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The right to food

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

* The reason for the late submission of this report is to reflect the latest information.

Summary

Pursuant to Commission resolution 2005/18, the Special Rapporteur hereby submits his sixth report to the Commission on Human Rights.

The Special Rapporteur is gravely concerned to report to the Commission that global hunger is continuing to increase. At least 852 million children, women, and men are gravely and permanently undernourished. Millions of people die every year for lack of food. Every five seconds, one child under the age of 5 will die from malnutrition and related diseases.

He is also gravely concerned by the current food crises sweeping across Africa, from Niger and West Africa last year, to Kenya, Tanzania and the Horn of Africa this year. Member States must act quickly to urgently respond to these food crises to prevent famine, as well as responding with a longer-term vision and investment to prevent this continual recurrence of famine in Africa.

All human beings have the right to live in dignity, free from hunger. Hunger and famine are never inevitable, but usually result from the action or inaction of Governments. It is time that hunger and famine are seen as a violation of the human right to food.

This report reports to the Commission on the Special Rapporteur's emergency mission to Niger in July 2005, to bring that forgotten crisis to the attention of the international community. In annex to this report, there are also two further reports on the Special Rapporteur's official missions to Guatemala and India, and the Special Rapporteur would very much like to thank the Governments of Guatemala and India for their valuable cooperation.

This report also takes the opportunity to review the definition and understanding of the right to food in an era of globalization. The primary obligations to respect, protect and fulfil the right to food of their people will always rest with national governments. However, in an age of globalization and increasing interconnectedness, when the actions and policies of every country can have far-reaching effects on people living in other countries, there is a need to extend a State's obligations under human rights to include extra-territorial obligations towards the right to food of people living in other countries. At the same time, in an age when the power of certain public and private non-state actors has grown to exceed the power of individual States, it is time that human rights obligations be extended to these powerful actors. Human rights were designed to limit arbitrary abuses of power by Governments against their citizens, but in an age when other public and private actors are more powerful than States, human rights must be extended to limit their potential abuses of power against people. These powerful new actors include international organizations such as the World Bank, the IMF and the WTO and private actors such as transnational corporations (TNCs). With power must come responsibility.

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Introduction

1. The Special Rapporteur has the honour to submit his report to the Commission on Human Rights, as requested by the Commission on Human Rights in resolution 2005/18 and General Assembly resolution 60/165. In this report, he builds on previous reports to strengthen the understanding and conceptual framework of the right to food. In addition, he submits two further reports as Annexes for the attention of the Commission, on the realization of the right to food in Guatemala and in India.

2. All human beings have a right to live in dignity, free from hunger. The right to food is a human right. It is a human right protected under international human rights and humanitarian law. As defined by the United Nations Committee on Economic, Social and Cultural Rights, “(t)he 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). For the Special Rapporteur:

“The right to food is 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.”

3. It is the Special Rapporteur’s duty to report to the Commission that the number of victims of hunger is continuing to increase. The Food and Agriculture Organization of the United Nations (FAO) reported in *The State of Food Insecurity in the World 2004* that there were 852 million undernourished people in the world in 2000-2002, an increase of 10 million over the previous year. Despite progress in some countries, global hunger is on the rise. Unless eradicating hunger is urgently made a central priority of all Governments, the Millennium Development Goal to halve hunger will not be met. This is absurd when, according to FAO, the planet could produce enough food to provide 2,100 kcals per person per day to 12 billion people, that is, almost twice the existing world population.¹ The Commission on Human Rights must reiterate that the right to food is a human right. Hunger and famine are not inevitable - they are a violation of human rights.

4. The United Nations Millennium Development Project’s Task Force on Hunger has shown that 80 per cent of the world’s hungry live in rural areas.² The majority are smallholder farmers who depend mainly or partly on agriculture for their livelihoods. Most of them cannot produce enough to feed themselves usually because they do not have sufficient access to productive resources such as land, water and seeds. Two thirds of these smallholder farmers live on remote and marginal lands under environmentally difficult conditions, such as mountainous areas or areas threatened by droughts and other natural disasters (fertile lands are concentrated in the hands of wealthier farmers). Another 22 per cent of those suffering from hunger are landless families who survive as poorly paid landless labourers. Another 8 per cent of the hungry in rural communities live from fishing, hunting and herding activities. Approximately 20 per cent of the hungry live in urban areas - but with migrants from rural areas increasing as conditions in rural areas become increasingly more difficult and unsustainable, urban hunger is rising fast.

5. Hunger and malnutrition have severe effects on both physical and mental health. According to UNICEF, more than 90 million children suffer from an acute stage of malnutrition, and most of them are born underweight. Undernourishment in the womb condemns these children to a life of stunted mental and physical development, a life in which they will not be able to concentrate even if they can go to school, a life in which they are condemned to be the poorest of the poor even when they become adults.³ Régis Debray has called these children “crucified at birth”. More than 400 million children also do not have access to clean drinking water, leaving them so vulnerable to water-borne disease, that many do not live to see their fifth birthday. Many girls never get to go to school because they are forced to spend the whole day walking long distances to collect water for their families.

