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UN rights expert advocates new food security model

In a report presented to the United Nations Human Rights Council, UN Special Rapporteur on the right to food Olivier De Schutter has called for the design of a new paradigm that better supports the realization of this basic right. This model would consist of actions to rebuild local food systems, complemented by supportive policies at national level and an enabling international environment that fosters the attainment of food security.

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Trends & Analysis

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A new paradigm needed to support the right to food

Asserting that “the food systems we have inherited from the twentieth century have failed”, a UN rights expert has called for a fresh combination of local-, national- and international-level policies to realize the right to food.

by Kanaga Raja

GENEVA: A new paradigm focused on well-being, resilience and sustainability must be designed to replace the “productivist” paradigm and thus better support the full realization of the right to adequate food, the United Nations Special Rapporteur on the right to food, Olivier De Schutter, has said.

“Wealthy countries,” De Schutter said, “must move away from export-driven agricultural policies and leave space instead for small-scale farmers in developing countries to supply local markets. They must also restrain their expanding claims on global farmland by reining in the demand for animal feed and agro-fuels, and by reducing food waste.”

In his final report to the UN Human Rights Council following the end of his six-year term as Special Rapporteur, De Schutter stressed that the eradication of hunger and malnutrition is an achievable goal.

“Reaching it requires, however, that we move away from business as usual and improve coordination across sectors, across time and across levels of governance. Empowering communities at the local level, in order for them to identify the obstacles that they face and the solutions that suit them best, is a first step,” he said.

“This must be complemented by supportive policies at the national level that ensure the right sequencing between the various policy reforms that are needed, across all relevant sectors, including agriculture, rural development, health, education and social protection.”

In turn, he added, local-level and national-level policies should benefit from an enabling international environment, in which policies that affect the ability of countries to guarantee the right to food – in the areas of trade, food aid, foreign debt alleviation and development cooperation – are realigned with the imperative of achieving food security and ensuring adequate nutrition.

“Understood as a requirement for

democracy in the food systems, which would imply the possibility for communities to choose which food systems to depend on and how to reshape those systems, food sovereignty is a condition for the full realization of the right to food,” said De Schutter.

Need for reform

The Human Rights Council held its twenty-fifth regular session here from 3-28 March.

In his report, presented at the Council on 10 March, the Special Rapporteur underlined that most stakeholders agree, in general terms, on the urgent need for reform.

“Measured against the requirement that they should contribute to the realization of the right to food, the food systems we have inherited from the twentieth century have failed. Of course, significant progress has been achieved in boosting agricultural production over the past fifty years. But this has hardly reduced the number of hungry people, and the nutritional outcomes remain poor.”

De Schutter noted that small-scale food producers and the landless rural poor, including many farmworkers who barely survive from their labour on large plantations, represent a majority of those living in extreme poverty.

“Yet, the promotion in the past of export-led agriculture, often based on the exploitation of a largely disempowered workforce, operated at the expense of family farms producing food crops for local consumption. This resulted in a paradoxical situation in which many low-income countries, though they are typically agriculture-based, raw commodity-exporting economies, are highly dependent on food imports, sometimes supplemented by food aid, because they have neglected to invest in local production and food processing to feed their own communities.”

De Schutter further said that it also

led to increased rural poverty and the growth of urban slums, and to the inability of governments to move to a more diversified economy. Whereas such a diversification requires adequate infrastructure, a qualified workforce, and a consumer market allowing producers of manufactured goods, or service providers, to achieve economies of scale, none of this can happen when half of the population is condemned to extreme deprivation.

Improving support to smallholders is therefore essential in achieving local food security, said De Schutter, adding that he had explored different tools to achieve this.

On the one hand, he said, "food systems must be reshaped in order to be more inclusive of small-scale food producers, who have generally been disadvantaged in the past, both as a result of inequitable food chains and because agricultural technologies have not taken into account their specific needs."

With this aim in mind, the Special Rapporteur noted the importance of addressing imbalances of power in food chains, in particular by regulating buyer power in situations where dominant positions may be a source of abuse: this has been an entirely forgotten dimension of the reforms that have been promoted since 2008.

In this context, De Schutter called, amongst others, for reforming a regime of intellectual property rights on plant varieties that can make commercially bred varieties inaccessible to the poorest farmers in low-income countries.

On the other hand, the right of small-scale food producers not to be forced or co-opted into the dominant food systems must be recognized, he said, underscoring that respect for their access to productive resources is key in this regard.

A new paradigm

Calling for the design of a new paradigm that better supports the full realization of the right to adequate food, the Special Rapporteur noted that firstly, certain types of agricultural development can combine increased production, a concern for sustainability, the adoption of robust measures to tackle unsustainable consumption patterns, and strong poverty-reducing impacts.

Governments could achieve this by providing strong support to small-scale food producers, based on the provision of public goods for training, storage and

connection to markets, and on the dissemination of agroecological modes of production.

In addition, measures should be taken to develop local markets and local food processing facilities, combined with trade policies that support such efforts and at the same time reduce the competition between the luxury tastes of some and the basic needs of others.

Secondly, just as multiple food systems must be combined to improve resilience through enhanced diversity, different forms of farming can coexist, each fulfilling a different function, he said, adding: "The example of Brazil suggests that family farms can be supported even in the vicinity of highly competitive, large-scale agricultural producers and that such coexistence can be viable, provided the government is aware of the different functions that different agricultural models serve to fulfil, and adopts a balanced approach towards them."

In many countries, however, this coexistence has failed, and the balance has shifted almost entirely in favour of the large-scale export-led agricultural sector, De Schutter stressed. "The lesson that emerges is that the transition to agrifood policies that support the realization of the right to food requires major political efforts to restructure support around agroecological, labour-intensive, poverty-reducing forms of agriculture."

According to the report, while a number of reasons explain the lack of investment in food production to satisfy local needs – including in particular the burden of foreign debt (which leads countries to focus on cash crops for exports) and the often weak accountability of governments to the rural poor – the addiction to cheap food imports is also caused by massive overproduction in better-off exporting countries, which is stimulated by subsidies going to the largest agricultural producers in those countries, and which ensures access to cheap inputs for the food processing industry.

"And it is facilitated by the growth of international trade and investment and the corresponding increase of the role of large agribusiness corporations in the food systems," said De Schutter, adding that while the rebuilding of local food systems in developing countries is vital to expand opportunities to small-scale food producers and, at the same time, to improve access to fresh and nutritious food for all, it depends fundamentally on

the reform of food systems in rich countries.

"Such reform faces significant obstacles, however. The various elements of the food systems have co-evolved over the years, shaped by the productivist paradigm that has dominated the design of food and agricultural policies for decades."

The report noted: "The farming sector has become highly dependent on agricultural subsidies that have favoured the production of commodities for the livestock or food processing industry – corn, soybean and wheat, in particular – rather than food, and it has come to rely on cheap fuel for its highly mechanized and input-intensive mode of production, replacing farmers' knowledge."

According to De Schutter, even without taking into account the subsidies for the consumption of fossil fuels by agricultural producers, countries of the Organization for Economic Cooperation and Development (OECD) subsidized their farming sector to the amount of \$259 billion in 2012.

This has encouraged the expansion of the food processing industry, thanks to the availability of cheap inputs and the deployment of infrastructure – in the form of silos and processing plants – that has been shaped by and for agro-industry.

"Large agribusiness corporations have come to dominate increasingly globalized markets thanks to their ability to achieve economies of scale and because of various network effects. In the process, smaller-sized food producers have been marginalized because, although they can be highly productive per hectare of land and highly resource-efficient if provided with adequate support, they are less competitive under prevalent market conditions," he said.

The Special Rapporteur said that these developments have come at a high ecological cost. "Due to the links between agriculture, diets and health, they also impose a considerable burden on health-care systems. They have led, finally, to the depopulation of rural areas. Yet, because these different components of the food systems shaped during the past half-century have strengthened one another, they have become lock-ins, seemingly blocking any real transformative possibilities."

