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LET THEM EAT RIGHTS: RE-FRAMING THE FOOD INSECURITY PROBLEM USING A RIGHTS-BASED APPROACH

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ABSTRACT:

Food insecurity is a global issue. Large parts of the global population are unable to feed themselves adequately with hundreds of millions of people suffering from hunger and malnutrition. This problem is recognized widely by governments, industry and civil society and is usually understood using one of three approaches or frames: a basic production problem solved by technology and increased industrialization of agricultural, and an economic problem solved by economic growth and a commercial problem resolved by expanding markets. Much of the discussion and policy advice is based on the premise that hunger is primarily a wealth issue and, that as wealthy countries do not have hunger, the solution is economic development. Using Erving Goffman's theory of framing, we argue that these frames are inadequate as evidenced by the failure to solve this very basic, but complex problem in both poor and wealthy countries on the one hand nor explain the success of some developing countries on the other. After analyzing the three frames and their limitations, we propose a rights-based frame and explain how rights are an important part of solving the complex problem of hunger. We examine how rights-based approaches have worked by creating three categories based on the status of food rights within the respective constitutional frameworks of those jurisdictions. In each of the three categories, we examine specific jurisdictional frameworks, evidence of performance and evaluate their success. Based on that review, analysis and evaluation, we identify the legal elements of an effective right to food.

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I. INTRODUCTION

The dramatic reduction in global hunger is a success story of the contemporary world;¹ however, it is estimated that 820 million people still suffer from hunger and malnutrition.² The prevalence of food insecurity is global—not limited to the developing world—and concerning, it has been exacerbated by the COVID-19 pandemic.³ The urgent challenge of feeding the hundreds of millions who go to bed hungry, and the important longer-term challenge of providing food for a planet of over nine billion people by 2050, are matters that need to be addressed.⁴ As Charles Darwin famously stated over 150 years ago, “[i]f the misery of our poor be caused not by the laws of nature, but by our institutions, great is our sin.”⁵

Before solutions can be developed, agreed upon, and implemented, however, a clearer understanding of, and agreement about, the problem(s) leading to food insecurity must be developed.⁶ At the international level there is a consensus that there are three dimensions to the problem of food insecurity, namely, availability, accessibility, and adequacy.⁷ This article aims to explore the leading theorizations of food insecurity, including their limitations, and to propose an alternative framing of the problem which addresses shortcomings of the leading frames. Food insecurity has been described by the Food and Agriculture Organization of the United Nations (“UN”) as “a complex condition.”⁸ This article argues that an important but often overlooked aspect of this complexity is the matter of rights, and particularly, the right to food.

1. See VACLAV SMIL, *FEEDING THE WORLD: A CHALLENGE FOR THE TWENTY-FIRST CENTURY*, at x-xiii (2000).

2. Hilal Elver (Special Rapporteur on the Right to Food), *Right to Food*, ¶5, U.N. Doc. A/74/164 (July 15, 2019).

3. Christina M Pollard & Sue Booth, *Food Insecurity and Hunger in Rich Countries—It Is Time for Action against Inequality*, 16 INT. J. ENV'T RSCH. PUB. HEALTH, 1, 4 (2019).

4. See U.N. FOOD & AGRIC. ORG., *HOW TO FEED THE WORLD IN 2050* 2–3 (2009), http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/How_to_Feed_the_World_in_2050.pdf.

5. CHARLES DARWIN, *THE VOYAGE OF THE BEAGLE* 317 (Millicent E. Selsam ed., Harper's & Row 1959).

6. See Yvonna S Lincoln, Laurie G. Thorp & Craig Russon, *The Storied Nature of Agriculture and Evaluation: A Conversation*, 20 AGRIC. HUM. VALUES 267, 267–76 (2003); see also Benedict Sheehy & Donald Feaver, *A Normative Theory of Effective Regulation*, 35 U.N.S.W. L.J. 392, 392–425 (2015).

7. See U.N. OFFICE HIGH COMMISSIONER FOR HUM. RTS. (“OHCHR”) & U.N. FOOD & AGRIC. ORG., *FACT SHEET NO. 34: THE RIGHT TO ADEQUATE FOOD* (2010), <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf> (last visited Aug. 22, 2021) [hereinafter *FACT SHEET NO. 34*].

8. U.N. FOOD & AGRIC. ORG., INT'L FUND FOR AGRIC. DEV., & WORLD FOOD PROGRAMME, *THE STATE OF FOOD INSECURITY IN THE WORLD THE MULTIPLE DIMENSIONS OF FOOD SECURITY* (2013), <http://www.fao.org/3/i3434e/i3434e.pdf> [hereinafter *STATE OF FOOD 2013*].

The three leading frames or approaches to food insecurity, which we will refer to as “technology, economics, and business,” are as follows. The first way of framing the problem is based in the natural sciences and addresses the basic problem of availability through technology.⁹ This framework describes food insecurity as an availability problem caused by the physical aspects of food production: cropping, soil science, and the like. It pursues technological breakthroughs in products and methods to solve the problem of food insecurity.

The second way of framing the problem, through economics, comes from the social science of economics and global finance and conceptualizes food insecurity in terms of economic accessibility.¹⁰ According to this frame, the problem to be addressed is that everyone “should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent.”¹¹ The solution is one of economic growth, where the objective is to develop economically as quickly as possible.¹² It is based, like most economic theories, on the assumption that humans’ unlimited financial aspirations and rationality drive all systems of production and consumption, and that only the correct incentives need to be put in place for sufficient markets to appear and solve the problem.¹³ Described in applied terms, the neoclassical economic assumption is that incentives created through expanded property rights and expanded markets can solve everything from global food problems to global warming.¹⁴ This approach assumes that the correlations between national wealth and hunger are simple, clear, and direct.

Finally, the third way of framing the problem, as a business issue, is advocated by large multinational corporations (“MNCs”), and, while coalescing to a considerable degree with the social science frameworks of economics and finance, is not a frame that is solely solution-focused. Rather, it is a narrow frame aimed at benefiting these same corporations but using some of the language of the sciences to promote their own ends. MNCs do increase

9. E.g., Jenny (Jingxin) Tian, Brian C. Bryska & Rickey Y. Yada, *Feeding the World into the Future – Food and Nutrition Security: The Role of Food Science and Technology*, 9 FRONTIERS LIFE SCI. 155, 155–66 (2016) (discussing the role of food science and technology in feeding the world).

10. E.g., Tess Penne & Tim Goedemé, *Can Low-Income Households Afford A Healthy Diet? Insufficient Income as a Driver of Food Insecurity in Europe*, 99 FOOD POL’Y 1 (2021) (arguing that insufficient income is a main driver of food insecurity in Europe).

11. Fact Sheet No. 34, *supra* note 7, at 2.

12. See Thomas S. Ulen, *The Role of Law in Economic Growth and Development*, in DOES LAW MATTER? ON LAW AND ECONOMIC GROWTH 181–82 (Michael Faure & Jan Smiths, eds., 2011).

13. See, e.g., H. Laurence Miller, Jr., *On the “Chicago School of Economics”*, 70 J. POLIT. ECON. 64, 64–69 (1962).

14. See, e.g., Louis Lefebvre, *Classical vs. Neoclassical Economic Thought in Historical Perspective: The Interpretation of Processes of Economic Growth and Development*, 21 HIST. POLIT. THOUGHT 525 (2000) (discussing the assumptions of neoclassical economics).

food production, potentially addressing the availability issue, and drive prices for some foods down, addressing issues of accessibility; however, these outcomes are tangential to the main aim of the MNCs' profitability and, as argued below, ignore very significant social costs which exacerbate other aspects of those same issues.¹⁵ There are two groups of MNCs primarily involved in this framework: those who are engaged in the agricultural sector, and those who are engaged in food retail. The MNCs engaged in agriculture aim to sell and deliver more agricultural inputs on a wider scale, to reduce variation of plants and animals in order to create standardized agricultural processes that maximize a return on investment, and to improve economies of scale and so increase profits.¹⁶ Further, MNCs include major food retailers.¹⁷ As such, they both provide and restrict access to food.¹⁸

Of particular concern, the MNC framework promotes solutions to food insecurity such as producing profitable long-term ecologically damaging products, ignoring the public good, and relying on socially detrimental practices that undermine the well-being and sustainability of poor and disenfranchised parts of society, further challenging food accessibility.¹⁹ While the MNCs' frame may be an appropriate policy for an MNC as a private profit-focused entity, it is wholly inappropriate when proposed as a public policy solution.

All three of these problem frames need to be investigated: Are they the only or best frames for understanding and solving food insecurity? What are the limitations of their heuristics or less obvious assumptions? Ultimately, it must be asked: Are they the frames that will lead to available, accessible, and adequate food? This article aims to provide a critique and analysis of the leading three frames used for understanding global food security and to provide an argument for why adopting a human rights-based frame is critical to solving this complex global problem.

15. E.g., Haley Stein, *Intellectual Property and Genetically Modified Seeds: The United States, Trade, and the Developing World*, 3 NW. J. TECH. & INTELL. PROP. 160, 161 (2005) (noting that MNCs' genetically modified crops significantly improve agricultural productivity. GMOs have the potential to "feed the world.") (internal quotations omitted).

16. But see Saeed Samiee & Kendall Roth, *The Influence of Global Marketing Standardization on Performance*, 56 J. MKTG. 1, 13-14 (1992) (emphasizing the MNCs' standardization of products while finding that some standardization is not empirically supported).

17. Nina Lakhani, Aliya Uteuova & Alvin Chang, *Revealed: The True Extent of America's Food Monopolies, and Who Pays the Price* THE GUARDIAN (July 14, 2021, 0:600 EDT), <https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>.

18. See, e.g., AGROPOLY – A HANDFUL OF CORPORATIONS CONTROL WORLD FOOD PRODUCTION, ECONEXUS (Sept. 2013), https://econexus.info/files/Agropoly_Econexus_BerneDeclaration.pdf.

19. See, e.g., Mary Jane Angelo, *Food Security, Industrialized Agriculture, and a Changing Global Climate: Perspectives on the United States and Cuba*, 29 FLA. J. INT'L L. 133, 134 (2017).

Following this introduction, the article is divided into three main parts. Part II introduces Erving Goffman's theory of frames. It describes, analyzes, and critiques the three leading frames of technology, finance, and business in the global food security dialogue, and introduces the rights-based frame. It also demonstrates why the three leading frames are inadequate to solve the problem of global food insecurity.

Part III of the article further explains and expands on the rights-based frame, connecting it to international instruments. This Part investigates how the rights-based frame advances the agenda of global food security well beyond the limitations and boundaries inherent in the other three frames. At the international level, the article argues that it is imperative to strengthen the development of a positive rights-based approach so that international law and treaty instruments can provide practical guidelines for their member states to follow.

Part IV examines the use of rights-based frameworks at the national level through a series of case studies. We group the eleven case studies into three categories of countries: Category A countries have explicit constitutional rights to food, Category B countries have implicit constitutional rights to food, and Category C countries have rights to food in domestic laws other than the constitution. Significantly, the analysis of the eleven countries is not based on level of development, but on legal rights to food. This novel approach provides evidence that the foundation for solving global food insecurity is the creation of constitutional rights to food.

The final part, Part V, concludes the article by emphasizing the importance of the rights-based approach to food security, while acknowledging the long road ahead in order to achieve "Zero Hunger"²⁰ globally.

II. FRAMING THE PROBLEM OF FOOD INSECURITY

In a nutshell, a frame is a way of looking at something. A very simple example can be drawn from motor vehicles. When four different people look at a motor vehicle, they will see different things. These differences are not reflective of rational interests, but of cognitive dispositions—personal ways of understanding the world, of making meaning for oneself, ways of determining right and wrong and evaluating phenomena. For example, with a car, one person using an aesthetic frame will see a thing of beauty. Another person will see a problematic object that requires work, maintenance, and expenditure. A third person will see it as something used for speed and competitive driving. Yet a fourth person will see it a useful means of transport. Thus, frames are ways of approaching phenomena, understanding where in one's cognitive universe a particular phenomenon belongs.

20. *Sustainable Development Goals: End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture*, FOOD & AGRIC. ORG. U.N., <https://www.fao.org/sustainable-development-goals/goals/goal-2/en/> (last visited Nov. 19, 2021).

A. Theory of Frames

Understanding how people look at the same issue but understand it differently is fundamentally a question of cognition—a function of information processing and attachment of meaning.²¹ It was first fully theorized and later popularized by the social psychologist, Erving Goffman, who coined the term “framing” to identify the distinct, coherent perspectives people develop when looking at phenomena.²² In Goffman’s words, frames are “principles of organization which govern events—at least social ones—and our subjective involvement in them.”²³ This description is apt, because although the problem of food security is systemic and collective, we are individuals perceiving and framing it for ourselves and not through some type of collective consciousness.

As individuals, our subjectivity is paramount and our ability to surmount that subjectivity depends on our opportunity and ability to discuss our perceptions and interpretations with others. Surmounting subjectivity and arriving at a more widely accepted understanding requires individuals to go through the framing process. Goffman describes that process as follows: “[W]hen individuals attend to any current situation, they face the question: ‘[w]hat is it that’s going on here?’ Whether asked explicitly, as in times of confusion and doubt, or tacitly, during occasions of usual certitude, the question is put forward, and the answer is presumed by the way the individuals then proceed to get on with the affairs at hand.”²⁴ Framing theory has moved well beyond Goffman; however, his basic conceptualization still stands.²⁵ This uncertainty, confusion, and doubt ranges widely in complex issues such as global food security.

Addressing framing problems of such complex issues requires attention to disciplinary lenses²⁶ and widely accepted social practices embedded in a range of global institutions. Global institutions support different social practices and can be publicly-oriented organizations such as the UN, large private organizations such as those associated with international finance, or informal institutions such as the globalized culture as found in fashion, pop culture, and economic fashions such as neo-classical economics. These institutions provide widely accepted frames and facilitate coordination of resources to address the issues as agreed upon by those using the frames. Frames are important because they limit the scope of issues to be considered

21. Dennis Chong & James N. Druckman, *Framing Theory*, 10 ANN. REV. POLIT. SCI. 103, 104–06 (2007).

22. See ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* 1–21 (Ne. Univ. Press Later Reprint Ed. 1986).

23. *Id.* at 10–11.

24. *Id.* at 8.

25. *E.g.*, Chong & Druckman, *supra* note 21, at 104.

26. See, *e.g.*, JANET GAIL DONALD, *LEARNING TO THINK* 45, 242 (2002).

and, as a result, limit the range of solutions which will be proposed and developed.

Framing, particularly disciplinary framing, creates its own epistemology.²⁷ As a result, it can at times become difficult to identify the limitations and weaknesses of one's own disciplinary frame. Indeed, the boundaries of the disciplines are contested.²⁸ Accordingly, in an analysis of a complex problem like global food insecurity,²⁹ or of most complex policy issues,³⁰ understanding the limitations of these frames and stepping beyond them is critical to the development of their resolution.

Stepping beyond these frames in order to address the problem of food insecurity, the UN has taken a different approach which starts on a different foundation. This different frame is a comprehensive frame of rights. In 2010, the Office of the United Nations High Commissioner for Human Rights ("OHCHR") and the Food and Agriculture Organization of the UN ("FAO") jointly published Fact Sheet No. 34 ("the Fact Sheet"),³¹ describing global food insecurity as having three dimensions. These are the previously mentioned issues of "availability, accessibility, and adequacy."³² "Availability" encompasses two aspects: "[F]ood should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other ways of obtaining food, such as fishing, hunting, or gathering";³³ it should also be "available for sale in markets and shops."³⁴ "Accessibility" rests on two pillars: economic accessibility and affordability, and physical accessibility to food. Everyone should be able to afford a nutritionally adequate diet without compromising on other basic needs.³⁵ Furthermore, food should be made physically accessible to everyone. Close attention should be paid to vulnerable populations, such as the sick, persons with disabilities, the elderly, and victims of armed conflicts or natural disasters, as their limitation of movement may restrict their physical access to food.³⁶ "Adequacy" is threefold: safe food, individuals' dietary

27. Mieke Boon, *The Role of Disciplinary Perspectives in an Epistemology of Scientific Models*, EUR. J. PHILOS. SCI., July 2020, at 1, 30–34.

28. E.g., Edward P. Lazear, *Economic Imperialism*, Q.J. ECON., Feb. 2000, at 99, 104–39; Uskali Mäki, *Economics imperialism: Concept and Constraints*, 39 PHIL. SOC. SCI. 351, 362–73 (2009).

29. SMIL, *supra* note 1.

30. E.g., Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCI. 453, 453 (1981); see also DANIEL KAHNEMAN, THINKING FAST AND SLOW 363–74 (2011).

31. Fact Sheet No. 34, *supra* note 7, at 2–3.

32. *Id.* at 2.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 3.

requirements, and cultural requirements.³⁷ First, “food should be safe for human consumption and free from adverse substances”; second, “food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc.”; third, “food should . . . be culturally acceptable.”³⁸

This three-dimensional approach, “availability, accessibility, and adequacy,” provides a critical high-level consensus, a supra-individual frame on the nature of the issue, for as noted, developing a policy response to any issue requires a prior general agreement on the definition of the issue itself. Without such initial agreement, policy responses may be incoherent, contradictory, mutually frustrating, destructive, and a waste of resources.³⁹ When actors have different understandings of a problem, only by acknowledging the differences in framing and the limitations of those frames is an appropriately complex frame possible.

B. *The Four Frames*

1. The Frame of Technology

The first leading frame, technology, focuses on food availability. This approach frames the problem of global food insecurity as an availability problem—there is not enough food to go around.⁴⁰ Thus, the basic principle of organization is a physical lack of sufficient food on the planet to feed the extant human population. The clear and obvious answer to the problem, when framed this way, is to increase the physical stock of food.⁴¹ It is a production problem, and a technical problem. Framed in this manner, it is first and foremost a technical problem best addressed by the natural sciences.

The tradition of “Big Science” goes back at least to the Second World War when governments realized that national defense relied on discoveries in the natural sciences.⁴² As a result, governments invested significant amounts of money into research directly related to the development and

37. *Id.* (“[F]ood should be safe for human consumption and free from adverse substances”; “food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc.”; “food should . . . be culturally acceptable.”).

38. *Id.*

39. See Sheehy & Feaver, *supra* note 6, at 40–44.

40. E.g., Tigist Gebrehiwot, Steve Cornelius & Lise Korsten, *Impact of Global Food and Agriculture Laws on Africa’s Food Security*, 52 DE JURE L.J. 85, 85 (2019) (noting that there exists a “growing tension between population growth and the demand for food” in Africa; “food production is not sufficient to feed the people.”); see also Aaron Sternick, *Food Fight: The Impending Agricultural Crisis and a Reasonable Response to Price Volatility*, 23 VILL. ENVTL. L.J. 145, 153 (2012).

41. See Sternick, *supra* note 40.

42. Nicolas Rasmussen, *Of “Small Men,” Big Science and Bigger Business: The Second World War and Biomedical Research in the United States*, 40 MINERVA 115, 115–46 (2002).

production of armaments and military support.⁴³ The model involved vast amounts of public money to coordinate large, highly sophisticated scientific experiments and laboratories that produced both esoteric basic science and applied scientific outcomes.⁴⁴ Billions of dollars were invested in the development of new science and technology, from war-time jet engines to particle accelerators, powdered drinks, and deep space exploration, often with little justification in terms of specific public good.⁴⁵ Eventually, this public approach to science fell out of favor as fiscal conservatism gained ground, and science was driven elsewhere to find funding.⁴⁶ Yet the model of large scale, project-driven, technologically sophisticated science did not disappear. The belief that effective solutions to complex problems are high tech and large scale and that such solutions can only be generated by sophisticated Big Science remains.

In the context of food insecurity, advocates of this frame focus primarily on agricultural sciences.⁴⁷ Agricultural scientists, in turn, focus on increasing yields, either through methods such as irrigation or adapting to the ecology, as for example, by planting different species.⁴⁸ They also aim to develop new food production methods that reduce the necessity of human labor in terms of intensity and effort.⁴⁹ Finally, they investigate new and alternative physical inputs such as fertilizers, the genetic modification of plants to resist pest infestations, herbicides, and other inventions to improve productivity of the biological forms under cultivation or husbandry.⁵⁰ To be sure, without historic innovations in agricultural science, it would be impossible to feed the human population. For example, Vaclav Smil, a scientist and policy analyst, commenting on the Haber-Bosch synthesis of ammonia, noted, “without this [invention], almost two-fifths of the world’s population would not be here — and our dependence will only increase.”⁵¹

43. *Id.*

44. Françoise Praderie, *Big Science: Why? Where? and How?*, 67 MEM. S.A. IT. 889, 889-99 (1996).

45. Cf. ELIZABETH RADIN & CHRIS ELEFThERIADES, FINANCING PANDEMIC PREPAREDNESS AND RESPONSE 2–3, <https://theindependentpanel.org/wp-content/uploads/2021/05/Background-Paper-14-Financing-Pandemic-Preparedness-and-Response.pdf> (last visited Mar. 12, 2022) (discussing the failure to finance global public goods).

46. *Private Funding for Science*, 13 NATURE METHODS 537 (2016).

47. See, e.g., ROBERT PAARLBERG, STARVED FOR SCIENCE: HOW BIOTECHNOLOGY IS BEING KEPT OUT OF AFRICA (2008).

48. *Id.* at 163–69.

49. One example of this phenomenon is the Green Revolution. See Shannon A. Hughes, *Data Feast: Information-Forcing for Industrialized Agriculture*, 22 DRAKE J. AGRIC. L. 159, 161 (2017).

50. See Zachary Lerner, *Rethinking What Agriculture Could Use: A Proposed Heightened Utility Standard for Genetically Modified Food Patents*, 55 U. KAN. L. REV. 991, 1025 (2007).

51. Vaclav Smil, *Detonator of the Population Explosion*, 400 NATURE 415 (1999).

Much of the research in agriculture is done by large, corporate-funded university research centers located in geographically expansive Western countries such as the United States,⁵² Canada⁵³ and Australia.⁵⁴ The research aims for high yields with low human labor inputs and high levels of synthetic inputs.⁵⁵ It is a model that coalesces with highly industrialized, commercially-driven agriculture.⁵⁶ MNCs fund projects at public universities and public research institutions in order to privatize the profits and exploit the products without regard for the public welfare.⁵⁷

Industrialized agriculture is also well suited to certain geographical locations such as the large central plains of North America, Ukraine and the Russian steppes, parts of Australia, and the pampas region of Argentina.⁵⁸ It is unsuited to geographies and climates where large level plains are not readily available, where there is significant forestland, and where arable areas are limited, difficult to access, or simply more suited to different crops.⁵⁹ Further, its crop monoculture approach that only allows the cultivation of a single crop in a given area,⁶⁰ while suited to certain crops, carries significant costs along with its significant benefits.⁶¹ It is often criticized for

52. See LORI GROVES ROWLEY, U.S. PUBLIC AGRICULTURAL R&D: STRONG HISTORY, BUT A GROWING GAP, 1–2 (Lugar Ctr. Sept. 28, 2020), <https://www.thelugarcenter.org/pp/news-409.pdf>.

