



General Assembly

Distr.
GENERAL

A/HRC/7/5
10 January 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

Report of the Special Rapporteur on the right to food, Jean Ziegler

Executive summary

Despite real advances in different countries, such as the People's Republic of China, India, South Africa, and several Latin American and Caribbean countries, there has been little progress overall in reducing the number of victims of hunger and malnutrition around the world. The number of people suffering from hunger has increased every year since 1996, reaching an estimated 854 million people despite government commitments to halve hunger at the 2000 Millennium Summit and at the 2002 World Food Summit. Every five seconds, a child under 10 dies from hunger and malnutrition-related diseases.

Yet hunger and famine are not inevitable. According to the Food and Agriculture Organization of the United Nations (FAO), the world already produces enough food to feed every child, woman and man and could feed 12 billion people, or double the current world population. Our world is richer than ever before, so how can we accept that 6 million children under 5 are killed every year by malnutrition and related illnesses?

All human beings have the right to live in dignity, free from hunger.

Today is the moment to look forward, not back, as so much remains to be done in promoting and protecting the right to adequate food. Indeed, one of the key remaining problems is the lack of coherence within the United Nations system, between the positive developments in some sectors of the system, for example as evidenced by the FAO's Right to Food Guidelines, and the way in which the policies and practices of other agencies, such as IMF and the World Bank, as well as WTO, undermine protection of the right to food.

State policies relating to the right to food also show similar patterns of inconsistency. While States have recognized the right to food in the World Food Summit Declarations and more than 150 States are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), at the same time they engage in trade policies that are detrimental to the enjoyment of human rights in other countries.

Other important issues must still be addressed, for example, the exclusion and discrimination of the most vulnerable. Particular attention has to be given to the protection of the right to food for disadvantaged groups, especially women and indigenous people.

Another phenomenon which greatly affects the right to adequate food is the powerful so-called "non-State actors" on the international scene: the transnational corporations. These actors are ever more powerful, yet we lack control mechanisms to guard against the violations of the right to food some of them are sometimes responsible for committing.

Other issues which remain on the agenda and which will require significant work in the future are desertification, biofuels and refugees from hunger.

Yet there is also much hope. The Right to Food Guidelines were adopted by the FAO Council and the elaboration of the Optional Protocol to the ICESCR is progressing, as are global, regional and national commitments to fight hunger.

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Introduction

1. The Special Rapporteur has the honour to present his final report to the Human Rights Council, after his mandate was extended by resolution 6/2 of that body.
2. The Special Rapporteur is outraged to report that global hunger is still on the rise, according to the latest report of the Food and Agriculture Organization of the United Nations (FAO) on the State of Food Insecurity in the World 2006. Notwithstanding real advances in different countries (such as the People's Republic of China, India, South Africa and several Latin American and Caribbean countries) and despite the commitments made by Governments in 1996 and again at the Millennium Summit in 2000, little progress has been made in reducing hunger worldwide. Whereas in 1996 the number of people suffering from undernourishment was estimated at some 800 million people, FAO's latest estimate suggests that there are now 854 million who do not have enough to eat every day. Every year, more than 6 million children die from hunger-related illness before their fifth birthday.
3. This is unacceptable. In a world that is richer than ever before, more people than ever continue to suffer from malnutrition, hunger and starvation. The world already produces enough food to feed the entire global population, yet millions go to bed hungry at night. Millions of children still go without enough adequate food each day, without sufficient macro and micronutrients, condemning them to stunted physical growth and intellectual development.
4. In a world overflowing with riches, hunger is not inevitable. It is a violation of human rights. The right to food is a human right that protects the right of all human beings to live in dignity, free from hunger. It is protected under international human rights and humanitarian law.

Activities of the Special Rapporteur

5. The Special Rapporteur has been honoured to continue to serve the Human Rights Council in his capacity as Special Rapporteur on the right to food. In his work over the last year, the Special Rapporteur has continued to promote the right to food amongst Governments, United Nations agencies and non-governmental organizations (NGOs) around the world. These efforts have included country missions: the Special Rapporteur visited Bolivia from 29 April to 6 May 2007 and Cuba from 28 October to 6 November 2007, and the corresponding reports are presented as addenda to this report. During 2007, the Special Rapporteur received invitations to visit the Central African Republic, Ecuador and Madagascar.
6. As part of his mandate, the Special Rapporteur is also required to receive and respond to information on the right to food covering all aspects of the realization of this right. During the reporting period, the Special Rapporteur has therefore sent communications to Governments, requesting further information on specific allegations of violations of the right to food that he has received. A report on all communications sent in 2007 is attached as an addendum to this report.
7. The Special Rapporteur has also continued to work closely with United Nations agencies, particularly the World Food Programme (WFP) and FAO. The Special Rapporteur is pleased to note that, on the eve of the commemoration of 60 years since the proclamation by the United Nations of the Universal Declaration of Human Rights, the World Food Day celebrated

worldwide on 16 October 2007 was dedicated to the theme of the right to food. Activities to promote the right to food were organized in over 150 countries. On this occasion, the Special Rapporteur participated in events staged in Brussels, Bonn, Bern and Geneva.

8. At the same time, the Special Rapporteur has also continued to follow the important work of NGOs around the world to promote respect for the right to food. In particular, he would like to underscore the efforts made by Foodfirst Information and Action Network (FIAN) and ActionAid. These organizations have launched two international campaigns on the right to food in 2007: Face It Act Now, a three-year campaign by FIAN targeting European governments, and Hunger Free, a five-year campaign by ActionAid to promote the right to food worldwide.

9. In this final report to the Human Rights Council, the Special Rapporteur briefly presents some of the most recent developments with respect to the right to food. He then recalls the definition of the right to food and State obligations. The report addresses six main topics: the schizophrenia in the United Nations system and in States' policies; the exclusion and discrimination that exists in relation to the right to food, especially in relation to women and indigenous people; refugees from hunger; the impact of new powerful non-State actors such as transnational corporations (TNCs); desertification; and biofuels. Finally, the report addresses the areas that should give us some hope: the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (hereafter the Right to Food Guidelines) adopted by the FAO Council in November 2004; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights being negotiated in the Human Rights Council; the progress in justiciability of the right to food at the national level; global commitments to fight hunger; and the work of States and civil society to promote the issue of food sovereignty.

I. RECENT DEVELOPMENTS WITH RESPECT TO THE RIGHT TO FOOD

A. Positive developments

10. The Special Rapporteur has followed important legislative developments for the protection of the right to food in many countries, including through his country missions to Brazil, India, Guatemala, and Bolivia.

