

2011

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Recommended Citation

Gathii, James Thuro, Food Sovereignty for Poor Countries in the Global Trading System, 57 Loy. L. Rev.509 (2011)

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FOOD SOVEREIGNTY FOR POOR COUNTRIES IN THE GLOBAL TRADING SYSTEM

*James Thuo Gathii**

I. INTRODUCTION¹

I would like to thank the Colloquia Committee of Loyola University College of Law for inviting me to give this year's Brendan Brown Lecture. I am honored to join a very distinguished list of prior lecturers. My lecture was inspired by my visit to the South Pacific on a United Nations mission in the summer of 2010. I travelled to Fiji, Vanuatu, and the Solomon Islands. Each of these countries comprises a series of islands in the South Pacific. While tourists tend to remember these tropical islands for their scenic beauty, few realize that on these tropical islands, less nutritious, commercially grown foods threaten to displace locally grown foods.

In spite of their geographical isolation from the rest of the world, these tropical islands have been affected by the globalization of agricultural markets in general and the food trade in particular. Rather than serving the locally grown organic fruits and foods being sold in the open markets right next door, I was struck that hotels in the South Pacific were serving canned fruit from Australia, New Zealand, and Papua New Guinea.

There are two major themes in my lecture. First, I address the current phenomena of imported foods quickly displacing locally grown foods in both the subsistence and commercial

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1. These remarks were delivered at the 2011 Brendan Brown Lecture at Loyola University College of Law, New Orleans, on April 12, 2011.

sectors. Second, I focus on the ways the global food trade and the larger apparatus of neoliberal globalization have undermined the ability of local people to have sovereignty or control over their place, culture, and food security. My most significant claim is that given the adverse food security impact of industrial agriculture on family and subsistence farming, local farmers in poor communities should retain sovereignty over access to genetic and natural resources as well as their farming systems. They should also be supported to have access to financial and technical resources to enable them to produce food for their needs without the fear of violating patents, plant-breeder rights, or restrictive methods, such as anti-germination technology.

In effect, I argue that food sovereignty would go a long way in helping to acknowledge and recognize not only the importance of local control over resources and territory, but of culture and identity. This is because commercial farming and cheaper packaged imports are rapidly displacing small-scale and subsistence farming and locally grown foods. Proponents of this trend regard the availability of cheaper food as an example of win-win globalization because consumers pay lower prices for what they eat and fewer people go hungry. However, the devastating effect of imported European chicken parts on the local chicken industry in Ghana exemplifies the negative effects of the global food trade on developing economies.

In the South Pacific, fatty lamb and mutton flap exports from Australia and New Zealand now compose a significant proportion of the local population's diet.² These fatty meat flaps are another indicator of trends in the global food trade. First-world countries keep the lean and healthy meats for their populations and export the fatty and undesirable leftovers to developing economies. In Ghana, the once-thriving local chicken industry is now in the throes of collapse due to subsidized chicken quarters, legs, and gizzards being exported from the European Union (EU) to Ghana.³ Meanwhile, Europeans are left with the

2. Deborah Gewertz & Frederick Errington, *CHEAP MEAT: FLAP FOOD NATIONS IN THE PACIFIC ISLANDS* (Univ. of Cal. Press 2010).

3. USDA FOREIGN AGRICULTURAL SERVICE, *GHANA POULTRY AND PRODUCTS ANNUAL REPORT (2008)* available at

<http://www.fas.usda.gov/gainfiles/200808/146295648.pdf>. See also Suleiman Mustafa, *Ghana's Dying Chicken Industry*, *THE STATESMAN*, Jan. 2, 2008, http://www.thestatesmanonline.com/pages/news_detail.php?newsid=5675§ion=2.

healthier white meat. In the South Pacific, the fatty meat flaps are now highly correlated with lifestyle diseases such as diabetes.

A central factor driving these trends is the enhanced commercialization of the food trade within highly subsidized agricultural markets, primarily in the West. Many of the fatty unwanted foods in the West, such as the chicken legs and gizzards from the EU and the meat flaps from Australia and New Zealand, are produced under conditions of heavy subsidization. Subsidization enables multinational corporations in these first-world countries to export these leftovers at a pittance to poor countries.

A few years ago on a mission in Brussels, I asked the then-EU Chief Trade Negotiator and Deputy Director of General Trade, Mr. Karl Falkenburg, why the EU was allowing cheap chicken parts to undermine Ghana's local chicken industry.⁴ These chicken parts were being sold in Ghana by importers at a cost lower than the cost of production in the chicken industry in Ghana.⁵ Mr. Falkenburg told me that there was nothing that prevented Ghana from imposing high tariffs to prevent EU imports from destabilizing its local chicken industry. However, in reality, several internal and external forces act in concert to undermine local farmers in poor countries. The external forces include subsidized commercial agriculture in the West and other policies adopted by international financial institutions and western governments. The most significant internal force is unsympathetic politicians who, in the face of pressure from international financial institutions and western governments, tend to adopt agricultural policies that further undermine their local farmers.⁶

For example, when the Ghanaian Minister of Finance proposed a tariff increase in the 2003 budget to protect the local

4. The date of the meeting was Wednesday, September 19, 2007. Cheap chicken parts have little or no market value in Europe where the consumers prefer to eat the white part of the chicken. See Linus Atarah, *Playing Chicken: Ghana vs. the IMF*, CORP WATCH (June 14, 2005), <http://www.corpwatch.org/article.php?id=12394>.

5. See *FAO Briefs on Import Surges: No. 5 Ghana: rice, poultry and tomato paste*, FAO (Nov. 2006), <ftp://ftp.fao.org/docrep/fao/009/ah628e/ah628e00.pdf> (showing how surges in imports of cheap chicken parts as a result of subsidies in European agriculture resulted in falling demand and production of local Ghanaian chicken. Imports from the EU surged from 26,000 to 40,000 metric tonnes from 2002 to 2004).

6. ROBERT BATES, *MARKETS AND STATES IN TROPICAL AFRICA: THE POLITICAL BASIS OF AGRICULTURAL POLICIES* (1981).

poultry industry, the local representative of the International Monetary Fund (IMF)⁷ opposed the tariff increase. Moreover, the Executive arm of the government rejected the tariff by suspending the duty increase, which Parliament had authorized to protect the chicken industry. In response, local poultry farmers filed suit in the Ghanaian High Court against Ghana Customs, Excise and Preventive Service for failing to levy the tariff increase. Reasoning that the local poultry farmers ought to be given a fair chance to compete with foreign farmers, the High Court issued an order requiring the government to levy the tariff increase.⁸ However, the government declined to comply with the High Court order.⁹ To make matters worse, after the High Court issued its order in favor of the domestic chicken industry, Parliament used an emergency procedure to repeal the tariff increase it originally authorized to protect the domestic chicken industry.¹⁰ This repeal exhibited the magnitude of the pressure exerted by the IMF on the Ghanaian government.¹¹

Section 1 of this Article discusses the manner in which neoliberal globalism is having an adverse effect on local environments, indigenous peoples, and their agricultural practices. This regime of neoliberal industrial agriculture is reducing food security, particularly for the poorest people around the world, and effectively forcing them to turn to unhealthy food imports. Section 2 addresses my proposals for countering this regime of neoliberal, or industrial, agriculture. Here, I differentiate among the rights to food, food security, and food

7. *The Damage Done: Aid, Death and Dogma*, CHRISTIAN AID, 33-34 (May 2005), http://www.christianaid.org.uk/Images/damage_done.pdf [hereinafter CHRISTIAN AID]. The IMF told the Ghanaian government that the increase was inconsistent with pre-agreed plans that the government had in place with Ghana not to raise consumer prices for rice and chicken as part of the growth and poverty reduction strategy. *Id.* at 34.

8. Amos Safo, Ghana: Court Orders CEPS to Implement New Tariffs on Imported Poultry, ALL AFRICA (April 15, 2005), <http://allafrica.com/stories/200504180517.html>.

9. CHRISTIAN AID, *supra* note 7, at 41.

10. The Law was Act 641 of 2003. The Ghanaian government also cited provisions of a regional trade treaty, the Treaty for the Establishment of the Economic Community of West African States (ECOWAS), as its justification for reversing a 2003 tariff increase on chicken part imports from the European Union, the U.S., and Japan, which had been imposed to ensure the survival of its local chicken industry. See CHRISTIAN AID, *supra* note 7, at 37.

