

## ARTICLES

### CONCEPTUALIZING MULTI-LEVEL LEGAL SYSTEMS TO ADDRESS GLOBAL FOOD SECURITY: THE HARD LAW-SOFT LAW INTERFACE OF INTERNATIONAL LAW AND CORPORATE SOCIAL RESPONSIBILITY

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#### ABSTRACT

This Article argues that the Zero Hunger Sustainable Development Goal (SDG) has been threatened by a combination of the COVID-19 pandemic, the Russian invasion of Ukraine, and climate change. Given that global food security is a well-recognized and fundamental human right worthy of protection, this Article examines the existing legal regimes—from the international, through the regional and national to organizational levels. Recognizing the critical role of commercial activities and enterprises in global food security, this Article argues that there is a need for direct, purposeful engagement by companies of all sizes, from multinational corporations (“MNCs”) to small and midsize enterprises (“SMEs”) to address global food security. This Article demonstrates that it can be done as a form of corporate social responsibility (“CSR”), a global policy with national and organizational implementations. It then examines India and Indonesia as two jurisdictions where CSR laws have been enacted to address the specific needs of those societies and especially those members of society without sufficient resources to address their own needs. After a brief review of the legislation, a range of potential reforms are developed which would support a return to the zero hunger trajectory.

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## TABLE OF CONTENTS

- I. INTRODUCTION
  - A. *The Global Food Crisis in the Aftermath of the COVID-19 Pandemic*
  - B. *Structure of the Article*
- II. THE KEY DRIVERS BEHIND DETERIORATING GLOBAL FOOD SECURITY
  - A. *Traditional Causes of Food Insecurity*
  - B. *Emerging Factors Affecting Food Security*
    - 1. *The Challenges Arising from the COVID-19 Pandemic*
      - a. *Availability*
      - b. *Physical access to food*
      - c. *Economic access to food*
    - 2. *The Russia-Ukraine War*
    - 3. *Climate Change*
    - 4. *Summary*
- III. THE RIGHT TO FOOD AND THE EXISTING MECHANISMS IN ADDRESSING FOOD INSECURITY
  - A. *The Right to Food in International Law*
  - B. *The Right to Food in National Laws*
  - C. *The Role of Corporations in Addressing Global Food Insecurity*
- IV. NEW APPROACHES TO FOOD SECURITY
  - A. *Public-Private Partnerships and Collaborations*
  - B. *Shifting Towards Hard Law at Both the International and National Levels*
    - 1. *CSR Regulation at the International Level*
      - a. *US FTAs*
      - b. *EU FTAs*
    - 2. *CSR Regulation at the National Level*
      - a. *Domestic CSR regulation to ensure food availability and accessibility: the case studies of India and Indonesia*
      - b. *Challenge: to what extent should CSR be regulated to improve food security?*
- V. CONCLUSION

## I. INTRODUCTION

*A. The Global Food Crisis in the Aftermath of the COVID-19 Pandemic*

In the past few decades, developments in agricultural science and technology have significantly improved agricultural productivity and food security.<sup>1</sup> International food aid programs and domestic social welfare schemes have also enhanced food availability, accessibility, and adequacy to some extent.<sup>2</sup> Despite these positive signs, the United Nations (“UN”) research reveals that food insecurity remains a persistent issue, and worse, the world is moving backwards with respect to the Sustainable Development Goals (“SDGs”) of ending global hunger and all forms of malnutrition (known as “the Zero Hunger SDG”) by 2030.<sup>3</sup>

Prior to the COVID-19 pandemic, the world was on a trajectory to achieve the Zero Hunger SDG. The hope that the food security trajectory would reverse again, however, has been frustrated by challenges arising from the economic and societal aftermath of the pandemic, the Russia-Ukraine war, and intensification of climate change related weather events.<sup>4</sup> The UN World Food Program (“WFP”) suggests that the world is facing “a global hunger crisis of unprecedented proportions.”<sup>5</sup> The global management consulting firm, McKinsey & Company (“McKinsey”), also sees the world as experiencing a global food crisis that is likely to be “more pronounced” than the one that occurred in 2007–2008.<sup>6</sup>

The data presented below in Table 1 showing declining global food security

1. Robert H. Trudell, *Food Security Emergencies and the Power of Eminent Domain: A Domestic Legal Tool to Treat A Global Problem*, 33 SYRACUSE J. INT’L L. & COM. 277, 296 (2005); Benedict Sheehy & Ying Chen, *Let Them Eat Rights: Re-Framing the Food Insecurity Problem Using a Rights-Based Approach*, 43 MICH. J. INT’L L. 631, 639 (2022).

2. Anupama Panghal et al., *Global Food Security Post COVID-19: Dearth or Dwell in the Developing World?*, 114 AGRON J. 878, 878-884 (2022); see also Stuart J. Smyth, Steven R. Webb, & Peter W.B. Phillips, *The Role of Public-Private Partnerships in Improving Global Food Security*, 31 GLOB. FOOD SEC. 105, 105-18 (2021).

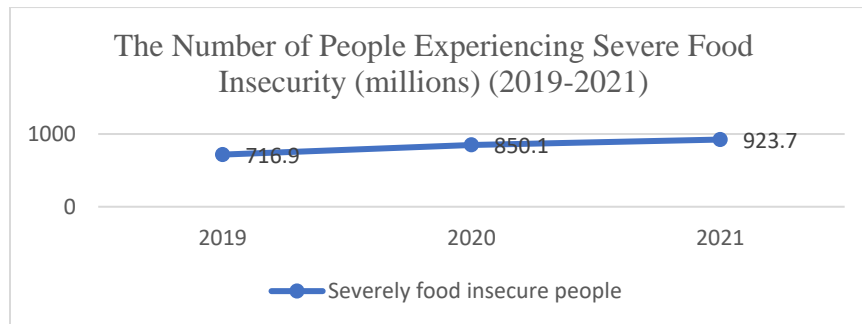
3. The United Nations, *World is Moving Backwards on Eliminating Hunger and Malnutrition, UN Report Reveals*, U.N. NEWS (Jul. 6, 2022), <https://news.un.org/en/story/2022/07/1122032> [<https://perma.cc/7DHA-KGPA>].

4. Daniel Aminetzah, Artem Baroyan, Nicolas Denis, Sarah Dewilde, Nelson Ferreira, Oleksandr Kravchenko, Julien Revellat & Ivan Verlan, *A Reflection on Global Food Security Challenges amid the War in Ukraine and the Early Impact of Climate Change* (Aug. 17, 2022), <https://www.mckinsey.com/industries/agriculture/our-insights/a-reflection-on-global-food-security-challenges-amid-the-war-in-ukraine-and-the-early-impact-of-climate-change> [<https://perma.cc/9V5H-H4S4>].

5. The World Food Programme, *Emergency: Global Food Crisis*, <https://www.wfp.org/emergencies/global-food-crisis> [<https://perma.cc/KU7S-CKLG>] (last visited Mar. 30, 2023) [hereinafter *Emergency: Global Food Crisis*]; see also The World Food Programme, *A Global Food Crisis - 2023: Another Year of Extreme Jeopardy for Those Struggling to Feed Their Families*, <https://www.wfp.org/global-hunger-crisis> [<https://perma.cc/2YBM-KLRZ>] (last visited Oct. 3, 2023).

6. Aminetzah et al., *supra* note 4.

was extracted from a report (“SOFI report”) jointly published by the Food and Agriculture Organization (“FAO”), International Fund for Agricultural Development (“IFAD”), the United Nations International Children’s Emergency Fund (“UNICEF”), the World Health Organization (“WHO”), and the WFP.<sup>7</sup> As Table 1 demonstrates, in 2019, the number of people who suffered from severe hunger and malnutrition was only 716.9 million, and it surged to 850.1 million in 2020, and 923.7 million in 2021.<sup>8</sup> The Office of the United Nations High Commissioner for Human Rights (“OHCHR”) notes that the worst is yet to come: a further fifty million individuals were severely food insecure in 2022; an additional nineteen million individuals are expected to “face chronic undernourishment in 2023.”<sup>9</sup> The prevalence of hunger and malnutrition is exhibiting an increasing trend.<sup>10</sup>



**Table 1: The Number of People Experiencing Severe Food Insecurity (millions)<sup>11</sup>**

The current global food crisis draws attention to the vulnerability of low-income food-deficit (“LIFD”) countries,<sup>12</sup> a vulnerability which is largely attributable to their fragile food systems that are heavily reliant on imports while simultaneously having limited purchasing power.<sup>13</sup> According to a report published by the United Nations Conference on Trade and Development (“UNCTAD”), in 2022, as food prices hit new record highs, people in the LIFD

7. FOOD & AGRIC. ORG. OF THE U.N., INT’L FUND FOR AGRIC. DEV., UNICEF, WORLD FOOD PROGRAMME & WORLD HEALTH ORG., THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD 2022:

REPURPOSING FOOD AND AGRICULTURAL POLICIES TO MAKE HEALTHY DIETS MORE AFFORDABLE (2022), <https://openknowledge.fao.org/items/c0239a36-7f34-4170-87f7-2fcc179ef064> [<https://perma.cc/HU76-AWML>] [hereinafter SOFI Report].

8. *Id.*, at 26.

9. Press Release, U.N. Off. of the High Comm’r for Hum. Rts., Time for Coordinated Action to Address the Food Crisis and Create A Global plan – UN Expert (Oct. 29, 2022), <https://www.ohchr.org/en/press-releases/2022/10/time-coordinated-action-address-food-crisis-and-create-global-plan-un-expert> [<https://perma.cc/GV9H-VTTN>].

10. Aminetzah et al., *supra* note 4.

11. SOFI Report, *supra* note 7, at 26.

12. Aminetzah et al., *supra* note 4.

13. *Id.*

countries faced increased costs for imported food; and further, the situation was worsened by inflation and sharp devaluations of local currencies vis-à-vis the U.S. dollar.<sup>14</sup> Furthermore, the COVID-19 pandemic plunged the global economy into recession, leading to high unemployment rates in some of the LIFD countries.<sup>15</sup> Consequently, hunger and malnutrition levels in the LIFD countries were high and expected to continue to rise, and indeed they have.<sup>16</sup>

The current global food crisis, even more concerningly, disproportionately affects vulnerable populations such as women and children, and it does so more severely than others.<sup>17</sup> The SOFI report shows, in 2021, 31.9% of women experienced moderate or severe levels of food insecurity, whereas about 27.6% of men experienced the same.<sup>18</sup> Furthermore, forty-five million children under the age of five suffered from wasting, which is the most lethal type of malnourishment,<sup>19</sup> and an additional 149 million children within the same age group suffered from stunting, which results from chronic malnutrition.<sup>20</sup>

David Beasley, the Chief of the WFP, expresses his “gravest concern” for the worsening global food insecurity<sup>21</sup> and calls for “the world [to] open its eyes to this unprecedented [. . .] crisis and act now to stop it spinning out of control.”<sup>22</sup> The UN Deputy Secretary-General and Chair of the UN Sustainable Development Group Amina J. Mohammed acknowledges that the number of people who are suffering from hunger and malnutrition is “shocking” and “we . . . must[] do better.”<sup>23</sup> The FAO Director-General Dongyu Qu asserts, as food insecurity is rapidly intensifying, the world must act in solidarity and ensure that no one is left behind.<sup>24</sup> The IFAD President Gilbert Houngbo also recognizes the alarming statistics concerning hunger and malnutrition, and advocates for a more rigorous approach to alleviate and ultimately end the global food crisis.<sup>25</sup>

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14. U.N. CONF. ON TRADE & DEV., A DOUBLE BURDEN: THE EFFECTS OF FOOD PRICE INCREASES AND CURRENCY DEPRECIATIONS ON FOOD IMPORT BILLS 3 (2022), <https://unctad.org/system/files/official-document/ditcinf2022d3.pdf> [<https://perma.cc/ES7F-FVVP>].

15. Aminetzah et al., *supra* note 4.

16. *Id.*

17. The United Nations, *supra* note 3.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* (noting that there was “a real danger” that global food crisis will get worse).

22. The United Nations, *Global Food Crisis: Let’s Move from ‘Despair to Hope and Action’*, Urges Guterres, U.N. NEWS, Oct. 14, 2022, <https://news.un.org/en/story/2022/10/1129547> [<https://perma.cc/6YJY-PHQJ>].

23. The United Nations, *supra* note 3.

24. The United Nations, *supra* note 22.

25. The United Nations, *supra* note 3.

### *B. Structure of the Article*

Fact Sheet No. 34, a report jointly published by the OHCHR and the FAO,<sup>26</sup> identifies the three key elements of the right to food: (1) availability which addresses the supply side of food security,<sup>27</sup> (2) accessibility which includes both physical and economic access to food,<sup>28</sup> and (3) adequacy which emphasizes food safety and individuals' dietary and cultural requirements for food.<sup>29</sup> This Article investigates the global food crisis that emerged in the aftermath of the COVID-19 pandemic, exacerbated by the Russian invasion of Ukraine and climate change, with a primary focus on identifying viable solutions to address the two fundamental challenges within the scope of the right to food: availability and accessibility.<sup>30</sup> The reason for this particular emphasis is that these two elements are accorded greater importance, and the last element, adequacy, cannot be achieved in isolation without realization of availability and accessibility.

Following the introduction, Part II examines the key drivers behind the deteriorating global food security. Part III offers a critical evaluation of the existing legal systems and voluntary standards aimed at mitigating and ultimately eliminating hunger and malnutrition. Specifically, Part III identifies the main challenges that hinder the effective implementation of laws in the public sector and voluntary standards in the private sector. Part IV proceeds to discuss potential solutions to global food insecurity. The proposals highlight that the lack of hard law and related regulatory infrastructure is a major issue for the realization of the right to food broadly. It calls for a holistic and coordinated approach that engages with not only "soft law" but also "hard law" to enhance the implementation of the right to food and achieve sustainable food security on a global scale. Furthermore, given the major role of companies in food supply, they must be included in any solution. Finally, Part V concludes that there are direct and specific law reforms available to tackle the global hunger crisis and restore the trajectory for the realization of the Zero Hunger SDG.

