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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***

**Building resilience: a human rights framework for
world food and nutrition security**

* In its resolution S-7/1, adopted by the Human Rights Council on 22 May 2008, the Council requested the Special Rapporteur to invite comments from States and other relevant actors on the impact of the global food crisis on the protection of the right to food and the required remedies from a human rights perspective, and to report thereon to the Council at its ninth session. Owing to the time restraints involved, the present report is submitted late. The footnotes and annexes to the report are reproduced as received, in the language of submission only.

Summary

The marked increase of the prices of food commodities on the international markets in the period 2006-2008 confronts States with a number of dilemmas, related for instance to whether the price increases should be combated or actions taken instead to ensure that those increases benefit agricultural producers and do not have a negative impact on the most vulnerable, or to the conditions under which agrofuels could be developed as an alternative to fossil fuels in the transport sector. In the present report, the Special Rapporteur on the right to food highlights the impact of the choices to be made on the right to food, placing them in the framework of States' obligations domestically and internationally. He suggests why a human rights framework should be adopted in order both to identify the measures needed to respond to the new situation created by the surge in prices and to guide their implementation. Listing both the risks and the opportunities of the current situation, the Special Rapporteur explains why continued monitoring of initiatives adopted at the national and international levels to respond to the crisis is required.

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I. INTRODUCTION

1. The present report is submitted in accordance with resolution S-7/1, adopted by the Human Rights Council at its seventh special session on 22 May 2008, on the negative impact on the realization of the right to food of the worsening of the world food crisis caused, *inter alia*, by the soaring food prices.¹ It aims to offer an analysis of the global food crisis and of possible solutions which are grounded in the right to adequate food, as recognized under international law. In proposing a human rights framework for an evaluation of the initiatives aimed at addressing the global food crisis, the report is based on article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights, as interpreted by the Committee on Economic, Social and Cultural Rights, as well as other relevant international standards.² The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by States members of the General Council of the FAO on 23 November 2004 are also taken into account, since they offer detailed and practical prescriptions about how States and other actors should implement the right to adequate food in a number of areas.

2. A number of implications follow from the adoption of this perspective. In identifying these implications, the Special Rapporteur is mindful of the fact that the impact of the recent surge in food prices on the right to adequate food must be addressed by measures adopted at both the national and the international levels. It is the primary responsibility of each State to ensure that every man, woman and child under its jurisdiction, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.³ A human rights approach will target the most vulnerable segments of the population, who are most severely affected by the crisis or who may least benefit from the remedies. It is therefore particularly important that States (a) base the measures they adopt on an adequate mapping of food insecurity and vulnerability, and (b) that they ensure accountability for violations of the right to food. In addition, the present report explains why States should (c) improve the protection of the rights of land users, in a context characterized by increased competition for land and other natural resources such as water and biodiversity; and (d) strengthen the protection of women's rights (see sect. III below). It is however the responsibility of all States and of the international community as a whole, including international agencies whether or not from the United Nations system, to shape an international environment that enables States to effectively comply with these obligations. This requires all States and international agencies (a) to re-examine policies that have a negative impact on the enjoyment of the right to food in other

¹ <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/7/index.htm>.

² See in particular Committee on Economic, Social and Cultural Rights, general comment No. 12: The right to adequate food (1999), E/C.12/1999/5. See also CRC, article 24 (2) (c), and CEDAW, article 12 (2).

³ General comment No. 12, para. 6.

countries, and to abstain from taking new measures that would have such an impact; (b) to protect the right to adequate food by ensuring that third parties, including private actors do not interfere with the enjoyment of the right to food; and (c) to contribute to the fulfilment of the right to adequate food by cooperating in the identification of the obstacles to the realization of the right to food and in the elimination of them (see sect. IV).

3. The increase in prices on the international markets during the period 2005-2007 will result in increased poverty, which a World Bank study of April 2008, based on a survey of nine low-income countries, estimated at 4.5 per cent in the absence of policy measures taken to mitigate the price increases, driving an additional 105 million people into poverty.⁴ Given the annual poverty reduction of 0.68 per cent since 1984, this 4.5% increase in poverty would destroy almost seven years of poverty reduction efforts. It has been estimated that with a 20 per cent increase in food prices in 2025 relative to the 1996 baseline, the number of undernourished people in the world would increase by 440 million.⁵ In addition, rising food prices are forcing families to stop buying more nutritious foods as they can barely afford the staple foods they need. A reversal of the already slow progress in reducing under nutrition seems inevitable. In such a context, it is imperative that policies which measures that could worsen the crisis be avoided.

4. It is equally clear that efforts aimed at limiting the increase in prices on international markets are not sufficient. Even before the current crisis, an estimated 852 million people were food-insecure. The current crisis shows that the mismatch between supply of and solvent demand for agricultural products may in the future further worsen this situation by making food even less affordable for people whose entitlements are insufficient to allow them to procure sufficient food. The world population, now at 6.7 billion, increases by some 75 million each year; in 2025, there will be 8 billion living on the planet, and 9.2 billion in 2050. It has been estimated that the production of food will have to increase by 50 per cent by 2030, and double by 2050, if an increase growth in demand is to be met. But if a response to the current crisis is sought exclusively in a rise in the overall production of agricultural commodities in order to address the imbalance between the supply and the demand for food as a source of tension on the global commodities markets, it will largely miss its target. This is not only because tackling food insecurity and increasing agricultural investment do not explicitly tackle malnutrition, which affects 2 billion people in the world who suffer from micronutrient deficiency. It is also and even more importantly overconsumption and wastage by some,⁶ and insufficient purchasing power for

⁴ Ivanic Maros and Martin Will, 'Implications of Higher Global Food Prices for Poverty in Low-Income Countries', World Bank Policy research Working paper, April 2008.

⁵ B. Senauer and M. Sur, 'Ending global hunger in the 21st century: projections of the number of food insecure people', *Rev. Agr. Econ.*, vol. 23(1), 2001, 68-81.

⁶ For instance, a 2004 study from the University of Arizona (UA) in Tucson indicates that forty to fifty per cent of all food ready for harvest never gets eaten: <http://www.foodnavigator-usa.com/news/ng.asp?id=56376-us-wastes-half>.

the many others, the main problem, not food shortage. Producing more food will not alleviate the hunger of those who lack the purchasing power required to gain access to the food which is available. Moreover, speaking in aggregate terms obfuscates distributional questions. We need to produce food in order to raise not just the supply of food, but also the purchasing power of those who produce it.

5. In addressing the global food crisis, we should therefore constantly remind ourselves of who the food insecure are, in order to target our efforts at increasing their purchasing power. Most of the food insecure live in rural areas. Agricultural workers are among the most vulnerable, owing due to the often informal character of their employment, depriving them of legal protection from their employers. They amount to 450 million, and represent 40 per cent of the world's agricultural work force.⁷ Another important category of food-insecure people are the small-hold farming households.⁸ Unless carefully tailored to increase the purchasing power of this category, measures to boost production may lead to investments in large-scale agricultural exploitations, working with technologies and providing markets not accessible to small-holders. There are approximately 500 million small-holder households, totalling 1.5 billion people, living on two hectares of land or less. Many are facing an unprecedented increase in the price of inputs, as a result of the increase of the price of oil and, for livestock farmers, of crops, at the very same moment that, as net food buyers, they are spending larger amounts of their budgets on food. International market price increases will benefit some, particularly in India and China, but not many others, particularly in sub-Saharan Africa. Higher food prices do not always trickle down to the farm-gate, where many poor farmers must sell. To increase their yield, they need access to credit to pay for fertilizer, seeds, and tools. They need access to technology to boost productivity. They will be helped, not by being provided food, but by being supported to produce food, and to sell it at a remunerative price and thus, from their position as net food buyers, become net food sellers. For them, the alternative is clear: to live from farming their small plots, or to join the rapidly expanding slums of the larger cities.

6. The challenge we face, in sum, is not simply to increase production; it is also to ensure that the current increase in food prices can be seized as an opportunity in order to advance the realization of the right to food by the adoption of structural measures, leading to a profound reform of the global food system. The section below explains why this is so, and why adopting a human rights framework will help to achieve it.

⁷ http://www.fao-il.org/fao_il_rural/en/.

⁸ More precisely, it has been estimated that about half of those who are food insecure in the world live in smallholder farming households ; two-tenths are landless ; one-tenth are pastoralists, fisherfolk, and forest users ; and the remaining two-tenths are the urban poor (U.N. Millennium Project, *Halving Hunger: It Can be Done, Summary Version of the Report of the Task Force on Hunger* (The Earth Institute, Columbia University, 2005), p. 6).

II. TOWARDS SUSTAINABLE SOLUTIONS BASED ON BUILDING RESILIENCE

7. Annex I contains a brief analysis of the drivers of the crisis and of the broader perspective within which it should be situated. Two conclusions emerge from the analysis. The first is that the surge in prices in 2006-2008 is the result of policies that have systematically undermined the agricultural sector in a number of developing countries over a period of 30 years. This not only made these countries vulnerable to the volatility of international prices for food commodities, but also resulted in a situation where small-holders, owing to the lack of rural infrastructure and access to credit, the dismantling of public support schemes, the impact of rushed and mismanaged trade liberalization and their position in the food production and distribution chain are unable to benefit from the current increase in international markets prices. These factors must be addressed in the search for sustainable solutions to the current crisis.

8. Adopting a human rights framework can help achieve this objective, because it may guide the redefinition of the policy priorities triggered by the current crisis. The question “for whose benefit?” is at least as important as the question “how to produce more?” But there is a risk, in the current situation, that the latter question will be treated as the most pressing and that we focus on solutions that promote the supply of more food, without paying sufficient attention to the question of who produces, at what price and for whom. This would be a mistake with far-reaching consequences. One of the opportunities created by the current crisis is that investment in agriculture, which has been neglected for many years both in the definition of priorities of official development assistance and in national budgets, will be given in the future the priority it deserves. But how the investments will be channelled, towards whom, and for which purpose, deserves close scrutiny. If, guided by a sense of urgency and a mistaken diagnosis about the challenges facing us, investment is planned exclusively with a view to increasing the supply of food, it could result in the wrong choices. Instead, investment should be guided by the need to promote sustainable forms of agricultural production, benefiting small-holders who are most in need of support, and where the impact on poverty alleviation will be greatest.⁹

9. There is a risk that, in a context dominated by the fear of food shortages, opportunities will be mistaken for solutions, and that, in the name of raising production, the need for both social and environmental sustainability of the solutions devised will be underestimated. One indicator of the reality of the risk is the almost complete silence in international discussions about the conclusions of the International Assessment of Agricultural Knowledge, Science and Technology for Development, sponsored by the FAO and the World Bank that “the way the

⁹ The difficulty in identifying the best options in this regard is best illustrated by the ongoing discussion on the impacts to be expected from the work of the Alliance for a Green Revolution in Africa (AGRA). In order to facilitate a dialogue on the issues raised by the idea of launching a second ‘green revolution’ in the African context, the Special Rapporteur intends to convene a multi-stakeholder meeting in December 2008.

world grows its food will have to change radically to better serve the poor and hungry if the world is to cope with a growing population and climate change while avoiding social breakdown and environmental collapse".¹⁰

10. The search for such sustainable solutions may be more difficult than reliance on technological solutions devised elsewhere, and it may be less attractive to private interests. But these recommendations are the result of a long process of scientific research and consultation, analogous to the work of the Intergovernmental Panel on Climate Change. In devising solutions to improve the productivity of agriculture, we should first and foremost use the scientific expertise already available on the social and environmental impact of technology-led attempts at boosting production.