11. *Bad Economic Policy, Dangerous Politics*, LIBÉRATION AFRIQUE 1, 2 (April 15, 2005), http://www.liberationafrique.org/IMG/article_PDF/article_535.pdf.

sovereignty. Food sovereignty, I note, is a much broader concept than the right to food or food security and requires local peoples to have control over their agricultural practices, their local food supply, their natural resources, as well as their culture and identity.

II. THE FACE OF NEOLIBERAL GLOBALISM IN THE FOOD TRADE AND ITS NEGATIVE IMPACT ON LOCAL ENVIRONMENTS, INDIGENOUS PEOPLES, AND LOCAL AGRICULTURAL PRACTICES

A. LOCAL ENVIRONMENTS, PEOPLE, AND AGRICULTURAL PRACTICES

Within indigenous and peasant communities, production, transformation, and distribution of agricultural goods, as well as fishing, collecting, and hunting practices, tend to be driven by a logic of self-reproduction rather than surplus generation.¹² In many of these communities, labor for production comes from the family or communal and kinship ties and is primarily subsistence oriented. Another distinctive aspect of such communities is a lack of formal contractual relationships in the provisioning of inputs like seeds or leases.¹³ Additionally, while low-intensity technologies are available in some places, most ethnic groups and peasant communities do not use high technology. Because their agricultural methods involve little or no technology, they often have high ecological efficiencies and environmental conservation outcomes.¹⁴

12. ARTURO ESCOBAR, TERRITORIES OF DIFFERENCE: PLACE, MOVEMENT, LIFE, *REDES* 133 (Arturo Escobar & Dianne Rocheleau eds., 2008).

13. *Id.* at 134. As Arturo Escobar has noted with reference to the black communities of the Andean slopes of the Pacific (particularly the Colombian Pacific), their farming methods are

characterized by high use of human energy, a marked sexual division of labor, some forms of reciprocal labor, collective distribution of the product by family and kinship group, a measurable use of barter (plantain is the main medium and measure), food security practices (e.g., salting of fish, pigs), and the fact that labor is not counted in market terms Yet the system is not a closed loop in that it interacts with the market . . . [in] two main forms: unequal exchange between the primary products of TPSS [Tradition Production Systems] and modern commodities; and *endeude* (indebtedness), characteristic of extractive activities, main timber extraction.

Id. at 136-37 (2008).

14. See also VANDANA SHIVA, *MONOCULTURES OF THE MIND* (Zed Books, 1993) (noting how measuring productivity of modern monoculture agriculture assesses productivity only in term of a single market that in turn makes other values and services such as forests and how use-values for local peoples are affected invisible).

B. GLOBALIZED AGRICULTURE

One of the central features of this system of globalized agriculture is enormous growth in its scale, from one that was locally based and anchored around local, regional, or national networks to a globally integrated and concentrated system. Within this system, huge transnational corporations, including Wal-Mart, Carrefour, Kroger, Metro-AG, Ahold, Albertson's, Safeway, and Sainbury's, are the most powerful actors.¹⁵ The supermarket chains have increasingly sought to differentiate the food market into various niches and market segments to meet consumer needs, driving what consumers eat, the prices consumers pay, and the manner in which food is produced.¹⁶

Standards for food safety and sustainable agriculture are important mechanisms by which corporations control the production and distribution of food. Recently, these supermarkets have established their own standards regarding the following: (1) quality, which includes factors like appearance, cleanliness, and taste; (2) safety, which includes eliminating the presence of pesticides, artificial hormone residue, and microbes; and (3) authenticity, which relates to guarantees of geographical origin or use of a traditional process with respect to worker health and safety.¹⁷ Producers bear the costs of implementing these standards. Local producers who work with less financial assurance protest the private standards because the standards are driven more by concerns about "profit, market share, premium prices, consumer loyalty and monopoly rents" than quality.¹⁸ And producers who are unaware of these standards cannot produce for these global chains.

In the March 25, 2011 Federal Register, the USDA Plant and Animal Protection Service proposed a rule that would allow the United States to import 800 metric tons of French beans and

15. Jason Konefal, Michael Mascarenhas, & Maki Hatanaka, *Governance in the Global Agro-Food System: Backlighting the Role of Transnational Supermarket Chains*, 22 AGRIC. & HUM. VALUES 291, 294 (2005).

16. *Id.* at 292.

17. *Id.* at 295 (citing Thomas Reardon & Elizabeth Farina, *The Rise of Private Food Quality and Safety Standards: Illustrations from Brazil*, 4 INT'L FOOD & AGRIBUSINESS MGMT. REV. 413, 414 (2002)).

18. Robert Schaeffer, *Standardization, GATT and the Fresh Food System*, 3 INT'L J. SOCIOLOGY AGRIC. & FOOD 71, 74 (1993).

runner beans from Kenya.¹⁹ This quantity would compose about 5% to 10% of Kenya's average annual exports of French and runner beans. Underlying the proposed USDA rule is a large volume of plant epidemiology and risk analysis undertaken by the Plant and Animal Protection Service.²⁰ As these reports revealed, Kenyan producers of French and runner beans are subject to eighteen phytosanitary control points to guard against the introduction of internal and external pests and diseases that produce obvious symptoms.

U.S. inspectors who visited Kenya to undertake their own analysis of the phytosanitary controls on the farming and the packaging of Kenyan beans concluded that these controls met the standards promulgated by Euro-Retail Produce Working Group (EUREPGAP)—a consortium of EU fresh fruit and vegetable retailers. The inspectors noted that, while the EU's standards met U.S. regulatory requirements for certain commodities, the US could still require additional control measures.²¹ Clearly, the costs of meeting such standards—driven by U.K. and U.S. supermarkets such as Marks and Spencer—exclude local producers from accessing foreign export markets. Local producers are not specifically engaged in growing the beans for export markets, and even if they attempted to grow for export markets, they would lack the capital and the technical expertise necessary to meet the standards.²²

Competition between these transnational supermarket chains is intense. Because smaller supermarket chains are unable to compete with hyper-markets like Wal-Mart on price, they must compete on market differentiation.²³ The standards promulgated by EUREPGAP are an example of standards aimed at market differentiation. While these standards may have improved quality, they have also pushed out producers from developing countries that are not represented in the making of

19. Importation of French Beans and Runner Beans from the Republic of Kenya into the United States, 76 Fed. Reg. 16700 (proposed Mar. 25, 2011).

20. *See, e.g.*, Importation of French Beans and Runner Beans From the Republic of Kenya Into the United States, 76 Fed. Reg. 58, 16701 (Mar. 25, 2011) (to be codified at 7 CFR pt. 319).

21. *Id.* at 56.

22. These standards presuppose that the farms employ trained agronomists and farm managers with recognized training and expertise from recognized universities and colleges.

23. Konefal, *supra* note 15, at 296.

the standards and may not be able to meet the high compliance cost imposed by the standards.²⁴ Thus, what are essentially privately set standards below the level of the state, become mobilized transnationally across national boundaries above the level of states. As national de-regulatory efforts shrunk the ability of states to regulate in the 1980s, private governance of the food market emerged behind the scenes to set standards in agriculture from pre-farm to the consumer table.

Because the prohibitive costs associated with meeting these standards make it difficult for new entrants to grow the fresh fruits and vegetables sold by these supermarkets, food suppliers are concentrated in a rather small number of firms. For example, in the United States meat market, four farms are responsible for the slaughter of over 80% of beef, two firms process all pre-cut salads, and one firm processes 30% of milk.²⁵ In 2010, these trends led the U.S. Department of Justice, Antitrust Division, and the U.S. Department of Agriculture to hold the first ever joint workshops to discuss competition and regulatory issues in the agriculture industry.²⁶ The attorneys general from fourteen states submitted a document to this series of workshops in which they asserted that state and federal government agencies should scrutinize concentrations in a variety of agricultural markets and enforce antitrust laws where appropriate to ensure healthy competition. The attorneys general in particular noted that concentrations in seeds, grain transportation, cattle, poultry, hog, and the dairy industry require “careful antitrust scrutiny, and enforcement where appropriate” by state and federal government agencies with a view to ensuring healthy competition.²⁷

24. Konefal, *supra* note 15, at 298.

25. Keith E. Sealing, *Attack of the Balloon People: How America's Food Culture and Agricultural Policies Threaten the Food Security of the Poor, Farmers, and Indigenous Peoples of the World*, 40 VAND. J. TRANSNAT'L L. 1015, 1035 (2007) (citing Michael Pollan, *The Vegetable-Industrial Complex*, N.Y. TIMES MAG., at 17 (Oct. 15, 2006), available at http://www.nytimes.com/2006/10/15/magazine/15wwln_lede.html).

