INDIA SINKING: THREATS TO THE RIGHT TO FOOD, FOOD SECURITY & DEVELOPMENT IN AN ERA OF ECONOMIC GROWTH

Sukanya Pillay*

Despite reports of being Asia's next economic superpower, India is experiencing a crisis in food that threatens development, peace, and security. Affecting 700 million Indians, the food crisis is caused by the State's failures to uphold its legal obligations to protect the international human right to food. Conflicting post-Independence agricultural policies, the Green Revolution, and neoliberal reforms imposed at the behest of the World Bank, the International Monetary Fund, and the World Trade Organization, have dismantled the country's food production capacity. The result is increased hunger, poverty, malnutrition, starvation, deaths, vast social inequities, inflated food prices, the decimation of small-scale farming, epidemic farmer suicides, and the loss of biodiversity, each of which violate the international human right to food, and threaten development, peace, and security. Part II of this article sets out India's legal obligations to protect the right to food, the prerequisite of this right for development, and the duty of the State to ensure non-State actors respect this right. Part III of this article explains how and why policy reforms in India have removed key resources from small-scale farmers and rural Indians, leaving India with the highest malnutrition, poverty, and hunger rates in the world. Part IV concludes that the neoliberal reforms have resulted in the failure of the right to food and the right to development in the country, and have perpetuated poverty, powerlessness, and exclusion among India's poor; India must pursue a development strategy that is human-rights centered, and must implement economic reforms that are grounded in justice, equity, and respect for the inherent dignity of the human being. Some initial areas for reform are identified as a means for the Indian government to protect the right to food, and to work towards the realization of the full benefits of development for all Indians.

* The author works with the Canadian Civil Liberties Association as Director of the National Security Project. She has been a professor at the Faculty of Law at the University of Windsor and has worked previously in India as corporate counsel for a multinational corporation, and as a lawyer investigating state compliance with treaty obligations for an international NGO focusing on international human rights law. This paper emerges from a research trip taken to India by the author in August-September 2006. The author is grateful for the time and information provided by high ranking officials working with the Indian Ministry of Agriculture, Indian Ministry of Commerce, the Indian Institute of Foreign Trade, and for the invaluable comments and discussions of members of the Human Rights Law Network, AIDWA, M.S. Swaminathan, Colin Gonsalves, Jean Dreze, Vasanthi Devi, and Devinder Sharma. An early version of this paper was delivered at a conference at Seattle University in October 2006 and the author is grateful to Gail Lasprogata, Gemma Smyth, and Julio Menezes for their comments at that time. The author would also like to thank the Faculty of Law, University of Windsor for their support, the University of Windsor Women's Grant, and the valuable research assistance of Marietta Hristovski, Bilal Khan, and Tim McKeown. For their support the author also thanks Bruce Elman, Sunil Gupta, K.S. Ranganathan, Vasanthi Devi, Annette Demers, Reem Bahdi, Vidya Balachandar, Toni Kaplan, Mireille Hector, Yamini Bhatt, Vicki Leung, and the late Professor Rose Voyvodic.

Malgré les rapports qu'elle est la prochaine superpuissance économique de l'Asie, l'Inde connaît une crise alimentaire qui menace le développement, la paix et la sécurité. Touchant plus de 700 millions d'Indiens et d'Indiennes, la crise alimentaire est due au manquement de l'État de remplir ses obligations légales de protéger le droit international de la personne à l'alimentation. Des politiques agricoles incompatibles suite à l'Indépendance, la Révolution verte et les réformes néolibérales exigées par la Banque mondiale, le Fonds monétaire international et l'Organisation mondiale du Commerce ont démantelé la capacité de production alimentaire du pays. Il en résulte une augmentation de la faim, de la pauvreté, de la malnutrition, de l'inanition, de décès, d'iniquités sociales de grande envergure, de la majoration du coût des aliments, la décimation de la petite culture, le suicide épidémique chez les cultivateurs et la perte de biodiversité, tous des éléments qui violent le droit international de la personne à l'alimentation et qui menacent le développement, la paix et la sécurité. La deuxième partie de cet article expose les obligations légales de l'Inde de protéger le droit à l'alimentation, le fait que ce droit est préalable au développement, et le devoir de l'État d'assurer que les acteurs autres que l'État respectent ce droit. La troisième partie de l'article explique comment et pourquoi les réformes des politiques en Inde ont enlevé des ressources-clés des petits cultivateurs et des Indiens et Indiennes en milieu rural, laissant l'Inde avec les taux de malnutrition, de pauvreté et de faim les plus élevés au monde. La quatrième partie conclut que les réformes néolibérales ont mené à l'échec du droit à l'alimentation et du droit au développement dans le pays et ont perpétué la pauvreté, l'impuissance et l'exclusion chez les pauvres de l'Inde; l'Inde doit poursuivre une stratégie de développement centrée sur les droits de la personne et doit mettre en place des réformes économiques fondées sur la justice, l'équité, et le respect de la dignité inhérente à l'être humain. Quelques domaines initiaux dans lesquels effectuer des réformes sont identifiés comme moyen par lequel le gouvernement indien peut protéger le droit à l'alimentation et œuvrer à la réalisation de tous les avantages du développement pour tous les Indiens et Indiennes.

I. INTRODUCTION

India's food crisis is at odds with its exported image of being an economic success story.¹ Although India's economy has been growing an astonishing

1 Indian Finance Minister P. Chidambaram, reviewing the 2007-2008 fiscal year, claimed India will be an economic superpower, as quoted in *The Economic Times* (22 July 2008), online: Economic Times <http://economictimes.indiatimes.com/News/Economy/India_set_to_become_an_economic_superpower_Chida_mbaram/articleshow/3265048.cms>. See also *India: Development Policy Review – Questions and Answers*, online: The World Bank <<http://web.worldbank.org/>

8-9%² in recent years, this growth is primarily in the services and industry sectors which benefit only 25% of India's 1.1 billion people.³ Seventy percent of the population – that is, 700 million people – are being bypassed by this economic growth, and in fact, being pushed further into poverty and hunger.⁴

India has the highest number of hungry people in the world,⁵ and the largest number of undernourished people; malnutrition and infant mortality are worse than in sub-Saharan Africa;⁶ 250 million Indians are living below the poverty line;⁷ over 860 million Indians are living on less than US\$2.00 per day;⁸ and starvation deaths are being reported throughout the countryside.⁹ The Food and Agriculture Organization of the United Nations (FAO) reports that rising international food prices have added 75 million people to the number of hungry in the world, and India now has 231 million people suffering from hunger.¹⁰

WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/0,,contentMDK:20992968 -pagePK:146736-piPK:146830-theSitePK:223547,00.html>, [World Bank Report] stating that, "India's rapid economic growth - among the top ten percent in the world since 1991 - has positioned the country as an emerging economic superpower." See also Anand Giridharadas, "India Economy Grows at Torrid Pace" *New York Times* (29 September 2006), online: The New York Times <<http://www.nytimes.com/2006/09/29/business/worldbusiness/30rupeeecnd.html?ex=1317182400&en=93f5c5cbab358d74&ei=5088&partner=rssnyt&cmc=rss>>. But see also emerging views that violence may be halting India's economic growth, *New York Times* (29 November 2008) online: The New York Times <<http://www.nytimes.com/2008/11/29/world/asia/29impact.html?ref=asia>>.

- 2 See speech of Indian Prime Minister Singh, marking Indian Independence Day, August 15, 2008, stating that the Indian economy has grown at 9% for the past four years, online: India Brand Equity Foundation <http://ibef.org/artdisplay.aspx?art_id=20023&cat_id=100&page=2>. See generally Sumit Ganguly and Manjeet S. Pardesi, "India Rising: What is New Delhi to do?" (2007) 24:1 *World Policy Journal* 9, about the growth of the Indian economy.
- 3 See Food and Agriculture Organization of the United Nations (FAO), *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Developing Countries, Volume II, Chapter 6. India*, [FAO, India] reporting in the *Introduction* that "(a)bout 70 percent of rural households and 8 percent of urban households are still principally dependent on agriculture for employment. Since some three quarters of the population live in rural areas, a majority of Indian households thus depend principally on this sector." online: FAO <<http://www.fao.org/DOCREP/003/X8731E/x8731e07.htm>>. See also Special Rapporteur, "India Report," *infra*.
- 4 UN Economic & Social Council (ECOSOC), Sub-Committee On The Right to Food, *Report of the Special Rapporteur on the Right to Food - Mission to India*, U.N. Doc. E/CN.4/2006/44/Add.2 (20 March 2006) (prepared by Jean Ziegler), [Special Rapporteur, "India Report"] at para. 7. See also BBC News Article "Is India Facing a Food Crisis?" (7 April 2008), [BBC, "Food Crisis"] reporting on the steep increases in food prices, online: BBC News, <http://news.bbc.co.uk/2/hi/south_asia/7327858.stm>.
- 5 Special Rapporteur "India Report," *ibid*. See also BBC News article "Hunger in India States Alarming" (14 October 2008), online: BBC News <http://news.bbc.co.uk/2/hi/south_asia/7669152.stm>, [BBC, "Hunger in India"]
- 6 Special Rapporteur "India Report," *ibid*. The article provides additional statistics on the concern of hunger and starvation in India, including its poor ranking in the World Hunger Index.
- 7 *Ibid*.
- 8 The Special Rapporteur noted that the World Bank reported that 80% live on below \$2/day, and of them, almost half live on less than \$1/day. *ibid*. para. 8, fn. 6.
- 9 *Ibid*. at paras. 6, 8, 9, 10-16. See also BBC, "Hunger in India" *supra* note 5.
- 10 See Food and Agriculture Organization of the United Nations Briefing Paper "Hunger on the Rise" (17 September 2008), online: FAO <<http://www.fao.org/newsroom/common/ecg/1000923/en/hungerfigs.pdf>>. The number of hungry in India has increased by 20 million

The first Millennium Development Goal (MDG) is halving the proportion of the number of people suffering from extreme hunger and poverty by 2015; it is unlikely India will achieve this goal. Contrary to the political slogan and media fanfare, India is decidedly not “Shining.”¹¹

Throughout the country, the Right to Food and the Right to Development are failing. These rights are entrenched in international legal covenants ratified by India, which therefore create binding legal obligations upon the State to provide these rights to all people within its jurisdiction: that is, the Indian people are “rights holders” entitled to the enjoyment of these rights, and the Indian Government is the primary “duty holder” legally obligated to provide these rights. Further, the right to food is entrenched in the Indian *Constitution* and Directive Principles,¹² creating legal obligations at a national level. The rights to food and development are mutually reinforcing, one cannot exist without the other, and the failure of one is often the failure of the other.

Similarly, chronic hunger and poverty are indivisible.¹³ Hunger is not caused by the shortage of food, but by the inequitable distribution of food and/or the lack of access to food or productive resources, usually through lack of economic purchasing power. Poverty is not only about economic lack, but also about the denial to a human being of his or her capabilities. In a vicious cycle, hunger creates poverty because it diminishes the capacity of humans to perform and participate in every aspect of their societies. Poverty is further exacerbated by unjust social and economic conditions which perpetuate exclusion and powerlessness. India calls itself the ‘largest democracy in the world,’ but the claim is disingenuous given the persistent impoverishment and exclusion of 70% of its population.

The denial of the rights to food and development underpins the denial of all social, economic, cultural, civil, and political rights for the hundreds of millions of mass poor in India, including the real entitlements of true democracy.¹⁴ The masses of poor and hungry are obstructed from meaningfully participating

since 1990-1992, the baseline period for measuring hunger prior to the World Food Summit in 1996.

11 In 2003 the then ruling BJP (Bharatiya Janata Party) political party adopted the slogan “India Shining” in anticipation of the upcoming 2004 general elections. The slogan was supposed to reflect the economic boom in India, but is considered to have backfired and the BJP were voted out of power. The Congress party won on the platform of working to help the poor. See “BJP Admits ‘India Shining’ Error” (28 May 2004), online: BBC News <http://news.bbc.co.uk/2/hi/south_asia/3756387.stm>.

12 The Right to Food has been judicially interpreted as being part of the Right to Life and the Right to Nutrition, entrenched in the Indian *Constitution*, *infra* note 64.

13 See “Understanding Poverty, What is Poverty,” World Bank online: World Bank stating “Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time. Poverty is losing a child to illness brought about by unclean water. Poverty is powerlessness, lack of representation and freedom”, online: World Bank <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/0,,contentMDK:20153855-menuPK:373757-pagePK:148956-piPK:216618-theSitePK:336992,00.html>>.

14 See UN Committee on Social and Economic Rights, General Comment 12, para. 4, on the Right to Food, *infra* note 67.

in their society or government,¹⁵ or being informed enough to hold a government accountable for violating the duty to protect rights to which the poor are entitled. As Jean Dreze states, “there is an obvious sense in which mass hunger is fundamentally incompatible with democracy in any meaningful sense of the word.”¹⁶

So why are poverty and hunger increasing in India? Why are the rights to food and development being consistently violated? The answer, it seems, is because the Indian Government has prescribed solely economic-centered policies that are shrinking the agricultural sector, upon which 70% of the population relies for food and livelihood.

The shrinking of agriculture has been in place for over fifty years, with accelerated damage occurring with ‘globalization’ and the corresponding neoliberal reforms. Post-Independence policies, including the Green Revolution, resulted in serious harm to India’s crop diversification, biodiversity, food security, and food sovereignty. Further reforms enabled transnational corporations (TNCs) to enter the agricultural sector of the Indian market, assuming eventual control over every aspect of the food chain and farming, and requiring farmers to rely upon the exorbitantly costly inputs of imported technologies, seeds, chemical fertilizers, and pesticides, all manufactured by the TNCs. Small farmers were devastated, rendered landless, suffering loss of wages, food insecurity, and incurring enormous debt, perpetuating a first wave of hunger, poverty, and violations of social and economic rights including the right to food, in newly independent India. A second reason for the shrinking of agriculture is that India has pursued a neoliberal philosophy towards development to comply with conditions imposed by the World Bank, International Monetary Fund (IMF), and World Trade Organization (WTO). India implemented economic reforms giving paramountcy to market liberalization, privatization, profit maximization for corporate agribusiness and the elite; the prioritization of cash crops over staple crops,

15 See Thomas Pogge, *Poverty and Human Rights*, online: Office of the High Commissioner for Human Rights <http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas_Pogge_Summary.pdf> [Pogge, *Poverty and Human Rights*], stating that hunger and poverty are the underlying reasons for the poor being denied their enjoyment of human rights, including civil and political rights. Desperately poor people, often stunted, illiterate, and heavily preoccupied with the struggle to survive, typically lack effective means for resisting or rewarding their rulers, who are therefore likely to rule them oppressively while catering to the interests of others, often foreign, agents (governments and corporations, for instance) who are more capable of reciprocation.” at 1.