11. A second conclusion from the analysis (see annex I9 is that we should resist the temptation of seeking answers by simply reversing the clock: by reverting to a 'normal' situation, in which the impoverished countryside feeds the comparatively wealthier inhabitants of the city, and in which cheap food is made available on international markets as compensation for the destruction of the livelihood of farmers in many developing countries. Instead, we need to build a system which ensures a sufficient degree of resilience in the face of the increasing volatility of international markets of agricultural primary commodities, and which maintains such volatility within acceptable margins. According to the Agricultural Outlook 2008-2017 by FAO and the Organization for Economic Co-operation and Development (OECD), prices of primary agricultural commodities will remain at higher average levels over the medium term than during the period 1998-2007, but they will then resume their decline in real terms, though at a lesser pace than previously. These forecasts are, however, made under rather heroic assumptions.¹¹ The potential impact of climate change and water shortages were not factored in, although we know the threat that they represent for agriculture, particularly in sub-Saharan Africa, Eastern Asia and South Asia, where climate change will affect rain, increase the frequency of droughts, raise average temperatures, and threaten the availability of fresh water for farming. In addition, policy

¹⁰ The report found that technological innovations in agriculture have generally favoured large-scale producers, and their costs have been borne by small scale producers, their communities and the environment. The IAASTD report strongly supported the potential of small-scale producers in agricultural development, pointing to the need for dedicated support for smallholders if this potential is to be achieved, and to the need to avoid dependency on expensive inputs such as inorganic fertilizers whose prices are closely aligned with those of oil, or on patented seeds. In order to reduce vulnerability in the food system, it recommended relying on locally-based knowledge, innovations, policies and investments. Participatory Plant Breeding and Farmer-Researcher groups - not exogenous technologies - were specifically highlighted as models for successful technological development. The IAASTD identified several areas ripe for investment and public research, among them, low-input and organic systems, biological substitutes for agrochemicals, site-specific easily adaptable cultivars, local seed systems, and reducing the dependency of agriculture on fossil fuels.

¹¹ *OECD-FAO Agricultural Outlook 2008-2017*, 29 May 2008, at 14 and 28.

changes, particularly mandates for the use of agrofuels, the reform of the Common Agricultural Policy of the EU, or changes in the regimes governing international trade in agriculture or intellectual property rights, per definition, could not be considered in those forecasts. Therefore, we should be prepared for not only higher than average prices or a slowing down of the decline in prices, but also for price volatility.¹² As noted by the World Bank, “managing grain price risk is a fundamental requirement in a world characterized by more volatile international grain prices and recurring supply shocks that will likely result from global warming”.¹³ Acknowledging uncertainty about the future evolution of prices, rather than potentially misleading forecasts about their possible evolution, should be guiding policy choices. For this reason, the present report puts resilience, as a condition for coping with uncertainty and thus guaranteeing access to food for all, at its centre.

12. Annex I also offers a summary of the reactions that followed the global food crisis of 2007-2008. It is not the purpose of the present report to review in detail the initiatives taken at the operational level by the executive agencies of the United Nations, the international financial institutions or regional development banks; nor would it be feasible here to describe the outcome of the meetings which, in different forums, focused on the global food crisis and the answers to it. A consensus has emerged that the adoption of short-term measures should not only aim at alleviating the lot of the hungry, particularly the urban poor, and particularly by the provision of food aid, but that, for the reasons explained above, it should also aim at improving the productivity of small-holders. The question to be addressed by the Council is how the various initiatives and commitments which have been recalled could be guided by a human rights framework and what that would imply. With the exception of the resolution adopted by the Council at its seventh special session and of reference to the right to food guidelines in the outcome document adopted by the High-Level Conference on World Food Security convened by FAO in Rome from 3 to 5 June 2008, the human right to adequate food has been almost entirely absent from the current discussions. This is not of merely symbolic, or anecdotal, significance. It leads to a situation in which an important set of tools that could address the global food crisis is neglected. Developing responses under the framework of the human right to food would ensure that these responses are better guided by the needs of the hungry and the malnourished. It would pave the way for targeting, but also for prioritization, coordination, accountability and participation. Whether the right to food has been left out by design or by ignorance of its operational consequences, it should now be brought back.

13. It is in this spirit that the observations below are submitted. They focus on the future of the global food system. The immediate reactions to the crisis are referred to only insofar as they provide indications about the risk that the human rights dimension will be neglected in the setting-up of mechanisms ensuring improved food and nutrition security for the future.

¹² On current volatility in agricultural commodities, see FAO Food Outlook, June 2008, at 55-7.

¹³ *Framework Document for proposed loans, credits, and grants in the amount of US\$ 1.2 billion equivalent for a Global Food Crisis Response Program (GFRP)*, 29 May 2008, at 6.

III. NATIONAL STRATEGIES FOR THE REALIZATION OF THE RIGHT TO FOOD

14. Under article 11 of the International Covenant on Economic, Social and Cultural Rights, the principal obligation of States is to take steps to achieve progressively the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal.¹⁴ The human right to adequate food thus requires the adoption of measures which, at the national level, might better shield vulnerable segments of the population from the impact of increases in the price of food commodities: the net food buyers, whether or not they are agricultural producers, and particularly the urban poor and landless labourers. 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”.¹⁵ Such a national strategy should comprise the establishment of appropriate institutional mechanisms in order to (a) identify, at the earliest stage possible, emerging threats to the right to adequate food, by adequate monitoring systems; (b) assess the impact of new legislative initiatives or policies on the right to adequate food; (c) improve coordination between relevant ministries and between the national and subnational levels of government, taking into account the impact on the right to adequate food, in its nutritional dimensions, of measures taken in the areas of health, education, access to water and sanitation, and information; (d) improve accountability, with a clear allocation of responsibilities, and the setting of precise time frames for the realization of the dimensions of the right to food that require progressive implementation; and (e) ensure the adequate participation, particularly of the most food-insecure segments of the population.

15. In order to ensure that the measures they take move in the right direction, States should, as a matter of priority, inform themselves about the risks to food security under their jurisdiction, and about the impact of any measures they intend to take. They should establish mechanisms ensuring the accountability of all branches of government in order to ensure that they comply with the obligations imposed on them for the realization of the right to food. They should also strengthen the rights of land users and of women.

A. Mapping food insecurity and vulnerability, and monitoring

16. Acting within a human rights framework first requires States to develop policy responses based on an adequate mapping of food insecurity and vulnerability, identifying with the necessary precision how interventions should be targeted, and assessing the impact on the right to food prior to the adoption of legal or policy measures that could have a negative impact on the right to food. Guideline 13 of the Right to Food Guidelines (see paragraph I above) recommends establishing food insecurity and vulnerability mapping systems (FIVIMS) to identify those

¹⁴ General comment No. 2, para. 14.

¹⁵ General comment No. 12, para. 21.

groups that are food insecure in terms of lack of assets or income, as well as on other grounds. Similarly, the United Nations Children's Fund (UNICEF) has emphasized the need to strengthen the evidence-base for decision-making, with a particular focus on the nutritional risks faced by women and children, through nutritional and associated health indicators.¹⁶ One indicator of the usefulness of performing such a mapping exercise at the early stage of policymaking is the almost complete neglect in the current discussions of the role of fundamental labour rights in the fulfilment of the right to adequate food. Agricultural workers are in a particularly vulnerable position, 60 per cent of them living in poverty in many countries.¹⁷ Mapping food insecurity and vulnerability at the national level would help identify the scope of this problem and the development of appropriate policies. Impact assessments can also improve significantly the quality of lawmaking and policymaking. Guideline 17 of the Right to Food Guidelines contains a set of recommendations related to conducting right to food impact assessments, the development for monitoring purposes of process, impact and outcome indicators, and the need to prioritize the monitoring of the food security situation of vulnerable groups and their nutritional status.

B. Improving accountability

17. Mapping threats to food security alone does not suffice, however. The human rights approach also leads to an understanding of the requirement of food security in terms of legal entitlements and accountability mechanisms. Ensuring that everyone has access to adequate food is not enough. It is also important that they have so as a matter of right, and that corresponding obligations be imposed on public and private actors who may have an impact on the enjoyment of that right. By ensuring that the hungry and the malnourished have legal claims against those whose actions or inactions have an impact on their situation, this framework creates security, backed by institutional mechanisms. It helps to create the conditions ensuring that people can feed themselves. Ensuring that they can do so as a matter of right rather than as a matter of policy choice is especially important if we take into consideration the capacity to influence decision-makers of the respective groups concerned with food insecurity. It is well known that, in developing countries, small-scale farmers form a large but geographically dispersed group, with little or no access to resources for political lobbying, and face prohibitive transaction costs in the organization of collective action. Urban groups, in contrast, find it easier to mobilize through public protests; so do farmers in industrial economies.¹⁸ With such disparity in access to political influence, a rights-based approach constitutes a necessary insurance against the risk of public policies being biased in favour of the most influential and well-organized interest groups, when they should instead address the needs of those at greatest risk, whether in urban or rural populations.

¹⁶ See for details UNICEF, *Food Prices Increases/Nutrition Security: Action for Children*, 4 July 2008.

¹⁷ http://www.fao-il.org/fao_il_rural/en/.

¹⁸ See The World Bank, *World Development Report 2008 - Agriculture for Development*, Nov. 2007, at p. 43.

18. As part of their national strategies, 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, and so that, in the adoption of measures aimed at realizing the right to food, any discrimination in access to food or means for its procurement will be effectively prohibited. By defining in a framework law the obligations corresponding to the right to adequate food with a greater degree of precision, courts or other monitoring mechanisms, such as human rights institutions, will be encouraged to contribute to ensure compliance with the right to adequate food. Such accountability mechanisms may therefore contribute to ensure that, where macro-economic or social policies are misguided or are not well targeted (for instance, because they underestimate the needs of certain segments of the population or of certain regions), this will be identified at an early stage and corrected.

19. While the Comprehensive Framework for Action developed by the High-Level Task Force on the Global Food Crisis to provide guidance to Governments advocates the regular assessment of food and nutrition insecurity,¹⁹ this is not couched in human rights terms, and is conceived solely as a tool to guide policymaking at the national level. Thus, the dimension of accountability remains absent, and the establishment of recourse mechanisms for the victims of violations of the right to food is not recommended. Instead, these dimensions would be present if national strategies were grounded on the recognition of the right to adequate food, and if courts or other mechanisms, including national institutions for the promotion and protection of human rights or ombudsman institutions, were assigned the task of monitoring whether the different branches of Government fulfil their duties under the said national strategy. In order to assist States in setting up such a framework, the FAO Right to Food Unit should be strengthened in the context of the current reform of the Organization so as to make its work on the right to food less dependent on the discretion of voluntary donor contributions.

C. Securing rights related to the use of land

20. A particular source of concern is that, despite decades of work on this issue by FAO or the World Bank, too little attention has been paid to the rights of those who cultivate land or need access to it as a productive resource, among the answers to the global food crisis. While the Comprehensive Framework for Action developed by the High Level Task Force on the Global Food Crisis does refer to the need to implement “a transparent land tenure policy for managing land effectively while securing access to land rights for communities or individuals, particularly marginalized groups (e.g. indigenous people, women)”,²⁰ it is not developed in any detail, and constitutes an exception in the range of proposals currently developed in response to the global

¹⁹ At 39.

²⁰ At 28.

food crisis.²¹ The statement made by leaders of the Group of eight on global food security makes no reference to the issue. No governmental delegation present at the High-Level Conference on World Food Security mentioned agrarian reform or the need to protect the security of land tenure.²²

21. To the extent that the emphasis is on increasing the production of food, the responses to the current global food crisis could, however, lead to new threats to security of land tenure. One danger in the current situation is that, as a result of the renewed interest in agriculture and the race towards the production of agrofuels,²³ competition will increase for land in what has been described as “an uneven playing field - in many cases between large-scale investors and local land users who often hold no statutory rights over the land they use”.²⁴ The development of transnational investment in agricultural land, by which countries seek to ensure their food security by buying land abroad, and the development of monocultures for exports increase such pressure even further. In this context, developing countries should be encouraged to ensure security of tenure for all land users. While landowners may gain from the increase in the price of land, it constitutes a threat for landless labourers or for those whose title to the land they cultivate is insecure, and it may make it impossible for small holders to acquire more land in order to increase production. Securing land rights would encourage investors seeking to produce crops for export to opt for contract farming with small-holders, thus contributing to a better livelihood for the producers concerned.

22. Not only should the rights of land users on their land be secured; excessive concentration of land should also be avoided, and, where necessary, agrarian reform should be pursued to ensure that those who depend on land for their livelihood have access to it. Article 11(2) (a) of the International Covenant on Economic, Social and Cultural Rights refers to developing or reforming agrarian systems as a means of ensuring the fundamental right to be free from hunger. Agrarian reforms should be accelerated, as recommended by Guideline 8.10 of the FAO Guidelines on the Right to Food and by the FAO International Conference on Agrarian Reform

²¹ The Latin American Presidential Summit, at which 15 delegations were convened on 7 May 2008 in Managua, did express its support for ‘an agrarian reform process, that would provide land to agricultural producers who are currently deprived of this resource to produce food’(‘un proceso de reforma agraria, que provea de tierras a aquellos productores agrícolas, que en este momento no tienen este recurso para producir alimentos’).