26. See *Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy*, U.S. DEPT. OF JUSTICE, <http://www.justice.gov/atr/public/workshops/ag2010/index.html> (last visited Oct. 6, 2011).

27. Attorneys General of Mont., Iowa, Me., Md., Miss., N.H., N.M., Ohio, Okla., Or., S.D., Tenn., Vt., & W. Va., *Comments Regarding Competing in the Agriculture Industry*, U.S. DEPT. OF JUSTICE, Mar. 11, 2010, <http://www.justice.gov/atr/public/workshops/ag2010/016/AGW-15683-a.pdf>.

C. NEOLIBERAL GLOBALIZATION'S IMPACT ON LOCAL AGRICULTURAL PRACTICES

Unlike local, ethnic agricultural practices, neoliberal globalization is driven by a logic of surplus generation. Neoliberal globalization seeks to transform local farming methods by incorporating local farmers into the global economy on the premise that such incorporation would result in increased food security by increasing food yields through the introduction of more efficient production methods. Transitioning local farmers to modern farming methods and techniques would require a variety of changes. First, rather than using seeds in storage from prior seasons, local farmers would acquire inputs, like seeds and fertilizer, from multinational corporations. In effect, local farmers would abandon organic farming methods in favor of genetically altered seeds and synthetic fertilizers. Second, rather than encouraging subsistence farming, globalization encourages farmers to become increasingly mechanized to produce for the market. Because mechanized production requires farmers to make greater investments, farmers would be drawn into banking networks to procure credit. Third, the shift toward globalization has included initiatives to privatize land holdings away from communal, kinship, or family-oriented holdings.²⁸ Fourth, the transformation of agricultural systems around the world in the twentieth century from local farming communities into global cash-crop producers has changed local social systems. Male authority and the male role of provider were undermined as women gained increased access to markets. Wage work liberated young men from the control of their parents, thereby undermining parental authority.²⁹

D. NEOLIBERAL GLOBALISM'S IMPACT WORLDWIDE

Although the neoliberal justification for integrating local farmers into the global market was increasing food security, market integration has resulted in decreased food security,

28. In Vanuatu, for example, the collective land tenure system is being transformed to make way for tourism development and private settlement, inconsistently with the rights of the indigenous peoples. See Lara Daley, *Hijacking Development Futures: "Land Development" and Reform in Vanuatu*, AID WATCH, 34 (Sept. 2009),

http://www.aidwatch.org.au/sites/aidwatch.org.au/files/Lara%20Daley_0.pdf.

29. June Nash, *Global Integration and Subsistence Insecurity*, 96 AM. ANTHROPOLOGIST 7, 15 (1994).

decreased biological and food product diversity, increased poverty, and increased rates of farmer suicide worldwide.³⁰ Indeed, while quantitative assessments of production yields in communal, kinship, or family-oriented holdings are lower in market economy terms than in mechanized commercial farming, communal, kinship, or family-oriented agriculture is often correlated with better outcomes in terms of food security, conservation of biodiversity,³¹ and preservation of families and communities.

Statistical data also demonstrates that the worldwide transition from traditional farming methods to modern farming methods has resulted in higher suicide rates in farming communities across the globe.³² The suicide rate for farming populations throughout the world is higher than for non-farming populations.³³ In the Midwest, suicide rates among male farmers are twice that of the general population.³⁴ In Britain, farmers are taking their own lives at a rate of one per week.³⁵ In India, the figures are most shocking. Between 1997 and 2005, one farmer committed suicide in India every 32 minutes.³⁶

30. See ESCOBAR, *supra* note 12, at 137. Losses of biological diversity come from the introduction of non-native species, loss of habitats, and ecosystem fragmentation due to habitat destruction.

31. See ESCOBAR, *supra* note 12, at 137.

32. United Nations Commission on Sustainable Development, *International Farmers Suicide Crisis*, UNITED NATIONS (May 2008), http://www.un.org/esa/sustdev/csd/csd16/PF/presentations/farmers_relief.pdf. This presentation is from the 2008 Partnership Fair, put on by the U.N. Commission on Sustainable Development. The fair took place May 5–16, 2008, at the U.N. Headquarters in New York.

33. *Id.*; Robert McKnight & Steven R. Browning, *Farmer Suicides: A 9-Year Analysis in Three Southeastern States, 1990–1998*, UNIVERSITY OF KENTUCKY MEDICAL CENTER, http://www.mc.uky.edu/scahip/documents/Farmer_Suicides_full_report.pdf.

34. United Nations Commission on Sustainable Development, *supra* note 32.

35. *Id.*; Liz Doig, *Stress and Suicide in the Country*, BBC NEWS (Sept. 14, 1999), http://news.bbc.co.uk/2/hi/special_report/1999/09/99/farming_in_crisis/441895.st. For studies on farmer suicides in the U.K., see *Suicide in High Risk Occupational Groups—Farmers*, UNIV. OF OXFORD CENTRE FOR SUICIDE RESEARCH, <http://cebmh.warne.ox.ac.uk/csr/resfarmers.html#farmstress> (citing S. Simkin et al., *Stress in Farmers: A Survey of Farmers in England and Wales*, 55 OCCUP. & ENVTL. MED. 729, 729–34 (1998)).

36. United Nations Commission on Sustainable Development, *supra* note 32; P. Sainath, *One Farmer's Suicide Every 30 Minutes*, THE HINDU, Nov. 15, 2007, <http://www.hindu.com/2007/11/15/stories/2007111554771300.htm>. For more statistical analysis, see Srijit Mishra, *Suicide of Farmers in Maharashtra*, INDIRA

A combination of factors, including financial stress and poor crop yield, account for the huge increases in farmer suicides. Local farmers are increasingly being squeezed out of local markets as a result of import surges of cheap food against which they are unable to compete favorably. These farmers have also faced increased costs of production for inputs, such as seeds, fertilizers, and pesticides.³⁷ Farmers are therefore left with limited resources. They are often forced to credit purchase seeds and other inputs to farm their land. Decreased incomes result in farmers owing more than they own. Some of the other factors that contribute to farmer suicides include the loss of independence and control due to disease, weather, and government policy; the sheer sense of loss and hopelessness due to loss of crops, loss of land, loss of income, loss of community, loss of family farms, and loss of a way of life; geographical remoteness and the potential for social isolation; untreated mental illness and lack of access to mental health services in rural areas and the stigma attached to treatment; depression arising from exposure to agricultural chemicals and pesticides may increase the risk for mood disorders and ultimately raise suicide rates.³⁸

In short, the twentieth century dramatically transformed the nature of agricultural production from one largely based on production for local markets to one in which large agricultural businesses supplied national and international markets. The challenge and central goal in the twenty-first century is finding a way to ensure that people have food to eat, a place to live, and a community that serves as an insurance mechanism when harvests are bad, regardless of whether the people are from the inner cities of developed economies or the rural areas of poor economies. Both old industrial centers in the United States, such as Detroit, and peasant and commodity producing areas around the world have experienced economic collapse.³⁹ Nevertheless, a simplistic analysis based on a binary opposition between local subsistence farmers engaged in producing and multinational corporations engaged in supplying and retailing would detract from the central goal of feeding families from inner cities and

GANDHI INSTITUTE OF DEVELOPMENT RESEARCH, MUMBAI (Jan. 26, 2006), http://mdmu.maharashtra.gov.in/pdf/FinalReport_SFM_IGIDR_26Jan06.pdf.

37. United Nations Commission on Sustainable Development, *supra* note 32.

38. United Nations Commission on Sustainable Development, *supra* note 32.

39. Nash, *supra* note 29, at 22.

developing economies.⁴⁰

Increasingly, people rely on national and international markets rather than local markets to supply vital food needs.⁴¹ In essence, globalized food markets have had a nearly uniform effect; they have increased the smallholder's dependence on finance capital by encouraging a shift from subsistence agriculture to cash-crop agriculture. This shift from subsistence-oriented to cash-crop-oriented agriculture has resulted in declining subsistence production and subsistence security. As a result, urban and even rural families that relied on multiple sources of food, including family farms and other subsistence producers, are forced to rely heavily on food produced for profit in commercial outlets. Meanwhile, their incomes decline as a result of the departure or decline of major industrial plants or loss or reduction of subsistence farming.

