

**Distr.
RESTRICTED**

**A/HRC/AC/2/CRP.2
19 January 2009**

ENGLISH ONLY

**Human Rights Council
Advisory Committee
Second session
26 – 30 January 2009**

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**“Preliminary report to the drafting group of the Human Rights Council Advisory
Committee on the Right to Food”**

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1. In its resolution 7/14, the Human Rights Council requested the Advisory Committee :

“to consider potential recommendations for approval by the Council on possible further measures to enhance the realization of the right to food, bearing in mind the priority importance of promoting the implementation of existing standards”.

2. In response to this request, the Advisory Committee, during its first session in August 2008, created a Drafting Group on the Right to Food (hereinafter, DGRtF). The members of the DGRtF are: Mr. Bengoa (Chile), Ms. Chung (Republic of Korea), Mr. Hüseyinov (Azerbaijan), Mr. Ziegler (Switzerland) and Ms. Zulficar (Egypt). The DGRtF held three initial meetings, on 6, 12 and 15 August 2008 (see A/HRC/AC/2008/1/L.10, par. 43-60). The DGRtF met with representatives of Member States, the United Nations Conference on Trade and Development (UNCTAD), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the civil society. Staff from the United Nations Office of the High Commissioner for Human Rights (OHCHR) also participated in these meetings.

3. Jean Ziegler was mandated to draft a preliminary report on the right to food and the current food crisis. This preliminary report will begin by presenting the causes and figures of structural hunger (Section I). The causes and figures will then be addressed, as well as the consequences of the rise of hunger due to the recent world food crisis (Section II). The report then describes the States' legal obligations (Section III) and it proposes recommendations on measures to be taken by States and the Human Rights Council (Section IV).

I. STRUCTURAL HUNGER

4. In the world today, it is an affront to human dignity that many people starve to death, or live a life not worthy of the name, in conditions of squalor and unable to

escape, with minds and bodies that are not whole. In the period 1997-1999, there were 815 million undernourished people in the world – mainly in the 122 third world countries.¹ The shocking news is that in the last decade global hunger continued to increase. The Food and Agricultural Organization's (FAO) 2006 report, *The State of Food Insecurity in the World*, showed that structural hunger had increased to 852 million gravely undernourished children, women and men, compared to 842 million the previous year, despite already warning in 2003 of a “setback in the war against hunger”. Important progress in reducing hunger had been made in few countries. The FAO's 2006 report estimates that in 19 developing countries, the number of hungry people dropped by 80 million over ten years. Yet the FAO found that in developing nations overall, hunger is on the rise. The overall trend is one of regression, rather than the progressive realization of the right to food. Every seven seconds a child under the age of 10 dies, directly or indirectly, of hunger somewhere in the world.²

5. 34 million of the structurally undernourished people in the world live in the economically developed countries of the North. The countries worst affected by structural hunger are mostly in sub-Saharan Africa (18 countries), the Caribbean (Haiti) and Asia (Afghanistan, Bangladesh, the Democratic People's Republic of Korea, and Mongolia). Most of the victims live in Asia – 515 million, or 24 per cent of the total population of the continent. However, if we look at the number of victims relative to the size of the population, sub-Saharan Africa is worst affected: there, 186 million women, men and children, or 34 per cent of the region's population, are permanently and seriously undernourished. More than 33 per cent of Africa's youngest children suffer from the effects of permanent, severe, chronic undernourishment in the form of stunted physical growth. In South Asia, almost one in every four Asians suffers from chronic malnourishment, and 70 per cent of the world's stunted children live in Asia.

6. Structural hunger, like poverty, is still a predominantly rural problem. Of the 1.4 billion people who suffer from extreme poverty in the developing countries today, 75 per cent live and work in rural areas.³ The rural poor suffer from hunger because they lack access to resources such as land, do not hold secure tenure, are bound by unjust sharecropping contracts, or have properties that are so small that they cannot grow enough food to feed themselves. It is clear that reducing structural hunger does not

mean increasing the production of food in rich countries, but rather in finding ways of increasing access to resources for the poor in the poorest countries.

