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增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

食物权问题特别报告员奥利维耶·德舒特的报告 *

建立承受能力：一个促进世界粮食和营养安全的人权框架

* 人权理事会在 2008 年 5 月 22 日通过的第 S-7/1 号决议中，请特别报告员邀请各国和其他相关角色就全球粮食危机对保护食物权的影响，以及从人权角度需要采取的补救措施发表意见。并在第九届会议上向理事会报告。由于所涉的时间限制，报告延期提交。报告脚注和附件不译，仅以提交的原文收录。

概 要

2006 年至 2008 年期间，国际市场上粮食初级商品价格的显著增长，使各国面临一些两难问题，例如，是否应当限制价格增长；或者相反，采取行动确保价格增长使农业生产者受益，不对最弱势者或可开发农业燃料(作为运输部门化石燃料的替代物)的条件有负面影响。食物权问题特别报告员在本报告中指出将做的选择对食物权的影响，将其选择置于各国的国内和国际义务的框架内。他解释了为什么应当采用一个人权框架，藉以确定对价格激增所造成新情况必须作出的反应措施，并指导其落实行动。特别报告员同时列举了当前情况的风险和机会，说明为什么需要继续监测国家和国际一级采纳的危机应对举措。

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一、导 言

1. 提交本报告是根据人权理事会在 2008 年 5 月 22 日第七届特别会议上通过的关于世界粮食危机恶化(比如粮食价格飙升)对实现人人享有食物权造成的负面影响的第 S-7/1 号决议。¹ 报告旨在分析全球粮食危机与以国际法承认的适足食物权为依据的可能解决办法。本报告根据《世界人权宣言》第二十五条和《经济、社会、文化权利国际公约》第十一条(按照经济、社会和文化权利委员会的解释)以及其他相关国际标准,为评估各种旨在处理全球粮食危机的举措提出一个人权框架。² 也考虑了粮农组织理事会成员国于 2004 年 11 月 23 日通过的《支持在国家粮食安全范围内逐步实现充足食物权的自愿准则》。该《准则》为各国和其他行为者应当如何在一些领域落实充足食物权提供了详细和实用的处方。

2. 采纳这一视角具有若干意义。特别报告员在指出这些意义时,注意到必须同时以国内和国际一级采纳的措施处理最近粮食价格上升对充足食物权的影响这一事实。各国负有首要责任,确保其管辖下的、单独的或与他人共同生活的每一男女、儿童任何时候都具有物质上和经济上取得适足食物的便利或采购食物的手段。³ 人权方针将以最弱势的居民群体为对象。这些人受到危机的影响最严重,或者可能从补救措施的受益最少。因此,特别重要的是,各国(a) 以恰当测绘粮食不安全和脆弱性情况为依据而采取措施,和(b) 确保关于侵犯食物权行为的问责制。另外,本报告解释各国为何应当(c) 在一个以土地和其他自然资源(比如水和生物多样性)竞争加剧为特征的环境中加强对土地使用者权利的保护;以及(d) 加强妇女权利的保护(见以下第三章)。然而,所有国家和整个国际社会(包括无论属于联合国系统与否的国际机构)都有责任建立一个能使各国有效遵守这些义务的国际环境。这要求所有国家和国际机构(a) 重新审议对在别国享有食物权具有负面影响的政策,并且不采取会有这类影响的新措施;(b) 确保第三方(包括私人行为者)不干涉食物权的享有,从而保护充足食物权;以及(c) 在确认和消除有碍实现食物权的因素方面进行合作,促进充足食物权的实现(见第四章)。

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.

3. 2005 年至 2007 年国际市场的价格增长将导致贫困增长。根据对九个低收入国家的调查, 2008 年 4 月的世界银行研究报告估计这一增长为 4.5%(在没有政策措施减缓价格增长的情况下), 并将另外的 1 亿零 5 百万人驱入贫困。⁴ 鉴于自 1984 年以来的 0.68%年减贫率, 这一 4.5%的贫困增长将葬送几乎七年的减贫努力。据估计, 以 1996 年为基线, 伴随 2025 年粮食价格的 20%增长, 世界的营养不良人口数量将增加 4 亿 4 千万。⁵ 另外, 粮食价格增长也正在迫使各家庭停止购买更有营养的食物, 因为他们几乎支付不起其所需的主食。在减少营养不良方面本已放缓的进展出现逆转, 似乎不可避免。在这种情况下, 必须避免采取可能加剧危机的政策措施。

4. 同样明显的是, 为限制国际市场价格增长所做的努力不足。甚至在当前的危机之前, 据估计 8 亿 5 千 2 百万人没有粮食安全。当前的危机表明, 农产品供应与具有偿付能力的需求之间的不相称, 将来可能进一步恶化这一情况, 甚至使无足够能力采购充足食物的人更支付不起食物。目前 67 亿的世界人口每年增加约 7,500 万; 地球在 2025 年将有 80 亿人, 2050 年将有 92 亿人。据估计, 如果要满足增长的需求, 粮食生产在 2030 年以前必须增长 50%, 至 2050 年必须增长一倍。但是, 如果仅仅以增加农业初级商品总生产量来寻找当前危机的应对措施, 解决造成全球初级商品市场紧张根源的粮食供求不平衡, 将远远无法达到目标。这不仅由于解决粮食不安全和增加农业投资不会切实解决营养不良问题(影响世界上 20 亿微营养素不足的人), 同样而且甚至更重要的是, 某些人过度消费和浪费,⁶ 以及其他许多人购买力不足。这才是主要问题的所在, 而不是粮食短缺。生产更多的粮食不会减轻那些无必要购买力获得现有食品的的人的饥饿。另外, 笼统而言则模糊了分配问题。我们需要生产粮食, 以不仅提高粮食供应, 而且提高生产粮食者的购买力。

5. 因此, 在处理全球粮食危机时, 我们应当经常提醒自己谁处于粮食不安全, 从而将我们的努力用于增强他们的购买力。大多数粮食不安全者生活在农村地区。农业工人属于最弱势的群体, 因为他们的雇佣通常属于非正式的, 剥夺了其免受雇主侵犯的法律保护。他们的数量达到 4 亿 5 千万, 代表了 40%的世界农

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>.