Democratizing food security policies

But change can be achieved, and ac-

tions should be launched at three levels to democratize food security policies, thus weakening existing lock-ins and allowing these policies to shape the new model that he has called for, the Special Rapporteur said.

At the local level, the key to transition is to rebuild local food systems, thus decentralizing food systems and making them more flexible, but also creating links between the cities and their rural hinterland, for the benefit both of local producers and of consumers.

At the national level, in addition to support for locally led innovations, multi-sectoral strategies should be deployed. Such strategies should trigger a process in which progress is made towards supporting a re-investment in local food production, focused in particular on small-scale food producers in the countries where they represent a large proportion of the poor; towards the diversification of the economy, to create opportunities for income-generating activities; and towards the establishment of standing social protection schemes, to ensure that all individuals have access to nutritious food at all times, even if they have access neither to productive resources nor to employment.

At the international level, said De Schutter, greater coordination should be achieved between actions launched at the multilateral, regional and national levels, with a view to creating an enabling international environment – rewarding and supporting domestic efforts towards the realization of the right to food rather than obstructing them.

“At each of these levels, the right to adequate food has a key role to play to guide the efforts of all actors, to ensure participation of those affected by hunger and malnutrition, and to establish appropriate accountability mechanisms,” said De Schutter.

Rebuilding local food systems

On rebuilding local food systems, the Special Rapporteur said that the modernization of food supply chains, together with the implementation of agricultural policies focused more on the production of commodities than on food, has led to the marginalization of local food systems over recent years.

“This trend must be reversed. Small-scale food producers must be provided with greater opportunities to sell on the local markets, which they can more eas-

ily supply without having to be dependent on large buyers.”

According to the Special Rapporteur, local food systems can be rebuilt through appropriate investments in infrastructure, packaging and processing facilities, and distribution channels, and by allowing smallholders to organize themselves in ways that yield economies of scale and allow them to move towards higher-value activities in the food supply chain.

“This would support rural development and the reduction of rural poverty, and slow down rural-to-urban migration,” said De Schutter, adding that the strengthening of local food systems would also improve the resilience of cities.

By 2050, when the world population will have reached 9.3 billion, about 6.3 billion of these inhabitants, more than two in three, will be urban, at current rates of rural-to-urban migration. Under a business-as-usual scenario, the rural population is expected to decline globally after 2020: there will be 300 million fewer rural inhabitants in 2050 than there were in 2010.

“As the competition increases between putting land to urban or to industrial use in the urban and peri-urban perimeter, and as increased food supplies create unprecedented logistical challenges for food distribution and transport systems, it is vital that cities assess their food dependencies, identify weaknesses and potential pressure points and, where possible, develop a variety of channels through which they can procure their food.”

De Schutter noted that a wide range of social innovations have emerged in recent years to support the rebuilding of local food systems, primarily by reconnecting urban consumers with local food producers. In Montreal, Canada, for instance, urban agriculture initiatives include a community gardening programme managed by the City, and collective gardens managed by community organizations, with impacts that go beyond improved food security and nutrition contributing also to educational and empowerment goals.

In Brazil, De Schutter said, he was impressed by the achievements of the Zero Hunger strategy launched in 2003. He noted that this strategy includes a range of programmes that are territory-based and seek to support the ability of “family farmers” to feed the cities:

among the innovations are the institutional recognition of family farming and the establishment of a ministry specifically dedicated to meeting their needs (the Ministry for Agrarian Development), a low-income restaurant programme, food banks, community kitchens, cisterns and the improvement of facilities for the storage of food in rural areas, as well as encouragement of the “social solidarity” economy.

“The right to food is central to the success of these efforts at rebuilding local food systems,” he stressed.

National and international strategies

The Special Rapporteur said that he has consistently encouraged the adoption of national strategies in support of the progressive realization of the right to adequate food, in line with the recommendations of the UN Committee on Economic, Social and Cultural Rights in its general comment No. 12 on the right to adequate food (paragraph 21) and with guideline 3 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

He was encouraged by the significant progress made in a number of regions, though especially in Latin America and in Africa, towards implementing these recommendations.

Such strategies are a key component for the governance of the transition towards sustainable food systems that can contribute to the eradication of hunger and malnutrition, said De Schutter, adding that regardless of how innovative they may be, local initiatives can only succeed, and be “scaled out” by successful experiments being replicated across large regions, if they are supported, or at least not obstructed, by policies adopted at the national level.

“Moreover, poor nutritional outcomes are explained by a range of factors, and combating hunger and malnutrition requires taking into account the full set of immediate, underlying and basic causes, at the individual, household and societal level respectively: this calls for a multi-sectoral approach, involving the full range of relevant ministries.”

According to the Special Rapporteur, transformative strategies must be adopted with a view to guaranteeing access to adequate food for all by simultaneously supporting small-scale food

producers' ability to produce food sustainably, improving employment opportunities in all sectors and strengthening social protection.

"The gradual substitution of policies focused on low prices of foodstuffs by rights-based social protection, as a means of ensuring access to adequate food for the poorest groups of the population, again illustrates the importance of a careful sequencing of reforms," he said, adding that today, 75-80% of the world population still do not have access to social security to shield them from the effects of unemployment, illness or disability – not to mention crop failure or soaring food costs.

Noting that there is now an international consensus in favour of making the full realization of the right to social security a priority, De Schutter recommended that social protection schemes be strengthened in all countries, and the social protection agenda and the agricultural agenda should be better aligned with each other, to gradually succeed in

making the transition.

The Special Rapporteur further said that the progressive realization of the right to food also requires improving global governance, noting that since its reform in 2009, the Committee on World Food Security (CFS) has been making a major contribution to the global food security agenda. "Indeed, just as local-level initiatives cannot succeed without support from national-level right-to-food strategies, efforts at the domestic level require international support to bear fruit."

Together with the Special Rapporteur on extreme poverty and human rights, De Schutter said, he has argued, for instance, for the establishment of a Global Fund for Social Protection, for overcoming financial obstacles and building international solidarity in order to fulfil the right to food and the right to social protection in developing countries, particularly those where vulnerability to covariant risks such as drought and food price volatility is high.

"The ninth Ministerial Conference of [the World Trade Organization], held in Bali, Indonesia, from 3 to 7 December 2013, which failed to place food security above trade concerns, provides a textbook illustration of the need to improve coherence of global governance for the realization of the right to food: no area, not even trade, should be left aside from discussions concerning this paramount objective," he said.

During the presentation of his report to the Council on 10 March, De Schutter noted that not all sectoral policies are aligned with the new, post-food-crisis paradigm. In particular, he said, many trade negotiators still tend to measure success by the increase of trade volumes, rather than by improvements in rural development and the reduction of rural poverty.

"Against that background, better aligning trade policies on the new food security agenda should be treated as an urgent priority," De Schutter stressed. (SUNS7763) □

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Developing countries flag key areas for SDGs

At a 3-5 March meeting of a UN body seeking to draw up a set of Sustainable Development Goals for the international community, developing countries highlighted their positions on the priorities that should be addressed in the goals. *Bhumika Muchhala* reports.

NEW YORK: Developing countries voiced various concerns and priorities on the issues of differentiation, means of implementation, global partnership and a narrative in the ninth session of the United Nations Open Working Group (OWG) on Sustainable Development Goals (SDGs).

The first of five intergovernmental consultation sessions in the second phase of the OWG was held on 3-5 March in New York. The eight previous OWG sessions – which took place over the course of one year, from March 2013 to February 2014 – had constituted the “input” phase.

The OWG is a key element in the follow-up to the outcome of the UN Conference on Sustainable Development (Rio+20) held in 2012, which had agreed to launch a process to formulate a set of SDGs. The intergovernmental OWG is charged with preparing a proposal on the SDGs. The co-chairs of the OWG are Ambassadors Macharia Kamau of Kenya and Csaba Korosi of Hungary.

On 21 February, the co-chairs had delivered a “focus areas” document attached to a letter to all member states. While the document did not indicate specific goals and targets, it did identify 19 clustered thematic areas that could define the SDG framework and that governments will discuss and develop further in their negotiation process.

