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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

## **Report of the Special Rapporteur on the right to food, Olivier De Schutter**

### **Agribusiness and the right to food**

#### *Summary*

This report examines the role of commodity buyers, food processors and retailers in the realization of the right to food. These actors play a key role, as they connect producers to consumers, and as they transform raw commodities into edible food. But the vast majority of those who are hungry in the world today are part of the food system; small independent food producers or waged agricultural workers working on farms in the formal or informal sector represent over half of the billion who go hungry today. The report therefore asks how the sourcing, pricing, and wages policies of commodity buyers, food processors and retailers impact the right to food. The report seeks to contribute to a better understanding, by agribusiness corporations and States alike, of their respective responsibilities and obligations under international law. It ends with 10 recommendations to States and the agribusiness sector to ensure that the current transformation of the food chain will contribute to the realization of the right to food. The recommendations relate to a range of areas, including codes of conduct and international framework agreements, cooperatives, marketing boards, public procurement, and competition law.

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## I. Introduction

1. This is the second annual report to the Human Rights Council of Olivier De Schutter as Special Rapporteur on the right to food, as requested in Council resolution 10/12.

2. In a report presented to the Human Rights Council at its eighth session, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises proposed a framework outlining the human rights responsibilities and obligations of the business community and of States, respectively, in relation to corporate-related human rights issues.<sup>1</sup> Based on an overview of human rights violations linked to the activities of corporations,<sup>2</sup> he proposed a framework relying on three principles. First, States have an obligation to protect human rights, comprising at a minimum “a duty to protect against human rights abuses by non-State actors, including by business, affecting persons within their territory or jurisdiction”.<sup>3</sup> Second, companies have a responsibility to respect all human rights: “Because companies can affect virtually all internationally recognized rights, they should consider the responsibility to respect in relation to all such rights.”<sup>4</sup> In order to meet their responsibility to respect, companies must undertake an ongoing process of human rights due diligence whereby they become aware of, prevent, and mitigate adverse human rights impacts: companies should “not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it”.<sup>5</sup> Third and finally, “effective grievance mechanisms play an important role in the State duty to protect, in both its legal and policy dimensions, as well as in the corporate responsibility to respect”.<sup>6</sup>

3. In this report, the Special Rapporteur examines the role of commodity buyers, food processors, and retailers in the realization of the right to food. These actors are referred to collectively as the “agribusiness sector”. They link producers to consumers. Without them, producers would have only very limited access to markets and the choices available to consumers would be vastly more limited. It is through market mechanisms that, for the most part, the right to food is satisfied, yet the sourcing, pricing, and wage policies of commodity buyers, food processors and retailers have a huge and sometimes negative impact on the right to food. The main objective of this report is to contribute to a better understanding, by agribusiness corporations and States alike, of their different but complementary responsibilities under international law, in the light of these impacts.

4. This report focuses on political economy issues that arise in the food chain, and on the relationships between the agribusiness corporations on the one hand, and their suppliers on the other, looking specifically at two vulnerable groups: agricultural workers and smallholder farmers. A number of issues have been left out of this report, due to space limitations. These include the environmental and nutritional dimensions of the practices of agribusiness corporations (i.e., how they could encourage sustainable agriculture and promote diverse, nutritious and balanced diets), and the impact of pricing policies on consumers. However, the Special Rapporteur intends to return to these other issues in his future work. Nor does this report address a number of situations in which the activities of private corporations can have an impact on the right to food, for instance when large-scale development projects deprive communities of their access to productive resources, or when

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<sup>1</sup> A/HRC/8/5.

<sup>2</sup> A/HRC/8/5/Add.2.

<sup>3</sup> A/HRC/8/5, para. 18.

<sup>4</sup> *Ibid.*, para. 24.

<sup>5</sup> *Ibid.*, para. 25.

<sup>6</sup> *Ibid.*, para. 82.

seed companies abuse a dominant position in the market to raise the prices of the inputs they sell to farmers.<sup>7</sup> An addendum to this report (A/HRC/13/33/Add.1) presents the work of the Special Rapporteur on the issue of large-scale land acquisitions or leases.

5. This report builds on the work of the previous Special Rapporteur on this issue.<sup>8</sup> For its preparation, the Special Rapporteur has benefited from his participation in the International Labour Organization (ILO) Tripartite Technical Workshop on the Global Food Price Crisis and Its Impact on Decent Work held in Geneva on 6 March 2009, and from other contacts with the ILO, as well as with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). He also commissioned contributions<sup>9</sup> and convened a multi-stakeholder consultation in Berlin on 19–20 June 2009, hosted by the non-governmental organization European Center for Constitutional and Human Rights (ECCHR) and supported by the German Government. He had exchanges with a number of agribusiness corporations, both bilaterally and through the Consumer Goods Forum, a global network of retailers and manufacturers covering over 150 countries.

## II. The changing context

6. Food systems are currently undergoing deep transformations. The renewed interest in agriculture, from both the public and the private sector,<sup>10</sup> led to foreign direct investment in agriculture rising from an average of US\$ 600 million annually in the 1990s, to an average of US\$ 3 billion in 2005–2007.<sup>11</sup> The increase in direct investment is part of a larger transformation of the global supply chain in the agrifood sector.<sup>12</sup> Commodity buyers (wholesalers) are larger and more concentrated than previously, and they seek to respond to the requirements of their food industry clients by increased vertical coordination, tightening their control over suppliers. The processing industry is rapidly consolidating, after an initial period during the 1980s and early 1990s during which the parastatal large-scale processors were dismantled. This sector is increasingly globalized and dominated by large transnational corporations. Global retailers and fast-food chains are expanding to reach China, India, Russia, Viet Nam, and increasingly southern and eastern Africa, and diversifying from processed foods to semi-processed foods and, increasingly, fresh produce.

7. In this process of expansion and consolidation, the procurement system too has been modernized: in addition to public standards, private standards have gained increased

<sup>7</sup> See A/64/170.

<sup>8</sup> A/58/330, paras. 27–51.

<sup>9</sup> The Special Rapporteur gratefully acknowledges the contribution of the New York University Law Students for Human Rights, *Transnational Corporations and the Right to Food*, available at: [www.chrgj.org/publications/docs/TNCsandRTF.pdf](http://www.chrgj.org/publications/docs/TNCsandRTF.pdf).

<sup>10</sup> See A/HRC/12/31, paras. 13–22.

<sup>11</sup> United Nations Conference on Trade and Development, *World Investment Report 2009. Transnational Corporations, Agricultural Production and Development*, 17 September 2009.

<sup>12</sup> T. Reardon and J.A. Berdegú, “The rapid rise of supermarkets in Latin America: challenges and opportunities for development”, *Development Policy Review*, vol. 20, No. 4, (2002), p. 317; T. Reardon and others, *Supermarkets and horticultural development in Mexico: Synthesis of Findings and Recommendations to USAID and GOM*, August 2007; T. Reardon and others, “Agrifood industry transformation and small farmers in developing countries”, *World Development*, vol. 37, No. 11 (2009), p. 1717.

importance, often imposed through codes of conduct adopted by retailers.<sup>13</sup> Vertical integration has increased, with wholesalers and retailers seeking to secure stability of supply by the use of explicit contracts (long-term arrangements with producers) or techniques such as preferred supplier lists. Procurement is increasingly centralized, as the procurement shed (the area from which companies source) expands from the national to the regional and thence to global networks.

