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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### Right to food

#### Report of the Special Rapporteur on the right to food, Michael Fakhri

##### *Summary*

In the present report, submitted to the Human Rights Council pursuant to Council resolution 43/11, the newly appointed Special Rapporteur on the right to food, Michael Fakhri, provides an outline of the direction that he intends to take during his tenure, including his vision of the areas of concern and priority issues that will inform his future thematic reports.



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## I. Introduction

1. In his first report to the Human Rights Council, the Special Rapporteur on the right to food, Michael Fakhri, provides his vision of the thematic concerns and priority issues for the duration of his mandate. The Special Rapporteur assumed his functions on 1 May 2020 and submitted his first report, addressing the right to food in the context of international trade law and policy (A/75/219), to the General Assembly in July 2020. In that report, the Special Rapporteur blended human rights and trade policy perspectives to provide an institutional map and new principles that can guide Member States, United Nations entities and civil society to ensure that the world's trade regime is geared towards fulfilling the right to food. The Special Rapporteur shared his findings at the High-Level Special Event on Global Governance of Food Security and Nutrition, organized by the Committee on World Food Security from 13 to 15 October 2020. The Special Rapporteur also presented his recommendations to the World Trade Organization (WTO) at a high-level symposium on 2 December 2020 and will continue to follow trade as a thematic area throughout his mandate.

2. Based on scores of formal and informal consultations with States, United Nations agencies, civil society organizations, private sector representatives, academics and other stakeholders, as well as information and reports received, the Special Rapporteur has decided to focus on four thematic areas: the coronavirus disease (COVID-19) pandemic and the hunger crisis; food systems and global governance; seeds and farmers' rights; and the right to food in armed conflict and protracted crises.

3. While the present report describes the Special Rapporteur's vision for the mandate, due to the acute nature of the pandemic, he has included some recommendations on how to fulfil people's right to food despite COVID-19.

## II. Coronavirus disease (COVID-19) and the looming hunger crisis

### A. State of hunger during the pandemic

4. The Special Rapporteur began his mandate at the outset of the pandemic. At that time, the situation was alarming. People were losing their jobs at unprecedented rates. In April 2020 at the peak of school closures, 369 million children missed meals; to date 246 million children are still missing meals.<sup>1</sup> Governments were scrambling to respond, yet millions of people were still excluded from essential resources. The virus was unfamiliar, but it was, predictably, harshest on marginalized and vulnerable people.

5. The dire conditions of the pandemic warranted calls from the Secretary-General of the United Nations 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.<sup>2</sup> While all human rights are essential and interconnected, the right to food plays a particularly important role in all short- and long-term solutions.

6. Nevertheless, the world was falling behind on fully realizing the right to food even before the current pandemic. If statistics provide any guidance, the number of hungry and undernourished people in the world has been rising since 2015.<sup>3</sup> While the climate crisis is raging, biodiversity in food and agriculture is decreasing as the global diet becomes

<sup>1</sup> World Food Programme, "Global monitoring of school meals during COVID-19 school closures".

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "COVID-19 guidance"; "Press conference with ACANU Geneva, 14 May 2020: opening remarks by High Commissioner for Human Rights Michelle Bachelet"; and 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.

<sup>3</sup> Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), United Nations Children's Fund (UNICEF), World Food Programme (WFP) and World Health Organization (WHO), *The State of Food Security and Nutrition in the World 2019: Safeguarding against economic slowdowns and downturns* (Rome, FAO, 2019).

increasingly homogenized around a small number of crops, including a marked shift towards heavily processed foods.<sup>4</sup> Furthermore, COVID-19 is only the most recent virus, and unfortunately not the last, to strike humanity as a result of our continued disruption of ecosystems and animal habitats, increasing the risk of zoonotic transfer of disease.<sup>5</sup> Moreover, the world has only recently recovered from the food price volatility which struck from 2007 to 2010.<sup>6</sup> The COVID-19 pandemic continues to exacerbate and accelerate the same inequities that have persisted for decades and, in some instances, centuries. In fact, due to the pandemic, it was estimated that the total number of people suffering from acute hunger would double, going from 130 million in 2019 to 265 million by the end of 2020.<sup>7</sup>

7. At the time of writing of the present report, the situation was getting worse. Even though the number of hungry people had not been tallied at the end of 2020, early predictions of a protracted hunger crisis will probably prove to be accurate. The virus continues to ravage humanity; even with early reports of a vaccine, it will be some time before the global health situation stabilizes and it will be at least a decade before the world recovers economically. Meanwhile, Member States and international organizations have not yet come together to tackle the looming hunger crisis. There remains no internationally coordinated action responding to the hunger crisis caused by the pandemic.

8. The right to food provides an analytical framework to understand what is going on. The right to food means that food must be adequate, available and accessible.

9. While some Governments have ensured that food is available and accessible through relief programmes, they have focused only on calories without attending to people's nutritional and cultural needs.

10. In their response to the pandemic, Governments have not shut down food trade and transport, ensuring overall international food availability. Agricultural production yields were thankfully not a global concern in 2020.

11. However, food has been made available and supply chains were stabilized at the expense of workers' safety and health. In fact, agricultural workers, even before COVID-19, experience the highest incidence of working poverty and food insecurity; the pandemic has made their situation worse.<sup>8</sup>

12. More broadly, people do not have access to food because nearly half of the world's 3.3 billion global workforce are at risk of losing their livelihoods. Informal economy workers, migrant workers and other marginalized people are particularly vulnerable because the majority lack social protection and access to quality health care.<sup>9</sup> As the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the World Health Organization (WHO) indicated in a joint statement: "Without the means to earn an income during lockdowns, many are unable to feed themselves and their families. For most, no income means no food, or, at best, less food and less nutritious food."<sup>10</sup>

<sup>4</sup> 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, 2019); and 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).

<sup>5</sup> A. Haroon Akram-Lodhi, "Covid-19 and the world food system", *Journal of Australian Political Economy*, No. 85 (2020).

<sup>6</sup> Anna Chadwick, "Regulating excessive speculation: commodity derivatives and the global food crisis", *International and Comparative Law Quarterly*, vol. 66, No. 3 (July 2017).

<sup>7</sup> WFP, "COVID-19 will double number of people facing food crises unless swift action is taken", 21 April 2020.

<sup>8</sup> International Labour Organization (ILO), "COVID-19 and the impact on agriculture and food security", ILO Sectoral Brief, 17 April 2020.

<sup>9</sup> OHCHR, "COVID-19: Urgent help for India's forgotten migrant workers must follow Supreme Court ruling, say UN experts", 4 June 2020.

<sup>10</sup> ILO, FAO, IFAD and WHO, "Impact of COVID-19 on people's livelihoods, their health and our food systems", 13 October 2020.

13. As a result, many people all over the world, in rich and poor countries alike, resorted to food banks to access food. Food banks are only a stopgap; they do not provide people with a stable and dignified source of food since they rely on a charity model.<sup>11</sup>

## B. Framing the issue: crisis of care

14. In the fact of the COVID-19 pandemic, Governments are trying to strike a balance between health and wealth. If they attend to people's health by locking everything down, they bring the economy to a halt and destroy people's livelihoods. If they prioritize the economy and emphasize production and growth, a large number of people will continue to get sick, become weak or die.<sup>12</sup>

15. A common way to frame the issue has been in terms of trade-offs. As infection rates decrease, Governments can open up the economy more, but when the pandemic worsens, Governments impose safety measures that may slow down economic productivity.