7. A distinction should be drawn between two concepts: hunger or undernourishment on the one hand, and malnutrition on the other. Hunger or undernourishment refers to an insufficient supply or, at worst, a complete lack of calories. Malnutrition, on the other hand, is characterized by the lack or shortage of micronutrients in food which otherwise provides sufficient calories. These important micronutrients are vitamins (organic molecules) and minerals (inorganic molecules). These micronutrients are vital for the functioning of cells and especially of the nervous system. Many of the women, men and children suffering from chronic undernourishment suffer from what the FAO calls 'extreme hunger'. This means that their daily ration of calories is well below the minimum necessary for survival. Many people die on a daily basis from starvation.

8. Malnutrition handicaps people for life. It can retard mental and physical development. Malnourishment also heightens vulnerability to other illnesses and almost always has serious physical and mental effects. Brain cells do not develop, bodies are stunted, blindness, and diseases become rife, limiting potential and condemning the hungry to a marginal existence. Children are stunted and do not grow properly if they do not receive adequate food, in terms of both quantity and quality. A child may be receiving sufficient calories, but if he lacks micronutrients, he will suffer from stunted growth, infections and other disabilities, including impaired mental development.⁴ What the United Nations Children's Fund (UNICEF) calls "hidden hunger" is undernourishment and/or malnutrition between birth and the age of five, and it has disastrous effects: a child suffering from undernourishment and/or malnutrition in the first years of life will never recover. He cannot catch up later and will be disabled for life.⁵

9. Hunger and malnutrition pass on from generation to generation over the life cycle, as malnourished mothers give birth to babies who are themselves physically and mentally retarded and then pass these problems onto their own children.⁶ Every year, tens of millions of seriously undernourished mothers give birth to tens of millions of seriously affected babies – Régis Debray has called these babies "crucified at birth".⁷ This leads to a vicious cycle of poverty and underdevelopment. The impacts of hunger and malnutrition therefore affect the very possibility of a country to develop. Children

cannot concentrate at school without food in their stomachs. No one can do a productive day's work, physically or mentally, if they are hungry. This means that poor countries can be trapped in a cycle of underdevelopment.

II. THE RIGHT TO FOOD AND THE CURRENT FOOD CRISIS

10. The right to food is a human right that protects the right of all human beings to live in dignity, free from hunger. It is protected under international human rights and humanitarian law. As defined by the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 12 (1999), "(t)he right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement".⁸ Inspired by this definition, the right to food has been defined as:

"the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear." (A/HRC/7/5, par. 17)

11. The right to food is, above all, the right to be able to feed oneself in dignity. The right to food includes the right to have access to resources and to the means to ensure and produce one's own subsistence, including land, small scale irrigation and seeds, credit, technology and local and regional markets, especially in rural areas and for vulnerable and discriminated groups, traditional fishing areas, a sufficient income to enable one to live in dignity, including for rural and industrial workers, and access to social security and social assistance for the most deprived.

12. The current food crisis leads to violations of the right to food in many ways, by threatening all kinds of means by which vulnerable people have access to food. It destroys in particular their economic access to food, as increases in food prices are often not compensated by an increase of their income. It also destroys the possibility for international organizations, in particular the World Food Program (WFP), to ensure that sufficient food will reach the people most in need.

