10 corporations (which include Aventis, Monsanto, Pioneer and Syngenta) control one-third of the US\$ 23 billion commercial seed market and 80 per cent of the US\$ 28 billion global pesticide market.²⁹ Monsanto alone controls 91 per cent of the global market for genetically modified seed.³⁰ Another 10 corporations, including Cargill, control 57 per cent of the total sales of the world’s leading 30 retailers and account for 37 per cent of the revenues earned by the world’s top 100 food and beverage companies.³¹ In South Africa, Monsanto completely controls the national market for genetically modified seed, 60 per cent of the hybrid maize market and 90 per cent of the wheat market.³²

37. The participation of private sector corporations in food, agriculture and water sectors may improve efficiency, but such concentration of monopoly power also brings a danger that neither small producers, nor consumers will benefit. The design of genetically modified seeds for example, has largely been about creating vertical integration between seed, pesticides and production to increase corporate profits. FAO Assistant Director General Louise Fresco revealed recently that 85 per cent of all plantings of transgenic crops are soybean, maize and cotton, modified to reduce input and labour costs for large-scale production systems, but not designed “to feed the world or increase food quality”.³³ No serious investments have been made in any of the five most important crops of the poorest, arid countries - sorghum, millet, pigeon pea, chickpea and groundnut. Only 1 per cent of research and development budgets of multinational corporations is spent on crops that might be useful in the developing world.³⁴ A report by NGO ActionAid which examined the evidence in Africa, Asia and Latin America concluded that “the expansion of GM is more likely to benefit rich corporations than poor people”.³⁵

38. NGOs and farmers are particularly concerned about technologies that prevent seeds from regenerating and the use of intellectual property rights over seeds, which require farmers to purchase new seeds every year, threatening their independence and capacity to generate their own seed stocks. A marked paradigm shift has occurred from a system seeking to foster food security on the basis of the free exchange of knowledge, to a system seeking to achieve the same goal on the basis of the private appropriation of knowledge. Monsanto has recently filed 475 lawsuits against farmers. One particular case has caught the headlines - Percy Schmeiser,

a Saskatchewan, Canada, canola farmer ordered to pay US\$ 400,000 to Monsanto in compensation for a canola crop which Schmeiser insists he did not plant, arguing that his crop was contaminated by Monsanto seed.³⁶ The Special Rapporteur believes that whilst the patent rights of corporations must be protected, the rights of small farmers must also be protected.

39. There is also the growing power of transnational corporations over the supply of water, as this is increasingly liberalized across the world. The privatization of water services have already been carried out in various parts of the world, including Argentina, Bangladesh, Bolivia, Colombia, Côte d'Ivoire, Hungary, Indonesia, Madagascar, Mexico, Morocco, Nepal, Nigeria, Pakistan, the Philippines, Senegal, Sri Lanka and Tunisia. In many cases, this has largely been because private sector participation in water services has been made a precondition for the provision of loans and grants to developing countries by the IMF and the World Bank. Just two companies, Veolia Environnement, formerly Vivendi Environnement, and Suez Lyonnaise des Eaux, control a majority of private concessions worldwide.

40. Recent evidence on water privatization suggests that, while in some cases it can bring increased efficiency, it often means higher prices which the poorest cannot afford. The case of Cochabamba, Bolivia, is now famous (see A/58/330, para. 36). A study on the privatization of water services in Manila to *Ondeo/Suez Lyonnaise des Eaux*³⁷ shows that this has had some positive effects, with 1 million more people being connected to the network between 1997 and 2003, but the price also rose by 425 per cent, making it too expensive for the poor. The study suggests that the poorest are doubly discriminated against because the price is at its highest in poorest communities and water quality has deteriorated rapidly in the poorest parts of the city. The lack of effective regulation frequently results in outcomes that are not beneficial to the poor. The study concluded that there was no independent mechanism for accountability and affected populations were not able to participate in the process. Another recent study on water privatization in Bolivia³⁸ concluded that deficient legislative and regulatory frameworks and accountability mechanisms, as well as limited user participation and access to information, were the main causes of the failure of the privatization process, together with the fact that the concessions contracts did not prioritize poor regions. The same conclusions have also been presented by WaterAid and Tearfund, in a study funded by the Department for International Development of the Government of the United Kingdom, on the effects of water privatization in 10 developing countries.³⁹

B. Mechanisms to monitor and demand accountability of transnationals

41. Under the traditional application of human rights law, it is usually only possible to hold a Government to account for violations of human rights; it is still not well understood how a corporation could be held to account for human rights violations. However, new developments are occurring within human rights law. It is now increasingly understood that there are two key ways of holding corporations to respect human rights - one indirect, the other direct. Corporations can be held to account indirectly, by Governments which have a duty to protect their citizens against any negative impacts on the right to food of third parties. This means that Governments are required to monitor and regulate corporations. Corporations can also be held to account for human rights directly, through the development of direct human rights obligations, intergovernmental instruments and voluntary codes of conduct. This section explains these two ways of holding corporations to account for human rights, and describes for each way the available monitoring mechanisms.