The letter is available at <http://sustainabledevelopment.un.org/content/documents/3272cochairsletter.pdf>, and the focus areas document at <http://sustainabledevelopment.un.org/focussdgs.html>.

At the 3-5 March OWG session, developing countries, led by the Group of 77 (G77) and China, highlighted several key issues that were of priority to them.

On the whole, developing countries consistently stressed that while the SDG framework is universally relevant to all countries, the roles and responsibilities in the implementation of the goals should be differentiated with respect to the different national realities, capacities

and levels of development, as well as to national policies and priorities. The seventh Rio Principle (1992) on “common but differentiated responsibilities” (CBDR) was repeatedly referenced by developing countries to guide the translation of each SDG goal into targets.

Developing countries also unanimously called for both a standalone goal on means of implementation as well as its integration across each goal, emphasizing that the concept embodies not just financial resources but also technological development and transfer and capacity building. India and Indonesia in particular called for a standalone goal on a strengthened “global partnership for development”, while the G77 and China underscored the importance of integrating international systemic issues and the creation of an international enabling environment under global partnership. Meanwhile, Brazil and Nicaragua expressed concern with the excessive reliance on multi-stakeholder schemes, or the so-called “partnerships”, for the implementation of SDGs.

At the conclusion of the meeting, the co-chairs announced that in about 10 days’ time (mid-March) they would deliver a second draft of the focus areas document that would be “tweaked” to reflect member states’ input. However, they emphasized that there would be no “radical changes” and that their intention was to “slightly amend” the document, with some of the “fat taken out”.

Despite the fact that both member states and various civil society organizations participating in the Major Groups had voiced concerns and problems with the co-chairs’ focus areas text over the course of three days, the co-chairs did not demonstrate an assurance towards substantively integrating said concerns into the second draft of the text. Rather than affirming that key sections, such as on a global partnership for development, or a narrative, might be added to the text, the co-chairs instead emphasized reducing the text even further.

Two new documents will also be

produced. The first is a map that lays out interlinkages between the 19 focus areas of the SDGs; and the second is a document that outlines targets and decisions that have already been agreed to in various other multilateral fora.

In response to the co-chairs, Brazil and Nicaragua called for the inclusion of a narrative extracted from the Rio+20 outcome document, “The Future We Want”, with care being taken not to renegotiate the language in Rio+20 but rather to simply condense the key points. They also called for a stronger and more comprehensive means of implementation and global partnership, as well as the explicit inclusion of the CBDR principle. Argentina, China, India, Pakistan and Saudi Arabia agreed with Brazil and Nicaragua, with India stressing that the co-chairs’ “tweaking” should not amount to subtracting or chopping off sections of the focus areas text. Rather, they should add and modify certain parts of the text, particularly the emphasis on productive capacity made by the least developed countries and international systemic issues that are currently underemphasized.

China clarified that the importance of a narrative was that it was a preamble that delivers the mandate of the SDGs, in terms of recognizing and respecting previously agreed outcomes of consensus that work towards building new political consensus. China also stressed that member states should not be renegotiating or readdressing anything that had already been agreed to in previously negotiated outcomes.

In response to the call for a narrative, both Australia and the United States voiced their disagreement. Australia said that a narrative was not needed for the SDGs, given that the Rio+20 outcome document already had a narrative. The text should be evidence-based, concrete and thorough. The US said it wanted to ensure that maximum space was given to discussing the substance of goals and targets, rather than a narrative.

Priority areas for developing countries

Universality and differentiation

Brazil and Nicaragua stated that the OWG had yet to come up with a shared political vision on the SDGs, taking into account both the universal application of the SDGs and the differentiated capacities and responsibilities of countries. They recalled that the SDGs were sup-

posed to be “global in nature and universally applicable to all countries while taking into account the different national realities, capacities and levels of development and respecting national policies and priorities”, as enshrined in paragraph 247 of the Rio+20 outcome document. This mandate brought about a sea change in UN development cooperation.

The transformational potential of the SDGs lay on this very global nature and universal applicability, while taking into account differences among countries. A cursory interpretation of this mandate could jeopardize the balance, coherence and transformational impact of the SDGs.

In light of the above, Brazil and Nicaragua said that the 19 focus areas defined by the OWG co-chairs could be further balanced, since the targets and commitments were unevenly distributed, placing on developing countries a disproportionate share of responsibility for achieving the goals.

India also stressed that a truly universal set of goals implied, first and foremost, that the developed countries also take on concrete commitments and deliverables. A universal agenda also demanded that developed countries support the efforts of developing countries with enhanced financial and technological support and through reforms in global governance to increase the voice of developing countries in global decision-making.

Common but differentiated responsibilities

The G77 and China has repeatedly called for the inclusion of the CBDR principle to guide the development and implementation of the SDGs. This means that the SDGs should not place additional restrictions or burdens on developing countries, and that the donor community is required to honour its international commitments, especially those related to financial resources, technology transfer and capacity.

India said that universality was synonymous with differentiation, and the principle of CBDR captured this very duality. Differentiation as embodied in the principle of CBDR would be the basis of crafting targets under the universally relevant goals.

Brazil and Nicaragua welcomed the reference to the concept of CBDR in focus area 15 (on climate). CBDR, however, could not be merely “regarded” in one specific focus area. It was a centrepiece of the Rio+20 outcome document and

other relevant processes, and lay at the basis of the agreement by all UN member states to devise the SDGs.

Means of implementation

The G77 and China stressed that clear and concrete means of implementation should be a specific standalone goal and also be integrated across each goal. The Intergovernmental Committee of Experts on Sustainable Development Financing (another Rio+20 outcome) should consider both traditional and non-traditional resource pools and sources as the main drivers of SDGs for the 15-year duration beginning in 2016. The Committee of Experts should also consider ways to maintain the universal nature of means of implementation in a way that ensures adequate resource flows and technology transfer with respect to each identified SDG, with special reference to the countries that are lagging behind. The G77 and China said they looked forward to hearing about the priority areas in financing that would be addressed by the Committee of Experts.

Brazil and Nicaragua said that experience with the Millennium Development Goals (MDGs) showed that means of implementation should not be exclusively considered under a single standalone goal. This approach jeopardized the effectiveness of MDG 8, with detrimental consequences for the overall implementation of the MDGs. Many developed countries had fallen short of meeting their commitments in terms of official development assistance (ODA), whose levels dropped consistently in 2011 (2%) and 2012 (4%). Other targets of MDG 8 were not being achieved either. For this reason, means of implementation should be mainstreamed under each and every SDG.

Brazil and Nicaragua stressed that a cross-cutting and horizontal approach on means of implementation would be crucial to delivering SDG results on the ground. Such an approach would also send a positive message to the Intergovernmental Committee of Experts on Sustainable Development Financing and to the structured dialogues on facilitation of environmentally sound technologies.

India also supported the G77 and China’s call to mainstream and integrate means of implementation across each goal, as the objective of the SDG framework was not merely to list out major global problems but rather to generate an international compact for multilateral cooperation to address these problems. The ambition in substance needed to be matched by an ambition in

the means to achieve the substance. The international community must thus provide to developing countries enhanced financial and technological support, as well as capacity building to enable these goals to be reached.

Indonesia stressed that in order to ensure concrete actions and progress in a timely manner, the upcoming drafting of goals and targets should be consistently linked to adequate provision of means of implementation. The spirit of the current MDGs also needed to be addressed and strengthened in the SDGs.

Global partnership for development

The G77 and China underscored the importance of linking international factors to an enhanced global partnership, the critical role of means of implementation, together with actions and efforts to be taken by countries at the national level. This three-component approach was essential because laudable goals at the national level would not be attainable unless structural factors, including international factors, were addressed. Similarly, developing countries required international cooperation in finance, technology transfer and capacity building if they were expected to achieve the SDGs.

