

## TOWARDS MORE COHERENCE BETWEEN INTERNATIONAL TRADE AND THE RIGHTS OF THE CHILD

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### I. International cooperation, international trade and the Convention on the Rights of the Child

Under the Convention on the Rights of the Child (CRC), States Parties have the obligation to respect, protect and fulfil children's economic, social and cultural rights (ESCR). According to the CRC (preamble, article 4), the UN Charter (articles 55 and 56) and the International Covenant on ESCR (article 2 (1)), international cooperation represents a key element towards implementing ESCR worldwide. In its General Comment No 5 (2003),<sup>1</sup> the Committee on the rights of the child states that all States Parties to the Convention have the obligation to implement it "within their jurisdiction, but also to contribute, through international cooperation, to global implementation".

In the field of human rights, international cooperation refers to the idea that States do not only have obligations towards their own citizens, but also towards people living outside their territories. The extraterritorial dimension of human rights obligations under the CRC holds that States have to respect and protect ESCR of children in third countries.<sup>2</sup> This means that States parties have to abstain from violating ESCR abroad and to prevent third parties to interfere with these rights in another country. In terms of international trade, it implies that States should restrain, both at national and international level, from elaborating policies and negotiating agreements that could negatively affect the rights of the child and impede its "harmonious" development. Moreover, governments have also the duty to regulate the activities of transnational corporations so that they do not violate children's rights under the CRC abroad.

On the occasion of the 20<sup>th</sup> Anniversary of the CRC, 3D → Trade - Human Rights - Equitable Economy submits this paper to outline the importance of taking into account children's ESCR in international trade. Current practice shows that trade representatives within multilateral and bilateral States agencies often do not consider sufficiently – or at all – the impact economic policy decisions might have on the enjoyment of children's ESCR, especially in developing countries. Furthermore, in most cases, trade agreements are still negotiated in secrecy, ignoring human rights principles such as transparency and participation.

Article 3 (1) of the CRC states that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. States parties have therefore an obligation to take into account children's interests when negotiating trade agreements and implementing respective measures. In a similar way, article 3 (1) applies also to the States' participation within international organizations like the World Bank Group, the International Monetary Fund and the World Trade Organization (WTO). This means that States must consider their obligations regarding children's rights when engaging as members of these international organizations in activities related to international cooperation and economic development.<sup>3</sup>

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<sup>1</sup> Committee on the Rights of the Child, *General Comment No. 5, General measures of implementation for the Convention on the Rights of the Child*, 2003,

[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En?OpenDocument)

<sup>2</sup> W. Vandenhoe, 'Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?', *International Journal of Children's Rights* 17, 2009

<sup>3</sup> Committee on the Rights of the Child, *op. cit.*

To ensure that human rights principles are considered when negotiating trade agreements, governments should realize rights-based impact assessments before implementing new trade measures that might affect children's enjoyment of ESCR. Similarly, already existing trade policies and rules have to be assessed periodically within the framework of human rights standards.

International trade as a dimension of international cooperation needs to be framed in a way that contributes to the realization of children's ESCR. This requires that States work together towards a more equitable global economy, which takes into account the interests of the most vulnerable groups in society, including children.

The following section outlines how current trade rules and policies can affect specific ESCR under the Convention. The analysis is based on 3D's work over the past years and focuses on the relationship between trade liberalization and trade-related intellectual property rights (IPRs), on the one hand, and the right to food, a standard of living adequate to the child development, health and education, on the other hand. We will conclude with recommendations and proposals for future work.

## **II. Implications of trade and intellectual property rules on economic, social and cultural rights enshrined in the Convention on the Rights of the Child**

### **The right to food (article 6, article 24 and article 27.1)**

The right to food requires States to ensure availability, accessibility and adequacy of food.<sup>4</sup> It is considered a "progressive realization" right which means that States must move as rapidly as possible towards its realization. However, it imposes immediate obligations on States, such as non-discrimination in the realization of the right, non-regression in terms of enjoyment of the right and the elaboration of a policy towards the realization of the right.

The right to food of the child can be hampered by IPRs related to seeds,<sup>5</sup> which have been introduced by the WTO Trade-related Intellectual Property Rights (TRIPS) Agreement and have become recurrent features of regional and bilateral free trade agreements. Because they prevent others from producing, selling, exchanging or reusing seeds, IPRs owners - usually private corporations - make small farmers dependent on them for seed supply, which can negatively impact their means of subsistence and farm production. With increasing corporate concentration in the agricultural sector, the seed owners gain control over seed production and are free to set prices at high rates. The problem of such a system is that it raises the cost of seed and agricultural inputs making them unaffordable for small-scale farmers. If seeds become inaccessible, farmers will not be able to derive their livelihood from farming anymore, making hunger more prevalent amongst children living in rural areas. IPRs on seeds can also have negative effects on the sustainability of food production. By hampering the flow of farm seeds, IPRs limit sharing of genetic material and traditional knowledge. This has negative effects on agricultural biodiversity and jeopardises the food security of future generations.

