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Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture



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Human Rights Approach to Economic
Policy in Agriculture**

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OVERVIEW

In the context of an unparalleled convergence of food, energy, climate, financial, ecological and economic crises, a group of human rights advocates of various fields of expertise from every region of the global South came together in Kuala Lumpur, Malaysia to develop the Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture.

This Overview provides a brief account of the objectives, context and content of the Guidelines.

Background

The three-part Kuala Lumpur Guidelines are designed as a tool to provide basic information and a methodology for use by anyone concerned with ensuring the primacy and centrality of the human rights of those affected by trade, investment and finance rules as well as fiscal, monetary and other economic policies related to agriculture. The Kuala Lumpur Guidelines aim to contribute to the further development, application and interpretation of international human rights law in relation to economic law and policy as pertaining to agriculture.

Part I: Guiding Principles for a Human Rights Approach to Economic Law and Policy

Human rights provide a clear and universally-recognized framework founded in international and domestic law for guidance in the design, implementation and monitoring of economic policies.

Part I of the Kuala Lumpur Guidelines presents the general human rights principles available for guiding economic policy in a way which upholds human dignity. Founded in the centrality and primacy of human rights law and norms, this section lays out how the principles of universality, interdependence, indivisibility, non-retrogression, non-discrimination, maximum available resources, minimum core content, participation and accountability relate specifically to economic law and policy.

Part II: Human Rights Actors, Issues and Threats in Agriculture

Agriculture provides economic activity and sustains livelihoods for more than a billion people in the world, significantly contributing to rural development, as well as setting the stage for attaining food security and realizing human rights in rural and urban areas.

Part II of the Kuala Lumpur Guidelines describes in context the crucial and multidimensional role of agriculture in providing a necessary foundation for the enjoyment of a plethora of human rights—from the right to work to the right to food to the right to culture. The key state and non-state actors in agriculture are identified, and the existing threats to realizing human rights in agriculture—from market concentration to genetic modification to agro-fuels—are briefly discussed.

Part III: Human Rights Obligations and Economic Policy Tools in Agriculture

Economic policy is public policy. Fiscal and monetary policy as well as trade, investment and finance policies generate positive or negative outcomes for human rights in agriculture depending on the

tools that are chosen, the way they are designed, the way they are implemented, and the way their implementation is monitored over time. State's human rights obligations—not other private or investment commitments—must be the central reference point in deciding upon the correct mix, type and intensity of economic policy tools in agriculture.

Part III of the Kuala Lumpur Guidelines starts by describing a number of economic policy tools affecting agriculture which bears intimately upon a country's capacity to meet its human rights obligations.

The Guidelines then go on to draw the analytical and practical links between the human rights principles and obligations in economic policy as they concretely manifest in agricultural policy domestically and internationally today. In this context, governments' human rights obligations in economic policy within inter-governmental organizations which impact agriculture are also analyzed. UN agencies, the World Trade Organization, multilateral development banks, international financial institutions, regional development banks, regional economic integration programs, and regional political alliances all figure prominently here. As both members and beneficiaries of these organizations, States' duties to human rights, it is argued, supersede other considerations. As both decision-makers over and/or parties to a loan, grant, trade or other economic agreements, States must uphold the primacy of human rights law and principles. Moreover, international economic policies and practices must not affect the ability of States to discharge their human rights obligations at home.

Lastly, the Kuala Lumpur Guidelines explore what a human rights-centered economic policy in agriculture would look like extraterritorially, beyond borders. While the primary duties of governments rest within their borders, and while the fundamental norm of State sovereignty must be respected, the obligations to promote, respect, protect and fulfill human rights are not circumscribed by national borders alone. States also have duties of international cooperation and assistance in economic policy. The Kuala Lumpur Guidelines conclude by exploring this shared responsibility to work actively towards a just and equitable trade, investment and financial system which complies with international human rights laws and principles, and which provides an enabling environment in the full realization of human rights in agriculture.

Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture

Introduction

In the context of an unparalleled convergence of food, energy, climate, financial, ecological and economic crises, a group of human rights advocates of various fields of expertise from every region of the world came together in Kuala Lumpur, Malaysia from 22-26 July, 2009 to develop a set of Guidelines for a Human Rights Approach to Economic Policy in Agriculture (herein the ‘Kuala Lumpur Guidelines’).