²² See International Land Coalition, *Access to land and the food crisis: Feedback and reflections by the ILC Secretariat on the FAO High Level Conference on World Food Security*, June 2008, www.landcoalition.org.

²³ *Fuelling Exclusion? The Biofuel Boom and Poor People's Access to Land*, by Lorenzo Cotula, Nat Dyer and Sonja Vermeulen, www.iied.org/pubs/pdfs/12551IIED.pdf.

²⁴ International Land Coalition, *Access to land and the food crisis*, cited above.

and Rural Development since gaining access to land is essential to landless labourers who are among the most food- insecure today. In the ministerial declaration adopted by consensus at its 2008 session the Economic and Social Council recognized “the crucial importance of enhanced access of the rural poor, women and men, to productive assets, in particular land and water”, and stressed that “priority attention should be given to the adoption of policies and the implementation of laws that guarantee well-defined and enforceable land- and water-use rights and promote legal security of tenure, while recognizing the existence of different national laws and/or systems of land access and tenure”.²⁵ In accordance with Res. 2002/49 of the Commission on Human Rights on ‘Women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing’, special attention should be paid to the removal of all obstacles to the equal enjoyment of land rights by women.²⁶

D. Women’s rights

23. Elsewhere, the previous Special Rapporteur on the right to food explored why the full respect for women’s rights is crucial to the enjoyment of the right to adequate food, particularly in its nutritional aspects.²⁷ As noted by the World Bank, “in many societies, women bear the primary responsibility for feeding the family, yet without having control of family resources. In many countries, women and girls are also frequently less favoured in the intra-household distribution of food.”²⁸ The Comprehensive Framework for Action is explicit on this issue.²⁹ There is a high degree of consensus, therefore, on the need to strengthen women’s rights, particularly in rural areas as required under article 14 of the Convention on the Elimination of All Forms of Discrimination against Women, and on the contribution this could make to food and nutrition security. However, many obstacles remain in the implementation at the national level, owing to discriminatory laws or customs. States should be encouraged to move further in this direction by making women’s rights an explicit component of their national strategies to respond to the food crisis.

IV. AN ENABLING INTERNATIONAL ENVIRONMENT

24. When they adopted g8 on establishing a global partnership for development as part of the Millennium Development Goals, Members States were in fact reaffirming what was already an obligation under international law. States should not only respect, protect and fulfil the right to

²⁵ Implementing the internationally agreed goals and commitments in regard to sustainable development, doc. E/2008/L.10, para. 28.

²⁶ E/CN.4/2002/200 (23 April 2002).

²⁷ See Report of the Special Rapporteur on the Right to Food to the General Assembly, A/58/330 (2003).

²⁸ GFRP, at ii.

²⁹ At 19. The CFA also encourages channelling food assistance via women and targeted interventions for women farmers (at 13 and 16).

adequate food on their national territories; they are also under an obligation to contribute to the realization of the right to food in other countries and to shape an international environment enabling national Governments to realize the right to food under their jurisdiction.³⁰ It is in this light that we should understand the commitment of States under the Covenant, “taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need” (art. 11.2 (b)). It follows from Article 56 of the Charter of the United Nations that they must cooperate in the identification and elimination of the obstacles to the full realization of the right to food. Although it does not provide a catalogue of measures which might constitute ‘international assistance and cooperation’ as required by the Covenant, it is clear at least from article 23 of the Covenant that such an obligation is not limited to the provision of financial assistance.³¹ Rather, it should be understood as having three implications, corresponding respectively to (a) an obligation not to pursue policies which have a negative impact on the right to adequate food; (b) an obligation to ensure that third parties, including private actors, do not interfere with the enjoyment of the right to food; and (c) an obligation to cooperate internationally in order to contribute to the fulfilment of the right to food. Whether or not they belong to the United Nations system, international agencies are also under an obligation to respect the human right to adequate food, under general public international law; and the member States of these organizations have a due diligence obligation to ensure that international organizations to which they delegate powers exercise them in conformity with their human rights obligations.³²

A. The obligation not to pursue policies that have a negative impact on the right to adequate food: the example of agrofuels

25. International law imposes on all States an obligation to re-examine, with a view to its modification, any policy which has been proven to have a negative impact on the right to adequate food or on the right of every individual to be free from hunger and malnutrition. It does not matter whether such impact is documented within the State which has taken the measure, or whether the impact is seen outside the national territory of that State, as long as there exists a clear causality link between the policy in question and the enjoyment of the right to adequate food.

³⁰ See also United Nations Conference on Trade and Development, São Paulo Consensus, (TD/410, 25 June 2004), para. 5.

³¹ This article states that ‘international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned’.

³² The preliminary report of the Special Rapporteur to the UN General Assembly contains more detailed normative references on these issues.

26. It is in the light of this obligation that the policies promoting the use of agrofuels as a substitute for fossil fuels in the transport sector must be examined.³³ These policies take various forms and it would be irresponsible to condemn them as a whole, by claiming, for instance, that bioenergy production to meet domestic needs and limit dependency on the expensive oil imports is the same as large-scale agrofuel production for export purposes; that bioethanol produced from sugar was comparable to the bioethanol produced from maize, or from other crops such as cassava, wheat, sweet sorghum and sugar beets, or that biodiesel produced from rapeseed oil was the same as the biodiesel from palm oil or soybean oil. Indeed, not only should distinctions be made between different plants used as feed for fuel; in order to evaluate the impact on the right to food, the production methods used in each industry should be taken into account, since they have a different impact on job creation of, on the environment and food security.

27. Annex II offers a brief overview of the impact of the development of agrofuels on the enjoyment of the right to adequate food. An impact can be witnessed on three levels.

28. First, the pace of agrofuel development has significantly contributed to the increase in the price of certain agricultural commodities on international markets, threatening the enjoyment of the right to adequate food. It has been estimated that the number of people suffering from undernourishment could increase by 16 million for each percentage point increase in the real price of staple food;³⁴ the food crops currently used to produce ethanol are also the crops that form the largest part of the diets of poor people, maize, sugar cane, soy, cassava, palm oil and sorghum provide around 30 per cent of mean calorie consumption of people living in chronic hunger.³⁵ Such price increases are not *per se* problematic; under certain conditions, particularly if they benefit rural households who are net food sellers and if the net food buyers are protected by targeted measures aimed at increasing their purchasing power, such increases may in fact have benevolent effects, particularly in a dynamic perspective. Under current conditions, however, and owing to the sudden brutality of the price increases and our degree of unpreparedness, the negative effects far outweigh the positive ones, and this should be carefully monitored.

29. Second, since the production of agrofuels (particularly of bioethanol, which currently constitutes the largest proportion) tends to reinforce the concentration of land and the development of large-scale agricultural exploitations, it puts additional pressure on small-holders, and poses a threat to the use of land by indigenous peoples. It increases the competition for cropland and for water resources, and represents a threat to biodiversity. Though

³³ See Asbjorn Eide, *The right to food and the impact of liquid biofuels (agrofuels)*, study submitted to the Right to Food Unit of the FAO, May 27, 2008.

³⁴ Mark Rosegrant and others, 'Biofuels and the global food balance', cited above.

³⁵ R. Naylor, A. Liska, M. Burke, W. Falcon, J. Gaskell, S. Rozelle, and K. Cassman, 'The Ripple Effect -Biofuels, Food Security, and the Environment', *Environment*, Vol. 49, No. 9, November 2007, at 41, citing from FAO's Faostat, available at <http://faostat.fao.org>.

it may create employment (although this should be weighed against the risk of the livelihoods being destroyed as a result of the development of agrofuels production), the working conditions in the large plantations typical of the agrofuels industry are often exploitative.

30. Third, since their demand is concentrated in industrialized countries, whereas the production of agrofuels is more efficient and cost-effective in developing countries given their natural comparative advantage in their production in the absence of market-distorting measures, agrofuels encourage a form of economic development based on the expansion of cash crops, further pitting the interests of a small minority of actors producing crops for exports against the interests of both other agricultural producers and the other sections of the population, for which the result may be further inflation of food prices.

31. The conclusion that emerges from the findings (see Annex II) is that the current path in the development of agrofuels for transport is not sustainable, and that if such development goes unchecked, further violations of the right to food will result. Pending the adoption of an international consensus on this issue, any new large-scale investment into the production of agrofuels for transportation should be authorized by government authorities only when its detailed and multi-stakeholder assessment is positive in terms of its implications, both at the domestic and international levels, for the right to food, social conditions and issues related to land tenure, including the displacement of farmers and the indirect environmental impact this might cause in terms of land use. All measures encouraging a market for agrofuels (blending mandates, subsidies and tax breaks) should be revised, since such measures encourage speculation by non-commercial investors, who anticipate that the price of agricultural commodities will remain at high levels and rise further as a result of the growing demand for agricultural commodities on international markets, linked to the creation of this artificial market.

32. Work should be accelerated in the development of an international consensus on agrofuels. In the view of the Special Rapporteur, two outcomes should result. First, international guidelines on the production of agrofuels should be agreed upon. In addition to environmental standards, the guidelines should incorporate the requirements of human rights instruments, particularly with regard to the right to adequate food (as elaborated upon in the FAO Right to Food Guidelines), the right to adequate housing (including protection from evictions and displacements), the rights of workers (including in particular the right to fair remuneration and the right to a healthy working environment), the rights of indigenous peoples, and women's rights. Countries should be encouraged not to allow further investments in agrofuels unless such guidelines are followed. In addition, and as a means to encourage such compliance, access to international markets could be made conditional upon compliance with the guidelines.³⁶ Similarly, States should be allowed,

³⁶ In defining the relationship between such guidelines as developed through an international consensus and the international trade regime, lessons should be drawn from the Kimberley Process Certification Scheme, which restricts trade between Kimberley participants to certified non-conflict diamonds only, and prohibits trade between Kimberley participants and non-participants.

in their import policies, to discriminate in favour of countries whose production of agrofuels complies with the guidelines, while excluding imports from other, non-compliant States. For reasons of legal certainty, a waiver may be sought from the General Council of the World Trade Organization, in order to ensure the compatibility of such a scheme with the non-discrimination principles of articles I, XI and XIII of the General Agreement on Tariffs and Trade.

33. As a second element of a new international consensus on agrofuels, a permanent forum should be established at the international level, in order to both ensure the impartial and objective monitoring of compliance with the guidelines and constitute a platform for the exchange of best practices in their implementation. Such a forum should have sufficient expertise in the human rights issues raised by the production of agrofuels. It should also have the resources to evaluate the potential impact of certain investment decisions on the prices of food commodities, both at the international and the national levels and thus to provide assessments guiding States in the implementation of the guidelines.

34. Consideration should also be given to the possibility of allocating quotas to countries for the production of agrofuels. Such an allocation should take into account the energy balance of each form of production and the impact on the price of agricultural commodities on international markets. But it should also include consideration of the risks of distorted development in producing countries, working in favour of crop-growers producing feed for fuel but at the same time threatening the access to land and water of other producers, particularly small-holders producing crops for domestic consumption, and inflating the prices of food on local markets.

B. The obligation to protect the right to adequate food by controlling private actors

35. There exists an obligation of all States to protect the right to food effectively by regulating the activities of companies at all levels of the system of production and distribution of food, consistent with article 11 of the International Covenant on Economic, Social and Cultural Rights³⁷ and with the FAO Right to food Guidelines.³⁸ The Human Rights Council has requested private actors “to take fully into account the need to promote the effective realization of the right to food for all”.³⁹ But, as noted by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises in his most recent report to the Council, the role of States in ensuring that they comply with their human rights obligations remains crucial.⁴⁰

³⁷ General comment No. 12, para. 19 (referring to the failure by States to regulate activities of individuals or groups so as to prevent them from violating the right to food of others as an instance of the violation of the right to food).

³⁸ See para. 4.3. of the Guidelines.

³⁹ See Human Rights Council Resolution 7/1, 27 March 2008, para. 13.

⁴⁰ See A/HRC/8/5 (7 April 2008), paras. 27-50.

