

From Justiciability to Justice: Realizing the Human Right to Food

Nandini Ramanujam, Nicholas Caivano & Semahagn Abebe*

The international human rights regime has recognized the right to food since its inception, yet chronic hunger remains one of the most flagrant human rights violations of our time. Food security—the ability to access adequate, nutritious food—continues to elude almost 1 billion people. In 2008, the economic downturn, coupled with environmental events affecting crop yields, caused global food prices to skyrocket. The resulting food crisis created an even greater urgency to resolve the issue of global food insecurity. This article explores the state's role in facilitating the realization of food security in two contexts: India and Ethiopia.

We analyze the normative content of the right to food in international law and examine the promise and realization of food security in each country. The article sets out key principles for a justice-based framework to food security, an approach based on the state's obligation to ensure the progressive realization of the right to food and reform corrupt or dysfunctional institutions that perpetuate systemic inequality. The approach emphasizes the primacy of four interconnected strategies: (i) strengthening institutions; (ii) improving access to justice; (iii) empowering rights holders; and (iv) supporting food sovereignty.

Le régime international des droits humains a reconnu le droit à l'alimentation depuis le tout début. Pourtant, la faim chronique demeure une des violations des droits humains les plus flagrantes de notre époque. La sécurité alimentaire – la capacité d'un individu à accéder adéquatement à des aliments nutritifs – continue d'échapper à près d'un milliard de personnes. En 2008, la récession économique, ajoutée aux incidents environnementaux ayant affecté les récoltes, a engendré une montée en flèche mondiale des coûts des aliments. La crise alimentaire qui en a résulté a rendu l'urgence de résoudre cette problématique mondiale de l'insécurité alimentaire d'autant plus importante. Cet article aborde le rôle de l'état dans la facilitation de la réalisation de la

sécurité alimentaire dans deux contextes précis : l'Inde et l'Éthiopie. Nous analysons le contenu normatif du droit à l'alimentation dans le droit international et examinons la promesse et la réalisation de la sécurité alimentaire dans chaque pays. L'article établit des principes clés pour un cadre équitable de la sécurité alimentaire, une approche basée sur l'obligation par l'état d'assurer la réalisation progressive du droit à l'alimentation et de réformer les institutions corrompues ou dysfonctionnelles qui perpétuent l'inégalité du système. L'approche met l'accent sur la primauté de quatre stratégies interconnectées : (i) renforcer les institutions; (ii) améliorer l'accès à la justice; (iii) habiliter les titulaires de droits; et (iv) supporter la souveraineté de l'alimentation.

* Nandini Ramanujam is an Associate Professor (Professional), Faculty of Law, McGill University; Executive Director and Director of Programs, Centre for Human Rights and Legal Pluralism; and Principal Investigator, Rule of Law and Economic Development Research Group. Nicholas Caivano is a Law Foundation of Ontario Public Interest Fellow and articling student at Amnesty International; and Academic Associate, Rule of Law and Economic Development Research Group. Semahagn Abebe is a Visiting Professor, Human Rights Institute, University of Connecticut. The authors are grateful to the Rule of Law and Economic Development Fund and the O'Brien Fellows in Residence Fund for supporting this research project.

| | |
|---|----|
| 1. INTRODUCTION | 3 |
| 2. THE RIGHT TO FOOD AND THE RESURGENCE OF THE FOOD SECURITY MOVEMENT | 6 |
| 2.1. HUNGER AND SYSTEMIC INEQUALITY | 6 |
| 2.2. THE RIGHT TO FOOD | 8 |
| 2.2.1. STATES' OBLIGATIONS UNDER INTERNATIONAL LAW | 8 |
| 2.2.2. INTERNATIONAL AND REGIONAL COURTS' INTERPRETATION OF THE RIGHT TO FOOD | 10 |
| 2.2.3. INCORPORATION OF THE RIGHT TO FOOD IN DOMESTIC LEGISLATION | 10 |
| 2.3. THE FOOD SECURITY MOVEMENT | 11 |
| 3. TOWARDS A JUSTICE-BASED FRAMEWORK FOR FOOD SECURITY | 12 |
| 3.1. STRENGTHENING INSTITUTIONS | 13 |
| 3.2. FACILITATING ACCESS TO JUSTICE | 14 |
| 3.3. EMPOWERING RIGHTS HOLDERS | 16 |
| 3.4. SUPPORTING FOOD SOVEREIGNTY | 18 |
| 4. INDIA | 19 |
| 4.1. HUNGER AND FOOD INSECURITY IN INDIA | 20 |
| 4.2. LEGAL AND POLICY FRAMEWORK FOR THE RIGHT TO FOOD | 23 |
| 4.3. CHALLENGES AND OPPORTUNITIES | 25 |
| 5. THE RIGHT TO FOOD IN ETHIOPIA | 28 |
| 5.1. HUNGER AND FOOD INSECURITY IN ETHIOPIA | 28 |
| 5.2. LEGAL AND POLICY FRAMEWORK FOR THE RIGHT TO FOOD | 30 |
| 5.3. CHALLENGES AND OPPORTUNITIES | 34 |
| 6. CONCLUSION | 36 |

1. INTRODUCTION

While some of the world's most impoverished nations are experiencing rapid economic growth, 162 million children under the age of five remain malnourished and will grow up with severe physical and mental deficits.¹ Economic prosperity has done little to reduce hunger among people for whom basic human necessities remain far out of reach. Though the right to food has long been recognized by the international human rights regime, chronic hunger and malnutrition represent one of the worst human rights violations of our time.

Sustainable food security—the ability to access adequate, nutritious food—eludes almost 1 billion people.² Although the global supply of food is keeping pace with population growth,

¹ Gardiner Harris, “Poor Sanitation in India May Afflict Well-Fed Children With Malnutrition”, *The New York Times* (15 July 2014), online: The New York Times <www.nytimes.com>.

² Olivier De Schutter, “Food Security Eludes Almost 1-Billion”, *Business Day* (22 April 2014), online: <www.bdlive.co.za> [De Schutter, *Food Security*]. Food security is the status of those individuals having full access to safe, adequate, and nutritious food to maintain a healthy life. States tend to enjoy food security when food is produced locally and is always available at affordable prices. See Ruparao T Gahukar, “Food Security in India: The Challenge of Food Production and Distribution” (2011) 12:3–4 *J Agricultural & Food Information* 270 at 270. The Food and Agriculture Organization of the United Nations has stated that food security consists of four pillars: availability,

severely distorted global food systems are impeding access to that supply.³ The world's food systems perpetuate power asymmetry and inequality.⁴ These systems have dominated because they maximize agribusiness profits, even though they are highly inefficient in nearly every other way.⁵

The right to food has emerged as one way to direct attention to the ability of the world's poorest and most marginalized to access food, as well as to hold governments accountable for their role in creating an enabling environment for food security. In 1948, the Universal Declaration of Human Rights (UDHR) first recognized that everyone has the right to a standard of living adequate for the health and wellbeing of themselves and their family, which includes access to food.⁶ The International Covenant on Economic Social and Cultural Rights and the UN Convention on the Rights of the Child also recognize the fundamental human right to food.⁷

In the past decade, we have witnessed a surge in interest in the domestic enforceability of the human right to food. With the food crisis of 2008, the issue of sustainable food security moved to the centre of public debate, emphasizing the need for sustainable food production and distribution systems.⁸ As domestic laws begin to incorporate the right to food, human rights practitioners and development experts have begun asking themselves what other approaches are needed to bridge the chasm between rhetoric and practice.

To address the complex challenges inherent in curbing hunger and malnutrition, some countries have begun to adopt elements of what we refer to in this article as a justice-based framework. We posit that the progress and challenges these states have experienced reflect broad implications for the international food security movement. These signs of progress can be attributed to changes occurring within at least one of four dimensions that comprise the justice-based framework: (i) strengthening institutions; (ii) improving access to justice; (iii)

access, utilization and stability. See Committee on World Food Security, *Global Strategic Framework for Food Security and Nutrition*, UNFAO, 39th Sess, CFS 2012/39/5, (2012), online: FAO <www.fao.org/docrep/meeting/026/ME498E.pdf> at 4 [*Strategic Framework for Food Security*].

³ See generally Frances Moore Lappé & Joseph Collins, *World Hunger: Twelve Myths*, 2nd ed (New York: Grove Press, 1998) at 4–6, 9.

⁴ See especially Food and Agriculture Organization of the United Nations, International Fund for Agricultural Development & World Food Programme, *The State of Food Insecurity in the World in 2014*, (Rome: FAO, 2014), online: FAO <www.fao.org/3/a-i4030e.pdf> at 2 [*State of Food Insecurity*]; Institute for Health Metrics and Evaluation, “Global, regional, and national prevalence of overweight and obesity in children and adults during 1980–2013: a systematic analysis for the Global Burden of Disease Study 2013” (2014) 384 *The Lancet* 766 at 770.

⁵ De Schutter, *Food Security*, *supra* note 2.

⁶ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 art 25 (1) [*UDHR*].

⁷ *United Nations Convention on the Rights of the Child*, GA Res 44/25, UNGAOR, 44th Session, Supp No 49, UN Doc A/44/49 (1989) 166 arts 24, 27; *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A, UNGAOR, 21st Sess, Supp No 16, UN Doc A/6316 (1966) 49 art 11 [*ICESCR*].

⁸ Carmen G Gonzalez, “The Global Food Crisis: Law, Policy and the Elusive Quest for Justice” (2010) 13 *Yale Human Rts & Dev LJ* 462 at 462.

empowering rights holders; and (iv) supporting food sovereignty. Similarly, the failings of each country to eradicate hunger can be analyzed through the four components of the framework.

Our model recognizes the inherent dignity of all human beings to access food. It goes beyond a rights-based approach by recognizing hunger's rootedness in disempowerment and poverty, and emphasizing the role of access to justice in ensuring that individuals have equal opportunity to lead healthy lives. As Baldry and McCausland have observed, the ability to utilize the remedies that are available under the human rights system "requires a significant degree of understanding of that system, and the resources and skills to advocate for the rights that are breached. Ironically, it is those most in need of assistance when their human rights are breached that are often least able to access such a system."⁹ The justice-based approach to food security that we present in this paper calls on states to not only enforce human rights, but to facilitate access to remedies and resources, thereby striving towards a vision of systemic social justice. Within this broader conception of justice, the right to food, and its enforceability before various courts and tribunals, enables and empowers individuals to hold states responsible for their role in ensuring that food is available, accessible, and affordable.

While hunger is an incredibly complex problem that no one approach could claim to explain in its entirety, we offer the justice-based framework as one step towards a better understanding of how to address the structural barriers to a world free from hunger. The model presented here suggests that improvements in each of the four elements be pursued at once and guide the development of advocacy strategies. This four-dimension framework is meant as a tool, as well as a starting point for the development of a set of approaches that address the common elements of food insecurity; these approaches transcend national borders and can be applied in multiple contexts.

In this article, we examine India and Ethiopia as examples of countries where justice-based approaches have advanced initiatives to curb hunger and malnutrition. While India's economic growth, food production, population, and geographic area far surpasses that of Ethiopia, its inability to provide consistent access to food for its citizens closely mirrors Ethiopia's struggle in doing the same. Both countries have made progress towards the attainment of international development targets, but each must still overcome a range of challenges in order to ensure that the benefits of recent advancements are shared equally.¹⁰

In India, a non-profit organization launched a high profile public interest suit in 2001.¹¹ The NGO argued that food was available yet wasting away in government warehouses while prevalent hunger was claiming lives. The Supreme Court of India ordered those food supplies to be distributed, which set into a motion an extensive grassroots civil society campaign and resulted in widespread media coverage of the case, demonstrating how the empowerment of rights-holders can drive legislative change. In Ethiopia, a series of programmes and initiatives designed to support food sovereignty have allowed the country to demonstrate progress

⁹ Eileen Baldry & Ruth McCausland, "Social Justice in Development" (2008) [unpublished] at 7 cited in National Pro Bono Resource Centre, "Occasional Paper No 1: What is Social Justice?" (October 2011) at 2.

¹⁰ *United Nations Millennium Declaration*, GA Res 55/2, UNGAOR, 53rd Sess, UN Doc A/Res/55/2 (2000) 1 at para 19, online: <www.un.org/millennium/declaration/ares552e.pdf>.

¹¹ *PUCL v Union of India & others* (2001) Supreme Court of India.

according to several major indicators, such as the attainment of the first MDG goal: halving the level of extreme poverty.¹² The government's Growth and Transformation Plan (GTP) aims to dramatically reduce the number of people dependent on food aid programs and emergency food relief. We examine both case studies in further detail to draw attention to which dimensions of the justice-based approach each government has demonstrated strength in and where opportunities for improvement exist with the potential to create real impact for food security in the country.

The next section of this article places the current food crisis in its historical context. It then analyzes the normative content of the right to food, looking at freedom from hunger as a justiciable legal right within the domestic framework as well as in the international human rights system. In section three, we set out the four dimensions of the justice-based framework to food security. Sections four and five examine hunger and the right to food in India and Ethiopia respectively, and analyze the promise and realization of food security in each country.