16 See Jean Dreze commenting that a political democracy is incomplete without an economic democracy, which includes the realization of the Right to Food. Dreze, “*Democracy and the Right To Food*” *infra* note 58 at 51: “Indian democracy is trapped in a vicious circle of exclusion and elitism. Because underprivileged sections of the population are excluded from active participation in democratic politics, their aspirations and priorities are not reflected in public policy. The elitist orientation of public policy, in turn, perpetuates the deprivations (poverty, hunger, illiteracy, discrimination, etc.) that disempower people and prevent them from participating in democratic politics. The root of the problems was identified quite clearly by Dr. Ambedkar in the context of his argument for linking political democracy with economic and social democracy. ‘On the 26 January 1950,’ he said, ‘we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality.’”

reversal of protectionist trade practices and subsidies for staple crops; and the removal of government intervention in the marketplace. Economic reforms can co-exist with human rights provisions – and economic growth is necessary for development – but these reforms were solely economic-centered with no apparent regard for the deleterious effects upon the marginalized, powerless majority. The increasing rates of hunger and poverty, and the spate of farmer suicides numbering in the tens of thousands every year for the past decade are attributed to the implementation of these neoliberal policies.¹⁷

The Indian government has repeatedly made pronouncements recognizing the severity of the agricultural crisis and its commitment to protect farmers, fight hunger and poverty, and promote development.¹⁸ Yet this is only rhetoric. Its laws and policies perpetuate an inequitable social and economic order of chronic hunger, poverty, powerlessness, and exclusion.

This article posits that India's solely economic-centered development reforms have been a serious, tragic mistake of colossal proportions. While it is true the economy has grown, it has done so at the expense of 700 million people, compounding the suffering of the most vulnerable segments of society including scheduled castes, women, and children. Solely economic-centered reforms orchestrate and justify violations of social and economic rights as 'a necessary short-term pain for long-term gain;' but such arguments are callously facile as the 'gains' are enjoyed only by powerful minority elites or corporations, and the 'pains' for the majority are permanent, chronic, excruciating, or fatal.

This article states that India must comply with its binding international legal obligations regarding the human rights to food and development. To do so, India must adopt a human rights-centered approach to development that will create the economic and social conditions to promote the rights and development of all people.

Part II of this article sets out the right to food in international law and the

17 See Special Rapporteur "India Report," *supra* note 4 at para. 14 reporting that high cost inputs pushed farmers into debt, leading to farmer suicides. See also "1500 Farmers Commit Mass Suicide in India" *The Independent* (15 April 2009), online: <http://www.independent.co.uk/news/world/asia/1500-farmers-commit-mass-suicide-in-india-1669018.html>. See also BBC, "Food Crisis," *supra* note 4, stating that 10,000 farmers have killed themselves each year over the last 10 years. See also reports in the *Daily Mail (UK)* (3 November 2008), that the Indian Ministry of Agriculture has confirmed in 2008 that 1,000 farmers kill themselves every month, and that India's farmer suicides have also been referred to as the "GM Genocides" and were called "tragic" and a "moral question" by Prince Charles, online: <http://www.dailymail.co.uk/news/worldnews/article-1082559/The-GM-genocide-Thousands-Indian-farmers-committing-suicide-using-genetically-modified-crops.html>. For a recent report stating that the suicides are not due to GM crops see "Indian Farmer Suicides not GM Related, say Study" *The Guardian* (5 November 2008), online: <http://www.guardian.co.uk/environment/2008/nov/05/gmcrops-india>; in any event, the article does not dispute the fact of the suicides or that they are caused by free market reforms, but states narrowly that suicides have not risen due to an increase in the use of GM seeds; this view is disputed by civil society organizations in India. See also "On India's Farms, a Plague of Suicides" *The New York Times* (19 September 2006), online: <http://www.nytimes.com/2006/09/19/world/asia/19india.html?pagewanted=2>.

18 See e.g. the Independence Day Speech of the Indian Prime Minister, August 15, 2008, *supra* note 2.

corresponding binding legal obligations upon the government of India. The interdependencies between development and the right to food, as well as the elements of food security and food sovereignty, are discussed. The obligations of the State as duty-holder in creating the legal and policy environment for enjoyment of these rights, and the challenges faced by Indian citizens as rights-holders with respect to the State, and the exigencies of today's globalized world regarding the impact on rights by non-State actors like the World Bank, IMF, WTO, and TNCs are also discussed. Part III examines in detail the post-Independence policies, Green Revolution, and neoliberal economic policies promoting the agendas of the World Bank, IMF, and WTO which have contributed to India's food crisis. Part IV makes concluding remarks on the neo-liberal economic reforms, and calls for future reforms to be human-rights centered, creating a just and equitable economic and social order respecting the inherent dignity of every human person, and creating the environment in which the right to food and development can be realized.

PART II: THE RIGHT TO FOOD IN INTERNATIONAL LAW

A. Statement of the Problem

The Right to Food and the Right to Development are failing in India.¹⁹ India has more people suffering from hunger than any other country in the world. Nearly fifty percent of the world's hungry live in India.²⁰ In 2006, the United Nations Special Rapporteur on the Right to Food ("Special Rapporteur") conducted a mission to India and found serious hunger, malnutrition, and starvation deaths not reported since 1962.²¹

India's plight to sustainably feed itself mirrors the challenges faced by developing countries throughout the world, and is reflected in the global food crisis. One in every six people in the world lives in India, and one in every four farmers in the world is Indian.

Across the world, the number of starving people has increased to 923 million in 2008,²² from 826 million in 2001.²³ This, despite the commitment of

19 The vast hundreds of millions of poor people in India are suffering violations of their human rights. See Thomas Pogge, "Recognized and Violated by International Law: The Human Rights of the Global Poor" (2005) 18 *Leiden J. Int'l L.* 717, who writes "the great human rights deficits persisting today are heavily concentrated among the global poor," and international law "establishes and maintains institutional structures that greatly contribute to violations of these human rights," including the "persistence of severe poverty." [Pogge, "Recognized"] at 718.

20 See the World Food Programme, India Program, online: World Food Program <http://www.wfp.org/country_brief/indexcountry.asp?country=356>. Note that this number has increased since 2005, when the number of hungry in India represented only 25% of the world's hungry; see October 13, 2005 press release of the Food First Information and Action Network reporting on the alarming situation of hunger in India and demanding that the Indian government take specific steps to reduce hunger and starvation deaths in the country, online: Food First Information and Action Network <http://www.fian.org/news/press-releases/fian-demands-that-the-indian-government-takes-massive-action-against-starvationdeaths?set_language=en>.

21 Special Rapporteur "India Report," *supra* note 4.

22 As reported by the Food and Agricultural Organization (FAO) of the United Nations, (18 September 2008), press release online: FAO <<http://www.fao.org/newsroom/en/news/2008/1000923/>>.

23 *Supra* note 20, and see *Report of the Special Rapporteur on the Right to Food to the Commission on*

the international community to halve the proportion of hunger in the world by 2015.²⁴ Hunger has been described as the silent genocide²⁵ that claims over 24,000 lives every day. Today, two billion people worldwide go hungry and every five seconds a child under the age of five dies from hunger-related causes.²⁶ Eighty percent of the world's hungry live in rural areas in developing countries and rely on agriculture for their livelihoods; and most are small farmers who cannot feed themselves because they do not have access to food, or to resources like seeds or water.²⁷ Twenty percent of the world's hungry are migrants living in urban areas.²⁸ Hunger is not caused by the scarcity of food;²⁹ there is enough

Human Rights, 24 January 2005, E/CN./2005/47 at para. 3. [Special Rapporteur, "Ethiopia"] See also *supra* note 10, regarding the increase in the number of starving and hungry people in India.

- 24 See Thomas Pogge, "The First UN Millennium Development Goal: A Cause for Celebration?" (2005) 5:3 *Journal of Human Development* 377, writing that following the World Food Summit in 1996 the international community pledged to half the 'number' of hunger and poverty in the world. The MDGs however changed the language to halving the 'proportion' of hunger and poverty, which is less, and calculating the 'proportion' from the early 1990s, further lessening the numbers to actually be aided by the first MDG. See also Sanjay Reddy & Thomas Pogge, "How Not to Count the Poor" in *Measuring Global Poverty* (Oxford: Oxford University Press, 2007). This book is scheduled to be re-released in January 2010 under the title *Debates in Measurement of Global Poverty* Sudhir Anand, Paul Segal & Joseph Stiglitz eds. (Oxford: Oxford University Press, 2010 (tentative)).
- 25 The Special Rapporteur on the Right to Food in his report to the General Assembly, UNGAOR, 56th Sess., UN Doc.A/56/210 (2001) at para. 129 reported, "The silent, daily genocide of hunger has to be stopped." See also the overview of the work of the Hunger Project which includes statistics regarding hunger, online: The Hunger Project <<http://www.thp.org/overview/index.html>>.
- 26 See Care website regarding the initiative to Make Poverty History, online: Care <http://www.care.ca/work/events/make_History/history_e.shtm>. See also Report of the Special Rapporteur on the Right to Food, Report to the 59th Session of the General Assembly, September 27th, 2004, A/59/385 at para. 2.
- 27 See Report of the Special Rapporteur on the Right to Food, [Special Rapporteur, "Right to Food"], made to the Commission on Human Rights, UN Economic and Social Council, March 16, 2006, E.CN.4/2006/44, at para. 4. See also Michael Windfuhr, "What can Civil Society Groups Working in the Field of Right to Food and Nutrition do with the Voluntary Guidelines?" *Right to Food*, Human Rights Law Network, 2005, pp. 505 at 507-508 stating that "(t)he key lesson from the brief typology presented is that hunger and malnutrition are deeply entrenched in groups that are politically and geographically marginalized and live in relatively remote areas" that "Small holder farmers on marginal lands often lack access to secure land titles, to credits, agricultural extension services, to local markets and agricultural research. Landless families lack access to jobs or productive resources such as land, seeds or water..." and the value added in identifying not only numbers, but the groups most affected by hunger and poverty, is the ability to then identify solutions, namely "securing access to ...productive resources. The role of government is important, not in relation to production but in the creation and security of an enabling environment."
- 28 Special Rapporteur, "Right to Food," *ibid*.
- 29 See e.g. "Rice Blames India, China for Food Crisis", *Times of India* (29 April 2008), online: Times of India <http://timesofindia.indiatimes.com/Food_New_global_crisis/Rice_blames_India_China_for_food_crisis/rssarticle/show/2996063.cms> last visited December 6, 2008, reporting that US Secretary of State Rice has attributed the food crisis in part to the increasing diets of India and China causing those governments to keep food in those countries. Her comments imply that India is a food exporter, whereas subsequent comments by President Bush suggest that the increased demand for food among the rising middle class in India was the cause of the global food crisis, implying that India was a net food importer exhausting world food supply; See Rama Lakshmi, "Bush Comment on Food Crisis Brings Anger, Ridicule in India" *The*

food on the planet to feed twelve billion people each day.³⁰ In the developing world, the causes of hunger and poverty are historic and systemic.³¹

The right to be free from hunger is a “fundamental human right.”³² Food and hunger are directly related to an individual’s dignity and his or her ability to live a fulfilling life, exploring and achieving their potential as a human being. A hungry or starving human being cannot fully contribute to his or her family or community, cannot engage in gainful employment, cannot acquire the resources which would enable procurement of food,³³ and cannot meaningfully partici-

Washington Post (8 May 2008), online: The Washington Post <<http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050703405.html>>, last visited December 6, 2008. Jayati Ghosh in her article wrote “When food prices were rising, there was much talk of the shifts in demand that were causing this trend. President Bush joined those who decided that this reflected the increased demand from China and India as their per capita incomes grew. This was a ludicrous argument because food consumption has actually declined in both countries. Both economies have shown even sharper declines in per capita food intake despite the continued presence of widespread hunger, because of increased income inequalities within these countries. In any case, that argument about more food demand from China and India quickly collapsed along with the fall in global prices. Now it is more than evident that the wild swings that have been observed in food and several commodity markets over this year have been the result of speculative forces, rather than any real changes in global demand and supply.” Jayati Ghosh, “The Outcry is Muted but the Food Crisis is Getting Worse” *The Guardian* (9 January 2009), online: The Guardian <<http://www.guardian.co.uk/commentisfree/2009/jan/09/food-shortages-coverage-jayati-ghosh>>, last visited January 19, 2009.

30 See report of the Special Rapporteur on the Right to Food to the United Nations General Assembly, Jean Ziegler, *Report on All Human Rights, Civil, Political, Economic, Social, Cultural, Rights, Including the Right to Development*, UNGAOR, 7th Sess., UN Doc. A/HRC/7/52 online: Right to Food <<http://www.righttofood.org/new/PDF/CHR2008.pdf>>. [Special Rapporteur: “2008”]

31 See e.g. Pogge, *Poverty and Human Rights*, *supra* note 15, stating that “the existing radical inequality is deeply tainted by how it accumulated through *one* historical process that was deeply pervaded by enslavement, colonialism, even genocide. The rich are quick to point out that they cannot inherit their ancestor’s sins. Indeed. But how can they then be entitled to the fruits of these sins: To their huge inherited advantage in power and wealth over the rest of the world? If they are not so entitled, then they are, by actively excluding the global poor from their lands and possessions, contributing to their deprivations....The asymmetries inherent in the current global economic (WTO) regime are well documented: It allows the rich countries to favour their own companies through tariffs, quotas, anti-dumping duties, export credits and huge subsidies. UNCTAD estimates that the latter market distortions cost the developing countries \$700 billion annually in lost export revenue...” In this article, Pogge goes on to discuss the corruption of governments in developing countries “unwilling or unable to make serious poverty-eradication efforts. But their ability to rule, often against the will and interests of the population, crucially depends on outside factors. It depends for instance, on their being recognized by the rich countries as entitled to borrow in their country’s name, to confer legal title to its resources...,” who enforce laws, or enter into contracts, to dispose of their country’s resources, “impose debt service obligations upon it, to sign treaties on the country’s behalf and thus to bind its present and future population.” at 3-4.

32 *Infra* notes 73 and 74.