6. In Africa today, the situation is terrifying. During 2005, famine and food crises hit Niger, the Sudan, Somalia, Chad, Zimbabwe, Mauritania and Ethiopia, which all suffered from critical food emergencies as the rains failed and locust swarms destroyed crops, exacerbating the political and economic causes of hunger.⁴ Mali and Burkina Faso were also badly affected. At the time of writing this report, the Special Rapporteur received reports of a growing crisis in the Horn of Africa pushing millions of people to the brink of starvation. At least 11 million people in Somalia, Kenya, Djibouti and Ethiopia are in urgent need of food and assistance.⁵ UNICEF has warned that the lives of at least 1.2 million children under the age of 5 are in danger of malnutrition and disease.⁶ With the World Food Programme (WFP) issuing warnings of the worst drought to hit the region in a decade, humanitarian disaster is imminent in the pastoral regions of northern and eastern Kenya, yet no food aid is arriving. In the face of so much urgent need, it is clear that the permanent Global Emergency Fund, proposed by the United Nations, must be fully implemented and supported by all United Nations Member States to allow a rapid, effective response to food emergencies.

7. In refugee camps across Africa, thousands of families are facing starvation. According to the WFP, a funding shortfall of US\$ 133 million for their food aid programmes for refugees and displaced people around the world is insufficient to meet the needs and rations are being cut, especially in the refugee camps of Africa. In Zambia for example, in January 2006, the WFP was forced to cut food rations in half to 80,000 Angolan and Congolese refugees. This means that the refugees will receive only half the daily minimum requirement of calories necessary to sustain life, and the risk of slow starvation, with increases in the number of people already dying from malnutrition and related diseases.⁷ This is a violation of the right to food.

8. Famine and food crises are not inevitable. In Africa, a new study by the well-respected International Food Policy Research Institute (IFPRI) has shown that chronic food insecurity in Africa has been increasing since 1970, with the number of malnourished people in sub-Saharan Africa soaring from 88 million to 200 million in 1999-2001.⁸ Chronic food insecurity means that as soon as drought strikes, it can quickly turn into catastrophic famine. Yet the IFPRI study shows that hunger could be reduced by investing in development and reducing dependence on rain-fed agriculture. Investments in simple water-harvesting technologies, agricultural extension, education and HIV/AIDS prevention and treatment would dramatically reduce the percentage of malnourished children in Africa.⁹ This would put African countries on course to meeting the Millennium Development Goals and help prevent recurrent famine.

9. Impressive progress has been made in fighting hunger in some countries - India and China for example have eradicated the threat of famine through investment in agricultural infrastructure and extension services which has brought agricultural production to national self-sufficiency, if not household self-sufficiency. In Latin America, there is a new and emerging consciousness of hunger that still affects so many people in the region. Cuba was the first country to promote the right to food. Today, Brazil, Guatemala, Bolivia, Peru, Chile, Argentina, Mexico, Cuba and Venezuela are committed to the continental-wide *Fome Zero* Programme (Zero Hunger Programme), built on the lessons learned from Brazil's experience. Latin America has more than 60 million gravely and permanently undernourished people, which the Zero Hunger Programme aims to cut in half by 2015. The Zero Hunger strategy is based on four pillars: increasing access to food, strengthening family-based agriculture, promoting income generation and empowerment and providing food assistance. It promotes the right to food, but also broader social inclusion and citizenship rights by overcoming economic, social, gender and race-based inequalities. Brazil's José Graziano da Silva, former head of the Zero Hunger Programme, has recently been appointed to lead FAO's regional initiative against hunger.¹⁰

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

10. Over the last year, the Special Rapporteur's work in promoting the right to food has included many activities. During the year, the Special Rapporteur carried out official missions to Guatemala (February 2005) and to India (August 2005), as well as an emergency mission to Niger in July 2005 (see report below), liaising with the WFP, FAO and Governments and issuing numerous press statements to generate international response to the crisis. The Special Rapporteur made requests to undertake country missions to the Democratic People's Republic of Korea and Myanmar, but has yet to receive a response from the respective Governments. He has also continued to issue urgent appeals and press statements, individually and jointly with other special rapporteurs, on urgent situations related to the right to adequate food in Equatorial Guinea, Myanmar, the Philippines, Pakistan, the Democratic Republic of the Congo, the Democratic People's Republic of Korea, Romania, the Sudan, Zimbabwe, Brazil and Indonesia. He would like to thank the Office of the High Commissioner for Human Rights for its cooperation on these urgent appeals.

11. The Special Rapporteur and his team also continued to work to promote the right to food amongst other United Nations agencies, international and non-governmental organizations. He would like to thank his team at the Research Unit on the Right to Food, at the University of Geneva, Sally-Anne Way and Christophe Golay, for their support to his mandate. He would also like to thank Walter Fust and the Swiss Agency for Development and Cooperation (SDC) for their valuable support in promoting the right to food. He and his team have continued to work with FAO to promote and disseminate the new international standards on the right to food, the Voluntary Guidelines accepted by all FAO member States in November 2004. Special collaboration was also initiated with the Secretariat for the Convention to Combat Desertification to draw out the linkages between desertification, hunger and the right to food and to contribute to the preparations for an international conference to be held in Geneva in April 2006. Members of his team spoke on the right to food at numerous international conferences, including: Policies Against Hunger IV: Implementing the Voluntary Guidelines held in Berlin in June 2005, at the international colloquium on Earth Politics organized by the Fundación Sistema in Salamanca in June 2005, and at the conference "Trade as if Development Really Mattered" held at the

European Parliament in November 2005. At the invitation of the Government of Switzerland, the Special Rapporteur also spoke at the Conference on International Human Rights and Humanitarian Law held in Fribourg from 20 to 23 September 2005. On 26 November 2005, the Special Rapporteur was also invited to make the inaugural presentation at the first conference for the creation of an international association on the right to water, ACME (Association pour le Contrat mondial de l'eau), and has continued to work with a number of non-governmental organizations on the right to water regarding its linkage to the right to food. In December 2005, under the auspices of the Government of Switzerland, he was invited to address the International Colloquium of Francophone Ministers of Human Rights and Ambassadors held in Bern.