Honduras

11. The Special Rapporteur welcomes the forward-looking initiatives that have been taken by the Government of Honduras in cooperation with civil society. In particular, he welcomes the various awareness-raising programmes on forced land evictions and the right to food, organized by the Special Office on Human Rights of the Prosecutor's Office, with the participation of police officers, prosecutors and officers of the National Agrarian Institute (INA). The Special Rapporteur also welcomes the proposal for a Protocol on forced land evictions and the right to food that was submitted to the Supreme Court in August 2007 by civil society organizations as well as the drafting by such organizations of a law on the right to food and food security, presented to Congress on 16 October 2007. He urges the Court and the Parliament promptly to adopt these important instruments.

Philippines

12. The Special Rapporteur applauds the Supreme Court's recent decision to lift its temporary restraining order on the Revised Implementing Rules and Regulations (RIRR) for the marketing of baby foods introduced by the Ministry of Health. The Rapporteur has been following this situation for the past two years.¹ Although the Court has not endorsed a total ban on the marketing of breastmilk substitutes, it has reaffirmed Government's primary role to regulate, screen and decide on the advertising and promotional materials of these products. In addition, the Court has asserted that the International Milk Code of Marketing of Breast-milk Substitutes must also protect and promote the nourishment of children above 12 months old, contrary to the companies' claim that its coverage is limited to children between 0 and 12 months of age.

B. Situations of special concern

Southern Africa

13. The Special Rapporteur continues to be deeply concerned about the food crises that currently threaten the lives of millions of people across southern Africa (see A/62/289). A recent FAO/WFP assessment confirms that an estimated 2.1 million people in southern Africa require food aid, a number that could double by early 2008. The Special Rapporteur is particularly concerned that funding shortfalls are forcing WFP to scale back operations across the region. In Zambia, WFP must reduce food assistance to 500,000 vulnerable children, widows, orphans and HIV/AIDS patients.² In Namibia, WFP has cut rations to 90,000 orphans and vulnerable children, jeopardizing their access to sufficient food.³

Colombia

14. The Special Rapporteur has received alarming information which claims that in Colombia, private agro-industrial companies cultivating African palm oil, including recently for use as a biofuel, are preventing displaced communities from recovering their land.⁴ For example, in the Jiguamiandó and Curvaradó communities in the north-western department of Chocó, private companies cultivating African palm started establishing this plantation on the land soon after its inhabitants were displaced in 1996 as a result of a major military campaign by the army and paramilitary forces against guerrilla groups.⁵ These companies have continued to expand their

¹ See A/HRC/4/30.

² IRIN, Critical funding shortfall threatens United Nations food lifeline for 500,000 Zambians, 27 February 2007.

³ IRIN, Namibia: WFP cuts rations for orphans, 12 January 2007.

⁴ International Displacement Monitoring Centre, Resisting Displacement by Combatants and Developers: Humanitarian Zones in North-West Colombia, November 2007.

⁵ Ibid. Also Darío Fajardo Montaña, "El desplazamiento forzado, ¿palanca del 'desarrollo'?", Nación, 27 November 2005; Human Rights Everywhere and Diócesis de Quibdó, *El cultivo de la palma africana en el Chocó*, 2004.

plantations throughout 2007 despite orders by the Colombian Institute for Rural Development, the Office of the Prosecutor General and the Inter-American Court on Human Rights to stop the exploitation of this land and to facilitate the return of the owners. Some of the displaced communities have declared humanitarian zones, characterized by precarious living conditions. It also appears that military and paramilitary groups have allowed transport of only limited amounts of food and other goods in and out of these zones.⁶ With the help of the Interecclesiastical Commission for Justice and Peace, an international ethics commission has been created to ensure minimal protection for peasants threatened by eviction and displacement, living in the humanitarian zones.⁷

Economic Partnership Agreements between the African, Caribbean and Pacific countries (ACP) and the European Union

15. The Special Rapporteur is concerned by the terms of new agreements being negotiated by the European Union (EU) under new Economic Partnership Agreements (EPAs) with the Africa, Caribbean and Pacific (ACP) countries. He would like to draw the urgent attention of all States, particularly members of the EU, to the implications that this may have on the right to food of poor farmers in the developing world. He is particularly concerned about the potential negative impacts of greater trade liberalization on peasant farmers in the ACP countries, especially given unfair competition with highly subsidized EU production. In these countries, where up to 80 per cent of the population can be involved in peasant agriculture, unfair competition may push millions of African, Caribbean and Pacific peoples out of agriculture, leaving few other employment options. In addition, the new EPAs are likely to lead to substantial loss of revenue for ACP governments, most of which depend heavily on import taxes to raise revenue.⁸ Eliminating tariffs on EU imports would lower tariff revenues considerably, forcing these countries to cut fiscal expenditure and therefore jeopardizing social programmes and affecting Governments' ability to meet their obligations in terms of economic, social and cultural rights, including the right to food.

II. THE RIGHT TO FOOD IN INTERNATIONAL LAW

A. Definition of the right to food

16. The right to food is a human right that protects the right of all human beings to live in dignity, free from hunger. It is protected under international human rights and humanitarian law.

⁶ See International Displacement Monitoring Centre, *op. cit.*, 2007.

⁷ Report of François Houtard, University of Leuven, Belgium, 2007.

⁸ Oxfam, *Unequal Partners: How EU-ACP Economic Partnership Agreements could harm the development prospects of many of the world's poorest countries*, September 2006.

17. As defined by the Committee on Economic, Social and Cultural Rights in its general comment No. 12 (1999), “the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement” (para. 6). Inspired by this general comment, the Special Rapporteur defines the right to food as:

“the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear”.

18. The right to food is, above all, the right to be able to feed oneself in dignity. The right to food includes the right to have access to the resources and to the means to ensure and produce one’s own subsistence, including land, small-scale irrigation and seeds, credit, technology and local and regional markets, especially in rural areas and for vulnerable and discriminated groups, traditional fishing areas, a sufficient income to enable one to live in dignity, including for rural and industrial workers, and access to social security and social assistance for the most deprived. The right to food also includes the right to have access to safe drinking water.⁹

B. Definition of States’ correlative obligations

19. Commitment to the right to food entails obligations of Governments to ensure freedom from hunger for all people at all times. By committing themselves to advancing the right to food through ratification of international conventions, Governments are bound to respect, protect and fulfil the right to food without discrimination, which also means that they should be held accountable to their populations if they violate those obligations. These three levels of obligations were defined by the Committee on Economic, Social and Cultural Rights in its general comment No. 12. The Special Rapporteur set out this normative framework in detail in his report to the Commission on Human Rights in 2006.¹⁰

20. The definitions of the right to food and States’ correlative obligations to respect, protect and fulfil it were endorsed in the Right to Food Guidelines adopted by the FAO Council in November 2004. This step marked very significant progress, bringing to a close an important theoretical and conceptual period of 20 years initiated by Asbjørn Eide and paving the way for a new period of practical and concrete implementation of the right to food at the national level.

C. States’ extraterritorial obligations concerning the right to food

21. The primary responsibility to ensure human rights will always rest with national governments. However, given the current context of globalization and strong international interdependence, national governments are not always able to protect their citizens from the

⁹ See A/56/210 and E/CN.4/2003/54.