业劳动力。⁷ 粮食不安全群体的另一重要类别是小农户家庭。⁸ 除非仔细规划以增强这类群体的购买力，否则促进生产的措施可能导致大规模农业开发上的投资：技术性耕作以及提供小农户无法进入的市场。大约有 5 亿小农户家庭，总计 15 亿人，以两公顷或少于两公顷的土地为生。由于石油价格的增长，许多人面临着投入物价格前所未有的增长；而与此同时，对于作为粮食净买方的畜牧业者，农作物价格增长使他们在粮食上花费更多。国际市场价格增长将使一些人受益，特别是印度和中国人，但不是其他许多人，特别是撒哈拉以南非洲地区。高粮食价格并不总是滴落在许多贫穷农民必须从事销售的农场上。为增加收入，他们必须获得信贷支付化肥、种子和工具。他们需要获得技术提高生产率。要帮助他们，不是提供粮食，而是支持他们生产粮食并以有利可图的价格出售，使他们从粮食净买方变为粮食净卖方。对于他们，替代选择很明显：或者以耕作小块土地而生存，或者搬入大城市迅速扩大的贫民窟。

6. 概言之，我们面临的挑战不是简单地增加生产；而是确保能够作为一个机会来抓住当前粮食价格的增长，通过有步骤的措施，促进食物权的实现，迈向全球粮食体制的深远改革。以下章节将解释为何如此，以及采纳一个人权框架为何将有助于实现这一点。

二、在建立承受能力的基础上实现可持续解决办法

7. 附件一对危机的驱动因素和应当如何以更广的视角看待这场危机作了简要分析。分析得出两个结论。第一，2006 至 2008 年的价格动荡来自于一些发展中国家 30 多年来一贯削弱农业部门的政策。这不仅使这些国家容易受到粮食初级商品国际价格波动的影响，同时导致了小农户由于缺少农业基础设施和无法获得信贷，公共支持计划被破坏，匆忙和管理不当的贸易自由化影响，以及其在粮食生产和销售链上的地位，而不能受益于当前国际市场价格的增长。必须为当前危机寻找可持续的解决办法来处理这些因素。

⁷ http://www.fao-ilo.org/fao_ilo_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).

8. 采纳一个人权框架可以帮助实现这一目标，因为这可指导重新界定当前危机促成的政策优先项目。“让谁受益”的问题至少与“如何生产更多”的问题同样重要。但是在当前情况下有一个风险，也就是将后者作为最迫切的问题，并且我们侧重于促进提供更多粮食的解决办法，而不充分关注谁在生产，以什么价格和为谁生产的问题。这将是一个影响深远的错误。当前危机所创造的机会之一，是农业投资将来会得到其应有的优先地位。农业投资多年来已经在官方发展援助优先事项的界限中和国家预算中被忽视。但是，需要密切审查如何引导投资、向谁投资及为何目的投资。如果以一种迫切感和我们所面临挑战的误判来引导，纯粹为增加粮食生产而规划投资，则可能导致错误的选择。相反，指引投资的应当是促进可持续农业生产形式的需要、让最需要支持的小农户获益以及对减贫具有最大影响之处。⁹

9. 在担心粮食不足笼罩下的环境中，存在着把机会错当解决办法的风险，并且以增加产量的名义，低估关于制定同时具有社会和环境方面可持续解决办法的需要。风险现实存在的一个标志，是国际上的讨论几乎完全不提粮农组织和世界银行赞助的《农业知识、科学和技术发展国际评估报告》的结论，即：“如果世界将应付一个日益增长的人口和气候变化，同时避免社会瓦解和环境崩溃，则必须迅速改变世界粮食生产方式，以更好地照顾贫困者和饥民，”。¹⁰

10. 比起依赖于别处制定的技术性解决办法，探索这类可持续解决办法可能更难，并且对于私营部门可能更缺少吸引力。但是，这些建议是长期科学研究和咨询的结果，类似于政府间气候变化专门委员会的工作。在制订解决办法提高农

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.

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.

业生产率方面，我们应当首先利用现有关于旨在增加生产的技术性尝试对社会和环境的影响的专门科学知识。

11. 来自于分析(见附件一、9)的第二个结论是，我们应当抵制以简单倒拨时钟的办法而寻找答案的诱惑，即：返回“正常”状况——贫困的乡下供养相对富裕的城市居民并向国际市场提供廉价粮食，作为毁灭许多发展中国家农民生计的补偿。相反，我们需要建立一个制度，确保在面临农业初级商品国际市场日益波动时的充分复原程度，以及在可接受的限度内维持这一波动。根据粮农组织和经济合作与发展组织(“经合组织”)的《2008-2017 年农业展望》，初级粮食商品价格在中期将保持在一个高于 1998-2007 年期间的平均水平，但然后将恢复实际的下降——尽管步伐较前更慢。然而，这些预测是根据一些相当大胆的假设作出的。¹¹ 没有考虑到气候变化和用水不足的潜在影响，尽管我们知道其对农业的威胁，特别是在撒哈拉以南非洲、东亚和南亚——那里的气候变化将影响降雨、增加干旱频率、提高平均气温，并威胁农业用淡水的提供。另外，就定义来说，不可能在这些预测中考虑政策的变化，特别是使用农业燃料的规定、欧盟《共同农业政策》改革，或者国际农业贸易或知识产权体制的变化。因此，我们应当不仅为平均价格更高或价格降低缓慢，而且为价格波动做好准备。¹² 如世界银行指出的，“在一个可能由全球变暖导致的国际粮食价格更波动和供给动荡反复为特征的世界中，管理粮食价格风险是一个基本需要”。¹³ 承认未来价格变化的不稳定性，而不是对价格可能的演变趋势作出有可能给人误导的预测，应当是指导政策的选择。为这一原因，本报告的中心内容是将复原作为应对不确定局面和因此保障人人享有食物的条件。

12. 附件一还提供 2007 至 2008 年全球粮食危机后应对情况的概述。本报告的目的不是详细审查联合国执行机构、国际金融机构或区域开发银行在执行层面所采取的举措；这里也不适合叙述不同场合中各种会议关注全球粮食危机及其应对措施的成果。已经出现一个共识，即采取短期措施不应仅旨在特别是以提供粮食援助而减缓饥饿(尤其是城市贫民)；而是出于上述原因，也应旨在提高小农户的生产力。理事会将处理的问题是：如何可用一个人权框架指引已被重新提出

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

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.