Obligation of the State to protect - indirect accountability

42. The right to food imposes three levels of obligations on the State: the obligations to respect, protect and fulfil the right to food. It is the obligation of the State to protect the right to food which is most important in this context. According to general comment No. 12 on the right to food of the Committee on Economic, Social and Cultural Rights “the obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food” (para. 15). In general comment No. 15 on the right to water, the obligation to protect includes “adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems” (para. 23). Where water services are privatized, an effective regulatory system must be established which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance (see paragraph 24).

43. There are a number of monitoring mechanisms that can be used to ensure that Governments protect the right to food and water by monitoring and regulating the activities of transnational corporations. This includes national and regional courts and human rights institutions, as well as international mechanisms, such as the Committee on Economic, Social and Cultural Rights, and the special procedures of the Commission on Human Rights.

44. There have been a number of important cases taken up by regional human rights mechanisms, including the African Commission on Human and Peoples’ Rights and the Inter-American Commission on Human Rights. One illustrative case of the failure by the State to protect the right to food was the decision by the African Commission on Human and Peoples’ Rights, which monitors the African Charter on Human and Peoples’ Rights, on communication 155/96, concerning the case brought by the Social and Economic Rights Action Center and the Center for Economic, Social and Cultural Rights against Nigeria at the thirtieth ordinary session of the Commission held in Banjul from 13 to 27 October 2001. This case argued that the Government of Nigeria had failed to regulate or monitor the activities of the oil consortium (Nigerian National Petroleum Company and the Shell Petroleum Development Corporation) in Ogoniland. In its decision, the African Commission found several violations of the African Charter, including violation of the right to food of the Ogoni people. The African Commission ruled that “Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties. ... the right to food requires that the Nigerian Government ... not allow private parties to destroy or contaminate food sources, and prevent peoples’ effort to feed themselves.” In its conclusions, the African Commission appealed to the Government of Nigeria to ensure protection of the people of Ogoniland, including ensuring adequate compensation to victims of the human rights violations, ensuring relief and resettlement assistance to victims of Government-sponsored raids, and ensuring that any further oil development is monitored by effective and independent oversight bodies for the petroleum industry.

45. Another important example is a case brought to the Inter-American Commission on Human Rights. In 1990, a petition on behalf of the indigenous Huaorani people living in the Oriente region in Ecuador, alleged that oil exploitation activities by the Government’s own oil company, Petro-Ecuador, and by Texaco, contaminated the water they use for drinking and

cooking and the soil in which they cultivate their food. Following a report issued by the Center for Economic and Social Rights,⁴⁰ the Inter-American Commission conducted a country visit to Ecuador in November 1994, and in its final report presented in 1997, stated that access to information, participation in decision-making and access to judicial remedies had not been guaranteed to the Huaorani people, and that oil activities in Ecuador were not regulated enough to protect indigenous people.⁴¹

46. At the international level, the Committee on Economic, Social and Cultural Rights is an important mechanism that can help to ensure that Governments do protect their citizens through adequate regulation. An NGO shadow report to the Committee on Economic, Social and Cultural Rights on the negative impacts of water privatization on the poorest, led to a recommendation from the Committee that the Government of Nepal ensure that projects involving privatization of water supply provide for continued, assured and affordable access to water by local communities, indigenous people, and the most disadvantaged and marginalized groups of society, with adequate regulation and accountability built into the privatization process (E/C.12/1/Add.66, para. 30).

47. The Office of the Special Rapporteur is another available mechanism mandated to receive communications from various organizations including NGOs, regarding the activities of transnational corporations and the obligations of States to protect the right to food. In the view of the Special Rapporteur, Governments should develop and implement national frameworks to ensure that deregulation under liberalization policies does not leave gaps in the protection for human rights, including where water services are privatized. Frameworks for new technologies, such as genetically modified food, should also be put in place ensuring regulation, labelling, precautionary approaches and legislation on company liability for potential harmful effects on poor farmers, indigenous people, local communities, consumers or the environment.

