

# Power hungry

six reasons to regulate global food corporations

**act:onaid**  
international

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# Acronyms & abbreviations

<b>ADM</b>	Archer Daniels Midland
<b>BAT</b>	British American Tobacco
<b>Bt cotton</b>	<i>Bacillus thuringiensis</i> cotton
<b>CSR</b>	Corporate social responsibility
<b>CP</b>	Charoen Pokphand Group
<b>CORE</b>	Corporate responsibility coalition
<b>EU</b>	European Union
<b>EUREP-GAP</b>	Euro-Retailer Produce Working Group for Good Agricultural Practices
<b>FDI</b>	Foreign direct investment
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GM</b>	Genetically modified
<b>GDP</b>	Gross domestic product
<b>HLL</b>	Hindustan Lever
<b>IFAD</b>	International Fund for Agricultural Development
<b>IFPRI</b>	International Food Policy Research Institute
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>IPRs</b>	Intellectual property rights
<b>NCP</b>	National Contact Point
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PBRs</b>	Plant breeders' rights
<b>SAPs</b>	Structural adjustment programmes
<b>TOPP</b>	Twifo Oil Palm Plantation
<b>TNCs</b>	Transnational corporations
<b>UK</b>	United Kingdom
<b>UHT</b>	Ultra high temperature
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations Children's Fund
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNEP</b>	United Nations Environment Programme
<b>UN NORMS</b>	United Nations Human Rights Norms for Business
<b>USDA</b>	United States Department of Agriculture
<b>WTO</b>	World Trade Organization

# Executive summary

**Global food companies have grown too powerful and are undermining the fight against poverty in developing countries. They are draining wealth from rural communities, marginalising small-scale farming, and infringing people's rights. Urgent action is needed to re-govern agricultural markets so they benefit poor people, and to make companies legally accountable for their impacts on human rights and the environment.**

Transnational corporations (TNCs) such as Monsanto, Cargill, Nestlé and Wal-Mart have come to dominate supply chains for food and agricultural goods, from seed to supermarket shelf. Two decades of economic liberalisation have enabled 'agrifood' TNCs to expand enormously in size, power and influence in developing countries; as a result, they now deal more directly with small-scale farmers. A wave of mergers, acquisitions and business alliances in the agrifood industry has concentrated enormous market power amongst these corporations:

- the top 30 food retailing corporations account for one-third of global grocery sales
- one TNC controls 80% of Peru's milk production
- five companies control 90% of the world grain trade
- six corporations control three-quarters of the global pesticides market.

Agrifood TNCs are rapidly transforming agricultural systems in developing countries, which play a vital role in reducing poverty and promoting food security. Seventy per cent of the world's poor people live and work in rural areas, and the majority will continue to do so until well into the 21st century. But instead of helping to generate vibrant farm economies, TNCs are having anti-development impacts on rural communities, and are undermining poor people's basic rights.

This report marks the beginning of ActionAid International's engagement with governments and civil society on agrifood industry regulation. It highlights six reasons to regulate agrifood TNCs:

## **1 TNCs use and abuse their market power to drain wealth from poor communities**

Agrifood TNCs are exercising their market power to raise the price of agricultural inputs, engage in unfair buying practices, form price-fixing cartels, shut local companies out of markets, and push down prices for farmers' goods. The UK supermarket Asda Wal-Mart, for example, used its bargaining power over suppliers to cut the price of bananas in 2002. Other retailers followed suit and demanded deep price reductions from their suppliers. By 2004 bananas were retailing at £0.74 per kg in the UK, down from £1.08 in 2002. This meant that growers in Costa Rica would not have been able to get the legal minimum price for a box of bananas, or pay plantation workers the legal minimum wage. Eighty five per cent of all recent fines imposed on global price-fixing cartels were paid by agrifood companies. Corporations such as Tate & Lyle, Cargill and Archer Daniels Midland have between them paid out over one billion dollars to settle price-fixing lawsuits brought against them.

## **2 TNCs pay low prices and capture the resulting value**

Many factors can work to bring down farm prices in addition to the misuse of market power, including oversupply and changes in trade rules. Despite dramatic falls in the prices for important farm goods bought by TNCs such as coffee, rice, sugar, milk, wheat and tea, consumers often do not pay less for these products. Whether they actively force down farmgate prices, or take advantage of depressed markets to pay low prices, agrifood TNCs often keep the profits for themselves. The gap between farm and retail prices is growing, and is wider in countries where TNCs have concentrated market power. The World Bank estimates that the farm-retail price gap is costing commodity-exporting countries more than US\$100 billion each year, and that anti-competitive behaviour by agrifood TNCs is a key cause.

### **3 TNCs marginalise poor farmers and rural workers**

The agrifood corporations' market power allows them to set the 'rules of the game': who's in and who's out of the supply chain. By imposing tough standards that poor farmers cannot afford to meet, TNCs are threatening the livelihoods of hundreds of thousands of smallholders. After a series of aggressive takeovers in Brazil, for example, Nestlé and Parmalat forced over 50,000 dairy farmers out of their supply chains; as a result, many went out of business altogether. Women make up to 90% of the labour force in the supply chains for fruit and vegetables exported from developing countries. Agrifood TNCs are forcing the costs and risks of doing business onto suppliers, who in turn pass on these pressures by undermining women workers' rights.

### **4 TNCs are not fully accountable for their impacts on human rights and the environment**

Agrifood TNCs frequently violate poor people's basic rights. In India, for example, at least 12,000 children worked on farms in 2003 supplying cotton seeds to subsidiaries of TNCs including Bayer, Monsanto, Syngenta and Unilever. But TNCs have in many respects outgrown the reach of national law in many of the countries in which they do business. Domestic laws are patchy and unevenly applied in poor countries, and TNCs can avoid prosecution by exploiting the legal separation between parent companies and their subsidiaries. TNCs are operating in what amounts to a 'regulatory void' in which they can weaken labour, environmental and public health laws, and practise double standards by behaving more responsibly in countries with tighter regulation, and less responsibly elsewhere.

### **5 Corporate social responsibility is optional and insufficient**

Voluntary efforts by companies to improve their social and environmental performance – a practice known as 'corporate social responsibility' (CSR) – has important benefits, such as helping companies to develop and implement best practice within their industry sector. But companies' goodwill alone has proved insufficient to the task of protecting human rights and the environment. The sheer number of company and industry-wide codes is hindering companies' efforts to tackle the issues, and is creating uncertainty as to which standard they should use. Most CSR initiatives have been undertaken by large firms with high public profiles. The agricultural sector has relatively few company codes, and the food manufacturing industry even less. The selection – or indeed avoidance – of issues covered by a CSR code varies significantly, and many companies have adopted a 'pick-and-mix' approach. Most codes are general statements of principles rather than detailed instructions as to how these principles might be applied. Meanwhile, out of an estimated 64,000 TNCs operating today, only 1,500-2,000 – 3% at most – produce annual CSR reports.

### **6 People harmed by corporate activity are denied access to justice**

When TNCs violate human rights and the environment, affected communities look for redress through the laws of their own country, or in the country where the company is headquartered. There are also a number of international treaties that affected people could use. Yet national authorities are often unwilling or unable to prosecute companies, while there are no international mechanisms for redress that are legally binding on companies. People harmed by corporate activity are often poor, and yet in most cases they must bear the costs of bringing litigation against corporations. Claimants may fear persecution, particularly if the company has been collaborating with the government or security forces. If affected people do manage to bring a legal case, however, they can wait years for redress because companies have greater legal, political and financial resources to delay and weaken any decision.

## Solutions

Many rural communities are mobilising to defend their interests against the negative impacts of agrifood TNCs through grassroots action. ActionAid actively supports such initiatives, including co-operatives and producer organisations. Governments and international institutions should also take action to ensure TNCs do not infringe the rights of poor and excluded communities. Countervailing measures should be seen not simply as a response to the misuse of corporate power. They are also important tools for building a more democratic and equitable food system, and for generating sustainable growth with equity. ActionAid International calls on governments to:

### 1) Re-govern agrifood markets towards pro-poor development goals by:

- preventing the misuse of TNC buyer power in agrifood markets
- strengthening, and where appropriate establishing, rural producer organisations
- addressing the global agricultural commodity crisis affecting small-scale farming communities.

### 2) Hold TNCs legally accountable for their impacts on human rights and the environment by:

- ensuring that TNCs fulfill their obligations to promote, secure and protect human rights under the UN Human Rights Norms for Business
- introducing and enforcing domestic legislation to regulate TNC activities in developing countries
- building capacity in developing countries among farmer organisations and civil society groups.



# **Section one** **A rights-based approach to corporate regulation**

***'I feel cheated by the operations of Twifo Oil Palm Plantation because I do not understand the deductions they make. When you doubt the figure they will not explain it to you... There is no effort to correct mistakes quickly, if at all. We just have to accept what the officials give us.'*** Kwadwo Osae, a palm oil smallholder who supplies a Unilever plantation in Twifo Ntafrewaso, Ghana

***'They're not bothered about receiving milk from those who sell little, they want those who produce a lot more to reduce their number of suppliers and make gains in volume.'*** Baldur Frederich, a dairy farmer from Rio Grande do Sul, Brazil, describing his experience of selling to Parmalat

***'The kids were screaming, vomiting and grabbing their bellies. Some were dead, others were writhing on the grass and still more were on the school patio. We had no idea what to do.'*** A villager from Taucamarca, Peru, where 24 children died after swallowing a pesticide sold by Bayer

Transnational corporations (TNCs) have a major influence over the lives of poor people in the South. These companies, the majority of which are headquartered in rich countries, trade goods and services and make investments in poor countries worth hundreds of billions of dollars each year. ActionAid supports ethical and responsible activities pursued by business. If properly regulated, private sector enterprise can help to reduce poverty, realise people's rights, increase employment opportunities and generate economic growth with equity. But ActionAid's experience of working with poor communities around the world is that corporate activity can also create and sustain poverty, degrade the natural environment and violate people's rights.

This report marks the beginning of ActionAid International's engagement with governments, international institutions and civil society on 'agrifood' industry regulation. It focuses on the corporations that trade, process and distribute the goods produced by poor farmers and rural workers in developing countries. In recent years, world trends towards economic liberalisation, privatisation and deregulation have enabled agrifood TNCs to expand enormously in size, power and influence. These companies now deal more directly with small-scale producers, and have come to dominate national and international markets for farm produce. In doing so, agrifood TNCs are driving a process of radical transformation in developing countries' agricultural systems, which are strategically important for poverty reduction, food security and pro-poor economic growth. But instead of helping to foster vibrant agricultural economies, TNCs in many cases are driving anti-development characteristics in the agrifood chain, and are undermining poor people's basic rights.

ActionAid International will continue to campaign with its partners to reform unjust trade rules. But even if trade rules were made fairer, extreme imbalances of power between farmers and corporations would still remain, undermining efforts to alleviate poverty and promote peoples' rights until effective regulations are put in place. The global trade in agricultural goods is controlled by a handful of powerful corporations not by farmers or by countries. Policymakers must recognise that the concentration of market power amongst these companies is skewing the benefits of trade from poor people in the South, to company owners in the North. Given that 70% of the world's poor people live and work in rural areas, and considering the multiple benefits that flow from a thriving smallholder economy, these trends pose a serious threat to sustainable and equitable development.

Agrifood firms based in the South, some of them transnational, also have major impacts on poor people and the environment in developing countries. ActionAid supports domestic reforms to prevent these companies from undermining people's rights. But national legislation alone cannot deal with the challenges presented by a globalising economy, and TNCs require attention in their own right. Public policy must catch up to address the realities of transnational business, where corporations play countries off against each other, exploit weak labour, environmental, public health and competition laws, declare most profits where taxes are lowest and sell products banned in countries with stricter laws, while advising governments on what trade and investment rules would suit them best.

ActionAid welcomes the steps that some companies have taken to improve their social and environmental performance through voluntary codes of conduct. But protecting human rights and the environment cannot be left to companies' goodwill alone. While the voluntary approach to corporate regulation has merits, it has in practice proven insufficient. Numerous examples show businesses at the cutting edge of 'corporate social responsibility' continue to be implicated in rights violations on the ground. Clearly the voluntary approach needs to be supported by minimum standards that are legally enforced.

The negative impacts of TNCs on poor communities are not isolated cases perpetrated by a few 'bad apples'; they are the results of systemic and pervasive problems that require new institutional mechanisms to remedy. We call on governments to prevent the marginalisation of smallholders and rural workers by re-governing agrifood markets towards pro-poor development goals, and to ensure TNCs contribute to the realisation of human and environmental rights by bringing companies within the framework of international law.



**Section two**  
**Context: rural**  
**livelihoods in crisis**

**‘Earlier we used to buy fish or meat once or twice a week. Now that has stopped completely. We can’t even think of it on wage day. We’ve stopped buying vegetables. Before we used to buy vegetables on credit and pay on wage day. Now we can’t manage that. Can’t cut down on rice because it fills everyone’s stomachs, but we can’t afford vegetables and dal anymore.’** Chandran, a tea worker on a plantation in Tamil Nadu, India, owned by Unilever’s local subsidiary<sup>1</sup>

An estimated 1.3 billion people work in agriculture around the world and another 2.5 billion depend on the sector.<sup>2</sup> Over 50% of the population in developing countries works in agriculture, a figure that rises to 85% in some of the poorest countries.<sup>3</sup> Agriculture provides the main source of food and income for the majority of the world’s poor people. It plays a crucial role in the fight against poverty and hunger, and is essential for securing people’s basic rights. Agriculture is also of great social, cultural and environmental significance for rural communities. It tends to be particularly important for women, who have the main responsibilities for feeding their families and are estimated to produce 60%-80% of food grown in most developing countries.<sup>4</sup>

Compelling evidence shows that growth in the smallholder economy is the most effective way of alleviating rural poverty. An increase in smallholders’ incomes reduces poverty in the wider economy by increasing local demand for goods and services, such as transport, construction and farm labour (IFAD 2001; Irz *et al.* 2001). In a 2003 policy paper, the UK government’s Department for International Development concluded that *‘growth in agriculture benefits the poor most... No other economic activity generates the same benefits for the poor.’*<sup>5</sup>

In most countries of the South, small-scale farming must play a central role in any effective national development strategy. A vibrant smallholder economy, together with equitable land distribution, acts as a cornerstone for broader-based economic growth. Few countries have developed strong industrial economies without first achieving growth in smallholder agriculture. Industrialisation is an important goal, but policymakers should not ignore agriculture in its pursuit. Over the last three hundred years, almost all instances of mass poverty reduction started with rises in income due to higher productivity on small-scale farms (Lipton 2004). Even in the success stories of the newly industrialised countries of east Asia, a common characteristic is that they invested from the outset in rural and agricultural development.<sup>6</sup>

## **Increasing corporate control of agriculture**

Current trends in agriculture are threatening its ability to deliver these multiple benefits. The production, trading, manufacturing and retailing of food and agricultural goods – the ‘agrifood’ chain – is becoming industrialised, globalised and concentrated. A small number of TNCs are at the vanguard of this trend. They have come to dominate global and national agrifood markets (see Box 2), and their influence is transforming agriculture in many developing countries. This report shows how these trends are having profound marginalising effects on farmers and farm workers, and how the lack of legal accountability for TNC activities is undermining poor people’s rights.

The agrifood chain can be divided into four core activities (see Figure 1). One group of companies supplies agricultural inputs such as seeds and agrochemicals to farmers. Another buys the farmers’ produce and sells it around the world to the third sector, the food processors. The last link in the chain is formed by companies that sell branded food and food products to consumers in the North and South. Each activity has drawn major criticisms because of its impacts on poor communities.

Figure 1: the agrifood chain

THE AGRIFOOD CHAIN	GENES SEEDS CHEMICAL INPUTS	FOOD AND FIBRE TRADING RAW PROCESSING	FURTHER PROCESSING MANUFACTURING	SUPERMARKETS
Leading TNCs	Syngenta Monsanto DuPont Bayer	ADM Louis Dreyfus Bunge Cargill	Nestlé Kraft Foods Unilever PepsiCo	Wal-Mart Carrefour Metro Tesco
Core activities	seed and agrochemical production	trading and primary processing of raw materials	processing food and beverages	food retailing
Major issues	<ul style="list-style-type: none"> <li>control over intellectual property</li> <li>promoting technologies inappropriate for poor farmers</li> <li>eliminating sustainable agriculture alternatives</li> </ul>	<ul style="list-style-type: none"> <li>use of market power to push down prices</li> <li>unfair buying practices</li> </ul>	<ul style="list-style-type: none"> <li>use of market power to push down prices</li> <li>setting stringent standards</li> <li>unfair buying practices</li> </ul>	<ul style="list-style-type: none"> <li>use of market power to push down prices</li> <li>setting stringent standards</li> <li>unfair buying practices</li> </ul>
Key impact on farmers	<ul style="list-style-type: none"> <li>loss of right to save and exchange farm-saved seed</li> <li>increased input costs</li> <li>pesticide poisonings</li> <li>debt cycle</li> </ul>	<ul style="list-style-type: none"> <li>lower incomes</li> <li>exposure to volatile markets</li> <li>business costs and risks passed on to producers</li> </ul>	<ul style="list-style-type: none"> <li>lower incomes</li> <li>exclusion from markets</li> <li>business costs and risks passed on to producers</li> </ul>	<ul style="list-style-type: none"> <li>lower incomes</li> <li>exclusion from markets</li> <li>business costs and risks passed on to producers</li> </ul>

A boom in mergers, acquisitions and business alliances in the agrifood industry has helped create this set of powerful corporations. Agrifood TNCs have been on a buying spree in the South, acquiring large numbers of local firms in recent years.<sup>7</sup> They have also formed new global networks through joint ventures and informal alliances with other companies in the chain – from gene and seed, through production, trade and processing, to supermarket shelf – increasing their market power, and their control over the way food is produced and distributed in developing countries (Busch 2004).

**Box 1**

**How and why agrifood TNCs gain size and power**

**Horizontal and vertical integration:**

Agrifood corporations have bought or merged with other companies carrying out similar activities in the agrifood supply chain. A supermarket acquiring another supermarket is an example of such ‘horizontal integration’. Agrifood TNCs have also bought up companies operating at different stages in the supply chain – a process known as ‘vertical integration’ – for example, when a trading company that buys agricultural goods from farmers acquires a company that supplies farmers with seeds and fertilisers.

**Horizontal and vertical coordination:**

A trend towards ‘vertical coordination’ is also giving great power to agrifood corporations. Advances in logistics and information technology have allowed TNCs to coordinate and control entire supply chains through alliances, networks and contractual relationships, without formally merging with other firms in the chain. Agrifood TNCs also form alliances with other companies operating at the same stage of the supply chain, a practice known as ‘horizontal coordination’, for example, when TNCs share patented technologies to consolidate control over markets (see Section 3.1).

