

Statement of the Human Rights Caucus

On the occasion of the Sixth Ministerial Conference of the World Trade Organization

December 10, 2005

In a matter of days, government delegates will be gathering in Hong Kong for the latest landmark event in the ongoing process of economic globalization--the Sixth Ministerial Conference of the World Trade Organization (WTO). We, members of civil society from developed and developing countries, concerned about the impact of this process on the realization of human rights and fundamental freedoms of people all over the world, take the opportunity of *International Human Rights Day* to remind our governments that their human rights obligations cannot be abandoned at the WTO door.

The moral and legal primacy of human rights

The human rights struggle is the struggle for human dignity, which is a fundamental and defining ethical value in any culture. Trade liberalization on the other hand is a means, not an end in itself. The end that must be served by trade, as well as other aspects of economic policy, is increased human wellbeing through development. This is the only basis on which a given economic policy can claim moral and political legitimacy.

The canon of international human rights law (comprising civil, political, economic, social and cultural rights) offers a comprehensive legal definition of the fundamental elements of human wellbeing and human dignity. Therefore, any trade or other economic policy that offends against the principles of human rights, either in design or practice, lacks moral and political legitimacy.

Human rights are enshrined in numerous international treaties and in many national constitutions. Substantial portions of human rights law are regarded as having achieved the status of customary international law. Some of its foundational principles are recognized as peremptory norms of international law.

The promotion and protection of human rights are included in the UN Charter as being among the fundamental purposes of the United Nations. Through Articles 55(c) and 56 of the UN Charter, Members of the United Nations pledge to take joint and separate action to "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex language or religion." Charter Article 103 expressly and unambiguously provides that "[i]n 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."

Increased trade can undoubtedly serve as one means for the realization of human rights--especially the right to development--but it does not automatically or necessarily do so. Even when trade does bring increased wealth, poor distribution of the benefits both within and between nations, perpetuates poverty and impedes the progressive realization of human rights.

The Doha Development Agenda & coherence in law, policy and practice

Human rights and economic policy are interconnected to a degree that demands coherence in international and national law, policy and practice. In the wider context of the security-development-human rights nexus, UN Secretary-General Kofi Annan has declared in his March 2005 report, *In Larger Freedom*, that:

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed.

Nevertheless, the international trade regime has repeatedly denied and rejected any intersection between its mandate and human rights. This is both logically and legally indefensible especially since most WTO members have ratified at least one of the major UN human rights treaties.

This isolationism of the international trade community is based in part on a lack of knowledge of human rights--in particular of economic, social and cultural rights as an inseparable element of the canon of international human rights law--and also of the important contribution that human rights can make to desired development outcomes of trade policy and practice.

Isolationism has resulted as well from the disconnection of international trade policies and practices from the goal of increased human wellbeing. Increased trade and trade liberalization have become ends in themselves, and trade negotiations pit governments against each other in a competitive process driven by corporate interests rather than human development.

We denounce this isolationist tendency, which runs counter to the Preamble of the Marrakech Agreement, and demand that our governments take specific steps to ensure coherence between trade means and human rights ends.

- WTO member States must take their human rights obligations into account in all aspects of trade policy development, negotiation and practice.
- WTO member States must undertake human rights impact assessments before concluding new trade agreements or revisions of existing trade agreements, as well as in the course of implementing existing agreements.
- Information about human rights impacts should be included in trade policy reviews, both in the members' own reports and in the reports prepared by the WTO secretariat, including information provided by civil society sources.
- The WTO should be receptive to human rights arguments in the context of dispute settlement, including through the possibility for human rights organizations to submit *amicus curiae* briefs to the panels and the Appellate Body set up under the Dispute Settlement Understanding.
- States should establish effective mechanisms within government to enhance policy coherence between human rights and trade. Trade ministries and trade representatives should receive human rights information and assessments from both governmental and non-governmental sources, in order to formulate and advocate for coherent policy decisions in international economic forums.

Extraterritorial Obligations

No country has, as yet, made a sufficient attempt to ensure that its policy positions in international economic forums are consistent with its domestic human rights obligations and with the human rights obligations of its trading partners.

International human rights law places obligations upon States with regard to international assistance and cooperation. These obligations require that States refrain from actions (including in the context of negotiating and implementing international trade agreements) that could interfere, directly or indirectly, with the enjoyment of human rights in other countries, as well as their own. Such extraterritorial obligations mean that steps should be taken to ensure that activities undertaken by States individually or within multilateral processes including trade negotiations do not undermine the ability of other States to meet their human rights obligations.

- Developed States must take into account their responsibility for international assistance and cooperation for the realization of human rights.
- UN human rights treaty bodies should strengthen their capacity to examine the human rights impacts of international trade agreements and policies and to make observations concerning policy coherence.

Agricultural trade, and the human right to food

In a world that has more than enough food to feed everyone, the number of people who suffer from hunger and malnutrition is increasing. According to the UN Food and Agriculture Organization, more than 850 million people lack adequate food. Every five seconds a child under the age of five dies of hunger or hunger-related disease. The international trade in agricultural food products must be part of the solution, not part of the problem, in relation to this tragedy.

