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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to food in the context of international trade law and policy

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right to food, Michael Fakhri, in accordance with Assembly resolution [73/171](#).

* [A/75/150](#).



Interim report of the Special Rapporteur on the right to food

Summary

In his first report, the Special Rapporteur on the right to food, Michael Fakhri, conveys to the General Assembly that trade policy has primarily focused on economic frameworks and has either ignored or marginalized people's human rights concerns. At the same time, human rights policy has provided a powerful sociopolitical critique of trade but does not offer an institutional alternative to the existing regime. Neither approach has adequately responded to climate change. The present report blends trade and human rights perspectives and provides principles and an institutional map that can improve understanding of the right to food anew in political, economic and ecological terms.

I. Introduction

1. Projected onto walls in Chile¹ and heard in union halls around the world,² people are shouting, “we won’t get back to normal because ‘normal’ was the problem”. At the time of the present report, the world is in the midst of the coronavirus disease (COVID-19) pandemic. No one knows how long the pandemic will last, nor what lies ahead. What is clear, however, is that immense suffering is already being caused by the virus, and the worst is yet to come. People are losing their jobs at unprecedented rates. Schools that are a source of food for most children are closing, and as a result many are missing more meals than usual. Many Governments are scrambling to respond, yet millions of people are still being excluded from essential resources. The virus is novel, but its effects are predictably harshest on marginalized and vulnerable people. The pandemic exacerbates and accelerates the same inequities that have persisted for decades and, in some instances, centuries.

2. The dire conditions of the pandemic warranted a call from the Secretary-General and the United Nations High Commissioner for Human Rights asserting that people and their rights are fundamental to the success of all public health responses.³ While all human rights are essential and interconnected, the right to food plays a particularly important role in all short- and long-term solutions.

3. The world was falling behind on fully realizing the right to food even before the pandemic. If statistics are any guide, the number of hungry and undernourished people in the world has been rising since 2015.⁴ Meanwhile, biodiversity in agriculture is decreasing as the global diet becomes increasingly homogenized around a small number of crops, including a marked shift towards heavily processed foods.⁵ Furthermore, COVID-19 is only the most recent virus, and not the last, to strike humanity as a result of our continued disruption of animal habitats, which increases the risk of zoonotic transfer of disease.⁶ Lastly, the world has only recently recovered from the food price volatility which struck during the period 2007–2010.⁷

4. The right to food cuts through oversimplified debates over whether food insecurity is a problem of scarcity (not enough available food) or a problem of distribution (lack of access to food). Instead, it requires us to first understand how power is produced and distributed before answering the question of how food should be produced and distributed.

¹ Sara Pantuliano, “Covid-19: ‘we won’t get back to normal because normal was the problem’”, Overseas Development Institute (ODI), 1 April 2020.

² Sue Longley, “We won’t get back to normal because ‘normal’ was the problem”, video, 1 May 2020.

³ Office of the United Nations High Commissioner for Human Rights (OHCHR), “COVID-19 guidance”, 13 May 2020; António Guterres, Secretary-General of the United Nations, “We are all in this together: UNSG delivers policy brief on COVID-19 and human rights”, statement, 23 April 2020.

⁴ Food and Agriculture Organization of the United Nations (FAO) and others, *The State of Food Security and Nutrition in the World 2019: Safeguarding against Economic Slowdowns and Downturns* (Rome, 2019).

⁵ Julie Bélanger and Dafydd Pilling, eds., *The State of the World’s Biodiversity for Food and Agriculture* (Rome, FAO Commission on Genetic Resources for Food and Agriculture Assessments, 2019); Colin K. Khoury and others, “Increasing homogeneity in global food supplies and the implications for food security”, *Proceedings of the National Academy of Sciences*, vol. 111, No. 11 (March 2014).

⁶ AHaroon Akram-Lodhi, “Covid-19 and the world food system”, *Journal of Australian Political Economy*, No. 85 (2020).

⁷ Anna Chadwick, “Regulating excessive speculation: commodity derivatives and the global food crisis”, *International and Comparative Law Quarterly*, vol. 66, No. 3 (July 2017).

5. Until now, trade policy has primarily focused on economic frameworks and has either ignored or marginalized people's human rights concerns. At the same time, human rights policy has provided a powerful sociopolitical critique of trade but has not offered an institutional alternative to the existing regime. Neither approach has adequately responded to climate change.

6. The present report of the Special Rapporteur on the right to food, Michael Fakhri, is a first step past this impasse, by framing the right to food within the context of international trade law and policy. International trade is of particular importance and a core element that must be addressed to ensure the full realization of the right to food.⁸ The report blends trade and human rights policy, and provides principles and an institutional map that can guide States and people to understand the right to food anew in political, economic and ecological terms. During his mandate, the Special Rapporteur will work with States and stakeholders to expand on these basic elements in order to generate an effective international food policy geared towards building a new trade regime.

7. In the present report, part II serves as a précis of what the right to food means in everyday terms, which informs the entire report and the Special Rapporteur's mandate.⁹ Part III summarizes how the existing World Trade Organization (WTO) Agreement on Agriculture operates and its inherent inability to provide adequate trade results, much less human rights outcomes. Part IV pushes both human rights and trade policy into a new, common direction and outlines human rights principles for international trade. Part V sketches out how novel international food agreements may implement these principles.

8. From the outset of his mandate in May 2020, the Special Rapporteur reached out to various stakeholders, seeking their general comments on the current challenges and obstacles in the realization of the right to food. Because of COVID-19, he was somewhat hampered in those consultations, yet many discussions successfully took place through virtual means. In response to COVID-19, the Special Rapporteur, with other mandate holders, called for input from States, local and regional governments, national human rights institutions, civil society organizations, academics, United Nations agencies and other stakeholders.¹⁰ Through a questionnaire, he invited everyone to provide their comments on questions related to the disruption of international and domestic food supply chains during the pandemic; the measures taken by governments to ensure access to food for all, including individuals in vulnerable situations; and the conditions under which food workers such as agricultural labourers, store workers, transporters, cooks and shopkeepers had to work and measures taken to protect them. The Special Rapporteur is grateful to all stakeholders who found the time and capacity to provide invaluable insight.

II. What the right to food means

A. Food is central to community and sovereignty

9. The right to food is not just the right to be free from hunger. It is the right for everyone to celebrate life through their meals with each other in communion. One of

⁸ International Covenant on Economic, Social and Cultural Rights, art. 11, para. (2) (b); Human Rights Council resolution 43/11, para. 20.

⁹ This distills the definition from the International Covenant on Economic, Social and Cultural Rights, art. 11, the Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and the work of previous Special Rapporteurs.

¹⁰ OHCHR, Issues, Food, "Call for inputs: international trade and the right to food". Available at www.ohchr.org/EN/Issues/Food/Pages/Call-covid19.aspx.

the most important ways that a community defines itself is through what, how, when and with whom they eat. Communities are made through shared holidays, memories, recipes, palates and manners of eating. Through these food practices, people create their social and political institutions.