的各种举措和承诺，以及这将会有什么意义？除了理事会第七届特别会议通过的决议以及援引粮农组织于 2008 年 6 月 3 日至 5 日在罗马召开的世界粮食安全高级别会议通过的结果文件中的食物权准则，目前的讨论几乎完全不提及作为人权的适充足食物权。这不仅仅具有象征或宣传上的意义。这导致一个忽略一套可处理全球粮食危机的重要手段的局面。根据人权框架制订粮食问题应对措施，将确保更好地以饥饿和营养不良的人的需求来指引这些应对措施。它将为确定目标，也为确定重点、开展协调、建立问责制和参与而铺平道路。无论食物权是否已因故意或忽视其实施结果而被抛在一边，现在应当将它找回来。

13. 下述意见正是以这一精神提交的。它们侧重于全球粮食体制的未来。目前只有当其显示出在建立关于确保增强未来粮食和营养安全的机制过程中有忽视人权问题的危险时，才提及关于危机的立即应对措施。

三、实现食物权的国家战略

14. 根据《经济、社会、文化权利国际公约》第十一条，各国的首要义务是采取步骤，逐渐达到充分实现适足食物权。这规定了一项尽快争取实现这一目标的义务。¹⁴ 因此，作为人权的适足食物权要求在国家一级采取措施，以有可能使弱势居民群体——无论是否农业生产者的粮食净买者，以及特别是城市贫民和无土地劳工——更好地避免粮食初级商品价格增长的影响。经济、社会和文化权利委员会坚称，各国必须致力于“根据确定这些目标的人权原则采取总国家战略，确保所有人的粮食和营养安全，并需要拟订政策和相应的标准”。¹⁵ 这一国家战略应包括设立适当的机构性机制，从而(a) 以适当的监测制度，在最可能早的阶段确认新出现的对适足食物权的威胁；(b) 评估关于适足食物权的新立法举措或政策的影响；(c) 改进相关各部之间以及政府的国家和次国家一级之间的协调，兼顾在健康、教育、用水和卫生及信息领域所采取措施在营养方面对适足食物权的影响；(d) 增强问责制，明确划定责任，并且为需要逐渐落实的食物权实现而设定确切的时间框架；(e) 确保适当的参与，特别是处于食物最不安全状况的居民群体。

¹⁴ General comment No. 2, para. 14.

¹⁵ General comment No. 12, para. 21.

15. 为了确保其采取的措施向正确的方向发展，各国应当作为优先事项，了解其管辖范围内粮食安全的风险及其拟采取的任何措施的影响。它们应当设立机制，以确保政府所有部门的问责制，确保其履行为实现食物权而承担的义务。它们也应当加强土地使用者和妇女的权利。

A. 绘制粮食不安全和脆弱性情况，并开展监测

16. 在一个人权框架中采取行动，首先要求各国根据适当测绘粮食不安全和脆弱性情况，制定政策对应措施，以必要的准确性而确认如何选择干预行动，并且在采纳可能对食物权有负面影响的法律或政策措施前评估其对食物权的影响。

《食物权准则》13(见上述第 1 段)建议各国建立粮食安全和弱势情况测绘系统，以确认那些由于缺少资产或收入以及其他原因而处于粮食不安全的群体。同样，联合国儿童基金会也强调有必要加强决策的证据基础，根据营养及其相关的健康指标而特别关注于妇女和儿童面临的营养方面危险。¹⁶ 目前关于基本劳工权在实现适足食物权方面作用的讨论中，几乎完全忽视在政策制订早期应当开展此类测绘工作的这一指标。农业工人的地位特别脆弱，有 60%在许多国家中处于贫困。¹⁷ 在国家一级测绘粮食不安全和脆弱性情况，将有助于确认这一问题的范围并制定适当政策。影响评估也可极大提高有关制定法律和制定政策的水平。《食物权准则》17 载有一套建议，涉及食物权影响评估的开展、监测程序的制订、影响和成果指标，以及重视监测弱势群体粮食安全状况及其营养状态的需要。

B. 增强问责制

17. 然而，仅测绘对粮食安全的威胁还不够。采取人权方针的下一步，是从法律权利的角度了解粮食安全的要求和实行问责制。确保人人享有适足食物还不够。同样重要的是人人作为一项权利而享有，并对那些可能影响该权利享有的公共和私人行为者施加相应的义务。这一框架确保饥饿和营养不良的人能够针对那些作为和不作为影响其状况的人提出合法要求，从而创造了机构性机制所支持的

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

¹⁷ http://www.fao-ilo.org/fao_ilo_rural/en/.

安全。它有助于创造条件，确保人民能够养活自己。如果我们考虑到各有关群体以粮食不安全问题影响决策者的能力，则确保其能够作为一项权利而不是一个政策选择事项而这样做，具有根本的重要意义。众所周知，在发展中国家，小农构成了一个庞大但地理分散的群体，几乎没有或根本得不到政治游说资源，并且在组织集体行动上面临着高不可攀的经费成本。相反，城市群体更容易通过公共示威而动员起来；工业经济体中的农民也是如此。¹⁸ 鉴于获取政治影响方面的这种不平等，以权利为重的方针构成一个必要保障，在公共政策应当满足那些处于最大风险者——无论城市还是乡村居民——的需要时，避免其偏向于最有影响并良好组织起来的利益集团。

18. 作为国家战略的一部分，各国应当通过一个框架法律，确保食物权案件可在国家法院受理或者提供其他形式补救措施，从而在类似目前这种粮食价格突然增长的情况下，政府其他部门不得无所作为，并且从而以采纳旨在实现食物权的措施，有效地禁止任何享有食物或采购食物方式方面的歧视。通过在框架法律中更确切地界定与适足食物权相应的义务，将鼓励法院和其他监测机制(比如人权机构)致力于确保适足食物权的落实。因此，当宏观经济或特别政策被滥用或选择目标有误时——比如低估了某些居民群体或某些地区的需求，这类问责制可有助于确保及早确认和纠正之。

19. 尽管全球食物危机高级别工作队为向各国政府提供指导而制定的《综合行动框架》呼吁定期评估粮食和营养不安全情况，¹⁹ 却不是以人权为基础，而完全是作为在国家一级指导决策的手段而制订的。因此，依然缺乏问责制方面的内容，并且没有提出为那些食物权被侵犯的受害者建立补救机制。相反，如果根据对适足食物权的承认而制定国家战略，并且如果法院或其他机制(包括增进和保护人权的国家机构或人权监察员机构)被赋予任务，监测政府的不同部门是否根据上述国家战略履行其义务，就会有这方面内容。为协助各国制定这一框架，粮农组织食物权股应当在该组织的现行改革过程中予以加强，从而使其关于食物权的工作较少依赖于自愿捐助者的意愿。

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

¹⁹ See The World Bank, *World Development Report 2008 - Agriculture for Development*, Nov. 2007, at p. 43.

