POLICIES AGAINST HUNGER VII
FOOD IS A HUMAN RIGHT

CONCLUSIONS AND RECOMMENDATIONS
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The Policies against Hunger VII Conference convened in Berlin on December 8-10th, 2008, on the theme of the right to food as a human right. The discussions are dominated by a sense of failure, and by a shared understanding of the participants that a return to business as usual is not a solution. 975 million people are hungry in the world today, up from 852 million in 2003-2005, and 820 million in 1996. Previous policies have failed. The world food crisis, characterized by a sudden increases of prices of agricultural commodities on the international markets which peaked in June 2008, took States and the international community by surprise. The crisis had devastating human consequences, with particularly severe impacts on women and children, due to inequalities within households and due to the specific nutritional needs of the latter for their physical and mental development.

For many families particularly in developing countries, the sharp increases we have witnessed made food unaffordable, leading them to cut back on expenses in education or health, to switch to less varied diets, or to have fewer meals. But the crisis reaches much further, and it is much deeper, than the question of prices alone would suggest. The crisis illustrated the unsustainability of a global food system which may be good at producing large amounts of food, but which is neither socially nor environmentally sustainable: while the incomes of small-scale farmers in developing countries are below subsistence levels, often leaving them no other option but to leave their fields and seek employment in cities, the current methods of agricultural production deplete soils, produce large amounts of greenhouse gases, and use vast quantities of water, threatening food security in the long term, and making the repetition of crises such as the one we’ve seen unavoidable if we do not act decisively.

In 1996, the World Food Summit convened in Rome, requesting that the right to food be given a more concrete and operational content. In 2004, the 187 Member States of the General Council of the United Nations Organization for Food and Agriculture (FAO) adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Between those two dates, the Committee on Economic, Social and Cultural Rights adopted its General Comment No.
12 on the right to food; and the Commission on Human Rights established the mandate of the UN Special Rapporteur on the Right to Food.

That period was one during which the normative content of the right to food was clarified. We need to move to concrete implementation. This is urgent. Unless the right to food is placed at the very centre of the efforts of the international community to address the structural causes which have led to the global food crisis, we will repeat the same mistakes. We will produce more out of fear of producing too little. But we will forget to ask the decisive questions which, because of their political nature, governments all too often do not want to hear: whose incomes will rise as a result of production increasing? will the poorest be able to afford the food which is available on the markets? are safety nets in place, shielding the poorest from the impacts of high prices? are stabilizing measures in place, insuring farmers against too low prices? are initiatives being taken to narrow the gap between farmgate prices and prices paid by the consumers, which has so significantly increased over the last few years? do victims of violations of the right to food have remedies to challenge the actions of governments and their omissions, which cause such violations?

The right to food obliges us to face these questions and answer them, because the primary obligation of governments is to inform themselves about the situation: to map food insecurity and vulnerability, to identify the obstacles to the full realization of the right to food, and to work towards removing these obstacles. And recognizing the right to food allows courts, or other independent bodies such as national human rights institutions, to monitor the behavior of governments, and call upon them to justify their policy choices, the impact of which on the realization of the right to food should be systematically assessed. Producing enough food is of course essential, and population growth, shifting diets, climate change, and increased competition between crops for food, feed and fuel, all challenge our ability, in the future, to meeting the growing demands of the planet. But that is only part of the equation. It is also essential that all have access – economic access in particular – to the food which is available. The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. It is not about being fed. It is about being guaranteed the right to feed oneself, which requires not only that food is available, but also that each household either has the means to produce its own food, or has a sufficient purchasing power to buy the food which it needs.

