"The realisation of the human right to food in the context of economic liberalisation: A case study on the access to maize-based food staples in Mexico City"

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By
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<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CDHDF</td>
<td>Comisión de Derechos Humanos del Distrito Federal (Human Rights Commission of Mexico City)</td>
</tr>
<tr>
<td>CNDH</td>
<td>Comisión Nacional de Derechos Humanos (National Human Rights Commission)</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>ESC</td>
<td>Economic and Social Council</td>
</tr>
<tr>
<td>ESCR</td>
<td>Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agricultural Organization</td>
</tr>
<tr>
<td>FIAN</td>
<td>Foodfirst International and Action Network</td>
</tr>
<tr>
<td>GC</td>
<td>General Comment</td>
</tr>
<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North Atlantic Free Trade Agreement</td>
</tr>
<tr>
<td>PAN</td>
<td>Partido Acción Nacional – National Action Party</td>
</tr>
<tr>
<td>PRD</td>
<td>Partido de la Revolución Democrática – Democratic Revolution Party</td>
</tr>
<tr>
<td>PRI</td>
<td>Partido Revolucionario Institucional – Institutionaised Revolutionary Party</td>
</tr>
<tr>
<td>RTF</td>
<td>Human Right to adequate Food</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
"The realisation of the human right to food in the context of economic liberalisation: A case study on the access to maize-based food staples in Mexico City"

An Abstract of the Thesis
by
Anne Cristina de la Vega-Leinert

Mexico is increasingly dependent on imports to satisfy national basic food needs. The volatility of international markets, high concentration of the maize sector, speculation and recent use of maize for biofuels push prices up. The Mexican State, who once strongly intervened to control food prices, particularly of the tortilla, has since the 1980s largely abandoned its responsibilities towards social food supply. This was initiated through structural adjustments programmes and exacerbated by Mexico’s uncritical adoption of free trade. Consequently, the Mexican State fails in many ways to realise the right to adequate food of poor urban populations, as encapsulated in the International Covenant in Economic, Social and Cultural Rights. To mitigate negative impacts on the urban poor, the State must reclaim its role as instigator of social policy and market regulator. This case study on Mexico City uses an international human rights law approach combined with a qualitative research framework.
Acknowledgments

Many people have helped me to come this far.

I am in debt to all experts, who provided me with invaluable information and accepted to share with me their time and experiences. Each interview has been a stimulating opportunity to learn and reflect on my topic, and broader issues, from many different perspectives. These thought-provoking encounters have confirmed me in my wish to continue in this academic path and seek new ways to develop and express my own ideas.

I am grateful to my supervisors, Dr. Valentin Aichele and Sean Loughna, who have provided critical insight and advice throughout the duration of the MA and to the ICM Team and my fellow students for their help, friendliness and encouragement.

I would like to thank my family, in particular my father for making my wish to study the MA possible in many ways and my mother for her enthusiasm and understanding. Thanks are extended to my WG and friends, who offered me much needed inspiration, patience and continuous support.
1. Tortilla price inflation:

**An entry point for a human rights study on Mexican food policies**

On the 31\textsuperscript{st} January 2007, 100,000 people gathered in the centre of Mexico City to demonstrate against the rapidly increasing prices of the tortilla, the national basic food staple made out of maize. The tortilla price indeed had climbed from 6 pesos/kg (<0.4€\textsuperscript{1}) in October 2006 to between 14 and 30 pesos/kg (0.89 and 1.89€) in January 2007. Although the most extreme prices only occurred in specific areas of the country, the significant increases stirred important social protests, particularly in the capital.

Tortilla price increases primarily affects urban households, which are the targeted recipients of the mass industrialisation and commercialisation of the tortilla. In contrast, in rural areas the staple is generally not marketed and mostly made at home from locally grown or purchased maize grains. The climbing tortilla prices are moreover only one aspect of the current tendency to generalised inflation of all major food staple prices and of other key household goods, including domestic gas and more recently fuel (La Jornada 20\textsuperscript{th} September and 20\textsuperscript{th} December 2007). Since urban household expenditures rise rapidly while income levels stagnate, purchasing power is in real terms declining significantly (Carrera Chavez, 2007:16). Consequently, the already precarious livelihoods of the poorer urban social classes are endangered.

Profound societal transformations have been proposed as broad explicative context for the current inflationary trends of food staples in Mexico (Mújica Vélez, 2007:9). Indeed, after almost five decades of protectionist and state-controlled economy, Mexico, in the early 1980s, initiated a drastic process of economic liberalisation. This was accelerated through Mexico’s ratification of a number of multilateral commercial treaties, in particular the North-American Free Trade Agreement (NAFTA) in 1992, and its entry into the World Trade Organization (WTO) in 1994. Fundamental state and policy reforms have accompanied the progressive opening up and privatisation of the Mexican economy and its incorporation into the rules of global trade (Hernández Oliva, 2007:67).

Through economic liberalisation and industrialisation Mexico has accessed the status of advanced middle-income country (World Bank, 2007\textsuperscript{2}). Poverty, hunger and malnutrition, however, continue to affect a large part of the population (FAO, 2008\textsuperscript{3}). Moreover, within NAFTA, Mexico has been encouraged to progressively abandon basic food staples, such as maize and beans (produced more cheaply and efficiently by the USA) to concentrate on specific cash crops, where it has a competitive advantage, to boost exports revenue (Williams, 2004:15). As Mexico neglects the production of basic food staples, it is less and less able to satisfy its national needs, and consequently its food self-sufficiency\textsuperscript{4} declines despite growth in macro-economic terms (Henriques and Patel, 2003:7).

\textsuperscript{1} The Mexican peso is at the time of writing worth 0.06 €. Using currency conversion rates on 21.02.2008 (http://www.oanda.com/convert/classic)


\textsuperscript{4} Food self-sufficiency: “The ability to produce enough food to support a population” (Agripedia, 2008 - http://www.ca.uky.edu/agripedia/glossary/foodefcy.htm - accessed on 26.02.2008)
Before joining any trade organisation or ratifying any free trade treaty, Mexico willingly accepted some important moral and legal obligations under international human right law. In particular, it ratified in 1981 the International Covenant on Economic, Social and Cultural Rights (ICESCR). This legally binding treaty enshrines the right to adequate food (RTF) and to be free from hunger under Article 11. In a country where poverty levels remain high the unchecked increase in basic food prices could be reframed as an obstacle for the realisation of the RTF, as enshrined in the ICESCR.

However, food staple price inflation relates to a complex series of factors, not all directly related to economic liberalisation and / or national policy. At the same time, prices are one among many factors that determine accessibility of food in a human right perspective. The overall purpose of the present research is, therefore, to investigate how the Mexican State has approached its legal obligations under ICESCR to progressively realise the RTF of its urban population, with specific focus on Mexico City, and to which extent its policies have contributed to reaching this goal.

2. Research question and objectives

The rights to adequate food (RTF) and to be free from hunger contained in Article 11 of the ICESR have been described in substantive and procedural terms in the General Comment (GC) No. 12 of the Committee on Economic, Social and Cultural Rights (CESCR). This is centred on the obligations of the state party to realise the access to qualitatively and quantitatively adequate food, in nutritional, economic and cultural terms. Under international law, state obligations are articulated around three distinct tasks. The State must respect (i.e. not negatively arbitrarily interfere with an individual’s human right), protect (i.e. actively defend the human rights of an individual from negative third party intervention) and fulfil (i.e. develop of a legislative and policy framework for the long term realisation of human rights).

These different dimensions of state obligations can be interpreted and implemented in very different ways according to the approach the State wishes to follow and the population group it targets. Access is direct, when (essentially rural) populations produce their own food as in the case of subsistence farming. For urban populations it is generally indirect, since they do not have the means of producing their own food and need to purchase it or obtain it by other means. They are, therefore, dependent on the following key factors to realise their RTF: 1) sufficient economic assets or income, 2) adequate and accessible offer of food (e.g. using normal market mechanisms), and /or 3) public policies and regulatory mechanisms (e.g. a guaranteed minimum salary sufficient to cover food costs, price ceilings for the official minimum food basket, food production and consumption subsidies).

The present work focuses on the access to maize-based products of Mexican urban population. The research question is: in the context of economic liberalisation, which challenges and opportunities does the Mexican State face in securing the access to maize-based food staples to urban populations, with particular consideration of Mexico City?

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7 Maize-based products include processed maize flour and dough, and derived products, such as the tortilla.
To reflect on the role of the Mexican State in the access to maize-based products of urban populations in the context of economic liberalisation, we first aim to understand:

- the meaningfulness of maize-based products for the Mexican (urban) population,
- trends in agricultural and food policies before and with economic liberalisation, and
- major changes in the living conditions of the urban poor.

### 2.1. Research hypotheses

The underlying hypotheses are:

- There are grounds to argue that the Mexican State is neglecting, even violating, its obligations under the ICESCR, through its current approach to food policy
- The paucity of an explicit formulation of the RTF in national legislation and of legally binding enforcement mechanisms undermine efforts towards its realisation
- Proactive state interventions are not incompatible with economic liberalisation and are a necessary pillar of the realisation of the RTF of urban populations in Mexico.

### 2.2. Relevance of the case study

The case study will discuss the usefulness of international human rights law as a set of ethical-legal norms and analytical tools to promote the development of, and contribution to, critical discourses on economic liberalisation and as a base for the elaboration of alternative societal models. The relevance of the human right approach as a catalyst for social mobilisation, confrontation and transformation, and its meaningfulness in advocacy work, which aims to improve the living standards for the underprivileged, will be investigated.

This work is a contribution to a better understanding of the concrete potentials of human rights to further societal debate and scrutiny on Mexico’s endeavours to fulfil its obligations under the ICESCR at a time when human rights are becoming more visible in public debate in Mexico. It will, it is hoped, be of specific relevance to analysts or socio-political actors dedicated to promoting the RTF in Mexico, or in other countries facing similar problems. This study could thus also be relevant to state or non-state actors involved directly or not in human rights advocacy work, poverty mitigation programmes or broader development issues.

### 2.3. Structure of the thesis

Section 3 introduces and discusses the research methods used in the present work. Section 4 presents the Mexican situation, particularly of Mexico City, in terms of the role of maize in Mexican nutrition and culture and puts forward current trends in malnutrition and poverty. Section 5 reviews and analyses the normative and procedural content of RTF in international law and in the Mexican legislative context. Section 6 establishes the important lines of Mexican agricultural and food policy since the 1950s to understand how the access to maize of urban population has changed. These policies are contextualised with respect to two contrasting approaches to development and economic policy followed by the State. These are analysed in Section 7 from a human right perspective. Section 8 brings the main findings of the thesis together and discusses them in terms of the role of the State in the realisation of the RTF in the context of economic liberalisation. Finally, key conclusions and recommendations are synthesised in Sections 9.
3. Research methods

The present research is based on an international human right law approach. This implies that the coherence and effectiveness of the agricultural and food policies of the Mexican State are analysed in terms of two main lines. First, the Mexican understanding of its duties under ICESCR will be compared to the official description of ethical aspirations and legal norms encapsulated in the General Comment No. 12. Second, the societal visions and goals underlying food policies will be set against their actual implementation.

The second methodological characteristic of the present project is that it follows a qualitative and empirical approach. It is articulated along the following tasks. First, a broad newspaper survey was done between 1st January and 31st December 2007, to develop the project proposal and ground the literature review. Scientific and grey literature was analysed focusing on:

- conceptualisations of the RTF, its articulation in ethical legal norms and academic analysis of its scope and interpretations,
- relevance of maize in Mexican diet, culture and identity, and,
- Mexican food and agrarian policies since the 1950s, with a special emphasis on their goals and impacts on the access to maize products of urban populations.

Second, a broad review of existing data on Mexican nutritional trends as well as contextual data on macro-economic indicators of wealth, trade, employment, poverty, and when possible specific data related to the metropolitan area of Mexico City. The collection of data and literature was performed through visits of specialised libraries in Mexico City and in Berlin, and through Internet access to international and Mexican organisations dedicated to human rights, health, agriculture and trade issues.

Third, existing material relevant to the RTF from official and shadow reports produced by the Mexican State and civil society organisations and submitted to the Committee on Economic, Social and Cultural Rights since Mexico’s ratification of the Covenant, was reviewed to collect information on recent state approaches to food and agricultural policy.

Fourth, during a 10-week stay in Mexico City between 29th August and 6th November 2008, relevant workshops, conferences, exhibitions, fairs etc. related to the three core themes of the research, i.e. the maize-tortilla system, economic liberalisation and human right to food, were attended to, as a way to collected literature and contact relevant experts.

Fifth, a series of semi-structured expert interviews was performed while in Mexico City. Potential interviewees were identified through exhaustive Internet searches, attendance at relevant events or personal contacts. Approximately 30 different experts, from 21 different organisations were short-listed and contacted by means of telephone, Internet or personal visits. Interviewees were primarily academics, journalists, (non-) governmental actors, health and nutrition practitioners, who had key expertise in fields relevant to the research question. Interviews ranged from c.30 minutes to 1 hour 50 minutes in length. Two were collective interviews of at least two experts. Eventually, fourteen interviews were carried out, ten of them being fully transcribed following accepted transcription methods (See e.g. Oliver et al, 2005). Moreover two speeches made at a workshop on World Food Day (October 16th 2007) were also fully transcribed. Interviewed experts and their affiliations are listed below (Table 1). All experts provided a full consent to be named and quoted in the present work.

All quotes from the literature or interviews have been translated directly by the author of the present work. Where some words and (parts of) sentences were altered, these are signalled as

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8 See Appendix 1 for the full list of organisations contacted and Appendix 2 for a typical letter of recruitment.
follows [plain text]. If words or parts of sentences were omitted this is signalled by (...). Line numbers from the full transcripts were added to each quote to ease their localisation.

The original aim of the interviews was to trace relevant literature, collect published and grey literature and obtain analytical views specifically on the RTF of urban populations in Mexico City, in particular its visibility and acceptance, and existing opportunities and challenges for its realisation. However, during the phase of compilation and selection of possible interview candidates, it appeared that the RTF from the perspective of urban populations was an issue that was formally articulated only in specific circles, for example for activists and academics related to FIAN International9 and FIAN Mexico. In general, reflection and information on the status of this human right in Mexico was closely related to subsistence farmers’ plight or more generally rural populations. Thus, the interview strategy was refocused to target different perspectives on broader issues relevant to the research question.

Broad topics covered in the interviews included:

- general relevance of human rights, more specifically of the economic, social and cultural rights (ECSR), as an ethical-legal framework in governance and civil society,
- major challenges in the realisation of ECSR in Mexico
- importance of maize in the Mexican food, nutrition and economy,
- impacts of economic liberalisation on the maize-tortilla sector, and
- major societal transformations affecting Mexican urban areas since the 1950s.

Through preliminary work important sub-themes to be covered during the interviews were identified. According to the particular area of expertise of the interviewees, personalised sets of questions were elaborated10. Some questions, however, were asked to all interviewees, on for example personal opinion on major advances in, and barriers to, the realisation of the RTF in Mexico. These common questions were very useful since they allowed collecting different perspectives on the same theme. This contributed to develop a more nuanced understanding on the complexity of the topics covered. The main interview themes later also guided the broad coding of the transcripts. Due to the vast length of the interview transcripts and the limited amount of time for their processing a simplified coding technique was used. Transcripts were carefully read to select the sections containing statements particularly relevant to the research question, which were to be later summarised or quoted. Otherwise synthesising codes (See Appendix 5) were formulated and later discussed in relation to the selected quotes in the shape of short memos. Finally, the memos, or parts of memos, most relevant to answering the research question, were related to information collected from the literature review. These were later structured into the different chapter of this thesis.

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9 FIAN International – Foodfirst Information and Action Network is an international non-government organization actively involved in the protection and promotion of the human right to food. It has numerous national relay organization, such as FIAN Mexico - [http://www.fian.de/fian/index.php](http://www.fian.de/fian/index.php) - accessed on 18.03.2008

10 See Appendix 3 for an example of one interview guide.
<table>
<thead>
<tr>
<th>Expert Name</th>
<th>Affiliation</th>
<th>Expertise</th>
<th>Status transcription</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Atlántida Coll-Hurtado</td>
<td>Department of Geography Universidad Nacional Autónoma de México (UNAM)</td>
<td>Land-use and societal transformations Land-city interactions</td>
<td>Interview Full transcript (1 hour 22 minutes)</td>
</tr>
<tr>
<td>Susana Cruickshank</td>
<td>OXFAM</td>
<td>Advocacy Civil Society Agricultural and food issues</td>
<td>Interview Full transcript (39 minutes)</td>
</tr>
<tr>
<td>Dr. Díaz Muller</td>
<td>Instituto de Investigaciones Jurídicas, UNAM</td>
<td>International Human Rights Law</td>
<td>Interview Full transcript (45 minutes)</td>
</tr>
<tr>
<td>Luis Hernández Navarro</td>
<td>Journalist La Jornada</td>
<td>Domestic economic and political issues related to Free Trade</td>
<td>Interview Full transcript (34 minutes)</td>
</tr>
<tr>
<td>Ing. Jesús Guzmán</td>
<td>Centro de Estudios para el Desarrollo Rural Sustentable y la Soberanía Alimentaria (CEDRSSA), Câmara de Diputados</td>
<td>Agricultural and Food policy</td>
<td>Interview Not transcribed, but key recommended publications reviewed</td>
</tr>
<tr>
<td>Dinorah López</td>
<td>Food International Action Network (FIAN)</td>
<td>Human rights, food and nutritional issues, Community resource management Civil society</td>
<td>Interview Full transcript</td>
</tr>
<tr>
<td>Dr. Catherine Marielle</td>
<td>Grupos de Estudios Ambientales (GEA)</td>
<td>Agricultural and food policy Rural community resources management Agro-ecological systems</td>
<td>Interview Not transcribed, but key publications reviewed</td>
</tr>
<tr>
<td>Omar Rábago</td>
<td>Centro Nacional de Comunicación Social (CENCOS)</td>
<td>Human Rights advocacy Access to information Civil Society</td>
<td>Interview Full transcript (1 hour 20 minutes)</td>
</tr>
<tr>
<td>Ana Sánchez, Andrea Márquez, Tania Ramírez</td>
<td>Comisión de Derechos Humanos del Distrito Federal</td>
<td>Human Rights advocacy Monitoring and Evaluation of State policies Mexico City</td>
<td>Interview Full transcript (53 minutes)</td>
</tr>
<tr>
<td>Jorge Santiago Santiago</td>
<td>Desarrollo Económico Social de los Mexicanos Indígenas. Asociación Civil (Desmi, A.C.)</td>
<td>Alternative agricultural and economy system Land-city interactions</td>
<td>Interview (telephone) Full transcript (26 minutes)</td>
</tr>
<tr>
<td>Francisco Saucedo</td>
<td>Former Member of Parliament for the PRD (Partido de la Revolución Democrática) Grupo Tacuba</td>
<td>Juridical issues related to human rights Political lobbying</td>
<td>Speech at the FIAN workshop on World Food Day Full transcript (36 minutes)</td>
</tr>
<tr>
<td>Dr. Rita Schwentesius</td>
<td>Universidad de Chapingo</td>
<td>Agricultural and food issues Organic agricultural networks</td>
<td>Interview Full transcript (47 minutes)</td>
</tr>
<tr>
<td>Victor Suárez</td>
<td>Asociación Nacional de Empresas Comercializadoras de productos del campo (ANEC) Former Member of Parliament for the PRD (Partido de la Revolución</td>
<td>One of the leaders of the Campaign “Sin Maíz No Hay País” (Without maize there is no land) Agricultural issues Political lobbying</td>
<td>Speech at the FIAN workshop on World Food Day Full transcript (37 minutes)</td>
</tr>
<tr>
<td>Licenciada Zamora</td>
<td>Bufete Jurídico Tierra y Libertad</td>
<td>Lawyer focused on land tenure Education workshops on (land) rights Defence of human rights advocates</td>
<td>Interview Full transcript (49 minutes)</td>
</tr>
</tbody>
</table>
Although a wide spectrum of opinions was sought through the interviews, some bias must be noted and reflected upon. Thus, fewer governmental actors were contacted than independent academics or experts from civil society organisations. This was a deliberate choice. The interviews were envisaged as eye-openers and it was hoped that they would help to contrast official, government-based sources of information. The bias resulting from the recruitment choices was further strengthened as few of the contacted governmental actors did answer requests for interviews. However, information collected in state’s official report and academic literature provided a more balanced and complex representation of the richness of views on the topics covered.