¹⁰ See E/CN.4/2006/44.

impacts of decisions taken in other countries. All countries should therefore ensure that their policies do not contribute to human rights violations in other countries. In such a globalized, interconnected world, the actions taken by one Government may have negative impacts on the right to food of individuals living in other countries. International trade in agriculture is a case in point. It is widely recognized that subsidies to farmers in developed countries have negative impacts on farmers and the right to food in developing countries if food products are “dumped” on developing countries.¹¹

22. By adopting the International Covenant on Economic, Social and Cultural Rights, States have undertaken to cooperate - without any territorial or jurisdictional limitations - to ensure the realization of the right to food and the fundamental right to be free from hunger (arts. 2, 11 (1) and 11 (2)).

23. In his efforts, the Special Rapporteur has built on the work of the Committee and the studies of many academics and non-governmental organizations to show the applicability of extraterritorial obligations to the right to food. The Special Rapporteur strongly believes that States must respect, protect and support the fulfilment of the right to food of people living in other territories, including when they take decisions within WTO, IMF or the World Bank, to fully comply with their obligations under the right to food.¹²

III. WHERE THE PROBLEMS ARE

A. Schizophrenia in the United Nations system and in States' policies

1. Non-acceptance of the right to food

24. The Special Rapporteur believes that the profound internal contradictions within the international community are a key obstacle to the realization of the right to food. On the one hand, United Nations agencies such as FAO, WFP, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF) emphasize social justice and human rights and do excellent work in promoting the right to food, for example as evidenced by the FAO's Right to Food Guidelines. On the other hand, the Bretton Woods institutions, along with the Government of the United States of America and the World Trade Organization, refuse to recognize the mere existence of a human right to food and impose on the most vulnerable States the “Washington Consensus” emphasizing liberalization, deregulation, privatization and the compression of State domestic budgets, a model which in many cases produces greater inequalities. In particular, three aspects of this general process of privatization and liberalization create catastrophic consequences for the right to food: the privatization of institutions and public utilities, the liberalization of agricultural trade, and the market-assisted model of land reform. Such policies contradict the resolution adopted on 18 December 2007 by the General Assembly

¹¹ See E/CN.4/2004/10.

¹² See E/CN.4/2006/44.

on the right to food (A/62/439/Add.2, resolution XVII),¹³ in which the World Bank and IMF are asked to avoid actions that could have a negative impact upon the realization of the right to food.

25. The Special Rapporteur believes that his two missions to Niger showed clearly how the market-based paradigm of development, largely imposed by IMF and the World Bank, has been harmful to food security for the most vulnerable.¹⁴ Cost-recovery policies in health centres, for instance, mean that many poor children are not being treated for malnutrition. The privatization of government support services, including the logistics and food distribution system (OPVN) and the National Veterinary Office, has exacerbated food insecurity amongst small-scale farmers and pastoralists. Niger possesses wealth in the form of 20 million head of cattle, sheep and camels, which are historically prized and exported widely. The animals constitute essential revenue for millions of nomads and peasants. But the privatization of the national veterinary office led to disaster: many pastoralists can no longer afford the prices of vaccinations, medicines and vitamins charged by commercial traders.

26. The schizophrenia of the United Nations system is also particularly evident in relation to land issues.¹⁵ Despite the importance placed on agrarian reform models that promote transformative and redistributive reform by the international community, contradictions persist. In the Rome Declaration on World Food Security and World Food Summit Plan of Action,¹⁶ land reform constituted a key part of stated commitments. In the Conference Declaration of the International Conference on Agrarian Reform and Rural Development organized by FAO and the Government of Brazil and held in Porto Alegre, Brazil from 7 to 10 March 2006,¹⁷ 95 States recognized that one important way to ensure the fulfilment of the right to food was to establish appropriate land reform to secure access to land for marginalized and vulnerable groups, and to adopt adequate legal frameworks and policies to promote traditional and family agriculture. At the same time, agencies such as the World Bank are promoting new models of agrarian reform which emphasize the market and are compatible with the Washington Consensus, a paradigm which is “inherently opposed to policy interventions aimed at achieving social equity”.¹⁸

27. The World Bank’s “market-assisted” or “negotiated” models of land reform seek to overcome elite resistance to land reform by offering credit to landless or land-poor farmers to

¹³ At the time of writing, the resolution had only just been adopted by the General Assembly and not yet numbered.

¹⁴ See A/60/350, E/CN.4/2002/58/Add.1.

¹⁵ See A/57/356.

¹⁶ Food and Agriculture Organization of the United Nations, Report of the World Food Summit, 13-17 November 1996 (WFS 96/REP), part one, appendix.

¹⁷ See FAO document (C/2006/REP), Appendix G.

¹⁸ FAO, *Contemporary Thinking on Land Reforms*, 1998, <http://www.fao.org/WAICENT/FAOINFO/SUSTDEV/LTdirect/LTan0037.htm>.FAO.

buy land at market rates from large landholders, with the State playing a part only in mediation and the provision of credit. Yet these models shift the logic of agrarian reform away from a concept of a right to land and redistribution towards a view that access to land is only possible through purchase of the land at market prices, despite a context of historically produced inequities. Despite past criticism by the Special Rapporteur and many NGOs and social movements who claim that this undermines more transformative programmes of agrarian reform,¹⁹ the practice continues.

28. The Special Rapporteur saw the limits of the “market-assisted” model during his mission to Guatemala.²⁰ Despite the fact that the Government is making impressive efforts to change the situation, Guatemala remains one of the most inequitable countries in the world. Land ownership is highly concentrated: 2 per cent of the population owns up to 70-75 per cent of agricultural land, while 90 per cent of small farmers survive on less than one hectare. This situation is the result of a long history of land expropriation from indigenous people, exacerbated by a 36-year civil war (1960-1996) during which military and landowners forcibly controlled more land. In this particular context, the promotion by the World Bank of a market-based redistribution of land, concretized by the creation of a land fund, FONTIERRA, to provide credit for land purchases, is particularly ineffective. It precludes the adoption of more important measures required under the Peace Accords of 1996, including the creation of an effective land registry system, the elaboration of an agrarian code recognizing indigenous forms of land ownership, and the establishment of an agrarian jurisdiction to resolve land disputes.

2. The lack of coherence of States’ policies

29. The second aspect of this “schizophrenia” is that many States are not at all coherent as far as their own practices are concerned. Far too often, one part of a Government undertakes to protect and promote the right to food, while another part of the Government takes decisions or implements policies that directly undermine this right.²¹

30. The great majority of States have recognized the right to food in the World Food Summit Declarations and the Right to Food Guidelines. More than 150 States are parties to the ICESCR, and more than 193 to the Convention on the Rights of the Child. They have to respect, protect and fulfil the right to food in all their policies and decisions. Unfortunately today, there is an increasing lack of coherence in policies implemented by Governments, which means, for example, that whilst they remain committed to a rights-based approach to development, they might also adopt trade policies that could have negative effects on human rights in other countries.