8. As a result of these developments, concentration in the food production and distribution chains has been significantly increasing over the past years.<sup>14</sup> The resulting market structure gives buyers considerable bargaining strength over their suppliers, with potentially severe implications for the welfare both of producers and consumers. Current measures adopted to encourage companies to act responsibly are unable to tackle this structural dimension.<sup>15</sup> Concentration in buying markets is particularly worrying, and even more so than concentration in selling markets, because dominance in buying markets can be achieved with a relatively small market share; for instance, the United Kingdom Groceries Market Investigation concluded in 2000 that retail grocers with as little as 8 per cent of the total retail market have substantial buyer power over sellers.<sup>16</sup>

9. Due to the deeply unequal bargaining positions of food producers and consumers on the one hand, and buyers and retailers on the other hand, 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. Thus, one main reason why prices in developing countries have remained high despite the bursting of the bubble in the commodities markets in July 2008 — in a number of countries, prices were higher in July 2009 than they were a year earlier<sup>17</sup> — is because of the dominant position of certain traders in these countries. These imbalances of power in the food systems must be corrected. The Special Rapporteur is convinced that the relationships between the actors concerned cannot any longer be based solely on their relative bargaining strength. Instead, they must be collaborative, and based on other modes of communication than price signals.

<sup>13</sup> S. Ponte, *Standards, Trade and Equity: Lessons from the Speciality Coffee Industry*, Centre for Development Research (Copenhagen, 2002).

<sup>14</sup> For example, in the Brazilian soybean market there are roughly 200,000 farmers attempting to sell to five main commodity traders; three large transnational commodity buyers (ADM, Cargill, and Barry Callebaut) dominate the Ivorian cocoa industry. Food processors sometimes also achieve the same degree of concentration: in 1996, two transnational food and beverage companies, Nestlé and Parmalat, shared 53 per cent of the Brazilian dairy processing market, driving off a large number of cooperatives who were led to sell their facilities to these companies. For these and other examples, see Peter Gibbon, *The Commodity Question: New Thinking on Old Problems*, United Nations Development Programme, Human Development Report Office, occasional paper, 2005/13; Bill Vorley, *Food Inc.: Corporate Concentration from Farm to Consumer*, United Kingdom Food Group, 2003, available at <http://www.ukfg.org.uk/docs/UKFG-Foodinc-Nov03.pdf>; Mary Hendrickson and others, *The Global Food System and Nodes of Power*, 2008, available at SSRN: <http://ssrn.com/abstract=1337273>; Molly Anderson, *A Question of Governance: To Protect Agribusiness Profits or the Right to Food?*, Agribusiness Action Initiatives, 2009; I. Sheldon and R. Sperling, "Estimating the extent of imperfect competition in the food industry: what have we learned?", *Journal of Agricultural Economics*, vol. 54, No. 1 (2003), p. 89.

<sup>15</sup> For example, the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises have no provision on fair prices to be paid to producers, nor on a living wage for workers.

<sup>16</sup> Competition Commission, *Supermarkets: A Report on the Supply of Groceries from Multiple Stores in the United Kingdom*, 2000.

<sup>17</sup> See A/HRC/12/31, para. 5; and FEWSNET (Famine Early Warning Network), USAID, October 2009, Price Watch: Urban Food Markets, available at <http://www.fews.net>.

### III. Protecting workers in the agricultural sector

#### A. The challenges

10. There are more than 450 million waged agricultural workers globally, composing 40 per cent of the agricultural workforce.<sup>18</sup> Fundamental rights at work are frequently violated in the agricultural sector. Less than 20 per cent of agricultural workers have access to basic social protection and about 70 per cent of child labour in the world is in agriculture, representing approximately 132 million girls and boys aged 5 to 14. 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.

11. Collective bargaining is crucially important for agricultural workers, both because knowledge and enforcement of the law tend to be weak in rural areas and because labour legislation frequently treats the agricultural sector differently from other sectors with regard to issues such as working time, overtime pay, or leave.<sup>19</sup> Yet, despite the relatively high level of ratification of ILO Convention No. 11 (1921) on the Rights of Association and Combination of Agricultural Workers, collective bargaining and social dialogue are often entirely absent. In part, this is attributable to the difficulties waged agricultural workers face in organizing themselves. But it stems also from subcontracting and outsourcing practices, the result of which is that the actual employer has no formal relationship with the worker.

12. As agricultural labour is increasingly casualized, as contract farming develops, 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. Tenants and share-croppers also form intermediate categories: tenants pay a fixed rent in cash, in kind, in labour, or by a combination of these; sharecroppers pay rent in kind consisting of an agreed share of the produce; and certain agricultural workers are remunerated by a share of the produce.<sup>20</sup> 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. This challenge must be met by the regulator.

#### B. The role of States in protecting the right to food

13. States must protect the right to food of agricultural workers by discharging their obligations under international labour legislation. Specific instruments that concern agricultural workers include ILO Conventions, No. 99 (1951) on Minimum Wage-Fixing Machinery in Agriculture<sup>21</sup> and No. 110 (1958) on Conditions of Employment of Plantation Workers, supplemented by its Protocol of 1982, and recommendation No. 110 (1958) on

<sup>18</sup> Peter Hurst, *Agricultural workers and their contribution to sustainable agriculture and rural development*, FAO-ILO-IUF, 2005, p. 2.

<sup>19</sup> International Labour Office (ILO), *Promotion of rural employment for poverty reduction*, International Labour Conference, 97th Session, 2008, para. 295.

<sup>20</sup> Specific instruments, such as ILO recommendation No. 132 (1968) on the Improvement of Conditions of Life and Work of Tenants, Share-croppers and Similar Categories of Agricultural Workers, seek to protect these groups.

<sup>21</sup> See also the accompanying recommendation No. 89 (1951) on Minimum Wage-Fixing Machinery in Agriculture.

Conditions of Employment of Plantation Workers. States face two major and interrelated challenges in the implementation of these instruments.

### 1. Guaranteeing the right to a living wage

14. As companies in the agribusiness sector increasingly buy from different suppliers across different regions, competition increases between suppliers, and there is a risk of regulatory competition between the countries that host them. As a result, various forms of abuse in the payment of wages could remain unpunished. Such abuses include the non-payment or deferred payment of wages; the exclusion of agricultural workers from national legislation on the minimum wage; non-respect of periodic readjustment of minimum wage rates; the lack of adequate sanctions to deter abuse of the minimum wage system, where it exists; and the lack of statistics and data on workers covered by minimum wages in this sector.