The G77 and China noted that the focus areas document lacked an analysis of international systemic issues and the creation of an international enabling environment, including addressing trade, debt, technology and reform of the international financial system and global economic governance. This needed to be elaborated, and overall, the thrust on international systemic issues needed strengthening. While recognizing the hard work of the co-chairs and the member states of the OWG, the G77 and China asserted the need to include focus areas with transformative impact that allow progress towards a real and comprehensive development agenda. With that intention, the Group requested the inclusion of the areas of culture as well as trade, technology transfer, financial architecture and taxation.

Indonesia called for both a goal and cross-cutting targets on the global partnership for development. As a goal, it should both encompass and strengthen means of implementation based on CBDR. As cross-cutting targets, it should be included within various goals, particularly poverty eradication, education, health, employment, financial inclusion, employment and access to clean energy. International cooperation must be enhanced to support global commit-

ments, including ODA, a development-oriented trade regime and reform of the international monetary system.

India emphasized the importance of a standalone goal on a “strengthened global partnership for development” in order to ensure adequate focus on international systemic issues and to build on and strengthen MDG 8 on global partnership. However, while the focus areas document highlighted the issue of inequality between countries, the imperative of correcting this through reforms in international systemic issues needed further elaboration.

Private sector partnerships

Referring to the various partnerships the UN had been embarking on in recent years, particularly with the private sector, Brazil and Nicaragua expressed concern with the excessive reliance on multi-stakeholder schemes, or the so-called “partnerships”, for the implementation of SDGs, saying that they could not and would not rely excessively on the role of the private sector for promoting sustainable development in the post-2015 period.

They urged a comprehensive assessment of existing partnerships that had yet to be carried out. An assessment should take into account the impact, accountability and compliance of existing partnerships and their institutional arrangements with the principles and governance mechanisms of the UN. While the UN should be open to catalyzing all existing support for sustainable development, this should not facilitate an evasion of government responsibility, in both developed and developing countries, from the achievement of the SDGs.

Sustainable consumption and production (SCP)

The G77 and China stated that achieving sustainable patterns of consumption and production was essential to the sustainable development agenda, and that this view was consistent with the call made by the G77’s political leaders more than 20 years ago at the 1992 Earth Summit, in the Rio+10 summit 10 years later and the Rio+20 summit in 2012.

Brazil and Nicaragua urged that SCP could be further expanded in accordance with the 10-Year Framework of Programmes on Sustainable Consumption and Production. While focus area 14 in the co-chairs’ document stated that developed countries must take the lead on the implementation of SCP, there still

seemed to be a disproportionate focus on actions to be taken on sustainable production as compared to sustainable consumption. A considerable amount of the production of manufactured goods in developing countries was driven by unsustainable consumerist lifestyles of wealthy societies in developed countries. In taking the lead, developed countries needed to commit to the promotion of sustainable lifestyles within their own societies.

India strongly favoured a standalone goal on SCP, saying that a universal agenda and the urgency for sustainable development required that developed countries take the lead through concrete deliverables on shifting their societies and economies to sustainable consumption and lifestyle patterns in accordance with the CBDR principle. Developed countries would thus create positive reference models as well as incentivize technological innovation necessary for such shifts.

Indonesia also emphasized the need to ensure that SCP was a standalone goal. The Johannesburg Plan of Implementation (adopted in 2002 at the Rio+10 summit) had identified the importance of changing patterns of production and consumption as an essential requirement for sustainable development. Therefore, failure to ensure SCP as a goal would hinder both poverty eradication and sustainable development.

Climate change

Brazil and Nicaragua said that the CBDR principle was fundamental for the existing international agreement on climate change and must be reflected accordingly in any goal on this matter. Negotiations in the OWG should not preempt or disrupt existing negotiations under the UN Framework Convention on Climate Change (UNFCCC) or other international conventions. Unfortunately, however, the focus area dedicated to climate change did not seem to comply with this requirement.

India said there was a broad agreement in the OWG to address climate change under relevant goals rather than placing it as a standalone goal. Any deliverable on climate change under the SDGs, whether as a separate goal or integrated across relevant goals, must scrupulously adhere to the principles and provisions of the UNFCCC, in particular the principles of equity and CBDR, as well as ensure that the ongoing discussions under the UNFCCC were not prejudiced or prejudged.

Indonesia said that any discussion

of climate change in the context of the SDGs needed to reflect adherence to the UNFCCC process and be consistent with the CBDR principle. Furthermore, disaster risk reduction (DRR) was not only an imperative to protect investments in development, but also an opportunity to ensure a transformative shift towards resilient development. DRR should be a cross-cutting element across various SDGs, including food security, infrastructure, education, health, water and sanitation.

Environmental goals

India said that the multiple objectives under environment could be usefully integrated under one holistic goal on the sustainable management of natural ecosystems. Such a goal could usefully integrate deliverables on various issues such as oceans, forests, biodiversity and so on. The mandate and principles of the respective multilateral processes dealing with these issues would also have to be respected.

Indonesia said that in order to avoid a silo approach to the SDGs, the focus areas of marine resources, oceans and seas, as well as ecosystems and biodiversity should eventually be clustered under one umbrella of sustainable management of natural ecosystems. This cluster should also cover issues such as forests and observe the existing mandates and principles of related international agreements or processes such as the UN Convention on the Law of the Sea, the UN Convention on Biological Diversity and the Montreal Protocol on ozone-depleting substances.

Economic goals

India strongly supported standalone goals and targets on the economic issues of inclusive economic growth, infrastructure, industrialization, employment generation and universal access to modern energy services. As the economic pillar was the foundation of sustainable development, economic goals were indispensable prerequisites for sustainable development and for eradicating poverty.

India also supported goals on food security and nutrition, health, education, water and sanitation and gender equality.

Poverty eradication

India said that the goal of eradicating poverty by 2030 must be accompanied by adequate means of implementation, such as enhanced ODA and a

strengthened global partnership, in order to be meaningful.

Brazil and Nicaragua emphasized that the SDGs should address the underlying causes of poverty and not only its symptoms, recognizing its multiple dimensions and interlinkages with other areas of sustainable development. Brazil stressed that national governments would ultimately be responsible for achieving sustainable development objectives.

Human rights

The G77 and China called for the urgent and immediate fulfilment of relevant UN documents and resolutions which request all member states to refrain from promulgating and applying any kind of unilateral economic, financial or trade coercive measures against other sovereign states. Such measures constituted a flagrant violation of international law, the UN Charter and human rights, in particular the right to development. Moreover, these measures impeded the full achievement of economic and social development, particularly in developing countries.

Peace and conflict

Brazil and Nicaragua said that focus area 19 on peaceful and non-violent societies did not reflect a priority area of the Rio+20 outcome document. It must be remembered that the OWG should address issues from a developmental perspective and not subordinate it to political or security considerations and conditionalities. Furthermore, peace, governance and rule of law could not be made into targets and measured in ways that were consensual and reflected the democratic plurality of nations, their national histories, political circumstances and cultures. Thus, issues considered in focus area 19 would be better addressed under other topics, such as equity, means of implementation and gender.

India said a goal on governance and peace and security must also address the existing democratic deficit in the institutions of global governance. Developing countries needed to be given real voice and participation in global decision-making, and institutions responsible for global peace and security must be fully reflective of contemporary realities.

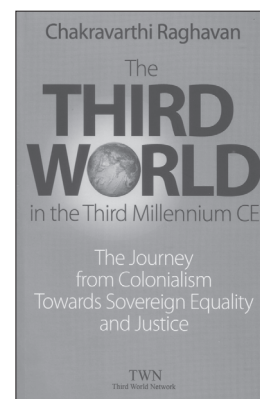
The next session of the OWG will be from 31 March to 4 April.

The Third World in the Third Millennium CE The Journey from Colonialism Towards Sovereign Equality and Justice

By *Chakravarthi Raghavan*

The development path traversed by the countries of the Third World since emerging from the colonial era has been anything but smooth. Their efforts to attain effective economic sovereignty alongside political independence, even till the present day, face myriad obstacles thrown up on the global economic scene. This drive to improve the conditions of the developing world's population has seen the countries of the South seek to forge cooperative links among themselves and engage with the North to restructure international relations on a more equitable basis – not always with success.