Recognizing that law is constantly in a process of transformation, and conscious of the essential role of social groups and movements in shaping it in a way which upholds the principles of social justice, the Kuala Lumpur Guidelines aim to contribute to the further interpretation of international human rights law in relation to the design, implementation and monitoring of economic law and policy as pertaining to agriculture. As such, the following Guidelines are designed as a tool to provide basic information and a methodology for use by anyone concerned with ensuring the primacy and centrality of human rights of those affected by trade, investment and finance rules and other types of economic policies related to agriculture.

Part I: Guiding Principles for a Human Rights Approach to Economic Law and Policy

1. Human rights provide a clear and universally-recognized framework founded in international and domestic law for guidance in the design, implementation and monitoring of economic policies and programmes. Human rights not only pose limits to oppression and authoritarianism. They also impose positive obligations on States to uphold human rights.
2. States exist to protect the human dignity and human rights of all people within their own territory and/or jurisdiction, in accordance with their legally binding, universal obligations. States have the duty to respect, protect and fulfill all human rights universally and at all times.
3. Human rights—economic, social, cultural, civil and political—have equal status. They are interrelated, interdependent and indivisible. The fulfillment and enjoyment of one right often depends on the fulfillment of other rights, while the violation or impairment of one right can in turn negatively affect others.
4. Primary human rights obligations of States rest within their territory and/or jurisdiction. In the spirit of the UN Charter and applicable international law, however, States are also required to contribute to international cooperation in the full realization of human rights. States are thus obliged to respect the enjoyment of human rights outside their borders, and recuperate their regulatory power to protect against human rights abuses involving third parties within their jurisdiction, be they business, banks or other non-state actors. When acting within inter-governmental fora, such as the United Nations, the World Bank, the International Monetary Fund, the World Trade Organization,

or other *ad hoc* meetings such as the G-20, States must guarantee that their decisions are consistent with and conducive to the realization of their human rights obligations to respect, protect and fulfill.

5. In determining the specific means to discharge these duties, States enjoy a certain latitude of discretion given their particular circumstances and mandates. Even in the face of public revenue limitations, however, States must marshal the maximum available resources to ensure that full implementation of economic and social rights is progressively realized in the near and longer-term. States have a specific and continuing obligation to move as expeditiously and effectively as possible towards their full implementation, and to guarantee non-discrimination throughout the process.

6. Likewise, no deliberately retrogressive measures can be taken, unless fully justified for the enjoyment of the totality of economic, social and cultural rights and only if States have carefully considered all alternatives and are using the maximum resources available domestically and internationally. Any policy or resource decision which rolls back the realization of these rights without these justifications represents a violation, and thus is impermissible under human rights law.

7. In addition to not going backward, or regressing in the fulfillment of human rights, States must immediately ensure at the very least minimum essential levels of enjoyment of economic, social and cultural rights as a matter of priority. Law and policy must be designed and implemented in a way which ensures these core benchmarks are met, and the limitation of resources cannot be used as justification for failing to fulfill these minimum essential levels.

8. Non-state actors, especially those involved in or affecting economic policy, have clear responsibilities to respect human rights at all times as an integral component of their operations, and to avoid in all ways complicity in human rights abuses. In certain circumstances in which non-state actors perform an essentially public function, responsibilities to protect and/or fulfill human rights obligations shall consequently be borne by them.

9. Human rights law enjoys normative primacy and centrality in international and national law. Human rights obligations thus cannot be derogated, or in any way compromised, by trade, investment or finance commitments and agreements.

10. Thus, States must conduct their economic policy both domestically and abroad in a way which upholds their human rights obligations. Along with this obligation of conduct, States must also ensure that the outcomes of their economic policies are human rights-realizing. Both in the conduct and in the outcomes of economic policy, careful monitoring and assessment of the human rights consequences of these policies is essential.

11. By virtue of the inherent dignity and equality of all, every person and community must be considered equally in determining and measuring policy, and thus no one can be directly or indirectly discriminated against in their enjoyment of human rights. This principle of non-discrimination requires that all measures adopted in economic policy avoid disproportionate effects, even in times of severe resource constraints. Deliberate, targeted measures may be required to ensure that disadvantages or vulnerabilities of certain groups or individuals will not hamper the substantive exercise or fulfillment of their human rights.