15. It is the duty of the State to ensure that a minimum wage is set in legislation, and that compliance with this requirement is adequately monitored. That minimum wage should be, at least, a “living wage”, that “provides an income allowing workers to support themselves and their families”, as required under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.<sup>22</sup> Work could be launched on the design of a universally agreed-upon methodology to define a living wage, expressed in terms of the hourly wage rate a full-time worker should earn.<sup>23</sup> No such definition currently exists.

16. A methodology to define the living wage at national level should be based on a number of common principles. It should: (a) ensure that all members of the family have permanent access to quantitatively and qualitatively adequate and sufficient food, that is in conformity with the cultural traditions of the family concerned, without having to sacrifice other basic human rights, such as the right to education or to housing;<sup>24</sup> (b) be transparent and adaptable to the evolution of the cost of living, including the evolution of the price of the basic food basket; (c) allow for a calculation based on easily accessible data; (d) take into account specific needs, for example the costs of transportation for those living away from the place of work, or the costs of taking care of members of the family unable to provide for themselves; (e) build on, and be consistent with, ILO Conventions No. 99 and No. 131 (1970) on Minimum Wage Fixing, with Special Reference to Developing Countries, particularly as regards the requirement that the minimum wage should be fixed taking into consideration, inter alia, “the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups”;<sup>25</sup> and (f) include an element of progressivity, with a view to reducing inequalities in incomes.

17. A methodology based on such principles would take into account the characteristics of each country and the significant differences of the cost of living across different

<sup>22</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work (art. 6), para. 7. The Ethical Trading Initiative Base Code refers to a “living wage” as one that is “enough to meet basic needs and to provide some discretionary income” (art. 5.1). The Global Social Compliance Programme reference code states that “Compensation shall meet basic needs and provide some discretionary income for workers and their families” (6.3).

<sup>23</sup> For an attempt, see Michael J. Zimmer, “Decent Work with a Living Wage”, *Seton Hall Public Law Research Paper No. 1072083*, available at SSRN: <http://ssrn.com/abstract=1072083>.

<sup>24</sup> This is in line with general comment No. 12 (1999) on the right to adequate food (art. 11) of the Committee on Economic, Social and Cultural Rights, as well as with the requirement of the interdependency and indivisibility of all human rights.

<sup>25</sup> ILO Convention No. 131, art. 3 (a).

countries. It should naturally be seen as a minimum, above which countries and social partners should be encouraged to move as speedily as possible, through laws and collective agreements. In the agricultural sector, it is sometimes understood that the minimum wage can be paid, in part, in the form of allowances in kind, when the employer provides housing, food rations, or health care to the workers. States should ensure that such allowances are appropriate for the personal use and benefit of the worker and his family and that “the value attributed to such allowances is fair and reasonable”.<sup>26</sup> At the same time, the imposition of a living wage should not increase the incentive to develop informal forms of employment in the agricultural sector, in which this is already one of the major obstacles to the effective monitoring and implementation of existing safeguards.

## 2. Monitoring compliance with labour legislation

18. Agricultural workers should benefit from the same level of protection as workers in other sectors. This implies that agricultural workers should be protected by the social security schemes applicable to the industrial and commercial sectors. A first step towards achieving this is to establish a scheme making the registration of agricultural workers compulsory, as has been done in Argentina under pressure from the Argentine Union of Rural Workers and Stevedores (UATRE). Similarly, labour providers should be registered and should only be authorized to work under a licence, and any violation of the applicable legislation should lead to the licence being revoked.<sup>27</sup>

19. Agriculture is often excluded from coverage under national occupational health and safety regulations, and such standards are usually not enforced even when they do exist. As a result, agriculture is one of the three most dangerous occupations to work in, along with construction and mining.<sup>28</sup> This is a direct cause of poverty in rural areas: families are left without protection when the main breadwinner is killed or injured at work. ILO Convention No. 184 (2001) on Safety and Health in Agriculture and its accompanying recommendation No. 192 (2001) formally recognize that agricultural workers are guaranteed the same rights and protection with regard to their health and safety as other categories of workers. Innovative solutions, such as that experimented with in Sweden, where unions have won the right to send safety representatives onto farms located in their region, may have to be scaled up further.

20. The single most important obstacle to the enforcement of labour legislation and the reason for the continuing existence of high levels of informal employment is the weak capacity of labour inspectorates to monitor employment conditions in the agricultural sector. ILO Convention No. 129 (1969) on Labour Inspection in Agriculture requires governments to establish a system of labour inspection in agriculture and describes the main functions of labour inspection, including that of playing a proactive role by bringing gaps in protection to the attention of the competent authorities and making proposals as to how to bridge those gaps. However, although some progress has been made on this front in recent years,<sup>29</sup> more political will is needed in this respect: Convention No. 129 has been ratified by significantly fewer States than Convention No. 81 (1947) on Labour Inspection

<sup>26</sup> ILO Convention No. 99, art. 2, para. 2 (b). See also ILO Convention No. 110 (1958), art. 27, para. 3.

<sup>27</sup> See, for instance, the role of the Gangmasters Licensing Authority in the UK. In May 2009, in order to make enforcement more effective, the GLA and firms including Tesco and Sainsbury’s have drawn up a draft protocol on joint checks of suppliers and sharing information on any abuses.

<sup>28</sup> Peter Hurst, *Agricultural workers and their contribution to sustainable agriculture and rural development*, ILO, FAO, IUF, 2007, sect. 2.8, p. 51.

<sup>29</sup> ILO General Survey of the reports concerning the labour inspection conventions and recommendations, report III (1B), International Labour Conference, 95th Session, 2006, para. 13.

in Industry and Commerce; and even where labour inspectorates exist and are competent to monitor employment in rural areas, they may not have the resources to function effectively.

### **C. The role of employers in respecting the right to food**

21. Employers have a responsibility to respect the right to food, even where laws are insufficiently protective of agricultural workers or where the existing labour legislation is inadequately monitored. At present, the globalization of the food economy increases the competitive pressure exercised on suppliers, pushing them to lower wages and downgrade other working conditions, and weakening the ability of unions to resist this downward trend. This can and must be reversed. Its responsibility to respect the right to food implies that a company must not contribute, directly or indirectly, to human rights abuses through its relationship with suppliers. Agribusiness corporations operating at a global level should use their influence on suppliers to ensure that wages and working conditions improve, rather than degrade, as a result of their suppliers joining global value chains. Agribusiness companies could make unilateral undertakings to monitor compliance with certain social standards in the supply chain. They may conclude international framework agreements with global unions. These tools are not a substitute for the enforcement of protective regulatory standards by the State, but they can improve situations that, otherwise, would be even worse.

#### **1. Codes of conduct**

22. Agribusiness companies increasingly adopt codes of conduct to ensure that their suppliers comply with certain requirements related, for instance, to freedom of association, to health and safety at work, and to the prohibition of child labour. Indeed, the proliferation of such codes has been such that one of the challenges is now to coordinate, further encourage, or harmonize, the multiple private initiatives. There are attempts to encourage the comparison of good practices between multi-stakeholder initiatives (MSI). Transnational corporations increasingly share experiences in supply chain management. One example is the Global Social Compliance Programme (GSCP), which seeks to improve coordination between a number of supply chain management schemes, by developing a reference code that may serve as a benchmark for the partners involved, and by making progress towards mutual recognition of social auditing practices. Such coordination should mitigate the difficulties resulting from the coexistence of a myriad of codes of conduct imposed by the various clients of local suppliers.