C. 保障土地使用权

20. 一个特别的关注是，尽管粮农组织或世界银行在这一问题上工作数十年，但在应对全球粮食危机时，几乎没有关注那些耕种土地或需要获得土地作为生产资源的人的权利。尽管世界粮食安全问题高级别会议制订的《综合行动框架》的确提到有必要落实“一个有效管理土地的透明土地使用权政策，同时确保社区和个人，特别是边缘群体(比如土著人、妇女)享有土地权”，²⁰ 但没有作详细阐述，并且在当前应对世界粮食危机中制订的一系列建议中成为例外性的。²¹ 八国集团领袖们关于世界粮食安全的声明没有提到该问题。出席世界粮食危机高级别会议的政府代表团，都没有提到农业改革或保障土地使用权的需要。²²

21. 然而，在重点是增加粮食生产的范围内，对目前全球粮食危机的应对措施可能导致对土地使用权保障的新威胁。目前情况下的一个危险是：出于对农业重生的兴趣和农业燃料生产方面的竞争，²³ 在所谓“不平游戏场上——许多情况下是大规模投资者与当地土地使用者(通常对其所使用土地没有法定权利)之间”——对土地的竞争将增加。²⁴ 对农业土地的跨国投资的发展——各国以此寻求以购买国外土地而确保粮食安全——以及为出口而单一经营的发展，进一步加重了这一压力。尽管土地拥有者可以从土地价格的增长中受益，但这威胁着无土地劳工或那些对其所耕种土地无权利保障者，并且可能使小农户无法获得更多土地以增加产量。保障土地权将鼓励那些谋求生产作物出口的投资者选择与小农户订立合同耕种，从而有助于改善有关生产者的生计。

22. 不仅应当保障土地使用者对其土地的权利，也应当避免土地过度集中，并且在必要情况下应当开展农业改革，以确保那些依赖土地谋生者能够获得土

²⁰ At 28.

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.

地。《经济、社会、文化权利国际公约》第十一条第二款(甲)项提及发展或改革土地制度，作为一项确保人人免受饥饿的基本权利的措施。对于今天属于最无粮食安全的无土地劳工来说，既然获得土地至关重要，则应当根据《粮农组织食物权准则》8.10 和粮农组织关于土地改革和农村发展的国际会议的建议而加速土地改革。经社理事会在 2008 年会议上以共识通过的《部长宣言》确认，“改善农村贫困人口、妇女和男子获取生产性资料，特别是获取土地和水源的机会至关重要”，并强调“应优先重视制定政策和实施法律，确保土地和水源使用权利得到清晰界定并可以执行，推动土地保有的法律保障，同时认识到不同国家存在不同的法律和(或)获得土地的机会及土地保有制度”。²⁵ 根据人权理委员会关于“妇女平等拥有、利用和控制土地的权利以及平等拥有财产和获得适足住房的权利”的第 2002/49 号决议，应当特别注意消除对妇女平等享有土地权的一切障碍。²⁶

D. 妇女权利

23. 此外，前食物权问题特别报告员曾探讨过为什么充分尊重妇女权利对于享有适足食物权——特别是在营养方面——至关重要。²⁷ 如世界银行指出的，“在许多社会，妇女承担着供养家庭的首要责任，却不能控制家庭资源。在许多国家，妇女和女童在家中也常常少受喜爱”。²⁸ 《综合行动框架》在这一问题上说得很明确。²⁹ 因此，目前存在着高度共识，认为有必要——特别是根据《消除对妇女一切形式歧视公约》第十四条而在农村地区——加强妇女权利，并且这可有助于保障食物和营养。然而，由于歧视性的法律和习俗，在国家一级的落实方面依然存在许多障碍。应当鼓励各国沿着这一方向继续前进，使妇女权利成为其应对粮食危机的国家战略中的明确内容。

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).

四、有利的国际环境

24. 当各会员国通过作为《千年发展目标》一部分的关于全球合作促进发展的目标 8 时，实际上是在确认国际法上已经存在的义务。各国不仅应该在其本国领土上尊重、保护和实现适足食物权，而且有责任促进食物权在其他国家的实现，并建立一个各国政府能够在其管辖范围内实现食物权的环境。³⁰ 我们应当据此理解各国根据《公约》所作的承诺，“在顾及粮食进口国家和粮食出口国家的问题的情况下，保证世界粮食供应会按照需要公平分配”（第十一条第二款(乙)项）。这根据的是《联合国宪章》第五十六条，即它们必须合作以确认和消除对充分实现食物权的障碍。尽管这没有提供一个可构成《公约》所要求的那类“国际援助及合作”措施，但至少《公约》第二十三条表明这一义务不限于提供财政援助。³¹ 相反，应理解其具有三重含意，分别相当于：(a) 有义务不实施对适足食物权有负面影响的政策；(b) 有义务确保第三方(包括私人行为者)不干涉食物权的享有；以及(c) 有义务开展国际合作，协助实现食物权。联合国系统内外的各国际机构也有义务根据一般国际法而尊重作为人权的适足食物权；并且这些组织的成员国有一个尽责义务，确保其所授权的国际组织遵照其人权义务而行使权力。³²

A. 有义务不实施对适足食物权有负面影响的政策：农业燃料的事例

25. 国际法规定一切国家有义务重新审议和修改任何事实证明对适足食物权或人人免于饥饿和营养不良的权利产生负面影响的政策。只要在有关政策与适足食物权的享有之间存在着明确的因果联系，则这类影响是否记载于已经采取这类措施的国家或影响是否出现于该国领土之外，无关重要。

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. 根据这一义务，必须审查那些促进使用农业燃料作为运输行业化石燃料替代物的政策。³³ 这些政策具有各种形式，笼统地加以谴责是不负责的，例如，指称为满足国内需求和减少对昂贵石油进口的依赖而生产生物能源，与为出口目的进行大规模农业燃料生产是一样的；用糖生产的生物乙醇，相当于用玉米或其他农作物(比如木薯、小麦、甜高粱和甜菜)生产的生物乙醇；或者用菜籽油生产的生物柴油与用棕榈油或巴豆油生产的生物柴油一样等等。的确，不仅应当区别作为燃料来源的不同植物；为了评估对食物权的影响，还应当考虑到每一工业使用的生产手段，既然它们对创造就业、对环境和粮食安全有不同的影响。

27. 附件二简短介绍了开发农业燃料对于享有适足食物权的影响。可以从三个层面观察这一影响。

28. 首先，农业燃料开发的步伐极大地促进了国际市场上某些农业初级商品价格的增长，威胁适足食物权的享有。具估计，主食的实际价格每增长一个百分点，可使患营养不良者的数量增长 1,600 万；³⁴ 目前用于生产乙醇的粮食作物也是构成穷人饮食最大部分的作物——玉米、甘蔗、大豆、木薯、棕榈油和高粱，为长期陷于饥饿的人提供大约 30% 的平均热量消耗。³⁵ 在某些情况下，这一价格增长本身不构成问题，特别是如果让作为粮食净卖者的农村家庭受益；并且如果粮食净买者受到旨在提高其购买力的措施保护，这类增长实际上可具有慈善性的效果——特别是从动态的角度。然而，在目前的情况下，并由于价格增长突如其来的剧烈性及我们缺乏准备的程度，负面效果大大超过了正面效果；这应当予以认真监测。