A. The current food crisis

13. The current world food crisis is characterized by a rapid increase in food prices, which led to an additional 75 million people being severely undernourished in 2008. According to Jacques Diouf, Director-General of the FAO, 925 million people are therefore gravely undernourished in 2008, compared to 852 million in 2007.⁹ Most of the 75 million people affected by the food crisis are living in urban areas and have been at the center of the attention since the beginning of 2008. But many small peasants, as well as refugees and internally displaced persons (IDPs) living in camps, are also suffering from the consequences of the current food crisis.

i) Increase in food prices

14. According to the FAO, between February 2007 and February 2008 the price of wheat on the international market rose by 130%, the price of rice rose by 74%, the price of soya by 87%, and the price of maize rose by 31%. On average, the price of staple foods has risen more than 40% in the same period. According to the International Monetary Fund (IMF), food prices continued to increase significantly in the first six months of 2008, reaching a 56% increase from January 2007 to June 2008.¹⁰ The main problem is that this rise in prices is structural. According to the World Bank, the price of food products increased 83% between February 2005 and February 2008, and the price of wheat rose 181% during the same period.¹¹ According to the IMF, the price of internationally traded food commodities increased by 130 % from January 2002 to June 2008.¹²

15. There are two important preliminary aspects to note. First, powerful countries like India, China, Egypt and others are, for the time being, able to subsidize the staple foods for their people and so alleviate the worst impacts of the price explosion. But this cannot continue in the long term. Many of the poorer countries do not have this possibility. Haiti, for instance, normally consumes 200,000 tons of flour and 320,000 tones of rice per year. 100% of the flour consumed is imported and 75% of the rice. Between January 2007 and January 2008 the price of flour in Haiti increased by 83%, and the price of rice increased by 69%. 6 million out of 9 million Haitians are living in extreme poverty. Many of them are reduced to eating mud-pies.

16. Secondly, approximately 90% of the staple food export agreements provide that food products are sold 'free on board' (FOB). There are some that are sold 'Cost

Insurance Freight' (CIF) but these are in the minority. This means that generally you have to add the transport cost to the exploding world food prices, which is making the situation much worse because of petrol costs etc. For example, many of the West African countries, Mali, Senegal, etc, import up to 80% of their food from overseas, mostly rice from Thailand and Vietnam.

ii) Increase in poverty

17. The number of poor people in the world increased significantly in the last years. According to a study of the World Bank released in August 2008, 1.4 billion people in the developing world were living in extreme poverty in 2005, on less than US\$ 1.25 a day.¹³ The report shows that extreme poverty is more widespread than previously thought, as the previous figures – 985 million people living below the former poverty line of US\$ 1 a day in 2004 – were based on the cost of living in developing countries in 1993, which is totally inadequate to reflect the real cost of living in these countries today. 400 million more people therefore lived in extreme poverty in 2005, as compared to 2004 statistics. The number of people living in extreme poverty has almost doubled in Africa over 1981-2005, from 200 million to 380 million.

18. The situation worsened during the current food crisis. According to the World Bank, the food crisis has pushed 105 million people back into poverty in 2008, in urban as well as rural areas.¹⁴ As the UN Standing Committee on Nutrition stated, this increase in poverty erases any progress that could have been made towards the Millennium Development Goal (MDG) 1 target for the reduction of poverty.¹⁵

B. Causes of the current food crisis

19. The causes of the current food crisis are multiple. Many people cite the increasing demand for food, such as the sudden shift to produce agrofuels, or a decrease in food availability. But the increase in food prices in 2007 and 2008 cannot be explained without taking due account to the speculation on food and agricultural commodities.¹⁶

i) Speculation on food and agricultural commodities

20. One of the first causes of the world food crisis is speculation on food and agricultural commodities, mainly at the Chicago Commodity Stock Exchange where

most of the world food staple prices are negotiated. In November and December 2007, the worldwide financial markets crashed and over 1,000 billion dollars worth of investments were lost. Consequently, most of the big speculators, for example hedge funds, shifted to investing in options and futures for agricultural raw materials and staple foods. For Heiner Flassbeck, Director of the Globalization and Development Strategies Division at UNCTAD:

“the recent price hike cannot be satisfactorily explained by changes in the fundamentals of global supply and demand. It may be more than a mere coincidence that the recent price surge started exactly at the same time when the financial turmoil related to subprime mortgage lending in the United States entered the stage and house prices there began to collapse. Speculators looking for assets with rising prices may well have sensed arising strains in world food markets and, based on the expectation of further rising prices, re-oriented their portfolios towards a greater share of future contracts in food commodity exchanges”.¹⁷

21. The increase in speculation on food commodities is massive. In the year 2000, the volume of trade in agricultural products at the various stock exchanges was approximately 10 billion dollars. It was 175 billion dollars in May 2008. During just one month in January 2008, when the transfer to these markets really started, 3 billion new dollars were invested at the Chicago Commodity Stock Exchange.

