

THIRD WORLD *Economics*

TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 623 16 – 31 August 2016

HLPF reviews implementation of sustainable development agenda

The UN's High-level Political Forum on Sustainable Development (HLPF), which is charged with overseeing implementation of the global 2030 Agenda for Sustainable Development, convened in New York on 11-20 July for its first session since the Agenda was adopted last year. The outcome declaration from the meeting reaffirmed the principles recognized in the Agenda but also contains key gaps which underscore the challenges confronting efforts to attain the Agenda's Sustainable Development Goals.

- HLPF adopts ministerial declaration and discusses 2030 Agenda follow-up and review – p2
- Civil society expresses discontent over dire state of means of implementation – p4

Also in this issue:

<i>South faces uphill battle to retain “policy space” in WTO talks</i>	<i>TPP under serious threat</i>	<i>p8</i>	<i>p12</i>
<i>Vulture funds inherently exploitative at expense of human rights</i>	<i>New trade deals legalize corporate theft, make farmers’ seeds illegal</i>	<i>p9</i>	<i>p15</i>

Contents

CURRENT REPORTS

- 2 HLPF adopts ministerial declaration and discusses 2030 Agenda follow-up and review
- 4 Civil society expresses discontent over dire state of means of implementation
- 8 South faces uphill battle to retain "policy space" in WTO talks
- 9 Vulture funds inherently exploitative at expense of human rights

OPINION

- 12 TPP under serious threat
- 13 Poverty, vulnerability and social protection

ANALYSIS

- 15 New trade deals legalize corporate theft, make farmers' seeds illegal

THIRD WORLD ECONOMICS is published fortnightly by the Third World Network, a grouping of organisations and individuals involved in Third World and development issues.

Publisher: S.M. Mohamed Idris; **Editor:** Chakravarthi Raghavan; **Editorial Assistants:** Lean Ka-Min, T. Rajamoorthy; **Contributing Editors:** Roberto Bissio, Charles Abugre; **Staff:** Linda Ooi (Administration), Susila Vangar (Design), Evelyn Hong & Lim Jee Yuan (Advisors).

• **Annual subscription rates:** Third World countries US\$75 (airmail) or US\$55 (surface mail); India Rs900 (airmail) or Rs500 (surface mail); Malaysia RM110; Others US\$95 (airmail) or US\$75 (surface mail).

• **Subscribers in India:** Payments and enquiries can be sent to: The Other India Bookstore, Above Mapusa Clinic, Mapusa 403 507, Goa, India.

• **Subscribers in Malaysia:** Please pay by credit card/crossed cheque/postal order.

• **Orders from Australia, Brunei, Indonesia, Philippines, Singapore, Thailand, UK, USA:** Please pay by credit card/cheque/bank draft/international money order in own currency, US\$ or euro. If paying in own currency or euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

• **Rest of the world:** Please pay by credit card/cheque/bank draft/international money order in US\$ or euro. If paying in euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

Visit our web site at <http://www.tw.my>.

Printed by Jutaprint, No. 2, Solok Sungei Pinang 3, Sungai Pinang, 11600 Penang, Malaysia.

© Third World Network

HLPF adopts ministerial declaration and discusses 2030 Agenda follow-up and review

The discussions and outcome of the 2016 session of the UN's sustainable development forum reflected the challenges involved as countries move to realize the global 2030 Agenda for Sustainable Development. *Bhumika Muchhala* reports.

The High-level Political Forum on Sustainable Development (HLPF), the central platform in the United Nations for the follow-up and review of the 2030 Agenda on Sustainable Development and its 17 Sustainable Development Goals (SDGs), held its annual session on 11-20 July at the UN headquarters in New York.

The session, which adopted a ministerial declaration, included a three-day ministerial segment, preceded by five days of roundtables where panellists and member states spoke on the various economic, social and environmental themes of sustainable development.

The Forum was established to play a central role in overseeing a network of follow-up and review processes of the 2030 Agenda's implementation, provide political leadership, guidance and recommendations on the SDGs, spur coherent policies informed by evidence, science and country experiences, as well as address new and emerging issues.

It will share experiences and best practices, and promote system-wide coherence and coordination of sustainable development policies taking into account different national realities, capacities and levels of development and respecting each country's policy space.

This year's Forum session was preceded by several weeks of informal discussions by member states in the Second Committee of the UN in New York. The Forum is supported by reviews of the UN Economic and Social Council (ECOSOC) functional commissions and other intergovernmental bodies and forums.

The 22 countries that presented national reviews at this session were: China, Colombia, Egypt, Estonia, Finland, France, Georgia, Germany, Madagascar, Mexico, Montenegro, Morocco, Norway, the Philippines, the Republic of Korea, Samoa, Sierra Leone, Switzerland, Togo, Turkey, Uganda and Venezuela.

Their reports are accessible at <https://sustainabledevelopment.un.org/hlpf>.

Ministerial declaration

The ministerial declaration of 23 paragraphs encapsulates the themes "Ensuring that no one is left behind" and "Implementing the post-2015 development agenda: moving from commitments to results." The first paragraph in the declaration reaffirms all the principles recognized in the sustainable development agenda and highlights poverty eradication as an indispensable requirement for sustainable development.

The third paragraph takes note of revitalizing and enhancing the Global Partnership for Sustainable Development, increasing system-wide coherence and integration across the UN agencies and commissions, addressing existing and emerging challenges, enhancing national capacities for evidence-based and data-driven decision-making, and facilitating participatory, cooperative and enabling environments at all levels.

A palpable absence in the declaration is the meaningful incorporation of accountability mechanisms in the follow-up and review of the 2030 Agenda. Paragraph 15 highlights the central role of national governments and the importance of participation and inclusion from parliaments, sub-national governments and other stakeholders, including the private sector, civil society, academia and philanthropic organizations. The single mention of accountability comes in this paragraph, which states that the participation of these stakeholders "supports accountability to our citizens and enhances the effectiveness of our action ..."

The absence of accountability is a complex issue in the UN. It reflects the sense of caution among developing countries towards global accountability mechanisms after many adverse experiences on disproportionate and unfair

accountability requirements imposed on them in the context of trade and climate change negotiations. The SDGs are universal and for the first time the accountability of developed countries with regard to their commitments (including legally binding means-of-implementation commitments in the climate change, biodiversity and desertification treaties) could have been pinned down. However, this situation is also a result of the lack of political will among all member states as a whole, particularly within the non-binding context of UN conferences and their outcomes.

As a result, the emphasis is entirely on “voluntary” national reviews, efforts and initiatives. Paragraph 17 commends the 22 countries above on the presentation of voluntary national reviews, welcomes voluntary reviews at the regional and global levels, and upholds the integration of the 2030 Agenda into their national development strategies and plans. Guidance and methodologies to address interlinkages among the SDGs, which may be proposed by UN agencies, are nuanced as voluntary. Other countries are encouraged to volunteer their national reviews in the coming years.

The meaningful addressing of SDG 17 on means of implementation (MoI) was also missing, as civil society networks and the Major Groups repeatedly pointed out during the HLPF proceedings. The ministerial declaration only mentions it in paragraph 13 in reference to the Addis Ababa Action Agenda outcome document of the third International Conference on Financing for Development (FfD) serving as a supporting tool for MoI.

The declaration includes due mention of the full range of themes and issues covered in the SDGs. These include: inclusive economic growth, environmental protection, social inclusion, gender equality, women's and girls' empowerment, inequality between and within countries, reforms towards an equitable global economic system, human rights including the right to development, enabling decent work and productive livelihoods for all, universal access to healthcare, social protection and quality education at all levels, peaceful, inclusive and just societies, effective rule of law and good governance, safe drinking water and sanitation, food security, sustainable agriculture and so on.

Factors which give rise to violence, insecurity and injustice, such as inequal-

ity, corruption, poor governance and illicit financial and arms flows, are highlighted.

Operationalization of the three components of the Technology Facilitation Mechanism, science, technology and innovation, is emphasized. The inaugural multistakeholder forum on the SDGs, which took place in June 2016, is also highlighted for the facilitation of the development, transfer and dissemination of relevant technologies for the SDGs.

The declaration also mentions the important role that regional and sub-regional forums can have in supporting the implementation of the 2030 Agenda, including by promoting peer learning and cooperation, including South-South and triangular cooperation as appropriate, and helping to link the national and global levels of implementation.