## II. THE KEY DRIVERS BEHIND THE DETERIORATING GLOBAL FOOD SECURITY

### *A. Traditional Causes of Food Insecurity*

Traditionally, food insecurity is the result of a mix of factors, such as

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26. U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., FACT SHEET NO. 34: THE RIGHT TO ADEQUATE FOOD (2010), <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf> [<https://perma.cc/554M-MZZH>] (last visited Oct. 3, 2022).

27. Ying Chen, *Protecting the Right to Food in the Era of Covid-19 and Beyond*, 49 GA. J. INT'L & COMP. L. 1, 6-7 (2021); *see also id.*, at 2-3.

28. U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., *supra* note 26 at 2-3.

29. *Id.*

30. *Id.*

poverty, overpopulation, and loss of farmland,<sup>31</sup> along with natural phenomena such as drought.<sup>32</sup> Regrettably, all of these factors continue to cause hunger and malnutrition.

Among these factors, poverty remains one of the primary drivers of food insecurity, affecting hundreds of millions of people worldwide, particularly those in the LIFD countries.<sup>33</sup> The World Bank estimates that 9.3 percent of the global population live in extreme poverty.<sup>34</sup> With limited financial resources or land, these people are unable to grow their own food or purchase it from the market to feed themselves or their families.<sup>35</sup> Reducing poverty thus helps alleviate hunger and malnutrition; however, as noted, the COVID-19 disruptions have greatly hindered the world's ability to make any significant progress toward the Zero Hunger Goal.<sup>36</sup>

Additionally, overpopulation continues to be a major challenge for global food security.<sup>37</sup> World population has increased from one billion in 1800,<sup>38</sup> to seven billion in 2011,<sup>39</sup> to eight billion in 2023.<sup>40</sup> Although population growth is slowing down, the UN still predicts 9.7 billion by 2050.<sup>41</sup> Growing global population puts a strain on the availability of arable land, water, and other resources necessary for agricultural production.<sup>42</sup> In addition, it is also a

31. See, e.g., Vanessa Wight, Neeraj Kaishal, Jane Waldfogel, & Irv Garfinkel, *Understanding the Link between Poverty and Food Insecurity among Children: Does the Definition of Poverty Matter?*, 20 J. CHILD POVERTY 1, 1-20 (2014); Rishikesh Singh, Pratap Srivastava, Pardeep Singh, Akhilesh Singh Raghubanshi, & Shweta Upadhyay, *Human Overpopulation and Food Security: Challenges for the Agriculture Sustainability*, in URBAN AGRICULTURE AND FOOD SYSTEMS: BREAKTHROUGHS IN RESEARCH AND PRACTICE 439-67 (2019); Luther Tweeten, *Food Security and Farmland Preservation*, 3 DRAKE J. AGRIC. L. 237, 237-50 (1998).

32. See, e.g., Bethuel Sibongiseni Ngcamu & Felix Chari, *Drought Influences on Food Insecurity in Africa: A Systematic Literature Review*, 17 INT'L J. ENV'T RSCH. & PUB. HEALTH 1, 1-17 (2020).

33. See generally MARTIN CARAHER & JOHN COVENEY, FOOD POVERTY AND INSECURITY: INTERNATIONAL FOOD INEQUALITIES, 1-124 (2016).

34. THE WORLD BANK GRP., POVERTY AND SHARED PROSPERITY REPORT 2022, at xxi (2022), <https://openknowledge.worldbank.org/server/api/core/bitstreams/b96b361a-a806-5567-8e8a-b14392e11fa0/content> [<https://perma.cc/MW8P-PDSN>].

35. YING CHEN, TRADE, FOOD SECURITY, HUMAN RIGHTS: THE RULES FOR INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS AND THE EVOLVING WORLD FOOD CRISIS 35 (2014).

36. See generally U.N. Special Rapporteur on the Right to Food, *The Right to Food and the Coronavirus Disease Pandemic*, U.N. Doc. A/77/177 (Jul. 18, 2022).

37. Robert H. Trudell, *Food Security Emergencies and the Power of Eminent Domain: A Domestic Legal Tool to Treat a Global Problem*, 33 SYRACUSE J. INT'L L. & COM. 277, 279 (2005).

38. CHEN, *supra* note 35, at 51.

39. *Id.*

40. 2023 Theme: *Unleashing the Power of Gender Equality: Uplifting the Voices of Women and Girls to Unlock Our World's Infinite Possibilities*, THE UNITED NATIONS (Jul. 11, 2023), <https://www.un.org/en/observances/world-population-day> [<https://perma.cc/T48M-4QC9>].

41. *9.7 billion on Earth by 2050, but Growth Rate Slowing, Says New UN Population Report*, THE UNITED NATIONS, <https://www.un.org/en/academic-impact/97-billion-earth-2050-growth-rate-slowing-says-new-un-population-report> [<https://perma.cc/9ZQ8-UQSE>] (last visited Sept. 31, 2023).

42. Singh et al., *supra* note 31.

contributing factor to climate change,<sup>43</sup> which, in turn, causes reduced crop yields and disruptions to food storage and transport networks, leading to further reduced food availability and accessibility.<sup>44</sup>

Finally, the loss of agricultural land is another major contributor to global food insecurity, particularly when occurring in combination with growing global populations and related increase in demand for food.<sup>45</sup> The conversion of prime agricultural land, often found in close proximity to cities, to urban, industrial, and other non-agricultural uses reduces agricultural production, and thus further contributes to the decline in food availability.<sup>46</sup> According to the FAO, global cropland area per capita decreased from 0.45 hectare per capita in 1961 to 0.21 hectare per capita in 2016.<sup>47</sup> It is anticipated that this pattern will persist. Christopher Bren d'Amour et al.'s research shows that by 2030 urban expansion is expected to cause a further loss of croplands on a global scale.<sup>48</sup>

There have been other factors that contribute to global hunger and malnutrition, some newer, others long-standing. Among these factors, for example, are the use of crops for biofuel production and the distortion of agricultural trade for political and economic purposes.<sup>49</sup> Regardless of the drivers behind food insecurity, before the COVID-19 pandemic, the world had no food *availability* issues. The planet was able to produce sufficient food to feed the whole population.<sup>50</sup> The primary concern revolved only around food *accessibility*—physical and economic access to food.

### *B. Emerging Factors Affecting Food Security*

The COVID-19 pandemic has created unparalleled challenges in every

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43. Doris Baus, *Overpopulation and the Impact on the Environment* (Feb., 2017) (M.A. thesis, City University of New York), [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=2929&context=gc\\_etds](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=2929&context=gc_etds) [<https://perma.cc/G5J6-XB6K>].

44. Cheikh Mbow et al., *Food Security*, in CLIMATE CHANGE AND LAND: AN IPCC SPECIAL REPORT ON CLIMATE CHANGE, DESERTIFICATION, LAND DEGRADATION, SUSTAINABLE LAND MANAGEMENT, FOOD SECURITY, AND GREENHOUSE GAS FLUXES IN TERRESTRIAL ECOSYSTEMS 437-517 (Valérie Masson-Delmotte et al. eds., 2019).

45. *Sustainable Food and Agriculture- Land Use in Agriculture by the Numbers*, U.N. FOOD & AGRIC. ORG. (May 7, 2020), <https://www.fao.org/sustainability/news/detail/en/c/1274219/> [<https://perma.cc/YVD7-68TY>].

46. See, e.g., Jajat Sudrajat, Adi Suyatno, & Shenny Oktoriana, *Land-Use Changes and Food Insecurity around Oil Palm Plantations: Evidence at the Village Level*, 5 FOREST & SOC'Y 352, 352-64 (2021) (showing how competition with oil palm plantations (non-food agriculture) leads to food scarcity in a rural Indonesian village).

47. U.N. Food & Agric. Org., *supra* note 45.

48. Christopher Bren d'Amour, Femke Reitsma, Giovanni Baiocchi, Stephan Barthel, Burak Güneralp, Karl-Heinz Erb, Helmut Haberl & Felix Creutzig, *Future Urban Land Expansion and Implications for Global Croplands*, 114 PROC. NAT'L ACAD. SCIS. U.S. AM. 8939, 8939-44 (2017).

49. See generally CHEN, *supra* note 35.

50. Donald E. Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food Under International Law*, 6 PACE INT'L L. REV. 285, 287 (1994); see also CHEN, *supra* note 35, at 3.



aspect of society.<sup>51</sup> Additional factors, such as the Russia-Ukraine war and climate change, have further derailed the Zero Hunger SDG aimed at ending global hunger and malnutrition by 2030.<sup>52</sup> These new and emerging factors pose substantial constraints on agricultural production, which could potentially lead to food scarcity not only to LIFD countries but beyond to a global level. They also pose significant impediments to physical accessibility through supply chain disruptions, and economic accessibility through price hikes and declining purchasing power and in addition to the availability issues arising from climate change. The following section investigates the multifaceted impacts of these factors on global food security.

### *1. The Challenges Arising from the COVID-19 Pandemic*

The COVID-19 pandemic has had a detrimental effect on global food security,<sup>53</sup> undermining the two most fundamental elements of the right to food: availability and accessibility.<sup>54</sup> This outcome is largely due to the fact that the pandemic has adversely affected all facets of society, and “the lingering effects . . . continue to impede progress towards the achievement of SDG [to end hunger and malnutrition] by 2030.”<sup>55</sup>

#### *a. Availability*

The COVID-19 pandemic raised grave concerns pertaining to the risk of food scarcity.<sup>56</sup> During the pandemic, lockdowns and other restrictions hindered agricultural production due to labor shortages and the related limited access to agricultural inputs in disrupted supply chains.<sup>57</sup> The adverse effects on food availability were felt around the globe.<sup>58</sup>

51. Sabine O’Hara & Etienne C. Toussaint, *Food Access in Crisis: Food Security and COVID-19*, 180 *ECOLOGICAL ECON.* (2021) (discussing the impact of COVID-19 on food security).

52. Charis M. Galanakis, *The “Vertigo” of the Food Sector within the Triangle of Climate Change, the Post-Pandemic World, and the Russian-Ukrainian War*, 12 *FOODS* 721 (2023).

53. SOFI Report, *supra* note 7, at 1.

54. Ali Jafri, Nonsikelelo Mathe, Elom K. Aglago, Silvenus O. Konyole, Moussa Ouedraogo, Keiron Audain, Urbain Zongo, Amos K. Laar, Jeffrey Johnson & Dia Sanou, *Food availability, accessibility and dietary practices during the COVID-19 pandemic: a multi-country survey*, 24 *PUB. HEALTH NUTRITION* 1798, 1798-805 (2021).

55. SOFI Report, *supra* note 7, at 1.

56. Xuecheng Zhu, Xinyue Yuan, Ying Zhang, Huilin Liu, Jing Wang & Baoguo Sun, *The global concern of food security during the COVID-19 pandemic: Impacts and perspectives on food security*, 370 *FOOD CHEMISTRY* 1, 1-6 (2022); *see also* Chen, *supra* note 27.

57. *Id.*

58. *See, e.g.*, Mingzhe Pu & Yu Zhong, *Rising concerns over agricultural production as COVID-19 spreads: Lessons from China*, 26 *GLOB. FOOD SEC.* 1, 1-7 (2020); *see also* Priya Priyadarshini & Purushothaman Chirakkuzhyil Abhilash, *Agri-food systems in India: Concerns and policy recommendations for building resilience in post COVID-19 pandemic times*, 29 *GLOB. FOOD SEC.* 1, 1-14 (2021).

In the post-pandemic era, there is a deepening fear that agricultural output will continue to decline at a global level.<sup>59</sup> The reason for this potential decline is that global food systems are confronted with unparalleled challenges of geopolitical conflicts and climate change.<sup>60</sup> Anupama Panghal and many other scholars have expressed their concerns about the capacity of global food systems to meet the demands.<sup>61</sup>

*b. Physical access to food*

At the beginning of the pandemic, the world witnessed an unprecedented phenomenon of panic buying of food and other essential commodities.<sup>62</sup> This sudden surge in demand resulted in supply chain bottlenecks, temporary food shortages, and price hikes, all of which combined to substantially restrict people's access to food.<sup>63</sup>

Food supply chains around the world have gradually resumed operations following the period of panic buying; however, research indicates that they have yet to reach a level of operation that is comparable to that observed prior to the pandemic.<sup>64</sup> In addition to the COVID-19 disruptions, the Russian invasion of Ukraine poses another challenge to distribution networks as well as more broadly to global food security in general—a matter examined in greater detail later in this Article.<sup>65</sup>

*c. Economic access to food*

The COVID-19 pandemic is responsible for “plunge[ing] [the] global economy into [the] worst recession since World War II.”<sup>66</sup> The catastrophic economic downturn caused severe economic hardships across various regions in the world.<sup>67</sup> While developed countries demonstrated resilience and made a

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59. See, e.g., *The World's Food Supply is Made Insecure by Climate Change*, THE UNITED NATIONS, <https://www.un.org/en/academic-impact/worlds-food-supply-made-insecure-climate-change> [https://perma.cc/8J8C-NNJL] (last visited Oct. 1, 2023).

60. Panghal et al., *supra* note 2, at 878-84; Aminetzah et al., *supra* note 4.

61. Panghal et al., *supra* note 2.

62. Michael Keane & Timothy Neal, *Consumer Panic in the COVID-19 Pandemic* (Univ. of New S. Wales Econ., Working Paper 2020-06).

63. Michael Omotayo Alabi & Ojelanki Ngwenyama, *Food security and disruptions of the global food supply chains during COVID-19: Building smarter food supply chains for post COVID-19 era*, 125 BR. FOOD J. 167, 167-85 (2022).

64. Aminetzah et al., *supra* note 4.

65. U.N. Special Rapporteur on the Right to Food, *Conflict and the Right to Food: Report of the Special Rapporteur on the Right to Food*, ¶ 12, U.N. Doc. A/HRC/52/40 (Dec. 29, 2022); see also Aminetzah et al., *supra* note 4.

66. *COVID-19 to Plunge Global Economy into Worst Recession since World War II*, THE WORLD BANK (Jun. 8, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii> [https://perma.cc/Q9WQ-KW9D].