53. PATHWAYS TO IMPACT: AGRICULTURAL RESEARCH, CAN. FOUND. FOR INNOVATION, https://www.innovation.ca/sites/default/files/Evaluation/ag_summary_piece_eng_final.pdf (last visited Mar. 12, 2022) (noting that “the Canadian agriculture sector leads internationally with an impressive record of research and technology development which contributes directly to the national economy.”)

54. J. D. Mullen, G.M. Scobie & J. Crean, *Agricultural Research: Implications for Productivity in New Zealand and Australia*, 42 N.Z. ECON. PAPERS 191, 191–211 (2008).

55. See generally Hanna Hottenrott & Susanne Thorwarth, *Industry Funding of University Research and Scientific Productivity*, 64 KYKLOS 534, 534–55 (2011) (discussing industry funding for university research).

56. See Rasmussen, *supra* note 42.

57. E.g., Bayer sponsors scientists and scientific institutions to do research. This list of sponsorships can be found at *Transparency in Science Collaborations*, BAYER GLOB. <https://www.bayer.com/en/commitments/transparency-in-science-collaborations> (last visited Nov. 20, 2021).

58. Aaron Hale-Dorrell, *The Soviet Union, the United States, and Industrial Agriculture*, 26 J. WORLD HIST. 295, 295–324 (2015).

59. See generally *Industrial Agriculture 101*, NAT’L RES. DEFENSE COUNCIL [“NRDC”] (Jan. 31, 2020), <https://www.nrdc.org/stories/industrial-agriculture-101> (noting that “[i]ndustrial agriculture is the large-scale, intensive production of crops and animals.”).

60. See Sara Popescu Slavikova, *Advantages and Disadvantages of Monoculture Farming*, GREENTUMBLE (Jun. 16, 2019), <https://web.archive.org/web/20210521100534/> <https://greentumble.com/advantages-and-disadvantages-of-monoculture-farming/>.

61. E.g., Roger L. Higgs, Arthur E. Peterson & William H. Paulson, *Crop Rotations Sustainable and Profitable*, 45 J. SOIL WATER CONSERV. 68, 68-70 (1990) (discussing the importance of crop rotations).

“destroying natural defenses of lands, thus negatively affecting resilience of ecosystems.”⁶²

Industrialized agriculture is also suited to particular social situations, such as those where labor is scarce and expensive. Where there is high unemployment and an unskilled work force, this model creates significant social costs, displacing those with limited skills, as industrialized agriculture requires less labor input.⁶³ It is not suited to high-labor intensity farming, which relies on high levels of manual inputs. The two—technology and labor—are not necessarily directly substitutable or commensurate.⁶⁴

There are a number of problems with this technology frame. Most importantly, the data does not support the view that inadequate quantities of food production are the main cause of global hunger and food insecurity. As Vaclav Smil observed, “we would not even have to increase existing agricultural inputs in order to feed many more than ten billion people in a global economy guided by concerns about consumption equity and offering everybody frugal, largely vegetarian but nutritionally adequate diets.”⁶⁵ Further, as former special rapporteur on the right to food, Hilal Elver, observed: “An excessive focus on increasing production encourages a reliance on technology that inflicts major environmental damage.”⁶⁶

Beyond just environmental harm, a sole focus on agricultural science results in significant detrimental social impact. Again, Elver writes, “[the] increasing digitalization and dematerialization of agriculture has the potential to dispossess local knowledge, workers, and production processes . . . disempowering local producers and consumers.”⁶⁷

To make such observations is not to denigrate the critical contribution of agricultural sciences to the global food security problem. Agricultural sciences are intimately involved in improving soil, crops, and farming methods.⁶⁸ The scientists working in these areas make very significant contributions to the well-being of populations.⁶⁹ The issue is that the main funding, and hence, the focus for this work, comes from MNCs, including indus-

62. See Slavikova, *supra* note 60.

63. *Effects of Agriculture on the Industrial Revolution*, FOUNDS. W. CULTURE, <http://foundations.uwgb.org/agriculture/> (last visited Nov. 20, 2021).

64. Nick Evans, Carol Morris & Michael Winter, *Conceptualizing Agriculture: A Critique of Post-Productivism as the New Orthodoxy*, 26 *PROGRESS HUM. GEOGR.* 313, 313–32 (2002).

65. SMIL, *supra* note 1, at ix.

66. Hilal Elver (Special Rapporteur on the Right to Food), *Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food - Report of the Special Rapporteur on the Right to Food*, ¶ 80, U.N. Doc. A/HRC/43/44 (Jan. 21, 2020).

67. *Id.*

68. E.g., Dionisio Ortiz Miranda, TeresaPinto-Correia, MartaCzekaj, Dominic Duckett, Francesca Galli, Mikelis Grivins, Christina Noble, Talis Tisenkopfs, Irina Tomai & Theodore Tsiligiridis, *Supporting the Role of Small Farms in the European Regional Food Systems: What Role for the Science-Policy Interface?*, 28 *GLOB. FOOD SEC.* 1, 1–10 (2021).

69. See *id.*

trial farms that have no interest in global food supply, natural environmental preservation, social conditions, or local conditions as values independent of their own profit structures.⁷⁰ As a result, the balance of agricultural science technologies and solutions tends to be skewed less toward the common, global good, which encompasses food security, and more toward the narrow profit-driven agendas of private actors.

2. The Frame of Economics

The economic frame focuses attention on economic resources and systems as the solutions to global food insecurity. Economists note that global food insecurity is not a technical or production problem, but a problem of economic accessibility and affordability—the second dimension of the right to food found in the Fact Sheet.⁷¹ Ruslan Mudrak and his co-authors assert that food insecurity “has deep social background”; it is “inextricably linked with another equally pressing problem which is poverty.”⁷² Similarly, researchers Roberto Capone and his colleagues, after examining food security problems in the Middle East and North Africa (“MENA”) region, contend that “affordability is a key factor determining access to food,” and “food affordability is dependent not only on food cost but also on the disposable income that can be spent on food.”⁷³

Law professors Kaitlin Y. Cordes and Anna Bulman, like Smil, consider economic accessibility to be more critical than any other production limitations, arguing that: “[F]ood insecurity is not the result of global food scarcity. There is enough food in the world to feed every person on this planet.”⁷⁴ They argue, instead, that “poverty is one of the main causes of chronic hunger and food insecurity.”⁷⁵ Staying within this economic frame, law professor Narula argues, “the best antidote to hunger and poverty is sustained and equitable economic growth.”⁷⁶ Certainly, a lack of econom-

70. See generally Peter Debaere, *The Profit-Maximizing Firm as Multinational Corporation* (Darden Case Paper No. UVA-G-0623, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1583773 (noting that MNCs’ decisions are ultimately profit driven).

71. E.g., Ruslan Mudrak, Yuriy Tsymbalyuk, Larisa Fytsyk & Chin-Hong Pua, *Affordability of Food as a Key Condition of Food Security of Households*, 168 *ECON. & MGMT. NAT’L ECON.* 53, 53 (2018).

72. *Id.*

73. Roberto Capone, Hamid El Bilali, Philipp Debs, Gianluigi Cardone & Nouredin Driouech, *Food Economic Accessibility and Affordability in the Mediterranean Region: An Exploratory Assessment at Micro and Macro Levels*, 2 *J. FOOD SEC. 1*, 1 (2014).

74. Kaitlin Y. Cordes & Anna Bulman, *Corporate Agricultural Investment and the Right to Food: Addressing Disparate Protections and Promoting Rights-Consistent Outcomes*, 20 *UCLA J. INT’L L. & FOREIGN AFFS.* 87, 89 (2016).

75. *Id.*; see generally AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* (1981) (noting that poverty is one of the main causes for starvation and famine).

76. Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 *COLUM. J. TRANSNAT’L L.* 691, 699 (2006).

ic resources—or, perhaps, inappropriately distributed economic resources—is a critical factor in the macro issue of global food insecurity.⁷⁷ The relationship between low economic development and food insecurity, as evidenced below in the case studies, however, is not a one-to-one relationship. Rather, there is considerable nuance among all three categories of countries in the case studies, demonstrating the importance of powerful rights and the obligations and limitations they can put on government.

In its frame, orthodox economics emphasizes methodological individualism, rational utility maximization by individuals, efficiency norms, and private profits.⁷⁸ Its normatively preferred institution, the market, is considered the optimal institution for regulating supply and demand, as well as the ideal institution for distribution.⁷⁹ The core assumption is that markets will operate to allocate financial resources based on the greatest demand/need.⁸⁰ This foundational assumption, however, ignores the basic issue that resources are not distributed equitably in the first instance—a fundamental challenge in the consideration of justice.⁸¹ This issue of equity is a significant obstacle to advancing economic growth as the solution to hunger and food insecurity. As the FAO stated:

Growth can raise incomes and reduce hunger, but higher economic growth may not reach everyone. It may not lead to more and better jobs for all, unless policies specifically target the poor, especially those in rural areas. In poor countries, hunger and poverty reduction will only be achieved with growth that is not only sustained, but also broadly shared.⁸²

Regarding justice and equity, international financial governance institutions like the World Bank and the International Monetary Fund (“IMF”) are critical actors.⁸³ They provide guidance, policy recommendations, and hard

77. Susan H. Bragdon & Carly Hayes, *Reconceiving Public-Private Partnerships to Eradicate Hunger: Recognizing Small-Scale Farmers and Agricultural Biological Diversity as the Foundation of Global Food Security*, 49 *GEO. J. INT’L L.* 1271, 1307 (2018) (noting that “any solution to food security challenges that focuses on production misses the point that food security is more about poverty and inequality than about production.”).

78. Daniel Hausman, *Philosophy of Economics*, in *ROUTLEDGE ENCYCLOPEDIA OF PHILOSOPHY* 211–22 (Edward Craig ed., 1998).

79. Benedict Sheehy, *Regulation by Markets and the Bradley Review of Australian Higher Education*, 52 *AUSTL. UNIVS. R.* 60, 60–68 (2010).

80. See generally JOHN SHORT & KEITH BASSETT, *HOUSING AND RESIDENTIAL STRUCTURE: ALTERNATIVE APPROACHES* (1980) (discussing the demand-oriented approaches of neo-classical economics in housing markets and residential structure).

81. See generally JOHN RAWLS, *A THEORY OF JUSTICE* (1999).

82. STATE OF FOOD 2013, *supra* note 8.

83. See generally *Development Finance Institutions and Private Sector Development*, <https://www.oecd.org/development/development-finance-institutions-private-sector-development.htm> (discussing the role of national and international development finance institutions in supporting the development in developing countries).

rules for national governments in the development of policies.⁸⁴ These institutions, along with private financial institutions, provide finance for agricultural inputs, finance for storage and transport, and underwrite markets for the commodities produced.⁸⁵ As such, they act as both systemic brakes and accelerators and as regulators of global food supply chains.⁸⁶

The issue is the purposes for which these institutions brake and accelerate—the norms which determine the use of their regulatory powers. As would be expected from the private actors, they use their very significant powers to increase profits and reduce costs for their own private accounts, and not to ensure secure food for the population at large.⁸⁷ Troublingly, however, supposedly public international financial actors have also been criticized severely for ignoring public welfare. Law academics Nadia Lambek and Priscilla Claeys observe that “at the international level, many institutions, including the World Bank, the International Monetary Fund, and the World Trade Organization, often elect not to take a rights-based approach or address issues concerning food systems in a manner consistent with the right to food.”⁸⁸

On a deeper level, the global food system depends on global financial markets for food and for agricultural inputs to be produced, processed, and moved around the globe. The global finance system allocates economic resources and so controls or in politico-legal terms, “regulates,” the supply and demand for food.⁸⁹ The issue is that the goals and incentives of global finance are not aligned with ensuring the public policy objective of global food security.⁹⁰ In fact, global food insecurity is a boon for global finance.⁹¹

84. E.g., *IMF Conditionality*, NT'L MONETARY FUND [“IMF”] (Feb. 22, 2021), <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality> (noting “[w]hen a country borrows from the IMF, its government agrees to adjust its economic policies to overcome the problems that led it to seek financial aid.”).

85. E.g., Mike Sheehy, *Exploring Crop Input Financing*, CROP LIFE (Apr. 1, 2014), <https://www.croplife.com/crop-inputs/exploring-input-financing/> (noting that there are many alternatives to pay for crop inputs, including, for example, financing being offered by the manufacturers and agricultural retailers).

86. Hilal Elver, *The Challenges and Developments of the Right to Food in the 21st Century: Reflections of the United Nations Special Rapporteur on the Right to Food*, 20 UCLA J. INT'L L. & FOREIGN AFFS. 1, 31 (2016); see Sheehy, *supra* note 79.

87. See Debaere, *supra* note 7070 (noting that MNCs' decisions are ultimately profit driven).

88. Nadia Lambek & Priscilla Claeys, *Institutionalizing a Fully Realized Right to Food: Progress, Limitations, and Lessons Learned from Emerging Alternative Policy Models*, 40 VT. L. REV. 743, 765–66 (2016).

89. See Sheehy, *supra* note 79.

90. E.g., Madina Kalimullina & Mikhail (Shamil) Orlov, *Islamic Finance and Food Commodity Trading: Is There a Chance to Hedge against Price Volatility and Enhance Food Security?* 6 (11) HELIYON 1, 1–21 (2020).

91. Panos Varangis, Juan Buchenau, Diego Arias & Toshiaki Ono, *To Avoid Food Insecurity, Keep Finance Flowing*, WORLD BANKS (May 27, 2020), <https://blogs.worldbank.org/psd/avoid-food-insecurity-keep-finance-flowing>.

Volatility in markets creates new opportunities for arbitrage, and with increasingly sophisticated programs for spotting and exploiting it, global financiers are becoming more and more interested in creating and supporting systems which create new opportunities for the exploitation of both fluctuations and volatility.⁹² New financial instruments, new ways of identifying, creating, and hedging risks, and the creation of related new types of financial derivatives favor financial markets over food security.

As noted, these markets are not designed for food production and global food security, nor are their participants interested in these things. Rather, their focus is on finance—financial products, financial markets, and ultimately, profits. The matter of global food security, by way of contrast, relies on stable means of production, commodities, and fair, effective distribution norms.⁹³ Long-term projects and related investments are inimical to short term profits, and the core issues of human well-being as related to food and the economic resources necessary for those suffering from food insecurity could hardly be further from the frame of international financial institutions.

To gain a real insight into the time frame involved in global finance, consider that the majority of shares traded on the world's largest share market are traded within twenty-two seconds of their purchase.⁹⁴ Senior investment banker, Paul Clemens Hunt, described the issue as follows:

[T]he problem with the financial sector was the transition of financial investment from a model of relationships to transactions and finally to a trading culture. As trading culture dominates across the markets, it presents a huge challenge for asset owners anywhere in the world ... Globalization may have raised hundreds of millions out of poverty, but it can intensify inequality at any level in every country, and it then drops people back into poverty.⁹⁵

Summarizing the issue to this point, we note that at a systemic level, global finance is inimical to global food security. The current model of global finance seeks the quickest, highest return and uses a related systematic business strategy that makes its profits through the endless purchase, break-up, and combination of productive organizations rather than stable

92. Bernhard Troester, *The Determinants of the Recent Food Price Surges—A Basic Supply and Demand Model*. (Berlin Working Papers on Money, Fin., Trade & Dev., Paper No. 06/2012, 2012) <https://finance-and-trade.htw-berlin.de/en/publications/working-paper-series/paper/?paper=2012-06.rdf>.

93. Md Hafizul Islam & Julie Simmons Ivy, *Modeling the Role of Efficiency for the Equitable and Effective Distribution of Donated Food*, OR SPECTRUM (2021), <https://doi.org/10.1007/s00291-021-00634-z>.

94. Jon Terbush, *Econ. Professor: Average US Stock Holding Lasts Just 22 Seconds*, TALKING POINTS MEMO (Jan. 5, 2011), <https://talkingpointsmemo.com/news/econ-professor-average-us-stock-holding-lasts-just-22-seconds>.

95. Nina Rohrbein, *Investors Throw Down Gauntlet to Principles for Responsible Investment*, INVS. & PENSIONS EUR. (Oct. 8, 2013), <https://www.ipe.com/main-navigation/investors-throw-down-gauntlet-to-principles-for-responsible-investment/10000100.article>.

long-term investment.⁹⁶ This model is hostile to the long-term planning required for permanent solutions to global food security.⁹⁷ Such a system is not designed to provide the stability and security needed for long-term global food security.⁹⁸ Accordingly, it is inappropriate to rely on global finance, with its private profit prioritization, to allocate limited resources to products necessary to achieve a public good of global food security.

Furthermore, there are other outcomes from adopting neoclassical economic approaches to global food security. Highly mechanized industrial farming, because of its cost structure, is suited to economy of scale inputs and relies on slim profit margins generated by high volume.⁹⁹ There are various contexts for which this model is inappropriate. For example, in contexts where small scale farming is suited to local social, cultural and ecological needs more than cash crops readily fungible in global markets,¹⁰⁰ that small-scale model provides more food security than the scaled-up model preferred by global finance.¹⁰¹

Moreover, when global finance discovers economic sectors which it could turn to cash crops, it seeks to consolidate and create large industrial farms.¹⁰² This results in the removal of those working on small farms, which then leaves them unemployed and stops the growth of food products aimed at meeting local needs in favor of cash crops that can be sold on global markets.¹⁰³ The results are unemployment, economic insecurity, and an inability

96. E.g., Alin Marius Andrieș & Silviu Gabriel Ursu, *Financial Crisis and Bank Efficiency: An Empirical Study of European Banks*, 29 *ECON. RSCH.* 485, 485–97 (2016) (discussing how financial institutions in Europe focused almost exclusively on improving “profit efficiency” after the 2008 global financial crisis).

97. See Ryan Isakson, *Financialization and the Transformation of Agro-Food Supply Chains: A Political Economy* (Food Sovereignty: Int’l Conf., Paper No. 9, 2013), https://www.tni.org/files/download/9_isakson_2013.pdf.

98. See Louise Manning, *Corporate and Consumer Social Responsibility in the Food Supply Chain*, 115 *BRIT. FOOD J.* 9, 9-25 (2013).

99. See Melanie J. Wender, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy Is Destroying the Family Farm and the Environment*, 22 *VILL. ENV’T L. L.J.* 141, 141 (2011).

100. Kenneth Miller & Adam Prizio, *Innovative Use of the Law for Small-Scale Producers*, 26 *J. ENV’T L. & LITIG.* 131, 131 (2011); see also Wender, *supra* note 99, at 143.

101. See Wender, *supra* note 99, at 143.

102. Kari Hamerschlag & Christopher D Cook, *To Fight the Climate Crisis, Banks must Stop Financing Factory Farming*, *THE GUARDIAN* (Oct 19, 2021), <https://www.theguardian.com/commentisfree/2021/oct/19/climate-crisis-factory-farming-paris-climate-un> (noting that as the global meat demand increases, public development banks “channel[] billions of taxpayers’ dollars into multinational meat corporations,” directly undermining the UN and Paris climate goals).

103. Paul S. Taylor, *Power Farming and Labor Displacement in the Cotton Belt, 1937 Part 1*, 46 *MONTHLY LAB. REV.* 595, 595 (1938) (noting that increasing mechanization results in heavy displacement of farmers and laborers).

of the local populations to feed themselves.¹⁰⁴ One example of such an occurrence comes from Burundi and its coffee industry.

Burundi relies on coffee for the livelihoods of over fifty percent of its population.¹⁰⁵ As part of a debt restructuring plan for Burundi, the World Bank conditioned financial aid for the state on the privatization of the industry.¹⁰⁶ While privatization is economically rational, it is highly damaging to local livelihoods.¹⁰⁷ Indeed, “human rights groups, local populations, and two Special Rapporteurs have raised concerns regarding the impacts of this privatization on the ability of local populations to access food and maintain their livelihood.”¹⁰⁸ Perhaps even more damningly for the economics frame, “the World Bank . . . has denied that it has human rights obligations,”¹⁰⁹ a set of obligations that balance the claims of the food insecure, poor, and weak against the assertion of profit rights of powerful global capital.

Aside from this institutional issue, the global finance markets of orthodox economics fail in contexts that are not suited to industrial-scale farming.¹¹⁰ It is inappropriate for a public, global institution like the World Bank to deny that it has overarching public objectives such as the support of human rights. After all, the justification for such a global financial institution is its support for improvement of the conditions of human existence rather than improving the performance of global finance portfolios. Further, orthodox economic models of markets do not attend to externalities such as social displacement, unemployment and poverty. Rather, the focus is efficiency in trade, maximizing profits. Global finance is uninterested in local social contexts and, accordingly, economic resources for development and related food security in such areas are practically non-existent.¹¹¹

It is not that global finances are unimportant or unnecessary for food production and poverty reduction. Rather, the problem is the allocation of resources by global finance. Again, as Cordes and Bluman argue,

[I]nvestment in agriculture is essential for reducing poverty and combating hunger. For too long, agriculture [in the developing world] has been neglected by governments, donors, and the private sector, resulting in detrimental impacts for food security and rural

104. E.g., the example of Haiti was discussed in NOAM CHOMSKY, PROFIT OVER PEOPLE: NEOLIBERALISM AND GLOBAL ORDER 107–08 (1999).

105. See Linda Maguire, *Power Ethnicized: The Pursuit of Protection and Participation in Rwanda and Burundi*, 2 BUFF. J. INT’L L. 49, 50 (1995).

106. See *id.*

107. See Lambek & Claeys, *supra* note 88, at 765–66.

108. *Id.*

109. *Id.*

110. E.g., U.N. FOOD & AGRIC. ORG. U.N., FOOD SECURITY AND THE FINANCIAL CRISIS (2009), <https://www.fao.org/3/k6360e/k6360e.pdf> (noting that poor farmers with limited access to agricultural credit and markets could not take advantage of higher commodity prices, and found it difficult to deal with the situation without support).

111. See *id.*

livelihoods. Yet the way in which such investment occurs determines the immediate impact on some of the world's poorest and most food insecure: rural smallholder farmers and individuals whose livelihoods depend on access to productive resources.¹¹²

If markets are as economists assume—that is, optimal resource allocators rather than institutions that allow the wealthy and powerful to exploit the weaker and needy—the problem of global food insecurity ought not to exist. As put elsewhere, those who believe markets will solve food insecurity should “try to convince the tens of millions of people who die of malnutrition every year because the free market is incapable of engineering a situation in which less than half of the world’s food is thrown away.”¹¹³ Where half of the world suffers an excess of nutrition in an obesity epidemic and the other half suffers from malnutrition, it is hard to argue that the largely unfettered global markets moving ever more closely to economic theory’s price, efficiency, and zero-transaction-cost environments priorities are effectively balancing supply and demand and as such, provide an appropriate solution.¹¹⁴ The markets of economic theory provide an efficient allocation of capital in terms of generating profit. It is another matter to suggest real global food and finance markets are an appropriate solution to global food insecurity.