The most vulnerable countries, such as African countries, least developed countries, landlocked developing countries, small island developing states (SIDS), countries in conflict and post-conflict situations and many middle-income countries, are highlighted as needing special attention. Support is reaffirmed for the Istanbul Programme of Action for the Least Developed Countries 2011-2020, the SIDS Accelerated Modalities of Action (SAMOA Pathway) and the Vienna Programme of Action for Landlocked Developing Countries 2014-2024 and the African Union's Agenda 2063.

Developing-country proposals show nature of compromise in HLPF discussions

The developing-country Group of 77 (G77) and China, represented by the Ambassador of Thailand, Virachai Plasai, delivered a statement reflecting developing countries' key positions and issues.

The one issue that has historically stalled member state discussions is the G77's call for “removing the obstacles to the full realization of the right of self-determination of peoples living under colonial and foreign occupation,” and for “further effective measures and actions to be taken, in conformity with international law.” The G77 stressed that this is a vital part of ensuring the central theme of the 2030 Agenda, that “no one will be left behind.” After weeks of deliberation where developed countries refused to consider this language, it was finally included in the concluding lines of para-

graph 7 of the ministerial declaration with the support of the HLPF Co-Facilitators (the Ambassadors of Belize and Denmark).

The G77 also called for the principle of common but differentiated responsibilities (CBDR) to be reflected in the text of the ministerial declaration. However, this did not succeed, despite the argument that the universality of the 2030 Agenda applying to all countries can only function equitably if CBDR is integrated into the universality. In other words, universality does not work without differentiation. Another key argument is that if the original context of CBDR in the 1992 Rio Principles applies to environment- and ecology-related policy, it should be mainstreamed into the SDGs given that the environmental dimension of sustainable development is indivisible from and interdependent on the economic and social dimensions.

While CBDR is excluded, policy space, another historically contentious principle for developed countries, is included. It must be noted, however, that the mere mention of the two words “policy space” is not quite enough. Developing countries in the G77 proposed language to “eliminate obstacles to development, including through the elimination of coercive economic, financial or trade measures against developing countries”, but this was not welcomed. The term “obstacles to development” resonates with the central concern of many civil society organizations that have persistently advocated that the structural obstacles to development in trade, economic and financial policy must be addressed in order for national implementation in developing countries to fully function.

On national sovereignty, the G77 asked for the following language: “We also reaffirm that every State has, and shall freely exercise, full permanent sovereignty over all its wealth, natural resources and economic activity.” While this language was also denied, the second paragraph of the ministerial declaration mentions the importance of “taking into account different national realities, capacities and levels of development and respecting each country's policy space, and to be implemented consistent with the sovereign rights and obligations of States under international law and with the Charter of the United Nations.”

The HLPF ministerial declaration

includes the longstanding G77 language on technology transfer in the context of the Technology Facilitation Mechanism and the multistakeholder forum on science, technology and innovation. However, clarifying language that technology should be made available on “favourable terms, including on concessional and preferential terms as mutually agreed,” which would address patents and other intellectual property rights that restrict access to technology, is not included.

While the declaration emphasizes access to justice, quality education, safe and sustainable transportation and energy, paragraph 12 only mentions that infrastructure should be safe, accessible and people-centred. The G77 had made a push for language that specified that infrastructure development should focus on “affordable and equitable access for all.”

These compromises demonstrate the ways in which the implementation, follow-up and review of the 2030 Agenda will be shaped.

While the G77 recalled the commitment from the Addis Ababa Action Agenda of the FfD conference in July 2015 for enhanced support, including financial and capacity building, the declaration refers in paragraph 13 to the FfD outcome document as a supporting tool for Sustainable Development Goal 17 on MoI in the 2030 Agenda. During the weeks of informal discussions preceding the HLPF session, developing countries had asserted that Goal 17 must be discussed annually, particularly since some targets require global concerted action. This is not reflected in the ministerial declaration.

The vague and weak emphasis on MoI demonstrates the unwillingness of many developed countries to address MoI in a specific, deliberate and strong manner.

With regard to economic growth, the words “inclusive” and “sustainable” have now become the status quo. However, further mention of developing broader measures of progress to complement gross domestic product (GDP), which developing countries called for during the informal discussions, failed to take off.

Many in civil society and UN agencies were concerned at the voluntary nature of reviews of the 2030 Agenda at both regional and global levels. While the stress on voluntary reviews has been incorporated into the ministerial declaration, global civil society continually alerts

member states to ensure that national and sub-national reviews are carried out with the full and meaningful participation of civil society and social movements, and that civil society representatives at the HLPF and similar global and regional forums are provided the opportunity to speak after the national representative speaks on the national reviews.

Informal member state discussions also recognized that the entire UN system, including the UN secretariat, will have to be restructured for the genuine implementation of the 2030 Agenda. All member states more or less agreed that it will be important to strengthen support for the UN system, which will require intensive effort for existing mechanisms and significantly scaled-up access by the UN system to financial, technical and programmatic resources to support member states.

The narrative on the central 2030 Agenda theme of “leaving no one behind” includes varying emphases. Many UN agencies and civil society organizations highlight groups of people in society, such as women, the extreme poor, indigenous peoples, the disabled and so on. Collecting separate data about how these groups fare is considered one way for governments to help achieve SDG 10

on decreasing inequality within and between countries.

Meanwhile, developing countries highlight countries in special circumstances, in particular African countries, least developed countries, landlocked developing countries and small island developing states, as well as countries in conflict and post-conflict situations. The G77 also notes that while the world’s poorest and most fragile countries have specific challenges, many middle-income countries also face challenges, as they have the largest number of people living in poverty.

At a separate meeting during the HLPF session, the G77 noted some of the specific gaps that remain in financing for development. Concern was expressed that rich countries are failing to meet their commitments to deliver official development assistance (ODA) to developing countries.

A new report released by the UN Conference on Trade and Development (UNCTAD) during the UNCTAD 14 conference held in Nairobi in July revealed that the gap or shortfall between pledged and delivered ODA since 2002 is equivalent to just over \$2 trillion. The ODA gap in 2014 alone amounted to more than \$192 million. □

Civil society expresses discontent over dire state of means of implementation

Civil society groups at the HLPF stressed the need to remove structural obstacles impeding implementation of the sustainable development agenda.

by *Bhumika Muchhala*

Civil society organizations made their voices heard through bold, direct and urgent statements, reports and panel events throughout the 2016 session of the High-level Political Forum on Sustainable Development.

Perhaps the most notable report was *Spotlight on Sustainable Development 2016*, a report of the civil society Reflection Group on the 2030 Agenda for Sustainable Development (available at <https://www.2030spotlight.org/>).

The report assesses each of the 17 Sustainable Development Goals through a systemic lens, highlighting the ways in which the 2030 Agenda has yet to see a change in the trajectory of global development by addressing the structural ob-

stacles to equitable, sustainable and inclusive development. The complementary national reports (available at <https://www.2030spotlight.org/en/book/national-civil-society-reports>) show how the implementation of the SDGs has yet to really begin in many countries.

At the same time, the report recognizes that in comparison to the UN’s Millennium Development Goals (MDGs), which failed to address structural inequality, ecological sustainability and the responsibilities of the Global North, the 2030 Agenda acknowledges the enormous disparities of opportunity, wealth and power as immense challenges to sustainable development. This is a significant step forward.

Among various challenges in the meaningful implementation of the SDGs on the ground, two key issues stand above many others. The first is the absence of any new financing. There is no new official development assistance (ODA) or international public financing being made available. The overwhelming emphasis is on domestic resource mobilization from national governments and on multistakeholder partnerships between the UN and the private sector or donors, which have been demonstrated to lack accountability and people-centred, bottom-up governance. Public-private partnerships involving national governments have also proven to be costly for the public and failed to deliver sustainable development.

The second obstacle is the new generation of bilateral investment treaties and free trade agreements, such as the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TiSA). These agreements drastically constrain the ability of governments to abide by human rights and sustainability principles and commitments, and to carry out regulations to protect society, the economy and the environment. They encourage countries to keep competing in a race to the bottom by offering foreign investors and multinational companies lower taxes, cheaper labour, increased deregulation and the same (or even greater) rights and privileges as those offered to domestic investors and companies. The *Spotlight* report shows how these agreements regard social, environmental and human rights standards in the same category as non-tariff barriers to trade and investment which have to be either removed or harmonized.

The legal infrastructure of opaque arbitration and dispute settlement under the investor-state dispute settlement system, an integral component of such agreements, is enforcing the rights of corporations as national laws, particularly in the United States, confer more rights to corporations than to human beings. Furthermore, the increasing global concentration of corporate power exacerbates these challenges if governments continue to regard the legal recourse of corporations over states as inevitable. The *Spotlight* report points out that in 2015 the merger and acquisition activities of transnational corporations reached an all-time high.