Some countries have, as a result, become dependent on imports for food. Dependence on foreign imports subjects countries to increased uncertainty and renders such countries vulnerable to forces beyond local and national control. The uncertainty and vulnerability is particularly pronounced in countries lacking the financial ability to afford imports when import prices rise.⁴² For example, in the 1970s the poorest countries experienced rising and unpredictable food import prices that were exacerbated by declining export receipts, increasing oil prices, and increasing interest rates on foreign loans. In economies where households spend over 60% of their income on food, these pressures mean that small price increases reduce the population's food consumption. The reduction in the population's food consumption leads to malnutrition, hunger, and famine in some cases.⁴³

Even countries like South Korea, which can hardly be regarded as poor, demonstrate that local farmers' vulnerability to adverse trends in the national and global economy increases as

40. Nash, *supra* note 29, at 22.

41. Raymond F. Hopkins, *Food Security, Policy Options and the Evolution of State Responsibility*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 6 (F. LaMond Tullis & W. Ladd Hollist eds., 1986).

42. Hopkins, *supra* note 41, at 27-28.

43. Hopkins, *supra* note 41, at 30-31.

they are increasingly integrated into the cash economy.⁴⁴ In the late 1960s, South Korea experienced a golden period for local agriculture. However, in the 1970s, South Korean grain and livestock farmers were displaced by suppliers from the United States, Australia, and New Zealand, which were able to supply the goods at much lower costs.⁴⁵ Thus, quite interestingly, as South Korea's industrial exports became more competitive, its "family farm sector" became increasingly unable to compete with foreign suppliers.⁴⁶ To compete with the large corporations importing grain and livestock, South Korean farmers are increasingly relying on industrially-produced inputs such as fertilizer, agrochemicals, and machinery. The problems encountered by South Korean farmers were demonstrated in a high profile suicide by a Korean farmer in the World Trade Organization (WTO) Meeting in Cancun, Mexico, in 2003.⁴⁷

Local and national farmers in the beef industry are also being integrated into the global food trade through the universalization or internalization of foreign breeding and production methods and the adoption of international standards for consumption and trade. For example, since the 1980s, Latin American producers have increasingly adopted "U.S. feedlot technology [and] European antibiotics," and participated in Japanese markets for boxed beef.⁴⁸ Under the newly-adopted

44. Mick Moore, *Mobilization and Disillusion in Rural South Korea: The Saemul Movement in Retrospect*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 115 (F. LaMond Tullis & W. Ladd Hollist eds., 1986).

45. *Id.*

46. Mick Moore, *Mobilization and Disillusion in Rural South Korea: The Saemul Movement in Retrospect*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 115 (F. LaMond Tullis & W. Ladd Hollist eds., 1986). This contrasts with the early 1970s, which is often regarded as a "golden age" for South Korean framers who at the time had their incomes

rapidly improving in both absolute and relative terms, when productive new rice varieties were available for the first time, when fertilizer was cheap, when there was a series of good harvests uninterrupted by drought, flood, plant disease or unseasonal cold weather, and when government was for the first time paying attention to the improvement of agriculture and rural life.

Id. at 116-18.

47. OneWorld.net, *Suicide at WTO Meeting Highlights Farmers' Plight*, COMMON DREAMS (Sept. 12, 2003), <http://www.commondreams.org/headlines03/0912-04.htm>.

48. Steven E. Sanderson, *The Emergence of the "World Steer": Internationalization and Foreign Domination in Latin American Cattle Production*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 124 (F. LaMond Tullis & W. Ladd Hollist eds., 1986).

international standards for consumption and trade, Latin American farmers must, among other things, ensure that cattle herds are free of contagious diseases, minimize the marbling characteristics of the meat produced from the cattle, and produce standardized cuts of beef.⁴⁹

However, the universalization of European and North American breeding and production methods as well as international standards has not necessarily rendered cattle production in Latin America dependent upon multinational corporations.⁵⁰ Rather prosperous cattle farmers in places like Brazil, Mexico, and Argentina have, by subscribing to these methods and standards, essentially integrated themselves into the global cattle trade and homogenized their production methods and standards to align with Europe and North America. Thus, the integration of global markets has occurred primarily through the "transnationalization of productive processes" according to international standards.⁵¹ Another factor driving this internationalization was that as U.S. feedlots and order buyers sought to avoid ownership stakes in developing economies, stock breeding companies began drawing up producer contracts under which feedmills, feedlots, and slaughterhouses became vertically integrated. Instead, U.S. feedlots and order buyers would provide "financing, breeding stock, resources for artificial insemination, [and] antibiotics . . . all from international companies specializing in such services."⁵²

The internationalization of cattle production in Latin America reduced the land available for traditional crops,

49. Sanderson, *supra* note 48, at 124.

50. Steven E. Sanderson, *The Emergence of the "World Steer": Internationalization and Foreign Domination in Latin American Cattle Production*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 126 (F. LaMond Tullis & W. Ladd Hollist eds., 1986). Notably, this is not to suggest multinational corporations are not absent, in fact leading agribusiness multinationals like Purina, Bayer, Hoeschst, Anderson-Clayton, Ciba-Geigy have come to be identified with foreign direct investment. Alongside these multinationals are their local-national analogs. See Steven E. Sanderson, *The Emergence of the "World Steer": Internationalization and Foreign Domination in Latin American Cattle Production*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 124 (F. LaMond Tullis & W. Ladd Hollist eds., 1986).

51. *Id.* at 127.

52. *Id.* at 144.

particularly food crops.⁵³ Local food security there was sacrificed through government programs targeted at producing a market of “prime international cuts of meat” for rich local consumers and for export to foreign consumers.⁵⁴ In short, government support for export-led growth or the pro-export stance in this example was driven by governments in countries as diverse as Argentina, Brazil, and Mexico seeking to stimulate exports to earn foreign exchange. This drive to earn foreign exchange was in large part driven by the desire to meet external debt payment obligations.⁵⁵ In the process, government policies favoring internationalized modes of cattle, poultry, and feed-grain production have undermined support for traditional backyard and small-scale livestock enterprises⁵⁶ and their ability to sell native cuts of meat.⁵⁷ The consequences on households were so bad that data from the 1980s from Mexico and Brazil showed that “lower income groups enjoyed little or no animal protein,”⁵⁸ an outcome that came with declines in the real-worker income and cattle-herd increases.⁵⁹ Thus, the increase in the availability of animal protein for the wealthier classes of consumers was accompanied by a decline for the poorer classes.

In addition to threatening local-food security, traditional agriculture, and traditional artisanal ways of survival, the internationalization of the Latin American beef industry has threatened the local environment. Cattle ranchers have appropriated vast amounts of agricultural land, as well as rainforests in southern Mexico and the Brazilian Amazon.⁶⁰ Once the cattle raised in these ranches are exported, particularly to the

53. Sanderson, *supra* note 48, at 126.

54. Sanderson, *supra* note 48, at 127.

55. Sanderson, *supra* note 48, at 127-28.

56. Steven E. Sanderson, *The Emergence of the “World Steer”: Internationalization and Foreign Domination in Latin American Cattle Production*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 128 (F. LaMond Tullis & W. Ladd Hollist eds., 1986).

57. *Id.* at 132-33.

58. *Id.* at 129.

59. Sanderson, *supra* note 48, at 130.

60. Sanderson, *supra* note 48, at 131. Notably and as an aside here, similar policies in the sugar trade in the U.S. have endangered the family farm and resulted in soil deterioration and water depletion. See John J. Bailey, *Controlling International Commodity Prices and Supplies: The Evolution of United States Sugar Policy*, in *FOOD, THE STATE AND THE INTERNATIONAL POLITICAL ECONOMY: DILEMMAS OF DEVELOPING COUNTRIES* 190 (F. LaMond Tullis & W. Ladd Hollist eds., 1986).

United States, the hides, horns, and lard are re-exported back to Mexico, further harming the local artisanal industry.⁶¹ This is because the Mexican artisanal industry lacks the resources to effectively compete against the U.S. hide and skin industry. Further, these farming methods have resulted in far-reaching ecological devastation.⁶² For example, livestock production is a primary driver of tropical food destruction in Latin America.⁶³ In addition, factory-style animal production is highly correlated to concentrations of animal waste and extensive antibiotic and pesticide use.⁶⁴ Thus, as agriculture moved from food production for human consumption to “feedgrains for prime cattle, hogs, and poultry,”⁶⁵ environmental devastation increased while the very survival of poor rural populations that depend on agriculture was increasingly threatened.⁶⁶ In the process, food crops such as beans and rice have been neglected as commodities in huge demand for export and urban markets such as beef and poultry, and crops such as soybeans, vegetables, and fruits have received more support and attention.⁶⁷

The increased concentration in food production within multinational corporations has resulted in “unprecedented imbalances, high speculation in currency exchange, and rapid inflation at a time when sluggish economic activity depletes the basis for future growth.”⁶⁸ Nothing better illustrates this problem than the recent financial crisis when the global economy bottomed out in 2008 and food prices skyrocketed. Food prices have remained at the highest levels on record following the global

61. Sanderson, *supra* note 48, at 131.

62. Sanderson, *supra* note 48, at 131.

63. *Cattle Ranching is Encroaching on Forests in Latin America*, FAO NEWSROOM, June 8, 2005, <http://www.fao.org/newsroom/en/news/2005/102924/index.html>.