12. The right of participation implies that all aspects of economic policy are meaningfully rendered open to contest and debate by all members of society, in their design, implementation and monitoring. This requires that public access to information which affects peoples' lives is not restricted, and that positive steps are taken by States and their agencies to ensure greater transparency and stakeholder participation in economic decision-making processes and actions. Any exceptions to full transparency must be strictly necessary in the public interest and for the general protection of human rights.

13. Everyone has the right to an effective remedy and to access to justice for violations of their human rights, irrespective of who the perpetrator is. Therefore, States must ensure the necessary conditions that will allow individuals and groups whose rights have been affected as a result of economic policy decisions to enjoy accessible and effective remedies which offer redress for wrongs committed, ensure fair compensation for harms done, enable victims to fully enjoy their rights, and hold all responsible parties to account.

Part II: Human Rights Actors, Issues and Threats in Agriculture

A. Multidimensional Role of Agriculture in Realizing Human Rights

14. Agriculture is the key economic driver for many developing and least developed countries around the world, whose populations largely consist of small-scale subsistence-based rural farmers. It is a major occupational sector, with more than forty-four percent of the world population employed in agriculture. Agriculture provides economic activity and sustains livelihoods for more than a billion people in the world, significantly contributing to rural development, as well as setting the stage for attaining food security and realizing human rights in rural areas. Agriculture also plays a significant role in ensuring, supporting and meeting the food security needs of urban populations.

15. The importance of agriculture transverses many different dimensions, and is thus considered to have a multi-functional role for human well-being. Its different roles and functions include production aspects, such as a source of food, animal feed, fiber, medicine, ornaments, income and fuel. Important non-production aspects also exist, such as environmental services (conservation of plant genetic biodiversity, water, forest, and land) and the preservation of cultural heritage.

16. Secure access to land and other natural resources, in particular water, as productive assets in agriculture can play a fundamental role in creating the conditions for the realization of a plethora of human rights.

B. Actors in Agriculture

17. Agriculture involves different actors, each with corresponding rights, responsibilities and obligations. The actors most closely dependent on agriculture are farmers (small-scale farmers, family farmers, or peasants), agricultural workers (which very often include women workers, migrant workers, and landless workers), indigenous communities, and other marginalized groups.

18. Given their economic, social and cultural needs and aspirations, as well as their particular vulnerabilities within the economic system, these actors often organize themselves into collectivities,

such as cooperatives, associations, and trade unions in the struggle to effectively defend and protect their rights, sometimes in the face of violent repression.

19. The State has the primary duty to respect, protect and fulfill human rights in the design, implementation and monitoring of its economic policies in agriculture. The State has the corresponding duty to provide access to effective remedy, including compensation for those negatively affected by these policies. When disadvantaged groups face disproportionately adverse impacts as a result of agriculture-related catastrophes, including climate, food and financial crises, special measures must also be forthcoming to cushion them.

20. Agriculture has also become an arena for global economic interests and actors, such as private investors, multinational companies, financial institutions like national and regional development banks, the World Bank, the International Monetary Fund, and inter-governmental trade institutions like the World Trade Organization. Each of these actors has their distinct set of responsibilities and universal obligations to respect and promote human rights, with more expansive degrees of responsibility in some circumstances.

C. Human Rights in Agriculture

21. Agriculture provides a necessary foundation for the enjoyment of various inter-related human rights, amongst them:

- a. Right to an adequate standard of living: where agriculture provides the means to sustain dignified livelihoods.
- b. Right to work: where agriculture provides the conditions for freely-chosen employment for men and women, with the potential to assure dignified wages, decent working conditions, and the rights of migrant workers.
- c. Right to adequate housing: where agriculture provides the means to afford basic shelter and housing, enabled by access to land and income through agriculture.
- d. Right to water: where agriculture pursued in an environmentally sustainable way provides the means to equitably access water.
- e. Right to adequate food: where agriculture enables the means to access, afford, and make available food, enabled through agricultural practices and economics.
- f. Right to education: where agriculture provides the means to attain knowledge and skills to support a dignified way of life and livelihood.
- g. Right to self-determination: where agricultural practices are based on traditional knowledge from small-scale farmers' and indigenous peoples' own invaluable methods, initiatives and experiences which express one of the ways freely determined to pursue their development.
- h. Rights to culture: where agriculture provides the means to express the heritage, culture, history and traditions of small-scale farmers, including indigenous and community knowledge systems, and where agriculture has been the means to acquire and preserve wealth (land or properties) inter-generationally through customary and ancestral rights.