33 See first Report of the Special Rapporteur on the Right to Food, Jean Ziegler, *Economic, Social and Cultural Rights*, UNESCOR, 57th Sess., UN Doc. E/CN.4/2001/53 para. 8. [Special Rapporteur, 2001] The Special Rapporteur writes that “the unbearable nagging dread that tortures starving persons from the moment they wake up...that dread may be even more terrible than the physical suffering and the many aches and diseases that strike an undernourished body.”

pate in creating, shaping, or challenging the system of government in which he or she lives.³⁴

The right to development is also failing in India. India has the highest rates of AIDS cases in the world;³⁵ its adult literacy rates are only at 73 percent for males and 48 percent for females;³⁶ and, it has the highest number of undernourished people in the world, and one of the highest numbers of child malnutrition. Close to two million children die each year from “malnutrition and preventable diseases,” and half “suffer from moderate or severe malnutrition, with 47 percent of children underweight and 46 percent stunted in their growth.”³⁷

Gender and caste inequalities pervade the country. “Scheduled castes and tribes suffer the most from hunger and malnutrition.”³⁸ Women are particularly vulnerable in these situations, often eating last or forgoing rations, which is detrimental to her health, being paid less than men for the same agricultural labour, and being denied the ability to hold title to lands.³⁹ Female infanticide persists, particularly in rural areas, and maternal malnutrition and death in childbirth remain serious problems. Indian women are seriously malnourished

34 See *General Comment 12* *infra* note 67 at paragraph 1: “The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to all persons...” and paragraph 4: “The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.” See also Pogge, *Poverty and Human Rights*, *supra* note 15, at 2 stating that socio-economic rights such as the right to food “are currently, and by far, the most frequently violated human rights. Their widespread violation also plays a decisive role in explaining the global deficit in civil and political human rights which demand democracy, due process, and the rule of law: Very often poor people – often physically and mentally stunted due to malnutrition in infancy, illiterate due to lack of schooling, and much preoccupied with their family’s survival, can cause little harm or benefit to the politicians and officials who rule them. Such rulers therefore have far less incentive to attend to the interests of the poor compared with the interests of agents more capable of reciprocation, including foreign governments, companies, and tourists.” The 1996 World Food Summit recognized the link between the RTF and the RTD in its statement emphasizing “the need for democracy and the promotion and protection of all human rights and fundamental freedoms, the right to development and the full and equal participation of men and women as essential determinants of success in achieving sustainable food security for all.”

35 See Special Rapporteur: “2008,” *supra* note 30.

36 *Ibid.* at 13.

37 See Special Rapporteur, “India Report,” *supra* note 4 at para. 7.

38 *Ibid.* at para. 11 reports, “scheduled castes and tribes suffer most from hunger and malnutrition, making up 25 percent of the rural population but 42 percent of the poor. As a result of discrimination, many low-caste Dalits are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers. Although debt bondage is illegal, NGOs estimate that there are between 20 to 60 million bonded labourers in India, 85 per cent of them belonging to scheduled castes and scheduled tribes.”

39 *Ibid.* at paras. 7-14. See especially para. 12: “Women and children, particularly girl children also, tend to suffer disproportionately from hunger and malnutrition as a result of discrimination. Women are particularly vulnerable as a result of social customs that women should eat last and eat least. Women are paid less than men for the same work, with the average agricultural wage rate per day for women about 16.4 rupees, while it is 23.4 rupees for men.”

and 75% are anemic, with the result that prematurity and low birth weights are rampant in the country.⁴⁰ Increased hunger and poverty subject a woman to abuses: “when economic vulnerability increases and particularly when the core which is food vulnerability and food insecurity increases, the degree of abuse, whether it is sexual, abuse of human dignity, or her dependence on contractors, on supervisors, on shopkeepers whom she is indebted to; all these factors lead to an increase in violence against women.”⁴¹

B. Incorporating the Right to Development into Economic Reforms

‘Development’ is a term invoked by all actors: citizens; victims; States imposing reforms; the World Bank, IMF, and WTO in justifying imposed reforms; and the TNCs operating in developing countries.

The Preamble to the *Declaration on the Right to Development* defines development as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”⁴² *The Declaration on the Right to Development*⁴³ states in Article 1 that “the right to development is an inalienable right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” ‘Development’ itself contains the goal of the realization of all human rights.

The right to development is a process recognizing a progressive realization of rights.⁴⁴ It is recognized that resource constraints within a country may prevent

40 See speech by Brinda Karat, “Strengthen the PDS, Make it Universal at BPL prices,” *Voice of Working Woman*, (February 2006), online: Centre for Indian Trade Unions <http://citu.org.in/wwomen_feb06_al.htm>. Ms. Karat states “that agricultural, trade and economic reforms are increasing hunger which has particularly harmful effects on women; in India approximately 70-75% of women are anemic, 50-55% of all adults are undernourished, and 30% of newborns are underweight. Women bear the burden of poverty in patriarchal societies throughout India, eating last or not at all when food is scarce, and when work is scarce women are vulnerable to accepting any type of work for wages far below the minimum wages.”

41 *Ibid.*

42 *Declaration on the Right to Development*, GA Res. 41/128, UNGAOR, 41st Sess., U.N. Doc. A/Res/41/128 Annex (1987).

43 *Ibid.*

44 The Right to Development was proclaimed a human right by the UN Commission on Human Rights in 1977, res. 4 (XXXIII) (1977). The RTD is also a “composite right to a process of development; it is not just an “umbrella right,” or the sum of a set of rights. The integrity of these rights implies that if any one of them is violated, the whole composite right to development is also violated,” See Frameworks for Development Cooperation and the Right to Development, *Fifth Report of the Independent Expert Mr. Arjun Sengupta on the Right to Development to the Commission on Human Rights*, UNCHROR, 2002, UN Doc. E/cn.4/2002/WG.18/6 para. 6 [Sengupta, Independent Expert]. For further information, see Russel Lawrence Barsh, “The Right to Development as a Human Right: Results of the Global Consultation” (1991) 13 Hum. Rts. Q. 322-338; and see Arjun Sengupta, *infra* note 46. For a brief overview of the right to development, see also Sukanya Pillay, “Absence of Justice: Lessons from the Bhopal Union Carbide Disaster for Latin America” (2006) 14 MSU-DCL J. Int’l L. 479 at 504-507. See generally regarding the right to development, online: UN Office of the High Commissioner

the immediate and full realization of development and economic, social, and cultural rights. Accordingly, “progressive realization” acknowledges that resource constraints can be relaxed by economic growth that is consistent with human rights norms.⁴⁵

Arjun Sengupta states that a human rights approach to development requires social and economic reforms rooted in the principles of justice and equity.⁴⁶ Such an approach does not herald economic and market growth as the sole indicators of development. Rather, development grounded in justice and equity leads to the improvement of the “entire population,” and the concept of “well-being” “extends well beyond conventional notions of economic growth to include the expansion of opportunities and capabilities to enjoy those opportunities, captured in the indicators of social and human development, which in turn expand their substantive freedoms.”⁴⁷ The concepts of justice and equity are each grounded in the recognition of the inherent dignity of human beings, and their equality in dignity and rights, and their entitlement to freely participate in their society.⁴⁸

Accordingly, a human rights-based approach to economic growth and development is willing to accept the ‘trade-off’ of less growth, in order to achieve justice and equity for all its participants.⁴⁹

The interdependencies among agriculture, hunger, poverty, and development have been recognized by the international community,⁵⁰ most recently in the Millennium Development Goals (MDGs).⁵¹ The MDGs represent the will of the international community to guarantee the right to development, and are directly related to agriculture and the right to food. The MDGs are:

a. Eradicate extreme poverty and hunger

for Human Rights <<http://www.unhchr.ch/development/right.html>> last visited January 19, 2009.

45 Sengupta, “Independent Expert” *ibid.* at para. 5. See also the Declaration on the Right to Development, *supra* note 42.

46 See Arjun Sengupta, “On the Theory and Practice of the Right to Development” (2002) 24 Hum. Rts. Q. 837-889 at 849.

47 *Ibid.* at 848.

48 *Ibid.* at 849. See also *Declaration on the Right to Development*, *supra* note 42.

49 *Ibid.* at 850, “According to the right to development, considerations of equity and justice would determine the whole structure of development. For example, poverty has to be reduced by empowering the poor and uplifting the poorest regions. The structure of production has to be adjusted to produce these outcomes through development policy. The aim of the policy should be to achieve this with the minimum impact on other objectives such as the overall growth of output. But if there is a trade-off, such that growth will be less than the feasible maximum, that will have to be accepted in order to satisfy the concern for equity. This development process has to be participatory.”

50 See generally the World Summit, the World Food Summit, the MDGs, the Voluntary Guidelines, online: <<http://www.fao.org/wsfs/world-summit/en/>> <<http://www.un.org/millenniumgoals/>> *infra* note 52 <<http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>> *infra* note 70 <<http://www.undp.org/mdg/>> <<http://www.fao.org/righttofood/kc/downloads/vl/en/details/215468.htm>>.

51 The UN member states adopted the Millennium Declaration in 2000.

- b. Achieve universal primary education
- c. Promote gender equality and empower women
- d. Reduce child mortality
- e. Improve maternal health
- f. Combat human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS), malaria, and other diseases
- g. Ensure environmental sustainability
- h. Develop a global partnership for development.⁵²

The World Bank has recognized that agriculture is key to achieving each of the MDGs, as most of the world's poor live in rural areas and "agriculture is a critical component in the successful attainment of the MDGs."⁵³ Agriculture-led economic growth and improved nutrition⁵⁴ are vital to eradicating extreme poverty and hunger (MDG (a)), and relate directly to the right to food.

To fulfill its obligations under international law, a state must create the economic and social conditions to promote the development of all human rights, including the right to food and the fundamental right to be free from hunger.⁵⁵ A state's duty to facilitate the right to development, or the "active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom" can be considered legal obligations in international law.⁵⁶ The MDGs acknowledge that development "rests on the foundations of democratic governance, rule of law, respect for human rights, and peace and security."⁵⁷

C. The Right to Food in International Law

The Right to Food and the Right to Development are both based on the understanding of the inherent dignity of the human being.⁵⁸ *The International*

52 See generally Millennium Goals online: United Nations <<http://www.un.org/millenniumgoals/>>, last visited January 19, 2009.

53 See *World Bank Report*, *supra* note 1, at pages ix-xiv for a summary of how agriculture is vital to achieving each of the MDGs.

54 *Ibid.*

55 See *Charter of the United Nations*, which in Article 1 identifies international cooperation in promoting and encouraging respect for human rights and fundamental freedoms as one of the purposes of the UN, Charter of the United Nations online: United Nations <www.un.org/aboutun/charter/>. See Declaration on the Right to Development, *supra* note 42 Article 2: "States have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom."

See especially the Voluntary Guidelines on the Right to Food, *infra* note 70.

56 *Ibid.* See also Arjun Sengupta, "A Rights-based Approach to Removing Poverty: Eradicating Poverty as Realizing Human Rights" (2007) 1 *Indian Journal of Human Development* 55

57 *Supra* note 52.

58 The Right to Food may also be considered a moral right, which does not depend upon prescribed laws for its existence. See Jean Dreze, "Democracy and the Right To Food" in Philip Alston & Mary Robinson, eds., *Human Rights and Development: Towards Mutual Reinforcement* (New York: Oxford University Press 2005) 45-64 at 45, "(I)t is possible to argue for the

Covenant on Economic and Social Rights (ICESCR) recognizes pre-existing legal rights in its Preamble, stating that “these rights derive from the inherent dignity of the human person,”⁵⁹ and therefore these entitlements of rights-holders do not derive from the good will of the State, but rather from the very existence of the right-holder as a human being. So although States do not confer the rights, they are custodians of the rights and must be held accountable for their actions regarding human rights. International human rights law provides the foundational framework to hold a State accountable for its legal obligations regarding human rights owed to rights-holders.

States recognized the importance of the right to food back in 1947. Following World War II, representatives of the international community drafted the *Universal Declaration of Human Rights* which enshrined the right to food.⁶⁰ The ICESCR in Articles 11 (1) and (2)⁶¹ set out the right to an adequate standard of

right to food as a moral and social right...Indeed, it is a basic premise of the human rights movement that all human beings have some fundamental rights, whether or not these rights are already incorporated in national or international law”[Dreze, “Democracy”]. See also Pogge, “Recognized” *supra* note 19 para. 2, stating that moral rights do not depend upon governments, but a government’s legitimacy can depend upon whether it upholds moral rights. Consider also that arguments in favor of humanitarian intervention have turned on a government losing its legitimacy if it violates human rights: for example, the international community accepted India’s intervention in then East Pakistan in 1972 when the then government committed mass atrocities against its peoples.

59 See ICESCR Preamble: “recognizing that these rights derive from the inherent dignity of the human person,” and in other words, these rights do not depend upon internationally or national legal systems for their creation. See Pogge, “Recognized” *supra* note 19 at 717 stating that “...human rights lawyers can acknowledge that the legal rights and obligations they draft and interpret are meant to give effect to pre-existing moral rights. In fact, this acknowledgment seems implicit in the common phrase ‘internationally recognized human rights.’ It is clearly expressed in the Preamble of the UDHR, which presents this *Declaration* as stating moral human rights that exist independently of itself. This acknowledgment bears stressing because the distinction between moral and legal human rights is rarely drawn clearly.... (E)ven all governments together cannot legislate (moral) rights out of existence. The widespread recognition of moral human rights is important because it makes room for an independent critical assessment of existing international law.”

60 *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948). Article 25 provides: “Everyone has the right to a standard of living adequate for the well-being of himself and his family, including **food**, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” [my emphasis]

61 *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976,) [ICCPR]. Article 6 TK.

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360, (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

ICESCR Article 11(1): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food... The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent,” and Article 11(2): “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures including specific programmes which are needed: (a) to improve methods of

living, which includes the Right To Food, and the fundamental right to be free from hunger. The right to food intersects with the panoply of human rights,⁶² and is intertwined with the right to life (article 6) in the *International Covenant on Civil and Political Rights*, and the right to food for children guaranteed by article 24 of the *Convention on the Rights of the Child*. The right to food is also protected in international humanitarian law,⁶³ which prohibits the denial or obstruction of food to civilians during times of armed conflict.

India has ratified the ICESCR, and is legally bound therefore to respect, protect, and fulfill the right to food to all of its citizens. This includes creating binding domestic laws implementing the international norms within the State.

India has a historic *prima facie* understanding of the importance of the right to food in its society. At the time of Independence, architects of modern India protected the right to food in the *Constitution*⁶⁴ and the Directive Principles.⁶⁵ Recently, confronted by the serious inequities leading to hunger and starvation deaths, civil society organizations have brought public interest litigation suits demanding the government fulfill its obligations to protect and uphold the right to food. While the justiciability of the right in its totality is still unclear, certain elements of the right are justiciable as demonstrated by interim orders of the Supreme Court

production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

62 In India, the right to nutrition and the right to life are entrenched in the *Constitution* at Articles 47 and 21 respectively. The Right to Food has been judicially interpreted as being a part of these rights. See also *General Comment No. 12* on the Right to Food and its necessity for the enjoyment of all other civil, political, economic, social and cultural rights, *infra* note 67.

63 See the Geneva Conventions 1949, *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Aug. 12, 1949, 6 U.S.T. 3114; 75 U.N.T.S. 31 (entered into force 21 October 1950).

Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217; 75 U.N.T.S. 85 (entered into force 21 October 1950).

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516; 75 U.N.T.S. 287 (entered into force 21 October 1950).

Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316; 75 U.N.T.S. 135 (entered into force 21 October 1950).

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 (entered into force 7 December 1978).

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609; 26 I.L.M. 568 (1987); S. Treaty Doc. No. 100-2 (1987) (entered into force 7 December 1978).

64 See Special Rapporteur "India Report," *supra* note 4, at paras. 19 and 20. Article 47 of the *Constitution* states that "The 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" and protects the right to life in Article 21 which the Supreme Court has interpreted as "the right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care, and shelter," and includes "the right to water and the right to live with human dignity and all that goes along with it".

65 See Drezee, "Democracy" *supra* note 58 at 46, 51, 55.

of India in these cases, ordering for example, that food be distributed to those in need rather than kept stored and rotting in warehouses, and that states participate in the Mid-Day Meal schemes to provide food to impoverished children attending schools. Significantly, indeed, the Supreme Court of India has interpreted the 'right to life' in the Indian *Constitution* to incorporate the 'right to food.'⁶⁶

D. Elements of the Right to Food

The human right to food is multi-dimensional: it guarantees every individual the right to adequate food which is culturally appropriate; the right to access food either through growing one's own food or being able financially or otherwise to acquire adequate food; the fundamental right to be free from hunger; the conditions in which to be able to enjoy national and household food security; the preservation and reform of agrarian systems to achieve the most proper and efficient use of natural resources; and importantly, the right to the equitable distribution of food.

The UN Treaty Body responsible for monitoring implementation of the ICESCR, the UN Committee on Economic, Social and Cultural Rights, in General Comment 12, has affirmed the importance of the right to food as essential to the right to life and human dignity, and necessary for the enjoyment of all other human rights.⁶⁷ The Committee has defined the right to food as being realized when every individual has "physical and economic access at all times to adequate food or means for its procurement."⁶⁸

66 *Ibid.* at 56, 63. This is an excellent article which among other things, promotes the use of the conceptual framework of the Indian Constitution for interpreting the right to food and posits that this right is "essential to achieve 'economic democracy' without which political democracy is at best incomplete." For an overview of Public Interest Litigation in India on the right to food, and the numerous significant interim decisions of the Indian Supreme Court on this right which demonstrate the justiciability of the right under the Indian Constitution, and its guarantee as part of the right to life under Article 21 including the right to live with dignity, the right to and adequate livelihood under Article 39(a), and the State's duty to raise levels of nutrition and the standard of living pursuant to Article 47, respectively of the Indian Constitution, see Right to Food Campaign India, *Supreme Court Orders on the Right to Food: A Tool for Action*, (August 2008), online: Right to Food Campaign <<http://www.righttofoodindia.org/data/scordersprimeratoolforaction.pdf>>, last visited June 1, 2009.

67 See Committee on Economic, Social and Cultural Rights *The right to adequate food (Art.11)*, UNESCOR, 20th Sess., UN Doc. E./C.12/1999/5 (1999) para. 4, online: United Nations Human Rights <<http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9?Opendocument>>, last visited January 19, 2009. [General Comment 12] General Comment 12, para. 4 states: "The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the *International Bill of Human Rights*. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all."

68 *Ibid.* at para. 6: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate

Drawing on the Committee's definition, the Special Rapporteur has defined the right as follows:

... the right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.⁶⁹

Several significant elements can be identified from this definition:

- “regular, permanent and free access:” food, an essential to life, must be regular, permanent, and free. Food should not be tied to cash, and the right to food should not be constrained by an individual's inability to pay. This definition recognizes the inequalities that exist in the circumstances of human beings, and those already condemned to poverty should not be condemned to starve. The Voluntary Guidelines on the Right to Adequate Food⁷⁰ adopted by the international community in 2004, clarifies that “access” also includes the right of individuals and groups to *productive resources* to obtain food;
- “directly or by means of financial purchases:” gives States the option to directly provide food access - through farming land for example, or vouchers, or through cash;⁷¹
- “quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions:” recognizes objective standards of quality and quantity necessary for a human being, as well as the importance of providing food that is culturally appropriate;
- “ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear:” recognizes the physical importance of food to human beings, but also the effect of food on an individual's and society's collective psyches. The fear of hunger can be as traumatizing and debilitating as the lack of food itself.

The Commission on Human Rights in 2001 reaffirmed the right to food in international law, and adopted a resolution to this effect.⁷²

hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.”

69 See Special Rapporteur, “2001,” *supra* note 33 at para. 14.

70 The Voluntary Guidelines To Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted by the FAO Council in November 2004, hereinafter [Voluntary Guidelines] available at <<http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>>

71 For example consider the current initiative Zero Hunger, in Brazil.

72 49th meeting, 22 April 2002 [Adopted without a vote E/2002/23- E/CN.4/2002/200, see chap. X], and states in its Preamble,

“Recognizing that the problem of hunger and food insecurity has global dimensions and that they

The key elements of the right to food are discussed below.

1. The Right to Adequate Food and the Fundamental Right to Be Free From Hunger

Article 11 of the ICESCR⁷³ provides for the *relative* “right to adequate food” and the *absolute* “fundamental right to be free from hunger.”⁷⁴

The international community has recognized that the right to food (RTF) creates three levels of responsibility for States Party: the responsibility to *respect* the right to food, the responsibility to *protect* the right to food, and the responsibility to *fulfill* (and *facilitate*) the right to food. The Committee has defined these obligations as follows: “respect” creates a *negative obligation* on States that they shall not prevent or destroy existing means of access to food; “protect” creates a *positive obligation* on States that they must enact measures to ensure entities or individuals do not deprive individuals of their right to food; “fulfill” or “facilitate” also creates a *positive obligation* on States to take measures to proactively provide access to food, and when an individual or group is unable to enjoy their right to adequate food for reasons beyond their control the State must provide (fulfill) that right directly.⁷⁵

A State violates these obligations if it fails to ensure the minimum essential level of food required to be free from hunger.⁷⁶ Distinctions will be made between a State’s inability to provide food – where the State must demonstrate it did everything possible to provide food – versus the unwillingness of the State to provide this right. States should also ensure that non-State actors, like TNCs,

are likely to persist and even to increase dramatically in some regions unless urgent, determined and concerted action is taken, given the anticipated increase in the world’s population and the strain on natural resources,

Reaffirming that a peaceful, stable and enabling political, social and economic environment, both at a national and an international level, is the essential foundation which will enable States to give adequate priority to food security and poverty eradication.”

73 Article 11(1): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food... The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent”; and Article 11(2): “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures including specific programmes which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

74 The right is “relative” because of being culturally appropriate and “absolute” since it is a “fundamental right”. See Smita Narula, “The Right to Food: Holding Global Actors Accountable Under International Law, (2006) 44(3) Colum. J. Transnat’l. 691 at 706, “The right to adequate food (article 11(1)) is a “relative standard. In contrast, the right to be free from hunger (Article 11(2)) is ‘absolute’” and is the only right to be qualified as ‘fundamental’ in both the ICCPR and ICESCR.”

75 See General Comment 12, *supra* note 67 at para 15.

76 *Ibid.* at para. 17.

operating within their territories do not violate the right to food.⁷⁷

Finally, States must recognize that the fundamental right to be free from hunger is directly linked to poverty.⁷⁸ Hunger and poverty create a 'vicious cycle' that continually perpetuate the misery of hundreds of millions of vulnerable persons worldwide. The increasing disparities between rich and poor in India further marginalize the poor and exacerbate the impediments to the poor realizing their right to food, including the right to be free from hunger.

2. The Right to Food Security and the Right to Food Sovereignty

The rights to food security and food sovereignty are intertwined. Food security "exists when all people, at all time, have physical and economic access to sufficient, safe, and nutritious food to meet their dietary needs and food preferences for an active and healthy life."⁷⁹ Thus, food security depends upon 'access,' both physical and economic, to quality food to maintain an active, healthy life. Poverty, because it can prevent economic and physical access to food, is a barrier to food security.⁸⁰

Governments bear the primary responsibility for creating an "enabling environment" with policies to "ensure peace, as well as social, political and economic stability and equity and gender equality."⁸¹ Agricultural or economic (credit) policies in India which affect the production of food by removing resources from farmers, and trade policies which raise the price of food because of dumping or inequitable distribution when food is earmarked for export, contribute to food insecurity by obstructing access to food and access to productive resources.

Along with national food security, household food security is also an object-

77 Consider for example the responsibility of the state of Nigeria, during allegations of violations in Ogoniland by the State, complicit with state security forces, the Nigerian National Petroleum Company, and Shell Petroleum Development Corporation: NGOs filed complaints regarding the failure of the state of Nigeria to uphold its human rights obligations under the African Charter on Human and Peoples' Rights, *African [Banjul] Charter on Human and Peoples' Rights*, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), (*entered into force* Oct. 21, 1986). The body responsible for monitoring the African Charter, the African Commission on Human and Peoples' Rights, found that Nigeria had violated the rights of the Ogoni peoples including violation of the right to food. The African Commission ruled that "governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties... the right to food requires that the Nigerian Government...not allow private parties to destroy or contaminate food sources, and prevent peoples' effort to feed themselves," as cited in para. 44 of the Report of the Special Rapporteur on the Right to Food to the Commission on Human Rights, Economic and Social Council, February 9, 2004, E/CN.4/2004/10 [Special Rapporteur, Right to Food] at 16. According to the Special Rapporteur, States must ensure that non-State actors do not violate the right to food within their territories.

78 See the *World Food Summit Plan of Action*, para. 2, *infra*.

79 See the first paragraph of the World Food Summit Plan of Action, November 13-17, 1996, UN Food and Agricultural Association, online: FAO <<http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>> last visited December 8, 2008.

80 See the World Food Summit Plan of Action Preamble. "...sustainable progress in poverty reduction is critical to improve access to food," at para. 2, *ibid*. Other causes of food insecurity include "conflict, terrorism, corruption and environmental degradation."

81 *Ibid*. note 79 at para. 70.

ive.⁸² In India, despite the growing economy, the majority of Indians (85%) live on less than US\$2.00 per day, and with some of the highest rates of malnutrition and starvation worldwide, household food security in India has not been achieved.⁸³ Household food security also requires the State, and citizens themselves in their homes, to stop the discriminatory practices against women and female infants and children – such as rotational eating among women, and nutritional resources going first to males and then to females – and to ensure the availability and distribution of food and nutrition to females in a substantively equal manner as that available to males within the house. With infants and children, the number of calories consumed should be equal. “Food sovereignty holds that each country should have the right to determine the extent to which it wants to be self-reliant in domestic production for basic food needs.”⁸⁴ In other words, people are entitled to determine *how* they will ‘get’ their food, and *what* methods will be used in growing and/or procuring their food. The definition by Via Campesina, the global social movement of peasant and family farmers, provides a very clear definition of food sovereignty:

Food sovereignty is the right of peoples 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; and to restrict the dumping of products in their markets.⁸⁵

This includes the right of developing countries to implement protectionist trade policies to preserve self-sufficiency with staple crops. Food sovereignty also requires governments to ensure that laws and policies provide equitable access to resources like land, water, seeds, credit, and other productive resources and to traditional practices of farming such as farmers’ rights to preserve, “exchange and reproduce seeds”⁸⁶ so people can feed themselves.

The right to food sovereignty gives citizens the right to “reclaim sovereignty

82 Food security has been defined as “the capacity of a country to provide sufficient food for its population, and it will depend on such factors as food production, imports, food aid and within –country food distribution (in India’s case, this is state-level food security). The ability to absorb shocks to such a system from drought, floods, civil strife, etc., is also relevant”, and household food security is...defined as access to food, that is adequate in terms of quality, quantity, safety and cultural acceptability, for all household members (Gillespie and Mason 1991).” The definition goes on to state that the two main factors affecting household food security are “poverty and food prices” Vinodini Reddy et al, “Nutrition in India” online : Paper prepared for the XV International Congress of Nutrition, Adelaide Australia, December 1992 <<http://nzdl.sadl.uleth.ca/cgi-bin/library?e=d-00000-00---off-0fml2%2e2--00-0---0-10-0---0---0direct-10---4-----0-11-11-en-50---20-about--00-0-1-00-0-0-11-1-0utfZz-8-10&a=d&c=fml2.2&cl=CL2.1&d=HASH6edeecbc4c8680099b58c2.1>> at Introduction, Chapter 5.

83 See Special Rapporteur, “India Report,” *supra* note 4.

84 Special Rapporteur, “Right to Food,” *supra* note 77 at para. 28.

85 *Ibid.* at para. 25, citing the statement of Via Campesina, the global social movement of peasant and family farmers.

86 *Ibid.* at para. 31.

over decision-making on agricultural and food security policy, challenges the imbalances and inequities in current global rules on agricultural trade, and draws a common position for peasant farmers in the developed and developing world.”⁸⁷ It also encompasses the rights of peoples to determine the sources of food and whether or not they wish to partake in consumption of genetically modified seeds or foods.

E. Extra-territorial Obligations of States and the Right to Food

Although the primary responsibility to fulfill the right to food rests with national governments, the contemporary globalized world has increased the effects of actions taken by one State upon the citizens of another State.

Recent developments in international law recognize an extraterritorial obligation for States regarding their international human rights law obligations. The premise is that globalization has created an interdependence among nations, and decisions taken in one state can directly and significantly impact other states.⁸⁸ States may also adopt conflicting policies; they may embrace development and promote foreign aid, while simultaneously adopting subsidy policies domestically which undercut the foreign farmers in those developing countries, which paradoxically are recipients of the said State’s aid. Another paradox is that within States, trade policy ministers may have little or no communication or synchronization with foreign policy or development ministers in the same country, resulting in conflicting policies that again detrimentally affect developing countries. The Special Rapporteur has called on States to adopt a coherent “integration of economic and social policies,”⁸⁹ where such coherence can be achieved “by putting human rights at the centre of all government policy and ... (refraining) from policies and programmes that may negatively affect the right to food of people in other countries.”⁹⁰ The Special Rapporteur further points out that the Convention on Economic, Social and Cultural Rights does not contain territorial or jurisdictional limitations, but rather contains “explicit legal commitments to cooperate for the realization of economic social and cultural rights of all individuals without limitations.”⁹¹

As such, States have responsibility to people in other countries regarding human rights such as the right to food, through each State’s own decisions or as members of international organizations.⁹²

The minimum negative duty to refrain from violating the right to food also

87 *Ibid.* at page 2.

88 See Special Rapporteur, “Ethiopia,” *supra* note 23 at para. 40.

89 *Ibid.* citing the ILO World Commission on the Social Dimension of Globalization’s report “A Fair Globalization: Creating Opportunities for All” (2004). At para. 40.