A second bias must be noted, namely the focus on critiques to the current paradigm of free trade approved by the Mexican State. However, again this bias is to a certain extent nuanced through opinions from proponents of free trade collected in the literature review, and through academic assessments. The review of academic literature was perceived as a way to balance the information and opinions from state and non-state actors. However, academic literature is in no way neutral, and a bias towards literature critical to free trade has been preferred in the present work. This perspective is, therefore, clearly emphasised in the present work, although the author has attempted to the best of her abilities to avoid being uncritically partial of opinions, which did not agree with her own.

After presenting the overall goal of the present research, the framework adopted and the methodology followed, we turn to the description and analysis of the results. In the next section, the paramount role of maize in the Mexican diet and culture is introduced and the malnutrition status in Mexico is reviewed with consideration of its broad causes and societal impacts.

4. Setting the scene: Maize, nutrition and poverty in Mexico

4.1. The traditional relevance of maize in Mexican nutrition

Maize is central to Mexican lifestyle and culture. In the pre-hispanic diet maize was combined with beans, chillies (the “three friends of the poor”), squashes, fruit and occasional meat (Guillermo Prieto in Esteva, 2003a:20). It formed a key part of Mesoamerican cosmological and spiritual systems (López Austin, 2003:30). It is a god in the Maya cosmology, but also the essence of humans, who were created out of maize after first attempts with wood and clay yielded creatures unfit to be called human (Fournier García, 1996:99).

“Civilisation, the process of the conversion of primitive humans into civilised ones has lived through the labour of Mesoamerican peoples. And Mesoamerican peoples have managed to spread their culture and civilisation thanks to maize, to the cultivation of maize, this is why they say that we are men and women of maize. Maize has nurtured us. The western civilisation says that we are man and women made out of clay (...) but the men and women of this land are made out of maize” (Suárez, 1.35-143)

The Spanish colonisation brought many extraneous products (e.g. wheat, beef, pork, dairy products). With time, autochthonous and colonial food habits intermingled to create a rich and diverse Creole cuisine, although strong social and “ethnic” segregation became reflected in culinary and dietary habits (Pilcher, 2001:73). Higher social classes preferred wheat, while maize consumption characterised Indian populations (ibid.:69), although urban popular classes soon ate cheap wheat breads along with maize tortillas. After the independence in the nineteenth century Mexican nationalism developed and affirmed its dual Indian and Spanish roots, which led to the revalorisation of maize in Mexican identity and culture (ibid.:202).
Maize diversity and richness is today articulated as an evidence for the agricultural skill of the descendants of highly civilised pre-hispanic cultures (Ramos Rodríguez, 2003:256). Today’s variety of maize products results from continuous innovation but remains strongly rooted in pre-hispanic traditions (Fournier García, 1996:102-104). Eating maize in all its forms has become a symbol for Mexicaness: a way to state one’s cultural affiliation and to partake in the great Mexican nation (Cebreros, 1996:141).

Maize is the third most important world cereal, after wheat and rice (Warman, 1988: 24). Worldwide, maize production in 2005 was headed by the USA, with Mexico as fourth largest producer (FAO, 2008)\(^{11}\). The USA are also the largest yellow maize exporters\(^{12}\), while Mexico is the third importer, after Japan and the Republic of Korea\(^{13}\). In developed countries, maize is primarily used as animal fodder to enhance growth and meat quality (\textit{ibid.}:207). Historically, it was also a staple for humble social classes in Italy, Spain and Portugal (Lomelí Escalante, 1996:83). In developing countries, it has become since the mid-1950s a key staple for human consumption, even replacing local staples such as millet and sorghum in Eastern and Southern Africa (Byerlee and Eicher, 1997:10). This is partly due to strong US commercialisation and food assistance strategies to dispose of its agricultural surpluses (Warman, 1988:209). Maize is a highly versatile staple, adaptable to vastly different geographical, pedological and climatic contexts with high potential yields (Ortega Paczka, 2003:127). Moreover, its industrial uses as sweeteners, source of starch, alcohol, oil or glue make it a key part of daily lives worldwide (Lomelí Escalante, 1996:82).

In Mexico, maize is perceived and consumed very idiosyncratically. Every part of the plant is used for food or non-food related activities, including the grains, leaves, associated fungi etc. White and coloured maize are traditionally preferred for human consumption (Lomelí Escalante, 1996:83), while yellow maize is recently becoming more common, but still mostly used for animal fodder (Schwentesius, 2007:1.81-83\(^{14}\)). The former varieties are primarily produced in Mexico, although the USA are experimenting with white maize for export to the Mexican market (La Jornada, 8th February 2007).

Worldwide, it is the dry maize flour that is used for food preparation (e.g. Italian polenta), but in Mexico dry maize is processed following the pre-hispanic “nixtamalisation”, whereby grains are soaked with a small quantity of chalk, pre-cooked and ground into a dough. This preparation is a simple, highly efficient way to enhance the nutritional qualities of maize\(^{15}\). The nixtamalised dough is used to shape tortillas or other derivatives, which are baked, toasted, fried or steamed, to be eaten alone, stuffed, or to accompany any other savoury dish. The tortilla was traditionally much more than food, it was the backbone of eating habits and it played many roles at once in rural areas, although this has vastly changed with urbanisation.

\(^{14}\) References to interview transcripts include line numbers to locate the relevant extracts.
\(^{15}\) This process eliminates the toxins contained in the outer skin of the maize grain, releases essential micronutrients, such as Niacin, and transforms proteins for eased digestion (Lomelí Escalante, 1996:85)
Thus, for Coll-Hurtado (l.265-273)

“45 years ago, you knew that the people you visited [for survey interviews] were first generation city migrants, that is: just arrived from the countryside, [by observing] the kitchen tools they used at home. The tortilla was fundamental because in Mexico one eats with tortilla, the only tool that you see in a rural household is a spoon. You use the tortilla like a spoon for everything. Now this does not exist anymore, you now see spoons, forks and knives everywhere (...). And the tortilla has stopped playing this role, not only as food, but as implement. In two generations.”

Although back in the 1950s, the tortilla was still largely handmade, it has since undergone important technological changes to allow mass production. This required the development of mills, which produced the nixtamalised dough, of specific machinery, for automated manufacture of the tortilla, and eventually the elaboration of (nixtamalised) maize flour, which bypassed the mills, for the industrial production of the tortilla (Rubio: 1997:131). The daily average consumption of maize per capita in Mexico is between 280 and 400g (Cravioto et al., 1945:91; Carey, 2007). Maize, particularly the tortilla, is the cheapest and most nutritious food, some times the only food, of rural populations and the urban poor. Its consumption is inversely related to social status and constitutes 70% of the calorific and protein intake of the poorest social classes (Ferrer Pujol, 1996:40). For Torres et al. (1996:15):

“The diet of the average Mexican is organised around maize, since all other products are prioritised and combined in the expenditures once the tortilla has been secured. Maize delineates the ‘borders of hunger’”.

Therefore, if maize and tortilla prices become prohibitive over the long term it is likely that the nutritional status of the most marginalised will degrade.

4.2. Status and impacts of malnutrition in Mexico

Malnutrition includes under-nourishment (i.e. hunger) and over-nourishment (i.e. overweight and obesity) (Kent, 2005:13). Protein-energy malnutrition (PEM) is the insufficient consumption of protein and energy to satisfy the body's nutritional needs. Chronic or prolonged PEM may lead to death through starvation. Also, micronutrient (e.g. iron and iodine) deficiencies are important drivers of morbidity and mortality (Kracht, 2005:120). Worldwide, hunger and under-nourishment are overwhelmingly associated with poverty in rural areas (ESC, 2006:par.4). However, Windfuhr (2005:338) stated that: “[a]bout 20% of the hungry live in urban areas and represent currently the fastest growing group”.

For the Food and Agricultural Organization (FAO, 2000), Mexico displays moderate prevalence and moderate depth of under-nourishment16. The permanently under-nourished in Mexico have, nevertheless, increased from 4.6 to 5.3% of the total population since 1990 (FAO, 200617). Aggregated values, however, mask the high rates of malnutrition among children as well as substantial regional disparities.

16 The depth of under-nourishment is measured by the average dietary energy deficit of undernourished people – not of the population as a whole – expressed in kilocalories per person per day. FAO (2000:2)
Thus at the end of the 1980s, children malnutrition was higher than national average in the south and centre of the country, and lower than average in the north and the capital. In Mexico City and its agglomeration 17% of children were affected by wasting, underweight or stunting, compared to 41.5% in rural areas and 29.2% as national averages. Children malnutrition indicators remained broadly unaffected between 1996 and 2005, with 18% of children under five affected by stunting, 8% by underweight and 2% by wasting (UNICEF, 2007). Significant regional discrepancies persist, despite an overall decline. Thus, rates of children wasting ranged between 5 and 40% in 1999, but had sank to between 5 and 25% in 2006, as illustrated in Figure 1.

**Figure 1 Wasting in children below five years per region between 1999 and 2006**

![Wasting in children below five years per region between 1999 and 2006](image)

Regions from left to right: North, Centre, Mexico City, South and National average

(Source: ENSANUT, 2006)

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18 Wasting: Weight to Height relation - Underweight: Weight to Age relation - Stunting: Height to Age relation (Gillespie, S. and Haddad, 2001)
20 UNICEF 2007 – at a glance – Mexico – Statistics -
Moreover, malnutrition affects more significantly specific social classes. In 1995, in the metropolitan area of Mexico City, 20.4% of children under five issued of low socio-economic stratum were under-nourished, with slightly higher figures for girls\(^{21}\). In 1991, low birth-weight, which is related to malnutrition of pregnant women and result in low survival and health potential of newborn infants, affected 6.5% of babies\(^{22}\).

Between 1995 and 1998, 2.4% of total national deaths were directly related to malnutrition and other nutritional deficiencies\(^{23}\). The mortality of women, children under five and elderly were more than average related to malnutrition\(^{24}\). In 2003, PEM was the 10\(^{th}\) cause of mortality in the country, although associated mortality rates had decreased to 1.9% of total deaths (INEGI, 2005:120). Micronutrient deficiency was also significant, with women and children under five years being particularly affected by iron deficiency. Anaemia was thus among the 20 main causes of death among children aged under five between 1990 and 1994\(^{25}\).

The arguably low representation of hunger and malnutrition in mortality rates, and their recent decrease in the Mexican context should not lead to underestimate their importance. Hunger and under-nourishment are often not directly associated with high mortality but play a major role in contributing to a weakened general health and increased morbidity (Kent, 2005:15).

The first two mortality causes in 2003, diabetes mellitus and heart diseases are responsible for respectively 12.6 and 10.8% of total deaths (i.e. one order of magnitude higher than the rates associated with under-nourishment). Overweight and obesity recently emerged as a worrying and apparently contradictory trend, with sharp increased between 1988 and 1999 (Figure 2). In 2003, for example, overweight affected between 32 and 46% of the population depending on age and sex, and obesity between 11.8 and 39.8% (Barquera and Tolentino, 2005:141).

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\(^{24}\) Economic and Social Council, 1998. op. cit. paragraph 275  

\(^{25}\) Economic and Social Council, 1998. op. cit. paragraph 276
Nutritional changes relate to key societal transformations, including urbanisation and industrialisation (e.g. of food production). Female employment has rapidly increased to complement household income in the lower urban social classes, and it has resulted in drastic changes in the preparation of food (del Roble Pensado Leglise, 2003:221). For Shrimpton (2005:400):

“one of the consequences of populations in urban areas becoming increasingly if not totally dependent on the processed food available in the market, is that the potential to consume an imbalanced diet is considerably increased”.

Over-nutrition does not mean good nutritious, nor does it indicate improving live standards. Rather it often relates to low education and poor access to adequate food and nutrition information. As Kracht (2005:123) states over-nutrition is closely associated with ‘cheap calories for poor people’. Dinorah López (FIAN) vehemently commented the dramatic changes in dietary patterns she observed in thirty years of close involvement in local food, health and nutritional education:

“We observed how the nutritional patterns changed from almost countryside diets that there still was in the city through the incorporation of all these vices, the imposition of [other] food patterns (…) so now in Mexico we have a perverse diet. There is no state responsibility (…) the government now says that it is a horrendous problem. (…) My mother gave us milk and eggs (…) I gave my children the same. But a child nowadays, a child that might be completely under-nourished can go and buy with a few coins a cake and a soft drink. Perhaps that is the only thing this child will eat that day. This child is not under-nourished (…) but this child is not [properly] nourished.” (l.1156-1198)

Kracht (2005:124) synthesised the major impacts of chronic hunger and malnutrition. These conditions impair physical and mental development and degrade health severely over the long term, while it reduces physical capacity and productivity. Household’s ability to grow food or raise sufficient income may be jeopardised. More household members may be put to work, particularly children, who may consequently drop their education to replace failing adult workforce. Increased morbidity and health costs may plague households’ budget and lead to impoverishment and debt. Chances of vertical social progression through access to better jobs may be lost. Over the long term, therefore, a vicious circle linking malnutrition, deficient health, poverty and low education may create conditions for chronic economic marginalisation, which may be passed from one generation to the next. Malnutrition can thus be viewed as an impact as well as a driver of poverty. At societal level, these mechanisms, if widespread and unmitigated by state policy, form important obstacles to economic development and contribute to social and political instability (Sengupta, 2005:112).

4.3. A holistic view on malnutrition

Traditional explicative patterns related malnutrition to food scarcity during punctual events (e.g. natural hazards, crop failures or armed conflicts) ignoring that famine and malnutrition commonly occur in situations of plentiful supply (Sen, 1981:39-45). In contrast, Wiesmann’s holistic approach to malnutrition distinguishes three main families of causality factors (2006:4). Rather than an individual predicament, it is the symptom of interrelated societal processes. Immediate or clinical determinants are deficient nutritional intake and the onset of diseases and may be temporary and easily solved by targeted medical treatment and regular, adequate feeding. Underlying causes encompass inadequate household access to food, care and health services, education and healthy environment.
These are dependent on broader societal conditions, called basic determinants of malnutrition, which include: nationally available resources, their distribution and management, wider governance system and overall economic situation. Chronic malnutrition is thus articulated around the structural lack of access to food of specific sections of the population, as the result of political inaction, both at national and international scales, and the failure to ensure an adequate food supply (Banik, 2005:42). The State has therefore the prime responsibility to mitigate malnutrition in times of crisis through food assistance and to address its wider causes (e.g. poverty) through development and social policies. Food production is key, but the appropriate (re)distribution of food and wealth is formulated as the way to eradicate malnutrition (Barth Eide, 2005:72).

### 4.4. Poverty and malnutrition in Mexico

Social marginalisation is a major cause and consequence of poverty (Gonzalez de la Rocha, 2005:465). In Mexico, poverty and malnutrition relate to pervasive unequal distribution of wealth, in a system, which remains strongly influenced by former colonial structures of domination, discrimination and land tenure (Roldán et al. 2000 in Ortíz Gómez, 2004:24). Poverty has multiple dimensions and many methods have been used to measure it. Poverty time-series following a single computation method could not be found for Mexico so different sources are cited. In Mexico, the poverty line is based on two minimum daily salaries per household26. Accordingly, poverty decreased significantly from 76.4% of national population in 1960 to 50% in 1989, increasing to 52% in 1998. This includes extreme poverty, which increased from 19.7% in 1960 to 29.6% in 1987 before declining to 24% in 1998 (Appendini, 2001:177; Cordera, 2008:2).

The World Bank’s poverty line is based on monetary thresholds per person per day27 and is comparable to Mexican national poverty line if one divides the household-based poverty line by the average Mexican household size composed of 4.5 members (Torres Salcido and del Roble Pensado Leglise, 2003:365). Accordingly, in 2005, 45% of national population lived in poverty. Extreme poverty, however, declined from over 30% in 1990 to 18% in 2005. Combined these data suggest that poverty has substantially decreased since the 1960s, particularly extreme poverty in the last two decades. Disaggregated poverty measurements distinguish three poverty thresholds (Székely, 2005a:14-15). In 2002, 20.3% of the total population lived under the nutritional poverty threshold28 (22.4 pesos/person/day in urban areas), 26.5% under the capacity development threshold29 (26.4 pesos/person/day) and 51.7% under the patrimony development threshold30 (45.6 pesos/person/day) (Figure 3).

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26 For 2007 this was projected to be 2 x 48.8 = 97.6 pesos (or 9.1 US $) (INEGI, 2006)


28 Nutritional poverty threshold: income per person necessary to cover nutritional requirements (Economic and Social Council, 2005. op. cit. paragraphs 1073 and 1074). This is equivalent to the World Bank poverty line.

29 Capacity development threshold: income per person necessary to meet nutritional requirements and cover education and health expenditure. (Economic and Social Council, 2005. op. cit.)

30 Patrimony development threshold: income per person necessary to meet nutritional requirements and basic consumption in health, education, clothing, footwear, housing and public transport. (Economic and Social Council, 2005. op. cit.). This is slightly more than the 2002 minimum wage.
All estimates displayed in Figure 3 fluctuated greatly between 1992 and 2002 and peak in 1996. The 2002 values are only marginally lower than those for 1992 and indicate only a slight improvement in the decade.

Despite an overall decline, the different methods confirm that poverty remains a severe issue in Mexico. It has been further argued, that measurements of poverty based on rigid and too low thresholds, which do not consider real purchasing power, contribute to masking the full magnitude of this phenomenon (Fay and Johansson, 2005:5). For Torres Salcido (2003:43) current policies in Mexico use:

“an obsolete definition of the poverty line, which places [poverty] at two minimum wages, which is from all perspectives insufficient to satisfy the necessity of a poor family in [Mexico City]”.

Figure 3 Recent poverty trends in Mexico

Fay and Johansson (2005:5) argue that poverty should be measured in terms of expenditure level rather than as function of a specific income level. The value of money itself is often unstable and dependent on the macro-economic situation at national and international level. Moreover, if prices increase, income levels often lag behind, resulting in decreasing purchasing power in real terms. This applies particularly well to Mexico. A legal minimum salary exist and its level has been multiplied by five from 9.14 pesos/day in 1990 to 48.8 in 2007 (INEGI, 2006). However, this is no guarantee that employers respect these levels. Indeed, a large part of the Mexican economy is informal and is not regulated by legal labour standards. The International Labour Organization estimated that the informal economy represented 32% of Mexico’s Gross Domestic Product. Informal employment reached in 1998 64% of total employment, with in 2000 13.7 million Mexicans working informally (ILO, 2002:36). Even if the minimum wage is paid, this is still very low, since it corresponds more

31 The mid-1990s were a period of serious macro-economic and financial crisis in Mexico. The peso was strongly devaluated and purchasing power dropped sharply in real terms (Fay and Johansson, 2005:4).

or less to the patrimony poverty line mentioned above. This forces households to secure higher income through multiplying wage earners whether in the formal or informal economy (Appendini, 2001:183-184). Despite a slow improvement of wages, as measured by the decline in the number of adults receiving between one and two minimum salaries from 49% in 1995 to 39% in 2003, low salaries still affect a substantial part of the working population. Moreover, there remains a significant part of workers (9%) that do not receive any retribution at all for their work (INEGI, 2005:131).

The increase in minimum wages masks a decline in real terms of the purchasing power, which is primarily related to constant inflation rates of basic consumption goods and housing and transport costs. In real terms, therefore, the minimum wage decreased by 50% between 1982 and 1989 (Appendini, 2001:177) and a further fourth of its value between 1994 and 2004. Food prices have significantly increased. For example, the tortilla price rose in average 18% per year between 1996 and 2006, while in 2007 the 42 items composing the indicative basic food basket increased by 35% (La Jornada, 20th December 2007).

Carrera Chávez (2007:16) thus argued that:

‘in January 2006, a worker earning the minimum wage needed 0.82 hours of work to be able to acquire a kilogram of tortilla, but needed in January 2007 1.35 hours of work to buy this same kilogram of tortilla, which represents 18.75% of his works day, and this only to be able to buy a kilogram of tortilla.’

Increasing food prices are of particular importance, since food constitutes an important part of household expenses in the lower social classes. It has been reported that food represents 42% of the expenses of extreme poor and 37% of poor households (Fay and Johansson, 2005:9). Thus, inflation demands significant reshuffling of household budgets and substantial changes in nutritional habits to cover overall expenditures.