The working groups of the conference achieved a significant degree on consensus on a number of core recommendations. Some have to do with enhancing the legal protection of smallscale farmers and landusers. Others have to do with legal strategies for the implementation of the right to food, whether by relying on the Voluntary Guidelines on the right to food adopted within the FAO or by empowering courts to adjudicate on the right to food. Some, finally, have to do with issues of global governance. The following paragraphs are not a faithful summary of these recommendations, nor do they pretend to be. They constitute, rather, a set of ideas which were put forward during the conference and which deserve further exploration:

I. Access to Natural Resources as a Condition of the Right to Food

Half of those who are food insecure live in smallhold farming households, and approximately 20% are landless agricultural laborers: security of land tenure and access to land as a productive resource are essential for the protection of the right to food of both these categories. Guideline 8.10 of the FAO Voluntary Guidelines on the Right to Food emphasizes the need to ‘promote and protect the security of land tenure, especially with respect to women, poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit’; and it recommends advancing land reform to enhance access for the poor and women. Building on this guideline, the Member States emphasized the ‘essential role’ of agrarian reform in the realization of basic human rights and food security at the 2006 FAO International Conference on Agrarian Reform and Rural Development (ICARRD). They reaffirmed that ‘wider, secure and sustainable access to land, water and other natural

1 UN Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food (1999), UN doc. E/C.12/1999/5, at para. 6.
resources related to rural people’s livelihoods, especially, inter alia, women, indigenous, marginalized and vulnerable groups, is essential to hunger and poverty eradication, contributes to sustainable development and should therefore be an inherent part of national policies. Indeed, securing land rights also makes economic sense: it has been widely documented that ‘providing land owners or users with security against eviction enhances their competitiveness by encouraging land-related investment’, and lowers the cost of credit by increasing the use of land as collateral.3

The question of the rights of land users is particularly topical for three reasons. First, the tendency towards trade liberalization in agriculture results in a pressure towards concentration of land in the hands of large agricultural producers, better connected to the global markets and who can more easily meet the volumes and standards requirements for export. This creates new threats to the security of land tenure for smallhold farmers. Indeed, trade liberalization in other sectors also may increase demand for land. The relationship between local resource users and large industries are characterised by major imbalances of power. A number of cases have been documented where farmers have been expropriated for the building of industrial plants, in conditions which amount to forced eviction with no or insufficient compensation. For this reason, it is important not to focus exclusively on the economic case for securing rights related to land, but to understand this as a human rights issue: while the strengthening of property rights is a condition for markets to transfer land to more productive users and users, this should be encouraged only to the extent that it does not lead to further marginalization of the poorest, for instance resulting from distress sales of land by indebted farmers.

Second, the increased production of, and demand for, agrofuels leads to competing resource claims between local resource users, governments and incoming agrofuel producers. As a result, ‘where appropriate conditions are not in place, the rapid spread of commercial biofuel production may result – and is resulting – in poorer groups losing access to the land on which they depend. In these contexts, the spread of commercial biofuel crop cultivation can have major negative effects on local food security and on the economic, social and cultural dimensions of land use’.4 Safeguards should therefore be put in place in procedures to allocate land to large-scale biofuel feedstock production. Concepts such as ‘under-utilized’, ‘unproductive’, ‘degraded land’, etc., should not be abused in order to avoid allocation of land on which local user groups depend for their livelihoods.

Third, the recent increase in the prices of primary agricultural commodities on the international markets has led investors to buy land suitable for cultivation, speculating on further increases of the price of land in the future. This may result in poorer land users being priced out of land markets. It may also lead to the accelerated expansion of monocultures for the production of cash crops, and to new risks resulting from the depletion of soils and the loss of biodiversity. The protection of security of tenure constitutes an essential safeguard against these developments going unimpeded, and further marginalizing the most vulnerable.