16. Some politicians have been openly willing to let the elderly die to save the economy. That is not the sentiment of just one or two politicians.<sup>13</sup> The death toll in vulnerable communities like the elderly continues to rise even though COVID-19 preventive measures are well known. That indicates an increasing willingness to sacrifice segments of society, such as workers, migrants, persons with disabilities, women, children and indigenous peoples, in order to maintain economic productivity.

17. The problem is not a matter of political mismanagement. Thinking in terms of trade-offs has analytical limitations. It pits health against livelihoods. It assumes that by focusing more on people's health, there is inevitably an economic cost (and vice versa). That way of thinking has been reactive and has not tackled the inherent inequities that are making the effects of the pandemic brutal and prolonged.

18. In order to develop a systemic response, it is important to understand the pandemic as a crisis of care.<sup>14</sup> That framework provides a way of identifying priorities and tackling the problems underlying the pandemic's effects. If thinking in terms of trade-offs frames things as different compromises and sacrifices, thinking in terms of care frames the issue as a matter of sequencing and helps determine who should be protected first in order to make everyone better and stronger.

19. As people are getting sick and dying during the pandemic, people – mostly women – are having to work harder and longer to ensure everyone stays healthy and alive.

20. Centring care work aligns with a human rights-based approach because for too long and in too many places, those people who take care of others have often been the most marginalized and undervalued. States have deployed a range of measures to tackle the challenges posed by the pandemic, but there remains a lack of attention given to both paid

<sup>11</sup> Reuters, "Hundreds queue for food parcels in wealthy Geneva", *The Guardian*, 9 May 2020; Sharon Cohen, "Millions of hungry Americans turn to food banks for 1st time", AP News, 7 December 2020; and Jem Bartholomew, "The food bank paradox", *Prospect*, 7 December 2020.

<sup>12</sup> Shaun P. Hargreaves Heap and others, "Valuating health vs wealth: the effect of information and how this matters for COVID-19 policymaking", VoxEU, 6 June 2020; Martin McKee and David Stuckler, "If the world fails to protect the economy, COVID-19 will damage health not just now but also in the future", *Nature Medicine*, vol. 26 (9 April 2020); and Ukertor Gabriel Moti and Daniel Ter Goon, "Novel Coronavirus Disease: a delicate balancing act between health and the economy", *Pakistan Journal of Medical Sciences*, vol. 36 (May 2020).

<sup>13</sup> Lois Beckett, "Older people would rather die than let Covid-19 harm US economy – Texas official", *The Guardian*, 24 March 2020; Olga Khazan, "A failure of empathy led to 200,000 deaths. It has deep roots", *The Atlantic*, 22 September 2020; and Imogen Foulkes, "Coronavirus: Swiss count cost of surge in deaths", BBC News, 18 December 2020.

<sup>14</sup> Civil Society and Indigenous Peoples' Mechanism for relations with the Committee on World Food Security, "Gender, COVID-19 and food systems: impacts, community responses and feminist policy demands" (Women's Working Group, October 2020), "Youth demands for a radical transformation of our food system" (Youth Working Group, October 2020) and "Voices from the ground: from COVID-19 to radical transformation of our food systems" (Working Group on Global Food Governance, October 2020).

and unpaid care work. That has amplified the impact of the pandemic and perpetuated the cycle of inequality, with women bearing the brunt of the impact and economic shock.

21. Care is not just about attending directly to people's emotional and physical needs. It includes all activities that nourish and nurture, all the elements that are necessary for people's welfare and for them to flourish.<sup>15</sup> Understood in that way, care captures a number of elements: the needs of individuals in vulnerable situations; the social capacity to care through institutions; and the needs of people who are care workers and are essential for humanity's well-being.

### C. Coronavirus disease (COVID-19) and the right to food

22. Food is at the centre of the economy of care. Before anyone can go to work – before anyone can be productive in the market – they have to make sure they can make or get something good to eat. People's access to good food determines their ability to work. In turn, labourers', farmers', fishers' and pastoralists' ability to work determines whether any food is even available.<sup>16</sup>

23. A key way to ensure that all people have access to food is to provide social protection with an emphasis on marginalized communities.<sup>17</sup> That includes measures such as implementing targeted programmes to protect the jobs, wages and benefits of all workers, including undocumented migrant workers; imposing a moratorium on evictions or mortgage bond foreclosures against people's homes during the pandemic; providing social relief and income-support programmes to ensure food and income security to all those in need; and taking specially tailored measures to protect the health and livelihoods of marginalized individuals and communities (E/C.12/2020/1, para. 15).

24. In terms of availability, thankfully, most countries have kept their borders open and trade in food has not been significantly disrupted by export bans or other trade restrictions.<sup>18</sup> Nevertheless, only 10 to 12 per cent of all agricultural products are traded on the international market.<sup>19</sup> One of the reasons for the hunger crisis is that domestic and international supply chains are being disrupted due to the inadequate care being taken of food workers in the fields, factories, markets and kitchens.

25. Food workers are part of the care economy and their work is essential for humanity's well-being. When food workers get sick, the world goes hungry.

26. Even though food workers are essential, all over the world they are being treated as if they were expendable. Workers, especially migrant workers, are often left without adequate personal protective equipment. They often work under precarious and unjust conditions, sometimes without hazard pay.<sup>20</sup> In fact, parts of the food system are also a public health hazard. For example, meatpacking plants around the world have fostered the pandemic, spreading the virus to nearby communities due to poor working conditions and environmental abuses.<sup>21</sup>

27. Furthermore, people's access to land determines both their access to food and the general availability of food to communities. People grow food, raise animals and hunt or fish for themselves; they also do so as food producers whose livelihood depends on their work. Many communities also depend on local food producers' work. The pandemic, however, is

<sup>15</sup> The Care Collective, *The Care Manifesto: The Politics of Interdependence* (London, New York, Verso, 2020).

<sup>16</sup> Tithi Bhattacharya, ed., *Social Reproduction Theory: Remapping Class, Recentering Oppression* (London, Pluto Press, 2017).

<sup>17</sup> See [www.ohchr.org/EN/Issues/Poverty/Pages/Covid19.aspx](http://www.ohchr.org/EN/Issues/Poverty/Pages/Covid19.aspx).

<sup>18</sup> See [www.wto.org/english/tratop\\_e/covid19\\_e/agric\\_report\\_e.pdf](http://www.wto.org/english/tratop_e/covid19_e/agric_report_e.pdf).

<sup>19</sup> Sylvia Kay and others, "Connecting smallholders to markets: an analytical guide" (Civil Society Mechanism, 2016).

<sup>20</sup> See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25356>.

<sup>21</sup> Thin Lei Win, "'Elbow to elbow:' are working conditions in the global meat industry fostering pandemics?", Thomson Reuters Foundation, 12 June 2020.

threatening peasants, farmers and indigenous peoples' land tenure. Governments and companies, through new laws or coercion, are pushing through agribusiness, mining and infrastructure megaprojects on ancestral and farmlands.<sup>22</sup> Those "land grabs" threaten people's livelihoods and access to food.

