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# THE RIGHT TO FOOD AND THE POLITICAL ECONOMY OF THIRD WORLD STATES

By

Opeoluwa Adetoro Badaru\*

## Introduction

Current global events validate the fact that beyond a theoretical analysis of rights discourse and food justice, there is a need to understand and propose ways to address the very fragile global food situation, and especially so in Third World states. At the peak of the high food prices in mid-2008, the world observed how the issue of access to food and the means to acquire food (in the larger context of other socio-economic needs) spurred riots from Egypt to Bangladesh and Mexico.<sup>1</sup> And one cannot definitely say that we are out of the woods yet concerning rising food prices. Furthermore, with the current global financial crises and the implications on the food security of individuals and households, there is a need for research that critically examines the theory of rights and thereafter proposes practical means by which to ensure food security, especially in Third World states. This article therefore seeks to link a rigorous theoretical exercise with the real-life challenges that face millions of people globally, and particularly so in the Third World.

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1. See CNN, *Riots, instability spread as food prices skyrocket* (14 April 2008) online: [http://articles.cnn.com/2008-04-14/world/world.food.crisis\\_1\\_food-aid-food-prices-rice-prices?\\_s=PM:WORLD](http://articles.cnn.com/2008-04-14/world/world.food.crisis_1_food-aid-food-prices-rice-prices?_s=PM:WORLD).

With this in view, the aim of this article is to understand why, in spite of the fact that the right to food is recognized under international law, and by some domestic constitutions that also established implementation mechanisms, global hunger and malnutrition still persist in immense proportions. This dissonance between the mainstream articulation of the right to food and the availability of adequate food in real human terms to those who need it the most in the Third World thus leads one to critique rights discourse as whole, and further understand the political economy of food in Third World states. In trying to understand the large dissonance between the articulation of the right to food and the availability of food to the hungry and malnourished in the Third World, the main objective of this article is to engage with the question of the extent to which a *rights approach* in and of itself can possibly advance the effort to produce the kind of ideas and practices that can ameliorate the problems of hunger and malnutrition in Third World states, particularly in the context of the current structure of the global political economy. In doing this, this article argues that in order to more effectively realize the right to food in Third World states, there is a need to understand the political economy of food in the Third World and for this understanding to permeate the mainstream approach to realizing socio-economic rights. Thus, this article seeks to propose more synergy among the proposals that have been made by the mainstream, Third World Approaches to International Law (TWAAIL), and Political Economy (PE) schools of thought on the most effective approaches to realizing socio-economic rights.<sup>2</sup>

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2. By "mainstream", I refer to a perspective that is based on a strict and formal interpretation of international law as it is currently couched in the recognized sources of international law, and a similar understanding of the international and domestic legal orders. By "TWAAIL", I refer to the perspective of a school of thought referred to as "Third World Approaches to International

The conventional thinking about rights has largely been to approach it from a mainstream perspective. It is my contention that while this conventional approach of seeking to redress socio-economic hardships (particularly hunger and malnutrition) from a mainstream approach has indeed produced some results, one of the main reasons why there is still a disproportionate situation of socio-economic hardships in Third World states is because of a lack of sufficient engagement with the political economy of the states. In the context of hunger and malnutrition, I will therefore proceed to highlight the mainstream approach to realizing the right to food, the critiques raised against it by TWAIL and PE approaches, and how all these approaches can mesh together in a way that can portend well for efforts to realize the right to food in Third World states.

### **Understanding the Mainstream Approach**

The "mainstream" approach to international human rights law refers to a mainly Western positivist perspective on human rights law that understands contemporary international human rights law as having originated from the United Nations (UN) following the Second World War and couched in the generally recognized sources of international human rights law. It also includes a similar understanding of the arrangement of the international legal systems.

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Law" that is unified by historical and contemporary concerns regarding the position of Third World peoples in the global political and economic structure, particularly within international law. By "Political Economy", I refer to an approach that tries to understand the historical and current links between the economy and political power and how they influence each other. It would seem as if thus far, each of these schools of thought has developed its own approach to either rights discourse in general, or socio-economic rights discourse in particular, without a deliberate and concerted effort to harmonize with the other approaches.

Thus, in order to deconstruct what we understand to be the mainstream approach to the realization of the right to food, it is necessary to highlight the manner in which the right is textually formulated under international law as well as the mechanisms set up thereunder to realize it. Currently, the main international (focusing on the UN and not the regional systems) normative frameworks for realizing the right to food are as follows:

1. Article 25(1) of the 1948 Universal Declaration of Human Rights;<sup>3</sup>
2. Article 1 of the 1974 Universal Declaration on the Eradication of Hunger and Malnutrition;<sup>4</sup>
3. Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights.<sup>5</sup>

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3. *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) 71. Article 25(1) provides as follows:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

4. *Universal Declaration on the Eradication of Hunger and Malnutrition*, GA Res 3180 (XXVIII), UNGAOR, 1974, UN Doc E/CONF 65/20 at 1. Article 1 provides thus:

Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.

5. *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI), UNGAOR, 21st Sess, Supp No 16, 16 December 1966, 993 UNTS 3, UN Doc A/6316 (1966) 49; Article 11 states as follows:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The mainstream approach to international human rights law, as indicated above, is generally concerned with a mainly Western-positivist understanding of what the international law relating to the right to food is, as well as what the international institutional mechanisms available for the implementation of the right are. Hence, a mainstream approach in this analysis focuses mainly on what the international law relating to the right to food currently *is*, and separates it from prescriptions on what the right to food *ought to be*. Furthermore, because a positivist approach envisages that law is usually backed by sanction or coercion necessary to ensure its observance,<sup>6</sup> a mainstream approach as applicable to international law envisages a situation of *obligatory* norms and processes,

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2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Also noteworthy in the ICESCR are Articles 2 and 16. Article 2 provides for how the right should be implemented (States to progressively realize the rights and using the "maximum of its available resources), while Article 16 provides for the institutional framework.