67. SOFI Report, *supra* note 7, at 16.

strong rebound in the aftermath of the pandemic, developing countries, particularly those low-income countries (“LICs”), have encountered considerable challenges in their efforts to recover.<sup>68</sup> In the food sector, as the SOFI report notes, the deteriorating global food insecurity “reflects exacerbated inequalities across and within countries due to an unequal pattern of economic recovery among countries and unrecovered income losses among those most affected by the COVID-19 pandemic.”<sup>69</sup> Juan Antonio Duro and many other scholars have also observed that significant inequalities exist within the global food system.<sup>70</sup> Rising food prices, inflation, and reduced income have disproportionately affected the vulnerable populations,<sup>71</sup> with the poor and marginalized bearing the brunt of the economic fallout.<sup>72</sup> According to the World Bank, people who struggled to pay for food prior to the pandemic are now suffering even more.<sup>73</sup>

Furthermore, the decline in availability and accessibility inevitably constrains peoples’ ability to obtain food that meets their dietary and cultural requirements, compromising the third element of the right to food: adequacy.<sup>74</sup>

## 2. *The Russia-Ukraine War*

Both Ukraine and Russia are critical players in the agricultural sector, both listed among the world’s top producers and exporters of essential agricultural products and inputs, such as wheat, maize, sunflower seed oil, fertilizer,<sup>75</sup> and

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68. *Id.*; see also Gulcin Ozkan, *COVID-19 Recovery: Some Economies will Take Longer to Rebound – This is Bad for Everyone*, THE CONVERSATION (Jun. 7, 2021), <https://theconversation.com/covid-19-recovery-some-economies-will-take-longer-to-rebound-this-is-bad-for-everyone-162023> [<https://perma.cc/GVD9-UYHV>] (noting that “some economies will take longer to rebound”); Samer Kharroubi, Marwa Diab El Harake, Farah Naja & Lamis Jomaa, *Food Insecurity Pre- and Post the COVID-19 Pandemic and Economic Crisis in Lebanon: Prevalence and Projections*, 13 NUTRIENTS 1, 1-15 (2021).

69. SOFI Report, *supra* note 7, at xiv.

70. Juan Antonio Duro, Christian Lauk, Thomas Kastner, Karl-Heinz Erb & Helmut Haberl, *Global inequalities in food consumption, cropland demand and land-use efficiency: A decomposition analysis*, 64 GLOB. ENV’T CHANGE 1, 1-11 (2020).

71. Brandan Bonds, *Food for Thought: Expanding the Pandemic-EBT Program to Provide Emergency Food Assistance for All*, 23 LOY. J. PUB. INT. L 24, 27 (2021); see also MARK NORD, ALISHA COLEMAN-JENSEN & CHRISTIAN GREGORY, U.S. DEP’T OF AGRIC. ECON. RSCH. SERV. REP. NO. 167: PREVALENCE OF U.S. FOOD INSECURITY IS RELATED TO CHANGES IN UNEMPLOYMENT, INFLATION, AND THE PRICE OF FOOD (2014), [https://www.ers.usda.gov/webdocs/publications/45213/48167\\_err167.pdf?v=9114.2](https://www.ers.usda.gov/webdocs/publications/45213/48167_err167.pdf?v=9114.2) [<https://perma.cc/3MGS-PUUD>].

72. SOFI Report, *supra* note 7, at 1.

73. *Food Security Update: World Bank Response to Rising Food Insecurity*, THE WORLD BANK, <https://www.worldbank.org/en/topic/agriculture/brief/food-security-update> (last visited Oct. 2, 2023).

74. Chen, *supra* note 27, at 13.

75. *Agricultural Markets in Russia and Ukraine*, U.S. DEP’T OF AGRIC., <https://www.ers.usda.gov/newsroom/trending-topics/agricultural-markets-in-russia-and-ukraine/> [<https://perma.cc/2MPE-GW6K>] (last visited Oct. 5, 2023).

crude oil.<sup>76</sup> According to the SOFI report, before the conflict, the two countries together accounted for thirty percent of global wheat exports, twenty percent of global maize exports, and approximately eighty percent of global sunflower seed oil exports.<sup>77</sup> Furthermore, Russia, as an energy superpower, holds the position of the world's second-largest exporter of crude oil<sup>78</sup> - a vital resource for agricultural production and transportation.<sup>79</sup> Russia is also a leading exporter of nitrogen, potassium, and phosphorous fertilizers, all of which are key inputs in modern agriculture.<sup>80</sup>

The Russian invasion of Ukraine has had a detrimental impact on global food security. It has created a range of complex and interconnected challenges for the agri-food sector,<sup>81</sup> causing food shortages and increased prices worldwide.<sup>82</sup> As the SOFI report notes, “[t]he bearings of the war in Ukraine are uncertain, but its threat to global food security is quickly surfacing.”<sup>83</sup> McKinsey also observes that the Russia-Ukraine war is “tilting global food security into a state of high risk.”<sup>84</sup>

The war undermines global food availability. As Professors Joe Janzen and Carl Zulauf observe, the war has already had significant implications for farming activities in Ukraine, particularly in the eastern regions that have borne the brunt of the fighting.<sup>85</sup> It is estimated that to date, the conflict has resulted in the destruction of agricultural infrastructure worth over \$6.6 billion.<sup>86</sup> Conflict-induced displacement of populations have also severely reduced Ukrainian farmers' capacity to cultivate, harvest, and distribute their products.<sup>87</sup> The Ukraine agricultural sector faces indirect costs of \$36.2 billion, primarily due to lost agricultural production and increased logistics expenses for exports.<sup>88</sup> Research also indicates that the “2022–23 harvest in Ukraine is below normal levels by more than 30 million tons, due to lower acreage planted and lower input availability (and the fact that some grain is likely to remain unharvested).”<sup>89</sup>

Further, the war restricts food accessibility, both physically and

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76. SOFI Report, *supra* note 7, at 38.

77. *Id.* at 20.

78. *Oil Market and Russian Supply*, INT'L ENERGY AGENCY, <https://www.iea.org/reports/russian-supplies-to-global-energy-markets/oil-market-and-russian-supply-2> [<https://perma.cc/TB7T-HKVN>] (last visited Oct. 5, 2023).

79. Monika Roman, Aleksandra Górecka & Joanna Domagala, *The Linkages between Crude Oil and Food Prices*, 13 ENERGIES 1, 1-18 (2020).

80. SOFI Report, *supra* note 7, at 38.

81. Aminetzah et al., *supra* note 4.

82. SOFI Report, *supra* note 7, at 20; *see also* Aminetzah et al., *supra* note 4.

83. SOFI Report, *supra* note 7, at 38.

84. Aminetzah et al., *supra* note 4.

85. Joe Janzen & Carl Zulauf, *The Russia-Ukraine War and Changes in Ukraine Corn and Wheat Supply: Impacts on Global Agricultural Markets*, 34 FARMDOC DAILY 1, 1-6 (2023).

86. *Id.*

87. *Id.*

88. *Id.* at 2.

89. Aminetzah et al., *supra* note 4.

economically. First, the Russian invasion of Ukraine has caused significant supply chain disruptions in the agri-food sector.<sup>90</sup> For example, in 2022, Ukraine experienced significant supply chain disruptions due to the blockade imposed on the Black Sea ports,<sup>91</sup> hindering the export of grains and other agricultural products.<sup>92</sup> Meanwhile, in response to this situation, many countries sought to safeguard their own food security by restricting grain exports.<sup>93</sup> War-induced supply chain disruptions have resulted in a sharp increase in global food prices.<sup>94</sup>

Second, rising energy prices also contribute to a surge of the total costs associated with agricultural production and distribution, prompting an escalation of food prices worldwide.<sup>95</sup> Third, although the economic sanctions imposed on Russia for the invasion of Ukraine specifically excludes the agricultural sector, i.e., food and fertilizers, they still adversely affect global food systems owing to a number of factors.<sup>96</sup> For example, as Joseph Glauber and David Laborde note, some of the sanctions specifically target Russian individuals, oligarchs, who may have business interests in the agricultural sector.<sup>97</sup> These sanctions inevitably hinder Russia's agricultural exports and related supply chains. Additionally, economic sanctions incur additional costs when trading with Russia due to more restrictive banking regulations and shipping constraints.<sup>98</sup> Many companies and importers ceased their business activities with Russia as a result of the concerns about negative publicity related to such dealings.<sup>99</sup>

In summary, the Russian invasion of Ukraine has disrupted the global food system and compromised both food availability and accessibility.<sup>100</sup> This has particularly affected the LIFD countries that rely heavily on Ukraine and Russia for food and agricultural supplies.<sup>101</sup> The UN warns, “[t]he food, fuel and fertilizers crisis heightened by the war in Ukraine, could lead to famine, and result in ‘global destabilization, starvation, and mass migration on an unprecedented scale.’”<sup>102</sup> There is an urgent need for the world to “act today to avert this looming catastrophe.”<sup>103</sup>

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90. SOFI Report, *supra* note 7, at vi.

91. Aminetzah et al., *supra* note 4.

92. *Id.*

93. *Id.*

94. The United Nations, *supra* note 3.

95. SOFI Report, *supra* note 7, at 20.

96. Joseph Glauber & David Laborde, *How Sanctions on Russia and Belarus are Impacting Exports of Agricultural Products and Fertilizer* (Nov. 9, 2022), <https://www.ifpri.org/blog/how-sanctions-russia-and-belarus-are-impacting-exports-agricultural-products-and-fertilizer> [<https://perma.cc/D5E4-JGHK>].

97. *Id.*

98. *Id.*

99. *Id.*

100. Janzen & Zulauf, *supra* note 85.

101. SOFI Report, *supra* note 7, at 20.

102. The United Nations, *supra* note 3.

103. *Id.*

### 3. Climate Change

A report released by the UN Intergovernmental Panel on Climate Change (“IPCC”) shows, human activities are the primary driver of climate change.<sup>104</sup> These activities result in “[w]idespread and rapid changes in the atmosphere, ocean, cryosphere, and biosphere,”<sup>105</sup> such as global warming, rising sea level, extreme precipitation, and other extreme climate events.<sup>106</sup>

As “the largest, most pervasive threat to the natural environment and societies the world has ever experienced,”<sup>107</sup> climate change challenges agricultural sustainability and food security.<sup>108</sup> For example, changes in temperature and rainfall patterns, and increased frequency and intensity of extreme climate events impede crop production and food systems as a whole.<sup>109</sup> These phenomena will also disrupt supply chains that are vital to the distribution of essential food supplies and agricultural inputs.<sup>110</sup>

Professor Margaret Rosso Grossman notes, climate change is a leading cause for the rise in global hunger and malnutrition in recent years.<sup>111</sup> Professors Tim Wheeler and Joachim Von Braun also argue, climate change undermines “crop productivity” that could have devastating consequences for food availability.<sup>112</sup> According to the WHO, in 2022-2023, millions of people living in the greater Horn of Africa experienced severe hunger and malnutrition as the region faced “one of the worst droughts in recent decades,”<sup>113</sup> while still grappling with “years of conflict and instability, the impact of the COVID-19 pandemic and rising food prices due to, in part, the war in Ukraine.”<sup>114</sup>

Furthermore, in 2022, the heat waves that occurred in India and the dry summer in Western Europe were estimated to result in a reduction of over ten

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104. *Summary for Policymakers Headline Statements*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <https://www.ipcc.ch/report/ar6/wg1/resources/spm-headline-statements/> [https://perma.cc/X5QA-Y6AX] (last visited Oct. 5, 2023).

105. *Id.*

106. Margaret Rosso Grossman, *Climate Change Impact on Agrarian Law: Legal Aspects of Food Security in the United States*, 70 AM. J. COMPAR. L. 118, 119-20 (2022).

107. Press Release, U.N. Off. of the High Comm’r for Hum. Rts., *Climate Change the Greatest Threat the World has Ever Faced, UN Expert Warns* (Oct. 21, 2022), <https://www.ohchr.org/en/press-releases/2022/10/climate-change-greatest-threat-world-has-ever-faced-un-expert-warns> [https://perma.cc/W3CK-F9GC].

108. Tim Wheeler & Joachim Von Braun, *Climate Change Impacts on Global Food Security*, 341 SCIENCE 508, 509-10 (2013).

109. *Id.* at 508-11.

110. SOFI Report, *supra* note 7, at 1.

111. Grossman, *supra* note 106, at 118.

112. Wheeler & Von Braun, *supra* note 108 at 511.

113. *Drought and food insecurity in the greater Horn of Africa-Overview*, THE WORLD HEALTH ORG. (Mar. 4, 2024), <https://www.who.int/emergencies/situations/drought-food-insecurity-greater-horn-of-africa> [https://perma.cc/ZWZ4-YL8S].

114. *Id.*; see also Laurent Kemoe, Pritha Mitra, Cedric Okou & D. Filiz Unsal, *How Africa Can Escape Chronic Food Insecurity Amid Climate Change*, INT’L MONETARY FUND BLOG (Sept. 14, 2022), <https://www.imf.org/en/Blogs/Articles/2022/09/14/how-africa-can-escape-chronic-food-insecurity-amid-climate-change> [https://perma.cc/A8K4-DQ9M].

million tons of grain supply in the global market.<sup>115</sup> These events are all examples of how climate change has and will increasingly negatively affect food availability.<sup>116</sup>

#### 4. Summary

In addition to the traditional contributing factors such as poverty and overpopulation, newly emerging factors are worsening global food security. The COVID-19 pandemic, the Russia-Ukraine war, and climate change undermine food availability. These same matters also obstruct people's physical and economic access to adequate and nutritious food.<sup>117</sup> It is imperative to examine the existing legal systems and voluntary standards, weighing their strengths and weaknesses, to determine the most effective course of action for achieving global food security.

### III. THE RIGHT TO FOOD AND THE EXISTING MECHANISMS IN ADDRESSING FOOD INSECURITY

The right to food has been widely acknowledged in both international and national laws, as demonstrated by the explicit and implicit protections of this right in international human rights treaties, as well as in the national constitutions and domestic legislation of many countries around the world. However, it is not only found in the public sector.