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South encouraged to use TRIPS flexibilities for public health

A developing-country think-tank has voiced concern over US pressure aimed at preventing India from using safeguards in intellectual property law to protect public health and other development priorities.

by Kanaga Raja

GENEVA: The Geneva-based South Centre has encouraged India and other developing countries "to continue to make full use of the TRIPS flexibilities for public health and other public policy objectives", consistent with their rights and obligations under the World Trade Organization (WTO) rules.

In a statement released on 4 March, the intergovernmental policy think-tank of developing countries called on WTO member states to respect the legitimacy of the use of TRIPS flexibilities for public health in light of new threats of unilateral trade measures by the United States against India over the latter's intellectual property (IP) laws and regulations.

The South Centre statement cautioned that continued pressures by the US on India and other developing countries "to adopt an IPRs [intellectual property rights] regime that would go beyond the minimum standards in the [WTO's] TRIPS [Trade-Related Aspects of Intellectual Property Rights] Agreement and that does not make use of the flexibilities that are part of TRIPS would have adverse social and developmental effects, including on the public's access to medicines".

"The US administration should also stop putting pressures on developing countries to prevent them from making use of their rights under the TRIPS Agreement to make use of policy measures to promote access to medicines, public health and other development objectives," the South Centre emphasized.

Deep concern

In its statement, the South Centre expressed deep concern that developing countries, including, recently, the government of India, are facing increasing pressure from the US to reform their IP laws.

The South Centre asserted that the Indian IP laws include balanced provisions to ensure that IP rights do not hinder the ability of the government to

adopt measures for promoting development priorities, particularly in the area of public health.

"These are fully in line with the TRIPS Agreement and reaffirmed by the Doha Declaration on TRIPS and Public Health," it stressed.

According to the South Centre statement, the United States International Trade Commission (USITC) has initiated investigations against India on its trade, investment and industrial policies, particularly on intellectual property protection and enforcement.

[The USITC held public hearings in February as part of its investigation titled "Trade, Investment and Industrial Policies in India: Effects on the US Economy". The investigation was initiated at the instance of both the Senate Committee on Finance and the House Committee on Ways and Means, with support from several US industry associations including the Pharmaceutical Research and Manufacturers of America (PhRMA).]

In its statement, the South Centre also said that the United States Trade Representative (USTR) is being asked to include India as a "priority foreign country" in the "Special 301" review for 2014, at the request of US industry associations including PhRMA, the Biotechnology Industry Organization (BIO), the National Manufacturers Association (NAM), the National Foreign Trade Council (NFTC), the US Chamber of Commerce's Global Intellectual Property Centre and the Alliance for Fair Trade with India (AFTI), alleging lack of adequate and effective protection of IPRs.

"The South Centre views these recent developments as most inappropriate, as it is against the spirit of the landmark Ministerial Declaration on TRIPS Agreement and Public Health."

It underlined that India and other developing and least developed countries (LDCs) have the right to use the flexibilities in the TRIPS Agreement to the fullest extent for advancing public

health needs and other development priorities.

Regrettable

Pointing out that the legal and regulatory measures that India has used for protecting public health are fully consistent with the TRIPS Agreement, the South Centre said that the "continued threat of unilateral trade sanctions by the US to developing countries through USITC investigations and the Special 301 review undermines the legitimacy of the WTO, particularly the TRIPS Agreement and the WTO's dispute settlement system."

It is regrettable that India or any other developing country may be designated as a "priority foreign country" under the "Special 301" provisions of the US Trade Act of 1974, the South Centre added.

Designation as a "priority foreign country" starts a 30-day period during which targeted countries must engage in good-faith negotiations or make significant progress in bilateral or multilateral negotiations or face sanctions under the Section 301 process.

The South Centre statement explained that "priority foreign country" determinations are reserved for countries "that have the most onerous or egregious acts, policies, or practices", that "have the greatest adverse impact (actual or potential) on the relevant US products", and for which "there is a factual basis for the denial of fair and equitable market access as a result".

"The USTR investigation may lead to unilateral trade sanctions that would be illegitimate under the WTO rules," it said. "The mere threat of sanctions by placing a country in any specific category in the US watch list would appear to violate the WTO Dispute Settlement Understanding."

A WTO panel noted, in a dispute brought in 1999 by the EU against Section 301 of the US law, that "the threat alone of conduct prohibited by the WTO would enable the Member concerned to exert undue leverage on other Members. It would disrupt the very stability and equilibrium which multilateral dispute resolution was meant to foster and consequently establish, namely equal protection of large and small, powerful and less powerful Members through the consistent application of a set of rules and procedures."

The South Centre statement also noted that separately, at the request of

the US Senate Committee on Finance and the House Committee on Ways and Means with backing from various US industry associations including PhRMA, the USITC has launched an investigation (on India's trade, investment and industrial policies).

The South Centre underlined that the establishment by the government of a country of its criteria to grant patents (as provided for in Section 3(d) of the Indian Patents Act and interpreted by the Indian Supreme Court in the Novartis case), the right to issue compulsory licences, and the use of patent pre-grant and post-grant opposition proceedings are, among others, "important flexibilities that serve to protect public health, consistent with the TRIPS Agreement".

"None of the recent decisions in India to reject patents on known medicines or to issue compulsory licences on anti-cancer medicines have been challenged

before the WTO dispute settlement mechanism," it noted.

In fact, the statement pointed out, the recent actions taken by India are not unique. Many other developing countries have issued compulsory licences for ensuring access to affordable medicines to meet their public health needs, including Brazil, Ecuador, Eritrea, Ghana, Indonesia, Malaysia, Mozambique, Thailand and Zambia.

"The TRIPS Agreement also does not preclude that countries include in their patent laws a requirement to disclose the source and geographical origin of biological materials used in an invention that is the subject of a patent application," said the South Centre.

The disclosure requirement is conducive to the mutually supportive implementation of the TRIPS Agreement and the Convention on Biological Diversity and the Nagoya Protocol on Access and Benefit-Sharing, it added. (SUNS7758)□

US leads the world in use of compulsory licences, says KEI

Even as the US chides developing countries for granting compulsory licences on medicines, it is itself "leading the world" in making use of compulsory licensing, a Washington-based non-profit group has noted.

by Kanaga Raja

GENEVA: The United States "is leading the world in the use of compulsory licences" and is hypocritical in voicing indignance when developing countries issue compulsory licences for essential drugs, a leading international civil society organization, Knowledge Ecology International (KEI), has said in testimony before the United States International Trade Commission (USITC).

KEI's testimony was before a public hearing in February as part of the USITC's investigation titled "Trade, Investment and Industrial Policies in India: Effects on the US Economy."

The USITC investigation was initiated at the instance of both the US Senate Committee on Finance and the House Committee on Ways and Means, and has been backed by several US industry associations including the Pharmaceutical Research and Manufacturers of America (PhRMA).

A number of other civil society groups had also testified before the USITC, rebutting the arguments of PhRMA and the other industry associations, and expressing strong support for

India's use of compulsory licensing. (See, for example, *TWE* No. 563.)

The Washington DC-based KEI, which also has an office in Geneva, included an appendix to its written statement that provided numerous examples of compulsory licences issued by the US government in several areas of intellectual property such as copyright, energy patents, medicines and health testing.

In its written statement to the USITC hearing, KEI focused its testimony on the manufacture and sale of generic drugs from India, the recent compulsory licence issued by India on Bayer's patents for the cancer drug Nexavar, the decision by the Indian Patent Office to reject the patent for Novartis' cancer drug Gleevec, and the consequences of trade pressure in curbing India's role in supplying affordable medicines.

KEI noted that from 1970 until 2005, India did not grant patents on pharmaceutical products, and, like many other developing countries, limited or eliminated patent protection for pharmaceutical drugs.