90 *Ibid.* at para. 41.

91 *Ibid.* at para. 43.

92 *Ibid.* at para. 51. In this regard, the Special Rapporteur has stated that: “States should also refrain at all time from policies of which the effects can be foreseen or that they are aware will have negative effects on the right to food. This means for example that Governments should not subsidize agricultural production that will be exported to primarily agrarian developing countries, as it can be seen in advance that the right to food of people living in those countries will be seriously negatively affected as their livelihoods will be destroyed and they will not be able to purchase food, even if the food is cheaper.”

attaches to the extraterritorial actions of States in establishing the economic order of globalization, including the rules of the WTO imposed upon developing countries in particular. Thomas Pogge writes:

Are the rich countries violating human rights when they, in collaboration with Southern elites, impose a global institutional order under which, foreseeably and avoidably, hundreds of millions cannot attain a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care" (Universal Declaration of Human Rights 25)? The Declaration itself makes quite clear that they do when it proclaims that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (28). The existing international institutional order fails this test. It aggravates extreme poverty through protection and aggressive enforcement of intellectual property rights in seeds and essential medicines."⁹³

F. Non-State Actors and The Right to Food

Today global dynamics have shifted such that non-state actors like transnational corporations (TNCs),⁹⁴ and international organizations like the WTO, and international financial institutions (IFIs)⁹⁵ like the World Bank and IMF, can wield more power than states.⁹⁶ The actions of non-state actors have a direct impact on citizens, and yet there are no legally enforceable standards to hold non-State actors accountable for the effects of their actions upon individuals.⁹⁷

In a twist of irony, States appear more willing to consistently honour the legal contractual obligations they owe to non-State actors, than to fulfill the legally binding obligations of international human rights law they owe to their own citizens.⁹⁸ So while the rule of law doctrine is often ignored or eroded by States

93 See Pogge, *Poverty and Human Rights*, *supra* note 15.

94 The top 25 out of 50 economies in the world are held by TNCs, and they have incredible leverage in dealing with developing countries that seek greater FDI.

95 With respect to IFIs, the World Bank and IMF impose conditionalities upon developing countries, often making States more accountable to these institutions than they are to their own people.

96 See Narula, *supra* note 74. See also Pillay, *supra* note 44.

97 This paper focuses on obligations of the state of India regarding the human right to food. For detailed discussion on liability of non-state actors regarding the right to food See Narula, *supra* note 74. For a comprehensive discussion on the potential benefits and challenges regarding TNCs and development, See Olivier de Shutter, "Transnational Corporations as Instruments of Human Development" in Philip Alston and Mary Robinson, eds *Human Rights and Development, Towards Mutual Reinforcement* (Oxford: Oxford University Press, 2005) 403

98 That is, States who are beholden to non-State actors either through loan conditions or joint venture agreements to access Foreign Direct Investment are far more accountable to non-State actors than to their own citizens. The emphasis is not on private versus public law, but on State compliance (willingly or unwillingly) with its obligations to non-State actors, and prioritizing them often in the context of economic reforms, over the well-being and human rights of their own citizens.

when it comes to fulfilling legal obligations under international human rights law, a shadow regime of legal accountability in multilateral and bilateral trade agreements and investment contracts has evolved.⁹⁹

Accordingly victims fall into compounded classes of violation: On one level they suffer violations when their State fails to protect the rights to which they are entitled either because the State is perpetrating the violation, inactive in protecting against the violation, or complicit in colluding with a non-State actor to enable the violation to occur. Under international human rights law and/or complementary national law implementing the international obligations, victims are in theory entitled to hold States accountable for rights violations. In India, civil society groups have exhibited great ingenuity in mobilizing grass roots organizations in rights awareness, a necessary first step to rights realization, and in moving toward the justiciability of rights, such as the public interest litigation on the right to food. Problems arise in that these methods, while absolutely essential, are progressive in terms of the delivery of rights or reparation and rely on a constellation of other factors to exist, such as a true functioning democracy, respect for the rule of law, an independent judiciary, and the realization of the panoply of human rights which brings the issue full circle to the very violations of rights being considered. On another level, victims suffer violations directly by the actions of non-State actors but they have no legal recourse against non-State actors. Because international law primarily addresses State action, there is an international legal 'gap' through which transnational actors such as TNCs, IFIs, and the WTO evade accountability for the suffering their actions inflict upon victims. As this article discusses, the IFIs are responsible for imposing loan conditionalities that have caused India to implement economic reforms resulting in the failure of the rights to food and development. The WTO, which is a multilateral organization consisting of governments, has imposed membership rules requiring India to comply with marketplace reforms also resulting in violations of the rights to food and development. The issue of TNCs in agriculture is particularly acute as TNCs are the engine behind decades of market reform, as they sought to penetrate developing country markets, and to maintain a stronghold on the food chain within those markets through control of every single aspect of food production. For example, in the food trade the entire seed economy is controlled today by five TNCs.¹⁰⁰

There is considerable push in the human rights discourse to recognize that although there may not be clearly legally defined obligations for non-State actors, they remain 'duty-holders' at a minimum of holding the negative duty not to violate the international human rights of human beings, and to consider the impact of their actions upon human beings. This 'duty' is imposed upon them through customary international law, as members of the international commun-

99 Professor Andreas Lowenfeld has observed that Bilateral Investment Treaties constitute international legislation, Andreas Lowenfeld, "Investment Agreements and International Law," (2003) 42 Colum. J. Transnat'l L. 123 at 128 and that the BIT movement has "moved beyond *lex specialis*...to the level of customary law effective even for non-signatories." at 129.

100 See Special Rapporteur, "India Report," *supra* note 4. See also Carin Smaller, *Planting the Rights Seed: A human rights perspective on agriculture trade and the WTO* (March 2005) online: 3d <http://www.3dthree.org/pdf_3D/Backgr1webEn.pdf>

ity referenced in the Universal Declaration of Human Rights.¹⁰¹

While there are measures employed by the international community to promote human rights awareness among non-State actors,¹⁰² these measures rely upon voluntary compliance and guidelines, and fall short of procuring justice. International law must expand to be able to hold non-State actors accountable for their actions.¹⁰³ Given that the language of globalization is couched in terms of 'development,' and the World Bank, IMF, and WTO speak of liberalization as a means to development, it is unacceptable that these entities continue to impose reforms which deny, limit, or reverse social and economic rights. It is also unacceptable that TNCs continue to reap profits literally at the expense of the global poor.

Until non-State actors are held legally accountable for their actions, the full promise of the benefits they may provide will be morally compromised.¹⁰⁴

PART III: AGRICULTURE AND LIBERALIZATION POLICIES IN INDIA

India has violated its right to food obligations by (i) implementing harmful agricultural policies, including the Green Revolution, (ii) reversing investment in agriculture, (iii) curtailing the Public Distribution System (PDS) iv) implementing harmful trade policies that allow unfair trade competition, allow the dumping of subsidized imports into India, and undermine India's production of staple crops; (v) failing to protect small-farmers and rural landowners against land acquisitions by corporate agribusiness resulting in displacement and the dismantling of small-scale farming; and (vi) allowing reforms in credit and intellectual property laws which remove resources from farmers and subject them to unfair laws.¹⁰⁵

Agriculture is central to India's infrastructure. Seventy percent of India's 1.1 billion people live in rural areas and 700 million people depend upon agriculture for their livelihoods.¹⁰⁶ One in every four farmers in the world lives in India.¹⁰⁷

101 The UDHR in its Preamble calls upon "every organ of society" to respect and promote human rights.

102 See generally the Global Compact and the UN Human Rights Norms for Transnational Corporations online: UN <<http://www.unglobalcompact.org>> See also the OECD Guidelines for MNEs, online: OECD <http://www.oecd.org/departement/0,3355,en_2649_34889_1_1_1_1_1,00.html>

103 See Narula, *supra* note 74.

104 See de Shutter, *supra* note 97. The promise of TNCs in contributing to development cannot be realized without an international economic order based on justice and equity, and so reflected in India with respect to the 'business' of food.

105 In general see Jayati Ghosh, UNDP Background Paper: Trade liberalization in Agriculture: An Examination of Impact and Policy Strategies with Special Reference to India (2005), online: HDR, <http://hdr.undp.org/docs/publications/background_papers/2005/HDR2005_Ghosh_Jayati_12.pdf> last visited January 19, 2009.

106 See FAO, "India," *supra* note 3.

107 See also Devinder Sharma, "Agricultural Trade and Development: The Indian Experience of Liberalization of Agriculture," August 17th, 2005, Talk delivered at a roundtable conference on Agricultural Trade and Development organized jointly by the National Farmers Federation and Oxfam Australia at Canberra, Australia, August 17, 2005, at 2, online: University of Technology, Sydney, <http://www.transforming.cultures.uts.edu.au/pdfs/ds_liberalisation_2.pdf>

Yet the agricultural growth rate has shrunk from 3.5% in 1991, to 1.3% in 2003-2006.¹⁰⁸ For the first time in fifty years, the rate of food production has fallen behind the population growth rate. Chronic hunger, starvation, malnutrition, and poverty pervade the country, and desperate farmers are killing themselves.

Prime Minister Manmohan Singh has acknowledged this agrarian crisis, and pledged to assist the farmers with a series of promises and bail-out packages.¹⁰⁹ Yet government actions in agriculture, trade, and economic reforms belie these promises, and the bail-out packages fail to assist the poorest farmers who most need help. This Part will show that agricultural and economic policies were intertwined since India achieved Independence in 1947, and were increasingly mismanaged through the 1980s resulting in India's financial crisis of 1991. The 1991 financial crisis forced India to accept loans with conditions from the IMF and the World Bank; the Indian government chose to implement the agendas of the IMF, World Bank, which combined with the WTO reforms, resulted in harmful effects upon agriculture and the right to food in India.

A. Post Independence Reforms: 1947-1961

Because of inherited problems accessing food, the newly independent India¹¹⁰ made food security a paramount concern. Under British rule, India's agricultural production had been geared to supplying crops to the British market, representing an early example of inequitable distribution violating the right to food.¹¹¹ mismanagement of food supplies and domestic distribution resulted in severe famines¹¹² and deaths. The last great famine occurred in 1943 in West Bengal. As Amartya Sen has explained, the cause was not a scarcity of food. Rather, the famine began with rumors of food shortage during World War II, which led to the British army siphoning food from India to its soldiers in the Middle East,¹¹³

108 See Sudhanshu Ranade, "Indian farm output facing sharp drop in growth: World Bank report suggests serious problems," *Hindu Business Line*, August 22, 2006, online: Hindu Business Line <<http://www.hinduonnet.com/thehindu/thshcrip/print.pl?file=2006082200161300.htm&date=2>> The Report notes that agricultural growth rates in 2003-2006 were considerably less than the 4% projected in the tenth agricultural plan. See also *BBC*, "Hunger in India," *supra* note 5.

109 See P. Sainath, "*Withering Lives*" *Frontline*, Vol. 28, Issue 17: August 26- September 8, 2006, at 4, online: *Frontline* <http://www.frontline.in/fl2317/stories/20060908004500400.htm>>. The entire issue is dedicated to the agrarian crisis in India. Bail-outs must be available to all farmers, and not as currently operating, available only to those who meet certain criteria and tend to be better off economically. But these bail-outs by their terms pre-empt real help to the most impoverished farmers who most need the assistance.

110 India attained Independence from Britain in 1947.

111 *Supra* note 109.

112 *Ibid.* at 38, citing Mike Davis in his book *Late Victorian Holocausts: El Nino and the Making of the Third World* (London: Verso, 2001) "Although the British insisted that they had rescued India from 'timeless hunger,' more than one official was jolted when Indian nationalists quoted from an 1878 study published in the prestigious *Journal of the Statistical Society* that contrasted thirty one serious famines in 120 years of British rule against only seventeen recorded famines in the entire previous two millennia." Traditional Indian approaches to agriculture were steeped in the unequal system of feudal land ownership, but required kings and feudal lords to bear the responsibility of feeding the people in times of food shortages.

113 See a description of the 1943 West Bengal famine and descriptions by Amartya Sen explaining

and the hoarding of food supplies by speculators and individuals, all of which obstructed access to and the availability of food. Three million people died in the West Bengal famine.¹¹⁴

In this wake of famine, food security became urgent. On Independence Day, Prime Minister Nehru famously remarked that:

There is nothing more humiliating to a country than to import food. Therefore, everything else can wait, but not agriculture.¹¹⁵

Self-sufficiency in agriculture and industry became priorities of the new State. Nehru's strategy was to promote public and private sector investment to strengthen the country's infrastructures, while at all times building a state grounded in principles of democracy¹¹⁶ and social welfare. The Planning Commission was created which ensured the Central Government steered the economic policy for all twenty-eight states and seven territories in the country. Foreign direct investment (FDI) was recognized as a vehicle to attract foreign capital and technology.¹¹⁷ Accordingly, through the 1950s, the Planning Commission exercised liberalization reforms encouraging FDI flows in sectors like chemicals which played a large role in agriculture through production of fertilizers and pesticides. During the period from 1948 to 1961, FDI in India grew 143%.¹¹⁸

the causes, in *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Oxford University Press, 1982).

114 See Special Rapporteur, "India Report," *supra* note 4.

115 Nehru made this comment shortly after Indian Independence in 1947. See an article on this quote by India's leading agricultural expert and promoter of the Green Revolution M.S. Swaminathan "Agriculture Cannot Wait," online: <<http://74.125.45.132/search?q=cache:6BL9Cu1O9C4J:krishakayog.gov.in/Agricannot.pdf+nehru+everything+can+wait+except+agriculture&hl=en&ct=clnk&cd=5&gl=us&client=safari>> last visited December 9, 2008. See also Speech of President George W. Bush to the Future Farmers of America, Washington, July 27th, 2001, online: CNN, <transcripts.cnn.com/TRANSCRIPTS/010727/se.02.html> George W. Bush echoed this sentiment in a 2001 address to American Farmers stating that "It's important for (the United States) to build, to grow foodstuffs, to feed our people. Can you imagine a country that was unable to grow enough food to feed the people? It would be a nation subject to international pressure. It would be a nation at risk. And so when we're talking about American agriculture, we're really talking about a national security issue." Although Mr. Bush was advocating a particular approach to agriculture, the point about food security is important. Food security not only threatens national security, but also affects sovereignty and geopolitical concerns. For example, India during the Cold War was a leader of the non-aligned movement. India was contemporaneously dependent upon US food imports; when India spoke out against the Korean and Vietnam wars and US involvement, India was punished by the reduction of food imports, resulting in food shortages in the country. In discussing the entrance of China into the WTO, President Bush also said in this speech "We want our American farmers to be growing the products that the Chinese use to eat. And that's what, to me, trade means."