2. THE RIGHT TO FOOD AND THE RESURGENCE OF THE FOOD SECURITY MOVEMENT

A country's food system encompasses the availability (production and distribution), accessibility (affordability and allocation), and utilization (knowledge about nutrition and health) of food.¹³ Our analysis will focus on availability and access to food. While we recognize that no single indicator can comprehensively measure human wellbeing, this paper will examine the right to food through the lenses of hunger and malnutrition, two of the most common indicators of food insecurity. In this section, we describe the link between food insecurity and systemic inequality, and the efforts that have been made to reduce hunger and malnutrition. We then discuss the right to food as it has been developed in international law and adopted by domestic constitutions and legislation.

2.1 HUNGER AND SYSTEMIC INEQUALITY

According to the World Food Programme, hunger results in more deaths per year than AIDS, malaria, and tuberculosis combined.¹⁴ Over 3 million children under the age of five have perished from hunger in the last year alone.¹⁵ Millions of others are stunted, weakened by disease, or impaired in their physical or mental development. Those afflicted by chronic hunger lag behind in their studies and other activities that shape their future employment opportunities.¹⁶

¹² Ethiopian Embassy Brussels, News Release, "Ethiopia Cuts Extreme Poverty, Hunger By Half" (13 October 2014), online: Ethiopian Embassy <www.ethiopianembassy.be/en/>.

¹³ USAID has defined food utilization, which is closely linked to literacy rates, as follows: "[f]ood is properly used; proper food processing and storage techniques are employed; adequate knowledge of nutrition and child care techniques exists and is applied; and adequate health and sanitation services exist." US, United States Agency for International Development, *Policy Determination: Definition of Food Security*, (PD-19) (April 13th, 1992) at 3–4.

¹⁴ World Food Programme, "Hunger Statistics" (2014), online: <www.wfp.org/hunger/stats>.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

In the context of global food security, experts disagree on what precise institutional and systemic factors cause hunger to persist despite decades of efforts to eradicate it.¹⁷ For those who view the root cause of hunger and malnutrition as an imbalance between food supply and population growth, hunger is a technical problem to be resolved by applied sciences such as agronomy and demography. The solution, in theory, would be to limit population growth. The analysis in this paper, however, focuses on the link between hunger and socioeconomic deprivation, where hunger is as much a question of political and social justice as it is technical.¹⁸ Hunger can thus be seen as a matter of systemic inequality rather than one of overpopulation, whereby the socio-economic paradigm is to blame, rather than natural constraints. In reality, hunger likely has no single, monolithic cause, and development experts need to examine a range of factors that influence a population's ability to access food.¹⁹

The bulk of the world's poor and undernourished reside in rural areas of the Global South.²⁰ Most are small, marginal, or subsistence farmers who, together, produce approximately seventy percent of the world's food.²¹ These farmers did not benefit from the recent increase in food prices because the cost of inputs, such as fertilizer and seeds, also surged.²² Small farmers have limited access to credit arrangements, irrigation, technical resources, and other inputs that could increase productivity. Their small piece of land is generally the most valuable asset they own and must be offered as collateral to creditors, and is often lost due to unethical lending practices by informal lenders. Under this model, small farmers have considerably less power than their global trading partners. A shift towards market liberalization and globalization increasingly demands that small farmers lower prices and meet the standards set by supermarkets and large export traders.²³

¹⁷ Destaw Yigzaw, "Hunger and the Law: Rethinking the Right to Food" (2011) [unpublished, archived at <papers.ssrn.com/sol3/papers.cfm?abstract_id=1962391>] at 4.

¹⁸ See generally *ibid* at 5.

¹⁹ Amartya Sen, *Development as Freedom* (Oxford, New York: Oxford University Press, 1999) at 162.

²⁰ Thomas Hirsch, Christine Lottje & Michael Windfuhr, "Deepening the Food Crisis? Climate Change, Food Security and the Right to Food" in Sophia Murphy & Armin Paasch, eds *The Global Food Challenge: Towards a Human Rights Approach to Trade and Investment Policies* (Ecumenical Advocacy Alliance: 2009) 79 at 85, online: <www.fian.org/en/library/publication/detail/the_global_food_challenge/>.

²¹ Karla D Maass Wolfenson, *Coping with the food and agriculture challenge: smallholders' agenda*, Food and Agriculture Organization of the United Nations (Rome: FAO, 2013) at 22, online: Food and Agriculture Organization of the United Nations <www.fao.org/fileadmin/templates/nr/sustainability_pathways/docs/Coping_with_food_and_agriculture_challenge__Smallholder_s_agenda_Final.pdf>. Marginal farmers are those who cultivate land up to 1 hectare: Suman Modwell & Bansidhar Rukhaiyar, "The Indian Small and Marginal Farmer: A Tale of Two Villages in Hazaribag" (January 2012) Groupe d'Économie Mondiale Working Paper at 9, online <gem.sciences-po.fr/content/publications/pdf/Modwel_Rukhaiyar_Hazaribag%20Paper012012.pdf/>.

²² Food and Agriculture Organization of the United Nations, *The State of Food Insecurity in the World*, (Rome: FAO, 2011) at 9, online: <www.fao.org/docrep/014/i2330e/i2330e.pdf>.

²³ Peter Hazell, "Five Big Questions about Five Hundred Million Small Farms" (Paper delivered at the IFAD Conference on New Directions for Smallholder Agriculture, Rome, 24–25 January 2011) at 7, online: <193.194.138.127/events/agriculture/doc/papers/hazell.pdf>.

Gonzalez has described how colonialism originally imposed plantation-based production and trade patterns on many developing countries, leading to their entrance into the global economy as producers of natural resources and consumers of imported manufactured goods.²⁴ This reliance on agricultural exports placed these countries at a disadvantage due to the volatility in market prices for agricultural products, as well as the lower bargaining power resultant in negotiating trading contracts for commodities.²⁵ Developing countries that relied on their export of agricultural products could not depend on steady revenue streams for investment.²⁶ With the 2008 surge in food prices, many developing countries that relied on agricultural exports suffered because the price of food staples (such as cereals and oilseeds) rose at a far greater rate than the price of the cash crops they were exporting (such as coffee, cocoa, and cotton).²⁷

Drawing on Sen's seminal research, De Schutter notes that "people may grow hungry in times of boosting yields, as a result of the incomes of certain groups remaining too low while the incomes of others rise."²⁸ As a result, hunger is not the result of inadequate food production—it occurs when individuals can't "afford the food that is available on the markets or because they lack the necessary resources to produce food themselves."²⁹ The conclusion is that hunger and malnutrition are not always the product of a lack of food, but are rooted in disempowerment and poverty.³⁰

2.2 THE RIGHT TO FOOD

2.2.1 STATES' OBLIGATIONS UNDER INTERNATIONAL LAW

The right to food has been recognized in international law and by international judicial bodies, although the specific duties required by states to meet their obligations and the criteria to be used to determine whether the right to food has been realized remain unclear.

²⁴ Gonzalez *supra* note 8 at 462.

²⁵ *Ibid* at 465.

²⁶ See James M Cypher & James L Dietz, *The Process of Economic Development* (New York: Routledge, 1997) at 86.

²⁷ See Gonzalez, *supra* note 8 at 465. Subsidies in the US and the EU also contribute to an uneven playing field among international trade partners, leaving developing countries at a disadvantage. See Randy Schnepf, *Agriculture in the WTO Bali Ministerial Agreement*, Congressional Research Service Report (2014) online: Federation of American Scientists <fas.org/sgp/crs/misc/R43592.pdf> at 2-3.

²⁸ Olivier De Schutter, "Countries Tackling Hunger with a Right to Food Approach" (May 2010) Briefing Note 01, at 5, online: <www2.ohchr.org/english/issues/food/docs/Briefing_Note_01_May_2010_EN.pdf> [De Schutter, "Tackling Hunger"]; Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (New York: Oxford University Press, 1981).

²⁹ *Ibid.*

³⁰ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (New York: Oxford University Press, 1981) at 154–155.

Domestically, the right to food is increasingly being incorporated into states' constitutions as local legislatures impose specific obligations upon government officials.³¹

The first expression of the right to food appeared in article 25 of the UDHR, which states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.”³² The right was later codified in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).³³ It is defined in the ICESCR as the right to freedom from hunger and to sustainable access to enough food to satisfy one’s dietary and cultural needs.

State parties to the ICESCR are required to take steps to progressively achieve the right to adequate food.³⁴ Progressive realization implies moving “as expeditiously as possible” towards this goal, acting immediately “to mitigate and alleviate hunger ... even in times of natural or other disasters.”³⁵ The Committee on Economic, Social and Cultural Rights (CESCR) has concluded that right to adequate food implies ensuring:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; [and] [t]he accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.³⁶

In his study on freedom from hunger as a human right, Eide developed a framework for describing the duties states have to meet their obligations to rights holders.³⁷ These are: the duty to respect, the duty to protect, and the duty to fulfill human rights. The duty to *respect* the right to food is an obligation not to interfere with existing access to food and to refrain from any action that might prevent that access. The duty to *protect* requires states to ensure that third parties—such as private individuals or companies—do not deprive citizens within their jurisdiction of their access to food. The duty to *fulfill* means that “the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and

³¹ In 2010, for example, Brazil added “food” as an enumerated social right in its domestic constitution: *Constitution of the Federative Republic of Brazil*, 3rd ed, 2010, art 6. In 2011, Mexico incorporated the right to food into its constitution, stating that the “State shall guarantee” the “right to nutritional, sufficient and quality nourishment”: *Political Constitution of the United Mexican States*, 1917, art 4.

³² *UDHR*, *supra* note 6, art 25(1).

³³ See generally Philip Alston, “International Law and the Human Right to Food” in Philip Alston & Katarina Tomasevski, eds, *The Right to Food* (The Netherlands: Martinus Nijhoff, 1984) 9 at 30-32; *ICESCR*, *supra* note 7, art 11; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 Can TS 1976 No 47, 6 ILM 368 (entered into force 23 March 1976) [*ICCPR*]; *ICESCR*, *supra* note 7, art 11(2).

³⁴ *Ibid*, art 2(1).

³⁵ *Ibid* at para 6; Commission on Human Rights, *General Comment No 12: The Right to Adequate Food*, UNESCOR, 1999, UN Doc E/C12/1999/5, at para 14 [*General Comment*].

³⁶ *General Comment*, *supra* note 35 at para 8.

³⁷ Commission on Human Rights, *The New International Economic Order and the Promotion of Human Rights: Report on the Right to Adequate Food as a Human Right*, UNESCOR, 29th Sess, UN Doc E/CN.4/Sub.2/1987/23 (1987) at 58ff.

means to ensure their livelihood, including food security.”³⁸ Thus, whenever individuals cannot enjoy their right to food for reasons outside their control, states must take action to fulfill that right directly.³⁹

2.2.2 INTERNATIONAL AND REGIONAL COURTS’ INTERPRETATION OF THE RIGHT TO FOOD

In recent years, claimants have sought recourse before regional human rights courts in an effort to hold the state accountable for its role in realizing the right to food. In 2012, for example, the Inter-American Court of Human Rights (IACHR) released its judgment in the case of *Sarayaku v Ecuador*, choosing to protect the rights of the Sarayaku community against a concession given to an Argentinian corporation for oil exploitation.⁴⁰ The court accepted the community’s arguments that the corporation’s plans for their territory, particularly the placement of explosives in the forest where community members lived, had severe impacts on their right to food.⁴¹ In addition, the corporation’s planned oil exploitation in the areas in which the community hunts, fishes, and gathers food would have seriously affected the community’s food security.⁴² The IACHR concluded that many rights of the indigenous community members had been violated, including their rights to communal property, consultation, and life. It ordered the Government of Ecuador to pay the community US\$1,340,000 as compensation to implement “educational, cultural, food security, health and eco tourism development projects or other communal works or projects of collective interest that the Community considers a priority.”⁴³

In the 2012 case of *Stanev v Bulgaria*, the European Court of Human Rights held that providing inadequate food to persons in social care institutions could amount to inhuman and degrading treatment. For seven years, Stanev was forced to live in a psychiatric institution in unsanitary conditions and with insufficient and poor quality food.⁴⁴ The court reasoned that the living conditions to which Stanev was exposed during the considerable seven-year period amounted to degrading treatment, contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁴⁵ The court also confirmed that states may not use a lack of financial resources as a defense when faced with alleged rights violations.⁴⁶

2.2.3 INCORPORATION OF THE RIGHT TO FOOD IN DOMESTIC LEGISLATION

At the domestic level, the recognition of the right to food as a justiciable right is increasingly gaining ground. Ecuador was one of the first countries to insert the right to food

³⁸ *General Comment*, *supra* note 35 at para 15.

³⁹ *Ibid.*

⁴⁰ *Kichwa Indigenous People of Sarayaku Case (Ecuador)* (2012), Inter-Am Ct HR (Ser C) No 245 at para 284.

⁴¹ *Ibid* at paras 100, 134.

⁴² *Ibid* at para 174.

⁴³ *Ibid* at paras 317, 323.

⁴⁴ *Stanev v Bulgaria* [GC], No 36760/06, [2012] I ECHR 3, at paras 209–210.

⁴⁵ *Ibid* at paras 212–13.