4.5. Urban poverty in the context of significant societal change

At global level poverty is primarily a rural phenomenon. Disaggregated data for Mexico suggest that if moderate poverty affects similarly urban and rural areas in absolute terms, extreme poverty is mostly a rural phenomenon (Fay and Johansson, 2005:5). In 2002, moderate poverty affected 42% of total urban population, and extreme poverty 11%. There are, however, vast regional differences in urban poverty, with for example Mexico City consistently displaying the lowest rates for extreme poverty (5 to 3% of the total city population between 1992 and 2002), and moderate poverty (31 to 26%) (Fay and Johansson, 2005:7). If poverty is estimated from the perspective of unsatisfied basic necessities including basic housing and public services, then up to 62% of the total population in the Mexico City agglomeration could be affected (Torres Salcido and del Roble Pensado Leglise, 2003:366).

Urban poverty implies specific opportunities and challenges compared to rural poverty (Fay and Johansson, 2005:2). Cities have large informal economy sectors, and vast labour markets, which enable the poor to access some form of retribution easier than in rural areas, where source of paid work is often, directly or indirectly, controlled by a small elite. The diversity, anonymity, more liberal societal circles and sheer size of cities allow individuals more freedom from social control and tight conventions. However, urban poor often lack the capacity to produce their own food and must secure a monetary income to access the goods.
and services cities provide. Urban poor cumulate a range of handicaps in comparison to wealthier social groups, including precarious health, larger families, low education and skills, which hinder them to lobby for, and obtain, formal, secure and decently paid employment.

The phenomenon of urban poverty in Mexico must be related to wider societal transformations since the 1950s. Then national population was comparatively low (around 30 million inhabitants) and primarily rural (57.4% of national population). Today, the population has more than tripled (105.9 million in 2007) and it is predominantly urban (76.4% of national population). Urbanisation has been related to low agricultural productivity on restricted agricultural land as well as the unequal distribution of available land among a rapidly growing rural population (Coll-Hurtado, 1.25-49 cited below).

“In Mexico only 10% of the [total 2 million km²] surface can be cultivated (...). This is very important because (...) historically these agricultural lands logically coincide with human settlements. From the 1950s (...) when the demographic boom starts the pressure on agricultural land grows continuously stronger and [this occurs] in two ways: Pressure on the physical space, because the cities grow and grow on their immediate surroundings, which are agricultural lands. Pressure [grows] also in terms of farmers’ ownership of the land or of access to the land. There is also a huge pressure because there are always more farmers who want the same decreasing lands. Thus an important vicious circle is generated there. I think that urban growth has been one of the key issues in the loss of agricultural lands. This growth does not only relate to the increasing of urban areas but also transport infrastructures, and on the pressure of the increasing rural populations on scarce land.”

Santiago Santiago (1.29-42) summarised the situation as follows:

“at national level (...) there is a growing concentration of the population. Rural populations come to the city to find employment (...) first temporary employment, then this becomes [permanent] and [it leads to] proletarianisation and internal marginalisation in cities. Cities grow at a fast rate (...) [through] new settlements often irregular, often without any infrastructure. (...) [T]here is an abandonment of rural areas (...) [because] there are no employment alternatives. [This is also due] to demographic growth and also to the decreasing viability of agricultural [activities]. With technological change the agricultural sector does not need so much labour”.

Development models since the 1950s have consistently emphasised the industrialisation, and recently, the tertiarisation of the economy, at the expenses of agriculture. Combined with changes in mentalities and aspirations for different work and living standards, this has contributed to the increasing preferences of urban lifestyles. For Schwentesius:

“this is also an issue of age. The young do not stay [in rural areas] anymore and the older people are not in any conditions to take care of the crops. So they buy pasture seeds for a cow and that’s it. (...) yes, it’s a problem of age. (...) But in any case the land is not viable anymore (...). In the subsistence system nowadays, perhaps you sell a bit of cheese, a bit of milk, but this is no perspective for the young anymore.” (1.530-543.)

Coll-Hurtado added:

“I guess that there is a sort of extinction of subsistence farming. Poverty expulses poor farmers to the city, the city attracts them. They know that in the city with less work they will be able to survive (...). [If we think in terms of] a mass phenomenon then I feel it is going more in this direction: nowadays the young prefer to work in the industry, they prefer to go to the city and look for other alternatives like the construction sector. The tertiarisation accelerated of our countries is also related to this: to the abandonment of the countryside” (l.203-206; 212-217)

Despite being a federal country, Mexico is highly centralised, with Mexico City being the national political and economic focus. The capital attracts a considerable portion of the total economic activity and total population. In 1950, the city counted already over three million inhabitants. Thereafter, the expansion of the agglomeration occurred particularly through the development of working classes quarters, which by then represented over 60% of the urbanised surface. By 1998, these quarters concentrated 62% of the population of Mexico City and its agglomeration (Torres Salcido, 2003:25).

In 2005 the city had reached 8.7 million, and together with its agglomeration 19.3 million inhabitants\(^\text{36}\), around 20% of the total national population. The city’s rapid expansion is due to natural demographic growth, and to significant immigration rates form the city’s hinterland (See Figures 4). Although recent trends suggest that growth rates are slowing down, Mexico City will remain in future decades the largest Mexican city, and one of the largest metropolis of the world (Chías Becerril and Romero Valle: 2003:122).

**Figure 4 The location of Mexico City (left) and its Metropolitan Zone (right)**

This section demonstrated that inappropriate nutritional status is a critical and evolving problem today in Mexico. Under-nourishment and hunger are more prevalent in rural areas, while in urban areas malnutrition is increasingly related to issues of overweight and obesity. These trends are closely associated with vast societal changes in the last decades. Persisting poverty has been particularly highlighted as an important factor in rural exodus and migration to cities. In these conditions, rapid urbanisation, epitomised by Mexico City, has occurred through the development of vast working class settlements. These are often, at least at first, informal and characterised by precarious living conditions.

In the next section the ethical-legal norm of the right to food is presented and its current status in the Mexican legal framework is reviewed.

5. The Human Right to Food (RTF) in the Mexican context

5.1. The RTF as an international ethical-legal norm

The RTF is a “basic subsistence right” (Shue, 1996:24-25), related to “freedom from want”, one of President Roosevelt’s four pillars of peace and development (Eide, 2002:27). It is solidly grounded in several, not necessarily binding international law instruments, including the Universal Declarations on Human rights and on the Eradication of Hunger and Malnutrition, the Convention on the Rights of the Child (CRC) and the additional protocol to the American Convention on Human rights. It is most explicitly related to the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Barth Eide and Kracht, 2005:102-103).

The Committee on Economic, Social and Cultural Right (CESCR) specified in the General Comment 12 (GC12) the nature of the RTF, its substantive content, and the responsibilities of state parties and of the international community in its realisation. It reaffirms its intricate relationship with the notions of human dignity and social justice and its fundamental role in the realisation of other human rights (par.4). The realisation of the RTF itself has been closely related to that of other human rights, whether economic, social and cultural (e.g. right to health, to education, to work) or civil and political (e.g. rights to non-discrimination, not to be tortured or arbitrarily incarcerated, to participation), which make it a particularly good example for the interrelationship and indivisibility of human rights (Vidar, 2005:141).

There are two formulations of the RTF in ICESCR. It is in Article 11, paragraph 1, a component of the broader right to an adequate standard of living, and in paragraph 2 a stand alone right to be free from hunger. Sengupta (2005:115) argues that this double formulation renders the ultimate goal to be pursued by states ambivalent and imprecise. For Alston (1984:167) the minimalist interpretation (i.e. right to be free from hunger) makes states answerable to the international community via humanitarian law, while the maximalist interpretation (i.e. right to adequate food) is largely left to state parties.

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37 Universal Declaration of Human Rights. Article 25 (1) “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food”.
39 Convention on the Rights of the Child. Articles 24 and 27. States are required to take positive steps to combat children disease and malnutrition, reduce child mortality and recognize the right to every child to an adequate standard of living. In this case state obligations are restricted to children and mothers.
40 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol of San Salvador”. Article 12 (1): “Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development”. http://www.oas.org/juridico/English/Treaties/a-52.html
The GC12 emphasises a broad interpretation of the RTF, beyond previous narrow focuses on immediate causes of hunger, international food production and minimum nutritional levels (e.g. in Universal Declaration on the Eradication of Hunger and Malnutrition). Instead, access to food at individual / household level and food distribution mechanisms targeted at vulnerably populations become central (Barth Eide, 2005:69-73). This embraces the view that:

“[m]alnutrition generally results not from a lack of food in the community but from the skewed distribution of the food that is available. That skewing results because some people are too poor or too powerless to make an adequate claim on the food that is available” (Kent, 2002:21)

The core content of the right states that food is to be physically and / or economically accessible (par.6) and in sufficient quantity and quality (par.8) to cover appropriately the differential dietary needs of individuals according to their life cycle (par.9) and the specific circumstances they are in (par.13). Food needs to be safe (par.10), adequate as defined by local conditions and meanings, acceptable in terms of local cultures and believes (par.11), sustainable (i.e. the RTF of future generations should not be endangered – par.7) and equitable (i.e. it should not interfere with others’ RTF – par.8). Food must be available directly through access to productive resources, such as land or water, or indirectly through access to distribution and commercialisation systems (par.12) (Eide, 1998:3; Eide, 2002:28).

5.2. State obligations

General Comments 12 and 3 are instrumental in clarifying the issues of responsibility and accountability, two fundamental notions in a right-based framework (Eide, 2002:30). They contribute to specify the relationships between right holders (i.e. the individual in general and vulnerable groups in particular), duty bearers (i.e. state parties but also the international community and private actors) and agents of accountability (e.g. judicial institutions, civil society, international community) (Kent, 2005:65). They provide formal clarification and guidance on the nature of state obligations to help filling the gap between the prevalence of hunger and malnutrition and official national and international commitments to eradicate these phenomena worldwide (e.g. 1996 Food Summit and later the Millennium Goals).

The GC No.12 spells out the three groups of state obligations related to the RTF (par.15). States must respect, i.e. not interfere with existing access to food or to means of food production. For example, states should not hinder subsistence agriculture, through expropriation to make land available for non food-production related activities. States must protect individual RTF by preventing third parties to interfere with existing access to food. In this case, states should for example prevent uncontrolled increases of basic food prices, driven by private speculation or monopolistic practices. The obligation to fulfil explicitly contains two types of intervention.

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45 For example in the Millennium Declarations, states parties pledged to: 1) reduce by half the proportion of people living on less than a dollar a day and 2) reduce by half the proportion of people who suffer from hunger by 2015 - [http://www.un.org/millenniumgoals/](http://www.un.org/millenniumgoals/) - accessed on 17.03.2008
First, state parties have the responsibility to facilitate an overall legislative and policy framework, which actively supports individual’s access to food and food security at national level (Barth Eide, 2005:81). Such policies include minimum salary levels, maximum prices for a basic food basket or quality standards for food production, distribution and commercialisation products. Secondly, states must provide direct access to food if individuals are deprived from the means to feed themselves, through food assistance programmes to vulnerable populations and in case of natural hazards or disasters (e.g. armed conflict).

For Eide (2005b:148-152) these three families of obligations are not progressively stronger state intervention, but three parallel and complementing groups of responsibilities. Moreover, it has been argued that there exists an erroneous impression that the “fulfil” obligation implies the direct provision of food either in kind or in monetary terms. However,

“[t]here may be some obligations for the government to provide for people directly, but that is required only in exceptional circumstances, when other means fail. The premise is that under normal circumstances people will provide for themselves.” (Kent, 2005:104)

This has resulted in state reluctance to endorse the RTF via for example its incorporation in the constitution. Rather than direct provision, which is generally costly and effectively may do little to solve long-term access to food, the state should invest in comparatively cheaper long term measures that enable right holders to feed themselves (Kent, 2005:108).

The GC No.3 highlights misunderstandings of state obligations in the realisation of economic, social and cultural rights, as formulated in Article 2 (par.1) of ICESCR. If full realisation of rights will be progressive, since it depends on the mobilisation of important resources over the long term, delay in taking action cannot be justified or excused (par.9). The document strongly compels to action and emphasises that specific steps must be taken shortly following ratification to initiate change (par.1-2). In the GC No.12 (par.14) states have:

“an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger”.

States bear a double responsibility: to conduct measures and to obtain results leading to the realisation of the RTF (Eide, 2005b:147). Practically, they are to elaborate a human right-based national food and nutrition strategy, which should identify long term goals and prioritise measures to be taken immediately (GC No. 12, par.16, 23). This should consider the food system in its entirety and be adapted to national circumstances and the specific requirements of populations in need (par.25-26). International human rights standards should be incorporated into national framework law based on the principles of non-discrimination, participation, accountability, transparency and decentralisation (par.18, 23, 29). Accountable governance should be based on independent judiciary system, effective judicial remedies and an active civil society (par.32-35). Cost-effective policies and clear, verifiable benchmarks for their implementation should be formulated. Policies should coordinate the actions of responsible authorities vertically (i.e. central to local government levels) and horizontally (i.e. across relevant sectors, e.g. health, employment etc.) (par.22, 25). Monitoring programmes should assess state progress in the realisation of the RTF (par.31).

46 Food security is here defined as the “physical and economic access, at all times, to sufficient, safe and nutritious food to meet dietary needs and food preferences for an active and healthy life” (FAO, 2007)
Appropriate budgets must be allocated based on available resources and identified needs. Neither lack of resources nor particularly unfavourable conjunctures constitute legitimate reasons for non-action (GC No. 3, par.12; GC No. 12, par.28). The core obligation of the RTF should be achieved in any situation, through narrowing down targeted populations, focussing on low-cost programmes or appealing to international assistance.

Violation occurs: “when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger” (GC No. 12, par.17). For Windfuhr (2005:341) non-compliance of “respect” and “protect” obligations are over-represented violation claims compared to the less visible non-compliance of “facilitate” obligations. This is related to different degrees of organisation of affected groups (i.e. farmers are typically better organised than refugees or internally displaced people) and to the fact that:

“the direct role and involvement of the government are more visible in situations of clear social exclusion than in other circumstances, making it easier to detect the violating act”.

Thus:

“[t]he proof of a violation of fulfilment-bound obligations is therefore more difficult, as it involves potentially complicated resource- and policy discussion, including, for example, the burden of proof that the government could in fact spend more resources for the groups than it actually does”.

However, states’ incapacity and unwillingness to comply should be distinguished. The latter could constitute a prima facie violation of the RTF, unless state parties can prove that the maximum level of available resources was mobilised for this purpose (GC No. 3, par.10; GC No. 12, par.17). The realisation of the RTF is, therefore, dependent on approaches and programmes that tackle the structural causes of malnutrition, particularly poverty. It is as such intrinsically linked to the emerging right to development47 (Shrimpton, 2005:387).

Although the prime responsibility lies with state parties, broad-based co-responsibility at societal level is foreseen, with private actors sharing responsible in the realisation of their own and other’s RTF (Barth Eide and Kracht, 2005:108). Other states have binding responsibilities, stemming from their ratification of the relevant treaties, through the Charter of the United Nations or humanitarian law. Accordingly, states must refrain to engage in activities that negatively interfere with the RTF of the population of another state, for example within international agreements. Food embargoes or the political and ideological instrumentalisation of food are prohibited (GC No. 12, par.36-37). International organisations and financing institutions (e.g. World Bank, International Monetary Fund) often neither have explicit binding obligations nor acknowledge any legal responsibility within the human rights framework (Eide, 2005a:34). This is worrying since they strongly influence trade liberalisation, debt relief and structural adjustment programmes (Barth Eide and Kracht, 2005:113).

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47 Declaration on the Right to Development. Article 8: “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income”. UN High Commissioner for Human Rights: Geneva. [http://www.unhchr.ch/html/menu3/b/74.htm](http://www.unhchr.ch/html/menu3/b/74.htm) - accessed on 04.03.2008.
For Ziegler these organisations should be made accountable since they are composed of states, which in majority have ratified human rights treaties. Minimum obligations should be to respect and facilitate the RTF through cooperation, assistance and the incorporation of human right standards in their approaches and activities. Ziegler further demands explicit legal obligations for critical private national and transnational actors48.

Though these General Comments bear strong normative weight and are the authoritative interpretation of the Covenants legal provisions, they are not legally binding, since they were not submitted to the consultation and approval of state parties. Thus, although these documents provide a detailed articulation of ethical-legal norms supported by the international and regional human rights and UN institutions (e.g. Food and Agricultural Organization), the state party’s interpretation of the Covenant’s provisions prevails, provided this cannot be proved to be in violation of the letter and spirit of the law.

5.3. The RTF in the Mexican legal system

Mexico adopted the Universal Declaration on Human Rights (1948)49, the Universal Declaration on the Eradication of Hunger and Malnutrition (1974), ratified most international or regional human rights treaties (e.g. ICESRC and the American Convention of Human in 1981) and ratified, accessed or signed several additional protocols, including the San Salvador Protocol to ICESCR in the Inter-American Human rights system50. The Mexican State has, therefore, willingly accepted substantial binding responsibilities to realise human rights, including the RTF. For Kent (2005:71-72), Mexico has a monist legal system, which by setting international treaties on an equal footing with the Constitution and federal laws, allows for their direct implementation. This is opposed to dualist systems, where ratified treaties must first be incorporated into national law to become binding norms.

Article 133 of the Mexican constitution51 indeed states that:

“[t]he constitution, the laws from the national congress based on it, and all the treaties concluded by the President with the approval of the Senate in accordance with the Constitution will form the Supreme Law of Mexico”.

Mexico placed a reservation at the time of ratification of ICESCR. This, however, only applies to Article 8 (right to work)52. In theory, therefore, there is no legal obstacle hindering the implementation of the RTF in Mexico. There is, however, a missing link in the Mexican Constitution. If this covers in substance all civil and political rights under the first chapter on individual guarantees, it does not exhaustively deal with economic, social and cultural rights.

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A series of provisions on individual guarantees do, however, exist. These are related to the rights of indigenous people (Article 2), to education (Article 3), the protection of health, to an adequate environment and housing (Article 4) and appropriate work conditions and salaries (Articles 5, par.123). Food is only explicitly mentioned in the context of the rights of children to the satisfaction of basic needs for their healthy development (which otherwise include health, education and leisure).

Moreover, there exist a series of constitutional provisions, which clearly delineate the central role of the state in elaborating, coordinating and implementing economic and development policy, and which are compatible with state obligations under the RTF. The overall aim is explicitly to secure economic growth and national sovereignty, in a framework of democracy and greater social justice, so that citizens may enjoy the freedoms contained in the Constitution in full dignity (Article 25). Article 27 relates to the exclusive national property of the countries natural resources, such as land, waters and energy, and stipulates lawful regimes and restricted conditions of transfer of property rights from the State to communities (via the collective lands named “ejidos”) or private actors and vice versa. In 1992, this article was amended under great protest, in particular from subsistence farmers, to allow the privatisation of collective land (Lorente: 2004:4).

Finally, Article 28 is relevant to the realisation of the RTF. It prohibits monopolistic practices and states that:

“the law will punish severely, and the authorities will effectively sue, any concentration or monopole in one or few hands of necessary consumption products, with the aim of cause an increase in price.”

This article allows the State to fix maximum prices, impose organisation or production modalities to prevent insufficient supply or increasing prices, and grant subsidies to activities of high priority, as long as these as general, temporary and do not affect substantially the national finances. Moreover, a number of federal legislative provisions specify the responsibility of the State in matters of food distribution, commercialisation and supply, food provision to children and the elderly, and support of productive resources in a framework of sustainable rural development (Concha Malo, 2007:146-47).

Seen together the above provisions theoretically give the Mexican State substantial legal ground to:

1. anchor the right to food conceptually and per law, following the interpretation that it is a necessary basic right which enables the realisation of other individual guarantees; and,

2. act upon its obligations to realise the right to food under ICESCR.

Before assessing the compliance of the Mexican State with regards to its obligations under ICESCR, the broad trends in agricultural and food policy since the mid 1950s are synthesised in the next session. This forms the basis of a comparison of the achievements of the Mexican State in terms of the access to maize of the urban population, particularly of Mexico City prior to, and since, liberalisation.