6. This refers to Austinian positivism that suggests that law refers to the expressed intention of a superior who has the capacity and willingness to inflict some form of sanction in the event of disobedience of the command. See Mark C. Murphy, *Philosophy of Law: The Fundamentals* (Malden, MA: Blackwell Publishing, 2007) at 17-18.

However, this perspective of law has been critiqued by another positivist, H.L.A. Hart, who conceives of laws as rules instead of commands. See Hart's critique in H.L.A. Hart, *The Concept of Law*, 2d ed (Oxford: Clarendon Press, 1994) at 18-29.

bearing in mind that the element of obligation or compulsion in international law is somewhat different in nature than what would be the case within a domestic legal order.<sup>7</sup> Because of this element of obligation through practice, a mainstream approach to international law would therefore exclude from the international law text non-obligatory international policy documents and soft legal instruments that are not backed by any form of compulsion (either through ratification or accession of a treaty, or through accepted customary state practice). These kinds of international policy documents would not be categorized as law because states are not obliged to adhere to them.

In the light of the foregoing discussion on the principal sources of international law relating to the right to food, it is therefore submitted that focus on and valorization of the textual expression of the right to food and its implementation mechanism as provided under the ICESCR represent the hallmark of the mainstream approach to the realization of the right to food. This submission is premised upon the fact that

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7. It is at this juncture that Hartian positivism becomes relevant in this Chapter. Unlike Austin whose analysis of law as being sanction-based would have confined international law to the realm of "positive morality" because it lacks the element of a sovereign political superior, Hart argues that "binding legal obligations arise from the acceptance of rules as law from the internal point of view through practice, not from predictions of probable behavior produced by threats of coercion". Hence, Hart considers international law to be "customary rules accepted as binding law by a "community" of states whose officials are engaged in its practice, showing an internal practical attitude of rule-acceptance and not merely fear of coercion". See Gordon A. Christenson, "The Jurisprudence of Sanctions in International Law" (2009) 31:4 *Hum Rts Q* 1086 at 1086-89.

Likewise, O'Connell rejects purely sanction-based theories of international law, but states that sanctions are available mainly to deter free-riding and aid compliance with rules of international law, since the rules are usually followed for other reasons. See Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (New York: Oxford University Press, 2008) at 369-70.

any mainstream description, formulation or discourse of the right to food mainly revolves around its articulation and implementation as stipulated in the ICESCR. The combination of the provisions of Articles 2, 11 and 16 of the ICESCR is what is generally recognized in mainstream international human rights literature and practice as the underlying *obligatory* basis for the right to food. All other instruments which recognize a right to food or of access to food either fall under the category of soft law (or of policy instruments which address the provision of food as a food security issue),<sup>8</sup> or apply the right to food or access to food narrowly to the particular context of an identified person or group.<sup>9</sup>

8. See, for example, the *Rome Declaration on World Food Security and World Food Summit Plan of Action*, FAO, 'Report of the World Food Summit', 13-17 November 1996, WFS 96/REP, Part One, Appendix, which is the result of the 1996 World Food Summit convened by the FAO in Rome from 13 to 17 November 1996. One of the most important targets set in this document was to reduce the total number of undernourished people in the world by half by the year 2015.

Another document that falls in the category of soft law is the *United Nations Millennium Declaration 2000* (GA Res 55/2, 2000, UN Doc A/RES/55/2). At the Millennium Summit in September 2000, world leaders adopted the *UN Millennium Declaration*, committing their nations to a new global partnership to reduce extreme poverty and setting out a series of time-bound targets, with a deadline of 2015. These targets have become known as the Millennium Development Goals (MDGs). The first MDG (MDG1) is to eradicate extreme poverty and hunger. Under this goal, one of two targets as to what should be halved between 1990 and 2015 is the proportion of people who suffer from hunger.

9. Some of these provisions include art 12(2), *Convention on the Elimination of All Forms of Discrimination against Women*, GA Res 34/180, UNGAOR, Supp No 46, 18 December 1979, 1249 UNTS 13, UN Doc A/34/46 [CEDAW]; art 24(2)(c), *Convention on the Rights of the Child*, GA Res 44/25, annex, 44 UNGAOR, Supp No 49 at 167, 20 November 1989, 1577 UNTS 3, UN Doc A/44/49 [CRC]; art 26, *Geneva Convention (III) relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135; art 55, *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287; arts 14 and 18(2), *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the*



The mainstream approach to realizing the right to food, as exemplified by the provisions in the ICESCR – Articles 2, 11, and 16 – seems to be premised on the assumption that a crucial starting point in the struggle to alleviate hunger and malnutrition and thereby promote the provision of adequate food is the putting in place of a legal framework (including a set of norms and a mechanism via which these norms can be vindicated). It would be difficult to come across any mainstream discussion of the realization of the right to food in the literature that does not stress the importance of having an *obligatory* right to food. The existence of a right to food ‘law’ – whether internationally, constitutionally or through ordinary domestic legislation – is generally acknowledged in mainstream circles as a position of strength from which to tackle the question of the realization of the right to food. In short, to mainstream international human rights lawyers, the normative and *implementative* framework is the primary instrument or resource in the effort to realize the right to food.