¹⁹ For example “Land for those who work it, not just for those who can buy it”, April 2002, <http://www.foodfirst.org/progs/global/trade/worldbankseminar.html>.

²⁰ See E/CN.4/2006/44/Add.1.

²¹ See E/CN.4/2005/47.

31. Wide disparities in economic power between States mean that powerful States negotiate trade rules that are neither free nor fair. Such rules severely affect small farmers and threaten food security, especially in developing countries that have been required to liberalize agriculture to a much greater extent than developed countries. The heavy production and export subsidies that OECD countries grant their farmers - more than US\$ 349 billion in 2006 or almost US\$ 1 billion per day - mean that subsidized European fruit and vegetables can be found in a market stall in Dakar, Senegal, at lower prices than local produce. Although developed countries, including EU member States, made promises at the WTO Hong Kong Ministerial Conference in December 2005 to eliminate export subsidies that result in dumping, there has been little concrete progress so far. In Mexico, it is estimated that up to 15 million Mexican farmers and their families (many from indigenous communities) may be displaced from their livelihoods as a result of the North American Free Trade Agreement (NAFTA) and competition with subsidized United States maize.²²

32. It would be possible to achieve coherence by placing human rights at the centre of all government policy and by refraining from any policies and programmes that might negatively affect the right to food of people in other countries. This primacy of human rights is recognized in the Vienna Declaration and Programme of Action of the World Conference on Human Rights (Vienna, 14-25 June 1993), where all States recognized that the promotion and protection of human rights were “the first responsibility of Governments”.²³ Moreover, the General Assembly resolution on the right to food (A/62/439/Add.2, resolution XVII)²⁴ stresses that States should ensure that their policies, including international trade agreements, do not have a negative impact on the right to food.

B. Exclusion and discrimination

33. Exclusion and discrimination are particularly evident in the case of women and indigenous people, who are also among the most vulnerable to hunger and malnutrition.²⁵ Women play vital roles in the production and preparation of food, in agriculture and in earning incomes to feed their families, and as mediators of nutrition education within the family, if they themselves are educated. It is now widely agreed that women produce 60-80 per cent of food crops in developing countries and play a crucial part in ensuring the food security of households. And it is increasingly recognized that the health of women is crucial to the health of entire societies, because malnourished women are more likely to give birth to malnourished and underdeveloped babies. New scientific evidence in nutrition calls for a “life-cycle” approach to nutrition which

²² Friends of the Earth International, “Sale of the century? Peoples’ food sovereignty”, 2003, www.foe.co.uk/resource/reports/qatar_food_sovereignty_1.pdf.

²³ See A/CONF/157/23, para. 1.

²⁴ See footnote 8 above.

²⁵ See A/58/330 and A/60/350.

recognizes the intergenerational links in nutritional status.²⁶ Underweight and malnourished mothers are more likely to give birth to underweight babies, whose mental and physical capacities may be severely stunted. Régis Debray has called these children “crucified at birth”. These children may never recover and in turn have malnourished babies, passing hunger on through the generations.

34. Despite their key role in ensuring food security, 70 per cent of the world’s hungry are women or girls. Women often face discrimination in gaining secure access to and control over other productive resources, such as land, water and credit, as they are often not recognized as producers or juridical equals. According to FAO, while the proportion of women heads of rural households continues to grow, exceeding 30 per cent in some developing countries, women own less than 2 per cent of all land.²⁷ Despite legal and often constitutional rights in many countries, women still face considerable obstacles to inheritance, purchase and control of land. In many countries, despite formal protection against discrimination, women lack any real access to land, a problem which is exacerbated by a lack of inheritance rights.²⁸

35. Indigenous peoples also face exclusion and discrimination that impact upon their right to food, despite the commitments to protect the economic, social and cultural rights of indigenous peoples set out in the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous peoples encompass approximately 5,000 distinct peoples and some 350 million individuals, the vast majority of whom live in developing countries. It has long been understood that due to long historical processes of colonization, exploitation and political and economic exclusion, indigenous peoples are amongst the most vulnerable to poverty, hunger and malnutrition. Various studies have, over an extended period of time, established that the living standards for indigenous peoples “were at the bottom of the socio-economic scale” and that “indigenous peoples the world over are usually among the most marginalized and dispossessed sectors of society”.²⁹ This problem continues to be a cause for alarm as a result of continued discrimination in access to productive resources. In Guatemala for instance, where the Government has made a major effort to change this situation, it is still clear that indigenous peoples face much higher levels of poverty and malnutrition than the rest of the population. Whereas half of all Guatemalan children under 5 are stunted, malnutrition is much higher amongst indigenous children, with 70 per cent displaying stunted growth as compared with 36 per cent of non-indigenous children.³⁰

²⁶ United Nations Sub-Committee on Nutrition (ACC/SCN), *Nutrition Throughout the Life Cycle*, 2000.

²⁷ FAO, *Women’s right to land: a human right*, www.fao.org/News/2002/020302-e.htm.

²⁸ See e.g. E/CN.4/2005/47/Add.1.

²⁹ See A/60/350.

³⁰ See E/CN.4/2006/44/Add.1.

C. Refugees from hunger

36. Refugees from hunger are among the most excluded and discriminated people. They are also among those who suffer most from the lack of coherence in States' policies. The Special Rapporteur argues that to be coherent, States must extend legal protection to protect people fleeing from hunger and other severe violations of their right to food. He calls for the creation of a new legal instrument to recognize them as "refugees from hunger" and grant them, at the very minimum, the right of non-refoulement with temporary protection so that they would not be sent back to a country where hunger and famine threaten their lives. This need to strengthen protection for people forced to leave their homes and land because of hunger was recognized by the General Assembly in its resolution on the right to food (A/62/439/Add.2, resolution XVII).³¹

1. Fleeing from hunger

37. Millions of people do cross international borders and some try to reach developed countries to escape pervasive hunger, especially people living in sub-Saharan Africa. Many try to reach the Canary Islands from Mauritania or Senegal. According to the Government of Spain, 37,685 African migrants reached Spanish shores in 2005. Another 22,824 migrants reached the islands of Italy or Malta, leaving from the Libyan Arab Jamahiriya or Tunisia.³² They also try to reach Greece through Turkey or from Egypt. In 2006, the Spanish authorities detained at least 28,000 people arriving in the Canary Islands after a dangerous journey across the open sea in overcrowded open fishing boats.³³ Many arrive in terrible conditions, too weak to walk or stand and chronically undernourished. Yet most of them are detained and held in processing or detention centres before being forcibly repatriated to their countries of origin.