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53 Article 27 has a strong symbolic value, since it formed the basis for the 1930s expropriation of international oil companies and the nationalisation of the oil industry under the Presidency of Cárdenas. This process may currently being reversed as ways are being thought to allow private capital to invest in the Mexican oil sector, without modifying the clause constitutional clause of exclusivity (La Jornada Michoacán, February 8th 2008)
6. Changing approaches to access to maize

Historically, the intervention of a central government in food supply in Mexico originates in Mesoamerican empires (Esteva, 2003a:24). The Spanish Conquest disturbed traditional patterns of food, especially maize, production, as workforce was diverted to other activities (e.g. silver mining) or other (export) crops (e.g. wheat, sugar cane). Colonial, later Mexican, governments reshaped a basic framework for food provision during exceptional food scarcity and the regulation of basic grains market (Torres Torres, 1996:20). This did not prevent the emergence of a very unequal system, where productive resources, wealth and political decision power have been historically concentrated in few hands (Ruiz, 1992:291-313). Long-term inadequacy of the food supply resulted in chronic malnutrition, exacerbated by recurrent drought and outbursts of famine (Esteva, 2003b:179-190). The Mexican revolution explicitly pursued comprehensive goals of social justice and equity illustrated in the 1917 Constitution, one of most progressive of the American continent of that time. This stimulated agrarian reform, which culminated in the 1930s under the Cárdenas Presidency, who replaced strategic productive resources under the tutelage of the State. Though this progressive project was interrupted by subsequent conservative presidencies, it grounded the food policy, which was to prevail in Mexico in the following 40 years.

6.1. Pre-liberalisation and the dilemma of prices

Agricultural and food policies between the 1940s and 1970s aimed at securing food self-sufficiency and cheap food for urban markets (Ortiz Gómez, 2004:12). This could be achieved by: focusing on the production (offer) side, the consumption (demand) side or both ends of the food sector. Till the 1950s, the first option prevailed and the State fostered the green agricultural revolution. It selectively subsidised water drainage infrastructure, fertilisers, pesticides and improved seeds and the access to credit to acquire agricultural machines. This resulted in significant increase of agricultural yields, as a result of rising productivity (for export crops) and increasing agricultural surface (for basic grains) (Appendini, 2001:14, 35).

Between the 1950s and 1970s, Mexico privileged a protected, endogenous industrialisation through imports substitution (Torres Torres, 1996:21). Macro-economic policies sought to stabilise inflation through salary and agricultural price control to impulse the industrial sector (Appendini, 2001:37). Agricultural subsidies were channelled to commercial basic grains and export farmers, although small and subsistence farmers, despite their low productivity, still contributed an important part of the national maize demand, by expanding agricultural area54. National agricultural production consequently steadily increased and achieved between 1965 and 1967 self-sufficiency in basic food staples, especially maize (for a total population of 42 million people) (Appendini, 2001:41). This policy proved, however, counterproductive since: 1) domestic guaranteed prices at times were lower than international prices, but due to protectionist policies discouraged exports, 2) guaranteed prices over time implied a significant decrease in price in real terms, which exacerbated declining farmers incomes, and 3) small and subsistence farmers did not benefits from adequate subsidies, which increased the vast productivity and competitiveness gap between them and commercial farmers (Torres Torres, 1996:22). In the mid-1960s, the depreciation of guaranteed basic grains prices compared with other crops made commercial farmers choose more profitable export crops. Stagnant domestic maize supply did no longer cover an expanding national demand, leading from the 1970s to rapid increases in maize imports (Appendini, 2001:42, 51).

54 Although the majority of the harvest in subsistence systems is dedicated to own needs (including food and the following years seeds), surpluses are generally sold on local markets to secure some monetary income for bills, taxes and goods not grown on site (Coll-Hurtado and Godínez Calderón, 2003:85).
For Appendini (2001:11) the Mexican State had to reconcile the apparently contradicting needs of the maize producers (high guaranteed prices) and urban consumers (accessible food), a situation she called “the dilemma of prices”. Any significant increase in food staple prices would likely result in social mobilisation for higher salaries and risk to set a high inflationary vicious circle. In this context, the maize-tortilla system became a strategic public sector (Fernández Mendoza, 1996:31). Centralised institutions, especially CEIMSA then CONASUPO\(^55\), described by Yúnez Náude (1998:2) as a “typical parastatal and state trading enterprise of less developed countries”, were key in the regulation of the maize-tortilla sector. The State intervened in the production of maize, of chemical additives, the constitution of national maize reserves, grain transport and distribution, the allocation of credits and insurance, and food (especially tortilla) industrialisation and commercialisation (Yúnez Náude, 2002:3). Consequently, the tortilla became physically and economically accessible for mass urban consumption. Its price remained frozen for over a decade, decreasing in real terms as minimum salaries increased over time (Appendini, 2001:54-55).

Despite these achievements, this policy failed to achieve national basic grain sufficiency by the late 1960s and exacerbated the precarious situation of small and subsistence farmers (Appendini, 2001:67). The broader development model failed to improve general living standards and led to raising social discontent particularly in the late 1960s (CESOP, 2004a:25). To palliate these deficiencies and prevent stronger social mobilisation, the State chose in the 1970s to stimulate national production and agricultural income, while continuing to secure low prices for a range of food staples for urban consumers by means of increasing subsidies. The State intervened directly in food commercialisation through an alternative subsidised retail system. Basic food staples were made available cheaply under the DISCONSA\(^56\) procurement programme (Gundersen et al. 2000:2). Moreover, in 1974, the tortilla industry was declared of public interest, with CONASUPO playing a central role in the tortilla supply to urban populations (Appendini, 2001:71). Non maize-based food assistance programmes for urban populations included school meals, nutritional education, food ration supplement for children and the elderly, subsidised household food stores, subsidised kitchens\(^57\). In this system the population of Mexico City, the largest and fastest growing city of the country, benefited of a particular status with the highest minimum wages and the highest and most diverse set of food subsidies, especially tortilla and milk (Gundersen et al., 2000:2).

The Mexican Food System (Sistema Alimentario Mexicano) was the culmination of state intervention in the food sector (Appendini, 2001:71-78). It was designed to tackle the food system in an integrated manner, from important production subsidies to small farmers to consumption subsidies and nutritional and health assistance for vulnerable populations. In three years of existence it achieved a significant improvement of the agricultural productive capacities for basic grains, but fell short of achieving the goals of reversing the growing national dependence on imports. It attempted to equilibrate state subsidies between food producers and consumers, but continued to prioritise the latter. State commercialisation of food staples, either through wholesales (for maize) or subsidised retail shops increased still.

\(^{55}\) CEIMSA (Compañía Exportadora e Importadora Mexicana S.A. – Mexican Export and Import Company) was founded in 1949 with the aim of regulating basic grains imports and exports. It lasted until 1958 and was then replaced by CONASUPO (Compañía Nacional de Subsistencias Populares – National Popular Subsistence Company), which itself lasted until 1996 (CESOP, 2004:23)

\(^{56}\) DISCONSA - Distribuidora Conasupo. This complemented the LICONSA (Leche Industrializada Conasupo ) project already in place since the mid-1960s which sought to remedy children malnutrition via the allocation of subsidised milk to low income family.

These incorporated rural as well as urban areas and offered a more diverse basic food basket, at prices 35% below average market prices. Since this programme demanded vast state injections, it became the first victim of the vast restructuring policy, imposed on Mexico by international financing organisations as a consequence of the 1980s crisis (Ortiz Gómez, 2001:13; Esteva, 2003b:202).

6.2. Onset of economic liberalisation: the dilemma of prices resolved

By the end of the 1970s, Mexico’s economy was dependent on high oil prices, external debt, and trade with the USA. The worldwide economic and financial recession that struck partly as a response to the oil crisis of 1979/1980, hit Mexico hard, with declining oil sells and dwindling exports. Loss in confidence in the country’s growth led to decreasing investments, capital evasion and eventually bankruptcy (Ruiz, 1992:444-466). Governing elites and international financial institutions, which granted enormous loans without realistic assessments of creditors’ repayment capacity, share an important responsibility in the resulting deep external debt (Eide, 2005:17). For Appendini (2001:93), the 1980s crisis reflects a structural crisis in the Mexican development model. An inefficient productive system had led to deep inequalities in wealth distribution and increasing marginalised populations, the State sought to appease by increasing public expenditures rather than developing sustainable ways to let them partake in national growth.

In 1982 Mexico was the first country to declare its impossibility to honour its external debt. For the International Monetary Fund and the World Bank, this set a worrying precedent and constituted a “threat to the international credit system” (Eide, 2005a:12). Further credits were blocked unless strict conditionalities, the structural adjustment programmes, were accepted, based on drastic state reforms and macro-economic monetarist policies. For Eide (2005a:13-17), neo-liberal ideology, strongly advocated by leading economists and the Reagan-Thatcher regimes, became the dominant paradigm for international and regional development banks. Spelled out in the so-called Washington Consensus, its political and economic agenda was articulated around: 1) free trade dynamics; 2) strong financial and macro-economic focus, 3) state disengagement from the economy and from social policy (Steger, 2003:41).

This resulted in a re-orientation of the Mexican economy and critical societal transformations (Appendini, 2001:94). The new model of growth emphasised an export-oriented industrialisation through economic liberalisation. The priority was given to the service of the external debt through the restructuring of public finances and a vast process of privatisation. Opinions differ on the outcomes of these policies. For Chong and López-de-Silanes (2004:12-52), who write for the Inter-American Bank of Development, despite some failures, the privatisation strategy in Mexico has been overall a success and is associated with increasing company efficiency, performance, profitability and sales, significant reduction in public debt, and a refocusing of public expenses on education and poverty alleviation. For Hernández Oliva (2007:66), an academic associated with the main left Mexican opposition party, the dismantlement of the public sector has resulted in the plundering of the Mexican economy, impoverishment of an important part of the population and increasing external dependency.

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58 Monetarism envisages the supply and demand of money at macro-economic level as the main process regulating economic wealth. The overall aim is to stabilise the economic system, particularly any inflationary trends by influencing on these two variables, through policies such as currency devaluation or re-evaluation

59 The Democratic Revolution Party - Partido de la Revolución Democrática (PRD)
This has been associated with the subordination of a large part of the Mexican industry and industrial employment to transnational corporations, via a perverse specialisation on “maquilas” or sweatshops. For Appendini (2001:182-186), the 1980s and 1990s saw an increasing polarisation between the few winners of the new economic model and the majority, who suffered a significant deterioration in living standards. For urban households this meant decreasing purchasing power and rising household expenditures through rapid inflation rates, which reached 159% in 1987 (Appendini, 2001:98). Between 1982 and 1999 contractual wages lost 64% of their purchasing power (Hernández Oliva, 2007:70), while that of the lowest incomes decreased by 70%, falling under 1956 levels in real terms. In the agricultural sector, the progressive opening of the Mexican agriculture to free market dynamics resulted in the deterioration of the productive basis and rural incomes.

To stabilise the economy while contracting public expenditure the Mexican State chose in the 1980s two strategies (Appendini, 2001:100-121). It negotiated an Economic Solidarity Pact with private employers, workers and farmers, to fix labour and consumption prices. It also replaced the notion of agricultural self-sufficiency by that of food sovereignty, defined by the state as the capacity to acquire food on the international market. Rather than invest over the long term in the national productive resources, the Mexican State decided to rely on cheap food imports, resolving de facto the dilemma of prices at the expenses of small and subsistence farmers. In real terms, agricultural subsidies declined by 85% between 1980 and 1988, which further discouraged commercial farmers to continue producing maize (Torres Torres, 1996:23).

These policies resulted in sharp increases of the basic urban food basket prices, which from 30% of a minimum wage in 1982, climbed to 50% in 1986, while in 1990, the daily cost of food products for a family of five reached 25% more than the minimum wage. Lower income household developed different employment and nutritional strategies so as to adapt to income contraction, including increasing women employment, informal jobs and significant dietary changes (Appendini, 2001:182-186). The contribution of food to household budget declined (to make room for other essential expenses). Food expenses focused on traditional, still subsidised staples (e.g. tortilla and beans) and increasingly on cheap industrial “stuffing” but not nutritious food, which contributed to increasing obesity rates. The access to cheap food of increasingly impoverished urban populations became a burning issue. During the 1990s the maintenance of generalised tortilla subsidies was hotly debated (Fernández Mendoza, 1996:32-36), since selective, cost-effective subsidies were perceived as a more productive way to use finite public resources (World Bank Group, 2008b:3).

However, until the mid-1990s a parallel system of subsidies was in place (Figure 5). First, unlike other food programmes that were rationalised to target specific vulnerable populations, generalised tortilla subsidies were maintained for a time, despite growing criticism of being costly, unequal and ineffective. The State allocated maize grain quotas to mills and additionally subsidies to increasingly dependent mills and tortilla manufacturers (Yúnez

60 “Maquila” plants use low local legal standards in labour and environmental domains and strong tax rebate systems to attract foreign industries. “Maquila” plants increase manufacture employment levels and provide some tax revenues, but over the long term, they do not favour national development, since the added value of the manufactured products and the financial benefits of the enterprise remain in the hands of foreign companies

61 Note: this definition appears to equate to the definition of food security used in the present work. (See FAO, 2007: Op. cit. Here food sovereignty is defined as: “The right of peoples, communities, and countries to define their own agricultural, labor, fishing, food and land policies which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies” (FoodFirst/IFDP, 2002)

Náude, 1998:16). The tortilla price was fixed nationally at 1.24 pesos/kg. Till 1995 price increase was deliberately kept lower than inflation, thus decreasing in real terms (Ferrer Pujol, 1996:40-45). Big regional differences remained. Mexico City benefited from the highest minimum wages (35 pesos/day in 1996) and the lowest tortilla price (1 peso/kg), while for example Chiapas in the south of the republic cumulated the lowest minimum wages (20 pesos/day) and more expensive tortilla (1.30 pesos/kg). Mexico City, with 21% of total population had more than 25% of the generalised tortilla subsidies. Also, from the mid-1980s a direct tortilla subsidy was designed for vulnerable households in marginalized urban areas, who could purchase 14 kg of tortilla per week at preferential prices (Torres Salcido, 1996:76), through specific channels within the DISCONSA programme. These included locally established and run shops (or “community supply organisations”) and workers unions. This was replaced by a voucher system for subsidised tortilla (Tortibonos). This targeted food assistance programme was designed and implemented based on the national poverty line, i.e. only households whose income was lower than two minimum wages could apply.

This direct subsidy was coupled with others given to the tortilla sector, since the collected household vouchers were exchanged by tortilla manufacturers for grain from the CONASUPO reserves. By 1989, 1.3 million urban families were involved in the programme. This represented 10% of total urban households, although up to 35% fitted the selection criteria. Mexico City received in total 64% of these vouchers (Appendini, 2001:201-203).

In the 1990s this became the Tortilla sin Costo programme (Programme to Subsidise the Consumption of Tortilla). Selected households could receive freely 1 kilogram of tortilla per day. Originally vouchers were used although in 1992 a chip card system was introduced to increase the control on the allocation of the subsidy (Fernández Mendoza, 1996:34). The population benefiting from this programme reached at its maximum 2.3 million households in 1995, out of an estimated 3.5 million households, which fulfilled the required criteria (CESOP, 2004b:5; Mitastein, 1996:56). 35% of the households receiving the subvention lived in the Metropolitan Zone of Mexico City. To replace this in context, by 1995, 20.16% of the national population (or 16 million people) benefited from at least one food subsidy, with 55% receiving milk, 27% tortilla, and 37% another food subsidy. The direct tortilla subsidy represented a fundamental part of the state’s food provision policy. Other food programmes (e.g. school breakfast, basic food basket distribution) were further rationalised to cut costs via reducing their scope and the targeting to specific areas or populations (e.g. Torres Salcido and del Roble Pensado Leglise, 2003:369-371).

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63 Economic and Social Council, 1993. op. cit. Paragraph 170
64 Economic and Social Council, 1998. op. cit. Paragraphs 18, 263
Figure 5 The maize-tortilla market in 1990

6.3. Agricultural and food policies and free trade: the impact of NAFTA

In 1986 Mexico integrated the General Agreement on Tariffs and Trade (GATT) and its successor the World Trade Organisation (WTO) in 1995. Since 1982, Mexico has signed 24 free trade agreements (García Raño and Keleman, 2007:19), including in 1992 the North-American Free Trade Agreement (NAFTA). The direct consequences of NAFTA are difficult to isolate, nevertheless, the balance of impacts on Mexico appears mixed. There has been a significant improvement in most macroeconomic indicators, as aggregate Gross Domestic Product (GDP) per capita, foreign and private investments or export volumes (Williams, 2004:14). Mexico has become the 9th largest world economy and is now considered a dynamic industrialising country, although growth rates fluctuate significantly (Henriques and Patel, 2003:10). Through important improvements in competitiveness, productivity and specialisation Mexico has gained a substantial share of international trade, and preferential access to US and Canadian markets. In 2006, Mexico was ranked 15th for world exports and 14th for world imports, with annual increases ranging from 5 to 12% (WTO, 2007).

These gains have been accompanied by important losses. Yúnez Náude (2002:2) argues that NAFTA has been instrumentalised in Mexico to consolidate the domestic liberalisation trends initiated during the 1980s. It is said to have tightened even further the political and economic influence of the USA on Mexico (Henriques and Patel, 2003:11), while wealth has been unevenly distributed across different economic sectors and the population (Lorente, 2004:3; Hernández Oliva, 2007:70). In particular, the living conditions of rural populations have far from improved (Henriques and Patel, 2003:13). Opinions on the achievement of NAFTA are very much contrasted. For Williams (2004:14-15) the Mexican agricultural sector has been being modernised resulting in raising productivity, competitiveness and dollar value, through a refocusing on cash crops where Mexico has comparative advantages. Farmers’ dependence on agriculture has reduced through diversification of farmers’ employment. The critiques on NAFTA are, nevertheless, numerous and diverse. For Valencia Fontes (2007:74) NAFTA was negotiated with the underlying assumptions that the three commercial partners broadly shared similar development conditions, thereby ignoring the Mexican reality (Nadal, 2005:5). Adequate furthering and protective measures suited to the particularities of Mexican agriculture were not embedded (Lorente, 2004:37). This may have allowed Mexico to gradually bridge the gap with its partners to eventually compete on equal terms with them. Instead, “an equal treatment was given to unequal parties, which usually disfavours the weakest” resulting in increasing asymmetries (Valencia Fontes, 2007:75). Contrary to usual practice and despite much controversy, the agriculture sector were included in the agreement on the same footing as other sectors and the particular sensitivity and strategic importance of maize for national food security, as well as the value difference between white and yellow maize was ignored (Keilbach Baer, 2005:3).

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66 This is often common practice in agreements between developing and developed countries or between more and less economically advanced countries as in the European Union’s supporting policies for Spain or Ireland.

67 Within NAFTA white maize, primarily planted and used in Mexico, was equated in value with yellow maize, although the former has higher market prices then the latter. This resulted in the “devaluation” of domestic white maize production compared to imported yellow maize. Although the tortilla is still primarily made out of white maize produced in Mexico, yellow maize is increasingly imported and becomes a substitute for national white maize in the flour industry (Nadal, 2000:26)
The Mexican government according to Nadal (2002:6) “aimed at releasing productive resources that would find a more efficient allocation in other crops or sectors”. It was assumed that Mexico’s competitive advantages (e.g. labour surplus, lower cost) in for example tropical horticultural products and other labour intensive cash crops would compensate largely losses in the basic grain sector (Nadal, 2000:12). There has been, however, an explicit political choice to accept these losses. Only the Mexican commercial agriculture (e.g. in the state of Sinaloa) disposes of production conditions comparable to those of US agriculture, while small and subsistence farmers are plagued by many obstacles (Henriques and Patel, 2003:25).

Mexico accelerated the liberalisation of agricultural products. Instead of the originally negotiated 15 years delay, farmers effectively had less than three years to adapt to international competition and prices (Nadal, 2000:31). This was accompanied by the continued restructuring of CONASUPO. For Yúnez Náude (1998:1) “[t]he reforms meant a sharp reduction in CONASUPO’s direct intervention in the food chain. The reforms have ranged from the disappearance of CONASUPO’s agro-industries to the elimination of producers’ price support (...) and import licensing for all the agricultural products that were historically considered by the government as basic food accessible to the poor”.

Between 1991 and 1999, CONASUPO still intervened as prime maize importer, established prices and quotas to the flour and nixtamalised dough industry. With CONASUPO’s disappearance in 2000 private imports were encouraged and increased rapidly in the absence of further state regulation. National maize prices rapidly adjusted to the lower prices on the international market (Henriques and Patel, 2003:24). Together with a sharp withdrawal of state subsidies from the agricultural sector, this resulted in significant decline in the income of maize producers (Nadal, 2000:28-29). For Schwentesius (1.20-28):

[it was] in the context of the agricultural policy reform in the European Union and then in the USA, and also following the recommendations of the OECD on policy changes to decouple the subsidies [from agricultural price policies]. It has also to do with the WTO negotiations. No country has [reformed its agricultural subsidies] as drastically as Mexico, thus (...) in 1994 the only subsidy (...) was the PROCAMPO programme, (...) by then almost all the others had disappeared.”

