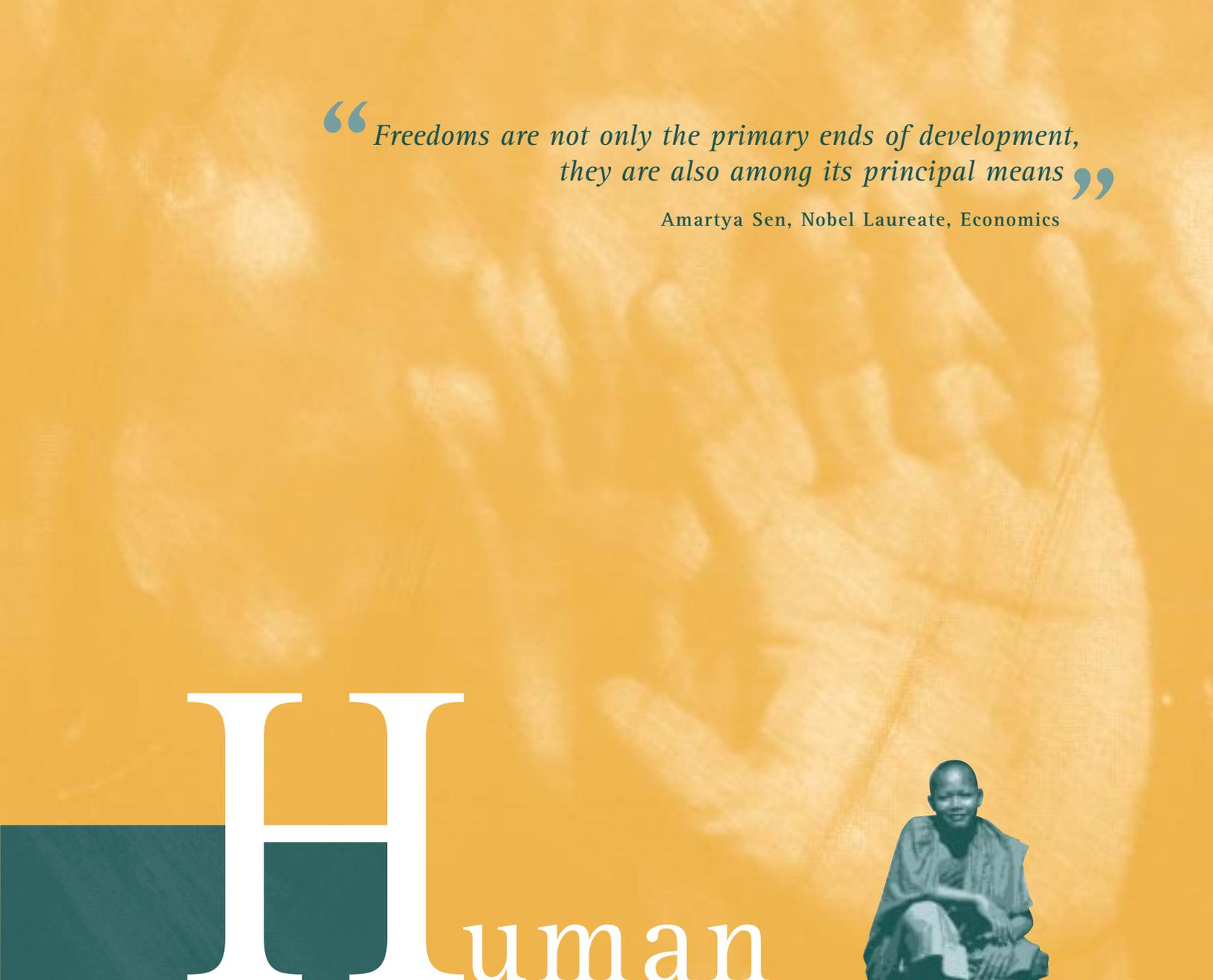


*“Freedoms are not only the primary ends of development,
they are also among its principal means”*

Amartya Sen, Nobel Laureate, Economics



Human Rights:

The WTO's MISSING
Development Agenda



Rights & Democracy

International Centre for Human Rights
and Democratic Development

Did you know?