64. Leo Horrigan, Robert S. Lawrence & Polly Walker, *How Sustainable Agriculture Can Address the Environmental and Human Health Harms of Industrial Agriculture*, 110 ENVTL. HEALTH PERSPECTIVES 445, 445, 451 (2002).

65. Sanderson, *supra* note 48, at 133.

66. Sanderson, *supra* note 48, at 134. For similar effects within the United States, see Stephanie Tai, *The Rise of U.S. Food Sustainability Litigation*, S. CAL. L. REV. (forthcoming 2012) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1937781. See also James Gathii & Keith Hirokawa, *Curtailing Eco-System Exportation: Ecosystem Services as a Basis to Reconsider the Merits of Export-Driven Agriculture in Economies Highly Dependent on Agricultural Exports*, VA. ENVTL. L.J. (forthcoming 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1926721.

67. Bailey, *supra* note 60, at 192.

68. Nash, *supra* note 29, at 11.

economic crisis of 2008 and have already resulted in a series of food riots and protests in a variety of countries around the world.

In some countries, efforts to combat high prices of food through price controls have been rejected. For example, when the Kenyan Parliament passed a Price Control (Essential Goods) Bill in mid-2010, it was overwhelmingly criticized by free market economists, including the World Bank's Country Director in Kenya.⁶⁹ These economists argued that governmental intervention in the market place would distort prices and that the role of the government should be to provide an enabling environment for business by letting the forces of supply and demand make price decisions without government interference. Such arguments neglected the main reason the Kenyan government enacted the Bill—to make food prices affordable for poor and vulnerable Kenyans. Instead, the opposition to the Bill adopted the classic neoliberal view that Africans respond to economic incentives like everyone else and that price controls would impede market determined prices.

The Kenyan President's decision to reject the Price Control (Essential Goods) Bill indicates a broader problem. High food prices are not only the result of external or international distortions in global agricultural trade. In September 2011, the Kenyan President signed an extremely watered-down version of the Price Control Act into law.⁷⁰ For decades, many developing countries have favored industrial growth by taxing farmers. Locally-produced-farm produce, such as milk and vegetables, that are often in high demand in urban areas are sold at below-market prices. Self-interested government officials in developing countries thought it wise to pursue such policies to ensure that urban populations did not vote them out of office. Thus, rural populations producing food for urban populations were underpaid; consequently, engaging in agriculture became less beneficial for them.⁷¹

India is another example of a country trying to deal with increased food prices. The Indian legislature is currently

69. See Evelyne Njoroge, *Economists Oppose Kenya Price Bill*, CAPITAL BUSINESS (June 24, 2010), <http://www.capitalfm.co.ke/business/Kenyabusiness/Economists-oppose-Kenya-price-Bill-4342.html>.

70. See James Gathii, *The Competition Act and the Price Control Act*, NAIROBI LAW MONTHLY (Sept. 2011).

71. BATES, *supra* note 6.

considering a food-security bill that would subsidize grains for the poor in India.⁷² The Congress (I) Party, the ruling party in India, has taken this one step further by introducing a bill aiming to curb food waste at lavish Indian parties.⁷³ According to one Minister, up to 15% of all food grains and vegetables in India are wasted through extravagant celebrations such as weddings and other festivities.⁷⁴ By limiting the waste, this bill seeks to channel food saved for distribution under the food-security bill.⁷⁵ However, opposing parties are less optimistic about the bills, asserting that the wealthy would continue to throw grand receptions and that restricting food consumption at festivities would only lead to increased corruption.⁷⁶ This skepticism is warranted.

In addition to addressing the immediate problem of food price hikes and shortages at the national and local levels, it is important to address some of the global problems that contribute to and exacerbate this problem. Structural adjustment programs implemented by developing countries in the 1980s and 1990s, as well as global-trade-liberalization commitments assumed under the umbrella of the WTO, resulted in low applied agricultural tariffs. As a result, those economies became vulnerable to surges in agricultural imports from both developed states and middle-income countries. Imports from countries that heavily subsidize their farmers compounded the problem of import surges.⁷⁷ These import surges pose dire risks to rural livelihoods and employment in the importing states. The following table documents the extent of the problem, showing how steep increases in imports

72. A. M. Jigeesh, *Food Security: Government Finds Lavish Menus Unsavourly*, INDIA TODAY (Feb. 22, 2011), <http://indiatoday.intoday.in/site/Story/130549/india/food-security-govt-plans-to-limit-food-served-at-weddings.html>.

73. *Id.*

74. *Id.*

75. *Id.*

76. A. M. Jigeesh, *Food Security: Government Finds Lavish Menus Unsavourly*, INDIA TODAY (Feb. 22, 2011), <http://indiatoday.intoday.in/site/Story/130549/india/food-security-govt-plans-to-limit-food-served-at-weddings.html>.

77. South Centre, *The Proposed Special Safeguard Mechanism (SSM) in the WTO: Is it still 'Special'?*, at 2 (Nov. 2009), http://www.southcentre.org/index.php?option=com_content&view=article&id=1367%3Athe-proposed-special-safeguard-mechanism-ssm-in-the-wto-is-it-still-special&catid=51%3Atrade-in-agricultural-goods&Itemid=67&lang=en [hereinafter South Centre Policy Brief].

have resulted in a decline in production by local smallholders.

Table 1: FAO Research Documenting Import Surges and Impact on Local Production⁷⁸

Country / Commodity:	Imports Increased by:	Local Production Decreased by:
Senegal—Tomato Paste	15 times	50%
Burkina Faso—Tomato Paste	4 times	50%
Jamaica—Vegetable Oils	2 times	68%
Chile—Vegetable Oils	3 times	50%
Haiti—Rice	13 times	Small %
Haiti—Chicken Meat	30 times	Small %
Kenya—Diary Products	“dramatic” amount	Cut local milk sales
Benin—Chicken Meat	17 times	Declined

Statistical data collected from fifty-six developing countries between 2004 and 2007 confirms that food-import surges are very common. For instance, food-import surges account for 23% of total agricultural imports for Least Developed Countries (LDCs). For Small and Vulnerable Economies (SVEs), this figure is at 21% of their agricultural trade; it accounts for 15% of agricultural trade in other developing countries.⁷⁹

One proposal to deal with food-price surges at the WTO is the Special Safeguard Mechanism (SSM). It was proposed by the Group of 33 (G33), a grouping of 46 developing countries, with

78. FAO 2003 “Some Trade Policy Issues Relating to Trends in Agricultural Imports in the Context of Food Security,” Committee on Commodity Problems, CCP 03/10, 2003.

79. See South Centre, *The Extent of Agriculture Import Surges in Developing Countries: What are the Trends?*, at 1-2 (Nov. 2009), http://www.southcentre.org/index.php?option=com_content&view=article&id=1369%3A-the-extent-of-agriculture-import-surges-in-developing-countries-what-are-the-trends&Itemid=1&lang=en.

support from the African Group, African, Caribbean, and Pacific (ACP) Group, and the LDCs.⁸⁰ The SSM would allow the imposition of an additional duty to support developing countries in dealing with volume-import surges and price volatilities.

There are two variants of the SSM—a volume-based SSM and a price-based SSM.⁸¹ Under the volume-based SSM, countries have the right to use the SSM that would allow them to levy an additional duty—the SSM remedy—on the imports when imports in a current year surpass 105% or 110% of the average imports of the preceding three years.⁸² The level of the remedy will increase in step with the volume of the import surge. Under the price-based SSM, an additional duty—SSM remedy—can be levied on the product to address the price gap so that domestic producers are not undercut by the price decline in the imported product when the price of an import declines below a certain trigger level.⁸³

Dealing with issues of food security such as import surges requires coordinated action at the local, national, and global levels. This requires vigilant social movements that do not burden farmers with litigation or costly, complex negotiations at forums like the WTO. Surely, trade negotiations and court battles are inevitable, but farmers, human-rights activists, environmental activists, and concerned people must become engaged through “agitation and disobedience, politicking, policymaking, and monitoring.”⁸⁴ Activists must combine grassroots movements with lobbying and protest campaigns that keep up the pressure on local, national, and international institutions. They must continue to draw attention to the food security and sovereignty issues, which affect whether or not a billion people continue living at the risk of hunger. This is especially so in a world where the problem is not availability of food, but distribution and production practices that have put millions of farmers out of work around the world.