22. A variety of human rights violations and other abuses also occur in the context of agriculture, amongst them:

- a. Right to life: where conflicts over land or productive resources can lead to extra-judicial killings or other threats to personal integrity.
- b. Right to social security: where small-scale farmers and other vulnerable people, despite the fact that their work in agriculture contributes to the national economy, may not benefit from the social protection systems due to their participation in informal employment which in general lacks the proper operational structure to access the institutionalized social security benefits.
- c. Right to health: where some agricultural practices involve intensive use of chemical inputs and genetically engineered seeds, or other environmentally unsafe products which pose substantial risks to the enjoyment of the highest attainable standard of physical and mental health.
- d. Women's rights: where agriculture has historically been the means by which women attempt to manage and fulfill their responsibilities of labor, family care, and nutritional security, and where the need for women to secure access to land and property intensify as conditions in agriculture become more tenuous.

D. Significant Threats to Economic, Social and Cultural Rights in Agriculture

Commercialization, Monopolization and Market Concentration

23. Agriculture has increasingly become commercialized, monopolized and concentrated, a process facilitated by regional and international trade, privatization and investment bodies. Private companies have continued to improve their capacities to control production costs, satisfy market demand and generate additional profit by expanding their operations, at the expense of small-scale farmers with less competitive advantages. Such expansion has given way to an escalating trend toward fewer and larger firms in agriculture.

24. This trend has disproportionately affected small-scale farmers, rural and indigenous communities, and other disadvantaged groups dependent on agriculture, exposing them to forced evictions and displacements, loss of land and access to natural resources, threatened livelihoods, increased hunger, more prevalent disease and deeper poverty in rural areas.

Genetic Modification, Intellectual Property Regimes, and Chemical Inputs

25. The biodiversity protected by traditional community knowledge and wisdom has enabled farming systems to continue evolving and preserving the environment and natural resources, ensuring the sustainable enjoyment of a broad range of economic, social and cultural rights. Sustainable forms of agriculture are thus crucial for addressing the environmental crisis related to climate change, pollution and soil degradation.

26. Genetic biodiversity is however increasingly at risk as a result of the development, commercial production and distribution of genetically modified organisms (GMOs) in agriculture. The use of GMOs poses a detrimental threat to agro-biodiversity through the promotion of an intellectual property rights regime in seeds concentrated under the control a small group of multinational companies. An institutionalized promotion of commercially produced seeds or GMO seeds through hasty policies determined without regard for human rights obligations, thus, will likely undermine farmers' capacities to make their own crop choices based on their traditions of agriculture

knowledge. These threats in turn put at risk the rights of farmers to determine their form of social and economic development by limiting their access to productive assets through, for instance, the traditional practice of saving, reusing and sharing of a diverse variety of seeds.

27. Environmental and health quality could also be compromised by the application of these genetically modified organisms or crops released and propagated through artificially-induced growth and survival, in parallel with other chemical inputs (pesticides, herbicides, mineral fertilizers, etc.) that may cause severe adverse impacts, in particular on the right to adequate health.

Agro-fuels

28. Increasing demand for alternative sources of energy has also transformed agriculture's original role in producing food, expanding it to include the production of agro-fuels. This trend has aggravated the food crisis, attributed to the rising competition for productive resources to produce food and non-food agriculture. Private agricultural actors with interests in capitalizing on the surge in demand for agro-fuels in the global market have in many cases stimulated higher levels of monopolization and concentration in land ownership (or "land-grabbing") and control, with adverse impacts on the rights of farmers to secure access to land, and in the realization of the rights to food, water and self-determination.

Part III: Human Rights Obligations and Economic Policy Tools in Agriculture

A. Economic Policy Tools and Human Rights

29. Economic policy tools are a menu of measures that States may use in the exercise of their public authority through executive, legislative, budgetary, administrative or other means. These include fiscal and monetary as well as trade, investment and finance policies. Trade is taken to refer broadly to the tools that affect buying and selling of goods and services, as well as conditions of ownership and transfer of intellectual property rights. Investment refers to the tools that affect the transfer of capital for the activities of business enterprises. Finance refers to the tools that affect the transfer of financial capital and instruments, as well as the conditions of operation for lending and borrowing by public and private actors in the economy.