What should be done? Land owners or users be protected from forced eviction, taking into account, in particular, the Basic Principles and Guidelines on Development-based Evictions and Displacement presented by the Special Rapporteur on adequate housing.5 Their right to land should also be protected from being interfered with by private parties. And in certain circumstances, as mentioned by Article 11(2) of the International Covenant on Economic, Social and Cultural Rights, access to land should be facilitated through agrarian reform, particularly for landless agricultural workers. The working group of the conference which discussed this issue made four recommendations:

**Implement fully already existing commitments, such as Guideline 8.10 of the FAO Voluntary Guidelines on the Right to Food or the conclusions of the International Conference on Agrarian Reform and Rural Development (ICARRD).** To a large extent, the standards exist. We need to make them better known; to ensure that they are better taken into account; and to mainstream their use, in particular, in policies which could have an impact on land rights, including rural development and agricultural policies, which should more systematically be assessed against the requirements of the right to food.

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Support the development of new standards, such as through the initiative of the FAO to develop a set of Voluntary Guidelines on the responsible governance of land and natural resource tenure, or through the preparation by the Advisory Committee of the Human Rights Council of a study on a new normative instrument protecting peasants’ rights. The Guidelines under preparation within the FAO, it was noted, should be fully participatory, and involve in particular peasants, women, and other vulnerable groups.

Specific fears were expressed about the impact of the arrival of investors seeking to exploit natural resources or develop large-scale plantations on portions of land which are cultivated, sometimes without adequate legal title, by farmers. The adoption of guidelines on this issue was recommended. As regards foreign investors, the countries of origin should exercise control on those actors in order to ensure that they comply with the right to food, including access to natural resources as a human right, in their operations.

Finally, it was noted that a number of policies may have a negative impact on the protection of the rights of landusers, particularly agricultural development policies, policies aimed at attracting foreign investment, or trade policies encouraging the production of cash crops instead of crops for local consumption. The impact of such policies on land rights should be assessed on a systematic basis.

II. Developing and strengthening the legal framework

We cannot get rid of hunger by outlawing it more than we can get rid of murder by outlawing homicide. In both cases however, imposing well-defined obligations on actors whose actions or omissions play a decisive role in the chain of causes which lead to violations of human rights can help. Indeed, this can be done, even if we take into consideration the fact that certain dimensions of the right to food are subject to progressive realization, to the maximum available resources for each State. The fact that the objective may seem distant is one more reason to clearly define the intermediary steps which must be taken towards achieving the goal.

The Committee on Economic, Social and Cultural Rights, has insisted on the need for States to work towards ‘the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks’. Guideline 3 of the FAO Voluntary Guidelines provides useful indications about how States could adopt a national human rights-based strategy for the realization of the right to adequate food. Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to: (i) identify, at the earliest stage possible, emerging threats to the right to adequate food, by adequate monitoring systems; (ii) improve coordination between the different relevant ministries and between the national and sub-national levels of government; (iii) improve accountability, with a clear allocation of responsibilities, and the setting of precise timeframes for the realization of the dimensions of the right to food which require progressive implementation; (iv) ensure the adequate participation, particularly, of the most food-insecure segments of the population; finally, they should (v) pay specific attention to the need to improve the situation of the most vulnerable segments of society, including girls and women whose specific situation must be taken into account (Guideline 3.9.), to the principle of non-discrimination, as well as to the explicit inclusion of access to adequate food as part of larger poverty reduction strategies (Guidelines 3.4. and 3.5.). As part of such a national strategy, States should adopt a framework legislation ensuring that the right to food is justiciable before national courts or that other forms of redress are available, so that in situations such as the current one when the prices of food undergo a sudden increase, the other branches of government will not be allowed to remain passive.