23. While welcome in principle, these unilateral initiatives also present companies with other challenges. First, the quality of these codes varies greatly. The value of codes consists in the fact that they may go beyond the minimum requirements that are laid out in domestic legislation or in international labour standards that companies have a responsibility to respect; a code that does not move beyond those minimum requirements is a source of confusion, not progress. Second, these codes should avoid shifting all the burden of compliance onto the supplier, and recognize that it is the responsibility of 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. Third, codes would be too easy to circumvent if the supplier could simply subcontract or outsource certain segments of the chain; codes should apply to the whole supply chain, including sub-suppliers and subcontractors. Fourth, lack of compliance should lead to the adoption of a corrective action plan, supported by the buyer, with well-defined and reasonable time frames, rather than to the cutting off the business relationship – a solution which, for the workers concerned, may be worse than the evil to be combated. Fifth, these codes should be binding on the companies adopting them, and failure to implement them adequately should come at a cost. The Special Rapporteur believes that a company adopting a code but failing to

implement it appropriately should be considered as guilty of misleading advertising, and public authorities therefore have a duty to monitor such compliance.<sup>30</sup>

24. The main concern raised by codes of conduct is that they would de facto appear as substitutes for negotiation and bargaining, and divert companies from signing international framework agreements (IFAs), or from joining multi-stakeholder initiatives (MSIs).

## 2. International framework agreements

25. Some 72 international framework agreements (IFAs) have been concluded to date between transnational corporations and global unions. Among them are agreements concerning the food sector, such as the agreement concluded between Danone and IUF in 1988, between Accor and IUF in 1995, Carrefour and UNI in 2001, Chiquita and IUF/COLSIBA in 2001, and Fonterra and IUF in 2002. These IFAs go beyond most codes of conduct because of the active implication of the unions in monitoring the undertakings of the company which signed the agreement. Their main purpose is to protect the ability of local unions to bargain effectively over working conditions, including wages. They may thus strengthen the ability of unions throughout the group to protect workers, and they limit the competition between workers of the same group.

26. A number of conditions should be fulfilled in order for IFAs to be truly effective.<sup>31</sup> First, they should protect the basic rights of workers throughout the whole supply chain, covering not only the direct employees of the transnational corporation, but also those of its suppliers, contract growers or joint venture partners, wherever they operate. Second, appropriate information should be given to workers about the content of the IFA, so that they may complain in case of violation. Third, they should go beyond guaranteeing the ability of unions to bargain collectively at local level and include, at a minimum, a provision on a living wage, if necessary higher than that set under the applicable minimum wage legislation. This would be consistent with the obligation of companies to respect the right to food in their operations. Fourth, where one supplier does not comply with the requirement of the IFA, the buyer should not be obliged either to do nothing or to cut off relationships with that supplier; here also, a range of graduated options should be available, and the buyer should commit to supporting the supplier in its efforts to comply with the content of the IFA. These different conditions could be taken into account by employers' organizations in the food sector and the IUF in the preparation of a model IFA.

## D. Remedies

27. Just as legal guarantees of a living wage and compliance with other labour rights require the strengthening of enforcement mechanisms, particularly through labour inspectorates, codes of conduct or IFAs are only as valuable as the monitoring mechanisms they include. States should therefore be encouraged to allow consumers to challenge the compliance of companies with the codes of conduct they advertise, and global unions negotiating IFAs should ensure that monitoring will be effective.

<sup>30</sup> *Kasky v. Nike*, 27 Cal. 4th 939 (2002), *cert. granted*, 123 S. Ct. 817, and *cert. dismissed*, 123 S. Ct. 2254 (2003); in the EU, see art. 6 (2) (b) of Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ("Unfair Commercial Practices Directive"), OJ L 149, 11.6.2005, p. 22.

<sup>31</sup> See also Lone Riisgaard, *The IUF/COLSIBA – CHIQUITA framework agreement: a case study*, ILO working paper No. 94, 2004.

## IV. Addressing the specific needs of smallholders

### A. The challenges

28. Smallholders in developing countries, cultivating small plots of land often with little or no public support, are the single most important group of those who are food insecure in the world today. To the extent that they do not market their produce themselves, and lack storage and processing facilities, smallholders often face a very limited number of buyers. For smallholders, the key factor is the price they receive for their crops. In the next paragraphs the Special Rapporteur explores the initiatives States could take in order to protect the right to food of smallholders, and the measures which could be taken by the agribusiness companies to respect the right to food in their relationships with smallholders. The overall objective is to ensure that smallholders capture a fair proportion of the value of their products, despite the very unequal bargaining position in which they find themselves at the moment vis-à-vis commodity buyers.

### B. The role of States in protecting the right to food

29. By encouraging the diversification of channels of trading and distribution and by ensuring the viability of wholesale and local markets, States create a wider range of options for smallholders, thus improving their bargaining position in the food chain. In particular, it is vital that farmers are not forced to join the agro-export networks, and that they are sufficiently supported if they opt, instead, for the production of food crops for local consumption. This has not always been the case in the past; since farmers supplying the international markets reaped a disproportionate share of public support (in access to credit, to technologies, or to infrastructure), the choice for smallholders was often between switching to cash crops for exports, something only a minority achieved, or living off subsistence agriculture. A number of countries are now seeking to put an end to this imbalance, and this is to be welcomed. But more precise measures could also be taken.

#### 1. Creating a wider range of options for smallholders: cooperatives, marketing boards, and public procurement

30. States have at their disposal a number of tools in order to strengthen the position of smallholders and allow them to reap a larger proportion of the value in their transactions with buyers. The provision of information about prices and the improvement of communication infrastructures are essential, allowing producers to improve their bargaining position vis-à-vis buyers and to transport their crops more easily to the markets, where they can obtain better prices from other buyers. In this section three other instruments are examined — farmers' cooperatives, marketing arrangements, and public procurement — that States could explore in order to address the specific needs of smallholders.