80. South Centre Policy Brief, *supra* note 77.

81. South Centre Policy Brief, *supra* note 77.

82. South Centre Policy Brief, *supra* note 77.

83. South Centre Policy Brief, *supra* note 77.

84. See William Forbath et al., *Cultural Transformation, Deep Institutional Reform, and ESR Practice: South Africa's Treatment Action Campaign*, in STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY 67 (Lucie White & Jeremy Perelman eds., 2011).

III. THE COUNTERMOVEMENT: THE RIGHT TO FOOD, FOOD SECURITY, AND FOOD SOVEREIGNTY

A. THE RIGHT TO FOOD

The right to food requires that everyone have adequate access to food or the means to procure it. This right requires states not to take measures that would limit access to productive resources needed to produce food. States also have the obligation to ensure that such access is not encroached upon by private parties and that such access and the utilization is strengthened with a view to guaranteeing food security and the livelihood of their populations.⁸⁵ Further, the right to food requires governments to ensure that they and corporations from their countries do not engage in practices or policies that undermine this right in other countries.⁸⁶

Article 11 of the International Covenant on Economic, Social and Cultural Rights guarantees everyone the right to “an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Article 27(1) of the Convention on the Rights of the Child makes provisions for the “right of every child to a standard of living adequate for the child’s physical, mental or spiritual, moral and social development.”⁸⁷ The right to food includes the availability of food in a quantity and of a quality that can satisfy the dietary needs of individuals, and sustainable accessibility that does not interfere with the enjoyment of other rights.⁸⁸

These provisions are buttressed by the following Articles of the International Covenant on Economic, Social and Cultural Rights: Article 1(2)(a), which provides that “[i]n no case may a people be deprived of their own means of subsistence”; Article

85. *Report of Special Rapporteur on the Right to Food*, UNITED NATIONS GEN. ASSEMBLY (Aug. 22, 2010), <http://www.righttofood.org/new/PDF/A62289.pdf>.

86. *Report of Special Rapporteur on the Right to Food*, UNITED NATIONS ECON. & SOC. COUNCIL (Mar. 20, 2006), <http://www.righttofood.org/new/PDF/India%20PDF.pdf>.

87. The 1996 Plan of Action adopted at the World Food Summit in Commitment Four aspired to assuring that “food, agricultural trade and overall trade policies are conducive to fostering food security for all through a fair and market-oriented world trade system.” *Id.*

88. Comm. on Econ., Soc., and Cultural Rights, General Comment 12, 8, Apr. 26–May 14, 1999, U.N. Doc. E/C. 12/1999/5 (May 12, 1999).

11(2)(a), which provides that states “shall take measures to improve methods of production, conservation and distribution of food . . . by developing or reforming agrarian systems”; and Article 11(2)(b), which provides that states shall “ensure an equitable distribution of world food supplies in relation to need.”⁸⁹ These provisions, and in particular those in Article 11, oblige states to take affirmative steps to ensure that the right to food is realized.⁹⁰ The use of the word “shall” connotes a heightened level of the responsibility that requires states to uphold all human-rights contexts, to respect, protect, fulfill, remedy, and ensure guarantees of process and results.

The Doha Declaration, which launched the Doha Round of Trade Talks, made it a goal to enable developing countries to meet their food needs as part of an agenda referred to as “Non-Trade Concerns” and the reform of Article 20 of the Agreement on Agriculture, which requires countries to take into account non-trade concerns, such as food security in negotiations on agricultural liberalization.⁹¹ These negotiations have included submissions that made direct reference to the right to food “as being particularly relevant to the future negotiations” on non-trade concerns in the Agreement on Agriculture.⁹² The Committee on Economic, Social and Cultural Rights has recommended that trade negotiations ensure that “the right to food is given adequate consideration.”⁹³ The Committee has noted that the failure to take into account the right to food in negotiating new trade agreements would violate this right.⁹⁴

The Food and Agriculture Organization’s (FAO) World Food

89. For an exhaustive analysis, see Hans Morten Haugen, *Food Sovereignty-An Approach to Ensure the Right to Food*, 78 NORDIC J. OF INT’L L. 263 (2009).

90. See generally HAN MORTEN HAUGEN, *THE RIGHT TO FOOD AND THE TRIPS AGREEMENT – WITH A PARTICULAR EMPHASIS ON DEVELOPING COUNTRIES’ MEASURES FOR FOOD PRODUCTION AND DISTRIBUTION* (Brill 2007).

91. For a good analysis of how global trade rules adversely affect the right to food, see Jacqueline Mowbray, *The Right to Food and the International Economic System: An Assessment of the Rights-Based Approach to the Problem of World Hunger*, 20 LEIDEN J. OF INT’L L. 545 (2007); see also Carmen Gonzalez, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security and Developing Countries*, 27 COLUM. J. ENVTL. L. 433 (2002).

92. Christine Breining-Kaufman, *The Right to Food in Agriculture*, in HUMAN RIGHTS AND INTERNATIONAL TRADE 349 (Thomas Cotter et al., eds. 2005).

93. Comm. on Econ., Soc., and Cultural Rights, General Comment 12, 8, Apr. 26–May 14, 1999, U.N. Doc. E/C. 12/1999/5 (May 12, 1999).

94. *Id.* at ¶ 19.

Summit's Plan of Action recognizes "the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food, and the fundamental right of everyone to be free of hunger."⁹⁵ The FAO's work in this respect affirms Article 8 of the Declaration on the Right to Development, which obliges states to undertake "all necessary measures" for the realization of the right of access to food.⁹⁶

B. FOOD SECURITY

Food security refers to a situation "when all people, at all times, have physical, social, and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life."⁹⁷ Food security therefore refers not only to the ability to produce sufficient quantities of food, but also to the ability to access food.⁹⁸ Despite burgeoning populations worldwide, global food production is actually sufficient to feed everyone in the world.⁹⁹ Because the distribution of the food is highly uneven, providing access to those in need is the crucial solution to food availability for everyone.¹⁰⁰

C. FOOD SOVEREIGNTY

Food sovereignty is a much broader concept than the right to food. The global trade regime and the larger apparatus of neoliberal globalization in the context of food security have in turn produced a countermovement or social movements for the "defense of practices of cultural, economic and ecological difference."¹⁰¹ Food sovereignty is about protecting and building alternative "socio-natural worlds" that can provide a healthy food

95. *FAO's Consultation on the Right to Development* (Apr. 6, 2011), <http://www.fao.org/Legal/rtd/statements/dev00.htm>.

96. Declaration on the Right to Development, G.A. Res. 41/128, Annex, U.N. GAOR, U.N. Doc. A/RES/41/128 at 4 (Dec. 4, 1986). There has been and continues to be a rapporteur on the right to food.

97. FAO, *THE STATE OF FOOD INSECURITY IN THE WORLD: ADDRESSING FOOD INSECURITY IN PROTRACTED CRISES* 8 (2010). See also, U.N. FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, Adopted at the 127th Session of the FAO Council, CL 127/10, Nov. 22–Nov. 27, 2004, 34-35 (2005).

98. *Organic Agriculture FAQ*, FAO, <http://www.fao.org/organicag/oa-faq/oa-faq7/en/> (last visited Feb. 3, 2012) [hereinafter *Organic Agriculture FAQ*].

99. *Organic Agriculture FAQ*, *supra* note 98.

100. *Organic Agriculture FAQ*, *supra* note 98.