The reality of Mexican rural systems, the central and irreplaceable role of maize and the difficulties involved in finding alternative sources of work or income meant that many farmers could neither become competitive nor switch to other sources of labour and income (Henriques and Patel, 2003:28). Small and subsistence farmers contrary to all projections expanded maize production, even on marginal land, to recover through increased production the losses incurred due to price decline (Nadal, 2000:6). This contributed to the further drop in prices on national markets and increased rates of environmental degradation (Nadal, 2000:91). Mexico’s agriculture, now open and much less subsidised, must compete with US and Canadian agricultural systems, which are strongly state-supported and better protected. Thus, Mexico’s exports may be negatively impacted by high phyto-sanitary regulation set within NAFTA. It has indeed been argued that these measures can mask protectionist attempts and may significantly affect developing countries (Henson et al.,1999:3).

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68 State subsidies under the PROCAMPO programme are since 1994 decoupled from crop prices and relate to surface under cultivation. This was due to end in 2009, although it has recently been prolonged to 2012 (La Jornada, February 23rd 2007. Additional subsides include financial aid to increase productive potential and crop substitution Henriques and Patel, 2003:29).
The USA is being accused of unfair competition strategies, specially dumping\textsuperscript{69} and disguised export subsidies to win important market shares by supplanting other competitors (Oxfam, 2003:10). This has led to an important loss of food sovereignty\textsuperscript{70}, with the radical expansion of Mexican dependency on food imports, especially US maize (Nadal, 2002:7-8). This is a particularly worrying trend since the full liberalisation of maize on 1\textsuperscript{st} January 2008. This has been expressed by several of the interviewed experts, as Cruickshank (l.523-539):

“How will the calorific need of people who mostly eat tortilla be substituted, when traditionally it is [their] basic staple. (...) maize represents more than simply tortilla, but the tamales, the pozol, you know this drink made out of maize. For everything we Mexicans use maize, for everything, for everything, the gorditas, the sopes, everything, everything. What will happen is we are dependent on maize imports (...) when the USA begin to reduce their production? (...) Mexico is not at all strengthening [its domestic maize production] nor is [taking steps] to secure a human right to [maize] in future. So what are we going to substitute [maize] with? We don’t know”.

Under NAFTA the gradual liberalisation of maize was planned until 2008, through the progressive reduction of import tariffs and increasing import quotas. The Mexican State, however, chose not to use these protective measures, and consistently imported more than the agreed quotas without charging the USA the allowed tariffs (See Figure 6). This has meant the loss of approximately 2.6 billion US$, which could have supported national farmers’ re-conversion or modernisation (Keilbach Baer, 2005:11).

**Figure 6 Mexican import of USA maize since the entry into force of NAFTA**

![Figure 6](image)


\textsuperscript{69} Dumping is an informal name for the practice of selling a product in a foreign country for less than either (a) the price in the domestic country, or (b) the cost of making the product. [http://economics.about.com/library/glossary/bldef-dumping.htm](http://economics.about.com/library/glossary/bldef-dumping.htm) - accessed on 28.03.2008.

\textsuperscript{70} Here defined here as the capacity of a country to feed its population through national production.
The dramatic situation of Mexican small and subsistence farmers since the NAFTA agreement has been emphasised repetitively by Ziegler (e.g. 2004, par.2071), who states that:

“[i]n Mexico, where maize has been a traditional crop for thousand of years, the North American Free Trade Agreement has left Mexican farmers extremely vulnerable to competition from subsidised United States maize. A study by the United Nations Development Programme (UNDP) estimated that 700,000 to 800,000 livelihoods have been lost as a consequence of trade liberalization and the subsequent fall in maize prices”.

Moreover, declining rural employment exacerbates poverty, spurs the abandonment of small, unviable farming plots and feeds emigration either to the cities or even the USA (Oxfam, 2003:6). Emigration and work abroad have, indeed, become since the 1980s an important characteristic of the Mexican and rural economy with a 6-fold increase in remittances since 1988 (Henriques and Patel, 2003:36-38).

6.4. The tortilla wars

The major explicit argument of the inclusion of maize in NAFTA was that this eventually would mean increasing quality and decreasing related food prices for urban consumers. However, although the price of maize has sharply declined on domestic markets due to its adjustment to international prices, the price of its major derivate, the tortilla, has continuously increased (Oxfam, 2003:19). Prices thus climbed from 0.5 pesos per kilogram to over 7 in 2001, an increase of over 500% (Nadal, 2002:9 – see Figure 7).

By that time, most tortilla subsidies for urban populations had been removed and there was no more buffer to compensate increases in market price. The Tortilla Programme continued to provide subsidised tortilla for marginalised populations, although the scope of this project was dramatically reduced. Over 2 million households had access to this programme in 1995, but only 140,000 in 2003 at national level. In Mexico City, the project benefited over 70,000 households still in 2000, but barely 12,000 in 2003 (CESOP, 2004b:30).

The programme had a very low coverage, with in 2002, only 4.6% (or 325,000 households) of the target population benefiting from the subsidy from the total population 7 million people, who fulfilled the selection criteria of the Tortilla Programme.

By 2007 the price reported in the Mexican press reached 10 pesos/kg in Mexico City and ranged from 12 to 15 pesos elsewhere with peaks to 30 in extreme cases (La Jornada 10th January 2007). For Hernández Navarro (1.59-61) “the tortilla increase has been stratospheric in relation to people’s income from one month to the next”. Although the Mexican government initially trusted that normal market dynamics would solve the crisis as consumers over the short term found cheaper alternatives, the growing social mobilisation in Mexico City threatened to intensify national political instability. The presidency was forced to take emergency measures to slow down the drastic inflation (García Ruño and Keleman, 2007:8). These include massive additional imports of US maize to constitute national reserves and the negotiation with mills, tortilla manufacturers, the flour industry and retailers of a price ceiling of 8.5 pesos/kg. This, however, formalised a 40% price increase from the former baseline of October 2006 (La Jornada, 19th January 2007). These short-term measures, however, were insufficient to stabilise the situation, and often were not enforced, as tortilla manufacturers continued to charge higher prices. Moreover, they did nothing to address the fundamental causes of the tortilla price rise. These include, as mentioned previously, the dismantlement of the former state-owned company, CONASUPO, the deregulation of the maize market and the restructuring of state subsidies along the maize-tortilla sector. The liberalisation of domestic maize prices in 1998 marked the end of 50-year price control (Nadal, 2000:38). Another pillar of state food policy, the generalised tortilla subsidy was removed, followed in 1999 by the selective tortilla subsidy. Indirectly, it led to what Espinoza (cited in Mitastein, 1996:53) called “the tortilla war”. This referred to the increasing competition between the flour industry and mills of nixtamalised dough for the tortilla market. This was closely influenced by a shift in allocation of state maize processing subsidies favouring the flour industry (Torres Salcido and Morales Ibarra, 1997:18). Although in the mid-1990s mass tortilla production was divided almost in half between both branches, the mills and tortilla-manufacturing sector came under fire and was criticised from many angles (i.e. low hygiene, low environmental and labour standards, low efficiency and competitiveness). These critiques were often justified but ignored the reality of primarily family businesses, which had been fully dependent on state subsidies and the often inadequate (qualitatively and quantitatively) maize from CONASUPO to meet fixed tortilla prices.

As state support stopped, they had to increase prices and keep processing costs down to continue in operation. Innovative ways were sought for higher quality standards, while

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72 The last presidential elections took place in July 2006. Preliminary results announced the victory of Felipe Calderón from the Partido Acción Nacional (PAN - National Action Party) over Manuel López Obrador from the Partido de la Revolución Democrática (PRD) under rumours of fraud. In subsequent weeks the official counting of the votes and results were accompanied by vast, often substantiated, accusations of electoral tampering. Until September 2006, date of the official beginning of the Calderón administration, massive mobilisations including the occupation of Mexico City’s central square and the Reforma Avenue. Manuel López Obrador proclaimed himself “the legitimate president” and constituted an alternative government to continue mobilising public opinion and pressurise Felipe Calderón, “the illegitimate president” (See La Jornada 20th October 2007). Despite mounting evidence of electoral fraud, public opinion is divided. Felipe Calderón does have the support of a significant part of the Mexican population, on which he based his legitimacy.

73 Adelita San Vincente Tello (2007:17) reported that in January 2007 national maize reserves represented less than one month of domestic needs.

74 Subsidies to the flour industry and maize mills were per decree abrogated in 1996 - http://www.apartados.hacienda.gob.mx/diario_official/documentos/archivos_shcp_dof/decretos/de_981231b.html - accessed on 14.03.2008
keeping down costs, however, mills and small tortilla manufacturers are in the process of losing the battle against the flour industry. Many businesses closed down (e.g. Torres Torres, 1997:164). Instead of fostering the modernisation of this manufacture branch and preserve local employment, the Mexican State favoured the industrial flour lobby (Nadal, 2000:38-41), based on its much advertised comparative advantages (Cebreros, 1997:147). By 2000, mills had direct access to cheaper imported maize, but this did not allow them to regain their position in the tortilla market.

The void created by the dismantlement of CONASUPO was soon filled by a few private concerns in an increasingly concentrated maize-tortilla sector (Figure 8). Thus, the US transnational corporation CARGILL now steers maize imports and acquisitions on the Mexican market. As the most important intermediary between producers and processors it dominates wholesale commercialisation. As single operator, and in the absence of effective state regulation, it de facto fixes prices in Mexico. Two main companies, led by MASECA, buy and process 92% of the maize flour needed to feed the industrial and small tortilla manufacturers (García Ruño and Keleman, 2007:37). Accusation of monopolistic (CARGILL) and oligopolistic (the flour cartel) practice and of speculation have been made to explain to the tortilla price inflation in recent years (La Jornada, May 17th 2007). CARGILL has been accused of using its storage capacity to create conditions of artificial scarcity to push prices up (Mújica Vélez, 2007:9). Speculation is said to be also practiced further upstream in the maize sector. For example, commercial maize producers have in place preferred to export rather than sell at lower prices on the domestic market (García Ruño and Keleman, 2007:14). These on-going transformations and processes have been called “the new tortilla war” by Hernández Navarro (La Jornada, January 12th 2007).

The maize-tortilla sector was further concentrated in the last decade, as supermarkets strategically decided to incorporate tortilla manufacture on their premises. Through economies of scales supermarkets can offer a cheaper price than local manufacturers and retailers. Supermarkets have also used the recent drastic increases in tortilla prices to expand their share of the tortilla market, by consistently selling the staple at the negotiated 2007 price or even lower (La Jornada, April 26th 2007). The tortilla has thus become a “hook” product, which brings customers in and incite them to spend more (Schwentesius, 1.225-229). Indeed, supermarkets prices in Mexico, except for “hook” products, are generally higher than local markets (Morales Ibarra, 2003:94). Although customers benefit from the cheaper price and uniform quality of the supermarket tortillas, this contributes to putting local tortilla manufacturers and other retailers out of business (Kompass, 2003:109). Supermarkets are of course less numerous than local tortilla manufacturers and retailers, although their zone of influence and capacity to adapt to changes on the international market and in customer demand is much higher. Moreover if, they were long located in the oldest most established part of cities, they recently developed specific warehouses to expand their share of food market in marginal urban areas, where once subsidised shops were (Torres, Torres, 2003:162).

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75 Small tortilla manufacturers sought to diversify by increasing their products range in an attempt to remain viable. Also to address critiques on low hygiene and environmental standards the production of nixtamilised flour, obtained from dehydrated nixtamilised dough, was developed. This increases shelf-life, decrease fluid waste and air contamination, while retaining the essential qualities of the nixtamilised dough in contrast to dry maize flour, which for exampled needs additives to reach the same calcium levels (Palomera, 1997:158).

76 Important to note is that since the 1990s many Mexican supermarket chains have been replaced by foreign companies, with on of the leading one being Wal-Mart (http://www.walmartmexico.com.mx/1historia.html - accessed on 17.03.2008)
Figure 8 The maize-tortilla market in 2006

Source: Own design from literature quoted in this section
Conjunctural trends also significantly influence the price of maize and derivatives. For example, increasing oil prices affect the whole maize-tortilla sector (García Ruño and Keleman, 2007:19). Moreover, the volatility of international markets means that prices fluctuate greatly according to world offer and demand. Since maize is a commodity on the stock exchange its value varies from day to day, some times from hour to hour. Yearly yields (e.g. through abundant or failing harvests) are an important factor, while prices themselves influence planting strategies based on expected price at harvest. Prices vary also according to the use maize will be put to. In recent years, ethanol produced from maize has seen its importance increase, especially in the USA, due to the combined pressure of energy security agenda and climate mitigation strategies. As the USA use a larger part of their domestic maize production for fuel, less is available on the international market, once again pushing prices up. The Mexican government has invoked this as one of the reason of the sharp increases in the price of the tortilla, although Carrera Chávez, (2007:15) argues, that since the tortilla is still primarily made out of white maize in contrast to ethanol, which is derived from the yellow sort, other reasons, i.e. speculative trends, play a more fundamental role. However, over the long term, the trend to maize ethanol might become a serious issue, as Mexican dependency on yellow maize imports becomes significant. The ethanol industry is an emerging sector in the USA and for the Mexican commercial maize producers (García Ruño and Keleman, 2007:40.). Several interviewees highlighted the lack of efficiency of this new trend to use maize for biofuel. Such a policy may make sense from an economic (e.g. a higher added value for maize surpluses) and political point of view (e.g. be seen to fight climate change, while diminishing energy dependency on imported fossil fuels). It, however, has potential high risks for the realization of the RTF. For Schwentesius (1.423-431):

“There are already [plants producing ethanol based on maize in Mexico]. There are subsidies for ethanol plants in Sinaloa. In my opinion the people, who decided this should be sent to jail (...) To start with maize is not the most efficient plant to produce ethanol. You need an awful lot of energy just to produce a little more [of it]. So, there is the oil palm which is much more efficient for biofuel for example.”

The maize ethanol sector already represents a strong lobby, which, it is argued, has managed to politically instrumentalise the climate chance discourse to prosper and obtain state support. In any case this points at an emerging and serious conflict between different, irreconcilable uses of basic grains, namely basic grains for food vs. for fuel. All the evidence so far suggests that the uses that achieve higher market value will be prioritised. For Ziegler the growing practice of using basic grains for biofuel is not only a worrying phenomenon, but “a crime against humanity” (International Herald Tribune, October 26th 2007).

It has been argued in this section that considerable changes have taken place in the Mexican approach to food supply and access to maize since the 1950s. These are closely related to broader approaches to economic development, external debt and aperture to international trade pursued by the Mexican State, and since the early 1980s strongly advocated by international financing institutions. These illustrate the importance of contextualising local food supply issues, so as to better assess to which extent the Mexican State has complied with its obligation under international human rights law.

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7. A human rights assessment of Mexico’s food policies

This section assesses the achievements of the Mexican food policies generally and in terms of the access to maize products of urban populations from a human right perspective. This draws on reports of the Mexican State to CESCR\textsuperscript{78}, shadow reports\textsuperscript{79} and opinions of the interviewed experts. It is based on criteria from the General Comment 12 for the realisation of the RTF presented in Section 5. These include:

- state obligations to respect, protect and fulfil,
- recommendations on integration into national legislation, and development of a national strategy and plan of action, and,
- non-discrimination, participation, accountability, transparency and decentralisation.

First, the actors considered in this case study are specified following Kent’s triangle of governance and accountability (2005:65). For our purpose, the right holders are all urban inhabitants (particularly from Mexico City), whose access to maize products, especially the tortilla, may be endangered or violated in any form. It is understood that state policies and programmes to address the RTF of urban populations should not undermine that of other right holders. Other right holders are considered in this assessment, if it appears that their RTF has been put at risk through policies targeted at urban populations. Under international law, the prime duty bearer is the Mexican State, who is answerable to citizens, civil society and the international community. Moreover, following the notion of co-responsibility, duty bearers also include the right holders themselves, any citizen or private organisation and the international community. Finally, the agents of accountability of relevance in this case are: the national judiciary system, civil society organisations, social movements and national and international, governmental or non-governmental human rights watchdog institutions.

Explicit legally binding obligations under the international human rights system with respects to the RTF officially commenced in 1981\textsuperscript{80}. International human rights law provisions are not retroactive. Policies prior to ratification may be scrutinised, but violation claims are only legally meaningful from the entry into force of the treaty\textsuperscript{81}. From an academic perspective, it is, nevertheless, valid to compare policies taken before and after human rights treaty ratification, as human dignity can be served with or without the explicit formulation of rights-based policy. For (Kent, 2005:103), however, a rights-based approach implies that human rights are explicitly formulated and attached to specific entitlements, while their realisation must be consciously pursued, and not left to chance.


\textsuperscript{79} These include the alternative reports to the official fourth report of the Mexican state: Organizaciones y redes del Grupo Promotor del Informe Alternativo DESCA. 2007 (see website below), Concha Malo et al., 2007; Nerio Monroy and Almaraz Reyes, 2007


\textsuperscript{80} Date of the Mexican ratification of ICESCR - Bayefsky, 2008a. Op. cit.

\textsuperscript{81} Prior to 1981 the Mexican state did have implicit human rights binding obligations (e.g. on right to life) under customary and humanitarian law related to its adoption of the Universal Declaration of Human Rights in 1948 and otherwise a broad moral obligation to human rights principles as endorsed in the Preamble of the UN Charter - \texttt{http://www.un.org/aboutun/charter/} - accessed on 18.03.2008
7.1. Visions and achievements in Mexican food policies

In this section the major differences in Mexican food policies prior and after the watershed of 1981 have been related to development paths, conceptualisations of food sufficiency of the role of the State.

7.1.1. The provision of tortilla

The pre-liberalisation development path invoked the notion of food self-sufficiency, which it sought to realise through a centralist, protectionist State that intervened in all steps of the food system. The ultimate aim of producing affordable food, particularly maize, for low paid urban workforces, who were to build the domestic industry, was broadly achieved. It enabled the physical and economical access to the tortilla, a culturally adequate food staple, in quantity, if not fully in quality, necessary to cover the nutritional needs of urban populations, with Mexico City benefiting most. Hernández Navarro highlighted this achievement, despite pointing at significant deficiencies in the model:

“[i]n the previous model, on top of the [subsidy] programme to the mills, there was a very strong State intervention, which permitted to regulate the prices (...) Although it was possible for particulars to do big businesses around maize purchases and sales, that is, it was not a perfect system, no. Yes, there was corruption etc. etc. [but] it permitted price regulation, (...) the establishment of maximum sale prices, because there was a market force that also allowed doing this. Well, this does not exist anymore”. (l.75-91)

The State banked on an urban and industrial world and neglected important parts of the Mexican society. The depreciation of rural economy and the lack of comprehensive support to the local productive forces contributed to rural exodus. For Coll-Hurtado, this lack of foresight had dramatic results in terms of loss of precious agricultural land.

“There are aerial photos that allow you to compare the [urban] growth [of Mexico City] before and after the industrial development. (...) This industrial development could have been located a few kilometres further away to preserve agricultural land. As an anecdote, years ago I said this in a meeting and the answer I got was that one hectare in industrial use produced more that one hectare of maize. So the hectare of maize was totally depreciated [despised?]. Yes, it was a lack of long-term vision and the [drive for the] maximisation of immediate profits. In the end, it was the lack of a strategic planning, which allows to predict what will happen in different scenarios, and always the predominance of profits from invested capital” (1.84-95).