It appears that what seems to validate this mainstream assumption that the obligatory legal framework for the realization of the right to food as set out in the ICESCR is the main or primary instrument in the effort to alleviate hunger and malnutrition is the fact of this framework’s obligatory legal character, and the fact that it largely meets the four main criteria that mainstream Western positivists have set out as the test of an ideal and effective legal framework. It has been posited that in order to make effective use of any norm of international human rights law, it is necessary to establish (i) its content; (ii) the subjects or beneficiaries; (iii) the object or

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*protection of victims of non-international armed conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609; and para 20(1), *Standard Minimum Rules for the Treatment of Prisoners*, ESC Res 663C, 24 UNESCOR, Supp No 1 at 11, 30 August 1955, UN Doc A/CONF/611, annex I.

duty-holders; and (iv) the mechanisms to promote compliance.<sup>10</sup> Relying on the aforesaid elements as benchmarks, it is submitted that the formulation of the right to food as provided under the ICESCR meets the criteria listed. Article 11, for one, goes into more detail (when compared to Article 25 of the UDHR, for example) on what constitutes a right to food. Thus, the *content* of the norm is expressly stated in the ICESCR, thereby fulfilling the first benchmark stated above. In addition, General Comment 12 further proceeds to develop the normative content of the right to adequate food around the concepts of accessibility and adequacy.<sup>11</sup> With regard to the second benchmark, the ICESCR in Article 11 also incorporates the persons who constitute the *beneficiaries* (in the individual sense, it refers to 'everyone' and internationally, it impliedly refers to states which suffer the effects of inequitable distribution of world food supplies). Furthermore, the identification of the beneficiaries of the right, and especially Article 2, also points to the *duty-holders*; these being the domestic states when it concerns individuals, as well as 'richer' states when the beneficiaries are states which are in comparative lack at the international level. And finally, Article 16 paves the path which eventually provides for an *international mechanism* by which the compliance of states to the treaty can be monitored. Thus, Article 11 of the ICESCR (including its necessarily corresponding Articles 2 and 16) – which represents the epitome of the mainstream approach to the realization of the right to food – meets all the criteria under

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10. Philip Alston, "International Law and the Human Right to Food" in Philip Alston & Katarina Tomasevski, eds: *The Right to Food* (Utrecht: SIM, 1984) at 31-32.

11. Rolf Kunnemann: "The Right to Adequate Food: Violations related to its minimum core content" in Danie Brand and Sage Russell, eds: *Exploring the Core Content of Socio-Economic Rights: South African and International Perspectives* (Pretoria: Protea Book House, 2002) at 81.

which the effectiveness of a human right norm could be evaluated.

It should be borne in mind at this juncture that the crucial issue in adopting these criteria is that the mainstream approach thereby over-emphasizes what the law can do given the best possible scenario. It follows therefore that based on the evaluating criteria for effectiveness, to the mainstream eye, the normative framework set out in the ICESCR should of necessity be of immense benefit in alleviating the problems of hunger and malnutrition. However, considering the fact that it is indisputable that hunger and malnutrition still persist worldwide and especially in Third World states, it is obvious that the potential effectiveness of a human right norm cannot solely be assessed by whether or not it meets some theoretical benchmarks. In fact, the potential effectiveness of a human rights norm which meets *all* the benchmarks is still limited by the truth that norms can only go so far in addressing social hardships such as hunger and malnutrition. It is the submission in this paper that the doctrinal assumptions upon which mainstream human rights lawyers seem to argue from betrays a training which clearly infuses the law with greater possibilities than what it could actually realize, especially the extent to which the law can reach in the efforts to alleviate hunger and malnutrition in the Third World. The conclusion arrived at upon the evaluation of the mainstream approach to the realization of the right to food is that while it indeed represents a good *starting point* in the struggle to alleviate hunger and malnutrition around the world, there is ample room for improvement especially when confronted with weaknesses in its capacity and effectiveness to resolve the problems it is faced with in Third World states.

### The TWAIL Critique of Rights

From its name alone, Third World *Approaches* to International Law, one can safely assume that TWAIL consists of different but related approaches to international law. The name gives the idea that TWAIL is undoubtedly not a monolithic school of thought.<sup>12</sup> It has thus been argued that the manner in which TWAIL scholarship engages with international law consists of different approaches – some more oppositional; others more reconstructive.<sup>13</sup> While there are variants even within the contemporary movement, the focus in this Section is on the overarching similarities that cut across the divergences within the school of thought. Below, therefore, are some of the main ideas and methodologies that undergird TWAIL.

TWAIL scholarship emphasizes the need to historically review the role of colonialism in how the Third World is currently structured today.<sup>14</sup> This is not about crying over milk that was split many decades back but about being intuitive in understanding the systemic and structural constraints on the Third World that are heritages of a colonial legacy. This is particularly necessary in considering whether this factors into whether, or how much, the Third World state can effectively guarantee socio-economic rights. Because in many cases colonialism drastically altered the socio-economic arrangements and living conditions of Third World people and even determined the manner in which the state was

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12. Obiora Chinedu Okafor: "Newness, Imperialism, and International Legal Reform in our Time: A TWAIL Perspective" (2005) 43 *Osgoode Hall LJ* 171 at 176.

13. *Ibid* at 176-77.

14. Antony Anghie & B.S. Chimni: "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts" (2003) *Chinese Journal of International Law* 77 at 83-84.

incorporated into the global economy,<sup>15</sup> it is every important to bring this insight into any analysis of socio-economic rights discourse in Third World states.

Second, a TWAIL analysis stresses the need to question (without necessarily rejecting completely) the legitimacy and application of rights in Third World societies where they may be seen as a Western imposition.<sup>16</sup> The boomerang effect of this is that, because they tend to lack in social legitimacy in Third World states, such rights – however beneficial their implementation may portend to the people – will not always be followed through by even those for whose benefits they were created.<sup>17</sup> This is very important because the starting point of even expecting that socio-economic rights discourse will, in some ways, alleviate social hardships is for people to believe in these rights enough to take the steps to struggle for and access them.