Human rights are international law with binding obligations on governments.

Of the WTO's 146 members:

▶ **116** have ratified the *International Covenant on Economic, Social and Cultural Rights*.

▶ **119** have ratified the *International Covenant on Civil and Political Rights*.

The United Nations General Assembly adopted the *Declaration on the Right to Development* in 1986. It defines development as a human right.



“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

Article 28, Universal Declaration of Human Rights

T here is an international consensus...

Ten years after 171 governments reached consensus on human rights during the UN World Conference on Human Rights in Vienna in 1993, delegations representing the same governments will meet in Cancun, Mexico, to discuss a trade and development agenda.

The Vienna Declaration recognized that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. It called upon the international community to promote effective international cooperation for the realization of the “right to development” and the elimination of obstacles to development. Moreover, it emphasized in its first paragraph that “the promotion and protection of human rights is the first responsibility of governments.”

Ministers attending the World Trade Organization’s (WTO) 4th Ministerial meeting in Doha, Qatar, declared that they would place the needs and interests of developing countries “at the heart of the WTO work plan” and they reaffirmed their commitment to the objective of sustainable development, contained in the Preamble to the WTO’s founding document, the Marrakesh Agreement.

Instead, it is the doctrine of progressive liberalization that has remained at the core of the WTO negotiations. Despite considerable evidence to the contrary, trade negotiations proceed as though liberalization, alone, automatically generates growth and that growth automatically benefits the poor.



D evelopment is a human right...

“Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”

The UN Declaration on the Right to Development

The *UN Declaration on the Right to Development* describes development as a “process” moving progressively ahead towards the full realization of all human rights contained within the Universal Declaration of Human Rights and its two defining treaties – the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *International Covenant on Civil and Political Rights (ICCPR)*.

In accepting development as a human right, the needs-based paradigm of donor and recipient is reversed, enabling citizens to claim entitlements on a non-discriminatory basis from the governments elected to represent them.

Implementation of human rights takes place within states, but also among states. Human rights must be at the forefront of considerations during the negotiation of trade and other economic arrangements. Governments should not participate in international negotiations that disregard or potentially undermine human rights, either at home or in the other countries that are party to the agreement.

“The right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”
UN Special Rapporteur on the Right to Food

Imagine..



The Agreement on Agriculture (AoA)

If the WTO's Agreement on Agriculture was negotiated within a human rights framework, it would require that governments support rules that promote development.

Stakes are high for the developing world, where approximately 3/4 of the population depends on agriculture for its livelihood. In its report, *The State of Food Insecurity in the World 2002*, the Food and Agriculture Organization reminds us that the world already produces “more than enough food to provide an adequate diet for everyone.” **Yet 840 million people in the world are undernourished and 6 million children**

under the age of five will die this year as a result of hunger and malnutrition. Clearly, increased production is not the challenge before us. What we are faced with is a lack of political will to take the steps necessary to stop what the UN Special Rapporteur on the Right to Food, Jean Ziegler, has called a “silent massacre.”

“We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and, as appropriate, in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development.”

Doha Declaration,
paragraph 13

“You liberalize, we subsidize”

International trade in agriculture plays a key role in the production and distribution of food. On the eve of the 5th WTO Ministerial Meeting, the world finds itself facing a situation in which its wealthiest traders subsidize their farmers by almost US\$1 billion per day. In doing so, they encourage over-production. Surplus production is exported at far below its cost. This “dumping” of agricultural products into economies heavily dependent on small-scale farming and local markets, has devastated communities around the world.

How can this situation be resolved?