In addition to the inherent problems of markets, neoclassical economics assigns social costs, such as unemployment and displacement, to parties not party to the core transaction. These social costs fall outside the analytical focus of the discipline and are relegated instead to other areas of economic analysis. They become a matter of externalities, to be borne by unrelated parties external to contracts—that is, the public, who, in orthodox economics, can contract around such problems if they are concerned.¹¹⁵ Efficiency and private profit are the only goals of orthodox economics.¹¹⁶ The focus of the neoclassical economics frame has, to a large extent, precluded attention to the justice issue of equitable distributions of resources. As such, it is not well suited to tackle the problem of food security.

As the former rapporteur Elver has stated, international financial institutions (“IFIs”) “have substantial influence over food and agricultural policies

112. Cordes & Bulman, *supra* note 74, at 160.

113. Jesse Myerson, *7 Massive Misconceptions You Have About Communism and Capitalism*, SALON (July 2, 2015), https://www.salon.com/2015/07/02/7_massive_misconceptions_you_have_about_communism_and_capitalism/.

114. *The World is at a Critical Juncture*, U.N. FOOD & AGRIC. ORG., <https://www.fao.org/state-of-food-security-nutrition> (last visited Nov. 21, 2021) (noting that hundreds of millions of people are suffering from hunger and malnutrition); *Controlling the Global Obesity Epidemic*, WHO, <https://www.who.int/activities/controlling-the-global-obesity-epidemic> (last visited Nov. 21, 2021).

115. Ronald Coase, *The Problem of Social Cost*, 3 J. LAW ECON. 1, 42-44 (1960).

116. Yew-Kwang Ng, *Orthodox Economics and Economists: Strengths and Weaknesses*, 48 SING. ECON. REV. 81, 82 (2003).

in developing countries. Developing countries often rely on economic and financial aid provided by IFIs. [I]n many instances, this influence threatens citizens' economic, social, and cultural rights, and specifically, their access to food."¹¹⁷ Simply put, the threat of IFIs is that available, accessible, and adequate food are not a concern or focus of the economic frame.¹¹⁸

3. The Frame of Business

The business frame is a narrow application of the economic frame discussed above. It is the frame of the private, multinational for-profit organizations. This frame is anti-regulatory (at least to the extent that regulation limits profits as opposed to underpinning and protecting its markets) and is driven by markets for finance and products, rather than needs for food and commitments to rights and duties, whether legal or moral. This frame could be described as "leave it to the markets" and "get government out of the way." Whereas economics may institutionally have a default preference for markets and regulation to support those markets broadly, business has an open hostility to regulation which in any way curtails profits, regardless of how it impacts markets, while strongly supporting any regulation which increases its profits, again without regard to well-functioning markets.

As noted, this frame follows economic rationales. MNCs operate on economies of scale—larger volumes, less variety, and standardization all to drive costs down—a strategy that works best on an industrial scale rather than family, cottage, or village scales.¹¹⁹ MNCs earn profits by creating new markets for their products, generating and consolidating demand among a reduced product offering, and through standardization of products.¹²⁰ MNCs use a variety of methods for carrying out these strategies, including marketing, reducing competition through suppressing local producers, buying up competitors, and further consolidating their grip on their markets.¹²¹ These aims and strategies of the MNC frame are evident in global food supply chains.

117. Elver, *supra* note 86, at 31.

118. HAUSMAN, *supra* note 78.

119. See *Industrial Agriculture 101*, NRDC (Jan. 31, 2020), <https://www.nrdc.org/stories/industrial-agriculture-101> (noting that "[i]ndustrial agriculture is the large-scale, intensive production of crops and animals.").

120. E.g., Gabriela Steier, *Dead People Don't Eat: Food Governmentenomics and Conflicts-of-Interest in the USDA and FDA*, 7 PITT. J. ENV'T'L PUB. HEALTH L. 1, 10 (2012) (for example, MNCs "push dietary recommendations that benefit their companies by marketing snack foods and fast foods as healthful"); see also Raymond Joel Starks, *Monsanto and Mergers: How Antitrust Got Borked and How Courts Can Take It Back*, 24 DRAKE J. AGRIC. L. 143, 160 (2019) (noting that Monsanto "used its market position to force out competitors or limit their gain.").

121. Steier, *id.*

MNCs are critically implicated in the issue of global food insecurity in terms of both production and distribution.¹²² As Elver notes, “in the food and agriculture sector, approximately ten corporations control and monopolize the commercial seed market, global pesticide market, and food retailers.”¹²³ Unsurprisingly, this group has the power to “determine the food that is available in local markets, food safety, content information, and advertisement regulations.”¹²⁴ In other words, these MNCs are responsible to a very large degree for the availability, adequacy, and accessibility of global food and global food insecurity.

On the production side, MNCs dominate the supply of agricultural inputs, the production and processing of agricultural outputs, and the distribution and retailing of food.¹²⁵ Thus, MNCs have massive control over production. Again, Elver notes, MNCs “control (directly or indirectly) the products grown on [eighty] percent of the world’s arable land.”¹²⁶ Using sophisticated marketing techniques, MNCs are able to persuade all parts of the global food supply chain that a limited range of products—those products offered by the MNCs—are best. MNCs then proceed to exploit the opportunity as one would expect.¹²⁷ Thus, using their business strategy as discussed above, MNCs are able to determine to a considerable degree the products agricultural producers will produce and the supply inputs MNCs need to manufacture to meet that demand.¹²⁸

By persuading producers that the MNCs’ limited range of offerings is desirable, MNCs are able to reduce the costs associated with offering a larger variety of inputs.¹²⁹ Further, by providing a limited range of inputs, they are able to set standards for the crops as outputs.¹³⁰ The standardization of crop types, methods of production, and inputs reduces costs for purchasing MNCs which, like supplier MNCs, need to reduce variability. For MNCs, increasing their involvement in the standardization process serves the model

122. William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation’s Tax Dollars*, 28 STAN. ENV’T L. J. 213, 223 (2009) (noting that in the United States, MNCs “manipulate the agricultural policy system to its benefit”).

123. Elver, *supra* note 86, at 30.

124. *Id.* at 31.

125. Keith Aoki, John Shuford, Esmeralda Soria & Emilio Camacho, *Pastures of Peonage?: Tracing the Feedback Loop of Food Through IP, GMOs, Trade, Immigration, and U.S. Agro-Maquilas*, 4 NE. U. L.J. 1, 15 (2012).

126. Elver, *supra* note 86, at 30-31; *see also* GARY PAUL NABHAN, *COMING HOME TO EAT: THE PLEASURES AND POLITICS OF LOCAL FOOD* 168 (2002).

127. *See* Steier, *supra* note 120, at 6, 10 (noting that in the United States, “Big Food’s ‘food governmentenomics’ strategies seize control over government protection agencies without regard for public health consequences”; they also “push dietary recommendations that benefit their companies by marketing snack foods and fast foods as healthful.”).

128. *See id.* at 9-11.

129. *See id.*

130. *See id.* at 6-11.

well, as it further stabilizes demand and reduces competition.¹³¹ The costs and methods imposed by MNCs through standardization are ultimately cost-effective only when done at an industrial scale, thus precluding small producers and subsistence farmers.¹³²

As agricultural inputs are developed and delivered by MNCs, only those products which suit an MNC's business model and profitability agenda are made available and put into global supply chains as inputs. Significantly, only a small number of crops have been developed and cultivated by MNCs.¹³³ This strategy, while favorable to MNCs, puts global food security at risk. Other potential food crops that have been neglected or abandoned could be precisely those more suited to the challenges posed by a warming planet.¹³⁴ Unfortunately, the current lack of investment and research in these crops meets the short-term interests of MNCs.

On the output end of the global food system, the MNCs' influence is also visible. A combination of sophisticated marketing and catering to unevolved human penchants for specific tastes has given MNCs great power with respect to shaping consumer demand.¹³⁵

MNCs focused on profit operate without regard to human nutritional needs or public welfare.¹³⁶ The human penchant for calorically dense foods which are high in fats and sugars is an evolutionary development.¹³⁷ The preference for these foods provided an evolutionary benefit when food sources were scarce and/or insecure. With contemporary technology, MNCs are able to produce foods high in fats and sugars with low cost and high profits, exploiting this evolutionary development.¹³⁸ Again, the MNC frame emphasizes economies of scale, growth of markets, and the standardization of products. Creating and supporting global brands for consumers allows

131. *See id.*

132. *See id.*

133. *See* Eubanks II, *supra* note 122, at 227–28 (noting that in the United States, corn, cotton, wheat, rice, and soybeans are the five predominant commodity crops, receiving significant subsidies from the government).

134. *See id.* at 284–85.

135. *See* Steier, *supra* note 120, at 9–11.

136. *See* Howard Wolinsky, *Crop Shortages: A Lack of Breeders to Apply the Knowledge from Plant Science is Jeopardizing Public Breeding Programs and the Training of Future Plant Scientists*, 11 EUR. MOLECULAR BIO. ORG. REPORTS 508, 508–10 (2010).

137. Adam Drewnowski & Eva Almiron-Roig, *Human Perceptions and Preferences for Fat-Rich Foods*, in *FAT DETECTION: TASTE, TEXTURE, AND POST INGESTIVE EFFECTS* (Jean-Pierre Montmayeur & Johannes le Coutre eds., 2010) (noting that “[f]at consumption is a classic example of how human innate preferences have been aligned with current trends in the food supply and the economics of food choice.”).

138. *See* Carlos A. Monteiro & Geoffrey Cannon, *The Impact of Transnational “Big Food” Companies on the South: A View from Brazil*, 9 PLOS. MED. 1, 2 (2012) (noting that the ultra-processed products controlled and produced by Big Food throughout the world are created from substances extracted from whole foods such as the cheap parts or remnants of animals, inexpensive ingredients such as “refined” starches, sugars, fats and oils, preservatives, and other additives).

MNCs to reap profits from all corners of the world without significant diversification. In sum, the food industry is not focused on the health aspects, or the “adequacy” of food, as a health focus is a less effective way to drive demand.¹³⁹ Rather, the industry chooses to add unhealthy substances, such as excessive levels of fats, sugar, and salt, to make food more appealing.¹⁴⁰ This tactic has become the hallmark of many MNCs’ strategies for building market share in the food industry.¹⁴¹

Finally, as most agricultural food products that are injected into global supply chains are processed through large food processing conglomerates’ supply chains, the issues associated with adequacy are addressed and framed by MNC agents through the lens of those MNCs and their respective supply chains. From an economic perspective, the level of consolidation in agri-business and food retailing precludes the competition necessary for positive achievement of the economists’ efficiency norms.¹⁴²

A highly problematic aspect of the business frame is the involvement of MNCs in politics.¹⁴³ Although the term “private politics” may be strange to many ears, it is not a new term.¹⁴⁴ Essentially, it refers to the organization of people outside of the framework of public government to achieve collective social and political outcomes.¹⁴⁵ People may be organized to achieve public government or private corporate policy outcomes. They may advocate any particular interest, whether a broad social interest, such as equality, or a narrow anti-social interest, such as undermining democratic processes through Political Action Committees (“PACs”). One example is the *Citizens United v. FEC*¹⁴⁶ decision in which the U.S. Supreme Court effectively allowed unlimited corporate funding of democratic elections.¹⁴⁷ MNC private politics

139. See Steier, *supra* note 120, at 1-67.

140. See Monteiro & Cannon, *supra* note 138.

141. See Steier, *supra* note 120, at 1-67.

142. This is a broad statement that draws on conclusions from a variety of studies. Various aspects of the argument can be found in: see generally Mary Hendrickson, et al., *Consolidation in Food Retailing and Dairy*, 103 BRITISH FOOD J. 715, 715-28 (2001); Aristides Matopoulos, et al., *A Conceptual Framework for Supply Chain Collaboration: Empirical Evidence from the Agri-food Industry*, 12 SUPPLY CHAIN MANAG. 177, 177-86 (2007); KENNETH S. FRIEDMAN, MYTHS OF THE FREE MARKET 93 (2003); Isakson, *supra* note 97, at 25.

143. See Julia C. Loney, *Government Programs in Agribusiness: A Comparison of the United States and Canada*, 23 DRAKE J. AGRIC. L. 57, 64 (2018) (noting that “[l]obbying has been and continues to be an essential tool for agribusiness in the U.S.”).

144. For example, David Baron first proposed the theory of private politics in 2001. See David P. Baron, *Private Politics, Corporate Social Responsibility, and Integrated Strategy*, 10 J. ECON. MANAG. STRATEGY 7, 7-45 (2001).

145. See Georgy Egorov & Bård Harstad, *Private Politics and Public Regulation*, 84 REV. ECON. STUD. 1652, 1652-82 (2017).

146. *Citizens United v. Federal Election Comm’n*, 558 U.S. 310 (2010).

147. This decision has created its own stream of scholarship. A Google Scholar search using the case name as the search term returned 744,000 hits as of Sept. 10, 2021.

may lobby for the allocation of resources to a particular industry or for rule frameworks that favor their preferred, profitable solutions.

Private politics regulate the global food supply.¹⁴⁸ In her report to the UN, Elver noted that transnational corporations “have exerted significant influence over the way in which global food policy is shaped and over the accessibility, availability, adequacy, and sustainability of food.”¹⁴⁹ This influence, she noted, was not limited to international policy. Rather, it has reached directly into law making. She has since added that transnational corporations “significantly influence law and policy-making processes at both the international and the national level.”¹⁵⁰ Large MNCs, such as Bayer (formerly Monsanto), lobbied national governments and transnational organizations to permit their products to be sold and to bring down financial, environmental, and other barriers to trade to increase market opportunities.¹⁵¹

While such opportunities may provide much needed financial relief to consumers, they simultaneously undermine local food production systems, which are better suited to local contexts. Private politics also includes NGOs such as Oxfam, which lobbies to bring food across borders and to introduce new agricultural methods and plant species for purposes other than generating a profit.¹⁵² Other NGOs may seek to advance specific agendas such as “dolphin-safe” tuna.¹⁵³ In all of these instances, the global food supply is subject to the pressures and preferences of select groups—and not all of those groups are pursuing a public policy of global food security. In particular, the MNCs and their industry associations and lobby groups are pursuing private profits. Thus, the MNC frame is poorly suited to providing a solution to the global food security problem.

4. The Frame of Human Rights

The foregoing sections made two distinct arguments. First, that the common frames for understanding food insecurity limit the scope of issues to be considered and, as a result, the frames limit the solutions which will be

148. Leading authorities on private politics include: Tetty Havinga, *Private Regulation of Food Safety by Supermarkets*, 28 *LAW & POL’Y* 515 (2006); BERND VAN DER MEULEN, *PRIVATE FOOD LAW: GOVERNING FOOD CHAINS THROUGH CONTRACT LAW, SELF-REGULATION, PRIVATE STANDARDS, AUDITS AND CERTIFICATION SCHEMES* 1-436 (2011) (discussing how the private sector influences the regulatory environment for food businesses).

149. Elver, *supra* note 86, at 30.

150. *Id.* at 31.

151. See Brewster Kneen, *Restructuring Food for Corporate Profit: The Corporate Genetics of Cargill and Monsanto*, 16 *AGRIC. HUM. VALUES* 161, 164 (1999) (noting that Monsanto is “well known around the world for its fleet of blue-suited lobbyists and advisors.”).

152. See Marc Abélès, *Rethinking NGOs: The Economy of Survival and Global Governance*, 15 *IND. J. GLOBAL LEGAL STUD.* 241, 245–49 (2008).

153. Jennifer Ramach, *Dolphin-Safe Tuna Labelling: Are the Dolphins Finally Safe?* 15 *VA. ENV’T L. L.J.* 743, 745 (1996).

proposed and developed for this complex problem. Second, the solutions offered within the frames of technology, economics, and business are inadequate, incomplete, or factually incorrect when taken as solutions in the absence of rights-based frames. The evidence of these limits can be seen in the escalating levels of malnutrition and global food insecurity more broadly.

The issue is not solely insufficient production, the proposition from agricultural sciences, nor is it just imperfect markets with inadequate opportunities for supply and demand to meet using the frames of economics and finance. Neither is global food insecurity a problem of MNCs' failure to gain further access and control of production, supply chains, and distribution networks.

While all of these lenses have a contribution to make, they all fail as a complete or comprehensive approach. The reason they fail is twofold. First, they fall into the following error: "For every complex problem, there is a clear, simple answer that is wrong."¹⁵⁴ Complex problems, like food insecurity, are just that, and their solutions can only be multi-faceted. Second, each of the frames starts with an inappropriate foundational focus or value structure. The focus on current limitations in production, like the monoculture of select products suited to industrialized agriculture readily plugged into MNC supply chains, processing, and distribution—the agenda of much agricultural science—is founded on the incorrect assumption that a failure of production is the issue. While much agricultural science done beyond the large MNC-sponsored laboratories addresses critical issues for the rest of the world, an overly large proportion of the research remains fixated on the agricultural science solutions that are little more than solutions for the MNCs looking to expand markets, reduce costs, and increase profitability.¹⁵⁵

Similarly, the lens of neo-classical economics fails to address an inevitable part of human society—inequality of economic resources and social costs. The economic lens draws attention to the need of the impoverished for adequate resources, but beyond the important task of economic development policy design, does not provide solutions to the everyday challenge of getting direct access to food for those without the resources. The challenge is to get access to food now.

At a foundational level, economics is a discussion about rights—which party will have the right to which scarce resources, and importantly, the basis of those rights. Economics takes property rights and the right to transact

154. HENRY LOUIS MENCKEN, *PREJUDICES: SECOND SERIES* BY H. L. MENCKEN, CHAPTER 4: THE DIVINE AFFLATUS 158 (1920).

155. *E.g.*, *Bayer to Strengthen Core Life Science Businesses While Significantly Enhancing Productivity and Profitability*, BAYER GLOB. (Nov. 29, 2018), <https://media.bayer.com/baynews/baynews.nsf/id/Bayer-strengthen-science-businesses-while-significantly-enhancing-productivity-profitability> (noting that agribusiness Bayer "aims to strengthen its core life science businesses through a series of portfolio, efficiency and structural measures designed to enhance productivity and innovation while significantly improving competitiveness.").

and enforce bargains using contracts to buy and sell labor services and food stuffs as its basic assumption.¹⁵⁶ Yet, starting with the foundational issue—food accessibility—and construing it as an assumed property right, economics makes a fundamental misstep by failing to establish human survival as a precursor to and hence more fundamental right than property rights. This point can be illustrated as follows: Is it wrong for someone seeking to escape floodwaters to climb onto the roof of a house that they do not own? Or, in the context of this article, is it wrong for a starving person to steal a piece of bread?

Finally, the lens of business is disingenuous, at best. The matter of global food insecurity is not a concern to the MNCs except as an opportunity to increase profits by selling more products. Whether those products are related to agricultural inputs, food production, processing, supply, or distribution is irrelevant—the sole issue is profitability.¹⁵⁷ Global welfare and ecological sustainability are not within the lens except to the extent that they may impact profits. Accordingly, this lens, while critical to production and distribution, provides a very limited and normatively unbalanced contribution to solving global food insecurity. The limitations of the former three lenses leads us to consider a different lens— a rights-based framework.

A rights-based approach provides a broad, universal lens, not dependent on the poorly funded, publicly-oriented agricultural science laboratories,¹⁵⁸ individual resources, the working of imperfect global financial markets, or the supposed largess of MNCs' expenditure on their privately sponsored Big Science laboratories. Rather, it recognizes that food and the human dignity it engenders are not, in the first instance, a mere commodity to be scientifically enhanced for the purpose of increasing profits for MNCs. A rights-based approach is also an acknowledgement that food security cannot be left to markets, the largess of charity, or the whims of government.

A rights-based approach illuminates the basic insight that the other lenses lack. Namely, that food is first and foremost an equity issue. As noted above, Darwin stated that institutional causes of poverty are a great sin.¹⁵⁹ In a world with sufficient food resources for all, hunger results from a failure of human institutions in distribution. The markets and MNCs are woefully

156. See Harold Demsetz, *The Exchange and Enforcement of Property Rights*, 7 J. LAW & ECON. 11 (1964).

157. See PETER DEBAERE, THE PROFIT-MAXIMIZING FIRM AS MULTINATIONAL CORPORATION (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1583773.

158. United Nations Sustainable Development Group, *Human Rights-Based Approach*, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> (last visited Mar. 17, 2022) (noting that “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”).

159. See DARWIN, *supra* note 5, at 317

inadequate for the task of ensuring global food security.¹⁶⁰ In this instance, they fail the basic moral justification for their existence, first provided by Adam Smith.

Smith justified free trade in which participants pursued their own ends precisely because ultimately, he argued, the institution of the market was the most effective way to “advance the interest of the society” as a whole.¹⁶¹ Where this outcome is not forthcoming, a re-thinking of institutional assignment is critical. Rather than a right to food as defined by economics and notions of private property, public human rights are a more appropriate lens. A public right to vote is held as a high-water mark for governance.¹⁶² A public right to basic education is not odd but expected as foundational to human flourishing.¹⁶³ Yet, one of the most critical public rights—a right to food—garners opposition from policy makers and business interests in the World Trade Organization (“WTO”) and other financially orientated fora.¹⁶⁴ There is inadequate attention to human rights in the discourse dominated by agricultural science, global financial institutions, and MNCs.

Returning to the institutional argument, it is apropos to quote Adam Smith again: “[W]hat improves the circumstances of the greater part can never be regarded as an inconvenience to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable.”¹⁶⁵ In other words, the institutions of markets and finance cannot be ends in themselves. Human rights institutions must instead take precedence in certain instances.

One result of globalization has been the increasing spread and penetration of something referred to as global society.¹⁶⁶ Despite the various conflicts, wars, and disagreements between governments and peoples, the moral demands of the daily needs of private individuals supersede group-based

160. See generally YING CHEN, TRADE, FOOD SECURITY, AND HUMAN RIGHTS (2014) (noting that global food security is caused by unequal distribution of food resources on the global food markets).

161. ADAM SMITH, THE THEORY OF MORAL SENTIMENTS 184, 184–8165 (2010).

162. For example, the United States provides protections to uphold voting rights. *Voting and Election Laws*, USA, <https://www.usa.gov/voting-laws> (last visited Nov. 21, 2021).

163. See generally KLAUS DIETER BEITER, THE PROTECTION OF THE RIGHT TO EDUCATION BY INTERNATIONAL LAW (2005) (discussing the importance of the right to education).

164. See generally Susan Randolph & Shareen Hertel, *The Right to Food: A Global Perspective*, in THE STATE OF ECONOMIC AND SOCIAL HUMAN RIGHTS: A GLOBAL OVERVIEW 21 (Lanse Minkler ed., 2013) (discussing the complexity in the agricultural regime given that government accountability to international financial institutions has taken precedence over government accountability to a country’s citizens human rights obligations).

165. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 66 (Sálvio Marcelo Soares & MetaLibri Digital Library eds. 2007).

166. James Fulcher, *Globalisation, the Nation-State and Global Society*, 48 SOCIO. REV. 522, 522–43 (2000).

conflicts. Accordingly, revisiting the institution of legal rights as a pathway to creating global food security is most appropriate.