Third, TWAIL joins other schools of thought in stressing the need to de-emphasize the state-centric focus of the human rights discourse and look at not only the vertical operation of human rights, but also its horizontal application.<sup>18</sup> In applying this approach to socio-economic rights discourse, and the right to food in particular, a question to ask is whether it is only the

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15. See Ralph Austen: *African Economic History* (London: James Currey, 1987) at 138-46; and John Lonsdale & Bruce Berman, "The Colonial State in Kenya, 1895-1914" in Yash Ghai, Robin Luckham & Francis Synder, *The Political Economy of Law: A Third World Reader* (Delhi: Oxford University Press, 1987) at 221-30.

16. See Makau Mutua: "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42 *Harvard Int'l LJ* 201 at 206.

17. *Ibid.*

18. See Madhav Khosla "The TWAIL Discourse: The Emergence of a New Phase" (2007) 9 *International Community Law Review* 291 at 297. See also, in general, Balakrishnan Rajagopal: *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

state that violates the right to food of Third World peoples, or whether there are other sites and institutions which need to be examined in trying to understand what is responsible for the state of hunger and malnutrition in the Third World.

Fourth, TWAIL stresses the need to look into the social and political issues prevalent in Third World societies, issues that rights discourse generally does not tend to bring to the fore. In this regard, a foremost political issue that TWAIL throws up is power relations: the internal and external power relations behind the implementation of rights in Third World states.<sup>19</sup> With regards to socio-economic rights, including the right to food, a TWAILian approach will seek to unearth the politics behind the availability and accessibility of food in the Third World. Who or what controls the production of food and the means to access it? Because hunger and malnutrition are primarily caused by poverty – when people do not have the means to access food – then what historical and current factors are responsible for the economic power relations within Third World states as well as those that affect Third World States externally to perpetuate poverty? Furthermore, why is the Third World state not playing a more redistributive role to ensure adequate food for its people? These all tie together various TWAIL methodologies – the need for historical and interdisciplinary analyses, as well as the examination of the workings of globalization in the Third World. In all, TWAIL scholars challenge us to consider how the promotion and

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19. As put by Makau Mutua: *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania, 2002) at 242:

In the last decade in Africa, however, a more politically educated activist and thinker, one who questions the human rights project more seriously and who seeks a culturally grounded program for social change, has started to emerge. This activist and thinker understands the connections among power relations, human rights, economic domination, and the historical relationships between the West and the rest of the world.

protection of global capital in Third World states has led to the detriment of the rights of Third World people.<sup>20</sup>

Furthermore, and building on the preceding point, a TWAIL analysis questions the paradigm shift that is happening with regards to rights discourse in Third World states, especially as the effects are that it is the rights of local and global capital that tend to be protected at the expense of suffering humanity.<sup>21</sup> This is particularly important as it concerns socio-economic rights and one needs to adopt this kind of TWAIL insight in analysing any situation where it seems as if enshrined socio-economic rights are not benefitting the people who need it the most while the corporate and financial sectors seem to be the ones enjoying the benefits of rights. TWAIL scholarship generally views the phenomenon of globalization as a major factor in the undermining of human

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20. As put by Upendra Baxi: "Voices of Suffering and the Future of Human Rights" (1998) 8 *Transnat'l L & Contemp Probs* 125 at 168:

If all this be so, is there a paradigm shift or merely an extension of latent capitalism that always has moved (as the readers of *Das Kapital* surely know) in accordance with bourgeois human rights trajectories? This is an important and difficult question raised by Burns Weston in his indefatigable editorial labors. My short answer for the present is that, while the appropriation by the capital of human rights logic and rhetoric is not a distinctively contemporary phenomenon, it is the scale of reversal now manifest that marks a radical discontinuity. Global business practices cancel, for example, many normative gains of the "contemporary" human rights movement through techniques of dispersal of these evils. The exploitation of child and sweat labor through free economic zones, and accompanying sex-based discrimination even in subsistence wages, is the hallmark of contemporary economic globalization. So is the creation of a "global risk society" through hazardous industry and the very legible scripts of "organized irresponsibility" and "organized impunity" for corporate offenders, of which the Bhopal catastrophe furnishes a mournful reminder. What distinguishes the paradigm shift is the "legitimation" of extraordinary imposition of human suffering in the cause and the course of the present contemporary march of global capital.

21. *Ibid* at 169.

rights in the Third World. Thus, TWAIL insists on an analysis of how much local and global capital influence the Third World state. This kind of TWAIL analysis also leads one to question why all-too-many Third World states would insist on not carrying out socio-economic redistribution of resources in the implementation of socio-economic rights where it is obvious that there is gross imbalance in the state to the detriment of the large majority of its citizens. Thus, TWAIL leads one to ask what rights are being protected and whether market-friendly rights trump genuinely transformative socio-economic rights in the state.

TWAIL scholarship therefore always inevitably leads one to examine the political economy of issues and rights in the Third World in order to understand some of the reasons for the current state of those societies; something mainstream human rights discourse does not always focus on. Adopting this approach to understand hunger and malnutrition in the Third World, this article thus needs to go beyond the statistics and attempt to investigate the political economy of food in the Third World.

### **The Political Economy of Food in the Third World**

A Political Economy approach, as understood in this article, envisages a commitment to trying to understand the historical and current links between the economy and political power and how they influence each other. This approach is particularly useful because it helps to understand, in a historical and more all-inclusive manner: the political and economic realities of the Third World in the context of colonization and globalization; the nature of global and local political and economic power; how these affect the situation of hunger and malnutrition in those societies; and the state's capacity to combat them.