38. Nobody knows how many thousands of people die while trying to make the journey, but bodies regularly wash up on the beaches or get tangled up in fishermen's nets.³⁴ On 18 December 2006, the international press reported that over 100 refugees had drowned in a single day off the coast of Senegal on their way to Spain.³⁵ However, as Markku Niskala, Secretary-General of the International Federation of the Red Cross has pointed out: "This crisis is being completely ignored: not only does no one come to the help of these desperate people, but there is no organization that even compiles statistics that record this daily tragedy."³⁶

³¹ See note 8 above.

³² *Tribune de Genève*, 14 December 2006.

³³ BBC News, 30 November 2006, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/6160633.stm>.

³⁴ BBC News, 24 October 2006, http://news.bbc.co.uk/go/pr/fr/-/2/hi/talking_point/5404816.stm.

³⁵ *Le Courrier*, Geneva, 10 December 2006.

³⁶ Amnesty International, 3 October 2005, AI Index EUR 41/011/2005 at www.amnesty.org.

39. The response of the European Union to African refugees from hunger is increasingly to militarize immigration procedures and border patrol. Rapid reaction teams of border guards form part of a new institution called Frontex. Frontex's "Operation Hera II" involved patrol boats, airplanes and helicopters from Spain, Italy, Finland and Portugal operating along the borders of Mauritania, Senegal and Cape Verde to intercept boats and immediately force them back to shore.³⁷ European Governments seem to believe that it is possible to address the drama of migration as a military and police problem.

2. Protecting people fleeing from hunger

40. Most people fleeing from hunger are refused entry and protection in other countries because they do not qualify as "refugees" in the traditional and legal sense. All Governments are legally obliged to receive asylum-seekers and grant protection to refugees under international law, but the definition of "refugee" is very limited under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (see A/62/289).

41. Few people fleeing from hunger are granted any of the protections that come with refugee status and the right of non-refoulement, even though they run the risk of grave violations of the right to food that amount to a threat to their life. Most people fleeing across international borders to escape hunger and starvation are treated as illegal "economic migrants". However, to suggest that people fleeing from hunger and famine are simply "economic migrants" and are not being forced to leave but are simply choosing to seek a better life is to fail completely to recognize the life-threatening situation that they face. It is absurd to suggest that people fleeing hunger and famine are fleeing "voluntarily". The Special Rapporteur insists on this crucial point: refugees from hunger should not be confused with "economic migrants". When an "economic migrant" seeks a better life by migrating to another country, he does so voluntarily. The refugee from hunger, on the other hand, does not move voluntarily but out of a "state of necessity" (see A/62/289). He is forced to flee. Above all when famine strikes a whole country or a whole region (for example the 2005 famine in the Sahel zone of sub-Saharan Africa), refugees from hunger have no other choice but to flee across international borders. Hunger poses an immediate threat to their lives and those of their families. They are fleeing out of a state of necessity, not out of choice. The concept of a "state of necessity" (*état de nécessité*) is a well-developed notion that is well established in both common law and civil law countries.

42. As far as hunger and famine are concerned, it is not difficult to establish objectively such a state of necessity. Both WFP and FAO issue regular reports that identify regions where there are chronic food emergencies and even identify the number of people suffering from acute and chronic levels of malnutrition. Based on this concept, it would therefore be possible to establish who is fleeing hunger and famine rather than for other reasons and to allow for the protection of refugees from hunger by recognizing that they have the right to seek asylum and the right to receive the protection of temporary refuge. The Special Rapporteur urges all States to consider the creation of a new legal instrument to protect people fleeing hunger and violations of the right to food.

³⁷ BBC News, 10 September 2006 (<http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/5331896.stm>).

D. New powerful non-State actors: transnational corporations

43. A phenomenon that affects the right to food is the increasing control of vast sectors of the world economy by transnational corporations.³⁸ Today, the top 200 corporations control around a quarter of the world's total productive assets. Many transnational corporations have revenues far exceeding the revenues of the Governments of the countries in which they operate. Concentration has produced huge transnational corporations that monopolize the food chain from the production, trade, processing to the marketing and retailing of food, narrowing choices for farmers and consumers. Just 10 corporations, including Aventis, Monsanto, Pioneer and Syngenta, control one third of the US\$ 23 billion commercial seed market and 80 per cent of the US\$ 28 billion global pesticide market.³⁹ Another 10 corporations, including Cargill, control 57 per cent of the total sales of the world's leading 30 retailers and account for 37 per cent of the revenues earned by the world's top 100 food and beverage companies.⁴⁰

44. Although the participation of private sector corporations in food and agriculture sectors may improve efficiency, such concentration of monopoly power entails a danger that will benefit neither small producers nor consumers. The design of genetically modified seeds for example, has largely been about creating vertical integration between seed, pesticides and production to increase corporate profits. FAO has revealed that 85 per cent of all plantings of transgenic crops are soybean, maize and cotton, modified to reduce input and labour costs for large-scale production systems but not designed "to feed the world or increase food quality".⁴¹ No serious investments have been made in any of the five most important crops of the poorest countries - sorghum, millet, pigeon pea, chickpea and groundnut. Only 1 per cent of the research and development budgets of multinational corporations is spent on crops that might be useful for the developing world in arid regions.⁴²

45. Moreover, transnational corporations have growing power over the supply of water, which is increasingly liberalized across the world. In many cases, private sector participation in water services has been made a precondition for the provision of loans and grants to developing

³⁸ See A/58/330, E/CN.4/2004/10 and E/CN.4/2006/44.

³⁹ Erosion, Technology and Concentration Action Group, Communiqué, November/December 2003, Issue 82.

⁴⁰ Ibid.

⁴¹ L.O. Fresco, *Which Road Do We Take? Harnessing Genetic Resources and Making Use of life Sciences, a New Contract for Sustainable Agriculture*, 2003, www.fao.org/ag/magazine/fao-gr.pdf.

⁴² P.L. Pingali and G. Traxler, "Changing focus of agricultural research: will the poor benefit from biotechnology and privatization trends?", *Food Policy*, 27, 2002.

countries by IMF and the World Bank. Just three companies, Veolia Environnement, formerly Vivendi Environnement, Suez Lyonnaise des Eaux and Bechtel (USA), control a majority of private concessions worldwide.

46. Recent evidence on water privatization suggests that, while in some cases it can bring increased efficiency, it often means higher prices, which the poorest cannot afford. The case of Cochabamba, Bolivia, is now famous.⁴³ A study on the privatization of water services in Manila⁴⁴ shows some positive effects, with an additional 1 million connected to the network between 1997 and 2003, but the price also rose by 425 per cent, making such services too expensive for the poor. The study suggests that the poorest are doubly discriminated against because prices are highest in the poorest communities and water quality has deteriorated rapidly in the poorest parts of the city. The study concluded that there was no independent mechanism for accountability and that affected populations were not able to participate in the process. The same conclusions have been put forward by WaterAid and Tearfund, in a study funded by the Government of the United Kingdom on the effects of water privatization in 10 developing countries.⁴⁵

47. Despite the fact that the transnational corporations increasingly control our food and water system, there are still relatively few mechanisms in place to ensure that they respect standards and do not violate human rights. Former Secretary-General Boutros Boutros-Ghali noted in 1996 that the global reach of TNCs was not matched by a coherent global system of accountability.