**Size matters:**

Increasing size can bring many benefits to agrifood companies, for example, it can generate barriers to market entry for other companies, economies of scale and reduced transaction costs. It gives companies improved market and meteorological intelligence, control of intellectual property, as well as privileged access to decision makers. Size also gives TNCs the ability to outbid farmers or smaller companies for resources and ideas, to set predatory prices and to increase market share through lavish advertising campaigns.<sup>8</sup>

## Box 2

**Corporate concentration in national and global agrifood markets****(see appendix)**

*'For people who want to buy corn, there really isn't much choice but to come to us.'* Bob Kohlmeyer, former manager, Cargill corporation

**1) Seed and agrochemicals**

- Six TNCs – **BASF, Bayer, Dow, DuPont, Monsanto** and **Syngenta** – now control 75-80% of the global pesticides market, down from 12 corporations in 1994.<sup>10</sup>
- **DuPont** and **Monsanto** together dominate the world seed markets for maize (65%), and soya (44%).<sup>11</sup>
- **Monsanto** controlled 91% of the global genetically modified (GM) seed market in 2001<sup>12</sup> and took over 60% of the Brazilian non-GM maize seed market in the space of two years (1997-1999).<sup>13</sup>
- **Bayer** controls 22% of the Indian pesticide market.<sup>14</sup>

**2) Bulk commodity trading**

- Two US TNCs, **Chiquita** and **Dole Foods**, control almost 50% of the world trade in bananas.<sup>15</sup>
- **Archer Daniels Midland (ADM), Barry Callebaut** and **Cargill** dominate Côte d'Ivoire's cocoa processing industry, where 95% of processing capacity is controlled by TNCs.<sup>16</sup>
- **Fyffes**, the largest fresh produce distributor in Europe, is the sole exporter of bananas from Belize and Surinam.<sup>17</sup>
- Three companies – **ADM, Cargill** and **Zen Noh** – handle over 80% of US corn exports.<sup>18</sup>

**3) Food manufacturing and processing**

- The top ten food processing companies account for 37% of sales by the largest 100 companies in the industry.<sup>19</sup>
- Three companies control 85% of the world's tea market, and **Unilever** is the world's biggest tea supplier.<sup>20</sup>
- **Nestlé** has established a virtual monopoly of the UHT milk market in Pakistan,<sup>21</sup> and controls around 80% of Peru's milk production.<sup>22</sup>
- Four companies, including **Cargill** and **Tyson**, control 81% of the US beef packing industry.<sup>23</sup>

**4) Food retailing**

- The 30 largest food retailing corporations account for around one-third of all world grocery sales,<sup>24</sup> with the top 10 amassing combined sales of US\$649 billion in 2002.
- **Wal-Mart** controls 40% of Mexico's retail sector.<sup>26</sup>
- Thirty-six per cent of all food sales in Thailand are now channelled through TNC retailers, where **Tesco** had 48 outlets and sales of around US\$1.2 billion in 2003.<sup>27</sup>
- **Asda Wal-Mart, Safeway, Sainsbury**, and **Tesco** account for 75% of food sales in the UK.<sup>28</sup>

**Table 1: agrifood TNC profits (US\$ billions)<sup>28</sup>**

COMPANY	2003	2002	2001	2000	COMPANY	2003	2002	2001	2000
<b>Wal-Mart</b>					<b>Unilever</b>				
Pre-tax profits	12.3	10.4	9.9	8.3	Pre-tax profits	6.6	5.7	5	4.8
Return on equity*	22%	20%	22%	22%	Return on equity	13%	10%	7%	6%
<b>Tesco</b>					<b>BAT</b>				
Pre-tax profits	2.2	1.8	1.6	1.4	Pre-tax profits		3.2	3	2.3
Return on equity	14%	15%	14%	14%	Return on equity		21%	20%	13%
<b>Carrefour</b>					<b>PepsiCo</b>				
Pre-tax profits		2.6	2.2	2.2	Pre-tax profits	5	4.9	4	3.8
Return on equity		23%	17%	13%	Return on equity	30%	35%	30%	30%
<b>Nestlé</b>					<b>DuPont</b>				
Pre-tax profits	6.2	6.2	5.2	5	Pre-tax profits	0.1	2.1	6.9	3.5
Return on equity	17%	22%	21%	21%	Return on equity	10%	-12%	30%	17%

\*Return on equity is a useful measure of a company's profit margins. It is calculated by dividing a company's net income by the shareholder equity, in effect, the amount of money invested in a company by shareholders. A 20% return on equity indicates that for every US\$1 invested in the company, the shareholder would earn 20 cents.

### Crisis for smallholder agriculture

Table 1 shows that the agrifood chain is highly profitable for the companies that dominate the industry. Many are wealthier than the countries in which they do business. In 2002, for example, Nestlé recorded profits greater than Ghana's gross domestic product (GDP) that year. In 2003, Unilever's profits were a third larger than Mozambique's GDP, while Wal-Mart's profits were bigger than the economies of Ghana and Mozambique combined.<sup>30</sup> Yet there is a stark contrast between these riches and the living conditions of those who produce the raw materials that contribute to the TNCs' wealth. Across Asia, Africa and Latin America, hundreds of millions of farmers and workers, a large proportion of whom are women, struggle to survive on a dollar or two per day. About 70% of the world's poor people live and work in rural areas,<sup>31</sup> and the majority will continue to do so until well into the 21st century (IFAD 2001).

World prices for important agricultural goods have been on a long-term downward trend, with disastrous consequences for rural communities. Prices for coffee, cocoa, rice, palm oil and sugar have collapsed by 50% or more over the past two decades, with other key crops such as wheat, maize and tea also registering steep declines.<sup>32</sup> If the prices for the top ten tropical commodities had risen in line with inflation over the last twenty years, it is estimated that in 2002 alone countries producing these goods would have received an extra US\$242 billion (Robbins 2003).

The commodities crisis is a major cause of mass poverty and hunger in the developing world (UNCTAD 2002a). Often the prices that smallholders get for their crops do not cover the cost of producing them, leaving farmers and workers struggling to feed their families. Those countries where agriculture makes up a large share of GDP, employment and export earnings have the highest levels of under-nourishment. Overall, the number of hungry people in the developing world increased by 34 million from the mid-1990s to stand at 815 million in 2002 (FAO 2004).

The crisis caused by rock bottom producer prices has been exacerbated by a rise in the cost of farm inputs such as seeds, pesticides, herbicides and fertilisers. The creation of strong global rules granting and protecting intellectual property rights (IPRs) over plant varieties and new seed technologies (such as GM seeds) has enabled TNCs to raise the prices they charge for these products. Meanwhile, the removal of state subsidies for agricultural inputs in developing countries has also increased farmers' costs. Smallholders who produce for commercial markets are being caught in a 'cost-price squeeze': companies are able to charge higher prices for agricultural inputs, and at the same time pay lower prices for farmers' goods.

Contrary to economic logic, declining returns for farmers often do not result in their abandoning agriculture, leading to a fall in overall production and a corresponding increase in farmgate prices. Small-scale and marginal farmers are relatively locked in to their markets. It is not cheap or easy to bring land in and out of production or to change the crops grown on it; a farm that grows cocoa, for instance, cannot easily switch to growing maize or vegetables.<sup>33</sup> As a result, many smallholders respond to low prices by producing even more just to get the same returns. At the same time, smallholder farmers in developing countries have few alternative ways of securing a livelihood. Aleyamma is a small-scale tea farmer from Nilgiris in Tamil Nadu, India, and her story is typical: *'Before I planted tea I grew tapioca and yams. I could feed my family,'* she says. But tea prices have collapsed, leaving her *'well and truly stuck'*.

***'We can't afford to pull out of the tea,' she says. 'It was such a huge investment. And since my land is all planted up with tea there is no space to grow any food on it. My grandchildren eat less food now than I fed my children in our early days when we struggled here.'***<sup>34</sup>

This farm crisis is not confined to the South. It is a global problem felt by producers and workers in developed countries, where thousands of small and family farms are going bankrupt each year. Farm incomes in the UK have declined by 40% over the last 30 years, and about 87,000 farmers and farm workers left the sector between 1993 and 2001.<sup>35</sup> France has lost half its farmers in the last 20 years,<sup>36</sup> while in Canada, net farm income has sunk to Depression-era levels.<sup>37</sup>

### Box 3

#### Three rural worlds<sup>38</sup>

Social and economic inequalities are growing among the estimated two and a half billion people that make a living from agriculture across the world. Government policies tend to view rural populations as a homogeneous whole, or favour wealthier farmers. They are often blind to the enormous disparities that exist between the three 'rural worlds' described here. Despite the diverging trends, rural world 3 is intimately connected to rural worlds 1 and 2, as it makes up a large part of the agricultural labour force.

**Rural world 1** comprises the wealthy, industrialised farmers, who:

- are connected to global markets through contracts with agribusiness
- have superior access to resources
- use capital- and input-intensive production methods.

**Rural world 2** comprises the small-scale and family farmers, who:

- face declining returns and increased risks
- lack capital, information and resources
- are vulnerable to the forces of globalisation.

**Rural world 3** are subsistence-oriented farmers and landless labourers, who:

- are seasonal, migrant or family labourers
- have little or no land
- are unskilled and uneducated, with few livelihood alternatives
- make up almost four-fifths of the world's hungry people.

### Many factors have triggered the crisis in smallholder agriculture

A complex interplay of factors has given rise to this crisis in smallholder agriculture. Over the last two decades the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) have enforced trade liberalisation in developing countries, which has intensified global competition in agriculture.<sup>39</sup> These institutions have also pressed governments in the South to withdraw state support to farmers, leaving rural producers more exposed to global market forces and vulnerable to poverty – particularly those in poorer, more remote areas.<sup>40</sup> The chronic oversupply of many farm commodities – in part caused by subsidies to Northern farmers, donor policies and the demise of global commodity agreements – has lowered the prices paid to agricultural producers, while the introduction of new technologies has increased some types of production and therefore supply. These technologies, however, generally have been targeted at large-scale farms and tend to bypass poor producers.<sup>41</sup>

### Corporate concentration

However, another important cause of the farm crisis, largely overlooked by policymakers, is the concentration of market power amongst a small number of agrifood TNCs. Markets are said to be ‘concentrated’ when they become dominated by a small number of companies. Concentration puts the dominant firms in a position to use and abuse their power to extract unfair profits from other players in the market, for example, by forcing down prices they pay to producers, or by shutting other companies out of the market.<sup>42</sup>

#### Box 4

### Key drivers of agrifood TNC concentration and capture of markets in the South

**Structural adjustment programmes (SAPs):** In many developing countries, the World Bank, IMF and other aid donors have required states to withdraw from agricultural research, production, extension and marketing, and to allow private, for-profit actors, including TNCs, to step in. Although this removed some inefficiencies, in many instances public monopolies have been replaced by anti-competitive, private monopolies.<sup>43</sup>

**Trade and investment liberalisation:** Over the last two decades or so, developing countries have reduced their barriers to trade and investment flows, largely as a condition of receiving aid. While liberalisation can enhance competition by enabling new goods and firms to enter local markets, it can also encourage the concentration of market power among a small number of dominant global companies, enabling them to distort markets.<sup>44</sup> Freer competition is likely to provide the greatest benefits to Northern TNCs, as they are better equipped than local firms to take advantage of market opportunities.<sup>45</sup>

**Competition policy:** Policymakers tend to see large-scale companies as inherently more efficient and more competitive on world markets, and have been reluctant to contest mergers and acquisitions. As a result, corporations have grown in scale, increasing concentration, the potential for market distortions and the power of corporate elites.<sup>46</sup>

**Intellectual property rights (IPRs):** The protection of IPRs on new plant varieties and seeds have become integral to the agro-input industry. However, IPRs such as plant breeders’ rights<sup>47</sup> and patents are excessively broad, lasting up to 20 years and sometimes allowing ownership of an entire plant species. This restricts the number of players in a market and encourages industry concentration.<sup>48</sup> Control of brands, trademarks and patents also raises barriers to competition in the food manufacturing and retailing industries, allowing dominant firms to concentrate capital away from the farm, and away from the South.<sup>49</sup> IPRs are justified as an incentive for investment in research and development, but in practice they are more a means of keeping competition at bay.

**Corporate strategy:** Intense competition and market saturation in the North have prompted agrifood corporations to expand into Southern markets in the search for higher margins and sales, as well as for cheaper sources of labour and raw materials.<sup>50</sup>

ActionAid recognises that the investments made by agrifood TNCs can work to reduce poverty if they are properly designed and managed to support national development goals. But instead of helping to foster vibrant agricultural economies, agrifood TNCs are in many cases exercising their market power to drive anti-development characteristics in the agrifood chain. We show how the TNCs' drive to increase shareholder and consumer value is leading to a perverse transfer of wealth away from rural communities in the South, and to the marginalisation of smallholder farmers and farm workers.

The use and abuse of market power is not the only corporate practice that is undermining people's rights, and rural communities suffer many other rights violations as a result of agrifood TNC operations. These include forced displacement, the use of child labour and pesticide poisonings. Yet private sector companies are not fully accountable for these abuses, leaving vulnerable communities at risk and affected people with little hope of seeing justice done.

The problems highlighted below result not only from the use and abuse of corporate power, but also from a lack of countervailing action by governments to re-govern agrifood markets towards more equitable outcomes. The result is increasing corporate size, concentration and bargaining power over small-scale farmers and rural workers. Given the benefits that flow from a thriving smallholder economy, this presents a serious threat to sustainable development. Yet government inaction and a reliance on voluntary regulation will not curb the agrifood TNCs' damaging effects on rural development and people's rights. The evidence presented in this report makes a compelling case for legally binding and enforced regulation of these companies. It shows that urgent action is needed to:

- **re-govern agrifood markets towards pro-poor development goals**
- **hold TNCs legally accountable for their impacts on human rights and the environment.**

## **Section three**

# **Six reasons to regulate agrifood corporations**



***‘Despite the fact that transnational corporations increasingly control our food system, there are still relatively few mechanisms in place to ensure that they respect standards and do not violate human rights.’*** Jean Ziegler, *UN Special Rapporteur on the right to food, 2003*<sup>51</sup>

The unchecked use and abuse of corporate power is marginalising smallholder agriculture and depriving poor people of their basic rights to food, livelihood, health and education. There are many reasons why governments need to regulate agrifood corporations; this report highlights six of them. The first three explain why agrifood markets need to be re-governed towards pro-poor development goals, while the final three describe why corporations need to be held legally accountable for their negative impacts on human rights and the environment.

### **Three reasons to re-govern markets**

- 1 TNCs use and abuse their market power to drain wealth from poor communities
- 2 TNCs pay low prices and capture the resulting value
- 3 TNCs marginalise smallholders and rural workers.

### **Three reasons to make corporations legally accountable**

- 1 TNCs are not fully accountable for their impacts on human rights and the environment
- 2 corporate social responsibility is optional and insufficient
- 3 people harmed by corporate activity are denied access to justice.

## **3.1 TNCs use and abuse their market power to drain wealth from poor communities**

***‘We are the flour in your bread, the wheat in your noodles, the salt on your fries. We are the corn in your tortillas, the chocolate in your dessert, the sweetener in your soft drink. We are the oil in your salad dressing and the beef, pork or chicken you eat for dinner. We are the cotton in your clothing, the backing on your carpet and the fertilizer in your field.’*** *Commodity trading TNC Cargill, corporate brochure 2001*<sup>52</sup>

Global agrifood markets are highly concentrated (see Box 2) – an ‘unquestionable’ fact, according to the UK government.<sup>53</sup> Concentration at the global level can increase concentration in national markets. A wave of international mega-mergers in the agro-input industry, for example, (see Table 2) has dramatically reduced the number of firms in India, and given TNCs a larger scale of operations to challenge local companies.<sup>54</sup> In bulk commodity markets, national trading and export companies have virtually disappeared from many countries and become subsidiaries or agents of TNCs, according to the UN Conference on Trade and Development (UNCTAD).<sup>55</sup>

While national level data on agrifood TNC market share in developing countries is relatively patchy, evidence suggests that farmers who supply domestic markets are also confronted with high levels of corporate concentration.<sup>56</sup> Global supermarkets and processing companies are moving rapidly into middle- and low-income countries, creating national market structures similar to those found on export markets, as well as bringing business models that exclude poorer producers from markets (see Section 3.3).<sup>57</sup>

Market concentration does not necessarily lead to abuse of market power. But the leading companies in any concentrated sector invariably use their dominant position to skew wealth and resources away from smaller players towards themselves. In the words of one business analyst, corporate concentration *'leads to a transfer of power and financial resources from consumers, taxpayers and small enterprises to a narrow business elite.'*<sup>58</sup>

A hands off approach to growing TNC concentration by governments in the North, and weak regulation in the South, has enhanced the opportunity for TNCs to exercise their market power. Cases are difficult to prove, and developing countries are poorly equipped to investigate them. However, there is enough evidence of abuse for regulators to take action and stem the harm caused to farming communities. Agrifood TNCs use and abuse their market power in a number of ways, for example, by:

- pushing down producer prices
- pushing up input prices
- pooling patented technologies
- shutting out competitors
- engaging in unfair buying practices
- forming price-fixing cartels.

## Corporate concentration pushes down producer prices

***'We have a system in which a half dozen companies are strangling the growers. Each year they come up with a new way to squeeze the growers tighter.'*** Helio Friedricha, councillor from Rio Grande do Sul, a tobacco-growing region in southern Brazil<sup>59</sup>

Increasing levels of concentration in the agrifood chain means farmers are selling their goods to a progressively smaller number of companies. This gives companies enormous bargaining power over producers and makes it possible for them to drive down farmgate prices. Research has shown that agrifood TNCs exert their market power through aggressive negotiations on price, bulk buying and playing producers off against each other (Vorley 2003; Dobson *et al.* 2003; Oxfam 2004). This forces smallholders to accept prices that are lower than they would be in markets with a more competitive structure, and to cut investments they need to make on their farms (UNCTAD 2003).

### Draining wealth from rural communities

The savings that companies make by paying farmers below competitive rates are either kept as profit, or passed on to consumers to gain market share from their competitors. Agrifood TNCs are therefore using concentrated buyer power to transfer wealth from farmers and rural communities to company owners and urban consumers – and from poor countries to rich countries.