Direct obligations of transnational corporations in international human rights law and standards

48. As a result of new developments in human rights law, it is becoming increasingly clear that transnational corporations have obligations to respect human rights (see A/58/330, paras. 43 and 44) and to avoid complicity with human rights violations carried out by others.⁴² In many cases, transnational corporations have chosen themselves to abide by human rights, adopting human rights policies and Codes of Conduct. Numerous codes of conduct have also been developed at the international level which strengthens accountability for human rights, including the OECD Guidelines (see A/58/330, para. 46-49). However, a strong and coherent system of accountability which fully outlines transnationals' obligations has, until now, been missing at the international level. Now a new set of instruments has been proposed to fill this gap - the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, adopted by the Sub-Commission on the Promotion and Protection of Human Rights on 13 August 2003 (E/CN.4/Sub.2/2003/12/Rev.2).

49. There is increasing scope for holding corporations accountable for their human rights obligations through mechanisms at the international level, as well as the national level. At the international level, these mechanisms are still quite weak. For example, there is no monitoring or enforcement mechanism in place for the Global Compact initiative. Mechanisms at the national level tend to be stronger because national courts can be, and have been, used. Examples

can be found in court decisions from Australia,⁴³ Canada⁴⁴ and the United Kingdom of Great Britain and Northern Ireland,⁴⁵ in which transnational corporations were held responsible (under tort law) for complicity in human rights violations abroad. In the United States, the 1789 Alien Tort Claim Act has provided a legal basis under which any transnational corporations (not only those based in the United States) can be held accountable for complicity with human rights violations in other countries.⁴⁶ In India, the Supreme Court has ruled in several cases that corporations must respect human rights.⁴⁷ In South Africa this is now possible, given that the Constitution demands respect of human rights and treats corporations as a juridical person. Useful lessons could also be drawn from Uganda and Namibian experiences, where privatization has been accompanied by an extension of the ambit of human rights institutions, including their respective national ombudsman's office and human rights commission to monitor the activities of the privatized entities.⁴⁸

50. At the international level, the proposed Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights are the most important recent development. The Norms, emerging from the deliberations of the Sub-Commission's working group on transnational corporations, are based on existing international human rights instruments, and their main assumption is that "[W]ithin their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law" (para. 1). According to the Norms, transnational corporations "shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to ... adequate food and drinking water ... and shall refrain from actions which obstruct or impede the realization of those rights" (para. 12). This is an important attempt to extend human rights, including the right to food, beyond the State-centric paradigm. It also tries to extend the obligations beyond the parent company to include all the suppliers to ensure that companies cannot deny obligations on the basis that they are not operating directly, but have contracted out much of their production or activities to local suppliers (see paragraph 15).

51. The Norms establish that, "[T]ransnational corporations and other business enterprises shall be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms" (para. 16). This could include monitoring by United Nations human rights treaty bodies, special rapporteurs and thematic procedures of the United Nations, and the Sub-Commission on the Promotion and Protection of Human Rights. States should also establish and reinforce the necessary legal and administrative framework for assuring that the Norms are implemented by transnational corporations and other business enterprises (see paragraph 17).

52. The adoption of the Norms by the Sub-Commission in August 2003 was welcomed by several NGOs but it was severely criticized by transnational corporations, including the United States Council for International Business (USCIB).⁴⁹ It should be remembered, as Sir Geoffrey Chandler, Founder-Chair of Amnesty International UK Business Group, 1991-2001, and a former Director of Shell International noted, that the Norms "were the subject of four public hearings in Geneva in 2000, 2001, 2002 and 2003 and of meetings during March 2001 and 2003 at which representatives of business, unions, NGOs, and the academic

world were involved in re-shaping the document". As Sir Geoffrey Chandler also stated "The Norms (...) represent an opportunity for companies, not a threat - an opportunity to assist and profit from a safer and more prosperous world."⁵⁰

IV. CONCLUSIONS AND RECOMMENDATIONS

53. **The Special Rapporteur urges Governments to respect, protect and fulfil the right to food in accordance with their human rights obligations. Imbalances and inequities in the global trading system that can have profound negative effects on the right to food should be urgently addressed. It is time to examine new and alternative models for agriculture and trade, such as that provided by the vision of food sovereignty, which places priority on food security and the right to food, for all people at all times. The growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State, also means that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of that power.**

54. **The Special Rapporteur recommends that:**

(a) **All Governments take immediate actions to meet their commitments made at the World Food Summit in 1996 to realize the right to food, and in the United Nations Millennium Declaration to reduce the number of victims of hunger by half by 2015;**