101. See ESCOBAR, *supra* note 12, at 67.

supply to farming communities than those being currently defined by neoliberal trade policies. However, the food sovereignty movement is about more than food sovereignty as such. It is about protecting the local environment, indigenous peoples, and agricultural practices that are not necessarily aimed at surplus production.¹⁰² In affected societies, communities are increasingly organizing into social movements. In doing so, they are faced with at least three choices:

the local regimes, which they want to defend and transform from a position of autonomy; the capitalist [or neoliberal regime], the advancement of which they want to contain; and the techno regime, [the rise of a science and policy movement around biodiversity and sustainability that is heavily reliant on evolutionary biology and a neo-Darwinian ecology paradigm in which gene technology and patents are used to consolidate power over food and nature and in which the species is represented as under threat of extinction], which through processes of counterwork and politics of scale they want to utilize for the defense of identity, territory, and place.¹⁰³

The backlash created by globalized food production is evidenced by the emergence of social movements, particularly in “remote highland or jungle environments.”¹⁰⁴ Movements such as those in the Chiapas in Mexico or in the Narmada Valley in India are all forms of grassroots resistance to not only the globalization of food production, but also to massive development programs being implemented by governments and international institutions. Such massive development programs like cattle production in Latin America and similar industrial agricultural programs are justified as being in the interest of urban and rural development. Yet, often they are protested by social movements consisting of a broad cross section of groups including women, environmentalists, human-rights activists, indigenous peoples,

102. According to Keith Aoki, unique local knowledge especially in agricultural seeds are often treated as a free resource while those very seeds once they receive intellectual property protection, they gain seller-based innovation and are marketed in the mass market. Keith Aoki, *Free Seeds, Not Free Beer: Participatory Plant Breeding, Open Source Seeds, and Acknowledging User Innovation in Agriculture*, 77 *FORDHAM L. REV.* 2275, 103 (2009).

103. See ESCOBAR, *supra* note 12, at 145.

104. Nash, *supra* note 29, at 9.

and religious activists.¹⁰⁵ These groups continue to raise concerns about the impact of bringing development to them in a way that compromises their ability to provide food for themselves as well as in undermining, if not entirely uprooting, their local economies and cultures.

While a primary aim of the right to food is access to food, food sovereignty pertains to a much broader set of issues. One way to combat global hunger and farmer suicides is to promote “food sovereignty.” The Declaration of Nyeleni, which was written by a transnational group of peasant groups, La Via Campesina, defines food sovereignty as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems.”¹⁰⁶ Food sovereignty puts the needs of farmers and consumers at the heart of policymaking, rather than the demands of markets and corporations.¹⁰⁷

Food sovereignty has also been defined as

the right of peoples, communities, and countries to define their own agricultural, labour, fishing, food and land policies, which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies.¹⁰⁸

Based on these definitions, the food sovereignty movement is comprised of the following basic tenets. First, people have rights to define their agricultural, labor, fishing, food, and land policies, as well as the plant genetic resources on which their food and

105. Balakrishnan Rajagopal, *From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions*, 41 HARV. INT'L L.J. 529 (2000).

106. Forum for Food Sovereignty, *Declaration of Nyeleni* (Feb. 27, 2007), http://www.world-governance.org/IMG/pdf_0072_Declaration_of_Nyeleni_-_ENG.pdf.

107. *Id.*

108. Rome/CSO Forum 2002, *A Right For All: Political Statement of NGO/CSO Forum for Food Sovereignty* (June 8–13, 2002), <http://www.foodsovereignty.org/Portals/0/documenti%20sito/About%20us/Food%20Sovereignty-%20A%20Right%20For%20All%20Political%20Statement%20.pdf>.

survival depend.¹⁰⁹ This right of self-determination is a recognized principle of international law. Vindicating this right involves restoring community control over productive resources including seeds and other resources that are under continual threat from multinational corporations, or what Jack Kloppenburg has called "agroscientific capital."¹¹⁰ It also involves ensuring that farming communities are able to produce their food needs free from fear that patents, plant breeders' rights, restrictive methods, or even technological methods, such as anti-germination technology, will be used to restrict their access to seeds.¹¹¹

Second, people have a right to produce safe, nutritious, and culturally appropriate food to sustain individuals and societies and a collective entitlement to produce for survival and community continuity, rather than for profit or surplus. This means people should not have to depend on food imports or substitute local nutritious foods for imported food, which may not be as healthy.¹¹² To protect this right, the state has a responsibility to ensure fair farm-input prices and access to productive resources, including land, water, and fishing areas.

Third, people have an obligation to practice ecological soundness. This means ensuring the land, water, and air resources are used in such a manner that they remain productive assets for current and future generations. The natural capital of a place should not be depleted to satisfy only current needs for subsistence or those of intensive profit-oriented agriculture.

Although food sovereignty has not attained the status that the right to food has in human-rights jurisprudence,¹¹³ it is clear that food sovereignty overlaps in significant ways with the right to food. For instance, Article 11 of the International Covenant on Economic, Social and Cultural Rights obliges states to ensure the improvement of methods of production, conservation, and distribution of food by developing or reforming agrarian systems.

109. Jack Kloppenburg, *Impeding Dispossession, Enabling Repossession: Biological Open Source and the Recovery of Seed Sovereignty*, 10 J. OF AGRARIAN CHANGE 3, 384 (2010).

110. *Id.*

111. For a discussion, see Keith Aoki, *supra* note 102, at 133-34.

112. Mowbray, *supra* note 90 (discussing how poor countries are often encouraged to import their food security).

113. See Haugen, *supra* note 89. See also Mowbray, *supra* note 91.

Further, states are obliged to ensure an adequate distribution of world food supplies in relation to need.

The concerns of food sovereignty are also reflected in traditional international legal principles, including permanent sovereignty over natural resources and the right of self-determination. The Declaration on Permanent Sovereignty Over Natural Resources in Article 1(2)(a) of the International Covenant on Economic, Social, and Cultural Rights expresses the principle of permanent sovereignty over natural resources by providing that “in no case may a people be deprived of their own means of subsistence.”¹¹⁴ Article 1.1 of the Declaration on Permanent Sovereignty Over Natural Resources declares that the “right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”¹¹⁵ Further, both the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights affirm the rights of all peoples to determine their own destinies—including what they grow and how they do so, elements that come under the umbrella of food sovereignty.¹¹⁶

Thus while the right to food and the concept of food security overlap with food sovereignty, food sovereignty encompasses elements not contained in the right to food and the concept of food

114. G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., Supp. No.17, U.N. Doc. A/5217, at 15 (Dec. 14, 1962).

115. *Id.*

116. Article 1 of both the International Covenant on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights reads as follows:

1.1:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

1.2:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

International Covenant on Economic, Social and Cultural Rights, U.N. HIGH COMM'R FOR HUMAN RIGHTS, *available at* <http://www2.ohchr.org/english/law/cescr.htm> (last visited Feb. 3, 2012); International Covenant on Civil and Political Rights, U.N. HIGH COMM'R FOR HUMAN RIGHTS, *available at* <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Feb. 3, 2012).

security. The right to food is primarily directed at states; however, food sovereignty is directed at a much broader audience. In addition to states, private actors such as national and multinational corporations and international organizations may be open to scrutiny when their conduct is inconsistent with the tenets of food sovereignty.

IV. CONCLUSION

In a number of ways, food sovereignty helps social movements defend local regimes by articulating a much broader vision than that offered by the important right to food and the techno-regime of biodiversity and sustainability. First, social movements and local farming communities marginalized by globalization seek not only to defend sustainable farming methods, but to defend their territory and land from encroachment by industrial agriculture and development programs not designed for their benefit. Food sovereignty is therefore about more than the right to food and food security. It also involves ensuring a place for traditional production systems and defending local economies.

Further, it means ensuring that a bottom up approach to agriculture based on the knowledge of farmers, supported by civil society organization and publicly funded research institutes "working in the public domain for the common interest," is not displaced by industrial agriculture supported by scientific solutions supported by the private sector for profit.¹¹⁷ It means coming up with solutions to the encroachment on resources of local farming communities, like seeds through new, concrete and innovative concepts such as "biological open space" that would stop the dispossession of such resources from those that need them most for their food and survival.¹¹⁸ In poor regions such as sub-Saharan Africa, this objective is evident in the fact that close to 80% of the population resides in rural areas and is engaged in agriculture as a major economic activity. Supporting local farmers would therefore mean strengthening indigenous ecological knowledge and practices to assure their viability,

117. Helena Paul & Ricarda Steinbrechner, HUNGRY CORPORATIONS: TRANSNATIONAL BIOTECH COMPANIES COLONISE THE FOOD CHAIN 108 (Zed Books 2004).