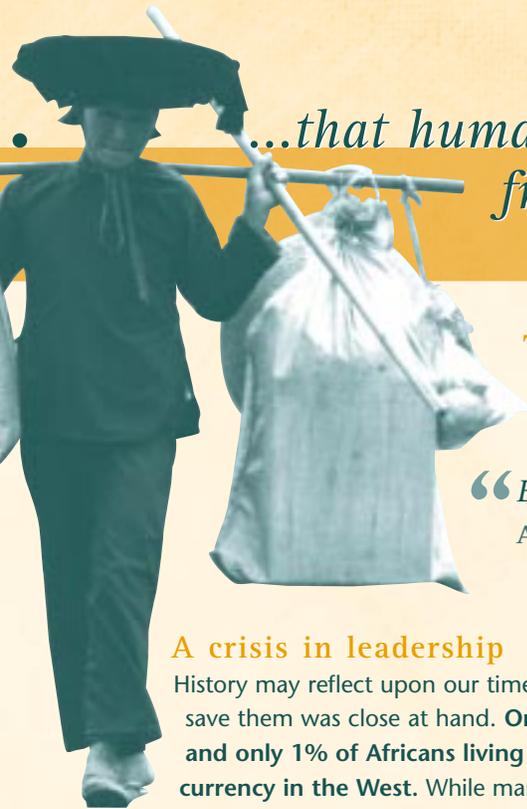
Taking steps towards the right to food

Several development-focused proposals for the AoA have been put forward by the governments of developing countries and by civil society organizations. They seek to redress WTO rules that have, in effect, slowed development and increased poverty.

The idea that WTO members should adopt such proposals is consistent with the consensus achieved in the Vienna Declaration and in the various human rights treaties ratified by WTO members. Moreover, it is consistent with the WTO's own stated mandate and the promise of the Doha Development Agenda.

As long as high levels of subsidized exports persist in wealthy nations, the WTO must encourage governments to adopt trade measures that will allow them to honour their human rights commitments. These positive steps would include:

- ▶ allowing developing countries to retain higher import tariffs to protect small farmers producing basic foods for local consumption (special products);
- ▶ allowing developing countries to apply extra import tariffs to block highly subsidized imports from developed countries like the US and the EU (safeguard mechanism);
- ▶ allowing developing countries to apply temporary extra tariffs to counter the effect of sudden surges of imported agricultural products (simplified countervail).



...that human rights formed the over-arching framework for international trade.

What would it mean for the WTO?

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

“Everyone has the right to life, liberty and security of person.”
Article 3, Universal Declaration of Human Rights

A crisis in leadership

History may reflect upon our time by asking what kind of leaders allowed millions to die when the ability to save them was close at hand. **One third of the world's people still lack access to essential medicines and only 1% of Africans living with HIV-AIDS are receiving anti-retroviral drugs that are now common currency in the West.** While many factors explain this injustice, in good part it is due to stringent protection of intellectual property rights as enshrined in the WTO, combined with the lack of attention that governments devote to their international human rights obligations, particularly economic, social and cultural rights.

The right to life over patent rights

At the Doha Ministerial meeting, a major breakthrough was achieved as the WTO's highest decision-making body issued a Declaration on the TRIPS Agreement and Public Health. This Declaration unequivocally reaffirmed the right of WTO members to protect public health and to use all the measures available under TRIPS to do so.

A human rights perspective on this issue demands that human life take precedence over patent rights as enshrined in the TRIPS Agreement. According to Médecins sans frontières, delay in reaching an agreement to allow countries to effectively deliver the medicines their populations need is costing 8000 lives a day. Governments that are not supporting a flexible interpretation of the TRIPS Agreement or the spirit of the Doha Declaration on TRIPS and Public Health are, in fact, violating the Universal Declaration of Human Rights, the ICESCR and the Constitution of the World Health Organization.