In west Africa, for example, recent studies show corporate concentration has enabled transnational traders to push down the prices they pay to smallholder cocoa farmers. TNCs such as ADM, Barry Callebaut and Cargill reportedly control over 95% of Côte d'Ivoire's cocoa processing capacity,<sup>60</sup> and over 90% of its cocoa exports.<sup>61</sup> Econometric evidence presented by Wilcox and Abbott (2004) shows that corporate buyers are exerting market power against cocoa farmers in Côte d'Ivoire. The study found that traders are also exercising market power to overcharge chocolate manufacturers for cocoa, which has increased the gap between farmgate and retail prices for cocoa products<sup>62</sup> (see Section 3.2). The researchers concluded that *'farm income would be higher if these markets were more competitive'* (Wilcox & Abbott 2004).<sup>63</sup>

Growing concentration at the retail stage of the supply chain is also forcing down producer prices, and a striking display of supermarket buyer power is presented in Figure 2. The UK supermarket Asda Wal-Mart, for example, used its bargaining power over suppliers to negotiate price cuts for bananas in 2002, and then brought the UK retail price for bananas down from £1.08 to £0.94 per kg. Other supermarkets followed suit

and demanded deep price cuts from their suppliers. By 2004, bananas were retailing at £0.74 per kg in UK supermarkets. The fruit is a crucial source of livelihood for millions of producers and workers in Latin America and the Caribbean. But research from the campaign group Banana Link shows that with a retail price of £0.81 per kg it is impossible for growers in Costa Rica to be paid the legal minimum price for a box of bananas, and in turn, impossible for growers to pay plantation workers the legal minimum wage.<sup>64</sup>

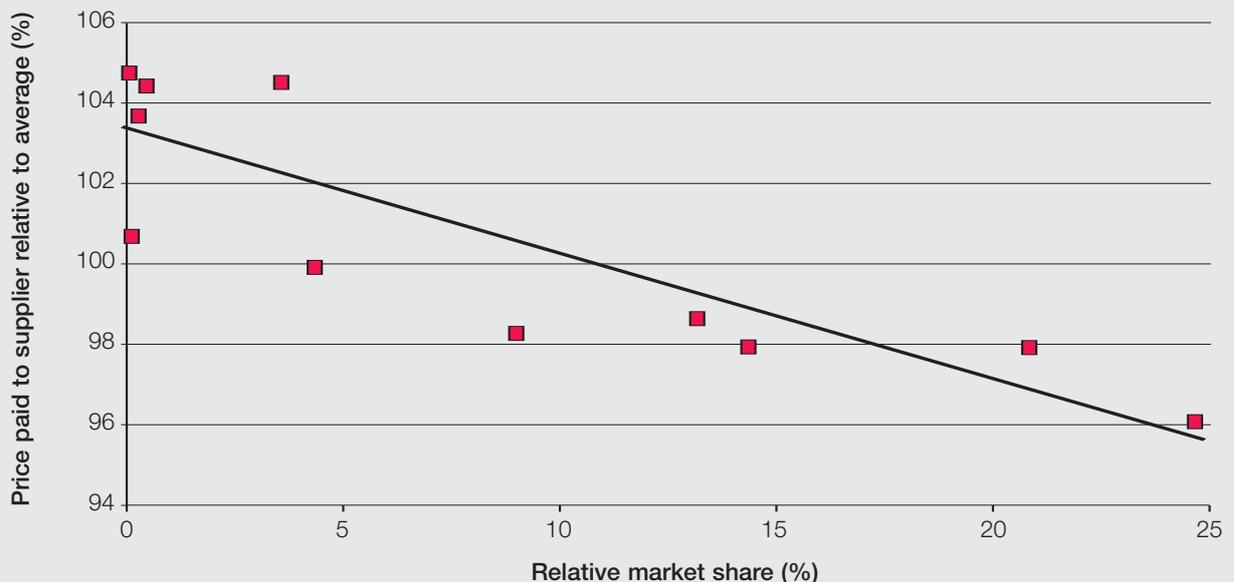
The trading stage of the banana chain is also highly concentrated. Just five companies – Chiquita, Del Monte, Dole, Fyffes and Noboa – control over 80% of the global market.<sup>65</sup> According to UNCTAD, these companies ‘are able to exercise their market power at several or all the stages of the banana marketing chain.’<sup>66</sup> Only about 12% of the retail price for bananas stays in producing countries, even though very little processing takes place off the farm or plantation. For every £1.00 that shoppers in the UK spend on loose Ecuadorian bananas, around 40 pence goes to supermarkets, while plantation workers receive just 1.5 pence.<sup>67</sup>

It is estimated that trade within TNCs now accounts for around 60% of all world trade flows, reflecting the growth of ‘intra-firm’ trade.<sup>68</sup> This trend can create downward pressure on the prices paid to farmers. The use of non-cash trading methods such as contracts to exchange goods in these private or ‘closed’ chains reduces the ability of markets to ‘discover’ what the open market rate for farm produce should be. This increases farmers’ vulnerability to price manipulation, as prices become a matter for company officials to decide on (Murphy 2002).

### Buyer power in action

The bigger a retailer is, the better able it is to extract lower prices from suppliers. This was a finding of the UK Competition Commission’s investigation into the UK supermarket sector in 2000.<sup>69</sup> The Commission’s data reveals a strong link between a retailers’ market share and its ability to exercise buyer power (see Figure 2). The biggest supermarket – in this case Tesco – consistently paid suppliers 4% below the industry average, while smaller supermarkets paid above the average rate.

**Figure 2: the impact of supermarket buyer power on prices paid to producers**



Source: Vorley, B (2003) Data from UK Competition Commission (2000), appendix 7.2. Applies to the suppliers’ top five lines

Governments have a responsibility to prevent the misuse of market power from harming vulnerable sections of society. Yet competition authorities tend to turn a blind eye to buyer power, especially if lower producer prices are passed on to consumers in the form of cheaper food. But in much of the agrifood chain, the wealth extracted from rural areas through the exercise of buyer power is not transmitted to consumers (see Section 3.2). Consumers also lose out when buyer power forces producers to cut investment on their farms, reducing both product quality and consumer choice (UNCTAD 2003; Dobson *et al.* 2003). ActionAid calls on regulators to re-examine competition policy and to address buyer power in agrifood markets (see Section 4).

## Corporate concentration pushes up farm input prices

***‘The speed of concentration in the sector raises serious competition issues. There are considerable dangers to food security if the technologies are overpriced to the exclusion of small farmers, or there is no alternative source of new technologies, particularly from the public sector.’*** *Commission on Intellectual Property Rights, 2002<sup>70</sup>*

Farmers also face highly concentrated markets when they buy agricultural inputs, particularly for commercial seeds and agrochemicals such as pesticides and herbicides (see Table 2). The costs of these inputs have been rising in recent years, leaving commercially-oriented farmers squeezed from both sides: paying more to agrifood companies for inputs, but receiving less for their produce from buyers. Before agricultural markets in developing countries were liberalised, many farmers relied on government support for agrochemicals. Now these subsidies have been reduced or removed altogether, farmers’ costs for these inputs have increased. Meanwhile, the World Trade Organization’s rules on intellectual property rights have facilitated concentration in the commercial seed industry. WTO rules also mean that new commercial seeds are often more expensive than traditional varieties, as they allow companies to charge royalty payments and issue restrictive contracts to farmers on protected crops.<sup>72</sup>

**Table 2: twelve agrochemical TNCs become six**

Beginning 1994	By 1997	By 1999	2000-2003
<b>Bayer (Germany)</b>	Bayer	AgrEvo	<b>Bayer</b>
<b>Hoechst (Germany)</b>	AgrEvo	Aventis	
<b>Schering (Germany)</b>	AgrEvo	Aventis	
<b>Rhône-Poulenc (France)</b>	Rhône-Poulenc		
<b>Ciba Geigy (Swiss)</b>	Novartis	Novartis	<b>Syngenta</b>
<b>Sandoz (Swiss)</b>	Novartis	Novartis	
<b>Zeneca (UK)</b>	Zeneca	AstraZeneca	
<b>BASF (Germany)</b>	BASF	BASF	<b>BASF</b>
<b>Cyanamid (US)</b>	Cyanamid	Cyanamid	
<b>DowElanco (US)</b>	DowElanco	Dow	<b>Dow</b>
<b>DuPont (US)</b>	DuPont	DuPont	<b>DuPont</b>
<b>Monsanto (US)</b>	Monsanto	Monsanto	<b>Monsanto</b>

Source: Dinham, B ‘Corporations and pesticides’ (forthcoming)

## Intellectual property rights lead to higher seed prices

Field research in India in 2002-2003 found that farmers using Monsanto’s genetically modified Bt cotton seeds paid between 200% to 300% more for them than traditional non-GM varieties. Producers in the Nalgonda district in Andhra Pradesh paid up to 1,600 rupees for a 450-gramme packet of Bt cotton seeds, of which the royalty component was 1,200 rupees. In comparison, a packet of traditional cotton seed cost 450-500 rupees. Despite the higher costs, some Bt cotton yields were lower than those of local varieties.<sup>73</sup> A 2003-2004 follow-up survey of 164 cotton farmers in 27 villages in Andhra Pradesh found a small reduction in pesticide use among Bt cotton farmers. However, for small and medium-scale farmers, the yield difference

between Bt and non-Bt users was negligible. Having paid a higher price for Bt seeds and spent more money on their cultivation, small and medium-scale farmers earned on average 1,526 rupees (US\$35) less per acre than their non-Bt counterparts.<sup>74</sup> Monsanto, however, claims Bt cotton users in Andhra Pradesh have had substantial reductions in pesticide use and higher yields.<sup>75</sup>

### Farmers become indebted

Commercial seeds are commonly tied in with expensive pesticides, herbicides or other agrochemicals produced by the same company by means of contracts – without the chemicals, the crops either will not grow or yield less. Small-scale farmers often have to take out loans to buy these input packages, and so are vulnerable to falling into debt if the expected yield increases do not materialise. In South Africa, for example, the advocacy group Biowatch reported that in 2004, smallholder Bt cotton growers in the Makhathini flats in Kwa-Zulu Natal were experiencing debt problems after taking up a corporate-promoted package of credit, GM seed, fertiliser, pesticide and technical advice from Vunisa, a local partner of Monsanto. Creditors from the para-statal Land Bank said that 2,390 farmers owed US\$3.3 million in loans, or an average of about US\$1,390 each – a crippling amount for smallholder farmers.<sup>76</sup> Monsanto, meanwhile, says that Bt cotton has brought benefits to smallholders in Makhathini.

**Table 3: the same four companies control the global seed and agrochemical markets**

	Maize seed (excluding China)	Soy bean seed	Agrochemicals
<b>Monsanto</b>	38%	29%	11%
<b>DuPont</b>	27%	15%	6%
<b>Syngenta</b>	7%	4%	19%
<b>Dow</b>	5%	1%	10%
<b>Total</b>	<b>77%</b>	<b>49%</b>	<b>46%</b>

Source: ETC Group (2003) 'Oligopoly, Inc. – concentration in corporate power: 2003'

### Other anti-competitive practices in the agro-input industry

Global expansion of the WTO's rules on IPRs are giving corporations unprecedented control over the world's food supply. By manipulating just one gene of a living organism, a company can be granted exclusive ownership of a plant variety, and sometimes an entire plant species.<sup>77</sup> Patents on agricultural technologies last for 17-20 years, allowing TNCs to block competition, set prices and monopolise entire markets for commercially produced seeds.<sup>78</sup>

IPRs are designed to provide incentives for investment in research and development, leading to innovation. However, IPRs on products and processes are excessively strong, and can have the effect of:

- stifling innovation
- restricting competition
- driving concentration in the industry.<sup>79</sup>

Just six companies now hold 74% of all US patents on agricultural technologies, which indicates the level of concentration in the sector.<sup>80</sup> But excessive legal control over these technologies can stifle research in the industry. Senior public sector researchers say that patents on key plant genes and technologies pose a 'significant barrier' to the development of new crops – particularly subsistence crops.<sup>81</sup> When Swiss public sector researchers wanted to develop vitamin A enhanced rice, they discovered there were 70 patents owned by 32 companies and universities on the key genes involved in developing so-called 'golden rice'. After finding it difficult to navigate the complexities created by this tangle of patents, the researchers eventually had to strike a deal with a key patent holder, AstraZeneca (now Syngenta), in 2000 to move forward on the stalled research (Commission on IPRs 2002). Whatever the merits of this controversial GM technology, these patents posed a substantial barrier to innovation.

### Corporate cooperation

According to a senior food industry analyst *'Cooperation is becoming as common as competition among the industry's leading corporations.'*<sup>82</sup> Canada-based public interest organisation the ETC Group has documented a trend towards corporations swapping and pooling their patents on key technologies to reinforce their control over agrifood markets. In effect, they are establishing 'global technology cartels' that are overlooked by competition authorities, or do not come within the regulators' remit.<sup>83</sup> In 2002, for example, DuPont and Monsanto agreed to drop outstanding hostile patent lawsuits against each other, and instead to swap key patented technologies for GM maize, rapeseed and soybean crops.<sup>84</sup> ETC Group director Pat Mooney commented that the agreement *'appears to encourage the two corporations to extend the use of existing technologies rather than to invent better ones,'* and that it *'cuts the number of major players down from five to four. This means less choice and less innovation for the same or higher prices.'*<sup>85</sup>

### Shutting out the competition

However, agrifood companies do not always opt for cosy commercial relationships. In July 2004, Syngenta, the world's largest agrochemical company, filed a lawsuit against Monsanto, the dominant player in GM seeds. Syngenta's complaint alleges that Monsanto is a *'monopolist in the markets for every biotechnology corn trait in the United States' market* and that the company maintained *'improper and illegal monopolization'* of the supply chain for GM maize seeds, which are used by farmers throughout the US.<sup>86</sup> Syngenta claims that, since the 1990s, Monsanto has sustained and increased its monopoly power through a series of *'coercive tactics and exclusive dealing arrangements'* with 300 US seed companies, which were designed to *'keep competitors out of the market for GM seeds.'*<sup>87</sup> Monsanto maintains that the allegations are without merit.

It is unlikely to be an isolated case. A World Bank study warns that *'with an increased reliance on the patent system for protecting agricultural products, monopolistic pricing may very well become a serious cause of concern in the future.'*<sup>88</sup> In view of such concerns, ActionAid calls on governments to reform intellectual property rights and ensure that no patents are granted on plants and seeds.

#### Box 5

### The agrifood TNCs' political power

***'Thanks to its political influence, big agribusiness has been able to pack USDA [the US Department of Agriculture] with appointees who have a background of working in the industry, lobbying for it, or performing research or other functions on its behalf. These appointees have helped to implement policies that undermine the regulatory mission of USDA in favor of the bottom-line interests of agribusiness.'*** Philip Mattera, industry analyst, in *USDA Inc (2004)*

With economic power comes political power. Agrifood corporations now wield enormous influence over decision-makers, from Washington to the Ghanaian parliament. The UN's Special Rapporteur on the right to food states that: *'As financially powerful lobbying groups, corporations can also exert great control over laws, policies and standards applied in their industries, which can result in looser regulation and negative impacts on health, safety, price and quality of food.'*<sup>89</sup>

Agrifood TNCs have extensive influence over policymaking in developing countries. In Ghana, for example, Unilever has become a central pillar of the national economy, and the government conducts economic policy with specific reference to the firm's corporate strategy. As former finance minister JH Mensah said, *'If you do not know what Unilever's investment intentions are for the next three years, drawing up a national plan is just an exercise in fanciful thinking.'*<sup>90</sup>

In many developing countries, domestic agrifood companies use their business and social networks to influence officials directly. For example, executives from the Charoen Pokphand (CP) Group, a Thai agrifood company with transnational reach, have high-level access to the Thai government. CP Foods director Pong Visedpaitoon is an advisor to the government Commission on Agriculture and Cooperatives, while the president of CP's Crop Integration Business Group, Monti Congrakultien, is also a member of the Board of Thailand's Bank for Agriculture and Cooperatives, which provides credit to poor farmers.<sup>91</sup>

A 'revolving door' operates between government bureaucracies and agrifood corporations. Most famously, Dan Amstutz, a former Cargill vice president, is credited with drafting the US proposal for bringing agriculture under the remit of international trade rules while he was at the US Trade Representative's office. The proposal became the WTO Agreement on Agriculture. After his government posting, Amstutz returned to work in the global grain trade.<sup>92</sup> Similarly, a small number of US companies, including DuPont and Pfizer, captured the US trade agenda-setting process in the 1990s, and, in partnership with European and Japanese corporations, drafted principles that became the blueprint for the WTO's agreement on intellectual property rights.<sup>93</sup>

Agrifood TNCs have repeatedly used their political power to block attempts by farm groups to raise the value of their crops. The grain industry, for example, undermined the International Grains Agreement, which was established to maintain minimum global prices for crops such as wheat.<sup>94</sup> The US government, acting at the behest of US trans-nationals, recently lost its eleventh legal challenge to the Canadian Wheat Board, this time at the WTO.<sup>95</sup> This public board manages the supply of grain from Canada's Western Provinces, denying companies such as Cargill and ADM a lucrative market.

## Corporations engage in unfair buying practices

***'I feel cheated by the operations of Twifo Oil Palm Plantation because I do not understand the deductions they make. When you doubt the figure they will not explain it properly to you... There is no effort to correct mistakes quickly, if at all. We just have to accept what the officials give us.'*** Kwadwo Osaea palm oil smallholder at Unilever's joint venture plantation in Twifo Ntafrewaso, Ghana<sup>96</sup>

Agrifood TNCs commonly engage in unfair trading practices with smallholders. These practices are routine and can increase levels of poverty and insecurity for vulnerable producers. High levels of market concentration mean that farmers often have a limited choice of buyers for their produce and a limited number of suppliers for agricultural inputs, leaving them open to exploitation, debt and dependency.<sup>97</sup> Farmers are particularly vulnerable because contracts are almost always verbal, making it difficult for them to obtain redress in cases of unfair treatment.

### Unfair TNC buying practices include

- delaying payment for produce
- lowering prices at the last minute
- buying less than the amount agreed to
- untransparent weighing and grading of produce
- making excessive and untransparent deductions from producer prices
- threatening to remove farmers from supply lists
- removing farmers from supply lists without good reason
- charging high interest rates for credit
- changing quality standards without adequate notice.

### Food processors and supermarkets

As well as forcing down farmgate prices, the major food processors and supermarkets exercise their market power to push the costs and risks of doing business onto the weakest links in the agrifood chain – farmers and farm workers. Agrifood firms have introduced a ‘just-in-time’ business model for fresh produce supply chains in the South, whereby they no longer buy goods up front so they can reduce the costs of holding them in stock.<sup>98</sup> Irrespective of whether buyers keep the savings as profits or pass them on to consumers in the form of cheaper food, farmers and rural workers suffer the consequences.

The ‘just-in-time’ approach encourages buying practices that increase smallholders’ vulnerability. For example, sudden short-term changes in consumer demand for fruit and vegetables are common. When demand suddenly drops, companies often lower the prices they pay to producers at the last minute, buy less than the quantities previously agreed to, or cancel orders altogether (Oxfam 2004). The rapidly changing quantities demanded by companies, stringent quality standards and the lack of enforceable contracts allows corporate buyers to reject perfectly good produce on spurious grounds.<sup>99</sup>

### Bulk commodity traders

Companies that bulk buy commodities such as palm oil, sugar and tobacco often act as banks for small-scale producers. They extend credit in the form of seeds, pesticides and technical support to farmers in return for exclusive rights to buy the farmer’s crop. This can leave farmers at the mercy of TNCs, and there are allegations that companies determine producer prices unilaterally, and have paid farmers less than the value of the loan.<sup>100</sup> Some farmers that sign contracts with Souza Cruz, a Brazilian subsidiary of British American Tobacco (BAT), can only buy inputs from, and sell their crop to, the company. Individually most farmers have little or no bargaining power with the tobacco companies. The price paid for their crop is tied to quality criteria which farmers say is unclear and decided on unilaterally by the companies. Some Brazilian farmers refer to this contract system as a ‘new feudalism’, and say they would stop growing tobacco if they could readily switch to another crop.<sup>101</sup>

In Ghana, smallholders supplying palm oil fruit to the Twifo Oil Palm Plantation (TOPP) interviewed by ActionAid in 2004 have expressed concerns about what they feel is a lack of transparency when the company weighs their produce, and when it makes deductions from producer prices for inputs already provided. Unilever, which enjoys a near monopoly status as a producer of refined palm oil in Ghana, took over management of TOPP in 1998.<sup>102</sup> The company provides agro-inputs and technical services, on condition that farmers do not sell their crop elsewhere. Contracted smallholders have to sell their produce to TOPP, but some say they are not getting a fair price for it. The company determines producer prices, which are below the open market rate for palm fruit.<sup>103</sup>

All the farmers interviewed by ActionAid complained of untransparent dealings by the company. Appiah Nti, a small-scale producer who supplies TOPP with palm fruit, says: *‘Before Unilever came, TOPP weighed the harvest on the farm site to our seeing. Now they put the palm bunches of many farmers together until the truck is full before sending it to the oil mill. ... Even though all bunches are not the same size, we only know the weight of our bunches at the end of the month when we get our pay slip.’*<sup>104</sup>

Producers are concerned that:

- they are not present when their fruit is weighed
- fruit is usually classified at the lowest paying grade
- they are not aware what grading criteria, if any, are used
- they are not informed of the basis on which the plantation makes deductions for inputs
- TOPP pays below the market rate for palm oil fruit.<sup>105</sup>

TOPP estate managers say that a formal complaints system is in place, and that the company is preparing guidelines on ‘good agricultural practice’ for smallholder palm farmers.