118. Kloppenburg, *supra* note 109.

118. See Aoki, *supra* note 102, at 131-34 & Kloppenburg, *supra* note 109, at 385-86.

rather than assuming modern ecology and the attendant patent regime that comes with it has all the answers.¹¹⁹

Second, by thinking of land in terms of life corridors linked to particular landscape units, be they mangrove ecosystems, foothills, rivers conceived as sociocultural forms, rather than simply as patches of territory that can be titled under a modern system of land registration and as such are marked by multidimensional uses that are marked by social relations (kinship, gender, and ethnicity). By life corridors I mean that of all varied landscape units that are often thought of discretely, should instead be regarded as being part of an interconnected ecosystem or as one “comprehensive whole.”¹²⁰ Notions such as life corridors have become an important way of developing a more complete picture from fragmentary information in a number of areas tracking how sea creatures migrate, feed, mate, and reproduce across a vast swath of the Pacific Ocean.¹²¹

A corridor approach has even been used to organize and prioritize environmental stewardship efforts for the twelve million acres of land alongside state and local roads owned and managed by the U.S. Department of Transportation.¹²² This approach to life-corridor environmental stewardships is more consistent with the reality of local communities as complex sociocultural ecosystems and habitats, rather than as fragmented patches of property to be privatized.¹²³ On this concept, the social

119. See, e.g., Joseph Gari, *Bio-diversity and Indigenous Agroecology in Amazonia: The Indigenous Peoples of Pastaza*, 5 ETNOECOLOGICA 7, 21 (2001).

120. I attribute this notion of “comprehensive whole” to Justice Weeramantry in his dissent in Case Concerning Kasikili–Sedudu Island (Bots. v Namib.), 1999 I.C.J. 4, 109 (Dec. 13) (Weeramantry, J., dissenting) (arguing that boundary delimitations around should not be used to undermine sensitive ecological zones because “modern international law” allowed taking into account “certain environmental values”).

121. David Perlman, *The Pacific Ocean’s ‘corridors of life’*, SFGATE.COM, June 23, 2011,

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/06/23/MNMB1JVGU5.DTL>. See also Northern Ontario Research Development Ideas and Knowledge (NORDIK) Program on Corridors for Life, NORDIK INSTITUTE, http://www.nordikinstitute.com/?page_id=55 (developed to ensure safe and reliable delivery of electricity along power line corridors in the Algoma region).

122. Marie Venner, Environmental Corridor Management NCHRP 25-25/63 (June 2010), [http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP25-25\(63\)_FR.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP25-25(63)_FR.pdf) (report prepared on request from American Association of State Highway and Transportation Officials Standing Committee on the Environment).

123. As Celestine Nyamu Musembi argues, formal titling of land is not correlated to increases in productivity. Celestine Nyamu Musembi, *De Soto and Land Relations*

movements of indigenous and local communities have a cultural-territorial basis and often articulate ideas of ethnic and cultural identity as well as food security and sovereignty to ward off displacement.¹²⁴

Consistent with this idea of life corridors is the need to recognize that African countries in particular have a variety of agro-ecological zones (arid, humid, and sub-humid zones for example) and as such, no single crop or set of crops, seed variety, soil or water management technology, infrastructure or institutions will work.¹²⁵ A one-size-fits-all approach as embraced in industrial agriculture is unlikely to work in these varied areas. Much creativity must be embraced to find individualized and workable solutions in each context. Project aid and national development policies that are not sensitive to this reality on the ground are unlikely to help address problems related to food security and sovereignty.

Third, pursuing food sovereignty often means seeking alternatives to the development paradigms offered by neoliberal globalization.¹²⁶ As I have just noted, many agricultural development programs in Africa are insensitive to the diversity of agro-ecological zones, since they are often designed as one-size-fits-all. Agricultural development projects that focus exclusively on the export sector and thus on a narrow range of cash crops do not integrate well with local structures and are not designed to help local farmers and the poor address the challenges of hunger and malnutrition.¹²⁷ Alternative approaches to addressing food

in *Rural Africa: Breathing Life into Dead Theories About Property Rights*, 28 THIRD WORLD Q. 1457 (2007). She further argues that there are five shortcomings of the impetus to title land in programs promoted by institutions such as the World Bank and advocates such as Fernando De Soto. *Id.* at 1459-60. The five shortcomings are: (1) a narrow construction of legality that equates legal pluralism with extra legality; (2) an underlying social evolutionist bias which presumes that individual ownership is ultimately inevitable for all social contexts; (3) an unproven link between formal title and access to credit facilities; (4) a narrow understanding of markets in land to refer only to 'formal markets'; and (5) a failure to acknowledge that formalization can result in both security and insecurity. *Id.*

124. ESCOBAR, *supra* note 12, at 145.

125. Akiwumi A. Adesina, *Solving the Food Crisis in Africa: Achieving the African Green Revolution*, in FOOD CRISES AND THE WTO: WORLD TRADE FORUM 100 (Cambridge Univ. Press 2010).

126. ESCOBAR, *supra* note 12, at 145.

127. Baris Karapinar & Christian Haberli, *Conclusions and Policy Recommendations*, in FOOD CRISES AND THE WTO: WORLD TRADE FORUM 332 (Cambridge Univ. Press 2010). It is doubtful that the landgrabs currently ongoing in

insecurity and sovereignty should not assume that the way to address the challenges of hunger and malnutrition is to incorporate local farmers and groups seamlessly into the official developmental discourses of genetic resource conservation and intellectual property rights and export-led development. Rather that these groups should be left with the autonomy to retain a degree of independence within their local communities understood holistically rather than in the often spatially and conceptually fragmented ways promoted by neoliberal reform projects.

Giving autonomy to locally-defined goals and perspectives would, in turn, increase and enhance the ability of such local communities to leverage their biodiversity resources for their benefit.¹²⁸ Giving autonomy to these groups would also need to be coupled with meaningfully and effectively empowering them. In the context of African countries, this would mean enhancing access to meaningful extension services, including fertilizers and other farm inputs, and investing in developing crops that are tolerant to drought, flood, disease, and pests. It would also mean technology transfers, farmer training in new and sustainable techniques of crop, and farm management, as well as end product quality to give their produce a shot in the market place.¹²⁹ These new and sustainable techniques must be practical, accessible, affordable, and helpful. They would constitute a way of democratizing expertise about agricultural production in a way that would make the technical and scientific knowledge that has transformed agricultural production in the green revolution in Asia unlike in corporate-dominated agriculture that is not accessible and usable to poor farmers.

Such an empowerment-based approach of knowledge sharing would ideally also include meaningful financial and other support to farmers to turn staple crops into tradable goods that can earn these farmers an income. This implies that the needs of local farmers would become an integral part of national agricultural planning in the same way export-led agriculture has become.¹³⁰

Africa are consistent with the concept of food sovereignty as discussed in this lecture.

128. See, e.g., Robert Rhoades & Virginia Nazarea, *Local Management of Biodiversity in Traditional Agroecosystems*, in BIODIVERSITY IN AGROECOSYSTEMS 215-36 (W. Collins & C. Qualset, eds., 1999).

129. Karapinar & Haberli, *supra* note 127, 330.

130. Adesina, *supra* note 125, at 104-05. Notably, such policies would also require

Governments are responsible for involving a broad cross section of stakeholders including local farmers in decentralized agricultural policy planning and implementation. This would include planning around such issues as pricing of farm products and inputs, marketing, credit, mechanization, and research. Farmers ought to be involved in long- and medium-term planning for the agricultural sector as well as project planning and implementation.

Regarding the example at the beginning of this Article about foreign canned fruit in the South Pacific, my proposals would help farmers in the South Pacific develop the capability to can their own fruit and market it competitively to avoid being displaced by canned fruit from farmers thousands of miles away.¹³¹ These sensible reforms at the national level would help reform the global agricultural system into a more equitable and efficient system in which countries move away from high agricultural protection as they have done for nonagricultural goods.¹³² Ultimately, it is vitally important for food security that local farmers in poor communities retain sovereignty over access to genetic resources, financial resources, and technical resources, as well as local control of their natural resources, including their farming systems. In addition, food sovereignty helps society to acknowledge not only the importance of control over resources and territory but of culture and identity.

training farmers with skills in climate change adaptation, another related and important issue that is beyond the scope of my lecture.

131. Incidentally, a progressive coalition of local groups has developed a national food policy along these lines, but it has languished in Parliament without substantial support to move forward because a majority of Members of Parliament were simply not interested or had been bought off by the large Australian–New Zealand import lobby in the country. Interview with Ralph Regenvanu, Vanuatu Member of Parliament, in Port Vila, Vanuatu (Aug. 17, 2010).

132. Kym Anderson, *Agricultural Policies: Past, Present and Prospective Under Doha*, in *FOOD CRISES AND THE WTO: WORLD TRADE FORUM*, 183 (2010).