31. States could support the establishment of farmers' cooperatives and other producer organizations. When they were controlled by governments in the past, cooperatives sometimes captured value instead of ensuring fair revenues for farmers, and they were seen as inefficient. In many countries, parastatal cooperatives were dismantled during the 1980s. This led to the emergence of a large number of producer organizations, established on their own initiative.<sup>32</sup> For small producers, grouping together presents a number of

<sup>32</sup> For instance, between 1982 and 2002 the percentage of villages with producer organizations rose from 8 per cent to 65 per cent in Senegal and from 21 per cent to 91 per cent in Burkina Faso. It is estimated that 250 million farmers in developing countries belong to one association. See World

advantages,<sup>33</sup> since organizations or cooperatives can significantly reduce the transaction costs which commodity buyers associate with small-scale farming. Such organizations also enhance the capacity of farmers to obtain lower prices when they buy inputs, and higher prices when they seek to sell their produce. They can spread the risks across their membership; provide services and organize training sessions for their members; provide infrastructure services to members, such as storage or transformation facilities; and disseminate price and other marketing information. The strengthening of such associations is recommended by various international bodies and experts, including ILO and the International Assessment on Agricultural Sciences and Technologies for Development (IAASTD).<sup>34</sup> Cooperatives that function according to democratic principles, that work for their members and in which costs and benefits are distributed equitably can be extremely beneficial to their members. States should go beyond recognizing the right of farmers to organize. They could establish an appropriate legal framework, that encourages the formation of cooperatives by smallholders, for instance by favouring access to loans for infrastructure investment. They could also build economic incentives, for instance preferential treatment of cooperatives in public procurement schemes, or tax incentives for the cooperatives themselves or for those buying from cooperatives. Cooperatives wishing to enter the global supply chain could benefit from capacity-building in order to improve their managerial capacity and ability to meet the increasingly complex norms and requirements of buyers and public authorities active on regional and global food markets.

32. States could also establish or support marketing boards, equipped to buy certain volumes of staple crops at remunerative prices, in order to put pressure on private traders to improve on their own offers. These boards should be set up with the participation of farmers' organizations. Such boards could help farmers market their products, or comply with standards imposed by the large commodity buyers or retailers. They could, for instance, provide for a transparent and reliable certification system. In the past, such marketing boards have sometimes used their monopsony power to artificially reduce prices received by farmers in order to ensure cheap food for urban consumers, or to earn foreign currency from food exports in order to fund industrialization policies; sometimes cheap food served the interests of the domestic food processing industries.<sup>35</sup> In effect, farmers were taxed, and the urban population subsidized – a situation made even worse by the high prices of inputs, the result of tariffs on imported inputs and of an artificially depressed currency exchange rate.<sup>36</sup> In that context, marketing boards in fact prevented farmers from retaining control over the prices they received for their produce, leading to the emergence of parallel farmers' markets and, sometimes, to bribery of marketing board officials. Great

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Bank, *World Development Report 2008*, p. 88.

<sup>33</sup> See World Food Programme, World Hunger Series, *Hunger and Markets* (London, Earthscan, 2009), p. 133; International Food Policy Research Institute (IFPRI), "Responding to the Global Food Crisis: Three Perspectives", 2008. On the role of collective action institutions in improving market access for the rural poor, see H. Markelova and others, "Collective action for smallholder market access", *Food Policy*, vol. 34, No. 1 (February 2009), p. 1.

<sup>34</sup> See ILO recommendation No. 193 (2002) concerning Promotion of Cooperatives; International Assessment on Agricultural Sciences and Technologies for Development (IAASTD), *Agriculture at a Crossroads: Global Summary for Decision Makers* (2009), key finding 12, p. 6; para. 12 (b) (ii) of resolution 17/1 and para. 19 (p. 41) of the Chairperson's summary, report on the seventeenth session of the Commission for Sustainable Development, E/2009/29-E/CN.17/2009/19.

<sup>35</sup> See Robert Bates, *Markets and States in Tropical Africa: the Political Basis of Agricultural Policies* (Berkeley, University of California Press, 2005), ch. 1.

<sup>36</sup> Alberto Valdés and Ammar Siamwalla, *Foreign Trade Regime, Exchange Rate Policy, and the Structure of Incentives*, in John Mellor and Raisuddin Ahmed (eds.), *Agricultural Price Policy for Developing Countries*, (IFPRI, Johns Hopkins University Press, 1989), p. 110.

care should be taken to ensure that these past mistakes are not repeated. Participation, accountability and transparency are therefore essential in the management of these bodies.

33. Finally, States could use their public procurement systems to support smallholder farmers. The public sector is an extremely important consumer of goods and services, typically representing 10 to 15 per cent of national GDP, and up to 16 per cent in the European Union.<sup>37</sup> Public authorities could exercise an important leverage on the practices of suppliers by including requirements linked to the payment of a fair price to the end producers, or to sourcing from smallholders in their purchasing practices. This tool could also serve to promote awareness amongst the broader public about the impact of consumer choices. It could encourage agribusinesses to develop their supply chains in a way that allows them to tender for public contracts, with an impact that would go beyond the specific supplies of the contracts for which they are selected. Of course, the introduction of criteria in public procurement schemes that seek to contribute to the right to food should be non-discriminatory and transparent and reliance upon non-objective criteria that third parties cannot apprehend should therefore be avoided. Nevertheless, there should be no obstacle to including technical specifications in food procurement schemes referring, for instance, to the need for a defined percentage of food being sourced from small farmers, or being bought in accordance with fair trade principles. The Brazilian Programme for the Purchase of Food from Family Agriculture (PAA) provides a good illustration of the potential of such tools.

## 2. Improving the bargaining power of smallholders: competition law and abusive practices

34. Where companies have a choice between sourcing from large producers or from small farmers, they generally prefer the larger producers, both because of the lower transaction costs involved, and because these producers have easier access to capital and thus to non-land farm assets, such as storage, greenhouses, or irrigation systems. Unless they organize themselves into cooperatives or unless they are otherwise supported in the acquisition of such assets, small farmers can only compensate for this disadvantage by their lower labour costs. The disturbing consequence is that small farmers pay a high fee for entry into the global supply chain; because of the structural obstacles they face, they can only compete by agreeing to low wages for those (often family members) working on the farm, and by being locked into a situation of high dependency on the buyer. These structural problems should be the target of State intervention in the area of competition policy. Unfair practices should be identified and prohibited.

35. States could seek to combat excessive concentration in the food chain, or abuses of dominant positions acquired by certain actors. However, competition law as it currently stands is not appropriately tailored to the circumstances that weaken the bargaining position of smallholders.<sup>38</sup> First, although progress has been made over the past years, in many developing countries, competition law is weak or non-existent.<sup>39</sup> Second, competition law

<sup>37</sup> See: <http://www.ustr.gov/trade-topics/government-procurement>; and [http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm).

<sup>38</sup> See, e.g., R. Clarke and others, *Buyer Power and Competition in European Food Retailing* (Edward Elgar Publishing, 2002); B. Hoekman and P. Mavroidis, "Economic development, competition policy and the WTO", World Bank Policy Research Working Paper No. 2917, 2002; L. Dodd and S. Asfaha, "Rebalancing the supply chain: buyer power, commodities and competition policy", South Centre and Traidcraft, April 2008.

