Food businesses and the right to food

Commodity buyers, food processors and retailers play a key role in connecting producers to consumers, writes Olivier de Schutter. Their contribution to the right to food is essential, and it is important that these actors benefit from a regulatory and economic environment that allows them to play this role.

It is striking that the majority of those who are hungry in the world today are also part of the food system. Small, independent food producers and waged agricultural workers represent an important percentage of people who appear in statistics on undernutrition or malnutrition. They probably represent around half of the world’s undernourished. It is therefore essential to consider how the sourcing, pricing, and wage policies of commodity buyers, food processors and retailers are aligned with the requirements of the right to food. Food systems are currently undergoing deep transformations, opening up major opportunities and major risks for all involved. Without state regulation, and without corporate responsibility, it is unlikely that the benefits will reach the millions of smallholders living close to or below the poverty line.

A transforming sector

Direct foreign investment in agriculture rose from an average of US$ 600 million annually in the 1990s, to an average of US$ 3 billion in 2005–2007, and has continued to expand in the wake of the 2008 food price spikes. This influx of capital is part of a larger transformation of the global supply chain in the agri-food sector. Commodity buyers are larger and more concentrated than ever before. They too are facing new challenges: they must respond to the requirements of their food industry clients for tighter control over suppliers. Meanwhile the processing industry is also rapidly consolidating and becoming increasingly globalized.

The resulting market structure gives buyers considerable bargaining strength over their suppliers, with major implications for the welfare both of producers and consumers. Due to the deeply unequal bargaining positions of food producers and consumers on the one hand, and buyers and retailers on the other, the latter can continue to pay relatively low prices for crops even when the prices increase on regional or international markets, and they can continue to charge high prices to consumers even though prices fall on these markets. While measures have been taken to encourage companies to act responsibly, they have not been commensurate with the magnitude of change in the sector.

Right to food

The implications for the right to food are multiple. The right to food constitutes the right of all to have access at all times to adequate and culturally acceptable food, either by producing it, or by procuring it from the market. For poor consumers, a powerful corporate agribusiness sector can pose a threat by pulling supply away from low-value markets, by failing to provide food at the right price – particularly in situations of monopoly or quasi-monopoly, in certain more remote areas – or by undercutting the local supply chain and reducing consumer choice. But even more directly impacted by the consolidation of the food systems are those involved in the production of food. As agricultural labour is increasingly casualized, as contract farming develops (resulting in long-term relationships being established between farmers and commodity buyers, who decide what and how to grow and set prices), and as small farmers increasingly work on farms or plantations to supplement their basic incomes, the distinction between waged workers and farmers is breaking down. The blurring of the distinctions between these different categories often leads to situations in which the legal framework applicable to the relationship between the food producer and the food buyer is difficult to determine, and in which the rights and obligations of the parties are unclear. Despite this, two broad categories of challenges can be distinguished.

Consider first the situation of farm workers employed on plantations. There are more than 450 million waged agricultural workers globally, representing a growing proportion of the agricultural workforce, perhaps 40% today. Fundamental rights at work are frequently violated in the agricultural sector. Less than 20% of agricultural workers have access to basic social protection. And, due to the lack of childcare services in rural areas in many countries or to wages being paid on a piece-rate basis (which is a strong incentive for women farm workers in particular, to bring their children to work with them on the field as “helpers”), about 70% of child labour in the world is in agriculture. 132 million children between five and 14 years of age work on plantations. This is a sector in which bonded labour practices are perpetuated from one generation to the next. Since much of waged employment is in the informal sector, national labour legislation is unable to ensure the right to a minimum wage or to protect women from discrimination.
Consider, second, the situation of smallholders in this rapidly changing environment, in which global supply chains develop. In a sector that is increasingly globalized and concentrated, the imbalance of bargaining power between producers and buyers is becoming a source of concern. Often regulation is unfit or unable to prevent this unequal relationship degenerating into manipulative practices that disempower farmers and force them into what some have called “self-exploitation” – a way of describing the situation of those who are paid too little for the product of their work, even though they are not in a waged relationship, and therefore make sacrifices simply to stay in business.

**Bridging the gap**

Therefore, it falls to corporations to take proactive steps to avert these risks. Employers have a responsibility to go beyond the baseline. Where laws are insufficiently protective of agricultural workers or where the existing labour legislation is inadequately monitored, employers must bridge the gap through their own good practice. To do so requires not merely an interest in decent working conditions, but an understanding of what constitutes the right to food, and how their activities can contribute to it – or undermine it – on various levels.