22. If it is difficult to calculate exactly the impact of speculative gains in the explosion of staple food prices. World Bank economists estimate that around 37% of the price explosion is due to speculation.¹⁸ Heiner Flassbeck evaluates this amount to be double.¹⁹ Jacques Carles, Executive Vice President of the *Mouvement pour une agriculture mondiale* (Momagri), has claimed that “on the agricultural markets, 95% of the operators are purely financial analysts. This financialisation is a true drama for humanity.”²⁰

ii) The conversion of food into agrofuels

23. The very first cause of the world food price explosion is the massive burning of food, wheat, maize, amongst others, into bioethanol and biodiesel (agrofuels). According to Donald Mitchell, lead Economist at the World Bank:

“The increase in internationally traded food prices from January 2002 to June 2008 was caused by a confluence of factors, but the most important was the large increase in agrofuels production from grains and oilseeds in the U.S. and EU. Without these increases, global wheat and maize stocks would not have declined appreciably and price increases due to other factors would have been moderate”.²¹

24. Donald Mitchell estimates that 70 to 75 % of the increase in food commodity prices was due to agrofuels and the related consequences of low grain stocks, large land use shifts, speculative activity and export bans.²² John Lipsky, the second in charge of the International Monetary Fund, estimates that the use of food crops, especially maize, to make bioethanol is responsible for at least 40% of the price explosion.²³

25. The sudden explosion of interest in agrofuels is evident in massive increases in investment and the setting of ambitious renewable-fuel targets across Western countries. The United States of America in 2007 alone burned 138 million tones of maize to be transformed into bioethanol, which means one third of the annual harvest, and it set targets to increase usage of agrofuels for energy to 35 billion gallons per year. The European Union requires that agrofuels provide 5.75 per cent of Europe’s transport power by 2010 and 10 per cent by 2020.²⁴ But these targets cannot be met by agricultural production in the industrialized countries. Therefore, the Northern industrialized countries are very interested in production of agrofuels in the countries of the southern hemisphere, as the key to meeting these needs.

26. This conversion of food into agrofuels has been described as a recipe for disaster (see A/HRC/7/5, par. 53-58). It is estimated that it takes about 200kg of maize to fill one tank of a car with agrofuels (about 50 liters), which is enough food to feed one person for one year.²⁵ Producing agrofuels therefore creates a battle between food and fuel, leaving the poor and hungry in developing countries at the mercy of rapidly rising prices for food, land and water. If agro-industrial methods are pursued to turn food into fuel, then there are also risks that unemployment and violations of the right to food may result, unless specific measures are put in place to ensure that agrofuels contribute to the development of small-scale peasant and family farming.

27. The rapid increase in the prices of food crops also intensifies competition over land and other natural resources. This pits peasant farmers and indigenous communities

against massive agribusiness corporations and large investors who are already buying up large swathes of land or forcing peasants off their land. The Belgian human rights organization Human Rights Everywhere (HREV) has, for example, documented forced evictions, the appropriation of land and other violations of human rights against communities of indigenous people and people of African descent living in the palm oil plantations in Colombia.²⁶ In this country, an ever increasing number of peasants' families continue to be illegally displaced from their land by paramilitary units which often act in conjunction with the army and the police. Often these paramilitary units are working for large agro-industry and livestock companies. The situation is particularly severe in the Colombian region of Chocó where the recent massacres of Brias and Pueblo Nuevo have taken place. With the help of the Interecclesiastical Commission for Justice and Peace, an international ethics commission has been created to ensure minimal protection for peasants threatened by eviction and displacement in declared humanitarian zones.²⁷ Forced evictions constitute clear violations of the obligations to respect and protect people's existing access to food, and all corporations involved in the production of agrofuels should avoid complicity in these violations.