10. Food is also central to how people establish their relationship with the land. It is therefore a key element in how sovereign power is expressed. Food creates a hub that interlaces complex ecologies of certain humans, animals, plants, microbes, spiritual entities and landscapes into long-standing relations of care with each other. Kyle Whyte puts it succinctly: food production, labour, preparation, consumption and disposal are woven tightly with land tenure, a community's way of life, reciprocal gift-giving and life sustenance, connecting people in a community, and respect for non-human life.¹¹

B. Food must be adequate, available and accessible

11. In doctrinal terms, the right to food means that everyone is entitled for their food to always be adequate, available and accessible.¹²

Adequate

12. People have the right to define for themselves what is culturally, nutritionally, socially and ecologically appropriate food, based on their particular conditions. That is to say, people get to decide what “good food” is, including the right to determine which food(s) should be designated as necessary. States are obliged to meet existing demands and must also be generous to future generations.¹³

Available

13. In order for good food to be available, people must always have reliable sources of food. Availability refers to the possibility of feeding oneself directly from working with the land or other natural resources.¹⁴ Therefore, States must ensure that people's access to land and other natural resources is shared fairly and equitably.¹⁵

14. Food should also be available for sale in markets and shops. Therefore, availability requires well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed, in accordance with demand.¹⁶ In these cases, States must also ensure that markets are fair, stable and competitive. Therefore, national and global market power should not be concentrated in the hands of the few. Food producers must receive a remunerative price for their goods or labour, or public support for their work.

15. Key to ensuring the availability of food, workers in all fields, waterways, factories and kitchens must have healthy and safe working conditions. The COVID-19 pandemic illustrates that one reason people are on the verge of a hunger crisis is because essential food workers are being forced to put their health at risk. Their employers are not providing safe workplaces and States are not providing adequate

¹¹ Kyle Powys Whyte, “Indigenous food sovereignty, renewal, and US settler colonialism”, in *The Routledge Handbook of Food Ethics*, Mary C. Rawlinson and Caleb Ward, eds. (London, Routledge, 2017).

¹² Committee on Economic, Social and Cultural Rights, general comment No. 12.

¹³ *Ibid.*, para. 7.

¹⁴ *Ibid.*

¹⁵ Lorenzo Cotula, ed., *The Right to Food and Access to Natural Resources Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (Rome, FAO, 2008).

¹⁶ Committee on Economic, Social and Cultural Rights, general comment No. 12.

support during the pandemic. Without healthy workers, the world cannot have a stable and available food supply.

Accessible

16. States must ensure that food is always economically accessible to everyone. This means people should always be able to get a good meal, which may be accomplished through free school meals, fair markets or a social system ensuring that people have the time and resources necessary to cook at home and feed their communities.

17. Food must also be physically accessible. This means that States must ensure that all food systems and institutions are universally inclusive. Regardless of a person's physical abilities, state of health, legal status or housing condition, States must support everyone's ability to get to a kitchen in order to obtain or make an adequate meal.¹⁷

C. State obligations and universal accountability

18. States are obliged to work collectively, and in solidarity, to ensure that the international system guarantees everyone's human rights.¹⁸ This includes making sure that public institutions (both international and domestic) and private bodies (including corporations) are publicly accountable to the people they serve and depend on.

19. It is important to note that "food security" does not create legal obligations and is a narrower term than the right to food. Food security addresses only availability and accessibility. It places emphasis on maintaining political stability. Food security policies often focus on ensuring that people have the sufficient amount of food they need to live and survive (i.e., subsistence).

20. By including a broad definition of adequacy, the right to food requires States to ensure that people always eat with dignity. The emphasis here is on nourishment and sustenance, not just subsistence. Food should be something that makes people stronger physically, but also politically and culturally. In this respect, the right to food raises fundamentally political questions about the way we produce, distribute and consume food that can neither be subsumed under nor answered by the often-technical language of food security.

21. In sum, all people have the right to define what is adequate food for their community; all national and international institutions – including economic institutions – have the duty to ensure that all people always have access to adequate food.

III. World Trade Organization Agreement on Agriculture

A. International trade and agriculture today

22. The Agreement on Agriculture, which came into force as part of WTO in 1995, has been a barrier to fully realizing the right to food.¹⁹ Rather than focus on people as rights bearers, the Agreement frames people in terms of their economic potential and activity. In the Agreement, people are referred to as producers (including "low-

¹⁷ The term "kitchen" is used in the broadest sense to mean anywhere people prepare food before eating.

¹⁸ See [A/71/280](#).

¹⁹ See [A/HRC/10/5/Add.2](#).

income or resource-poor producers”) and consumers, but also as “urban and rural poor”, and “sections of the population in need”.

23. The long-term objective for the multilateral trading system “is to establish a fair and market-oriented agricultural trading system” with the assumption that this shall be achieved through “substantial progressive reductions in agriculture support and protection”.²⁰ WTO members, who have a number of other international legal obligations, are only supposed to have “regard to non-trade concerns, including food security and the need to protect the environment” rather than put these issues at the centre of the trade agenda.²¹ In this respect, the current trade system treats food security as an exception and commercial transactions as the rule, and leaves out the broader right-to-food perspective.

24. Since 1982, and continued under the Agreement on Agriculture, agricultural trade negotiations around have been based on three “pillars”:

- (a) Improving market access by banning quantitative restrictions, converting behind-the-border policies into tariffs and gradually reducing all agricultural tariffs;
- (b) Gradually reducing export subsidies to zero;
- (c) Limiting the scope of permissible domestic support.²²

25. The consensus shared by both critics and champions of WTO alike has been that in practice the Agreement on Agriculture has neither created a liberal global market nor has it benefited poorer countries, whose economies depend on the agricultural sector. It has instead protected powerful countries and large corporations.²³

B. Exceptions to the Agreement on Agriculture

26. The Agreement on Agriculture does contain exceptional provisions that could ameliorate the negative effects of trade on particular countries, or on groups of people within countries, from the negative impacts of trade. Countries that are especially vulnerable to international markets have attempted to increase the number of these measures. These exceptions, and the reasons they did not succeed, are set out below.

- **Special and differential treatment.** Intended to grant developing countries more flexibility in how they implement WTO rules, in recognition of the disadvantages they face in the world trading system. The Agreement on Agriculture, for example, exempts developing countries from domestic support reduction commitments for low-income farmers to encourage rural development. However, special and differential treatment allowances are often weak (such as longer implementation periods and lower reduction rates on agreed commitments) or not much use to the poorest and most vulnerable (such as unlimited spending allowances on agriculture for countries that face unsustainable debt levels and chronic budget shortfalls). Moreover, developing countries that have joined WTO since its creation have been given only limited access to special and differential treatment. Overall, special and differential

²⁰ WTO Agreement on Agriculture, preamble.

²¹ Ibid.

²² General Agreement on Tariffs and Trade, press release GATT/1328, 29 November 1982.

²³ Michael Fakhri, “A history of food security and agriculture in international trade law, 1945–2017”, in *New Voices and New Perspectives in International Economic Law*, John D. Haskell and Akbar Rasulov, eds. (Cham, Switzerland, Springer International Publishing, 2020); Christian Häberli, “Agricultural trade: how bad is the WTO for development?”, *European Yearbook International Economic Law 2016*, Marc Bungenberg and others, eds. (Cham, Switzerland, Springer International Publishing, 2016).

treatment has been used as a way of instituting baseline policies inimical to developing States, while only allowing for limited, often unhelpful, deviations.