36. In the current discussions held at the intergovernmental level no reference has been made, to the role of agribusiness and global retailers in identifying solutions to the situation created by the increase in prices on the international markets. They are part of the solution, however. The gap between farm-gate prices (received by the farmers) and the prices paid by the consumer is widening, and while recent price increases hit consumers severely in many countries, they mostly do not benefit small-holders. This in turn can be explained by two characteristics of the organisation of the food production and distribution chain. First, at the horizontal level, the farming sector is increasingly dualized: while the vast majority of farms (85 per cent) are small-holder operations, 0.5 per cent of the world's farms that exceed 100 hectares in size claim a disproportionate share of global farm income and public subsidies in industrialized countries.⁴¹ Second, vertically, agricultural producers face increasingly concentrated interlocutors for both acquiring inputs and selling their produce. Farming is one of the few businesses that pays retail prices for inputs and sells its products at wholesale prices.⁴² At both ends of the chain (producers and retailers) and in the middle (the food processing sector), the degree of concentration is particularly high: for instance, the 10 leading food retailers have a 24 per cent share of the \$3.5 billion global market, and their activities in developing countries have expanded dramatically in recent years.

37. Private investment in agriculture is vital, and food processing companies and global retailers have a crucial function to fulfil by connecting farmers to high-value markets. But these imbalances in power are a major obstacle to the efficient functioning of the food chain. Since most large agribusiness companies are based in industrialized countries, this further worsens the imbalances seen in the global trading system. The World Bank has noted, for instance, that because of the high concentration rate of coffee roasters and retailers, the share of the retail price retained by coffee-producing countries Brazil, Colombia, Indonesia and Viet Nam accounting for 64 per cent of global production declined from a third in the early 1990s to 10 per cent in 2002, while the value of retail sales doubled. It also calculated that developing countries' claim on value added in agricultural commodities declined from around 60 per cent in 1970-1972 to around 28 per cent in 1998-2000.⁴³ This only underscores the importance of supporting small-holder farmers and their organizations, including in the poorest and most remote areas, to enable them to play an effective role in meeting the rising demand for food and thus to achieve an adequate standard of living, and of exploring with the agribusiness sector what contribution it could make to help achieve this objective.

⁴¹ Marc Cohen and others, *Impact of climate change and bioenergy on nutrition*, IPFRI, 2008, at 26.

⁴² For details, see *Concentrated Market Power and Agricultural Trade*, by Sophia Murphy, Ecofairtrade dialogue discussion papers No. 1, August 2006, at: www.tradeobservatory.org/index.cfm?refid=89014.

⁴³ The World Bank, *World Development Report 2008*, at 136.

38. In the fulfilment of his mandate, working in close cooperation with the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur will investigate this issue in two directions. First, he will seek to enter into a dialogue with the agribusiness sector in order to identify how they could contribute to the fulfilment of the right to adequate food, taking into account not only their obligations to workers in the food chain, but also how their buying practices could lead to fairer forms of trade. Second, he will examine how States could implement their duty to protect human rights in the food production and distribution chain, including by an improved use of antitrust regulations.

C. The obligation to cooperate internationally in order to contribute to the fulfilment of the right to food

39. The obligation imposed on all States under Article 56 of the Charter of the United Nations to take joint and separate action to achieve the full realization of human rights and fundamental freedoms is not limited to abstaining from the adoption of measures which have a negative impact on the enjoyment of those rights. As clearly indicated by the wording of article 23 of the International Covenant on Economic, Social and Cultural Rights, it may encompass the adoption of measures, in particular in the form of the negotiation of international agreements.

40. Taking into account these international obligations requires the identification of which coordinated reaction from the international community is needed to address the situation created by the increase in the price of food on international markets, guided by the obligations of all States under international law to respect the right to adequate food. Such a coordinated reaction should address not only the short-term impact of the current crisis, but also the structural causes leading to soaring food prices. The current crisis has highlighted the need to take action on three issues. Addressing these issues should be on the top of the agenda of the new partnership on agriculture and food.

1. The need for international cooperation

(a) Combating the negative impact of speculation

41. Many observers of the current crisis have noted the role of speculation on the markets of primary commodities, particularly food commodities, in the surge of prices in 2006 and 2007.⁴⁴ The large influx of funds from financial investors into agricultural futures and options markets has raised concerns that this may have driven up prices and contributed to the volatility of prices, a volatility which is in the interest of neither consumers, who pay higher prices as a result, nor producers, for whom credit may become unaffordable as a result, nor Governments, whose social programmes may have to bridge the gap between the incomes of the poorest and their needs. Index speculators have a particularly important and potentially destabilizing role, since their investment choice in commodities are a purely portfolio-based decisions, unrelated to fundamental supply and demand factors. The shift towards primary commodities by such

⁴⁴ *OECD-FAO Agricultural Outlook 2008-2017*, 29 May 2008, at p. 36.

investors,⁴⁵ a result of the low returns of stock markets and of the sub-prime mortgage crisis, has helped push the international prices of such commodities upwards on specialized boards, such as the Chicago Board of Trade.

42. Mechanisms such as the constitution of strategic grain reserves at the national, or preferably at the local level, could go a long way towards combating the impact of price volatility, thus making non-commercial speculation less attractive. Local grain banks in rural communities in the most vulnerable parts of the world should therefore be supported. Access and control should be entrusted to local communities and, where possible, stocks should be built of locally produced and consumed staple food. However, more attention should be paid by the international community to this phenomenon, as States acting unilaterally may find it difficult to effectively tackle the impact of speculation on the prices on international markets, for instance by improving the regulation of investment funds or by taxing such movement of funds.

43. One proposal made is the pooling of one portion of the strategic grain reserves detained by States, in order to establish what the leaders of the Group of Eight referred to as “a ‘virtual’ internationally coordinated reserve system for humanitarian purposes”.⁴⁶ The main objective of such a virtual global strategic reserve would be to ensure that States facing an emergency, for instance due to a conflict or to weather-related events, could acquire food at a price which is reasonable and, especially, predictable, since prices would be based on a commitment of the States participating in the global reserve to sell at pre-defined prices. One benefit of such a scheme would be that speculation would not be encouraged by sudden shocks, since the countries having to import urgently large quantities of food would not be going through the usual market mechanisms.⁴⁷ A more ambitious version of this proposal would be to re-establish international buffer stocks in order to stabilize the price of food commodities, as was done in the 1960s and 1970s, for instance through the International Cocoa Agreement or the International Coffee Agreement. Provided that such agreements attracted support from a sufficiently large number of importing and exporting country members and set target prices at realistic levels, and could be funded at sufficiently high levels in order to cover the risks of long periods of low prices, they could have an important stabilizing function, to the benefit of exporting and importing countries alike. Again, since speculation has its origin in the expectations of future prices, price-stabilizing measures such as through the re-establishment of international buffer stocks would discourage speculation, preventing its negative effects on spot prices for commercial traders and consumers alike.

⁴⁵ It has been reported that total index-fund investment in corn, soybeans, wheat, cattle and hogs has increased in 2007 to more than 47 billion USD, from 10 billion USD in 2006. See David Kesmodel, Laurent Etter and Aaron O. Patrick, ‘Grain Companies’ Profits Soar As Global Food Crisis Mounts’, *The Wall Street Journal*, 30 April 2008, pages A1 and A14.

⁴⁶ See also the Comprehensive Framework for Action, at 27-28.

⁴⁷ See also, favouring such a solution, IFPRI, *High Food Prices: The What, Who, and How of Proposed Policy Actions*, 16 May 2008, at 9-10.

(b) Encouraging social safety nets by establishing a global reinsurance fund

44. While necessary, acting on prices alone is not sufficient. In addition, in order to boost supply, agricultural producers need to be supported through public programmes improving their ability to produce, and countries need to be able to protect their population from the impact of the increased volatility of food prices. Indeed, the FAO Right to Food Guidelines recommend that States establish and maintain social and food-safety nets to protect those who are unable to provide for themselves. But uncertainty about possible future shocks to their economies is a major disincentive for poor countries to establish robust social-safety nets, since they know their fiscal resources may be strained as a result of adverse shocks brutally increasing the needs of the population. In order to address this problem, the establishment of a global reinsurance fund has been proposed, providing insurance to poor countries against sudden shocks, whether of internal or of external origin, leading to rising demands for social support in ways that might not be fiscally sustainable for the countries concerned.⁴⁸

(c) The role of international trade

45. There have been calls for further progress on trade liberalization - and, more precisely, on the swift completion of the Doha round of negotiations within the World Trade Organization as part of the answers to the crisis. However, not any agreement will do. As noted in the Comprehensive Framework for Action, the international trade system needs to be equitable if it is to contribute to the objective of food security. There are strong arguments for the view that precipitate and inequitable trade liberalization in agriculture, following the prescriptions of the international financial institutions in the 1980s, is among the reasons for the lack of development of the agricultural sector in certain developing countries, particularly in sub-Saharan Africa: in addition to being heavily taxed by Governments through a combination of exchange rate manipulation, parastatal monopolies in processing and trading and government price setting, local farmers were weakened by severely distorted competition from abroad. The Uruguay round of trade negotiations leading to the establishment of the World Trade Organization and the conclusion of the agreement on agriculture did little to remedy this, and it is still uncertain whether the round of negotiations launched in Doha in November 2001 will offer satisfactory answers, as called for by the United Nations Conference on Trade and Development São Paulo Consensus.⁴⁹ Indeed, given that larger agricultural producers are in general better positioned to benefit from the opportunities created by trade liberalization, since they can more easily adapt to the volumes and standards requirements imposed by global food buyers and retailers, there is a real risk that export-led agricultural development will further marginalize the position of smallholders, worsening their food insecurity instead of improving it.

⁴⁸ Sanjay G. Reddy, 'Safety Nets for the Poor: A Missing International Dimension?' in Giovanni Andrea Cornia (ed), *Pro-Poor Macroeconomics*, Palgrave Macmillan, 2006, 144-165, here at 160.

⁴⁹ TD/410, 25 June 2004, para. 75.

46. Whether trade liberalization should be listed among the panoply of solutions for the establishment of world food security or not will depend on a number of factors, including in particular (a) whether the more vulnerable agricultural producers from developing countries can be effectively protected from the negative impact of imports of agricultural products sold at lower prices on international markets, especially those products being sold for less than their cost of production; (b) whether the development of export agriculture induced by trade liberalization is possible without discriminatory impacts on smallholders such as those resulting from increased competition over productive resources like land, water, irrigation, access to infrastructure, as large exploitations tend to capture rural services and infrastructure; (c) whether the problems created by excessive concentration in the agribusiness sector are effectively addressed ; and (d) which measures will be taken to encourage the ability of small-holder producers from developing countries to export to the markets of industrialized countries.⁵⁰

(d) Intellectual property rights

47. Finally, it should be noted that nowhere has the protection of intellectual property rights on plant varieties or seeds been identified as a potential source of concern. But, as explained in detail in the first report of the Special Rapporteur submitted to the General Assembly, regimes that prevent farmers from re-using and exchanging seeds can have serious implications for farmers' ability to continue farming and for agricultural biodiversity, and thus for the world's capacity to ensure sustainable food production over the long term.

2. Towards a new global partnership for agriculture and food

48. The idea of a global partnership for agriculture and food has emerged as a possible institutional response to the global food crisis.⁵¹ If one is to be established, such a proposal should bring true added value and ensure that the establishment of a new, coordinating structure is a better solution than the reinforcement of existing agencies. Any discussion should start by reconsidering why the World Food Council was abolished in 1996. In addition, whether the human right to food will be served by a new institutional initiative will depend on the capacity of any structure emerging from the current discussions to tap into strategies developed at the national level, with the active participation of those immediately affected by the problems of hunger and malnutrition. The Special Rapporteur would like to make, in addition, the comments set out in the paragraphs below.

49. Any global partnership for food and agriculture should aim at ensuring world food and nutrition security, in order to contribute to the realization of the right to food, with attention paid

⁵⁰ The Special Rapporteur will examine the interactions between international trade in agricultural products and the right to food in a separate report to the Human Rights Council on a mission to the WTO.

⁵¹ See also the proposals emanating from the International Food Policy Research Institute: J. von Braun and N. Islam, 'Toward a New Global Governance System for Agriculture, Food and Nutrition: What Are the Options?', *IFPRI Forum*, March 2008.

specifically to the most vulnerable. It should not only focus on boosting the supply of food, but also contribute to ensuring compliance with the right to adequate food, including in its nutritional aspects. Health, education, trade and the environment - not agriculture alone - should therefore be part of any effort to improve international coordination towards meeting this objective. The aim should be to ensure household food and nutrition security, which implies more than adequate food intake; it also demands attention to health services and proper care for the vulnerable. Indeed, one likely impact of the current food crisis is that it will create to more low-income, net food purchasing households, whose dietary diversity will be reduced in their effort to maintain consumption of staples. This has serious public nutritional health implications, including micronutrient malnutrition especially of women and children. Special efforts are therefore required to address both food security and general nutrition security; otherwise the benefits for the realization of the right to food for good nutrition are less likely to accrue for the most vulnerable groups. The important expertise of the Standing Committee on Nutrition should be drawn upon in order to ensure that this dimension is adequately taken into account.