12. Since the Special Rapporteur's mandate includes clean drinking water as an essential part of healthy nutrition, the Special Rapporteur has also worked to promote understanding that the right to water is a human right. He welcomes the Ecumenical Water Declaration signed in April 2005 between the Protestant and Catholic churches of Switzerland and Brazil which promotes the view that water is a common good and that the right to water is a human right.¹¹ Support for this Declaration was sought at the global ecumenical meeting on water, held at the Ninth Assembly of the World Council of Churches (WCC), in Brazil in February 2006, attended also by representatives of the Latin American Episcopal Conference and the European Episcopal Conference. The issue will be reviewed at the World Water Forum to be held in Mexico in March 2006

II. SITUATION OF SPECIAL CONCERN: FAMINE IN NIGER

13. In July 2005, the Special Rapporteur carried out an emergency mission to the West African country of Niger, and made a full report on this visit to the General Assembly (A/60/350). He conducted this mission at the request of United Nations agencies and the request of the Government of Niger in the face of an emerging food crisis and a lack of response of the international community to appeals for emergency aid. On 24 May 2005, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland described Niger as "the number-one forgotten and neglected emergency in the world", and by July 2005 there had still been no response, despite the growing risk of famine. Fortunately after visits by the Special Rapporteur, and the United Nations Secretary-General and growing public awareness of the situation, an international response was finally set in motion.

14. Niger is a proud country inhabited by some of the greatest civilizations of humanity - the Songhai, the Djerma, the Hausa, the Tuareg, the Peul - courageous and hardworking men and women of great dignity. During his mission however, the Special Rapporteur witnessed the gravity of the situation. Almost one third of the population, around 3.6 million people, including 800,000 children, were facing acute malnutrition, and in some regions vulnerable people, in particular infant children, were already dying from starvation. According to government reports, in July 2005 the food situation was satisfactory in only 19 out of 106 zones; it was critical in all others. During visits to Ouallam and Tondikiwindi, the Special Rapporteur saw evidence of thousands of farmers being reduced to subsisting on seeds, roots and poisonous fruits. He also visited the Saga Emergency Feeding Center operated by the Mother Theresa Sisters on the outskirts of Niamey, where he received reports that undernourished children were dying from hunger every week.

15. The United Nations appeal for funds in May 2005 prompted a limited response from the international community, with contributions of only US\$ 3.8 million in July 2005 compared to estimated requirement of US\$ 16.2 million to cover basic essential needs. Despite its status as one of the world's poorest countries, Niger receives comparatively little emergency or development aid and investment compared with other countries. Even in normal years, one out of every four children in Niger dies before the age of 5 as a result of hunger or malnutrition-related disease and more than 80 per cent of the population are food insecure (see E/CN.4/2002/58/Add.1). The lack of development and investment in agriculture (even low-cost investment such as rainwater harvesting) has left the people of Niger with few resources in the event of drought. Although the immediate causes of the crisis were drought and locusts, the root causes are the lack of development, withdrawal of the State from agricultural and pastoral extension services (after privatization) and pervasive chronic food insecurity, which means that any crisis quickly turns into catastrophic famine.

16. During his mission (see press release of 13 July 2005), the Special Rapporteur emphasized that the right to food is a human right and called on all member States to honour their obligations to ensure the right to food of Niger's population. Media coverage by a United Nations television team and the United Nations Secretary-General's urgent visit did much to raise public awareness of the crisis. This finally generated an international response in July and August 2005. The Arab States, including Algeria, Morocco, the Libyan Arab Jamahiriya, Saudi Arabia and Dubai, sent emergency food aid and promised funds. The European Union, France, Sweden, Norway, Switzerland, Belgium, Denmark, Germany and the United States of America also sent emergency aid and announced that they would contribute US\$ 10 million. Venezuela alone announced that it would contribute US\$ 3 million. Cuba increased its medical assistance programme, providing further qualified doctors, to treat those suffering from malnutrition.

III. DEFINING THE RIGHT TO FOOD IN AN ERA OF GLOBALIZATION

17. The right to food is a human right that entails Governments' obligations to guarantee the food security of their populations. In a world richer than ever before, it is unacceptable that people can be left to die of starvation. Nor should anyone be condemned to the misery of stunted mental and physical development that results from chronic hunger and malnutrition. All human beings have a right to live in dignity, free from hunger.

18. All Governments have a responsibility to prevent starvation and hunger. The primary responsibility always rests with national Governments. However, all other Governments have a responsibility to refrain from taking action that cause food insecurity and to respond to requests for emergency assistance, to the extent that their resources permit. In a context of globalization, when national Governments no longer enjoy a full monopoly on power, it is also essential to extend human rights obligations to other powerful actors, such as international organizations and private transnational corporations.

19. In an attempt to improve and consolidate understanding of the obligations entailed by the right to food, this chapter sets out a conceptual framework that details the specific obligations of Governments, but also of other powerful public and private actors, and summarizes the

conceptual framework elaborated in the previous reports to the Commission and the General Assembly. It starts by outlining the obligations of Governments to respect, protect and fulfil people's right to food, and then moves on to extend the traditional boundaries of human rights.