Governments should address unfair buying practices and act against companies that pursue them. Companies should give small-scale producers contracts that are clear, simple and fair, and be open and transparent about their weighing, grading and deduction decisions. Companies should commit to longer-term relationships with farmers so as to build trust and better trading practices.

As well as having commercial benefits for companies, this would help protect farmers' livelihood security. Such relationships would also encourage better communications throughout the supply chain, making it easier to identify and address problems.<sup>106</sup>

## Corporate price-fixing cartels

*'Our competitors are our friends. Our customers are the enemy.'* James Randall, former president of grain trading TNC Archer Daniels Midland<sup>107</sup>

One of the most damaging abuses of market power comes in the form of global price-fixing cartels. Corporate cartels were a feature of the global economic landscape until the Second World War, when successful anti-cartel legal actions deterred their formation for the next 40 years.<sup>108</sup> But a wave of global cartels reappeared in the 1990s. The US Department of Justice and the European Commission have prosecuted or are currently investigating at least 40 different international price-fixing conspiracies that were in force at some point over the last decade.<sup>109</sup> According to Connor (2002), today's cartels cause massive market distortions and welfare losses, and *'incorporate a refinement of operational techniques, a global perspective, a multicultural pluralism, a leadership style, a degree of longevity, and a scale of operation that the world has never before seen.'*

Over the last several years, 85% of all fines imposed on global price-fixing operations were paid by food and agriculture cartels.<sup>110</sup> Several high profile cases have affected agrifood markets in developing countries, including cartels to fix prices for lysine (an amino acid added to animal feed), citric acid (added to food and animal feed), and corn fructose (a sweetener used in the food and drink industries). Many involved substantial fines and settlements:

- The US trading giant ADM paid US\$400 million in 2004 to settle an antitrust lawsuit that claimed the company conspired to fix the price of corn fructose.<sup>111</sup>
- ADM was also fined US\$100 million in 1996 for its role in the lysine and citric acid cartels.<sup>112</sup>
- AE Staley, a US subsidiary of UK sugar TNC Tate & Lyle, was accused of colluding in the corn fructose price-fixing cartel and agreed to pay damages of US\$100 million in an out-of-court settlement. Tate & Lyle deny any wrongdoing.<sup>113</sup>
- Cargill agreed to pay a US\$24 million settlement for its alleged role in the fructose cartel, while denying the charges.<sup>114</sup>

A proven cartel was found among the producers of bulk vitamins added to food and animal feed. In 1999 just three companies – Hoffmann-La Roche, BASF AG and Rhône-Poulenc (now owned by Bayer) – controlled 75% of the world market for vitamins. Investigators at the time found that the companies, plus several others, had colluded since 1990 to fix the price of vitamins.<sup>115</sup> The companies were prosecuted in the US, EU, Canada and Australia. Hoffmann-La Roche was fined US\$500 million by the US Department of Justice, and in 2001, eight companies, including the 'big three', were fined US\$770 million by the EU for their role in the conspiracy.<sup>116</sup> Mario Monti, the EU's competition commissioner at the time, concluded: *'The arrangements were part of a strategic plan conceived at the highest levels to control the world market in vitamins by illegal means.'*<sup>117</sup>

### Cartel impacts on developing countries

The Brazilian subsidiaries of the big three vitamin giants were found guilty by Brazilian authorities of a conspiracy to fix prices and allocate market share. The companies colluded to overcharge Brazilians for vitamin A, vitamin E and beta-carotene.<sup>118</sup> Analysts from the World Trade Institute measured trade flows during the period when the vitamin cartel was operating. They concluded that exports from countries in which the cartel was located, to countries in Africa, Europe, and Latin America that did not have anti-cartel laws, grew faster than exports to those nations that did have such laws. The researchers suggest the cartel had deliberately targeted countries in which its actions could not be brought to justice.<sup>119</sup>

These cartels operated for long periods in developed countries that have strong competition authorities. The fact that the corporations involved were apparently targeting countries where competition rules are weak or non-existent suggests price-fixing and market allocation are more widespread than is currently recognised. This supports the argument for increasing governmental cooperation on cross-border competition issues, with a view to establishing competition authorities at the regional level, and – if the political will is generated – eventually at the global level (see Section 4).

## 3.2 TNCs pay low prices and capture the resulting value

***‘Now at four to five rupees a kilo I can’t feed my family any more... Everyone here is struggling. It’s a vicious cycle. We can’t look after the land. So it is producing poorer yields... Can’t feed ourselves, how can we feed our plants?’*** Lakshmi, a small-scale tea grower from Gudalur valley, Tamil Nadu, India<sup>120</sup>

***‘The big winners from structural oversupply have been major transnational corporations... Low input prices have enabled these firms and traders to reap super-profits at the expense of poor producers.’*** UNCTAD press release for 2004 report<sup>121</sup>

The market distortions caused by agrifood TNCs are not the only factor working to bring down farmgate prices. Oversupply, changes in trade rules and weather conditions, for example, can also result in low prices. However, agrifood TNCs buy a large proportion of global agricultural production, and the low prices they pay to farmers are a major factor in creating and sustaining poverty in developing countries.

Furthermore, whether TNCs use their market power to push down prices, or simply take advantage of depressed markets to pay low prices, the savings they make are generally kept as profit, and passed on to consumers only if the company wishes to gain or consolidate market share. Wealth is therefore being transferred from farmers and rural areas to company owners, and from poor to rich countries.<sup>122</sup>

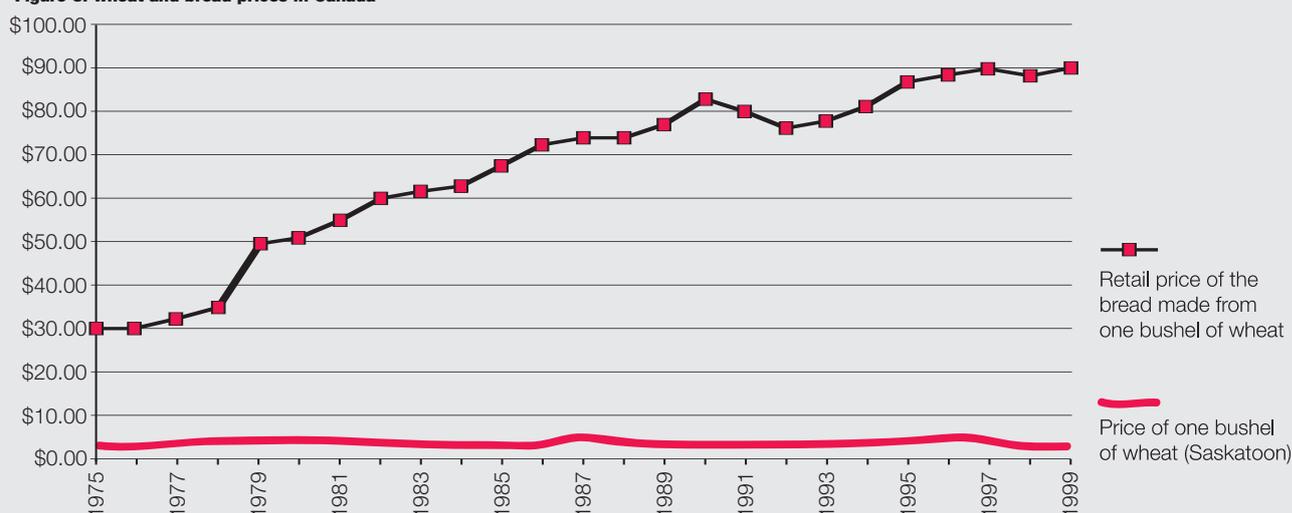
Low producer prices are having devastating effects on rural communities. For example, in the fertile hills of Matagalpa, a coffee-growing region in northern Nicaragua, hunger, disease and malnutrition are rife. Small-scale farmers and workers have been hit hard by the collapse of global coffee prices, which reduced income and employment and created food shortages for thousands of families.<sup>123</sup> Aid workers documented a high incidence of hunger-related diseases in coffee-growing areas and chronic malnutrition in almost half of all children under five.<sup>124</sup> Food shortages and malnutrition persist, and the UN continues to distribute food to around 100,000 people in northern Nicaragua.<sup>125</sup>

Despite the dramatic fall in prices for many farm commodities, consumers in developed countries have not seen a corresponding fall in prices for most food products containing these goods. In fact, some prices have gone up. UNCTAD has documented this widening gap between producer and retail prices, a gap that has grown faster since the 1980s and is widest in countries with the highest degrees of market concentration. The study concluded that higher retail prices cannot be attributed to increased operating costs for businesses.<sup>126</sup>

A World Bank study estimates that the divergence between farm and retail prices costs commodity-exporting countries more than US\$100 billion a year and that anti-competitive behaviour by the dominant transnational trading companies is the key cause (Morisset 1997). The coffee market provides a classic example. It is dominated by four TNCs: Kraft, Procter & Gamble, Sara Lee and Nestlé – a company reported to earn US\$0.26 for every US\$1 of instant coffee it sells.<sup>127</sup> In the early 1990s, the coffee earnings of exporting countries were US\$10-12 billion, while retail sales were around US\$30 billion. In 2002, retail sales had more than doubled to exceed US\$70 billion, but coffee-producing countries received about half their earnings of a decade earlier at only US\$5.5 billion.<sup>128</sup>

The same story is unfolding in developed countries. According to the UK National Farmers Union, there is no evidence that declining farmgate prices in the UK are being passed on to consumers. Sharp falls in producer prices for milk and lamb during the 1990s, for example, did not translate into lower retail prices for these goods. The overall farm-retail price gap is widening in the UK. From 1991-1992, the food retail price index rose by 15%, while farmgate prices went down by 9.6%.<sup>129</sup> Figure 3 shows that companies have captured the value generated by the increased gap between wheat and bread prices in Canada, where farmers are faced by an agrifood market in which ‘almost every link in the chain, in nearly every sector, is dominated by between two and 10 multi-billion-dollar multinational corporations’ (Qualman 2001).

Figure 3: wheat and bread prices in Canada<sup>130</sup>



The case study below highlights the current crisis in the Indian tea industry. Producer prices have now fallen below the cost of production, leaving farmers and workers struggling to feed their families while tea companies reap high profits.<sup>131</sup> The crisis is so acute that more than 800 tea garden workers are reported to have died of starvation in the state of west Bengal in 2004, while tens of thousands more have lost their jobs as tea plantations have closed down.<sup>132</sup>

#### Case study 1

### The crisis in India's tea industry

*‘Declining prices of tea at the primary commodity level has not brought down the prices of value added or packaged tea segment. Consumers are paying high prices for tea purchased off the shelf. Consequently the big tea companies like Hindustan Lever Ltd, Tata Tea Company etc are not apparently affected by the prolonged crisis. On the contrary, there are indications that their profits are increasing.’* Centre for

*Education and Communication, 2003<sup>133</sup>*

Over a million people are employed in the Indian tea industry, and this number rises significantly if casual workers are included.<sup>134</sup> Auction prices for tea have fallen by around 33% in southern India, from 69 rupees per kg in 1998 to 46 rupees in 2004, and by nearly 12% in northern India within the same timeframe. This means prices are below the cost of production – estimated to be approximately 75 rupees per kg in 2004.<sup>135</sup>

Many tea plantations have been forced to close because they can no longer cover their costs. While some blame the closures on poor management, falling tea prices have played a major role.<sup>136</sup> As a result of the crisis, workers on other plantations now receive substantially lower wages. The union for tea plantation workers in Nilgiris in Tamil Nadu, for example, recently negotiated a 12% wage cut for its members. At the same time, tea pickers have been given higher productivity targets, meaning more work for less pay.



ActionAid UK/ Tea picker, Tamil Nadu, India

According to Chandran, a 30-year-old worker on a plantation owned by Hindustan Lever in Nilgiris, more tea workers have fallen further into debt. He says: *'Everyone owes money to the "kadaikaran" [grocers] for food. On wage day all the shopkeepers wait for us outside the factory to take the money off us even as we are counting it. Earlier they trusted us. It was not like this. Now it's hard times for everyone.'*<sup>137</sup>

Dr Shylajadevi Menon, founder of the local Gudalur Adivasi hospital, is concerned about the rising levels of malnutrition in families dependent on tea estate wages, many of whom can no longer afford to buy as much food: *'We were beginning to feel that severe malnutrition was a thing of the past and something that was common in the late eighties and early nineties,'* Dr Menon says. *'Suddenly we are seeing an alarmingly steady increase in the numbers of malnourished children and anaemic ante-natals.'*<sup>138</sup>

Small-scale tea farmers have fared little better than plantation workers. Low prices at tea auctions and private sales have caused significant drops in their incomes. Like many others, Aleyamma came to Tamil Nadu several decades ago to grow tea. She bought three acres of land and worked hard to raise crops and feed her family. The fall in tea prices has affected her livelihood. *'Now, no matter how hard you work you can't feed your family. No one has work to give you. Everyone here is a small farmer. Everyone is having a crisis. At this point, I'm so desperate, I would sell my land but there's no one to buy it,'* she says. *'Ten years ago I could look at my life with satisfaction and say because of my hard work I have taken my family out of our poverty. Now I look at my grandchildren in despair. After working like a dog every single day of my life, we have nothing to give them.'*

### Why have prices declined?

Many factors could explain the fall in Indian tea prices – surplus production, poor quality tea, or the perceived 'seven year price cycle' in the Indian market. Some analysts interviewed by ActionAid in 2004 believe that large buying companies have also played a role in pushing down the price of tea.<sup>139</sup> A recent study noted regular complaints from tea producers and trade unions about cartels operating on the tea auction floors: *'It is alleged that the bigger players, operating on behalf of the corporate entities, keep away smaller brokers from the auction floors in order to reduce competition. That is one of the reasons that the tea price in the retail market is around 160 rupees per kilo while in the auctions it is less than 50 rupees per kg.'*<sup>140</sup>

Whatever its causes, the tea crisis is clearly having devastating effects for small-scale tea farmers and plantation workers, but tea companies are still reaping large profits. Hindustan Lever is estimated to have a 34% share of the Indian packaged tea market,<sup>141</sup> and markets leading brands such as Lipton Yellow Label

and Brooke Bond Red Label teas.<sup>142</sup> While producer prices have collapsed, shareholder dividends issued by Hindustan Lever have more than quadrupled since 1996<sup>143</sup> and the retail price for tea in India has gone up – from 85 to 105 rupees per kilo between 1999 and 2002,<sup>144</sup> and continues to rise.

### Revisiting supply management

The crisis in farm commodity markets is generating mass poverty and inequality on a global scale. Yet policymakers have responded to the problem by ignoring it. The case for learning from past lessons and re-establishing international supply management systems – made recently by some developing countries,<sup>145</sup> UNCTAD,<sup>146</sup> economists<sup>147</sup> and civil society groups such as Oxfam<sup>148</sup> – is clear. The main obstacle to building on these proposals is a lack of political will.

### Mainstreaming fairness in trading

Agrifood TNCs should commit to fair, long-term relationships with primary producers, and respect their basic rights – both indirectly, through their subsidiaries and business partners in the supply chain, and directly, in their dealings with smallholders. Paying producers even a small percentage more of the overall retail price would translate into huge benefits on the ground. Because retail prices have stayed the same or increased while farmgate prices have fallen, paying fairer prices to producers would not necessarily mean higher prices for consumers, or deep cuts in company profits.

Agrifood TNCs should learn from the Fairtrade experience and adopt fair trade<sup>149</sup> principles as standard corporate practice in all their dealings with developing country producers. This would help secure poor people's rights, including the rights to food and livelihood. Incorporating the principles of fair trade as standard corporate practice means that companies must:

- pay a guaranteed minimum price that ensures producers have a decent standard of living
- engage in long-term relationships with producers
- pay a social 'premium' that producers can use to invest in improvements to their businesses and living conditions
- make advance payments when required.<sup>150</sup>

Mainstreaming the fair trade principles carries many risks, not least companies making false or misleading claims about their dealings with producers. Companies should not make public claims about their fair trade credentials unless certified by a recognised Fairtrade labeling body. While some commodity chains are complex and difficult to monitor, many companies have removed layers of mid-chain suppliers and now deal more directly with primary producers. This practice, combined with increased traceability, rigorous quality controls and company inspections, means TNCs are better positioned to facilitate independent supply chain monitoring, and to monitor themselves the social impacts of their supply chain operations.

## 3.3 TNCs marginalise poor farmers and rural workers

***'They're not bothered about receiving milk from those who sell little, they want those who produce a lot more to reduce their number of suppliers and make gains in volume.'*** Baldur Frederich, a dairy farmer from Rio Grande do Sul, Brazil, describing his experience of selling to Parmalat<sup>151</sup>

The previous sections show that TNCs are using their dominant position in agrifood markets to extract wealth from rural areas in developing countries. This section shows that growing corporate power is having other marginalising effects on farming communities. In view of the critical importance of smallholder agriculture for reducing poverty, ensuring food security and generating pro-poor economic growth, it is vital that governments take action to prevent the exercise of corporate power from crushing smallholder agriculture.

Agrifood TNCs are marginalising small-scale farmers, wider rural communities and local agrifood companies by:

- demanding that farmers meet stringent standards
- denying communities' access to land
- undermining women's rights
- taking out patents and IPRs on crops
- crowding out local companies.

## Corporate standards

By introducing modern supply chain systems, national and global supermarkets are radically transforming agriculture in many middle- and lower-income countries, notably in Latin America, east and southeast Asia, and southern and eastern Africa. The pace of change is rapid. The top 30 global retailers had expanded into 85 different countries by 2003, up from just 15 countries a decade earlier.<sup>152</sup> By the year 2000, supermarkets had captured around 50-60% of the food retailing sector in Latin America, up from 10-20% in 1990 – a process that took 50 years in developed countries.<sup>153</sup>

Commentators point out that supermarkets can provide benefits for farmers, such as linking them to high value markets, and cutting out middlemen. However, by relying on larger farms and imposing tough standards, supermarkets are excluding small-scale producers from markets and in doing so present a serious threat to smallholder agriculture.