Human rights, unlike property rights, are not fungible. They are inalienable.¹⁶⁷ By shifting the lens to human rights, the issue of global food security takes on a markedly different meaning. Rather than producing and distributing food on the basis of economic profit norms, a human rights approach would produce and distribute food on the basis of inalienable rights of humans. Food would be distributed in the first instance on an equity basis rather than a wealth basis.

III. THE RIGHTS-BASED APPROACH IN INTERNATIONAL LAW

The right to food is well-established in international law.¹⁶⁸ The 1948 Universal Declaration of Human Rights (“UDHR”)¹⁶⁹ established “a standard of living” for all individuals, including “*food*,¹⁷⁰ clothing, housing and medical care.”¹⁷¹ Since then, many international treaty instruments have explicitly acknowledged the human right to adequate food.

As a legally binding elaboration of the UDHR, the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) not only protects “the right to adequate food and the right to be free from hunger,”¹⁷² but also places legal obligations on member states to take proactive steps to ensure the full realization of this right.¹⁷³ Similarly, the Universal Declaration on the Eradication of Hunger and Malnutrition declares that individuals have an “inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.”¹⁷⁴ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights requires its member states to guarantee people’s sustainable access to food “in a quantity and quality sufficient”¹⁷⁵ to satisfy their dietary and cul-

167. Compare Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1111–15 (1972), with *What are Human Rights?*, OFF. U.N. HIGH COMM’R FOR HUM. RTS. [“OHCHR”], <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> (last visited Mar. 12, 2022).

168. Narula, *supra* note 76, at 701.

169. G.A. Res. 217 (III) A, The Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

170. *Id.* (emphasis added).

171. UDHR, *supra* note 169, art. 25.

172. International Covenant on Economic, Social and Cultural Rights, art. 11, ¶ 2, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

173. *Id.* art. 11, ¶ 1.

174. G.A. Res. 3348 (XXIX), The Universal Declaration on the Eradication of Hunger and Malnutrition, art. 1 (Dec. 17, 1974).

175. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 12 (1999): The Right to Adequate Food Art. 11, ¶ 6, U.N. Doc. E/C.12/1999/5 [hereinafter General Comment No. 12].

tural needs.¹⁷⁶ It also articulates state approaches to respect, protect, and support the fulfilment of the right to food.¹⁷⁷ Furthermore, the FAO published the Voluntary Guidelines on the Right to Adequate Food in 2004 as a practical guide to assist states in implementing their legal obligations under the ICESCR.¹⁷⁸

The right to food is also widely recognized in international treaty instruments aimed at protecting specific vulnerable populations. For example, the Convention on the Rights of the Child (1989),¹⁷⁹ the Convention on the Elimination of All Forms of Discrimination against Women (1979),¹⁸⁰ and the Convention on the Rights of Persons with Disabilities (2006)¹⁸¹ all contain provisions ensuring sustainable access to adequate food and dietary quality for specific disadvantaged and marginalized individuals and communities. Furthermore, the UN Commission on Human Rights (now the Human Rights Council) has appointed Special Rapporteurs on the right to food since 2000,¹⁸² “[t]o promote the full realization of the right to food” and “[t]o examine ways and means of overcoming existing and emerging obstacles to the full realization of the right to food.”¹⁸³ The former UN Special Rapporteur on the Right to Food, Elver, strongly advocated for the adoption of a human rights-based approach to food security at both “the global and national levels.”¹⁸⁴ In 2015, in response to the rising concern of global food insecurity, the UN set a 2030 “Zero Hunger” target as part of its Sustainable Development Goals, aiming to end hunger and malnutrition by

176. Rebecca Lindberg Liza Barbour & Stephanie Godrich, *A Rights-based Approach to Food Security in Australia*, 32 HEALTH PROMOTION J. AUSTRAL. 6, 6–12 (2021).

177. *Id.*

178. U.N. FOOD & AGRIC. ORG. VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY, ¶15, (Nov. 2004), <https://www.fao.org/3/y7937e/y7937e00.pdf>.

179. United Nations Convention on the Rights of the Child arts. 24, 27, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; see Elver, *supra* note 8686, at 12.

180. United Nations Convention on the Elimination of All Forms of Discrimination Against Women arts. 12, 14, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

181. The right to food is recognized in the context of the right to health under Article 25 and in the context of the right to an adequate standard of living and social protection in Article 28. Convention on the Rights of Persons with Disabilities arts. 25, 28, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD]3; see Elver, *supra* note 86, at 12.

182. *Special Rapporteur on the Right to Food*, OHCHR, <https://www.ohchr.org/en/issues/food/pages/foodindex.aspx> (last visited Aug. 26, 2021) (former Special Rapporteurs on the right to food are Jean Ziegler (2000–2008), Olivier De Schutter (2008–2014), and Hilal Elver (2014–2020); the current Special Rapporteur is Michael Fakhri).

183. Human Rights Council Res. 6/2, U.N. Doc. A/HRC/RES/6/2 (Sept. 27, 2007).

184. Hilal Elver (Special Rapporteur on the Right to Food), *Right to Food: Interim Rep. of the Special Rapporteur on the Right to Food*, at 2, U.N. Doc. A/71/282 (Aug. 3, 2016) [hereinafter *2016 Interim Report*] noting that “[t]he Report A/71/282, submitted pursuant to General Assembly resolution 70/154, is dedicated to reiterating the importance of a rights-based approach to ‘adequate food’, that is, nutritious food for all.”)

2030 through the coordinated efforts of all UN member states.¹⁸⁵ Thus, the right to food as a legal right is well established in international law.¹⁸⁶ As a result, there exists a rights-based framework at the international level to address the global prevalence and severity of food insecurity.

Nevertheless, the international community faces significant barriers to implementing and improving global food security through the enforcement of international treaty instruments, which, as a result, remain little more than aspirational.¹⁸⁷ Many of the international instruments discussed above are not legally binding on their member states.¹⁸⁸ While states may face condemnation from the UN and the global community for continued human rights violations, including for the failure to provide food security, they face no legal liability for this or other failures to fulfill their legal obligations.¹⁸⁹

As for treaties that do impose legal obligations on states, such as the ICESCR, the UN lacks the regulatory infrastructure necessary to implement them. By design, the UN has nothing beyond executive agencies for implementation or enforcement.¹⁹⁰ It lacks institutions such as a centralized body for the adjudication of rights and the enforcement powers necessary to implement the human rights standards contained in its treaties. As Professor Julie Cassidy points out, “[t]he enforcement of international human rights laws has always been seen as the weak link in the international legal sys-

185. *Pathways to Zero Hunger*, U.N., <https://www.un.org/zerohunger/content/pathways-zero-hunger> (last visited Mar. 12, 2022).

186. *A Human Rights Based Approach: An Introduction*, SCOT.HUM.RTS. COUNCIL, https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf (last visited Mar. 12, 2022) (noting that “a human rights-based approach emphasizes legality and a legal right should be set out in international and domestic laws”).

187. *Id.*

188. U.N. FOOD & AGRIC. ORG, RIGHT TO FOOD HANDBOOKS: THE RIGHT TO FOOD WITHIN THE INTERNATIONAL FRAMEWORK OF HUMAN RIGHTS AND COUNTRY CONSTITUTIONS 3 (2014), <http://www.fao.org/3/i3448e/i3448e.pdf> (noting that binding instruments related to the right to food include, for example, the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the Convention on the Rights of Persons with Disabilities (2006). Non-binding instruments related to the right to food include, for example, the Universal Declaration on the Eradication of Hunger and Malnutrition (1974), and the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (2004)).

189. See Univ. Minn., *A Short History of Human Rights*, IN HUMAN RIGHTS HERE AND NOW: CELEBRATING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (Nancy Flowers ed., 1998) (For example, the UDHR is not binding on its member states, there is only an expectation of compliance).

190. See generally Matúš Štulajter, *Problem of Enforcement of An International Law – Analysis of Law Enforcement Mechanisms of the United Nations and the World Trade Organization*, 33 J. MOD. SCI. 325, 325–35 (2017) (discussing the United Nation’s lack of enforcement power).

tem”¹⁹¹—a problem widely recognized by scholars and practitioners alike.¹⁹²

In spite of this inherent institutional design limitation of the international human rights system and indeed, the UN generally, the UN still plays a critical role in upholding and disseminating a rights-based approach to food security. It provides important norms for the international community in both global and domestic contexts and disseminates them through guidelines for member states.¹⁹³

IV. NATIONAL IMPLEMENTATION OF THE RIGHTS-BASED APPROACH

Under international law, states are the primary duty bearers responsible for human rights.¹⁹⁴ For example, the ICESCR requires states to “take appropriate steps” to ensure the progressive realization of the right to food for their citizens.¹⁹⁵ In practice, the actual implementation of human rights law is also predominantly state-centric.¹⁹⁶ The rationale for this state-centric approach, as Narula explains, is that “human rights are the by-product of relationships between governments and the individuals they govern, rather than relationships between global actors and individuals worldwide whose rights are affected by their actions.”¹⁹⁷

Unlike the UN and many other international organizations, states have the power not only to make laws, but also to enforce laws. The enactment of a rights-based approach in legislation “ensures that the aim of all activities is to contribute directly to the realization of rights by prioritizing capacity building, participation, transparency, accountability, and non-discrimination.”¹⁹⁸ Furthermore, states are able to adopt “legislation with teeth,”¹⁹⁹ that is, states are able to set up enforcement mechanisms that en-

191. Julie Cassidy, *Watchdog or Paper Tiger: The Enforcement of Human Rights in International Forums*, 10 NOTRE DAME L. REV. 37, 37 (2008).

192. See, e.g., Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 U. PA. J. INT’L L. 1 (2012) (providing examples of scholarly recognition of concerns of the lack of enforcement).

193. Lindberg et al., *supra* note 176176 (noting that “international documents and guidelines outline the principles of human rights and mechanisms to achieve them. Various strategies have been implemented at the country-level internationally to improve food security.”).

194. Narula, *supra* note 76, at 724 (noting that “human rights law is state-centric . . . and] [s]tates bear exclusive legal responsibility for ensuring human rights).

195. ICESCR, *supra* note 172, art. 11, ¶ 1; see Narula, *supra* note 76, at 694.

196. Narula, *supra* note 76, at 724.

197. *Id.* at 694.

198. Brian Concannon Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 EMORY INT’L L. REV. 1145, 1147 (2011).

199. Elver, *supra* note 86, at 21 (noting that “[a]ccountability and enforceability mechanisms are crucial components to legislation, yet governments are often reluctant to adopt “leg-

sure “those who violate human rights are held accountable”²⁰⁰ and that “those who are wronged can seek redress.”²⁰¹ It is a global expectation and normative imperative for states to integrate human rights norms and principles in the design and development of domestic laws and regulations. It is critical that states take affirmative action to ensure that their execution of human rights imperatives is robust, consistent, and fair, and that they provide adequate legal rights and resources to citizens to implement a rights-based approach to alleviate hunger and malnutrition.²⁰²

States around the globe have taken different approaches to enacting, administering, and adjudicating legislation establishing rights and duties providing food security. These different approaches have had different levels of success, depending on a variety of factors ranging from economic resources; to local food production practices and resources; to strategic choices in agricultural, financial, and social security policy; and finally, to regulatory design, with related legal factors affecting all of the foregoing factors.²⁰³ While certainly a review of these different approaches is a vast research agenda across a wide range of disciplines, we propose to examine only the regulatory design factors—and exclusively the location of the right within the national legal system.

A. *The Three Categories*

At the national level, there have been considerable legislative efforts to uphold the right to food. As indicated in Table 1 below, the approaches adopted by different countries can be categorized into three groups: explicit constitutional protections (Category A), implicit constitutional protections (Category B), and the integration of the key elements of the right to food in domestic laws (other than the constitutions), policies, and programs (Category C). The subsequent section investigates and assesses the three models, as seen in Table 1 below, through a series of case studies that provide important insight into what an ideal rights-based approach might look like. We wish to point out that, as case studies, our evidence does not provide correlation, and we would urge further empirical research to refine the categories and test them against food security data. Further, in terms of method, our case study countries were selected as being broadly representative of the different countries in the category.

isolation with teeth” and are instead more comfortable with framework laws that do not impose major constraints or obligations”).

200. Concannon Jr. & Lindstrom, *supra* note 198, at 1184.

201. *Id.*

202. Narula, *supra* note 76, at 724 (noting that “human rights law is state-centric [...] [and] [s]tates bear exclusive legal responsibility for ensuring human rights).

203. See case studies *infra*.

To date, over thirty countries (Category A) have expressly recognized the right to food in their constitutions. These countries include Belarus,²⁰⁴ Bolivia,²⁰⁵ Brazil,²⁰⁶ Colombia,²⁰⁷ Costa Rica,²⁰⁸ Cuba,²⁰⁹ Democratic Republic of the Congo,²¹⁰ Ecuador,²¹¹ Egypt,²¹² Fiji,²¹³ Guatemala,²¹⁴ Guy-

204. Канстытуцыя Рэспублікі Беларусь, Russian: Конституция Республики Беларусь [CONSTITUTION] Dec. 12, 1993, art. 21 (Belr.) (“Everyone has the right to a decent standard of living, including appropriate food, clothing, housing and a continuous improvement of conditions necessary to attain this.”).

205. CONSTITUCIÓN POLÍTICA DEL ESTADO [CONSTITUTION] Jan. 25, 2009, art. 16 (Bol.) (“Every person has the right to water and food. The State has the obligation to guarantee food security, by means of healthy, adequate and sufficient food for the entire population.”).

206. CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL [CONSTITUTION] Oct. 5, 1988, art. 6 (Braz.).

207. CONSTITUCIÓN POLÍTICA DE COLOMBIA DE 1991 [CONSTITUTION] July 4, 1991, art. 43, (Colom.) (“Women and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination. During their periods of pregnancy and following delivery, women shall benefit from the special assistance and protection of the State and shall receive from the latter food.”).

208. Constitución Política de la República de Costa Rica [CONSTITUTION] Nov. 7, 1949, art. 82 (Costa Rica) (“The State will provide food and clothing to the indigent pupils, in accordance with the law.”).

209. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONSTITUTION] Feb. 24, 2019, art. 77 (Cuba) (“All people have the right to a healthy and adequate diet. The State works to achieve the food security of the entire population.”).

210. CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO [CONSTITUTION] Feb. 18, 2006, art. 47 (DRC) (the DRC’s Constitution explicitly guarantees every individual’s right to food security and the law specifies “the fundamental principles and the rules of organizations for . . . [a secure] food supply.”).

211. CONSTITUCION DE LA REPUBLICA DEL ECUADOR [CONSTITUTION] Sept. 28, 2008, arts. 13, 32, 45, 66 (Ecuador).

212. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT [CONSTITUTION] Jan. 18, 2014, art. 79 (Egypt) (“Each citizen has the right to healthy, sufficient amounts of food and clean water. The state shall provide food resources to all citizens. It also ensures food sovereignty in a sustainable manner, and guarantees the protection of agricultural biological diversity and types of local plants to preserve the rights of generations.”).

213. CONSTITUTION OF THE REPUBLIC OF FIJI [CONSTITUTION] Sept. 7, 2013, art. 36 (Fiji) (“(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities. (2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.”).

214. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [CONSTITUTION] Jan. 14, 1986, art. 51 (Guat.) (“The State will protect the physical, mental, and moral health of the minors of age and of the elderly. It will guarantee to them their right to food, health, education, and security and social prevision.”).

ana,²¹⁵ Haiti,²¹⁶ Honduras,²¹⁷ Kenya,²¹⁸ Iran,²¹⁹ Malawi,²²⁰ Maldives,²²¹ Mexico,²²² Nepal,²²³ Nicaragua,²²⁴ Niger,²²⁵ North Korea,²²⁶ Panama,²²⁷

215. CONSTITUCIÓN DE LA REPÚBLICA COOPERATIVA DE GUYANA [CONSTITUTION], Oct. 6, 1980, art. 40 (Guy.) (“Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, disease, ignorance and want.”).

216. CONSTITUTION D’HAÏTI [CONSTITUTION], Mar. 29, 1987, art. 22 (Haiti) (“The State recognizes the right of every citizen to decent housing, education, food and social security.”).

217. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS [CONSTITUTION], Jan. 11, 1982, art. 123 (Hond.) (“Every child shall have the right to grow and develop in good health, for which special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, housing, education, recreation, exercise, sport, and adequate medical services.”).

218. THE CONSTITUTION OF KENYA [CONSTITUTION], Aug. 27, 2010, art. 43(1)(c) (Kenya) (“Every person has the right [...] (c) to be free from hunger, and to have adequate food of acceptable quality.”).

219. THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN [CONSTITUTION], Dec. 3, 1979, art. 43 (Iran) (“In order to secure the economic independence of society, to uproot poverty and deprivation, to fulfill the needs of human beings in the process of growth, while also maintaining liberty, the economy of the Islamic Republic of Iran will be based on the following criteria: 1. providing the essential needs: housing, food, clothing, health, medical care, education, and the necessary provisions for the starting of a family for all.”).

220. CONSTITUTION OF THE REPUBLIC OF MALAWI [CONSTITUTION], May 16, 1994, art. 30(2) (Malawi) (“The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.”).

221. THE CONSTITUTION OF THE MALDIVES [CONSTITUTION], Aug. 7, 2008, art. 23(a) (Maldives) (“Every citizen the following rights pursuant to this Constitution, and the State undertakes to achieve the progressive realisation of these rights by reasonable measures within its ability and resources: a. adequate and nutritious food and clean water.”).

222. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONSTITUTION] Feb. 5, 1917, art. 4 (Mex.).

223. CONSTITUTION OF NEPAL 2015 [CONSTITUTION], Sept. 20, 2015, art. 36 (Nepal) (“(1). Each citizen shall have the right to food. (2). Every citizen shall have the right to be protected from a state of starvation, resulting from lack of food stuffs. (3). Every citizen shall have the right to food sovereignty as provided for in law.”).

224. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [CONSTITUTION], Nov. 19, 1986, art. 63 (Nicar.) (“It is the right of Nicaraguans to be protected against hunger. The State shall promote programs, which ensure adequate availability of food and its equitable distribution.”).

225. CONSTITUTION OF THE REPUBLIC OF NIGER [CONSTITUTION], Oct. 31, 2010, art. 12 (Niger) (“Each one has the right to life, to health, to physical and moral integrity, to a healthy and sufficient food supply [alimentation], to potable water, to education and instruction in the conditions specified by the law.”).

226. THE SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA [CONSTITUTION] Dec. 27, 1972, art. 25 (N. Kor.) (“The State shall provide all working people with every condition for obtaining food, clothing and housing.”).

227. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ [CONSTITUTION], Oct. 11, 1972, art. 110 (Pan.) (“In matters of health, the State is primarily obliged to develop the

Paraguay,²²⁸ Philippines,²²⁹ Republic of Moldova,²³⁰ Seychelles,²³¹ South Africa,²³² Suriname,²³³ Switzerland,²³⁴ Ukraine,²³⁵ Uganda,²³⁶ and Zimbabwe.²³⁷ Among these countries, Switzerland has been the top performer in terms of implementing food security; Brazil, Mexico, and many others have also made remarkable progress in alleviating hunger and addressing malnutrition.²³⁸ On the other hand, countries such as the Democratic Republic of

following activities, integrating the functions of prevention, cure and rehabilitation in the: 1. Establishment of a national policy of food and nutrition, ensuring optimum nutritional conditions for the entire population, by promoting the availability, consumption, and biological benefit of suitable food.”).

228. CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY [CONSTITUTION], Jun. 20, 1992, art. 57 (Para.) (“Every senior citizen has the right to receive full protection by his family, society, and the State. State organizations will promote the well-being of senior citizens by providing them with social services to meet their needs for food, health, housing, culture, and leisure.”).

229. THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES [CONSTITUTION], Feb. 2, 1987, art. XV, section 3 ¶ (2) (Phil.) (“The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development”).

230. THE CONSTITUTION OF MOLDOVA [CONSTITUTION], July 29, 1994, art. 47 ¶ 1 (Mold.) (“The State shall be bound to take actions aimed at ensuring to every person and to his/her family a decent standard of living, health protection and welfare including food, clothing, shelter, medical care, and the necessary social services.”).

231. CONSTITUTION OF THE REPUBLIC OF SEYCHELLES [CONSTITUTION], June 23, 1993, Pmb. (Sey.) (“We, the People of Seychelles . . . [solemnly declaring] our unswaying commitment, during this our Third Republic, to . . . develop a democratic system which will ensure the creation of an adequate and progressive social order guaranteeing food, clothing, shelter, education, health and a steadily rising standard of living for all Seychellois.”).

232. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA [CONSTITUTION], Dec. 10, 1996, arts. 27 (1) ¶ b, 28(1) ¶ c (S. Afr.).

233. THE CONSTITUTION OF THE REPUBLIC OF SURINAME [CONSTITUTION], Sept. 30, 1987, art. 24 (Surin.) (“The state shall take care of the creation of conditions in which an optimal satisfaction of the basic needs for work, food, health care, education, energy, clothing and communication is obtained.”).

234. BUNDESVERFASSUNG [BV][CONSTITUTION] Apr. 18, 1999, SR 101, art. 104(a). (Switz.).

235. КОНСТИТУЦІЯ УКРАЇНИ [CONSTITUTION], June 28, 1996, art. 48 (Ukr.) (“Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.”).

236. THE CONSTITUTION OF THE REPUBLIC OF UGANDA [CONSTITUTION], Sept. 27, 1995, art. XIV ¶ b (Uganda) (“[A]ll Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.”).

237. THE CONSTITUTION OF ZIMBABWE [CONSTITUTION], Mar. 16, 2013, art. 77 (Zim.) (“Every person has the right to (a) safe, clean and potable water; and (b) sufficient food; and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.”).

238. See case studies *infra*.

the Congo (“DRC”)²³⁹ continue to struggle to ensure their citizens have food that is available, accessible, and adequate.²⁴⁰

As shown in Table 1, Category B countries, the majority of countries in the world, offer indirect, implicit constitutional protection of the right to food. They have constitutional provisions that permit judicial protection of the right to food by way of invoking other human rights,²⁴¹ such as the right to life,²⁴² the right to development,²⁴³ and respect for human dignity.²⁴⁴ Finally, in a number of states, the Category C countries, there are no constitutional protections of the right to food. Instead, these states incorporate key aspects of this right in domestic laws, policies, and social welfare programs.²⁴⁵

239. KLAUS VON GREBMER, JILL BERNSTEIN, MIRIAM WIEMERS, KESHIA ACHEAMPONG, ASJA HANANO, BRONA HIGGINS, RÉISEAL NÍ CHÉILLEACHAIR, CONNELL FOLEY, SETH GITTER, KIERSTIN EKSTROM & HEIDI FRITSCHER, 2020 GLOBAL HUNGER INDEX: ONE DECADE TO ZERO HUNGER LINKING HEALTH AND SUSTAINABLE FOOD SYSTEMS 5 (Oct. 2020), <https://www.globalhungerindex.org/pdf/en/2020.pdf> (noting that the DRC remains one of the most food insecure countries in the world); see “Staggering” Scale of Acute Hunger in the Democratic Republic of the Congo, U.N. NEWS, (Apr. 6, 2021), <https://news.un.org/en/story/2021/04/1089152>; Democratic Republic of the Congo Emergency, WORLD FOOD PROGRAM, <https://www.wfp.org/emergencies/kasai-emergency> (last visited Mar. 12, 2022) (UN data indicates that one-in-three people in the DRC suffer from chronic hunger and malnutrition, and millions are at “emergency” levels of acute hunger. Conflict is a key factor in food insecurity in the DRC. This situation is made worse by Ebola outbreaks and COVID-19).