20. Although globalization is not a new phenomenon, the extent of interdependence between countries is vastly greater than ever before, which means that the policies and programmes of one country can have far-reaching effects on the right to food of people living in other countries. Governments should therefore become more aware of extraterritorial obligations to refrain from violating the right to food in other countries and to respond to emergencies. In the worldwide neoliberal globalization and privatization process, a key role is played by organizations such as the WTO, the World Bank and IMF. The emergence of private transnational corporations that today have greater economic and financial power than many States, also requires extending the boundaries of human rights obligations. Given the risk that these private actors may abuse their monopoly power, they must be held accountable to human rights obligations. With power must come responsibility.

A. The primary responsibility rests with national Governments

21. 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, which also means that they should be accountable to their populations if they violate those obligations. These three levels of obligations have been defined by the Committee on Economic, Social and Cultural Rights in its general comment No. 12 on the right to adequate food.¹²

Obligation to respect

22. The obligation to respect means that the Government should not arbitrarily take away people's right to food or make it difficult for them to gain access to food. The obligation to respect the right to food is effectively a negative obligation, as it entails limits on the exercise of State power that might threaten people's existing access to food. Violations of the obligation to respect would occur, for example, if the Government arbitrarily evicted or displaced people from their land, especially if the land was their primary means of feeding themselves, if the Government took away social security provisions without making sure that vulnerable people had alternative ways to feed themselves, or if the Government knowingly introduced toxic substances into the food chain, as the right to food entails access to food that is "free from adverse substances". In situations of armed conflict, it would mean that the Government troops must not destroy productive resources and must not block, delay or divert relief food supplies to civilian populations.

Obligation to protect

23. The obligation to protect means that the Government must pass and enforce laws to prevent powerful people or organizations from violating the right to food. The obligation to protect requires States to regulate non-State actors, including corporations or individuals who may threaten other people's right to food. The Government must also establish bodies to

investigate and provide effective remedies, including access to justice, if that right is violated. For example, if the Government does not intervene when a powerful individual evicts people from their land, then the Government violates the obligation to protect the right to food. The Government would also fail to protect the right to food if it took no action if a company polluted a community's water supply. To protect the right to food, the Government might also have to take action if people were denied access to food on the basis of gender, race or other forms of discrimination. It might also, for example, have to introduce laws to protect consumers against harmful food products or against unsustainable means of production. That could include the introduction of labelling on foods or legislation on the use of pesticides or genetically engineered food.

Obligation to fulfil

24. The obligation to fulfil (facilitate and provide) means that the Government must take positive actions to identify vulnerable groups and to implement policies to ensure their access to adequate food by facilitating their ability to feed themselves. The obligation to fulfil is a positive obligation, as this means that the Government must actively seek to identify vulnerable groups and implement policies to improve those people's access to adequate food and their ability to feed themselves. That could mean improving employment prospects by introducing an agrarian reform programme for landless groups or promoting alternative employment opportunities. It could also include, for example, free milk programmes in schools in order to improve child nutrition. The further obligation to provide goes beyond the obligation to facilitate, but only comes into effect when people's food security is threatened for reasons beyond their control. As a last resort, direct assistance may have to be provided by means of safety nets such as food voucher schemes or social security provisions to ensure freedom from hunger. The Government would violate that obligation if it let people starve when they were in desperate need and had no way of helping themselves. An appeal by a State for international humanitarian aid, when it is itself unable to guarantee the population's right to food, also comes under this third obligation. States that, through neglect or misplaced national pride, make no such appeal or deliberately delay such appeals are violating their obligation.

25. The fulfilment of the right to food, like other economic, social and cultural rights, is qualified to the extent that it must be achieved progressively and to the maximum of available resources. Under paragraph 1, article 2 of the International Covenant on Economic, Social and Cultural Rights (emphasis added):

Each State Party ... undertakes to take steps ... to the **maximum of its available resources** ... [with a view to achieving] **progressively** the full realization of the rights recognized in the present Covenant by all appropriate means ...

26. That means that a poor country is not expected immediately to ensure the same level of economic, social and cultural benefits that a rich country can afford. However, even the poorest country is bound to ensure the highest level its resources will permit and, at the very least, a basic minimum level of economic, social and cultural rights.¹³ The concept of "progressive realization" cannot be used to justify persistent injustice and inequality. It requires Governments to take immediate steps to continuously improve people's ability to feed themselves and to eliminate hunger. This also implies the "principle of non-regression", which means that Governments must not adopt regressive policies that lead to deterioration in access to food.

What Governments must do, therefore, is adopt an action plan with concrete goals and fixed time frames and monitor progress over time to measure progressive realization. Current national efforts to monitor the Millennium Development Goal on hunger provide an important step in this direction. However, Governments must also be called upon to explain and account for any regression in the realization of the right to food.

27. In addition, under international law, the prohibition of discrimination is not subject to the limitation of progressive realization. The obligation not to discriminate is an immediate duty, and discrimination in access to food on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as stated in article 2, paragraph 2, of the International Covenant, cannot be justified under any circumstances, including low levels of resources. The Special Rapporteur believes very strongly that non-discrimination policies must be implemented immediately, and not subjected to progressive realization.