If human rights, including the right to health and to life, were kept in mind during the WTO negotiations on TRIPS and health, the appropriate course of action would be obvious. Governments should not let trade law stand in the way of delivering life-saving drugs to people who need them. In Cancun, that would mean that governments agree to the following positive steps:

- ▶ A non-limited list of diseases that will be covered under a special agreement for developing countries to import generic drugs;
- ▶ Broader eligibility in terms of which countries will be permitted to import generic medicines from other countries that are producing them under compulsory licenses (disregarding patents, allowed under TRIPS);
- ▶ No restrictions on which countries may produce generic drugs for export to developing countries where no patent or compulsory license exists.

“We agree that the TRIPS agreement does not and should not prevent Members from taking measures to protect public health.”

Doha Declaration on TRIPS and Public Health

Dispute settlement – rights or might?

The *Universal Declaration of Human Rights* is clear on the importance of judicial remedies for human rights violations. The UN Committee on Economic Social and Cultural Rights has also pointed out that failure to provide judicial recourse for violations of economic, social and cultural rights would disadvantage the most vulnerable groups of society and therefore be discriminatory in nature.

To ensure that WTO members do not apply discriminatory trade measures against other members, expert panels work full-time to determine blame and assign compensation in the millions of dollars. But the panel's mandate is restricted to its area of expertise – specific violations of the WTO agreements and trade-related discriminatory practices.

The international system has no institutional mechanism for resolving potential conflicts between trade rules and human rights law. The UN human rights system in particular lacks a strong mechanism for enforcing its provisions and ensuring that governments comply with the human rights treaties they have ratified.

An international campaign is currently underway at the UN Commission on Human Rights, for the adoption of an "optional protocol" (complaints mechanism) to the ICESCR. Even though the proposed protocol is much weaker than the WTO Dispute Settlement Understanding, providing for no financial penalties, many governments continue to oppose it. They argue that economic, social and cultural rights cannot be adjudicated in a court of law.

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Article 8, Universal Declaration of Human Rights

Searching for equity in all the wrong places

In the post World War II period, human rights and trade law evolved on parallel tracks and there was very little communication between them. As both the volume of international trade and the scope of trade agreements themselves expanded in recent decades, this disjunction has created a double standard that is itself highly discriminatory.

The protection of human rights is one of the essential purposes of the United Nations. In article 103, the UN Charter states that “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

How can we ensure that human rights obligations prevail over trade agreements? As long as governments are able to violate human rights with impunity while receiving swift penalties for violations of trade agreements, the implementation of trade rules will assume a de-facto primacy. If the members of the WTO truly believe in a development agenda, they must confront the challenges currently facing the human rights system. This will mean taking strong, positive steps towards the implementation of human rights treaties in the countries that have adopted them.

THE DOHA DEVELOPMENT CHALLENGE

In meeting the promise of its own development agenda, the WTO must reorient its perspective – shifting its emphasis from increasing trade volume, to determining trade rules and practices that will support a human rights framework for sustainable development. This will mean:

- ▶ acknowledging that WTO members have human rights obligations;
- ▶ understanding that sustainable development, not free trade, is the WTO's objective;
- ▶ recognizing that non-discrimination is a fundamental human rights principle;
- ▶ agreeing to take positive steps for the implementation of human rights treaties;
- ▶ ensuring that no WTO agreement results in human rights violations.

Which WTO members have HUMAN RIGHTS treaty obligations?

116 of the WTO's 146 members have ratified the ICESCR and are bound by its obligations. The obligations require that governments take steps necessary for progressive realization of the rights contained within the Covenant, including the right to an adequate standard of living, to food, to health and to education. This means that whatever the starting point, the economic well-being of poor people must continuously improve, not deteriorate.

119 of the WTO's 146 members have ratified the ICCPR which includes the right to life, liberty and security of the person, the right to freedom of expression and opinion, and the right to take part in government either directly or through freely chosen representatives. The rights contained in the ICCPR require immediate implementation by the States that have ratified this Covenant.