No more business-as-usual

Meanwhile, civil society statements at the HLPF boldly stressed the need to alter business-as-usual and dismantle systemic obstacles to the 2030 Agenda.

The Women's Major Group, one of the key UN Major Group constituencies that can participate and contribute to the plenary as external stakeholders, delivered a statement titled "Unlocking means of implementation for SDGs and creating an enabling environment". The first and foremost observation on means of implementation (MoI) was that they were "missing in action" in the HLPF discussions.

The Women's Major Group had five key points. First, how will MoI for the SDGs be mobilized when donor governments have failed to meet their basic ODA commitments towards development cooperation? The untying of aid, ending policy conditionality attached to loans and aid, use of country systems and transparency of information and development finance flows are not unfinished business but rather a core business for MoI.

Second, the Women's Major Group questioned how the ambition of the 2030 Agenda will be met without reviewing the structural impediments to achieving the Agenda. Many states, including developing-country governments from the Global South, are pursuing the very opposite path, that of worsening systemic inequality through trade and investment treaties which are reaching farther and deeper across borders, increasing military spending and conflicts and engaging in proxy wars, turning a blind eye to issues of corruption and governance breakdowns, enabling greater land and resource grabbing, ignoring and even fuelling fundamentalist and extremist practices, and reducing the space for civil society to thrive.

Third, the Group pointed to the irony of raising domestic financial resources for the SDGs through means that hurt the poor the most. Domestic resource mobilization focuses on domestic consumption and income tax, which, when not progressively structured, hurt the poor disproportionately (particularly through value-added and goods and services taxes). Resource mobilization should instead target the world's wealthiest corporations and individuals who know how to legally evade taxes. The third International Conference on

Financing for Development (FfD) in Addis Ababa last year did not establish an intergovernmental taxation body (as advocated by developing countries), and thereafter the Panama Papers were leaked. It is clear that the international community needs a comprehensive mechanism for international taxation, without which the discussion of resource mobilization is insufficient and inappropriate.

Fourth, how can MoI be unlocked if development partners and partnerships are not accountable to the people? Transnational corporations must adhere to all development effectiveness and human rights principles, promote and practise decent work, and adopt transparency and accountability norms.

And most importantly, the Women's Major Group asked, how do we expect to properly implement the SDGs if global civil society is left behind? Civil society is an independent development actor whose "right to initiative" must be supported. In more than a few countries, that space is closing at a very alarming rate. Environmentalists and human rights defenders, with women human rights defenders at the core, are being silenced, criminalized and murdered. Political will and action is required to reverse this trend and to make the global partnership and the MoI work.

The Group concluded that unlocking MoI resources to make SDG implementation a reality requires changing the status quo, and this in turn requires everyone to think out of the box and reformulate ways of the business called "development".

Mainstreaming the SDGs

The Asia Pacific Regional CSO Engagement Mechanism (AP-RCME) focused its statement on three key points. First, there are some good practices on mainstreaming SDGs at the national level in several countries, particularly in terms of inclusion and participation of civil society. These examples should be upheld and replicated. Second, systemic issues are the central challenges for integrated policymaking and for realizing the 2030 Agenda. Third, the question must be asked what we can do together to support the national mainstreaming of the SDGs.

AP-RCME pointed out that the following countries have put in place policies, coordination mechanisms and plans

to integrate the SDGs into their national development plans:

- In Indonesia, civil society recommended a joint committee to implement the SDGs, which was agreed to by the President. This committee works together to mainstream SDG goals and targets into the National Mid-term Plan 2015-2019.

- Immediately following the signing of the 2030 Agenda (in September 2015), the UN Development Programme (UNDP) and the government of Bhutan agreed to prioritize SDG implementation as part of Bhutan's 12th Five Year Plan. Bhutan's Gross National Happiness key results areas were mapped against the SDGs.

- Sri Lanka established a new cabinet ministry exclusively for sustainable development in order to facilitate the national commitment to the 2030 Agenda – the first ministry exclusively devoted to the 2030 Agenda. Sri Lanka is establishing an inclusive process to draw up a national roadmap on sustainable development and form a committee inclusive of civil society and other stakeholders to monitor the implementation of the agenda.

However, AP-RCEM emphasized, going beyond the issues of inclusion, process and mechanisms, the 2030 Agenda cannot be achieved unless the systems and structures that impede sustainable and equitable development are dismantled. During the negotiations member states, particularly developing countries, drew attention to the need to address systemic and structural imbalances in economic and political governance. Several states also stressed the need to address systemic human rights, conflict and justice barriers. Identifying and tackling systemic drivers of inequality between and within countries must be central to the efforts to mainstream the 2030 Agenda into national policies to ensure the agenda is truly universal and that no one is left behind.

Addressing systemic issues means that governments need to reassess and review their national policies and practices, including their extraterritorial obligations in relation to the following areas:

- **Trade and investment agreements:** There is mounting evidence and awareness that neoliberal economic policies widen inequalities, threaten the survival of the planet, and disproportionately burden women, indigenous people, people living with HIV or other illnesses,

people with disabilities, the elderly, rural communities, low-income workers, farmers and those dependent on state support or living in poverty. These communities are the ones who are “left behind”. Despite these adverse outcomes, most government policy has failed to shift course. Trade agreements conflict with both the 2030 Agenda and the UN Charter. These agreements give multinational corporations powers to challenge national policies designed to advance environmental protection, fiscal policies, labour rights, affirmative action policies, public health and public access to basic needs and services and human rights. In doing so, they accelerate the power of the wealthiest and leave the vast majority of the population behind.

- **Land and resource distribution:** Communities directly dependent on land and natural resources are increasingly at risk of being denied their livelihoods. Indigenous peoples, ethnic minorities, rural communities and subsistence farmers (the majority of whom are women) face increasing threats to their livelihoods from land concessions awarded to corporations, large-scale “development” and infrastructure (including that established under the guise of “green growth”) and from climate change. The volume of cross-border activity in real estate grew by 334% from \$65 billion to \$217 billion between 2009 and 2015. The wealthiest are buying up the world.

- **Militarism and conflict:** Conflict, the presence of state and non-state armed forces and military spending are systemic drivers of inequality, poverty and human rights violations. The drivers of conflict increasingly intersect with core issues of the 2030 Agenda, such as resource scarcity, climate change, inequalities and poverty. Consequently, reducing militarism is both a driver and an outcome of inclusive, sustainable development. In addition to the immediate devastation of conflict, people, particularly women, displaced by conflict are amongst the communities most likely to be “left behind”, with generational consequences. Stateless people and those who migrate from conflict zones are most likely to be forced into cheap, exploitable labour or trafficked into slavery-like conditions. Within these populations, women, people with disabilities, children and the already economically marginalized face deeper risks and less ability to seek safe refuge. Given the recent political responses to conflict and

asylum, a thematic focus on militarism at the HLPF is required, including addressing the issue on the national level.

- **Corporate capture:** The UN Secretary-General's report recognized that “a lack of clarity about additionality; a risk of misalignment of private sector and country priorities; and diminished transparency and accountability” make public-private partnerships a questionable way to advance sustainable development. Corporations are increasingly able to engage in manipulative price transfers and tax evasion and avoidance, and to avoid environmental and social responsibility. As state sovereignty and policymaking power has been diminished and increasingly handed to the private sector, no corresponding system to ensure regulation and accountability has emerged from the private sector. This needs to be addressed to ensure that the 2030 Agenda itself is not “left behind”.

- **Patriarchy and fundamentalisms:** Ideologies that rigidly limit opportunities, participation and autonomy for some members of the population cause whole groups of people to be “left behind”. Patriarchy is the belief that power and decision making should reside with some men. It permeates lives, relationships and policies at the family, community, national and international levels. Fundamentalisms, whether cultural, religious, political or economic, ascribe rigid beliefs about the roles and value of different groups of people. In doing so, fundamentalist beliefs commonly focus on women's bodies, sexuality and decisions.

When these ideologies shape policies and laws, women, sexually and gender diverse groups, single or unmarried women and women human rights defenders are “left behind”. While SDG 5 sets some important targets that measure some of the consequences of patriarchal policies, a more holistic review of the systemic causes of inequality as a review theme would allow the intersectional nature of the 2030 Agenda to be interrogated.