28. Increasingly unconvinced of the positive net impact of the production of agrofuels on carbon dioxide emissions and food security, non-governmental organizations have started to call for a global moratorium on the expansion of agrofuels until the potential social, environmental and human rights impacts can be fully examined and appropriate regulatory structures put in place to prevent or mitigate any negative impacts. The former UN Special Rapporteur on the Right to Food, Jean Ziegler, called for a five year worldwide moratorium concerning the production of agrofuels and of agrofuels diesel. The objective of the moratorium was to improve research on agrofuels made from non-food plants, particularly those that can be grown in semi-arid and arid regions, and agricultural waste, reducing competition for food, land and water. The Director General of the IMF, Dominique Strauss-Kahn, and many experts, including Asbjørn Eide, supported the idea of the moratorium.²⁸ For Asbjørn Eide:

“The moratorium should be used to pursue four different objectives: the first would be energy saving measures by developing better understanding of ways and methods to reduce overall energy consumption and to improve energy efficiency; the second would be to move as quickly as possible to “second generation” technologies for

producing agrofuels, since this is expected to reduce the competition between food and fuel; the third would be to adopt among first generation methods those technologies that use non-food crops, particularly Jatropha, and the fourth objective would be to focus on the way in which agrofuels production is organized. It should ensure that it is based on family agriculture, rather than industrial models of agriculture, in order to ensure more employment and rural development that provides opportunities, rather than competition, to poor peasant farmers”.²⁹

iii) Agricultural liberalization and export subsidies

29. Wide disparities in economic power between States mean that powerful States negotiate trade rules that are neither free nor fair. Such rules severely affect small farmers and threaten food security, especially in developing countries that have been required to liberalize agriculture to a much greater extent than developed countries. In most of these countries, liberalization and dependency on international food markets have been at the core of the current food crisis. When the prices went up, it was impossible for them to substitute food imports by local production.

30. The heavy production and export subsidies that OECD countries grant to their farmers - more than US\$ 349 billion in 2006 or almost US\$ 1 billion per day – have also greatly contributed to the destruction of local production, by putting subsidized fruit and vegetables in competition with local production. Although developed countries, including EU member States, made promises at the WTO Hong Kong Ministerial Conference in December 2005 to eliminate export subsidies that result in dumping, there has been little concrete progress so far. In Mexico, it is estimated that up to 15 million Mexican farmers and their families (many from indigenous communities) may be displaced from their livelihoods as a result of the North American Free Trade Agreement (NAFTA) and competition with subsidized United States maize.³⁰

iv) Financial measures made by certain international financial agencies (such as the International Monetary Fund)

31. The programs of the IMF and the World Bank and the policies of the World Trade Organization are also gravely responsible for the actual price explosion. For many years, these organizations gave priority to exporting agricultural products such as cotton,

sugar cane, coffee, tea, peanuts, and this induced a dangerous general structural neglect for food security. For example, last year Mali was exporting 380,000 tones of cotton and importing a large part of its food stocks. This erroneous agricultural policy imposed upon developing countries is responsible today for a large part of the catastrophe as the concerned populations are not able to pay these exploding prices.³¹

C. Consequences

i) Countries in danger

32. The countries which are the most affected by the food crisis are those which are dependent upon imports for more than 40% of their basic food needs. With the rise in prices on the world market, their grain bill increased by 37% between 2006 and 2007. The FAO expects that this will increase by 56% between 2007 and 2008. And for the low income and food deficit countries in Africa, the grain bill will increase by 74% between 2007 and 2008.³²