In the private sector, corporate social responsibility ("CSR") has become an integral aspect of modern business practice.<sup>118</sup> It is a form of global soft law that imposes on corporations an obligation to operate in a responsible manner, minimizing negative externalities, such as pollution, and creating greater positive externalities, such as improving employment conditions, as broader socially beneficial impacts.<sup>119</sup> CSR requires businesses to consider the social, economic, and environmental impacts of their daily operations.<sup>120</sup> It is becoming increasingly relevant to food security, as corporations have the means available to contribute positively to the agri-food sector.<sup>121</sup> There are, however, some fundamental inconsistencies between the pursuit of economic profit and the

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115. Aminetzah et al., *supra* note 4.

116. *Id.*

117. SOFI Report, *supra* note 7, at 2.

118. Benedict Sheehy, *Defining CSR: Problems and Solutions*, 131 J. BUS. ETHICS 625, 642 (2015).

119. Sheehy & Chen, *supra* note 1, at 657; Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 701 (2006).

120. *See generally*, Sheehy, *supra* note 118.

121. Monika Hartmann, *Corporate Social Responsibility in the Food Sector*, 38 EUR. REV. AGRIC. ECON. 297, 297-324 (2011).

implementation of CSR initiatives.<sup>122</sup>

The section which follows investigates the existing mechanisms for upholding the right to food. It also identifies the main challenges that impede the effective implementation of both international and national laws in the public sector, and the voluntary CSR standards in the private sector.

#### *A. The Right to Food in International Law*

As noted, international law has widely recognized the right to food as a fundamental human right.<sup>123</sup> The Universal Declaration of Human Rights (“UDHR”) (1948)<sup>124</sup> mandates a minimum standard of living for all individuals which encompasses basic necessities, such as food, housing, and medical care.<sup>125</sup> Following the UDHR, the right to food has been explicitly enshrined in numerous international human rights treaties.<sup>126</sup> For example, the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) safeguards the right to sufficient and nutritious food;<sup>127</sup> it also imposes binding obligations on its member states to take affirmative steps to uphold this right.<sup>128</sup> The Universal Declaration on the Eradication of Hunger and Malnutrition recognizes the inalienable right of individuals to be free from hunger and malnutrition for their full development.<sup>129</sup> Furthermore, the Convention on the Rights of the Child (1989),<sup>130</sup> the Convention on the Elimination of All Forms of Discrimination against Women (1979),<sup>131</sup> and the Convention on the Rights of Persons with Disabilities (2006)<sup>132</sup> all have clauses that explicitly guarantee food availability, accessibility, and adequacy for vulnerable and marginalized populations.

The UN and its agencies have been devoted to the progressive realization of the right to food. For example, in 1996, the FAO released the Rome Declaration on World Food Security and a Plan of Action affirming the world’s

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122. *See generally*, DAVID E. HAWKINS, CORPORATE SOCIAL RESPONSIBILITY: BALANCING TOMORROW’S SUSTAINABILITY AND TODAY’S PROFITABILITY 1-295 (2006); *see also* Sheehy & Chen, *supra* note 1, at 633-34.

123. Sheehy & Chen, *supra* note 1, at 657; Narula, *supra* note 119, at 701.

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

125. *Id.*, at art. 25.

126. Sheehy & Chen, *supra* note 1, at 657.

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

128. *Id.*, at art. 11, ¶ 1.

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

130. United Nations Convention on the Rights of the Child arts. 24, 27, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; Sheehy & Chen, *supra* note 1, at 658-59.

131. 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.

132. Convention on the Rights of Persons with Disabilities arts. 25, 28, Dec. 13, 2006, 2515 U.N.T.S. 3.



commitment to “achieving food security for all.”<sup>133</sup> In 2004, the FAO adopted the Voluntary Guidelines on the Right to Adequate Food, providing a practical guideline to “support the progressive realization of the right to adequate food” at the national level.<sup>134</sup> In 2015, the UN adopted the SDGs and identified “Zero Hunger” as one of the top priorities for sustainable development.<sup>135</sup> Furthermore, the UN Committee on Economic, Social and Cultural Rights also issued General Comment No. 12 and highlighted a rights-based approach to food security.<sup>136</sup>

Despite these international efforts, the world still faces significant food insecurity.<sup>137</sup> This, in part, is attributed to the difficulties in enforcing international human rights treaties. As Professors Benedict Sheehy and Ying Chen argue, international human rights instruments remain aspirational rather than operational in tackling hunger and malnutrition problems.<sup>138</sup>

Admittedly, on the one hand the UN “plays a critical role in upholding and disseminating a rights-based approach to food security,”<sup>139</sup> and it “provides important norms for the international community in both global and domestic contexts and disseminates them through guidelines for member states.”<sup>140</sup> On the other hand, the UN has constrained capacity to safeguard human rights.<sup>141</sup> Most of the treaty instruments mentioned above are not binding,<sup>142</sup> which means the UN cannot hold states to account in the event of violations of those human rights.<sup>143</sup> As for instruments that do impose legal obligations on their member states, for example, the ICESCR, the UN lacks the power and institutional framework to enforce them.<sup>144</sup> The international human rights system was not designed with adjudicative institutions or to have enforcement powers. As Professor Yvonne Dutton observes, the UN “lacks institutions such as a

133. U.N. FOOD & AGRIC. ORG., ROME DECLARATION ON WORLD FOOD SECURITY AND WORLD FOOD SUMMIT PLAN OF ACTION (1996); *see* 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 (2005), [hereinafter VOLUNTARY GUIDELINE].

134. VOLUNTARY GUIDELINE, *supra* note 133; Sheehy & Chen, *supra* note 1, at 658.

135. *The 17 Goals*, U.N. DEP’T OF ECON. & SOC. AFFS., <https://sdgs.un.org/goals> [<https://perma.cc/WA37-T5R7>] (last visited Oct. 5, 2023).

136. 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 (May 12, 1999); Sheehy & Chen, *supra* note 1, at 657-58.

137. Grossman, *supra* note 106, at 145.

138. Sheehy & Chen, *supra* note 1, at 659.

139. *Id.*, at 660.

140. *Id.*

141. *See generally* ROSA FREEDMAN, FAILING TO PROTECT: THE UN AND THE POLITICISATION OF HUMAN RIGHTS 1-224 (2014).

142. 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); Sheehy & Chen, *supra* note 1, at 659.

143. Nancy Flowers, *A Short History of Human Rights*, in HUMAN RIGHTS HERE AND NOW: CELEBRATING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (Nancy Flowers ed., 1998); Sheehy & Chen, *supra* note 1, at 659.

144. Sheehy & Chen, *supra* note 1, at 659.

centralized body for the adjudication of rights and the enforcement powers necessary to implement the human rights standards contained in its treaties.”<sup>145</sup>

Clearly, enforcing international human rights law presents a challenge; however, global food insecurity is not a problem that suffers from a “lack of solutions.”<sup>146</sup> As Michael Fakhri, the UN Special Rapporteur on the right to food, argues, “[t]he international community has a good sense of how to tackle the food crisis; what we need now is coordinated government action.”<sup>147</sup> Our argument aligns with Fakhri, and the proposition for collaborative efforts will be examined in Part IV.

### *B. The Right to Food in National Laws*

States have a duty to safeguard their citizens’ fundamental human rights, particularly through the integration of human rights standards in the design and development of their domestic regulatory and broader institutional frameworks.<sup>148</sup> Furthermore, they have the power to make binding laws to protect human rights, and most importantly, the capacity to enforce these laws in the domestic context.<sup>149</sup> States’ lawmaking and enforcement powers ensure that victims can seek remedies and human rights violators are held to account for their actions.<sup>150</sup>

In the context of the right to food, as Sheehy and Chen observe, states around the world have adopted different approaches to “enacting, administering, and adjudicating legislation establishing rights and duties providing food security.”<sup>151</sup> These approaches can be categorized into three distinct groups: explicit constitutional protections (Group 1), implicit constitutional protections (Group 2), and the integration of the key elements of the right to food in domestic laws (other than the constitutions), policies, and programs (Group 3).<sup>152</sup>

As of 2023, more than thirty countries have explicitly acknowledged the right to food in their respective constitutions, such as Brazil, Mexico, South Africa, Switzerland, and the Democratic Republic of the Congo (“DRC”).<sup>153</sup> Furthermore, a significant number of countries in the world offer implicit constitutional protection of the right to food through constitutional protection of other rights, such as the right to life, the right to development, and the respect

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145. Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 U. PA. J. INT’L L. 1 (2012).

146. U.N. Off. of the High Comm’r for Hum. Rts., *supra* note 9.

147. *Id.*

148. ICESCR, *supra* note 127, art. 11, ¶ 1; Sheehy & Chen, *supra* note 1, at 660.

149. Sheehy & Chen, *supra* note 1, at 660.

150. *E.g.*, 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, 1184 (2011); Sheehy & Chen, *supra* note 1, at 660-61.

151. Sheehy & Chen, *supra* note 1, at 660-61.

152. *Id.* at 663.

153. *Id.* at 661-65.

for human dignity.<sup>154</sup> The remaining countries in the world do not have any constitutional provisions to safeguard the right to food; however, some of them, such as the United States and Australia, have included the fundamental elements of food rights in their domestic laws, policies, and programs.<sup>155</sup>

As Sheehy and Chen point out, the three approaches have exhibited varying degrees of success.<sup>156</sup> Among Group 1 countries, Switzerland is among the top performers in terms of food security.<sup>157</sup> Most others, such as Brazil, have also performed relatively well in mitigating hunger and malnutrition.<sup>158</sup> Very few countries, such as the DRC, still face substantial challenges in ensuring food availability, accessibility, and adequacy for their citizens.<sup>159</sup> Food security situations in Group 2 countries exhibit considerable variation; for example, Belgium's prevalence of undernourishment is lower than 2.5 percent, whereas one out of four Ethiopians struggle to feed themselves.<sup>160</sup> Group 3 countries demonstrate a similar but more extreme pattern as compared to those in Group 2, with high levels of food security in wealthy countries such as the United States and Australia, and extremely low levels of food security in LICs, such as Syria and Madagascar.<sup>161</sup>

The varying degrees of success observed in different countries can be attributed to two main factors: economic capacity, and state approach to food security.<sup>162</sup> First, LICs, such as DRC, Ethiopia, Syria, and Madagascar, are constrained by inadequate financial resources and infrastructure<sup>163</sup> which impede their ability to achieve adequate food production and distribution.<sup>164</sup> As such, coordinated international support becomes particularly important, as it helps provide critical resources, such as financial and technical assistance, and other capacity-building programs, to enable LICs to implement effective food security measures and alleviate hunger and malnutrition.<sup>165</sup>

Second, the improvement of food security heavily relies on the level of support provided by the governments. As the SOFI report notes, governments across the world provide significant support to the agri-food sector, with an

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154. *Id.* at 667.

155. *Id.* at 684-85.

156. *Id.* at 661-65.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 685.

162. *Id.* at 661-65.

163. Inadequate financial resources and infrastructure can be caused by a number of factors, for example, poverty or armed conflicts. *See, e.g.*, U.N. FOOD & AGRIC. ORG. & WORLD FOOD PROGRAMME, MONITORING FOOD SECURITY IN FOOD CRISIS COUNTRIES WITH CONFLICT SITUATIONS: A JOINT FAO/WFP UPDATE FOR THE MEMBERS OF THE UNITED NATIONS SECURITY COUNCIL 7 (Nov. 2022), <https://openknowledge.fao.org/server/api/core/bitstreams/d7fa7b36-7d32-4e19-a6ee-e21cba5c88f6/content> [<https://perma.cc/Q5K4-U8C8>].

164. SOFI Report, *supra* note 7, at xxii.

165. *Id.* at vii.

annual global contribution of approximately USD \$630 billion.<sup>166</sup> The support plays a minor role in mitigating hunger and malnutrition; rather, this money “distorts market prices, is environmentally destructive, and hurts small-scale producers and Indigenous Peoples.”<sup>167</sup> For example, in the United States, a substantial amount of government budget is allocated towards agricultural subsidies which ultimately benefit large agribusiness,<sup>168</sup> and does less to improve Americans’ access to adequate food and nutrition.<sup>169</sup>

As a result, there is an urgent need for governments to reorient budgets to “prioritize food consumers, and to incentivize sustainable production, supply and consumption of nutritious foods.”<sup>170</sup> Furthermore, the FAO and other UN institutions acknowledge that, “[t]he success of repurposing efforts will also be influenced by the political and social context, governance, (im)balances of power, and differences in interests, ideas and influence of stakeholders.”<sup>171</sup> They also suggest, as each state’s context is unique, that effective repurposing efforts require robust institutional arrangements at the local, national, and global levels, along with active participation among stakeholders from both the public and private sectors, as well as international organizations.<sup>172</sup>

The implementation of food rights in the domestic context also faces a number of challenges beyond borders, such as a broken international trade system, and rising corporate power worldwide.<sup>173</sup> These challenges cannot be resolved by individual states. A coordinated global response is required to address food insecurity.<sup>174</sup> Furthermore, as Jessica L. Guarino and others note, government efforts alone are not always sufficient to tackle hunger and malnutrition problems; collaborative efforts between the public and private sectors are crucial to strengthening the resilience of food systems.<sup>175</sup> Among other examples, they point out that private entities, such as corporations, can take practical steps to combat food insecurity.<sup>176</sup>

In summary, the importance of food security in the domestic context cannot be overstated. It is the fundamental responsibility of states to ensure that their citizens have sustainable access to sufficient and nutritious food. In order to achieve this, governments must take affirmative action by

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166. *Id.* at vi.

167. *Id.* at vi.

168. 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.J. 141, 141-67 (2011).

169. SOFI Report, *supra* note 7, at vi.

170. *Id.* at vi.

171. *Id.* at xv.

172. *Id.*

173. U.N. Off. of the High Comm’r for Hum. Rts., *supra* note 9; *see also* Benedict Sheehy, *Corporations and Social Costs: The Wal-Mart Case Study*, 24 J. L. & COM. 1, 1-55 (2004) (analyzing corporate harm in the international arena).