AP-RCEM stressed that the voluntary national reports of most countries continue to frame developed countries' obligations only in terms of ODA. The vast majority of states have failed to recognize their extraterritorial obligations in relation to multinational corporations and international financial institutions, their complicity in promoting contradictory trade agreements, and their roles in enabling global financial speculation, tax

South faces uphill battle to retain “policy space” in WTO talks

Developing countries may come under pressure to cede their policymaking flexibility in order to make any headway in the deadlocked Doha Round trade negotiations at the WTO.

by D. Ravi Kanth

GENEVA: Developing countries face an uphill battle for retaining “policy space” to pursue their respective developmental goals as the outgoing chair for the Doha negotiations on market access for industrial goods at the World Trade Organization has suggested “reductions of policy space” as an entry point for kickstarting the stalled Doha talks in agriculture, market access for industrial goods, and services.

“A potential entry point to market access negotiations,” said Ambassador Remigi Winzap, the outgoing Swiss chair for the Doha negotiations on non-agricultural market access (NAMA), “could in my view be the reduction of ‘policy space’ in all of the three main areas – agriculture, services and NAMA.”

After WTO delegates return from their summer break in September, the developing countries which are facing several roadblocks to restarting negotiations on the outstanding issues of the Doha work programme will have to come to terms with onerous demands from the United States and other major developed countries to forego “policy space”, according to several trade envoys familiar with the development.

An informal meeting of select trade ministers to be hosted by Norway on 24 October in Oslo will discuss the possible deliverables for the WTO’s eleventh Ministerial Conference, which will be held next year. Among others, the issue of policy space could figure at the Oslo meeting, according to people familiar with the development.

No convergence

In his address to an informal heads-of-delegation (HOD) meeting at the WTO on 25 July, Winzap said that “for NAMA specifically, this [policy space] could include incomplete bindings, binding overhang, and reducing water on some tariff peaks.”

“Even if not directly affecting everyday business practice, such modest steps could contribute to the relevance and

predictability of the multilateral trading system and to a certain consolidation of advances made in RTAs [regional trade agreements],” he said, in his oral statement that has been circulated as a restricted job document by the WTO.

The outgoing chair lamented that “as of today, there does not seem to be any convergence in members’ positions on NAMA, nor does there seem to be any noteworthy fresh momentum on NAMA since the Nairobi Ministerial Conference.”

While a “broad section of the membership keeps showing interest in outcomes on NAMA”, the chair said, “these members do not seem to know how to take their respective issues forward in the general context of WTO’s negotiating function at present.”

The chair, however, said that there is an “objective case for multilateral NAMA negotiations” because customs duties are still being applied on about 50% of world trade.

“There continues to be tariff peaks and important discrepancies in tariff structures and concession levels of members,” he emphasized.

Further, non-tariff barriers keep increasing in numbers and complexity, Winzap said.

So far, he said, “no NAMA-demandeurs have come forward with specific proposals or requests since MC10 [the WTO’s tenth Ministerial Conference, held in Nairobi in December 2015].”

He said the developed countries, which were the demandeurs of the past, “seem to have largely satisfied – or are involved in negotiations aimed at satisfying – their NAMA interests outside WTO.”

Meanwhile, “new demandeurs” have not come into sight yet, the chair said, arguing that “traction in NAMA will be difficult to achieve as long as it is looked at on its own merit.”

“Rather, there seems to be a case for approaching NAMA in the broader context of WTO negotiations,” Winzap ar-

gued.

The chair did not make any reference to either the unaddressed Doha work programme or the Nairobi Ministerial Declaration.

Policy space at risk

The chair’s address clearly suggested that if developing countries and poorest countries want to address tariff peaks and tariff escalation in the developed countries, they will have to concede “reductions in policy space.”

In short, the chair’s address has turned the unfinished Doha Development Agenda (DDA) negotiations upside down by suggesting that the developing countries will have to make bigger ‘payments’ if they are to draw the developed countries into negotiations after the summer break.

In comparison, the Doha mandate on NAMA, in paragraph 16 of the 2001 Doha Ministerial Declaration, maintained: “We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without *a priori* exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.”

Winzap, however, remained silent on whether all developed countries are uninterested in restarting the NAMA negotiations or whether just one major developed country – the US – is blocking the negotiations, according to trade officials familiar with the statement.

At the last NAMA meeting over three months ago, the US said categorically that there cannot be any Doha negotiations on industrial goods because members did not reaffirm the DDA negotiations in Nairobi.

(continued on page 14)

Vulture funds inherently exploitative at expense of human rights

Vulture funds are raking in extravagant profits at the expense of human rights and development in poor indebted countries, the Advisory Committee to the UN Human Rights Council has said, underlining the need to curb the “predatory practices” of these creditors.

by Kanaga Raja

GENEVA: Vulture funds are inherently exploitative, since they seek to obtain disproportionate and exorbitant gains at the expense of the full realization of human rights, particularly economic, social and cultural rights, and the right to development, the UN Human Rights Council Advisory Committee has said.

In its latest report on the activities of vulture funds and their impact on human rights, the Advisory Committee said that seeking the repayment in full of a sovereign debt from a state that has defaulted or is close to default, is an illegitimate outcome.

“The duty to observe due diligence to prevent a negative impact on and potential violations of economic, social and cultural rights applies to all states and stakeholders, including the management of vulture funds. Therefore, assessments of the impact of their activities on the enjoyment of economic, social and cultural rights should be made systematically,” it said.

“Excessive claims awarded to vulture funds have allowed them to reap profits at the expense of the welfare and sustainable development of the poorest countries, without taking due account of the negative consequences of such actions on the state’s capacity to fulfil its human rights obligations,” it added.

The Advisory Committee comprises 18 independent experts and serves as a think-tank to the UN Human Rights Council.

In its report, the Advisory Committee recommended, amongst others, that the Human Rights Council maintain the issue of vulture funds and human rights on its agenda in order to assess the impact of their activities on economic, social and cultural rights and the right to development, and to support further initiatives aimed at identifying and curtailing illegitimate activities by vulture funds.

The Advisory Committee recom-

mended that the Human Rights Council explore further ways of mainstreaming human rights in the context of debt restructuring workouts and operationalizing processes aimed at assessing and monitoring the negative impact of the activities of vulture funds on the full enjoyment of economic, social and cultural rights and on the realization of the Sustainable Development Goals.

In addition, the Advisory Committee recommended that member states enact legislation aimed at curtailing the predatory activities of vulture funds within their jurisdiction.

“Domestic laws should not be limited to HIPC [Heavily Indebted Poor Countries] but should cover a broader group of countries and apply to commercial creditors that refuse to negotiate any restructuring of the debt.”

Claims that are manifestly disproportionate to the amount initially paid (by these funds) to purchase the sovereign debt should not be considered, it underlined.

(When countries default, the value of their bonds and securities falls and the vulture funds purchase them on secondary markets at heavy discounts. When these debts are restructured by the creditors and the country recovers, these funds demand full repayment. – *SUNS*)

Making a killing

The Advisory Committee cited the African Development Bank as saying that 20 of the 36 poorest developing countries have been threatened or targeted by aggressive litigation by vulture funds since 1999.

The World Bank estimates that more than a third of the countries that qualified for its debt relief initiative have been targeted by lawsuits by at least 38 litigating creditors, with judgments totalling \$1 billion in 26 of the cases.

Vulture funds have achieved, on

average, recovery rates of some 3-20 times their investment, equivalent to returns of 300-2,000%. The International Monetary Fund (IMF) estimates that in some cases the claims by vulture funds constitute as much as 12-13% of a country’s gross domestic product (GDP).

The Advisory Committee noted that cases brought by vulture funds are particularly protracted: the average estimated time for recovery is six years, which would suggest annualized returns averaging 50-333%.

“Such long judicial proceedings are always burdensome and can complicate debtor states’ financial and reserve management,” it said.

Most vulture funds are incorporated in tax havens, where there is no obligation to disclose information on benefits or ownership and it is feasible to hide gains to avoid or evade taxation. Such jurisdictions facilitate the secretive manner in which vulture funds operate as well as the flight of much-needed capital, particularly from developing countries, said the Advisory Committee.

Vulture funds have a long history of predatory practices against developing countries, particularly HIPC, it noted.

The most commonly targeted are countries, most of them in Africa and Latin America, with already unsustainable debt burdens and lacking the capacity and resources needed to face complex and protracted judicial processes.

In recent years, vulture funds have aimed their profit expectations at middle-income countries, particularly Argentina. With more than 40 lawsuits filed by commercial investors after the default of 2001, the country accounts for a third of the total number of lawsuits brought by vulture funds.