30. Agriculture in any given country is closely related to the enjoyment of a broad range of human rights, as aforementioned. For this reason, the mix, type and intensity of trade, finance and investment tools affecting agriculture will bear upon a country's capacity to meet its human rights obligations. These policy choices will generate positive or negative outcomes depending on the tools that are chosen, the way they are designed, the way they are implemented, and the way their implementation is monitored over time. In this respect, States must consider using any and every economic policy tool and procedure relevant to agriculture depending on the context in ways that best respect, protect and fulfill human rights, in conduct and/or outcome.

31. Acknowledging the existence of a wide variety of economic policy tools which at different times and in different contexts can be used to realize human rights in agriculture, a number of such economic policy tools are noteworthy: import tariffs, import quotas, agricultural and export subsidies, export taxes, exchange rates, financing and investment in agricultural infrastructure

services, marketing boards and state trading enterprises, credit regulation, money and interest rates, public revenue collection (taxation), price controls (caps), price stability and commodity boards, capital controls and investment controls.

32. Increasingly, the space States need to utilize certain economic policy tools necessary to affect agriculture so as to ensure the enjoyment of human rights, especially economic and social rights, is being circumscribed by conditions set out by regional and international financial institutions, and trade and investment agreements.

33. The nature and existence of trade and investment agreements, as well the type of relationship a country has with financial and trade institutions, are government decisions. As a result, a State's human rights obligations must be the central reference point in deciding which constraints if any a State is willing to accept in deciding on and approving the correct mix, type and intensity of economic policy tools in agriculture.

B. The Content of Human Rights Obligations in Economic Policy at the National Level

Normative Primacy of Human Rights

34. As members of the United Nations, States have legally committed themselves to uphold the purposes and principles of the UN Charter, including the promotion of respect for human rights. According to Article 103 of the UN Charter, the obligations of States under the Charter, including obligations in the field of human rights, take primacy over other international commitments or accords.

35. Therefore, the State is by no means in the position to invoke obligations under trade or investment treaties, or clauses under finance arrangements, signed with foreign public or private institutions as an excuse to avoid using certain economic policy tools in agriculture that it may need to uphold its human rights obligations.

Participation, Transparency and Access to Information

36. The State has a mandate to ensure that everyone—especially those directly affected by economic policy in agriculture—effectively participate in a non-discriminatory manner in policy formulation and implementation addressing key issues related to the environment, food security and sovereignty, access to land and livelihoods.

37. The State, in implementing this obligation to ensure the right to participate in public life and in the decision-making processes, must extend participation to every stage of the formulation, implementation and monitoring of any economic policy tool. The State and inter-governmental organizations in this context must ensure effective participation of farming associations, trade unions and non-governmental organizations that genuinely represent the interests of small-scale farmers or other vulnerable actors in agriculture, including rural and indigenous communities, workers and other marginalized groups in the implementation of any laws and/or procedures concerning agriculture that may affect their human rights.

38. In order to meaningfully exercise the right to participation, processes related to the formulation, implementation and monitoring of any economic policy affecting human rights in agriculture must be fully transparent. Transparency in this regard requires that all relevant information be accessible to all interested actors at all stages in negotiations undertaken by States with public and private financial institutions, as well as in trade and investment agreements and institutions.

39. States and all actors with specific economic interests and intentions in agriculture must ensure free, prior and informed consent to be exercised in accordance with national and international obligations where access to local genetic resources and sought-after traditional knowledge of indigenous peoples could have inequitable, negative outcomes to the enjoyment of human rights through patenting and ownership claims.

Human rights impact assessments

40. At the design, implementation and monitoring stages of economic policy, States have an obligation to provide for effective, participatory and independent mechanisms for assessing the human rights impacts of economic policy tools.

Progressive Realization and Non-retrogression

41. The obligation to take steps progressively to realize economic, social and cultural rights entails non-retrogression and continuous implementation of effective measures. As a result, no economic policy tools can be *a priori* excluded from consideration as means towards that end. Any tool or mix of tools which are necessary to realize these rights must be immediately considered.

42. Breaches in the obligation of progressive realization of economic, social and cultural rights can occur through acts of commission or omission. Acts of commission may occur whenever a State specifically implements an economic policy tool which is known, or should be known, to lead to the infringement of human rights. For instance, the removal of tariffs that protect small-scale agriculture has been shown to have direct adverse consequences on the enjoyment of human rights among members of the farming communities involved.