<sup>39</sup> For instance, a survey of African countries on the website of the Global Competition Forum reveals that out of 38 States, 20 are either only in the process of creating a competition law regime, or lacking such a regime completely. See: <http://www.globalcompetitionforum.org/africa.htm>, and Section T.

generally seeks to protect the end consumers, and not suppliers squeezed by buyers. Competition law should, however, also constitute a check against excessive buyer power, and not only against seller power.<sup>40</sup> The South African Competition Act 1988 illustrates the potential of competition law thus reconceived, since this legislation has been relied upon, for instance, to launch prosecutions against dairy processors for colluding to fix prices in a way that is detrimental to suppliers.<sup>41</sup> Third, the use of competition law to address abuses of dominant position or cartels in global supply chains may require the application of competition law to foreign companies. But while the extraterritorial application of competition rules is common when anti-competitive behaviour affects consumer welfare in the State concerned, it is not customary when it affects producers in that State seeking to have access to export markets and unable to do so on reasonably advantageous terms because of excessive concentration of buyer power. For concentration in global food chains to be effectively combated, States where suppliers are based should extend the reach of their competition law to foreign buyers whose abuses affect national sellers, developing regional responses if they are concerned about being vulnerable as a small economy; and States where consumers are affected should accept responsibility for addressing such abuses, which may restrict consumer choice by allowing buyers to become the gatekeepers to their markets. If necessary, States should cooperate through arrangements allowing suppliers in one country to complain about abuse of dominant positions by traders or supermarkets from another country.

36. States could also seek to identify and prohibit a series of practices which are particularly detrimental to suppliers. A number of abusive practices have been documented in this regard.<sup>42</sup> For instance, a dominant buyer may demand a discount on the market price from suppliers that reflects the savings made by the seller due to increased production, or it may retrospectively adjust the terms of supply. In its Groceries Market Investigation of 2008, the United Kingdom Competition Commission stated that of the 52 practices it identified in the previous Investigation of 2000, 26 were concerned with “practices that have the potential to create uncertainty for suppliers regarding their revenues or costs as a result of the transfer of excessive risks or unexpected costs to suppliers”.<sup>43</sup> Certain practices could be prohibited as they constitute an undue exercise of buyer power. The UK Supermarket Code of Practice (SCOP) could serve as a source of inspiration in this regard. Among the requirements of SCOP are: a clear definition of the terms of business between

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Stewart, J. Clarke and S. Joekes, *Competition Law in Action: Experiences from Developing Countries* (International Development and Research Centre, Ottawa, 2007), pp. 26–41.

<sup>40</sup> The OECD Guidelines for Multinational Enterprises refer to the fact that enterprises should refrain from sharing or dividing markets by allocating suppliers (IX, 1).

<sup>41</sup> Complaint referred by the South African Competition Commission to the Competition Tribunal in South Africa, against Clover Industries Ltd and others, on 7 December 2006. The case is currently pending in the Competition Tribunal. The South African Competition Act 1998 provides its purpose to be to “promote and maintain competition in the Republic in order ... (c) to provide employment and advance the social and economic welfare of South Africans ... (e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons (ch. 1, sect. 2)”.

<sup>42</sup> ActionAid, *Who Pays? How British Supermarkets are keeping Women Workers in Poverty*, available at [http://www.actionaid.org.uk/1486/who\\_pays\\_campaign.html](http://www.actionaid.org.uk/1486/who_pays_campaign.html). See also *Collateral Damage. How Price Wars between UK Supermarkets Helped to Destroy Livelihoods in the Banana and Pineapple Supply Chains*, Banana Link, 2006 (describing how price pressures from United Kingdom retailers have forced banana producers to cut wages, replace permanent labourers with temporary contract workers and suppress trade union rights).

<sup>43</sup> Competition Commission, *The Supply of Groceries in the UK. Market Investigation* (2008), para. 9.51, pp. 166–167.

supplier and buyer; no undue delay in payments; no retrospective reduction in price unless reasonable notification is given, at the latest prior to delivery; no obligation for the supplier to contribute to marketing costs; no compensation to be paid to the buyer for failure to make the expected sales or for wastage; limited circumstances in which suppliers may be asked to pay a lump sum to the retailer for access to the shelves; no obligation for the supplier to contribute disproportionately to promotions; no change in supply chain management without reasonable notice; and no unjustified payment imposed on the supplier for consumer complaints.

### C. The role of buyers in respecting the right to food

37. Buyers also could improve the ability of smallholders to have access to markets, whether local, regional or global. There is evidence that the shift from supply-driven to buyer-driven chains, linked to the expansion of large retail networks (“supermarketization”), can lead to an increased exclusion of smallholders.<sup>44</sup> Such exclusion is due, in part, to the imposition of standards in the supply chain that smallholders find it difficult to comply with. They must be supported in achieving compliance, but they must also be integrated in ways that ensure an adequate standard of living, including adequate food, as required by article 11 of the International Covenant on Economic, Social and Cultural Rights. In the view of the Special Rapporteur, three issues are central.

#### 1. Private standards

38. The agribusiness sector has devoted significant efforts to developing private standards, traceability systems and third-party certification in order to accompany and facilitate the booming global trade in fresh fruit, vegetables and fish. The most significant initiative in this regard was the establishment of the European Retailers’ Protocol for Good Agricultural Practice (EurepGAP), which evolved into GLOBALGAP, a certification system covering the process from farm inputs to the farm gate. The development of standards is frequently seen as a tool to guarantee that the globalization of food chains meets high social and environmental criteria. However, the focus has been more on hygiene and food safety issues than on social and environmental concerns.

39. The development of private standards has worked against smallholders.<sup>45</sup> Indeed, 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.<sup>46</sup> This consequence can only be avoided by the payment of a premium by the

<sup>44</sup> See D. Sautier and others, “Case-studies of agri-processing and contract agriculture in Africa”, Rimisp-Latin American Center for Rural Development, 2006.

<sup>45</sup> In their study of the vegetable export chain in Senegal, Johan F.M. Swinnen and Miet Maertens conclude that tightening standards led to a shift from smallholder contract farming to integrated estate production. But, they note, the poorest households benefited through being employed on such estates rather than themselves producing for the global markets (M. Maertens and J.F.M. Swinnen, “Trade, Standards and Poverty: Evidence from Senegal”, *World Development*, vol. 37, No. 1 (January 2009), p. 161. Plantation farming is generally much less labour-intensive than small-scale farming, however, and it is therefore doubtful whether, in most cases, the employment effects compensate for the increased concentration of production.

<sup>46</sup> See, e.g. the Agrifood Standards Programme led in 2005–2008 by the International Institute for Environment and Development (IIED) and the Natural Resources Institute (NRI) with the support of the United Kingdom Department for International Development (DFID) and the Swiss Agency for

wholesalers to reward compliance, at least during the first years of implementation, and by 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. Research in the horticultural sectors of Kenya and Zambia has shown that “the average recurrent costs of GLOBALGAP compliance typically exceed half of the margin for [smallholders]”.<sup>47</sup> For this reason, the Ethical Trade Initiative (ETI) Smallholder Guidelines, developed in 2006, take the view that: “retailers cannot expect smallholders to bear all the burden of meeting new technical standards. [Retailers] can help smallholders by sharing the risk of transition to production processes that meet these standards. For instance, [they] can invest in technical assistance, funds or materials for smallholder production”.<sup>48</sup>

40. The agribusiness sector could take proactive steps to assist smallholders wishing to enter global supply chains. 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.<sup>49</sup> 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. In the opinion of the Special Rapporteur, the participation of smallholders in the elaboration of, and compliance with, standards is crucial. The smallholder ambassador/Africa observer project launched by GLOBALGAP in May 2007 is welcome in this respect, because it allows for feedback to be provided to the development of standards by GLOBALGAP.