50. A global partnership for food and agriculture has the potential to improve accountability with regard to the follow-up to commitments made by countries, particularly concerning contributions to official development assistance and the use of such contributions (including levels and predictability of assistance, and the earmarking of a certain proportion of it and of national budgets to the needs of the agricultural sector in accordance with local conditions and needs), and with regard to the impact of policies pursued at the national, regional and international levels on the right to adequate food. If indicators and benchmarks are to be relied on in measuring progress towards meeting the objective of world food and nutrition security, they should be based on the different components of the human right to adequate food be disaggregated in order to measure the impact of the policies pursued on all vulnerable groups, particularly women, children, indigenous peoples, displaced persons and refugees, as well as small-holders and rural landless labourers.

51. If a scientific body is to be established as part of a new global partnership for food and agriculture, the experts appointed to that body should be carefully selected in order to ensure their full independence and impartiality. It is also crucial that we build on the expertise of the important expertise accumulated within the Rome-based agencies of the United Nations (FAO, the International Fund for Agricultural Development and the World Fund Programme), and that, in any area already covered by the International Assessment of Agricultural Knowledge, Science and Technology for Development, the latter research be taken as the departure point. Not only would there be little point in repeating that enterprise; offering to do so would raise the suspicion that the conclusions reached by the Assessment have been set aside because they are inconvenient.

52. If a new global fund is to be established as part of a new global partnership for food and agriculture, it should serve the existing agencies working in these areas. Any competition for resources should be avoided. However, a new fund could have the added value of including in its mechanisms the global reinsurance fund (see paragraph 44 above); it could also serve to manage the virtual international reserve which could be established in order to meet the urgent needs of countries without disrupting markets, and to finance international buffer stocks as a part of international commodity agreements.

V. CONCLUSIONS

53. The increase in the price of food commodities on international markets has had a severe negative impact on the right to food of the poorest households, who are net food buyers, with particularly damaging consequences in countries where there are either no social safety nets in place or the ones that exist are too weak to withstand the shock. The increase will not benefit many small-holders, either as they face steep rises in costs and lack the infrastructure and support they need to increase food supply. Therefore, while the tension between supply and demand must be addressed in order to reconstitute the food stocks by both increasing the level of agricultural production and limiting waste and overconsumption, what matters in human rights terms is who will produce food, and for the benefit of whom. The current situation creates opportunities. But opportunities should not be mistaken for solutions. While more must be invested in agriculture and rural infrastructure in order to make up for years of neglect, how the investments are targeted, which forms they take, and what their effects are, must be carefully monitored. If a new global partnership for agriculture and food is to emerge from the current crisis, it is crucial to ensure that this partnership does not simply seek to boost supply by promoting technology-driven recipes, but also empowers those who are hungry and malnourished and whose livelihoods may be threatened by precisely this renewed interest in encouraging agricultural production. A human rights framework would contribute to keeping the search for solutions on this track, because it would ensure that the most vulnerable will be given priority, and because it would improve accountability and participation in decision-making. It is therefore regrettable that such a framework has been almost entirely absent from current discussions.

54. The Special Rapporteur calls on the Human Rights Council:

- (a) To continue monitoring the initiatives adopted by Governments, the private sector and international agencies, in reaction to the global food crisis, and contribute to the discussion of any future global partnership for agriculture and food, ensuring that it includes attention to its human rights dimensions and that it is based on an effective participation of rights-holders;
- (b) To encourage States to build national strategies for the realization of the right to adequate food, which should include mapping of the food- insecure, adoption of relevant legislation and policies with a right-to-food framework, establishment of mechanisms to ensure accountability so that rights-holders are able to claim their right to food, and the establishment of mechanisms and processes which ensure real participation of rights-holders, particularly the most vulnerable, in designing and monitoring such legislation and policies. These strategies should in particular take into account the need to strengthen the protection of the human rights of the most vulnerable groups including land-users whose land tenure is insecure, landless labourers, women, the displaced, indigenous people, minorities, the disabled and the rural and urban poor;
- (c) To encourage the development of an international consensus on agrofuels, based not only on the need to avoid the negative impact of the development of agrofuels on the

international price of staple food commodities, but also on the need to ensure that the production of agrofuels respects the full range of human rights and does not result in distorted development in producer countries;

(d) To insist that all States ensure that third parties, including private actors, do not interfere with the right to adequate food, and clarify how the private sector can contribute to the shaping of a more just food production and distribution system;

(e) To request further studies on the role of international cooperation in combating the negative effects of non-commercial speculation on the price of primary agricultural commodities, particularly on the potential roles of a virtual global reserve and international commodity agreements;

(f) To examine the contribution the establishment of a global reinsurance fund could make to the realization of the right to adequate food.

Annex I

THE GLOBAL FOOD CRISIS AND THE RESPONSES OF THE INTERNATIONAL COMMUNITY: A SUMMARY

1. This Appendix briefly recalls the origins of the current global food crisis (1.), the broader historical context in which it can be understood (2.), the main impacts (3.), and the responses of the international community (4.). It should be read as a complement to the initial analysis provided by the Special Rapporteur of the global food crisis, which included data not repeated here.⁵²

1. The origins of the global food crisis

2. Since a number of studies have been presented on the origins of the surge in the prices of food commodities in the international markets in 2007-2008,⁵³ a brief summary of the emerging consensus may suffice here. While independent observers differ on the relative importance of the different factors which have played a role - which indeed, due to their interrelatedness, are difficult to disaggregate from one another - there is broad agreement at least on the identity of these factors. The increase in the price of oil led to a corresponding rise in the cost of producing food, both because of the costs of fertilizers and pesticides and because of the transportation, packaging and processing costs, widening the wedge between farmgate prices and prices on international markets.⁵⁴ It also led to a higher demand for agrofuel feedstock, particularly maize, soybean, and palm oil, creating more competition for cropland between food, feed for livestock, and fuel, and a surge in the demand for grain. The resulting tension between supply and demand was accentuated, on the supply side, by other factors, some purely conjunctural, others more

⁵² See the background note on the global food crisis, www2.ohchr.org/english/issues/food/docs/SRRTFoodcrisis.pdf (2 May 2008).

⁵³ See, *inter alia*, J. von Braun, *The World Food Situation. New Driving Forces and Required Actions*, December 2007; Office for the Coordination of Humanitarian Affairs (OCHA), *Background note, Global Food Challenges*, 23 April 2008; Joachim von Braun, *Rising Food Prices. What Should be Done?*, IFPRI Policy Brief, April 2008; World Bank, *Rising food prices: Policy options and World Bank response*, April 2008; International Food Policy Research Institute, *High Food Prices: The What, Who, and How of Proposed Policy Actions*, 16 May 2008; Organisation for Economic Co-Operation and Development (OECD), *Rising Food Prices. Causes and Consequences*, April 2008; Donald Mitchell, *A Note on Rising Food Prices*, The World Bank, Policy Research Working Paper No. 4682, July 2008; and the sources cited in the background note referred to in the preceding footnote.

⁵⁴ Research from the World Bank indicates that a 10 percent rise in crude oil prices translates into a 1.6 per cent increase in agricultural commodity prices.

structural in nature. Weather-related events in 2005-2006 led to worse-than-expected harvests in certain major cereal-exporting countries, although the overall level of production remained stable. But more importantly, agricultural production needs time to adapt to price signals, because it requires new investments, the absorption of new technologies or the switch to higher-priced crops. In the current context, the cost of energy, both for production of food and for freight, further slowed down the ability of producers to respond to demand. And in many regions, agricultural producers have been unable to continue improving their productivity per hectare as they have been doing since the 1960s - either because the productivity is already such that margins for improvement are almost non-existent (as in the EU and in the United States, Canada or Australia), or because of insufficient access to credit and infrastructures, depleted soils, and a system of international trade in agricultural products which has reduced agricultural production in those countries to lower-than-subsistence levels after the 1980s (as in Sub-Saharan Africa where important margins subsist for productivity improvements).

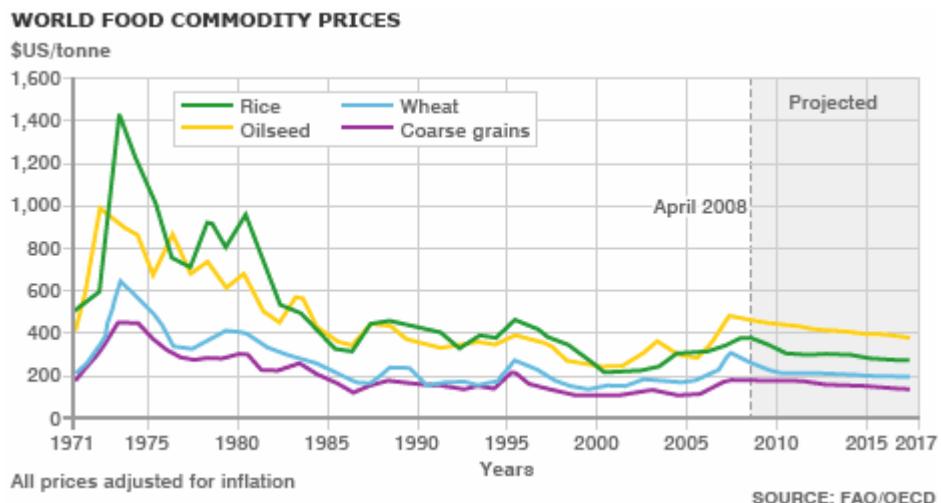
3. On the demand side, the continuation of levels of consumption in the industrialized countries, particularly of animal protein-rich food such as dairy products and meat, which would be unsustainable if they were to be replicated universally, and improving diets in large, fast-growing economies - although they still lag far behind the levels of consumption achieved in the OECD countries - have further contributed to putting pressure on the markets. These changes in diets multiply the impact of natural population growth, which increases by about 75 million persons each year. Finally, the resulting increase of the prices of agricultural primary commodities on the international markets was severely exacerbated by (although not caused by) the arrival on those markets of non-commercial investors, who massively shifted to primary agricultural commodities in 2006 and especially 2007. While there remains disagreement about whether this, *per se*, contributed to the soaring of prices, it certainly did lead to more volatility in the concerned markets.

2. The crisis in historical perspective

4. There is some analogy between the current crisis and earlier episodes. Following the oil price shocks of 1973 and 1979, sudden supply-side shocks already had sent commodity prices significantly higher. Especially in 1972-1973, due to wheat harvest failures in the USSR, the prices of grain went up in proportions comparable to those we are witnessing today. After the Soviet Union decided to buy significant quantities of grain on the world markets, prices trebled between mid-1972 and mid-1973. As a result of this peak in prices, the private sector invested more into agriculture, and national policies were set in place to encourage production. As a consequence of the resulting efficiency gains, prices were brought down to their previous levels.⁵⁵ The tendency towards constantly lower prices continued throughout the 1980s and

⁵⁵ *Global commodities: a long term vision for stable, secure and sustainable global markets*, HM Treasury, United Kingdom, June 2008, available from www.hm-treasury.gov.uk.

1990s, with the exception of a small increase in 1979-1980 and during the mid 1990s. These evolutions are reflected in the real value of the extended Food price Index of FAO. The index reached its peak in 1974 (250) and then it has been followed by a decline in real food prices till end of the 1980s (100) followed by a small increase in the mid 1990s, followed by a historical low in 1999. Between 2000-2005 it has been increasing at a rate of 1.3 per cent per year and has increased to 15 per cent per year since 2006, reaching a level of 160 in 2008.