In this vein, the hypothesis that is being sought to be tested with this political economy approach is that one cannot see the dismal rates of hunger and malnutrition in the Third World as simply a matter of the statistics alone; rather, one needs to understand them within their historical and current political and economic contexts. This would help one to more effectively examine the rationality of expecting these states to be able to allocate resources to fulfill the duties implied from socio-economic rights treaties and instruments. According to Meyer, this political economy approach could hold the "promise for sorting through the puzzling aspects of private and public economic activities, especially the impact these activities have upon political rights and social welfare in less developed countries".<sup>22</sup> Furthermore, such an approach helps one to understand the political, social and economic realities of the Third World and to discover some of the more likely *causes* of the socio-economic hardships that may have been overlooked in a strictly mainstream legal rights analysis.

Against this background, the more specific question to be considered in this article is how are local and global power relations, as well as globalization and colonialism, affecting the politics and economics of the Third World and what are some of the major factors contributing to hunger and malnutrition in the Third World? Furthermore, how have these in turn affected the ability of Third World states to effectively use socio-economic rights to address the socio-economic issues, such as poverty and/or hunger, facing their people? In addressing these questions, this Section shall discuss in depth the political economy of the Third World generally and its impacts on the efforts to realize the right to food.

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22. William H. Meyer: *Human Rights and International Political Economy in Third World Nations: Multinational Corporations, Foreign Aid, and Repression* (Westport, Connecticut: Praeger Publishers, 1998) at 2.

From the outset, it needs to be pointed out that one overarching phenomenon that currently impacts on the political economy of the Third World is globalization. Globalization is however not seen (at least by TWAIL scholars) as an autonomous phenomenon. Rather it is believed to be facilitated in large measure by dominant states in the international systems that tend to employ international institutions to implement their preferred policies.<sup>23</sup> In terms of political economy, the most dominant international institutions have been the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO), but regional lending institutions and some regional economic communities are also included in this category.<sup>24</sup> These actors currently *govern* Third World states (in the macro, overarching, and broad policy sense) with their economic policy prescriptions and decisions. This is a classic depiction of the link between international economics and the politics of Third World states. That said, it is not only these international institutions that constitute the principal actors in the current global governance. According to Chimni, another "principal moving force" is the transnational corporate actor, i.e. multinational corporations that seem to operate without real accountability to any state.<sup>25</sup> In all, it is said that what now seems to apply in Third World states is a governance shift from a "state-centric mode of governance".<sup>26</sup> In effect, the power of the Third World state is greatly diminished to the extent that some writers assert that there has been a substantial shift in sovereignty from the Third

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23. B.S. Chimni: "Third World Approaches to International Law: A Manifesto" (2006) 8 *International Community Law Review* 3 at 7.

24. M. Shamsul Haque: "Globalization, New Political Economy, and Governance: A Third World Viewpoint" (2002) 24:1 *Administrative Theory & Praxis* 103 at 103-06.

25. Chimni, *supra* note 23 at 13.

26. Haque, *supra* note 24 at 104.

World state to supranational organizations, agreements, private actors and specialized economic agencies.<sup>27</sup>

To highlight the political economy of food in Third World states, it is necessary to identify some of the factors that have exacerbated hunger and malnutrition in the Third World:

### **Colonialism – The Colonial Legacy and the Political Economy of Food in the Third World**

Colonialism largely marked the beginnings and the perpetuation of food insecurity in Africa and the Third World relative to other parts of the world. There was a drastic shift that occurred during colonialism and this needs to be highlighted when discussing some of the reasons for hunger and malnutrition in the Third World, particularly Africa. This shift was the forceful co-optation of households into the cash crop economy as against their erstwhile subsistence farming, that had least guaranteed some access to nutritious food.<sup>28</sup> Furthermore, the turning of subsistence farmers into wage labourers and the forceful taking over of their land meant increases in poverty and less capacity to access food even by purchase as the wages were pitiful.<sup>29</sup> Colonialism therefore hugely impacted on the capacity of Third World people to make food available to themselves and also to access food by purchase. The impacts of these legacies continue, in different measures, to impact on people in Third World states.

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27. Gary Teeple & Stephen McBride: "Introduction: Global Crisis and Political Economy" in Gary Teeple & Stephen McBride, eds, *Relations of Global Power: Neoliberal Order and Disorder* (Toronto: University of Toronto Press, 2011) at xiii-xiv.

28. Kinfe Abraham: *The Missing Millions: Why and How Africa is Underdeveloped* (Trenton, N.J.: Africa World Press, 1995) at 4.

29. Frederick Cooper, *Africa since 1940: The Past of the Present* (New York: Cambridge University Press, 2002) at 21.

## International Economic Policies and the Political Economy of Food in the Third World

With most of the Third World in debt crises and facing poor credit situations by the late 1970s and early 1980s, the World Bank and the International Monetary Fund (IMF) stepped in, largely on behalf of creditors, to "exact payments from and supervise the credits to the Third World".<sup>30</sup> With time, in order to reschedule their debts and access more loans, Third World countries had to have the "seal of approval" of the World Bank and the IMF.<sup>31</sup> This approval was contained in official memoranda of agreement and letters of intent exchanged between these Third World states and the World Bank and IMF, wherein the states agreed to a package of measures, generally called Structural Adjustment Programmes (SAPs).

With SAPs and similar neoliberal policies (often referred to as the Washington Consensus), the World Bank and the IMF introduced some of the most important policy frameworks that have to a great extent influenced strategies and programs for food security in the Third World, and in Africa in particular.<sup>32</sup> Although it was predicted that the implementation of SAPs would have an impact on poverty by fostering economic growth and shifting relative prices in favour of agricultural and rural areas, where most of the poor live,<sup>33</sup> this was largely not the case. Even if SAPs did promote economic

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30. Ankie Hoogvelt: *Globalization and the Postcolonial World: The New Political Economy of Development*, 2d ed (Maryland: The John Hopkins University Press, 2001) at 180.