174. U.N. Off. of the High Comm’r for Hum. Rts., *supra* note 9.

175. Jessica L. Guarino, Bradley R. Windings & Bryan Endres, *Beyond Victory Gardens: Bolstering Resilience in Food Crisis Response*, 11 WAKE FOREST J.L. & POL’Y 515, 567 (2021).

176. *Id.*

implementing policies and programs that promote food availability, accessibility, and adequacy. However, this cannot be achieved by individual states alone. Coordinated collaboration that involves both public and private sectors is crucial for achieving a common goal of ensuring food security for all.<sup>177</sup>

### *C. The Role of Corporations in Addressing Global Food Insecurity*

There have been ongoing debates about the role of corporations in improving global food security, specifically with regard to whether corporations bear responsibility for alleviating hunger and malnutrition, and further, while some corporations incorporate food security-related initiatives into their CSR strategies, how they are to strike a balance between profitability and their social and environmental responsibility.<sup>178</sup> For example, Professor Marina Teller assesses the efficiency of the existing CSR approach to food security, and asserts that corporations can provide significant support to the governments pertaining to public policies that promote food security.<sup>179</sup> Professors Amelia Clarke, Eduardo Ordonez-Ponce, and Monida Eang investigate the roles of multinational corporations (“MNCs”) in implementing the UN SDGs, including the Zero Hunger SDG, at the local level.<sup>180</sup>

In response to these debates, we start with the proposition that corporations are capable of having a positive impact on human well-being.<sup>181</sup> Particularly, MNCs that are involved in the agri-food sector can and have played a vital role in driving innovation and improving efficiency in many aspects of agricultural production and distribution.<sup>182</sup> They have invested heavily in agricultural science and technology critical to improving productivity.<sup>183</sup> They have also enhanced global supply chains and distribution networks, facilitating the efficient transportation and distribution of food worldwide.

The former UN Special Rapporteur on the Right to Food, Hilal Elver, observed that about ten agri-food MNCs in the world “control and monopolize

177. Narula, *supra* note 119, at 724.

178. Marina Teller, *Food Security and Corporate Social Responsibility*, 4 REVUE INTERNATIONALE DE DROIT ÉCONOMIQUE [INT’L REV. ECON. L.] 63, 63-69 (2012).

179. *Id.*

180. Monida Eang, Amelia Clarke & Eduardo Ordonez-Ponce, *The roles of multinational enterprises in implementing the United Nations Sustainable Development Goals at the local level*, 26 BRQ BUS. RSCH. Q. 79, 79-97 (2023).

181. Audrey J. Murrell, Ray Jones, Sam Rose, Alex Firestine & Joe Bute, *Food Security as Ethics and Social Responsibility: An Application of the Food Abundance Index in an Urban Setting*, 19 INT’L J. ENV’T RSCH. PUB. HEALTH 1, 1-13 (2022).

182. 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); Sheehy & Chen, *supra* note 1, at 650.

183. Sheehy & Chen, *supra* note 1, at 641-42.

the commercial seed market, global pesticide market, and food retailers,”<sup>184</sup> and determine the food options available in global markets.<sup>185</sup> It is evident that MNCs have wielded significant power over agri-food production and distribution; they are capable of bringing about a meaningful change in global food security.<sup>186</sup> Sheehy and Chen concur with Elver; they note, corporations, particularly MNCs, with this level of power have the potential to contribute to alleviating food availability problems by boosting global agricultural production; they can also help improve physical and economic accessibility by delivering affordable food worldwide.<sup>187</sup>

Second, corporations are responsible for their impact on society and the environment, which includes an element of responsibility for food security as an aspect of society.<sup>188</sup> There are two justifications for corporate engagement in CSR. First, corporations cannot operate in the absence of society. They rely on the resources, labor, and support provided by society.<sup>189</sup> Their success is thoroughly entwined with the well-being of the people and the communities in which they operate, and this includes the environment.<sup>190</sup> They rely on society’s acceptance of the legitimacy of their business for their social license.<sup>191</sup>

CSR has become more than a respected business practice.<sup>192</sup> While CSR is driven to some degree by consumer demand,<sup>193</sup> the much greater impetus is the aforementioned license and specifically the ability to participate in supply

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184. 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, 30 (2016).

185. *Id.* at 31.

186. 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).

187. *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); Sheehy & Chen, *supra* note 1, at 633-34.

188. *See generally*, Ambra Galeazzo, Toloue Miandar & Michela Carraro, *SDGs in Corporate Responsibility Reporting: A Longitudinal Investigation of Institutional Determinants and Financial Performance*, J. MGMT. & GOVERNANCE (2023).

189. Benedict Sheehy, *Understanding CSR: An Empirical Study of Private Regulation*, 38 MONASH UNIVERSITY L. REV. 103, 103-27 (2012).

190. Sheehy, *supra* note 173, at 1.

191. Craig Deegan, *Introduction: The Legitimizing Effect of Social and Environmental Disclosures—A Theoretical Foundation*, 15 ACCT. AUDITING & ACCOUNTABILITY J. 282, 282-311 (2002); *see* James Guthrie & Lee D. Parker, *Corporate Social Reporting: A Rebuttal of Legitimacy Theory*, 76 ACCT. & BUS. RSCH. 343, 343-52 (1989).

192. Włodzimierz Sroka & Richard Szántó, *Corporate Social Responsibility and Business Ethics in Controversial Sectors: Analysis of Research Results*, 14 J. ENTREPRENEURSHIP, MGMT. & INNOVATION 111, 111-26 (2018).

193. Bala Ramasamy, Matthew C. H. Yeung & Alan K. M. Au, *Consumer Support for Corporate Social Responsibility (CSR): The Role of Religion and Values*, 91 J. BUS. ETHICS 61, 61-72 (2010).

chains, gain access to markets and savings—in sum, the business case.<sup>194</sup> For corporations, there is real value in integrating food security initiatives into their CSR strategies.<sup>195</sup> As Professors Ambra Galeazzo, Toloue Miandar, and Michela Carraro note, “[c]ompared to their peers, sustainable companies are more likely to gain greater legitimacy . . . improve their image and reputation, and gain access to more and better resources.”<sup>196</sup>

Third, although corporations form the backbone of a resilient agri-food system, and some of them have integrated the elements of the right to food into their CSR initiatives,<sup>197</sup> corporations often face a dilemma when it comes to balancing profitability and CSR interests.<sup>198</sup> While corporations are increasingly expected to engage in socially and environmentally responsible business practices that can benefit society as a whole, their ultimate goal remains unchanged: maximizing economic profits.<sup>199</sup> Furthermore, another concern with this voluntary approach is that CSR standards are fragmented and do not necessarily align with governments’ development goals such as food security.<sup>200</sup> How corporations are to strike a balance between profitability and CSR is a complex question and one of the key focuses in Part IV.

#### IV. NEW APPROACHES TO FOOD SECURITY

The WFP has declared that “[g]lobal food security is at a tipping point”<sup>201</sup> due to a myriad of traditional and emerging challenges.<sup>202</sup> These challenges are highly complex such that the existing mechanisms are unable to resolve them. While acknowledging numerous factors contributing to the limited ineffectiveness of existing solutions, this Article draws attention to two potentially pivotal areas that may induce systematic change in global food governance and ultimately lead to enhanced food security.

As noted, although corporations, particularly MNCs, hold considerable resources and expertise in the agri-food sector, and have the capacity to play a vital role in alleviating hunger and malnutrition, their efforts fall short of their full potential due to imperfect CSR standards, implementation, and their

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194. Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT’L J. MGMT. REV. 85, 85-105 (2010).

195. See generally Galeazzo et al., *supra* note 188.

196. *Id.* at 114.

197. Teller, *supra* note 178.

198. See generally HAWKINS, *supra* note 122.

199. E.g., Fakhri, *supra* note 65, at ¶ 8.

200. See generally V. Kasturi Rangan, Lisa Chase & Sohel Karim, *The Truth About CSR*, HARV. BUS. REV., Jan. – Feb., 2015, <https://hbr.org/2015/01/the-truth-about-csr> [<https://perma.cc/J29J-LVCB>].

201. Smyth et al., *supra* note 2, at 105-18.

202. See *Emergency: Global Food Crisis*, *supra* note 5; see also *id.* (noting that “[a]fter decades of both absolute and relative improvement in food security worldwide, climate change, market disruptions and declining productivity have reversed the trend.”).

institutional commitment to the pursuit of profit. Given the urgent need for a coordinated approach to combat global food insecurity,<sup>203</sup> forming robust public-private partnerships will be a critical step towards addressing food security goals set by the governments. A better alignment between governments and corporations' CSR initiatives must be a serious consideration for all parties.

Furthermore, as noted, the world is reversing its gains on the UN's Zero Hunger SDG.<sup>204</sup> With only seven years left, the world is "fast running out of time to correct course."<sup>205</sup> To deliver on the promise of this SDG, "a fundamental shift is needed – in commitment, solidarity, financing, and action."<sup>206</sup> Substantial progress on SDGs demands bold and transformative measures.<sup>207</sup> In this regard, this Article advocates for hard law CSR at both the international and national levels. Shifting from soft to hard law imposes clear responsibilities backed up with force on corporations to contribute to the realization of the right to food.<sup>208</sup>

As Professor Marina Teller notes, despite MNCs' CSR initiatives, there are hardly any substantial redistributions of private wealth specifically aimed at improving collective rights, such as the right to food.<sup>209</sup> Although voluntary CSR initiatives could contribute to the improvement of food security, finding the right balance between profitability and CSR will always be a challenge for profit-driven MNCs.<sup>210</sup> In response to this, Teller contends, the public sector, i.e., governments, should bear the primary responsibility for ensuring food security for all their citizens, which can be achieved through regulation of food production, distribution, safety, and other initiatives.<sup>211</sup> Legally binding rules and regulations, in other words, "hard law," are essential to enabling and holding all parties, including corporations, to account for their actions and failures in the context of food security.<sup>212</sup> The discussion which follows supports Teller's assertion that hard law holds the key to resolving global food insecurity problems, as it provides a transparent and enforceable framework for positive action.

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203. WILLIAM D. SCHANBACHER, *THE POLITICS OF FOOD: THE GLOBAL CONFLICT BETWEEN FOOD SECURITY AND FOOD SOVEREIGNTY* ix (2010).

204. The United Nations, *supra* note 3.

205. *We Need 7 Years of Accelerated, Transformative Action to Achieve SDGs*, U.N. DEP'T OF ECON. & SOC. AFFS. (Jun. 13, 2023), <https://www.un.org/en/desa/we-need-7-years-accelerated-transformative-action-achieve-sdgs> [<https://perma.cc/3L8H-C3UB>].

206. *Id.*

207. *Id.*

208. *See generally* Benedict Sheehy, Habib Zaman Khan, Paramita Prananingtyas & Philein Sophiana Sunarso Putri, *Shifting from Soft to Hard Law: Motivating Compliance When Enacting Mandatory Corporate Social Responsibility*, EUR. BUS. ORG. L. REV. (2023) (arguing that shifting from soft law to hard law helps improve CSR compliance).

209. Teller, *supra* note 178.

210. *See generally* HAWKINS, *supra* note 122.

211. Teller, *supra* note 178.

212. *Id.*



*A. Public-Private Partnerships and Collaborations*

Public-private partnerships and collaborations in various forms (“PPPs”) offer a promising approach to reduce hunger and malnutrition, particularly when both parties perform and discharge their obligations effectively. Strong policy support from the public sector, such as the development of a rights-based legal and institutional framework, creates an enabling environment for the implementation of the right to food.<sup>213</sup> Meanwhile, the private sector brings in innovative ideas, valuable resources and expertise as well as corporate policies; it contributes directly to the production and distribution of adequate and affordable food worldwide.<sup>214</sup>

Many scholars have endorsed the concept of PPPs recognizing their role in promoting food security. For example, as early as 1991, Professor Gabrielle Persley emphasized the significance of technology transfer between the two sectors and advocated for innovative forms of PPPs built on past experience.<sup>215</sup> Professor Stuart J. Smyth also suggested, “the use of both strategic and tactical partnerships should be accelerated in order to improve global food security.”<sup>216</sup>

Furthermore, the international community has recognized the importance of PPPs in supporting the realization of the right to food.<sup>217</sup> As early as 1992, the UN Conference on Environment and Development called on the private sector, including corporations, to participate in development partnerships.<sup>218</sup> This marked the first significant global advocacy for PPPs in food security.<sup>219</sup> In 2002, the World Summit on Sustainable Development expressed concerns about the public sector’s poor performance in international development,<sup>220</sup> and proposed partnerships between governments, the private sector, and civil society to meet development goals.<sup>221</sup>

One key area in which the public and private sectors can collaborate is in research and development (“R&D”).<sup>222</sup> R&D holds great importance in addressing traditional and, most importantly, emerging challenges faced by the agri-food sector as well as governments. For example, climate change has

213. See generally Sheehy & Chen, *supra* note 1.

214. 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); Sheehy & Chen, *supra* note 1, at 633-34.

215. Smyth et al., *supra* note 2, at 105-18.

216. *Id.*

217. *Id.*

218. 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, 1287 (2018); see also MARIANNE BEISHEIM & NILS SIMON, MULTI-STAKEHOLDER PARTNERSHIPS FOR IMPLEMENTING THE 2030 AGENDA.: IMPROVING ACCOUNTABILITY AND TRANSPARENCY (2016).