5. The structural decline in the prices of agricultural primary commodities over the last 30 years clearly hindered the development of the agricultural sector in a number of developing countries. Prices on the international markets were depressed due to two factors: remarkable increases in productivity per hectare by mechanisation and the use of improved seeds and other inputs in certain developing countries while the average wages remained low; and public support to farmers, including in the form of export subsidies, in industrialized countries with high salaries. The result was that for many farmers in the South, there were few incentives to produce much beyond subsistence levels, even when they could achieve such levels - which often they could not. This was further aggravated by the retreat of the public sector from agriculture, in part because institutions such as marketing boards, because they were considered inefficient and at times mismanaged, were dismantled following prescriptions of the international financial institutions, and in part because too little of the public budget was invested into agriculture, rural services, and the development of infrastructure for the rural areas. Massive impoverishment of the rural areas and rural flight followed. A number of countries which previously were self-sufficient in food became net-food-importing in the 1980s.⁵⁶ The

⁵⁶ Developing countries had an overall agricultural trade surplus of almost US\$ 7 billion per year in the 1960s. According to the Food and Agricultural Organization (FAO), gross imports of food by developing countries grew with trade liberalization, turning into a food trade deficit of more than US\$ 11 billion by 2001 with cereal import bill for Low Income Food Deficit Countries reaching over US\$ 38 billion in 2007/2008.

resulting situation was not sustainable. Even in the cases where these food-importing countries could feed their population, particularly the growing number of urban poor having left the countryside, thanks to relatively cheap food dumped on the international markets, the decline of the agricultural sector made these countries extremely vulnerable to external shocks, and particularly to sudden rises in prices of commodities traded on international markets. This is the crisis they now face.

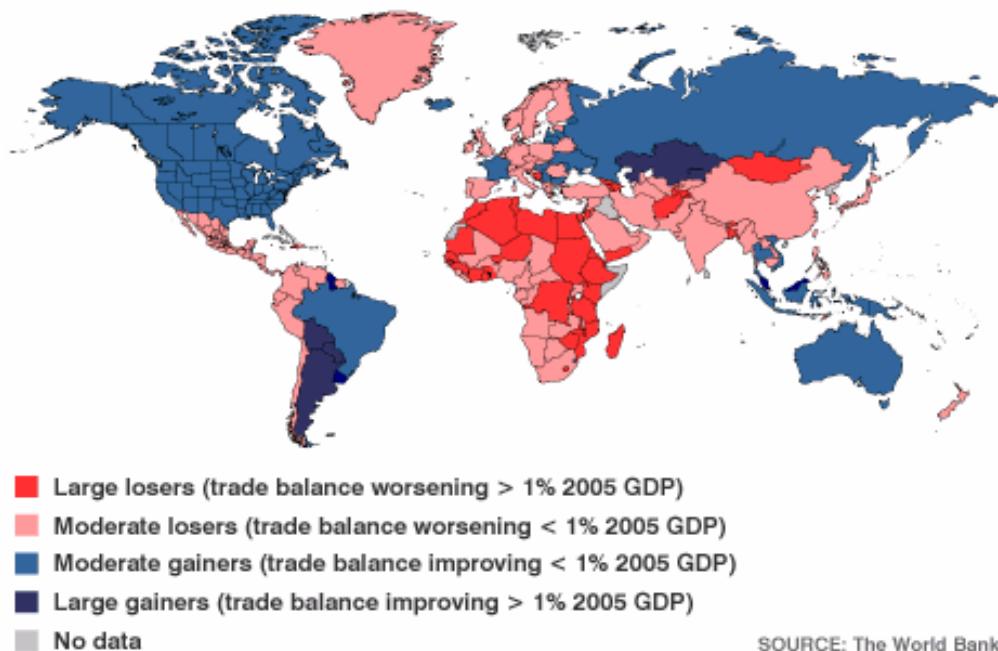
3. The impacts⁵⁷

6. The increase of 2006-2008 in the prices of food commodities on international markets was almost unprecedented by its scale and brutality. The impact has been severe on the ability of international agencies to provide food, especially where the levels of food aid provided by governments are calculated in prices rather than in volumes. The surge in prices has also increased the import bills of poor net-food-importing countries. The food import bill of the Low-Income Food-Deficit Countries is expected to reach US\$ 169 billion in 2008, 40 per cent more than in 2007. Developing countries as a whole could face an increase of 33 per cent in aggregate food import bills, coming on the heels of a 13 per cent increase the year before. The balance of payments effects of food price increases are thus significant, especially when combined with the impacts of rising fuel prices, which are often even more important. According to data from the World Bank, Africa and Asia are the main losers from the food price increase as most of these countries are net food importers. Most of the developed world, Russia, Latin America, and South East Asia improve their trade balance as a result of the food price increase. However, since all food commodity prices have not increased to the same extent, consumption patterns vary across countries and countries tend to import some commodities while exporting others a careful analysis is needed to determine which countries gain and lose due to the current food price increases. In addition exchange rate changes can lower or worsen the impact of change in international food prices. Even net food exporting countries could worsen their trade balance if the commodities they import show far higher increase in prices as compared to commodities they export. So a case by case analysis is needed to determine the impact on the country level.

7. The map below depicts the impact on trade balances of countries:

⁵⁷ The Special Rapporteur acknowledges the contribution of Mr. Rahul Lahoti to this part of the analysis, for which the Special Rapporteur bears full responsibility.

**2007 - 2008 IMPACT OF PROJECTED FOOD PRICE INCREASES ON
TRADE BALANCES**



8. The impact of the increase of food prices on international markets has been severe on net food buyers in countries in which the consumers are insufficiently insulated from such impacts. Particularly at risk are the landless labourers and the urban poor. But among the losers are also a large number of smallholders, themselves net food buyers, and who are unable to benefit from the increase in prices on the international markets, because the increase occurs at a time when the price of their inputs hits record levels and because they are not connected to global supply chains.⁵⁸ At the same time, others have benefited: global

⁵⁸ It has been argued by some analysts that since 1° poverty is concentrated in the rural areas, 2° this is driven by low and declining food prices and 3° the net food sellers are the very poor, an increase in food prices might have a positive impact on poverty. M. Ataman Aksoy and Aylin Isik-Dikmelik (“Are Low Food Prices Pro-Poor? Net Food Buyers and Sellers in Low-Income Countries”, The World Bank: Washington, D.C., 2008) argue that although there are more poor net food buyers than sellers, about half of net food buying households is marginal net food buyers, and thus price increases will have a small effect on their welfare. In their analysis for nine countries the average incomes of net food buyers are higher than the average incomes of net food sellers in eight of nine countries. Thus, higher food prices will, on average, transfer income from richer to poorer households and be pro poor. Also they argue that incomes of the net food buying households in the rural areas depends on the expenditures of food selling households and an increase in that might positively impact the food buying households. However, this analysis presupposes that higher prices for food commodities on international markets will translate into higher prices at the farmgate - an assumption which, due to the current organisation of the food production and distribution chain, will be valid only in limited contexts, particularly in countries such as Vietnam with highly egalitarian distribution of land resources.

agribusiness firms and food retailers,⁵⁹ traders and speculators, a small number of net-food-exporting countries and large agricultural producers, well connected to the international markets.

4. The responses

9. The global food crisis led to reactions in three, partly overlapping, phases. During the first phase of the crisis, a number of Governments adopted measures on a unilateral basis, without coordination. Some countries sought to lower domestic prices by lowering import tariffs or by imposing export restrictions, in the form of export taxes or even export bans on certain categories of food crops. The lowering of tariffs on imports provided temporary relief to consumers, albeit at a high fiscal cost in countries whose public budget is heavily dependent on such tariffs. While in certain cases necessary to respond to the immediate needs of the population, export restrictions also provided such relief, but at the risk not only of penalizing local agricultural producers and creating the wrong incentives for them, but also of worsening the situation on the international markets. Some countries sought to rebuild largely depleted strategic reserves of grain, even though this might have contributed further to the price spikes. Some countries sought to strengthen support programmes for the poor, in the form of cash subsidies, vouchers, cash- or food-for-work programmes, health and nutrition programmes, or schoolfeeding programmes.

10. These reactions have been examined in detail elsewhere and shall not be recounted here. It should be noted however, that some of these measures (particularly trade policy measures) sought primarily to keep the prices low on domestic markets (or to limit their increase), for the benefit of all consumers including those who would have been able to support higher prices, although targeted measures, particularly social programmes aimed at the poor, would have been more efficient. It is also striking that these measures were adopted without consideration of their impact on the ability of other countries to feed their populations. This disregards every State's obligation to uphold the right to food, not only of its own population, but also in other countries. It also shows a lack of consistency, since the imposition of export restrictions or the reconstitution of strategic reserves precisely when the prices on international markets are high have further exacerbated the tensions on the markets and further perpetuated the very developments such measures were seeking to react to.

⁵⁹ It has been reported that: "Cargill, the world's biggest grain trader, achieved an 86 per cent increase in profits from commodity trading in the first quarter of this year. Bunge, another huge food trader, had a 77 per cent increase in profits during the last quarter of last year. ADM, the second largest grain trader in the world, registered a 67 per cent increase in profits in 2007. Nor are retail giants taking the strain: profits at Tesco, the UK supermarket giant, rose by a record 11.8 per cent last year. Other major retailers, such as France's Carrefour and Wal-Mart of the US, say that food sales are the main sector sustaining their profit increases" (GRAIN report, Making a killing from hunger, April 2008, available from: www.grain.org/articles/?id=39).

11. International agencies mobilized their efforts in order to address the most immediate needs - those of the hungry of course, but also those of the farmers who, because of the increase in the prices of agricultural inputs, were unable to prepare for the next harvests. In December 2007, the FAO launched its Initiative on Soaring Food Prices (ISFP). It seeks to offer technical and policy assistance to poor countries affected by high food prices in order to help farmers improve production by facilitating access to inputs such as improved seeds, organic and inorganic fertilizer and water. Burkina Faso, Mauritania, Mozambique and Senegal were the first countries benefiting from the ISFP; by June 2008, 54 countries were covered, for a total amount of 23.8 million US\$. This sum is largely insufficient, and it should be complemented by other partners. According to FAO, the countries most affected, especially in Africa, will need at least a total of US\$ 1.7 billion for short-term measures during 2008-2009 just in order to start reviving their agricultural systems. In this regard, ISFP should play a catalytic role. In March 2008, the World Food Programme launched an emergency appeal for 755 million US\$, in order to cover the incremental costs of its original 2008 work programme, taking into account the increase in the prices of food and fuel ; the appeal gathered 1.2 billion US\$, including 500 million US\$ from Saudi Arabia. In June 2008, 81 million beneficiaries required food assistance, bringing the total cost of 2008 activities with 4.9 metric tons of food to just over US\$ 4.78 billion. However, it is estimated that the WFP's requirements for food assistance programs have increased to approximately US\$ 6 billion annually, as a result of the global food crisis. And on 25 April 2008, the International Fund for Agricultural Development announced it would make available up to 200 million US\$ from existing loans and grants to provide an immediate boost to agricultural production in the developing world. This sum could be increased soon, since IFAD has identified 800 million US\$ in undisbursed fund that might be suitable for reprogramming in order to boost production by providing essential inputs to farmers.

12. In order to assist countries to face their balance of payments difficulties, the International Monetary Fund provided additional balance of payments support by augmented access to 12 countries under Poverty Reduction Growth Facility (PRGF) arrangements, with the first in early January 2008.⁶⁰ Discussions are ongoing, at the time of writing, about loosening the conditions for access to the Exogenous Shocks Facility (ESF) and the non-concessional Compensatory Financing Facility (CFF).

13. Important though as they are, these initiatives would have been even more effective if they could have begun earlier, prior to the first uncoordinated reactions, including hoarding by traders speculating on higher prices and the imposition of export restrictions by net-food-exporting States. Although governments responded speedily to the emergency appeal of the WFP, it is simply unacceptable that, in order to act effectively in the face of such a crisis, international agencies have to spend weeks calling upon international donors in order to fund their response programmes: it is as if the firefighters were being recruited after the fire has started.

14. A second phase opened with a number of high-level meetings which sought to improve coordination between the agencies involved in addressing the global food crisis and, in part

⁶⁰ The total amount disbursed amounts to some SDR 143 million, about double the access under outstanding loans.

through these agencies' activities, between governments. Initiatives were adopted both at the operational and political levels. On 28-29 April 2008, the Executive Heads of the UN specialized agencies (including the Bretton-Woods institutions), funds and programmes and the World Trade Organisation, gathered in Bern in order to agree on a common strategy. The Chief Executives Board agreed on the need to address the crisis through short-term measures (including through the emergency programme launched by the WFP and by supporting developing country farmers for the next harvests), but also through short-to-medium term measures (including support for the establishment of safety nets and income generation programmes, and to countries experiencing balance of payments difficulties as a result of higher food and oil prices), medium-to-long term measures (including support for improved agricultural decision-making to boost production and productivity), and long-term measures (including further research on the impact of diversion of food crops towards agrofuel production and support for agriculture in Africa). Many of these components of the responses to the global food crisis were already contained in the "New Deal for a Global Food Policy" proposed on 13 April 2008 by the president of the World Bank Group, and endorsed by the Development Committee of the World Bank and the International Monetary Fund. The Bern meeting reinforced inter-agency cooperation, in particular by setting up a High Level Task Force on the Global Food Crisis (HLTF), which held its first meeting on 12 May 2008 and launched work on a "Comprehensive Framework for Action" (CFA). A first draft of the CFA was presented at the High-Level Conference on World Food Security held at the FAO headquarters in Rome on 3-5 June.