31. *Ibid* at 180-81.

32. Abdi Ismail Samatar: "Structural Adjustment as Development Strategy? Bananas, Boom, and Poverty in Somalia" (1993) 69:1 *Economic Geography* 25 at 25.

33. World Bank: *Accelerated Development in Sub-Saharan Africa: An Agenda for Action* (Washington, D.C: World Bank, 1981).

growth (and this is arguable),<sup>34</sup> it has been asserted that what SAPs ultimately did was to exacerbate poverty levels and deepen inequality because their effects were increased unemployment, wage restriction, increased food prices and a reduction in social service programs by governments.<sup>35</sup> It therefore goes to show that by increasing the vulnerability of the poor, SAPs and Washington Consensus, as policies, could not be said to have effectively combated food insecurity in Africa but actually worsened the situation.

After SAP came the Comprehensive Development Framework (CDF). The apparently pro-poor thrust of the combination of the CDF, HIPC initiative, and the PRSP policies all seem, at first appearance, to augur well for food security in Africa. The CDF was touted as commendable because the policy envisaged broad stakeholder contributions into the formulation of the PRSPs. However, whether or not the policies have in fact alleviated food insecurity in practice in most of Africa remains to be seen. In practice, although an improvement of the economic situation of the poor is supposed to underlie the PRSPs, there are criticisms that this is not the case.<sup>36</sup> Furthermore, in writing PRSPs, many countries fail to link food insecurity with poverty; hence, hunger and malnutrition measures are typically absent in the poverty reduction indicators specified for monitoring the progress of the PRSP.<sup>37</sup> Also, while the CDF, PRSP, and HIPC initiatives

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34. Charles R. P. Pouncy: "Stock Markets in Sub-Saharan Africa: Western Legal Institutions as a Component of the Neo-Colonial Project" (2002) 23 *U Pa J Int'l Econ L* 85 at 102.

35. Samatar, *supra* note 32 at 41.

36. Lindsay Whitfield: "Trustees of Development from Conditionality to Governance: Poverty Reduction Strategy Papers in Ghana" (2005) 43 *Journal of Modern African Studies* 641 at 657-58.

37. Todd Benson, "Africa's Food and Nutrition Security Situation: Where Are We and How Did We Get Here?" *2020 Discussion Paper 37* (Washington DC: International Food Policy Research Institute, 2004) at 61. In this

seem to be a welcome improvement to SAPs, there are assertions that the macroeconomic prescriptions mandated by the World Bank are not only largely similar to earlier stabilization policies but that they are the primary causes of food insecurity in several African countries.

### International Trade in Agriculture and the Political Economy of Food in the Third World

As with SAPs, liberalization of trade in agriculture is often presented as a means by which to promote growth and reduce poverty in Third World states.<sup>38</sup> With regards to agriculture, the AoA basically obliges members of the WTO to liberalize agricultural trade under three pillars: market access, cuts in domestic producer subsidies, and reduction in export subsidies.<sup>39</sup> In effect, Third World states as members of the WTO had to expand market access through tariffication by converting all non-tariff barriers to tariffs and then reduction of these tariffs,<sup>40</sup> reduction in both the volume of and expenditures on their subsidized exports,<sup>41</sup> and reduction in

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regard, see also the following: AFRODAD, *The Second Generation Poverty Reduction Strategy Papers (PRSPs II): The Case of Burkina Faso* (Harare: African Forum and Network on Debt and Development, 2007) at 26, 28; Samia Liaquat Ali Khan: *Poverty Reduction Strategy Papers: Failing Minorities and Indigenous Peoples* (London: Minority Rights Group International, 2010) at 16-17.

38. Christine Breining-Kaufmann: "The Right to Food and Trade in Agriculture" in Thomas Cottier, Joost Pauwelyn, & Elisabeth Bürgi, *Human Rights and International Trade* (Oxford: Oxford University Press, 2005) at 342.
39. *Ibid* at 344.
40. *Agreement on Agriculture*, World Trade Organization, 15 April 1994, LT/UR/A-1A/2, art 4.
41. *Ibid* at art 9.

trade-distorting domestic subsidies.<sup>42</sup> Furthermore, these states were required to begin negotiations that will continue the liberalization.<sup>43</sup> The aim of the AoA in canvassing for these free market conditions was to reduce the role of the state in agricultural production and trade.<sup>44</sup> These kinds of prescriptions are especially of significance to Third World countries where agriculture is a crucial sector of the national economy and, in some places, accounts for over 50 percent of their total employment.<sup>45</sup> But the crucial question is what their effects have been in reality. What have been the effects of the WTO agreements on food security in the Third World? Have they helped open up the markets for imports from the Third World into industrialized nations? And have they helped to curb the excessive subsidization of agriculture in developed countries that has been a major reason for cheap food prices in these countries and have prevented imports of food from Third World states?

In practice, those who seem to be gaining from the regime of the AoA are primarily in the West. With regards to market access, for example, Gonzales writes that the AoA produced very little liberalization, particularly in OECD countries.<sup>46</sup> What these states proceeded to do following the AoA

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42. *Ibid* at art 6. See Carmen G. Gonzalez, "Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries" (2002) 27 Colum J. Envtl L 433 at 449.

43. Breining-Kaufmann, *supra* note 38 at 348.

44. Jagjit Plahe: "Sacrificing the right to food on the altar of free trade" *Pambazuka News* 284: *Special Issue on Trade and Justice* online: <<http://www.pambazuka.org/en/category/features/39046>>.

45. *Ibid*.