High levels of concentration at the retail stage of the agrifood chain gives supermarkets the power to decide the 'rules of the game' for participation in markets: to determine who's in and who's out of the supply chain. Global retailers such as Ahold, Carrefour, Metro and Tesco, as well as major processors such as Nestlé and Parmalat, are buying increasing volumes of fresh produce such as fruit, vegetables, meat and dairy products in developing countries.<sup>154</sup> These companies exercise a high degree of control over their supply chains, and demand that local farmers comply with stringent criteria if they want to sell into their chains.

Producers are typically expected to:

- meet exacting product standards for their goods, for example, on size, shape, and colour
- adjust production volumes at short notice to meet short-term market trends
- meet food safety standards
- meet social and environmental standards
- prevent deterioration of products, for example, through provision of cold storage
- keep up with new technologies.

Corporate standards can promote important goals such as food safety, food quality and environmental conservation, and can ensure that goods are produced without exploiting farmers and workers (see Section 3.2). Standards can also help producers improve the quality of their goods and get a better price, and many are keen to sell into these high value markets.

But as the vast majority of smallholders do not have the financial or managerial resources to meet corporate buyers' demands, they have lost, or are in danger of losing, access to markets. Meeting corporate standards can be costly, and agrifood companies are using their dominant position to push the costs of compliance onto small-scale producers. For example, European supermarkets are implementing new standards that require producers to pay for farm audits that cost upwards of US\$500 per farmer. For many producers in Africa, this is more than they will earn in a year (see Box 6).

Supermarket standards are also driving a process of modernisation in traditional food marketing chains. As traditional chains evolve, there is a danger they will also take on characteristics that discriminate against smallholders, leaving them with fewer outlets to market their produce.<sup>156</sup> In some cases, supply chains introduced by agrifood TNCs have replaced traditional markets and forced farmers out of business altogether. In Brazil and South Africa, for example, major processors including Parmalat and Nestlé entered dairy markets in the 1990s, imposed new buying criteria, and pushed small-scale farmers out of their supply chains.<sup>156</sup> The companies' supply chains replaced traditional marketing channels, which were easier for smaller producers to access (see Case study 2).

## Case study 2

### Parmalat and Nestlé marginalise smallholders in Brazil

Nestlé and Parmalat forced at least 50,000 small-scale dairy farmers out of their supply chains after they bought up Brazil's milk cooperatives during the 1990s, and many farmers went out of business as a result.<sup>157</sup> Dairy farming provides an important source of income for hundreds of thousands of small-scale producers in Brazil. Elaine and Baldur Frederich run a typical family farm in Rio Grande do Sul. As Elaine explains: *'I wouldn't say [milk] will make you a fortune, but for you to support yourself, to have enough each month to pay the electricity, water, ranch and some other things you need for the family, it is really important.'*



Carlos Carvalho/ActionAid Brazil/Dairy farmer, Brazil

But the Frederich's milk income is under threat from the standards imposed by transnational dairy companies such as Nestlé and Parmalat, who now dominate the dairy industry in Brazil. Smallholder farmers have found it hard or impossible to meet their demands, and tens of thousands lost markets or went out of business as a result.

Parmalat carried out an aggressive expansion strategy in the 1990s by taking over national companies and dairy cooperatives. It bought out 27 local competitors by 2001, enabling it to become one of Brazil's largest dairy market players with a turnover of US\$240 million in 2002.<sup>158</sup>

After it entered the market, Parmalat promoted UHT milk, which quickly edged out traditional pasteurised milk products, commonly sold through local and cooperative marketing channels. Most UHT is packaged and sold in supermarkets, whose relentless cost-cutting put pressure on dairy processors to reduce their costs. In turn, the dairy processors began to drive down the prices they paid to producers. Between 1989 and 2002, farm gate milk prices came down by 50%, though consumer prices dropped by only 36%.<sup>159</sup>

Large processors such as Nestlé and Parmalat also cut their own costs by demanding that farmers install milk refrigeration tanks on their farms. The smallest tanks needed at least 100 litres per day to be filled, but the average farm produces only 50 litres per day. Most small-scale farmers could not afford to install the coolers, which in any case were beyond their needs.

The excluded producers tried marketing their milk to smaller processors and cooperatives, and continued to use informal markets. But the TNCs' market dominance meant that smaller processors were themselves quickly going out of business, while the rise in UHT consumption reduced farmers' access to alternative milk marketing channels. As a result, many farmers lost their milk income altogether.<sup>160</sup>

**Box 6****'EUREP-GAP' supermarket standards**

Farmer groups fear 'hundreds of thousands' of African fruit and vegetable smallholders will lose their livelihoods if new 'EUREP-GAP' standards are implemented in their current form.<sup>161</sup> Around a dozen large supermarkets set up the Euro-Retailer Produce Working Group (EUREP) to introduce standards for 'good agricultural practices' (GAP). Farmers must meet key criteria for crops to be considered safe for supermarkets, and to allay consumer concerns about food hygiene and pesticide residues. The criteria include health and safety rules, product testing, farm audits and staff training.

While striving for better standards is a worthy goal, smaller producers were not properly consulted, and the initiative did not take their interests into account. Farmer representatives say EUREP-GAP standards favour large-scale producers, and that the extra costs and paperwork threatens the livelihoods of hundreds of thousands of people.<sup>162</sup> The standards require scientific testing and farm audits, but the audit alone costs around US\$500 – about 70% of an average Ghanaian farmer's annual income.<sup>163</sup> Only wealthy, large-scale farmers will be able to comply, leaving many smaller farmers growing safe, good quality food, but locked out of valuable markets.<sup>164</sup>

It is to the advantage of agrifood TNCs to source from fewer, bigger farms that are better equipped to meet corporate standards: doing so reduces TNC costs and risks of doing business. But the marginalisation of smallholders need not be inevitable. In Zambia, for example, competition authorities prevented Parmalat from forcing dairy farmers out of the supply chain (see Box 8). With the appropriate investments in smallholder production, organisation and marketing, the costs and risks of dealing with smallholders can be greatly reduced.<sup>165</sup>

Agrifood TNCs could also make important contributions to poverty reduction by widening their supply bases to include more smallholders who wish to sell into corporate supply chains. Companies should support the participation of smallholders in standards setting processes and tailor private standards to ensure they do not exclude smallholders. The Fairtrade experience shows that improved standards do not have to come at the expense of smallholder livelihoods.

**Access to land**

***'Due to the twin fact that a lot of valuable land space and quality time are allocated to tobacco growth, food production suffers. As a result, Kuria district has joined arid and semi-arid areas as an area constantly in need of famine relief food. The people of Kuria, rather embarrassingly, are back to suffering from diseases associated with low nutritional levels such as marasmus, kwashiorkor, etc, a situation that could be remedied if more land and time were committed to food production.'***

*Samson Mwita Marwa, a former tobacco farmer and member of Parliament in Kenya, 2001*<sup>166</sup>

Agrifood corporations have a long history of promoting industrial, export-oriented production of cash crops. From coffee plantations in east Africa, to fruit estates in central America and palm oil production in Indonesia, agrifood traders have relied on large-scale farms and plantations for the supply of tropical commodities. In many cases, TNCs establish and own large-scale farms themselves. Devoting large tracts of land to producing cash crops, however, does not always generate pro-poor development. Industrial-scale agriculture often results in unequal land distribution, reduces rural employment, creates food insecurity, triggers rural-urban migration and damages the natural environment.<sup>167</sup>

In many regions, much land remains locked into large-scale, inefficient farms.<sup>168</sup> According to the UN International Fund for Agricultural Development, this has harmed poor people in rural areas by reducing economic growth and employment opportunities (IFAD 2001).

In South America, for example, TNCs such as ADM, Bunge, Cargill and Drefus are vertically integrated down to the farm stage of the chain and exercise a high degree of control over soy production. Only a fraction is consumed directly as human food; the bulk is processed for food manufacturers and animal feed. Although south America is a major supplier of soy feed to livestock industries in Europe and China, this export success has not reduced rural poverty. In Brazil, soy production has expanded out of the small- and medium-sized farms in the south of the country, to larger farms in central and north east Brazil. Soy farms in these regions reach up to tens of thousands of hectares in size but only one worker is permanently employed per 170-200 hectares, according to a recent study.<sup>169</sup>

In Matto Grosso, the largest soy producing state in Brazil, the land held by farms that are larger than 10,000 hectares rose from 17.8 to 20.6 million hectares between 1980-1996. During that time, almost 14,000 farms of less than 10 hectares in size disappeared.<sup>170</sup> In Piaui – a state in which an estimated 240,000 rural people are landless – it is alleged that the search for new land, driven in part by the expansion of soy cultivation, has stimulated land grabbing and irregular land transfer practices by private estate agencies.<sup>171</sup> As of July 2003, the ownership of some four million hectares was under investigation by state authorities.<sup>172</sup>

Observers note that in many developing countries where large amounts of land are used to grow to cash crops for sale to agrifood TNCs, large numbers of poor people are landless and go hungry. Cash crop production can push up local food prices and create food insecurity, particularly when it displaces small-scale food production and preparation.<sup>174</sup> In the tobacco-growing regions of Kenya, for example, cultivation of the leaf has replaced traditional food crops and livestock, leaving smallholders with little land or time to grow food for themselves.<sup>175</sup> A UNICEF study found that 52% of children in Migori district, a major tobacco-growing area in western Kenya, were chronically or acutely malnourished. Awino, a farmer from Migori who grows tobacco for BAT, says: *'In the tobacco season we have a lot of work and we have little time to cook for our children.'*<sup>176</sup> Many Kenyan tobacco farmers say that they do not have the time to grow food crops such as maize, beans, cassava and sweet potatoes.<sup>177</sup>

National investment policies can play an important role in regulating the availability of land to TNCs. China and Thailand, for instance, have closed various agricultural sectors to foreign investors (see Box 9) and several states in the US have introduced laws that restrict corporate ownership of farmland.<sup>178</sup>

## Women worker's rights

A boom in exports of high-value horticulture crops from developing countries – such as roses, apples, snowpeas, green beans and avocados – has generated new income and employment opportunities for millions of women, who make up between 50% and 90% of workers employed in the production and processing stages of these supply chains (Dolan & Sorby 2003). Most developing countries have signed UN treaties promoting women's rights and gender equality, yet research indicates that women are systematically denied their fair share of the benefits that stem from the growth of these exports (Oxfam 2004).

Most high-value farm exports are sold into global supply networks dominated by TNCs.<sup>179</sup> Corporate buyers exercise tight control over these chains, and use their market power to push the cost and risks of doing business onto suppliers. Suppliers in turn pass on these pressures by undermining workers' rights.<sup>180</sup> The International Labour Office report that the problems facing casual agricultural workers are 'legion'.<sup>181</sup> Women – who comprise the majority of casual workers – are losing out through weak labour rights, casualisation, low wages, long hours, lax health and safety practices, gender stereotyping and sexual harassment.<sup>182</sup>

Most women tend to do unskilled and vulnerable forms of work (casual, temporary, seasonal and flexible), which, according to a World Bank study, has allowed agribusiness firms to avoid paying benefits stipulated under labour law, such as pensions, health insurance, maternity, holiday and sick leave.<sup>183</sup> Women are less likely to unionise than men and are segmented by gender into a rigid division of labour determined by sex. Hence women tend to do the laborious yet 'feminine' tasks such as weeding, pruning, cutting, picking, sorting, grading and packing. Women are particularly exposed to harmful pesticides in greenhouses and packinghouses, and there is evidence of sexual harassment in the cut flower and fresh fruit industries in Africa and Latin America.<sup>184</sup>

Some companies have taken steps to address the negative effects of their purchasing practices on worker's rights, for example, by working more closely with trade unions. But TNCs must do more to promote the rights of women workers and ensure that respect for their rights is integral to a company's vision and operations.

## Intellectual property rights on plants and seeds

***'Patents held by northern multinationals...deprive poor farmers of access to the means of growing their food.'*** Jean Ziegler, *UN Special Rapporteur on the right to food, 2003*<sup>185</sup>

As already indicated, the WTO's rules on IPRs have raised the cost of some agricultural inputs and encouraged anti-competitive practices in the industry. As these rules begin to be applied more widely in the South, their impacts are likely to have other marginalising effects on smallholder agriculture. IPRs could be granted very broadly to allow monopoly rights over individual plant varieties, genes and their characteristics. This extension of IPRs further threatens food security in the South by removing farmers' customary rights to save, use, exchange and sell farm-saved seed. Increasing use of IPR-protected GM plants and seeds could make smallholders dependent on TNCs such as Monsanto, Syngenta and DuPont that hold the patents and IPRs. This, in turn, could fundamentally change the way agriculture is practised in developing countries by facilitating the growth of large-scale agribusiness and the decline of small farms and biodiversity still further.<sup>186</sup>

While IPRs have promoted and protected research by the largest corporations, they have had the opposite effect on public research bodies, plant breeders and smaller companies. As shown above, patents on genes and genetic traits have created expensive legal barriers that make it difficult for public sector researchers and smaller companies to gain access to new agricultural technologies.<sup>187</sup> Research and development can be blocked or becomes prohibitively expensive if royalties have to be paid on the patented processes or traits required for the research.

Most corporate research is driven by the demand for profits and control of markets rather than the needs of poor farmers in developing countries. It is estimated that around 80% of public research is oriented to smallholders' needs, compared with only 12% of corporate research.<sup>188</sup> GM crops provide a classic example: less than 1% of all GM research is targeted at small-scale producers.<sup>189</sup> Most research is directed at crops that large-scale commercial farms grow in monocultures, often with destructive effects on local communities and the environment. Since the mid-1990s, large-scale, mechanised GM soy production in Argentina – promoted by the government and TNCs such as Cargill, Dow, Monsanto and Syngenta – has expanded to cover almost 14 million hectares of land.<sup>190</sup> The technology requires virtually no farm labour and has led to an *'agriculture without producers'*. This has triggered a rural exodus into the shanty towns surrounding Argentina's cities, according to the advocacy group GRAIN.<sup>191</sup>

In light of these threats to smallholder agriculture, it is vital that state and private actors ensure that agricultural inputs are designed to be appropriate and affordable for poor farmers, and that governments protect farmers' rights to save, use, exchange and sell farm-saved seed.

**Box 7****Agrifood TNCs ‘kick away the ladder’ of development**

Smallholders and workers are not the only participants in the agrifood chain that are marginalised by corporate power. Smaller companies in developing countries find it difficult to enter or remain in local and global markets because of the size and power of the major agrifood TNCs. The corporations, with well-established brands, superior access to information, financial and technological resources and privileged access to policymakers, are well placed to keep potential competitors out of the market.<sup>192</sup> For example, companies from developing countries wishing to enter the soluble coffee market would have to compete directly with Kraft and Nestlé, the world’s largest food manufacturers. Likewise, potential developing country entrants to the fruit and vegetable business would find themselves competing with TNCs such as Dole and Del Monte who are powerful actors in the market – particularly at the processing and distribution stages.<sup>193</sup>

Civil society groups in Ghana have accused Unilever of crowding out local businesses. Rudolph Etoyo, a spokesperson from local campaign group, ISODEC, says that Unilever dwarfs its local competitors to such an extent that local businesses could never grow big enough to pose a challenge. *‘Because of the huge space that they occupy, our economy is virtually mortgaged to them,’* he says. *‘So in terms of our national priorities and national capacity, we probably never will have any indigenous capacity in the areas that they occupy because they will compete them out.’*<sup>194</sup>

Not only can agrifood TNCs stifle the development of local competitors, they can also force existing companies out of business. When Parmalat entered South Africa’s dairy market during the 1990s, it gained market share by undercutting local processors and distributors, many of which shut down as a result.<sup>195</sup> After entering the market, Parmalat offered dairy products to retailers at a reduced rate, and then put pressure on milk farmers to cut their prices by up to 28%. As Parmalat established itself in the market, however, it gradually increased its selling prices to retailers. Parmalat’s practices ensured its market dominance over smaller dairy producers and processors, and drove some of its competitors out of the market altogether.<sup>196</sup>

The dominance of markets by TNCs makes it almost impossible for companies from developing countries to move to the more lucrative processing and packaging stages of the agrifood chain. As the UK’s Overseas Development Institute states: *‘The market conditions in commodities, controlled by a small number of large integrated companies, makes moving into processing commodities extremely difficult for developing countries.’*<sup>197</sup> In many important commodity markets, the long-term trend has been for developed countries to increase their share of the value added to commodities produced in the South. Developing countries’ contribution to added value in the cocoa trade, for example, declined to around 28% in 1998-2000, down from 60% in 1970-1972.<sup>198</sup>

There are more opportunities for developing country companies to add value when the manufacturing and retailing stages of a supply chain are not concentrated. But high levels of corporate concentration in these stages of the agrifood chain impose major barriers to entry for Southern firms.<sup>199</sup> According to UNCTAD, these chronic power imbalances in the structure of global commodity markets contribute to a cycle of economic stagnation and extreme, persistent poverty in commodity-dependent developing countries.<sup>200</sup>

**3.4 TNCs are not fully accountable for their impacts on human rights and the environment**

*‘I begged and begged my mother to allow me not to work and to let me go to school... The smell of pesticides made me feel like vomiting. First it made my nose run and gave me a bad headache. Then I felt sick and dizzy.’* Suhasini Boya is nine years old and works in the cotton fields of Andhra Pradesh, 2004<sup>201</sup>

The problems highlighted in the previous sections result from the agrifood corporations' use and abuse of concentrated market power, and a lack of countervailing action by governments to re-orient agrifood markets towards more equitable outcomes. Section 4 points to how these problems can be addressed through competition, investment, trade and development aid policies, and through companies' self-regulation. But Mallesh Harijana's story shows that the misuse of market power is not the only kind of corporate activity that undermines people's rights. A 13-year-old child labourer, Mallesh had spent a long day spraying pesticides from a leaky can on a cotton seed farm in Andhra Pradesh in southern India. After work, he ate a mango without washing his hands, he doubled up in pain within 15 minutes, and was dead by the morning from pesticide poisoning.

*'We all ate Mallesh's earnings to keep us alive but we couldn't even afford to keep him alive,'* says his mother, who delayed hiring a jeep to take Mallesh to a district hospital because of the cost. Mallesh's death is one of 36 suspected pesticide poisoning cases currently being investigated by a local organisation, and he was one of an estimated 83,000 child labourers employed in Andhra Pradesh's cotton seed industry (see Case study 3). An estimated 12,000 children were employed in 2003 on farms supplying cotton seed to TNCs, many of them working up to 13 hours a day in conditions where health and safety standards were low or non-existent. The farm on which Mallesh worked did not supply any TNCs. However, child labour is commonly used for applying pesticides on cotton seed farms that supply both TNCs and local companies.<sup>202</sup>

The rights of farmers, farm workers and rural communities in developing countries are frequently violated as a result of agrifood TNC activities. The following case studies of child labour, forced displacement and industrial poisonings are just a few examples, but nonetheless support the emerging consensus that international legal standards currently applied to states need to be extended to TNCs to hold them accountable for their damaging impacts on human rights and the environment.