The Mexican State initiated or simply fed a vicious circle, in which by failing to realise the RTF of poorer rural populations, new vulnerable urban populations were created, who were to be fed by further marginalising rural populations. This policy indirectly disempowered (landless) farmers, who had the knowledge and capacity to feed themselves, but lacked the practical means to do so. Urban areas like Mexico City grew out of proportions, with many informal quarters occupied by newly arrived rural people unable to generate their own food and fully dependent on wages and subsidies to acquire it instead. The pre-liberalisation state vision required strong wage and social control, and conflicted with individual needs, in that these were kept to a bare minimum, i.e. workers were kept fed. However, the RTF envisages more than the satisfaction of nutritional needs. It is the State’s responsibility to shape a framework in that citizens can feed themselves and their household, as the basis for a life in dignity. In cities, this is strongly associated with developing labour opportunities and adequate remuneration. These goals can be understood as relating to the ‘facilitate’ (i.e. promote a healthy labour market) and ‘protect’ (i.e. protect workers from employers).
obligations. Rather than attend these goals, however, the Mexican State focused on developing a very elaborated and costly strategy to ‘provide’ access to food, particularly through generalised tortilla subsidy. Although this achievement is important and should not be denied, it also made a large part of the population dependent on a paternalistic state. This key critique to the pre-liberalisation Mexican system of food subsidies interestingly originates from proponents of free trade as well as of alternative community self-organisation. Such a policy is accused to have stunted individual initiative, created populations dependent on food assistance and led to ineffective use of resources (Sandoval, 2003:59,64). Also, strong regional disparities in the distribution of subsidies have been denounced (Ferrer Pujol, 1996:43). The special status of Mexico City in these subsidies has been explained by its large concentration of industry workers, and central political and economic role at national scale. Yet, precisely because of this, governments have been particularly keen on keeping down social mobilisations there, as exemplified by the internationally denounced violent repression of the demonstrations around 1968. A final point in this non-exhaustive evaluation of pre-liberalisation food policies is that although states may choose to use austere policies to construct national economy and wealth, from a human rights perspective, this only seems acceptable if the benefits of wealth created in the process are in time redistributed across the society. In Mexico, however, the worthy collective goal of national development was instrumentalised by political and economic elites. If it led to some improvement on living standards, growth benefits only trickled down to poorer social classes (Appendini, 2001:93).

7.1.2. An aborted attempt

The programme of the Mexican Food System (SAM), despite lasting only three years (1980-1982), remains a reference for some interviewees and in the literature as an attempt to develop a coherent and inclusive national agricultural and food policy. López stated: “during the presidency of López Portillo, who is the president who discovers the wealth of oil, who is a very conceited and rich bloke, there is the only coherent food programme that this country has had (…) the SAM, the Mexican Food System (…). I am convinced that this programme has done much to change people and [stimulate] people’s commitment. One of the programme’s mottos was: “we are what we eat”. (…) it was a very ambitious programme, which [had ambitious] goals of [eradication] of under-nourishment”. (l.134-145)

Cruickshank echoes this opinion. For her, the SAM has been: “the best food policy that the Mexican State has had” (l.402-403). For Esteva (2003b:204), it was an innovative and forward looking policy, which through incentives to rural areas, reached in a short time impressive results (e.g. rapid increase of maize production). For him, this demonstrated that:

“a rural policy that integrated small farmers in its perspective and addressed thoroughly the food issue at national scale could be viable”.

Appendini (2001:81) nuanced this evaluation and believed that the SAM had primarily sought to reactive the agricultural sector through vast subsidies, made available by the oil boom of the late 1970s and early 1980s and increasing external debt. The financial dependency of the project and its failure to question previous pattern of state support of commercial farmers were its greatest weakness (Esteva, 2003b:203). However, the vast costs of the SAM could be reformulated as necessary investments to stimulate the capacity and productivity of small and subsistence farmers, thereby tackling structural inequality and poverty. Despite its shortcomings, the SAM appears to have initiated such a task. For Mújica Vélez (2007:6):

“What was the main weakness of the SAM? That it was short-lived.”

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82 Mexican oil began to be exploited in the second half of the 1970s.
7.1.3. Liberalised food market

Reviewing governmental reports and some (independent) evaluations of programme achievements, it appears that existing governmental initiatives and projects related to food issues fit in principle some important characteristics of food and nutritional measures as formulated in the General Comment 12. Thus, the Mexican State has developed a National Development Plan, which acknowledges the importance of poverty eradication and access to food. It sets objectives for the improvement of basic capacities of populations living in situations of poverty through the strengthening and coordination of existing social assistance programmes. It involves several agrarian and rural development strategies, which aim at improving livelihoods and productive resources. Monitoring of poverty levels, household income and expenditure, nutritional and health trends is performed on a regular basis drawing on many official national and international sources. Moreover, food assistance programmes strongly emphasise the need to optimise resources by channelling them to vulnerable groups and to develop participation and transfer of responsibility to the receivers. The focus of state intervention is from now on explicitly primarily on rural areas. Efforts to address extreme poverty continue, however, to target marginalised urban populations, but have a very restricted scope. The broad capacity building Contigo (With you) Strategy includes the Programme Oportunidades (Opportunities). This tackles under-nourishment, while promoting health and nutritional education among households affected by extreme poverty over a targeted population of 5 million households at national scale. Among these in 2006, only around 18,000 households lived in Mexico City.

Critiques, however, focus on the much wider context presented in Section 6 to argue that the Mexican State has failed to address many important requirements in the realisation of the RTF. External debt, structural adjustments programmes, state retreat, economic liberalisation and free trade have led with time to the full dismantlement of the previous system, including its achievements, for example the basic access of urban population to the tortilla. The baby was thrown out together with the bath water! Expectations on the benefits of this restructuring were guided by erroneous assumptions (Nadal: 2002:14-25). For example, price deregulation was to secure declining prices over the long term through open competition, which was to stimulate productivity and efficiency (Ferrer Pujol, 1996: 48). This has so far failed to occur due to numerous market “imperfections” both at international (e.g. strong fluctuations of maize prices) and national levels (e.g. monopolistic and cartel-like structure of the maize-tortilla sector, speculation).

The strongest critique on state deregulation relates the withdrawal of the State from important strategic areas of decision-making to the irresponsible transfer of political power and control on the national economy over to the private sector. This has contributed to increasing wealth at macro-economic level and of specific parts of the Mexican society.

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85 Within the Oportunidades Programme financial handouts are distributed to mothers (for more effective use) and are conditional to regular attendance of nutritional and health checks of children and mothers. Their amount is also dependent on children’s number, age and attendance of school, so that children have a higher chance of getting their education rather than being enlisted as workforce (See Cruz et al. 2006).
86 The term refers to market theory, although in the opinion of the author it is a euphemism that suggest that ideal market conditions can ever be reached.
Nevertheless, many sectors of the population have thereby lost access to important safety nets and social services previously provided by the State\textsuperscript{87} (Kompass 2004:109). For Hernández Navarro (l.92-102):

“[since the former CONASUPO system has disappeared] from this point of view, the big flour industrials have already won the war. President Zedillo gave them the control on the market (...) he put it in their hands. Therefore, they now control [it]. Even if the Mexican State would like to regulate prices, reduce them, it has no longer the instruments to do this. It cut its own arms (...) [the State] can pressure small tortilla manufacturers (...) but this does not guarantee any substantial control on the process, so the war continues (...) but in general terms [the flour industry is] winning it and we are heading towards a market that is always more monopolistic.”

The lack of a forward looking, comprehensive, national strategy to resolve structural inequality and state intromission with private interests have been isolated by several other experts as a major flaw.

Thus, for Coll-Hurtado (l.288-293):

“[the State] colludes with big capital to give way to the big transnational companies, so there is no social policy, which there was before, with all the nuances you want, but there was a social policy, which answered in a way to the demands of the Revolution. But well, this is now becoming history, isn’t it? Who remember this?”

Cruickshank commented on programmes like Oportunidades:

“If you ask people in the communities, [they] are really thankful for this income, even if it is minimal ... but I don’t know if this policy really helps to build, strengthen the communities, to build development. It has been pinpointed as a very successful policy because of the access to resources that the communities or the families do not have [otherwise] due to lack of employment. That is 500-700\textsuperscript{88} pesos per month, so that at least the children go to school and so they have a little more milk and tortilla. But I don’t know if this is guaranteeing the right to food”.

From a human right perspective, it appears that the State has failed to its obligations by withdrawing from its regulatory role and uncritically adopting an extreme neo-liberal framework. Although this at first was largely imposed from international financing organisations, Mexican political and economic elites endorsed this model enthusiastically, in so doing substantially affecting the poor\textsuperscript{89} (Hernández Oliva, 2007:66).

For urban populations, 26 years of economic liberalisation have had mixed results. Indeed the general offer of (food) goods has with the removal of protectionist barriers radically increased and diversified (Torres Torres, 2003:159). There have been improvements in terms of quality

\begin{footnotes}
\item[88] Between 30 and 42€/month
\item[89] Concerning the RTF of rural populations, state non-compliance includes arguably: not respecting / protecting collective lands through the constitutional amendment of Article 27 that allows their privatisation; neither securing the application of national constitutional law on land tenure nor providing adequate remedies; removing previous subsidies while not securing compensatory mechanisms; not insuring adequate coverage and scope for programmes that tackle malnutrition (Zamora (l.142-164); Concha Malo et al., 2007:41-42; Nerio Monroy and Almaraz Reyes. 2007:16)
\end{footnotes}
(through the introduction of higher hygiene and environmental standards) and quantity. However, access to food, particularly the tortilla, of the urban poor as discussed in Section 6 has degraded significantly, both qualitatively and quantitatively. More concretely, it is argued that the RTF of poor urban populations is not being realised by the Mexican State, which has failed, for example, to:

- establish adequate levels of minimum wages (e.g. indexed to inflation to preserve purchasing power) (“facilitate” / “protect” obligations)
- enforce existing minimum wages (“protect” obligations)
- address the right to work of mills and tortilla manufacturers, whose livelihoods and RTF are endangered (by not fostering re-conversion in face of the emergence of maize flour industry) (“respect” / “protect” obligations)
- enforce existing anti-monopole, anti-cartel and anti-speculation provisions in the constitution to prevent unchecked increased in food prices (“protect” / “facilitate” obligations)
- use existing legal protecting provisions within the NAFTA framework, that could have mitigated impacts of liberalisation (“protect” / “facilitate” obligations)
- establish nutritional quality controls on industrial food sector, which could limit the invasion of unhealthy food (“facilitate” obligations)
- develop a comprehensive information and education campaign to alert populations on the risks associated with unhealthy food (“facilitate” obligations)
- constitute adequate national reserves of maize, which could be made available as emergency measure in time of scarcity (“facilitate” obligations)
- address structural discrimination through positive action (“facilitate” obligation)
- establish adequate compensatory mechanism when removing generalised subsidies to preserve livelihoods of the poorer urban classes (“provide” / “facilitate” obligations)
- improve the scope and coverage of existing focused subsidies and programmes that tackle urban malnutrition, its causes and manifestations (“provide” obligations).
- foster broad and coherent societal participation in the design and implementation of national food policies.  

The inadequacy of the efforts of the Mexican State in matters of food policy have been summarised by Kompass (2003:110):

“[i]n the case of the right to food, it cannot be said that Mexico has a state policy for its realisation (...) This lack of policy is reflected in the disintegration of the strategies and programmes in this domain, as well as by the inexistence of a unique entity responsible for [their evaluation] (...) The lack of a federal food policy implies a series of problems: the inexistence of clear goals for food education and orientation, the lack of clarity in public responsibilities related to the food sector (...) the discouragement of national food production and commercialisation; and the absence of an appropriate information and evaluation system on the food and nutritional situation of the population.”

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Finally, the Mexican State, in keeping with the approaches fostered within the Washington Consensus, chose to abandon the goal of food self-sufficiency to adopt that of food security, which emphasises the access to food irrespective of its source, rather than national production capacity. Beyond its impacts on the Mexican agricultural sector, this choice meant the loss of state control on processes affecting the production of basis food staples. In times of low international prices, the Mexican State could rationalise this decision by insisting on the importance of public savings in the (self-)imposed structural readjustment process (Fernández Mendoza, 1996:36). In times of high and unstable international prices, the short sightedness of this policy becomes obvious. Many voices have warned against the resulting loss of national food sovereignty. For Carrera Chavez (2007:13) through this changing conception in food sufficiency, Mexico has become hostage of a highly volatile international market. Food sovereignty has become a key concept in social, particularly farmers, mobilisation against NAFTA and the full liberalisation of the maize and beans in January 2008 (Concha Malo et al. 2007:16-17). This added to the continuation of current commercialisation practice have led many authors to draw very pessimistic scenarios for national food security, small farmers, (e.g. ruin), national biodiversity (e.g. contamination from genetically modified organisms and decline of regional diversity) and urban consumers (e.g. uncontrolled inflation) (e.g. Consejo, 2003:264; Henrique and Patel, 2003:41). Yúnez Náude and Barceinas Paredes (2004:16-17), however, are less pessimistic and highlight recent steps taken by the State towards an integrated approach to rural development through stimulating agricultural productivity and local incomes. Of key importance is the necessity to involve actively farmers in the design and implementation of policies. For the authors, it remains, however, unclear whether the current policy can be reconciled with maize self-sufficiency.

The General Comment 12 does not mention the concept of food sovereignty, although this can be interpreted as a collective vision, a path that is related to the realisation of the RTF and other human rights. There is no explicit direct obligation for the State to develop a food policy based on this notion, and no claim of human right violation could be presented on this grounds. Legally, the Mexican State could realise the RTF of urban populations, through a policy based on foreign maize, or even any other staple, provided this cannot be proved to jeopardise the RTF of other Mexican citizens in the process. If human rights are associated with explicit entitlements, e.g. physical or economic access to adequate food, neither specific paths nor measures to fulfil these are specified. To clarify this Kent (2005:94-94) distinguishes entitlements from compelling claims, which he describes as “strong argument that people are entitled to something in the concrete local circumstances because of the existence of specific human rights”. However, compelling claims do not have a legal status and cannot be demanded as entitlements can. Among different ways to fulfil an entitlement the State can lawfully chose an option that substantially differs from the locally preferred one. Therefore, demands on food sovereignty and access to (Mexican) maize or tortilla, which can all be associated to compelling claims, could only be legally valid, if they can successfully be related to the entitlements associated with explicit human rights provisions, e.g. access to healthy, culturally adapted food, to productive resources and protection of livelihoods.

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92 Concha invoked many of these aspects in “the human right to the tortilla”, La Jornada, January 20th 2007.
7.2. The fight to incorporate the RTF in national legislation

A fundamental critique of Mexican food policies, from a human rights perspective, is that food or access to food is not articulated in terms of an explicit legal entitlement of the citizen. In pre-liberalisation policies, the generalised tortilla subsidy was not a legal state obligation towards urban populations, but rather a moral obligation, a self-defined duty and a counter part for citizens accepting the controlling role of the State. Since liberalisation, the legal status of the RTF has not fundamentally changed, despite the ratification of ICESCR: it remains absent of the Constitution (Nerio Monroy and Almaraz Reyes: 2007:27). This significantly reduced state responsibility in case of non-compliance. Márquez (l.306-328) summarises the important difference brought by a right-based approach:

“[from the perspective of the right to health of children] there are two different poles in terms of public policy, one can be assistance: “what a poor [child]! We will give her something to eat so that she does die on us, this is important!” but if you speak about rights, you are speaking about a [legal] obligation [of the State], (...) not to protect this child per se (...) but to guarantee the rights of this child (...). That is why it is important to speak about rights, because you are obliging the State to realise effective, right-based public policies, rights-based programmes, rights-based budgets. So that it must go beyond saying “let’s support this because as State I have an interest in the survival of that child”, instead the State must guarantee subsistence, development, higher wages, improved living conditions (...) so, yes there is a fundamental distinction when one speaks about rights.”

Although for Kent (2005:71) Mexico has de lege a monist system, (i.e. which places international treaties at equal level with the Constitution), de facto, it appears to function as a dualist system. The Constitution is the reference law, to which other legal norms must first be explicitly incorporated to be acknowledged as national, enforceable norms. Zamora (l.234-245) stated:

“the other laws are derived from the Constitution. (...) In litigations the secondary laws are used, but if we are on an injunction case, then the Constitution is used, the express provisions of the Constitution. [Other] legal instruments [like the Agreement 169 of the ILO] are sometimes invoked in litigations, but I don’t believe anybody does this. That is why it is important that a right be in the Constitution, because otherwise, well, it is not recognised, it is not guaranteed in the Constitution, and if it is not there, then it does not exist.”

Most interviewees, therefore, believed that the absence of an explicit constitutional RTF is a major drawback its realisation. For Rábago (l.442-444):

“we believe that yes, the Constitution should be reformed because really in Mexico, the Constitution, (...) it’s everything! It’s like God!”

For Cruickshank (l.307-312):

“yes, we also think that [the constitutionalisation of the RTF] is fundamental. First, it is the only [basic] right that is not recognised in Mexico. This is [a serious problem] that as a Mexican your RTF is not recognised in our magna carta”.

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93 However, as mentioned in Section 5 there are clear provisions for children, which have certainly contributed to the development of existing programmes to tackle child under-nourishment.
At the end of the 1980s as the generalised tortilla and other food subsidies were being removed or drastically restructured in time of deep economic crisis, social movements emerged through rising awareness and self-organisation. For López (l.138-157), this was in part a positive achievement of the projects that had fostered participation in community retail shops and through the SAM. Together with civil society organisations, popular mobilisation formed tight and expanding networks, which denounced hunger and fought against the dismantlement of the food subsidy, particularly, that of the tortilla. In 1990, over 130 civil and social organisations created an alliance called the Front for the Right to Food, which resulted in the Pact against Hunger. Explicit demands for the constitutionalisation of the RTF were made through a range of actions, fora, meetings and marches (Mitastein, 1996:49-53; López, l.296-454). The high social importance of the tortilla made it a burning issue and the removal of its subsidy was politically unpopular. The vast mobilisation associated with the Front for the Right to Food, resulted with the formulation of food security goals and important policy recommendations. It led moreover in 1994 to the first articulated proposal for a constitutional amendment integrating the RTF, which was presented to the federal congress but failed to fulfil all the necessary steps (Concha Malo et al, 2007:45). It has, however, remained a consistent demand for activists and analysts of the Front (since then closely associated to FIAN). These have developed a broad-based strategy to maintain its visibility and mobilisation from local to international levels and politically lobby for its achievement, in particular through national political spheres and contribution to shadow reports to the UN.

Although, the explicit incorporation of the RTF in the Constitution is not the only avenue to secure its realisation, it does constitute the first step towards a national legislation that specifies legal, enforceable entitlements. For Kent (2005:73-74):

“[n]ational legislation provides highly authoritative articulation of the commitments accepted by the nation-state. It is a means of codifying and legitimising institutionalised governmental action. Thus, lawmaking can be a major tool for advancing the realisation of human rights.”

Another proposal for a constitutional amendment is since 2003 in review. It is being altered and sent back and forth between Senate and Federal Congress (Concha Malo, et al., 2007:45). Civil and social organisations are strongly lobbying to obtain its approval from the federal Congress, so far without success. It involves the reformulation of two articles of the Constitution. Article 4 (on individual guarantees) would be amended as follows:

“the State has the obligation to guarantee the efficient access of all individuals to food in quantity and quality sufficient to permit the individual to satisfy the nutritional needs required to secure his / her physical and mental development” (Saucedo, l.390-394).”

94 The description of the emergence of civil society and social mobilization leading to the Pact against Hunger and the Front for the Right to Food represent a substantial part of the interview from López. These are synthesised here and not directly cited for want of space.

95 The Pact against Hunger stimulated discussion fora and numerous local initiatives to fight malnutrition (López, l. 318-347)

96 For example on 2nd August 1990: the March of the poors’ envy of extreme richness (Mitastein, 1996:49)

97 These included: 1) the strengthening of food staple production and small and medium food staple processing industry; 2) the reinforcement and regulation of social food supply channels; 3), the adequate monitoring of nutritional needs and transparent allocation of food subsidies; and 4) the regulation of industrial food publicity and quality control to promote healthy nutritional habits (Mitastein, 1996:52-53).

98 Any constitutional amendment must in Mexico be approved by the Senate, the Federal Congress, and a two third majority among the 31 state parliaments (Saucedo, l.293-305)
Article 27 (on property and access productive resources), paragraph 20, would include:

“the aim of integral rural development policies (...) will be that the State guarantee sufficient and appropriate supply of the basic food products established by law” (Saucedo, l.397-400).

This amendment would ground the duties of the State concerning the RTF and its interlinkages with food and agricultural policy. In accordance with the General Comment 12 it focuses on the centrality of access to food, although the nature of the access remains unspecified. Dimensions of food do encompass quantity and quality, but focus primarily on the nutritional needs of individuals, and do not explicitly incorporate the notion of cultural acceptability. Food needs to be secured throughout the individual’s life cycle. However, there is no mention of specific vulnerable groups, who might have particular requirements. The second part of the amendment emphasises the state’s central role in the articulation of food production and distribution in a wider framework of food security and even food sovereignty\textsuperscript{99} with respects to basic food staples. Although not explicitly detailed, the wording suggests that the primary tasks of the State are to foster and regulate food production and supply, which could be related to ‘fulfil’ (‘facilitate’) and ‘protect’ obligations.