- **Special safeguard.** Available to countries that underwent tariffication. It is meant to provide temporary protection to domestic farmers when there are sudden surges of imports or falls in world prices. This could support local farmers because it provides domestic markets with some protection from dumping, even if it does not protect from chronic dumping. However, the special safeguard's major shortcoming is that it is only available to 21 developing countries; many developing countries did not undergo the tariffication process because they lacked non-tariff barriers to begin with.
- **Special safeguard measure.** Distinct from the special safeguard, for almost two decades a group of developing countries known as the Group of Thirty-Three have introduced multiple proposals for a special safeguard measure to protect against import surges or price falls in global markets, but negotiations have proved futile. Some exporting developing countries such as Paraguay and Uruguay have argued that the mechanism could undermine the livelihoods of their own smallholder producers.
- **Special products.** A mechanism to protect and promote food production, livelihood security and rural development, also proposed by the Group of Thirty-Three. The proposal would allow developing countries to designate a certain number of products as "special" and exempt them from tariff reduction requirements and other disciplines. The question is complicated, both technically (which crops should be eligible?) and politically (how many crops? which countries will be eligible? how much protection will be granted?).²⁴
- **Special attention to food needs of least developed countries and net food-importing developing countries.** The negotiators who crafted the Agreement on Agriculture acknowledged that the Agreement would have negative impacts on least developed countries and net food-importing developing countries. They therefore adopted the 1994 Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, as part of the Agreement. This decision provided for compensation for least developed countries and net food-importing developing countries, should they be negatively affected by higher food prices or reduced food aid following the implementation of the Agreement. However, WTO members have failed to properly implement the decision.

C. Inherent limitations

27. The past 25 years have shown that these exceptional, ameliorating Agreement on Agriculture provisions do not ensure fair international markets nor do they make domestic markets stable. Moreover, WTO negotiations have not advanced trade policy on agriculture since 1995.²⁵ Over the decades, the details of who grows what food, where and for whom have changed significantly. Nevertheless, existing WTO

²⁴ Institute for Agriculture and Trade Policy, "Agreement on Agriculture glossary" (2005).

²⁵ One notable exception was the Nairobi Package adopted at the Tenth Ministerial Conference of the World Trade Organization in 2015, which addressed topics such as export subsidies and special safeguard mechanisms for developing countries and relaxed rules regarding public stockholding for food security purposes (WT/MIN(15)/DEC).

disciplines lock in a profoundly unequal set of outcomes.²⁶ They continue centuries of patterns of trade in which formerly colonized States, indigenous peoples, agricultural workers and peasants are denigrated by the trade system.²⁷

28. In addition, rather than advance trade policy to promote development and human rights, the Agreement on Agriculture has privileged those States and corporations that already have access to resources, infrastructure, credit and foreign markets. More specifically, trade liberalization and domestic policies in the wealthiest countries increased the market power of transnational commodity traders and processors. The Agreement contributed to the consolidation of corporate power by ignoring the dominant role that a handful of large companies play at all levels of the food system.

29. The degree of market concentration in the global input sector (including seeds, fertilizers, chemicals, machinery and animal feed) has risen significantly in the past few decades. From 1994 to 2009, for example, the largest four firms in the global input sector accounted for at least 50 per cent of global sales. This was most rapid in the seed industry, where the market share of the four largest firms more than doubled from 1994 to 2009.²⁸

30. Mergers and acquisitions further intensify market concentration in the agrifood sector and are transforming the world's food supply. In 2015, Dupont and the Dow Chemical Company agreed to a merger. In 2016, Bayer succeeded in a \$66 billion takeover bid of Monsanto. That same year, ChemChina, one of the largest State-run chemical companies in China, acquired the Swiss agribusiness Syngenta for \$43 billion, and two major Canadian fertilizer companies, Potash and Agrium, agreed to merge.²⁹

31. This situation would not be as acute if governments were able ensure that farmers who buy inputs from market-dominant companies and sell into highly concentrated markets could negotiate a fair price. States could achieve this by changing corporate and competition laws or by sanctioning corporations' behaviour. However, many governments are unwilling or unable to contain corporate power, and WTO rules do not acknowledge the problem.

D. End the Agreement on Agriculture

32. The existing rules need to change, but there are disagreements and bitter divisions about what needs to be changed and how. It is unlikely that WTO members can overhaul the Agreement on Agriculture to meet long-standing claims for equity. The Agreement should therefore be wound down. Governments and peoples could then negotiate new international food agreements based on the principles described below.

²⁶ Carin Smaller, "Planting the rights seed: a human rights perspective on agriculture trade and the WTO", Backgrounder No. 1 in the THREAD series (Minneapolis, Minnesota, Institute for Agriculture and Trade Policy, 2005).

²⁷ Michael Fakhri, *Sugar and the Making of International Trade Law* (Cambridge, United Kingdom, Cambridge University Press, 2014); Fakhri, "A history of food security and agriculture"; John Borrows and Risa Schwartz, eds., *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment* (Cambridge, United Kingdom, Cambridge University Press, 2020).

²⁸ Keith O. Fuglie and others, *Research Investments and Market Structure in the Food Processing, Agricultural Input, and Biofuel Industries Worldwide*, Economic Research Report, No. 130 (Washington D.C., United States Department of Agriculture, Economic Research Service, December 2011).

²⁹ Carin Smaller, "Bayer tightens control over the world's food supply", International Institute for Sustainable Development, 23 September 2016.

IV. Human rights principles for international trade

A. Dignity

Dignity and the right to food

33. Dignity is at the core of international human rights and can also be found in numerous national constitutions and legislation. Even when an individual is overcome by formidable forces and cannot exercise their inalienable rights, they retain control over their inherent dignity as the final backstop against oppression. A recent and powerful invocation of dignity arose from the streets of Egypt and Tunisia, where people demanded “bread, freedom and dignity” or “bread, freedom and social justice” from their Governments.³⁰

34. Dignity stems from the “inherent worth of every human being and the respect that is due simply by virtue of being human”.³¹ In the public outcry over living conditions, the call for bread was a response to the increased cost of basic food and the prevalence of hunger. Freedom was a demand for civil and political rights. Dignity was interchangeable with social justice: it was part of a demand for jobs that did not denigrate people through low wages and poor working conditions or, more broadly, for a fair economic system. All three demands were inseparable as a call for the basic requirements for a decent life.³²

35. As a matter of political process, focusing on dignity is a way for people to relate to each other, debate over the terms of common values and agree to appropriate minimal international and national obligations. States must provide the necessary conditions for people to express their self-worth to each other as equals.

36. With regard to the right to food, everyone has the right to eat every meal with dignity. The notion of dignity has always played some role in everyday decisions about food-making. People measure their condition against some particular, shared notion of dignity in order to determine what to eat and whether they have enough culturally appropriate food.

37. Importantly, the right to food is not charity; the focus on food with dignity helps illustrate why. Historically, charity has depended on the mercy and dictates of those with power and plenty. Thus, charitable institutions have been a vehicle by which those with power tried to control people, especially in the context of colonial conquest.³³ This dynamic continues today.³⁴

38. The COVID-19 pandemic has highlighted how people’s dignity is intrinsically connected to accessible food. How people get their food is just as important as what food they require. Recent reports indicate that as schools close, children are missing meals; as businesses lay off employees, people must turn to food banks; as public food relief programmes are overwhelmed by new demands, people are forced to scrape by – even though food is readily available. The loss of dignity arises from how

³⁰ Gilbert Achcar, *The People Want: A Radical Exploration of the Arab Uprising* (Oakland, California, University of California Press, 2013).

³¹ Susan Marks, “Have you seen dignity?”, 2020 Annual Lecture for the Centre for Critical International Law, Kent Law School, video, 31 March 2020.

³² Achcar, *The People Want*; Noha Aboueldahab, *Transitional Justice and the Prosecution of Political Leaders in the Arab Region: A Comparative Study of Egypt, Libya, Tunisia and Yemen*, Studies in International and Comparative Criminal Law Series (London, Hart Publishing, 2017).