29. 第二，既然农业燃料(特别是目前构成最大组成部分的生物乙醇)的生产可能加剧土地集中和大规模农业开发，因此对小农户造成格外的压力，并威胁土著人民的土地使用。这加大了对农田和水资源的竞争，并威胁生物多样性。尽管这可能创造就业(虽然这应以生计受农业燃料生产开发所损害的风险来衡量)，但是大农场的工作条件，特别是农业燃料工业，通常是剥削性的。

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>

30. 第三，农业燃料的需求集中在工业化国家；而在发展中国家，免于市场扭曲措施的农业燃料生产具有自然比较优势，更有效率和成本效益；因此农业燃料促进了一种基于经济作物而扩大的经济发展形式，进一步促进了少数为出口生产农作物者与其他农业生产者及其他居民阶层之间的利益竞争，结果可能是粮食价格的进一步上涨。

31. 调查的结论(见附件二)表明，目前这条发展农业燃料用于运输的路是行不通的，如果不加制止，将导致进一步侵犯食物权。在国际上就这一问题达成共识之前，任何新的生产农业燃料用于运输的大型投资项目，政府主管当局在批准之前，都必须经过详细和有多方利益攸关者参加的评估，只有当投资不论在国内还是国际上对于食物权、社会条件和有关土地使用权的问题，包括农民的流离失所问题，以及从土地的使用而言，可能造成的间接环境影响等方面结果都是积极的情况下，才能予以批准。应当修改一切鼓励农业燃料市场的措施(燃料混合规定、补贴和税收减免)，因为这类措施鼓励非商业投资人的投机行为，这些人预测，由于这一人为市场的形成，国际市场上对农业初级商品的需求将不断增加，因此农业初级商品的价格将维持在高水平上，并且还将进一步上升。

32. 应当加快建设关于农业燃料的国际共识的工作。特别报告员认为，应有两种成果，第一，应当商定关于农业燃料生产的国际准则。除了环境标准，在准则中应当纳入人权文书的规定，特别是关于适足食物权(如《粮农组织食物权准则》所阐述的)、适足住房权(包括免受驱逐和流离失所的保护)，工人权利(尤其包括公正报酬权和健康工作环境权)、土著人民权利以及妇女权利。除非这类准则得到遵守，应鼓励各国不允许在农业燃料上进一步投资。另外，也作为鼓励这类遵守行为的手段，应当以是否遵守准则作为进入国际市场的条件。³⁶ 同样，应当允许各国在其进口政策中优惠那些遵守准则的农业燃料生产国，而不从其他不遵守准则的国家进口。为了在法律上有根据，可以从世界贸易组织理事会争取一个免责条款，以确保这类机制符合《关税和贸易总协定》第一条、第十一条和第十三条。

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

33. 作为关于农业燃料的新国际共识的第二个因素，应当设立国际一级的常设论坛，以确保公平和客观地监测准则遵守情况，并作为交流最佳执行方法的平台。在农业燃料生产所引起的人权问题上，这类论坛应具有足够的专门知识。它也应拥有资源，以评估某些投资决定对国际和国家一级粮食初级商品价格的潜在影响，从而提供评估结果，指导各国履行准则。

34. 也应当考虑有否可能分配各国农业燃料生产的定额。这一分配应当考虑到每一生产形式的能源平衡以及对国际市场农业初级商品价格的影响。但是，也应当考虑到生产国扭曲发展的风险，即照顾种植生产燃料用农作物的生产者，但同时威胁其他生产者(特别是生产国内消费作物的小农户)获得土地和水，并使当地市场粮食价格上涨。

B. 控制私营行为者，保护适足食物权的义务

35. 一切国家都有义务按照《经济、社会、文化权利国际公约》第十一条³⁷和《粮农组织食物权准则》³⁸，而在粮食生产和分配系统的所有层面上管理公司的活动，有效保护食物权。人权理事会已经请私人行为者“充分考虑到需要促进确实落实所有人的食物权”。³⁹但是，如人权与跨国公司和其他工商企业问题秘书长特别代表最近向理事会提交的报告所指出的，各国在确保私人行为者遵守其人权义务方面的作用依然至关重要。⁴⁰

36. 在目前政府间一级的讨论中，都没有提到农业工商业和世界零售商在确定如何解决国际市场价格增长所造成情况方面的作用。然而，它们是解决办法的组成部分。农场价格(农民收取的价格)与消费者所付价格之间的差距正在扩大；而尽管最近的价格增长在许多国家严重打击了消费者，但大部分没有让小农户获益。这可以反过来从粮食生产和分配链结构的两个特点来解释。第一，平行地看，农业部门日益二元化：尽管大多数农场(85%)是小农户经营，但世界上 0.5%的农场面积超过 100 公顷，不相称地占据全球农场收入和工业化国家公共补贴的份

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.

额。⁴¹ 其次，垂直地看，农业生产者在获得投入和在出售其产品上，面对越来越集中的对话者。农业成为很少的、以零售价支付投入资源而以批发价出售其产品的行业之一。⁴² 在粮食链的两端(生产者和零售者)以及中间(食物加工部门)，集中的程度特别高：例如，十个首要粮食零售商拥有 35 亿美元的世界市场中 24% 的份额，而近年来他们在发展中国家的活动已经急剧扩大。

37. 对农业的私人投资至关重要，而粮食加工公司和世界零售商通过将农民与高价值市场连接起来，将发挥关键的作用。但是，这些力量上的不平衡对于粮食链的有效运行是一个主要障碍。由于大多数的大农业工商业公司以工业化国家为基地，所以这进一步恶化了世界贸易体制中的不平衡。例如，世界银行指出，由于咖啡加工商与零售商的高度集中率，因此咖啡生产国巴西、哥伦比亚、印度尼西亚和越南(占有世界生产的 64%)保有的零售价份额从 90 年代早期的三分之一降到 2002 年的 10%，而零售价值却增长一倍。它的计算还指出，发展中国家在农业初级商品增值所占的份额，从 1970 年至 1972 年的 60%左右下降到 1998 年至 2000 年的 28%左右。⁴³ 这仅仅显示出，支持小土地农民及其组织——包括在最贫穷和最边远地区，使他们在满足增长的粮食需求方面发挥有效作用，从而达到一个适当的生活水准——以及与农业工商业部门探索其对协助实现该目标可做出什么贡献，有多重要。

38. 特别报告员在履行任务过程中，与人权与跨国公司和其他工商企业问题秘书长特别代表密切合作，将从两个方向探讨这一问题。首先，他将争取与农业工商业部门开展对话，以确认它们如何对实现适足食物权做出贡献，并兼顾其对食物链上工人义务，也兼顾其购买作法如何走向更公正的贸易形式。其次，他将审议各国可如何在粮食生产和分配链中履行其保护人权的责任，包括改进反托拉斯条例的应用。

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.