▲ indicates a State Party to the International Covenant on Economic Social and Cultural Rights

■ indicates a State Party to the International Covenant on Civil and Political Rights

▲■ Albania	▲■ Dominica	▲■ Korea, Republic of	▲■ Poland
▲■ Angola	▲■ Dominican Republic	▲■ Kuwait	▲■ Portugal
▲■ Antigua and Barbuda	▲■ Ecuador	▲■ Kyrgyz Republic	▲■ Qatar
▲■ Argentina	▲■ Egypt	▲■ Latvia	▲■ Romania
▲■ Armenia	▲■ El Salvador	▲■ Lesotho	▲■ Rwanda
▲■ Australia	▲■ Estonia	▲■ Liechtenstein	▲■ Saint Kitts and Nevis
▲■ Austria	▲■ European Community	▲■ Lithuania	▲■ Saint Lucia
▲■ Bahrain	▲■ Fiji	▲■ Luxembourg	▲■ Saint Vincent & the Grenadines
▲■ Bangladesh	▲■ Finland	▲■ Macao	▲■ Senegal
▲■ Barbados	▲■ Former Yugoslav Republic of Macedonia	▲■ Madagascar	▲■ Sierra Leone
▲■ Belgium	▲■ France	▲■ Malawi	▲■ Singapore
■ Belize	▲■ Gabon	▲■ Malaysia	▲■ Slovak Republic
▲■ Benin	▲■ Gambia	▲■ Maldives	▲■ Slovenia
▲■ Bolivia	▲■ Georgia	▲■ Mali	▲■ Solomon Islands
■ Botswana	▲■ Germany	▲■ Malta	▲■ South Africa
▲■ Brazil	▲■ Ghana	▲■ Mauritania	▲■ Spain
▲■ Brunei Darussalam	▲■ Greece	▲■ Mauritius	▲■ Sri Lanka
▲■ Bulgaria	▲■ Grenada	▲■ Mexico	▲■ Suriname
▲■ Burkina Faso	▲■ Guatemala	▲■ Moldova	▲■ Swaziland
▲■ Burundi	▲■ Guinea	▲■ Mongolia	▲■ Sweden
▲■ Cameroon	▲■ Guinea Bissau	▲■ Morocco	▲■ Switzerland
▲■ Canada	▲■ Guyana	■ Mozambique	▲■ Chinese Taipei
▲■ Central African Rep.	■ Haiti	▲■ Myanmar	▲■ Tanzania
▲■ Chad	▲■ Honduras	▲■ Namibia	▲■ Thailand
▲■ Chile	▲■ Hong Kong	▲■ Netherlands	▲■ Togo
▲■ China	▲■ Hungary	▲■ New Zealand	▲■ Trinidad and Tobago
▲■ Colombia	▲■ Iceland	▲■ Nicaragua	▲■ Tunisia
▲■ Congo	▲■ India	▲■ Niger	▲■ Turkey
▲■ Costa Rica	▲■ Indonesia	▲■ Nigeria	▲■ Uganda
▲■ Côte d'Ivoire	▲■ Ireland	▲■ Norway	▲■ United Arab Emirates
▲■ Croatia	▲■ Israel	▲■ Oman	▲■ United Kingdom
▲■ Cuba	▲■ Italy	▲■ Pakistan	■ United States of America
▲■ Cyprus	▲■ Jamaica	▲■ Panama	▲■ Uruguay
▲■ Czech Republic	▲■ Japan	▲■ Papua New Guinea	▲■ Venezuela
▲■ Dem. Republic of Congo	▲■ Jordan	▲■ Paraguay	▲■ Zambia
▲■ Denmark	▲■ Kenya	▲■ Peru	▲■ Zimbabwe
▲■ Djibouti		▲■ Philippines	

Rights & Democracy (International Centre for Human Rights and Democratic Development) is a Canadian institution with an international mandate. It is an independent organization, which promotes, advocates and defends the democratic and human rights set out in the International Bill of Human Rights. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.

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