48. In many cases, transnational corporations have voluntarily chosen to abide by human rights standards, adopting internal policies and codes of conduct. Nestlé is a case in point. But several NGOs have raised concerns that Nestlé dominates the market for breastmilk substitutes in many countries while its marketing practices violate the internationally agreed International Code of Marketing of Breast-milk Substitutes.⁴⁶ United Nations agencies, including the United Nations Children's Fund (UNICEF), have expressed similar preoccupations.⁴⁷

49. Major intergovernmental instruments which apply to the activities of private transnational corporations include the OECD Guidelines, under which all adhering Governments (the OECD member States and Argentina, Brazil and Chile) are obliged to establish national contact points

⁴³ See A/58/330, para. 36.

⁴⁴ N. Roseman, "The human right to water under the conditions of trade liberalisation and privatisation - a study on the privatisation of water supply and wastewater disposal in Manila", 2003.

⁴⁵ E. Gutierrez, B. Calaguas, J. Green and V. Roaf, "New rules, new roles: does private sector participation benefit the poor?", 2003.

⁴⁶ www.ibfan.org.

⁴⁷ S. Lewis, "Malnutrition as a human rights violation", ACC/SCN, *SCN News*, No. 18, 1999.

to handle complaints of violations by a transnational corporation, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. However, their supervisory mechanisms are very weak. An excellent set of new instruments has been proposed to fill this gap: the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.⁴⁸ Unfortunately, they have not yet received the necessary attention by the former Commission on Human Rights and the Human Rights Council. Furthermore, the General Assembly, in the resolution it adopted on the right to food (A/62/439/Add.2, resolution XVII),⁴⁹ specifically requested private actors to take full account of the need to promote the effective realization of the right to food for all; however, greater attention needs to be given to strengthening supervisory mechanisms in order to hold private actors accountable.

E. Desertification

50. Many of the global food crises are the result of the impact of serious drought, desertification and land degradation or destitution and rising conflict over deteriorating resources. Globally, desertification and land degradation now affect nearly 2 billion people in over 100 countries. The vast majority of people living in drylands live in Asia (about 1.4 billion people), another 325 million people live in Africa's drylands and there are also 140 million people in Europe and 177 million in the Americas.⁵⁰ The impact of land degradation is most severe in developing countries, particularly in Africa, where millions of people are wholly dependent on land for their livelihoods as farmers or pastoral herders and where there are few alternative livelihoods. Today, in Africa, 46 per cent of the population and approximately 500 million hectares of land are affected by land degradation, including two thirds of the region's productive agricultural land.⁵¹

51. It is estimated that 50 per cent of the world's 854 million hungry people live in marginal, dry and degraded lands.⁵² Half of the world's hungry people therefore depend for their survival on lands which are inherently poor and which may be becoming less fertile and less productive as a result of the impacts of repeated droughts, climate change and unsustainable land use. In Niger for example, close to 95 per cent of productive land is dryland; the population is predominantly rural, chronically poor and subject to repeated food crises.⁵³ In Zimbabwe, the overwhelming majority of the poor live in rural areas and poverty is deepest in the low rainfall

⁴⁸ E/CN.4/Sub.2/2003/12/Rev.2, see E/CN.4/2004/10.

⁴⁹ See footnote 8 above.

⁵⁰ See A/61/306.

⁵¹ P.M. Johnson, K. Mayrand, M. Paquin, *Governing Global Desertification: Linking environmental degradation, poverty and participation*, 2006.

⁵² Millenium Project, Task Force on Hunger, *Halving hunger: it can be done*, 2005.

⁵³ See E/CN.4/2006/44.

areas of Matabeleland South, Masvingo and Matabeleland North provinces.⁵⁴ Land degradation also causes migration and intensifies conflict over resources, particularly between pastoral and farming communities, as the Special Rapporteur witnessed in Niger and in Ethiopia.⁵⁵ Many conflicts in Africa, including the one in the Darfur region, are linked to worsening droughts, desertification and related fights over resources.⁵⁶

52. Eradicating hunger and fully realizing the right to food will therefore depend on efforts to address the global problems of desertification and land degradation and on the effective implementation of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. Unfortunately, few resources are directed towards rural drylands. International efforts to combat hunger - including poverty reduction strategies - still pay little attention to the problems of land degradation and desertification. Donors do respond to severe droughts by offering food aid, but provide little in the way of longer-term development aid that would break the cycle of repeated drought, degradation and destitution. While food aid saves lives, it does not save livelihoods - it is not a long-term solution, as the Special Rapporteur has found in various countries of the Sahel and the Horn of Africa.⁵⁷

F. Biofuels

53. An issue of grave concern for the right to food is the effect that biofuels will have upon hunger. In his last report to the General Assembly (A/62/289), the Special Rapporteur labelled the sudden, ill-conceived, rush to convert food - such as maize, wheat, sugar and palm oil - into fuels as a recipe for disaster. It is estimated that it takes about 200 kg of maize to fill one car's tank with biofuels (about 50 litres), which is enough food to feed one person for one year.⁵⁸ There are therefore serious risks of creating a battle between food and fuel that will leave the poor and hungry in developing countries at the mercy of rapidly rising prices for food, land and water. If agro-industrial methods are pursued to turn food into fuel, then there are also risks that unemployment and violations of the right to food may result unless specific measures are put in place to ensure that biofuels contribute to the development of small-scale peasant and family farming.

54. The sudden explosion of interest in biofuels is evident in massive increases in investment and the setting of ambitious renewable-fuel targets across Western countries. The European Union requires that biofuels provide 5.75 per cent of Europe's transport power by 2010 and

⁵⁴ IFAD, *Rural Poverty Report 2001: The Challenge of Ending Rural Poverty*.

⁵⁵ E/CN.4/2005/47/Add.1, E/CN.4/2006/44.

⁵⁶ M. Leighton, "Desertification and Migration" in P.M. Johnson, K. Mayrand, M. Paquin, op.cit.

⁵⁷ E/CN.4/2005/47/Add.1, E/CN.4/2006/44.

⁵⁸ F. Nicolino, *La faim, la bagnole, le blé et nous. Une dénonciation des biocarburants*, 2007.

10 per cent by 2020.⁵⁹ The United States has set targets to increase usage of biofuels for energy to 35 billion gallons per year. But these target objectives cannot be met by agricultural production in the industrialized countries. Therefore, the northern industrialized countries look to the production of the countries of the southern hemisphere to meet these needs.