⁴⁶ *Ibid* at para 210.

into its constitution.⁴⁷ The provision states that “[f]ood sovereignty is a strategic objective and an obligation of the State in order to ensure that persons, communities, peoples and nations achieve self-sufficiency with respect to healthy and culturally appropriate food on a permanent basis.”⁴⁸

De Schutter has suggested that explicit acknowledgment of the right to food within a country’s constitution is a major advancement due to the primacy that constitutions have over ordinary laws.⁴⁹ A clear articulation of the right to food in a country’s constitution also reduces uncertainty by avoiding the possibility that judicial interpretation could narrow or misinterpret the right. It improves accountability, as every government policy must be consistent with the constitutional provision, and acts deemed unconstitutional will be annulled or rendered inapplicable. Constitutional recognition of a right also empowers individuals to demand others laws and policies from their government that create a more enabling environment for the realization of the right to food.⁵⁰

2.3 THE FOOD SECURITY MOVEMENT

Using the rhetoric of human rights to frame hunger and malnutrition usefully draws the focus of food security improvement efforts on to the world’s poorest and most marginalized. This approach has drawn increased attention in recent years. In response to the 2008 food crisis, hunger and malnutrition has resurfaced on national agendas. The United Nations has also begun highlighting and supporting the realization of the right to food as a way to hold governments accountable for grave human rights violations.⁵¹

One of the forces behind the resurgence of the food security movement is the increased attention of the international community on the attainment of the Millennium Development Goals (MDG). In 2000, the UN Millennium Summit set a goal of halving the proportion of people who suffer from hunger between 1990 and 2015.⁵² That same year, the UN Commission on Human Rights appointed its first Special Rapporteur on the Right to Food in order to “respond fully to the necessity for an integrated and coordinated approach in the promotion and protection of the right to food.”⁵³ Ban Ki-Moon, Secretary-General of the United Nations,

⁴⁷ Karla Peña, “Institutionalizing Food Sovereignty in Ecuador” (Paper delivered at the Food Sovereignty: A Critical Dialogue International Conference, Yale University, 14-15 September 2013) [unpublished] at 1, online: Yale University <www.yale.edu/agrarianstudies/foodsovereignty/pprs/51_Pena_2013-1.pdf>.

⁴⁸ *Constitution of the Republic of Ecuador*, 2008, art 281, online: <pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

⁴⁹ De Schutter, “Tackling Hunger”, *supra* note 28 at 5.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *United Nations Millennium Declaration*, GA Res 55/2, UNGAOR, 53rd Sess, UN Doc A/Res/55/2 (2000) 1 at para 19, online: <www.un.org/millennium/declaration/ares552e.pdf>.

⁵³ United Nations Office of the High Commissioner for Human Rights, “The Right to Food: Overview of the Mandate”, *OHCHR*, online: <www.ohchr.org/EN/Issues/Food/Pages/Overview.aspx>.

stated in that the MDGs “have been the most successful global anti-poverty push in history.”⁵⁴ Despite the progress that has been made, Ki-Moon identified world hunger as an area “where action is needed most.”⁵⁵

As of September 2015, a new set of goals will guide the international development movement, promising to incorporate a broader notion of justice than the MDGs. The Sustainable Development Goals (SDGs) draw on the United Nations’ efforts to mainstream human rights into other dimensions of its work. Goal Two affirms the international community’s aspiration to “end hunger, achieve food security and improved nutrition and promote sustainable agriculture.”⁵⁶ The overarching objective of the SDGs is to eradicate global poverty by the year 2030.⁵⁷

3. TOWARDS A JUSTICE-BASED FRAMEWORK FOR FOOD SECURITY

The increased attention being given to the right to food is closely linked with a budding trend in international development circles to explore tenets of what we refer to in this paper as the “justice-based approach.”⁵⁸ Traditionally, the right to food, often grouped in under the umbrella term of “economic, social and cultural rights” (ESC), has been the domain of human rights organizations, not development experts. This may be because development experts were focused on implementing resource-intensive technical interventions in target countries, and did not see ESC rights—which were essentially a legal interpretation of their work—as useful or relevant to their mission. The increased synergy between human rights defenders and development experts began in the 1990s, when NGOs began paying more attention to the needs of the poor and examining how the rhetoric of ESC rights could be used to improve human rights outcomes by reducing poverty.

Over the past two decades, many have offered advice to NGOs about how they should do more to protect the right to food, as well as ESC rights more generally.⁵⁹ These suggestions, however, have largely overlooked how human rights can be harnessed to achieve real progress in the fight to eradicate hunger. As the ten-year anniversary of the FAO council’s adoption of the *Right to Food Guidelines* approaches, we offer the following justice-based approach based

⁵⁴ United Nations, *The Millennium Development Goals Report 2013*, (New York: United Nations, 2013) 1 at 3.

⁵⁵ *Ibid.*

⁵⁶ *Synthesis report of the Secretary-General on the post-2015 sustainable development agenda*, UNGAOR, 69th Sess, UN Doc A/69/700 (2014) 1 at 14, online: <www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E>.

⁵⁷ *Ibid* at 17.

⁵⁸ See e.g. Michael J McDermott, “Constitutionalizing an Enforceable Right to Food: A New Tool for Combatting Hunger” (2012) 35 BC Int’l & Comp L Rev 543; Vinodh Jaichand, “After Human Rights Standard Setting, What’s Next?” (2014) 20 SUR 35; David D’Hollander, Axel Marx & Jan Wouters, “Integrating Human Rights into Development Cooperation” (2014), online: Groep Humane Wetenschappen <ghum.kuleuven.be/ggs/projects/policy-research-centre/documents-1/15-stp-report-integrating-human-rights-in.pdf>.

⁵⁹ See e.g. Kenneth Roth, “Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization” (2004) 26:1 Hum Rts Q 63 at 63, 65.

on the lessons learnt in India and Ethiopia in an effort to provide practical guidance.⁶⁰ We have drawn from the common structural drivers of food insecurity between these two countries and present four dimensions for achieving food security in other developing contexts. As our case studies show, the value of the justice-based approach is that it focuses attention on discriminatory or arbitrary conduct by institutions, which perpetuates systemic inequality and contributes to food insecurity.

The justice-based approach emphasizes the state's positive obligations, which find their roots in national laws and constitutions and are bolstered by international human rights agreements. We present the key components of the justice-based approach as four distinct yet interrelated strategies: (i) strengthening institutions; (ii) improving access to justice; (iii) empowering rights holders; and (iv) supporting food sovereignty. If hunger and malnutrition are indeed the result of a lack of accountability and pervasive systemic inequality, creating an enabling environment for all individuals to access adequate food on an equal basis with others and hold duty-holders accountable for rights violations can significantly contribute to sustainable food security. We hope that drawing attention to these issues could help guide the realization of the right to adequate food through strong domestic institutional mechanisms that increase support to the state's most marginalized citizens.⁶¹

3.1 STRENGTHENING INSTITUTIONS

Ineffective, inefficient, or corrupt institutions are one of the major underlying causes of food insecurity.⁶² For states to achieve measurable progress towards curbing hunger, they must understand and acknowledge the contribution of domestic institutions to food security and set up an effective national strategy to strengthen them. The justice-based approach focuses on the primacy of institutions over policy as the key determinant of sustainable economic growth.⁶³ As North has stated:

Institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights). [They] provide the incentive structure of an economy; as that structure evolves, it shapes the direction of economic change towards growth, stagnation, or decline.⁶⁴

⁶⁰ They were adopted in November 2004: see Food and Agriculture Organization of the United Nations, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of the national food security*, (Rome: FAO, 2005), at I, online: <www.fao.org/3/a-y7937e.pdf>.

⁶¹ See generally De Schutter, "Tackling Hunger", *supra* note 28 at 13–14.

⁶² In this paper, we use the term "institutions" to refer to the legal, administrative, and customary arrangements for repeated human interactions in any society.

⁶³ Nandini Ramanujam et al., *The Rule of Law and Economic Development: A Comparative Analysis of Approaches to Economic Development across the BRIC Countries* (Montreal: Rule of Law and Economic Development Research Group, 2012) at 65, online: McGill University <www.mcgill.ca/roled/files/roled/mcgill_roled_report_2012.pdf>.

⁶⁴ Douglass C North, "Institutions" 5:1 (1991) *J Econ Perspectives* 97 at 97.

It is widely agreed upon that the quality of institutions has a significant impact on a state's economy and the level of poverty its citizens' experience.⁶⁵ Yet, in the human rights literature, few scholars have examined to what extent the institutions in a particular state constitute an enabling environment for the right to food to be realized. Institutions have become a major focus for evaluating a state's economy yet few human rights practitioners have extended this analysis to explain the link between effective institutions and food security.

Some institutions have an indirect yet important impact on food security. The judiciary, for example, allows individuals to hold government officials responsible for neglecting their duties. Public safety nets that are set up with the purpose of redistributing resources to remedy inequality provide another example. In other contexts, institutions have a direct impact on access to food. In the next section, for example, we discuss India's Public Food Distribution System, which has experienced significant difficulty in meeting its goal of distributing food to those in need. Both types of institutions require attention and analysis according to the justice-based approach.

As De Schutter explains, states have an obligation to ensure that:

institutions that are set up as part of a national strategy for the realization of the right to food [are] sufficiently well resourced. This is true both for participatory bodies in which civil society is involved, for independent monitoring bodies, including national human rights institutions and courts, as a condition of their independence.⁶⁶

Encouraging states to focus on the structural drivers of food insecurity draws attention to the specific ways in which the transparency and stability of institutions can be increased.⁶⁷ Such an analysis requires a consideration of local factors, such as conflict or political instability particular to the state in question. This step also requires states to identify which segments of their population are food insecure, and use disaggregated data to analyze which institutions should be targeted for reform.⁶⁸

3.2 FACILITATING ACCESS TO JUSTICE

Access to judicial institutions allows poor or otherwise marginalized groups to seek recourse in situations where states fail in their positive duty to realize the right to food or when multinational corporations interfere with individuals' ability to produce or access adequate food. While a legal framework may provide protections for human rights, individuals must also have access to and be educated about the effective and impartial processes that adjudicate disputes.⁶⁹ On this issue, the United Nations Committee on Economic, Social, and Cultural rights has affirmed that "[a]ny person or group who is a victim of the violation of the right to

⁶⁵ See Daron Acemoglu & James A Robinson, "Why Nations Fail: The Origins of Power, Prosperity, and Poverty" (New York: Crown Publishers, 2012).

⁶⁶ De Schutter, "Tackling Hunger", *supra* note 28 at 14.

⁶⁷ See generally *Strategic Framework for Food Security*, *supra* note 2 at 6.

⁶⁸ *Ibid* at 25.

⁶⁹ Marc J Cohen & Mary Ashby Brown, "Access to Justice and the Right to Adequate Food: Implementing Millennium Development Goal One" (2005) 6:1 SDLP 54 at 54.

adequate food should have access to effective judicial or other appropriate remedies at both national and international levels.”⁷⁰

An individual’s access to justice depends heavily on the local context. Golay has presented three elements that, at minimum, must be present in a given legal system for individuals to have access to justice: the right to food must be enshrined in the law; legal remedies must exist and be applicable to the case at issue; and oversight bodies must recognize their role in offering remedies to ensure the right to food is realized.⁷¹

For the extreme poor, however, access to justice remains elusive even when these factors are in place. Such individuals must overcome the high cost of legal advice in many jurisdictions, as well as administrative and other costs associated with using judicial mechanisms. Comparatively lower access to information and education about judicial processes is also at issue. As the former UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, has stated:

Poor functioning of the justice system particularly affects the poor, because pursuing justice requires a much greater effort and investment in terms of money and time for them, while their chances of a just and favourable outcome are worse. The deprivations that persons living in poverty encounter throughout their lives — lack of access to quality education, reduced access to information, limited political voice and social capital — translate into lower levels of legal literacy and awareness of their rights, creating social obstacles to seeking redress.⁷²

Thus, states must not only ensure that the right to food is justiciable and that relevant avenues for recourse are in place, but also that the barriers to access to justice affecting those living in extreme poverty are broken down.

A focus on access to justice also ensures that policy reforms take into account the massive power asymmetry that exists between small farmers and major corporations. More so than ever before, the phenomenon of multinational corporations exercising increasing control over major sectors of the world economy necessitates strengthened domestic remedies to allow rights holders to hold powerful international stakeholders accountable for rights abuses. Large multinational corporations have come to “monopolize the food chains, from production, trade, processing, to the marketing and retailing of food, narrowing choices for farmers and consumers.”⁷³ This monopoly often produces little benefit for small farmers or consumers

⁷⁰ Committee on Economic, Social and Cultural Rights, *General Comment No 12: The Right to Adequate Food*, UNESCOR, 1999, UN Doc E/C.12/1999/5 1 at para 32.

⁷¹ Christophe Golay, *The Right to Food and Access to Justice: Examples at the National, Regional and International Levels* (Rome: Food and Agriculture Organization of the United Nations: 2009) at 59, online: Food and Agriculture Organization of the United Nations <www.fao.org/docrep/016/k7286e/k7286e.pdf>.

⁷² Special Rapporteur on extreme poverty and human rights, *Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives*, UNGAOR, 67th Sess, UN Doc A/67/278 (2012) 1 at 6.