³³ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, United Kingdom, Cambridge University Press, 2005).

³⁴ Canada, Truth and Reconciliation Commission, *Canada’s Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada*, vols. 1–6 (Montreal, McGill-Queen’s University Press, 2015).

people experience the loss of control and power over one of the most fundamental aspects of their everyday lives. However, there is no shame in finding oneself unable to eat.

39. What is shameful is that hunger is almost always avoidable.

40. Hunger and famine are caused by political failure, not because of an objective lack of supply or a natural disaster.³⁵ People go hungry for two reasons. Sometimes it is because those with power control the supply of food and are withholding food on purpose as a cynical tactic to maintain or enhance their power. This happens during both war and peace. Alternatively, people go hungry because public and private institutions are undemocratic and unresponsive to people's demands, and are designed instead to control populations by concentrating power and preserving order. Usually, it is a combination of both scenarios. In effect, hunger has been the result of "planned misery", and this analysis still holds true today.³⁶

Trade and the political economy of dignity

41. The trade system is usually measured on a national scale in terms of balance of trade/balance of payment, or on a global scale in terms of volume. The underlying value informing these metrics is that more trade is a good thing. Inherent within this perspective is that the more people trade and the more goods they consume, the more the economy grows; everything becomes a commodity whose value is based on being bought and sold. Trade in foodstuffs is measured no differently than trade in any item. Ultimately, through this system, people and States are valued by how much they can economically produce and exchange on a global scale.

42. If the food and agriculture trade system started, instead, with the premise that food is inherently tied to dignity, and should be judged in such terms, the function and purpose of trade changes. Trade in food and agriculture becomes a way for States and peoples to cooperate in the spirit of asserting, recognizing and preserving human dignity.

43. Under the current trade system, because economic growth is the underlying value, people meet each other primarily as sellers and buyers in their everyday exchanges. However, if dignity replaces the value of economic growth, people's social and cultural relationships envelop everyday exchanges and interactions. When people exchange goods and services with dignity, they meet each other in the spirit of exchanging as friends, neighbours or kin.

44. The trade system should no longer only treat people as "buyers" or countries as "importers" in the narrow commercial sense. The right to food means that everyone is entitled to be in a position to receive goods and services in the spirit of equality and grace. Everyone's particular set of cultures already includes shared, informal rules about how one is supposed to share foods through practices of conviviality and hospitality.

45. If hospitality as a practice is a type of supply management, one needs an abundant stock and readily available reserve of food. This is because the ideal is to be a generous host. In turn, withholding food, hoarding and imposing embargoes are vicious and cruel practices whose legality is suspect.

³⁵ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford, United Kingdom, Oxford University Press, 1981).

³⁶ Susan Marks, "Human rights and root causes", *Modern Law Review*, vol. 74, No. 1 (January 2011); Anna Chadwick, *Law and the Political Economy of Hunger* (Oxford, United Kingdom, Oxford University Press, 2019).

46. A right-to-food perspective, in these terms, provides a way to analyse, judge and change existing systems of food production, distribution and consumption within a framework of equality and generosity. This includes investigating the political economy of food in terms that ensure everyone can always eat a meal with dignity, and asking questions such as:

- What constitutes a dignified meal for particular peoples and States? Accordingly, what foodstuffs are necessary or staple goods? (adequacy)
- What is an ample supply and stock of food? (availability)
- Who should control food reserves and stock? Where should this reserve and stock be held? (accessibility)
- In a bountiful season, what are the rules for sharing food? (availability and access in the form of aid)
- When does securing an abundant reserve of food become hoarding? (availability and access)

47. Sometimes the answers to these questions are clear and stable. But as ecological conditions continue to radically shift as the climate changes, peoples and governments should renegotiate these fundamental questions.

The agronomy of dignity and agroecology

48. One of the most pressing questions today that many are asking is: How can we ensure our food systems are resilient against climate change?³⁷ Furthermore: If agriculture accounts for approximately one third of human greenhouse gas emissions, including more than 40 per cent of methane, then how must we change our agricultural practices to mitigate these emissions?³⁸

49. Those questions are not easily reconciled. Resiliency seeks to maintain stability in the face of change. Therefore, resiliency research addresses questions of how to measure and understand ecological stability and change.³⁹ Climate change mitigation (and adaptation) research, however, emphasizes transforming agricultural practices and technologies.⁴⁰

50. Even so, resiliency, mitigation and adaptation can be brought together under human rights terms. The unifying question becomes: How can we ensure our food systems adapt to profound ecological changes in a way that maintains everyone's dignity?

51. The emphasis on dignity anchors understandings of social and ecological resilience and stability in a people-centred approach to rapid transformation. This approach ensures that climate change adaptation and mitigation plans are inseparable from questions of equitable access to resources and social justice. Climate change cannot be resolved through science and technology alone.

³⁷ Nicolas Urruty, Delphine Tailliez-Lefebvre and Christian Huyghe, "Stability, robustness, vulnerability and resilience of agricultural systems: a review", *Agronomy for Sustainable Development*, vol. 36, No. 1 (February 2016).

³⁸ Pete Smith and others, "Agriculture", in *Climate Change 2007: Mitigation*, Bert Metz and others, eds. (Cambridge, United Kingdom, Cambridge University Press, 2007).

³⁹ Tracy-Lynn Humby, "Law and resilience: mapping the literature", *Seattle Journal of Environmental Law*, vol. 4, No. 1 (2015); Dave Hodgson, Jenni L. McDonald and David J. Hosken, "What do you mean, 'resilient'?", *Trends in Ecology and Evolution*, vol. 30, No. 9 (September 2015).

⁴⁰ Anne Saab, *Narratives of Hunger in International Law: Feeding the World in Times of Climate Change*, Cambridge Studies in International and Comparative Law Series (Cambridge, United Kingdom, Cambridge University Press, 2019).

52. The emerging consensus in food resiliency is that agroecology and emphasizing diversity are the best ways to live through future transformations. This includes increasing biodiversity, enhancing cultural diversity, varying farmed crops across landscapes and over time, and maintaining redundant sources of food supply.⁴¹ Often missed is the fact that this also includes understanding the legal landscape of agroecology as interpenetrating legal orders or “interlegal” spaces, and identifying opportunities for people to assert their dignity in these spaces.⁴²

B. Self-sufficiency

53. As it relates to the right to food, self-sufficiency is a value that can provide qualitative and principled guidance to governments, people and institutions with regard to their decision-making and strategic planning across the different policy contexts that have an impact on the right to food, including trade policy.

54. In a human rights context, self-sufficiency is a relational principle in which the notion of self is collective and not individualistic, nationalistic or aiming for autarky. With nations, and within nations, self-sufficiency is about food and community and their symbiotic place in relation to world food and ecological systems. Between nations and political systems, it is a principle of horizontal coexistence. In all those different relations, self-sufficiency emphasizes autonomy, harmony, coexistence and respect.

55. Self-sufficiency is centred on communities, requiring policy and planning to be as localized as practicable. Scale matters with regard to how we understand what is working. In theory, the world as a whole has enough food to feed everyone and is “self-sufficient”, but 800 million people are chronically undernourished (and many more if we consider the number of malnourished).⁴³ Centred on and scaled to local communities, self-sufficiency places the locus of decision regarding the major dimensions of food production, distribution and consumption, and the recycling or disposal of food waste, in local communities first, national communities second and international communities third.