55. Increasing the production of biofuels could bring positive benefits for climate change and for farmers in developing countries, including improving food security, if the benefits trickle down. However, it is unacceptable that increasing production of biofuels should lead to greater hunger. The greatest risk is that dependence on the agro-industrial model of production will fail to benefit poor peasant farmers and will generate violations of the right to food.

56. The well-regarded think-tank International Food Policy Research Institute (IFPRI) has estimated that prices will rise dramatically in the near future if the production of biofuels is increased, forecasting a rise of 20 per cent in the international price of maize between now and 2010, and 41 per cent by 2020.⁶⁰ There are already reports that the global maize price has doubled over the past year.⁶¹ The prices of vegetable oil crops, especially soya and sunflower seeds, could increase by 26 per cent by 2010 and 76 per cent by 2020, while wheat prices could increase by 11 per cent and then by 30 per cent. In the poorest regions of sub-Saharan Africa, Asia and Latin America, the price of manioc could rise by 33 per cent and by as much as 135 per cent by 2020.⁶² The consequences of such a rapid increase in food prices would be grave. IFPRI forecasts that the number of people suffering from undernourishment would increase by 16 million people for each percentage point increase in the real price of staple food. Thus, by 2025, 1.2 billion people would be suffering from hunger.

57. The shift to biofuel will have numerous other impacts on the right to food. A rapid increase in the price of food crops will intensify competition over land and other natural resources, including forest reserves. This will pit peasant farmers and indigenous communities of forest dwellers against massive agribusiness corporations and large investors who are already buying up large swathes of land or forcing peasants off their land. There could also be impacts upon employment and conditions of work. Although the increase in biofuel production could offer better employment, Brazil's Landless Workers Movement has already protested the "slavery" conditions faced by workers on some of the country's sugar cane plantations.⁶³ Finally, there will also be impacts upon increasing prices and scarcity of water. The production of biofuels will require substantial amounts of water, diverting water away from the production of food crops.

⁵⁹ Directive 2003/30/EC on promotion of the use of biofuels.

⁶⁰ IFPRI, *Bioenergy and Agriculture: Promises and Challenges*, 2006.

⁶¹ D. Howden, "The fight for the world's food", *The Independent*, 23 June 2007.

⁶² IFPRI, *op.cit.* 2006.

⁶³ IPS 05.06.2007, <http://ipsnews.net/news.asp?idnews=38051>.

58. Increasingly unconvinced of the positive net impact of the production of biofuels on carbon dioxide emissions, non-governmental organizations have started to call for a global moratorium on the expansion of biofuels until the potential social, environmental and human rights impacts can be fully examined and appropriate regulatory structures put in place to prevent or mitigate any negative impacts. For the Special Rapporteur, instead of using food crops, biofuels should be made from non-food plants, particularly those that can be grown in semi-arid and arid regions, and agricultural wastes, reducing competition for food, land and water. The Special Rapporteur is calling for a five-year worldwide moratorium concerning the production of biofuel and of biofuel diesel.

IV. WHERE IS HOPE?

A. The Right to Food Guidelines

59. The Right to Food Guidelines, which were adopted in November 2004 by the FAO Council, mark an important step in the definition and implementation of the right to food.

60. The Right to Food Guidelines are groundbreaking insofar as they provide an internationally accepted definition of the right to food. The definition adopted by Governments (see paragraphs 16 and 17) closely follows the definition adopted by the Committee on Economic, Social and Cultural Rights. It also follows the interpretation offered by the Committee that States are obliged to “respect, protect and fulfil” the right to adequate food. This has important implications for the acceptance of this framework across all economic, social and cultural rights.

61. The Right to Food Guidelines are also groundbreaking insofar as they recognize the international dimension related to the right to food and address questions of, for example, international trade, food aid and embargoes. This is important because it extends understanding of the right to food beyond the traditional relationship between a State and its citizens towards a greater recognition of “extraterritorial” obligations. This set of guidelines also addresses questions of non-State actors, encouraging direct responsibility for respecting the right to food and improved regulation of markets to ensure food security.

62. The Guidelines also show how the right to food can be incorporated into government strategies and institutions.⁶⁴ They demonstrate how the key human rights principles - non-discrimination, participation, transparency, accountability and access to justice - can be incorporated into a rights-based approach to food security. They also call on States to promote “broad-based economic development that is supportive of their food security policies” (guideline 2.1), to “pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies” (guideline 2.5) and to incorporate the right to food into poverty reduction strategies. They also urge States to “take into account the shortcomings of market mechanisms in protecting the environment and public

⁶⁴ FAO, *Right to Food in Action. Examples of How FAO Member Countries Make it Happen*, 2007.

goods” (guideline 4.10), particularly for women (guideline 8.3) and vulnerable groups (guideline 8.1). The Right to Food Guidelines call on States to set up mechanisms to inform people of their rights and improve access to justice for the right to food (guideline 7).

B. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

63. The Special Rapporteur welcomes the decision of the Human Rights Council in its resolution 2006/3 to renew the mandate of the working group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights for a period of two years with a specific mandate to elaborate an Optional Protocol, as well as the work done at the July 2007 session.

64. The elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will mark significant progress at the international level in developing the “justiciability” of economic, social and cultural rights, including the right to food. It will build on the developments in case law at national, regional and international levels, such as those on which the Special Rapporteur has reported in the past.⁶⁵ During his missions to countries such as Brazil, Ethiopia, Bangladesh, Guatemala, India, Mongolia and others, the Special Rapporteur found that it is sometimes very difficult for poor people, especially peasant farmers, to have access to justice before local and national tribunals. The adoption of the Optional Protocol would greatly improve access to justice for victims of violations of the right to food, by allowing individuals or groups to lay complaints directly before the Committee on Economic, Social and Cultural Rights.

65. The draft Optional Protocol prepared by the Chairperson of the Working Group is an excellent starting point. The Special Rapporteur believes that all human rights recognized in the International Covenant on Economic, Social and Cultural Rights are justiciable and encourages States to ensure that all these rights are subject to a communications procedure.

C. Progress in the justiciability of the right to food

66. Justiciability is absolutely essential for the realization of the right to food. Making the right to food justiciable means that people can seek remedy and accountability if their right to food is violated. Justiciability is still not a reality in every country, but significant progress has been made in recent years in a number of Latin American, African and Asian countries.

67. India provides one of the best examples in the world in terms of the justiciability of the right to food.⁶⁶ The Constitution of India prohibits discrimination and recognizes all human rights. The right to life is recognized as a directly justiciable fundamental right (art. 21), while the right to food is defined as a directive principle of State policy (art. 47). As it has interpreted

⁶⁵ A/61/306 and E/CN.4/2002/58.

⁶⁶ See E/CN.4/2006/44/Add.2.

these provisions, the Supreme Court of India has found that the Government has a constitutional obligation to take steps to fight hunger and extreme poverty and to ensure a life with dignity for all individuals.