When the World Trade Organiza-

tion (WTO) was established, its TRIPS Agreement included a requirement that India and other countries grant patents on pharmaceutical products, and it created a new system to regulate the limitations and exceptions for patent rights, including the granting of compulsory licences.

According to KEI, India and other countries were reluctant to accept the TRIPS Agreement, but did so after threats of unilateral trade sanctions (highlighted by the creation in 1989 of the Special 301 list), as part of a larger bargain (in the Marrakesh treaty establishing the WTO) that offered greater market access.

"Since the WTO was created, the United States has reneged on that earlier bargain, not only with India, but with all developing countries, by pressing for endless demands to change intellectual property laws beyond that required by the WTO TRIPS agreement, and now, by complaining about price controls and other measures designed to control the prices of patented medicines," KEI said in its testimony before the USITC.

"If the USITC brings pressure on India to curb the manufacture and sale of generic cancer drugs, the actions will be directly responsible for the death of cancer patients living in developing countries, and this should be on everyone's mind," it added.

For all the corporate propaganda about concern for global health, the fact is that nearly all companies manufacturing and selling cancer drugs have been indifferent to the inequalities of access, and only introduce measures to mitigate concerns over access when faced with compulsory licensing of patents or other actions against the patent monopolies, said KEI.

US compulsory licences

In the appendix to its statement, KEI provided several examples of compulsory licences issued recently by the US government.

"When United States government officials become indignant over developing countries' issuance of compulsory licences over cancer drugs, the degree of hypocrisy expressed by some parties is worth noting. The United States is leading the world in the use of compulsory licences," it said.

Noting that the US and other countries seek to limit and curb anti-competitive actions by businesses, KEI said that one of the remedies available to curb

anti-competitive acts is compulsory licences on patents, copies, data or other types of intellectual property rights.

One of the examples cited by KEI is that in 1996, the US Department of Justice, consumer groups and small publishers successfully pressed for a compulsory licence to West Publishing's copyright claims on page numbers of court opinions.

In 1997, following complaints from consumer groups, the US Department of Justice brought an antitrust suit against Microsoft, dealing in part with the ability of other software developers to provide programs to work with the Windows operating system.

The European Union, Japan, several state governments, private firms and others subsequently brought antitrust cases against Microsoft. The resolution to the US' case included, as a remedy to unlawful conduct, a compulsory licence to a number of Windows protocols.

In 2000, the US Department of Justice obtained compulsory licences to Miller Industry patents on tow truck technologies.

In 2001, said KEI, ExxonMobil and the National Petrochemical & Refiners Association asked the US Federal Trade Commission (FTC) to force Unocal, another oil company, to grant licences to patents on reformulated gasoline. The patents were necessary to be in compliance with clean air regulations in California. In 2005, the FTC obtained a zero-royalty compulsory licence on a portfolio of patents, as a condition of Chevron acquiring Unocal.

In announcing the agreement, the FTC statement said: "If Union Oil were permitted to enforce its patent rights, companies producing this low-emission CARB gasoline would be required to pay royalties to Union Oil, the bulk of which would be passed on to California consumers in the form of higher gasoline prices. The Commission estimated that Union Oil's enforcement of these patents could potentially result in over \$500 million of additional consumer costs each year."

Another example cited by KEI is that in 2008, the FTC obtained an open compulsory licence to patents held by Negotiated Data Solutions LLC (Ndata) for use in Ethernet technologies. The FTC said: "The settlement will protect consumers from higher prices and ensure competition by preventing the company from charging higher royalties for the

technologies used in the standard."

In 2011, the US Department of Justice, in collaboration with Germany's Federal Cartel Office, required Microsoft, Oracle, Apple and EMC to license 882 patents and patent applications acquired from Novell under "open source" licences, including the GNU General Public Licence 2 and the Open Innovation Network (OIN) licence.

Standards-essential patents

On 8 January 2013, the US Department of Justice and the US Patent and Trademark Office issued a joint statement on "remedies for standards-essential patents subject to voluntary F/RAND commitments".

The statement was directed to the USITC which administers Section 337 of the Tariff Act of 1930 (19 USC 1337: Unfair practices in import trade) and it has the practical effect of introducing a policy of compulsory licences for thousands of standards-relevant patents.

According to KEI, the Department of Justice and the Patent and Trademark Office were responding to growing criticism of the patent system as it relates to mobile computing devices and other technologies where product developers find it difficult if not impossible to obtain voluntary licences on reasonable terms to the large number of patents covering various aspects of a product.

On 3 August 2013, US Trade Representative (USTR) Ambassador Michael Froman wrote to the USITC Chairman to "disapprove the USITC's determination to issue an exclusion order and cease and desist order" for Apple Inc. "smart phones and tablet computers that infringe a US patent owned by Samsung Electronics" in the USITC Investigation No. 337-TA-794.

According to press reports, this is the first time since 1987 that the White House has overturned an exclusion order by the USITC. Froman's letter cited the legislative history of USC § 1337, which includes a review of the impact on "(1) public health and welfare; (2) competitive conditions in the US economy; (3) production of competitive articles in the United States; (4) US consumers; and (5) US foreign relations, economic and political".

"By deciding that Apple would be allowed to import devices into the United States that infringe a patent held by Samsung, the USTR signalled that it

would not back the exclusive rights in patents cases where there are abuses or conflicts with the public interest, or other domestic concerns," said KEI.

The USTR's analysis of the Apple-Samsung patent dispute focused on the harm associated with failures to license on reasonable terms "standards essential patents". Froman's letter said that the decision to permit Apple to infringe Samsung patents was made "after extensive consultations with the agencies of the Trade Policy Staff Committee and the Trade Policy Review Group as well as other interested agencies and persons".

According to Froman, the decision was based upon "the effect on competitive conditions in the US economy and the effect on US consumers".

Federally funded inventions

In 1980, said KEI, the US Congress passed the Bayh-Dole Act, which sought to provide for more uniform policies as regards federally funded inventions. The Bayh-Dole Act included among its safeguards a royalty-free licence "to practise or have practised for or on behalf of the United States any subject invention throughout the world", a requirement of 35 USC 202(c)(4), and a compulsory licensing procedure called "March-In Rights", set out in 35 USC 203, and the definitions in 35 USC 201, and the requirement of 35 USC 204, regarding "Preference for United States industry".

According to 35 USC 203(a), a federal agency can grant a compulsory licence on a patent for an invention developed with federal funds if the federal agency determines that such: (1) action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (2) action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees; (3) action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or (4) action is necessary because the agreement required by Section 204 has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to Section 204.

According to KEI, the term “practical application” of the subject invention is defined in 35 USC 201(f) as “its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms”, an obligation quite similar to the requirement in the Indian patent law that patents are “reasonably affordable”.

In the 33 years since the Bayh-Dole Act created a uniform system for federally owned or funded patents, the National Institutes of Health has never exercised March-In Rights for an invention, and the same may be true for all federal agencies. However, while federal agencies have not formally granted March-In petitions, there are several instances where the threat of the compulsory licence has been used to obtain concessions from the patent holders.

One instance cited by KEI is that in a 2004 case involving patents on ritonavir, a drug used in the treatment of HIV/AIDS, the concession by the patent holder to avoid the March-In was significant – Abbott Laboratories agreed to reduce the price of ritonavir by approximately 80% for HIV/AIDS patients on federally supported programmes.

In 2006, the Centers for Disease Control may have threatened to use March-In Rights or the government’s royalty-free licence to expand access to patented technologies used to manufacture vaccines for avian flu, said KEI, adding that it has an outstanding Freedom of Information Act request for the details of this case.

KEI also highlighted the compulsory licensing of patents under the United States Energy Storage Competitiveness Act of 2007. In 2007, it said, the US Congress enacted a new compulsory licensing programme for “energy storage markets”.

In a programme involving four energy storage research centres that “translate basic research into applied technologies” and which is designed to “advance the capability of the United States to maintain a globally competitive posture in energy storage systems for electric drive vehicles, stationary applications, and electricity transmission and distribution”, the statute creates two obligations as regards patents obtained by participants: (i) the patent holder shall not negotiate any licence or royalty agreement with any entity that is not an industrial participant under this subsection;

and (ii) the patent holder shall negotiate non-exclusive licences and royalties in good faith with any interested industrial participant under this subsection.