Case studies

The Advisory Committee report cited three case studies highlighting the impact of vulture fund activities on human rights.

The first is Donegal International v. Zambia. By 1984, the Zambian government was unable to service a \$30 million debt owed to Romania for the acquisition of agricultural equipment. In early 1997, the firm Debt Advisory International (which later incorporated as Donegal International) began to put forward proposals for acquiring the debt.

In 1999, just as Zambia was about

to reach the decision point for comprehensive debt relief under the HIPC Initiative, Romania sold the debt to Donegal International for about \$3 million, 11% of the face value.

In 2003, in controversial circumstances involving allegations of corruption and bribing of public officials, Zambia signed a settlement agreement with Donegal International to waive sovereign immunity from litigation and paid approximately \$15 million of the then \$44 million face value of the debt. The agreement also included penal rates of interest in the event of default and the application of United Kingdom law to any future dispute arising from it.

After paying off a total of \$3.4 million, the Zambian government stopped fulfilling the terms of the agreement, arguing that it was tainted with corruption.

In 2006, only months before Zambia was due to receive debt cancellation under the HIPC Initiative, the company sued the country in the UK courts for a total amount of \$55 million. Donegal obtained a favourable ruling, obtaining a 370% return, nearly 17 times the value of the original debt.

The government of Zambia reportedly recognized the judgment and allocated about 65% of the amount received, already earmarked for health programmes, to service the debt.

As a result of this litigation, vulture funds took away from the country almost 15% of its total social welfare expenditure, funds that could have been channelled instead towards education, healthcare and poverty alleviation.

The second case cited by the Advisory Committee is FG Hemisphere v. Democratic Republic of the Congo. In 1980, the Democratic Republic of the Congo entered into a credit agreement with Energoinvest, a company based in Sarajevo, for the construction of a high-voltage electric power transmission facility. The country soon defaulted on its repayment obligations.

In 2003, the International Chamber of Commerce made two arbitral awards in favour of the company, and in 2004 a District Court in the United States confirmed the amounts to be paid: \$18,430,000 and \$11,725,000, plus 9% interest and the costs of arbitration.

At that point, the company decided to transfer the right to recover the claim to FG Hemisphere, a company based in the state of Delaware, a tax haven in the US. The debt was reportedly purchased

for \$37 million.

FG Hemisphere then pursued its claim on the debt by attempting to seize the country's assets in different parts of the world.

In 2005, a court ordered the government to provide detailed information about the location of those assets worth more than \$10,000. Following the failure to provide that information, a US District Court imposed a fine of \$5,000 per week, to increase periodically to a maximum of \$80,000 per week, for failing to comply with the order.

To enforce the 2003 rulings, FG Capital Management has managed to freeze hundreds of millions of dollars owed to the Democratic Republic of the Congo and obtained enforcement judgments from several courts all around the world.

The Advisory Committee noted that the Democratic Republic of the Congo is rich in natural resources, but is recovering from more than four decades of dictatorship and war that have destroyed its infrastructure.

"In fact, it is difficult to see how a country with one of the lowest Human Development Index rankings (176) can service its external debt obligations without at the same time harming its poverty reduction and economic development prospects. The negative impact of vulture funds on the state's capacity to create the conditions necessary to fulfil its human rights obligations is therefore evident," it said.

Argentina and the "holdouts"

The third case cited by the Advisory Committee is NML Capital Limited v. Argentina.

It has been well documented how the deteriorating economic, financial and social situation led Argentina to a catastrophic collapse in 2001, said the Advisory Committee. Soon after defaulting, the government recognized the need to restructure roughly \$81 billion of debt. In two successive exchanges of offers, in 2005 and 2010, Argentina succeeded in reaching an agreement with more than 92% of its creditors, which agreed to take an approximately 70% "haircut" on their bond holdings.

A group representing 1.6% of bondholders, led by NML Capital Ltd. (a hedge fund based in the Cayman Islands), refused to restructure and decided to sue the country in the New York state courts for the full amount.

Some of the defaulted bonds had been bought on the secondary market just before the country's default in 2001, but most were purchased after, at bargain prices. The vulture funds allegedly paid about \$48.7 million for more than \$220 million in defaulted bonds soon after the default; others were purchased even after the bond exchanges of 2005 and 2010.

In November 2012, a New York District Court judge ordered Argentina to pay NML Capital and other "holdouts" in full (about \$1.3 billion), an amount that may represent a profit of about 1,600%.

The court ruling was first confirmed by a decision of the US Court of Appeals for the Second Circuit and subsequently endorsed by the Supreme Court, which stated that the country could not pay the creditors that had accepted the exchange offers until the "holdout" creditors had been paid in full.

The Advisory Committee noted that these rulings represent a major departure from the traditional market/legal understanding of the *pari passu* clause, a common component of bond contracts. NML contended that the country was not granting the same treatment to the creditors that did not participate in the exchange because it had agreed only to pay its debt to the exchange bondholders.

In February 2016, with a newly elected government in office in Argentina, the US court set a number of conditions to effectively lift the injunction and allow Argentina to service the restructured debts.

Events accelerated from then on and in April, ceding to massive financial pressure, Argentina abruptly reversed its previous policy regarding these claims and agreed in an out-of-court settlement to pay \$6.5 billion to the "holdouts".

"The settlement represents a further setback in the process aimed at setting up an international sovereign debt restructuring mechanism based on the equal treatment of creditors, and human rights experts have expressed profound regret," said the Advisory Committee.

Paying vulture funds much more than what was paid to cooperative creditors in previous debt restructuring is a disturbing outcome. Rewarding those who refuse to participate in debt restructuring efforts sends the wrong message, it underlined.

It said that this long judicial dispute highlights the pressing need to regulate speculative investment practices in order

to bring them into line with human rights approaches and requirements.

Furthermore, it has prompted a process aimed at establishing a multilateral mechanism with a mandate to resolve sovereign debt litigation in an independent and impartial manner.

The case of Argentina is not an exception but forms part of a more general trend, said the Advisory Committee. Increasingly, non-cooperative creditors are reaping extraordinary profits owing to settlements reached or judgments obtained after disruptive litigation.

Not only do investors' expectations of obtaining high returns by suing countries asphyxiated by onerous financial terms benefit from the lack of a global mechanism on debt restructuring, but they may also be at the origin of this state of affairs.

In fact, statistics show that lawsuits and attempted attachments are increasingly becoming a common way of solving sovereign debt disputes, entailing costly and protracted judicial processes for the state that has defaulted.

The trend has grown since the 1990s, from 10% to almost 50% of such disputes. In the period 1976-2010 there were about 120 lawsuits against 26 defaulting countries in the US and the UK alone.

The high rate of success (72%) certainly encourages this worrying tendency, said the Advisory Committee.

Accounting for 79 and 27 creditor lawsuits respectively, Latin American and African countries are among the most affected.

Over the past few years, litigation against HIPC countries has reached a plateau. Although most lawsuits are now filed against middle-income countries, nearly 30% of all lawsuits have been launched against HIPC countries. In March 2016, at least 13 cases were still outstanding against eight such countries.

With an average of eight cases being filed per year, Africa has been by far the most harassed region. According to IMF reports, claims by vulture funds constitute between 12% and 13% of African countries' GDP.

African countries have the lowest rate of winning cases and have disbursed more than 70% of the nearly \$1 billion awarded to vulture funds as a result of lawsuits.

The Advisory Committee noted that at present, only two countries, Belgium and the UK, have enacted some sort of

legal framework to discourage disruptive litigation initiated by vulture funds. In 2013, UK legislation was replicated in the Overseas Territories and the dependencies of Jersey, Guernsey and the Isle of Man. Attempts to enact similar initiatives in France and the US have so far failed.

"While these national laws have played an important deterrent role, it is evident that more national laws are needed to tackle this problem effectively. The enactment of national legislation is particularly needed in those jurisdictions preferred by vulture funds for starting litigation or enforcing attachments," said the Advisory Committee.

In that regard, useful guidelines for states can be derived from existing domestic laws and experience on their implementation, including the following: (a) protection should be extended to any debt-distressed country and not only to HIPC countries; (b) where possible, procedures should allow for the identification of debts that are protected from the claims of vulture funds, on the basis of objective criteria; (c) concerns about the socio-economic situation of the debtor state and the well-being of its population should be adequately incorporated and addressed by the legislator; and (d) issues regarding the lack of transparency in the secondary debt market and the operation of vulture funds in tax havens should also be tackled.