240. For more details regarding human rights situations in the DRC, see *Democratic Republic of the Congo*, OHCHR (last visited Mar. 12, 2022) <https://www.ohchr.org/EN/Countries/AfricaRegion/Pages/CDIndex.aspx>; see also *Country Reports on Human Rights Practices: Democratic Republic of the Congo*, U.S. STATE DEP’T (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/democratic-republic-of-the-congo/> (the DRC’s government has failed to establish the regulatory infrastructure including a lack of enforcement mechanisms to protect its citizens’ rights to food. This lack of action is not surprising as, on occasion, the government has been implicated in a myriad of human rights abuses. Thus, the constitutional provision of the right to food holds little practical value in the DRC along with most other rights in that country).

241. Lambek & Claeys, *supra* note 88, at 753–55.

242. See, e.g., CONSTITUCIÓN POLÍTICA DEL PERÚ [CONSTITUTION] Dec. 29, 1993, art. 2 (Peru) (“Every person has the right . . . [t]o life, his identity, his moral, psychological, and physical integrity, and his free development and well-being.”).

243. See, e.g., CONSTITUTION DE LA IVE RÉPUBLIQUE [CONSTITUTION] Oct. 14, 1992, art. 12 (Togo) (“Every human being has the right to development, to the physical, intellectual, moral and cultural fulfillment of their person.”).

244. See, e.g., CONSTITUTION DE LA RÉPUBLIQUE TUNISIENNE [CONSTITUTION] Jan. 2014, art. 21 (Tunis.) (“All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination. The state guarantees freedoms and individual and collective rights to all citizens, and provides all citizens the conditions for a dignified life.”).

245. See Lambek & Claeys, *supra* note 88, at 752.

<p>Category B²⁵² Implicit constitutional protection of the right to food through constitutional protection of other human rights</p>	<p>The right to life – Afghanistan, Albania, Andorra, Angola, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Central Africa Republic, Chad, Chile, Cook Islands, Cote D’Ivoire, Croatia, Cyprus, Djibouti, Dominica, Dominican Republic, East Timor, El Salvador, Equatorial Guinea, Eritrea, Estonia, Finland, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guinea, Guinea-Bissau, India, Indonesia, Iraq, Ireland, Israel, Jamaica, Japan, Kazakhstan, Kiribati, South Korea, Kosovo, Kyrgyzstan, Laos, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Macedonia, Malaysia, Mali, Malta, Mauritius, Micronesia, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Niger, Pakistan, Palau, Papua New Guinea, Peru, Poland, Portugal, Romania, Russia, Rwanda, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, Somaliland, Spain, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sudan, South Sudan, Swaziland, Tajikistan, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Turkey, Turkmenistan, Tuvalu, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela, Zaire, Zambia.</p> <p>Other human rights – Belgium (respect for human dignity), China (social welfare), Ethiopia (the right to development), Hungary (social security), Iceland (social welfare), Sierra Leone (food production).</p>
<p>Category C²⁵³ Protection of the right to food through extra-constitutional laws, policies, and programs</p>	<p>Algeria, Argentina, Australia, Austria, Bhutan, Brunei, Comoros, Denmark, France, Gabon, Italy, Jordan, Kuwait, Lebanon, Libya, Luxembourg, Madagascar, Marshall Islands, Mauritania, Monaco, Morocco, Myanmar, Netherlands, New Zealand, Niue, Norway, Oman, Qatar, San Marino, Sri Lanka, Sweden, Syria, Taiwan, Tunisia, UAE, the United States, Vietnam, Yemen.</p>

252. See CHEN, *supra* note 160, at 187–211.

253. *Id.*

B. Case studies

1. Category A: Explicit Constitutional Protections

Category A, with the exception of Switzerland, is composed of exclusively developing countries. Developing countries' citizens are more susceptible to chronic hunger and malnutrition, and several of the developing countries listed in Category A provide an explicit substantive right to food in their constitutions. However, the preponderance of developing countries in this category should not be taken to mean that food insecurity is solely a developing country issue. Indeed, developed countries and their citizens are not immune to food insecurity, and thus there is good reason for them to provide constitutional protection of the right to food.²⁵⁴ Although developed countries tend not to provide this right, Switzerland is the exception, likely due to its strong respect for international human rights law.²⁵⁵

Food insecurity remains a global challenge in both developing and developed countries. While a quick scan of Category A countries reveals that this constitutional approach leads to a myriad of diverse outcomes, the detailed case studies below demonstrate a general trend of continuous improvement in food security, with few exceptions. In fact, with the exceptions of Guatemala and North Korea, no countries in Category A are listed in the “alarming” or “extremely alarming” categories on the Global Hunger Index 2018.²⁵⁶ We turn next to examine the constitutional food rights of four Category A countries in some detail.

(a) Brazil

Prior to the COVID-19 pandemic, Brazil was a beacon and an international standard for national implementation of a rights-based approach to food security.²⁵⁷ It succeeded particularly through the adoption and, most

254. See generally Graham Riches & Tiina Silvasti, *Hunger in the Rich World: Food Aid and Right to Food Perspectives*, in *FIRST WORLD HUNGER REVISITED*, 1–14 (Graham Riches & Tiina Silvasti eds., 2014) (discussing the relationship between scarcity and constitutional guarantees).

255. International Cooperation, *The Rule of Law* (Mar. 26, 2021), <https://www.eda.admin.ch/deza/en/home/strategie-21-24/rechtsstaat.html#:~:text=Switzerland's%20expertise%20in%20the%20rule,democracy%2C%20decentralisation%20and%20public%20accountability>.

256. Max Roser & Hannah Ritchie, *Hunger and Undernourishment - The Global Hunger Index (GHI)*, OUR WORLD DATA, <https://ourworldindata.org/hunger-and-undenourishment#the-global-hunger-index-ghi> (last visited Sept. 28, 2021).

257. JOSÉ GRAZIANO DA SILVA, MAURO EDUARDO DEL GROSSI & CAIO GALVÃO DE FRANÇA, *THE FOME ZERO (ZERO HUNGER) PROGRAM: THE BRAZILIAN EXPERIENCE 9* (2011), <http://www.cnafun.moa.gov.cn/zl/tstpzl/201305/P020130509356300882522.pdf> (noting that “Brazil is an international benchmark today when it comes to food security, rural development, and poverty eradication policies.”); see Lambek & Claeys, *supra* note 88, at 759 (Lambek and Claeys also suggest that “Brazil is often cited as a leading case study for national strategies aimed at ending hunger.”).

importantly, the effective enforcement of a series of national legislation, regulations, and policies aimed at strengthening food availability, accessibility, and adequacy.²⁵⁸ Its 2010 constitutional amendment creating the right to food improved food security and nutrition across the country.²⁵⁹ In addition, Article 7 of the Constitution ensures “a national uniform minimum wage . . . capable of meeting a worker’s basic living needs and those of his family, for . . . nourishment.”²⁶⁰ Article 227 also mandates, “[i]t is the duty of the family, the society and the Government to assure children, adolescents, and youths, with absolute priority, the right[] to . . . nourishment . . .”²⁶¹

The Brazilian government first placed food security at the center of its political agenda in 2003.²⁶² The “Fome Zero” program,²⁶³ initially a broad political policy, was used to “implement[] a comprehensive approach to promote food security,” translating a political agenda into action.²⁶⁴ Fome Zero focused on food availability. It addressed food insecurity, extreme poverty, and social exclusion in a holistic manner.²⁶⁵ Through the “establishment of an institutional setting that facilitates cooperation and coordination among ministries and different levels of government,”²⁶⁶ and through the implementation of a set of measures seeking to increase food affordabil-

258. Paula F. Strakos & Michelle B. B. Sanches, *State’s International Responsibility for the Human Right to Food: Implementation in Brazil*, 14 BRAZ. J. INT’L L. 36, 44 (2017) (noting that “Brazil has become an international benchmark in the fight against hunger due to the incorporation of the topic in its agenda as a top priority since 2002”); see also Carlos R. S. Milani, *Access to Food as a Human Right: Brazil, WFP and South-South Cooperation*, 14 BRAZ. J. INT’L L. 10 (2017) (noting that since 2003, Brazil “has endeavoured to place hunger as one of the worst violations against human rights.”).

259. See *The Right to Food is Now in the Constitution of Brazil*, U.N. FOOD & AGRIC. ORG. (Feb. 15, 2010), <http://www.fao.org/right-to-food/news/news-detail/en/c/157360/> [hereinafter *The Right to Food is Now in the Constitution of Brazil*] (noting that “[a]fter being approved by both chambers of the Congress on the 3 of February 2010, the Brazilians adopted the Constitutional Amendment Project (PEC 47/2003) which now establishes the right to food as a constitutional human right”); Strakos & Sanches, *supra* note 258, at 44.

260. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] Oct. 5, 1988, art. 7 ¶ IV (Braz.).

261. *Id.* art. 227.

262. U.N. FOOD & AGRIC. ORG., INT’L FUND FOR AGRIC. DEV. & WORLD FOOD PROGRAMME, *THE STATE OF FOOD INSECURITY IN THE WORLD 23* (2014), <http://www.fao.org/3/i4030e/i4030e.pdf> [hereinafter *THE STATE OF FOOD INSECURITY IN THE WORLD 2014*] (noting that former president Luis Ignácio da Silva pledged to ensure three meals a day for all Brazilians in his inaugural address in 2003. Zero hunger was his presidential and government priority); see also DA SILVA ET AL., *supra* note 257, at 7.

263. GRAZIANO DA SILVA ET AL., *supra* note 257, at 11 (noting that the Zero Hunger Program was initially proposed in 2001, and officially launched in 2003 when the Lula administration was inaugurated).

264. *THE STATE OF FOOD INSECURITY IN THE WORLD 2014*, *supra* note 262, at 18, 23.

265. Strakos & Sanches, *supra* note 258, at 45; see GRAZIANO DA SILVA ET AL., *supra* note 255, at 9.

266. *THE STATE OF FOOD INSECURITY IN THE WORLD 2014*, *supra* note 262, at 23.

ity and accessibility,²⁶⁷ Fome Zero significantly reduced the number of citizens going undernourished in Brazil.²⁶⁸

To improve all three dimensions of the right to food—availability, accessibility, and adequacy—Brazil, in 2006, legally recognized the human right to adequate food in the National Food and Nutritional Security Framework Law (“LOSAN”).²⁶⁹ In 2010, Brazil achieved another legal milestone: incorporating the right to food into the Federal Constitution.²⁷⁰ The constitutional recognition makes food an inalienable right.²⁷¹ In doing so, the Brazilian legislature demonstrated a strong political and national commitment to eliminating hunger and malnutrition among its populace. The inclusion of a right to food within the Constitution provided a justiciable legal right, operationalizing a rights-based approach to food security at the national level.²⁷² Since the enactment of the constitutional right, Brazil has passed and enforced legislation to realize its progressive approach to the right to food.²⁷³ Notable legislative efforts toward the establishment of a rights-based legal framework are summarized in Table 2. From Table 2, it is evident that the legislation in Brazil not only safeguards food availability and economic accessibility, but also addresses nutritional adequacy.

After enshrining the right to food in its Constitution, Brazil has further instituted numerous social and economic initiatives as part of its response to hunger and malnutrition problems across the country,²⁷⁴ such as its Food

267. Strakos & Sanches, *supra* note 258, at 45 (for example, by generating jobs and increased income, as well as “intensify[ing] the agrarian reform and incentive family farming and education.”); *see also* *The Right to Food is Now in the Constitution of Brazil*, *supra* note.

268. THE STATE OF FOOD INSECURITY IN THE WORLD 2014, *supra* note 262, at 23.

269. *The Right to Food is Now in the Constitution of Brazil*, *supra* note 259.

270. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] Oct. 5, 1988, art. 6 (Braz.) (Article 6 specifies a list of social rights protected by the Constitution, and they include the rights to “[e]ducation, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute.”); *see* *The Right to Food is Now in the Constitution of Brazil*, *supra* note 259.

271. *The Right to Food is Now in the Constitution of Brazil*, *supra* note 259.

272. Strakos & Sanches, *supra* note 258 at 45.

273. U.N. SYS. STANDING COMM. ON NUTRITION COUNTRY STUDY FOR SECOND INT’L CONF. ON NUTRITION, COUNTRY POLICY ANALYSIS: NUTRITION IMPACT OF AGRICULTURE AND FOOD SYSTEMS— BRAZIL 30 (Nov. 2013), http://unscn.org/files/Publications/Country_Case_Studies/UNSCN-country-case-study-Brazil-FINAL.pdf (hereinafter COUNTRY POLICY ANALYSIS - BRAZIL) (noting that since a 2010 constitutional amendment, to guarantee the right to adequate food, a series of laws and policies have been promulgated to guarantee the right to food, such as the National Food and Nutrition Security System (SISAN), and the National Food and Nutrition Security Policy (PNSAN)).

274. Lambek & Claeys, *supra* note 88, at 759–60 (as of 2016, Brazil had “instituted over 50 initiatives to address food insecurity throughout the state.”); *see* Cecilia Rocha, *Developments in National Policies for Food and Nutrition Security in Brazil*, 27 DEV. POL’Y R. 51, 63 (2009).

Card Program,²⁷⁵ Food Acquisition Program,²⁷⁶ food banks, and community kitchens.²⁷⁷ One remarkable feature of the Brazilian hunger and malnutrition program has been the involvement of civil society in Brazil.²⁷⁸ This significant contribution by civil society has been noted and commended by Olivier De Schutter, the former UN Special Rapporteur on the right to food.²⁷⁹

TABLE 2: BRAZIL'S EFFORTS TOWARD THE ESTABLISHMENT OF A RIGHTS-BASED LEGAL FRAMEWORK TO FOOD SECURITY SINCE THE 2010 CONSTITUTIONAL AMENDMENT²⁸⁰

Date	Legislation, Regulations, and Policies Promoting the Progressive Realization of the Right to Food
August 2010	Decree No. 7.272 establishing Law No. 11.346 to create the National System for Food and Nutrition Security ("SISAN") ²⁸¹

275. GRAZIANO DA SILVA ET AL., *supra* note 257, at 11 (noting that the Food Card Program is implemented to enable families to buy food).

276. *Id.* (noting that the Food Acquisition Program is "a mechanism for public procurement of food produced by family farmers.").

277. Lambek & Claeys, *supra* note 88, at 759–60; Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food on his Mission to Brazil*, at ¶14, ¶ 33, U.N. Doc. A/HRC/13/33/Add.6 (Feb. 19, 2009).

278. Lambek & Claeys, *supra* note 88, at 762 (noting that "Brazil created a national council for food and nutrition security . . . which is composed of two-thirds civil society organizations and one-third government representatives." The council "reports directly to the President and advises the government on guidelines and policies to advance the right to food in the state.").

279. *Id.* at 759–60.

280. The list was obtained from the Food and Agricultural Organization's website. *See The Right to Food around the Globe – Brazil*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/right-to-food-around-the-globe/countries/bra/en/> (last visited Aug. 8, 2021); *see also* COUNTRY POLICY ANALYSIS – BRAZIL, *supra* note 273, at 30 (Discussing the importance of the 2010 constitutional amendment that incorporates the right to food in the Constitution. Noting that "[a]mong the instruments to guarantee the right to adequate food in the country are the National Food and Nutrition Security System (SISAN) and the National Food and Nutrition Security Policy (PNSAN). PNSAN, implemented through SISAN, aim at promoting intersectoral programming and social participation for the achievement of a situation of food and nutrition security and the realization of the right to food.").

281. Decreto Nº 7.272, de 25 de Agosto de 2010 [Decree No. 7.272 Aug. 2010], Diário Oficial da União [D.O.U.] de 26.08.2010, <http://extwprlegs1.fao.org/docs/texts/bra130852.doc> (Braz.); *see* Strakos & Sanches, *supra* note 258, at 45 (noting that "the National Food and Nutritional Security System ("SISAN") was created . . . with the goal of fully implementing the [right to food] and set the guidelines for the National Plan for Food and Nutrition Security ("PNSAN").").

August 2011	National Plan for Food and Nutrition Security (“PNSAN”) (2012-2015) ²⁸²
December 2011	Law No. 7.307 creating the State System for Food and Nutritional Security (“SISAN/ALAGOAS”) ²⁸³
December 2011	Law No. 833 providing for the State System of Food and Nutrition Security and the State Plan of Food and Nutrition Security, to ensure the human right to adequate food in the State of Roraima ²⁸⁴
January 2012	National Policy on Food and Nutrition (2010-2025) ²⁸⁵
July 2012	Law No. 863 creating the Supplementary Feeding Programme (“CUIDAR”) supplying milk food supplements ²⁸⁶
October 2014	Law No. 10.152 creating the State System for Food and Nutritional Security within the State of Maranhão ²⁸⁷
May 2016	National Plan for Food and Nutrition Security (“PLANSAN 2016-2019”) ²⁸⁸
October 2017	Decree No. 53.771 creating the State Food Security Programme “Prato para Todos,” within the State of Rio Grande do Sul ²⁸⁹

282. COUNTRY POLICY ANALYSIS- BRAZIL, *supra* note 273, at 49–53; *see* Strakos & Sanches, *supra* note 258 (noting that “PNSAN aimed to achieving food security through intersectoral public actions and policies, guided by the legal framework of the [right to food]”).

283. Lei Nº 7.307 [Law No. 7.307], de 16 de Dezembro de 2011, Diário Oficial do Estado de Alagoas [D.O.E.A.L.] de 19.12.2011, <http://extwprlegs1.fao.org/docs/pdf/bra120786.pdf> (Braz.) (creating the State System for Food and Nutritional Security SISAN /ALAGOAS).

284. Lei Nº 833 [Law No. 833] de 28 de Dezembro de 2011, Diário Oficial do Estado de Roraima [D.O.E.R.] de 29.12.2011, <http://extwprlegs1.fao.org/docs/pdf/bra175194.pdf> (Braz.) (providing for the State System of Food and Nutrition Security and on the State Plan of Food and Nutrition Security, to ensure the human right to adequate food in the State of Roraima).

285. MINISTÉRIO DA SAÚDE, POLÍTICA NACIONAL DE ALIMENTAÇÃO E NUTRIÇÃO (2010-2025) [NATIONAL POLICY ON FOOD AND NUTRITION (2010-2025)] (Jan. 1, 2012) <http://extwprlegs1.fao.org/docs/pdf/bra147203.pdf> (Braz.).

286. Lei Nº 863 [Law No. 863], de 31 de Julho de 2012, Diário Oficial da União [D.O.U.] de 01.08.2012, <http://extwprlegs1.fao.org/docs/pdf/bra175228.pdf> (Braz.) (creating the CUIDAR - Supplementary Feeding Programme, through the supply of milk food supplements).

287. Lei Nº 10.152 [Law No. 10.152], de 29 de Outubro de 2014, Diário Oficial do Estado de Maranhão [D.O.E.M.] de 29.10.2014 <http://extwprlegs1.fao.org/docs/pdf/bra185678.pdf> (Braz.) (creating the State System for Food and Nutritional Security within the State of Maranhão).

288. CÂMARA INTERMINISTERIAL DE SEGURANÇA ALIMENTAR E NUTRICIONAL [“CAISAN”], PLANO NACIONAL DE SEGURANÇA ALIMENTAR E NUTRICIONAL 2016-2019 [NATIONAL PLAN FOR FOOD AND NUTRITION SECURITY (“PLANSAN 2016-2019”)] (May 2016), <http://extwprlegs1.fao.org/docs/pdf/bra166923.pdf> (Braz.).

289. DECRETO Nº 53.771 [Decree No. 53.771], de 26 de Outubro de 2017, Diário Oficial do Estado de Rio Grande do Sul [D.O.E.R.G.S.] de 27.10.2017, <http://extwprlegs1.fao.org>

December 2017	Law No. 22.806 creating the State Policy on Sustainable Food and Nutrition Security (“PESANS”) and organizing the National System of Food and Nutrition Security (“SISAN”) ²⁹⁰
September 2018	Law No. 6.412 on the Food and Nutrition Security of the Municipality of Rio de Janeiro (“LOSAN-RIO”), creating the System and Policy for Food and Nutrition Security of the Municipality of Rio de Janeiro ²⁹¹
June 2021	Decree No. 10.713 providing for the Interministerial Chamber for Food and Nutritional Security ²⁹²

As a result of these significant efforts, Brazil has successfully reduced undernourishment by 82.1 percent between 2002 and 2014—a very significant achievement which saw the number of hungry people falling from nineteen million to 3.4 million.²⁹³ This change was noted to be the largest drop in hunger amongst the eight most populous countries in the world.²⁹⁴ As a result, Brazil was removed from the UN World Hunger Map in 2014 when its undernourishment rate fell to 1.7 percent,²⁹⁵ a very low “prevalence of undernourishment in the population” by UN standards.²⁹⁶ Until the COVID-19 pandemic, Brazil continued to deliver on its success in the realization of the right to food. The 2020 UN World Hunger Map shows that

/docs/pdf/bra184257.pdf (Braz.) (creating the State Food Security Programme “Prato Para Todos” [“Meals for All”], within the State of Rio Grande do Sul).

290. Lei N° 6.412 [Law No. 6.412], de 17 de Setembro de 2018, Diário Oficial do Rio de Janeiro [D.O.E.R.J.] de 19.09.2018, <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC187661> (Braz.) (on the Food and Nutrition Security of the Municipality of Rio de Janeiro (“LOSAN-RIO”), creating the System and Policy for Food and Nutrition Security of the Municipality of Rio de Janeiro).

291. LEI N° 6.412 [Law No. 6.412], de 17 de Setembro de 2018, Diário Oficial do Rio de Janeiro [D.O.E.R.J.] de 19.09.2018, <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC187661> (Braz.) (on the Food and Nutrition Security of the Municipality of Rio de Janeiro (“LOSAN-RIO”), creating the System and Policy for Food and Nutrition Security of the Municipality of Rio de Janeiro).

292. Decreto N° 10.713 [Decree No. 10.713], de 7 de Junho de 2021, Diário Oficial da União [D.O.U.] de 08.06.2021, <http://extwprlegs1.fao.org/docs/pdf/bra203764.pdf> (Braz.) (providing for the Interministerial Chamber for Food and Nutritional Security).

293. MINISTRY SOC. DEV. & FIGHT AGAINST HUNGER (MINISTÉRIO DO DESENVOLVIMENTO SOCIAL E COMBATE À FOME) [“MDS”], BRAZIL OUT OF FAO WORLD HUNGER MAP, http://www.mds.gov.br/webarquivos/acao_informacao/institucional/gabinete-da-ministra/apresentacoes/201409_Brasil%20fora%20do%20mapa%20da%20fome%20%20ingles.pdf (last visited Mar. 13, 2022).