56. “Self-sufficiency” as a term is used differently in other contexts. FAO has defined it as “the extent to which a country can satisfy its food needs from its own domestic production”.⁴⁴ In this usage, self-sufficiency measures either the domestic food needs met by domestic production or the ratio of food consumed versus food produced,

⁴¹ See A/70/287; High-level Panel of Experts on Food Security and Nutrition, *Agroecological and Other Innovative Approaches for Sustainable Agriculture and Food Systems that Enhance Food Security and Nutrition* (Rome, Committee on World Food Security, 2019); International Panel of Experts on Sustainable Food Systems, *From Uniformity to Diversity: A Paradigm Shift from Industrial Agriculture to Diversified Agroecological Systems* (June 2016); Ari Paloviita, “Food processing companies, retailers and climate-resilient supply chain management”, in *Climate Change Adaptation and Food Supply Chain Management*, Ari Paloviita and Marja Järvelä, eds., Routledge Advances in Climate Change Research Series (Abingdon, United Kingdom, Routledge, 2017).

⁴² Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 2nd ed. (Cambridge, United Kingdom, Cambridge University Press, 2002); Irene I. Hadiprayitno, “Who owns the right to food? interlegality and competing interests in agricultural modernisation in Papua, Indonesia”, *Third World Quarterly*, vol. 38, No. 1 (2017); Matthew C. Canfield, “Claiming food sovereignty: legal mobilization in an era of global governance”, in *Studies in Law, Politics, and Society*, vol. 82, Austin Sarat, ed. (Bingley, United Kingdom, Emerald Publishing Limited, 2020).

⁴³ Jennifer Clapp, “Food self-sufficiency: making sense of it, and when it makes sense”, *Food Policy*, vol. 66 (2017).

⁴⁴ Anne Thomson and Manfred Metz, *Implications of Economic Policy for Food Security: A Training Manual*, Training Materials for Agricultural Planning, No. 40/Rev.1 (Rome, FAO, 1999).

allowing interchangeability between those two things. Other commentators use self-sufficiency to denote a political orientation towards borders completely closed to imported food. A related interpretation implies that self-sufficiency denotes the primacy of political rather than economic concerns in deliberations over questions of food policy. However, none of these distinctions are stable, necessary or realistic: every policy choice is both political and economic; no country relies 100 per cent on homegrown food; and relying on ratio-based indicators reduces self-sufficiency to a quantity. Rather than treating self-sufficiency as either an indicator or as a tendency towards autarky, one should approach self-sufficiency as a normative ideal with which to navigate the distinct risks and holistic objectives that frame the fulfilment of the right to food.

57. Fulfilling the right to food today is often presented as a set of opposing choices for people and policymakers. Some assert that making laws to favour domestic production and consumption distort the (global) market to the point of a raising a “systemic risk” of market collapse; this perspective, however, stems from an unrealistic image of markets. One policy concern is that relying solely on domestic or local food production to meet national or localized needs for adequate food leaves a country vulnerable to acute events such as crop failure, drought and political conflict. A different concern is the risk of relying too heavily on global markets for a stable food supply: the danger here is the dependency on trade and exposure to volatile food prices.

58. Reality is more complicated. The risks operate not only on a continuum, but also in tandem, and differently for different countries depending on their histories and endowments. Self-sufficiency as a principle offers guidance in navigating these risks. It builds on the premise that local markets are always understood in relation to global markets (and vice versa) and invites governments to develop policies that eschew an entirely domestic or international dependence. Self-sufficiency emphasizes localized decision-making in order to ensure that policies are calibrated on a political scale at which people can effectively organize themselves and influence political outcomes.

59. Having set out what self-sufficiency is, what it is not and why it is useful, it is important to outline four elements: autonomy, harmony, coexistence and respect. Each of these elements operates within and between States.

60. Self-sufficiency prioritizes local autonomy. Far from a caricatured idea of autarky, autonomy is about the authority of each community to decide for itself how it wishes to engage with the complex ecology of humans, animals, plants, microbes, spiritual entities and landscapes that surrounds a particular food (or set of foods) in a particular place.⁴⁵ The relevant question is: Who decides? This element of the principle operates on two levels. At the local level, the principle recognizes that there is a plurality of cultural understandings, even cosmologies, which are distilled and find expression in food practices. This plurality exists within States. The recognition of diversity in itself carries little meaning if it is not accompanied by a meaningful sphere in which to determine one’s own rules and laws, follow one’s own customs and practice one’s own traditions. Self-sufficiency as a normative principle demands co-determination between local and national communities in the elaboration of trade policies which relate to food and agriculture. At the national level, the normative principle of self-sufficiency and its emphasis on autonomy allows all States to decide for themselves which policies to adopt, and to find the appropriate policy that lies between producing food for export or for domestic consumption, and the levels and parameters of food importation. There is no meaningful consensus on such questions, nor could there be. In the absence of consensus, unless trade rules protect policy

⁴⁵ Whyte, “Indigenous food sovereignty, renewal, and US settler colonialism”.

autonomy for States (along with process rights), the most powerful actors will decide by default.

61. Self-sufficiency involves seeking regulatory harmony, rather than harmonization, between indigenous, local, national, regional and international laws. Respecting the right to food means respecting the rights of peoples to follow plural food laws, customs and practices. Policies that prioritize efficiency treat the diversity of food laws as secondary (or even antagonistic) to the overweening goal of lower prices. Harmonization is justified by the promise of cheaper food – but respecting the right to food is more than ensuring that food is as cheap as possible. It means creating the conditions for people to be able to access, cultivate, rear and prepare culturally appropriate food at a reasonable social and environmental cost. Against the backdrop of prioritizing autonomy, a respect for plurality means that trade policies should seek first to protect existing food ecologies and should not, a priori, promote the standardization of food practices and rituals, through laws and customs which support them.

62. To be self-sufficient is to also coexist with others. From a right-to-food perspective, prioritizing self-sufficiency for one's own community, whether local or national, does not mean "begging thy neighbour", or enacting tactical aggression in trade policy. The fulfilment of the right to food for one cannot come at the expense of another. This means self-sufficiency must encourage coexistence, not competition, with other people and their food systems. Treating the collective goal of trade in food as coexistence also has the potential to discourage waste, overproduction and overconcentration. Coexistence as a principle extends to being attentive to the diversity of food producers, from large corporations to millions of smallholder farmers and farm workers around the world. Here, self-sufficiency can be used to refocus institutions and rules on protecting and supporting small-scale producers, as well as on other mechanisms to support both food security and rural livelihoods. Coexistence recognizes that the right to food is held by the whole person: producer, consumer, citizen, migrant and farmer, not just by a consumer. Coexistence also implies seeking relations within nature and with the more-than-human world. The right to food cannot be expressed through the degradation of or extraction from the biosphere.

63. Finally, from a right-to-food perspective, self-sufficiency emphasizes respect. Respect is owed to the community members for whom each government is responsible; it is paid through listening, whether formally described as representation, voice or democratic engagement. Respect cleaves close to the element of autonomy, and it underpins the need for policymakers to listen to local communities first, to discover and understand existing food ecologies, before proposing changes that may disrupt these systems. Respect across borders reinforces the value of coexistence, inviting policymakers to take seriously differences between States. These differences exist in more than just levels of wealth, but also in terms of culture and constituency, and the different imperatives shaping each national elaboration of the right to food.