33. The FAO has presented a list of 37 states that are particularly vulnerable to food insecurity and which are most affected by the food crisis: Afghanistan, Bangladesh, Bolivia, Burundi, the Central African Republic, Chad, China, Democratic People's Republic of Korea, Democratic Republic of Congo, Ivory Coast, Ecuador, Eritrea, Ethiopia, Ghana, Guinea, Guinea-Bissau, Haiti, Iraq, Kenya, Lesotho, Liberia, Mauritania, Moldova, Nepal, Nicaragua, Republic of Congo, Sierra Leone, Somalia, Sri Lanka, Sudan, Swaziland, Tajikistan, Timor-Leste, Uganda, Vietnam and Zimbabwe.

34. Within these states, for the vast majority of people, food accounts for at least 60 to 80% of consumer spending compared to 10 to 20% in industrialized countries. A 40% increase in food prices means that the families in these countries must now spend their entire budget on food.

ii) The negative impact on the situation of peasants

35. People living in urban areas are not the only victims of the food crisis. Poor rural families, representing 75 % of the people suffering from structural hunger, are also suffering from increases in world food prices, a fact underlined by the World Bank.³³ As stated by Via Campesina, the World Movement of Peasants' Organizations:

“We also suffer from the food crisis as most small producers also have to buy food to survive. We are not the ones benefitting from the high food prices as the price at the farm gate is much lower than the price paid by consumers. Large retailers, food traders and agri-business companies are the ones profiting from the current situation”.³⁴

36. The analysis of Via Campesina is right. The current food crisis does not only deprive vulnerable people of their right to food. At the same time, it benefits huge transnational corporations that monopolize the food chain, from the production, trade, processing, to the marketing and retailing of food, narrowing choices for farmers and consumers (see A/HRC/7/5, par. 43-49). Just 10 corporations, including Aventis, Monsanto, Pioneer and Syngenta, control one-third of the US\$ 23 billion commercial seed market and 80 per cent of the US\$ 28 billion global pesticide market.³⁵ Another 10 corporations, including Cargill, control 57 per cent of the total sales of the world’s leading 30 retailers.³⁶ In the United States, for example, 60 per cent of terminal grain handling facilities is owned by four companies – Cargill, Cenex Harvest States, ADM and General Mills – and 82 per cent of corn exporting is concentrated in three companies – Cargill, ADM and Zen Noh.³⁷

37. To protect the rights of peasants, including their right to food, against violations by States and transnational corporations, Via Campesina has elaborated and adopted a Declaration on the Rights of Peasants at its meetings in Jakarta and Maputo in July and October 2008.³⁸ This Declaration, which could be followed by a study of the Advisory Committee on the rights of peasants, is a pertinent response offered to the current world food crisis.

iii) Hunger refugees

38. Millions of people cross international borders and some try to reach developed countries to escape pervasive hunger, especially people living in sub-Saharan Africa (see A/HRC/7/5, par. 36-42). For example, many try to reach the Canary Islands from Mauritania or Senegal. According to the Government of Spain, 37,685 African migrants reached Spanish shores in 2005. Another 22,824 migrants reached the islands of Italy or Malta, leaving from the Libyan Arab Jamahiriya or Tunisia.³⁹ They also try to reach Greece through Turkey or leaving from Egypt. During 2006, the Spanish

authorities detained at least 28,000 people arriving in the Canary Islands after a dangerous journey across the open sea in overcrowded open fishing boats.⁴⁰ Many arrive in a terrible condition, too weak to walk or stand and chronically undernourished. Yet most of them are detained and held in processing or detention centers, before being forcibly repatriated to their own countries.