For example, the responsibility to respect the right to food implies that a company must not contribute to the downward pressure on wages and working conditions, whatever the competitive pressures they face. Agribusiness corporations should use their weight to ensure that wages and working conditions improve as a result of their suppliers joining global value chains. They could make unilateral undertakings to monitor compliance with certain social standards in the supply chain. And they could also conclude international framework agreements with global unions. Indeed, agribusiness companies often adopt codes of conduct to ensure that their suppliers comply with certain requirements related to freedom of association, to health and safety at work, and to the prohibition of child labour. The problem with unilateral codes of conduct is that their coverage varies greatly. Their value lies in going beyond the regulatory baseline and taking an interest in the many dimensions of the right to food. A code that does not move beyond those minimum requirements is a source of confusion, not progress.

Meanwhile, there may also be a tendency to shift the burden of compliance onto the supplier. Instead, it is crucial for the buyer to support compliance by meeting part or whole of the investment cost required, by providing technical capacity, and by funding the monitoring procedures. A further risk is that supply contracts are outsourced and codes of conduct no longer apply. It is therefore essential to ensure that the whole supply chain is covered. The greatest challenge is in fact to ensure that these codes are implemented. If not, they are merely false advertising. Furthermore, it must still be ensured that these do not become a substitute for negotiation and bargaining, nor an excuse not to sign up to international framework agreements, or multi-stakeholder initiatives.

**Enabling compliance**

Meanwhile, there are specific things that can be done to improve the situation of smallholder farmers, itself an essential step in realizing the right to food. During the past decade, the shift from supply-driven to buyer-driven chains typically led to an increased exclusion of smallholders: consumers demand compliance with high food safety and hygiene standards, as well as with environmental standards, that are more difficult for smallholders to adapt to. Though this is gradually changing (consumers are now also concerned about equity in the sourcing policies of the large agribusiness dealers), this risk remains high.

It is therefore essential for corporations to reach out to these producers and help them to achieve compliance. Third-party certification schemes have not worked in favour of smallholders. Compliance has often required higher levels of capitalization than many smallholders could afford, and the high costs of monitoring compliance over a large number of units have been an incentive for export companies to switch from smallholders to larger commercial farms. This consequence can only be avoided through the payment of a premium by the wholesalers to reward compliance, at least during the first years of implementation, and through the provision of technical assistance to facilitate compliance with standards. Currently, a number of certified smallholders are only able to remain within the system thanks to donor support. This is not sustainable.

The agribusiness sector could take proactive steps to change this. As a first step, the sector could carefully assess the impact of private standards on the right to food. This is true for the standards it has adopted in the past and for those it is planning to adopt in the future. Such assessments should be carried out with the participation of smallholders themselves, who are better placed to identify the obstacles they may be facing in seeking to comply. Second, the sector should recognize the limitations of and move beyond the inspection/audit approach. Indeed, this approach does not assist smallholders in overcoming compliance problems, nor does it help buyers understand the obstacles that their suppliers face. Indeed, the participation of smallholders in the elaboration of, and compliance with, standards is crucial.

**Contract farming**

While corporations must be aware of rights implications across their activities, there are particular considerations to take into account when it comes to the ‘contract farming’ model. Recent years have seen an upsurge in large-scale land purchases by foreign investors – so-called ‘land-grabbing’ – but less attention has been paid to the parallel rise in contract farming arrangements, whereby farmers commit their output to processing or marketing firms at predetermined prices. These arrangements can be beneficial for smallholders and for the right to food, but only under certain conditions. Indeed, a fair contract must include a series of provisions: minimum price guarantees, visual demonstration of quality standards, the provision of inputs at or below commercial rates, tailored dispute settlement mechanisms, and the possibility to set aside a portion of land for food crops to meet the needs of the family and the community.

Without these checks and balances, the door is left open for produce to be summarily rejected, for farm debt to spiral, for labour to be sub-contracted without regulatory oversight, and for a region’s food security to be undermined by the production of export-oriented cash crops at the expense of all else. These are private contractual arrangements that vary from case to case, and ultimately it is up to governments to scrutinize these details. However, agribusiness can go a long way to ensuring a positive contribution to the right to food by drawing up contracts that empower smallholders and are therefore made to last. Here again, corporations must take a conscious decision not to abuse their strong negotiating power. Relationships between buyers and producers can no longer be based solely on their relative bargaining strength. Instead, they must be collaborative, and based on other modes of communication than price signals. Ultimately they must involve proactive steps from agribusiness that mitigate the risks of power imbalances, empower producers, and help to realize the right to food.

Olivier De Schutter is the UN Special Rapporteur on the right to food. He has submitted official reports to the UN on Agribusiness and the right to food (2010), and contract farming (2011).