⁷³ Jean Ziegler et al, *The Fight for the Right to Food* (London: Palgrave Macmillan, 2011) at 337.

in the world's poorest countries.⁷⁴ While multinationals exercise increasing control over the world's food production, there are few mechanisms to ensure that they respect international human rights standards.

Access to justice is undermined when states promote policies that are at odds with one another. One branch of government might commit to protecting the right to food, while another branch promotes policies that undercut efforts to achieve food security.⁷⁵ For example, a state might simultaneously commit to a national hunger reduction strategy while participating in trading arrangements that leave their citizens virtually without recourse to corporations that commit rights abuses (often due to local courts lacking jurisdiction over foreign-based multinationals).⁷⁶

3.3 EMPOWERING RIGHTS HOLDERS

Rights holders must be empowered to assert their claims against state officials who do not fulfill their positive duty to realize the right to food. Empowerment is the process by which individuals and communities increase their agency and control over their own lives.⁷⁷ Stakeholders should be empowered to claim their rights, insist that they be fully implemented by those responsible, and seek their enforcement in domestic courts when they are violated.⁷⁸ Initiatives should focus on education and capacity building so that rights holders can hold those within the government responsible to account, rather than wait passively for services to be provided and for law and policy to be reformed.⁷⁹

Empowerment is closely linked to other elements of the justice-based approach, such as the strengthening of institutions and facilitating access to justice. For states to take steps towards the progressive realization of the right to food, they must first strengthen institutions that can directly empower rights holders, particularly the judiciary and other complaints and oversight mechanisms. Courts must be independent and have the power to adjudicate claims related to the right food. Claimants must have access to information about their rights and how to enforce them, as well as access to justice and institutions.⁸⁰

⁷⁴ For example, genetically modified seeds have increased corporate profits by creating vertical integration between seed, pesticides and production. As Jean Ziegler et al. explain, no major investments have been made by food multinationals in any of the five most important crops of the world's poorest countries (sorghum, millet, pigeon pea, chickpea, groundnut) with the most potential to improve food security in those regions. *Ibid.*

⁷⁵ *Ibid* at 335.

⁷⁶ *Ibid.*

⁷⁷ Richard Claude, *Popular Education for Human Rights: 24 Participatory Exercises for Facilitators and Teachers* (Cambridge, MA: Human Rights Education Associates, 2000) at 6, online: <archive.hrea.org/pubs/Popular_Education/PopEd.html>.

⁷⁸ United Nations Children's Fund & United Nations Educational, Scientific and Cultural Organization, *A Human Rights-Based Approach to Education to All* (New York: UNICEF, 2007) at 2–3, online: <www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_All.pdf>.

⁷⁹ *Ibid* at 10–11.

⁸⁰ See De Schutter, "Tackling Hunger", *supra* note 28 at 14.

Empowering rights holders is presented here as distinct from strategies that emphasize allocating resources to strategic litigation efforts because, even where attempts to sway the courts to order a legislative change fail, empowerment can set into motion processes that extend beyond the immediate impact of a successful lawsuit. The attention given to rights-holders who speak out can, for example, apply political pressure that jolts stakeholders into action, or, in the short term, lead to rhetorical commitments by governments which provide momentum that fuels further change. According to Amon, Wurth, and McLemore, rhetorical commitments “set a marker for future dialogue around the pace, and barriers, to effectuating demonstrable changes.”⁸¹ For these reasons, we emphasize the potential of empowered rights holders to claim their right to court-ordered remedies as well as set into motion broader discussions with the potential to generate real impact.

Targeted empowerment approaches may be required for particularly marginalized rights holders, such as women and indigenous people, who are most vulnerable to weak institutions and inadequate access to justice. Women play a major role in producing and preparing food, yet 70 percent of the world’s hungry are women.⁸² One reason for this is that laws and policies often discriminate against women in gaining access to productive resources, such as land and credit. Despite legal protections, women face obstacles to inheritance and purchase of land in many jurisdictions. Indigenous groups are also particularly vulnerable. Long processes of colonization, exploitation, and political and economic exclusion have left many indigenous peoples at the bottom of the socio-economic scale and with limited access to productive resources.⁸³

Some states may benefit from enacting a national framework law regarding the right to food that includes provisions explicitly addressing marginalized groups. A framework law could articulate the provisions regarding food security set out in the ICESCR and “give a precise definition of the scope and content of this human right, set out obligations for state authorities and private actors, establish necessary institutional mechanisms and give the legal basis for subsidiary legislation and other necessary measures to be taken by the competent state authorities.”⁸⁴ Such a law could also specify that government institutions will be held accountable if they do not comply with their duties under the framework.⁸⁵ In addition to enforcement guarantees, it could ensure monitoring by charging human rights institutions with the task of evaluating the progress made towards national goals and ensuring that vulnerable groups are not excluded. As De Schutter has affirmed, “[t]he entrenchment of the right to food in domestic law makes the right to food operational at the national level as victims of right to food violations can obtain ownership, and utilize the law to seek remedy and accountability.”⁸⁶

⁸¹ Joseph J Amon, Margaret Wurth, & Megan McLemore, “Evaluating Human Rights Advocacy on Criminal Justice and Sex Work” (2015) 17:1 Health and Human Rights J [forthcoming in June 2015], online: <www.hhrjournal.org/2015/01/29/evaluating-human-rights-advocacy-on-criminal-justice-and-sex-work/>.

⁸² Ziegler et al, *supra* note 73 at 336.

⁸³ *Ibid.*

⁸⁴ Food and Agriculture Organization of the United Nations, *Methodological Toolbox on the Right to Food* (Rome: FAO, 2009), at 4, online: <www.fao.org/docrep/014/i0815e/i0815e.pdf>.

⁸⁵ De Schutter, “Tackling Hunger”, *supra* note 28 at 5–6

⁸⁶ *Ibid* at 6.

Several states have already adopted framework laws, and others have initiated efforts to draft one. Guatemala adopted such a law in 2005, Brazil in 2006, and Nicaragua in 2009.⁸⁷

3.4. SUPPORTING FOOD SOVEREIGNTY

States must be supported in their efforts to attain food sovereignty. Food sovereignty has been described as:

the right of individuals to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; to restrict the dumping of products in their markets.⁸⁸

As a by-product of globalization, imported foods are increasingly replacing locally grown foods in both subsistence and commercial sectors.⁸⁹ As a result, citizens of the developing world—as well as governments—have lost control of their food security. The justice-based framework for food security requires support for food sovereignty as a vital strategy to combat global hunger. The approach challenges the existing model of agricultural trade, which has cultivated an “export-oriented, industrial agriculture that is displacing peasant and family agriculture.”⁹⁰ Food sovereignty emphasizes the needs of farmers and local citizens in policymaking, rather than prioritizing the demands of international markets and corporations.⁹¹

A key tenet of food sovereignty is that the rights of small farmers should be protected because of their potential to improve food security in their local communities.⁹² Food sovereignty has been seen as a way to “stop the race to the bottom in terms of price and the resulting disintegration of rural communities.”⁹³ This approach emphasizes not only farmers’ access to land but also to agricultural resources such as seeds and water. It also has a major focus on “local autonomy, local markets, local production-consumption cycles, energy and technological sovereignty, and farmer-to-farmer networks.”⁹⁴ Thus a food sovereignty approach would support a strategy of raising subsidies for small farmers producing for domestic markets, and lowering or eliminating subsidies for large-scale farming or the export sector.

For states to move towards food sovereignty they will need to take progressive steps to regain control over their domestic and international food security policy. Under current World Trade Organization (WTO) agreements, “countries are losing control of their ability to decide

⁸⁷ *Ibid* at 5.

⁸⁸ La Via Campesina, “People’s Food Sovereignty-WTO Out of Agriculture”, (2 September 2003), *La Via Campesina*, online: <viacampesina.org/en/index.php/main-issues-mainmenu-27/food-sovereignty-and-trade-mainmenu-38/396-peoples-food-sovereignty-wto-out-of-agriculture>.

⁸⁹ James Thuo Gathii, “Food Sovereignty for Poor Countries in the Global Trading System” (2011) 57 *Loy L Rev* 509 at 509–510.

⁹⁰ Ziegler et al, *supra* note 73 at 352–353.

⁹¹ See Forum for Food Sovereignty, “Declaration of Nyeleni” (27 February 2007) *Nyeléni*, online: <www.world-governance.org/IMG/pdf_0072_Declaration_of_Nyeleni_-_ENG.pdf>.

⁹² Ziegler et al, *supra* note 73 at 354.

⁹³ Daryll E Ray, “Food Sovereignty”, *MidAmerican Farmer Grower* 21:34 (August 2003) 22 at 22.

⁹⁴ Miguel A Altieri, “Agroecology, Small Farms, and Food Sovereignty”, *Monthly Review* 61:3 (January 2009) 102 at 104.

their own food and agricultural policies.”⁹⁵ These agreements have eliminated states’ discretion to adopt certain policy options, such as tariffs on imports.⁹⁶ Furthermore, under the existing WTO rules, it is very difficult for states to reverse a process of liberalization once it has already begun. On this issue, the Government of Norway suggested in 2010 that states “be granted the flexibility in national policy design to foster domestic agricultural production necessary to address domestic non-trade concerns.”⁹⁷

Food sovereignty is closely linked to the realization of the right to food because governments are bound by international law to find the best possible way to ensure food security for their citizens. In the face of accumulating evidence that the existing world trading system is keeping food security out of reach for many of the world’s poorest and most marginalized, food sovereignty “offers an alternate vision that treats trade as a means to an end, rather than an end in itself.”⁹⁸ Given that, as we have discussed above, food insecurity often results when local farmers lack access to resources that support their agricultural efforts, a focus on food sovereignty would emphasize a call to access to resources for the poor and other marginalized groups, such as women.

The food sovereignty movement is consistent with the justice-based approach because it encompasses the legal right to food while recognizing that the realization of this human right should include access to food-producing resources, so that individuals and communities are able to sustain themselves.⁹⁹ While the concept of food sovereignty overlaps with the human right to food, food sovereignty encompasses elements not yet contained in the international community’s legal definition of the right to food. As the international community continues to grapple with what specific obligations the right to food imposes on governments, the food sovereignty discourse may help by articulating a broader vision for how individuals and communities can regain access and control over food and other productive resources.

Having examined the four components of the justice-based approach to food security, this article will now turn to two case studies that illustrate how elements of the approach have been used successfully.

4. INDIA

The case of India demonstrates how elements of the justice-based approach can be used to support justiciable human rights to advance food security. As we discuss, when rights holders are empowered and claimants have access to justice, the enforceability of the right to food can help create what matters most to the world’s hungry: real change. Strengthening this deeply-flawed

⁹⁵ *Ibid* at 354.

⁹⁶ *Ibid*.

⁹⁷ Norway, Ministry of Agriculture, “Multifunctional Agriculture: The Case of Norway”, Publication No M-0722E (Oslo: 2002) at 16, online: <www.regjeringen.no/upload/LMD/Vedlegg/Brosjyrer_veiledere_rapporter/179755-multifunc_red.pdf>.

⁹⁸ Ziegler et al, *supra* note 73 at 356.

⁹⁹ Forum for Food Sovereignty, “Rome/CSO Forum 2002, A Right For All: Political Statement of NGO/CSO Forum for Food Sovereignty” (8 June 2002) *Nyeléni 2007* at 3, online: <www.nyeleni.org/spip.php?article125&var_recherche=%20FOOD%20SOVEREIGNTY%3A%20A%20RIGHT%20FOR%20ALL>.

yet critical institution will be necessary to end an intergenerational cycle of food deprivation and malnutrition. This section provides an overview of the historic context and current state of hunger and food insecurity in India. We then examine the legal and policy framework in place for realizing the right to food and major developments in this regard. Next, we reflect on India's use of a justice-based framework in improving food security. We analyze the challenges and opportunities to combatting hunger and malnutrition in the country, focusing on the performance of the government's existing food-grain procurement and distribution system.¹⁰⁰

4.1 HUNGER AND FOOD INSECURITY IN INDIA

India experienced its worst and last famine in 1943.¹⁰¹ The West Bengal famine left over three million people dead of starvation and malnutrition.¹⁰² Since its independence in 1947, India has made immense progress in taking measures to prevent further occurrences of famine and severe food shortages. The government invested in agriculture and rural infrastructure, which quadrupled the country's production of rice and wheat.¹⁰³ Even though many areas in India are frequently affected by drought, cyclones, and other natural disasters, the country has overcome the threat of severe famine. This is in part due to its ability to rapidly transport food grain through the Public Food Distribution System (PDS), which emerged prior to Indian independence as a means to protect consumers from food shortages and producers from price fluctuations.¹⁰⁴ The PDS is "a rationing mechanism that entitles households to specified quantities of selected commodities at subsidized prices."¹⁰⁵ Since 1965, it has been overseen by the government-owned Food Corporation of India (FCI).¹⁰⁶ In terms of productive capacity, India should be able to maintain adequate supplies of food to feed its population, which exceeds one billion people.¹⁰⁷

¹⁰⁰ See generally Avinash Kishore, P K Joshi & John Hoddinott, "India's Right to Food Act: A Novel Approach to Food Security" in International Food Policy Research Institute, ed, *2013 Global Food Policy Report* (Washington: International Food Policy Research Institute, 2014) 30 at 41, online: <www.ifpri.org/sites/default/files/publications/gfpr2013_ch03.pdf>.