### Corporate responsibilities

Over the last two decades or so, global trends towards the privatisation of state enterprises, de-regulation and liberalisation have widened significantly the scope of private sector activity into areas that used to be the preserve of public institutions. At the same time, corporations have gained huge political and economic power, helped by coordinated industry lobbying to ensure that national and international policies are drawn up and implemented in their interests.<sup>203</sup>

Corporations now have a substantial influence over the extent to which people can exercise their human rights, and over the health of the natural environment. States have a duty to protect individuals from harm and abuse, including that perpetrated by private actors such as corporations. A wide range of national laws currently apply directly and specifically to companies. In addition, a number of international standards also apply to companies, including the Universal Declaration of Human Rights (UDHR).

Although the UDHR is primarily addressed to states, it calls on *'every organ of society'* to respect, promote, and secure human rights.<sup>204</sup> International agreements such as the OECD Guidelines for Multinational Enterprises<sup>205</sup> and the ILO Tripartite Declaration,<sup>206</sup> also set standards for companies. Currently, these international standards may have some legal effect as *'soft law'*,<sup>207</sup> but unlike obligations in an internationally agreed treaty, they are not fully legally binding on states or companies.

### TNCs have outgrown national regulation

When companies abuse human rights or degrade the environment, people look to national governments for protection and redress. Yet national regulation is often insufficient to protect communities and ecosystems from corporate misconduct. In many respects, TNCs have outgrown the reach of domestic law.

There are several reasons for this, including:

- The relevant laws in countries in which TNCs operate are often patchy and unevenly enforced, especially if both company and host government are colluding in abuses.
- Governments face a conflict of interest between implementing and enforcing laws that hold TNCs to account for their activities, while trying to attract foreign investment.

- Laws differ from country to country, both in their content and in the degree to which they are enforced.
- Companies can avoid being prosecuted by exploiting the legal separation between parent and subsidiary companies, known as the 'corporate veil' (see Section 3.6).
- The ability of TNCs to move capital freely between different countries hinders the efforts of individual states to regulate their activities.

### **TNCs are not held fully accountable under international law**

As such, many harmful activities carried out by TNCs fall outside the theoretical and practical reach of national law. But many of these activities are not covered by international law either, allowing TNCs to operate in what amounts to a 'regulatory void'. TNCs have become adept at maintaining and turning this void to their advantage, combined with the astute use of existing legislation and their influence over policymaking. Common practices are to:

- weaken labour, environmental and public health laws<sup>208</sup>
- practise 'double standards': acting more responsibly in countries with tighter regulation, but less responsibly elsewhere<sup>209</sup>
- declare the most profits in countries where taxes are lowest<sup>210</sup>
- create shell or holding companies to avoid regulatory requirements<sup>211</sup>
- engage in 'transfer pricing'<sup>212</sup>
- engage in anti-competitive business practices.<sup>213</sup>

### **International rules are needed**

Clearly there is a need to address this gap in global governance, and consensus is building that the international legal standards that currently apply primarily to states need to be extended to private businesses.<sup>214</sup> Just as human rights law was developed to counter-balance the power of states, so human rights legal obligations need now to encompass the private sector so as to counterbalance TNC power and influence. Not all of the practices listed above would be covered by human rights and environmental legislation as it currently stands, however, and some will need to be addressed, for example, by regional and international frameworks on competition and investment (see Section 4).

ActionAid is part of a network of civil society groups pressing for global standards to form the basis of an agreed set of legally-binding obligations on transnational businesses. The UN Sub-Commission on the Promotion and Protection of Human Rights is currently clarifying the scope of such obligations (see Section 4). While international rules are not a substitute for national law, they can act as a standard against which to assess national laws and regulation, and strengthen domestic frameworks when translated into national law.

### **International law can apply explicitly to private actors**

According to respected independent legal experts the International Council on Human Rights Policy, '*No conceptual obstacle prevents states from requiring companies to abide by legally binding international human rights obligations*' (ICHRP 2004). Indeed, some international treaties already impose direct legal obligations on companies, for example:

- the OECD Convention on Combating Bribery<sup>215</sup>
- the Convention on Civil Liability for Oil Pollution Damage<sup>216</sup>
- the UN Convention on the Law of the Sea.<sup>217</sup>

More and more governments are applying international human rights law within their national jurisdictions, and it can be argued that international law already creates direct legal obligations on private sector firms. As states, legal experts and civil society increasingly adopt the language and framework of legal obligation, and as governments begin to endorse international standard-setting initiatives, businesses increasingly will find themselves held to account for their impacts on human rights and the environment.

### Case study 3

## Child labour on India's cotton seed farms

Transnational corporations have been accused of benefiting from the use of child labour to produce hybrid cotton seed in India, and of not doing enough to stop the practice in their supply chains.<sup>218</sup> It is estimated that 82,875 children were employed on cotton seed farms in the southern state of Andhra Pradesh in 2003-2004 – 12,375 of them on farms supplying subsidiaries of TNCs such as Advanta, Bayer, Monsanto, Syngenta and Unilever.<sup>219</sup>



Karen Robinson/Panos/ActionAid UK/  
Child workers on cotton seed farm, India

Campaign groups report that many child workers are under 10 years old, 85% of them are girls, and they earn an average daily wage of 14-25 rupees.<sup>220</sup> Many are migrants from low castes who have been sold into debt bondage to pay off family loans. The childrens' job is usually to cross-pollinate cotton flowers by hand for up to 13 hours a day; in the process, they are exposed to toxic pesticides. They sleep communally in small huts and complain of headaches, nausea and convulsions. *'It is very hard work and we get tired and bored doing the same work again and again,'* says Sarala, a 12-year-old girl working in Alavakona village interviewed by ActionAid.<sup>221</sup>

TNCs do not employ child workers themselves, but they do work with intermediaries known as 'seed organisers' who in turn work with local farmers. Campaigners say the TNCs are complicit in the use of child labour because they help set and pay such low procurement prices for cotton seed that it makes it less viable for farmers to employ adult workers. They argue that TNCs exert a high level of influence and control over the cotton seed production process by giving farmers credit, technical advice and stipulating quality controls. Corporate representatives make regular visits to farmers' fields to ensure that their standards are being followed, and to advise on the use of pesticides.<sup>222</sup> Despite this, Suhasini's experience (see page 43) is not an isolated one. Many children are suspected to have died from pesticide poisoning and a local civil society group, the MV Foundation, is currently investigating 36 such deaths of young children.<sup>223</sup>

It appears it was mainly because of the efforts of local groups, who exposed and publicised the issue in 2001, that the companies took action against child labour.<sup>224</sup> Campaigners argue that stronger international human rights obligations on TNCs would have compelled companies to act sooner, even though the major companies deny that they have any legal responsibility for the activities of local farmers.<sup>225</sup> The TNCs have jointly set up a Child Labour Elimination Group to address the problem and Unilever says it intends to fulfil long-held plans to withdraw from India's cotton seed business in 2005.

Recent campaigns, legal actions against farmers and interventions by the state government, industry groups, TNCs and civil society have brought down the number of child labourers in Andhra Pradesh – from 247,830 in 2000-2001 to 82,875 in 2003-2004.<sup>226</sup> Some observers comment, however, that the decline is due mainly to drought, and that much more must be done by TNCs to get child workers out of the cotton fields and into education.<sup>227</sup>

## 3.5 Corporate social responsibility is optional and insufficient

***'We conduct our operations with honesty, integrity and openness, and with respect for the human rights and interests of our employees. We shall similarly respect the legitimate interests of those with whom we have relationships.'*** Unilever's code of business principles<sup>228</sup>

***'The [tea] estate officials with forest and revenue officials came to our land at around 10am... They were uprooting our tea plants. All our hard work. Our sweat and toil. All the officials were standing around in a circle. The village officer and watchers were pulling up our plants. Our people were begging them, protesting, pleading, women were in tears.'*** *Badichi Vayal, describing how employees of Unilever's Indian subsidiary pulled up her tea bushes in Tamil Nadu*<sup>229</sup>

Voluntary efforts by companies to improve their social and environmental performance – a practice known as 'corporate social responsibility', or 'CSR' – has important benefits. CSR can act as a useful tool to improve and develop good relations with all those with whom a corporation comes into contact, from workers and suppliers to consumers and shareholders. CSR has proved to be flexible and adaptable, and it can help companies to develop and implement best practice within their industry sector. In addition, it can help companies improve their practices before a government brings in relevant legislation.

But the goal of protecting human rights and the environment cannot be left to companies' goodwill alone, or to their response to critical outside pressure. Companies with outside shareholders (the majority of TNCs) are obliged by law to act first and foremost in the interests of their shareholders, an obligation that corporations and their institutional shareholders generally interpret as maximising profits and returns. But corporations may have a conflict of interest between this objective and their stated commitment to CSR. There is ample evidence that corporations that have publicly committed themselves to CSR are having damaging impacts on communities and the environment.<sup>230</sup> Despite the good intentions of many of those involved in promoting CSR, the practice generally has not minimised or prevented such negative impacts, and now needs to be underpinned by minimum legal standards. The following section explains why CSR has proved to be insufficient.

### **The proliferation of CSR codes has led to confusion**

There are now so many individual company and industry-wide codes, some of which contradict each other, that confusion abounds. Workers, suppliers and even large-scale businesses find that this proliferation and inconsistency is actually hindering their efforts to tackle the issues that the codes seek to address. The large number of different codes can place a burden on under-resourced trade unions, and many workers may not be aware that such codes even exist. Companies supplying different TNCs often have to deal with a wide variety of separate initiatives that may overlap but may also diverge in a number of areas. This seems to be the case in the clothing industry where different definitions among different codes – for example, on what constitutes child labour – creates uncertainty for suppliers and workers as to which standard they should use.<sup>231</sup>

The proliferation of codes has wider implications for business. The most common complaint among companies surveyed for a 2003 report was that the number of voluntary codes was unmanageable. Some favoured the development of a universal code, *'because this would eliminate the excuse of factory managers that the plethora of codes with which they must comply is confusing'*.<sup>232</sup>

### **CSR codes are usually restricted in scope, coverage and content**

Despite the wide variety and number of codes, they cover just a fraction of the corporate world.<sup>233</sup> Most CSR initiatives are undertaken by large companies, particularly those with high public profiles or well-known brand names. Out of an estimated 64,000 TNCs operating today, only 1,500-2,000 of them produce annual CSR reports<sup>234</sup> – 3% at most – and about half of these are from European companies.<sup>235</sup> It is often not clear how far down the supply chain the code is applied. The clothing industry, for example, relies on a multitude of sub-contractors, and codes are often imprecise as to their application to suppliers.<sup>236</sup>

An OECD survey found that most company codes applied to those industry sectors with high public profiles, notably textiles, chemicals and extractive industries. The agricultural sector, by contrast, had relatively few company codes, and the food manufacturing industry even less.<sup>237</sup> The key determining factor appears to be a company's export market: codes have been adopted mainly by companies that sell in developed countries, where their brand name and corporate image are more susceptible to public criticism and pressure.<sup>238</sup>

The selection (or indeed avoidance) of issues covered by a CSR code varies significantly. The OECD survey found that half the codes dealing with labour issues failed to recognise a prohibition on child labour or recognise the right to freedom of association, both fundamental human rights.<sup>239</sup> Labour issues are important in codes within the textile, footwear, toys and retailing industries because they supply consumer goods – and thus are susceptible to consumer pressure and boycotts – and have been criticised in the past for labour abuses.<sup>240</sup> In contrast, codes in the chemicals, forestry, oil and mining industries tend to focus more on environmental issues, as these are the areas in which these industries have been publicly criticised.<sup>241</sup>

In short, the majority of companies have simply not embraced CSR at all, while others have taken a ‘pick-and-mix’ approach. As the UN Research Institute for Sustainable Development concludes: *‘There is a possibility, therefore, that when codes are adopted, they become oases of best practice, leaving most producers [and issues] unaffected.’*<sup>242</sup>

### **The implementation and enforcement of CSR is limited**

The actual implementation of codes throughout a company’s operations remains relatively limited. Most codes are general statements of principles rather than detailed instructions of how the principles might be applied to a company’s activities. In the late 1990s, the International Organisation of Employers estimated that *‘80% of codes are really statements about general business ethics which have no implementation methods’*.<sup>243</sup> Moreover, implementation can be guaranteed and have credibility only when it is independently and externally verified. But of the approximately 2,000 CSR reports produced by TNCs, only about 40% are externally verified.<sup>244</sup>

Independent monitoring assesses a company’s compliance with its CSR commitments on the ground. However, companies are often wary of allowing external monitoring of their operations overseas. For example, one UK-based civil society alliance tried to encourage UK supermarkets operating in the country to improve their production practices and exercise greater fairness in their trading operations along the supply chain (the ‘Race to the Top’ initiative<sup>245</sup>). It failed, however, partly because the initiative would have involved external scrutiny of the supermarkets – including of their impacts on producers and suppliers. Many companies perceived that such scrutiny carried more risks to them than any benefits they might have gained from an improved public profile, and withdrew their support for the initiative.<sup>246</sup>

Another problem for CSR is that there is no means of enforcing the codes. As shown in Section 3.6, the OECD Guidelines offer some monitoring of their operation and a means of lodging complaints when companies do not follow them, but little can be done in practice to enforce the Guidelines.

### **CSR is ‘top down’**

UNCTAD, drawing on work from the World Bank, has expressed concern that CSR initiatives are essentially *‘codes from above’* and imposed *‘top down’*: *‘[A] major criticism of the codes initiative is that, although they are fundamentally about workers’ rights, workers themselves have not been part of the process. Codes are not negotiated between employers and workers, but introduced in a top down fashion by the companies themselves.’*<sup>247</sup>

Most workers and producers are non-unionised, and many of those without union membership are women. Women and women’s organisations are rarely consulted when codes are drawn up even though they comprise the majority of the workforce in many Southern industries.<sup>248</sup> More familiar labour concerns, including the right to organise unions, are being increasingly included in codes, but issues of special relevance to women, such as rights to breastfeed, maternity leave, childcare and freedom from sexual harassment are rarely covered. Indeed a survey of 22 voluntary codes found that reproductive rights were included in just two of them after consultation with women’s groups.<sup>249</sup>

### CSR rhetoric does not always match reality

ActionAid's experience of working with rural communities suggest that, contrary to the many claims made by companies and governments, voluntary codes of conduct are not the best means of respecting human rights and protecting the environment (see Case study 4). Our work with local communities around Coca-Cola's plant in Plachimada in the southern state of Kerala in India, for example, has revealed how damaging the company's continued extraction of local ground water is, despite Coca-Cola's stated commitment to CSR.<sup>250</sup> In Kenya, meanwhile, ActionAid supports local communities campaigning in response to plans by a Canadian company, Tiomin Resources, to mine titanium at Kwale on the Kenyan coast. Tiomin states it is committed to caring for the communities in which it conducts business, but the Digo indigenous people and local campaign groups allege coercion and a lack of consultation, and warn of threats to forest and marine life – claims Tiomin deny.

#### Case study 4

### Land struggle in India

Unilever's Indian subsidiary, Hindustan Lever (HLL), states that its approach to corporate social responsibility is rooted in its parent company's belief that *'To succeed requires the highest standards of corporate behaviour towards our employees, consumers and the societies and world in which we live.'*<sup>251</sup> Unilever has a high public profile for its stated commitment to CSR, and is respected for its sustainable agriculture initiative<sup>252</sup> to promote sustainable practice in its global production of palm oil, peas, spinach, tea and tomatoes.



Stan Thekaekara/Adivasi villager, Tamil Nadu, India

But the experience of adivasi<sup>253</sup> tribal communities near the Davershola tea plantation in the Gudalur valley in Tamil Nadu, southern India, seems far removed from Unilever's stated corporate purpose. Adivasi villagers say they have been harassed and intimidated, that their houses have been pulled down and their tea plants uprooted in a long-running land ownership dispute with estate managers at the Davershola tea plantation, owned by HLL. Five adivasi tribes of the Gudalur valley, including the Paniyas, Bettakurumbas and Irulas, are fighting for their ancestral rights to the land. Villager Vayal Madan from Kadchinkolly village says his family lived in constant fear of HLL estate managers. *'We were terrified,'* he says. *'They would tear down semi-permanent huts that we built. Anything we planted was always destroyed. They would chase us off our land... Unilever is very powerful. This is a company controlling thousands of acres, yet they are not ashamed to evict poor adivasis who have a quarter to half an acre of tea.'*<sup>254</sup>

Unilever strives to be a 'trusted corporate citizen' and voluntarily respects the 'legitimate interests' – although not explicitly the full range of human rights – of communities with whom it has relationships. But despite this villager Balan says that his crops were destroyed and livelihood threatened. He says: *'The new [HLL] manager came with forest department officials when I was working in the fields and destroyed my coffee and tapioca plants. They slashed and uprooted our silver oak, pepper, tapioca, banana and coffee bushes. I begged them not to destroy our plants, but they ignored me.'*<sup>255</sup>

The adivasi are pursuing their land claims legally and repeatedly urge HLL staff to stop threatening them and encroaching on their land, hunting grounds and ancestral burial grounds. While Unilever's commitment to CSR is welcome, this example reinforces the case that a voluntary approach to corporate regulation is insufficient and needs to be supported by a platform of minimum legal standards.

The voluntary approach is not without merits, and not every problem highlighted in this report currently lends itself to a legally binding solution. The issue of mainstreaming the fair trade principles as standard corporate practice, and the inclusion of smallholders into supply chains are cases in point, although state regulation could go a long way to addressing these issues (see Section 4). As pointed out by the International Council on Human Rights Policy: *'The future should hold a blend of voluntary and binding rules that together will ensure that companies respect human rights and demonstrate that they do so.'*<sup>256</sup>

### 3.6 People harmed by corporate activity are denied access to justice

***'The kids were screaming, vomiting and grabbing their bellies. Some were dead, others were writhing on the grass and still more were on the school patio. We had no idea what to do.'*** *A woman from Taucamarca village in Peru describing the aftermath of a pesticide poisoning incident, 1999*<sup>257</sup>

***'[Pesticide] companies have largely avoided liability for the adverse effects of products. However there is a growing recognition of the need to address the difficulty of redress... Victims of pesticide poisoning have to date had limited success holding manufacturers accountable under legal action.'*** *Barbara Dinham, director of Pesticides Action Network UK*<sup>258</sup>

Five years after 24 children died in Taucamarca in Peru after accidentally consuming a hazardous pesticide sold by the agrochemical company Bayer, their families are still waiting for justice. As the case study below shows, a Peruvian Congressional Subcommittee found evidence of criminal responsibility on the part of Bayer and the Peruvian Ministry of Agriculture, and recommended they compensate the families. Despite this, the families have received no assistance, compensation or an apology from the company, which blocked a lawsuit brought by the families.<sup>259</sup> The Peruvian villagers are not alone in facing barriers to obtain justice against TNCs; this section illustrates how legal obstacles often deny people redress for corporate wrongdoings.

When TNCs engage in practices that violate human rights and the environment, affected communities look for redress through laws and regulations in their own country (sometimes referred to as the 'host' country). They may also seek justice in the country where the company is based – the 'home' country, or through international frameworks. Yet authorities in host and home countries are often unwilling or unable to ensure that companies are prosecuted, and currently there are no international mechanisms for redress that are legally binding on companies.<sup>260</sup> Once again, TNCs fall between a gap in national and international legal frameworks, leaving affected people with limited opportunities to hold companies accountable for personal or environmental damage.