15. The CFA was finalized in mid-July. It is best described as a menu of actions, to be adapted according to national specificities, which the UN agencies and the Bretton-Woods institutions have identified as constituting the best response to the global food crisis. Two sets of immediate actions are listed. One aims at meeting the immediate needs of the vulnerable populations by improving access to food and nutrition support and increasing food availability. This translates not only into measures of a humanitarian nature, but also into actions to boost smallholder farmer-led food production, and trade and tax measures such as the use of strategic grain reserves to lower prices. Another set of actions, also to be launched immediately, aims at building longer-term resilience and contributing to global food and nutrition security, by expanding social protection systems; sustaining the growth of smallholder farmer food production; improving international food markets; and developing an international consensus on agrofuels. In addition, a third set of actions aims at establishing better global information and monitoring systems, particularly by better coordinating existing information systems and by developing the practice of comprehensive assessments and monitoring.

16. The contribution of the World Bank has been significant. On 29 May, the Bank launched the Global Food Crisis Response Program (GFRP), which aims to facilitate a rapid and flexible response of the Bank to the crisis, by (i) reducing the negative impact of high and volatile food prices on the poor, (ii) supporting countries in designing sustainable policies that mitigate the adverse impacts of high and volatile prices on poverty while minimizing long-term market distortions, and (iii) supporting efforts to increase productivity in agriculture as well as market participation to ensure an adequate and sustainable food supply response. It includes a facility drawing on a variety of funding sources, including a new multidonor trust fund, with a total authorized ceiling of US\$ 1.2 billion.

17. At the political level, a number of meetings took place which sought to achieve a consensus on what needs to be done by governments about the crisis. The Human Rights Council convened in a special session on 22 May. On 20-23 May, the Economic and Social Council also held a meeting on the issue. On 28-30 May, the Tokyo International Conference on African Development (TICAD IV) adopted an action plan and a follow-up mechanism laying out a road map for action-oriented initiatives with measurable targets in order to promote further growth in Africa. On 3-5 June, the FAO convened a High Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy, which a large number of heads of State and governments attended. The G8 Hokkaido-Toyako Summit adopted a statement on global food security. Finally, on 18 July, the General Assembly held a meeting on the food and energy crisis, and this theme will again be on the agenda of its sixty-third session.

18. Finally, we are now entering a third phase, one during which a new architecture for the global food system is being discussed, in order to improve world food security in a sustainable fashion. Building on the “New Deal for a Global Food Policy” proposed by the World Bank⁶¹ and on a French proposal, the G8 Leaders called for a global partnership on agriculture and food “involving all relevant actors, including developing country governments, the private sector, civil society, donors, and international institutions”. They stated (para. 4):

This partnership, strengthening and building on existing UN and other international institutions, could provide efficient and effective support for country-led processes and institutions and for local leadership, draw on the expertise in existing international organizations and, in particular, ensure monitoring and assessment on progress. The UN should facilitate and provide coordination. As part of this partnership, a global network of high-level experts on food and agriculture would provide science-based analysis, and highlight needs and future risks.

19. The statement also referred to the need to “explore options on a coordinated approach on stock management, including the pros and cons of building a ‘virtual’ internationally coordinated reserve system for humanitarian purposes” (para. 6). The UN Secretary-General, in his presentation to the UN General Assembly of 18 July 2008, fully endorsed the idea of a Global Partnership for Food. During the next few months, discussions will continue on these proposals.

⁶¹ See The World Bank, Double Jeopardy: Responding to High Food and Fuel Prices, G8 Hokkaido-Toyako Summit, 2 July 2008 (putting forward a 10-point action plan for a “New Deal for Global Food Policy”, for consideration by the G8 Leaders).

Annex II

THE IMPACTS OF AGROFUELS PRODUCTION ON THE RIGHT TO ADEQUATE FOOD

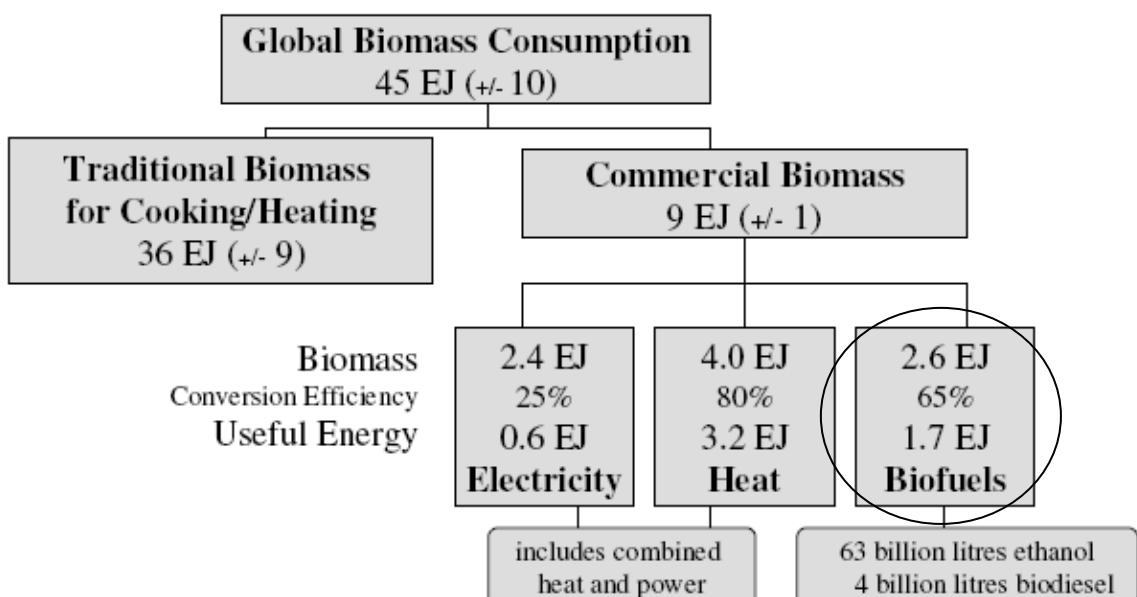
1. In the broad sense of the expression, agrofuels include all biofuels produced out of agriculture and livestock products. The agrofuels that have been the object of tremendous increase in demand and also of fierce debates in recent years, i.e. bioethanol and biodiesel for transportation (circled in both Diagram 1 and Figure 1), are only a fraction of agrofuels, and as Figure 1 shows, they constitute a tiny fraction of biofuels in general. The debate on liquid biofuels for transportation should not obviate all the other non-transport or stationary uses of biofuels, including biogas, firewood and even bioethanol and biodiesel for stationary energy in rural areas. In this paper, for the ease of convenience unless specified otherwise, the term agrofuels refers to liquid biofuels used for transport, i.e. bioethanol and biodiesel.

Diagram 1: Biofuels by source and types⁶²

Production side, supply	Biofuel type	Users side, biofuel examples
Direct woodfuels		Solid: fuelwood (roundwood, chips, sawdust), charcoal
Indirect woodfuels	WOODFUELS	Liquid: black liquor, ethanol
Recovered woodfuels		Gaseous: pyrolysis gas
Fuel crops		Solid: straw, stalks, huks, bagasse
Animal by-products	AGROFUELS	Liquid: ethanol, oil diester
Agroindustrial by-products		Gaseous: pyrolysis gas
	MUNICIPAL BY-PRODUCTS	Solid: municipal solid wastes
		Liquid: sewage sludge, pyrolytic oil
		Gases: biogas, pyrolytic gas

⁶² Courtesy of Olivier Dubois (FAO).

Figure 1: Contributions of biomass to global primary and consumer energy supplies in 2007⁶³



2. The impact on the right to adequate food of the development of bioethanol and biodiesel for transportation occurs at three levels. First, the pace of this development has significantly contributed to the increase of the prices of certain agricultural commodities on international markets, threatening the enjoyment of the right to adequate food. Second, a number of negative impacts on the right to food can be expected from the methods of production of agrofuels, in the locations where such production takes place. Third, when produced in developing countries in order to satisfy the growth of demand in industrialized countries, agrofuels may lead to a distorted development, benefiting only a minority, and worsening the lot of many others. These impacts are examined in turn.

1. The impact of agrofuels production on international prices of agricultural commodities

3. Certain policies aimed at promoting the use of agrofuels, in the form of blending mandates or tax breaks or subsidies for agrofuel production,⁶⁴ have contributed to the increase of the prices

⁶³ G. Best et al., *A Sustainable Biofuels Consensus*, Rockefeller Foundation, Bellagio Study and Conference Center, 2008 (based upon IEA, World Energy Outlook 2006, OECD/IEA, Paris, France, and World Energy Assessment Overview: 2004 Update, UNDP, UN-DESA and the World Energy Council, 2004).

⁶⁴ For an overview, R. Steenblik, “Biofuels - At What Cost? Government Support for Ethanol and Biodiesel in Selected OECD Countries”, Geneva: Global Subsidies Initiative of the International Institute for Sustainable Development, 2007. The U.S. for instance has a tax credit available to blenders of ethanol of USD 0.51 per gallon and an import tariff of

of agricultural commodities on the international markets. Estimates vary about the percentage of price increases which can be explained by the rise in demand for cropland and feed resulting from recent initiatives, particularly in the United States and in the European Union, aiming at encouraging the reliance on agrofuels as an alternative to fossil fuels.⁶⁵ But there is a consensus that these initiatives have had a significant impact. The IMF estimated that the increased demand for biofuels accounted for 70 per cent of the increase in maize prices and 40 per cent of the increase in soybean prices.⁶⁶ A recent study on the factors having led to the increase in internationally traded food prices from January 2002 to June 2008 concludes that “the most important” of these was the large increase in biofuels production from grains and oilseeds in the U.S. and EU. This study estimates that, while energy prices and related increases in fertilizer prices as well as the weak dollar could explain 25-30 per cent of the increase in food commodities prices, the remaining 70-75 per cent could be attributed to agrofuels production:

Without these increases [in the production of feed for fuel], global wheat and maize stocks would not have declined appreciably and price increases due to other factors would have been moderate. Land use changes in wheat exporting countries in response to increased plantings of oilseeds for biodiesel production limited expansion of wheat production that could have otherwise prevented the large declines in global wheat stocks and the resulting rise in wheat prices. The rapid rise in oilseed prices was caused mostly by demand for biodiesel production in response to incentives provided by policy changes in the EU beginning in 2001 and in the U.S. beginning in 2004. The large increase in rice prices was largely a response to the increase in wheat prices rather than to changes in rice production or stocks, and was thus indirectly related to the increase in biofuels. Recent export bans on grains and speculative activity would probably not have occurred without the large price increases due to biofuels production because they were largely responses to rising prices.⁶⁷

USD 0.54 per gallon, as well as a biodiesel blenders tax credit USD 1.00 per gallon. The U.S. mandated 7.5 billion gallons of renewable fuels by 2012 in its 2005 legislation and raised the mandate to 15 billion gallons of ethanol from conventional sources (maize) by 2022 and 1.0 billion gallons of biodiesel by 2012 in the 2007 Energy Independence and Security Act.

⁶⁵ An IFPRI study suggests price increases of between 16 and 43 per cent at best and between 30 and 76 per cent at worst, depending upon the commodity (Mark Rosegrant and others, “Biofuels and the global food balance”, in *Bioenergy and Agriculture: Promises and Challenges*, Peter Hazell and P. K. Pachauri, eds. (IFPRI, 2006); see also Marc Cohen and others, *Impact of Climate Change and Bioenergy on Nutrition*, IFPRI and FAO, 2008). Others consider that in the medium-term, when markets will be operating well, the impact on prices will be lower, averaging 5 per cent for most crops, although with significantly higher increases for certain feedstock crops like oilseeds, maize and sugar cane (*The Gallagher Review of the indirect effects of biofuels production*, The Renewable Fuels Agency, July 2008, at 57-58).