28. The Special Rapporteur has conducted a survey, held consultations, received reports and studied research into the range of measures that have proven to be effective in ensuring people's right to food is fulfilled during the pandemic. Below is an outline of preliminary suggestions and observations which the Special Rapporteur has received and which he will explore in more detail with stakeholders in preparing his future reports:

(a) Employers must provide workers in all parts of the food system with safe working conditions, such as personal protective equipment, distancing measures, clear health and safety guidelines, paid sick leave, adequate sleeping, eating and sanitary facilities and a quarantine shelter. Safe working conditions also include respecting the right of all workers to organize and to make all the arrangements necessary to care for their families during the crisis;

(b) States must provide workers with adequate social protection and actively enforce occupational safety laws and standards. All workers should be protected equally, regardless of their legal status, gender, age, disability or ethnicity;<sup>23</sup>

(c) States should connect local food producers to people in need by supporting local markets and local procurement programmes for schools, hospitals, prisons and nursing homes;

(d) States should continue to ensure that trade in food and agriculture flows across borders;

(e) States must protect local farmers' and peasants' land tenure;<sup>24</sup>

(f) States must ensure that food from public stocks is distributed fairly and transparently. States without such programmes should consider developing public food stocks sourced by local producers;

(g) States are encouraged to provide direct cash transfers when possible, since they are proving to be the most effective measure to prevent a hunger crisis.<sup>25</sup>

29. In order for those measures to have a global impact, international coordination is required. Unfortunately, national and international responses to the pandemic have been inconsistent. The provision of relief is often not fulfilling people's right to adequate food.

30. Part of the problem has been that the pandemic and the measures to contain it have created a global economic recession. That has strained Governments' capacities to provide social protection for those most affected by the crisis. In April 2020, the Governments of the Group of 20 (with the endorsement of those of the Group of Seven) offered to freeze the debt service payments for 73 of the poorest countries in order to free up funds to address the fallout from the pandemic.<sup>26</sup> That initiative has faced challenges and has not yet been fully

<sup>22</sup> Lorenzo Cotula, "Stopping land and policy grabs in the shadow of COVID-19", International Institute for Environment and Development, 1 June 2020.

<sup>23</sup> For more details, see International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, "COVID-19 information and resources" and ILO, "COVID-19 and the impact on agriculture and food security" and "COVID-19 and food retail", ILO Sectoral Brief, June 2020.

<sup>24</sup> 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); and International Planning Committee on Food Sovereignty, *People's Manual on the Guidelines on Governance of Land, Fisheries and Forests* (2016).

<sup>25</sup> Rodrigo Mussap, "Cash transfers offer respite to families during COVID-19", UNICEF, 30 September 2020; and [www.wfp.org/cash-transfers](http://www.wfp.org/cash-transfers).

<sup>26</sup> United Nations, "Debt and COVID-19: a global response in solidarity", 17 April 2020.

implemented, which is affecting the ability of the poorest countries to provide people with the social protection they need during the current crisis.<sup>27</sup>

31. ILO is best positioned to address international labour law and policy. For example, the Labour Inspection (Agriculture) Convention, 1969 (No. 129), in conjunction with other relevant instruments, sets out a series of principles for the establishment, functioning and organization of the system of inspection in agriculture, including recruitment and the powers and obligations of labour inspectors. The Safety and Health in Agriculture Convention, 2001 (No. 184), and its accompanying Recommendation No. 192, set out principles for the formulation and implementation of a coherent national policy on safety and health in agriculture.

32. The Committee on World Food Security is the pre-eminent place to develop international food security policy and coordinate the work of Governments along with international organizations such as FAO, the World Food Programme (WFP) and IFAD. On 23 November 2020, in his capacity as a member of the Committee on World Food Security Advisory Committee, the Special Rapporteur called upon the Committee to form an alliance with ILO and work together to lift the world out of the hunger crisis.

33. The Committee on World Food Security and ILO complement each other, since they both make space for collective organizing and reflect a human rights-based approach to governance. A human rights-based approach does not just mean protecting vulnerable people; it means placing people at the centre of policy responses, ensuring that their demands are heard and addressed by Governments, and empowering them as much as possible to determine their own future.

34. ILO has a unique tripartite structure in which States, unions and employers each have a seat at the table. The Committee on World Food Security is the most inclusive intergovernmental institution addressing global food policy, granting a seat at the table to civil society organizations, indigenous peoples, business interests, philanthropic organizations, research centres and other international organizations. Through the Civil Society and Indigenous Peoples' Mechanism for relations with the Committee on World Food Security, social movements, indigenous peoples, labour unions and advocacy organizations organize themselves autonomously and work together to contribute to the Committee on World Food Security policy instruments. If the Committee and ILO work together, there is hope.

### III. Food systems and global governance

#### A. Framing the issue

35. One of the most pressing issues arising from the current political economy and food system is the fact that agriculture accounts for approximately one third of human greenhouse gas emissions, including more than 40 per cent of methane.<sup>28</sup> The food system must therefore be part of the plan to tackle climate change.

36. The issue partly stems from the broader political economic context of the current food system. The current world food system is based on an industrial model of inputs and outputs,

<sup>27</sup> Committee on World Food Security, High Level Panel of Experts on Food Security and Nutrition, "Impacts of COVID-19 on food security and nutrition: developing effective policy responses to address the hunger and malnutrition pandemic", September 2020.

<sup>28</sup> Pete Smith and others, "Agriculture", in Intergovernmental Panel on Climate Change, *Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Bert Metz and others, eds. (Cambridge University Press, 2007).

a financial system rife with instability, an understanding of nature based on domination and extraction, and a commitment to endless economic growth.<sup>29</sup>

37. The Special Rapporteur will therefore monitor developments in the global governance of food in terms of the right to food and international political economy.

## **B. Food Systems Summit 2021 and human rights**

### **1. Taking stock of the Summit preparations**

38. In October 2019, the Secretary-General of the United Nations called for a Food Systems Summit, which is scheduled to be held in late 2021 in New York. He appointed Agnes Kalibata as Special Envoy for the Summit. The goal is to host an event that will push the world to transform food systems in order to reach all 17 of the Sustainable Development Goals, with particular emphasis on eliminating hunger and malnutrition. The Secretary-General called it a “People’s Summit” and a “Solutions Summit”.<sup>30</sup> The plan is for States, United Nations entities, civil society and businesses to come together to develop ideas about how to transform the world’s food systems.

39. Since the present report is being written and presented in the midst of the preparations for that important Summit, the Special Rapporteur takes the opportunity to take stock of the process to date. He will present his final assessment of the role of human rights in the Food Systems Summit preparations and provide an analytical framework on food systems and human rights in his forthcoming report to the General Assembly, right before the Summit itself.

40. In sum, human rights were initially excluded from the Summit preparations, and have now been included, but remain on the margins. The Special Rapporteur will continue to monitor the process and actively engage with the Summit leadership, encouraging everyone to ensure that human rights play a central role in the ongoing preparations and final event.