### Obstacles to redress in the host country

Many obstacles prevent people from holding corporations to account in their own national courts. Some of these are political in nature (see Section 3.4) but many are legal, for example:

#### Poor people lack resources to bring claims

People harmed by corporate activity are often poor. Yet in most cases they must bear the costs of bringing litigation against corporations that have access to far greater resources. Few developing countries provide legal aid, and if claimants lose, they risk having to pay all the costs incurred.

### **People suffer prolonged delays to achieve justice**

Affected people who do manage to bring legal cases against companies can wait years to see any results. Courts in developing countries are often under-resourced, and companies often use delaying tactics to prevent a claim being settled. For example, workers have lodged complaints since 1983 against the banana corporations Standard Fruit (now Dole Food) and United Fruit (now Chiquita), and the chemical manufacturers Shell and Dow, for alleged pesticide poisonings on banana plantations in Costa Rica. The companies have managed to avoid paying compensation to workers by delaying any final decision for more than ten years.<sup>262</sup>

### **The burden of proof lies with affected people**

People seeking redress often find it difficult to gather the necessary evidence to prove their claim. Costly scientific evidence may be required and TNCs often have control over the relevant documents and evidence.<sup>263</sup> For example, it took Unilever three years to release health records to workers who were exposed to mercury at the company's thermometer factory at Kodaikanal in Tamil Nadu, India.<sup>264</sup> The Unilever factory was shut down in 2001 after protests over its pollution of local ecosystems.<sup>265</sup> Medical examinations indicated that some workers showed symptoms of mercury poisoning, including kidney disorders, blurred vision and tremors.<sup>266</sup> As of October 2004, no one had received any compensation from the company,<sup>267</sup> which says that workers did not suffer adverse affects from exposure to mercury arising from the factory's operations.<sup>268</sup>

### **Risk of persecution**

People harmed by corporate activity may be deterred from seeking redress because of fear of persecution. This may be a particular concern in cases where the company has been collaborating with the national government and security forces.<sup>269</sup>

### **Lack of 'legal standing' is a barrier to redress**

People who are eligible to bring complaints are described as having 'legal standing'. In most cases, only those who have suffered direct harm from TNC activities have such standing and can bring claims. In some jurisdictions, civil society groups also have 'legal standing' and can act on behalf of affected people. But in general, legal options for advocacy organisations are limited, making it harder for poor and marginalised people to initiate claims.<sup>270</sup>

### **Fines are low and often not a deterrent**

Many penalties imposed against companies are low, and corporations may calculate that it is cheaper to pay fines than invest in structural changes to prevent harm from recurring. Shell – a company with sales of US\$270 billion – was fined US\$39,000 in 2002 by Brazil's Environment Agency for contaminating public wells in Vila Carioca, a poor district of Sao Paulo.<sup>271</sup> Residents used water from the wells for drinking and for food crops, which were polluted with toxic agrochemicals and industrial waste from Shell's storage depot.<sup>272</sup> Local people have testified to health problems including cancer, respiratory problems, infertility and depression, which they believe are caused by Shell's operations. The company denies responsibility for contaminating residents.<sup>273</sup>

### **The 'corporate veil' denies people access to justice**

Corporations can evade liability by hiding behind the 'corporate veil', which creates the legal fiction that parent and subsidiary companies are completely separate from each other. If a subsidiary company causes harm to others, the 'corporate veil' helps protect other businesses within the corporate group from liability. However, it also makes it difficult to hold a parent company responsible for the actions of its subsidiaries, even though they may exercise de facto control over other members of the corporate group.<sup>274</sup> In the words of one Australian judge: *'Every holding company has the potential [to] and, more often than not, in fact, does, exercise complete control over the subsidiary.'*<sup>275</sup>

When faced with litigation, corporations can restructure themselves to avoid penalties. For example, when a group of South African workers suffering from mercury poisoning brought a claim against Thor Chemicals in the UK in the 1990s for the actions of its wholly-owned South African subsidiary, the court concluded that the parent group had probably restructured to ensure Thor had limited financial assets.<sup>276</sup>

## Case study 5

### Tragedy in Taucamarca

In the remote Andean highlands of Peru, 24 children from the village of Taucamarca died after drinking milk contaminated with a hazardous pesticide. The incident happened in October 1999 when a local woman accidentally mixed the white powdered pesticide with a bag of powdered milk substitute. Eighteen other children suffered from poisoning but survived.<sup>277</sup>

According to the UN Environment Programme, an estimated 1 million to 5 million cases of pesticide poisonings occur every year, resulting in 20,000 fatalities among agricultural workers. Most of these poisonings take place in developing countries, where safeguards typically are inadequate or lacking altogether. Although developing countries use 25% of the world's production of pesticides, they experience 99% of the deaths.<sup>278</sup>



AFP photo/Diario LA REPUBLICA/Children's coffins, Taucamarca, Peru

The pesticide swallowed by the Peruvian children appears to have been methyl parathion. This is imported, formulated and sold in Peru by Bayer SA, a wholly owned subsidiary of the agrochemical TNC Bayer. The pesticide was sold in 1kg plastic bags with pictures of vegetables on the label, and without a pictogram showing the acute danger the pesticide posed to human health. The illiterate woman who mixed the pesticide with the milk powder speaks only the local language, Quechua, and could not read the Spanish label.<sup>279</sup>

In 2002, three years after the poisoning, a Peruvian Congressional Subcommittee report concluded that there was significant evidence of criminal responsibility on the part of Bayer SA and of administrative and criminal responsibility on the part of the Peruvian Ministry of Agriculture for the poisoning. The report recommended that the company and the government indemnify the families for the deaths of their children.<sup>280</sup>

Despite the recommendations, the people of Taucamarca have received no apology and no compensation. Bayer has argued, in court and in the media, that it complies with requirements of Peruvian law and that it operates under a policy of 'responsible care' in Peru. However, Bayer was pressured to stop selling methyl parathion in Germany in 1989, and the product has been banned almost entirely in the US on health grounds since 1999. Methyl parathion is a category 1a, or 'extremely hazardous', pesticide, according to the World Health Organization. But campaigners allege Bayer marketed the product in Peru without adequate and appropriate labeling warning users of the potential dangers.<sup>281</sup>

*'They [Bayer] did nothing,'* says Erika Rosenthal, legal advisor to Pesticide Action Network North America. *'Their failure to take protective action... should not be accepted as business as usual but rather should be understood as systematic disrespect for fundamental human rights.'*<sup>282</sup>

Methyl parathion was banned in Peru in the wake of these poisonings. Families of the affected children have tried to bring legal cases against Bayer but with little success. They filed a case in October 2001 but Bayer moved to have the families' lawsuit dismissed on procedural grounds.<sup>283</sup> The judge of the Superior Court of Lima then issued a resolution finding the case inadmissible on the same grounds.<sup>284</sup> Even today, the children who survived the poisoning have received no medical monitoring or special education.<sup>285</sup> The case is ongoing.

## Obstacles to redress in the home country, or ‘foreign direct liability’

National courts in a parent company's home country can sometimes provide an avenue for redress, a practice known as ‘foreign direct liability’. A few cases have been brought against TNCs in their home country, but only in a limited number of countries, mainly the US but also the UK, Canada and Australia, for alleged harms elsewhere. These include legal actions against Cape, Coca-Cola, ExxonMobil, RTZ (now Rio Tinto), Shell, Texaco (now ChevronTexaco), Thor Chemicals, Union Carbide (now Dow Chemicals), and Unocal.<sup>286</sup>

However, bringing claims in home countries is problematic. Procedural matters hampered most of the cases mentioned above; none of them resulted in a clear win on the substantive issues for the claimants, while others were settled out of court before a decision was made on the substance of the claims. Palmer (2003) highlights further obstacles to foreign direct liability, which include:

- **Choice of legal venue:** courts have typically taken the view that cases should be brought in the country where the harm took place because, for example, evidence and witnesses are likely to be more accessible there (a legal doctrine known as *forum non conveniens*).
- **Applying home country laws extraterritorially:** foreign direct liability has the effect of applying home country standards in a foreign country. This raises concerns about violating other countries’ sovereignty by applying laws ‘extraterritorially’.
- **Sovereign immunity:** complications arise if the host government owns part of the business, or is implicated in the activities that brought the claim. In such cases, the courts of one country may be reluctant to exercise jurisdiction over foreign governments.

Despite the difficulties involved, home country litigation can provide avenues for redress when justice is denied in the host state. Claims brought in the US, UK, Canada and Australia have raised public awareness of double standards employed by some TNCs in their foreign operations, and strengthen the case for home country courts to address corporate misconduct abroad.<sup>287</sup> In the UK, for example, a House of Lords judgement made in 2000 has allowed cases to be brought in the UK if justice would not be done in the host country – even where the host country appears to be the more appropriate venue under *forum non conveniens*.<sup>288</sup>

## Obstacles to redress at the international level

Several international standards – including various UN human rights and labour treaties – have procedures that allow people harmed by corporate activity to make complaints to judicial or quasi-judicial bodies.<sup>289</sup> However, the enforcement mechanisms attached to these treaties are weak and cumbersome, relying mainly on diplomatic pressure to find remedies.<sup>290</sup> Moreover, it is generally only possible to hold states accountable through these mechanisms (IHRP 2002).

### The OECD Guidelines

The OECD Guidelines for Multinational Enterprises is the only international mechanism that applies exclusively to companies, and that allows civil society to lodge complaints. If a company breaches the Guidelines, any individual or organisation can file a complaint to a ‘National Contact Point’ (NCP) based in a company’s home country, which acts as a mediator between claimant and company. If the parties do not find a resolution, NCPs can refer the case to an international OECD committee.

### The Guidelines are not legally binding, and not performing

However, neither NCPs nor the international OECD committee have any enforcement powers. Their decisions are only morally binding on parties, and cannot be enforced by a court of law. Also, the Guidelines only apply to companies based in the 30 OECD member countries, and there is no system of financial assistance for those who have strong grounds to make a claim.

Over the last few years, observers have expressed disappointment at the performance of the Guidelines' complaints mechanism. NCPs have adopted widely differing approaches to the way they interpret the Guidelines and handle cases. Procedures are slow and untransparent, and appear to be designed to discourage complainants.<sup>291</sup>

According to a survey by the civil society group OECD Watch, some NCPs automatically disallow complaints that relate to supply chain issues, even though the Guidelines carry provisions on supply chains that companies were allegedly in breach of. Of the 32 cases filed by civil society groups since 2000, only 12 had been concluded by mid-2004, and just two resulted in a declaration agreed by both parties. Despite being supported by carefully researched evidence, other cases were declared inadmissible, or are drawn out over many years. The survey found that *'Too often decisions seemed to have been made as a result of special pleading by the companies, or tinkering with the procedures, or... by reinterpreting the Guidelines.'*<sup>292</sup> Nevertheless, despite its weaknesses, the OECD Guidelines' complaints procedure provides a useful model on which a stronger international mechanism for redress could be based.

### **There is a need for an international system for redress and foreign direct liability**

Host country courts should remain the principal venue for affected communities to bring a case against a company. Yet they have proved to be largely ineffective so far in enforcing human rights and environmental obligations on companies. Building on existing standards to establish an international legal framework for corporate regulation would help to strengthen judicial systems in poor countries, including their ability to enforce regulations and deliver redress.

When national and international avenues for redress are inappropriate or have been exhausted, provisions should be made for affected people to bring cases in the country where the TNC is registered, or in the home country of the parent company. Establishing and codifying provisions for foreign direct liability under national law would help clarify the legal issues involved in such claims. Such legal certainty may be welcomed by companies and would create an important avenue of redress for affected communities.

# Section four Policies for corporate regulation



***‘As governments – especially in the South – withdraw from heavy involvement in agriculture, to be replaced by direct dealings between farmers and agribusiness, the gap of private sector policy must be addressed.’ Bill Vorley, International Institute for Environment and Development<sup>293</sup>***

***‘We cannot leave companies to regulate themselves globally, any more than we can in our national economies. Setting common standards at a global level requires legislation.’ Jack Straw MP, UK Foreign Secretary, 2001<sup>294</sup>***

Agrifood corporations are driving anti-development characteristics in the agrifood chain, and their business practices are undermining people’s rights in developing countries. There is clearly a need for new institutional mechanisms to counter agrifood TNC market power, and to ensure companies contribute to the realisation of human rights within the sphere of their influence. Countervailing measures should be seen not simply as a response to the use and abuse of corporate power. They are important tools for building a more democratic and equitable food system, and for generating sustainable growth with equity. ActionAid suggests two complementary approaches to regulating corporate behaviour:

- re-governing agrifood markets towards pro-poor development goals
- holding TNCs legally accountable for their impacts on human rights and the environment.

#### **Key principles for institutions tasked with regulating TNCs**

Primary responsibility for regulating corporate behaviour, whether through competition, investment, trade, or legal accountability measures, should remain with local and national governments. However, regional and international oversight is also required. Institutions tasked with regulating TNCs should:

- encourage participation by local communities and civil society groups
- promote communities’ right to prior informed consent
- have proper representation from developing countries, and not be dominated by developed country or industry interests
- be granted the necessary enforcement powers
- ensure mechanisms for redress are easily accessible for communities and countries
- ensure the costs of regulation are borne in the main by governments and industry.

## **4.1 Re-governing agrifood markets**

Shareholder and consumer value have become the key forces governing the distribution of wealth in the agrifood chain, with little countervailing pull from the state towards pro-poor development goals. Governments have a duty to prevent companies from abusing market power to appropriate resources unfairly, and should seek to ensure justice for farmers and rural workers. A number of policy interventions would curb the destructive impacts of corporate power on rural livelihoods, including in the areas of:

- competition
- investment
- trade
- development aid.

Where farmers wish to avoid, or opt out of, extractive and exploitative relationships with agrifood TNCs, a key consideration for governments should be to strengthen farmers’ ability to do so. Many of the solutions listed in this section would help create space for producers to prioritise, access and diversify into alternative trading structures and localised markets (see Box 10).

### Competition policy

Competition policy traditionally seeks to protect the interests of consumers. Regulators tend to avoid intervening when companies exercise buyer power as long as price discounts extracted from producers are passed on to consumers in the form of lower food prices.<sup>295</sup> However, given the multiple benefits of agriculture, policymakers should aim to strike a fairer balance between producer and consumer interests. Furthermore, evidence presented in this report indicates that in many cases, price reductions are not making their way to consumers. Competition authorities should recognise, monitor and take action against the misuse of buyer power and ‘value-grabbing’ accordingly.

The remit of domestic competition authorities in developed countries does not extend to overseas producers. Currently there are no international standards to regulate competition from one continent to another. If a UK-based company exerts buyer power to push down the price of farm produce in poor countries, this would be a matter for local competition authorities – if they exist. As such there is a need to examine how competition policy could work more effectively in cases of cross-border abuses.<sup>296</sup>

Competition policy is increasingly being shaped by the drive for economic efficiency, while consideration of the ‘public interest’ has been relegated to a secondary role. As governments consider large-scale companies to be more efficient and more competitive on world markets, they have allowed corporations to grow in scale. Although it may sometimes bring benefits, the pursuit of scale and market efficiency does not always coincide with the goal of reducing poverty and protecting people’s rights.

As Sophia Murphy of the Institute for Agriculture and Trade Policy observes: *‘If increased trade encourages anti-competitive behaviour, then much of its potential to benefit development is eroded. The giants are the result of not enforcing competition law. The giants are then the ones that soak up the opportunities that were meant for local firms. The result is not increased choice, job creation or increased foreign exchange earnings, but rather deepening inequities between North and South, and between small producers and big business.’*<sup>297</sup>

Some developing country authorities are guided by the principle that competition policy should promote social objectives, as well as economic efficiency (see Box 8). In South Africa, for example, a fundamental principle of the country’s competition law *‘balances the need for economic efficiency with socio-economic equity and development.’* It also includes provisions *‘to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy and to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.’*<sup>298</sup> In Thailand, competition regulators are making efforts to protect the interests of rural producers and control supermarket buyer power. The Trade Competition Commission is in the process of setting fair trade guidelines to restrict retailers’ use of bargaining power to demand heavy price reductions from suppliers.<sup>299</sup>

ActionAid calls on competition regulators to:

- focus attention on *buyer power* as well as seller power
- balance social and developmental objectives with promoting economic efficiency (see Box 8)
- recognise that companies need a much smaller market share to exert buyer power than is needed to exert seller power<sup>300</sup>
- ensure developing countries are accorded special and differential treatment, including policy space to foster domestic industries and producer organisations
- address the anti-competitive effects of strategic business alliances
- apply the ‘standstill’ or ‘rollback’ principles when a corporation’s size threatens the public interest.

**Box 8****Using competition policy to protect rural livelihoods**

When TNC Parmalat entered the Zambian dairy market in 1998, competition regulators prevented the company from forcing milk producers out of the supply chain. By 1999, Parmalat controlled 60% of Zambia's fresh milk market, which is of strategic importance to rural areas. Farmers feared they would lose out through Parmalat's takeover of the dairy company Bonnita, which had built a supportive structure for milk producers.

Zambia's Competition Commission took on board farmers' concerns and authorised the takeover on condition that Parmalat did not dismantle the existing dairy supply chain, which Bonnita had organised with a 'developmental approach'.<sup>301</sup> Parmalat had to maintain formal contracts with established dairy farmers throughout the country, and allow them to keep the shares they had in the company.<sup>302</sup> Regulators were also concerned about the effect of Parmalat's exclusive distribution arrangement throughout the country. This was authorised, but subject to removal of price-fixing and territorial restraint clauses.<sup>303</sup> This case shows that competition policy can be used to promote social and developmental goals in poor countries, as well as economic efficiency.

**Developing regional and global competition policy**

National governments should have primary responsibility for regulating competition, and the international community should help developing countries to build their capacity to manage anti-competitive behaviour – as appropriate to national circumstances. However, to counteract market concentration and to deter anti-competitive practices at the international level, national policies should be complemented by regional and global cooperation. Regional capacities could be built under the auspices of existing trade blocs, particularly within those whose member states are at similar levels of development. Regional authorities could be established to promote information sharing and cooperation between members, monitor competition issues, develop policies, and eventually be given the powers to intervene and enforce penalties in cases of cross-border abuses.

Once regional processes have developed, and if political will exists, governments should consider establishing a global competition authority, again using a gradual, staged approach. Multilateral competition rules should be housed outside the WTO, however, as its fundamental principles – including 'non-discrimination' between domestic and foreign companies – do not allow developing countries sufficient flexibility to promote social and development objectives through competition rules.<sup>304</sup>

**Competition policy solutions**

- National and regional competition regulators should focus attention on buyer power as well as seller power.
- Regulators should use competition policy to achieve social and development goals; for example, by permitting farmers to form producer organisations, and by ensuring small-scale producers are not forced out of supply chains.
- Unfair buying practices should be investigated and regulated as an abuse of market power.
- The international community should support developing countries to:
  - build a greater understanding of competition issues that is relevant to local conditions
  - where appropriate, establish competition authorities and policies in accordance with the country's needs and capacities.
- Regional cooperation on competition issues should be increased, with a view to establishing regional authorities. These should:
  - coordinate capacity-building between member states
  - share information and promote cooperation between national authorities
  - monitor corporate concentration, mergers and strategic alliances with implications across national borders
  - introduce a cartel 'whistle-blowing' mechanism<sup>305</sup>
  - investigate and process cases of restrictive business practices.