68. In South Africa, all economic and social rights have been declared justiciable under South African law. The South African Bill of Rights, incorporated into the 1996 Constitution, explicitly provides (sect. 27, para. 1 (b)) that every person has the right to have access to sufficient food and water, subject to progressive realization. This legal recognition of the right to food allowed, for example, non-governmental fishing organizations in South Africa to initiate and win a case before the High Court of Cape Town in 2007.⁶⁷

D. Global commitments to fight hunger

69. The Special Rapporteur is impressed by the global campaign to fight hunger and poverty worldwide spearheaded by the President of Brazil and by the commitments made in the New York Declaration on Action against Hunger and Poverty. With the help of a Quadripartite Group of Brazil, France, Chile and Spain, an international fund to fight hunger has been created drawing on the groundbreaking Landau report which proposes innovative financing mechanisms for development aid.⁶⁸

70. At the regional level, the Special Rapporteur welcomes the dynamism of the Latin American and Caribbean regions in general, and particularly the adoption of the regional initiative to eradicate hunger and guarantee food security under the “Iniciativa América Latina y Caaribe sin Hambre”, which makes the realization of the right to adequate food for all and at all levels a key priority in the region.

E. The food sovereignty strategy

71. Several States and civil society organizations have been active in questioning the whole paradigm of free trade in agriculture, as they believe that the inequities of the global agricultural trade system are a disaster for food security, particularly for poor countries and poor people. Today, States such as Germany, Norway, Switzerland and others and civil society organizations are calling for a new focus on “food sovereignty” that challenges the current model of agricultural trade, which they see as promoting an export-oriented, industrial agriculture that is displacing peasants and destroying family agriculture.⁶⁹

⁶⁷ FIAN, *Decision by South African High Court ends long lasting fight of fishermen*, www.fian.org.

⁶⁸ J-P. Landau, “New International Financial Contributions for Development”, 2004.

⁶⁹ See E/CN.4/2004/10.

72. During the World Food Summit: “Five years later” held in 2002, an NGO/CSO (Civil Society Organizations) entitled “Forum on Food Sovereignty”, which was attended by representatives of over 400 farmers’ organizations, defined the concept of food sovereignty as follows:

“Food sovereignty is the right of peoples, communities, and countries to define their own agricultural, labour, fishing, food and land policies which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies. Food sovereignty means the primacy of people’s and community’s rights to food and food production, over trade concerns.”⁷⁰

73. The first key element in the concept of food sovereignty is the reclamation of national and individual sovereignty over food security policy. The concept of food sovereignty is not anti-trade, but rather is against the priority given to exports and against the dumping of imported, subsidized food in local markets which destroys local farmers’ livelihoods. It seeks to guarantee food security first, by favouring local production for local markets. Food sovereignty emphasizes locally-orientated small-scale peasant agriculture producing for consumption inside the country, as opposed to the current model of export-oriented, industrialized agriculture.

74. Food sovereignty also embodies a call for greater access to resources by the poor, especially women. Food sovereignty offers an alternative vision that puts food security first and treats trade as a means to an end, rather than as an end in itself.

75. CSOs believe that the export-oriented model is forcing the industrialization of the food chain, precipitating the decline of small farms and peasant farming, in the North as well as in the South, to the benefit of the large agribusiness corporations.⁷¹ In the face of mounting evidence that the current world trading system is hurting the food security of the poorest and most marginalized, and generating ever-greater inequalities, the Special Rapporteur believes that it is now time to look at alternative means that could better ensure the right to food. The implementation of the concept of food sovereignty is a valuable solution.

V. CONCLUSIONS AND RECOMMENDATIONS

76. Some Governments and intergovernmental organizations support the neoliberal theory, which does not recognize the existence of economic, social and cultural rights and claims that only political and civil rights are human rights. According to this theory, only a totally liberalized and privatized, unified world market can gradually eliminate hunger and malnutrition in the world. The evidence shows the contrary - liberalization and privatization have progressed rapidly in most countries during the last 10 years. At the same time, the figures show that worldwide, more people than ever before suffer today

⁷⁰ www.foodfirst.org/progs/global/food/finaldeclaration.html.

⁷¹ www.foodfirst.org/pubs/backgrdrs/2001/f01v7n4.html.

from grave, permanent undernourishment. Consequently, the Special Rapporteur maintains that only the normative approach can gradually eliminate hunger and grave permanent malnutrition in the world. The human right to food has to be implemented by all States, by all intergovernmental organizations and by all non-State actors, including multinational corporations. As Jean Jacques Rousseau wrote 246 years ago in the Social Contract:

“Between the rich and the poor, it is freedom which oppresses and it is law which liberates.”

77. The Special Rapporteur makes the following recommendations:

(a) Hunger is not inevitable. The lack of progress in meeting the objectives of the World Food Summit and Millennium Goal No. 1 to halve the number of hunger victims by 2015 is unacceptable. All States should take immediate action to realize the human right to food of all their people. Lessons can be learned from the very positive examples of many Governments which have been detailed in this and in previous reports of the Special Rapporteur. The key initiatives of the Governments of Brazil, Cuba and Bolivia observed by the Special Rapporteur during his country missions set an example for the rest of the world;

(b) All States should ensure that their international political and economic policies, including international trade agreements, do not have negative impacts on the right to food in other countries. In this context, European Union Governments must ensure that EPA agreements with Asian, Caribbean and Pacific countries do not negatively affect the progressive realization of the right to food in those countries and include safeguard mechanisms to allow appropriate responses to any resulting food insecurity and hunger. All international trade agreements should include the participation of all stakeholders, including civil society. The implementation of the concept of food sovereignty should be discussed;

(c) States should improve the international supervisory mechanisms for transnational corporations, especially those which control our food and water system, to ensure that they respect the right to food. This should include discussing and adopting the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights;⁷²

(d) States should give priority to investments in long-term development projects that reduce vulnerability to drought and desertification, including through investing in small-scale water harvesting and management to improve food security;

⁷² E/CN.4/Sub.2/2003/12/Rev.2.

(e) States should establish a five-year moratorium on all initiatives to develop biofuels that aim to convert food into fuel. States should ensure that biofuels are produced from non-food plants, agricultural wastes and crop residues, rather than food crops, in order to avert massive rises in prices of food, water and land and the diversion of these resources away from food production. This will require immediate massive investment in “second-generation” technologies for the production of biofuels;

(f) States should strengthen international and national protection mechanisms for people forced to leave their homes and lands because of hunger or other severe violations of their right to food. They should elaborate a new international legal instrument that will provide protection for all people fleeing from hunger who are not currently protected under international human rights, humanitarian or refugee law. The Special Rapporteur suggests that the Human Rights Council mandate its new Advisory Committee to draw up a new norm of temporary non-refoulement of refugees from hunger.