(b) **All States parties to the International Covenant on Economic, Social and Cultural Rights consider their obligations to respect, protect and fulfil the right to food, within the context of international trade negotiations at the World Trade Organization, and in agreements with the IMF and the World Bank;**

(c) **WTO members resolve the current inequities and imbalances in the WTO Agreement on Agriculture to reflect the needs and rights of both developing, as well as developed countries, in order to ensure that the right to food is not threatened by global trading rules;**

(d) **Urgent attention be given to ensuring the livelihoods of poor peasant farmers who make up 75 per cent of the world's 1.2 billion poorest people, so that they would be able to feed themselves in dignity in accordance with the right to food. Models of export-oriented agriculture that threaten the livelihoods of millions of peasant farmers should be reviewed, particularly if economic restructuring does not result in new employment in other sectors;**

(e) **Food sovereignty be considered as an alternative model for agriculture and agricultural trade, in order to meet State obligations to respect, protect and fulfil the right to food;**

(f) **States also have an obligation to protect their citizens against negative impacts of transnational corporations on the right to food, including water. States must monitor and regulate the activities of their transnational corporations to ensure that they do not violate the right to food;**

(g) Transnational corporations respect regulatory frameworks set by Governments, as well as respecting their direct obligations towards the right to food (including water) under international human rights law, national legislation, intergovernmental instruments and voluntary codes of conduct;

(h) The Commission adopt the Sub-Commission's "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" at its sixtieth session;

(i) All States make the right to food a reality for everyone. Hunger is neither inevitable, nor acceptable. It is a daily massacre and a shame on humanity.

Notes

¹ The general comments/recommendations of all the treaty bodies have been compiled in document HRI/GEN/1/Rev.6, "International human rights instruments", which is revised annually.

² FAO, *The State of Food Insecurity in the World*, 4th ed., 2002 foreword.

³ FAO, "Fostering the political will to fight hunger" (CFS:2001/INF.6).

⁴ World Food Programme, *World Hunger Map*, 2001.

⁵ See www.righttofood.org.

⁶ Jean Ziegler, *Le droit à l'alimentation*, Editions Mille et une nuits, Librairie Arthème Fayard 2003.

⁷ *The Guardian*, "France signals real change in agriculture policy", 12 June 2003.

⁸ International Food Policy Research Institute (IFPRI), Xinshe Diao, Eugenio Diaz-Bonilla and Sherman Robinson, "How much does it hurt? The impact of agricultural trade policies on developing countries", press briefing, August 2003.

⁹ See www.whitehouse.gov/news/releases/2001/07/20010727-2.html.

¹⁰ Anuradha Mittal, *Giving Away the Farm: The 2002 Farm Bill*, Food First Backgrounder, summer 2002, Vol. 8, No. 3.

¹¹ IFPRI, see note 8 above.

¹² Statement by FAO at WTO Ministerial Conference, fifth session, Cancún, Mexico, 10-14 September 2003 (WT/MIN(03)/ST/61).

¹³ IMF, "External evaluation of the ESAF (Enhanced Structural Adjustment Facility): report by a group of independent experts", June 1998.

- ¹⁴ Often government monopolies are simply replaced by monopolistic private companies or traders, who offer lower prices to farmers and charge higher prices to consumers. See S. Way and J. Chileshe, "Trade liberalisation and the impact on poverty: Zambia case study", in Oxfam/Institute of Development Studies, University of Sussex, *Liberalisation and Poverty* (Oxford, Oxfam, 1999).
- ¹⁵ UNDP, *Mexico: Globalization and liberalization: Implications for poverty, distribution and inequality*, UNDP Occasional Paper 32, 1997.
- ¹⁶ Friends of the Earth International, *Sale of the Century?: Peoples' Food Sovereignty, Part 1 - the implications of current trade negotiations*, 2003 (www.foe.co.uk/resource/reports/qatar_food_sovereignty_1.pdf).
- ¹⁷ Sophia Murphy, with Steve Suppan, "Introduction to the development box: finding space for development concerns in the WTO's agriculture negotiations", paper produced for the International Institute for Sustainable Development, Spring 2003.
- ¹⁸ Jacques Morisset, "Unfair trade?: empirical evidence in world commodity markets over the past 25 years", Policy Research Working Papers, World Bank, 1997.
- ¹⁹ Via Campesina, "Priority to people's food sovereignty", 1 November 2001 (see www.peoplesfoodsovereignty.org/statements).
- ²⁰ See www.foodfirst.org/progs/global/food/finaldeclaration.html.
- ²¹ Government of Norway, Landbruksdepartementet "Multifunctional Agriculture: the case of Norway".
- ²² Daryll E. Ray and the Agricultural Policy Analysis Center, "Food Sovereignty", in *MidAmerica Farmer Grower*, Vol. 21, No. 34, 22 August 2003.
- ²³ See www.foodfirst.org/pubs/backgrdrs/2001/f01v7n4.html.
- ²⁴ Friends of the Earth International, op. cit.
- ²⁵ Via Campesina, op. cit.
- ²⁶ General comment No. 12 of the Committee on Economic, Social and Cultural Rights.
- ²⁷ WTO document G/AG/NG/W/36/Rev.1.
- ²⁸ UNCTAD press release TAD/INF/PR/47, 12 August 2002.
- ²⁹ Erosion, Technology and Concentration Action Group, Communiqué, November/December 2003, Issue 82. See also Biosafety Interdisciplinary Network, *Les impacts des plantes transgéniques dans les pays en voie de développement et les pays en transition*, 2003.