39. Nobody knows how many thousands of people die while trying to make the journey, but bodies regularly wash up on the beaches or fishermen catch them in their nets.⁴¹ On 18 December 2006, the international press reported that over 100 refugees drowned in one day off the coast of Senegal on their way to Spain.⁴² However, nobody is really counting. As Markku Niskala, Secretary General of the International Federation of the Red Cross has said: “This crisis is being completely ignored: not only does no one come to the help of these desperate people, but there is no organization that even compiles statistics that record this daily tragedy.”⁴³

40. The number of refugees from hunger is growing with the current food crisis, but the response of the European Union to African refugees from hunger is increasingly to militarize immigration procedures and border patrol. Rapid reaction teams of border guards are acting under a new institution called Frontex. Frontex’s “Operation Hera II” involved patrol boats, aeroplanes and helicopters from Spain, Italy, Finland and Portugal operating along the borders of Mauritania, Senegal and Cape Verde to intercept boats and return them immediately to shore.⁴⁴ European Governments seem to believe that it is possible to address the drama of migration as a military and police problem.

41. Most people fleeing from hunger are refused entry and protection in other countries because they do not qualify as “refugees” in the traditional and legal sense. All Governments are legally obliged to receive asylum seekers and grant protection to refugees under international law, but the definition of “refugee” is very limited. According to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, a refugee is a person who,

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail

himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

42. Most people fleeing from hunger are not granted any of the protections that come with refugee status and the right of non-refoulement, even though they run the risk of grave violations of the right to food that amount to a threat to their life. Most people fleeing across international borders to escape hunger and starvation are treated as illegal “economic migrants”. However, to suggest that people fleeing from hunger and famine are simply “economic migrants” and are not being forced to leave, but are simply choosing to seek a better life, is to fail completely to recognize the life-threatening situation that they face. It is absurd to suggest that people fleeing hunger and famine are fleeing “voluntarily”. Refugees from hunger should not be confused with “economic migrants”. When an “economic migrant” seeks a better life by migrating to another country, he does so voluntarily. The refugee from hunger, on the other hand, does not move voluntarily, but from a “state of necessity” (See A/62/289). He is forced to flee. Especially when famine strikes a whole country or a whole region (for example the 2005 famine in the Sahel zone of sub-Saharan Africa), refugees from hunger have no other choice but to flee across international borders. Hunger is an immediate threat to their lives and those of their families. They are fleeing out of a state of necessity, not out of choice. The concept of a “state of necessity” (*état de nécessité*) is a well developed concept and one that is well established in common and civil law countries.

43. In relation to hunger and famine, it is not difficult to establish objectively such a state of necessity. Both WFP and FAO issue regular reports that identify regions where there are chronic food emergencies and even identify the number of people suffering from acute and chronic levels of malnutrition. Based on this concept, it would therefore be possible to establish who is fleeing from hunger and famine, rather than for other reasons, and to allow for the protection of refugees from hunger by recognizing that they have the right to seek asylum and the right to receive the protection of temporary refuge. This need to strengthen protection for people forced to leave their homes and land because of hunger was recognized by the General Assembly in its resolution on the right to food (A/62/439/Add.2, resolution XVII).

iii) Hunger in refugees camps

44. The UNHCR and the WFP (which is ensuring access to food in camps) are confronted with a dramatic problem: the lack of financial means to ensure adequate food for refugees and internally displaced persons. Important efforts are being made by Europe, the United States and other developed countries to provide assistance and food aid in emergencies. However, despite the unrelenting commitment of WFP, there are serious funding shortfalls for some of its emergency programmes, threatening the lives of millions of people in Africa. The problem is old (see A/HRC/7/5, par. 13; A/HRC/4/30, par. 25). In 2006, WFP has been forced to cut food rations for 4.3 million people in sub-Saharan Africa. Food assistance being provided to mother and child nutrition centres and school feeding had even being cut. Some countries, including Malawi, Namibia and Swaziland faced cuts of up to 80 per cent or the termination of assistance. A funding shortfall of more than 70 per cent had forced WFP to halve rations in Mozambique.⁴⁵ This means that people received less than half the calories necessary to sustain a healthy life.