Limited remedy

According to KEI, another area where the US permits uses of patented inventions (and copyrights) without permission of right holders relates to uses “by and for” the government, under 28 USC § 1498 Patent and Copyright Cases. Under this statute, the federal government can authorize third parties as well as its own employees to use any patented invention (also applies to copyrights, plant variety protection and semiconductor designs), and the patent owner’s sole remedy is limited to compensation for the use.

KEI noted that the largest user of 28 USC § 1498 is the US Department of Defence, and indeed, the statute was amended in 1918 in order to address concerns by the US Navy regarding patent litigation.

Until 1960, 28 USC § 1498 was limited to patents. In 1960, the US Congress extended the act to cover copyright. Later, the statute was amended to apply to overriding exclusive rights for plant variety protections [28 USC § 1498(d)], mask works under chapter 9 of title 17, and designs under chapter 13 of title 17 [28 USC § 1498(e)].

Today, said KEI, any federal agency can rely upon 28 USC § 1498(a) to limit remedies for the infringement of patents, copyrights, plant variety rights, mask works and designs to compensation only.

“By removing the possibility of an injunction to enforce an exclusive right, the federal government has the equivalent of a compulsory licence on all patents, copyrights and other intellectual property rights covered by the statute. Examples where this compulsory licence has been used are quite diverse, and include such items as medicines, Blackberry smartphone services, software used by the Federal Reserve Bank to curb fraud, technology used by NASA to explore space and weapons of all types,” it noted.

In 2001, the US Department of Health and Human Services used the threat of a compulsory licence for the patents on Bayer’s ciprofloxacin to success-

fully obtain a 50% price reduction in the drug.

In 1999, the US Supreme Court ruled that state governments were not liable for damages for patent infringement, under the doctrine of state sovereign immunity. Later this immunity was extended to infringements of copyrights and trademarks.

“The immunity from damages for patent infringement has the practical effect of expanding the ability of state universities to engage in a wide variety of infringing activities, including those relating to medical research,” said KEI.

In 2010, the Affordable Care Act [PL 111148] created a compulsory licence for patents associated with biologic drugs. The compulsory licence goes into effect when the manufacturer of a biologic drug does not bring a timely action for infringement or fails to disclose relevant patents for the drug. The statute limits the remedies for infringement to either a reasonable royalty or no remedy at all, depending upon the failures of the patent holder to assert or disclose patent rights in a timely manner. The compulsory licence is automatic and mandatory.

According to KEI, the legal basis in the WTO TRIPS Agreement for the elimination of the availability of an injunction and the limit of the remedy to a reasonable royalty is Article 44.2.

In 2006, the US Supreme Court ruled that notwithstanding the exclusive rights associated with a patent, a patent holder was not automatically entitled to obtain an injunction to prevent future infringements.

The decision, *eBay Inc. v. MercExchange, LLC*, 547 US 388 (2006), states that the decision to grant an injunction is a question of equity, and the court must consider a four-part test and require the plaintiff to demonstrate: (1) that the plaintiff has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

“The practical impact of *eBay v. MercExchange* was to transform many infringement and injunction proceedings into compulsory licensing cases, and to include a public interest test,” said KEI. (SUNS7759) □

IMF urges redistribution to tackle growing inequality

Long criticized by anti-poverty campaigners for pushing fiscal austerity policies, the IMF is now advocating “progressive” redistribution to reduce income inequality.

by Carey L. Biron

WASHINGTON: The International Monetary Fund (IMF) is wading strongly into the global debate over the impact of growing income inequality, offering a series of controversial findings that push back on long-held economic orthodoxy – of which the Fund itself has long been a key proponent.

The IMF, arguably the world’s premier financial institution, is stating unequivocally that income inequality “tends to reduce the pace and durability” of economic growth.

In a paper released on 13 March, the Fund also suggests that a spectrum of approaches to “progressive” redistribution – national tax and spending policies that are purposefully tilted in favour of the poor – would decrease inequality and hence “is overall pro-growth”.

“This is the final judgment on inequality being bad for growth,” Nicolas Mombrial, a spokesperson for Oxfam, a humanitarian group, told Inter Press Service (IPS) in a statement.

“The IMF’s evidence is clear: The solutions to fighting inequality are investing in health care and education, and progressive taxation. Austerity policies do the opposite, they worsen inequality ... We hope this signals a long-term change in IMF policy advice to countries – to invest in health and education and more progressive fiscal policies.”

For the past half-century, the Washington-based IMF has operated as the world’s “lender of last resort” for failing economies. In return for offering short-term loans to governments in economic crisis, the Fund typically demands the imposition of a range of often stringent austerity measures aimed at solidifying the country’s finances.

After years of frustration over these conditions by anti-poverty campaigners, the IMF has recently engaged in a broad reappraisal of this approach.

In November, the Fund proposed an overhaul of its debt-restructuring guidance, though formal introduction of this proposal has now been pushed back to June, following pushback.

“Although the main points are not

new, the IMF paper is nonetheless significant because the organization has typically been at the more conservative end in its policy advice – from being seen to restrict measures that would ameliorate the worst impacts of crises on those in deepest poverty, for example, to promoting quite damagingly regressive changes to tax systems in their country advice,” Alex Cobham, a research fellow with the London office of the Center for Global Development (CGD), a think-tank based here, told IPS.

“Nonetheless, we should not expect massive or immediate changes in IMF policy. The situation of tax policy demonstrates very well how the organization can continue to promote in-country the same approaches that their own research has discredited.”

“Hot subject”

The new advice on income inequality will likely be received sceptically in many corners, though the Fund is giving the findings its full backing.

While the 13 March release came in the form of a staff paper, the report was given a high-profile rollout here, including an introduction from the Fund’s second-highest official, David Lipton.

“Some may be surprised that the Fund is engaging in this debate on the design of redistributive policies ... [but] one reason why we are discussing this issue today is it’s becoming a hot subject,” Lipton, the IMF’s first deputy managing director, said at the report’s unveiling.

“The interest in redistribution, as reflected in public surveys and our discussions with our members, shows that interest is higher than in the past. Our members want to explore with us how they can pursue distributive policies in an efficient manner.”

The IMF is quick to note that the new paper, which builds on a research note released in February, constitutes not recommendations but rather advice to its 188-country membership, while country-specific design for any redistributive

mechanism remains of paramount importance.

Nonetheless, the “efficient” options it is offering to both developing and developed governments to consider are striking.

These include placing higher taxes on the rich than on other segments of society, as well as strengthening property taxes, potential for which the Fund says is particularly significant in developing countries. It also suggests considering increasing the age at which citizens become eligible for pensions and other state old-age programmes.

Many of these suggestions have long been pushed by development advocates as well as global labour rights activists.

“We’re pleased that the IMF has finally caught up with what the global union movement has been saying for years – that inequality is the number one threat to the economic recovery,” Philip Jennings, the general secretary of UNI Global Union, said in a statement. “The only way out of this crisis is inclusive, sustainable economic growth with a living wage for all.”

CGD’s Cobham says the paper will give support to policymakers who want to tackle inequality, and could serve as the basis for a broader global agreement on the issue.

“It may in fact mark an important moment in establishing the breadth of the consensus that reducing income inequality should be one of the targets of the post-2015 framework that will succeed the Millennium Development Goals,” he says.

A half-decade since the start of the global economic crisis, inequality has risen to the top of global agendas.

In January, the World Economic Forum warned that the growing gap between rich and poor, brought about by globalization, constituted “the most likely risk to cause an impact on a global scale in the next decade”. The previous month, US President Barack Obama likewise stated that income inequality is “the defining challenge of our time”.

Much of this new focus is because the global concentration of wealth that has taken place over the past three decades has increased in recent years, and today stands at modern record levels. According to analysis by Credit Suisse, just 1% of the global population own around half of the world’s wealth.