### **The right to a standard of living adequate to the child development (article 27)**

The right to an adequate standard of living includes the right to adequate food, clothing and housing and the right to improve living conditions. It implies that governments build strategies to combat poverty, specifically aimed at the vulnerable and marginalized populations. The rural sector is of importance in this regard, as poverty is particularly prevalent in rural areas.

Yet, trade agreements and trade related policies can be detrimental to rural livelihoods. Agricultural trade liberalization encourages industrialized agriculture - controlled by multinational companies - over farmer-oriented agriculture. By eliminating barriers to imports trade agreements severely diminish small-scale farmers' incomes, suffering from agribusiness competition and massive flows

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<sup>4</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 12, The Right to Adequate Food*, 1999, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9)

<sup>5</sup> For more information on how IPRs impact the right to food see 3D's publication *Seeds of hunger: intellectual property rights on seeds and the human rights response*, [http://www.3dthree.org/pdf\\_3D/3D\\_THREAD2seeds.pdf](http://www.3dthree.org/pdf_3D/3D_THREAD2seeds.pdf)

of food imports at cheap prices. This may impact living conditions of large amount of populations as in many countries the majority of people depend on agriculture for employment and source of income. Because they decrease revenues from tariff perception, trade agreements may also lead to governmental cuts in public expenditures, thus affecting poverty reduction and other social measures designed to reach the poorest groups of the society.

The right of the child to decent living conditions is also jeopardized by the increased large-scale acquisitions and long-term leases of agricultural land for offshore food and biofuel production. The key driver behind this new trend is to ensure national food security of food importing countries that have lost confidence in international market as a reliable source of food supply.<sup>6</sup> The most sought-after lands are in developing and transition countries, where land and local labour are still inexpensive, the focal point of interest being sub-Saharan arid lands.<sup>7</sup>

The international transactions are not only opaque, but they also can affect children's living conditions in multiple ways. In many developing countries, farmers do not possess property titles on the land they cultivate. Many of the land users are not even bound by a formal contract to the owner of the land. When foreign investors come in, land tenants may be evicted without being compensated. Thus, land acquisition agreements may lead to displaced families, impeding children's right to housing and basic services.

Selling or leasing land to foreign investors can also deprive local populations of access to water and other natural resources linked to their subsistence, also violating the right to food of the child. Among the particularly vulnerable populations are pastoralist groups earning their livelihood from animal husbandry, crucially depending on access to pasture land. The rights of indigenous people could also be at risk as, according to the Committee of the Rights of the Child, "in the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture. States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible."<sup>8</sup>

If not regulated, land acquisition can be a source of food insecurity for a significant proportion of the population in a country as food produced through foreign investments is not designed for the local market but sent to the country of origin of the investor.

### **The right to health (article 24)**

The right to health does not mean that children have the right to be healthy and that States are obliged to guarantee a good health for every child. According to the Committee on ESCR, "the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health."<sup>9</sup> All children are entitled to have the same and equal access to health care and medicines, especially those from the poorest sections of society.<sup>10</sup> Health treatments and medicines have to be affordable for all and any discrimination made on economic ground is a violation by the State of its obligation relating to children's right to health.

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<sup>6</sup> For example: Libya, South Korea, China, United Arab Emirates

<sup>7</sup> See Olivier De Schutter, Special Rapporteur on the right to food, *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*, 2009, <http://www.srfood.org/images/stories/pdf/otherdocuments/22-srftlarge-scalelandacquisitions-hrprinciples-9.6.09-2.pdf>

<sup>8</sup> Committee on the Rights of the Child, *General Comment No. 11, Indigenous children and their rights under the Convention*, 2009, [http://www2.ohchr.org/english/bodies/crc/docs/GC.11\\_indigenous\\_New.pdf](http://www2.ohchr.org/english/bodies/crc/docs/GC.11_indigenous_New.pdf)

<sup>9</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14, The right to the highest attainable standard of health*, 2000, <http://daccessdds.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>

<sup>10</sup> Committee on the Rights of the Child, *General Comment No. 3, HIV/AIDS and the rights of the child*, 2003, [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.3.En?OpenDocument)