"A growing consensus has emerged in recent years on the need to curb the activities of vulture funds. A number of states have expressed support for international action to protect HIPC countries in particular from the activities of vulture funds as well as broad support for the establishment of an international mechanism for orderly debt restructuring," the Advisory Committee noted.

Substantial burden

The Advisory Committee emphasized that litigation by vulture funds represents a substantial burden on the budgets of already poor countries. Harmful conditions of loans or high and abusive interest rates may make repayment extremely difficult.

The state having to repay far more than the amount originally borrowed may be obliged to redirect into debt service resources previously allocated for essential public services, also triggering

cuts in public spending.

"Such a course of action hinders the state's capacity to fulfil economic, social and cultural rights (i.e., to adopt appropriate measures towards their full realization) and, ultimately, has an impact on the economic growth and development of the country."

According to the Advisory Committee, it has been demonstrated that in many countries debt repayment is often carried out at the expense of basic human rights, including the rights to food, health, education, adequate housing and work.

In the case of Ecuador, for example, the UN Committee on Economic, Social and Cultural Rights noted that the high percentage of the annual national budget (around about 40%) allocated for foreign debt servicing seriously limited the resources available for the achievement of effective enjoyment of economic, social and cultural rights.

The case of Malawi may be extreme, but it shows how debt repayment affected the country's capacity to create the necessary conditions for the realization of economic and social rights. In 2002, the government decided to sell the maize from its national food reserve agency with the aim of raising funds to repay loans. Following a poor harvest that year, 7 million people, of a population of 11 million, were left facing a serious food shortage.

"The ability of vulture funds to jeopardize the objectives of the International Monetary Fund and the World Bank HIPC Initiative is striking, particularly bearing in mind that it aims at ensuring the debt sustainability of poor countries. In a number of cases, it has been clearly demonstrated that resources freed up for development and poverty reduction programmes were used to service debt owed to vulture funds."

The Advisory Committee said that a good example is the case of the Democratic Republic of the Congo. A US District Court ruled in 2014 that it had to pay nearly \$70 million to a vulture fund for an \$18 million debt acquired in 2008, dating back to the regime of former dictator Mobutu Sese Seko in the 1980s. On the basis of the improved fiscal situation resulting from international debt reduction programmes, the country was ordered to pay the claims of the hedge

(continued on page 14)

TPP under serious threat

The Trans-Pacific Partnership agreement has become a political football in the US presidential election campaign, and with the public mood being against free trade pacts, this deal faces the real possibility of being discarded.

by Martin Khor

It was signed in February by the 12 countries that spent five years negotiating it, and was widely expected to come into force within two years, after each country ratifies it. But now there are growing doubts as to whether the controversial Trans-Pacific Partnership (TPP) agreement will actually see the light of day.

Ironically, it is the United States, which had led the negotiation process, that may in the end be its undoing.

The TPP has become one of the hottest issues in the US presidential election process. Opposing the agreement is at the centre of Donald Trump's campaign.

Bernie Sanders championed the anti-TPP cause, saying: "We shouldn't renegotiate the TPP. We should kill this unfettered FTA [free trade agreement] which would cost us nearly half a million jobs."

Hillary Clinton also came out against the TPP, a turnaround from her position when she was US Secretary of State. To counter suspicions that she would again switch positions if she becomes President, Clinton stated: "I am against the TPP, and that means before and after the elections."

They may all be responding to a popular feeling that trade agreements have caused the loss of millions of manufacturing jobs, stagnation in wages and the unfair distribution of benefits in US society.

Besides the presidential candidates, two other players will decide the TPP's fate: President Barack Obama and the US Congress.

Obama has been the main advocate for the TPP, passionately arguing that it will bring economic benefits, raise environmental and labour standards, and place the US ahead of China in Asian geopolitics.

So far, he has not succeeded. Obama must get the agreement ratified by Congress before his term ends, in the lame-duck Congress session after the election on 8 November and before mid-January 2017.

It is unclear whether there is enough

support to even table a lame-duck TPP bill and, if tabled, whether it will pass. Last year, a related "fast-track" trade authority bill was passed with only slim majorities. Now, with the concrete TPP before them, and the swing in mood, some members of Congress who voted for fast track have indicated they won't vote for the TPP.

Most Democrats have indicated they are against the TPP. They include Clinton's running mate for Vice President, Senator Tim Kaine, who had voted for fast track, House Minority Leader Nancy Pelosi and House Ways & Means Committee member Sandy Levin, who has said: "It is now increasingly clear that the TPP agreement will not receive a vote in Congress this year, including in any lame duck session, and if it did, it would fail."

Republican leaders in Congress have also voiced their opposition. Senate Majority Leader Mitch McConnell said that the presidential campaign had produced a political climate that made it virtually impossible to pass the TPP in the lame-duck session. House Speaker Paul Ryan, who had helped write the fast-track bill, said he sees no reason to bring the TPP to the floor for a vote in the lame-duck session because "we don't have the votes." Meanwhile, six House Republicans sent a letter to Obama in early August urging him not to try to move the TPP in the lame-duck session.

Options

Though the picture thus looks grim for Obama, he should not be underestimated. He said when the elections are over, he will be able to convince Congress to vote for the TPP. He added that many people had thought he would be unable to get fast track through Congress but he was able to prevail.

To win over Congress, Obama will have to respond to those on the right and left who are upset on specific issues such as the term of monopoly for biologic drugs or the inclusion of investor-state

dispute settlement in the TPP.

To pacify them, Obama will have to convince them that what they want will anyway be attained even if these are not legally part of the TPP. He can try to achieve this through bilateral side-agreements on specific issues, or insist that some countries take on extra obligations beyond what is required by the TPP as a condition for obtaining a US certification that they have fulfilled their TPP obligations.

Obama could theoretically also renegotiate specific clauses of the TPP in order to appease Congress. But this option will be unacceptable to the other TPP countries.

In June, Malaysia rejected any notion of renegotiating the agreement. The question of renegotiation does not arise even if there are such indications by US presidential candidates, said Rebecca Fatima Sta Maria, then the Secretary-General of the Malaysian Ministry of International Trade and Industry. "If the US does not ratify the TPP, then it will not be implemented," she said. The other TPP members would have to resort to a "different form of cooperation."

Singapore Prime Minister Lee Hsien Loong, on a recent visit to Washington, dismissed any possibility of reopening parts of the TPP as some Congress members are seeking. "Nobody wants to reopen negotiations," he said. "We have no prospect of doing better and every chance of having it fall apart."

In January, Canadian Trade Minister Chrystia Freeland said a renegotiation of the TPP is not possible.

Japan also rejected renegotiation, which it defined as including changing existing side-agreements or adding new ones. This is not going to happen, said Japan's Deputy Chief of Missions Atsuyuki Oike.

What happens, then, if the US Congress does not adopt the TPP during the lame-duck period?

The 12 countries that signed the agreement in February are given two years to ratify it. For the TPP to come into force, enough countries to account for 85% of the combined gross national product (GNP) of the 12 countries must ratify it. As the US accounts for over 15% of the combined GNP, a prolonged non-ratification by it would effectively kill the TPP.

Theoretically, if the TPP is not ratified this year, a new US President can try

to get Congress to adopt it in the next year. But the chances of this happening are very slim.

That's why the TPP must be passed during the lame-duck session. Or it may have to be discarded, probably for good.

That would be a dramatic marker of the changing winds in public opinion on

the benefits of free trade agreements, at least in the US, the land that pioneered the modern comprehensive FTA. □

Martin Khor is Executive Director of the South Centre, an intergovernmental think-tank of developing countries, and former Director of the Third World Network. This article was first published in The Star (Malaysia) (15 August 2016).

Poverty, vulnerability and social protection

Amid faltering growth rates and limited social protection measures, economic insecurity and vulnerability have become widespread across the globe.

by Jomo Kwame Sundaram

According to the World Bank, the Millennium Development Goal (MDG) target of halving the share of the poor was achieved by 2008, well in advance of 2015, the target year.

However, increased unemployment and lower incomes in recent times remind us that poverty is not an unchanging attribute of a shrinking group but, rather, a condition that billions of vulnerable persons risk experiencing.

Despite the various shortcomings of money measures of poverty, they nevertheless reflect the extent of vulnerability. For example, the estimated number of poor globally in 2012 more than doubles from 902 million to 2.1 billion when one raises the poverty line by 63% from \$1.90/day to \$3.10/day per person, suggesting that a very large number of those not deemed poor by the World Bank are very vulnerable to external economic shocks or changes in personal circumstances, such as income losses or food price increases.