43. Acts of omission occur whenever a State fails to use an economic policy tool that, if implemented, could reasonably lead to increased levels of enjoyment of economic, social and cultural rights. Acts of omission in agriculture may occur, for instance, if a State fails to use all the economic policy tools at its disposal to regulate investments in a way which ensures needed infrastructure—such as potable water, sewage systems and roads—is provided in rural areas.

44. Furthermore, States must in general refrain from using economic policy tools which have deliberately retrogressive effects on the enjoyment of economic and social rights. If any deliberately retrogressive measures are taken, the State has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of economic, social and cultural rights provided for in international law.

45. Considering the particular threats to the full realization of human rights in agriculture today, States in discharging their obligations pertaining to economic, social and cultural rights must progressively utilize economic policy tools which protect and promote environmentally-sustainable

and rights-realizing methods and technologies in agriculture. Some examples may include promoting agro-ecology and organic farming, protecting equitable access to land and resources for agriculture, and discouraging mono-crop cultivation and the usage of toxics and fertilizers dangerous for the productivity of the land and health of the population. States must legislate and enforce environmental protections and laws in accordance with the precautionary principle.

46. Given the essential role of land in the realization of many of the aforementioned human rights pertaining to agriculture, States must progressively adopt economic policy tools which embrace positive promotion and realization of equitable access to land and productive resources in agriculture.

47. States must also adopt economic policy tools which progressively enable an adequate standard of living, dignified wage-earning capacities and safe work conditions for peasants, small-scale farmers, women, migrant workers and others employed in agriculture.

Maximum Available Resources

48. The obligation to make full use of available resources includes not only those resources available through taxation and other revenue-mobilization within a State's capacity, but also those resources that can be acquired through the use of any of the possible economic policy tools available to the State. These resources—financial, technical and human—also include those available outside national boundaries through international cooperation and assistance.

49. In order for a State to be able to attribute its failure to meet human rights obligations to a lack of available resources, it must demonstrate that every effort has been made not only to use resources at its disposition but also to exhaust all economic policy tools that would have allowed it to acquire such resources. For instance, the use of progressive taxation measures can be a useful complement to boost the revenue base a State has available. The burden to show that it has made these efforts is on the State.

Duties of Immediate Implementation

50. The obligations of States of non-discrimination and to ensure minimum core levels of enjoyment of economic, social and cultural rights are of immediate application. That is, a State has the immediate duty to implement any economic policy tool necessary to put an end to discrimination and to guarantee core levels of economic, social and cultural well-being.

51. Likewise, States are obliged to immediately cease from implementing any policy that could potentially discriminate against disadvantaged actors, or adversely affect the enjoyment of minimum core levels. For instance, if a policy that leads to an increase in interest rates for credit has the disproportionate effect of depriving a specific vulnerable group, such as the poorest farmers, from accessing credit, and a means of production, this policy must be ended immediately.

Accountability

52. It is a general principle of public international law that any human rights violation gives rise to an obligation to provide effective remedies, including the right to access to judicial protection and

reparations, which for their part may include restitution, compensation, rehabilitation, and guarantees of non-repetition.

53. The right to remedy for human rights violations is one of the basic pillars of the rule of law, and goes to the very heart of human rights protection. It is fundamental to acknowledging that a wrong has been committed, to addressing the needs of those harmed, to correcting any adverse impacts, and to preventing future infringements from reoccurring. As such, this right implies clear obligations on States at the national level to guarantee access to justice and effective remedies and reparations for adverse impacts of economic policy.

54. States must prevent and punish abuses by individuals, agents of the State or non-state actors, such as companies or multi-lateral development banks. Non-state actors have responsibilities in their own right, and must at a minimum not cause harm to the enjoyment of human rights.

55. As the types and origins of human rights violations are diverse, the type and scope of measures and institutions created to fulfill the State obligation to provide remedy should also be diverse and adequate to meet the immediate and continuing needs of the people affected. In addition to providing access to legal remedies and judicial protection, States should also pursue complementary legislative, administrative or political approaches to ensuring accountability by, for example, promoting opportunities for capacity-building and legal aid amongst those whose rights are adversely affected, creating human rights monitoring mechanisms with enforcement powers, and ensuring that decisions are subjected to public scrutiny in the free contestation of economic policies.

56. The institutions responsible for providing remedy in this context should also have a mandate to fight corruption through mechanisms to punish those involved, provide for restitution of embezzled assets and protect against future incidents of a similar nature.