116 See Sunil Khilnani, *The Idea of India*, (London: Hamish Hamilton, 1997) at 90.

117 Nayak, *infra*. Foreign capital was already present in India through pre-Independence ventures. Local industrialists lobbied to retain FDI and its accompanying transfer of technology and capital.

118 See Amar K.J.R. Nayak, "Globalization of Foreign Direct Investment in India: 1900s-2000," *The Historical Society 2006 Conference Boston* at 13 "It is generally believed that the policies of

Contrary to the claims of neoliberalism's proponents the presence of FDI in India pre-dates the 1991 reforms. However there were sectoral caps on foreign ownership in the intervening decades, and foreign companies holding monopolistic positions were asked to accept local capital into their operations.¹¹⁹ Some companies complied while others left India.

Strict import-export controls were implemented including quota restrictions, licensing, tariffs, and export subsidies. These reforms operated to strengthen India's agricultural sector, and the State made investments in irrigation and rural infrastructures and nationalized resources like power, electricity, and water, upon which agriculture relied. In this focus on building strong infrastructures and food security, India differed from other newly independent Asian states such as China and Vietnam which focused instead on the manufacture of cheap exports.

It is a notable achievement that India's economy steadily grew and unlike other new states, India did not amass heavy debts or high inflation rates at this time.¹²⁰

B. Economic and Agricultural Reform: 1960s

In the 1960s, India entered its second phase of economic planning, and recast its economic and agricultural policies with significant implications for food security.

1. New Laws

India enacted legislation to restrict FDI¹²¹ and to govern competition through the regulation of companies' operations, holdings, and trade practices.¹²² These statutes enabled the Indian government to maintain strict controls on all sectors including agriculture, and manifested the State's growing commitment to maintain significant domestic ownership in enterprise as a means of growing and

GOI [Government of India] to nationalize companies in certain industries and the informal pressures of GOI on foreign companies to increase local equity participation in India reduced the flow of FDI into India during this period. Contrary to this popular perception, this study finds that FDI to India during this period actually rose and reach a peak in the year 1961. From 1948 to 1961, the amount of FDI stock grew from 2558 million INR (Indian Rupee) to 5285 million INR, an increase of nearly 143%. Similarly the number of joint ventures increased 34 in 1951 to 464 in 1961, an increase of nearly 14 times in a period of 11 years." The study also reports that US companies increased their investments in India during this period from 4.4% in 1948, to 13% by 1961.

119 *Ibid.* at 12-13.

120 See Khilnani, *supra* note 116 at 93. "...the economy itself maintained a remarkable stability. To some this was actually an unshakeable inertia. Yet the achievement was unusual: from the 1950s until the late 1980s, India managed to avoid high inflation as well as serious industrial recessions, and did not build up high levels of debt. Few new nations, and almost none of which have been democracies, managed this: the usual pattern was for new states to pursue inflationary strategies (usually for populist reasons) and to accumulate high and unmanageable levels of debt."

121 In 1962, India began working on new legislation, which came into force in 1973: the Foreign Exchange Regulation Act (FERA), which restricted FDI and determined the permissible foreign equity ownership in companies (i.e. joint ventures) in each sector.

122 *The Monopolies and Restrictive Policy Act*, 1969 (MTRP).

strengthening the country's infrastructures. Because agriculture was considered a national priority, it was one sector in which higher rates of FDI were permitted in order to attract agro input industry.¹²³

Controls directed by the Central Government of India started the 'top-down' approach to agriculture still in existence today.¹²⁴ Land reform laws were enacted to dismantle monopolistic ownership.¹²⁵ Protectionist policies were instated, namely import substitution and strict import-export regulations including quantitative restrictions, tariffs and non-tariff trade barriers; government procurement and price and supply management, which reduced consumer costs but also producer profits; directives to the banking sector to ensure provision of rural credit at lower interest rates; and continued investment in irrigation and rural infrastructures.

2. Green Revolution

The second major reform in this decade was the implementation of the Green Revolution. In the early 1960s, India was still struggling to recover from colonization, the threat of famine, and to achieve food security. Food scarcities, caused by lack of access to food and inequitable distributions of food, had resulted in increased dependency on food aid, primarily from the United States.¹²⁶ Urged by the US and the World Bank, India adopted the Green Revolution, which was being implemented in developing countries worldwide.¹²⁷ High Yield Variety

123 See Ramesh Chand, India's National Agricultural Policy: A Critique (2004), at 3, online: IEG <http://iegindia.org/dis_rc_85.pdf> last visited January 19, 2009.

124 Food First, Institute for Food and Development Policy, Policy Brief 10: "Shining India? Economic Liberalization and Rural Poverty in the 1990s," (2004), 21, online: Food First <<http://www.foodfirst.org/pubs/policy/pb10.pdf>> This "top-down" approach, i.e. directives by the Central Government, may explain the apathy of some Indian state governments to effectively address the agrarian crisis; consider the actions of the governments of Maharashtra and Andhra Pradesh, in P. Sainath, *supra*, note 109.

125 These land reforms have been criticized for effectively relegating subsistence farmers to landless agriculture labour, or to plots of less than 2 hectares which were incapable of attracting investment, undesirable credit risks, and overlooked by government subsidies which subsequent to the Green Revolution, were given primarily to larger and middle-sized landowners. These first land reforms are considered to have instituted inequities that disadvantaged small scale farmers from the outset.

126 Following World War II, the US implemented measures and legislation positioning itself to be a major source of food aid for the developing world. See for example the *Mutual Security Act*, 1954; the 1961 *Foreign Assistance Act*, the Food for Peace Plan, and the history of USAID. These measures -- while founded to promote peace and fulfill the moral obligations of the US in providing assistance to struggling countries -- have been criticized for making donees politically subservient to the donor; for example, India found itself restrained in speaking out against the Vietnam War when the US withheld food donations to punish India for its criticisms. See in particular criticism of the US Public Law 480, 1954, in Oxfam, *Food Aid or Hidden Dumping*, (March 2005) online: Oxfam, <http://www.oxfam.org/sites/www.oxfam.org/files/bp71_food_aid.pdf>.

127 See Carmen Gonzales, "Trade Liberalization, Food Security, and The Environment: The Neoliberal Threat to Sustainable Rural Development" (2004) 14 *Transnat'l L. & Contemp. Probs.* 419, for a critique of the impact of the Green Revolution on developing countries, with the contentions that introduction of a monocultural seed destroyed biodiversity and varied farming and eating patterns, reduced nutritional intakes, and promoted the use of seeds manufactured

Seeds (HYV) for wheat, and later rice were introduced to India. Yields improved dramatically, enabling India for the first time since Independence to produce crop surpluses.¹²⁸ Vandana Shiva has noted that Indian indigenous seeds were not inherently incapable of producing high yields, but rather did not take well to the introduction of chemical pesticides; the HYV seeds did.¹²⁹

However, the high yields were not without their negative, and long-term, consequences as described in the succeeding paragraphs. It is significant that while the harms of the Green

Revolution are being felt today in the 'green revolution states' of Punjab, Haryana, and Uttar Pradesh, the primary agricultural growth in 2006-2009 is in the southern and western states which used smaller, traditional farming methods with less inputs and even less access to irrigation sources.¹³⁰

Though the Green Revolution is frequently credited¹³¹ with enabling India to conquer famine, per capita food production did not increase from 1960 to the 1980s. India's success in avoiding famine is more likely due to government intervention and the corresponding growth of the rural economy and the purchasing power of Indians;¹³² or in the language of the right to food, India had succeeded in increasing the *access* to food for millions of Indians.

The Green Revolution had several negative effects which still harm India today. First, farmers were forced to leave behind traditional biodiverse farming practices in favour of HYV seeds, chemical fertilizers, and synthetic pesticides manufactured by TNCs headquartered in the developed world.¹³³ It irreversibly increased reliance on the high cost inputs of fertilizers, pesticides, and mechanized technologies resulting in what Clarence Dias calls the "perpetuation of a

by transnational corporations. For an excellent and prescient series of articles critiquing the Green Revolution, and in particular its harmful effects to sustainable development in the third world, See the International Center for Law in Development Series on Law, Social Action and Rural Poverty, Clarence Dias et al eds. *The International Context of Rural Poverty in the Third World: Issues for Research and Action by Grassroots Organizations and Legal Activists* (New York: International Center for Law in Development, 1986).

128 See Food First, *supra* note 124, at 22: "Unfortunately, not all the goals of the agricultural restructuring process were met. Wheat and rice, the primarily high yielding variety (HYV) crops, represented the lasting successes of India's Green Revolution. Wheat production grew 5.1% per year in the period 1967 to 1990, and rice grew at 4.1% per year between 1980 and 1990. But agricultural output on the whole had a lower growth rate than expected, at 2.7% per annum (with food grain production at 2.9% per annum) over the period from 1949 to 1990. By the end of the planning era, India was considered only "marginally self-sufficient in foodgrains."

129 See Vandana Shiva, *The Violence of the Green Revolution: Third World Agriculture, Ecology and Politics* (London: Zed Books, 2006) at 243.

130 See Ranade, *supra* note 108, referring to the World Bank study and stating that "the southern and western States have also taken up more crop diversification than the northern ones. Thereby, decreasing land fatigue while simultaneously providing farmers with better insurance against unanticipated shortfalls in production and prices."

131 See generally, Gonzales and Dias, *supra* note 127.

132 See Jean Dreze and Amartya Sen, eds. *The Political Economy of Hunger, Vol 2: Famine Prevention* (Oxford: Clarendon, 1991).

133 See Gonzales and Dias *supra* note 127, for a comprehensive discussion of the transnational corporate interests, who to ensure their advancement into new markets in the developing world, pushed for the spread of the Green Revolution, and were supported by the US and the IFIs.

cycle of dependencies” in the Indian countryside.¹³⁴ Through the supply of these inputs, TNCs began to occupy a pivotal role in Indian agriculture.¹³⁵ The Indian government began providing subsidies to compensate for the high input costs, but these subsidies contributed to greater inequities in rural areas as the recipients were predominantly manufacturers, and larger land-holding farmers. Landless, small-scale, and subsistence farmers were unable to access these subsidies, resulting in the first, post-Independence wave of farmer distress in India.¹³⁶

The Green Revolution is also criticized for unsustainable development because of soil erosion,¹³⁷ and reductions in nutrition,¹³⁸ and biodiversity.¹³⁹ The Green Revolution pushed specialization in wheat and rice, while indigenous small-scale farming in other crops was unsupported, eventually dwindling. Not only were nutritional and crop diversifications lost, but the economic diversity gained from a variety of crops was also lost, making the country reliant on one or two agricultural crops for monies then used to import other foodstuffs. The harms to biodiversity, the ecosystem, nutrition, and the food supply continue to this day to impede food security in India.

3. Food Corporation of India and Public Distribution System

In 1965, India created the Food Corporation of India,¹⁴⁰ (FCI), which as-

134 See Dias, *supra* note 127.

135 See Food First, *supra* note 124 stating that the control of seeds by transnational corporations set the precedent for the creation of seasonal seeds and patents on those seeds: “The national Seed Corporation and the Terai Seed Corporation, established in the 1960s, followed by the National Seeds Projects and Programs in the 1970s, began to produce certified seeds originating only from multinational corporations or other research institutions. The establishment of these three Indian projects was made possible by World Bank loans, and in 1988, the World Bank funded another such project. Seeds bred by these institutions, which contained pest-resistance or some other strengthening agent in order to increase farmers yields, are protected by patents and intellectual property rights. Furthermore, they are bred to work only for one season. The promotion of hybrid seeds took the essential input for farming out of the hands of farmers and put it into the hands of institutions and corporations...”

136 See Dias, *supra* note 127, and Food First, *supra* note 124 writing that the most powerful producers managed to appropriate most state support, while the poorest and smallest farmers at that time were bypassed.

137 Soil erosion is environmentally unsustainable and increases input costs to combat the decline of optimal cultivable lands.

138 See for example, Kanchi Kohli, *infra* note 140, “With the advent of the Green Revolution and the promotion of wheat and then rice, agriculture in India underwent a change. Everywhere in the FCI’s godowns – and therefore naturally in the distribution system as well, wheat and rice stocks were most common. This not only significantly changed the food habits of people across the country, but led to a complete neglect of so called coarse grains, like millets, which are otherwise extremely nutritious. This transformation may be acceptable if the PDS had been able to actually reduce hunger in the country as a result of its focus on wheat and rice-based security programs, but clearly that is not the case.”

139 Biodiversity is threatened by the introduction of genetically modified seeds that perpetuate a monoculture in seeding. See Gonzales, *supra* note 123.

140 *Food Corporation Act, 1964*. The Food Corporation website states that it “played a significant role in India’s success in transforming the crisis management oriented food security into a stable security system,” online: FCI <<http://www.fciweb.nic.in>> See also Kanchi Kohli, “Food Sovereignty, not just security,” for discussions of the FCI, PDS, and issues of food sovereignty and security discussed in this paper. Online: India Together, <<http://www.indiatogether.org/2005/>>

sumed responsibility for the procurement of grains from farmers, and the delivery of same at subsidized prices to consumers Below the Poverty Line (BPL) countrywide. The FCI used the dual prongs of its (1) Public Distribution System (PDS) responsible for transportation, storage, and distribution; and (2) the maintenance of Buffer Stocks, which refers to the storage of surplus grains in government warehouses (*godowns*) countrywide, for distribution to the needy. Although the PDS loses about 35% of its grains to corruption and speculators, the system had been praised as the “world’s largest food-based safety net,”¹⁴¹ and managed to meet India’s needs over three decades. However, as will be discussed below, changes dictated in the post-1991 liberalization era decreased the effectiveness of the PDS and threaten food security.

C. Shifting Reforms and Economic Crisis: 1970s and 1980s

In the 1970s, and 1980s, India’s public investment measures and protectionist trade policies in agriculture succeeded in advancing the country’s production in other staples including oil seeds (Yellow Revolution), fisheries (Blue Revolution), and milk (White Revolution).¹⁴²

Control over economic planning shifted in the 1970s from the Planning Commission of Nehru’s tenure (1948-64), to the politicized Ministry of Finance, which ultimately contributed to the politicizing of economic policies, and the ‘sloganism’ prevalent today. During the tenure (1966-1984) of Prime Minister Indira Gandhi,¹⁴³ India followed a protectionist policy towards agriculture, continuing subsidies and government investments, directing state banks to provide significant credit measures for farmers, and maintain strict import-export controls on agricultural trade.