41. At the outset, over 500 farmer-led social movements, food worker unions and human rights activists raised their concern that the nature of the call of the Secretary-General of the United Nations reflected an attempt by business interests to take over global food politics.<sup>31</sup>

42. Early Summit preparation material reflected the language and framework of the World Economic Forum project to transform the food system,<sup>32</sup> which also aligned with the strategic partnership of the Deputy Secretary-General of the United Nations with the World Economic Forum.<sup>33</sup>

43. Indeed, in the first year of Summit preparations, there was no mention of human rights. That was inconsistent with “The highest aspiration: a call to action for human rights”, which the Secretary-General presented to the Human Rights Council in February 2020. He called on all countries to “put human rights principles and mechanisms front and centre in implementation of the Sustainable Development Goals – including by creating wide avenues for civil society participation”.<sup>34</sup>

<sup>29</sup> Kate Miles, *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* (Cambridge, Cambridge University Press, 2013); Jennifer Clapp, “The rise of financial investment and common ownership in global agrifood firms”, *Review of International Political Economy*, vol. 26, No. 4 (2019); and Anna Chadwick, *Law and the Political Economy of Hunger* (Oxford, Oxford University Press, 2019).

<sup>30</sup> United Nations, “Secretary-General announces special summit to tackle world hunger, create sustainable, inclusive supply chain, in message for World Food Week”, 12 October 2020.

<sup>31</sup> See [www.oaklandinstitute.org/revoked-agnes-kalibata-special-envoy-2021-un-food-systems-summit](http://www.oaklandinstitute.org/revoked-agnes-kalibata-special-envoy-2021-un-food-systems-summit); [www.foodsovereignty.org/wp-content/uploads/2020/02/EN\\_Edited\\_draft-letter-UN-food-systems-summit\\_070220-4.pdf](http://www.foodsovereignty.org/wp-content/uploads/2020/02/EN_Edited_draft-letter-UN-food-systems-summit_070220-4.pdf); and <https://foodtank.com/news/2020/03/2021-food-systems-summit-started-on-wrong-foot-it-could-still-be-transformational/>.

<sup>32</sup> See [www.weforum.org/projects/strengthening-global-food-systems](http://www.weforum.org/projects/strengthening-global-food-systems).

<sup>33</sup> See <https://weforum.ent.box.com/s/rdlgipawkjxi2vdaidw8npbtyach2qbt>.

<sup>34</sup> See

[www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/5E6F57F2B4F04DC8C1258518](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/5E6F57F2B4F04DC8C1258518)

44. All of that was especially problematic because ever since the 2008 food crisis, there remains a concern that if one depends on financiers, businesses and entrepreneurs to dominate food systems, that will lead to more instability. The business sector has been part of the problem of food systems and has not been held accountable. Therefore, allowing the business sector to dominate the Food Systems Summit endangers the future of food systems and people's ability to fully realize their human rights.

45. Turning to the Food Systems Summit itself, the secretariat has created a structure that includes the following components:<sup>35</sup> an Advisory Committee; a Scientific Group; a United Nations Task Force, chaired by the United Nations Environment Programme; five Action Tracks on access, consumption, production, equitable livelihoods and resilience; and Food Systems Summit Dialogues.<sup>36</sup>

46. The Summit secretariat recently formed an informal integrating team to ensure that the Summit will be cohesive. The team includes leadership from all the components listed above, as well as individuals who were invited as independent advisers and others who were made "custodians of levers of change" in areas such as gender, finance and innovation. The Special Rapporteur was invited to be part of the integrating team as a "custodian of human rights and law".

47. The Food Systems Summit secretariat has not yet made human rights a core aspect of the planning process. While the secretariat has recently invited more people who are committed to a human rights-based approach to participate in the preparation of the Summit, they remain in the minority and are mostly on the margins of the process.

48. Due to the ongoing marginalization of human rights during the preparation of the Summit, the Civil Society and Indigenous Peoples' Mechanism for relations with the Committee on World Food Security finally decided to challenge the Summit. The organizations participating in that Mechanism comprise 300 million affiliated members from all continents. In mid-October 2020, the Mechanism put out an open call to other movements, networks and organizations that are either directly concerned with food in the broadest sense or are engaged in interrelated domains, to join them and fight for human rights, food sovereignty and agroecology against the Food Systems Summit.<sup>37</sup>

49. The Special Rapporteur has shared several of his own concerns going into the Summit based on his consultations with Food Systems Summit leadership, States, civil society and the private sector, and stemming from his participation in the Summit integrating team. He has communicated his concerns and proposed solutions in person and in a public letter to the Special Envoy for the 2021 Food Systems Summit, concomitant to the submission of the present report. The present report also provides an introduction to his vision and workplan on food systems beyond the Summit itself.

50. The Special Rapporteur's overarching concern is that the Summit still appears to be heavily skewed in favour of one type of approach to food systems, namely market-based solutions.

51. The human rights-based approach to food systems puts people before profits, ensuring that markets serve social needs, obligating States to provide people with adequate social protection. The challenge is not just about eliminating hunger and malnutrition. There is a duty to all human beings and future generations to change food systems in a way that ensures that everyone on the planet lives with dignity. From a human rights perspective, there will be no real solutions if the focus is on science and technology, money and markets, without also addressing fundamental questions of inequality, accountability and governance.

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<sup>35</sup> There are also elements focused on promotion and communications, such as the Champions Network. See [www.un.org/en/food-systems-summit/champions-network](http://www.un.org/en/food-systems-summit/champions-network).

<sup>36</sup> For more details, see [www.un.org/en/food-systems-summit](http://www.un.org/en/food-systems-summit).

<sup>37</sup> See [www.csm4cfs.org/open-call-civil-society-indigenous-peoples-engagement-respond-un-food-systems-summit/](http://www.csm4cfs.org/open-call-civil-society-indigenous-peoples-engagement-respond-un-food-systems-summit/).

## 2. What is at stake: knowledge and investment

52. The four main expected outcomes of the Summit are: to generate progress towards the 2030 Agenda for Sustainable Development; to raise awareness and elevate public discussion about how reforming the current food system can help achieve the Sustainable Development Goals by implementing reforms that are good for people and the planet; to develop principles to guide Governments and other stakeholders looking to leverage their food systems to support the Sustainable Development Goals; and to create a system of follow-up and review.<sup>38</sup>

53. In terms of food systems, the Summit represents a global response to the industrial model of agriculture, which relied on high-input, intensive agricultural systems, dominated by large-scale specialized farms, often depending heavily on fossil fuels and purchased, non-renewable and synthetic inputs.

54. During his mandate, the Special Rapporteur intends to focus on the various alternative approaches to food systems that will be discussed in the context of the Summit, with a view to analysing them from the perspective of the right to food.

55. Even though the title of the Food Systems Summit appears to suggest that multiple food systems should find a way to coexist, at the current time, the preparations for the Summit are prioritizing one type of knowledge, namely experimental science, and one type of policy, namely sustainable intensive agriculture, also known as the new green revolution.<sup>39</sup>

56. Sustainable intensification in many ways tries to better align with ecological goals such as soil health and increased biodiversity. Nevertheless, its methods are more a reform of industrial agriculture than a transformation of a food system.<sup>40</sup> Both sustainable intensification and industrial intensification rely on capital-intensive processes and technologies, thus reflecting the status quo of the current political economy of the food system. Both frame the problem primarily in terms of production, farm size and scale of operation. Both rely on a theory of knowledge in which, for the most part, scientists and experts deliver knowledge to farmers.