There is a general recognition that establishing such a framework may significantly contribute to the realization of the right to food, in a number of ways: (a) by ensuring that governmental bodies will be held accountable if they do not comply with the obligations the said framework imposes on them; (b) by ensuring that the right to food will be at the centre of national development strategies, which developing countries may then refer to in their dialogue with donor countries seeking to provide international aid; (c) by

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6 General Comment No. 12, para. 21.
strengthening the position of countries in negotiations related to trade or investment, by referring their partners to the obligations they are imposed vis-à-vis their constituencies at domestic level. Yet, only a small number of States have effectively implemented the Voluntary Guidelines on the right to food, and in many States, the right to food is still not enforceable in judicial proceedings. The following recommendations were made in order to remedy this:

More efforts should be made to ensure that the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security are known and used as a reference in the large set of policies they address. Dissemination and training, as well as the preparation of information tools, have a role to play in this regard; exchanges of experiences between States, and the establishment between States of partnerships aimed at the implementation of the Guidelines, could also be explored. Since many of the Guidelines are specific to certain sectors (such as development cooperation, land policy, agricultural reform, or social policy), the preparation of tools specific to each of these sectors could be recommended, particularly if they are practice-oriented. The role of the Right to Food Unit of the FAO has been essential in this effort and should be supported in order to continue in the future. Indeed, the FAO, particularly through its Right to Food Unit, could in the future more systematically report on the implementation of the Guidelines, thus developing a platform through which States could learn from their successes and failures in seeking to implement them in a variety of contexts: the preparation, on an annual basis, of a ‘State of the Right to Food’ covering all developments related to the implementation of the guidelines could constitute a powerful incentive for States to make progress in this direction. In addition, other actors than national governments could refer to the Guidelines more systematically: thus, the Guidelines could be taken into account by inter-governmental organizations (such as development banks or multilateral funds), or by the private sector.

Civil society should be equipped to play a role in furthering the implementation of the Guidelines. The efforts of national non-governmental organisations in defending and promoting the right to food should be supported through development cooperation. They should include training local non-governmental organisations and public servants about the implications of the Guidelines; the preparation of adequate indicators and monitoring tools; and participation in the elaboration of national strategies for the realization of the right to food. In general, for the right to food to be successfully implemented, it is vital that there exists a vibrant, and truly independent, civil society to accompany efforts made in this direction: capacity-building is essential in order to allow to perform this function.

Courts have an important role in protection the right to food. A number of obstacles remain, however, for this to become a reality in most countries. In a number of States, international law is not part of domestic law without national measures of implementation. Even where it is, or where the right to food is mentioned in the national constitution, access to judicial remedies may be impossible to achieve for the poorest. Courts may be reluctant to adjudicate on the right to food, because of what is perceived as the vague and imprecise nature of that right, or out of fear of the budgetary consequences, which would make this a question better dealt with by the political branches of government. These obstacles can be overcome, however. Public interest litigation, conducted by non-governmental organisations or in the form of class actions led by representative plaintiffs, may overcome the collective action problem which emerges from certain violations being widespread and structural in nature; in certain legal systems, a ‘People’s Prosecutor’ or a national human rights institution may file claims before courts, in order to challenge certain illegal actions by the authorities; increasingly, courts consider the right to food justiciable, a development which the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the development of a jurisprudence based on individual communications could encourage further. These best practices should be disseminated, and inspire developments in other countries. This again may be a role for the Platform on the implementation of the right to food mentioned above.

III. Global governance

Article 11(2) of the International Covenant on Economic, Social and Cultural Rights refers to the need to take into account ‘the problems of both food-importing and food-exporting countries’, and it imposes on States an obligation ‘to ensure an equitable distribution of world food supplies in relation to need’. This
wording itself confirms that States are imposed ‘international’ obligations, reaching beyond the national territory, in addition to obligations each State owes to its own population. Indeed, under general public international law, States may not disregard the impact of activities under their jurisdiction on other States’ territories. Consistent with this requirement, the Committee on Economic, Social and Cultural Rights has noted that States parties to the Covenant should ‘take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required’; that they should ensure that the right to adequate food is given due attention in the international agreements they conclude; and ‘consider the development of further international legal instruments to that end’. And the Human Rights Council considers that ‘all States should make every effort to ensure that their international policies of a political and economic nature, including international trade agreements, do not have a negative impact on the right to food in other countries’.