219. Bragdon & Hayes, *supra* note 218; see also Beisheim & Simon, *supra* note 218.

220. Bragdon & Hayes, *supra* note 218; see also Beisheim & Simon, *supra* note 218.

221. Bragdon & Hayes, *supra* note 218; see also Beisheim & Simon, *supra* note 218, at 8.

222. David J. Spielman & Klaus von Grebmer, *Public-Private Partnerships in International Agricultural Research: An Analysis of Constraints*, 31 J. TECH. TRANSFER 291, 291-300 (2006).

created undesirable farming conditions and compromised global food security.<sup>223</sup> R&D investment can provide essential support for the continuous development of solutions that can enhance the resilience and adaptability of crops and improve farming practices.<sup>224</sup> Climate resilient seeds and climate-smart agricultural techniques are some of the examples of potential R&D outcomes.<sup>225</sup>

Moreover, as Smyth and others observe, during the COVID-19 pandemic, “no country, regardless of income level [was] shielded from food system disruptions.”<sup>226</sup> The pandemic unveiled some previously unseen vulnerabilities in the global supply chains, such as staff shortages and loss due to closure.<sup>227</sup> These disruptions severely undermined food availability, accessibility, and adequacy around the globe.<sup>228</sup> Following the pandemic, global food supply chains are being tested again – this time by the Russian invasion of Ukraine. Since 2022, the war has disrupted Ukraine’s agricultural production and exports and “further aggravated the global food crisis.”<sup>229</sup> As a result, corporations have been reassessing supply chains, striving to “make their supply chains more resilient.”<sup>230</sup> As such, R&D investment in supply chain management is integral to fostering resilience in this sector, as it enables stakeholders within the supply chains to anticipate and effectively respond to emerging challenges and ensure the smooth flow of goods, such as food and supplies, from producers to consumers.

The two challenges mentioned above affect not only profit-driven corporations but also governments, as food production and distribution are foundational in the realization of the right to food—ultimately a government responsibility. As such, as Smyth et al argue, “gain[ing] synergies by improving collaborative opportunities between the public and private R&D programs” can be a critical strategy to improve profitability for corporations and food security

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223. Smyth et al., *supra* note 2, at 105-18.

224. *Id.*

225. See generally Niels P. Louwaars & Gigi Manicad, *Seed Systems Resilience—An Overview*, 1 *SEEDS* 340, 340-56 (2022); Marcus Taylor, *Climate-smart Agriculture: What is It Good For?*, 45 *J. PEASANT STUD.* 89, 89-107 (2017).

226. Smyth et al., *supra* note 2, at 105-18.

227. Sean Harapko, *How COVID-19 Impacted Supply Chains and What Comes Next* (Jan. 6, 2023), [https://www.ey.com/en\\_au/supply-chain/how-covid-19-impacted-supply-chains-and-what-comes-next](https://www.ey.com/en_au/supply-chain/how-covid-19-impacted-supply-chains-and-what-comes-next) [<https://perma.cc/6HGM-5RTC>].

228. Md. Nekomahmud, *Food Consumption Behavior, Food Supply Chain Disruption, and Food Security Crisis during the COVID-19: the Mediating Effect of Food Price and Food Stress*, 27 *J. FOODSERVICE BUS. RSCH.*, no. 3, 2022, at 227.

229. *Infographic - How the Russian Invasion of Ukraine has Further Aggravated the Global Food Crisis*, EUR. COUNCIL, <https://www.consilium.europa.eu/en/infographics/how-the-russian-invasion-of-ukraine-has-further-aggravated-the-global-food-crisis/> [<https://perma.cc/EY28-A6FB>] (last visited Sept. 28, 2023).

230. Willy C. Shih, *Global Supply Chains in a Post-Pandemic World*, *HARV. BUS. REV.*, Sept. – Oct., 2020, <https://hbr.org/2020/09/global-supply-chains-in-a-post-pandemic-world> [<https://perma.cc/GK98-UJTB>].

for governments.<sup>231</sup>

The collaboration between the FAO and CropLife International (“FAO-CLI Collaboration”) stands as a successful example of PPP implementation.<sup>232</sup> As Smyth and others observe, the FAO-CLI PPP has produced a number of useful innovations, for example, “a selection of new breeding tools, a host of modern improved varieties and a concerted public-private effort to make new technologies more available to small and subsistence producers.”<sup>233</sup> These innovations “have helped to increase global food supplies, lower food insecurity and in some ways advance production methods to lower the ecological footprint of agriculture.”<sup>234</sup>

The practical application of PPPs can also extend to many other areas of the agri-food sector. For example, PPP innovations in agricultural finance,<sup>235</sup> agricultural insurance and risk management,<sup>236</sup> food processing and storage facilities,<sup>237</sup> supply chain management,<sup>238</sup> and market infrastructure<sup>239</sup> are all valuable contributions.

Despite their merits, PPPs also give rise to significant concerns. Susan H. Bragdon and Carly Hayes assert the private sector, “by nature, is driven by profit gains achieved by efficiency in production.”<sup>240</sup> Its ultimate goal is not to “provide universal access to public goods,” but to pursue private interests.<sup>241</sup> Although corporations provide jobs, pay taxes, and contribute to development goals set by the governments, the track record of PPPs has demonstrated that “power has most often shifted in favor of [the private sector]” as a result of its “greater financial resources.”<sup>242</sup> PPPs strengthen corporate power in influencing

231. Smyth et al., *supra* note 2, at 105-18.

232. SOFI Report, *supra* note 7, at 18-19.

233. Smyth et al., *supra* note 2, at 105-18.

234. *Id.*

235. *See, e.g.*, CATHERINE MOREDDU, OECD FOOD, AGRICULTURE AND FISHERIES PAPERS, NO. 92: PUBLIC-PRIVATE PARTNERSHIPS FOR AGRICULTURAL INNOVATION: LESSONS FROM RECENT EXPERIENCES (2016).

236. *See, e.g.*, Li Xing & Kaiyu Lu, *The Importance of Public-Private Partnerships in Agricultural Insurance in China: based on Analysis for Beijing*, 1 AGRIC. AND AGRIC. SCI. PROCEDIA 241, 241-50 (2010).

237. *See, e.g.*, STANDARDS AND TRADE DEV. FACILITY & INTER-AM. DEV. BANK, PUBLIC-PRIVATE PARTNERSHIPS TO ENHANCE SPS CAPACITY: WHAT CAN WE LEARN FROM THIS COLLABORATIVE APPROACH? (2012).

238. KARL M. RICH & CLARE A. NARROD, IFPRI DISCUSSION PAPER 01001: THE ROLE OF PUBLIC-PRIVATE PARTNERSHIPS IN PROMOTING SMALLHOLDER ACCESS TO LIVESTOCK MARKETS IN DEVELOPING COUNTRIES: METHODOLOGY AND CASE STUDIES (2010).

239. MICHAEL WARNER, DAVID KAHAN & SZILVIA LEHEL, MARKET-ORIENTED AGRICULTURAL INFRASTRUCTURE: APPRAISAL OF PUBLIC-PRIVATE PARTNERSHIPS (2009).

240. Bragdon & Hayes, *supra* note 218, at 1286; *see also* DEV. ALTS. WITH WOMEN FOR A NEW ERA, PUBLIC-PRIVATE PARTNERSHIPS AND GENDER JUSTICE IN THE CONTEXT OF THE 3RD UN CONFERENCE OF FINANCING FOR DEVELOPMENT (2015), [http://dawnnet.org/wp-content/uploads/2015/03/Ffd3\\_Public-Private-Partnerships-and-Gender-Justice.pdf](http://dawnnet.org/wp-content/uploads/2015/03/Ffd3_Public-Private-Partnerships-and-Gender-Justice.pdf) [<https://perma.cc/AVS2-RPH4>].

241. Bragdon & Hayes, *supra* note 218 at 1286-87.

242. *Id.*

and controlling the global food system. In fact, Smyth and his colleagues acknowledge this concern is “far from novel.”<sup>243</sup> Particularly, they state, “[t]here are well articulated legitimate concerns about supply chains and the degree of concentration that exists within the supply chains of certain food products.”<sup>244</sup>

In the face of the worsening global food crisis, there is an urgent need for a holistic and more effectively coordinated approach to food security. It is imperative that the world “harness the power of solidarity and collective action.”<sup>245</sup> An important question arises in this context: how can a balance be struck between corporate profits and the public social interests of food security? What does an appropriate CSR collaborative approach look like? These questions are both specific to PPPs and more general in nature, particularly in the context of corporations’ role in improving food security. The following sections strive to answer these questions.

*B. Shifting Towards Hard Law at Both the International  
and National Levels*

To substantially improve food security, this Article advocates for CSR regulation at both the international and national levels. Hard law imposes transparent and enforceable legal obligations on the private sector, including private actors such as corporations, and ensures that they do not solely pursue profits to the detriment of all other stakeholders. Hard law can establish clear standards for balancing profits and social responsibility.

For some scholars, food security is a key element of CSR.<sup>246</sup> For example, Professor Audrey J. Murrell and others note the right to food is a fundamental human right and “part of society’s ethical and social responsibility as well as a necessary component of social sustainability.”<sup>247</sup> In certain contexts, corporations consider the collective right to food in their daily business operations.<sup>248</sup> As soft law, however, CSR is voluntary in nature, sometimes described as going beyond mere compliance with hard law.<sup>249</sup> As such, it is not legally enforceable, ambiguous, uncertain, and of limited impact.<sup>250</sup>

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243. Smyth et al., *supra* note 2, at 105-18.

244. *Id.*

245. The United Nations, *supra* note 22.

246. Murrell et al., *supra* note 181.

247. *Id.*

248. *See generally*, Sheehy et al., *supra* note 208.

249. Amy O’Connor & Mark Meister, *Corporate social responsibility attribute rankings*, 34 PUB. RELS. REV. 49, 49-50 (2008); *see also* Hans B. Christensen et al., *Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review*, 26 REV. ACCOUNT. STUDS. 1176, 1176-1248 (2021).

250. *See, e.g.*, Anselm Schneider, *Embracing Ambiguity – Lessons from the Study of Corporate Social Responsibility throughout the Rise and Decline of the Modern Welfare State*, 23 BUS. ETHICS: EUR. REV. 293, 293-308 (2014).

### 1. CSR Regulation at the International Level

Most international law is in the form of soft law, which does not create enforceable obligations on member states.<sup>251</sup> The limited international hard law is often unenforceable due to “the absence of an independent judiciary with supporting enforcement powers.”<sup>252</sup> Thus, as Professors Kenneth W. Abbott and Duncan Snidal summarize, essentially, “all international law is soft.”<sup>253</sup> As such, the enforcement of human rights law, including the right to food, faces considerable challenges at the international level, as it involves commitments not only from the UN but also from individual states across the globe. This situation entails complex political dynamics and is not easy to navigate.

Unlike the situation in international law generally, and despite the voluntary nature of CSR, there are precedents of mandatory CSR in international trade law that could serve as a model for the implementation of the right to food at the international level. Hence, further exploration of this area is merited. As an example of such mandatory CSR provisions, the United States has adopted a sanction-based approach to enforce labor and environment standards enshrined in its free trade agreements (“FTAs”).<sup>254</sup> Similarly, although the European Union (“EU”) has traditionally preferred the promotional approach (or “the voluntary approach”),<sup>255</sup> it too is transitioning to hard law, making CSR a mandatory obligation for its trading partners.<sup>256</sup>

#### a. US FTAs

The existing US FTAs prioritize labor and environmental standards. Indeed, in some cases, the United States includes labor and environmental standards in the main body of trade agreements, such as the United States-Australia FTA,<sup>257</sup> and the Dominican Republic-Central America FTA.<sup>258</sup> In other cases, it enters side agreements to address trade-related social and environmental issues with its trading partners, for example, the North American Agreement on Labor Cooperation (“NAALC”)<sup>259</sup> and the North American Agreement on

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251. Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT’L ORG. 421, 421 (2000).

252. *Id.* at 421-22.

253. *Id.*

254. Ying Chen & Benedict Sheehy, *Exporting Corporate Social Responsibility through Free Trade Agreements: Improving Coherence in the EU’s New-Generation Trade and Sustainable Development FTAs*, 58 TEX. INT’L L.J. 173 (2023).

255. *Id.* at 189.

256. *Id.*

257. United States-Australia Free Trade Agreement, U.S.-Austl., May 18, 2004, 43 I.L.M. 1248.

258. Dominican Republic-Central America FTA, OFF. OF THE U.S. TRADE REPRESENTATIVE (Aug. 2, 2005), <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta> [https://perma.cc/M6M9-MP4K].

259. North American Agreement on Labor Cooperation, Canada-U.S., Sept. 8–14, 1993, 32 I.L.M. 1499.

Environmental Cooperation (“NAAEC”)<sup>260</sup> signed with Mexico and Canada as part of the former North American Free Trade Agreement (“NAFTA”).<sup>261</sup> The US FTAs have the potential to serve as exemplars of how CSR in FTAs could be used to improve food security, either through the integration of the standards into the text of the main trade agreement or through separate side agreements. Most importantly, the right to food could be realized through the United States’ hard law enforcement approach to violations.

The United States’ sanction-based approach to CSR does not tolerate non-compliance.<sup>262</sup> If a party breaches its CSR obligations, particularly if the breach affects trade, other parties can impose fines or initiate a procedure to temporarily suspend trade benefits.<sup>263</sup> The scholarship also reveals that the US model has driven its trading partners to reform their domestic laws to uphold higher labor and environmental standards.<sup>264</sup> For example, Professor James Harrison notes that the United States’ sanction-based approach prompted domestic legislative reforms to improve labor standards in Bahrain, Colombia, Morocco, Oman, and Panama.<sup>265</sup> Professors Evgeny Postnikov and Ida Bastiaens also observe similar reforms in the domain of environmental law.<sup>266</sup> Taking a hard law approach to the right to food similarly has the potential to enhance food security, particularly among trade partners. It is worth noting, however, that the U.S. model retains its emphasis on economic benefits.<sup>267</sup> It is focused on and generally used to level the playing field and prevent the United States’ trading partners from exploiting lower economic standards.<sup>268</sup> By incorporating higher CSR standards into FTAs, the United States seeks to avoid being competitively disadvantaged.<sup>269</sup> As such, the United States is likely to require an economic justification for the incorporation of the right to food in its FTAs.

#### *b. EU FTAs*

Similarly, under the EU FTAs, CSR has evolved through four stages: (1) the official announcement of the EU’s commitment to CSR in 2001;<sup>270</sup> (2) the

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260. North American Agreement on Environmental Cooperation, Canada-U.S., Sept. 8–14, 1993, 32 I.L.M. 1480.

261. Chen & Sheehy, *supra* note 254, at 203-04.

262. *Id.* at 205; *see also* Ronald C. Brown, *FTAs in Asia-Pacific: “Next Generation” of Social Dimension Provisions on Labor?*, 26 IND. INT’L & COMP. L. REV. 69, 81-82 (2016).