C. Solidarity

64. An economy built on solidarity relies on organizations governed by principles of horizontal cooperation and coordination, not profit and ceaseless growth. The idea of solidarity economics draws directly from the practices of millions across different States, who have organized their power through entities such as mutual benefit societies, trusts

and cooperatives.⁴⁶ The underlying purpose is to create markets that operate to meet human needs instead of pursuing profit for its own sake, organize commerce through democratically governed enterprises and soften the boundaries between the economic sphere and the realms of care, leisure or culture. In this respect, the solidarity economy differs both from private enterprise, which prioritizes profit, and from State intervention, which is often bureaucratic, remote and exclusionary. Importantly, these ideas and practices are already vividly present in the realm of food production.

Limits of economic growth

65. Since the establishment of the United Nations, the pursuit of development – with a focus on economic growth – has been a central goal for international law and institutions.⁴⁷ Questions of food and hunger have also followed this trend. On the one hand, it has been argued that economic growth will eradicate hunger and generate higher standards of nutrition. On the other, the eradication of hunger is sometimes considered a precondition for economic growth. Linking hunger with economic growth in any way sees the eradication of hunger as being almost synonymous with the eradication of extreme poverty.

66. This emphasis on growth is limited on a number of grounds.

67. First, it takes the notion of markets for granted. Studies have convincingly shown that in recent years, within States, there has been a correlation between the rise of hunger and the slowing of economic growth (measured as real gross domestic product per capita). These same studies note that the direct relationship between economic growth and hunger/malnutrition remains unclear. Further complicating matters, increases in economic growth are not always shared equally, and reducing extreme poverty does not necessarily translate into improved food security and nutrition. In fact, food-insecure and malnourished people are not always members of the poorest households.⁴⁸ Thus, from an economic growth perspective, the question regarding hunger and nutrition is not only about determining how to increase economic growth, but more specifically about how economic inequalities make it harder for food-insecure and malnourished people to both benefit from that growth and protect themselves from economic downturns.⁴⁹

68. The question of how to make economic growth work for people is important, and there are, of course, long-standing debates over how both growth and hunger are measured.⁵⁰ Nevertheless, a right-to-food perspective questions why there is a correlation between hunger/nutrition and the market in the first place.

69. There is no inherent reason why income and prices should determine whether people have access to adequate food. The task is to investigate when and why people's access to food is linked to markets, and to better understand how those markets are constructed.

70. A right-to-food perspective also understands the economy more broadly, in the sense that it is not just commercial market transactions. It also includes work conducted in households and informal markets – work that is not captured by

⁴⁶ Peter Utting, *Public Policies for Social and Solidarity Economy: Assessing Progress in Seven Countries* (Geneva, International Labour Organization (ILO), 2017); Yvon Poirier, Françoise Wautiez and Béatrice Alain, “Legislation and public policies in support of Social Solidarity Economy (SSE): first steps and elements of a practical guide” (January 2018).

⁴⁷ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (Cambridge, United Kingdom, Cambridge University Press, 2011).

⁴⁸ FAO and others, *The State of Food Security and Nutrition in the World 2019*, p. 51.

⁴⁹ *Ibid.*, p. 79.

⁵⁰ Frances Moore Lappé and others, “How we count hunger matters”, *Ethics and International Affairs*, vol. 27, No. 3 (2013).

economic growth metrics and is usually done by women. People also regularly obtain food through institutions other than markets, including gifting, schools, care facilities, food banks/pantries and prisons.

71. Furthermore, climate change is urgently challenging even the short-term viability of growth as a means to fully realize the right to food. The exacerbation of droughts, the increased frequency of extreme weather phenomena and the alteration of long-observed weather patterns will and already do affect every step of the production, distribution and consumption of food.

72. Climate change demands that States rethink the growth-centred paradigm in relation to food. Under the Paris Agreement on climate change, States have committed to keeping temperature increases below 2 degrees Celsius in reference to pre-industrial levels, and aim to limit temperature increases even further, to 1.5 degrees.⁵¹ Food production, notably industrialized agriculture and meat production, is a major source of greenhouse gas emissions. A recent study by the Intergovernmental Panel on Climate Change estimates that agriculture, forestry and other land use account for approximately 23 per cent of total anthropogenic greenhouse gas emissions.⁵² The sheer size and rising trend of food-related emissions mean that reforming the way we produce, trade and consume food should be an indispensable part of our collective efforts regarding climate change.

73. The Intergovernmental Panel on Climate Change has listed more than 100 mitigation scenarios, most of which assume continuing economic growth. However, combining economic growth with the Paris climate commitments is only possible using extremely optimistic projections and heavy reliance on carbon capture and storage technologies. These technologies have not been designed for widespread use, and their efficacy and broader consequences are largely understudied.⁵³ Other “green growth” plans rely heavily on the intensive mining, processing and usage of rare earth minerals.⁵⁴ Often located on the lands of racialized and indigenous peoples, these materials contain radioactive elements that make their extraction and processing an energy-intensive and extremely dangerous process for both humans and the environment.⁵⁵

74. Similarly, so-called “green grabs” are particularly worrying when it comes to the realization of the right to food. The phenomenon involves the appropriation of resources, notably in developing States, for environmental purposes, and carbon emissions in developed States are supposedly offset through the financing of carbon-saving projects in developing States.⁵⁶ In addition to the ineffectiveness of these market-based mechanisms in actually delivering fewer emissions, green grabs also undermine the right to food by disrupting local food-making practices and shifting the usage of land away from agriculture, hunting or gathering. Often, land is appropriated without meeting the following human rights requirements: obtaining free, prior, and informed consent from indigenous peoples; cooperating and

⁵¹ See [FCCC/CP/2015/10/Add.1](#), decision 1/CP.21, annex, art. 2.

⁵² Priyadarshi R. Shukla and others, “Summary for Policymakers”, in *Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems*, Priyadarshi R. Shukla and others, eds. (Intergovernmental Panel on Climate Change, 2020), p. 7.

⁵³ Jeremy Baskin, *Geoengineering, the Anthropocene and the End of Nature* (Palgrave MacMillan, 2020).

⁵⁴ Julie Michelle Klinger, *Rare Earth Frontiers: From Terrestrial Subsoils to Lunar Landscapes* (Ithaca, New York, Cornell University Press, 2016).

⁵⁵ [A/HRC/41/54](#).

⁵⁶ Ntina Tzouvala, “A false promise? regulating land-grabbing and the post-colonial state”, *Leiden Journal of International Law*, vol. 32, No. 2 (June 2019).

collaborating in good faith with peasants and other people working in rural areas; and holding corporations accountable to their human rights obligations.⁵⁷

75. All in all, optimistic reliance on potential technological “fixes” to deliver green growth only postpones the necessary transformations of economies, including our food systems. These systems must transform from growth-centric goals in order to limit the effects of climate change, to build truly sustainable relationships with our ecosystems and to empower those with fewer resources to assume control over their lives. Any delays will acutely limit everyone’s ability to fully realize their right to food. Persons with disabilities, women, youth, children, indigenous peoples, racialized people and people living in poverty are – and will continue to be – disproportionately affected by these climate-induced disruptions.

Transformation of the economy

76. If the challenge to our food systems is fundamental, so should be our rethinking of the political economy of food and hunger. Prioritizing growth, even when social safety nets are included, has not delivered on its promise, even as it exacerbates climate change. Rather, the realization of the right to food for everyone demands a fundamentally different approach centred on cooperation among producers and solidarity between all participants in the cultivation, hunting, gathering, transportation, preparation and consumption of food.