Despite the importance of constitutionalisation, most interviewees, however, emphasise the limitations of this step in the overall realisation of the RTF. For Cruickshank (l.319-328):

“yes, this would be an important success, and I hope that we will achieve it soon. But the fight does not stop there, you still have to do a lot more afterwards to realise this right, the capacity to claim this right does not only depend on legal mechanisms, but also on people’s awareness (...) and on [collective] citizenship, so of course it is a very important step but there is a lot to do afterwards”.

For Hernández Navarro (l.262-268)

[the constitutionalisation of the RTF is not the key], and less in a country like Mexico, where laws exist but are not enforced (...). I believe that as important or more is that [right holders] are aware of their rights (...) and able to exercise them, to lobby [for them], and this only comes from the conscience of this right”.

And Díaz Muller (l.335347):

“in terms of implementation, of the efficiency of the human rights norms (...) there can be a beautiful constitution (...) but I don’t give it much importance if it is not enforced, if it is not applied”.

\textsuperscript{99} Moreover, members of the three political parties represented in the Federal Congress have formulated a proposal for a federal law on “Planification for food and nutritional sovereignty and security” in 2005. This envisages programmes for promotion of rural productive resources, which would be decoupled from the political election cycle so as to foster continuity and financial stability of the medium to long term. This legislative project has also not yet been approved (Concha Malo, 2007:18).


7.3. Governance

The notion of governance encompasses in a neutral fashion the many dimensions of the exercise of authority in running a country’s affair at local to international scale. This includes the interactions between all societal actors, decision-making and implementation processes. The term “good governance” in contrast is normative, in that it prescribes clear principles in the nature and scope of state intervention in society, including participation, accountability and transparency, rule of law, effectiveness and equity\(^\text{100}\). These factors are also fundamental in a human rights approach.

Overtly, the Mexican political regime is in a process of political liberalisation and democratisation, illustrated in 2000 with the end of 70 years of continuous reign of the PRI. However, it remains characterised by recurrent electoral scandals and a culture of secrecy (Human Right Watch, 2006:3). Opacity in decision-making has also been a constant both at domestic and international levels. The system of food subsidies was and remains centrally decided, with virtually no grass-root involvement at any stage of the decision-making process. Moreover, there are reports of deliberate hindrance of popular mobilisation and community self-organisation attempts in nutritional matters within state-led programmes (Mitastein, 1996:50). For López, however, within the pre-liberalisation system, some degree of community participation was embedded in state approach to food policy (1.98-107):

“[CONASUPO programme to commercialise cheap food products included] small shops that were put in the popular quarters. People from the working class quarters had fought for many years to obtain a small shop. They had to form a committee, provide the premises, and people did it and there were places where the small shops got there before there even was a path”.

This led to the activation of social networks in marginalised urban areas, which later were to play a fundamental role in the initial popular mobilisations within the Front for the RTF. The subsidised food retail system, however, remained dominated by local political clientelism.

“CONASUPO put some of these shops itself, it formed a PRI committee with (...) the quarters’ leaders, but [these were] corrupted leaders (...) The most successful shops were those that the people organised themselves, because they had a committee that really functioned (...) rather than a group of people ready to steal and manipulate (...), who didn’t manage it, [or] even have an interest in it, these became clan shops, PRI shops. The other shops were community shops. So there was a great difference in quality between these shops.” (López, l.164-204)

Despite local achievements, for Torres Salcido (2003:14-15) Mexico is characterised by culture of political clientelism and authoritarianism, which has resulted in the misallocation and political instrumentalisation of state resources, such as food subsidies. For Cruickshank:

“[t]hese [e.g. OPORTUNIDADES] are programmes that are not state policies (...) a policy that would contemplate [the RTF] as a state responsibility, as a right (...) these have been policies that have been instrumentalised by the [political] parties, the governments (...) by all three parties” (l.418-422).

For several interviewees, a worrying trend is that the realisation of human rights in Mexico is perceived as related to state’s good will rather than an obligation stemming from the lawful entitlement of citizens (Márquez, l.640-642). This has been associated to the vast ignorance of Mexican citizens on their human rights and the associated responsibilities of the State.

Thus, for Rábago (l.704-732) a major obstacle in the implementation of human rights in Mexico is the persisting uncritical perception of the State, as a benevolent provider, which he interprets as a heritage of decades of unchallenged state paternalism and clientelism. This opinion is echoed by Ramírez (l.542), for whom democratic life in Mexico is still in its infancy.

Hernández Navarro (l.281-298) stated:

“I believe that in general terms the fight for human rights in Mexico lags very much behind. (...) There is no political culture to give priority to human rights issues. Effectively we are a country where political relations are clientelist, corporatists. We have not yet constructed a full citizenship, in the broadest sense of the word [what is needed is] the development of a political culture, a change in relationships, and this is not a short term process”.

In the last three decades, social movements and civil society organisations in Mexico have significantly expanded and their visibility has considerably increased from local to international level. This has been closely related to the armed Zapatist insurrection from 1994, which has spurred national and international scrutiny and given renewed impulse to civil society. Many non-governmental civil society organisations now closely interact with social movements and relevant governmental institutions (e.g. CDHDF) to explicitly or implicitly address human rights. For example, the rights to food and to water are emerging as critical reminders of the interdependence of human rights and powerful arguments against the extremes of economic liberalisation in Mexico. The importance attributed to human rights is exemplified by the considerable mobilisation in the process of alternative reporting to CESCER, which in 2006 included around 130 organisations101.

Nevertheless, civil society has not yet reached the status of an effective counter-balancing power and agent of accountability. Despite well mediatised steps, such as Law of Transparency and the recent issuing of a permanent invitation to the UN Human Rights Special Rapporteurs, state’s accountability at national and international level remains low. Mexico continues to argue that state sovereignty has prevalence over the protection of basic human rights. It continues to avoid and delay fundamental reforms needed to address the many challenges of international human right law (Human Right Watch, 2006), for example the constitutionalisation of the RTF and enforcement of its core obligations. In particular, Mexico’s judicial and police systems are plagued with issues of corruption and discrimination and brutal treatment of political dissidents, in particular journalists, human rights activists, as well as the impunity of responsible state and non-state actors (amnesty international, 2005:227-232). According to several interviewees, the cause of human rights in Mexico is retrograding, with renewed and widespread repression (Zamora, 1,502-513; Hernández Navarro, 1,356-393). This is illustrated by the sadly famous events in Atenco and Oaxaca in recent years, which led to the UN Committee Against Torture recommendations for prompt investigation of torture cases and repression (La Jornada November 25th 2006). There is de facto a growing criminalisation of social protest (e.g. through the incarceration of (human right) activists under “invented charges” (Zamora, 1.33-34). Also, current governmental attempts explicitly aimed at restricting existing rights to demonstrate, based on arguments of security and disruption of economic production102.

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102 The PAN has launched a campaign for a law restricting the right to demonstrate, which is so formulated that it could potentially lead to their de facto prohibition. Thus, demonstrations would not only need to be first registered by local authorities, but they should not cause disturbances to third parties. See also La Jornada 15th July 2007. http://www.jornada.unam.mx/2007/07/15/index.php?section=capital&article=036n1cap – accessed on 28.03.2008
Moreover, mass information channels do little to publicise human rights concern and raise awareness on the state’s responsibility. Rábago (l.116-167) thus deplores the vast ignorance of journalists on human rights issues, as well as the political instrumentalisation of information by the State, through collusion with private media concerns. Information distortion is also an important concern regarding the official reports to CESCR. For example, shadow reports have highlighted the tendency of the Mexican State to focus on positive results while ignoring important concerns.

Díaz Muller, when asked to evaluate the meaningfulness of official reports to the UN system, thus stated (l.442-446):  

“I will be very frank, I think that it would be very interesting to (...) [ask] this question to the people of Foreign Affairs [who write the reports] to understand which mechanisms, including psychological ones, they use to make beautiful reports of realities that do not exist.”

Also, although according to the State, open consultation was actively sought during the reporting process, civil society organisations claim that consultation had been minimal. Cruickshank highlights the risks of political instrumentalisation involved in participating in governmental consultation and dialogue exercises (l.226-232):

“sometimes we think that the opening of the State to (...) dialogue is already a success. Sometimes it is, but sometimes it isn’t, because sometimes [dialogue mechanisms] are only there to legitimise governmental positions. So one has to know when (...) a real dialogue is being constructed and impulse proposals and when one is simply being used and leave”.

A particularly worrying trend is the de facto subordination of international human rights norms to the national legal framework and to international free trade treaties. Thus, although several proposals for constitutional amendments to incorporate the RTF in national legislation have failed, no less than 260 amendments to the Mexican Constitution have been reported to accommodate the neo-liberal paradigm of state retreat, private property, market dynamics and free trade (La Jornada Michoacán, February 5th 2008). Thus, there appears to be a politically motivated inconsistency in the hierarchisation of laws. The lack of clarity in the positioning of international human rights treaties relative to the national constitution as well as the failure to incorporate international human norms in national legislation has been much criticised (HRW, 2006:14). For Zamora (l.381-389):

“there are sometimes political motivations in the interpretation or the application of the law, of the Constitutional law, of the treaties (...) [regarding the hierarchy of law, Court officials] contradict themselves all the time (...) There is no congruence, no unique criterion, and according to what issues is being addressed, the treaty can have the same level as the Constitution or be placed higher or lower then the Constitution. This can be easily manipulated (...) by judges, magistrates, or officials from the judicial power”.

The subordination of international human right norms to national ones, despite constitutional provision, is permitted by institutions, such as the Supreme Court, whose task is, however, to push for state accountability.

Thus, Zamora argues (l.360-369):

“the fundamental right that we have as citizens are in the Constitution, and if there are not there, well we do not have them, because now with the statement of the [Supreme] Court that [international] treaties are under the Constitution, well (...) they are no longer [at the level of the Constitution] in this hierarchy, but (...)
Finally, there is a general lack of adequate remedies in situations of violations to the RTF at international level (since there is no additional protocol for ICESCR), and national level (since the right is not constitutionally recognised). The lack of justiciability of the RTF (i.e. the incapacity of right holders to legally sue the Mexican State for violation and obtain remedies), however, should not be equated with the inexistence of the right, of state obligations or of violations. For several interviewees the realisation of the RTF and human rights in Mexico is, therefore, primarily dependent on the successful establishment of the rule of law, the development of a culture of rights, of participation and information, based on raising the awareness of the population and a healthy and dynamic civil society (Rábago, l.704-732). This implies a profound transformation of the current approach to human rights and politically responsibility. For Cruickshank (l.362-372).

“the non-compliance of human rights is fairly complete. First, as a citizen you do not have the tools to know you rights (...). [I]f you know them, you do not know how to claim them. There is a huge bureaucracy, (...) there is no real equal access to the law if you do not have money (...) I believe we lack a culture of ethics, of compliance, of respect”.

8. The State, the RTF and economic liberalisation

The regulation of food supply has historically been a fundamental task of emerging centralised governance and nation states (Andreassen, 2005:97). As a component of the basic social contract, which relates the State and subjects or citizens, it has involved the direct provision of food in insecure times, such as war and harvest failure due to natural hazards, as a counterpart of workforce and / or taxes. State’s regulatory role of private food markets has been related with many forms of interventions (Banik, 2005:45-46). This includes the storage of grains to constitute state reserves, and their redistribution in case of food scarcity. This policy has served different purposes. Indeed, food scarcity and famine, particularly in time of plenty, are important catalysts of social unrest and instability, and may contribute to the downfall of political regimes (Sengupta, 2005:112). Therefore through providing minimum access to food, the State may not only fulfil its role of ‘provider’, but also protect itself and remain in power. With the advent of political regimes based or strongly dependent on popular support, states became increasingly perceived as having not only prerogatives, but also clear responsibilities towards citizens and their well-being.

Within the human rights approach, the relationships between citizens and the State is formalised in a more complex manner. Explicit ethical-legal norms are set to guide and control state power, while citizens’ basic necessities and well-being are reformulated in terms of lawful entitlements. As mentioned previously international human rights law is in principle compatible with different conceptualisations of society and role the State. Indeed, measures to realise human rights, their implementation and the wider ideological, development or macroeconomic frameworks are not stipulated and remains the decision of the state party (General Comments No. 3, par.3 and 8, No. 12, par.21). This is of great political importance and relates to the original conceptual battle around human rights, which confronted capitalistic and communist blocks during the Cold War. Thus, economic, social and cultural rights (ECSR), it is assumed, can be achieved in free market as well as in protected economies.
As presented in Sections 6 and 7, in the Mexican context two vastly different economic models and approaches to food policy and state intervention have been envisaged since the 1950s. In the first model, state regulated access to the tortilla was guaranteed to impoverished urban populations, in particular in Mexico City, but there were important drawbacks. The state’s policy maintained poor urban consumers dependent on fixed tortilla prices rather than foster more autonomous livelihoods and truly redistribute wealth through, for example, improving labour conditions and remuneration. In the second model, access to maize and the tortilla has been largely deregulated. The urban poor no longer benefit of preferential access to the tortilla and are now dependent on private commercial actors and the volatility of the international maize market. State intervention in matters of access to food has therefore dramatically changed. The pre-liberalisation state, despite all its short-comings and the absence of a rights-based approach, still had an explicit social policy of food supply directed to the masses (i.e. facilitate), while specific programmes also attempted to deal with under-nourishment and extreme poverty (i.e. provide). With liberalisation, the Mexican State uncritically adopted all recommendations of the Washington Consensus and in so doing renounced to its duties in matters of social food policy. The removal of generalised food subsidies and state retreat from the food sector was legitimised through the (self) imposed need to cut state expenditure and maximise remaining resources by strictly targeting the extreme poor. The Mexican situation in keeping with that pictured by Berthelot (2005:9):

“[t]he desire of governments to feed urban citizens at low costs, together with bilateral pressure of food exporting countries, conditions imposed by International Financial Institutions in the framework of structural adjustment programs or debt alleviation mechanisms and WTO rules, led progressively to food trade liberalisation in most developing countries and countries with economies in transition”

The prioritisation of food strategies is explicitly envisaged in the GC No. 12 in case of low resources. A survey to capture the opinions of Mexican poor also suggests that if assistentialist policies are generally rejected, the poor legitimise the channelling of state resources towards the most needy (Székely, 2005b:64-68). However, despite the almost complete dismantlement of the former food subsidy apparatus, the State consistently fails to attend its core obligations under the RTF. These are: the prompt incorporation of international law standards in the national legislation, the development of an integrated national food and nutrition strategy, and the realisation of the right to be free from hunger of approximately 5% of its total population, affected by chronic under-nourishment. Despite important divergence in the two main models followed by the Mexican State, neither has produced a coherent, sustainable food policy, which satisfies the key requirements of a rights-based approach.

Although international human right law refrains from prescribing the approach a state is to follow to realise the RTF, it still envisages a strong State that has negotiating power and plays a central role in economy. This is apparently incompatible with the precepts of economic liberalisation as implemented in Mexico in the last three decades. However, it is argued that economic liberalisation does not in practice have to mean the full disengagement, and arguably, disempowerment of the State. Indeed, developed countries are the best example for this, since despite relying on a market economy, their states have not relinquished their role as regulator of conflicts of interests, promoter of economic growth, protector of national interests and provider for the economically weak.\(^{103}\)

\(^{103}\) This should not be understood as a way to raise developed countries as examples in matters of human rights. Instead, it is argued that economic liberalisation has been applied in different ways, with developed countries having more negotiation power and access to more efficient ways to deflect potential negative consequences.
Thus, developed countries have consistently sought to protect in many ways their agricultural sector from international competitors, while keeping prices accessible for consumers (Oxfam, 2007:3). From a human rights perspective, economic liberalisation as performed in the last decades in countries like Mexico has been fundamentally flawed. It has indeed ignored national specificities, in particular structural obstacles to development and equity, and fostered the transfer of state responsibility to private actors through blind deregulation and undifferentiated dismantlement of former state-centred system (See Hernández Oliva, 2007).

In the Mexican case, this has effectively meant going from one extreme to another. The structural adjustments programmes and state adoption of a radical neo-liberal agenda have prevented the elaboration of guide rail mechanisms, which may have helped the economy to adapt in a constructive way for the benefit of the whole population. Wolter (2005:120-121) reminds that free trade, as framed in the WTO, is a means to achieve development and improve living standards, which should not be confused with an end in itself. He further argues that through multilateral trade and economic integration political cooperation and the peaceful resolution of disputes is encouraged, while sources of food supply increase. For developing countries free trade may imply both opportunities (e.g. declining prices) and risks (e.g. high fluctuations of international prices). However, important political and economic asymmetries make trade relations complex and their impacts are difficult to predict (Gonzalez-Pelaez, 2005:65). These asymmetries should be taken adequately in consideration, since under free trade they intensify the gaps between already vastly unequal partners, instead of promoting healthy competition and a levelled playing field (Valencia Fontes, 2007:78).

It has further been argued that economic liberalisation may be incompatible with the goals of political liberalisation (Dunne, 2001:173). For Hernández Oliva (2007:67-68) the Mexican State abandoned its social and economic role to instigate national development and redistribute wealth, but preserved its former authoritarian role in the political arena, leading to persisting forms of social control and repression. However, one of the by-products of the opening of Mexico and its ratification of a number of international human right instruments has been the creation of a number of human rights institutions at federal and state level. Thus next to the National Human Right Commission (CNDH), a Mexican Office of the High Commissioner on Human Rights now exists, which has pushed the elaboration of a first comprehensive national assessment of the human rights situation (Kompass, 2003). There is also a very active Human Right Commission for Mexico City (CDHDF), which is currently finalising a similar diagnostic assessment for the capital. Although this does not explicitly address the RTF, it represents an important step in the official recognition of human rights and the associated obligations of the Mexican State.

For Díaz Muller (l.515-521):

“obviously nobody could deny that in the last 25 years there has been a clarification of, and increasing awareness on the issue of human rights (...) it is clear that these exist and that they can be claimed”.

These recent development have also been partly the result of the emergence of a dynamic civil society in the last four decades, which has played an important role in inspiring and channelling social mobilisations. The multiplication and professionalisation of non-governmental actors and organisations have increased the national and international visibility of human rights issues in Mexico. This has had an important impact in raising the public awareness on the existence of human rights and the nature of state obligations: a fundamental step towards the claiming of these rights. Although far from achieved, the emergence of an alternative discourse and counter power to the State is in process. This promotes active lobbying for increasing accountability and transparency. Sánchez and her colleagues (l.703-770) emphasised that a significant advance had been the development of a societal discourse, where human rights have become a recognized issue. They nevertheless highlighted the large
discrepancies between this discourse and its present realisation. In particular, societal scrutiny and participation to policy making remains low. Moreover, despite overt democratisation trends, former populist practices and collusion of the state with private interests persist.

Also, there is a tendency within the economic liberalisation discourse to ignore that private actors, who have gained considerable influence in national decision-making, have vested interests, which are often incompatible with those of social policy (Eide, 2005a:18-19). In democratic systems, state actors represent citizens (at least a large part of them) and are to a certain extent accountable to society. This as Ziegler repetitively pointed out, is not the case for private actors, such as international organisations and transnational corporations.

Arguably this could be illustrated in the development in the last fourteen years of a new approach to food assistance in Mexico. The programme “1 kilo de ayuda” (one kilogram of help) has been developed, based on the concept of public-private partnership and with the blessing of the Mexican government (who besides does not seem to participate financially in the endeavour). The project is promoted by private firms, like WAL-MARTS supermarkets, which encourage customers to donate funds, matched by private firms, for nutritional programmes for children in extreme poverty.

From one perspective, this project could be interpreted as a positive step in the development of corporate social responsibility. This could be associated with the development of private charity enterprise, which seeks to address the gaps of public social policy. However, such an initiative can also be seriously contested from a human rights perspective. It ignores the lawful entitlement to food contains in a rights-based approach and it reduces food policy to food assistance. It, moreover, risks inciting the state to neglect its obligation under international human rights law, by relying on private enterprise. However, with the privatisations of former public sectors, here the maize and tortilla sector, the State does not shed its legal obligation to satisfy the RTF, or transfer it to private actors. Although it can be argued that private actors who dominate the market, such as the maize and flour corporations in Mexico, have a moral obligation to facilitate access of maize to poorer populations, this is not formalised in any legal provision. Although a private initiative to tackle child malnutrition can be praised since it provides much needed funds, it might be counterproductive if it is instrumentalised by the State (e.g. to replace own initiative) and private actors (e.g. to secure larger market shares) or if it disempowers recipients (Kent, 2005:118).