41. The agribusiness sector could do more to reform in depth its relationships with smallholders, and in particular reinforce the capacity of its suppliers to comply with social and environmental standards. The ETI Smallholder Guidelines set out a series of steps to be implemented sequentially within specified time frames. The nature and position of smallholders within the supply chain should be identified, followed by an assessment of their needs and priorities regarding not just labour issues, but also operational matters. A “development and improvement plan” should then be drawn up, the nature of which should vary according to the particular market. Lastly, there should be periodic evaluations of these plans undertaken with smallholders, in which farmers and other supply chain actors should participate.

42. The imposition of standards by agribusiness companies may also have to be challenged in a different way. Standards qualifying products relative to specific cultural/geographical regions could act as a counterweight, to encourage a re-linking of farmers to their local markets, and increase the attractiveness of these markets for producers. Regional examples, such as *Cojote Rojo* in Mexico or Local Food Plus in Canada, demonstrate that such labels present distinct advantages in re-embedding agriculture and combating the current dualization whereby producers either manage to join agro-export chains or are neither recognized nor sufficiently rewarded.<sup>50</sup> The emergence of

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Development and Cooperation (SDC), available at <http://www.agrifoodstandards.net/>.

<sup>47</sup> Ibid., “Costs and benefits of GLOBALGAP compliance for smallholders: synthesised findings”, 2008.

<sup>48</sup> Para. 4.5.

<sup>49</sup> See also the detailed recommendations in Andrew Graffham and Jerry Cooper, “Making GLOBALGAP smallholder friendly: can GLOBALGAP be made simpler and less costly without compromising integrity?”, Agrifood Standards project, IIED-NRI-DFID, July 2008.

<sup>50</sup> See H. Friedmann and A. McNair, “Whose rules rule? Contested projects to certify ‘local production

local and regional organizations experimenting with alternative food supply chains — such as the Slow Food movement — which also involve some sort of certification, albeit in a decentralized and bottom-up manner, is encouraging in this regard. States have ceded a part of their responsibility to regulate food chains to the private sector in the past two decades. They would now gain from strengthening these local experiences in order to create a diversity of options for farmers and consumers.

## 2. Contract farming

43. One arrangement that is often referred to as a means to improve the ability of smallholders to participate in higher-value chains is contract farming. This consists in smallholders being provided with credit, inputs, and technical assistance by a buyer who typically commits to buy predefined volumes at certain prices, thus ensuring that the producer will have a market and that the investments will pay back.<sup>51</sup>

44. Ideally, contract farming should benefit both sides, improving the ability of farmers to modernize and increase their production, and guaranteeing a stable supply to the buyer. However, since the farmer in many cases has very few alternatives to choose from, it is particularly important to ensure that such contracts do not lead to inequitable outcomes.<sup>52</sup> This risk is present when farmers have no access to credit or to technical advice, as a result of the failure of public policies to provide them with the kind of support they require. Abuses have been documented, for instance, whereby the buyer provided loans to the supplier that the latter was unable to repay, or sold inputs above market prices because of his dominant position.

45. At a minimum, contract farming arrangements should not result in a disproportionate proportion of the value going to the buyer, and all the risks linked to production (as a result of weather-related events or pests, or due to changes in consumer preferences) being shifted to the producer. Model contracts should serve as a basis for the negotiation of specific arrangements. They should include: (a) the setting of prices at predefined levels that shield the producer from variations in market prices; (b) where the inputs are paid for by the producer, an adaptation of the prices paid to the producer to take into account any increases in the cost of inputs; (c) the guarantee of at least a minimum income calculated on the basis of the expected output; and (d) appropriate redress mechanisms, including automatic penalties, if the buyer fails to comply with its obligations. This would shift the risk onto the buyer, but reinsurance mechanisms should be made available to the buyer in order to make such forms of contract farming sustainable in the long term.

## 3. Fair trade

46. A still small but growing segment of the market functions according to the principles of “fair trade”. This segment accounted for around US\$ 5.88 billion in worldwide sales by the end of 2008, and its increase over the years has been spectacular. Although it still represents less than 1 per cent of total trade<sup>53</sup> and remains centred on coffee, bananas,

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for distant consumers”, *Journal of Agrarian Change*, vol. 8, No. 2–3 (April 2008), p. 408.

<sup>51</sup> S. Henson, O. Masakurea and D. Boselie, “Private food safety and quality standards for fresh produce exporters: the case of Hortico Agrisystems, Zimbabwe”, *Food Policy*, vol. 30, No. 4 (August 2005), p. 371.

<sup>52</sup> On the risks inherent in contract farming, see P.D. Little and M.J. Watts, eds., *Living under Contract: Contract Farming and Agrarian Transformation in Sub-Saharan Africa* (Madison, University of Wisconsin Press, 1994).

<sup>53</sup> There are wide variations across commodities. In bananas, 500,000 tons are traded annually under Fairtrade certification, out of a total of 13.5 million tons of banana exports worldwide.

cocoa, tea, sugar, and other fruits and juices, it covers an increasingly large number of commodities and mechanisms.<sup>54</sup> Where it has been introduced, fair trade has brought significant improvements to the farmers benefiting from the scheme.<sup>55</sup> In contrast to other certification schemes, such as SA8000, the Rainforest Alliance or UTZ, fair trade (as defined in the Charter of Fair Trade Principles)<sup>56</sup> not only ensures that environmental and social conditions are complied with in the supply chain: in addition, it guarantees a floor price to the producer that may be significantly above the conventional world market price. The minimum price is calculated to be sufficient to cover the costs of sustainable production and living. Fair trade contracts are long-term, allowing planning and sustainable production practices.<sup>57</sup>

47. The fair trade movement now faces three main challenges. First, the proliferation of labels related to environmental and/or social “sustainable” practices has created confusion among consumers, who may not always be well-informed about the specificity of fair trade.<sup>58</sup> The Special Rapporteur identifies signs of a “Gresham’s law” at work in this area: among the vast array of schemes boasting sustainability in supply chains, the less effective labels — those which offer the fewest benefits to producers while reassuring the consumer at the supplier’s expense — may be crowding out the best ones. Second, the supply of fair trade goods outstrips consumer demand.<sup>59</sup> Accordingly, while fair trade bodies may guarantee a minimum price for the produce that is sold, they cannot guarantee that the produce will in fact be sold. This leads to concerns that buyers may choose among their suppliers, generally preferring those with whom they have an established relationship, with potential new entrants facing insuperable obstacles. Third, fair trade schemes may lock producers into a dependent relationship where they provide raw materials, instead of being provided with the tools to progressively diversify, process, package and directly market their products, thereby capturing more of the total value created along the chain.