The reference Article 23 of the Covenant makes to the various forms of international action which may be taken for the achievement of the rights of the Covenant clearly implies that, in order to comply with their international obligations, States must not only abstain from taking measures which impact negatively upon the right to food in other countries; instead, they may also have to adopt positive measures in order to protect and fulfill the right to food abroad. As shown by the reference in Article 23 of the Covenant to the conclusion of conventions, these international obligations may require not only unilateral actions, but also international cooperation, i.e., the provision of public goods at the global level. Ultimately, the goal should be to establish a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized – something to which, under the terms of Article 28 of the Universal Declaration, everyone is entitled.

The right to adequate food is not one which any State can fulfill in isolation. All States have a shared responsibility, grounded in international law, to ensure that the international environment in which States operate enables them to respect, protect and fulfill the right to food for the benefit of their own populations. A number of recommendations emerging from the conference are based on this obligation:

**Development cooperation policies should comply with the right to food and contribute to its full realization.** That means, firstly, that more priority should be given to agriculture in development cooperation in the future: this sector has been neglected since the early 1980s, with dramatic consequences for the food security of large regions of the developing world, particularly in sub-Saharan Africa. But it means also that the implementation of development cooperation policies should be based on the right to food.
food: the principles of national ownership, alignment, harmonisation, managing for results and mutual accountability, around which the 56 guidelines of the 2005 Paris Declaration on Aid Effectiveness are based, should be interpreted in accordance with the right to food. It is notable in this respect that one of the commitments of the States adhering to the Paris Declaration on Aid Effectiveness is to enhance partner countries’ accountability to their citizens and parliaments for their development policies, strategies and performance (para. 3, iii, and para. 14). This objective has been further reaffirmed by the Accra Summit on Aid Effectiveness of 2-4 September 2008 (para. 13, a, of the Accra Agenda for Action). Indeed, the Accra Agenda for Action provides that developing countries and donors will ‘ensure that their respective development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability’ (para. 13, d).

The international trade regime must be made consistent with the requirements of the right to food. All too often, the human rights obligations of States and the commitments they make through the conclusion of agreements under the WTO framework remain uncoordinated. At international level, this lack of coordination is one example among others of the problem of fragmentation of international law into a number of self-contained regimes, each with their own norms and dispute-settlement mechanisms, and relatively autonomous both vis-à-vis each other and vis-à-vis general international law. All too often, this failure of global governance mechanisms to ensure an adequate coordination between the obligations imposed on States under these different regimes is replicated at domestic level: trade negotiators either are not aware of the human rights obligations of the governments they represent, or they do not identify the implications for their position in trade negotiations; even when they are well informed about the potential intersections, they routinely express the view that any potential incompatibility should be addressed through appropriate policies at domestic level, where the two sets of commitments should be reconciled.

This approach thus leaves it to each State to ensure, in its domestic policies, a consistency which is not sought after in the international legal process. This is not satisfactory. It amounts to treating obligations incurred under trade agreements equivalent in normative force to human rights obligations. This not only fails to recognize that, both as a result of Article 103 of the UN Charter and because human rights norms have the status of peremptory norms of international law – no court could recognize as valid and apply a treaty adopted in violation of internationally recognized human rights –, human rights should prevail over any other international commitments. It also creates the risk that, faced with situations of conflict, States will opt for compliance with their obligations under trade agreements: since these agreements are commonly backed by the threat of economic sanctions – as is the case within the WTO, under the Dispute Settlement Understanding –, setting aside their human rights obligations will appear to governments less costly economically and even, often, politically.

This is an acute problem, particularly if we take into account a number of problems which the participants in the conference identified in the current regime of international trade. The least-developed countries are insufficiently involved in the trade negotiating process. The capacity of LDCs, and of developing countries in general, to negotiate international standards and sanitary regulations and ensure compliance is also insufficient. And developing countries’ ability to protect the right to food under their jurisdiction should be fully respected.