There are close linkages between agricultural trade liberalization and the failure to respect, protect or fulfill the human right to food. Developing countries have been pushed to open their agricultural markets to foreign imports that are often exported at less than the cost of production. Unfair trade rules, coupled with international financial institution loan conditions, have limited the policy space for developing country governments to meet their human rights obligations.

The Doha Development Agenda requires that WTO members address livelihood and food security concerns by establishing adequate flexibilities within new rules for trade in agriculture. However, on the eve of the 6th WTO Ministerial Meeting, very little hope of progress towards this goal can be offered to millions of poor farmers and people suffering from hunger around the world, and to the societies of which they are a part.

- WTO members must honour their commitment to make special and differential treatment for developing countries an integral part of the negotiations, including in agriculture negotiations.
- Market access rules must allow for differentiation, and allow developing countries to adopt rules and practices for the purpose of protecting the livelihoods of their agriculture-reliant poor.

- Developing countries must have sufficient policy space to enable them to support small farmers and to protect their agricultural markets from cheap imports, especially for food staples.
- Developed countries must end the dumping of subsidized agricultural production.

Trade in services and equitable provision of essential services

Current negotiations on the WTO's General Agreement on Trade in Services (GATS) threaten to erode the ability of national governments to implement measures for the equitable provision of essential services (such as health, water, sanitation and education) to all their citizens. The implementation of such measures is a central requirement of States under their human rights treaty commitments. While the GATS does not technically require withdrawal of the State from the provision of essential services, the logic of liberalization of trade in services does not favour equitable provision of those services. The legal requirements of the GATS continue to threaten effective State involvement and oversight in this area. Further mandated negotiations may also threaten governments' capacity to regulate services in the public interest.

Moreover, consideration of the potential impact of the GATS should address the power imbalances between countries in the negotiation process, and the existing pressure towards privatization of the public sector under the policy prescriptions of the IFIs.

Insofar as the human rights obligations of private corporations are not, as yet, legally enforceable in all circumstances, as the home States of those corporations are hesitant to adopt extra-territorial legislation to that effect, and as the host States may find it legally or practically impossible to impose strict obligations on foreign corporations, the rights of poor and vulnerable populations to the highest attainable standard of health, nutrition, education etc., may be put in jeopardy.

- Essential services with direct implications for specific human rights--such as the human right to health, water and education—should be excluded from negotiations under the GATS.
- There should be no new approaches within the GATS negotiations (such as 'benchmarking' or sectoral approaches) that could undermine the existing flexibility of the positive list approach.
- The ability of Governments to regulate in the public interest must not be subjected to new constraints.

Trade-related intellectual property rights, and the human right to health

The WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) has posed formidable obstacles to the progressive realization of the human right to health and the right to life, particularly in terms of access to medicines. By protecting, or indeed mandating, monopoly rights for at least 20 years, and stifling competition from lower-cost producers, the TRIPS Agreement enables drug prices to be set high and to stay high.

The 2001 Doha Declaration on the TRIPS Agreement and Public Health recognized the practical problems for public health posed by TRIPS compliance and encouraged WTO members to take advantage of TRIPS flexibilities. However, many commercial and political disincentives continue to

limit the practical availability and utility of these flexibilities, such as compulsory licensing and parallel importation, and hamper the ability of poorer countries to ensure that TRIPS outcomes are consistent with their human rights obligations. Further, the crisis regarding neglected diseases (mainly those affecting populations in the developing world) demonstrates the limitations of the market-based justification for stringent intellectual property laws - i.e. incentive for innovation.

In addition, the TRIPS provision allowing patent monopolies over living organisms is offensive to many religions and spiritual traditions and is therefore a violation of cultural rights.

- States must ensure that intellectual property rules in TRIPS and in other trade agreements do not obstruct or undermine any State's ability to comply with its human rights obligations, including equitable access to medicines.
- Assurances must be made that the additional seven year delay granted to Least Developed Countries (LDCs) for the implementation of TRIPS is not used to obtain concessions in agriculture, services or non-agriculture market access (NAMA).
- G8 countries must honour their commitment at Gleneagles to ensure "universal access to (HIV) treatment for all those who need it by 2010", and pursuant to that commitment to take all necessary steps to mitigate the restraining effects of the TRIPS Agreement on access to ARVs in the developing world.
- The review under provision 27(3)(b) should proceed and lifeform patents should be removed from the agreement.