48. Both retailers and governments should do more to promote fair trade and find, in negotiation with smallholders, ways to overcome the challenges identified above. States should clarify the legal meaning of fair trade and prohibit any abuse of the label. The existing confusion among consumers surrounding the various certification schemes should be dispelled by information campaigns which highlight the respective merits of the different schemes. States could also develop incentives to encourage demand, such as the lowering of import tariffs on products that are fair trade certified, and they could support

<sup>54</sup> See L.T. Reynolds, D. Murray and J. Wilkinson, eds., *Fair Trade. The Challenges of Transforming Globalization* (London and New York, Routledge, 2007).

<sup>55</sup> Although the mandate of fair trade was initially focused on disadvantaged small producers, it has now moved also to protect labourers on large-scale plantations, leading to the inclusion of new certification criteria such as democratic worker representation and good labour conditions. Nevertheless, consistent with the historical origins of fair trade, it is examined in this report in the section dedicated to smallholders.

<sup>56</sup> This Charter was adopted jointly by the Fairtrade Labelling Organizations (FLO) and by the World Fair Trade Organization (WFTO), the two main standard-setting organizations for fair trade.

<sup>57</sup> Sununtar Setboonsarng, “Can ethical trade certification contribute to the attainment of the Millennium Development Goals? A review of organic and fair-trade certification” (2008), Asian Development Bank Institute, discussion paper No. 115.

<sup>58</sup> L.T. Reynolds, D. Murray and A. Heller, “Regulating sustainability in the coffee sector: a comparative analysis of third-party environmental and social certification initiatives”, *Agriculture and Human Values*, vol. 24, No. 2 (June 2007), p. 147.

<sup>59</sup> Joni Valkila, Anja Nygren, “Impacts of Fair Trade certification on coffee farmers, cooperatives, and laborers in Nicaragua” *Agriculture and Human Values* (2009); D. Murray, L. Reynolds and P. Taylor, “The future of Fair Trade coffee: dilemmas facing Latin America’s small-scale producers”, *Development in Practice*, vol. 16, No. 2 (April 2006) p. 179.

the creation of national fair trade networks or organizations in order to ensure they can seize national and international opportunities. Finally, public bodies at all levels in both developed and developing countries could consider favouring fair trade products in their public procurement schemes.

#### **D. Remedies**

49. Both agribusiness corporations and States must be aware that, in the absence of appropriate grievance mechanisms or remedies, the above measures may remain ineffective. For instance, States should ensure that, if they prohibit certain unfair buyer practices, the suppliers that are victims of such practices will be able to complain without fear of reprisals. Since fears of delisting have sometimes led suppliers to abstain from complaining, the establishment of an ombudsman to monitor the policies and practices of buyers may need to be considered by States. If marketing boards are set up offering to buy at certain prices from small farmers, the fixing of the prices and the selection among potential beneficiaries should be defined transparently by objective criteria, and those who cannot sell their crops should have the possibility of complaining. If public bodies include technical specifications in public procurement schemes that prioritize smallholders or fair trade, a failure to implement such specifications could lead to the award of a public contract being annulled.

50. Buyers too, whether they are wholesalers or retailers, should ensure that mechanisms are in place ensuring that their relationships with suppliers will be transparent and thus promote trust. In contract farming, the obligations of the buyer should be clearly stipulated, and predefined sanctions applied in cases of violation, to reduce uncertainty.

### **VI. Recommendations**

51. **The Special Rapporteur makes the following recommendations:**

52. **States should:**

**(a) Improve the protection of agricultural workers by (a) ratifying all ILO conventions relevant for the agrifood sector, including Convention No. 99 (1851) on Minimum Wage Fixing Machinery in Agriculture; Convention No. 129 (1969) on Labour Inspection in Agriculture; Convention 184 (2001) on Safety and Health in Agriculture; Convention No. 110 (1958) on Conditions of Employment of Plantation Workers; and Convention 141 (1975) on Organisations of Rural Workers and Their Role in Economic and Social Development; and (b) ensuring that their legislation sets a minimum wage corresponding at least to a “living wage” as required by international human rights standards and defined according to the criteria identified in this report;**

**(b) Monitor compliance with labour legislation by (a) devoting appropriate resources for an effective functioning of labour inspectorates in agriculture, in order to genuinely meet the requirements of the ILO Labour Inspection Convention; and (b) taking the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy to ensure that agricultural workers are progressively protected by the same social security schemes applicable to other industries. Among others, this should include the establishment of a scheme making the registration of agricultural workers compulsory and, to combat the circumvention of legal requirements by outsourcing, at a minimum by the compulsory registration of labour providers;**

(c) Proactively engage in public policies aimed at expanding the choices of smallholders to sell their products on local or global markets at a decent price by (a) strengthening local and national markets and supporting continued diversification of channels of trading and distribution; (b) supporting the establishment of farmers' cooperatives and other producer organizations; (c) establishing or defending flexible and efficient producer marketing boards under government authority but with the strong participation of producers in their governance; (d) using their public procurement systems to support small farmers; and (e) promoting and scaling up fair trade systems;

(d) Reinforce the bargaining power of smallholders and equalize their relationships with the agribusiness sector by (a) prohibiting practices that constitute an undue exercise of buyer power; and (b) combating excessive concentration in the food chain, or abuses of dominant positions acquired by certain actors. This requires having in place competition regimes sensitive to excessive buyer power in the agrifood sector, and devising competition authorities with mechanisms that allow for affected suppliers to bring complaints without fear of reprisal by dominant buyers;

(e) Re-engage in public regulation of global food chains by (a) guaranteeing that the standards developed by the private sector do not have unintended negative side effects on the realization of the right to food; (b) considering the potential of, and strengthening, alternative decentralized certifying schemes, such as those qualifying products relative to specific cultural/geographical regions; and (c) engaging more broadly in the development of standards through international cooperation.

53. Private actors of the agribusiness sector should:

(a) Refrain from practices that constitute an undue exercise of buyer power, as identified by the States in which they operate;

(b) In their relationships with workers, use their influence on suppliers to ensure that wages and working conditions improve, rather than degrade, as a result of their suppliers joining global value chains, by (a) seeking to conclude international framework agreements with global unions, guided by the principles stated in this report; (b) considering unilateral undertakings to monitor compliance with ILO standards in the supply chain, while supporting their suppliers in achieving compliance; and (c) engaging in chain-wide learning to assure that participation in the chain is profitable for all involved, including small-scale producers;

(c) In their relationships with smallholders:

(i) Involve smallholders in the elaboration of and compliance with food safety, labour or environmental standards and facilitate their access to global supply chains; at a minimum, ensure that the imposition of private standards does not exclude smallholders from certified food chains (by assessing the impact of private standards on the right to food);

(ii) Negotiate contract farming arrangements that respect the right to food of smallholders and the criteria outlined in this report;

(iii) Promote fair trade through increased shelf space and by running information campaigns highlighting the unique importance and contribution of fair trade.