¹⁰¹ We take "food crisis" to denote a severe shortage of food, and "famine" to denote an escalation of that crisis to the point where the shortage poses a threat to survival.

¹⁰² World Food Programme, *Enabling Development: Food Assistance in South Asia*, (New Delhi: Oxford University Press, 2001) at 61.

¹⁰³ Ziegler et al, *supra* note 73 at 258.

¹⁰⁴ See Alessandro Tarozzi, "The Indian Public Distribution System as Provider of Food Security: Evidence from Child Anthropometry in Andhra Pradesh" (2005) 49:5 *European Economic Review* 1305, online: <www.princeton.edu/rpds/papers/Tarozzi_The_Indian_Public_Distribution_System_as_provider_of_food_security_EER.pdf>.

¹⁰⁵ Madhura Swaminathan, *Programmes to Protect the Hungry: Lessons from India*, UNESA, UN Doc ST/ESA/2008/DWP/70 (2008) at 2, online: <www.un.org/esa/desa/papers/2008/wp70_2008.pdf>.

¹⁰⁶ TNAU Agritech Portal, "Food Corporation of India", *TNAU Agritech Portal*, online: <agritech.tnau.ac.in/agricultural_marketing/agrimark_FCI.html>.

¹⁰⁷ Gerard J Gill et al, *Food Security and the Millennium Development Goal on Hunger in Asia* (London: Overseas Development Institute: 2003) at 5, online: <www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1892.pdf>.

Since independence, India has laid out its economic strategy through Five-Year Plans, each of which has implemented measures aimed at improving access to food. The first Five-Year Plan began in 1951, increasing crop area, irrigation, mechanization, and other farm inputs, causing food grain production to increase fourfold over the next five decades.¹⁰⁸ In the late 1960s, however, India faced severe food insecurity due to war and drought. In response, the Green Revolution of the 1970s filled gaps in food production by introducing high-yield crop varieties and adopting modern agricultural techniques.¹⁰⁹ The intensive farming practices put pressure on agro ecosystems, marginalizing small farmers who could not sustain their businesses when adverse weather conditions caused a reduction in yield.¹¹⁰ In the 1990s, economic growth increased rapidly in light of the liberalization of trade policies. The country ambitiously set out to address micronutrient deficiencies in its population in its Tenth Five Year Plan 2002–2007, but the results failed to meet its National Nutrition Goals.¹¹¹

Despite India's ability to produce enough food to feed its population, food security at the household level has not been achieved. Malnutrition and poverty remain pervasive, and development experts have stated that hunger and food insecurity has been on the rise since the 1990s.¹¹² India is home to the largest share of the world's malnourished, with over 200 million people eating less than the minimum calories requirement, according to the FAO.¹¹³ This situation is worsening as average calorie consumption has fallen in the past decade.¹¹⁴ India currently has one of the highest rates of child malnutrition in the world.¹¹⁵ Over 230 million people in rural areas remain undernourished, and approximately 40 percent of children under the age of three are underweight and stunted in growth. Almost one-third of Indian children suffer from some form of malnutrition, and an equal percentage are underweight and stunted in their growth.¹¹⁶

Inequality has risen since the 1990s in light of economic growth that has largely favoured India's western and southern states over the poorer northern and eastern states.¹¹⁷ In urban areas, the middle and upper classes have benefited from "India Shining" (a marketing slogan that emerged in 2004 to refer to the feeling of economic optimism in India at the time). The poor, however, have experienced an increase in food insecurity and a decline in overall living standards. India's economy has become more export oriented, with a shift from subsistence to cash crops.¹¹⁸ These cash crops require increasingly costly fertilizer, seeds, and other inputs,

¹⁰⁸ Gahukar, *supra* note 2 at 271.

¹⁰⁹ Peter BR Hazell & C Ramasamy, *The Green Revolution Reconsidered: The Impact of High-Yielding Rice Varieties in South India* (Baltimore: John Hopkins University, 1991) at xiii.

¹¹⁰ Gahukar, *supra* note 2 at 271.

¹¹¹ Ziegler et al, *supra* note 73 at 259.

¹¹² *Ibid.*

¹¹³ *State of Food Insecurity*, *supra* note 4 at 42.

¹¹⁴ Ziegler et al, *supra* note 73 at 260.

¹¹⁵ United Nations Development Programme, *Human Development Report 2005* (New York: UNDP, 2005), at 29–30, online: <hdr.undp.org/sites/default/files/reports/266/hdr05_complete.pdf>.

¹¹⁶ *Ibid* at 31.

¹¹⁷ Ziegler et al, *supra* note 73 at 260.

¹¹⁸ *Ibid.*

which has driven many farmers deep into debt. This may explain the spike in farmer suicides, which had reached ten thousand cases by 2005.¹¹⁹

India's PDS underwent a major shift in the 1990s as government officials sought to reduce costs by decreasing its overall size. The system was "universal" until 1997—available to all households with a registered residential address. The switch to a "targeted" approach that year, however, was extremely detrimental to the nation's food security. The new system specified that only the income-poor were eligible to receive rations, excluding households that were in urgent need of support yet did not meet the minimum threshold. According to the United Nations, several problems plagued the new system:

First, targeting [led to] the large-scale exclusion of genuinely needy persons from the PDS. Secondly, targeting [affected] the functioning and economic viability of the PDS network adversely and led to a collapse of the delivery system. Thirdly, [the PDS failed] to achieve the objective of price stabilization through transfer of cereals from surplus to deficit regions of the country. Lastly, there are reports of large-scale leakages from the PDS, that is, of grain being diverted and not reaching the final consumer.¹²⁰

These issues created the paradox of rising hunger and malnutrition in India at the same time as huge excess stocks of food were being held by the PDS, rather than being distributed to households in need.¹²¹

The media picked up on the inefficiencies of the PDS in 2000, as the first reports emerged that people in India were dying from starvation while food rotted in government storage facilities. Some reports stated that food was being thrown into the ocean or exported to foreign countries at subsidized prices to reduce storage costs rather than being distributed to the hungry and malnourished.¹²² To this day, this important institution remains plagued by large exclusion and inclusion errors in terms of its targeted beneficiaries. It excludes many who meet the programs requirements, and includes many who do not.¹²³

Given that crop production has stagnated and the country's population increased, development experts project that India's food insecurity will worsen, which could lead to even more widespread hunger and starvation.¹²⁴ The unavailability of food is aggravated by inflation and rising prices that decrease consumers' purchasing power.¹²⁵ The magnitude of absolute poverty has increased over a period of positive growth in GDP, suggesting rising inequality.¹²⁶

¹¹⁹ *Ibid* at 262.

¹²⁰ Swaminathan, *supra* note 105 at 5.

¹²¹ Jayati Gosh, *Trade Liberalization in Agriculture: An Examination of Impact and Policy Strategies with Special Reference to India*, (New York: UNDP, 2005) at 10, online: <hdr.undp.org/sites/default/files/hdr2005_ghosh_jayati_12.pdf>.

¹²² Ziegler et al, *supra* note 73 at 262–263.

¹²³ Kishore, Joshi & Hoddinott, *supra* note 100 at 36.

¹²⁴ See generally Praduman Kumar, PK Joshi & Pratap BIRTHAL, "Demand Projections for Foodgrains in India" (2009) 22:2 *Agricultural Economics Research Review* 237 at 237.

¹²⁵ Gahukar, *supra* note 2 at 271.

¹²⁶ Tamil Nadu, "Poverty Has Increased During Period of Economic Growth, Says Economist" *The Hindu* (20 May 2013), online: *The Hindu* <www.thehindu.com/>.

In response to this situation, the government began developing and sponsoring food security programs. In 2007, it launched the National Food Security Mission to increase production of cereals and legumes.¹²⁷

4.2 LEGAL AND POLICY FRAMEWORK FOR THE RIGHT TO FOOD

India has the legal and policy framework in place to realize the right to food with regard to both domestic and international law. In terms of international agreements, India has committed to respect, protect, and fulfill the right to food for all its citizens, without discrimination. India is a party to the ICESCR and all other international conventions that provide for the right to food or the right to health, including the Convention on the Rights of the Child (articles 24 and 27)¹²⁸ and the Convention on the Elimination of all Forms of Discrimination Against Women (articles 12 and 14).¹²⁹

India's domestic legal framework also incorporates a justiciable right to food. In 1950, India adopted a progressive constitution that includes a broad range of human rights protections, forbids discrimination, and recognizes civil and political rights as justiciable. Article 47 of the Constitution states: "[t]he State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties."¹³⁰ This right, however, is not directly justiciable.¹³¹ It serves only to guide interpretation of fundamental rights, including the right to life protected by article 21. However, in 1995, the Supreme Court of India has stated that the right to life, which is justiciable, "implies the right to food, water, decent environment, education, medical care and shelter."¹³² In 2013, the *National Food Security Act* was enacted, launching the world's largest and most ambitious food safety net program and providing for food security as a legal entitlement.¹³³

India has been said to "[provide] one of the best examples in the world in terms of the justiciability of economic, social and cultural rights, with the right to life interpreted extensively by the Supreme Court to include the right to food."¹³⁴ The country's laws offer progressive human rights protections, and the country has set up several safety nets for its poor and food-insecure citizens. A key example is the 2005 *National Rural Employment Guarantee Act* (NREGA), which provides for one hundred days of unskilled work for rural inhabitants.¹³⁵ The act states that work should be provided to applicants within two weeks, and provides for

¹²⁷ *Ibid* at 272.

¹²⁸ *Convention on the Rights of the Child*, 2 September 1989, 1577 UNTS 3, Can TS 1993 No 147, art 24, 27.

¹²⁹ *Convention on the Elimination of all Forms of Discrimination Against Women*, 3 September 1981, 1249 UNTS 13, arts 12, 14. These articles specify a right to health care, including appropriate services in connection with pregnancy as well as provisions for rural women.

¹³⁰ *Constitution of India*, 1950, art 47.

¹³¹ Ziegler et al, *supra* note 73 at 265.

¹³² *Chameli Singh v State of UP*, 1995 Supp(6) SCR 827 at para 8, 1996 AIR 1051 (India) .

¹³³ *National Food Security Act, 2013* (India), (N)04/0007/2003-13, Preamble.

¹³⁴ Ziegler et al, *supra* note 73 at 265.

¹³⁵ *National Rural Employment Guarantee Act* (2005) at 2.3.1, online <www.tnrd.gov.in/schemes/nrega.html>.

an unemployment allowance if they are unable to find employment. The act also provides for a minimum wage, which must be paid in a timely manner.¹³⁶ NREGA indirectly supports the right to food by supporting financial access to adequate food in times of economic insecurity.¹³⁷

In 2000, media attention surrounding India's hunger and malnutrition issues increased and public outrage began to swell, leading to a landmark case on the right to food before India's Supreme Court. In 2001, the People's Union for Civil Liberties (PUCL) launched a claim against the Government of India. The catalyst for the case was indignation at incidences of death from starvation in the State of Rajasthan, despite the surplus of food grain that remained unused rather than distributed to the hungry. PUCL argued that the right to food was a component of the right to life of all Indian citizens and asked for the country's food stocks to be used immediately for hunger prevention. The court ordered that the food stocks be extended to those at risk of starvation, and called for implementation of the food-based schemes that had been devised but only partially realized.¹³⁸ The case went above incorporating the protections of international human rights law into domestic jurisprudence, because state parties' obligations under article 11 of the ICESCR are predicated upon free consent.¹³⁹ Thus, the ICESCR does not oblige States to give away food surpluses.

The case brought the issue of hunger as a human rights violation back into the public discourse, and has subsequently been embraced as a powerful advocacy tool. Non-profits began offering education to judges on the right to food, using the PUCL case as a key example.¹⁴⁰ According to De Schutter, "[s]everal cases have been successfully filed since in the lower and high courts all over India demanding the implementation of the right to food."¹⁴¹ The PUCL case demonstrates the enormous potential of the link between developments in the law and social change, as well as the value of a legal framework for enforcing the right to food. Ultimately, the judgment and the resulting media attention shows how the individuals can be empowered to advocate for enforcement of the right to food.

The PUCL judgment also fuelled the debate surrounding a major development in India's legislative landscape with respect to food security: the introduction of the *National Food Security Act* (NFSA).¹⁴² The act was developed to navigate several difficulties with the targeting mechanism of the new PDS, particularly with regard to defining the quantity, variety, and sales price of the subsidized food grains to be distributed.¹⁴³ The NFSA seeks, according to

¹³⁶ De Schutter, "Tackling Hunger", *supra* note 28 at 9.

¹³⁷ *Ibid.*

¹³⁸ *People's Union for Civil Liberties v Union of India*, (2007), Writ Petition (civil) 196/2001 (India) at para 8.

¹³⁹ Yigzaw, *supra* note 17 at 38.

¹⁴⁰ See e.g. Human Rights Law Network, "PUCL vs. Union of India & others" (2013), online: <www.hrln.org/hrln/right-to-food/pils-a-cases/255-pucl-vs-union-of-india-a-others-.html>; De Schutter, "Tackling Hunger", *supra* note 28 at 10.