C. 为促进实现食物权开展国际合作的义务

39. 《联合国宪章》第五十六条对各国施加的采取联合和单独行动达到充分实现人权和基本自由的义务，并不限于避免采取对享有这些权利具有负面影响的措施。《经济、社会、文化权利国际公约》第二十三条的措词明确表明，这可包括采取措施，特别是以谈判国际协议的方式。

40. 考虑到这些国际义务，则要求在所有国家根据国际法而尊重适足食物权的义务的指导下，确认国际社会需要采取何种协调应对措施处理国际市场粮食价格增长带来的情况。这一协调应对措施应当不仅处理当前危机的短期影响，而且处理导致粮食价格暴涨的结构性原因。当前的危机表明，有必要就三个问题采取行动。对这些问题的处理，应当在农业和粮食问题新伙伴关系的议程上占首要地位。

1. 国际合作的必要

(a) 制止投机的负面影响

41. 2006 年和 2007 年价格暴涨的过程中，当前危机的许多观察者已经注意到投机在初级商品，特别是粮食初级商品市场上的作用。⁴⁴ 金融投资者的资金大量涌入未来和期权农业市场，已经引起了关于这可能驱动价格增长并促使价格波动的关切。价格波动既不符合因此支付更高价格的消费者的利益，也不符合因此可能付不起信贷的生产者的利益，更不符合其社会方案可能必须弥补最贫困者的收入及其需求之间差距的政府的利益。指数投机者具有特别重要和潜在的不稳定作用，因其在初级商品中的投机选择，纯粹是以有价证券组合为基础的决策，与基本的供求因素无关。由于股票市场的低回报和抵押贷款危机的结果，这类投资者向初级商品转移，⁴⁵ 协助推动了这类初级商品国际价格在专门交易所——比如芝加哥期货交易所——的增长。

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

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

42. 在国家一级或者——更适当的——地方一级组建战略性粮食储备这类机制，在消除价格波动的影响，从而降低非商业性投机的吸引力方面，可能有很长的路要走。因此应当支持世界大多数弱势地区的农村社区当地粮食储备。应当授权当地社区获取和控制，并且在可能的情况下，应当建立当地生产和消费的主食储备。然而，国际社会应当更加关注这一情况，因为单方面行为的各国可能发现难以有效应付投机对国际市场价格的影响，比如以改进投资基金的管理或对这类基金流通征税。

43. 一个建议是把各国保留的一部分战略性粮食储备汇集起来，以设立一个八国集团领导人称为“‘虚拟的’国际人道主义协调储备制度”。⁴⁶ 这一虚拟的世界战略储备的主要目标，是确保处于紧急状态的各国——比如因冲突或气候相关的事件——可以获得合理并特别是可预见价格的粮食，因为价格将依据参加世界储备的各国所作的承诺以事先确定的价格出售。这一机制的益处之一将是突然的意外事件不会鼓励投机，因为必须紧急进口大量粮食的各国不必经过通常的市场机制。⁴⁷ 该建议的一个更雄心勃勃的形式将是重新建立国际缓冲库存，以稳定粮食初级商品的价格，好像 20 世纪 60 年代和 70 年代所作的那样，比方说通过《国际可可协定》或《国际咖啡协定》。如果这类协定吸引足以大量的进口国和出口国成员的支持，并且把目标价格确定在现实的水平上，以及可以在足够高的水平上得到资金以涵盖长期低价的风险，则可以有一个重要的稳定作用，使出口国和进口国都受益。还有，既然投机来自于对未来价格的期望，重新建立国际缓冲库存这类价格稳定措施将阻止投机，防止现货价格对商业贸易者和消费者的负面影响。

(b) 设立全球再保险基金，促进社会安全网络

44. 尽管有必要，但仅对价格采取行动并不够。另外，为增加供应，农业生产者需要通过改善其生产能力的公共方案而得到支持，并且国家需要能够保护其

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.

居民免受粮食价格增长波动的影响。的确，《粮农组织食物权准则》建议各国建立和保持社会和粮食安全网络，以保护那些不能供养自己的人。但是，无法确定可能冲击本国经济的未来事件，严重妨碍穷国建立强有力的社会安全网：因为它们知道负面冲击导致民众需求急剧增加，从而可能限制其财政资源。为了处理这一问题，有人建议设立全球再保险基金，为穷国提供防止突然冲击——无论来自内部还是外部——的保险，这种冲击导致增加关于可能财政上对于有关国家并非可持续性的社会支持的需求。⁴⁸

(c) 国际贸易的作用

45. 有人呼吁在贸易自由化方面取得进一步进展——更确切地说，迅速完成国际贸易组织的多哈回合谈判，作为回应危机的一部分。然而，没有任何协定将做到一点。如《全面行动框架》指出的，如果国际贸易体系要为粮食安全的目标作出贡献，则必须是公平的。有人强烈争辩说，根据 20 世纪 80 年代国际金融机构的处方而在农业方面开展的仓促和不公平贸易自由化，是某些发展中国家，特别是撒哈拉以南非洲的农业部门没有发展的原因之一：除了受政府以汇率操纵，加工和贸易的国营垄断与政府定价的合并措施的盘剥，当地农民还受到了来自国外的严重扭曲竞争的削弱。乌拉圭回合贸易谈判导致世界贸易组织的建立和缔结农业方面的协定，但几乎对此没什么弥补。2001 年 11 月在多哈发起的谈判回合是否将提供令人满意的答复——如联合国贸易和发展会议《圣保罗共识》所呼吁的——仍然不确定。⁴⁹ 的确，鉴于更大的农业生产者通常能够更好地获益于贸易自由化创造的机会——由于他们能够更容易地适应世界粮食购买者和零售商施加的数量和标准要求，真正的危险是以出口为导向的农业开发将进一步使小农户的地位边缘化，恶化而不是改进他们的粮食不安全状况。

46. 是否贸易自由化应列入关于设立世界粮食安全的一整套解决办法之中，将取决于若干因素，特别是包括(a) 发展中国家更弱势的农业生产者能否得到有效保护，免受国际市场上以更低价出售的进口农产品的负面影响，特别是那些以低

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.