B. Extraterritorial obligations of States to the right to food

28. Although the primary responsibility to ensure human rights will always rest with the national Government, it is not always able to protect its citizens from the impacts of decisions taken in other countries, given the current context of globalization and strong international interdependence. All countries should therefore ensure that their policies do not contribute to human rights violations in other countries. As S.I. Skogly has stated, the strict territorial application of human rights obligations is now outdated.¹⁴ 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 (see E/CN.4/2004/10).

29. According to Peter Brabeck, President and CEO of Nestlé, the world’s largest food and beverage company “In the industrialized countries, agricultural products are subsidized to the tune of US\$ 1 billion per day (...). We cannot consume all these products and so we create mountains of butter and milk. After that we export them at extremely low prices to developing countries. The local farmers do not stand a chance [to sell their own products]. Why do all developing countries have these huge urban slums? Because their people can no longer find work in the countryside and must flee to the cities. Who is responsible? The agricultural subsidies.”¹⁵

30. The issue of extraterritorial obligations in relation to human rights has been debated mostly in relation to civil and political rights. Civil and political human rights instruments contain explicit territorial and jurisdictional limitations, and it has therefore been argued that extraterritorial obligations in relation to these rights do not exist at all. Nevertheless several international and regional monitoring bodies have affirmed that human rights obligations cannot simply stop at territorial borders. The European Court of Human Rights, for example, ruled in *Loizidou v. Turkey* that the “responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory”.¹⁶

31. Unlike civil and political rights, the legal instruments relating to economic, social and cultural rights do not contain any territorial or jurisdictional limitations. On the contrary, there are explicit legal commitments to cooperate for the realization of economic, social and cultural rights of all individuals without limitation. It therefore cannot be argued that extraterritorial obligations towards these rights do not exist at all. Much work is currently being performed by academic institutions and non-governmental organizations to better understand the definition and content of these obligations. This includes studies by the International Council on Human Rights Policy,¹⁷ FoodFirst Information and Action Network (FIAN), Bread for the World and the Evangelischer Entwicklungsdienst,¹⁸ 3D-Trade-Human Rights-Equitable Economy and Realizing Rights: The Ethical Globalization Initiative,¹⁹ and by many academics, including S.I. Skogly,²⁰ F. Coomans and M.T. Kamminga.²¹ The Special Rapporteur will build on these studies, as well as on the work of the Committee on Economic, Social and Cultural Rights²² and the Sub-Commission for the Promotion and Protection of Human Rights, including the studies by Asbjørn Eide,²³ to present the extraterritorial obligations of States in relation to the right to food.

32. The right to food under the International Covenant on Economic, Social and Cultural Rights contains the most important and clearest commitment of member States to cooperate. By adopting the treaty, 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)). Therefore, the Committee on Economic, Social and Cultural Rights suggested the following framework for extraterritorial obligations that mirrors the national obligations established under the right to food to respect, protect and fulfil the right to food of all individuals within its territory and subject to its jurisdiction, stating that:

“States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.”²⁴

33. Non-governmental organizations, such as FIAN, Bread for the World and the Evangelischer Entwicklungsdienst have adopted the same approach. However, they have further clarified that another Government can only be obliged to assist in the fulfilment of the right to food,²⁵ since the primary obligation to implement the right to food rests with the home Government. This clarification is important. It underlines that the principal obligation to guarantee the right to food is incumbent on the national Government, but if other States, have available resources, they have a complementary obligation to help the national State when it does not have the resources to realize its population's right to food.

34. The Special Rapporteur believes that, States must respect, protect and support the fulfilment of the right to food of people living in other territories, to fully comply with their obligations under the right to food. The obligation to respect is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries. The obligation to protect requires States to ensure that their own citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not violate the right to food in other countries. The obligation to support the fulfilment of the right to food requires States, depending on the availability of resources, to facilitate the realization of the right to food in other countries and to provide the necessary aid when required.

The extraterritorial obligation to respect

35. The extraterritorial obligation to respect the right to food requires States to ensure that their policies and practices do not lead to violations of the right to food for people living in other countries. This obligation does not require any resources to be provided. It is simply the obligation to “do no harm”. States should refrain at all times from implementing policies with foreseeable negative effects on the right to food of people living in other countries. For example, food and water should never be used to exert political or economic pressure and States should refrain at all times from food embargoes or similar measures that endanger conditions for food production and access to food in other countries or prevent the supply of water, as well as goods and services essential for securing the right to water.²⁶ Policies such as export subsidies for agriculture may also have negative effects when production is exported to agrarian-based developing countries. It is clear that such policies will have a negative impact on the right to food of people living in those countries since their livelihoods will be destroyed and they will not be able to purchase food, even if the food is cheaper. In Mexico, for example, it is estimated that up to 15 million Mexican farmers and their families, many from indigenous communities, may lose their livelihoods as a result of the North American Free Trade Agreement and competition with subsidized United States maize.²⁷ States should also refrain from taking decisions within the WTO, the IMF or the World Bank that can lead to violations of the right to food in other countries.