In the 1980s, State investment and protectionism in agriculture began shifting for a number of reasons. During Prime Minister Rajiv Gandhi’s tenure (1984-1989), the country slowly “shifted from import substitution to export-led growth,”¹⁴⁴ and there was a corresponding shift in public investment away from agriculture, and into manufacturing and information technology. At the same time to foster exports, farmers were encouraged by the government to diversify into cash crops. This began a series of conflating challenges: problems like soil erosion, caused by the Green Revolution, were becoming apparent, necessitat-

oct/agr-sovereign.htm> for discussions of the FCI, PDS, and issues of food sovereignty and security discussed in this paper.

141 See Special Rapporteur, “India Report,” *supra* note 4. The PDS is also credited with having effectively distributed food through the country when it faced shortages in 1987, and avoiding the threat of famine at that time.

142 The FAO reports that “The ‘green revolution’ has been followed by the ‘white revolution,’ ‘yellow revolution’ and then the ‘blue revolution,’ leading to an increase in the output of milk, oilseeds and fish and fish products, respectively; See “WTO Agreement on Agriculture: the Implementation Experience: India” online: FAO, <<http://www.fao.org/docrep/005/y4632e/y4632e0f.htm#bm15>> last visited January 19, 2009.

143 Indira Gandhi dominated Indian politics from 1966 to her assassination in 1984, although she was briefly voted out of power from 1977-1980 after she imposed a state of emergency from 1975-1977.

144 See Valerie Cerra and Sweta Chaman Saxena, *What Caused the 1991 Currency Crisis in India*, IMF Staff Papers, Vol. 49, No. 3, (2002) 395 at 400.

ing remedies which required more and costlier inputs; and the directions to diversify resulted in greater costs and risks to farmers, yet no government policy for risk assessment in terms of yields, changes to cultivable land, or exposure to the volatility of international markets appears to have been considered by the government, causing one commentator to remark that in the 1980s, "agriculture policy lacked direction and was marked by confusion."¹⁴⁵

India's economy began stalling in this period of the 1980s due to exhaustive protectionist policies and political crises, operating within the wider context of a global recession. To balance the competing shifts in economic policies, and provide incentives to the growing services and technologies sectors, the government engaged in greater commercial external financing.¹⁴⁶ This in turn led to the plummeting of India's international commercial credit ratings, and the increase in its external debt from \$35 billion in 1984-1985 to \$69 billion by 1990-1991.¹⁴⁷ These results were worsened by the impact of the Gulf War, skyrocketing oil prices, and the loss of remittances to India by non-resident Indian workers living in the Arab states.¹⁴⁸ Further, the decline of world export markets, and particularly the decline of US markets, which was India's major export destination¹⁴⁹ detrimentally affected India's export volumes.¹⁵⁰ All of these factors resulted in India's experiencing a balance of payments crisis in 1991.

D. Macroeconomic Liberalization Reforms: 1991-2008

1. International Financial Institutions: The World Bank and the International Monetary Fund

India's mismanaged economic policies of the 1980s contributed to the financial balance of payments crisis in 1991. On the brink of default, India was forced to seek external financing from the World Bank and the IMF.¹⁵¹ These IFIs loaned India money in return for the country implementing the World Bank structural adjustment program (SAP), and corresponding 'conditionalities.' These conditionalities required India to make major macroeconomic (i.e. neoliberal) reforms purportedly to 'correct' imbalances, and to liberalize restrictions to private sector activity in order to promote efficient competition.¹⁵² The purported aims of the SAP were to reduce the fiscal deficit by reducing public spending; open up India's markets to world markets by removing tariff and

145 *Ibid.* at 403. The authors contrast policies of delicensing and deregulation in the industrial sectors which appear better planned.

146 *Ibid.* at 402.

147 *Ibid.* at 402.

148 *Ibid.* at 403.

149 *Ibid.* at 403.

150 *Ibid.* World growth declined steadily from 4 ½ percent in 1988, to 2 ¼ percent in 1991. "US growth fell from 3.9 percent in 1988 to 0.8 percent in 1990 and to -1 percent in 1991. Consequently India's export volume growth slowed to 4 percent in 1990/91." at 403.

151 India received a World Bank loan of US\$900 million, and IMF loan of US\$2.3 billion.

152 See generally Rob Jenkins, "Liberal Economic Reform and Contested Conceptions of Democracy in India," in S. Mappa ed., *Le lien social du Nord au Sud* (Paris: Karthala, 1999) 328 at 330.

non-tariff trade barriers and permitting increased penetration of FDI; liberalize the financial sector which included the privatization of the banking sector and the entry of foreign owned banks; privatize other State-run enterprises through deregulation and delicensing in these sectors including power, electricity, and water;¹⁵³ and institute currency devaluation to reflect market realities. An underlying justification for all of these reforms was that they would promote development.¹⁵⁴

However, the scope and substance of the reforms, plus the mode in which they were employed by the Indian government, operated to shock the agricultural sector and reverse gains.¹⁵⁵ Farmers had been reliant on the pre-1991 protectionist policies which provided subsidies, public investment in rural infrastructure including irrigation and roads, and strict export-import controls which insulated them from volatile price fluctuations in global markets. They also accepted the trade-off of artificially depressed domestic market prices in return for Minimum Support Payments received through government procurement via the FCI and PDS. In 1991, farmers were producing steady yields in grains, oil seeds, fisheries, and milk. Suddenly these farmers were exposed to a new environment in which the supports and protections, in which the agricultural sector was built since 1947, were systematically removed; specifically, in accordance with the IFI conditionalities:

- Public investment funds were to be reduced. Accordingly, subsidies to the agricultural sector were drastically cut to reduce public spending as evidenced by budget cuts in all post-1991 Budgets and National Plans. Farmers were thus increasingly deprived of the support subsidies they relied upon for the high cost inputs imposed upon them by past government policies including the Green Revolution.
- The World Bank insisted on the reduction of funds for the Public Distribution System (PDS), which provided subsidized food to the poor. In 1997, India recast its PDS by targeting food distribution to the segment of the population considered Below the Poverty Line (BPL). In other words, the threshold of eligibility for the PDS was raised. The remainder of the population reliant on the new Targeted Public Distribution System (TPDS) were now required to pay higher prices for the food. Today, 57% of the poor

153 Privatization reforms affected many crucial sectors of Indian society including health and education, which in turn directly impact upon the Millennium Development Goals.

154 See generally websites of the World Bank, <<http://www.worldbank.org>>, and the World Trade Organization, <<http://www.wto.org>>

155 Reverse gains made in wheat, rice, oil seeds, fisheries and milk production since the 1960s deleteriously affect farmers of tea and cotton and subject farmers suddenly to the complete volatility of international markets and competition from subsidized imports and the encroachment into their fields of corporate agribusiness.

are ineligible to receive food under the TPDS.¹⁵⁶ Purchases decreased, not because of lack of demand on the part of these consumers but because of a lack of purchasing power or ability to afford the new higher prices. This resulted, ironically, in the food surpluses being held by the Food Corporation of India (FCI), even though increasing rates of hunger and starvation deaths were widely reported. The FCI suddenly found itself with excess surpluses because the food was no longer being purchased; these surpluses were earmarked for export at vastly reduced prices, and stored in *godowns* where due to mismanagement they rotted in the heat or were eaten by rats.¹⁵⁷ In other words, food was being stored, rotting, or kept for export while Indians were going hungry or starving to death. Human rights lawyers brought a lawsuit against the Indian Government. The Supreme Court of India ruled that the stored food earmarked for export must be distributed to the people where hunger or starvation is an issue.¹⁵⁸ While this ruling is welcome in terms of furthering fundamental human rights and development, the TPDS continues, and human rights groups have reported vast trends of rotation eating, and increased hunger, starvation, and malnutrition in women and children. Critics oppose the TPDS for creating an artificial distinction between poor people by defining them as Above the Poverty Line (APL) or Below the Poverty Line, and state that the poverty levels have not fluctuated and instead, methods of calculation have been skewed to artificially lower the poverty line.¹⁵⁹

- In accordance with SAP directives, the Indian rupee was significantly devalued.¹⁶⁰ Currency devaluations reduced the global prices of India's export and cash crops, creating an artificial demand for Indian exports. Farmers, with State encouragement, began cultivating cash crops

156 See Karat, *supra* note 40.

157 See Ghosh, *supra* note 105.

158 For a history of the litigation, see "The Right to Food", Colin Gonsalves, P. Ramesh Kumar, Anup Kumar Srivastava, 2nd edition, (New Delhi: Human Rights Law Network, 2005).

159 *Ibid.* See also, UNDP Trade and Development Report, 2005, with respect to increases in poverty possibly being due to different calculation methods rather than any significant decrease in the household purchasing power of people in rural areas. See also the Special Rapporteur, "India Report," *supra* note 4, at para. 9, "Although government statistics suggest that poverty fell across India from 36 to 26 percent between 1993 and 2000, there is considerable debate about whether poverty had actually fallen or whether the drop in poverty is the result of changes in the data collected... There are concerns about evidence of rising inequality since the beginning of the 1990s as it seems that under recent economic growth, the better off western and southern states have been doing better than the poorer northern and eastern states."

160 The Indian rupee was devalued in 1991 by 25%.

for export which exposed them to the volatilities of the international market and threatened food security because of the corresponding reduction in staple crop farming.

- Privatization resulted in previously nationalized sectors being deregulated and turned over to the private sector. The financial sector, and banking, became privatized. Nationalized banks had followed State policies to provide dedicated credit to the rural sector at reasonable interest rates. However, privatized banks had little incentive to provide loans or acceptable interest rates to the rural sector. This loss of institutional credit meant farmers had to increasingly turn to private moneylenders that charged exorbitant interest rates. Indeed, most of the farmer suicides are attributed to cycles of loans accumulated with each new package of high input costs; policy pressures to shift to cash crops and resulting export costs; and the exorbitant interests rates of moneylenders on top of the interest rates on loans owed to banks. Delicensing, deregulation, and relaxed foreign exchange policies and laws further enabled the entry of foreign capital and transnational corporate interests into the Indian sector. Because social welfare does not factor into the agenda of the private sector which pursues a pure profit-seeking agenda, privatized resources essential to farming such as water and electricity became more expensive for farmers.¹⁶¹ While the private sector enjoys the gains of entry, the risks are borne by the public sector, or in this case, the 700 million people living in rural areas.
- Reform of taxation which has reduced taxation of upper income brackets and taxes on capital gains, which affects the net public moneys available for allocation to public investment in agriculture.¹⁶²

2. The World Trade Organization (WTO)

Reforms continued when India became a member in the newly established

¹⁶¹ Deregulation of resources can overlook social welfare concerns, and actually drive up costs as witnessed by the power deregulation and ensuing blackouts in California in the 1990s, and the Enron Dhabol power plant debacle in Maharashtra which resulted in power costs being driven up, blackouts, and environmental degradation.

¹⁶² The agricultural sector was more heavily taxed before, up to 25% of its profits in the 1980s, which decreased by the mid-1990s to only 9% of profits. See FAO, "India" *supra* note 3. These measures are part of the larger restructuring of the macro-environment in which agriculture operates; concessions such as the reduction of the agricultural sector are offset by decreased subsidies and protections mentioned above.

WTO in 1995.¹⁶³ These reforms had serious negative effects on India's food security, and are further illustrations of the failure of the Indian government to fulfill its international legal obligations to uphold the right to food for its citizens.

The WTO dictated specific measures for market reform to further trade in goods and services, which directly affected the liberalization of agriculture in India:

- Reduction and elimination of all quota restrictions;
- Reduction and elimination of export subsidies;
- Tariffication of non-tariff trade barriers accomplished through binding existing tariffs to further facilitate market access;
- Compliance with intellectual property rights protections in the TRIPS¹⁶⁴ agreement, which are particularly relevant in agriculture with respect to the patenting of seeds, which will be explained below.

This resulted in the following violations by the Indian government of the right to food:

a) Removals of quota restrictions,¹⁶⁵ import-licenses,¹⁶⁶ and input subsidies and cash-compensatory schemes for exports which exposed Indian farmers, accustomed to 44 years of protections, to the volatilities of price fluctuations in international markets, and competition from cheap highly-subsidized imports which operated to depress local prices and demand. Any fluctuating externality, such as the droughts of 2002, renders farmers exceedingly vulnerable. For example, quota restrictions on imports and subsidies were removed for oil seeds, with the effect that India has turned from a net-exporter of oil seeds to becoming a net importer.¹⁶⁷ The imports come mostly from other South Asian countries and the US, and are considered to be inferior to the domestic brands. The impact in India has been the forced or compelled abandon-

163 India was a founding member of GATT. In 1991, India began systematically implementing GATT liberalization reforms. With the Uruguay Round and the creation of the WTO in 1995, India aggressively began implementing liberalization reforms, and even adopted zero tariffication perhaps in optimism of the effects of the WTO. See generally Ghosh, *supra* note 105, and *Food First*, *supra* note 124.

164 Trade Related Aspects of Intellectual Property Rights, referred to as the TRIPS agreement. For a discussion of how TRIPS operates see B.K. Keayla "TRIPS Patent System: An Appraisal" *Combat Law* (2003) 2(1) at 42.

165 Quota restrictions were completely removed by 2001. Other barriers operating to limit entry such as elimination of import-licensing. The government also abolished the export subsidies or cash compensatory scheme for exports. See Sanjay Parikh, *Combat Law*, (2006) 4(5).

166 Jenkins, *supra* note 152 at 5.

167 See Christian Aid, *Damage Done: Aid Death and Dogma*, online: Christian Aid <http://www.christianaid.org.uk/Images/damage_done.pdf> at 17.

ment¹⁶⁸ of oil seed cultivation by farmers, resulting in the devastation of the oil seed production sector in India, exposure of Indian farmers to volatile price fluctuations, and depression of local prices caused by cheap subsidized imports.¹⁶⁹

b) The introduction of the WTO TRIPS requirements also adversely affected Indian farmers. Transnational corporations began introducing genetically modified seeds, engineered to last only one season and requiring a new compulsory “package” of fertilizers and pesticides from the same seed manufacturer, which operates to grossly increase high cost inputs on an annual basis. Secondly, the process of patenting seeds is requiring farmers to dismantle the age old farming practices of seed preservation and replanting, and harms biodiversity because traditional seed varieties continue to be abandoned. The Indian government has reinforced this practice by introduction of the controversial *National Seeds Bill 2004*,¹⁷⁰ which operates to further open the Indian market to private and foreign seed firms.¹⁷¹ Amendments to the *1970 Patents Act* in 2005, and the *Protection of Plant Varieties and Farmers Right Act no. 53 of 2001*, also operate to protect plant breeders,¹⁷² which are generally the TNC seed companies operating in India.