¹⁴¹ *Ibid* at 10.

¹⁴² *National Food Security Act*, *supra* note 133, Preamble.

¹⁴³ Bill Pritchard, Anu Rammohan & Madhushree Sekher, "Food Security as a Lagging Component of India's Human Development: A Function of Interacting Entitlement Failure" (2013) 36:2 J South Asian Studies 213 at 223.

its preamble, to “provide for food and nutritional security ... by ensuring access to adequate quantity of quality food at affordable prices to people.”¹⁴⁴ While there is consensus during Parliamentary debates on the need to address hunger and malnutrition in India, the method of providing subsidized cereals to two-thirds of the population through a public distribution system remains contentious, with officials still debating whether to strengthen this institution as it stands or develop a new one entirely.¹⁴⁵

During the negotiations that led up to the Act, civil society overwhelmingly spoke out in favour of the law, with many arguing for even more ambitious provisions.¹⁴⁶ Many suggested that its scope be expanded through a universalized PDS to cover pulses, oil, and salt, and to introduce other schemes such as community kitchens and feeding programs for the severely impoverished.¹⁴⁷ The mainstream media, however, heavily criticized the Act, blaming it for various economic events and other woes. The response “[showed] the disconnect between the few who are prospering and the majority of the population that is still grappling with access to basic entitlements related to food, health, education and work.”¹⁴⁸ The mixed public opinion reflects scepticism that yet another iteration of the PDS will be enough to stop the corruption in India’s food distribution social security scheme, unless mechanisms to enforce the right to food are made more accessible.

4.3 CHALLENGES AND OPPORTUNITIES

While food insecurity in India remains high overall, the progress the country has made since the PUCL judgment suggest further opportunity in the area of empowering rights-holders and facilitating access to justice. There is little jurisprudence on the use of right to food laws to bring claims related to food sovereignty, but India appears to have the legal and policy framework in place to rule on such a claim should one arise. Despite these advances, the government of India has stated that it is not on track to achieve the MDGs in relation to hunger and malnutrition.¹⁴⁹ Although the achievement of food security India is too complex too attribute to any one cause, the country’s weak institutions represent a major blip in its ability to address the elements of the justice-based approach. The government has made efforts to strengthen its institutions responsible for carrying out programmes related to food security. India created a body known as the Commissioners to the Supreme Court on the *Right to Food Act*, a group that supports independent monitoring of the PDS and other food-related social security schemes.¹⁵⁰ This development demonstrates a movement away from focusing on total food production, and towards improving access to food by addressing structural and

¹⁴⁴ *National Food Security Act*, *supra* note 133, Preamble.

¹⁴⁵ Kishore et al, *supra* note 102 at 30.

¹⁴⁶ Dipa Sinha, “Cost of Implementing the National Food Security Act” (2013) 48:39 *Economic & Political Weekly* 31 at 31.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Ziegler et al, *supra* note 73 at 271.

¹⁵⁰ International Food Policy Research Institute, *2014 Global Hunger Index* (Washington: International Food Policy Research Institute) at 12, online: <www.ifpri.org/sites/default/files/publications/ghi14.pdf>.

institutional issues. Other institutions, however, continue to impede progress and demand further attention and analysis.

In particular, the NREGA has had a modest impact so far, with one researcher concluding that it has not turned out to be the silver bullet many had hoped for in the fight against poverty and hunger.¹⁵¹ While the scheme has substantially increased private-sector wages for women, it has had little effect for men.¹⁵² Implementation of the NREGA has been a challenge due to corruption within institutions, as well as exclusion and discrimination, which may account for its disappointing net impact on food security. In some cases, the work was denied and wages were paid late or not at all. Another major issue has been spreading awareness about NREGA and its provisions. Many people living in rural areas are illiterate and do not have access to information about how to enforce their rights under the law. Implementation of the program has been criticized as lacking transparency, with little official data released by the government.¹⁵³

The NFSA has also faced implementation issues due to operational and financial challenges. One of the major setbacks is also one of the most basic: identifying the target population with the greatest need for subsidized food. Identifying the three quarters of the population that should benefit from the plan poses a challenge, as the relative needs of such a large group will vary widely. One critic argues that the final draft of the law missed the true target group in a rush to gain political mileage.¹⁵⁴

The use of the PDS as the intended mechanism of delivery for the NFSA is highly problematic as it imposes an enormous responsibility on an already-flawed system. PDS has been successful in averting famine, but it is “beset by pervasive corruption.”¹⁵⁵ Reports have revealed issues such as overcharging, irregular opening hours of fair price shops, many of the poorest not having the requisite ration cards, and some not even being able to afford the subsidized prices.¹⁵⁶ The PDS has, for decades, failed to attain its primary objective of providing subsidized food to millions of intended recipients.¹⁵⁷ It has failed to make a meaningful impact in addressing chronic undernourishment because it simply does not distribute enough food. Some evidence demonstrates that the PDS is massively inefficient, wasting over 40 percent of the grain under its responsibility, due to inefficiency in targeting beneficiaries, large exclusion errors, fake ration cards, and corruption.¹⁵⁸ The flawed delivery mechanism of the PDS seems to pose a major implementation challenge to the operational efficiency of NFSA. Electronic

¹⁵¹ Laura Zimmermann, *Labor Market Impacts of a Large-Scale Public Works Program: Evidence from the Indian Employment Guarantee Scheme*, (Bonn: Institute for the Study of Labour, 2012) at 28-29, online: <ftp.iza.org/RePEc/Discussionpaper/dp6858.pdf>.

¹⁵² *Ibid* at 1.

¹⁵³ Jean Drèze & Christian Oldiges, “NREGA: The Official Picture” in Reetika Khera, ed, *The Battle for Employment Guarantee* (New Delhi: Oxford University Press, 2011) 21 at 21–22.

¹⁵⁴ Suma M Singh, “Why National Food Security Act is more Wrong than Right” (2013) 1:2 *Vidyaniketan J Management & Research* 136 at 136.

¹⁵⁵ Ziegler et al, *supra* note 73 at 268.

¹⁵⁶ *Ibid*.

¹⁵⁷ Singh, *supra* note 154 at 136.

¹⁵⁸ *Ibid*.

governance strategies that are currently under development hold the potential to trace those identified as food insecure as part of the program and prevent fraudsters from collecting food using fake ID cards by using biometric (such as fingerprint) technologies.¹⁵⁹

Successful implementation of the NFSA is crucial to ensure the welfare of India's poor, but it is especially critical for particularly marginalized castes and tribes. Members of these groups experience poverty at disproportionate rates as well as discrimination in obtaining food and employment. Discrimination affects every aspect of their lives, from wage earnings to the quantity and quality of food. The scheduled castes receive on average less food and other services from government programs. In India's Mid-Day Meal Program in schools, for example, scheduled caste children are often seated separately, served last, served insufficient quantities of food, and sometimes denied meals altogether. These incidences show how critical it is for India's national food security strategy to include protections against discrimination.¹⁶⁰

India faces several other obstructions to achieving food security. The first is land use, which is regulated by laws enacted following India's independence from British rule.¹⁶¹ The laws have been criticized for placing small farmers at a disadvantage compared to landlords and moneylenders.¹⁶² Recently, a major shift in land use has areas previously used for crop cultivation now being used for infrastructure, such as roads and housing, with hotels and resorts cropping up on the land outside major cities.¹⁶³ The increase in India's population has led to a decrease in per capita landholding. Severe soil degradation due to poor soil and water management practices is eroding food security in the country.¹⁶⁴ Farmers spray a cocktail of pesticides on food to boost food production, but these chemicals kill beneficial fauna and decrease soil fertility. India houses 20 percent of the world's livestock population (which represents approximately 450 million animals). The amount of grazing land is already inadequate and still decreasing, which also leads to animals overgrazing on the existing land.¹⁶⁵

Education is also an essential element of an integrated approach to fighting hunger and malnutrition in India, along with direct strategies to target food insecurity. Families often lack the knowledge needed to make simple, healthy meals for the children using what limited food is at hand. Mothers may be unaware of what constitutes adequate nutrition for their infants, who will suffer lasting damage if they are not properly nourished within the first few months of their lives.¹⁶⁶ Education is also required to provide information about sanitation, which an emerging body of literature has linked to the stunting of children in India due to

¹⁵⁹ See e.g. Visiontek, "E-Governance Public Distribution System Management" (2013), online: <www.transaction-terminals.com/94pos/egovernance-publicdistribution_case.html>. See also Randeep Ramesh, "1.2bn population of India to be given biometric ID cards", *The Guardian* (19 September 2009), online: <www.theguardian.com/world/2009/sep/16/india-population-biometric-id-cards>.

¹⁶⁰ Kishore, *supra* note 100 at 32.

¹⁶¹ Ziegler et al, *supra* note 73 at 258, 264.

¹⁶² Gahukar, *supra* note 2 at 272.

¹⁶³ *Ibid.*

¹⁶⁴ R Lal, "Soils and India's Food Security" (2008) 56:2 *J Indian Society Soil* 129 at 130.

¹⁶⁵ Gahukar, *supra* note 2 at 271.

¹⁶⁶ See Cornelia Rabitz, "Education is Key to Fighting Hunger", *Deutsche Welle* (14 November 2011), online: <www.dw.de>.

malnourishment. Efforts to educate parents about the nutrition and sanitation needs of their children and to establish schools that take into account the special requirements of children in rural areas are inextricably linked to the success of a government's food policy choices.

As this section demonstrates, contemporary India presents a food security paradox—the nation is experiencing economic growth while improvement in food security lags behind, occurring at a much slower pace than development experts predicted.¹⁶⁷ Our analysis suggests that the country's ineffective institutions represent a significant weakness amongst the four dimensions of the justice-based approach. India's institutions directly tasked with distributing food supplies and those with indirect links to hunger, particularly those responsible for land use and education, must be transformed for the country to make measurable progress.

5. THE RIGHT TO FOOD IN ETHIOPIA

The Government of Ethiopia has implemented major changes in its strategic approach to targeting food insecurity, as well as development, over the past five years. The country has made progress according to several key indicators that can be attributed to a justice-based approach. Ethiopia has traditionally provided an enabling environment for numerous civil society organizations (CSOs) to operate freely. In 2014, however, it began rigorously enforcing a law that has been panned by human rights watchdogs such as Human Rights Watch (HRW) and Amnesty International for curtailing the work of CSOs.¹⁶⁸ This development presents a major threat to access to justice and to the empowerment of rights-holders. In this section, we canvass the major food security challenges that Ethiopia faces, and then present the legal and policy framework for realizing the right to food currently in place. Next, we consider Ethiopia's use of a justice-based framework in improving food security for its people, and examine the structural and institutional issues still in need of urgent attention.

5.1 HUNGER AND FOOD INSECURITY IN ETHIOPIA

In October 2014, Ethiopia's Ministry of Agriculture revealed that the country had halved the level of extreme poverty in the country, meeting the first MDG goal.¹⁶⁹ As part of a broader development strategy, Ethiopia has also seen progress on other indicators, particularly a reduction in child mortality and an increase in children enrolled in primary school.¹⁷⁰ The World Bank and other international organizations have also reported rapid growth in

¹⁶⁷ Pritchard, Rammohan & Sekher, *supra* note 143 at 213, 215.

¹⁶⁸ Human Rights Watch, "World Report 2015: Ethiopia" (2015), online: <www.hrw.org/world-report/2015/country-chapters/ethiopia>; Amnesty International, *Stifling Human Rights Work: The Impact of Civil Society Legislation in Ethiopia* (London: Amnesty International Ltd, 2012) at 25, online: <files.amnesty.org/archives/afr250022012eng.pdf>.

¹⁶⁹ Ethiopian Embassy Brussels, *supra* note 12.

¹⁷⁰ United Nations World Food Programme, "Ethiopia: Overview" (2015), online: <www.wfp.org/countries/ethiopia/overview> [UN WFP, "Ethiopia: Overview"].

Ethiopia's economy over the past decade.¹⁷¹ Despite these advances, the country's issues with food security still plague the one in three people living below the poverty line.¹⁷²

Ethiopia has long been associated with famine, although the country has made significant strides in the past decade due to an early warning system put in place by the Ethiopian government and the international donor community.¹⁷³ Ethiopia's first major famine occurred in 1973, leaving over three million people hungry. The international community only became aware of the magnitude of the famine when Jonathan Dimbleby of the BBC filmed and broadcasted footage of the devastation, shocking the world and sparking internal political turmoil that led to the overthrow of the feudal system. In 1984, another wide-scale famine resulted in an estimated 1 million deaths by starvation.¹⁷⁴

In 2003, Ethiopia suffered a severe food crisis, with one fifth of the population, or an estimated 13.2 million people, resorting to food aid for survival.¹⁷⁵ As of January 2014, the Government of Ethiopia reported that 2.7 million people in Ethiopia faced acute food insecurity.¹⁷⁶ The level of malnutrition in the country is among the highest in the world. Annual costs associated with child malnutrition are estimated at 16.5 percent of the country's GDP.¹⁷⁷ According to a 2011 study conducted on the state of child malnutrition in Ethiopia, a third of children under five were underweight and almost half were moderately or severely stunted.¹⁷⁸

Many researchers link Ethiopia's chronic food insecurity to the agricultural sector's poor historical performance, which produces revenues that account for the majority of the country's GDP. In January 2015, the head of the Food and Agriculture Organization of the United Nations made remarks emphasizing the link between food security and agriculture, and their critical contribution to sustainable development in Ethiopia more broadly.¹⁷⁹ Although the agricultural sector supports the lives of more than 80 percent of the Ethiopian population, it is

¹⁷¹ World Bank, "Ethiopia Overview" (September 2014), online: <www.worldbank.org/en/country/ethiopia/overview>.