57. Those institutions which provide remedy must also guarantee that victims are treated in a non-discriminatory manner, and in general ensure transparency in their operations and decision-making processes.

58. Furthermore, it is vital to ensure that the multiplicity of standards, principles and institutions related to economic law and policy in agriculture should not in any way obfuscate or prevent victims from obtaining full reparation and remedy.

59. In recognition of the incoherence of economic policy across government agencies, and the lack of suitable mechanisms to hold economic policy-making accountable to human rights standards, States must also ensure that all of their agencies, ministries and departments involved in economic policy related to agriculture are held accountable to human rights norms in their actions and in their omissions.

C. The Content of States' Human Rights Obligations in Economic Policy within Inter-governmental Organizations

States' Obligations within Inter-Governmental Organizations

60. Human rights obligations remain active and central for States when they enter into bilateral, regional or international agreements. These obligations also extend to States' participation and activities when acting collectively within bi-lateral, regional or international inter-governmental institutions (IGOs)—be they of a legal, economic or political nature.

61. These inter-governmental organizations include various UN agencies, the World Trade Organization, multilateral development banks, international financial institutions, regional development banks, regional economic integration programs, and regional political alliances.

62. As both members and as beneficiaries of these organizations, States' duties to human rights must supersede other considerations. That is, as both decision-makers over and/or parties to a loan, grant, trade or other economic agreements within an inter-governmental organization, States must uphold the primacy of human rights law.

63. Moreover, international economic policies and practices must not affect the ability of States to discharge their obligations under human rights treaties and customary law. International trade and investment policies and rules must also be negotiated and interpreted in a manner consistent with existing treaties, legislation and policies designed to protect and promote all human rights.

64. In their operations, States must ensure participation, accountability, monitoring and remedy within the IGOs of which they are member States. A key role exists for regional and international human rights institutions and special procedures in monitoring the economic policies of these IGOs, in protecting against abuses stemming from these policies, and in recommending alternative economic policies with positive repercussions for the enjoyment of human rights.

65. Duty-bearing governments which constitute IGOs involved in economic policy must discharge their obligation to protect by integrating human rights standards and principles into the operations of these institutions, by monitoring and providing remedy for their adverse impacts on human rights, and by otherwise ensuring transparency and accountability at every step.

66. Furthermore, principles of accountability and remedy in economic policy are impaired when intrusive conditions are demanded by these regional and international economic institutions, or by inflexible rules in trade and investment agreements inconsistent with human rights norms.

67. States must ensure the necessary conditions for effective access to justice within IGOs, and establish therein the necessary institutions to allow individuals and groups whose rights have been affected to enjoy accessible and effective remedies which offer redress for wrongs committed and hold responsible parties to account.

Human Rights Responsibilities of Intergovernmental Organizations Involved in Economic Policy

68. Various inter-governmental organizations with specific responsibilities in the spheres of trade, investment and finance today impact economic policy decisions in fundamental ways. These economic institutions must be held accountable for any adverse human rights impacts resulting from their conduct.

69. For inter-governmental institutions with economic policy mandates, their responsibilities begin with the integration of human rights considerations into all aspects of their operations and internal functioning. All financial institutions must ensure that prevention of human rights violations is given primacy in their processes, policies and financing of projects and in the implementation of various programs and strategies. If violations do occur in the course of these operations, then measures for mitigating the impact thereof, and mechanisms of accountability and redress, must be put into place.

70. It is crucial then that inter-governmental organizations which impact economic policy in agriculture act in ways which are compatible with the human rights obligations of their member States. This can be done, for example, by taking full responsibility for respecting human rights when supporting projects, policies or programmes which have the potential of negatively impacting or undermining the enjoyment of human rights.

71. These organizations must also devise appropriate methods to facilitate more systematic consideration of the impact upon human rights of particular fiscal, monetary, trade, investment and finance policies and otherwise play a supportive and constructive role in relation to State obligations to protecting, respecting and fulfilling human rights. It is equally necessary that global governance reform is founded upon human rights norms.

72. The United Nations organs and agencies involved in any aspect of international economic cooperation—including the World Bank and the International Monetary Fund—must recognize the intimate relationship between their activities and the efforts of States and peoples to promote respect for human rights in general, and fulfill economic, social and cultural rights in particular. These institutions must thereby carry out all their activities, programmes and projects in ways which respect and complement the human rights duties of their member States.