于生产成本出售的产品；(b) 贸易自由化带来的出口型农业发展能否不对小农户产生歧视性影响——比如那些由于对土地、水、灌溉、获得基础设施这类生产资源的竞争增加所带来的影响，因为大的开发往往攫取农村的服务和基础设施；(c) 是否有效处理农业工商业部门过度集中所造成的问题；以及(d) 采取何种措施增强发展中国家小农户生产者向工业化国家市场出口的能力。⁵⁰

(d) 知识产权

47. 最后，应当注意到，没有一个地方将关于植物多样化或种子的知识产权保护作为潜在的关切。但是，如特别报告员在向大会提交的第一份报告中详细解释的，防止农民反复使用和交换种子的办法，可能严重影响农民继续耕作的能力，以及农业的生物多样性，从而影响世界长期确保可持续粮食生产的能力。

2. 建立新的全球农业和粮食伙伴关系

48. 关于全球农业和粮食伙伴关系的想法，已经作为应对全球粮食危机的一个可能的机构性措施而出现。⁵¹ 如果建立起来一个伙伴关系，这一建议应当带来真正的新价值，并确保建立一个新的协调结构比加强现有机构是一个更好的解决办法。任何讨论都应当首先重新考虑为什么 1996 年撤销世界粮食委员会。另外，一个新的结构性举措是否有助于作为人权的食物权，将取决于目前讨论所产生的任何机构能否利用国家一级制订的战略，以及那些直接受到饥饿和营养不良问题影响的人能否积极参与。特别报告员愿意在以下段落中另外作出评论。

49. 任何全球粮食和农业伙伴关系都应当旨在确保世界粮食和营养安全，从而特别关注最弱势群体，有助于实现食物权。它不仅应侧重于粮食供应，而且应有助于确保适足食物权(包括在营养方面)得到遵守。因此，卫生、教育、贸易和环境——不仅仅是农业——应当成为任何为实现这一目标而增进国际协调的工作的一

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.

部分。目标应当是确保家庭粮食和营养安全，这比适足食物摄入具有更多的意义；这也要求关注卫生服务并适当关照弱势者。的确，当前食粮危机的一个可能影响是将产生更多的低收入、粮食净买家庭。这些家庭在努力维持主食消费的过程中减少其饮食多样性。这具有严重的公共营养卫生影响，包括特别是妇女和儿童的微营养物不足。因此，需要付出特别的努力，同时处理粮食安全和一般性营养安全；否则，最弱势群体不太可能从实现获得营养食物的权利中受益。应当借鉴营养问题常设委员会的重要专门知识，以确保适当考虑这方面问题。

50. 一个全球粮食和农业伙伴关系，有可能在各国所作承诺的后续行动方面加强问责制，特别是关于官方发展援助的贡献，和这类贡献的使用(包括援助的水平和可预见性，和将援助的一部分或国家预算的一部分，根据当地条件和需要，指定用于解决农业部门的需求)，以及在国家，区域和国际一级所实施的政策，对享有适足食物权的影响。如果依靠指标和基线作为衡量实现世界粮食和营养安全目标的尺度，则这些指标和基线应基于对作为人权的适足食物权的不同内容分类，以衡量所实施的政策对所有弱势群体的影响，特别是妇女、儿童、土著人、流离失所者和难民，以及小农户和农村无土地劳工。

51. 如果设立一个科学机构，作为新的全球粮食和农业伙伴关系的一部分，应当仔细挑选向该机构任命的专家，以确保其充分独立和公正。同样关键的是我们借鉴联合国驻罗马各机构(粮农组织、国际农业发展基金会以及世界粮食计划署)所积累的重要专门知识，并且在《农业知识、科学和技术发展国际评估报告》所涵盖的任何领域，将前一研究作为起点。重复该活动不仅意义很小，而建议去那样做，也将引起人们怀疑，《评估报告》所作出的结论由于不方便，已经被抛在一边。

52. 如果设立新的全球基金作为新的全球粮食和农业伙伴关系的一部分，它应当为这一领域工作的现行机构服务。应当避免资源方面的任何竞争。然而，一个新的基金可能具有在其机制中纳入全球再保险基金的新价值(见以上第 44 段)。它也可用于管理虚拟的国际储备——可建立起来满足那些市场未被扰乱的国家的迫切需求，并作为国际初级商品协议的一部分而为国际缓冲储备提供资金。

五、结 论

53. 国际市场粮食初级商品价格的增长，对于作为粮食净买者的最贫穷家庭的食物权有严重的负面影响，并且在没有社会安全网络或者存在社会安全网络但是过于薄弱、不能承受冲击的国家，具有特别的损害后果。价格增长不会使许多小农户受益，因为他们或者面临成本的激增、或者缺少他们需要的基础设施和支持以增加供应。因此，尽管必须处理供求之间的紧张关系以通过增加农业生产水平和限制浪费及过度消费而重建粮食储存，但从人权角度来说，重要的是谁生产粮食以及让谁受益。目前的局势创造了机会。但是，不应将机会误认为解决办法。尽管必须在农业和农村基础设施上更多投资，以弥补多年的忽视，但必须仔细监测如何确定投资目标、采取何种形式、效果是什么。如果从当前的危机中产生出新的全球农业和粮食伙伴关系，关键的是确保这一伙伴关系不会以促进技术驱动的食谱而简单地争取增加供应，而是也向那些饥饿和营养不良的人以及生计可能切实受这一鼓励农业生产的重生兴趣所威胁的人授权。一个人权框架将有助于保持沿着这一轨道寻找解决办法，因为它将确保重视最弱势者，并且将增强问责制和决策参与。而目前的讨论几乎完全没有提及这一框架，令人遗憾。

54. 特别报告员呼吁人权理事会：

- (a) 继续监测各国政府、私营部门和国际机构应对全球粮食危机采取的举措，推动任何关于未来全球农业和粮食伙伴关系的讨论，确保其包括对人权问题的关注，并且以权利人的切实参与为基础；
- (b) 鼓励各国为实现适足食物权而制订国家战略，包括绘制粮食不安全状况，通过食物权框架的相关立法和政策，建立确保问责制的机制，使权利人能够要求享有食物权，以及建立机制和程序，确保权利人，特别是最弱势群体能够的真正参与制订和监测这类立法和政策。这些战略应当特别考虑到加强最弱势群体的人权保护，包括无土地使用权保障的土地使用者、无土地劳工、妇女、流离失所者、土著人、少数群体、残疾人和城乡贫民；

- (c) 鼓励在农业燃料方面建立国际共识，不仅基于需要避免农业燃料开发对主食初级商品国际价格的负面影响，而且基于需要确保农业燃料生产尊重全部人权，不导致生产国的扭曲发展；
- (d) 强调所有国家确保第三方，包括私人行为者，不干预适足食物权，并明确私营部门可如何为建立一个更公正的粮食生产和分配制度作出贡献；
- (e) 请求进一步研究国际合作在消除非商业性投机活动对初级农产品价格的负面影响中的作用，特别是对虚拟全球储备和各项国际商品协定的潜在作用；
- (f) 研究设立全球再保险基金对实现适足食物权可能作出的贡献。

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/SRRTFnotefoodcrisis.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).