57. Agroecology represents a different approach and is currently absent from the Summit preparations. Agroecology starts with the question of power dynamics and frames the problem as an issue relating to access to knowledge, resources and control over the food system as underlying causes of food insecurity and malnutrition.<sup>41</sup>

58. Agroecology is a scientific discipline that includes experimental knowledge with a focus on the ecology of agricultural environments. Its primary goal is to mimic ecological processes and biological interactions as much as possible in order to design production methods based on “assembling crops, animals, trees, soils and other factors in spatial/temporal diversified schemes”, allowing farms to generate their own soil fertility, crop protection and productivity.<sup>42</sup> As an agricultural practice, agroecology is labour intensive and encompasses a range of production techniques derived from local experience and expertise that draws on immediately available resources. Thus, it also relies heavily on experiential knowledge, more commonly described as traditional knowledge.

59. As a social movement, producer-based agroecology acts as an important driver for strengthening social cohesion through the gradual reduction in social inequalities, promotion of local governance, sovereignty and empowerment of local communities. While sustainable intensive agriculture recognizes the importance of responding to the social and ecological

<sup>38</sup> See [www.un.org/en/food-systems-summit/about](http://www.un.org/en/food-systems-summit/about).

<sup>39</sup> Conclusion stemming from the Special Rapporteur’s understanding of the Summit “Scientific Group” and the current work of the Action Tracks.

<sup>40</sup> Thomas W. Kuyper and Paul C. Struik, “Epilogue: global food security, rhetoric, and the sustainable intensification debate”, *Current Opinion in Environmental Sustainability*, vol. 8 (October 2014); and Jacqueline Loos and others, “Putting meaning back into ‘sustainable intensification’”, *Frontiers in Ecology and the Environment*, vol. 12, No. 6 (August 2014).

<sup>41</sup> Loos, “Putting meaning back into ‘sustainable intensification’”.

<sup>42</sup> Miguel A. Altieri, “Agroecology: the science of natural resource management for poor farmers in marginal environments”, *Agriculture, Ecosystems and Environment*, vol. 93, Nos. 1–3 (December 2002).

dimensions of food production,<sup>43</sup> the precondition of agroecology is that food producers enjoy secure access to biodiverse land and natural resources.

60. Not only does the Summit not include any space for agroecology, it leaves out experiential/traditional knowledge, which has the acute effect of excluding indigenous peoples and their knowledge. As the Secretary-General recently noted:

Indigenous peoples make up less than 6 per cent of the world's population yet are stewards of 80 per cent of the world's biodiversity on land. Already, we know that nature managed by indigenous peoples is declining less rapidly than elsewhere. With indigenous peoples living on land that is among the most vulnerable to climate change and environmental degradation, it is time to heed their voices, reward their knowledge and respect their rights.<sup>44</sup>

61. The Special Rapporteur welcomes the fact that the Food Systems Summit leadership has met with representatives from the Permanent Forum on Indigenous Issues and that there is some indigenous representation in the Summit preparation process. He will continue to closely monitor what role indigenous knowledge, and experiential/traditional knowledge more broadly, will play at the Summit.

62. Experiential/traditional knowledge and agroecology are core elements of international food policy today, as is reflected in the commitment of FAO to developing and promoting agroecology.<sup>45</sup> At the World Intellectual Property Organization (WIPO), negotiations are currently taking place on an international legal instrument on genetic resources through the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.<sup>46</sup> Since at least 2011, the right to food has been firmly linked to agroecology, including in the Special Rapporteur's report at that time (A/HRC/16/49). The Committee on World Food Security is currently in the midst of negotiating "policy recommendations on agroecological and other innovative approaches" and a number of countries are looking to transform their food systems through agroecological methods.

63. A recent ground-breaking study by the Ceres2030 research collective indicates that a global consensus is growing around experiential/traditional knowledge and agroecology as principal ways to tackle hunger and climate change.<sup>47</sup>

64. Ceres2030 researchers spent three years using complex models and artificial intelligence to "capture the dynamic effects of investments made to end hunger".<sup>48</sup> The primary findings have clarified what is at stake at the Food Systems Summit and what is needed to end hunger: donor Governments must spend an additional \$14 billion a year on average until 2030 to end hunger, double the incomes of 545 million small-scale farmers and limit agricultural emissions in line with the Paris Agreement on climate change. That would mean roughly doubling the amount of aid allocated to food security and nutrition each year, and would also need to be accompanied by an additional \$19 billion a year from the budgets of low- and middle-income countries.<sup>49</sup>

65. That immediately raises the question of what that money should be spent on. After reviewing more than 100,000 articles in agricultural research, using a diverse set of issues in their evaluation, the Ceres2030 team identified all articles capable of contributing to their scientific assessment of what is needed to tackle hunger. What troubled the Ceres2030 team

<sup>43</sup> H. Charles J. Godfray and others, "Food security: the challenge of feeding 9 billion people", *Science*, vol. 327, No. 5967 (12 February 2010).

<sup>44</sup> Secretary-General, "The State of the Planet", World Leaders Forum, Columbia University, New York, 2 December 2020.

<sup>45</sup> See [www.fao.org/agroecology/home/en/](http://www.fao.org/agroecology/home/en/).

<sup>46</sup> See [www.wipo.int/tk/en/igc/](http://www.wipo.int/tk/en/igc/).

<sup>47</sup> Ceres2030 is a partnership between the College of Agriculture and Life Sciences at Cornell University, the International Institute for Sustainable Development and the International Food Policy Research Institute, built on a common vision: a world without hunger, where small-scale producers enjoy greater agricultural incomes and productivity, in a way that supports sustainable food systems. Their conclusions do not explicitly frame their results in terms of agroecology.

<sup>48</sup> <https://ceres2030.org/our-story/>.

<sup>49</sup> [https://ceres2030.org/shorthand\\_story/donors-must-double-aid-to-end-hunger-and-spend-it-wisely/](https://ceres2030.org/shorthand_story/donors-must-double-aid-to-end-hunger-and-spend-it-wisely/).

and surprised the scientific research community<sup>50</sup> was that only around 2 per cent of published agricultural research provides original and high-quality data that can offer solutions for small-scale producers.<sup>51</sup>

66. From that 2 per cent, the Ceres2030 researchers provided an outline of what type of research is needed. They found that smallholders are more likely to adopt new approaches when supported by extension services; localized education matters. They also found that farmers' incomes increase when they belong to cooperatives, self-help groups and other autonomous organizations that share networks and resources, networks built on experiential/traditional knowledge that are part of what others describe as solidarity economics.<sup>52</sup> Moreover, they found that informal markets work; farmers prosper when they can sell their produce informally to small- and medium-sized firms. Those are markets based on trust, which some have described as territorially embedded in long-standing social relationships.<sup>53</sup>

67. That type of research, geared towards smallholders' localized education, solidarity economics, informal markets and experiential/traditional knowledge, is central to agroecology.<sup>54</sup>

68. Only a handful of donors such as France, Germany, Switzerland, FAO and IFAD have explicitly recognized agroecology as a key solution for building sustainable food systems. Public investment in agroecological approaches has been severely limited, estimated at between 1 and 1.5 per cent of total agricultural and aid budgets. Most private and public investments in agricultural research over the last 50 years were primarily based on green revolution technologies such as agrochemicals, mechanization and genetics. Moreover, the majority of teaching and research institutions and extension services have been devoted to isolated industrial solutions to problems, although there is now a growing number of education programmes that take more systemic and holistic approaches, as well as experiential learning.<sup>55</sup> Some countries such as Bolivia (Plurinational State of), Kenya, Mexico and Senegal continue to devote more resources to agroecological approaches at a national scale. There are also ongoing plans that organize<sup>56</sup> and funds that enhance<sup>57</sup> investment in agroecology.