294. See *id.*

295. *Id.* (noting that the prevalence of undernourishment rate was only 1.7 percent).

296. WORLD FOOD PROGRAM HUNGER MAP 2015 (2015), <https://documents.wfp.org/stellent/groups/public/documents/communications/wfp275057.pdf> [hereinafter HUNGER MAP 2015] (noting that five percent is the threshold for presenting a very low “prevalence of undernourishment in the population”).

Brazil's undernourishment rate remained below 2.5 percent between 2017 and 2019.²⁹⁷ To achieve this impressive outcome, Brazil invested in improving domestic food availability, accessibility, and adequacy.²⁹⁸ Particularly after the constitutional amendment in 2010, it established an effective rights-based legal framework to ensure the right to food is enforced.²⁹⁹

Sadly, as the COVID-19 pandemic rages across the country, hunger has returned to Brazil. Approximately fifty-five percent of the population, some 117 million people, have inadequate access to nutritious food as a result of the pandemic-induced economic downturn.³⁰⁰ The situation was exacerbated by the government's decision to abruptly cut emergency cash payments in 2020 to address its deteriorating financial situation.³⁰¹ The net result is that Brazil has been placed back on the World Hunger Map.³⁰² In fact, Brazil is not a lone traveler in this territory. As the UN World Food Programme ("WFP") warned, the world is now standing "on the brink of a hunger pandemic."³⁰³ The COVID-19 pandemic is unprecedented in its global reach and impact, and Brazil's poor performance in the pandemic should not be judged too quickly or too harshly. Despite the pandemic and the related economic downturn, the rights-based legal framework will hopefully continue to empower Brazilians and guide its government in continuing to address food insecurity in a meaningful, substantive way.

(b) Mexico and South Africa

Mexico and South Africa are two more successful examples of improving food availability, accessibility, and adequacy through the adoption and effective implementation of the constitutional rights-based approach. Mexi-

297. THE WORLD FOOD PROGRAM, HUNGER MAP 2020 (2020), <https://docs.wfp.org/api/documents/WFP-0000118395/download/?ga=2.107517442.16314836.1628393476-1999282380.162794924> [hereinafter HUNGER MAP 2020].

298. See U.N. FOOD & AGRIC. ORG., INT'L FUND FOR AGRIC. DEV. & WORLD FOOD PROGRAM, ACHIEVING ZERO HUNGER: THE CRITICAL ROLE OF INVESTMENTS IN SOCIAL PROTECTION AND AGRICULTURE 31 tbl. A2 (2015), <https://www.fao.org/3/i4951e/i4951e.pdf> (this table indicates that Brazil is among that top countries in terms of investment in social protection and agriculture in order to reduce hunger and malnutrition).

299. See *supra* Table 2; see also COUNTRY POLICY ANALYSIS—BRAZIL *supra* note 273, at 30.

300. Ernesto Londoño & Flávia Milhorange, *Ravaged by Covid, Brazil Faces a Hunger Epidemic* N.Y. TIMES, (Apr. 23, 2021, last modified Apr. 27, 2021), <https://www.nytimes.com/2021/04/23/world/americas/covid-brazil-hunger.html>.

301. *Id.*

302. Lise Alves, *Pandemic Puts Brazil Back on the World Hunger Map*, NEW HUMANITARIAN (July 19, 2021), <https://www.thenewhumanitarian.org/news-feature/2021/7/19/pandemic-puts-brazil-back-on-the-world-hunger-map>.

303. *WFP Chief Warns of Grave Dangers of Economic Impact of Coronavirus as Millions are Pushed Further into Hunger*, THE WORLD FOOD PROGRAM (Sept. 15, 2020), <https://www.wfp.org/news/wfp-chief-warns-grave-dangers-economic-impact-coronavirus-millions-are-pushed-further-hunger>.

co established the constitutional right to food in 2011 through constitutional reform.³⁰⁴ The Mexican Constitution's new Article 4 guarantees all individuals "the right to nutritional, sufficient and quality nourishment."³⁰⁵ To safeguard the enforcement of this new constitutional right, Mexico developed a full set of legislation, implementing regulations, and policies to address the various aspects of food security, including agricultural and rural development, disaster risk management, food and nutrition, environment, ecosystems, climate change, and agricultural production.³⁰⁶ It has also provided additional support to vulnerable groups, such as women and Indigenous people.³⁰⁷ As a result of these efforts, Mexico's rate of undernourishment has been consistently below 7.7 percent over the last ten years.³⁰⁸ This is lower than it was prior to the constitutional reform. According to the United States Department of Agriculture ("USDA") Foreign Agricultural Service, "[a]t least 10 percent of the residents of all Mexican states suffered from inadequate food access" in 2010.³⁰⁹

Similarly, South Africa adopted constitutional provisions protecting the right to food in the 1990s.³¹⁰ Pursuant to Articles 27, 28, and 35, the South African Constitution provides: "Every individual has the right to have access to . . . sufficient food" and "[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of [the right]."³¹¹ To promote and strengthen the progressive realization of the right to food, in 2002, South Africa promulgated the Integrated Food Security Strategy ("IFSS") and developed a series of enforceable policies and programs aimed at enhancing food availability, accessibility—particularly economic accessibility—and adequacy.³¹² South Africa

304. *UN Expert Welcomes Mexico's Move to Recognize Food as Constitutional Right*, U.N. NEWS (Oct. 13, 2011), <https://news.un.org/en/story/2011/10/391442-un-expert-welcomes-mexicos-move-recognize-food-constitutional-right>.

305. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONSTITUTION], CPEUM, art.4, Diario Oficial de la Federación [DOF] 05-02-1917, Últimas Reformas DOF 10-02-2014 (Mex.).

306. For a full list of legislations that protect the right to food, see *Mexico Country Profiles*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=MEX> (last visited Mar. 13, 2022).

307. *Id.*

308. GLOB. HUNGER INDEX, GLOBAL HUNGER INDEX 2020-MEXICO 1 (Oct. 2020), <https://www.globalhungerindex.org/pdf/en/2020/Mexico.pdf>.

309. FOOD SECURITY AND NUTRITION IN MEXICO, U.S. DEP'T AGRIC. FOREIGN AGRIC. SERV. (July 9, 2010), https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Food%20Security%20and%20Nutrition%20in%20Mexico_Mexico_Mexico_7-9-2010.pdf.

310. Lambek & Claeys, *supra* note 88, at 761 (noting that South Africa was the first state to enshrine a constitutional right to food in the 1994 post-apartheid Constitution).

311. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA [CONSTITUTION], Dec. 10, 1996, arts. 27 (1) ¶ (b), 28(1) ¶ (c) (S. Afr.).

312. Lambek & Claeys, *supra* note 88, at 760; DEP'T AGRIC. REPUBLIC S. AFR., THE INTEGRATED FOOD SECURITY STRATEGY FOR SOUTH AFRICA 6 (July 17, 2002), <https://>

has achieved a remarkable and comparable result to Mexico.³¹³ The prevalence of undernourishment in South Africa has dropped from 18.4 percent in 2000 to 13.5 percent in 2020.³¹⁴

(c) Switzerland

As compared to the other countries in Category A, Switzerland is in a markedly different situation in terms of baseline hunger and economic development. Unlike its fellow Category A cohort, far from being a developing nation, it is one of the richest countries in the world.³¹⁵ Food security is not a wide concern, as the prevalence of undernourishment is extremely low.³¹⁶ The majority of Swiss people are able to earn sufficient income to purchase food.³¹⁷ Furthermore, the Swiss government has strong and comprehensive welfare programs to support a high standard of living for vulnerable populations.³¹⁸ Over the last century, including during World War II, the Swiss did not experience food insecurity.³¹⁹ Switzerland's food security performance at the domestic level is outstanding.³²⁰ At the international level, Switzerland has been a proactive partner and a major contributor in supporting FAO's initiatives to combat global hunger, particularly in times of emergencies.³²¹

Although wealth is an important factor affecting food security, Switzerland's success can also be attributed to two other causes: a constitutional protection of the right to food and the effective implementation of the rele-

www.gov.za/sites/default/files/gcis_document/201409/foodpol0.pdf (the IFSS provides necessary interventions to address food insecurity in South Africa, including improving nutrition).

313. GLOB. HUNGER INDEX, GLOBAL HUNGER INDEX 2020-SOUTH AFRICA 2 (Oct. 2020), <https://www.globalhungerindex.org/pdf/en/2020/South-Africa.pdf>.

314. *Id.*

315. *Switzerland*, ORG. FOR ECON. COOP. & DEV. ["OECD"], <https://data.oecd.org/switzerland.htm> (last visited Sept. 23, 2021).

316. HUNGER MAP 2020, *supra* note 297; HUNGER MAP 2015, *supra* note 296296 (The prevalence of undernourishment has been consistently less than 2.5 percent).

317. Christian Häberli, *Swiss Policies for More Food Security*, (Swiss Nat'l Ctr. Competence Rsch., Working Paper No. 2014/23, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2556241 (noting that Switzerland is "one of the most food-secure countries in the world: there are abundant food supplies, relatively low retail prices in terms of purchasing power parity, with few poverty traps.>").

318. Susan Misicka, *How Swiss Welfare Works*, SWISSINFO (Feb. 25, 2020), <https://www.swissinfo.ch/eng/povertyhow-swiss-welfare-works/45575954>.

319. Charlotte Blattner & O. Ammann, *Food Security and Symbolic Legislation in Switzerland: A False Sense of Security?* in JUSTICE AND FOOD SECURITY IN A CHANGING CLIMATE 349 (Hanna Schübel & Ivo Wallimann-Helmer eds., 2021) (Switzerland did not participate in WWII which may account for their food security during that particular period as compared to the rest of Europe).

320. Häberli, *supra* note 317.

321. *See generally* U.N. FOOD & AGRIC. ORG., FAO + SWITZERLAND: AN INNOVATIVE PARTNERSHIP FOR GLOBAL CHALLENGES (Nov. 13, 2019), <http://www.fao.org/3/ca6384en/CA6384EN.pdf> (discussing Switzerland's engagement with the FAO in combatting hunger).

vant constitutional provisions. Prior to 2017, the Swiss Constitution protected the right to food indirectly as part of the right to the minimum conditions of life.³²² In 2017, 78.7 percent of Swiss people voted in favor of a constitutional amendment on the right to food.³²³ By enshrining this right in the Constitution, Switzerland further emphasized what it has already prioritized—improving food security. The new Article 104a of the Federal Constitution explicitly recognizes the right to food.³²⁴ It requires the Confederation to create favorable conditions to guarantee food security,³²⁵ including the protection of agricultural production and farmland, the preference for local production, conservation of natural resources (emphasizing their effective use), responsiveness to market requirements, and cross-border trade relations contributing to sustainable development of the agricultural and food sectors.³²⁶

Switzerland's constitutional amendment provides a substantive right, with concrete administrative obligations and resources ensuring food security in terms of availability, accessibility, and adequacy. Although some Swiss researchers criticize the enforcement of the right to food in Switzerland, arguing, for example, that Switzerland does not have comprehensive urban food policies due to the lack of a political mandate for action,³²⁷ the reality is that Switzerland has established an overarching implementation framework that is more advanced than almost all other countries in the world.³²⁸ Its policies and programs on agriculture, food and nutrition, environment, and risk management³²⁹ at all government levels effectively safeguard food availability, economic and physical accessibility, as well as ade-

322. BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr.18, 1999, SR 101, art. 12 (Switz.) (as amended to 2017) (Article 12 states “[p]ersons in need and unable to provide for themselves have the right to assistance and care, and to the financial means required for a decent standard of living.”).

323. Blattner & Ammann, *supra* note 319, at 349 (Switzerland claims that the right to food was needed to further improve food security, although researchers have diverse views about this amendment. Some suggests it was symbolic, while others argue that it was to protect agribusiness' interests).

324. BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr.18, 1999, SR 101, art. 104(a) (Switz.).

325. *Id.*

326. *Id.* at ¶¶ (a)-(e).

327. Heidrun Moschitz, *Where is Urban Food Policy in Switzerland? A Frame Analysis*, 23 INT'L PLAN. STUD. 180, 181 (2018).

328. See SWISS CONFEDERATION, SWITZERLAND IMPLEMENTS THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT - SWITZERLAND'S COUNTRY REPORT 2018, AT 8-9 (2018), https://www.eda.admin.ch/dam/agenda2030/en/documents/laenderbericht-der-schweiz-2018_EN.pdf.

329. *Switzerland-Country Profiles*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=CHE> (last visited Sept. 23, 2021).

quacy in Switzerland. It has achieved a remarkably coherent regulatory system³³⁰ and developed a comprehensive rights regime around food.

In sum, we see that countries in Category A have been relatively successful in addressing food insecurity. Apart from Switzerland, which emphasized what it has already prioritized through its constitutional amendment, the case studies of Brazil, Mexico, and South Africa suggest that the constitutionally entrenched rights-based approach has led to remarkable improvement in food availability, accessibility, and adequacy across different levels of economic development—albeit in the top half in terms of economic development. These case studies support the argument that the constitutional approach leads to the best outcomes, particularly where effective legal and institutional frameworks are available to ensure compliance with and enforcement of the constitutional right to food.

2. Category B: Implicit Constitutional Protections

As noted earlier, the majority of countries in the world fall into Category B—countries which provide implicit constitutional rights to food through constitutional protections of other broader human rights (for example, the right to life).³³¹ Despite this common legal approach, the food security situations in Category B countries appear to be quite diverse. For example, while food security is not an issue in Belgium (where the prevalence of undernourishment at less than 2.5 percent),³³² hunger in Ethiopia is still widespread, with twenty-five percent of the Ethiopian population not having available, accessible, and adequate food.³³³ Meanwhile, Indonesia, the fourth most populous country in the world, has seen the prevalence of undernourishment stay below ten percent since 2012.³³⁴ We turn now to look at how some of the countries in this category address food security.

330. See generally Donald Feaver & Benedict Sheehy, *Designing Effective Regulation: A Positive Theory*, 38 U.N.S.W. L.J. 961, 961–994 (2015) (discussing how to improve regulatory success).

331. See CONSTITUTION BELGE COORDONNÉE [CONSTITUTION] Feb. 17, 1994, art. 23 (Belg.) (“Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others: . . . (2) the right to social security, to health care and to social, medical and legal aid”); see also CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA [CONSTITUTION] Aug. 21, 1995, art. 43 (Eth.) (Article 43 states “[t]he Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development. . . . The basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs.”).

332. HUNGER MAP 2020, *supra* note 297297; HUNGER MAP 2015, *supra* note 296.

333. *Id.*

334. WORLD FOOD PROGRAM, WFP INDONESIA COUNTRY BRIEF 1 (July 2021), https://docs.wfp.org/api/documents/WFP-0000131309/download/?_ga=2.11932276.1936320079.1631607062-1999282380.1627949247&_gac=1.191371608.1628750317.Cj0KCQjw6s2IBh

(a) Belgium

The Belgian Constitution protects the right to adequate food through its overarching right to “lead a life in keeping with human dignity.”³³⁵ To ensure “human dignity” for every individual, the Constitution mandates all domestic legislation and regulations “tak[e] into account corresponding obligations, and determine the conditions for exercising [the right].”³³⁶ An assessment of Belgium’s existing legal and regulatory framework reveals that it has indeed developed one of the world’s most comprehensive systems to safeguard the full realization of the right to food as part of respect for human dignity.³³⁷

To date, the Belgian legislature has passed over 440 pieces of legislation and implemented regulations (including constitutional amendments) governing all aspects of food security, from matters such as agricultural and rural development, to food and nutrition more broadly.³³⁸ Perhaps most importantly, Belgium has developed a strong institutional framework guaran-

CnARIsAP8RfAijte1n00dzdNnFlqdvsnSTA3rfelpA06-httV6ICNkzrBbudq3J5AaAkRWEALw_wcB (noting that in 2020, the prevalence of undernourishment in Indonesia was 8.3 percent); see *Indonesia Hunger Statistics 2001-2021*, MACROTRENDS, <https://www.macrotrends.net/countries/IDN/indonesia/hunger-statistics> (last visited Sept. 14, 2021).

335. CONSTITUTION BELGE COORDONNÉE [CONSTITUTION] Feb. 17, 1994, art 23 (Belg.).

336. *Id.*; CONSTITUTIONAL AND LEGAL PROTECTION OF THE RIGHT TO FOOD AROUND THE WORLD (2010) 14, U.N. FOOD & AGRIC. ORG. (2010), https://reliefweb.int/sites/reliefweb.int/files/resources/450C6C95C3D0E1C2C12577F500385ECD-FAO_Nov2010.pdf (noting that Belgium recognizes the right to the means necessary to live a dignified life).

337. Belgium – Country Profiles, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=BEL> (last visited Aug. 10, 2021).

338. *Belgium - Agricultural and Rural Development*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/faolex/country-profiles/general-profile/see-more/en/?iso3=BEL&countryname=Belgium&area=agricultural%20and%20rural%20development&link=aHR0cDovL2Zhb2xleC5mYW8ub3JnL2NnaS1iaW4veG1sLmV4ZT9kYXRhYmFzZT1mYW9sZXgmYW1wO3NIYXJjaF90eXBIPXF1ZXJ5JmFtcDt0YWJsZT1hbGwmYW1wO3F1ZXJ5PUFSRUE6QUcQU5EIEITTzpCRUwgQU5EIFQ6QUxMIEFORCBSRVBFQUxFRDpOIEFORCBTVVBFUIM6Ti-BOT1QgUk86WSBBTkQgWjooTCBSIE0pIE5PVCBaOlAmYW1wO3NvcnRfbmFtZT1Ac3ByZkFHJmFtcDtsYW5nPXhtbGYmYW1wO2ZvcmlhdF9uYW1lPUByU0hPUIQmYW1wO3BhZ2VfaGVhZGVyPUVYTUxIJmFtcDtwYWdlX2Zvb3Rlcj1FWE1MRg==> (last visited Mar. 13, 2022); *Belgium – Food and Nutrition*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/faolex/country-profiles/general-profile/see-more/en/?iso3=BEL&countryname=Belgium&area=Food%20and%20nutrition&link=aHR0cDovL2Zhb2xleC5mYW8ub3JnL2NnaS1iaW4veG1sLmV4ZT9kYXRhYmFzZT1mYW9sZXgmYW1wO3NIYXJjaF90eXBIPXF1ZXJ5JmFtcDt0YWJsZT1hbGwmYW1wO3F1ZXJ5PUFSRUE6RkQgQU5EIEITTzpCRUwgQU5EIFQ6QUxMIEFORCBSRVBFQUxFRDpOIEFORCBTVVBFUIM6Ti-BOT1QgUk86WSBBTkQgWjooTCBSIE0pIE5PVCBaOlAmYW1wO3NvcnRfbmFtZT1Ac3ByZkZEMjFtcDtsYW5nPXhtbGYmYW1wO2ZvcmlhdF9uYW1lPUByU0hPUIQmYW1wO3BhZ2VfaGVhZGVyPUVYTUxIJmFtcDtwYWdlX2Zvb3Rlcj1FWE1MRg==> (last visited Mar. 13, 2022) (over 120 regulating agricultural and rural development and over 320 regulating food and nutrition).

teeing the implementation of its laws.³³⁹ The Constitutional Court of Belgium and other independent institutions play a vital role in ensuring the government is upholding fundamental rights, such as the right to human dignity, and their efforts are applauded by the European Commission.³⁴⁰ For example, Trees Merck-Van Goeij and Willem Verrijdt observed, “[i]n the jurisprudence of the ordinary courts, article 23 of the Constitution has received a level of enforceability beyond the will of its drafters. Some jurisprudence even grants the human dignity principle a direct effect, especially in the field of social assistance.”³⁴¹ As a partial result of this regime, Belgium has been one of the most food secure countries in the world, with the prevalence of undernourishment of well below 2.5 percent.³⁴²

(b) Indonesia

Indonesia recognizes the right to food as a subsidiary right of the constitutionally protected right to development and right to social security.³⁴³ Article 28C of the Constitution grants all individuals “the right to develop him/herself through the fulfilment of his/her basic needs.”³⁴⁴ Article 28H protects the “right to social security in order to develop oneself fully as a dignified human being.”³⁴⁵ In 1999, Law No. 39 of 1999 on Human Rights was enacted to protect, promote, and implement human rights and fundamental freedoms in Indonesia. Article 9 of Law No. 39 grants everyone the right to “improve his or her standard of living.”³⁴⁶ In 2012, to further strengthen domestic food security, Indonesia passed Law No. 18 of 2012 on Food.³⁴⁷ This new food law focused on the improvement of food availability and accessibility, and it prioritized food production for self-sufficiency.³⁴⁸ Since the enactment of this new law, the Indonesian government has provided sig-

339. EURO. COMM’N, RULE OF LAW 2020-COUNTRY REPORTS 5, https://ec.europa.eu/info/sites/default/files/rule_of_law_2020_country_reports_2_web.pdf

340. *Id.*

341. Trees Merckx-Van Goeij & Willem Verrijdt, *The Right to Human Dignity in the Belgian Constitution: The Scope of Article 23 of the Constitution and Its Application by the Belgian Constitutional Court*, in INTERNATIONAL ALMANAC, CONSTITUTIONAL JUSTICE IN THE NEW MILLENNIUM 168 (2002).

342. HUNGER MAP 2020, *supra* note 297297; HUNGER MAP 2015, *supra* note 296.

343. CONSTITUTION OF THE REPUBLIC OF INDONESIA [CONSTITUTION] Aug. 18, 1945, rev. 2002, arts. 28(C) ¶ (1), 28(H) ¶ (3).

344. CONSTITUTION OF THE REPUBLIC OF INDONESIA [CONSTITUTION] Aug. 18, 1945, rev. 2002, (C) ¶ (1).

345. CONSTITUTION OF THE REPUBLIC OF INDONESIA [CONSTITUTION] (Aug. 18, 1945, rev. 2002, art. 28(H) ¶ (3)).

346. Law on Human Rights, 1999, art. 9 ¶ (1) (Act. No. 39) (Indon.).

347. Law Concerning Food, 2018, (Act. No. 18) (Indon.).

348. INDONESIA POLICY BRIEF – AGRICULTURE, OECD. (Mar. 2015), <https://www.oecd.org/policy-briefs/indonesia-agriculture-improving-food-security.pdf> (the new food law aims to achieve self-sufficiency through domestic production of staples).

nificant financial support and heavy subsidies to domestic agricultural producers.³⁴⁹

Furthermore, Indonesia established the National Commission on Human Rights in 1993 to “develop a national atmosphere conducive to the exercise of human rights.”³⁵⁰ Subsequently, it developed a series of national plans of action on human rights that detailed the concrete steps for the continuing promotion and protection of human rights.³⁵¹

As a result of these efforts, Indonesia was able to “meet its Millennium Development Goal of halving the number of undernourished people by 2015.”³⁵² The prevalence of undernourishment declined from 19.3 percent in 2001 to 9.3 percent in 2015.³⁵³ Since 2015, Indonesia’s undernourishment rate has stayed between 8.3 percent and 9.2 percent.³⁵⁴

Despite its significant progress in reducing food insecurity, Indonesia still faces three main challenges. First, food accessibility, specifically economic accessibility, remains a major concern among low-income households living in rural areas, “where 14.3 percent of the population live below the poverty line.”³⁵⁵ High food prices in comparison to neighboring countries further exacerbate the hunger situation.³⁵⁶ Second, frequent natural disasters such as “earthquakes, volcanic eruptions, tsunamis and climate related events like floods, droughts, and landslides” impede vulnerable Indonesians’ economic and physical access to food.³⁵⁷ Third, nutritional adequacy continues to pose a serious threat to public health in Indonesia.³⁵⁸ The WFP report indicates 19.4 million Indonesians are unable to meet their dietary needs due to poorly varied diets, such as heavy reliance on rice.³⁵⁹ It

349. *Id.*

350. NATIONAL PLANS OF ACTION FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS – INDONESIA (1998-2003), OHCHR ¶4, <https://www.ohchr.org/Documents/Issues/NHRA/Indonesia.doc> (last visited Mar. 13, 2022).