77. Solidarity economy practices have emerged and spread when both States and private actors have failed. The emergence of mutual aid groups and increased reliance on social networks during the COVID-19 pandemic illustrates this phenomenon, and the social and political conditions that give rise to such practices. Looking back, deindustrialization and the retreat of the welfare state in developed States after the 1980s led to the emergence of cooperatives as well as community-run services, notably childcare. In developing States, the exclusion of large parts of society from the “formal” economy as well as from “official” politics similarly led to the development of cooperatives, which offer not only livelihoods, but also a sense of belonging and agency.⁵⁸

78. Frustrated with international trade regimes, which were seen as fundamentally detrimental to the interests of developing States and their citizens, some people created “fair trade” practices. These bring together cooperatives from both developed and developing States to secure fair terms of exchange and employment, minimizing or eliminating the role of intermediaries, and giving consumers a sense of the history, social relations and cultural significance embedded in the purchased goods. Labelling has emerged as an important policy tool for promoting such cooperative experiments. However, important as it may be, labelling relies on Coexistence also implies seeking relations within nature and with the more than human world “consumer choice” and does not alter the fundamentals of international trade law. Therefore, if such practices are to expand and alter the core of our food systems, they require domestic and international infrastructures to increase the scale of these initiatives and to facilitate regional and international relationships.

79. Food production, distribution and preparation have already been central to localized cases of solidarity economy. This is partly because unfettered (domestic and

⁵⁷ United Nations Declaration on the Rights of Indigenous Peoples; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, annex).

⁵⁸ Ana Margarida Esteves, “Decolonizing livelihoods, decolonizing the will: solidarity economy as a social justice paradigm in Latin America”, in *Routledge International Handbook of Social Justice*, Michael Reisch, ed., (Abingdon, United Kingdom, Routledge, 2014).

international) food markets and the global concentration of market power in the hands of a few corporations have led to wildly fluctuating prices; in addition, an overblown role of intermediaries creates overly long supply chains. But also, food by its very nature transcends and challenges the assumption that the economy of goods is distinct from the economy of care.

80. A shift to a solidarity economy would also be necessary for the realization of the right to food to fulfil its broadest meaning, beyond just an elimination of hunger. For example, the 10 Elements of Agroecology of FAO emphasize the importance of circular and solidarity economies as well as of co-creation and the sharing of knowledge.⁵⁹ The triptych of availability, adequacy and accessibility that is at the heart of the right to food demands that people control the production, distribution and consumption of their food. It also requires that all these steps remain open to democratic dialogue and re-creation as circumstances evolve.

81. Experience has shown that a solidarity economy works towards the satisfaction of immediate needs but also teaches its participants how to build new relationships. The core idea is that a solidarity economy operates as a form of “prefiguring”, or building the foundations, for a radically transformed society by enacting different ways of coexisting right here and right now.⁶⁰ By definition, solidarity economics emerges from the trials, errors and successes of social movements and supportive governments and cannot be directed by international laws or institutions. Forty years of experimentation in both developed and developing States shows that international policies can nevertheless assist (or hinder) such initiatives.

82. Government initiatives in Ghana and Brazil provide examples of how States may introduce solidarity economic projects and successfully battle hunger. In both cases, national Governments did not focus exclusively on “safety nets”. Rather, food-related initiatives in Ghana in the early 2000s shaped markets in a way that empowered small farmers as the Government encouraged participatory programmes such as farmer field schools and cooperatives. One result was an increase in agricultural cooperatives by 251 per cent over the course of only six years.⁶¹ Similarly, Brazil assisted agricultural collectives by mandating State schools to purchase a substantial percentage of the food for school meals from the solidarity economy sector.⁶²

83. Overall, the centring of the solidarity economy enables a transformative vision of human rights that does not only focus on sufficiency and minimum levels of welfare. Rather, the approach put forward in the present report prioritizes democratic control over food – including production, circulation and consumption – as a way to build equitable and sustainable relationships among humans, non-human animals and the ecosystem as a whole.

V. International food agreements

84. Building new food and agriculture agreements on the foundation of human rights principles will not only ensure that the trade regime responds to people’s needs, it will also change the nature of international markets. The General Agreement on Tariffs and

⁵⁹ FAO, *The 10 Elements of Agroecology: Guiding the Transition to Sustainable Food and Agricultural Systems* (Rome, 2018).

⁶⁰ Hilary Charlesworth, “Prefiguring feminist judgment in international law”, in *Feminist Judgments in International Law*, Loveday Hodson and Troy Lavers, eds. (Oxford, United Kingdom, Hart Publishing, 2019).

⁶¹ Frances Moore Lappé and others, “Framing hunger: a response to food insecurity in the world 2012” (Cambridge, Massachusetts, Small Planet Institute, 2013), p. 14.

⁶² Esteves, “Decolonizing livelihoods, decolonizing the will”.

Trade (GATT) imagined the world as interconnected domestic markets, and WTO set out to construct a global market. International food agreements will still be anchored by GATT, as well as by the International Covenant on Economic, Social and Cultural Rights. International food agreements will reflect different socioecological food contexts in order to generate regional or plurilateral food hubs.

A. A new legal geography for international trade

85. Winding down the Agreement on Agriculture leaves us with GATT as the anchoring piece of trade law. GATT on its own differs from WTO.⁶³ GATT is an “interface” system that recognizes different types of economies and ameliorates the international tensions caused by those differences, without having to resolve anything through regulatory harmonization.⁶⁴ This creates the flexible framework necessary to create new types of trade agreements: ones that generally draw from human rights and specifically prioritize the right to food.

86. GATT provides two legal forms through which international food agreements could be developed: regional trade agreements and international commodity agreements. International food agreements could be created by redirecting the function of these types of agreements towards prioritizing the right to food.

87. Regional trade agreements are more familiar, as their numbers abound and countries continue to negotiate new ones. GATT allows countries to derogate from the guiding principles of non-discrimination⁶⁵ and grant more favourable conditions to the trade of goods with regional partners than to other WTO members.⁶⁶

88. Regional trade agreements are limited, however, because they primarily focus on increasing the flow of trade between Member States. Countries integrate their economies through regional trade agreements for a host of geopolitical and economic reasons, therefore their purpose varies.⁶⁷ Most importantly, regional trade agreements have not proven to be an effective way to improve life in developing countries and often re-entrench unequal relations between countries.⁶⁸

89. International commodity agreements offer more promise. GATT was originally negotiated as part of the larger International Trade Organization. Under the International Trade Organization plan (the Havana Charter), international trade in agriculture was intended to be governed by international commodity agreements (chapter VI), not by GATT (chapter IV). This structure is still valid today, and any new international commodity agreements would still need to conform to certain principles: such agreements could only be adopted to deal with severe market disruption; their aim would be limited to price stabilization and not price increases; and importing and exporting countries would have equal voting power.⁶⁹

⁶³ WTO is not just one agreement, but a suite of agreements held together by the Marrakesh Agreement Establishing the World Trade Organization.

⁶⁴ John H. Jackson, *Restructuring the GATT System* (New York, Council on Foreign Relations Press, 1990), pp. 82–84.

⁶⁵ General Agreement on Tariffs and Trade, art. I.

⁶⁶ General Agreement on Tariffs and Trade, art. XXIV; Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause).

⁶⁷ Michael Fakhri, “Images of the Arab World and Middle East: debates about development and regional integration”, *Wisconsin International Law Journal*, vol. 28, No. 3 (2011).

⁶⁸ Clair Gammage, *North-South Regional Trade Agreements as Legal Regimes: A Critical Assessment of the EU-SADC Economic Partnership Agreement* (Northampton, Massachusetts, Edward Elgar Publishing, 2017).