¹⁷² UN WFP, "Ethiopia: Overview", *supra* note 170.

¹⁷³ World Meteorological Organization, "Ensuring Food Security in Ethiopia" (2012), online: <www.wmo.int/pages/prog/dra/documents/CDSCaseStudy_Ethiopia-withpictures_08-26-12.pdf /> at 1-2.

¹⁷⁴ United States Agency for International Development, *Final Disaster Report: Ethiopia Drought/Famine Fiscal Years 1985 and 1986* (Addis Ababa: USAID Office, 1987) at iii-iv, online: <pdf.usaid.gov/pdf_docs/PNABG233.pdf>.

¹⁷⁵ Ziegler et al, *supra* note 73 at 195.

¹⁷⁶ United States Agency for International Development, "Food Assistance Fact Sheet - Ethiopia" (15 August 2014), online: <www.usaid.gov/ethiopia/food-assistance>.

¹⁷⁷ United Nations World Food Programme, "10 Things Everyone Should Know About Hunger in Ethiopia" (24 June 2013), online: <www.wfp.org/stories/10-things-everyone-should-know-about-hunger-ethiopia>.

¹⁷⁸ Reach Consult Ltd & Canadian Hunger Foundation, *Assessment of CIDA's Food Security Strategy and Funding in Ethiopia*, (Ottawa: Canadian Council for International Co-Operation, 2013) at 12, online: <www.ccic.ca/_files/en/working_groups/2013_07_29_Ethiopia_Report_FSPG.pdf>.

¹⁷⁹ "Ethiopia: 'Vicious Circles Linking Violence and Hunger' Must End - UN Agriculture Chief", *The Ethiopian Herald* (29 January 2015), online: allAfrica <allafrica.com/stories/201501290446.html>.

plagued by lack of productivity, overcrowded land as well as absence of tenure security.¹⁸⁰ The low level of agricultural productivity has seriously hampered food availability in local markets and the unprecedented state of poverty in the country has left millions of people without the necessary income to buy food. The agricultural sector has been also extremely vulnerable to changes in climate, with decreases in production closely linked to major droughts.¹⁸¹

While a high percentage of population continues to be engaged in agriculture, unprecedented inflation in prices for food items over the past decade have exacerbated the country's poverty and food security issues. The World Food Programme has explained the effect of inflation on hunger and malnutrition in Ethiopia as follows:

As income/expenditure decreases, households tend to spend a larger share, if not all, of their food budget on stomach-filling staples, such as rice and wheat, which provide “cheap” sources of calories. In doing so, they forfeit more nutritious items and may lack adequate consumption of proteins and micro-nutrients. This also results in a less diverse diet overall, with dietary patterns limited to a poor variety of foods.¹⁸²

The level of food inflation in Ethiopia has been increasing, from a rate of 15.1 percent in 2006, to 28 percent in 2007, 57.4 percent in 2008, and 36.4 percent in 2009.¹⁸³ Inflation has affected the food security of the urban and rural poor, who heavily depend on the market for their food supply.¹⁸⁴

5.2 LEGAL AND POLICY FRAMEWORK FOR THE RIGHT TO FOOD

Ethiopia has ratified major international instruments relevant to the right to food, including the International Covenant on Civil and Political Rights (ICCPR).¹⁸⁵ It has also ratified the Geneva Convention of 1949 and the Additional Protocol of 1977 dealing with international humanitarian law.¹⁸⁶ Ethiopia is also a party to the African Charter on Human and Peoples'

¹⁸⁰ Paul Dorosh & Rashid Shahidur Rashid (eds) “Food and agriculture in Ethiopia: Progress and policy challenges” (2014) 31:3 *Agriculture & Human Values* 329 at 329.

¹⁸¹ Zerihun Gudeta, “How Successful The Agricultural Development Led Industrialization Strategy (ADLI) Will Be Leaving The Existing Land Holding System Intact – A Major Constraints For The Realization of ADLI’s Targets?” (2009) 1:1 *Ethiopian E-Journal for Research & Innovation Foresight* 19 at 24.

¹⁸² United Nations World Food Programme & Ethiopia Central Statistical Agency, *Comprehensive Food Security and Vulnerability Analysis (CFSVA): Ethiopia*, (2014) at 35, online: <documents.wfp.org/stellent/groups/public/documents/ena/wfp265490.pdf>.

¹⁸³ Jema Haji et al, *The ‘Black-Box’ of Ethiopian Agricultural Produce Price Formation and its Determinants within the Current Liberalized Market Policy*, (Oslo: Drylands Coordination Group, 2011) at 11, online: <www.drylands-group.org/Articles/1961.html>.

¹⁸⁴ *Ibid* at 20.

¹⁸⁵ *ICCPR*, *supra* note 33.

¹⁸⁶ 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287/ 1958 ATS No 21; 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3/ 1991 ATS No 29/ 16 ILM 1391 (1977).

Rights, which recognizes the right to food.¹⁸⁷ Additionally, the Ethiopian constitution lays down a framework for addressing the right to food. Article 9(4) of the Constitution stipulates that “[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land” and according to article 13(2), human rights provisions of the constitution “shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights and international instruments adopted by Ethiopia.”¹⁸⁸ Nevertheless, the application of international human rights instruments in judicial and other human rights institutions is minimal due to problems with the status of such instruments in relation to other domestic legislation, as well as the lack of independence of the judicial system.

Although the Ethiopian constitution contains no provision that explicitly recognizes the right to food, it does provide for other economic, social, and cultural rights. It includes provisions for farmers to receive a fair price for their products, the right to equal access to social services, and recognizes the state’s obligation to allocate resources to social services.¹⁸⁹ The constitution has also recognized the right to life, equality before the law, freedom of association, access to justice, and equality between men and women. Article 90 of the Constitution states that “to the extent the country’s resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.”¹⁹⁰

In 1991, following the collapse of the regime which had been in power since 1974, the transitional government demonstrated renewed concern for food security issues and adopted policies that were conducive to the growth of Ethiopian civil society.¹⁹¹ Since then, the role of CSOs in Ethiopia’s agricultural development and in its progress towards improving food security has been significant. The earliest missions by CSOs were largely limited to emergency response programs related to famine, drought, or other disasters. In the past two decades, however, many CSOs began to expand their mandates in Ethiopia to include a broad range of socio-economic development activities. CSOs were able to assist vulnerable communities by aiding in the provision of clean water, education and health services. They began focusing on improving agricultural practices, including water harvesting and small-scale irrigation.¹⁹² UN agencies also have a long history in Ethiopia since the catastrophic famine of 1974, and

¹⁸⁷ African Union, *African (Banjul) Charter on Human and Peoples’ Rights*, 1988, AU Doc CAB/LEG/67/3 rev 5, arts 16, 60; See UNESCO, Commission on Human Rights, Jean Ziegler, *Report of the Special Rapporteur on the Right to Food*, UN Doc E/CN.4/2005/47, February 2005 at 10 [*Report of the Special Rapporteur*].

¹⁸⁸ *Constitution of the Federal Democratic Republic of Ethiopia*, 1995, arts 9(4), 13(2) [*Constitution of Ethiopia*].

¹⁸⁹ *Ibid*, art 41.

¹⁹⁰ *Ibid*, art 90.

¹⁹¹ Shahidur Rashid, Meron Assefa & Gezahegn Ayele, “Distortions to Agricultural Incentives in Ethiopia” (2007) World Bank Development Research Group Working Paper No 43 at 2, online: <siteresources.worldbank.org/INTTRADERESEARHC/Resources/544824-1163022714097/Ethiopia_0708.pdf>.

¹⁹² Berhanu Adenew, *Effective Aid for Small Farmers in Sub-Saharan Africa: Southern Civil Society Perspectives* (Addis Ababa: The Canadian Food Policy Group, 2006) at 12, online: <www.ccic.ca>

work closely with local organizations. Twenty-five UN agencies are currently represented in Ethiopia, including the International Monetary Fund and the World Bank.¹⁹³

In 2009, Ethiopia adopted a new law capping at ten percent the amount of overseas funding an NGO can receive to promote certain human rights causes.¹⁹⁴ The legislation specifies that only Ethiopian charities are allowed to work on issues related to: “the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of the disabled and children’s rights; the promotion of conflict resolution or reconciliation; the promotion of the efficiency of the justice and law enforcement services.”¹⁹⁵ The law has been described as “a legacy of the late prime minister Meles Zenawi who wanted to curb foreign groups unaccountably advocating their own values in sensitive areas.”¹⁹⁶ An NGO worker reported that the government agency charged with overseeing the law’s implementation advised his organization to end its advocacy against female genital mutilation and forced marriage.¹⁹⁷ Amnesty International has expressed concern that the law’s specification that only thirty percent of an NGO’s budget be spent on “administrative costs” could be used to restrict field research and investigations by classifying the expenses associated with those activities as administrative.¹⁹⁸ These restrictions risk hampering efforts by NGOs to target the direct and indirect causes of hunger. In addition to capping overseas funding for research on the human rights to food, the law could limit an organization’s ability to draw attention to weak or corrupt institutions, or expose discriminatory or arbitrary practices that limit access to justice.

Recent strategic initiatives that recognize poverty as a key driver of food insecurity explain Ethiopia’s achievement of the first MDG goal. The Ethiopian government has implemented a poverty reduction strategy called the Growth and Transformation Plan (GTP) for the 2011–2015 periods.¹⁹⁹ The ambitious goal of the GTP is to transform Ethiopia into a food secure, middle-income nation by 2025. The GTP envisages reducing the number of individuals living below the poverty line from 29 to 22 percent, the proportion of people below the food poverty line from 28 to 21 percent, as well as achieving real GDP growth of 11 percent annually.²⁰⁰ In addition, the GTP envisages reducing the proportion of the population benefiting from food aid programs from 7.1 million to 1.4 million by 2015.²⁰¹ Similarly, the government expects

¹⁹³ *Report of the Special Rapporteur, supra* note 187 at 16.

¹⁹⁴ Charities and Societies Proclamation (No 621/2009), Ethiopia; William Davison, “Ethiopia makes help difficult for world donors advocating civil society, rights”, *The Christian Science Monitor* (28 February 2013), online: <www.csmonitor.com/World/Africa/2013/0228/Ethiopia-makes-help-difficult-for-world-donors-advocating-civil-society-rights>.

¹⁹⁵ Charities and Societies Proclamation, *supra* note 194 art 14 (2(j-n)).

¹⁹⁶ Davison, *supra* note 194.

¹⁹⁷ *Ibid.*

¹⁹⁸ Amnesty International, *supra* note 168 at 7.

¹⁹⁹ Reach Consult Ltd & Canadian Hunger Foundation, *supra* note 178 at 10.

²⁰⁰ *Ibid* at 11.

²⁰¹ *Ibid* at 12.

the number of people benefiting from emergency food relief to decrease from 4.5 million to 3.2 million.²⁰²

The Ethiopian government's first set of food security strategies, originally devised in the 1990s, focused on transitioning from emergency humanitarian relief to long term self-sufficiency. In 2010, the Ethiopian government launched the Food Security Programme (FSP), consisting of the Productive Safety Net Programme (PSNP), the Household Asset Building Programme (HABP), the Complementary Community-based Infrastructure Programme (CCI) and the Resettlement Programme.²⁰³ The program was designed to address the problems of food shortages in drought prone areas for an estimated 10–15 million people throughout Ethiopia.²⁰⁴

The most ambitious donor-sponsored branch of Ethiopia's food security program is the PSNP. The PSNP is designed to address the problems of chronically food-insecure communities among heavily impoverished wards (Ethiopia's administrative divisions) in the country by supporting those in need, either by providing free food or financial subsidies.²⁰⁵ The safety net program is on track to reach 8.3 million chronically food-insecure rural people in 320 wards by 2015.²⁰⁶ Most households selected for the program who are classified as food insecure participate in a public works project (about 90 percent of the participants), with those who are unable to work as labourers still covered under the program unconditionally.²⁰⁷ The project's aim is to enable vulnerable populations to become self-sufficient after three to five years of receiving support from the PSNP.²⁰⁸

Unfortunately, the country's current and historical economic and land policies have adversely affected agricultural development, which in turn has impeded further progress on the food security front. During the feudal era, the economic basis of political power was the land tenure policy, whereby land was entirely controlled by a few privileged groups, resulting in tenure insecurity for small farmers.²⁰⁹ The military regime, which came into power in 1974, pursued a centrally planned economy that significantly undermined private investment in the agricultural sector. The regime distributed land to the peasantry while keeping total ownership of the land in the hands of the government.²¹⁰ These restrictive government policies explain the

²⁰² Mario Zappacosta et al, *FAO/WFP Crop and Food Security Assessment Mission to Ethiopia* (Rome: FAO, 2012) at 4.