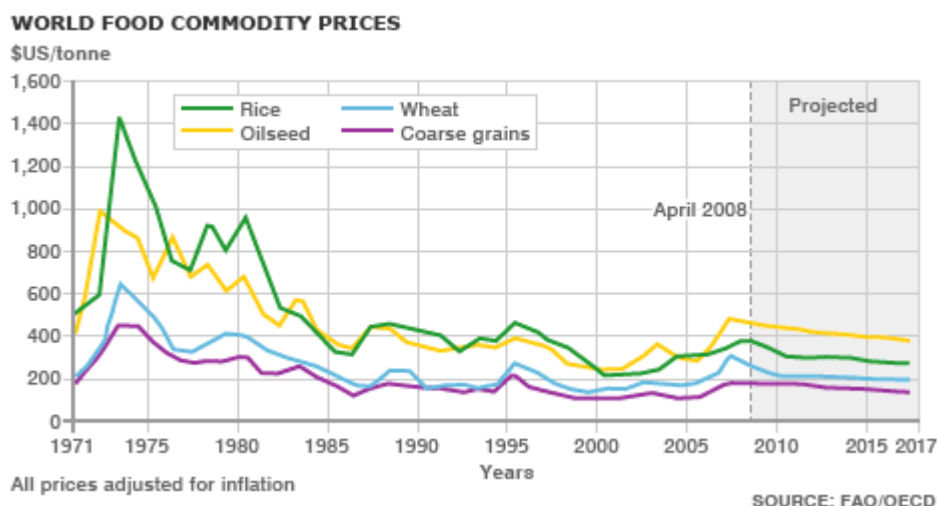
3. On the demand side, the continuation of levels of consumption in the industrialized countries, particularly of animal protein-rich food such as dairy products and meat, which would be unsustainable if they were to be replicated universally, and improving diets in large, fast-growing economies - although 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.

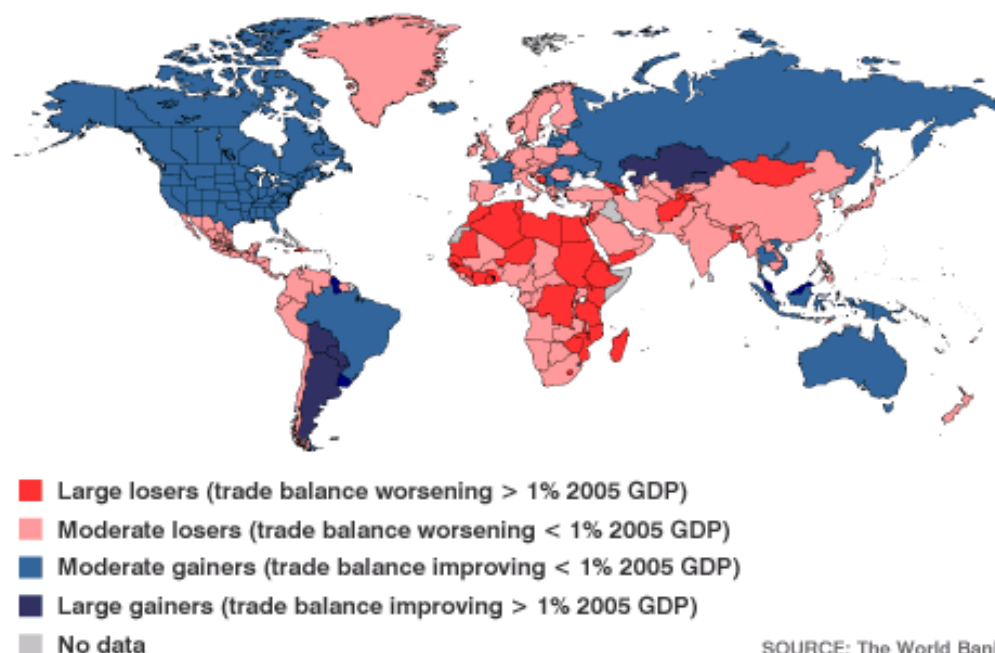
3. The impacts⁵⁷

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 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

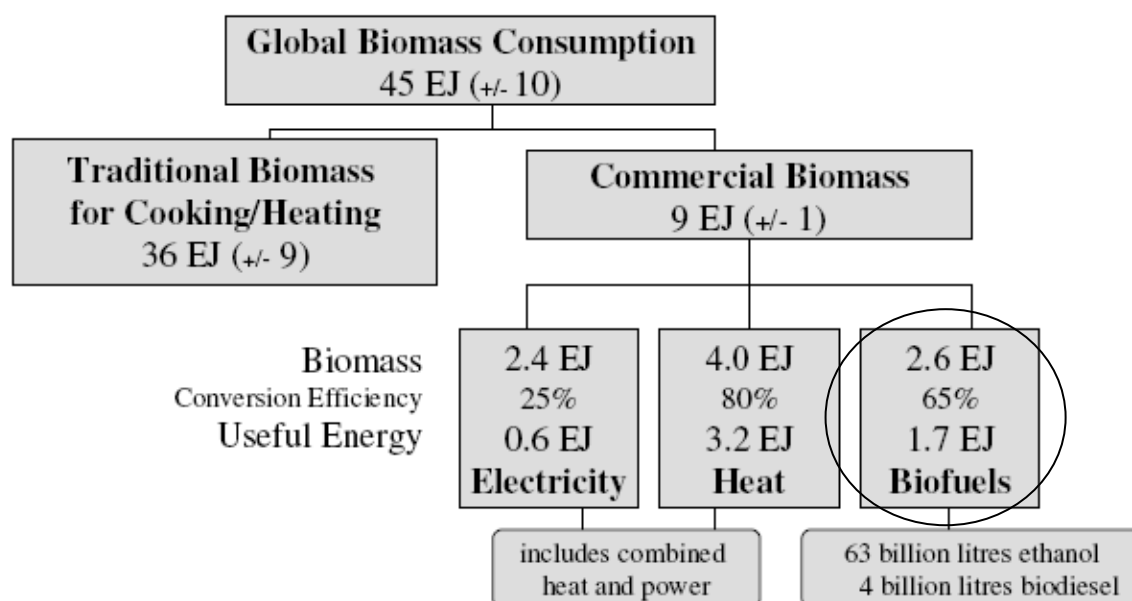
1. In the broad sense of the expression, agrofuels include all biofuels produced out of agriculture and livestock products. The agrofuels that have been the object of tremendous increase in demand and also of fierce debates in recent years, i.e. bioethanol and biodiesel for transportation (circled in 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	WOODFUELS	Solid: fuelwood (roundwood, chips, sawdust), charcoal
Indirect woodfuels		Liquid: black liquor, ethanol
Recovered woodfuels		Gaseous: pyrolysis gas
Fuel crops	AGROFUELS	Solid: straw, stalks, huks, bagasse
Animal by-products		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.

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).

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 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

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 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.

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

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 instable 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 carbon content, such as

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

⁶⁸ Id., at 9.

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

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 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

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.

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.

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 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

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.

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

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.

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.

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