Of the world's poor, three-quarters live in rural areas where agricultural wage workers suffer the highest incidence of poverty, largely because of low productivity, seasonal unemployment and low wages paid by most rural employers.

Vulnerability and economic insecurity have increased in recent decades with rising insecure, casual and precarious jobs involving part-time employment, self-employment, fixed-term work, temporary work, on-call work and home-working – often mainly involving women. Such trends have grown with labour market liberalization, globalization and declining union power.

To make matters worse, macroeco-

nomics policies in recent decades have focused on low inflation rather than full employment, while limited social protection has exacerbated economic insecurity and vulnerability.

Additionally, lower economic growth rates, following the global financial crisis, would push 46 million more people into extreme poverty than expected before the crisis. This figure was later revised to 64 million, implying over 200 million people fell into extreme poverty due to food-fuel price hikes and the global financial crisis.

While some of these figures were subsequently revised downward, they suggest widespread vulnerability and economic insecurity, due to the inability of governments to respond with adequate counter-cyclical policies and in the absence of comprehensive universal social protection measures.

During the East Asian financial crisis of 1997-98, the official poverty rate in Indonesia shot up from 11% to 37% in just one year following the massive depreciation of the Indonesian rupiah.

The working poor

The working poor are defined as those employed but earning less than the international poverty line [\$1.25 a day in 2005 and \$1.90 a day in 2011 in purchasing power parity (PPP) terms]. Despite working, they cannot earn enough to get out of poverty. In most developing countries, most poor adults have to work, if only to survive, in the absence of adequate social protection.

According to the International Labour Organization (ILO), an estimated 375 million workers lived below the in-

ternational poverty line in 2013. The number of working poor rises dramatically to close to 800 million when a \$2-a-day poverty line is used. Women comprise the majority of the working poor, accounting for about 60%.

Progress in reducing the number of working poor has slowed markedly since 2008. An estimated 1.42 billion people globally were in vulnerable employment in 2013, still increasing by around 1% in 2013, well above the 0.2% average increase in the years prior to 2008. The number was projected to exceed 1.44 billion in 2014, accounting for 45% of total world employment.

Social protection

Most people who fall under the international poverty line are vulnerable, with no basic social protection. The lack of comprehensive universal social protection is a major obstacle to economic and social development, exacerbating high and persistent levels of poverty, economic insecurity and inequality.

Most countries do not have unemployment insurance or other similar social protection. In the most vulnerable countries, more than 80% have neither social security coverage nor access to health services.

The ILO's *World Social Protection Report 2014/15* found a high or very high vulnerability in terms of poverty and labour market informality.

Only 27% of the global population enjoy access to comprehensive social security systems, whereas 73% are only covered partially or not at all.

This means that about 5.2 billion people do not have access to comprehensive social protection, and many of them – in the case of middle- and low-income countries, nearly half their populations – live in poverty. About 800 million of them are working poor, most of whom work in the informal economy.

Although 2.3% of GDP worldwide is allocated to public social protection expenditure for income security during working age, there are wide regional, national and local variations, e.g., ranging from 0.5% in Africa to 5.9% in Western Europe.

Only 28% of the global labour force is potentially or legally eligible for unemployment benefits. Yet, only 12% of unemployed workers worldwide actually receive unemployment benefits, with effective coverage ranging from 64% of unemployed workers in Western Europe to just over 7% in the Asia and

Pacific region, 5% in Latin America and the Caribbean, and less than 3% in the Middle East and Africa.

Globally, about 39% and more than 90% of the population living in low-income countries have no right to healthcare. About 18,000 children die every day, mainly from preventable causes.

On average, governments allocate 0.4% of GDP to child and family benefits, ranging from 2.2% in Western Europe to 0.2% in Africa, Asia and the Pacific.

Fiscal austerity measures since the 2008-09 global financial and economic crises have exacerbated the situation. Such measures are not limited to Europe; many developing countries have also adopted such measures, including reducing or ending food and fuel subsidies; cutting or capping wages; more narrowly targeting social protection benefits, and reducing public pension and healthcare systems.

These are contrary to the pledges countries made in adopting the Sustainable Development Goals which include achieving universal protection and healthcare.

Not surprisingly, fiscal austerity measures, including cuts in social protection expenditure, have not helped economic recovery but, instead, have exacerbated inequality. (IPS) □

Jomo Kwame Sundaram was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

Third World Economics
is also available in Spanish.

Tercer Mundo Economico
is the Spanish edition of
Third World Economics, edited
and published in cooperation
with Red del Tercer Mundo,
Uruguay.

For subscription details,
please contact:

Third World Network/
Red del Tercer Mundo,
Av 18 De Julio 2095/301
Montevideo 11200, Uruguay
Fax (5982) 419222
Email: redtm@chasque.apc.org

(continued from page 11)

funds. "This example shows how domestic rulings can clearly undermine the intent of the HIPC Initiative, which is often not taken into account by national courts."

However, this is not an isolated case. In 2013, the World Bank and IMF reported that commercial litigation was ongoing against eight HIPC countries, said the Advisory Committee.

Vulture funds take advantage of the lack of adequate regulation of a financial system that has traditionally been based on purely commercial interests and foreign to human rights-based approaches and concerns.

(continued from page 8)

The US maintained that it doesn't recognize the Doha negotiations any longer, according to a negotiator present in the room.

The US argued that it doesn't see any merit in conducting the NAMA negotiations at the WTO as it secured maximum gains in slashing industrial tariffs outside the trade body.

"The US was questioning the utility of the multilateral process," the negotiator said, adding that it is very disturbing to witness the world's largest economy creating hurdles at every juncture in all outstanding areas of the Doha negotiations.

Despite growing demand from several developing and some developed countries for addressing the outstanding Doha NAMA issues, the obstreperous stance of the US has put paid to any resumption of the NAMA negotiations, according to NAMA negotiators who asked not to be quoted.

Further to paragraph 16 of the Doha Ministerial Declaration cited above, Annex B of the 2004 July framework agreement reinforced this by stating that "negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. We also reaffirm the importance of special and differen-

"Though relevant actions have been undertaken in previous years, and though human rights monitoring bodies have provided some valuable guidance in striking a better balance between the different interests at stake, human rights should be further mainstreamed in this context," said the Advisory Committee.

"The international community should work to provide the basis for shaping a more coherent framework where both commercial interests and human rights concerns are accommodated. In this context, the inter-linkages between an enhanced capacity of states to fulfil economic, social and cultural rights and sustainable development should be strengthened," it added. (SUNS8299) □

tial treatment and less than full reciprocity in reduction commitments as integral parts of the modalities."

And in paragraph 14 of the WTO's 2005 Hong Kong Ministerial Declaration, trade ministers agreed to "adopt a Swiss Formula with coefficients at levels which shall inter alia:

- Reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries; and
- Take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments."

Thus, the developing countries which were provided special and differential treatment and less than full reciprocity in the Doha work programme and subsequent ministerial/General Council decisions are now being advised to agree to reductions in policy space as a 'payment' for restarting the NAMA negotiations.

The developing countries had already agreed to several 'payments' during the NAMA negotiations, starting with a Swiss coefficient, voluntary tariff elimination and other onerous commitments.

After all these concessions, the developing countries are being advised by the outgoing chair of the negotiations to forego policy space – which seems like the last straw on the camel's back. (SUNS8300) □

New trade deals legalize corporate theft, make farmers' seeds illegal

A raft of new bilateral and regional free trade agreements are seeking to further entrench corporate control of seed supply and restrict farmers' ability to save, produce and exchange seeds. The following article by *GRAIN*, an international non-profit organization supporting farmers' rights, sounds the warning.

Since 2001, GRAIN has been tracking how so-called free trade agreements (FTAs), negotiated largely in secret outside the World Trade Organization (WTO), are being used to go beyond existing international standards on the patenting of life forms. In this article, we provide an update on the FTAs that are legalizing corporate theft and threatening farmers' ability to save, produce and exchange seeds around the world.

Legalized theft

Signed in 1994, the WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was the first treaty to impose global standards on intellectual property or legal ownership of plants, animals and microorganisms, bolstered by an enforcement mechanism. Representatives of the US seed and biotech industry had brought the issue into the trade talks. Their goal? To ensure that companies like Monsanto, Dow and Pioneer, which spend money on plant breeding to bring new seeds to market, can recoup their investment and make a profit by preventing farmers from reusing those seeds – obligating them to purchase seeds from corporations year after year.