46. Gonzalez, *supra* note 42 at 458. The OECD was established in 1961 by the world's major economic powers to promote economic and financial policies that would favour its members. It currently consists of 34 member countries. See OECD, "Members and Partners" online: <[http://www.oecd.org/pages/0,3417,en\\_36734052\\_36761800\\_1\\_1\\_1\\_1\\_1,0.html](http://www.oecd.org/pages/0,3417,en_36734052_36761800_1_1_1_1_1,0.html)>.

restrictions was to engage in “dirty tariffication” – they set tariff equivalents for non-tariff barriers at a very high level.<sup>47</sup> The effect of this is that the whole process of tariffication and the subsequent lowering of tariffs are not beneficial to Third World countries.<sup>48</sup> Most countries in sub-Saharan Africa, for example, derive their export revenues from agricultural products and because the developed countries still maintained high agricultural tariffs, it was difficult to access their markets.<sup>49</sup> In fact, in spite of so-called special advantages granted to least-developed countries in some initiatives of the European Union, the latter countries still maintained high tariffs on export products from the Third World, such as cotton, sugar, cereals and horticulture.<sup>50</sup> Furthermore, Western countries maintained tariff peaks, and made sure that the tariffs on tropical products remain higher and more complex than those on temperate zone products.<sup>51</sup> According to the Special Rapporteur on the Right to Food, Olivier De Schutter, “[t]his perverse structure of tariffs – which systematically disadvantages developing countries and works against, not in favor of, these countries climbing up the ladder of development – is one of the major sources of discontent with the current multilateral trading regime”.<sup>52</sup>

Likewise, with regards to cuts in domestic subsidies proposed by the AoA, the same trend was seen. In spite of the prescriptions of the AoA, industrialized countries were said to have actually expanded their support for their agricultural

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47. *Ibid*

48. Olivier De Schutter: “International Trade in Agriculture and the Right to Food” *Dialogue on Globalization, Occasional Paper* (Geneva: Friedrich-Ebert-Stiftung, November 2009) at 11-12.

49. *Ibid.*

50. *Ibid.*

51. *Ibid.*

52. *Ibid.*



sector.<sup>53</sup> In fact, it was reported that “OECD figures show that annual subsidies reached an all-time high of US\$ 318 billion in 2002, up from an annual average of US\$ 247 billion in 1986-88”.<sup>54</sup> Meanwhile, Third World countries that had been cutting subsidies and liberalizing agriculture since the introduction of SAPs had to even cut more under the AoA regime. Overall, the AoA is said to have enabled developed countries to “maintain trade-distorting subsidies and import restrictions” to the detriment of Third World states.<sup>55</sup> In short, international trade and liberalization of the agricultural sector has not augured well for the realization of the right to food in Third World states, but rather “legitimises and perpetuates an imbalance in world agricultural trade which prevents developing countries’ agricultural sectors from growing in the way that is necessary for improved food security”.<sup>56</sup>

### **Land Grabs, Biofuels and the Political Economy of Food in the Third World**

In terms of political economy, one cannot discuss hunger and malnutrition in the Third World and in Africa in particular without analyzing the current wave of international land grabs and the global demand for biofuels. Land grabs refer to the phenomena whereby rich countries and companies from around the world outsource food production by purchasing or leasing farmland abroad.<sup>57</sup> In recent times, large-scale

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53. FIAN, *Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food: Context, Conflicts and Human Rights Violations* online: <<http://www.fian.org/resources/documents/others/agreement-on-agriculture-of-the-wto-and-the-right-to-food/pdf>>.

54. *Ibid.*

55. Gonzalez, *supra* note 42 at 458.

56. Plahe, *supra* note 44.

57. GRAIN, “Seized! The 2008 Land Grab for Food and Financial Security” *GRAIN Briefing October 2008* online: <[http://www.grain.org/briefings\\_files/landgrab-2008-en.pdf](http://www.grain.org/briefings_files/landgrab-2008-en.pdf)>.

acquisitions of farmland in the Third World - Africa, Latin America, Central Asia and Southeast Asia have made world headlines.<sup>58</sup> International investors are said to be on a mission to acquire hundreds of thousands of hectares of land in Third World countries.<sup>59</sup>

With particular reference to Africa, a study of *large land acquisitions*<sup>60</sup> in five African countries revealed a number of features which helps to give a background understanding to the current trend.<sup>61</sup> First, there is a significant level of activity of land acquisitions, such that in the five countries studied, there is an overall total of 2,492,684 hectares of approved land allocations since 2004, excluding allocations below 1000 hectares.<sup>62</sup> Second, in recent times there has been an increase in land-based investment in these countries, and this trend is expected to remain on the rise in the future.<sup>63</sup> Third, the land acquisitions seek to claim the remaining small proportion of suitable land in these countries, most of which are already under use or are claimed by local people. Also, there is now mounting pressure to acquire higher-value lands like those with irrigation potential or closer to the markets.<sup>64</sup> Fourth, the trend in some of the countries is showing possible increases in the size of single acquisitions, such as a 452,500 hectare biofuel project in Madagascar, a 150,000 hectare livestock project in Ethiopia, and a 100,000 hectare irrigation project in Mali.<sup>65</sup> Fifth, these land acquisitions transactions are dominated by the

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58. Lorenzo Cotula *et al*: *Land grab or development opportunity? Agricultural investment and international land deals in Africa* (Rome: FAO, IIED and IFAD, 2009) at 3 online: <<http://pubs.iied.org/pdfs/12561IIED.pdf>>.

59. *Ibid*.

60. These refer to acquisitions of land larger than 1000 hectares.

61. Cotula *et al supra* note 58.

62. *Ibid* at 4.

63. *Ibid*.

64. *Ibid*.