The extraterritorial obligation to protect

36. The extraterritorial obligation to protect the right to food requires States to ensure that third parties subject to their jurisdiction (such as their own citizens or transnational corporations), do not violate the right to food of people living in other countries. This puts a duty on the State to regulate its corporations and non-State actors in order to protect the inhabitants of other countries.²⁸ With the increasing monopoly control by transnational corporations over all components of the food distribution chain, from production, trade and processing to marketing and retailing of food, and control over the majority of water concessions worldwide (see E/CN.4/2004/10, paras. 35-52), it is becoming more difficult for less powerful national Governments to regulate transnational corporations working within their territory to respect human rights, making it essential that the often more powerful “home” States engage in adequate regulation. In water privatization, for example, steps should be taken by “home” States to ensure that the policies and activities of transnational corporations respect the right to water of all people in the countries where they are working.²⁹

The extraterritorial obligation to support the fulfilment

37. Governments also have a duty to support the fulfilment of the right to food in poorer countries. Developing States that do not possess the necessary resources for the full realization of the right to food are obliged to actively seek international assistance,³⁰ and wealthier States have a responsibility to help. This requires States, depending on the availability of their resources, to cooperate with other countries to support their fulfilment of the right to food. The obligation to support the fulfilment is constituted by the obligation to facilitate and provide. The obligation to facilitate realization of the right to food does not necessarily require resources or international aid, but rather that all countries should cooperate to provide an enabling environment for the realization of the right to food in all countries. As per article 28 of the

Universal Declaration of Human Rights, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. For example, equitable trade rules would enable all countries to realize the right to food, both in their own countries and in other countries. Development cooperation, already undertaken by most wealthier countries, must also help to create an enabling environment. Most wealthier Governments already recognize their responsibility to facilitate the realization of the right to food in other countries.³¹ In the Monterrey Consensus stemming from the International Conference on Financing for Development held in March 2002, States reaffirmed the goal to provide 0.7 per cent of gross national product for development assistance to developing countries, and 0.15 to 0.20 per cent to least developed countries.

38. To support the fulfilment of the right to food, Governments have an obligation to provide assistance, to the extent that their resources permit, when individuals are suffering in another country, such as a situation of widespread famine. At the same time, emergency aid must always be provided in ways which do not adversely affect local producers and markets and organized in such a manner as to facilitate the beneficiaries return to food self-reliance. Further, it must be safe and culturally acceptable to the recipient population,³² as recognized by States in the Voluntary Guidelines on the right to adequate food. The Committee on Economic, Social and Cultural Rights affirms that:

States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task in accordance with its ability. The role of the World Food Programme (WFP) and the Office of the United Nations High Commissioner for Refugees (UNHCR), and increasingly that of UNICEF and FAO is of particular importance in this respect and should be strengthened. Priority in food aid should be given to the most vulnerable populations.³³

C. The responsibilities of international organizations regarding the right to food

39. This section looks at the human rights responsibilities of international organizations such as the IMF, the World Bank and the WTO. These organizations are so powerful today that they have enormous influence on the policy and programmes of national Governments, particularly in the poorer, weaker countries that are heavily indebted to the international financial system. In relation to the IMF and the World Bank, far-reaching policies of structural adjustment, economic reform and poverty reduction strategies imposed in most developing countries by these agencies have significant impacts on the capacity of a nation State to meet its obligations to ensure the right to food. Far from improving food security for the most vulnerable populations, these programmes have often resulted in a deterioration of food security among the poorest. In Zambia, after a programme of rapid structural adjustment was introduced in the 1990s, an evaluation made by the IMF recognized that the liberalization in agriculture had caused hardship for poor Zambians, with maize consumption falling by 20 per cent between 1990 and 1997 as the poorest could not afford enough to eat.³⁴ The World Bank is also directly engaged in large-scale investment projects which, while they may promote economic growth, is often at the cost of violating the right to food of poor, vulnerable populations, particularly indigenous peoples. Many NGOs and civil society organizations have documented violations of the right to food that

have occurred in the context of programmes and projects funded by the World Bank, with typical cases including dam construction or mining natural resources in areas occupied by minorities or indigenous peoples who are forcibly displaced without due process and compensation.³⁵

40. The WTO also has a significant impact on national government policies and programmes through enforcing trade rules negotiated between its member States. The WTO rules on agricultural trade, for example, have a significant impact on the policies that Governments can choose in terms of maintaining their food security (see E/CN.4/2004/10, para. 14-34).³⁶ Unfortunately, the wide disparities in economic power between the negotiating States has meant that powerful States have negotiated rules that are neither free nor fair. As detailed in reports on the inequities in the current WTO rules on agriculture such as *Rigged Rules and Double Standards* published by Oxfam,³⁷ these trade rules severely affect small farmers and threaten food security, especially in developing countries which have been required to liberalize agriculture to a much greater extent than developed countries.³⁸ The heavy production and export subsidies that OECD countries grant their farmers - more than US\$ 349 billion per year (almost US\$ 1 billion per day) - means 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 the European Union, made promises at the WTO Hong Kong conference in December 2005 to eliminate export subsidies that result in dumping, there has been little concrete progress so far, and WTO continues to enforce inequitable rules.

41. This section outlines a legal framework for the responsibilities of those international intergovernmental organizations, based on the three levels of obligations *to respect, protect, and support the fulfilment of* the right to food. This draws on work that is currently being done by academic institutions and non-governmental organizations to better understand the definition and content of the responsibilities of international organizations in relation to human rights, some of which focus on the right to food. This includes studies by the International Federation of Human Rights Leagues,³⁹ 3D-Trade-Human Rights-Equitable Economy and FORUM-ASIA,⁴⁰ FoodFirst Information and Action Network (FIAN),⁴¹ and by many academics, including S.I. Skogly,⁴² A. Clapham,⁴³ M. Darrow⁴⁴ and B. Ghazi,⁴⁵ as well as the Committee on Economic, Social and Cultural Rights⁴⁶ and the Subcommission for the Promotion and Protection of Human Rights.⁴⁷ There is no question today that international organizations such as the World Bank, IMF and WTO have legal personality under international law. It is clear to the Special Rapporteur that international organizations such as the aforementioned institutions, are bound by international law with regard to the human right to food (see A/60/350, paras. 44-48).