³⁰ C. James, "Global status of commercialized transgenic crops: 2002", International Service for the Acquisition of Agri-Biotech Applications (ISAAA) Briefs, No. 27, 2002.

³¹ Erosion, Technology and Concentration Action Group, op. cit.

³² ActionAid, *GM crops - going against the grain*, 2003. See www.agribusinessaccountability.org/pdfs/250_GM%20Crops%20going%20against%20the%20grain.pdf.

³³ L.O. Fresco, *Which Road Do We Take? Harnessing Genetic Resources and Making Use of life Sciences, a New Contract for Sustainable Agriculture*, 2003. See www.fao.org/ag/magazine/fao-gr.pdf.

³⁴ P.L. Pingali and G. Traxler, "Changing focus of agricultural research: will the poor benefit from biotechnology and privatization trends?", *Food Policy*, 27, 2002.

³⁵ ActionAid, op. cit.

³⁶ See Percy Schmeiser, "Who owns the seeds?", opinion editorial in *San Francisco Chronicle*, 20 June 2003. See also ActionAid, op. cit. The Supreme Court of Canada will shortly hear an appeal for Percy Schmeiser's case.

³⁷ Nils Roseman, "The human right to water under the conditions of trade liberalisation and privatisation - a study on the privatisation of water supply and wastewater disposal in Manila", Friedrich Ebert Foundation, Occasional Papers: International Development Cooperation 2003.

³⁸ N. Laurie and C. Crespo, "Pro-poor water by concession, dream or reality? Lessons from Bolivia", University of Newcastle and Universidad Mayor de San Simón, 2003.

³⁹ E. Gutierrez, B. Calaguas, J. Green and V. Roaf, "New rules, new roles: does private sector participation benefit the poor?", 2003.

⁴⁰ Center for Economic and Social Rights, "Rights violations in the Ecuadorian Amazon: the human consequences of oil development", *Health and Human Rights: An International Journal*, vol. 1, No. 1, Fall 1994.

⁴¹ Inter-American Commission on Human Rights, "Report on the Situation of Human Rights in Ecuador", OEA/Ser.L/V/II.96, doc. 10 rev.1, 24 April 1997.

⁴² Andrew Clapham and Scott Jerbi have categorized corporate complicity as follows: direct corporate complicity, beneficial corporate complicity and silent complicity. See A. Clapham and S. Jerbi, "Categories of corporate complicity in human rights abuses", based on a background paper for the Global Compact dialogue on the role of the private sector in zones of conflict, New York, March 2001.

⁴³ Litigation against Broken Hill Proprietary by people living near Ok Tedi River in Papua New Guinea.

⁴⁴ *Recherche Internationales Quebec v. Cambior Inc.* Quebec.

⁴⁵ *Sithole and others v. Thor Chemicals Holdings Ltd. and others* (1999, 2000).

⁴⁶ It applies to customary international law norms, such as the prohibition of slavery, genocide, torture, crimes against humanity and war crimes. *Wiwa v. Royal Dutch Petroleum (Shell)*, *Bowoto v. ChevronTexaco*, *Doe v. Unocal*.

⁴⁷ *Consumer Education and Research Centre v. Union of India*.

⁴⁸ P.T. Muchlinski, "Human rights and multinationals: is there a problem?", *International Affairs*, I (2001).

⁴⁹ United States Council for International Business, "Talking points on the draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights", 2003.

⁵⁰ Sir Geoffrey Chandler, "Commentary on the United States Council for International Business 'Talking Points'", 20 November 2003. Available at <http://209.238.219.111/Chandler-commentary-on-USCIB-Talking-Points.htm>.