69. Within the scope of his mandate, the Special Rapporteur will continue to look into technology, experiential/traditional knowledge and indigenous rights at the Food Systems Summit and in other international forums, through his participation as a member of the integrating team towards the Summit and at various events leading up to the Summit itself.

<sup>50</sup> "Feast and Famine in Agricultural Research", *Nature Plants*, vol. 6, No. 10 (October 2020); and "Ending hunger: science must stop neglecting smallholder farmers", *Nature*, vol. 586 (12 October 2020).

<sup>51</sup> Jaron Porciello and others, "Accelerating evidence-informed decision-making for the Sustainable Development Goals using machine learning", *Nature Machine Intelligence*, vol. 2, No. 10 (October 2020).

<sup>52</sup> Peter Utting, *Public policies for social and solidarity economy: Assessing progress in seven countries* (Geneva, ILO, 2017); and 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).

<sup>53</sup> Kay and others, "Connecting smallholders to markets".

<sup>54</sup> FAO, "The 10 elements of agroecology: guiding the transition to sustainable food and agricultural systems" (Rome, FAO, 2018).

<sup>55</sup> 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", July 2019.

<sup>56</sup> Biovision Foundation for Ecological Development and International Panel of Experts on Sustainable Food Systems, "Money Flows: What is holding back investment in agroecological research for Africa?" (2020).

<sup>57</sup> See [www.agroecologyfund.org](http://www.agroecologyfund.org).

### C. Food systems and the right to food

70. The Food Systems Summit represents a consensus on a number of issues: an awareness that climate change is the biggest threat to our food systems; a recognition that global value chains for food are too long; a commitment to science-based policy solutions; and a recognition that all aspects of government and society should be paying attention to transforming food systems.

71. Even though the Summit secretariat and leadership are focused on solutions, they have not articulated how they are framing the problem. That leaves Summit organizers and participants no common language or framework to dialogue and debate. It is difficult to discuss solutions when there is no common understanding of the problem.

72. A food systems approach provides a powerful analysis of the global governance of food because it looks at all aspects of how food is produced, distributed and consumed across all sectors. It does not focus only on agricultural production or one particular part of a supply chain. How you conceptualize a food system, however, depends on what question you are asking.

73. The main point is that when researchers describe a food system, they rely on a model that has its own definition of what components make up a food system, scale of analysis and understanding of what is internal and external to the system.<sup>58</sup> Like all models, a food system analysis is designed to serve a particular research question.<sup>59</sup>

74. A food systems analysis, however, might provide a snapshot of how things work and maybe a prescription of what needs to change, but it does not clearly indicate how systems change. Only recently have researchers started to account for people's ability to change the system in order to improve their own individual and social well-being.<sup>60</sup> That understanding of agency captures the dynamism of food systems and complexity of how food is made, shared and eaten. Agency is also central to a human rights-based approach, since human rights put power into the hands of all people.

75. One of the Summit's planned outcomes is to develop principles to guide Governments looking to leverage their food systems to support the Sustainable Development Goals and create a system of follow-up and review. Therefore, the Special Rapporteur is particularly interested in understanding what the role of States and international organizations will be at the Summit. His primary concern is whether they will have an opportunity to identify and articulate which mode of governance will enable the transformations of the world's food systems. Without a clear normative order in mind, it is difficult to imagine transforming the food systems. A challenge to bear in mind is that the current international economic legal order is in a moment of profound change.<sup>61</sup>

<sup>58</sup> See [www.fao.org/3/CA2797EN/ca2797en.pdf](http://www.fao.org/3/CA2797EN/ca2797en.pdf); and <https://foodsystemsdashboard.org/about-food-system>.

<sup>59</sup> D.M. Tendall and others, "Food system resilience: defining the concept", *Global Food Security*, vol. 6 (October 2015); and High Level Panel of Experts on Food Security and Nutrition, "Nutrition and food systems", September 2017.

<sup>60</sup> High Level Panel of Experts on Food Security and Nutrition, "Food security and nutrition: building a global narrative towards 2030", 2020.

<sup>61</sup> See A/75/219; Donatella Alessandrini, *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission* (Oxford and Portland, Oregon, Hart Publishing, 2010); Clair Gammage, *North-South Regional Trade Agreements as Legal Regimes: A Critical Assessment of the EU-SADC Economic Partnership Agreement* (Cheltenham and Northampton, Massachusetts, Edward Elgar Publishing, 2017); Nicolás M. Perrone and David Schneiderman, "International economic law's wreckage: depoliticization, inequality, precarity", in *Research Handbook on Critical Legal Theory*, Emiliós Christodoulidis, Ruth Dukes and Marco Goldoni, eds., (Cheltenham and Northampton, Massachusetts, Edward Elgar Publishing, 2019); 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. (Springer Nature Switzerland, Cham, 2020); and Lorenzo Cotula, "(Dis)integration in global resource governance: extractivism, human rights, and investment treaties", *Journal of International Economic Law*, vol. 23, No. 2 (June 2020).

76. Regardless of the Summit's trajectory and outcome, the Special Rapporteur is committed to examining food systems for the duration of his mandate. In order to provide a long-term benefit for policymakers and members of civil society organizations, his work will be based on a legal framework, grounded in international political economy and undertaken from a human rights perspective.<sup>62</sup>

## IV. Seeds and farmers' rights

### A. Political economy of seeds

77. In December 2018, the General Assembly adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, in which it recognized the right to seeds of peasants and other people working in rural areas and the right to maintain, control, protect and develop their own seeds and traditional knowledge. It also indicated that States should take measures to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas.

78. To control seeds is to control life itself. Seeds are a fundamental element of the world's food systems.<sup>63</sup> The proprietary seed industry is intimately linked to the world's largest agrochemical corporations. For a while, many people referred to the "Big Six": Syngenta (Switzerland), Bayer (Germany), BASF (Germany), DuPont (United States of America), Monsanto (United States of America) and Dow (United States of America). Those companies controlled 60 per cent of the global seed market and 75 per cent of the global pesticides market.<sup>64</sup>

79. Mergers and acquisitions in the seed industry continue, and recently the Big Six agrochemical/seed firms have combined into a Big Four:<sup>65</sup> Dow and DuPont merged in a deal valued at \$130 billion, and then divided into three companies, including an agriculture-focused firm called Corteva; Chemchina acquired Syngenta for \$43 billion; Bayer acquired Monsanto for \$63 billion; and Bayer's seed divisions (including the Stoneville, Nunhems, FiberMax, Credenz and InVigor brands) were sold to BASF for \$7 billion to satisfy antitrust regulators.