- WTO member states should extend Article XVII of the General Agreement on Tariffs and Trade (GATT), which requires WTO members to provide information on the activities and market share of all state trading enterprises operating in their country, to include private sector companies. Information should be given on any company, public or private, with a given minimum threshold of national or global market share in a particular market, and should include details of subsidiaries, affiliated companies and strategic alliances.
- Governments should work to improve global governance of competition issues, with a view to establishing a global competition authority.

### Investment policy

Many developing countries retain important controls on foreign direct investment (FDI) which can work to protect sensitive industries such as agriculture. In sectors that have been liberalised, such controls can maximise the positive benefits that both foreign and domestic capital can bring by ensuring investment projects support the local economy. For example, investment boards can approve projects on the condition that companies buy products locally, including purchasing from smallholders, cooperatives and local manufacturers, and that investors transfer technology to build local capacity.<sup>306</sup> However, industrial countries are pressurising developing countries to liberalise their foreign investment regimes. This threatens the ability of countries in the South to protect sensitive sectors and maximise the pro-poor potential of foreign investment.

To benefit poor communities, investment policies should be based around the following principles:<sup>307</sup>

- **Respect for policy space:** developing countries should be given the flexibility to ensure their investment policies are conducive to promoting sustainable development, eradicating poverty, protecting the public interest and realising people's rights (see Box 9).
- **A balance of rights and responsibilities:** the rights of investors should be balanced against the responsibilities of both the investors and the home government to respect the rights of communities affected by the investment.

UNCTAD has developed principles for assessing FDI.<sup>308</sup> The criteria allow governments to determine how 'development-friendly' the proposed investments would be, and to discriminate among investors according to their potential to contribute to national development goals. The UNCTAD criteria affirm the right of host governments to restrict FDI in certain sectors, to require linkages to the local economy, and to screen potential investors before entry. They also provide a basis on which an international agreement on investment could, eventually, be established. As with competition rules – and for the same reasons – any multilateral investment framework should be housed outside the WTO.<sup>309</sup>

#### Box 9

### Using investment policy to protect rural livelihoods

The clearest restriction on foreign investment is the closure of sensitive sectors to foreign participation. For example:

- **Thailand** prohibits foreign investment in rice farming, animal farming, and various other sensitive sectors.
- **Uganda** prohibits foreign investment in agriculture (although flexibility is allowed in the establishment of tea and coffee plantations).
- **China** prohibits foreign investment in the breeding of certain Chinese varieties of crops, livestock and fish. It also maintains a ban on foreign investment into the processing of Chinese green tea and other specialist teas.<sup>310</sup>

In addition to keeping sectors closed to foreign investors, developing countries use various screening processes, market access conditions, performance requirements and restrictions on land use to maximise the benefits and minimise the risks of foreign investment to their economies. For example, Indonesia has made use of joint venture requirements on foreign investors, particularly in sectors of the economy that are reserved exclusively for small-scale enterprises such as agriculture, fisheries and foodstuff production.

There is a second set of sectors in which large and medium-scale enterprises are only allowed to invest on condition that they enter into partnership with a small business or cooperative. It includes animal husbandry; production of food crops; food and drink processing; manufacture of agricultural machinery; silk spinning; and small-scale mining.<sup>311</sup> In Thailand, meanwhile, new zoning regulations aim to curb the expansion of transnational supermarket chains such as Tesco and Carrefour outside the Bangkok area.<sup>312</sup>

### Investment policy solutions

Governments can protect and promote the interests of small-scale producers by designing and implementing investment policies that:

- ensure communities' right to prior informed consent is respected
- ensure companies' supply chain systems do not discriminate against smallholders
- close sensitive sectors, industries, or geographic areas to foreign participation
- impose market access conditions on investors, such as requiring agrifood companies to source from smallholders who wish to supply TNCs
- transfer technology to upgrade smallholders' capacity to participate in markets
- restrict land ownership for TNCs.

### Box 10

#### **Food sovereignty – grassroots resistance to corporate control of agriculture**

A growing international social movement is challenging corporate-driven models of agriculture and calling for a more democratic food system. The Food Sovereignty movement is defending the right of farming communities to control the means to agricultural production, and to take part in local, national and international policy debates that affect their livelihoods, but from which they are largely excluded. Via Campesina, an international network of agricultural labourers, indigenous peoples and family farmers, is a driving force behind the concept of Food Sovereignty, which has been defined as: *'The right of peoples, communities, and countries to define their own agricultural, labour, fishing, food and land policies which are ecologically, socially, economically and culturally appropriate to their unique circumstances.'* The movement rejects *'centralized, corporate-driven, export-oriented, industrial agriculture'*, and promotes *'decentralized, peasant- and family farm-based sustainable production primarily oriented towards domestic markets'* as an alternative.<sup>313</sup>

The movement is gathering momentum – more than 700 grassroots groups and an estimated 1.5 million people took part in 2004 in a 'People's Caravan for Food Sovereignty' which crossed 16 countries in Asia and Europe – and is demanding a greater say in the way agricultural markets are governed.<sup>314</sup> Policymakers should learn from the knowledge and practices of excluded rural communities and empower poor people to participate in policymaking – rather than just experience its consequences.

### Trade policy

Trade policy can make an important, if sometimes indirect contribution to reducing the negative impacts of corporate activity on smallholder farmers. Eliminating trade-distorting domestic and export agricultural subsidies, and ensuring that developing countries have the right to protect smallholder crops – for example, through border tariffs – would curb the predatory practices of agrifood TNCs (such as dumping agricultural goods). The scale of the commodities crisis and its impact on global poverty requires a re-examination of national and international supply management initiatives. This should be combined with strategies for longer-term diversification into food crops, value-added agrifood products and other economic sectors. Supply-side constraints need urgent attention to facilitate the trade of products and services onto local, national and international markets, where appropriate. This should involve establishing alternative trading structures for producers who wish to avoid dealing with TNCs.

### Trade policy solutions

- Developing countries should be supported to implement domestic policies aimed at stabilising producer prices at remunerative levels.
- The case for international commodity agreements to avoid oversupply and curb price volatility should be revisited. Commodity agreements should also include provisions to ensure fair returns for producers.
- Agricultural inputs should be designed to be appropriate and affordable for low income farmers.
- No patents and restrictive IPRs should be granted on plants and seeds, and farmers' rights to save, use, exchange and sell farm-saved seed should be protected.
- Northern governments should ban the dumping of agricultural goods, eliminate trade distorting subsidies, and implement effective domestic supply management of farm products.
- Developing countries should have the fullest flexibility (or the right) to protect producers in agricultural, manufacturing and services sectors in bilateral, regional and multilateral negotiations and agreements.
- Industrial country tariffs that penalise value-added agricultural products exported from developing countries should be removed.

### Development aid policy

Increasing the volume and quality of aid supporting small-scale agriculture could help offset imbalances in market power between farmers and agrifood companies. Developing country governments should give the smallholder sector a higher priority in poverty reduction strategies, ensuring that poor and marginalised people participate in designing policies, and are empowered to gain control over productive and institutional resources. Donors should also seek to strengthen, and where appropriate support the establishment of farmer cooperatives and organisations (see Box 11). This could involve improving collective bargaining techniques, increasing smallholders' access to market information, and upgrading smallholders' capacity to meet private standards.

Improving the quality of aid should also involve reassessing the role of the state in agriculture. In many cases private actors have failed to step in where state services have been withdrawn, especially in poor and remote areas. The past failings of government interventions in agriculture came about in part because of their 'top down' nature. A more participatory, transparent and targeted approach to public sector support would help ensure a fairer balance is struck between producer and consumer interests, and promote social objectives by ensuring services reach poor areas. Policymakers should recognise that almost all successful examples of pro-poor agricultural growth have involved substantial government support, including to stabilise output prices, subsidise input supply and credit, and undertake agricultural research and extension (Dorward *et al.* 2003).

#### Box 11

### Mango producers organising in Thailand

By forming a producer organisation and pooling their resources, small-scale mango farmers in northern Thailand have raised the value of their crop and improved their profits. In the early 1990s, almost all of Thailand's mango harvest was for the domestic market, and farmers lacked production know-how and management skills. As mango production increased, the average price declined, and in 1992 30 farmers from Chiang Mai started the Early Season Farmer Group. To escape the price squeeze, they began early season production of an export variety of mango, with dedicated support from government officers. As a group, the farmers had the collective bargaining power to reduce input prices and raise selling prices. The organisation's membership increased to 105 by 1998 and their gross margin per hectare was around 12 times higher than typical for the area. This was achieved through collective efforts to improve crop management, including the use of better fertiliser and improved pest and disease control.<sup>315</sup>

### Development aid policy solutions

- OECD countries should increase the volume and improve the quality of aid flows supporting smallholder agriculture and pro-poor rural institutions.
- Smallholders should be supported to participate in standards-setting processes, and standard makers should respond to the needs of smallholders accordingly.
- End the practice of tying aid to the privatisation and de-regulation of public institutions.

## 4.2 Holding TNCs legally accountable for their impacts on human rights and the environment

### Corporate accountability

The commitment made by some TNCs to improve their social and environmental performance is welcome. However, the voluntary approach to corporate regulation is insufficient, and needs to be underpinned by a set of minimum legal standards. While primary responsibility for protecting human rights and the environment lies with states, TNCs have in effect outgrown the reach of national regulation, yet there is no general rule that companies are responsible for their wrongful acts under international law. However, well-established international human rights standards have in many instances become customary law, and some apply to non-state actors. Such standards lay the foundation for legal obligations that apply directly to private sector companies.

Mechanisms for redress should be readily accessible for affected people and communities, who should be granted the right to appeal and access to sufficient legal aid. Where appropriate, people harmed by corporate activity should be supported to seek remedies through local channels, for example, through collective bargaining with the company in question, or through local legal systems. Where local or national authorities are unable or unwilling to deliver justice, or where claimants are more likely to obtain redress outside national jurisdictions, affected people should be able to seek redress through international frameworks or in home country courts.

### The UN Human Rights Norms for Business

The UN Human Rights Norms for Business represents a significant step towards international regulation of transnational corporations.<sup>316</sup> The Norms outline a set of minimum obligations for companies, and are drawn from existing global standards on human rights, labour and the environment that are well grounded in international law. Because they are not limited by clauses emphasising their non-regulatory nature, the UN Norms extend beyond the voluntary approach, and their legal effect will increase if national and international courts begin to make reference to them (Amnesty International 2004).

A number of articles in the UN Norms are relevant to securing the rights of smallholder farmers and rural workers. For example, the Norms oblige TNCs to:

- contribute to the realisation of human rights, including the rights to development and adequate food, and refrain from actions which obstruct the realisation of people's rights
- provide workers with remuneration that ensures an adequate standard of living for them and their families; this currently applies to company employees, but should be extended to include primary producers that supply TNCs with agricultural goods
- ensure freedom of association and the right to collective bargaining
- respect the rights of indigenous communities to their land and other natural resources, and their cultural and intellectual property
- respect the principle of prior informed consent.

**Box 12****The UK CORE Coalition**

ActionAid UK is a member of the Corporate Responsibility (CORE) Coalition together with Amnesty International, Christian Aid, Friends of the Earth, WWF and over 100 other UK civil society groups. The CORE Coalition is campaigning to change the legal framework under which UK corporations operate, calling for changes to UK company law in three key areas:

- **Mandatory sustainability reporting:** Companies should report against a comprehensive set of key indicators on the social, environmental and economic impacts of their operations, policies, products and procurement practices, including the activities of supply chain partners, sub-contractors, joint ventures and subsidiaries.
- **Directors' duties:** The current duties of directors of large companies should be expanded to include a 'duty of care' to communities and the environment, thus making directors legally accountable for the actions of their companies. Directors would therefore have to consider the impacts on stakeholders before they make decisions.
- **Foreign direct liability:** People and communities that are harmed by the activities of UK TNCs should be able to seek redress in UK courts.

**Corporate accountability policy solutions**

- The UN Human Rights Norms for Business should be supported and used as a basis for developing international legally binding regulations on TNCs.
- The UN Norms provision for 'fair and remunerative wages' for workers should be expanded to cover fair and remunerative prices for primary producers.
- OECD governments should provide assistance to build stakeholder capacity in developing countries, for example, to implement and enforce local and domestic legislation to regulate TNC activities, and for civil society to engage with companies regarding their adverse impacts.
- To reduce the hazards and risks of pesticides to human health and the environment, relevant international conventions<sup>317</sup> should be ratified by all governments. National laws to regulate pesticide distribution and use, based on international standards, should be adopted and implemented.
- Legal obligations should be placed on TNCs to take into account the interests of, and impacts on, suppliers or potential suppliers when considering new private standards or planning to stop dealing with a supplier. Companies should also be obliged to give adequate notice to suppliers of such changes.

**As well as by complying with legal obligations, agrifood companies and industry bodies could make positive contributions through voluntary commitments to:**

- apply fair trade principles to all trade with producers in developing countries as standard corporate practice
- widen their supply bases to include more smallholders who wish to supply TNCs, and invest in the development of smallholder organisations and marketing infrastructure
- support the participation of smallholders in standard-setting processes
- tailor private standards to suit smallholders' capacity, ensuring they do not exclude smallholders from markets
- remove the most toxic pesticides from markets, particularly in countries where conditions are unsuitable for their use, and introduce safer products and technologies.

## Key recommendations

Many rural communities are mobilising to defend their interests against corporate-driven models of agriculture. ActionAid actively supports such initiatives, including cooperatives and farmer organisations. States and international institutions also have an important role to play. Governments should help build local capacity and create space for a more equitable, democratic food system in which people can hold corporations to account. The following recommendations are targeted towards these ends. ActionAid calls on governments to:

- **re-govern agrifood markets towards pro-poor development goals**
- **hold TNCs legally accountable for their impacts on human rights and the environment.**

### **OECD governments should:**

#### **In the area of competition policy**

- recognise, monitor and take action to prevent the misuse of buyer power in agrifood markets, including cross-border abuses
- build capacity in developing countries to manage anti-competitive practices
- strengthen international cooperation on competition issues that promote social and development objectives with a view to establishing regional – and eventually global – competition authorities
- apply the ‘standstill’ and ‘rollback’ principles to mergers in the agrifood industry.

#### **In the area of investment policy**

- ensure developing countries have the policy space to implement investment (and competition) policies that promote national development goals.

#### **In the area of trade policy**

- revisit the case for international commodity agreements
- ensure developing countries are able to protect agricultural products and sectors that are deemed strategically important for poverty reduction, smallholder production, food security, livelihoods and rural development
- drop the inclusion of investment and competition rules that are aimed at increasing market access from WTO, regional and bilateral trade agreements.

#### **In the area of aid policy**

- increase the volume and quality of aid supporting small-scale agriculture, including funds to strengthen and establish rural producer organisations
- assist small-scale producers to participate in standards-setting processes
- end the practice of tying aid to the privatisation and de-regulation of public institutions.

**In the area of corporate accountability**

- support the UN Human Rights Norms for Business
- provide assistance to build stakeholder capacity in developing countries; for example, to implement and enforce local and domestic legislation to regulate TNCs, and to enable civil society to engage with companies regarding their adverse impacts
- legal obligations should be placed on TNCs to take into account the interests of, and impacts on, suppliers or potential suppliers when considering new private standards or planning to stop dealing with a supplier; companies should also be obliged to give adequate notice to suppliers of such changes.

**Developing country governments should:**

- prioritise the development of smallholder agriculture in domestic policies, including strengthening, and where appropriate forming, rural producer organisations
- recognise and monitor buyer power in agrifood markets, and take action to prevent abuses
- implement domestic policies to stabilise producer prices at remunerative levels.

**The World Trade Organization should:**

- extend Article XVII of the GATT to include private sector agrifood companies: information should include details of subsidiaries, affiliated companies and strategic alliances.

**The UN Commission on Human Rights should:**

- support the UN Human Rights Norms for Business, ultimately through the adoption of a resolution; this would pave the way for a resolution at the UN General Assembly.

**Transnational corporations should:**

- apply fair trade principles to all trade with producers in developing countries as standard corporate practice
- widen their supply base to include more smallholders who wish to supply TNCs, and invest in the development of smallholder organisations and marketing infrastructure
- support the participation of smallholders in standard setting processes and tailor private standards to suit smallholders' capacity, ensuring they do not exclude smallholders from markets
- remove the most toxic pesticides from markets, in particular in countries where conditions are unsuitable for their use, and introduce safer products and technologies.

# Appendix

## The world's top agrifood corporations

**Table 1: the top 10 seed companies (2002 sales)**

COMPANY	US\$ millions
1. DuPont (US)	2,000
2. Monsanto (US)	1,600
3. Syngenta (Switzerland)	937
4. Seminis (US)	453
5. Advanta (Netherlands)	435
6. Groupe Limagrain (France)	433
7. KWS AG (Germany)	391
8. Sakata (Japan)	376
9. Delta & Pine Land (US)	258
10. Bayer Crop Science (Germany)	250

Source: ETC Group (2003)

**Table 2: the top 10 agrochemical companies (2002 sales)**

COMPANY	US\$ millions
1. Syngenta (Switzerland)	5,260
2. Bayer (Germany)	3,775
3. Monsanto (US)	3,088
4. BASF (Germany)	2,787
5. Dow (US)	2,717
6. DuPont (US)	1,793
7. Sumitomo Chemical (Japan)	802
8. Makhteshim-Agan (Israel)	776
9. Arysta LifeScience (Japan)	662
10. FMC (US)	615

Source: ETC Group (2003)

**Table 3: the top 10 food manufacturers & traders (2002 sales)**

COMPANY	US\$ millions
1. Nestlé (Switzerland)	54,254
2. Kraft Foods (US)	29,723
3. Unilever (UK)	25,670
4. PepsiCo (US)	25,112
5. Archer Daniels Midland (US)	23,454
6. Tyson Foods (US)	23,367
7. Cargill (US)	21,500
8. ConAgra (US)	19,839
9. Coca-Cola (US)	19,564
10. Mars (US)	17,000

Source: ETC Group (2003)

**Table 4: the top 10 food retailers (2002 sales)**

COMPANY	US\$ millions
1. Wal-Mart (US)	246,525
2. Carrefour (France)	64,979
3. Royal Ahold (Netherlands)	59,455
4. Kroger (US)	51,759
5. Metro AG (Germany)	48,714
6. Tesco (UK)	40,387
7. Costco (US)	38,762
8. Albertson's (US)	35,916
9. Safeway (US)	34,799
10. Ito-Yokado (Japan)	27,606

Source: ETC Group (2003)

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**Telephone**  
+27 (0) 11 880 008

**Facsimile**  
+27 (0) 11 880 8082

**E-mail**  
mail.jhb@actionaid.org

**Website**  
www.actionaid.org

**International secretariat**  
Johannesburg

**Asia office**  
Bangkok

**Africa office**  
Nairobi

**Americas office**  
Rio de Janeiro

**Founder**  
Cecil Jackson Cole

**Chair**  
Noerine Kaleeba

**Chief executive**  
Ramesh Singh

**ActionAid International**  
PostNet Suite #248

Private bag X31  
Saxonwold 2132

Johannesburg  
South Africa

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