⁶⁶ John Lipsky, First Deputy Managing Director, IMF, *Commodity Prices and Global Inflation, Remarks At the Council on Foreign Relations*, New York City, May 8, 2008.

⁶⁷ Donald Mitchell, *A Note on Rising Food Prices*, The World Bank, Policy Research Working Paper No. 4682, July 2008, at 16-17.

4. The policies of the U.S. and of the EU are singled out in this respect. In contrast, according to this study, “Brazilian ethanol production from sugar cane has not contributed appreciably to the recent increase in food commodities prices, because Brazilian sugar cane production has increased rapidly and sugar exports have nearly tripled since 2000. Brazil uses approximately half of its sugar cane to produce ethanol for domestic consumption and exports and the other half to produce sugar. The increase in cane production has been large enough to allow sugar production to increase from 17.1 million tons in 2000 to 32.1 million tons in 2007 and exports to increase from 7.7 million tons to 20.6 million tons. Brazil’s share of global sugar exports increased from 20 per cent in 2000 to 40 per cent in 2007, and that was sufficient to keep sugar price increases small except for 2005 and early 2006 when Brazil and Thailand had poor crops due to drought”.⁶⁸

5. Considering the impact of the increase of the international prices of food commodities on the poorest, policies aimed at promoting the use of agrofuels from feedstock, having an inflationary impact on staple foods, could only be justified under international law if very strong arguments are offered, showing that the benefits from agrofuels outweigh the negative impacts. Indeed, the introduction of mandates for agrofuels and the provision of subsidies encouraging the creation of a viable market for agrofuels should be considered as deliberately retrogressive measures. Under the doctrine of the UN Committee on Economic, Social and Cultural Rights, a State adopting such measures has the burden of proving that they have been introduced only after the most careful consideration of all alternatives and provided only that they are duly justified by reference to the totality of the rights provided for in the Covenant on Economic, Social and Cultural Rights.⁶⁹

6. For the moment, the Special Rapporteur has serious doubts that this burden can be met. The main justifications which have been put forward for the imposition of blending mandates and the granting of subsidies to encourage agrofuels production are that this would limit the emission of greenhouse gases; that this would ensure a security of supply, limiting the dependency of the EU and the U.S., in particular, on crude oil imported from politically unstable regions; and that this would create employment. But, as already noted in a previous note presented by the Special Rapporteur, the first justification has been seriously challenged by recent scientific evidence, which demonstrates that, taking into account the full life cycle of the product (including the shifts in land-use resulting from an increased demand for cropland for agrofuels) as well as the massive volumes of water required to produce fuel from crops, the hopes put in agrofuels as an alternative to fossil fuels have been largely misplaced: indeed, with the exception of the production of ethanol from sugarcane in Brazil, the carbon balance of other agrofuels produced from crops is potentially very negative, particularly when land with high

⁶⁸ Id., at 9.

⁶⁹ See General comment No. 3 (1990), para. 9.

carbon content, such as forest or peat land, is converted to grow agrofuels.⁷⁰ The second justification is highly implausible. Agrofuels cannot constitute an alternative to reliance on fossil fuels. This follows from a simple comparison between the shifts in the use of crops for the production of agrofuels and the share of agrofuels in the transport fuel market: in 2007, approximately 23 per cent of coarse grain production in the U.S. was used to produce ethanol, for a share of ethanol in the gasoline transport fuel market of 4.5 per cent in 2008 ; in the EU, although 47 per cent of vegetable oil production was used in the production of biodiesel, causing higher imports of vegetable oil to meet domestic consumption needs, the biodiesel share of the diesel transport fuel market was 3.0 per cent.⁷¹ The U.S. National Academies of Sciences found that even if all the corn and soybeans produced in the U.S. in 2005 were used for bioethanol production, this would only replace 12 per cent of the country's gasoline demand and 6 per cent of its diesel demand.⁷² As to the third justification, it relates to the second level at which the development of agrofuels may have an impact on the right to food.

2. The impact on human rights in the country of production

7. Apart from its impact on the level of certain agricultural commodities, the development of agrofuels could have social and environmental impacts, which also may affect the right to food as an element of the right to an adequate standard of living. Specifically, the increased demand for crops for fuel may raise the price of cropland, making access to land even less affordable than it is presently as smallholders will be pit against large producers for the acquisition of land. It could lead to the eviction of landusers whose titles to the land are insecure, or to the displacement of populations, particularly of indigenous peoples, in order to allow for the

⁷⁰ The deforestation encouraged by the increased demand for agrofuels may be indirect. For instance, the increased demand for maize in the U.S., a result of the policies encouraging production of ethanol from that crop particularly since 2004, has led to restricting the supply of soybean by U.S. farmers, attracted by the subsidies linked to the production of maize for ethanol. The result has been the expansion of soybean production in Brazil, at the expense of portions of the cerrado and of the Amazonian rainforest.

⁷¹ The situation of Brazil is different. They have imposed blending mandates since 1938, and it sought to ensure its energy independence by supporting a domestic ethanol policy, Proálcool, since 1975. As a result, 54 of Brazil's sugarcane crop goes to ethanol, for a share of gasoline transport fuel market of 40 percent. These figures are provided in FAO, *Bioenergy, food security and sustainability*, High-level Conference on World Food Security, doc. HLC/08/INF/3, April 2008, para. 7.

⁷² M. Muller, T. Yelden and H. Schoonover, *Food versus Fuel in the United States - Can Both Win in the Era of Ethanol?*, Institute for Agriculture and Trade Policy (IATP), September 2007, 2, available at www.iatp.org. The article refers to a study by the National Academies of Sciences, by J. Hill, E. Nelson, D. Timan, S. Polasky and D. Tiffany, "Environmental, economic and energetic costs of biodiesel and ethanol biofuels", 12 July 2006.

development of large plantation-form agricultural exploitations for the production of agrofuels.⁷³ One study estimates that as many as 60 million indigenous people will be driven from their lands, under customary ownership, to clear the way for biofuels plantations, if current investment plans are realized.⁷⁴ Because much of the bioenergy industry relies on improved or genetically modified seeds which are protected by patents, it further aggravates the concentration of power in agriculture in the hands of a limited number of dominant actors, mostly large multinational corporations, further marginalizing smallholders.⁷⁵ In many cases, despite commendable efforts made by the governments concerned in order to combat this phenomenon, the employment which is created in the plantations for bioenergy crop production, because of their scale and of the concentrated structure of ownership, is exploitative in nature.⁷⁶ The expansion of monoculture plantations of soy, oil palm, jatropha, sugar cane, maize, cassava and other fuel crops, may also have detrimental impacts on biodiversity and an impact of diets, since in the regions affected the variety of local foods available may be reduced. In addition, it will increase the competition for scarce water between current landusers and bioenergy crop production, and aggravate water scarcity problems. While employment may be created by the agrofuels industry - in 1997, the ethanol sector employed one million in Brazil, 65 percent of which in permanent jobs⁷⁷ - these benefits should be measured against these impacts, and in particular the potential violations of the right to food and the right to water which may result from such an

⁷³ See International Institute for Environment and Development (IIED) and the Food and Agriculture Organization (FAO), *Fuelling Exclusion? The Biofuel Boom and Poor People's Access to Land*, by Lorenzo Cotula, Nat Dyer and Sonja Vermeulen, www.iied.org/pubs/pdfs/12551IIED.pdf; Rachel Smolker and others, The Real Cost of Agrofuels: Impacts on food, forests, peoples and the climate, Global Forest Coalition and Global Justice Ecology Project, 2008.

⁷⁴ See Victoria Tauli-Corpuz and Parshuram Tamang, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*, Permanent Forum on Indigenous Issues, sixth session, New York, 14-25 May 2007, doc. E/C.19/2007/CRP.6 (7 May 2007).

⁷⁵ Institute for Agriculture and Trade Policy, *Patents: Taken for Granted in Plans for a Global Biofuels Market*, October 2007. According to one study, patents granted in the industrial biotechnology already increased from 6000 in 2000 to 22.000 in 2005, predominantly for biofuel production: see IATP and IIED, *The multilateral trade and investment context for biofuels: Issues and Challenges*, April 2008, at 20.

⁷⁶ See FIAN, *Fact-Finding Mission Report on the Impacts of Agrofuels Expansion on the Enjoyment of Social Rights of Rural Workers, Indigenous Peoples and Peasants in Brazil*, April 2008.

⁷⁷ J. von Braun and R.K. Pachauri, *The Promises and Challenges of Biofuels for the Poor in Developing Countries*, IFPRI, 2006.

evolution. And even if the country as a whole stands to gain from developing the production of agrofuels, this should not be accepted as a justification if the situation of the most food insecure in the country worsens: indigenous peoples, smallholders and landless labourers are at particular risk, since these are the categories whose situation may worsen as a result of the change of land-uses for the production of feedstock for fuels.

8. None of the above is to say that the production of fuel from crops should be condemned per se. In fact, criteria could be developed which, agreed to by international consensus, could provide guidance to States about the development of agrofuels on their territory and about the conditions they could impose on the import of feedstock for agrofuels from abroad. It is in the nature of such criteria that different crops would be evaluated differently. For instance, while the production of ethanol from maize has a clearly demonstrated negative impact on food security, plantation production of sugarcane for ethanol or the cultivation of jatropha on depleted or dry land not suitable for the production of food crops may lead to increased welfare and reduced poverty, due to income-earning opportunities, with positive implications for food security.⁷⁸ Similarly, the imposition of such criteria could encourage practices, in particular modes of production, which contribute most to the reduction of poverty in the source countries, and to improving overall food security. Indeed, although in most cases the production of feedstock for fuel is more competitive if it relies on economies of scale related to largescale industrial production, due to the high investment cost related to processing, other forms of production may be encouraged, such as forms of contract farming in which “the processor purchases the harvests of independent (smallholder) farmers under terms agreed to in advance through contracts”; and smallholders could be assisted in “building cooperatives, marketing associations, partnerships and joint ventures, and coordinating their supply into larger production facilities will benefit smallholder participation in biofuel markets just as it holds potential for other agricultural markets”.⁷⁹

3. The impact of international trade in agrofuels: shaping development through export crops

9. The potential impact of the development of agrofuels should also be considered at a third level. While the demand for agrofuels is highest in the industrialized countries, particularly the U.S. and the EU, these countries do not have enough agricultural lands suitable to grow energy crops. In contrast to what is the case in developed countries, large portions of land remain unused or are not under intensive use in developing countries. Developing countries also have a comparative advantage for the production of agrofuels through their lower wages and labour standards. In addition, while the most energy-efficient agrofuel feedstock are sugarcane and (to a lesser extent) palm oil, these crops are best grown in tropical and sub-tropical climates.

⁷⁸ C. Arndt and others, *Biofuels, Poverty and Growth: A Computable General Equilibrium Analysis of Mozambique*, IFPRI, 2008.

⁷⁹ FAO, *Bioenergy, food security and sustainability*, cited above, para. 25.

10. The development of international trade in agrofuels will therefore further aggravate the current situation in which, due to the significant purchasing power of consumers in industrialized countries, a competition will emerge between the production of food for local consumption in developing countries and the production of feedstock for transport and other uses in industrialized countries. This is not a new phenomenon, of course: it is one which is linked to the problem of cash crops in general, understood as crops which are exported instead of being consumed in the country in which they are grown, and the production of feedstock for fuel presents a certain analogy in this respect with the production of feed for livestock, in order to meet primarily the demand for dairy food and meat in industrialized countries. What is unique however about the demand for crops for fuel production is that this demand is much more sensitive to price changes than demand for crops for food: while the level of consumption of calories and even the composition of diets vary only to a small extent when prices change - households usually cut down on education or other non-vital items before limiting their consumption of food -, the demand for fuel is much more elastic, although it is driven both by the price of oil (with which agrofuels compete) and by the price of crops. This means that the volatility of the international markets for agrofuels may be particularly high. Even more importantly, the demand for agrofuels is potentially almost infinite. Whereas increased demand for crops for food or in order to feed livestock reaches a natural limit - the demand is saturated at a certain level -, once crops are turned into bioethanol or biodiesel, the level of demand can be such that a very large proportion of crops can be used for that purpose, without a risk of saturation of markets before long. Thus, if the production of agrofuels is to develop in the future, it will be particularly important to monitor the impact on the non-growers of these crops in the producing countries: for even if the crop-growers themselves benefit from producing crops for fuel which they export to foreign markets, the impacts could be negative on those other segments of the local population, whose food security might suffer, for instance as a result of the increased price of land or a diminished availability of food.