42. In its resolution 60/165 on the right to food, the General Assembly supported this view and requested all international organizations, within their respective mandates, to take fully into account the need to promote the effective realization of the right to food for all (para. 9) and invited:

all relevant international organizations, including the World Bank and the International Monetary Fund, to promote policies and projects that have a positive impact on the right to food, to ensure that partners respect the right to food in the implementation of common projects, to support strategies of Member States aimed at the fulfilment of the right to food and to avoid any actions that could have a negative impact on the realization of the right to food (para. 16).

The obligation of international organizations to respect the right to food

43. The obligation to respect is a minimum obligation, which requires international organizations to ensure that their advice, policies and practices do not lead to violations of the right to food.⁴⁸ This means that, at least with regard to the World Bank and the IMF, international organizations should have minimum negative obligations to respect or not to do harm in relation to the realization of the right to food. The prohibition against doing harm seems to be universally recognized. This means that these organizations should not promote “development” projects that would result in forced displacement or the destruction of sources of livelihood, especially in cases without proper compensation and rehabilitation for the affected populations. It also means that actions and decisions of the World Bank, IMF and WTO should not increase people’s food insecurity in a given country, including the poorest people. Adjustment measures should not be implemented without carrying out impact studies on vulnerable groups, and putting in place necessary safety nets in advance to ensure that they will not result in starvation or chronic malnutrition. The WTO would also have to take due account of the human rights obligations of its members and should advise against the adoption of trade policies that may have negative impacts on the right to food.

The obligation of international organizations to protect the right to food

44. The obligation to protect requires international organizations to ensure that their partners, whether States or private actors, including transnational corporations, do not violate the right to food, inter alia in cases where concessions and contracts are granted, or in common projects that could threaten people’s livelihoods and food security. WTO organs with decision-making power, such as the Dispute Settlement Body (DSB), should protect the right to food in judicial decisions and should ensure that interpretations of WTO law are compatible with the human rights obligations of its member States regarding the right to food.

The obligation of international organizations to support the fulfilment of the right to food

45. The obligation to support the fulfilment of the right to food requires international organizations to facilitate the realization of the right to food and to provide necessary assistance when required for all people, indigenous, minorities and vulnerable groups. This should include facilitating the capacity of all people to feed themselves, as well as helping to ensure emergency support when they cannot feed themselves for reasons beyond their control. In developing countries, where up to 80 per cent of the population may depend on agriculture, small-scale agriculture should form the basis of food security strategies, as non-agricultural employment is often inadequate to absorb all those forced out of agriculture. The WTO should also ensure that the trade rules adopted are raising the standard of living worldwide, and should not allow the persistence of current inequities in rules on agricultural trade.

D. The responsibilities of private actors regarding the right to food: transnational corporations

46. Finally, the Special Rapporteur is concerned that in an era of globalization, private actors, particularly large private transnational corporations have come to hold power greater than nation States, yet as the report of the Secretary-General on the impact of the activities and working methods of transnational corporations in 1996 stated, “the global reach of TNCs is not matched

by a coherent global system of accountability” (E/CN.4/Sub.2/1996/12, para. 72). Despite wielding greater power than ever before, transnational corporations are trying to avoid being held accountable to human rights.

47. According to UNDP *Human Development Report, 2002*, “global corporations can have enormous impact on human rights - in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes”. Today, the top 200 corporations control around a quarter of the world’s total productive assets. Many TNCs have revenues far exceeding the revenues of the Governments of the countries in which they are operating. Concentration has produced huge transnational corporations that monopolize the whole food distribution chain, narrowing choices for farmers and consumers. Just 10 corporations (which include 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.⁴⁹ Monsanto alone controls 91 per cent of the global market for genetically modified seed.⁵⁰ 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.⁵¹ In South Africa, Monsanto completely controls the national market for genetically modified seed, 60 per cent of the hybrid maize market and 90 per cent of the wheat market.⁵² The participation of private sector corporations in food, agriculture and water sectors may improve efficiency, but concentration of monopoly power also brings a danger that neither small producers, nor consumers will benefit. In water privatization for example, two companies, Veolia Environnement, formerly Vivendi Environnement, and Suez Lyonnaise des Eaux, control a majority of private concessions worldwide, and while such monopoly control in some cases can bring increased efficiency, monopoly pricing very often means higher prices which the poorest cannot afford.⁵³

48. Under the traditional application of human rights law, it is usually only possible to hold a Government to account for violations of human rights; it is still not clear how a corporation could be held to account for such violations. However, new developments are occurring within human rights law. In general, however, there are two ways to make corporations respect human rights - one is indirect, the other, direct. Corporations can be held to account indirectly by Governments which have a duty to protect their people and people living in other countries against negative impacts on the right to food of third parties (as has been explained above). From this perspective, Governments are responsible for regulating and preventing the activities of corporations that violate human rights. However, there is a growing perception that corporations can also be held to account for human rights directly, through the development of direct human rights obligations, intergovernmental instruments and voluntary codes of conduct. With new developments in human rights law, it is becoming increasingly clear that transnational corporations have direct obligations to respect human rights (see A/58/330, paras. 43 and 44) and to avoid complicity with human rights violations carried out by others.⁵⁴

Direct obligations of private transnational corporations to respect the right to food

49. In the view of the Special Rapporteur, transnational corporations have direct obligations to at least respect the right to food in all their activities and avoid complicity in violations of the right to food carried out by others, including host Governments. As the Committee on Economic, Social and Cultural Rights states in its general comment No. 12 on the right to food:

While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the right to adequate food ... (para. 20).