263. Barbara J. Fick, *Corporate Social Responsibility for Enforcement of Labor Rights: Are There More Effective Alternatives?*, 4 GLOB. BUS. L. REV. 1, 25 (2014).

264. LONDON SCHOOL OF ECON., COMPARATIVE ANALYSIS OF TSD PROVISIONS FOR IDENTIFICATION OF BEST PRACTICES TO SUPPORT THE TSD REVIEW 10-11 (2021) [hereinafter LSE].

265. James Harrison, *The Labor Rights Agenda in Free Trade Agreements*, 20 J. WORLD INV. & TRADE 705, 717-18 (2019).

266. Evgeny Postnikov & Ida Bastiaens, *Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements*, 21 J. EUR. PUB. POL’Y 923, 923-40 (2014).

267. Chen & Sheehy, *supra* note 254, at 207.

268. LSE, *supra* note 264, at 9.

269. *Id.*

270. Chen & Sheehy, *supra* note 254, at 190-91.

first integration of labor and environmental standards into the FTA with Cariforum in 2008;<sup>271</sup> (3) the first chapter dedicated to labor and environmental issues in an FTA, being that negotiated with South Korea in 2010;<sup>272</sup> (4) the consistent inclusion of dedicated chapters in EU FTAs since 2010.<sup>273</sup> To date, the EU FTAs have expanded CSR norms to include human and labor rights, environmental protection, climate change,<sup>274</sup> and most recently, sustainable food systems and food security.<sup>275</sup>

As noted, this has been an evolutionary process, starting with the EU initially adopting a voluntary approach to CSR. Lately, it has acknowledged obstacles that compromise enforcement efforts, such as the lack of mechanisms to measure compliance.<sup>276</sup> As a result, it is contemplating a shift towards hard law.<sup>277</sup> As Chen and Sheehy note, however,

[i]t is not that hard law must immediately lead to the development of full-blown regulatory infrastructure and an enforcement regime--something which can occur over a longer period of time. Rather, hard law signals to the regulated parties what behaviors are acceptable and what are not--this is the so-called "expressive function" of hard law.<sup>278</sup>

Thus, the creation of hard law provisions makes it abundantly clear that certain practices, whether labor, environmental or potentially concerning food provision, are expressed as fundamentally objectionable to the EU.

In June 2022, the European Commission stepped up its CSR agenda by announcing "a new plan to enhance the contribution of EU trade agreements in protecting the climate, environment and labor rights worldwide."<sup>279</sup> The new plan emphasizes the use of trade sanctions for violations of the Paris Climate Agreement and the ILO fundamental labor principles.<sup>280</sup> This sanction-based approach "will be applied to future negotiations and to ongoing negotiations as

271. LSE, *supra* note 264, at 18.

272. Council Decision 2011/265/EU of Sept. 16, 2010, Free Trade Agreement between the European Union and its Member States, of the One Part, and the Republic of Korea, of the Other Part, 2011 O.J. (L 127).

273. Chen & Sheehy, *supra* note 254, at 190-91.

274. *Id.*

275. Free Trade Agreement Between New Zealand and the European Union ch. 7, Oct. 5, 2016, <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Consolidated-Text-of-all-Chapters.pdf> [<https://perma.cc/RK36-7XSV>] [hereinafter EU-NZ FTA].

276. Chen & Sheehy, *supra* note 254, at 213.

277. *Id.*; see also Jean-Pascal Gond & Nahee King, *The Government of Self-Regulation: On the Comparative Dynamics of Corporate Social Responsibility*, 40 J. ECON. & SOC'Y 640, 644 (2011).

278. Chen & Sheehy, *supra* note 254, at 198.

279. European Commission, *Press Release: Commission Unveils New Approach to Trade Agreements to Promote Green and Just Growth* (Jun. 22, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3921](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3921) [<https://perma.cc/322Y-MMY4>].

280. *Id.*

appropriate.”<sup>281</sup>

In fact, the EU and New Zealand Free Trade Agreement (“EU-NZ FTA”)<sup>282</sup> signed in July 2023 contains the most ambitious social and climate commitments to date.<sup>283</sup> Under this agreement, the Paris Climate Agreement and core labor rights are “enforceable through trade sanctions as a last resort.”<sup>284</sup> Furthermore, the EU-NZ FTA, for the first time in history, includes a dedicated sustainable food systems chapter (Chapter 7).<sup>285</sup> Given the significance and innovativeness of this provision, it merits further consideration.

Article 7.3 interprets sustainable food systems as “a food system which ensures access to safe, nutritious and sufficient food all year round in such a way that the economic, social, cultural and environmental bases to generate food security and nutrition for future generations are not compromised.”<sup>286</sup> That is, rather than simply aiming at providing food for individuals or limited populations, the FTA is taking a systemic approach. It contemplates a “food system” and entails manifold matters to be considered, from land care and farming practices to agricultural inputs including labor and other factors of production to supply chains.

Article 7.4 requires parties to collaborate on various sustainable food systems-related matters, including food security.<sup>287</sup> It states, “[t]he Parties shall cooperate on [developing] . . . contingency plans to ensure the security and resilience of food supply chains and trade in times of international crisis.”<sup>288</sup> Article 19.12 paragraph 3 also encourages the Parties to promote joint work in improving food security.<sup>289</sup> This provision is important as it extends the scope of concern directly to food security--a matter well beyond the nuts and bolts of trade.

Furthermore, Article 7.6 establishes a Committee on Sustainable Food Systems responsible for the following matters: “(a) establishing priorities for cooperation and work plans to implement those priorities; (b) promoting cooperation in multilateral fora; and (c) performing any other functions relating to the implementation or operation of this Chapter.”<sup>290</sup> Thus, a body is established and responsible for this particular obligation. It ensures that the provision is more than mere window dressing.

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281. *Id.*

282. *Press Release: EU and New Zealand Sign Ambitious Free Trade Agreement*, EUR. COMM’N (July 9, 2023), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3715](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3715) [<https://perma.cc/6C7G-39K4>].

283. *Id.*

284. *Press Release: EU – New Zealand Trade Agreement: Unlocking Sustainable Economic Growth*, EUR. COMM’N (Jun. 30, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4158](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4158) [<https://perma.cc/FVC5-KDFN>].

285. The EU-NZ FTA, *supra* note 275.

286. *Id.* art. 7.3.

287. *Id.* art. 7.4.

288. *Id.*

289. *Id.* art. 19.2.

290. *Id.* art. 7.6.



Accordingly, the EU-NZ FTA sets an important precedent for other countries: it demonstrates that food security can be incorporated into trade agreements and potentially enforced as hard law. It is worth noting that the EU's transitioning to hard law in CSR more broadly offers many benefits to the food situation, such as heightened awareness of food insecurity, improved monitoring and compliance mechanisms, and the establishment of a remedial system.<sup>291</sup> The transitioning process, however, remains complex, demanding careful consideration of, for example, suitable food security standards and the methods to measure enforcement and compliance. In light of this challenge, Pall A. Davidsson's recommendation holds great importance. He suggests:

Where laws do set down material requirements for CSR, they could, and perhaps should, be limited to minimum standards that are integral to the EU as a community embracing human rights and as an economy integrating social values. Higher and more ambitious notions could be left to voluntary codes, at least until a consensus develops within the EU that those rights are essential to human welfare or require greater protection.<sup>292</sup>

In summary, the United States has effectively integrated CSR as hard law into its FTAs, though not specifically concerning food security. The EU has explicitly recognized the right to include food in the FTA with New Zealand and is gradually transitioning towards hard law. Therefore, the inclusion of some element of food security as a component of mandatory CSR is indeed a viable option.

## *2. CSR Regulation at the National Level*

There is a wide range of national legislative responses to issues associated with harmful corporate behaviors as well as efforts promoting specific CSR pro-social behaviors.<sup>293</sup> At a very basic level, all legislation, whether environmental, employment and labor, or consumer, applies to control corporate behavior.<sup>294</sup> By way of this legislation, corporate behaviors are forced to be less harmful and more pro-social. Beyond this broader, general legal environment, several jurisdictions have specific CSR legislation and regulations. These include the EU's disclosure obligations, India's CSR range of authorized activities, and

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291. Chen & Sheehy, *supra* note 254, at 217.

292. Pall A. Davidsson, *Legal Enforcement of Corporate Social Responsibility within the EU*, 8 COLUM. J. EUR. L. 529, 555 (2002).

293. *See, e.g.*, William Mbanye, Linda Muchenje, Yafei Li, Hongyun Huang & Fengrong Wong, *Corporate Social Responsibility and Green Innovation: Evidence from Mandatory CSR Disclosure Laws*, 212 ECON. LETTERS 1, 1-7 (2022) (discussing CSR reporting laws).

294. Radu Mares, *Global Corporate Social Responsibility, Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy*, 1 TRANSNAT'L LEGAL THEORY 221, 221-85 (2010).

Indonesia's legislation<sup>295</sup> among others.

This broad range of legislation creates a wide variety of rights and duties, where duties are imposed upon corporations, while said rights are distributed more broadly. Duties range from mere disclosure obligations, such as California's SB-253 Climate Corporate Data Accountability Act,<sup>296</sup> to India's donations to charitable contributions.<sup>297</sup> In all instances, however, there is an element of director discretion.<sup>298</sup> The defining element of CSR legislation is allowing corporations to tailor their social contributions to their specific contexts.<sup>299</sup> That context is both the special strengths or niche of the corporate operations to the social and environmental context in which it is operating.<sup>300</sup> It may include, somewhat contentiously, political lobbying.<sup>301</sup>

*a. Domestic CSR regulation to ensure food availability and accessibility: the case studies of India and Indonesia*

Although the panoply of law around CSR is a combination of both hard and soft law, the real power to change corporate behavior is with hard law.<sup>302</sup> While CSR is responsive to the social context, as for example, where food security is overtly a challenge, it can be expected that CSR hard law would more readily accommodate or address that issue. We turn next to examine two jurisdictions where it has that specific potential, namely, India and Indonesia.

The Indian Parliament passed a new corporate law, the Companies Act,<sup>303</sup> in 2013.<sup>304</sup> Section 135 of that Act creates a form of mandatory CSR,<sup>305</sup>

295. See, e.g., Benedict Sheehy & Cacik Damayanti, *Issues and Initiatives: Sustainability and CSR in Indonesia*, in CAMBRIDGE HANDBOOK OF CORPORATE LAW, CORPORATE GOVERNANCE AND SUSTAINABILITY (Beate Sjaafjell & Christopher M. Bruner eds., 2019).

296. S.B. No. 253 (Cal. 2023).

297. Akanksha Jumde & Jean du Plessis, *Legislated Corporate Social Responsibility (CSR) in India: The Law and Practicalities of its Compliance*, 43 STATUTE L. REV. 170, 170-97 (2022).

298. See, e.g., Iris H.-Y. Chiu, *Disclosure Regulation and Sustainability: Legalisation and Governance Implications*, in CORPORATE GOVERNANCE AND SUSTAINABILITY 521 (Beate Sjaafjell & Christopher M. Bruner eds., 2020) (mandatory CSR reporting grants businesses a high level of autonomy and allows them to decide on, e.g., which issues are most important, what CSR objectives to achieve, and report on these matters).

299. David Hess, *The Future of Sustainability Reporting as a Regulatory Mechanism*, in LAW AND THE TRANSITION TO BUSINESS SUSTAINABILITY 125-39 (Daniel R. Cahoy & Jamison E. Colburn eds., 2014).

300. *Id.*

301. See generally Alvise Favotto & Kelly Kollman, *Mixing Business with Politics: Does Corporate Social Responsibility End Where Lobbying Transparency Begins?*, 15 REGULATION & GOVERNANCE 262, 262-79 (2021).

302. Robert B. Reich, *The Case Against Corporate Social Responsibility* (U. Cal. Berkeley Goldman School Pub. Pol'y, Working Paper No. GSPP08-003, 2008).

303. The Companies Act, 2013, § 135 (India).

304. Mahesh Chand Garg & Khushboo Tanwer, *Board Variables Reforms in India: Success or Failure? A Comparative Analysis Between Pre and Post Enactment Period of Companies Act, 2013*, 30 ASIA-PAC. FIN. MKTS. 531, 531-58 (2023).

305. Alison E. McArdle, *A Stick in the Global Carrot Patch: The Business of Corporate Social Responsibility in India's Companies Act 2013*, 38 SUFFOLK TRANSNAT'L L. REV. (2015).

imposing a duty on enterprises with a net worth of over USD \$73 million, a turnover of over \$145 million, or a net income of just under \$750,000 to contribute 2% of profit to CSR.<sup>306</sup> The first two provisions focus on large enterprises while the subsequent provision is focused on medium sized firms,<sup>307</sup> amounting to 16,000 enterprises (more or less).<sup>308</sup> The legislation has defined CSR primarily as public infrastructure and in terms of philanthropy.<sup>309</sup> The legislation has had some clear wins, including major projects such as corporate contributions in health, education, job training, environment and rural development.<sup>310</sup>

These projects are at the discretion of the directors who will respond to a combination of their own interests and perceptions of needs of and interests in the community of stakeholders. They may or may not interact with SDGs such as food security.<sup>311</sup> Where there are proposals being put forward for the board of directors to consider food security, the directors could decide to make all or part of their mandatory CSR contribution to food security. Leaving food security to directors' discretion, however, is unlikely to achieve the desired improvements. Accordingly, the interpretive regulation could provide direction to a portion of the 2% of profits dedicated to CSR to be applied to food security programs. Making such law reforms in India are particularly important as the COVID-19 pandemic hit the poorest of the country who are continuing to feel the impacts on food security especially hard.<sup>312</sup>

CSR contributions to food security could be improved by providing direct food subsidies to poor people. Alternatively, it could be through agri-businesses dedicating some portion of production to those suffering from food insecurity. For example, an agri-business focused on producing certain food stuffs could provide food directly to workers (whether contracted, sub-contracted, or simply affiliated with the land through some other work focused arrangement) sufficient for their families.

306. See generally Arjya B. Majumdar, *India's Journey with Corporate Social Responsibility - What Next?*, 33 J.L. & COM. 165, 165-205 (2015).