80. Such market concentration means that a small number of companies can significantly influence the price of seeds. Any increase in seeds prices will increase the cost of farming, making it harder for farmers to turn a profit. A potentially higher input cost to farmers can also cause consumer prices to increase, which can in turn threaten both food producers' livelihoods and people's access to food more broadly. The Big Four also produce most of the agrochemicals associated with genetically modified seeds. Those agrochemicals reduce

<sup>62</sup> See A/75/219; Harriet Friedmann, "International regimes of food and agriculture since 1870", in *Peasants and Peasant Societies*, Teodor Shanin, ed., 2nd ed., (Oxford, Basil Blackwell, 1987); Harriet Friedmann, "The political economy of food: a global crisis", *New Left Review*, vol. 197 (Jan./Feb. 1993); Philip McMichael, ed., *Food and Agrarian Orders in the World-Economy* (Westport, Connecticut, Praeger Publishers, 1995); Raj Patel, *Stuffed and Starved: The Hidden Battle for the World Food System*, revised, expanded ed. (New York, Melville House, 2012); Michael Fakhri, *Sugar and the Making of International Trade Law* (Cambridge, Cambridge University Press, 2014); Amy J. Cohen, "The law and political economy of contemporary food: some reflections on the local and the small", *Law and Contemporary Problems*, vol. 78 (2015); Chadwick, *Law and the Political Economy of Hunger*; and Adelle Blackett, "On social regionalism in transnational labour law", *International Labour Review*, vol. 159, No. 4 (2020).

<sup>63</sup> Lucile H. Brockway, "Science and colonial expansion: the role of the British Royal Botanic Gardens", *American Ethnologist*, vol. 6, No. 3 (1979); and Clare O'Grady Walshe, *Globalisation and Seed Sovereignty in Sub-Saharan Africa* (Palgrave Macmillan, 2019).

<sup>64</sup> International Panel of Experts on Sustainable Food Systems, "Too big to feed: exploring the impacts of mega-mergers, consolidation and concentration of power in the agri-food sector", October 2017.

<sup>65</sup> Philip H. Howard, "Global seed industry changes since 2013", 31 December 2018.

biodiversity, which lowers agricultural resilience, making farms more vulnerable to climate change shocks.<sup>66</sup>

## B. Farmers' rights in international law

81. People's access to seeds determines their ability to grow their own food and earn a living. As indicated in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, farmers' access to seeds is a human right.

82. It should be highlighted that article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture provides that the contracting parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

83. The Treaty requires the contracting parties to take measures to protect and promote farmers' rights, including: protection of traditional knowledge relevant to plant genetic resources for food and agriculture; the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture; and the right to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

84. It is clear in the Treaty that farmers' rights ultimately rest with national Governments and are subject to national legislation. Those rights emphasize resource sharing and biodiversity. Farmers are treated as political participants in the whole process and not just commercial actors.

85. However, farmers' rights still need to be articulated in greater detail. That is where the Special Rapporteur sees a specific interest. More broadly, farmers' rights, although grounded in the International Treaty on Plant Genetic Resources for Food and Agriculture, are also spread across a network of treaties and legal instruments.<sup>67</sup> What remains unclear is how all those treaties and instruments connect in a way that provides a coherent definition of farmers' rights consistent with a human rights understanding. Meanwhile, the secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture has formed an Ad Hoc Technical Expert Group on Farmers' Rights, which is creating an inventory of national legislation implementing article 9 of the Treaty.

86. Many States are signatories to that Treaty, but also to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the International Convention for the Protection of New Varieties of Plants. Therefore, when developing and implementing national legislation on farmer's rights, States are legally obliged to link and coordinate their approach with all the relevant treaties.<sup>68</sup> There can, however, be discord among all the treaties.

<sup>66</sup> Philip H. Howard, *Concentration and Power in the Food System: Who Controls What We Eat?* (Bloomsbury Academic, 2016); and Jennifer Clapp and Joseph Purugganan, "Contextualizing corporate control in the agrifood and extractive sectors", *Globalizations*, vol. 17, No. 7 (2020).

<sup>67</sup> That includes the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2010); the United Nations Declaration on the Rights of Indigenous Peoples; the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources; and the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

<sup>68</sup> Titilayo Adebola, "Access and benefit sharing, farmers' rights and plant breeders' rights: reflections on the African Model Law", *Queen Mary Journal of Intellectual Property*, vol. 9, No. 1 (2019); and Titilayo Adebola, "Examining plant variety protection in Nigeria: realities, obligations and prospects", *The Journal of World Intellectual Property*, vol. 22, Nos. 1–2 (2019).

87. Farmers' rights are somewhat ambiguous in the TRIPS Agreement. Article 27.3 (b) obliges all WTO members to protect plant varieties by patents or by an effective *sui generis* system or by any combination thereof. However, the Agreement does not define *sui generis*. Consequently, WTO members have theoretical latitude when designing their domestic intellectual property rights regimes. The Agreement also includes a provision for review within four years of the entry into force of TRIPS, but that has never been implemented. One of the issues of particular interest to the Special Rapporteur is to understand the interplay and potential overlap between national farmers' rights regimes based on the International Treaty on Plant Genetic Resources for Food and Agriculture and the undefined TRIPS understanding of a *sui generis* intellectual property rights regime, and what that would mean from the perspective of the right to food.

88. Farmers' rights are also addressed in the International Convention for the Protection of New Varieties of Plants. That Convention offers contracting parties the option of allowing farmers to save, reuse, exchange and sell farm-saved seeds. Most signatory countries have included that option in their domestic legislation. However, that allowance must be mitigated against the reference in article 15 (2) to the "safeguarding of the legitimate interests of the breeder".

89. The International Convention for the Protection of New Varieties of Plants will protect a person's rights only if the variety of plant in question is novel, distinct, uniform and stable. That approach does not prioritize and incentivize practices that are committed to enhancing biodiversity. Instead, it is about creating unique, singular varieties – usually entirely designed to be as productive as possible or to create a new product to distinguish the producer from market competitors. The logic is primarily industrial or commercial and has contributed to the global concentration of power over seeds and plants by a relatively small number of companies.

90. One key component of what is at stake are the so-called landrace varieties, which are usually cultivated by peasant and indigenous farmers, and often by women. They are local varieties of a domesticated plant species that has developed largely to adapt to the natural and cultural environment in which it lives. It differs from a plant that has been selectively bred and cultivated to conform to a particular standard of characteristics. The relatively high level of genetic variation of landraces is one of the advantages that they can have over commercial varieties. Although individual plant yield may not be as high, the stability of landraces in the face of adverse conditions is typically high. As a result, new pests or diseases may affect some, but not all, individuals in the population. That means farmers can ensure productivity through ecological stability and resilience, and high productivity per plot of land. As it stands today, the articulation of farmers' rights in the International Treaty on Plant Genetic Resources for Food and Agriculture encourages the development of landrace varieties, whereas the International Convention for the Protection of New Varieties of Plants makes such development significantly harder.

91. The Special Rapporteur will follow the work of the Ad Hoc Technical Expert Group on Farmers' Rights; provide an analysis of the state of global seed sharing through the market and public institutions such as seed/gene banks; and will outline a definition of farmers' rights that is sensitive to the commercial needs of smallholders, attentive to gender (since most seed savers are women) and ensures that peoples' human rights are fulfilled, despite the current normative ambiguity.

## **V. Right to food in armed conflict and protracted crises**

92. The destruction of millions of lives and serious violations of international humanitarian and human rights law are common in many armed conflicts. Even though food is a main source of nourishment, hunger and famine are increasingly being used by States and others as a weapon to harm and kill people.