351. *National Plans of Action for the Promotion and Protection of Human Rights*, OHCHR <https://www.ohchr.org/en/issues/plansactions/pages/plansofactionindex.aspx> (Indonesia has developed three national plans of action for the promotion and protection of human rights. They are National Plan of Action on Human Rights (1998-2003), National Plan of Action on Human Rights (2004-2009), National Plan of Action on Human Rights (2011-2014)).

352. *Indonesia*, THE WORLD FOOD PROGRAM, <https://www.wfp.org/countries/indonesia> (last visited Sept. 15, 2021) [hereinafter *Indonesia*].

353. Macrotrends, *supra* note 334.

354. *Id.* (Indonesia hunger statistics: 9.00 percent in 2018, 8.9 percent in 2017, 9.2 percent in 2016.); *see* WORLD FOOD PROGRAM, *supra* note 334 (noting that the prevalence of undernourishment in Indonesia was 8.3 percent in 2020).

355. *Indonesia*, *supra* note 352.

356. *Id.* (noting that rice, the staple for Indonesians, is “50 to 70 percent more expensive than in neighbouring countries.”)

357. *Id.*

358. Irene I. Hadiprayitno, *Food Security and Human Rights in Indonesia*, 20 DEV. PRACT. 122, 123 (2010).

359. *Indonesia*, *supra* note 352.

is a sad fact that over thirty-seven percent of children under five years old “suffer from stunted growth due to malnutrition,” and nearly twenty-five percent of women of reproductive age suffer from nutritional-deficiency anemia.³⁶⁰ The implicit constitutional protection of the right to food safeguards the Indonesian people’s access to basic food, and it also improves affordability to some extent, although there is still more to be done to address adequacy issues.

(c) Ethiopia

Ethiopia, too, recognizes the right to food as a subsidiary right to a constitutionally protected right—in this case the right to development.³⁶¹ Article 43 of the Constitution grants Ethiopians “the right to improved living standards and to sustainable development”,³⁶² it requires all development activities to work toward a common goal of: “enhance[ing] the capacity of citizens for development and . . . meet[ing] their basic needs.”³⁶³ Nevertheless, although Ethiopia is a country with abundant natural resources and favorable weather conditions for year-round farming,³⁶⁴ it still faces a high level of hunger and undernutrition.³⁶⁵

Researchers have found that Ethiopia’s food insecurity is attributable to ineffective governance and a lack of government accountability, which inevitably results in weak implementation of human rights.³⁶⁶ For example, Husen Ahmed Tura argues that, although Ethiopia has made important progress in designing and developing food security rights, policies, and programs over the past three decades, it has not adopted effective “legislative and judicial measures to enforce the right to food.”³⁶⁷ Tura further recommends that Ethiopia develop a comprehensive legal and institutional framework to ensure compliance with and enforcement of the right to food (along with other underlying rights).³⁶⁸

360. *Id.*

361. Ethiopian Constitution, *supra* note 331, art. 43.

362. *Id.*

363. *Id.*

364. Husen Ahmed Tura, *Achieving Zero Hunger: Implementing a Human Rights Approach to Food Security in Ethiopia*, 40 *THIRD WORLD Q.* 1613, 1618 (2019).

365. *Ethiopia*, WORLD FOOD PROGRAM, <https://www.wfp.org/countries/ethiopia> (last visited Mar. 13, 2022) [hereinafter *Ethiopia*]; see also Dagninet Asrat & Adugnaw Anteneh, *Status of Food Insecurity in Dryland Areas of Ethiopia: A Review*, 6 *COGENT FOOD & AGRIC.* 1, 2 (2020); Tura, *supra* note 364, 1618.

366. Tura, *supra* note 364, at 1613, 1618; see, e.g., Rachel Zuroff, *Protecting Food Security as a Socio-Economic Right in Ethiopia*, 40 *WINDSOR REV. LEGAL & SOC.* 1, 7 (2019) (describing instances where the Ethiopian government has ignored provisions safeguarding land holder rights to the detriment of food security).

367. Tura, *supra* note 364, at 1613.

368. See *Id.*

Another issue for food availability, accessibility, and adequacy in Ethiopia, as Rachel Zuroff argues, is the large-scale land acquisitions and leases by international investors.³⁶⁹ The transfer of these property rights, she argues, poses a grave threat to the food security of Ethiopians, impinging upon the local population's ability to meet its own food needs.³⁷⁰ Ironically, despite the Ethiopian government declaring itself a champion of food security, when it comes to investment, it has been a strong supporter of these major export-oriented land transfers.³⁷¹ By approving the land deals, the Ethiopian government has given large MNCs a "green light" to deprive Ethiopians of the farmland on which they have depended to feed themselves and their families.³⁷² In doing so, the government clearly fails to fulfil its constitutional obligation to provide available, accessible, and adequate food for all.³⁷³ Zuroff proposes a similar solution as Tura, again calling for effective implementation of domestic legislation. For Zuroff, however, the focus is on ensuring people's access to farmland—a critical resource for Ethiopians' food and nutrition.³⁷⁴

Similar to Ethiopia, many other Category B countries encounter chronic hunger and malnutrition. For example, Burundi, the Central African Republic, Somalia, and South Sudan all have been in a near-constant state of food insecurity since independence.³⁷⁵ A significant percentage of their populations (35 to 49.9 percent) are food insecure.³⁷⁶ The continuous cycle of violent conflict in these countries has undermined governments' capacities to implement and enforce laws. These ongoing conflicts have been detrimental not only to food production and distribution, but even more to the economy, pushing more people into extreme poverty and hunger.³⁷⁷ An explicit constitutional protection of the right to food will improve food security situations in these countries; however, only to a certain extent, as conflicts pose a major obstacle to rule of law and development.³⁷⁸

As compared to Ethiopia and many other African countries, Indonesia is a success story. As part of its emancipation from decades of dictatorship,

369. Zuroff, *supra* note 366, at 1-3.

370. *Id.*

371. Tsegaye Moreda, *The Right to Food in the Context of Largescale Land Investment in Ethiopia*, 39 *THIRD WORLD Q.* 1326, 1326, 1327 (2018).

372. Zuroff, *supra* note 366, at 10.

373. *Id.* at 7.

374. *Id.* at 26.

375. VON GREBMER ET AL., *supra* note 239, at 7, 20 (noting that these countries are on the "alarming hunger" list).

376. *Id.* at 7.

377. Seonjou Kang & James Meernik, *Civil War Destruction and the Prospects for Economic Growth*, 67 *J. POL.* 88, 91 (2005).

378. Press Release, U.N.G.A., African States Say Conflict Greatest Obstacle to Continent's Development, As General Assembly Debate Enters Second Week, U.N. Press Release, GA/10507 (Sept. 25, 2006), <https://www.un.org/press/en/2006/ga10507.doc.htm>.

creating meaningful rights and entrenching them in a constitution, along with developing legal institutions, has focused government energy and resources on building up the country.³⁷⁹ It is an important example of how an implicit constitutionally entrenched right to food, even in a lower-income country, can bring about better food security, reduce hunger, and increase nutrition. Through effective implementation of human rights laws, Indonesia has significantly improved food availability and accessibility, although the third dimension of the right to food—adequacy—has yet to be fully addressed, as tens of millions of Indonesians still struggle to meet their dietary and nutritional needs.³⁸⁰ By way of contrast, despite implicit constitutional entrenchment and related legislative efforts, Ethiopia lacks institutional mechanisms and the political will to enforce the right to food.³⁸¹ Its government squanders the country's considerable resources to maintain power.³⁸² As a result, it struggles to ensure food availability and accessibility for a hungry population, and it fails to address adequacy.

In sum, we see that Category B's implicit constitutionally-entrenched right to food supports the argument that the right to food is an indispensable part of the fight for human thriving and for leading a life in human dignity in a range of different countries. Countries in Category B are not all at equal levels of economic development; however, they are reasonably successful within the range of their economic development, with the exception of the conflict-affected countries. For example, as a developed country, Belgium has been one of the most food secure countries in the world, with a rate of undernourishment well below 2.5 percent.³⁸³ As a developing country, Indonesia has achieved food availability and improved affordability, although adequacy remains to be addressed. An implicit constitutional right is often seen as the second best way to ensure food accessibility, availability, and adequacy.

3. Category C: Integration of the Right to Food in Extra-Constitutional Domestic Laws, Policies, and Programs

As noted, Category C countries offer no constitutional protection for a right to food. Instead, several of them incorporate some of the key compo-

379. Benedict Sheehy & Cacik Damayanti, *Issues and Initiatives: Sustainability and Corporate Social Responsibility in Indonesia*, in CAMBRIDGE HANDBOOK OF CORPORATE LAW, CORPORATE GOVERNANCE AND SUSTAINABILITY (Beate Sjaafjell & Christopher M Bruner eds., 2019).

380. *Indonesia*, *supra* note 352.

381. Moreda, *supra* note 371, at 1326-47 (noting that the Ethiopian Government focuses on attracting foreign investments in farmland instead of improving its own people's food security.)

382. Semir Yusuf, *Ethiopia's Power, Security and Democracy Dilemma*, INST. FOR SEC. STUD. (July 15, 2019), <https://issafrica.org/iss-today/ethiopias-power-security-and-democracy-dilemma>.

383. Hunger Map 2020, *supra* note 297; Hunger Map 2015, *supra* note 296.

nents of this right into domestic laws. Similar to Categories A and B, Category C countries yielded some diverse results in terms of curbing food insecurity. For example, the undernourishment rates in the United States, Australia, Denmark, France, Luxembourg, Norway, New Zealand, and the Netherlands are all well below 2.5 percent.³⁸⁴ Syria and Madagascar, however, also Category C countries, are among some of the most food insecure countries on the planet.³⁸⁵

(a) The United States

As one of the wealthiest countries in the world, and one of the world's largest agricultural producers and exporters,³⁸⁶ the United States is a surprising home to a population suffering from hunger or food insecurity. Although the United States does not have food availability issues,³⁸⁷ it does have accessibility issues caused by inequitable food distributions.³⁸⁸ As Elver argues, the United States' failure to entrench food rights into its Constitution has had negative effects on the poor and hungry in what is otherwise a great and wealthy nation.³⁸⁹ In essence, it has left the populace at the mercy of the government of the day.³⁹⁰ A brief review of food insecurity in the United States illustrates the point.

Despite the absence of constitutional provisions on the right to food,³⁹¹ the United States has enacted a variety of legislation and developed a plethora of regulations to address food accessibility and adequacy in the United States.³⁹² Notable pieces of legislation include the Food Stamp Act of

384. Hunger Map 2020, *supra* note 297. *But see* U.S. DEPT. AGRIC., *Food Security and Nutrition Assistance* (Dec. 16, 2020), <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-security-and-nutrition-assistance> (indicating that around ten percent of United States households were food insecure at some time during the year in 2019).

385. VON GREBMER ET AL., *supra* note 239239, at 5 (noting that both Syria and Madagascar are at alarming levels of hunger).

386. Matthew Howden & Kirk Zammit, *Analysis of United States and Australian Agriculture – A Comparison*, 3 ABARES INSIGHTS S 1 (2019).

387. Eve E. Garrow & Jack Day, *Strengthening the Human Right to Food*, 7 U.C. IRVINE L. REV. 275, 277 (2017) (noting that food insecurity in the United States is not caused by food shortage).

388. *Id.* (noting that hunger in the US is “a distribution issue for which the U.S. government must be held to account”).

389. Elver, *supra* note 66, ¶ 59.

390. Garrow & Day, *supra* note 387, at 278.

391. Elver, *supra* note 66, ¶ 59 (noting that the US Constitution does not expressly recognize economic, social and culture rights).

392. *See FNS Documents & Resources*, U.S. DEP'T. AGRIC. FOOD & NUTRITION SERVICE, https://www.fns.usda.gov/resources?F%5B0%5D=resource_type%3A17 (last visited Sept. 23, 2021) (providing a full list of U.S. legislation addressing food accessibility).

1977,³⁹³ the Food Security Act of 1985,³⁹⁴ the Richard B. Russell National School Lunch Act,³⁹⁵ the Emergency Food Assistance Act of 1983,³⁹⁶ the Food and Nutrition Act of 2008,³⁹⁷ and the Healthy, Hunger-Free Kids Act of 2010.³⁹⁸

To ensure the effective implementation of food security laws, the Food and Nutrition Service (“FNS”) was created as a federal agency under the USDA.³⁹⁹ It focuses on “increase[ing] food security and reduc[ing] hunger by providing children and low-income people access to food, a healthful diet and nutrition education in a way that supports American agriculture and inspires public confidence.”⁴⁰⁰ The FNS currently runs fifteen assistance programs attending to the food and nutrition needs of different vulnerable populations.⁴⁰¹ For example, the Supplemental Nutrition Assistance Program (“SNAP”), previously known as the Food Stamp Program, improves food accessibility by providing financial assistance for eligible low-and no-income members of the population to purchase food at participating stores.⁴⁰² It has earned its position as “the centerpiece of the federal government’s response to food insecurity.”⁴⁰³ The National School Lunch Program (“NSLP”) was established under the National School Lunch Act to ensure school-age children’s access to sufficient food and nutrition, addressing both “accessibility” and “adequacy.”⁴⁰⁴ It provides “nutritionally balanced, low-cost or free lunches” to qualified students through subsidies to schools.⁴⁰⁵ An additional program addressing “accessibility” and “adequacy,” the Special Supplemental Nutrition Program for Women, Infants, and

393. The Food Stamp Act of 1977, Pub. L. No. 88-525, 78 Stat. 703 (as amended through Pub. L. No. 108-269, 118 Stat. 2809).

394. The Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1504.

395. The National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 230 (as amended through Pub. L. No. 116-94, 133 Stat. 2534).

396. The Emergency Food Assistance Act of 1983, Pub. L. No. 98-92, 97 Stat. 608 (as amended through Pub. L. No. 115-334, 132 Stat. 4490).

397. The Food and Nutrition Act of 2008, Pub. L. No. 88-525, 78 Stat. 703 (as amended through Pub. L. No. 116-94, 133 Stat. 2534).

398. The Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183

399. *About FNS*, U.S. DEP’T. AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/about-fns> (last visited Sept. 23, 2021).

400. *Id.*

401. *FNS Nutrition Programs*, U.S. DEP’T. AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/programs> (last visited Aug. 13, 2021).

402. *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP’T. AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/retailer/faq> (last visited Aug. 13, 2021).

403. Garrow & Day, *supra* note 387, at 277 (noting that the SNAP is the centerpiece of federal government’s response to food insecurity).

404. *National School Lunch Program*, U.S. DEP’T. AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/nslp> (last visited Mar. 22, 2021).

405. *Id.* (noting that the national school lunch program includes public and non-profit private schools and residential child care institutions).

Children (“WIC”), was launched in 1972 to provide nutrition benefits to low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, as well as infants and children up to age five.⁴⁰⁶ The implementation of food assistance programs has saved millions of Americans from hunger and malnutrition, contributed to the improvement of food security in the United States, and improved, in particular, food accessibility and adequacy.⁴⁰⁷

Like that of Brazil, the American story has not been one of unidirectional success. In 2020, former UN Rapporteur Elver criticized the United States for its “aggressive rollbacks and cuts” to SNAP.⁴⁰⁸ In her report to the UN Human Rights Council, she revealed that the withdrawal of fiscal support from the program had threatened national food security.⁴⁰⁹ She stressed that the withdrawal of support had arisen from the lack of formal recognition of “economic, social and cultural rights” in the U.S. Constitution.⁴¹⁰ In other words, the whims of government and fads of politicians have left millions of people in situations of hunger and malnutrition, despite living in one of the wealthiest nation on earth—a country which has enshrined the constitutional right to carry lethal weapons,⁴¹¹ but not the right to eat. Although an explicit right is the most effective, an implicit constitutional right to food will also help improve food security in all three aspects.

The United States’ approach to food insecurity has come under criticism from academics for its failure to achieve the desired outcomes in availability, accessibility, and adequacy.⁴¹² For example, Eve E. Garrow and Jack Day point out several operational barriers that impede the efficiency of SNAP. They argue that the bureaucratic complexities of the program are overwhelming and discourage public participation.⁴¹³ Furthermore, they note that people often receive insufficient levels of assistance to meet their dietary needs, continuing their vulnerability to hunger and malnutrition.⁴¹⁴

To remedy such issues, Garrow and Day propose taking a different legal approach to food security. They contend that the absence of a right to

406. *Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)*, U.S. DEP’T. AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/wic> (last visited Sept. 23, 2021).

407. For example, millions of children participated in the NSLP. *See National School Lunch Program (NSLP) Fact Sheet*, U.S. DEP’T. AGRIC. FOOD & NUTRITION SERV. <https://www.fns.usda.gov/nslp/nslp-fact-sheet> (last visited Aug. 13, 2021).

408. Elver, *supra* note 66, ¶ 59.

409. *Id.*

410. *Id.*

411. U.S. CONST. amend. II.

412. Garrow & Day, *supra* note 387, at 276 (noting that “[t]he United States perform[s] . . . poorly compared to other rich nations when it comes to food security”).

413. *Id.* at 279–80.

414. *Id.* at 279.

food places parts of the populace at risk of hunger and malnutrition.⁴¹⁵ They argue in turn that “the most promising path to food security [in the United States] is through the establishment of the right to food.”⁴¹⁶ They believe, as does Elver, that this rights-based approach is the most likely to succeed in ensuring that basic food security issues are addressed.⁴¹⁷ This article argues that removing control over that right from the government of the day and enshrining it in the Constitution would be an ultimate and appropriate solution. Indeed, a constitutional right to food is likely to produce the best possible results and improve food security in all three aspects.

(b) Australia

Similar to the United States, Australia does not have food availability issues.⁴¹⁸ It produces significantly more food than required for domestic consumption, and it exports approximately two-thirds of agricultural production.⁴¹⁹ Like its counterpart in the United States, the Australian Constitution does not protect the right to food, explicitly or implicitly.⁴²⁰ In fact, the Australian Constitution does not contain a bill of rights.⁴²¹ However, Australia performs relatively well in ensuring food security.⁴²² Living in one of the world’s most food secure countries,⁴²³ most Australians have adequate access to “a wide variety of healthy and nutritious foods,”⁴²⁴ although a small population is still susceptible to food insecurity, such as low-income

415. *Id.* at 276.

416. *Id.* at 276.

417. *Id.*

418. *See* Austl. Gov’t Austl. Trade & Inves’t Comm’n, *Australia: Shaping the Future of Food and Agriculture* (Feb. 2019), at 5, <https://www.austrade.gov.au/ArticleDocuments/1358/Agriculture40-brochure.pdf.aspx> (noting that Australia is a leading exporter and that it ranks sixth out of 113 countries in the Economist Intelligence Unit’s 2018 Global Food Security Index).

419. *See Why Australia for Agriculture 4.0*, AUSTL. GOV’T AUSTL. TRADE & INVES’T COMM’N, <https://www.austrade.gov.au/agriculture40/why-australia> (last visited Sept. 23, 2021).

420. Philip Lynch, *Harmonising International Human Rights Law and Domestic Law and Policy: the Establishment and Role of the Human Rights Law Resource Centre*, 7 MELB. J. INT. LAW 225, 225-26 (2006).

421. COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT July 9, 1900 (Austl.).

422. Leonie Wood & Natasha Grivas, *David Littleproud Claims Australia has the Most Secure Food Security in the World. Is He Correct?*, ROYAL MELB. INST. TECH. U. (May 18, 2020), <https://www.rmit.edu.au/news/all-news/2020/may/coronavirus-australia-food-security-supermarket-shelves>.

423. AUSTL. GOV’T DEP’T OF AGRIC., WATER, & ENV’T, ANALYSIS OF AUSTRALIA’S FOOD SECURITY AND THE COVID-19 PANDEMIC 2 (2020), https://daff.ent.sirsidynix.net.au/client/en_AU/search/asset/1030201/0.

424. *Id.*; *see also* Wood & Grivas, *supra* note 422 (noting that “Australia enjoys a very high level of food security. The nation produces an abundance of food, exports far more than it needs, and has ample alternative sources of certain foods should they become scarce.”).

earners, and Indigenous, culturally and linguistically diverse (“CALD”) individuals, and the socially isolated.⁴²⁵

Despite the absence of a bill of rights in the Federal Constitution, protections for human rights, however limited, are found in federal legislation,⁴²⁶ as well as in the state constitutions and legislation generally.⁴²⁷ Similar to Belgium, Australia has established one of the world’s most comprehensive legal and regulatory frameworks governing all aspects of food security.⁴²⁸ To date, it has enacted hundreds of pieces of legislation and regulations ensuring food availability, accessibility, and adequacy.⁴²⁹ Furthermore, Australia has also developed a well-functioning administration that ensures the implementation of its laws.⁴³⁰ Given that Australia does not have food availability issues, the focus has been placed on improving accessibility and adequacy.⁴³¹

Australian governments at both the federal and state levels provide payments and other support to the vulnerable populations,⁴³² such as low-income individuals and the Aboriginal and Torres Strait Islander peoples.⁴³³ It also provides the Food Relief program to “increase Emergency Relief providers’ access to a cost-effective supply of food items, across Australia.”⁴³⁴ Furthermore, Australia has developed strong food safety standards to improve adequacy.⁴³⁵ For example, through the National Food Standards

425. Kate Rosier, *Food insecurity in Australia: What is it, Who Experiences it and How Can Child and Family Services Support Families Experiencing It?* AUSTL. INST. FAM. STUD., (Aug. 2011), <https://aifs.gov.au/cfca/publications/food-insecurity-australia-what-it-who-experiences-it-and-how-can-child>.

426. *E.g. Racial Discrimination Act 1975* (Act No. 52/ 1975) (Cth) (Austl.).

427. *E.g. Victorian Charter of Human Rights and Responsibilities Act 2006* (Act No. 43/ 2006) (Vic., Austl.) (providing an additional protection for human rights).

428. For a full list of the legislation, see *Australia - Country Profiles*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=AUS> (last visited Sept. 15, 2021).

429. *Id.*

430. *See generally*, CHERYL SAUNDERS & KATHERINE LE ROY, *THE RULE OF LAW* (2003).