65. *Ibid*.

private sector and, in some cases, with the financial support or investments of their governments.<sup>66</sup> Fifth, foreigners dominate the land transactions, though domestic investors also play a major role.<sup>67</sup> The bottom line is that there is a fast-growing trend of land grabs in Third World countries to the possible detriment of local people and these grabs are largely been done by large foreign multinational corporations with the support of their home governments and the connivance of some domestic investors.

Several reasons are given for this new wave of land grabs. One is that the rising land prices in the developed countries, due to the recent global food crisis and commodity price increases, have increased the cost of food production in these countries, hence the need to increase food production by outsourcing.<sup>68</sup> Another is the current expansion of biofuels production as a source of energy, given the recent past spike in oil prices.<sup>69</sup>

Although still at the early stages, facts are emerging that the right of Third World peoples to land and access to it to produce and cultivate food for their consumption is gradually being eroded at the altar of biofuel production. And this ties to the whole idea of land grabs, particularly where the process of appropriating lands is not being done in consultation with the people who are going to be affected. Just in June 2011, the Oakland Institute issued damning reports after conducting investigations into land grabs in Ethiopia, Mali, Mozambique,

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66. *Ibid.*

67. *Ibid.*

68. Akinwumi A. Adesina: "Africa's Food Crisis: Conditioning Trends and Global Development Policy" (Plenary keynote paper delivered at the International Association of Agricultural Economists Conference, Beijing, China, 16 August 2009), at 15. See also Cotula et al, *supra* note 58 at 4.

69. *Ibid* at 4-5.

Sierra Leone, South Sudan, Tanzania and Zambia.<sup>70</sup> It was reported that “largely unregulated land purchases are resulting in virtually none of the promised benefits for native populations, but instead are forcing millions of small farmers off ancestral lands and small, local food farms in order to make room for export commodities, including biofuels and cut flowers”.<sup>71</sup> To imagine that land in African countries such as Ethiopia and Sudan – which are themselves in constant need of international food aid – could be resorted to for the production of food for export consumption would seem paradoxical.<sup>72</sup> One would also question why a country such as Kenya, which is currently facing drought in some parts of the country, would want to give up large portions of land, some of which will go to Qatar to produce food for export and another for Kenya to produce agrofuels.<sup>73</sup>

Thus, the phenomenon of land grabbing and the accompanying demand for biofuels are factors that are thrown up in a political economy analysis of the food issues in the Third World. It is especially important to note the dynamics behind these developments, especially the convergence of the

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70. Oakland Institute: *Special Investigation: Understanding Land Investment Deals in Africa* (July 2011), online:

<<http://media.oaklandinstitute.org/special-investigation-understanding-land-investment-deals-africa>>.

71. Oakland Institute, *Press Release: Understanding Land Investment Deals in Africa* (7 June 2011), online: <<http://media.oaklandinstitute.org/press-release-understanding-land-investment-deals-africa>>.

72. David K Deng: ‘Land belongs to the community’: *Demystifying the ‘global land grab’ in Southern Sudan* (LDPI Working Paper 4, April 2011) online: <[www.plaas.org.za/pubs/wp/LDPI04Deng.pdf](http://www.plaas.org.za/pubs/wp/LDPI04Deng.pdf)>.

73. FIAN, *Land grabbing in Kenya and Mozambique: A report on two research missions – and a human rights analysis of land grabbing* (Heidelberg, German: FIAN, 2010) online: <[http://www.rfn-watch.org/uploads/media/Land\\_grabbing\\_in\\_Kenya\\_and\\_Mozambique.pdf](http://www.rfn-watch.org/uploads/media/Land_grabbing_in_Kenya_and_Mozambique.pdf)>.

power and influence of more powerful states, multinational corporations, local capital, and even Third World states to inequitably take land from the most vulnerable people in the Third World and largely use such land to either produce food for export or produce biofuels, all at the expense of the capacity of Third World peoples to produce and access food for domestic consumption.

The factors discussed above do not, by any means, constitute the totality of the issues causing food insecurity and affecting efforts to realize the right to food in Third World states, particularly in Africa. However, they are the factors that need to be considered, particularly in taking up the TWAIL critique elucidated above, which stresses the need to understand colonialism, the workings of global capital, and the power dynamics within and outside the Third World in order to fully understand and explain the struggle to realize human rights in Third World states. Overall, a political economy analysis such as this leads to a further research agenda querying how economically independent Third World states actually are and whether they actually have the power and willingness to remove their people from the shackles of poverty and hunger and malnutrition. And furthermore, it highlights how much rights discourse can or cannot do to improve socio-economic conditions in the Third World in light of the structural and systemic constraints they face locally and internationally.

### **Conclusion**

This article has analysed the mainstream approach to realizing the right to food which stresses the need for justiciability of rights at the domestic level, and also the TWAIL critiques that highlight the need to understand the historical and social, political and economic realities and power relations of the

Third World. This foregrounded another angle being stressed by this article. This is the Political Economy angle – one that factors in the ability of the state to muster the political and economic wherewithal to address socio-economic inequalities amongst its people. The aim of this article is to challenge mainstream human rights convention that generally over-emphasizes the role that rights discourse can play in efforts to ameliorate hunger and malnutrition, particularly in the Third World. What this article has shown is that for mainstream rights discourse to be employed as an effective tool, it needs to be combined with the TWAIL analysis of the political economy issues surrounding food insecurity in the Third World. By itself, a right to food law cannot be successfully implemented if the politics and economics of food in the state are not addressed. However, an understanding of the political economy issues of the particular Third World state will unearth challenges in the political and economic realms that need to be addressed beyond the purview of law and the rights paradigm. Where these approaches are adopted in tandem with the circumstances of each State in question, the efforts to realize the right to food will yield better results. In addressing these issues, the implementation of the law (particularly the right to food) will translate into a more feasible enterprise than is the currently the case in many Third World states.