The Indian government speaks out about the need to protect its farmers in international and domestic venues. Again, these proclamations appear to be only rhetoric. The Indian government exceeds its requirements under the WTO¹⁷³ by grossly reducing tariffs and non-tariff barriers, and failing to implement any countervailing measures, or insist upon Special Products and Special SMSs.¹⁷⁴ Further the Indian government has entered into a series of bilateral trade agreements, effectively furthering the Doha agenda while speaking out publicly about protecting farmers from Doha.¹⁷⁵

168 See Chand, *supra* note 123.

169 *Ibid.*

170 The Bill would repeal and replace the 1966 *Seed Act*. The Indian government claims the Seeds Bill 2004 is required for compliance with TRIPS Article 27.3(b), but in fact, India already had the 1970 *Patent Act* which provided for patents on GM seeds and would have fulfilled the WTO requirements. As such, the Seeds Bill 2004 is seen as the Indian government's concession to powerful lobbying by western governments and industrial and transnational corporate interests. See also www.grain.org/seedling for a discussion on the passing of the 2004 bill into law, and its deleterious effects upon farmers.

171 See Savitha Kuruganti, “This Seeds Bill Must Go” (2005) online: India Together <<http://www.indiatogether.org/2005/aug/agr-seedbill.htm>> for a discussion of how the seeds laws are shifting power from farmers to corporate seed farms.

172 See Parikh, *supra* note 165.

173 The Agreement on Agriculture of the WTO, and the Doha Round which collapsed in 2008.

174 See FAO, “India,” *supra* note 3.

175 See for example Devinder Sharma, “WTO Doha Destructive Round: Time to Pull Down the

The Indian government announced a new Agricultural Policy in 2000. Objectives included increasing agricultural growth to 4% per annum and making improvements in sustainable agriculture; food and nutrition security; generation and transfer of technology; inputs management; incentive for agriculture; investment in agriculture; institutional structure; and risk management. However, no real progress in implementation of this policy is seen. The objectives of incentives and investment operate to cater to TNC interests and private sector investment in agriculture. The soil degradation, threats to diversity posed by genetically engineered and patented seeds, the reversal of gains in crop yields and corresponding increases of imports in these crops, and the declining agricultural rate to 1.3%, plus rising hunger and malnutrition indicate that agricultural growth and food security are failing objectives. The Policy also makes no mention of a strategy for achieving these goals, or the importance of controlling water or improving irrigation in developing agriculture.¹⁷⁶

E. Assessing Neoliberalism's "Successes"

Numerous claims of the successes of India's post-1991 macroeconomic liberalization reforms are constantly made and presented in the language of development. But as this article has stated, there has been no real progress in development, and there has been regression in realization of the right to food.

The growing economy and rates of GDP and FDI are frequently cited as evidence of progress. These claims are misleading. It is true that the GDP grew at the astonishing rate of 9% in 2007. However, from 1991 to 2005, the average rate of growth was 5%. In 2000, the rate fell to 3.4%, a GDP rate seen only in 1991 and 1981. Given the fluctuations in the rate, and the recent global financial crisis, it is uncertain whether India's economic growth rate will remain at 9%.¹⁷⁷ Also, the increase in GDP is primarily in the services sector which enjoys a 44% share, and which employs only 25% of India's population. As discussed earlier, little or no progress has been made in health, infrastructure, or realization of the MDGs.

Increased FDI can certainly benefit development, but only when it contributes to capital growth, technology transfers, and fixed industry share in the country. In India, FDI increased to \$7 billion (US) in 2005, but this figure was primarily found in the services industry and present in mergers and acquisitions. There is little indication that this FDI is contributing to any fixed capital growth or sustained technology transfer¹⁷⁸ in the country. India's rate of attracting FDI

Shutters" (2006) online: *In Motion Magazine*, <http://www.inmotionmagazine.com/opin/devsh_shutter.html>, last visited January 19, 2009, and Devinder Sharma, *Trade Liberalisation in Agriculture, Lessons from the First 10 Years of the WTO* (Brussels: Aprodev, 2005) online: APROVDEV <<http://www.aprodev.net/main/files/Devinder%20study-FINAL.pdf>>, last visited January 19, 2009.

176 For a critique, see Chand, *supra* note 123.

177 At the time of writing, India's economy is expected grow only between 5-6% in 2009.

178 Technology transfer is kept in the hands of the TNCs. See Chandana Chakraborty and Peter Nunnenkamp, *Economic Reforms, Foreign Direct Investment and its Economic Effects in India* (2006) online: Kiel Institute for the World Economy <<http://EconPapers.repec.org/RePEc:kie:kieliw:1272>>.

is less impressive when compared to China which attracted \$34 billion (US) in FDI in 2005.

India's liberalized trade reforms and membership in the WTO has not furthered development or food security; global free trade has not been on a 'level playing field' with India benefiting from its 'comparative advantages,' as promised by proponents of the WTO. India was a net exporter in 1991, but has become a net importer in 2008, compromising its food security.¹⁷⁹ Its self-sufficiency in wheat, rice, oilseeds, milk, and fisheries has been destroyed by the removal of protectionist measures and the corresponding dumping of highly subsidized imports.

As a developing country with 700 million people depending upon agriculture, crop production should be India's 'comparative advantage';¹⁸⁰ yet this possibility has been eroded by the exorbitant subsidies and market liberalization rules enforced by developed countries.

The agricultural sector is also being betrayed at a local level by local politicians who are selling large traces of cultivatable land to corporate real estate developers further threatening food production capacity and security in India. Such actions belie India's commitment to protect its farmers. Pushes to cash crops expose farmers to the volatilities of the international market and result in a corresponding decrease in staple crops thereby threatening food security. The promotion of 'contract farming' enables TNCs to essentially 'lease' land from the government, hire local farmers, and then place all the risk on these farmers. At any time, the TNC can move its operations to a different locale or country, and the farmers find themselves again landless and wageless, and further impoverished.

Finally, the reduction in India's fiscal deficit is minimal. Yet public spending and tax reforms have shifted investment away from agriculture and into other sectors.

All of these legal and policy reforms, and their manifestations noted above, have converged to orchestrate the collapse of India's agricultural sector and India's small-scale farmer. This destruction violates the international legal obligations of the Indian State to uphold the right to food (including the access to adequate food and food security) with the following consequences:

- Decrease in agricultural growth
- Decrease in agriculture's share of the GDP
- Decrease in agricultural income and employment
- Decrease in credit available to farmers
- Increase in income and employment in the services sector
- Increase in inequities between agriculture and non-agricultural sectors

179 For a thorough study of liberalization and Indian agriculture with statistical reports, See Ghosh, *supra* note 105.

180 See Gonzales, *supra* note 127. Consider another example; India is the world's largest producer of vegetables which require lower inputs and are grown primarily by small-scale farmers who are able to produce surpluses; however mismanagement results in post-harvest rotting, reduced export opportunities due to non-tariff barriers in destination countries, and India continues to import vegetables which is a product in which it has a comparative advantage.

- Increase in hunger and malnutrition throughout India
- Decrease in crop production in India
- Increase in crop imports into India
- Increase in the deleterious effects upon women, children, *Dalits*, and tribals
- Government claims of reduction in poverty
- Counter-claims by the UNDP and NGOs of possible increases in poverty
- Reversal of gains in production of wheat, rice, oilseeds, milk, fish, and increasing imports of same
- Farmer suicides in epidemic proportions
- Government of India acknowledgement of an 'agrarian crisis'

The Special Rapporteur has linked India's increasing food insecurity, chronic hunger, and starvation, and the particularly deleterious effects upon women, *Dalits*, and tribals directly to the liberalization reforms and the removal of public investment in agriculture. He notes also that the majority of the population is not benefiting from the country's post 1991 liberalization gains, and that "hunger and food insecurity have increased since the second half of the 1990s."¹⁸¹

PART IV: CONCLUDING REMARKS

Protection of agriculture and the right to food are prerequisites for development, democracy, peace and security, and the full benefits of economic globalization.

The right to food and development are failing throughout India, and the Indian Government is failing to meet its international legal obligations to provide these rights to the Indian people. Instead the Indian government has implemented a series of economic reforms, with no consideration of the deleterious impact upon the human rights - particularly the right to food - for its citizens, with the result that India today has some of the highest numbers of chronic hunger, malnutrition, starvation deaths, poverty, under-nutrition, and infant mortality in the world.

These human rights violations have been caused by the imposition of solely economic-centered reforms undertaken in the name of 'development;' but the reforms have only benefited the elite, the quarter of the population participating in the services and industry sectors, and TNCs who are reaping enormous profits. For the majority of India's population who are roughly 700 million people, the reforms have condemned them to intense suffering and violation of their human dignity and fundamental human rights. There is no real democracy for these hundreds of million of Indians.

Part II of this article has described how the right to food is crucial for realizing 'development.' Development is defined as a "comprehensive economic, social, cultural and political process," aiming for the "constant improvement

¹⁸¹ Special Rapporteur, "India Report" *supra* note 4 at para. 7.

of the well-being of *the entire population and of all individuals*" on the basis of real democracy found in their "active, free and meaningful participation in development," and the just and equitable "distribution of benefits resulting therefrom."¹⁸² Economic growth is necessary for development, but not at the expense of human rights and social welfare, as has been the case in India.

Part II of this article has also outlined the legal obligations upon the State to provide all the elements of the right to food, including the fundamental right to be free from hunger which is a moral imperative. India is legally bound to ensure it "takes no actions that arbitrarily deprive people of their right to food," and to "enforce appropriate law to prevent third parties, including powerful people and corporations" from violating the right to food."¹⁸³ The Government of India is also required to use the "maximum available resources" to facilitate and provide food. To achieve the right to food, India must create an enabling legal, economic, and social environment that provides equity: equity in terms of the equitable distribution of gains and resources, equitable access to food and productive resources for food, and enjoyment of food security and food sovereignty which requires meaningful participation in decisions regarding all aspects of food production and distribution. Economic reforms would then be part of a human-rights centered approach to development that is grounded in principles of justice, equity, and respect for the inherent dignity of the human being.

This Part also discussed the gaps in international law for holding accountable the powerful non-State actors including the World Bank, IMF, WTO, and TNCs, whose actions can and do deleteriously affect human rights. However, the World Bank has consistently used the language of development, poverty eradication, and democracy in its initiatives, and should continue to work with States and civil society organizations to realize these objectives rather than to subjugate them, and therefore seriously harm their realization by adhering to free market ideals that only herald profits and promote a culture of greed, non-transparency, non-accountability, and systematic human rights violations against the global poor. Efforts to build on accountability for TNCs should also continue, but until there is a real commitment on the part of non-State actors to uphold human rights, the rights will most likely continue to be violated.

Human rights are the aspiration of all persons and organs of the international community as established in the UDHR; human rights and economic reforms need not be antithetical and economic growth is a goal of economic human rights. All members of the international community including non-State actors must work to promote human rights within their spheres of influence, and at a minimum ensure they are not violating these rights. Part II has emphasized the importance in particular of the right to food for the enjoyment of development and all other human rights.

Part III explains how and why India has failed to fulfill its legal obligations regarding the right to food and development. Contrary to providing the 'maximum available resources' for food security, India has removed investment from agriculture, completely dismantled traditional farming methods and comprom-

182 Declaration on the Right to Development, Preamble, *supra* note 42 at para. 2.

183 See Special Rapporteur, "India Report," *supra* note 4, at para. 18.

ised food security, made the country a net-importer of staple crops, made economic reforms that remove vital resources and harm small farmers, and has removed resources and limited the effectiveness of the national food Public Distribution System (PDS). This Part explained how this happened through reviewing post-Independence reforms, the implementation of the Green Revolution, and the implementation of neoliberal economic policies at the behest of the World Bank, IMF, and WTO.

This article concludes that India is headed for disaster if it continues to allow 700 million people to suffer chronic hunger, poverty, and violations of the right to food. This article finds that India must chart a new course for development that is human rights-centered, and grounded in equity and justice. An important and urgent starting point for India is to fulfill its legal obligations pursuant to Article 11 of the ICESCR to respect, protect, and fulfill the right to food. Some general thoughts in this regard are to begin with the following considerations:

- 1) To urgently address the agrarian crisis and the extreme distress being experienced by small scale farmers: Public investment in agriculture must be reinstated notwithstanding any multilateral agreements or external financing conditions. This investment must include investment in rural infrastructure including irrigation projects throughout the country, government oversight of food production and distribution through procurement of grains from farmers, and provision of low interest credit to farmers. Tax holidays for high value enterprises and the removal of capital gains taxes must be revisited as they provide a potential resource for funds for investment.

- 2) To excuse debts to farmers in India, instate new credit support: This seems to be the only humane option, while bail-out packages to the families of farmers who have committed suicide are addressing the symptoms, they are not providing a cure for the long-term. Further the bail-out packages of recent years are not availing all small-scale farmers but only those who fit certain criteria, further marginalizing vulnerable farming families in the short-term.

- 3) To ensure that any bilateral trade agreements do not operate to create further distress to farmers through unfair trade practices. In negotiating multilateral trade agreements, the Indian government must observe its right to protect its own people, and its extraterritorial obligations to protect the right to food of people living in developing countries worldwide. The government should also ensure that intellectual property laws do not operate to appropriate traditional knowledge or research and development from farmers, and transfer these rights to TNCs.

4) To institute land reforms to ensure that small-scale farmers can obtain and maintain land ownership. Strictly regulate contract farming to ensure that the entire risk is not borne by the farmer and that unsustainable agriculture techniques are avoided. Ensure that prime agricultural land is not sold for real estate development or special economic zones antithetical to cultivation.

5) Develop and implement an agricultural policy that provides access to productive resources and focuses on the food production capacity of nutritious staple foods for which production can be sustained and delivered throughout the country, drawing on the successes of past experiences with the Food Corporation of India and Public Distribution System. In this regard, the poverty line must be raised to reflect the realities of the Indian population.

Civil society organizations in India must continue their excellent efforts to mobilize the poor, particularly in informing them of their rights so they themselves can monitor state actions at local levels, and to continue in efforts such as public interest litigation to ensure India complies with its international legal obligations regarding the right to food. The role of civil society organizations in India, such as the Human Rights Law Network and All India Democratic Women's Association (AIDWA) among hundreds of others, are absolutely invaluable in India in promoting development that consists of the meaningful participation and well-being of the entire population.

The Voluntary Guidelines on the Right to Adequate Food¹⁸⁴ provide an excellent resource for the Indian Government, and civil society organizations, even non-State actors like the World Bank to move forward in creating the economic and social environment in which the right to food can be realized.

Finally, this article also concludes that the international community must address the accountability of TNCs, IFIs, and multilateral trade organizations with respect to international human rights laws, and must establish systems of accountability and transparency. In particular, multilateral organizations must not impose conditions which harm the right to food, and the fundamental right to be free from hunger.

Economic growth in India cannot continue to be attained at the expense of the fundamental needs and rights of 700 million human beings; this not only condemns these 700 million Indians to poverty and hunger, but also condemns the very country itself.

184 Voluntary Guidelines, *supra* note 70.