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13 Only seldomly have WTO members referred to the right to food in the context of trade negotiations within the WTO: this was done by Mauritius and Norway (Committee on Agriculture, Special Session, Note on Non-Trade Concerns, WTO Doc. G/AG/NG/W/36/Rev.1, 9 November 2000, paras. 44 and 57; WTO Doc. G/AG/NG/W/101, 16 January 2001, paras. 6 ff.); and by Burkina Faso (WTO Doc. TN/AG/R/10 of 9 September 2003, para. 35).

14 As members of the Organization of the United Nations, all States have pledged under Article 56 of the UN Charter to ‘take joint and separate action in cooperation with the Organization for the achievement of the purposes’ of the Charter, which include ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion’. It follows from Article 103 of the Charter that this obligation prevails over any other international agreement.
The Common Agricultural Policy of the EU also was discussed by the participants in the conference. While the CAP was credited in some respects, it was found that it should be further reformed, in order to be consistent with development concerns. In the EU as in other developed countries, direct payments to farmers should be shifted to rural development programmes, such as programmes to preserve the environment or biodiversity. It was also recommended by participants in the conference that all export subsidies should be phased out; and that the impact of the CAP on developing countries should be monitored on a systematic basis.

The conference participants also discussed the reform of the global governance in food and agriculture. In general, efforts at improved coordination, such as by the High-Level Task Force on the world food crisis or, in the future, through the Global Partnership on Agriculture and Food, were welcomed. At the same time, the importance of working under the overarching principle of the right to adequate food was emphasized. Precise implications follow:

The agencies within the HLTF and the stakeholders which will take part in the GPAF should work under the overarching principle of the promotion of the Right to Adequate Food. They should:

a. prioritize the role of empowering vulnerable populations, increasing the awareness of their rights, through education and capacity building, and highlighting the role of the RTF as an alternative for the most vulnerable to be heard and claim their rights.

b. ensure that the nutritional security component is effectively incorporated into the food security policy implementation.

c. promote international and national needs and rights based strategies, which identify the vulnerable, assess the causes, develop targeted policies, establish goals, define obligations both addressing the immediate and long term goals.

d. encourage international and national coordination efforts in order to enable small scale farmers, pastoralists, fisherfolk, indigenous peoples by addressing the issues of access to land, land tenure security, access to natural resources, technical assistance, support to cooperatives, credit, stimulating production for local markets and access to local value chains and safeguard mechanisms, as well as facing the contradicting urban and rural interests.

Placing the right to adequate food at the centre of our efforts to reform the global governance of food and agriculture also implies that efforts of international coordination must be established:

e. in an open format, in full cooperation with the different sectors of civil society, with especial attention to the most vulnerable and involving all stakeholders (UN agencies, civil society organisations, farmers’ organisations, particularly smallscale farmers’ organizations, women’s organizations, other sectors of civil society, etc.)

f. as a broad forum for policy discussion including environmental, gender, HIV Aids, social/economic and human rights issues.

And must include monitoring and accountability mechanisms from a Right to Adequate Food based approach, based on the 2004 Voluntary guidelines on the Right to Food.

The participants in the conference also emphasized that closer cooperation between UN and Bretton Woods organizations is fundamental and should include assessment and discussion of the coherence between right to food-based food and nutritional security policies and agricultural, bilateral trade agreements and trade policies. And they note that the issue of guaranteeing the Right to Adequate Food of people in emergencies and failed states must be addressed, and effective actions and measures, such as food assistance, put in place.

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15 In an attempt to devise a unified response to the global food crisis, the decision was taken at the 28-29 April 2008 Bern meeting of the Chief Executives Board of the United Nations system (CEB) to establish a High-Level Task Force (HLTF) on Food Security, chaired by the United Nations Secretary-General. The HLTF includes the relevant UN agencies, funds, and programmes, the World Bank, the World Trade Organisation, and the International Monetary Fund.