⁶⁹ Interim Coordinating Committee for International Commodity Arrangements, Economic and

90. Thus, article XX (h) of GATT exempts international commodity agreements from the rules of GATT and provides the flexibility needed for future international food agreements. Moreover, article 11 (2) (b) of the International Covenant on Economic, Social and Cultural Rights calls for equitable trade in food. Combining these two provisions, and building on the principles of dignity, self-sufficiency and solidarity, international commodity agreements could be repurposed to become international food agreements. Nothing stops States from updating their interpretation of these two provisions to secure a legal foothold for international food agreements.

B. Form and function of international food agreements

91. The new type of human rights-oriented food agreements would be cooperative spaces of regional self-sufficiency and solidarity, held together by shared understandings of dignity.

92. Part of the task would then involve developing an interface for the different regional food hubs; this would require creating mechanisms that allowed for different types of food systems to coexist. The political question would be over which single intergovernmental institution would host the interface process among the different international food agreements, much like the United Nations Conference on Trade and Development provided a base for several autonomous international commodity agreements.

93. To ensure a people-centred approach, this base institution would have to ensure that all relevant parties have a seat at the table, building on inclusive institutions such as the Committee on World Food Security, ILO and the Arctic Council. These institutions have established different forms of participation for not only States but also peasants, employers, organized labour and indigenous peoples. The Committee on World Food Security is best suited to the task – albeit with some improvements. It is a unique international space where Governments, international agencies, the private sector and civil society coordinate their efforts to tackle hunger and malnutrition. Through the Civil Society and Indigenous Peoples’ Mechanism, rights holders have an effective seat at the Committee’s table. The Mechanism is an autonomous space that allows different social movements, indigenous peoples, labour unions and advocacy organizations to work together and shape Committee policies. Regardless of which institution acts as the base, it would have to ensure this degree of participation as a minimum.

94. A human rights approach must also inform the substantive focus of an international food agreement. As such, international food agreements should focus on three elements: land, labour and migration.

Land: being in good relation with the land

95. A general principle of law among indigenous peoples and peasants is that communities are entitled to have the authority and resources necessary to be in good

Social Council resolution 30 (IV); Analytical Index of the General Agreement on Tariffs and Trade (Revised) BISD 3S/239 (1955); General Agreement on Tariffs and Trade, document TRE/W/17.

relation with the land and, thus, with each other.⁷⁰ A lot can be learned here from the work of Kim Tallbear and her experience of the “everyday Dakota understanding of existence that focuses on ‘being in good relation’”.⁷¹ Generally, to “be in good relation”, like the idea of “good food”, is a matter for each community to determine for itself, through its unique conception of dignity. Importantly, though, being in good relation requires food practices that work in harmony with the land, not through controlling or extractive relationships.

96. Through policy tools and agroecological practices, the right to food is well suited to universalize the caretaking principle of being in good relation.⁷² In terms of trade, this would mean that international food agreements need to ensure that people’s local tenure is never disrupted, and that they always have the ability to be in good relation with the land and each other.

Labour: ensuring effective labour laws

97. International food agreements can build on ILO treaties and tools and establish minimum standards that guarantee that all food workers are protected. The food agreements would mandate States to enact clear, consistent and effective rules that protect workers’ health, safety and lives. Unlike trade agreements that ensured that all like goods were treated equally, international food agreements would draw from the universality of human dignity and ensure that all workers are treated equally.

Migration: movement of people and goods

98. The scope of the agreement will be determined by what Member States determine are staple foodstuffs, whether they only want to focus on staples or whether they want to include a wide range of foodstuffs. International food agreements will ensure the availability of food by constructing a stable food market and providing governments with the necessary tools to ensure people have access to diversified (redundant) supplies of food.

99. International food agreements could address issues such as:

- (a) Developing different types of price mechanisms that ensure food security (and not just stable prices);
- (b) Governing national and intergovernmental stockholding schemes;
- (c) Providing ways to ensure that food aid is not commodity dumping;
- (d) Ensuring that food reaches those in need in times of crisis, with an emphasis on removing all barriers to trade between regional food hubs in those moments.

100. In addition, in order to preserve and promote dignity, trade will reflect how people actually eat. Most people rely significantly on informal markets and

⁷⁰ United Nations Declaration on the Rights of Indigenous Peoples; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; Declaration of Nyéléni, adopted at the World Forum on Food Sovereignty, held in March 2007 in Nyéléni, Mali (2007); Circumpolar Inuit Declaration on Sovereignty in the Arctic (April 2009); Northern Tribes Buffalo Treaty (2014), see Sheryl R. Lightfoot and David MacDonald, “Treaty relations between Indigenous Peoples: advancing global understandings of self-determination”, *New Diversities*, vol. 19, No. 2 (2017); Uluru Statement from the Heart (2017).

⁷¹ Kim TallBear, “Caretaking relations, not American dreaming”, *Kalfou*, vol. 6, No. 1 (May 2019).

⁷² See A/HRC/16/49; FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (Rome, 2012); International Planning Committee on Food Sovereignty, *People’s Manual on the Guidelines on Governance of Land, Fisheries and Forests: A Guide for Promotion, Implementation, Monitoring and Evaluation* (2016).

economies of sharing at the local level.⁷³ Rather than trying to undo these existing practices, international food agreements should be designed to ensure those local markets realize people's right to food. Only 10 to 12 per cent of all agricultural products are traded on the international market.⁷⁴ Thus, local markets will be treated as the norm, and trade as the exception.

101. A key element of international food agreements would be to develop a system of seasonal tariff and migration rules that create a fair market. Many countries already have seasonal rules that regulate the movement of goods and people, but these emphasize protecting domestic producers or undervaluing migrant labour. International food agreements will make borders work in a way that follows the pattern of the seasons and ecological conditions to ensure that those who have an abundance of food can share and sell it to those who need it.

102. In sum, international food agreements would harness the market as servant, not master, in the fulfilment of the right to food.

VI. Conclusion

103. **In his first report to the General Assembly, the Special Rapporteur concludes that the existing WTO Agreement on Agriculture has been unable to provide adequate trade results, much less food security outcomes. He invites States to advance trade policy from a right-to-food perspective, based on the following recommendations:**

(a) **Wind down the WTO Agreement on Agriculture;**

(b) **Update their interpretation of article XX (h) (commodity agreements) of the General Agreement on Tariffs and Trade along with article 11 (2) (b) (equitable trade in food) of the International Covenant on Economic, Social and Cultural Rights, based on the human rights principles of dignity, self-sufficiency and solidarity;**

(c) **Negotiate new international food agreements based on the provisions and principles described in the present report.**

104. **The ultimate goal is to ensure that everyone eats with dignity and is free from hunger. This should include responding to climate change by moving away from growth-centric goals towards truly sustainable relationships with our ecosystems, and empowering those with fewer resources to assume command over their lives.**

105. **The Special Rapporteur will devote his mandate to sparking new dialogues on international trade that focus on ensuring that all people are empowered to access ample and diverse supplies of adequate food.**

⁷³ James Thuo Gathii, *Scoping Study – Designing the Continental Free Trade Area (CFTA): An African Human Rights Perspective* (Geneva, OHCHR, Economic Commission for Africa and Friedrich-Ebert-Stiftung, 2016); Sylvia Kay and others, “Connecting smallholders to markets: an analytical guide” (Civil Society Mechanism, 2016).

⁷⁴ Kay and others, “Connecting smallholders to markets”.