93. Hunger and famine are not only used as a weapon in armed conflict, but they are also used to create protracted crises and punish civilians. The Special Rapporteur has received reports on how States use unilateral measures, such as economic embargoes, that lead to acute shortages of food or famine. Refugees and minorities in camps struggle to gain access to

adequate and culturally appropriate food. Indigenous peoples' food practices are disrupted, as States and companies deny them access to their lands and waterways, to such a degree that sometimes their very existence and right to self-determination are being threatened. That has deepened the link between food and armed conflicts and protracted crises, at times reaching the level of a crime against humanity or genocide.<sup>69</sup>

94. International human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all. Over the years, the General Assembly and the Human Rights Council have considered that parties to the armed conflict have legally binding obligations concerning the rights of persons affected by the conflict. Although different in scope, international human rights law and international humanitarian law offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities or active participants in the conflict. International and regional courts, as well as United Nations entities, treaty bodies and human rights special procedures, have recognized that both bodies of law apply to situations of armed conflict and provide complementary and mutually reinforcing protection.<sup>70</sup>

95. There are a number of relatively new instruments that attempt to address the issue of food insecurity in armed conflict and protracted crises. In 2015, the Committee on World Food Security endorsed the Framework for Action for Food Security and Nutrition in Protracted Crises.<sup>71</sup> Article 8 (2) (b) (xxv) of the Rome Statute of the International Criminal Court (2002) criminalized intentionally using starvation of civilians as a method of warfare, but only in armed conflicts that are international. Most instances of starvation occurring today, however, are in the context of non-international armed conflicts. In 2018, Switzerland, with the support of the Netherlands, proposed an amendment to the Rome Statute to include starvation within the list of war crimes capable of being committed in non-international armed conflicts. The amendment was adopted by the States parties, but to date it has only been ratified or accepted by Andorra, the Netherlands and New Zealand.<sup>72</sup> Also in 2018, the Security Council unanimously passed its resolution 2417 (2018), in which it underlined that “using starvation of civilians as a method of warfare may constitute a war crime” and urged States to take action against those responsible, with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims.

96. It is unclear whether international humanitarian law and international criminal law are enough to tackle the root causes of violations of the right to food during times of war, armed conflict and protracted crises. There is also the business of conflict, hunger and famine. Often, war is the “shooting phase of a commercial struggle”,<sup>73</sup> meaning that armed conflicts and protracted crises are best understood by taking note of and following who is profiting commercially and financially from the conflict. As is currently being debated at WTO, that also includes looking into how food aid and humanitarian relief pose the risk of disrupting local markets.<sup>74</sup>

97. The Special Rapporteur will investigate the power of international humanitarian law and international criminal law to prevent hunger, famine and malnutrition. He will also look to international commercial law to better understand the root causes of war, armed conflict, protracted crises and how food is turned into a weapon. To date, research on human rights law, international humanitarian law, international criminal law and commercial law remain separate professional and academic fields. The Special Rapporteur will work closely with

<sup>69</sup> Catriona Murdoch and Wayne Jordash, “Clarifying the contours of the crime of starvation”, 27 June 2019, *EJIL:Talk!*.

<sup>70</sup> *International Legal Protection of Human Rights in Armed Conflict* (United Nations publication, 2011).

<sup>71</sup> See [www.fao.org/cfs/home/activities/ffa/en/](http://www.fao.org/cfs/home/activities/ffa/en/).

<sup>72</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-g&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-g&chapter=18&clang=_en). See also Salvatore Zappalà, “Conflict related hunger, ‘starvation crimes’ and UN Security Council Resolution 2417 (2018)”, *Journal of International Criminal Justice*, vol. 17, No. 4 (September 2019).

<sup>73</sup> Alfred Bester, *The Stars My Destination* (Vintage Books, 1956), p. 124. See also James Thuo Gathii, *War, Commerce, and International Law* (Oxford, Oxford University Press, 2010).

<sup>74</sup> See <http://sdg.iisd.org/commentary/policy-briefs/wto-members-mull-easing-restrictions-on-humanitarian-food-aid/>.

and consult stakeholders on combining those fields and develop a new analytical framework that can guide people to better understand how food is used to exacerbate conflict and how conflict may be avoided.

## VI. Conclusions and recommendations

98. The Special Rapporteur will focus on four thematic areas until 2023: (a) COVID-19 and the looming hunger crisis; (b) food systems and global governance; (c) seeds and farmers' rights; and (d) the right to food in armed conflicts and protracted crises.

99. Even though there are currently early reports of a COVID-19 vaccination, things are likely to get much worse before they get better. The world remains on the precipice of a hunger crisis and the economic aftershocks of the pandemic will last at least a decade. The Special Rapporteur calls upon States and international organizations, including ILO and the Committee on Food Security, to continue working in a coordinated manner to respond to the current hunger crisis.

100. States must reaffirm their commitment to tackling the pandemic through a human rights-based approach.

101. States must seriously consider implementing the measures that the Special Rapporteur has identified in paragraph 28 above as effective in ensuring that people's right to food is fulfilled during the pandemic.

102. The Special Rapporteur calls upon ILO and the Committee on World Food Security to form an alliance to tackle the looming hunger crisis. Since both the Committee on World Food Security and ILO are grounded in human rights, the Special Rapporteur asks the Human Rights Council to mandate the Office of the United Nations High Commissioner for Human Rights to facilitate the formation of that alliance.

103. The Food Systems Summit is committed to transforming the world's food systems. However, nothing can be properly transformed if everyone is sick, tired, poor and hungry; most States are beyond their capacity to adequately govern during the crisis. States must therefore ensure that tackling the looming hunger crisis and the aftermath of the COVID-19 pandemic is the highest priority on the international agenda.

104. Nevertheless, the Food Systems Summit remains scheduled for late 2021. The Special Rapporteur has communicated his concerns regarding the Summit and proposed solutions in person and in a public letter to the Secretary-General's Special Envoy for the 2021 Food Systems Summit, concomitant with the submission of the present report. The report also provides an introduction to the Special Rapporteur's vision and workplan on food systems beyond the Summit itself.

105. In order to meet "The highest aspiration: a call to action for human rights" of the Secretary-General, the Special Rapporteur calls upon the Secretary-General's Special Envoy and the Summit secretariat to enhance the role of human rights and multilateralism during the planning of the Food Systems Summit. In order to ensure that the final event is inherently defined by human rights and multilateralism, the Special Envoy and the Summit secretariat must do the following:

(a) Mandate all Summit support structures and work streams to describe and frame problems around the current food system in terms of human rights;

(b) Assemble an autonomous experiential and indigenous knowledge group to complement the Scientific Group;

(c) Ensure that all proposed solutions are articulated in terms of human rights;

(d) Ground outcomes in multilateral processes, such as through the Committee on World Food Security;

(e) **Ensure that discussions around agroecology predominate at the Food Systems Summit.**

106. **In accordance with his mandate, the Special Rapporteur aims to respond to the expectations shared among a broad range of stakeholders of an acceleration in the advances made in the realization of the right to food. He intends to carry out the mandate in a comprehensive and collaborative manner, working closely with Member States, the United Nations system, civil society, academia, business corporations and other stakeholders towards concrete results. In order to ensure the effective implementation of the mandate, and in a spirit of dialogue and collaboration, the Special Rapporteur calls for support in his endeavours in order to achieve the common objective of bringing about real change in the lives of people and realizing their right to food without discrimination, with dignity and equality.**

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