²⁰³ *Ibid* at 10.

²⁰⁴ Adenew, *supra* note 192 at 10.

²⁰⁵ *Ibid* at 11.

²⁰⁶ Zappacosta et al, *supra* note 202 at 10.

²⁰⁷ Sarah Coll-Black et al, *Targeting Food Security Interventions: The Case of Ethiopia's Productive Safety Net Programme, Summary of ESSP Working Paper 24*, (Washington: International Food Policy Research Institute, 2013) at 1.

²⁰⁸ Adenew, *supra* note 192 at 11.

²⁰⁹ Abenet Belete, John L Dillon & Frank M Anderson, "Development of Agriculture in Ethiopia Since the 1975 Land Reform" (1991) 6 *Agricultural Economics* 159 at 160.

²¹⁰ Sherman Robinson & Hashim A Ahmed, "Identifying and Measuring Agricultural Policy Bias in Ethiopia" (Paper delivered at the GTAP Annual Conference, Helsinki, Finland, June 2008) at 1, online: <www.gtap.agecon.purdue.edu/resources/download/3887.pdf>.

lack of progress in agricultural development in Ethiopia as farmers lacked the independence to decide what to produce and whom to sell it to.

5.3 CHALLENGES AND OPPORTUNITIES

Ethiopia faces obstacles within each of the four elements of the justice-based approach. The land tenure regime represents an area in which institutional reform is needed to ensure that the rights of farmers are respected. Preliminary findings on the effectiveness of the PSNP, which was designed as a means to provide individuals with greater independence and control in the production of food, show that it has had limited effect. The use of food aid as a political weapon by Ethiopia's government further undermines any effort to create an environment in which the country can make meaningful strides towards food sovereignty. In addition, the current regime's repression of civil and political rights and restriction of civil society organizations poses a major threat to efforts to improve access to justice and empower rights holders.

An ongoing obstacle for the realization of the right to food in Ethiopia relates to the security of the land tenure system. Since 1975, when land became the property of the state, farmers have held usufructuary rights.²¹¹ The current regime, which came to power in 1991, upheld the land policy put in place by the previous military government.²¹² Given that farmers are essentially tenants of the government, the system places them at risk of exploitation. The resulting uncertainty in whether or not the government will seize a farmer's land has discouraged them from investing in improvements that increase productivity.²¹³ To address this issue, the Ethiopian Government has implemented a Land Certification Policy, granting farmers 99-year leases that can be inherited by family members.²¹⁴ Whether such certificates will ensure land security remains to be seen, as the process surrounding land seizure continues to lack transparency.

Ethiopia's PSNP was designed with food sovereignty in mind as a result of mounting frustrations with the emergency relief system.²¹⁵ Since the 1980s, Ethiopia had been asking international actors to provide emergency food relief, creating what the government believed was a long-term cycle of dependency.²¹⁶ The safety net program, by contrast, was created to address unemployment and poverty as the underlying causes of food insecurity, with the hope that households would eventually be self reliant. Thus far, however, the program has had limited success in reducing participants' reliance on aid.²¹⁷ Its effects were also shown to be

²¹¹ Wibke Crewett & Benedikt Korf, "Ethiopia: Reforming Land Tenure" (2008) 116:203 *Rev of African Political Economy* 203 at 207.

²¹² *Ibid* at 204.

²¹³ *Report of the Special Rapporteur, supra* note 187 at 22.

²¹⁴ *Ibid* at 15.

²¹⁵ Department for International Development, "Building Consensus for Social Protection: Insights from Ethiopia's Productive Safety Net Programme (PSNP)" at 5, online: The IDL Group <www.theidlgroupp.com/documents/theIDLgroupPSNPconsensusbuildingfinal.pdf>.

²¹⁶ *Ibid* at 5.

²¹⁷ John Hoddinott et al, "The impact of Ethiopia's Productive Safety Nets and Household Asset Building Programme: 2006-2010" (2011) at 1, online: Institute of Development Studies <www.institutefordevelopmentstudies.org.uk>.

lower in terms of improving food security in female-headed households, which are more likely to be poor than male-headed households.²¹⁸ The main hypothesis as to why the impact of the PSNP has been lower for these households is that it has done nothing to reduce the overall workload for women.²¹⁹

Another barrier to the success of Ethiopia's efforts to improve food security is the use of food aid as political weapon by Ethiopia's current regime, the Ethiopian Revolutionary Democratic Front. Human Rights Watch has stated that "[t]he Ethiopian government is routinely using access to aid as a weapon to control people and crush dissent."²²⁰ Researchers at HRW observed that many families of opposition members were barred from participation in the food-for-work or PSNP.²²¹ In addition, the UN Special Rapporteur on the right to food has received evidence showing that opposition party members were being threatened with the withholding of food aid, credit, or fertilizer, or even access to land in different parts of the country.²²² The Special Rapporteur had also received serious allegations of the destruction and burning of homes, livestock, and food stocks of members of opposition parties.²²³

To end the Ethiopian government's practices that seriously undermine its own efforts to curb hunger and malnutrition, foreign donors and the international community, which have funnelled billions of dollars into various food aid programs, must no longer turn a blind eye to the regime's repression of civil and political rights.²²⁴ The international community is aware of the use of food aid as a political weapon, yet, according to HRW, has done "little to address the problem or tackle their own role in underwriting government repression."²²⁵ The country's progress in meeting development indicators, particularly its recent attainment of MDG Goal One, should not be an excuse to overlook the disregard for individual rights and freedoms.²²⁶

In 2014, the Government of Ethiopia began rigorously enforcing the Charities and Societies Proclamation law (CSO law), which has been described as having "severely curtailed the ability of independent nongovernmental organizations to work on human rights."²²⁷ The law has been devastating for human rights defenders in Ethiopia, forcing many NGOs to change focus or scale down their efforts in conformity with the law.²²⁸ Ironically, while

ids.ac.uk/files/dmfile/Impact_Report_FINAL_JAN2012.pdf>.

²¹⁸ UNIFAD, "The issue of poverty among female-headed households in Africa", online: IFAD <www.ifad.org>.

²¹⁹ Adenew, *supra* note 192 at 25.

²²⁰ Human Rights Watch, "Ethiopia: Donor Aid Supports Repression", *Human Rights Watch* (19 October 2010), online: <www.hrw.org/en/news/2010/10/18/ethiopia-donor-aid-supports-repression>.

²²¹ *Ibid.*

²²² *Report of the Special Rapporteur, supra* note 187 at 19.

²²³ *Ibid.*

²²⁴ Human Rights Watch, *Development without Freedom, How Aid Underwrites Repression in Ethiopia* (New York: Human Rights Watch, 2010) at 4.

²²⁵ *Ibid.*

²²⁶ Ethiopian Embassy Brussels, *supra* note 12.

²²⁷ Human Rights Watch, "World Report", *supra* note 168.

²²⁸ Amnesty International, *supra* note 168 at 5.

Ethiopia's constitution is one of the few to articulate a "right to development" in Article 43, non-profit organizations have been forced to respond to the CSO law by abandoning rights-based approaches to international development, according to Amnesty International.²²⁹ In May 2014, Ethiopia rejected recommendations made by several countries to strike down the law during the Universal Periodic Review of its human rights record.²³⁰

The CSO law has constrained organizations with the potential to empower rights holders and further access to justice in the country. The Ethiopian Woman Lawyers Association (EWLA), for example, was created to support access to justice, among other goals.²³¹ Prior to the CSO law's enactment, EWLA was thriving with 65 staff members carrying on the organization's much-needed work, empowering women to realize their rights by providing legal aid and advocacy before courts and tribunals.²³² By 2011, according to Amnesty International, EWLA "barely continued to exist."²³³ Due to alleged non-conformity with the CSO law, EWLA had its bank accounts frozen, costing it the equivalent of approximately \$595,000.²³⁴ The organization was forced to lay off three quarters of its staff.²³⁵ The impact of the significant reduction of EWLA and of other non-profit organizations has indirect negative implications for food security due to the stifling of efforts to improve access to justice for marginalized groups and to empower individuals to use judicial mechanisms to enforce their rights.

This section has demonstrated that Ethiopia still faces considerable challenges across all four dimensions of the justice-based approach. Our analysis suggests that the country must take steps to reform institutions that are not conducive to sustainable food security, particularly its PSNP and land tenure regime. The government's use of food aid a weapon, where members of the opposing political party are barred from participation in food programs, undermines efforts to facilitate food sovereignty. In addition, the enforcement of laws that are hostile to civil society organizations needlessly hampers activities intended to improve access to justice and empower rights holders.

6. CONCLUSION

The similarities between India and Ethiopia's hunger struggles are surprising given India's wealth of natural and human resources, and its home to several of the richest people in the world.²³⁶ According to the most recent Global Health Index survey (GHI), India is currently ranked 55 of 76 emerging economies, fifteen spots ahead of Ethiopia.²³⁷ Yet, over a period

²²⁹ *Ibid*; *Constitution of Ethiopia*, *supra* note 188, art 43.

²³⁰ Human Rights Watch, "World Report", *supra* note 168.

²³¹ Amnesty International, *supra* note 168 at 25.

²³² *Ibid*.

²³³ *Ibid*.

²³⁴ *Ibid*.

²³⁵ *Ibid* at 26.

²³⁶ V Rajagopal, *India ranked dismal 66th in Global Hunger Index*, online: The Hindu <www.thehindu.com>.

²³⁷ GHI is calculated by a simple average of three indicators: proportion of undernourished people as a percentage of the population, prevalence of underweight children under five, and mortality rate among under-five children. A lower GHI score implies better nutritional standard and a higher rank

of two decades, Ethiopia's improvement in GHI score has outpaced India's.²³⁸ Despite India appearing to enjoy advantages that would allow it to fare better than Ethiopia in feeding its population, the country has the highest rate of malnourished children under the age of five in the world.²³⁹ In terms of underweight children under the age of five, the Indian state of Madhya Pradesh far surpasses Ethiopia, with 59.9 percent compared to the latter's 34.6 percent.²⁴⁰ Food production in Madhya Pradesh far surpasses Ethiopia's, yet the poor children of Madhya Pradesh are exposed to acute malnutrition worse than their counterparts in Ethiopia. India's greater population pressures alone cannot explain its relatively poor standing on the GHI rankings, given highly populated China's much stronger position in fifth place out of seventy-five countries, a remarkable fifty spots ahead of India.

Both countries examined here illustrate that in very different political contexts and levels of development, justice-based approaches have begun to help poor people realize their right to adequate food. Our analysis of India and Ethiopia also demonstrates that, due to institutional inefficiencies that result in corruption and systemic inequality, an important reason many many continue to be hungry and malnourished is because they are powerless to access food, rather than there being a lack of food available. These countries' most marginalized citizens lack the power to influence policy decisions and the design of institutions at the domestic and international levels. The connection between rights and food security indicators is becoming increasingly important as countries begin to incorporate food rights into their domestic legislation, setting the stage for development experts and human rights advocates to demand enforcement. In this article, we have considered how the two are strongly linked and mutually reinforcing. The next step as we strive towards a hunger-free world is the development of tools and mechanisms to amplify the synergy of human rights and food security initiatives.

The justice-based frameworks employed in India and Ethiopia have begun to spur important gains in realizing food security. Justice-based strategies inform the principles and processes behind the food security movement through empowerment, participation, accountability, and transparency. The process of gradual realization of food security, at its core, is one of identifying duty bearers and empowering claim holders to hold them accountable.²⁴¹ The process in both countries would have not been set into motion had government initiatives and social movements not had a base of civil and political rights to anchor onto. The framework can also serve to reframe hunger in terms of arbitrary state conduct and discrimination, rather than simply a by-product of overall poverty.

for a country. See Klaus von Grebmer et al, *Global Hunger Index, The challenge of hidden hunger* (Washington: International Food Policy Research Institute, 2014) at 16.

²³⁸ India's GHI score has improved from 26.9 in 1995 to 17.8 in 2014, an increase of 34% percent. Ethiopia's GHI score has improved from 42.6 in 1995 to 24.4 in 2014, an increase of 43% percent. For the authors' own calculations using data from the 2014 GHI report, see *ibid*.

²³⁹ Sayantan Bera, "India Beters its Rank in Global Hunger Index", *Live Mint* (13 October 2014), online: <www.livemint.com/Politics/rUGpGL9KeroKGBf0xQw4kK/India-beters-its-rank-in-Global-Hunger-Index.html>.

²⁴⁰ Rajagopal, *supra* note 236.

²⁴¹ See Amartya Sen, "The right not to be hungry" in Philip Alston & Katarina Tomasevski, eds, *The Right to Food* (The Netherlands: Martinus Nijhoff, 1984) 9 at 75.

The relationship between the justice-based framework and achieving progress as measured by food security indicators is mutually reinforcing. For further progress, however, human rights lawyers and development experts will need to work together more closely than ever before. A justice-based discourse can animate or redirect public opinion. It also offers a concrete starting point to bridging the gap between rhetoric and practice. It reminds us that hunger is a grave human rights violation, and far from inevitable.