307. Dhammika Dharmapala & Vikramaditya S Khanna, *The Impact of Mandated Corporate Social Responsibility: Evidence from India's Companies Act of 2013*, 56 INT'L REV. L. & ECON. 92, 92-104 (2016).

308. Lucia Gatti, Babitha Vishwanath, Peter Seele & Bertil Cottier, *Are We Moving Beyond Voluntary CSR? Exploring Theoretical and Managerial Implications of Mandatory CSR Resulting from the New Indian Companies Act*, 160 J. BUS. ETHICS. 961, 961-72 (2019).

309. Ameeta Jain, Monika Kansal & Mahesh Joshi, *New Development: Corporate Philanthropy to Mandatory Corporate Social Responsibility (CSR)—A New Law for India*, 41 PUB. MONEY & MGMT. 276, 276-78 (2020).

310. Punam Singh & Shulgana Sarkar, *Revolutionizing Corporate Social Responsibility in India: Is It Truly Revolutionised?*, 13 ASIA-PAC. J. OF MGMT. RSCH. & INNOVATION 1, 1-12 (2018).

311. Anushree Poddar, Sapna Narula & Ambika Zutshi, *A Study of Corporate Social Responsibility Practices of the Top Bombay Stock Exchange 500 Companies in India and Their Alignment with the Sustainable Development Goals*, 26 CORP. SOC. RESP. & ENV'T MGMT. 1184, 1184-205 (2019).

312. Priyadarshini & Abhilash, *supra* note 58.

Indonesia also has a significant population suffering from food insecurity.<sup>313</sup> The working poor in addition to the destitute poor of Indonesia, a country with a population of over 250 million, make up a significant proportion of the population.<sup>314</sup> According to reporting by the World Bank, 168 million live on less than USD \$7.00 per day and 56 million live on less than USD \$4.00 per day—while likely not delivering food security, in comparison, it is still an improvement on 6.9 million individuals living below the International Poverty Line of \$2.15 per day.<sup>315</sup>

Indonesia's mandatory CSR has a longer history compared to most.<sup>316</sup> The 2003 Law on State-Owned Enterprises, Article 88(1) stipulates: “[State-owned entities] may set aside a part of their net profits for assisting small-scale businesses / cooperatives and society development in the surrounding of [the state-owned entities].”<sup>317</sup> In 2012, provisions extending CSR responsibility beyond state owned enterprises (“SOEs”) to include corporations with operations in extractive industries were introduced.<sup>318</sup> The provisions, as with India, create an obligation to make direct contributions to society. The legislation makes appropriation of profits mandatory.<sup>319</sup> And further, the appropriated funds must be contributed to co-operative institutions.

SOEs are obligated to engage in CSR primarily in the form of philanthropy. This philanthropy is aimed at social empowerment and poverty alleviation.<sup>320</sup> To achieve these legal objectives, SOE funds are to be distributed in one or both of a Partnership Program (*Program Kemitraan*) for SMEs and/or a Community Development Program (*Bina Lingkungan*).<sup>321</sup> The former is a program designed

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313. Estiana Rusmawati, Djoni Hartono & Adiwana Fahlan Aritenang, *Food Security in Indonesia: the Role of Social Capital*, 10 DEV. STUD. RSCH. 1, 1-10 (2023).

314. See generally Zuhud Rozaki, *Chapter Five – Food Security Challenges and Opportunities in Indonesia Post COVID-19*, in ADVANCES IN FOOD SECURITY AND SUSTAINABILITY 119-68 (Marc J. Cohen ed., 2021).

315. WORLD BANK GRP., POVERTY & EQUITY BRIEF, INDONESIA, EAST ASIA & PACIFIC (2023), [https://databankfiles.worldbank.org/public/ddpext\\_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/current/Global\\_POVEQ\\_IDN.pdf](https://databankfiles.worldbank.org/public/ddpext_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/current/Global_POVEQ_IDN.pdf) [<https://perma.cc/W79C-58HQ>] (noting that by Indonesian standards, only 9.5 are living below the National Poverty Line).

316. Sheehy & Damayanti, *supra* note 296.

317. Law of the Republic of Indonesia No. 19/2003 Concerning State-Owned Enterprises art. 88(1), <https://faolex.fao.org/docs/pdf/ins211876.pdf> [<https://perma.cc/H478-DENT>].

318. Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of Limited Liability Company art. 5 (Indon.) (this regulation is problematic because, as CSR not defined, it is unclear what amounts to a natural resources company and what a company ‘related to natural resources’).

319. Minister of State-Owned Enterprises Regulation Number PER-09/MBU/07/2015 art. 2(1), <https://peraturan.bpk.go.id/Details/146583/permen-bumn-no-per-09mbu072015-tahun-2015> [<https://perma.cc/Q8JS-Z5YN>] [hereinafter PER-09/MBU/07/2015].

320. TIM NASIONAL PERCEPATAN PENANGGULANGAN KEMISKINAN, EFFECTIVE CORPORATE SOCIAL RESPONSIBILITY FOR POVERTY REDUCTION THROUGH COMMUNITY DEVELOPMENT IN INDONESIA (2015), [http://www.tnp2k.go.id/images/uploads/downloads/CSR\\_EN\\_0616B\\_lowres.pdf](http://www.tnp2k.go.id/images/uploads/downloads/CSR_EN_0616B_lowres.pdf) [<https://perma.cc/R4NJ-V7RQ>].

321. PER-09/MBU/07/2015, *supra* note 319.

to improve resilience and independence of small businesses,<sup>322</sup> while the latter is described as a social empowerment program.<sup>323</sup>

Empirical research on CSR in the most populous island of Indonesia, the island of Java, finds that company empowerment programs can be readily categorized as:

(a) Education, (b) Well-being or health programs, (c) Sport, art or tourism programs, (d) Public welfare programs, (e) Empowering community economy programs, (f) Religious activity programs, (g) Environmental protection and management programs, (h) Agricultural or plantation or forestry or husbandry or marine and fishery programs, (i) Sustainable energy programs, (j) Emergency and mitigation programs and (k) Community assistance program and infrastructure programs.<sup>324</sup>

Given the empowerment objective of the Community Development Program, the Indonesian government could certainly use CSR laws to address food insecurity directly in Java. At a basic level, companies could be required to contribute to “public welfare programs” that ensure people living in poverty have access to adequate food. Given the strong religious institutions, the programs could be coordinated with local mosques, temples or churches to give them the greatest reach.<sup>325</sup> Food security is an issue that spans believers of all faiths. Government direction, however, would be critical to ensuring CSR addresses this basic issue in Java and Indonesia more generally.

*C. Challenge: To What Extent Should CSR Be Regulated to Improve Food Security?*

Remembering that CSR is an expression of society’s expectations of business enterprises, it is appropriate to consider whether and, if so, to what extent those expectations should extend to food security. As producers and controllers of the world’s food supply they have a critical role to play in the two fundamental challenges of the right to food: availability and accessibility. Addressing these two challenges clears the pathway for food adequacy. It is fair and reasonable to expect such contributions from society’s corporations.<sup>326</sup>

As noted above, however, CSR is to be responsive to its context. In locales where food security is an issue, it is not inappropriate to have some societal expectations of businesses operating locally to contribute to food security. Further, as an organization-focused policy, CSR too can reflect managerial

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322. *Id.* art. 1(6).

323. *Id.* art. 1(7).

324. Sheehy et al., *supra* note 208 at 706.

325. *See generally* ISMATU ROPI, RELIGION AND REGULATION IN INDONESIA 1-225 (2017) (discussing the various aspects of religion and regulation in Indonesia).

326. Sheehy, *supra* note 173.

discretion concerning the best and most appropriate form of contribution. For example, while it may not be appropriate for an automobile parts manufacturer to contribute food to local food banks or schools, it may be appropriate for local food production companies to donate food to such institutions.

In this same vein, the global food supply chain is dominated by less than a dozen corporations.<sup>327</sup> These MNCs are notoriously difficult to regulate.<sup>328</sup> Accordingly, it will take a concerted, creative effort to ensure that they contribute and do so in a way that makes a positive difference to the situation. It will require a combination of hard national laws, hard law of FTAs as well as soft private international law in the form of CSR.

Given the particular challenges faced by LIFD countries,<sup>329</sup> with their challenges of reliance on imports and limited purchasing power,<sup>330</sup> MNCs can be involved in supporting programs such as Indonesia's Partnership and Community Development Programs. Thus, credit and investment schemes in SMEs that form part of their supply chains, and particularly agri-businesses, would be appropriate targets of hard law and regulatory intervention. Fair credit terms will help alleviate the hardest hit SMEs in poorer countries—enterprises that often make up the lion's share of the economies of these countries.<sup>331</sup> Law can go further to addressing the specific problems. Law can direct contributions toward the especially vulnerable populations by requiring a dual focus on women, who have approximately a 10% higher incidence of hunger and the nearly 200 million children who suffer.<sup>332</sup>

These contributions, however, are not to be expected to occur in the absence of hard law applying pressure on businesses. This pressure is necessary as issues with motivating CSR, particularly beyond the immediate business case, remain problematic.<sup>333</sup> Hard law obligations need to be developed with care. They need to be appropriately focused, thus the obligation should be on the corporations themselves. As corporate obligations in areas of food insecurity, the law can mandate cash or in-kind contributions focused on addressing the problem. Both India and Indonesian laws and regulations have specified the types of contributions which will be acceptable. And in those contexts where public infrastructure is lacking, hard law obligations have been successful in directing

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327. Elver, *supra* note 184, at 30.

328. Glen Kelley, *Multilateral Investment Treaties: A Balanced Approach to Multinational Corporations*, 39 COLUM. J. TRANSNAT'L L. 483, 483 (2001).

329. Aminetzah et al., *supra* note 4.

330. *Id.*

331. *E.g.*, Sheehy & Damayanti, *supra* note 296.

332. The United Nations, *supra* note 3.

333. The foundational research on the business case is Carroll & Shabana, *supra* note 194. A number of under considered contradictions and other issues are noted by Michael L. Barnett, *The Business Case for Corporate Social Responsibility: A Critique and an Indirect Path Forward*, 58 BUS. & SOC'Y 167, 167-90 (2019).

corporate contributions to addressing those deficiencies.<sup>334</sup> There is no reason why hard law cannot be used to direct corporate contributions to social programs as the Indonesian regulations have. Nor is there a reason why it cannot specify matters that contribute to improving food security. For example, contributions to local food agencies, or food programs, can be directed. It is possible for obligations to be imposed on companies operating in LIFD countries to supply sufficient food directly to employees and their families.

An important, indeed core issue when contemplating such reforms is ensuring a balance between “not interfering with business operations” and “ensuring the fundamental rights be realized.”<sup>335</sup> To that extent, some minimum standards of corporate contributions focused on addressing food availability and accessibility could be developed. In a different context, specifically in the context of EU law (as discussed above), Davidsson suggests, “laws do set down material requirements for CSR, they could, and perhaps should, be limited to minimum standards.”<sup>336</sup> There is no reason the right to food, a basic human right, cannot be articulated as a minimum standard applicable to all companies involved in agri-business, and more broadly, to all companies of certain sizes in LIFDs. India and Indonesia provide examples of such. Finally, MNCs have no reason to be excused from these obligations. Indeed, as the global actors they are, MNCs have a leadership role derived from their social license to contribute to this global issue.

All of these suggested law reforms, however, must be accompanied by caveats. First, the caveat that goes with any hard law reform: there are always issues with compliance avoidance and while they can be addressed to a certain extent by regulatory design,<sup>337</sup> it will never be stamped out completely. Second, all law is likely to have unintended consequences, and it will be necessary to monitor implementation to ensure these are minimised and do not overly detract from the basic intent of social improvement. Finally, it is important to recognize the necessity for hard law in the development and direction of CSR. Although initially a wholly voluntary organizational program, CSR has expanded to become a global policy framework for the regulation of business contribution to

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334. See, e.g., Aline Gatignon & Christiane Bode, *When few give to many and many give to few: Corporate social responsibility strategies under India's legal mandate*, 44 STRATEGIC MGMT. J. 2099, 2099-127 (2023).

335. Antonio Vives, *Corporate Social Responsibility: The Role of Law and Markets and the Case of Developing Countries*, 83 CHI.-KENT L. REV. 199, 210-11 (2008) (discussing the issues associated with overregulation in CSR).

336. Davidsson, *supra* note 293, at 555.

337. Donald Feaver & Benedict Sheehy, *Designing Effective Regulation: A Positive Theory*, 38 U. NEW S. WALES L.J. 961, 961-94 (2015); Benedict Sheehy & Donald Feaver, *Designing Effective Regulation: A Normative Theory*, 38 U. NEW S. WALES L.J. 392, 392-425 (2015).

society<sup>338</sup> with increasing levels of hard law mandates.<sup>339</sup>

#### V. CONCLUSION

We have argued that the Zero Hunger SDG is in peril due to a combination of the COVID-19 pandemic, the Russian invasion of Ukraine, and climate change. We have also argued that global food security is a well-recognized human right worthy of protection both in its own right and as an exemplar of international human rights. Having canvassed the critical role of commercial activities and enterprises in global food security, we have argued that there is a need for direct, purposeful engagement in the matter by companies of all sizes, from MNCs to SMEs. This engagement can be done as a form of CSR, a global policy with national and organizational implementations. We examined jurisdictions where laws have been enacted to ensure that corporations are contributing to society's needs and, in particular, those members of society without sufficient resources to address their own needs. Having reviewed those jurisdictions' hard CSR laws, we provided a range of recommendations for further hard law reforms which would assist the world in getting back onto the Zero-hunger trajectory it was on before the recent calamities derailed it.

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338. Benedict Sheehy & Federica Farneti, *Corporate Social Responsibility, Sustainability, Sustainable Development and Corporate Sustainability: What Is the Difference, and Does It Matter?*, 13 SUSTAINABILITY 1, 1-17 (2021).

339. See generally Elin Jönsson, *Struggles for Regulatory Hardening: Exploring Swedish Politics on Corporate Social Responsibility*, 63 BR. J. CRIMINOLOGY 1184, 1184-98 (2023).