According to the new IMF paper, this trend is particularly pronounced in the West, especially in the United States.

In developing countries, income inequality has been growing in the Middle East and North Africa, though recently it has begun to decrease in sub-Saharan Africa and, particularly, in Latin America. Despite this recent downward trend, however, Latin America retains one of the highest levels of inequality of any region.

While the Fund points to a variety of social spending as a key way to reduce

these levels, the IMF's Lipton warns that such spending needs to be better designed or risk increasing inequality.

"Fiscal policy has played a major role in reducing inequality in the past and is the primary tool available for governments to affect income distribution," he said on 13 March. "Whether these policies help, or hurt growth, is all a matter of design." (IPS) □

Arab NGOs warn IMF against sharp cuts to subsidies

In a sign that the IMF's research findings on inequality may not be reflected in actual policy on the ground, a new report says that IMF pressure for the withdrawal of food and fuel subsidies in Arab states will hurt the poor and may contribute to unrest in the volatile region.

by Jim Lobe

WASHINGTON: Civil society activists from five Arab countries are urging the International Monetary Fund (IMF) to ease pressure on their governments to reduce food and fuel subsidies until stronger social protection schemes and other basic reforms are implemented.

In a new report, the Arab NGO Network for Development (ANND) and the Egyptian Centre for Economic and Social Rights (ECESR) argue that social safety nets in Egypt, Jordan, Morocco, Tunisia and Yemen are inadequate – or, in some cases, too corrupt – to compensate for the loss of critical subsidies on which the poor and even the middle class depend.

Indeed, in the absence of stronger safety nets, even the gradual removal of subsidies for key commodities may contribute to continuing unrest across the region as the three-year-old "Arab Awakening" plays out, according to the 20-page report.

"In the near term, the unwinding of subsidies cannot serve as the panacea for the serious budgetary and fiscal difficulties facing most Arab states," according to the report, which was released here on 27 February by the Middle East Task Force of the New America Foundation (NAF), a non-partisan think-tank.

"By continuing to press Arab governments to remove subsidies, the IMF has inadequately responded to the sweeping social and political changes stemming from the 2011 uprisings and subsequent period of unrest," it said.

The report also called on the IMF to

urge national governments to take other measures, notably instituting progressive tax systems and cutting the military budget, in order to increase revenues and cut spending.

Governments must also be encouraged to consult more with civil society organizations (CSOs), labour unions and local authorities regarding economic reform programmes, according to the report.

Jo Marie Griesgraber, who directs the New Rules for Global Finance Coalition, welcomed the report, saying it was the latest indication of growing interest by grassroots groups both in the Arab world and in other countries in transition, such as Ukraine and Burma, in the IMF and of their understanding that national economic problems need to be addressed at the global level.

At the same time, she noted that the authors may be overstating the leverage the IMF enjoys over national governments with which it is required under its charter to negotiate agreements.

"I'm sure, if given a choice, the IMF would prefer that reducing subsidies would not be the first policy option they would want to implement to reduce deficits," she told Inter Press Service (IPS). "It's a government policy, and the government is going to agree to cut subsidies to the poor before it agrees to cut military expenditures."

"The IMF can't do everything; you need the World Bank; you need regional banks; you need an international court to throw corrupt officials in jail; you need

a national political commitment for people to pay taxes," she said. "The IMF is too limited in what it alone can do, although it serves as a convenient scapegoat for governments."

Leila Hilal, NAF's Middle East Task Force director, agreed that states "are engaging the IMF bilaterally without consulting the affected populations".

With the recent uprisings, she told IPS in an interview from Jordan, "people feel that their voices are more valuable, that they have more agency, and that there's much more at stake in terms of policy, and they want to be heard.

"So the idea is that the pressure should be on the global community that is pushing these austerity measures without considering the actual context or impact on low-income people," she said.

Controversial reputation

While the mass demonstrations, violence and political upheavals across the Arab world continue to capture the headlines, relatively little attention has been paid to the underlying economic problems that many analysts believe lie at the root of the continuing regional turbulence.

The Washington-based IMF, which is dominated by the wealthy Western nations, has long been involved in the Middle East/North Africa (MENA) region, particularly in the five low- and middle-income countries that are the subject of the report.

The lender of last resort for failing economies, it provides short-term loans that are subject to recipient governments' compliance with conditions designed to reduce, if not eliminate, their fiscal deficits.

Over much of its history, it acquired a controversial reputation for pushing severe austerity on governments as part of "structural adjustment" programmes which hit the poor and most vulnerable sectors of society the hardest, often as a result of cuts to food and fuel subsidies, as well as social services, including health and education.

The IMF said it was unable to comment before deadline.

Cuts in subsidies have been particularly controversial because of their immediate impact on the population. In 1977, for example, a cut in bread subsidies in Egypt provoked widespread un-

rest, as did Jordan's attempts to cut subsidies in 1989 and again in 1996.

When the IMF sent a mission to Egypt in April last year, it was greeted with protests by civil society groups, labour unions and political parties anticipating that the agency would demand similar cuts as a condition for much-needed loans.

In much of the region, food and fuel subsidies make up a large percentage of government spending; in 2012, for example, they accounted for 10% of the Egyptian budget.

As the report itself notes, the Fund – as well as its development sister agency, the World Bank – has become increasingly sensitive to these criticisms and sought to persuade governments with which it negotiates the loan conditions to mitigate the impact on the poor by reducing subsidies more gradually and, with the Bank's help, strengthening social safety nets for the most vulnerable.

But the report, which was based on interviews with more than a dozen prominent civil society activists from the five countries, as well as analyses of IMF staff reports and other IMF documents, argues that these efforts are sometimes based on faulty assumptions.

"Theoretically, the IMF proposes the expansion of social safety nets as a way to offset the negative impact of subsidy removal on the poor," it said. "In practice, however, social protection schemes are underdeveloped and often non-existent in Arab countries, and are thus incapable of cushioning the poor against rising prices. In many instances, corruption and the absence of transparency mechanisms further complicate the task of distribution [of] social welfare benefits."

"Subsidy reform should only occur upon the establishment of sustainable and comprehensive social protection schemes, and can only proceed with broad support from a variety of stakeholders," according to the report.

"Our analysis highlights the need for the IMF and the G8 countries to adapt their advice to the changing political and socio-economic conditions in the Arab region," said NAF's Abdulla Zaid, one of four of the report's co-authors.

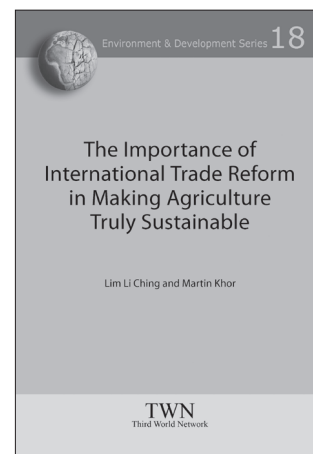
"The Fund's one-size-fits-all advice prioritizing fiscal austerity measures over social and economic rights fails to account for the harmful impact subsidy removal would have on low- and middle-income individuals, and thus, stability." (IPS) □

The Importance of International Trade Reform in Making Agriculture Truly Sustainable

Lim Li Ching and Martin Khor

Reforms of the international trade regime require a significant reduction or removal of harmful subsidies currently provided mainly by developed countries, while at the same time allowing special treatment and safeguard mechanisms for developing countries in order to promote their smallholder farmers' livelihoods. Such reforms, coupled with policies in support of sustainable small-scale agriculture in developing countries, would improve local production for enhancing food security.

There is also a need for regulatory measures aimed at reorganizing the prevailing market structure of the agricultural value chain, which is dominated by a few multinational corporations and marginalizes smallholder farmers and sustainable production systems. Policies that increase the choices of smallholders to sell their products on local or global markets at a decent price would complement efforts to rectify the imbalances. In addition, a shift to more sustainable and ecological agricultural practices would benefit smallholder farmers by increasing productivity while strengthening their



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