73. All organs of the United Nations, their subsidiaries and the specialized agencies concerned with furnishing technical assistance in the economic field should consider international measures likely to ensure that agriculture systems nationally and globally contribute to, rather than impede, the enjoyment of human rights.

D. The Content of Human Rights Obligations in Economic Policy Extraterritorially

74. While the primary duties of States rest within their own territory and/or jurisdiction and while the fundamental norm of State sovereignty must be respected, the obligations to promote, respect, protect and fulfill human rights are not circumscribed by national borders alone. They also entail duties of international cooperation. Thus, States have obligations to respect, to protect and to support the fulfillment of human rights extraterritorially.

75. States' obligations to promote, respect, protect and support the fulfillment of human rights are thus applicable transversely throughout various national and international economic policy arrangements, such as co-financed projects.

76. Consistent with their extraterritorial obligation to respect, States must refrain from implementing economic policies and laws with foreseeable negative effects on the rights of individuals, groups and other actors in agriculture in other countries.

77. A State's extraterritorial obligation to protect requires them to ensure that parties subject to their jurisdiction, including government officials, nationals of the country in question, or other non-state actors such as transnational corporations refrain and cease from violating human rights in other countries. It is incumbent on States then to establish policies and laws to adjudicate and otherwise regulate State and non-state actors to protect and prevent violations of the human rights of individuals and groups in other countries, and ensure compensation for those adversely affected.

78. A State's extraterritorial obligation to progressively support the fulfillment of human rights must be discharged through international assistance and cooperation in the realization of economic, social and cultural rights. This obligation of international assistance and co-operation involves a shared responsibility to work actively towards a just and equitable trade, investment and financial system which complies with international human rights laws and principles, and which provides an enabling environment in the full realization of human rights.

79. The right to effective remedy for violations which occur across national borders implies an obligation to ensure accountability extraterritorially. The extraterritorial obligation to respect in this regard entails that States provide the requisite enforcement mechanisms which prevent and punish actions or omissions of State actors, or actors closely associated with the State, involved in economic policy which cause harms to human rights abroad.

80. The extraterritorial obligation to protect for its part means that States must guarantee that activities of non-state actors in their jurisdiction avoid impinging on human rights, ensure that all parties responsible for violations are brought to justice, and provide victims of human rights violations with effective mechanisms to access justice and fair compensation at the domestic level, and when necessary within regional and inter-governmental institutions.

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In the context of an unparalleled convergence of food, energy, climate, financial, ecological and economic crises, a group of human rights advocates of various fields of expertise from every region of the world came together in Kuala Lumpur, Malaysia to develop a set of Guidelines for a Human Rights Approach to Economic Policy in Agriculture, or the “Kuala Lumpur Guidelines”.

Recognizing that law is constantly in a process of transformation, and conscious of the essential role of social groups and movements in shaping it in a way which upholds the principles of social justice, the Kuala Lumpur Guidelines aim to contribute to the further interpretation of international human rights law in relation to the design, implementation and monitoring of economic law and policy as pertaining to agriculture. As such, the following Guidelines are designed as a tool to provide basic information and a methodology for use by anyone concerned with ensuring the primacy and centrality of human rights of those affected by trade, investment and finance rules and other types of economic policies related to agriculture.

The Kuala Lumpur Guidelines were jointly elaborated by the following organizations: Asian Forum for Human Rights and Development—Forum Asia (Thailand), Center of Concern (US), Centro de Estudios Legales y Sociales—CELS (Argentina), Desarrollo, Educación y Cultura Autogestionarios—DECA Equipo Pueblo (Mexico), International Gender and Trade Network, International Network for Economic, Social and Cultural Rights—ESCR-Net, Kenya Human Rights Commission (Kenya), Land Center for Human Rights (Egypt), Southeast Asian Council for Food Security and Fair Trade—SEACON (Malaysia), Southern & Eastern African Trade Information & Negotiations Institute—SEATINI (Uganda), Terra de Direitos (Brazil) and Women and Law in Southern Africa (Zambia).

The Kuala Lumpur Guidelines are one concrete outcome of a larger pilot project co-coordinated by ESCR-Net and Center of Concern, entitled Bridging Trade, Investment, Finance and Human Rights: A Pilot Project on Agriculture. For more information on ESCR-Net’s Economic Policy and Human Rights Initiative, visit: www.escr-net.org.