Intellectual property rules can also limit children's access to medicines. Strict IPR standards in regional and bilateral free trade agreements are of particular concern, as they often go beyond the minimum standards set in the TRIPS Agreement. Such TRIPS-plus standards hinder a States' capacity to ensure access to low-cost medicines. They also ignore the decisions adopted under the Doha Declaration on the TRIPS Agreement and public health in 2001, aiming to protect public health and promote access to medicines for all. TRIPS-plus provisions limit the grant of compulsory licensing allowing cheaper generic versions of patented medicines, confer power on patent owners to block parallel imports of patented drugs from countries practicing lower prices, extend the patent term beyond the 20 years set by the TRIPS Agreement and provide patent owners with extended experimental data protection, which delays the marketing of generics. Such a strengthening of the patent system enhances monopolistic rights of pharmaceutical companies and prevents generic competition, which is considered the most efficient way to reduce the cost of medicines and improve access to medicines for all. This may be particularly harmful to children and adolescents in developing countries where HIV/AIDS is most prevalent. Considering the high cost of HIV/AIDS treatment, the non-availability of generic antiretroviral drugs may endanger the life of infected and ill children.

### **The right to education (article 28)**

The right to education in article 28 (1) requires States to make primary education compulsory and available free to all, make secondary education accessible and available to every child by introducing free education and offering financial assistance in case of need, and make higher education accessible on the basis of capacity by every appropriate means. To assess the right to education, it is helpful to part from the 4A's principle which indicates that education must be available, accessible, acceptable and adaptable in order to be meaningful<sup>11</sup>.

International trade affects the right to education at least in two ways: by privatization and liberalization and by copyright. The privatization and liberalization of services, such as health and education, is being promoted multilaterally through the WTO General Agreement on Trade in Services (GATS) and bilaterally through free trade agreements. The increased opening of the education sector to competition from national and foreign services providers needs to be analyzed and evaluated in terms of the right to education. In this context, it is essential that States parties to the CRC ensure that education remains free and accessible to all as well as acceptable, the latter meaning non-discriminatory, culturally appropriate and of quality.

Multi- and bilateral trade agreements generally contain not only a chapter on trade in services but also one on copyright and related rights. Copyright rules protect commercial interests of copyright holders and often do not sufficiently take into account public interest to access copyright-protected works. As a copyright provides the rights-holder with near monopoly control over publications, and many copyrights are in hands of transnational corporations, book prices tend to inflate. Multilateral instruments like the Berne Convention and the TRIPS Agreement include certain flexibilities that allow governments of developing countries to provide affordable text books for all children. However, often these flexibilities have been poorly used because it is unclear how to apply them nationally. As a result, domestic copyright legislations include low levels of flexibilities.<sup>12</sup> This means that many educational materials remain economically inaccessible for the most disadvantaged children. It is therefore essential to establish further mechanisms within domestic and international copyright legislation to promote and facilitate access to education, by making text books and other educational materials available and accessible to all children, including to disabled children, as stated in article 23 of the CRC.

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<sup>11</sup> Right to education project, *Education and the 4 As*, August 2009, <http://www.right-to-education.org/node/226>

<sup>12</sup> Gwen Hinze, *Making Knowledge Accessible Across Borders: the Case for Mandatory Minimum International Copyright Exceptions and Limitations for Education*, Capacity Building and Development, Electronic Frontier Foundation, November 2008, <http://www.eff.org/files/eff-making-knowledge-accessible-whitepaper.pdf>

## **Concluding remarks**

To improve coherence between the rights of the child and commercial policies and agreements, governments, both from the North and the South, should give more weight to children's development concerns based on ESCR when negotiating or applying trade measures.

The Committee has reiterated in several of its concluding observations regarding dialogues with States parties the importance of evaluating the impact of international trade agreements on the accessibility of medicines for children, and more generally on the realization of children's right to health.<sup>13</sup> 3D welcomes these recommendations of the Committee.

For the future implementation of the Convention, 3D would like to encourage all States as well as representatives from international organizations, NGOs and Committee members to systematically assess the potential effects of trade agreements and trade-related policies on the enjoyment of all children's economic, social and cultural rights.

We would like to recommend to CRC members to take into account when reviewing States' policies, their obligations related to their actions producing effects outside their own territories as well as States' responsibilities for the behavior of transnational corporations that adversely affect children's economic, social and cultural rights abroad.

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<sup>13</sup> For a summary on references of the Committee regarding intellectual property and human rights between 2004 - 2006, see: *UN Human Rights Treaty Monitoring Bodies Review of State Implementation of International Conventions (ICESCR, ICCPR and CRC)*, [http://www.3dthree.org/pdf\\_3D/TreatyBodyIPrefs\\_en.pdf](http://www.3dthree.org/pdf_3D/TreatyBodyIPrefs_en.pdf)