431. *See What We’re Doing about Food and Nutrition*, AUSTL. GOVT. DEPT. HEALTH, <https://www.health.gov.au/health-topics/food-and-nutrition/what-were-doing> (last visited Nov. 26, 2021).

432. *See Benefits and Payments*, AUSTL. GOV’T, <https://info.australia.gov.au/information-and-services/benefits-and-payments> (last visited Sept 15, 2021).

433. Mitchell Bowden, *Understanding Food Insecurity in Australia* (2020) 2 (2020), https://aifs.gov.au/cfca/sites/default/files/publication-documents/2009_cfca_understanding_food_insecurity_in_australia.pdf.

434. *Food Relief*, AUSTL. GOV’T DEPT. OF SOC. SERV., <https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/financial-wellbeing-and-capability-overview-of-changes/food-relief> (last visited Nov. 26, 2021).

435. *Food Safety Standards*, FOOD STANDARDS AUSTL. N.Z., <https://www.foodstandards.gov.au/foodsafety/standards/Pages/Foodsafetystandards.aspx> (last visited Sept. 15, 2021).

Australia New Zealand Act 1991, Australia implements strict food standards to protect public health and safety and improve adequacy.⁴³⁶ To guarantee the implementation of these standards, all states and territories have also established their own food agencies, regulating and continuously monitoring the entire food supply chain.⁴³⁷

(c) Syria and Madagascar

Syria and Madagascar are representative examples of low-income countries that, like their high-income counterparts in the United States and Australia, lack explicit or implicit constitutional rights to food. According to the WFP, a record 12.4 million Syrians, which is approximately sixty percent of the population, struggle to “access a basic meal.”⁴³⁸ An additional 1.8 million Syrians are at immediate risk of hunger and malnutrition.⁴³⁹ Similarly, Madagascar is at an “alarming” level of hunger: more than thirty-five percent of the population is food insecure,⁴⁴⁰ and chronic malnutrition is marked as one of the top public health concerns in the country.⁴⁴¹ Syria’s food insecurity derives from decade-long conflicts, mass displacement, and, most recently, the economic pressure induced by COVID-19.⁴⁴² In Madagascar, food insecurity is the result of a combination of factors. According to the FAO and the WFP, in addition to extreme weather conditions,⁴⁴³ political instability also impedes Madagascar’s government’s institutional capacity to implement its economic and development plans, worsening food vulnerability.⁴⁴⁴ In addition to the lack of constitutional protection of the right to food, neither Syria nor Madagascar has an effective legal or institutional framework to protect human rights, let alone peoples’ access to ade-

436. See *Food Standards Australia New Zealand Act 1991* (Act No. 118/1991) (Austl.).

437. *Food Safety Laws & Legislation New South Wales*, AUSTL. INST. FOOD SAFETY, <https://www.foodsafety.com.au/laws-requirements/location/new-south-wales> (last visited Sept. 15, 2021) (for example, the New South Wales (“NWS”) Food Authority is responsible for overseeing food safety across the entire NSW food industry; its role includes “food business licensing, conducting food business inspections (in partnership with local councils), managing food labelling requirements, specifying food safety training requirements . . . publishing the NSW Name & Shame List, providing food recall information.”).

438. *Syria Emergency*, WORLD FOOD PROGRAM, <https://www.wfp.org/emergencies/syria-emergency> (last visited Aug 15, 2021) [hereinafter *Syria Emergency*].

439. *Id.*

440. VON GREBMER, ET AL., *supra* note 239, at 7.

441. *Madagascar*, WORLD FOOD PROGRAM, <https://www.wfp.org/countries/madagascar> (last visited Sept. 23, 2021) [hereinafter *Madagascar*].

442. *Syria Emergency*, *supra* note 438.

443. *Madagascar*, U.N. FOOD & AGRIC. ORG., <http://www.fao.org/emergencies/countries/detail/en/c/161541/> (last visited Mar. 13, 2022) (noting that “Madagascar is the country most exposed to cyclones in Africa and one of the world’s most vulnerable countries to the effects of climate change. Frequent natural disasters and locust threats negatively impact households’ livelihoods, pushing thousands of people into poverty and hunger.”).

444. *Madagascar*, *supra* note 441.

quate food and nutrition.⁴⁴⁵ Again, all of these factors illustrate the complexity of food security and mitigate overly simple narratives.

In sum, Category C jurisdictions can be best described as a mixed group. Top performers such as Australia address all three dimensions of the right to food,⁴⁴⁶ although a small population still experiences food insecurity.⁴⁴⁷ Middle performers such as the United States have largely improved their peoples' social and economic access to sufficient, safe, and nutritious food, but much remains to be done. Meanwhile, bottom performers, such as Syria and Madagascar, still struggle to ensure access to basic food items, let alone adequate food. Furthermore, similar to Categories A and B, the case studies of Category C jurisdictions also confirm the importance of establishing a comprehensive legal and institutional framework for the compliance with and enforcement of right to food.

C. Conclusions Drawn from the Case Studies

We believe the case studies above provide some support for the argument that developing countries in Category A have been relatively successful in protecting food security, countries in Category B have been reasonably successful within a range, while Category C countries have been markedly divergent. Further, with respect to Category C, wealthy countries such as the United States have been less successful than one might expect in terms of food security.

The case studies provide two insights from which we draw inspiration. First, the presence of a right to food in all three categories leads us to conclude that the rights-based approach has wide recognition as an important and potentially powerful tool in addressing availability, accessibility, and adequacy issues of food security. Second, despite all categories having both high performers and low performers in terms of availability, accessibility, and adequacy of food, we observe that high performers across the case studies of the three categories share a common feature: They all have strong legal institutional frameworks to safeguard citizens' rights and so secure better availability, accessibility, and adequacy of food. Thus, law is a critical component in the complex puzzle of delivering successful food security programs.

Additionally, we note that strong legal institutions, including enforcement mechanisms, have proven to be instrumental in maintaining and im-

445. Freedom House, *Freedom in the World 2018 – Madagascar*, REFWORLD (Sept. 5, 2018), <https://www.refworld.org/docid/5b964c964.html> (noting that in Madagascar, “the judiciary remains weak, and government corruption and a lack of accountability persist”); *see also Syria Events of 2020*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2021/country-chapters/syria#> (last visited Nov. 26, 2021) (discussing human rights issues in Syria).

446. Wood & Grivas, *supra* note 422 (noting that “Australia enjoys a very high level of food security. The nation produces an abundance of food, exports far more than it needs, and has ample alternative sources of certain foods should they become scarce.”).

447. *See* Rosier, *supra* note 425.

proving human rights standards in food security. Admittedly, economically-disadvantaged developing countries in all categories are more prone to chronic hunger and malnutrition as compared to rich developed countries.⁴⁴⁸ There is no doubt that the relationship between poverty and food insecurity is intertwined,⁴⁴⁹ and further, that a holistic approach to addressing the different and interrelated causes of food insecurity is critical. We argue, however, that regardless of the approach chosen, it is essential to success to establish robust rights backed-up by effective enforcement mechanisms. Those mechanisms are necessary to ensure compliance, and thus, to achieve the desired outcome of food security. As noted, we believe the case studies provide a basis for arguing that developing countries in Category A have been relatively successful while some wealthy countries in Category C have been less successful than expected in terms of food security. Countries falling into Category B have median levels of success.

The analysis of the eleven countries which we group into three different categories is not based on level of development, but on the basis of the quality of their respective rights to food. This novel approach provides us with evidence to argue that an important part of the solution to the complex problem of global food insecurity is the creation of constitutional rights to food. The constitution, as the highest level of the law in any jurisdiction, provides the ultimate governing rules for states to follow. As Lambek and Claeys contend, “[s]tates generally cannot derogate from constitutionally protected rights, and often, constitutionally protected rights provide citizens a means to challenge legislation or government actions and inactions that violate the right to food by providing an individual cause of action before a court.”⁴⁵⁰ As such, constitutional amendments protecting the right to food will be able to do what international treaties have not. Specifically, they can lead to the structural changes within governments needed to improve food security for citizens.

Similarly, the UN Special Rapporteur also advocates constitutional reforms to establish the right to food in the domestic setting, arguing that “[c]onstitutional provisions . . . can be effective means of promoting the progressive realization of the right to food,” as they provide “an appropriate institutional structure” to “ensure . . . [s]tates adequately address various sectors that impact significantly on various dimensions of food security.”⁴⁵¹

448. See Faareha Siddiqui, Rehana A. Salam, Zohra S. Lassi & Jai K. Das., *The Intertwined Relationship Between Malnutrition and Poverty*, 8 FRONTIERS PUB. HEALTH 1, 1–5 (2020).

449. See generally Alexandra Holden, *Solve Hunger with Anti-Poverty Policies, Not Anti-Hunger Policies*, 44 HUM. RTS. 21, 21–25 (2019) (noting that to eliminate hunger, it is important to eliminate poverty first); see also Bragdon & Hayes, *supra* note 77, at 1307.

450. Lambek & Claeys, *supra* note 88, at 751.

451. Hilal Elver (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food: Access to Justice and the Right to Food: The Way Forward*, ¶ 29 U.N. Doc. A/HRC/28/65 (Jan. 12, 2014) [hereinafter *Access to Justice and the Right to Food*].

Given the reasons above, this article suggests that, ideally, a rights-based approach to food security should encompass two key components: a constitutionally protected right to food and effective legal institutions to safeguard the enforcement of the right.

D. *Legal Elements of an Effective Right to Food*

As noted in the discussion of international instruments, there is no international regulatory infrastructure to ensure governments around the world protect international rights to food. Accordingly, we believe that an effective right to food must be established by the domestic laws of the state. Further, we argue that a rights-based approach to food security should be entrenched in constitutions. Constitutional entrenchment obligates states, as duty bearers, to ensure food security for all at the domestic level.⁴⁵² Individuals, as rights holders, are entitled to seek redress through the courts if their constitutional rights are infringed.⁴⁵³ As such, the constitution holds special import with respect to this fundamental human need, the need for food, and it provides a right to food security. It is not the obligation of, nor is it within the reach of, the individual alone to create the food systems necessary for ensuring that food is available, accessible, and adequate. That obligation is a government obligation. Where the government is failing to address food security at a systemic level, as evidenced by higher levels of hunger and malnutrition, citizens need an entrenched constitutional right to force the government to direct resources to this most fundamental of all human needs. Such constitutionally entrenched rights offer citizens an important avenue to hold states accountable for rights violations generally and, in this case, the critical right to food.⁴⁵⁴ Where such a constitutional right exists, states would be required to create the regulatory infrastructure and dedicate the resources necessary to ensure the right to food is realized in national contexts.⁴⁵⁵

To achieve this goal, states must develop comprehensive rights-based legal frameworks, and include not only laws and regulations directly targeting the elimination of hunger and malnutrition, but also other laws that may affect food security. We have identified four areas which will require government attention for the development and implementation of a constitutionally entrenched right to food.

First, it is vitally important that states provide effective safety nets to address food insecurity while they work on developing and implementing comprehensive national plans to promote the progressive realization of the

452. Elver, *supra* note 66, at ¶ 60 (noting that “[t]here exists a fundamental difference between a legal entitlement and a generalized affirmation of charity or moral responsibility”).

453. *Id.*

454. *Id.*

455. See SCOT. HUM. RTS. COUNCIL, *supra* note 186, at 2 (establishing that approaches to ensure human rights be grounded in domestic and international laws).

right to food. Emergency food relief services and other social welfare programs have saved many vulnerable individuals from the immediate threat of hunger and malnutrition and need to be maintained.⁴⁵⁶

Second, in this area, effective administrative and policy measures are needed to eliminate any significant gaps between law and implementation. Administrative arrangements and accountability mechanisms must be developed, as they are “paramount to ensuring that the right to food and its correlative obligations are being implemented.”⁴⁵⁷ A focus on administration of the right is particularly important in this area of government activity because it addresses the needs of the most vulnerable and disenfranchised parts of the population. In particular, the realization of the right to food requires coordinated efforts across different agencies and sectors at all levels of government.⁴⁵⁸ A clear and transparent allocation of responsibilities across different government agencies helps strengthen accountability and coordination.⁴⁵⁹

Third, courts must be given the power to adjudicate cases pertaining to the realization of the right to food and the power to provide appropriate remedies in case of violations.⁴⁶⁰ In countries with judicial independence, courts have proven to be powerful channels for changing the behavior of governments, forcing administrations to follow the laws of the land.⁴⁶¹ Where a constitutionally entrenched right to food is ignored, under-resourced, or otherwise inadequately implemented, the courts have the power to sanction governments, hold executives accountable, and force them to fulfil their constitutionally-mandated obligations.⁴⁶²

Finally, the creation of a constitutional right and the related regulatory infrastructure will not address all underlying causes of food insecurity. States will need to consider broader issues negatively impacting food security, such as agricultural law and policy, related rural development matters, and even employment policy more broadly, as they all affect the various aspects of food security. Admittedly, this is not a short and simple list. It re-

456. Narula, *supra* note 76, at 747–48.

457. *Access to Justice and the Right to Food*, *supra* note 451, at ¶ 29.

458. Mariana Chilton & Donald Rose, *A Rights-Based Approach to Food Insecurity in the United States*, 99 AM. J. PUB. HEALTH 1203, 1207 (2009).

459. *Id.*

460. *See e.g.*, Tura, *supra* note 364, at 1619 (noting that food insecurity in Ethiopia was exacerbated by “inadequate access to justice and proper policies, as well as a dearth of institutions that support food sovereignty”).

461. Michel Rosenfeld, *The Rule of Law and the Legitimacy of Constitutional Democracy*, 74 S. CAL. L. REV. 1307, 1307-1352 (2001).

462. *See, e.g.*, Diane P. Wood, *The Rule of Law in Times of Stress*, 70 U. CHI. L. REV. 455, 464–65 (2003) (discussing how the Supreme Court of the United States “balanced constitutional rights against the claims of governmental needs.”).

flects the FAO's view that there are multiple dimensions of food insecurity and that such insecurity is a complex problem.⁴⁶³

In the developing world in particular, states seeking to address food insecurity by entrenching the right to food in the constitution will need to address the formidable obstacles posed by MNCs and IFIs.⁴⁶⁴ In the global context, since the 2008 global food crisis,⁴⁶⁵ MNCs and IFIs have “steered the food rights agenda”—and it should surprise no one that they have not done so toward availability, accessibility, and adequacy, but toward a more profitable but unnecessary increase in agricultural production worldwide.⁴⁶⁶ MNCs and IFIs have justified their large-scale global land grabs by claiming that they can provide a solution to global food insecurity.⁴⁶⁷ This anti-food security land grab strategy undermines the ability of subsistence farmers and others reliant on the land to feed themselves,⁴⁶⁸ while also having little to do with food security needs and everything to do with private profit.⁴⁶⁹ Increasing food production will not solve global food insecurity, for as the science has demonstrated, food security is not always a matter of under-production.⁴⁷⁰

Further, it must be noted that MNCs and IFIs have not complied with the existing rights-based legal framework and have failed to address human rights violations.⁴⁷¹ As multi-jurisdictional actors, their corporate activities are largely governed by voluntary codes of conduct.⁴⁷² A constitutionally entrenched rights-based framework would necessarily apply to corporations, including powerful MNCs and IFIs. These corporate groups need to be lim-

463. STATE OF FOOD 2013, *supra* note 8, at 14, 15.

464. Narula, *supra* note 76, at 691 (noting that “while corporate sector accountability and the responsibility of international financial institutions (IFIs) to ensure social and economic rights are now at the forefront of the globalization discourse, greater attention must be paid to how these actors can be held accountable under international law.”).

465. Kathryn Bowen, *Review of Food Crises and the WTO by Baris Karapinar and Christian Häberli (Eds.)*, 32 BERKELEY J. INT'L L. 445, 445 (2014) (noting that the food crisis “was characterized by a sharp increase in world prices for major agricultural commodities, including wheat, rice, maize, and oilseed crops.”).

466. Elver, *supra* note 86, at 29 (noting that MNCs advocate for “supply-oriented high yield industrial agriculture.”).

467. EnviroNews Nigeria, *Land Grabbing Prevalent in Food Insecure Countries* (July 30, 2015), <https://earthjournalism.net/stories/land-grabbing-prevalent-in-food-insecure-countries#:~:text=Investors%20claim%20that%20land%20grabs,family%20farmers%20vulnerable%20to%20exploitation,>

468. Cordes & Bulman, *supra* note 74, at 110.

469. Elver, *supra* note 86, at 29.

470. *Id.*

471. Narula, *supra* note 76, at 729–66.

472. See generally Nien-hê Hsieh, *Voluntary Codes of Conduct for Multinational Corporations: Coordinating Duties of Rescue and Justice*, 16 BUS. ETHICS Q. 119, 119–35 (2006).

ited within the national context⁴⁷³ to ensure that they operate without exemptions and have limited access to rights drawn from international conventions and bodies such as the WTO, where state-based powers and policies have been curtailed in favor of the concerns of IFIs and MNCs.⁴⁷⁴ MNCs and IFIs should be accountable for their human rights impacts in national contexts. Similarly, although corporations, including MNCs and IFIs, are not legal subjects under international law in the context of food rights,⁴⁷⁵ their profit pursuits need to be subordinated to states' obligations to protect their citizens' from human rights violations, including MNCs' and IFIs' actions which may lead to the breach of citizens' right to food. They should be regulated in their actions so that local and public food systems sufficient to make food available, accessible, and adequate for the populace are able to thrive.⁴⁷⁶

The creation and successful implementation of the proposed constitutional right to food would obviously encounter stiff opposition from several corners. First, there is the necessity for a strong and inclusive political will. The rights-based approach is dependent on public intervention; however, governments, as they are comprised of elected representatives seeking to secure re-election, have their own diverse and often conflicting agendas. Governments beholden to regular election cycles battle to stay in power and thus struggle to see beyond their own electoral ambitions and may fail to govern for broad public good considered over the longer term. Within the nation-state, governments may be seeking to secure the vote from an important sector associated with food production, processing, or distribution and, as a result, ignore the larger social and global contexts in which their political agendas are located.⁴⁷⁷ They may also seek to foster growth in international markets for local commodities, promote foreign investment in local agriculture, or develop policies that destroy local subsistence farming practices for purposes of cash-cropping. In such contexts, governments may collude with MNCs or local groups to suit their own agendas, even conspiring with MNCs and groups to gain individual private benefits. Thus, a lack of political commitment for the right to food poses a major obstacle to the effective implementation of human rights standards in food security.⁴⁷⁸

473. Menno T. Kamminga, *Multinational Corporations in International Law* (2017), DOI: 10.1093/OBO/9780199796953-0049 (noting that "multinational corporations are subject [...] to the domestic laws of the different states in which they operate.").

474. See generally *What we do*, WORLD TRADE ORG. ["WTO"], https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm (last visited Nov. 25, 2021) (providing further information about the WTO).

475. Narula, *supra* note 76, at 726.

476. *Id.* at 725.

477. See Lambek & Claeys, *supra* note 88, at 759, 764–65.

478. *Id.* (noting that without widespread political support, governments are unlikely to respond to requests for legislation).

Assuming one could overcome the basic problem of political will, a plan to address the regulatory design for implementing the right to food would be important. A right without regulatory infrastructure is unlikely to feed the hungry. Elver draws attention to this issue in her article.⁴⁷⁹ She points out that, although “[a]ccountability and enforceability mechanisms are crucial components to legislation,” government’s reluctance to adopt “legislation with teeth” hinders the progressive realization of the right to food.⁴⁸⁰

Finally, even where there is strong political will to adopt the right to food as a constitutional right, many governments, particularly the economically disadvantaged, still find meeting the demand to be a challenge. Limited resources will always be a challenge in the fight against food insecurity.⁴⁸¹ As a complex problem and with due regard the limitations of each individual frame, the issue is to avoid looking for clear, simple, but wrong solutions. Nevertheless, we believe there is a strong case for a constitutionally-entrenched right as a critical building block of the foundation necessary to combat global hunger.

In sum, a constitutionally entrenched rights-based approach provides critical support for realizing the right to food in national contexts, contributing to an end to food insecurity, and is an approach that should be more widely adopted. Nonetheless, challenges remain for the successful implementation of this approach.

V. CONCLUSION

We have argued that the three frames of technology, economics, and business are insufficient to understand and address global food insecurity. While global food insecurity—lack of availability, accessibility, and adequacy—cannot be solved without these frames, the lack of a human rights frame is misleading, incomplete, and in a context of dynamic adaptive complex systems, likely to have many unintended consequences. An effective solution requires a broader, holistic frame, one that is informed first by human rights.

A human rights-based approach integrates social context, i.e., human rights norms and principles, in the design, implementation, monitoring, and assessment of legislation, regulations, policies and programs.⁴⁸² It offers a legal basis and guidance for states to develop a framework that respects, protects, and fulfils the right to food. Particularly, the successful implementation of the rights-based approach to food security is grounded on equity rather than on wealth, and where there has been a breach of those rights, the

479. See Elver, *supra* note 86, at 21.

480. *Id.*

481. See Narula, *supra* note 76, at 704.

482. *Id.* at 700.

legal infrastructure necessary to extract accountability through the courts and elections.⁴⁸³ Without legal or electoral accountability, human rights amount to moral rights or pious sentiments. A constitutionally protected right to food increases the state's risk of legal accountability for failure to uphold the right.⁴⁸⁴ It empowers individuals and communities to seek remedies in case of violations of that right.⁴⁸⁵

We have argued that while agricultural science and economics are important frames, they are insufficient for solving the complex problem of food insecurity on their own. Further, we have argued that a rights-based approach is a critical part of the solution. We believe that combining the rights-based approach as a complement to natural science, economic, and business solutions is the key to solving the problem of food insecurity.

Over the last few decades, the world has made some encouraging progress in developing rights-based legal and institutional frameworks to ensure food security.⁴⁸⁶ Over thirty states provide explicit constitutional protection of the right to food; some protect this right through other human rights enshrined in their constitutions; and others incorporate the key components of the right to food into domestic laws, policies, and social welfare programs.⁴⁸⁷ In practice, the right to food campaigns at the domestic level have also achieved some noticeable success.⁴⁸⁸ Nevertheless, the world is still not on track to achieve Zero Hunger by 2030.⁴⁸⁹ There remains much work ahead, and it is imperative that states take affirmative, positive steps to protect and promote the right to available, accessible, and adequate food.

483. See Chilton & Rose, *supra* note 458, at 1204–05.

484. See, e.g., Fred L. Morrison, *The Liability of Governments for Legislative Acts in the United States of America*, 46 AM. J. COMPAR. L. 531, 531–47 (1998) (discussing government liability for unconstitutional actions).

485. Elver, *supra* note 86, at 7 (noting that “[a] legally enforceable right to food is a powerful tool to eliminate root causes of hunger and food insecurity.”)

486. Lambek & Claeys, *supra* note 88, at 744; see also Elver, *supra* note 86, at 3; Narula, *supra* note 76, at 696 (noting that “the right to food campaigns have taken root in many countries around the world”).

487. Narula, *supra* note 76, at 696.

488. *Id.*

489. 2016 Interim Report, *supra* note 1844, ¶¶ 3–4.