The patenting of life has been hotly contested for decades. For farmers, it makes seeds and livestock more expensive and takes away their right to freely reproduce them. It also reduces life and culture to a commodity that corporations can own and control. While the WTO agreement allowed countries to exclude plants and animals other than microorganisms from their patent laws, it required that they provide some form of intellectual property protection over plant *varieties* – the seeds that farmers sow – without specifying how to do that. According to industry representatives who helped draft the text, the US corporations got 95% of what they wanted from TRIPS.¹

FTAs negotiated outside the WTO go even further and help US and European corporations get what they weren't able to achieve under TRIPS. These deals often require countries to: 1) allow companies to take out patents on plants and animals, 2) adopt the rules of the International Union for the Protection of New Plant Varieties (UPOV) which provide patent-like rights for plant breeders, and 3) join the Budapest Treaty on the recognition of deposits of microorganisms for the purpose of patent protection.

These measures give monopoly powers to agribusiness at the expense of small and indigenous farming communities. For example, UPOV and patent laws generally make it illegal for farmers to save, exchange or modify seeds from so-called protected plant varieties. This is a tremendous injustice, since farmers and indigenous peoples are the original source of these seeds. Corporations take seeds from farmers' fields, tinker with them and then claim property rights over them as "new" varieties.

What's more, corporate varieties, promoted as more "modern" than traditional seeds, end up replacing the diversity in farmers' fields. This genetic uniformity makes the world's food supply extremely vulnerable, especially in the context of ever-increasing climate chaos.

The main countries pushing these measures through bilateral and regional trade deals are Australia, Europe, Japan and the US – with Europe and the US being by far the most aggressive. This is logical, because they house the world's top seed corporations. US firms alone account for more than 51% of commercial seed sales around the world.²

Washington promotes the hardest line: patenting when and where they can get it, UPOV as the backup option. The European Union, the European Free Trade Association, Australia and Japan are pushing countries to join UPOV. As a result, the list of countries being forced to join UPOV or allow patents on life as part of a trade deal outside the WTO is growing.

What's the latest?

A slew of bilateral and regional trade and investment deals have been signed in the last year, and a number of others are currently being negotiated.

The EU-Canada Comprehensive Economic Trade Agreement (CETA) was signed in September 2015 and currently needs to be ratified by the Canadian and European parliaments. The final version of CETA ultimately does not change the level of rights for seed companies in Canada or the EU, but it does give them more powerful tools to enforce their rights against farmers through seizures and injunctions based on mere suspicion of infringement, including seed saving. Worried about increased restrictions on farm-saved seeds, groups on both sides of the Atlantic, including Canada's National Farmers Union and the European members of La Via Campesina, are fighting hard against the ratification of CETA.³

Over the last year, the European Union has managed to initial or sign "interim" free trade deals with most African countries. As of now, these new Economic Partnership Agreements (EPAs) do not accomplish what the European seed companies want, i.e., mandatory compliance with UPOV 1991. But they do commit all signatories to a "rendezvous" clause stating that they will meet again in the near future to hammer out standards on intellectual property, which are bound to include the privatization of seeds.

The US government, in the meantime, is regularly pushing its trade partners to live up to their intellectual property commitments. In its latest Special 301 report – a report prepared annually by the Office of the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974 – the USTR criticizes Chile and Colombia for failing to adopt

UPOV 1991 as they agreed to do under their 2003 and 2006 bilateral trade deals with Washington.⁴

As for the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU, the public does not have access to the negotiating text and there have been no leaks of the intellectual property chapter for civil society to scrutinize.

TPP and RCEP are the two biggest threats

Currently, the two biggest threats to small-scale farmers' control over their seeds are the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP).

The TPP was signed in February 2016 by 12 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam. The TPP states that all signatories must join UPOV 1991. This means Brunei, Chile, Malaysia, Mexico and New Zealand will have to change their current laws.⁵ The changes will clamp down on farmers' ability to save seed from protected varieties; expand breeders' rights to all species; and extend corporate control to similar varieties as well as to the harvest. Even if legislators in TPP member countries decide to allow farmers to save seed from corporate-controlled varieties, farmers will now have to pay for this "privilege" year after year.

The TPP also requires all members to allow patents on inventions "derived from plants". What this means is not clear – and this vagueness is surely deliberate.⁶ At the very least, it would seem to mean that plant genes and cell cultures, and all products derived from them including plants, shall be patentable in all TPP countries. The US biotech and seed industry believe that this opens the door to the patenting of plants more generally.⁷ No wonder, then, that the USTR calls the TPP the "greatest tool" yet for imposing higher intellectual property standards not only in Asia, but globally.⁸

In Malaysia, organizations like the Consumers Association of Penang and members of the National Human Rights Society are urging the government to stop these changes from going through.⁹ These groups do not want the country's plant variety protection (PVP) law, which protects farmers' rights to reproduce seed, to be touched.

In Chile, the further privatization of seeds under the TPP is a major concern among social movements that are fighting the agreement's ratification. Over the past several years, students, farmers and consumers have successfully prevented the senate from adopting what they call a "Monsanto Law" that would require Chile to join UPOV 1991 – which the TPP would make obligatory. A number of national campaigns are currently focused on getting parliaments to reject ratification of the TPP.¹⁰

Farmers in Thailand and the Philippines are also concerned about the prospect of having to give greater control over local seed systems to transnational agrochemical corporations like Monsanto. The governments of these two countries have expressed a strong interest in joining the TPP, which would mean joining UPOV. Like Malaysia, both countries have PVP laws that currently provide greater protections than UPOV 1991 to farmers' rights to exchange and sell seeds.

In Thailand, farmers, scientists, former government officials and human rights advocates have been denouncing the implications of the TPP for seeds, including higher prices. According to the civil society group BioThai and the National Farmers Council, seed prices in Thailand would go up 100-600% if the country joined UPOV.¹¹ The Philippine peasant movement KMP rightly describes the policy changes the TPP would usher in – not only for seeds, but also for land and other resources – as "the end of the world as we know it".¹²

In addition to Thailand and the Philippines, the governments of South Korea, Taiwan, Colombia and Indonesia are also trying to join the TPP. A host of other countries, from Sri Lanka to Argentina, are also reportedly considering joining. In Latin America, many view the new neoliberal "Pacific Alliance" as a springboard to integration with the TPP.¹³ If ratified, the TPP could go very far indeed in strengthening corporations' control over the seed and food supply.

As the fight against the TPP rages on, a new fight is opening up against the RCEP, a newer mega-regional trade deal between the Association of Southeast Asian Nations (ASEAN) and six of its trading partners: India, China, South Korea, Japan, Australia and New Zealand.

The RCEP is bigger than the TPP in terms of how many people it will affect. And because it includes several TPP signatories, we expect that they will push to harmonize the RCEP with the TPP, at least on certain issues like seed patenting.¹⁴ While the negotiating texts are being kept secret, the latest leaks show that South Korea and Japan are pushing to make the RCEP require all member countries to join UPOV 1991.¹⁵ This means Asian farmers and social movements must struggle on two fronts: the TPP and the RCEP.

Clearly, the pressure to establish new powers for the seed and biotechnology industry comes mainly from a handful of governments (the US, Europe, Japan) for a handful of beneficiaries (the increasingly concentrated corporations based in these countries). While the corporate agenda is clearly gaining ground, it is not too late to stop a number of these mega-deals – CETA, TPP, RCEP and the final EPAs – before the damage is done. □

GRAIN is a small international non-profit organization that works to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems. The above was first published in July 2016 in the "Against the grain" series of short opinion pieces on recent trends and developments in the issues that GRAIN works on. The complete collection of "Against the grain" is available on GRAIN's website (www.grain.org).

Endnotes

1. Quoted in: Susan K. Sell, *Private power, public law: The globalization of intellectual property rights*, Cambridge University Press, 2003, p. 55.
2. ETC Group, "Breaking bad", December 2015, http://www.etcgroup.org/sites/www.etcgroup.org/files/files/etc_breakbad_23dec15.pdf
3. See: NFU, "Six points about CETA", <http://www.nfu.ca/issue/six-points-about-ceta>; and Gallen Simmons, "NFU hosts European farmers in Brodhagen", Mitchell Advocate, 1 March 2016, <http://www.mitchelladvocate.com/2016/02/29/nfu-hosts-european-farmers-in-brodhagen>
4. USTR, "Special 301 Report", Washington DC, 27 April 2016, <https://ustr.gov/issue-areas/intellectual-property/Special-301>
5. Chile, Mexico and New Zealand are members of an earlier version of UPOV (1978) that is not as anti-farmer. Malaysia is not a member of UPOV. Brunei doesn't even have a plant variety protection law.

(continued on page 7)