50. In many cases, transnational corporations have chosen to abide by human rights law, adopting relevant policies and Codes of Conduct. Numerous codes of conduct have also been developed at the international level which strengthens human rights accountability, including the OECD Guidelines for Multinational Enterprises (see A/58/330, paras. 46-49). However, a strong and coherent system of accountability which fully outlines transnationals' obligations has, until now, been missing at the international level. A new set of 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, adopted by the Sub-Commission on the Promotion and Protection of Human Rights on 13 August 2003 (E/CN.4/Sub.2/2003/12/Rev.2). Based on existing international human rights instruments, this document states that "within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect for and protect human rights recognized in international as well as national law" (para. 1). According to the Norms, transnational corporations:

shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to ... adequate food and drinking water ... and shall refrain from actions which obstruct or impede the realization of those rights (para. 12).

51. Other important intergovernmental instruments applying to private transnational corporations' activities include the OECD Guidelines, under which all adhering Governments (the OECD States, Argentina, Brazil and Chile) are bound to establish national contact points to handle complaints of violations by a transnational corporation. Others include the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the International Code of Marketing of Breastmilk Substitutes adopted by the World Health Organization and UNICEF and the Code of Ethics for International Trade in Food adopted by the Codex Alimentarius Commission. The Secretary-General's Global Compact initiative, by which transnational corporations can commit themselves to "support and respect the protection of internationally proclaimed human rights within their sphere of influence" and "make sure that they are not complicit in human rights abuses" is also an important initiative.

IV. CONCLUSIONS AND RECOMMENDATIONS

52. **The Special Rapporteur recommends that:**

(a) All Governments must act to halt the increase in global undernourishment. Hunger and famine are not inevitable, and are not acceptable in a world that is richer than ever before. As Executive Director of the World Food Programme, James T. Morris, reiterated in his speech on Africa's food crises to the Security Council on 30 June 2005, "In 2000, at the Millennium Summit, every nation here made just that pledge - to halve hunger and poverty. It is time we begin to show progress";

(b) Efforts made by the principal heads of State of the Latin American countries to promote the continental-wide Zero Hunger Campaign stand as an example to the rest of the world. The Special Rapporteur urges all Governments, United Nations organizations and NGOs to support this campaign and achieve the Millennium Goal to halve hunger by 2015;

(c) All Governments must respond to the food crises affecting African countries. Food security cannot be left to the vagaries of the market system. Emergency food aid must be provided; it should not be governed by market principles and food should be distributed free of charge. All Governments should support the Global Emergency Fund;

(d) All Governments must respond to calls for emergency assistance to refugees, especially in the refugee camps of Eastern and Southern Africa where shortages are greatest. It is shocking that WFP is being forced to hand out rations that do not meet international standards for minimum daily calorie requirements per person. This is a violation of the right to food;

(e) All Governments have the obligation to respect, protect and fulfil the right to food of their people. All arbitrary and discriminatory actions by Governments that restrict or exclude poor people from access to food, water and other productive resources constitute a violation of the right to food and the right to water. Appropriate remedies for violations must be instituted;

(f) All Governments must respect extraterritorial obligations by refraining from implementing any policies or programmes that negatively affect the right to food of people living outside their territories. Specifically, all Governments must refrain from dumping agricultural products in other countries and creating food insecurity. Inequities in WTO rules that disadvantage developing countries must be changed;

(g) All powerful private actors, particularly the 500 biggest transnational corporations that control 52 per cent of the world's gross global product, have an obligation to respect the right to food and the right to water, and to avoid complicity in violations of these rights carried out by others. Corporations must accept independent monitoring. With power must come responsibility. All Governments have a duty to regulate transnational corporations to protect people from potential human rights abuses, including through the implementation of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights;

(h) International organizations, such as the World Bank, IMF and WTO, with the power to shape the national policies of Governments must respect human rights and refrain from encouraging any policy, programme or project that will violate the right to food or water;

(i) Payments for debt service should not be prioritized over the right to food and human life. The external debt of developing countries, which exceeded US\$ 2,000 billion last year, is unsustainable and prevents investment in emergency support and development infrastructure that could eradicate hunger. The Special Rapporteur welcomes the G8's proposal to cut debt by US\$ 40 billion at the Gleneagles Summit in 2005, but this is insufficient. Debt eradication must be accelerated;

(j) Water is essential to human life. More than 400 million children do not have regular access to clean drinking water, leaving them vulnerable to disease and early death. Water must therefore be maintained as a common good and the right to water considered as a human right. All Governments must respect the human right of every person to have regular, healthy and unobstructed access to an amount of water adequate in quality and quantity to sustain life;

(k) Every five seconds one child under the age of 5 dies from hunger or malnutrition-related disease. Every four minutes, one person loses his or her eyesight for lack of vitamin A. More than 852 million people do not get enough food each day to sustain a normal life. This is a shame on humanity. It is time to enforce the right to food.

Notes

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