More effective measures, as advocated in rights-based approaches, would be to:

- confront the State with its legal obligation by denouncing its failure to realise the RTF,
- encourage dialogue with the State to elaborate effective ways to realise the RTF, and
- promote popular understanding on human rights and right holders claims.

For López (l.1118-1120):

“a human right official, who mentions a programme like ‘1 kg de ayuda’ [as part of the effort to realise the RTF] implies that the government ignores its responsibility. This is an erroneous discourse, which de-contextualises the issue [of malnutrition from legal state obligation]”

Of course, a state-centred economy is no fundamental guarantee that public interests and human rights will be better served than in a privatised world. The overarching goal of the public sector, however, is by nature different to the private sector, since it does not have to be profitable and can be financed through state revenue. The State, through its strategy on how to

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raise national income and through decisions to invest or not in a given public sector, therefore, makes an ideological and political choice. This constitute one of the core tasks of the State, namely to define together with society a development and societal vision and ways to attain it. This vision may include specific choices, which may or may not make strict sense in economic terms over the short term. If these choices contribute to construct the capacity of citizens to attend their own needs in time, then these make sense from a human right perspective. This is in keeping with the rational behind the notions of welfare states. The Mexican pre-liberalisation food policies can be to a certain extend related to this conceptualisation of state intervention. However, it fell short of the wider scope of the RTF, since its ultimate aim was not to facilitate citizens capacity to feed themselves and live in dignity, but instead, to keep them fed at low cost to drive industrial development.

Bearing this in mind a key question is: which role should the State play to realise the RTF in the current Mexican context? This relates to the positioning of human rights in relation to free trade agreements. Three different situations can be envisaged with human rights treaties placed below, on equal footing with, or above free trade agreements. Each possibility could be associated with different emphasis in the nature and scope of state intervention for the realisation of the RTF. Some of these avenues are introduced and discussed below.

In the first option, the normative of free trade agreements is prioritised over that of human rights treaties. This appears to be de facto the current situation in Mexico. Here, state measures to promote the realisation of the RTF must fulfil the specific obligations, encapsulated in the legal provisions of free trade agreements. For example, the Mexican State must abide the agreed liberalisation of the prices of maize and avoid subventions to farmers that would create unfair competition. Nevertheless, the State can prevail of its role of protector of national interests through exploiting the available protective provisions included within trade agreements. For example Wise (2007) suggests that Mexico could use existing countervailing clauses under NAFTA to restrict maize liberalisation with the argument that US policies are causing serious damage to Mexican farmers. The latter could also be a ground to either increase Mexican support for domestic maize production under WTO, or request a revision of US allocation of agricultural subsidies and of the dumping clause. Mexico has also theoretically the possibility to propose the positioning of the Cartagena Protocol on Biosafety as an overarching normative above the NAFTA treaty itself, to restrict imports of genetically modified maize from the US on ground of the risk of contamination to domestic maize. These measures could in principle stimulate the Mexican maize production and thereby contribute to address the RTF of rural populations, but only indirectly that of poor urban populations. To implement them, the Mexican State would have to revise its’ current perception of domestic agriculture and challenge the USA in arbitration and dispute resolution processes under the auspice of the WTO and NAFTA. These processes are, however, prohibitive, since they demand substantial resources and time, without guarantee of success.

In the second option, the human rights normative is placed at the same level as free trade agreements. The State, then, should pay attention to implement free trade provisions, while fulfilling its obligations under international human rights law, and vice versa. The State would need to reinforce its role as the protector of all national interests (via negotiations on the international arena) and facilitator of successful integration in the international economy. In departure from the present situation, the State could use the higher status of human rights to

\[106\] It has been argued that the USA have so far deflected accusations of unfair competition and dumping through allocating agricultural and exports subsidies under budgets that cannot be controlled under WTO provisions. (Oxfam, 2003:10)


\[108\] Genetic contamination of Mexican maize has already been reported (ETC, 2002:1)
reclaim prerogatives in market regulation, and expand anew in the field of social policy. Effective mechanisms would then have to be elaborated with the aim of the redistributing national resources to level inequalities, for example by reforming the current deficient tax system. These state interventions are similar to those currently performed by governments in developed countries. Mexico could, thus, rethink its agricultural policy to impulse national production of maize, constitute adequate maize reserves and support local and regional markets (San Vicente Tello, 2007:21). This could contribute to strategies aiming at stimulating rural economy via the strengthening of links between maize producers and consumers, and more broadly between rural and urban areas (Marielle, 2003:282). The State should make effective its constitutional provisions to regulate the commercialisation of maize, induce the de-concentration of the maize-tortilla sector, and punish speculative behaviour (San Vicente Tello, 2007:20). Also, it should strive to define and enforce more adequate minimum wage levels based on the evolution of ground household costs, as well as reform its tax system to secure the necessary revenue needed for sound social policy.109

In the third model, human rights norms prevail over free trade agreements. State intervention here could be related to that of true welfare states, which impulse national development over the long term and develop a multidimensional social safety net, so that the basic necessities of citizens are met. Here the state obligations under the RTF could become the guideline for development strategy and the design and implementation of agriculture and social policy. State vigilance in matters of food production and nutritional quality standards could be associated with comprehensive programmes for nutritional and health education system. Moreover, a RTF food approach could legitimise state’s repositioning vis à vis free trade organisations and justify renegotiations of trade agreement provisions that create obstacles to the realisation of human rights. There is support for this in significant parts of the Mexican society. Indeed, there has been a growing mobilisation demanding the renegotiation of the agricultural chapter of NAFTA, which intensified as the full liberalisation of maize approached110. This demand has been increasingly endorsed by activists and civil society organisations and explicit related to the fight for the realisation of the RTF. These mobilisations have succeeded in pushing some degree of agricultural reform although the State has consistently refused to renegotiate NAFTA (See Morales Moreno, 2008).

It is argued that effectively many measures mentioned in the second and third model could also theoretically be fostered without raising the status of the human rights normative, since all provisions already exist in the Constitution and to a certain extent in free trade frameworks. These imply, however, profound societal changes from governance to the mentalities of the people in power, but also of the wider population. The feasibility of a state re-orientation to emphasise the RTF over trade agreements or negotiate for a renegotiation of NAFTA in the actual climate seems, however, low (Hernández, 1.213-215). Since Mexico’s economy is tightly dependent from trade with the USA, such measures are not likely to be pushed by the current administration, the electoral basis of which is primarily composed of voters who directly or indirectly benefit from the focus on trade and industry.

109 Long-term public resources in Mexico have, as already mentioned, been drastically reduced through liberalisation. There are anyway low due to three important factors characteristics of developing countries: the incapacity of a large part of the population to contribute to raise public resources due to structural poverty, the deficient and lenient tax-system, and the large propensity to tax evasion.

110 Two important social movements ‘el campo no aguanta más (the country side cannot bear any more)” in 2003 (Castro Soto, 2003 - http://www.ciepac.org/boletines/chiapasaldia.php?id=331) and ‘Sin maíz no hay país (without maize there is no country)” have taken this as their prime demand (http://www.sinmaiznohaypais.org/). Both websites accessed on 27.03.2008
9. Conclusions

Alston (1984:9) argues that:

“the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any right”.

This statement does in many ways apply to Mexico. Indeed, the present work has provided much ground to argue that the Mexican State is not fulfilling its obligations to realise the RTF of urban populations. Interestingly, although in pre-liberalisation policies, as Mexico still had not ratified the ICESCR, the access to the tortilla of urban populations, in particular in Mexico City, appeared to have been to a certain extend better addressed than since. Although it this was restricted by the political instrumentalisation of this policy by a State often criticised for its authoritarian paternalism and clientelism. Despite important achievements, this policy can be interpreted as a complex systems geared at the direct provision of food for rapidly increasing urban populations, which did little to foster sustainable livelihoods. The dismantlement of the state food subsidy model from the 1980s, nevertheless, resulted in the removal of important social safety nets for a large part of the population in times of harsh economic crisis. The State partly through imposed measures from international financing institutions, partly out of sincere conviction, embraced the neo-liberalism paradigm. It more or less abandoned the responsibility for social food supply policy and replaced it by very restricted food assistance programmes, focused on rural areas and on extreme poverty, that do not comply with core state obligations under the RTF. Indeed, in a country, where still almost half of the population lives in conditions of poverty the State should not make the economy of a comprehensive food policy.

Interestingly, the removal of food subsidies has played an important role in the emergence of the notion of the RTF and the formulation of explicit rights-based societal demands around food entitlements. Mexico City, which had been privileged in all food subsidy programmes due to its vast concentration of population, was most affected by their progressive disappearance. In this context, the capital has played a key role in hosting and inspiring vast social mobilisations throughout the last decades.

Many structural obstacles, however, hinder the realisation of RTF claims, including the lack of state transparency and accountability, the broad absence of effective remedies at national and international levels, persisting tendencies to clientelist political relationships and the pervasive popular ignorance of human rights.

Díaz Muller (l.202-219) isolated three fundamental processes that substantially influence the ability of a country to realise human rights:

“first, the development policy that is social [public] policies, second, the (...) vision regarding [the extend of] state intervention in the economy (...) [and] third, (...) the external debt. This latter is a topic that [radically] influences the realisation of human rights. (...) There are countries, whose debt reaches up to 70% of their GDP. That means that all the money exports bring in must be paid out for [the service of the debt]. Therefore, there is no possibility for development, no opportunities for housing, health, education (...) In other words the external debt is their biggest obstacles in the realisation of fundamental human right.”

Although economic liberalisation in the context of structural adjustment programmes may have seriously debilitated Mexico and forced a radically transformation in the conceptualisation of the role of the State in social food policy, there exist already sufficient legal provisions in national legislation to initiate a sound rights-based approach to the RTF.
The main message of the present research is therefore that it is not simply for want of explicit legal norms and enforcement instruments that the RTF is at present not realised in Mexico. The incorporation of the international standards in national legislation is one of the prime demands of human rights activists in Mexico. Of course, these would facilitate significantly the claims of right holders. However, they would per se not fundamentally change the situation if the current perception of human rights and state obligation remains as it is, and the structural obstacles hindering real steps towards social and political equity are not addressed explicitly. These include the lack of political and societal decision to pursue the RTF as a priority, the lack of political integrity, structural inequality as well as institutional inertia and resistance to change. The absence of a societal consensus on the necessity to think a new approach to development that would consider the entire population rather than promote the ones at the expenses of others also plays fundamental role.

Despite this bleak panorama, there are significant efforts being made among civil society and also governmental actors to promote the cause of the RTF in Mexico. These efforts bear their fruits particularly in multiple local initiatives, which are increasingly made visible at national and international levels through dynamic non-governmental networks and official human rights institutions. These actions participate in the development of a human rights consciousness and enable affected populations to learn to recognise and claim their rights. Despite the lack of remedies and enforcement mechanisms, characteristic of economic, social and cultural rights, claims of violations to the RTF do have a weight, and not least a symbolic one, since they allow highlighting to shortcoming of state policy.

If the state is the prime duty bearer in the realization of human rights, there are many other actors who need to also commit to change and take an active part in the societal transformation needed. In the context of economic liberalisation and free trade and declining state control over national economy, the formalisation of extraterritorial state obligations, as well as legal responsibilities for private actors become key, as repetitively argued by Ziegler. However, individual responsibility should not be forgotten. The responsibility of right holders to fight for their right to feed themselves and their family adequately, but also that of each citizen to actively participate to bring about the realizations of the rights of their fellow citizens. This responsibility can be reformulated at the duty to resist and disturb the otherwise often unchallenged patterns of political and economic power, that lead to human rights violations.

As López stated (l.876-881):

“many years ago our motto as a social organisation was ‘if they want to push you, you cannot simply get out of the way’, at least they’ll have to waste efforts to manage to push you. (...) There was this sentence that was often used: ‘who does not disturb helps’. But we said [instead] ‘who disturbs helps’.”

‘who disturbs [the system] helps [to realize human rights]’

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Appendix 1 – List of organisations contacted

- Acción Social de los Jesuitas en México - Centro de Reflexión Teológica A. C. (Jesuit Social Action in Mexico – Centre for Theological Reflection)
- Bufete Jurídico Tierra Y Libertad (Legal consultancy Land and Freedom)
- Centro de Acción Laboral Y Asesoría Sindical (CILAS) (Labour Action and Union Consultancy)
- Centro de Derechos Humanos Fray Francisco de Vitoria (Human Right Centre Fray Francisco de Vitoria)
- Centro de Estudios para el Desarrollo Rural Sustentable y la Soberanía Alimentaria (CEDRSSA), Cámara de Diputados (Rural Sustainable Development and Food Sovereignty Research Centre – Parliament)
- Centro Nacional de Comunicación Social (CENCOS) (National Social Communication Centre)
- Comisión de Derechos Humanos del Distrito Federal (Mexico City’ Human Rights Commission)
- Comisión Nacional de Derechos Humanos (National Human Rights Commission)
- Desmi, A.C. (Social Economic Development of Mexican Indians, Civil Association)
- El Colegio de México
- FIAN Mexico – Food International Action Network
- Frente Auténtico del Trabajo (Authentic Labour Front)
- Grupo de Estudios Ambientales A.C. (Environmental Research Group – Civil Association)
- Instituto de Investigaciones Jurídicas de la UNAM (Law Institute, National Autonomous University of Mexico)
- Instituto de Geografía de la UNAM (Geography Institute, National Autonomous University of Mexico)
- La Jornada (Main opposition national daily paper)
- Liga Mexicana para la Defensa de los Derechos Humanos (Mexican League for the Defence of Human Rights)
- Oxfam
- Programa Nacional de Derechos Humanos
- Red Mexicana de Acción Frente al Libre Comercio (Mexican Action Network against Free Trade)
- Universidad de Chapingo (Chapingo University – Agronomy)
Appendix 2 - Recruitment material

A typical example of a recruitment email is translated below. For each expert approached, the email was modified to specify the specific topics that I wished to discuss. This was derived from previous internet searches to identify the particular interests of the experts to be contacted. Since I already have a doctoral title and have worked as a research fellow in collaboration with a number of research institutes I used this status to introduce myself. This proved to open many doors, as the majority of my mails were answered and most experts were keen to find time to meet me.

Dear Sir / Madam,

I am Dr. Cristina de la Vega-Leinert, an independent researcher associated with several universities in Germany. I am currently investigating existing obstacles and opportunities in the realisation of the right to food in Mexico.

I would be very much interested to know a bit better the work of the National Human Rights Centre, in particular regarding the realisation of economic, social and cultural rights, and the right to food.

I would be very grateful if you could indicate me who would be willing to receive me and to answer a few questions on the key aspects of your organisation’s work. This would help me very much in my research.

I will be in Mexico City until the end of October.

I thank you in advance for your help.

Sincerely,

Cristina de la Vega Leinert
Appendix 3 - Interview guide

Although some questions were common to most interview guides (for example those in italics below), they were different and especially conceived to fit the specific expertise of each interview. One typical interview guide is translated here. Not all questions were asked, nor were they asked precisely in the order they had been planned in interview guides. Rather questions were often added, removed or reformulated as I got to know better interviewers and to better know what topics they could best contribute with. Some interviews were succinct and followed a question-answer mode, others developed into a long conversation into I also shared some of my opinions, interests or expertise.

**Interview guide designed for Lic. B. Zamora (Legal consultancy Land and Freedom)**

1. Could you summarise the history of the Legal Consultancy Land and Freedom? In what context did it start? How did you start to work here?
2. Could you describe the vision and the main goals of your organisations in matters of human rights (particularly economic, social and cultural)?
3. In which zones of the country do you most work? Do you also work in the metropolitan zone of Mexico City’s valley?
4. Which are the focuses of your work in the metropolitan zone of Mexico City’s valley?
5. Which finances sources do you have?
6. The capacity to “claim/demand” economic, social and cultural rights has been fundamental for human rights activists, since many, like the right to food, are not constitutionalised. Is the constitutionalisation of human rights an unavoidable step towards their realisation? Does it mean that if these rights are not constitutionalised there are no legal provisions to oblige the State to act? Does it mean that if the State does not realise these rights this does not constitute a violation of states obligation of international law?
7. In your opinion, which are the most important obstacles to the incorporation of human rights to the Mexican Constitution? And in penal law?
8. Through which legal provisions in Mexican penal law can the topic of economic, social and cultural rights be approached?
9. Have you notices important changes in the way the topic of economic, social and cultural rights are presented in the media and civil society in recent years? If, yes; to what are they due? (for example to current situation of high inflation of basic food prices)
10. In your opinion, which have been the most notable advances in human rights issues?
11. Have you had to work cases of repression of human rights activists, in particular of economic, social and cultural rights?
Appendix 4 - Interview Transcripts

Transcripts are available from the author
## Appendix 5 - Sensitising concepts and codes

<table>
<thead>
<tr>
<th>Sensitising concepts</th>
<th>Synthesising codes</th>
<th>Detailed Codes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human Right to Food</strong></td>
<td>Conceptualisation</td>
<td>Universality - Interdependence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Generations of human rights</td>
</tr>
<tr>
<td></td>
<td>Legislation</td>
<td>Right holder and Duty bearers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State obligations (respect, protect, fulfil)</td>
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<tr>
<td></td>
<td></td>
<td>Determination of violations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hierarchy of rights and Instruments (legally binding, voluntary) – monist vs. dualist systems</td>
</tr>
</tbody>
</table>
| | | Legal Human Right Systems (universal, inter-American…)
| | Justiciability | Rule of Law – culture of rights and ethics |
| | | Awareness raising and Capacity to claim own rights |
| | | (Agents of) accountability and Transparency |
| | Realisation | Visibility |
| | | Role of Civil society and other Watchdogs (e.g. International community) |
| | | Incorporation into national legislation and Enforcement |
| | | National food policy and action plan - Monitoring, evaluation and reporting |
| **Food** | Perception and value | A public good vs. commodity? |
| | Security | Guarantee adequate supply (even through imports) |
| | Sovereignty | Protect and foster national production and markets – self-sufficiency |
| | Assistance | International community’s responsibility |
| | Culture | See Maize |
| **State** | Ideological framework | Societal vision - Paths to get there |
| | International Relations | Context (e.g. Cold War) |
| | | External debt |
| | | Bargaining power |
| | | Alliances and Free trade agreements |
| | Roles of State | Legislative – Governance – Democratic life |
| | | Regulatory - Enforcement |
| | | Provider - Facilitator (incentives) - Protector |
| | | Self preservation |
| **Policy** | Agricultural Policy | Maize Production – Storage- Distribution |
| | | Food production and Commercialisation |
| | | Subsidies |
| | Social and labour policy | Consumption subsidies (generalised, focused) |
| | | Infrastructure |
| | | Poverty alleviation - Minimum wage and Purchasing power |
| Pricing policy | State regulation (Food price control, Inflation regulation, anti-monopole, anti-cartel laws)  
Liberalisation and deregulation  
Any intermediary? |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nutrition / Health | Education / Information campaigns  
Malnutrition / Hunger eradication  
Quality control (of maize, nixtamalised dough)  
Genetically Modified Maize |
| Agricultural systems and their geographical scales | Small and Subsistence farmers – Intermediary – Commercial /export farmers  
USA agriculture  
Alternatives (organic agriculture) |
| Food vs. Energy | Commodified good on international market  
Maize for food vs. Maize for biofuel  
Speculation |
| Identity | National – Ethnic - Religious / spiritual  
Political instrumentalisation  
Maize as a cultural right |
| Awareness raising | Education / awareness campaigns - Promote societal debate  
Reporting – Visibility |
| Counter power | Social mobilisation - empowerment  
Lobby for incorporation in national legislation  
Professionalisation  
Local to international networks |
| Mexico City and its agglomeration | Political, economic and industrial centre  
Land – city interactions  
Immigration push – pull factors  
Concentration of workers - Marginalised urban areas  
Infrastructure  
Privileged status (Highest minimum salaries, Lowest food in regulated or free market)  
Dynamic Human Right Centre (exercise of diagnostic, but consideration of RTF) |
| Urban poor | Low capacity to produce food  
Dependent on market or state regulations |
| Right holders | Ignorance of rights – Lack of organisation |
| State | Lack of remedies – Lack of political will  
Corruption – corporativism – clientelism  
Collusion between agents of accountability and repressive state  
Collusion between state and private interests |
| System | Inertia  
Structural inequality |
Certificate of Authenticity

I, Anne Cristina de la Vega-Leinert, herewith certify that the above presented thesis is true and right to the best of my knowledge. I further certify, that I have researched and written this thesis without any outside help. Should I have had assistance this is pointed out at the appropriate place within this thesis.

Berlin, 31st March 2008