Endorsed by:

1. AEFJN, France
2. AFRIKA-EUROPA NETWERK, Belgium
3. Africa-Europe Faith & Justice Network, Switzerland
4. Aidwatch, Australia
5. Argo House, United Kingdom
6. Alianza Mexicana por la Autodeterminación de los Pueblos (AMAP), Mexico
7. AMARC-Mexico, Mexico
8. Anti-Corruption Trust of Southern Africa (ACT-Southern Africa)
9. Association Mauritanienne des Droits de l'Homme (AMDH), Mauritania
10. ATTAC Hungary, Hungary
11. ATTAC Japan, Japan
12. ATTAC Poland, Poland
13. ATTAC Spain, Spain
14. Australian Fair Trade and Investment Network (AFTINET), Australia

15. BLOOM, The Netherlands
16. Bloque Antiimperialista de Guatemala, Guatemala
17. BPMP - Alliance of Progressive Peasants, Philippines
18. Canadian HIV/AIDS Legal Network, Canada
19. Canadian Council for International Co-operation, Canada
20. Center for JustPeace in Asia, Hong Kong
21. Centre for the Study of Human Rights, Sweden
22. Centro de Derechos Humanos "Miguel Agustín Pro Juárez", Mexico
23. Church of Sweden, Sweden
24. Civil Liberties Organisation, Nigeria
25. Coalición de Organizaciones Mexicanas por el Derecho al Agua (COMDA), Mexico
26. Coalition for Health Promotion and Social Development (HEPS-Uganda), Uganda
27. Columban Sisters, Ireland
28. Comunicacion Comunitaria, Mexico
29. Community Alliance for Global Justice, USA
30. Consejo Indígena Popular de Oaxaca "Ricardo Flores Magón" CIPO-RFM, Mexico
31. Creators' Rights Alliance, Canada
32. DECA Equipo Pueblo, Mexico
33. Diakonia, Sweden
34. Documentation for Action Groups in Asia, Hong Kong
35. Dutch GATS Platform, The Netherlands
36. Ecumenical Advocacy Alliance (EAA), Switzerland
37. Ecumenical Coalition on Tourism, Hong Kong
38. Egyptian Initiative for Personal Rights, Egypt
39. El Comité Si a la Vida, No a la Destrucción del Medio Ambiente del Pueblo Indígena de Sutiaba de Nicaragua, Nicaragua
40. Erika Arteaga Cruz, Ecuador
41. Europe External Policy Advisors (EEPA), Belgium
42. European AIDS Treatment Group (EATG), Belgium
43. FIAN-International, Germany

44. FIAN-Mexico, Mexico
45. Fédération internationale des ligues des droits de l'Homme (FIDH), France
46. Fondazione Neno Zanchetta – Lucca, Italy
47. Franciscans International, Geneva
48. Friends of the Earth Finland, Finland
49. Fuerza Boliiovariana de Trabajadores, Venezuela
50. G.A.T.-Grupo Português de Activistas de Tratamentos sobre VIH/SIDA, Portugal
51. GRUPO DE TECNOLOGIA ALTERNATIVA S.C., Mexico
52. The Health and Human Rights Division, School of Public Health and Family, Medicine, University of Cape Town, South Africa
53. Human Rights in China, Hong Kong & United States
54. IBON Foundation Inc., Philippines
55. IDCID, Brazil
56. India Committee of the Netherlands (ICN), Netherlands
57. Information, Training and Research Unit on Globalization, France
58. Institute for Agriculture and Trade Policy, U.S.
59. Institute of Population Health, University of Ottawa, Canada
60. Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE), Mexico
61. International Restructuring Education Network Europe, The Netherlands
62. Justice and Peace Commision, Mexico
63. KAIROS - Canadian Ecumenical Justice Initiatives, Canada
64. KPMP - Congress of Workers' Unity, Philippines
65. Lutheran World Federation, Geneva
66. Maison des Droits de l'Homme du Cameroun, Cameroun
67. Mouvement Ivoirien des Droits Humains (MIDH), Ivory Coast
68. NATIONAL FRONT FOR THE PEOPLE HEALTH (NFPH-FNSP)-EQUATOR-SOUTH AMERICA, Ecuador
69. Nucleus for Health Policies and Programmes, India
70. The Oakland Institute, USA
71. PEACE CAMP, Philippines

72. Philippine Alliance of human rights advocates (PAHRA), Philippines
73. Plate-Forme Haïtienne de Plaidoyer pour un Développement Alternatif, Haiti
74. Programme on Women's Economic, Social and Cultural Rights, India
75. Red Informativa de Mujeres de Argentina, Argentina
76. Red Mexicana de Acción frente al Libre Comercio (RMALC), Mexico
77. Research Foundation for Science, Technology and Ecology (Dr. Vandana Shiva), India
78. Rights & Democracy, Canada
79. Shirkat Gah (Women' Resource Centre), Pakistan
80. South-North Federation, The Netherlands
81. Sociologists without Borders, USA
82. Centre for Research on Multinational Corporations (SOMO), The Netherlands
83. Southern African Legal Assistance Network (SALAN), Zambia
84. Sudan Organisation Against Torture (SOAT), Sudan
85. Task Force Detainees of the Philippines (TFDP), Philippines
86. Union for Civil Liberty , Thailand
87. United Church of Christ, USA
88. UPA Développement international, Canada
89. Vietnam Committee on Human Rights, Vietnam
90. Wemos, The Netherlands
91. Women's Information Network from Argentina (WINA), Argentina
92. World Young Women's Christian Association (World YWCA), Geneva
93. Zambia Civic Education Association (ZCEA), Zambia
94. 3D -> Trade - Human Rights - Equitable Economy, Geneva
95. 49th Parallel Biotechnology Consortium, Australia, Canada, Columbia, South Africa, U.K., USA