45. In 2007, a FAO/WFP assessment confirmed that an estimated 2.1 million people in southern Africa required food aid. But funding shortfalls forced WFP to scale back operations across the region. In Zambia, WFP was forced to reduce food assistance to 500,000 vulnerable children, widows, orphans and HIV/AIDS patients.⁴⁶ In Namibia, WFP cut rations to 90,000 orphans and vulnerable children, jeopardizing their access to sufficient food.⁴⁷

46. The problem has become dramatically worse with the explosion of the world market prices for staple foods: rice, maize and wheat in particular. Many refugees and displaced persons in camps managed by UNHCR are severely and permanently malnourished. In some camps, over 80 per cent of all children under 10 years of age suffer from anaemia and are incapable of following UNHCR school programmes. This dramatic situation is principally due to the shortfall in voluntary contributions to UNHCR by States Members of the United Nations.

47. The failure to assist persons suffering from undernourishment and hunger constitutes a violation of the right to food. It also constitutes a violation of the territorial and extraterritorial obligations of States to respect, protect and realize the right to food, defined in article 11 of the International Covenant on Economic, Social and Cultural Rights and interpreted in General Comment No. 12 of the Committee on Economic,

Social and Cultural Rights and in the Voluntary Guidelines on the Right to Food adopted in November 2004 (see below).

III. STATES' OBLIGATIONS

48. Commitment to the right to food entails obligations of Governments to ensure freedom from hunger for all people at all times (see A/HRC/7/5, par. 19-23). By committing themselves to advancing the right to food through ratification of international conventions, Governments are bound to respect, protect and fulfill the right to food without discrimination, which also means that they should be held accountable to their populations if they violate those obligations. These three levels of obligations were defined by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12. The definitions of the right to food and States' correlative obligations to respect, protect and fulfill that right were endorsed in the Right to Food Guidelines adopted by the FAO Council in November 2004.

49. The obligation to respect means that the Government should not take actions that arbitrarily deprive people of their right to food. The obligation to protect means that the Government should enforce appropriate laws to prevent third parties, including powerful people and corporations, from violating the right to food of others. Finally, the obligation to fulfil (facilitate and provide) means that the Government should take positive steps to identify vulnerable groups and implement appropriate policies and programmes to ensure their access to adequate food by facilitating their ability to feed themselves. As a last resort, the Government is required to provide adequate food to those who cannot feed themselves for reasons beyond their own control. To fulfil the right to food, the Government must use the maximum of its available resources and in every circumstance it must ensure the minimum essential level required to be free from hunger.

50. States also have extraterritorial obligations concerning the right to food. While the primary responsibility to ensure human rights will always rest with national governments, given the current context of globalization and strong international interdependence, national governments are not always able to protect their citizens from the impacts of decisions taken in other countries. In such a globalized, interconnected world, the actions taken by one Government may have negative impacts

on the right to food of individuals living in other countries. All countries should therefore ensure that their policies do not contribute to human rights violations in other countries. International trade in agriculture is a case in point.

51. By adopting the International Covenant on Economic, Social and Cultural Rights, States have undertaken to cooperate - without any territorial or jurisdictional limitations - to ensure the realization of the right to food and the fundamental right to be free from hunger (arts. 2, 11 (1) and 11 (2)). In accordance with this commitment, States must respect, protect and support the fulfillment of the right to food of people living in other territories, including when they take decisions within WTO, IMF or the World Bank, to fully comply with their obligations under the right to food.

IV. RECOMMENDATIONS ON MEASURES

52. Persistent hunger is neither inevitable, nor acceptable. Hunger is not a question of fate; it is man-made. It is the result either of inaction, or of negative actions that violate the right to food. It is therefore time to take action to respect, protect and realize the right to food across the world. To reach that aim, the Advisory Committee makes the following recommendations:

A. Speculation must be regulated. UNCTAD considers that staple food prices should not be subjected to speculation on the stock exchange, but should be fixed by international agreements between producer countries and consumer countries. The UNCTAD method of regulating these agreements through buffer stocks and stabex could be a solution. The complementary solution is to reform, drastically, the regulations for trading in futures and options through normative decisions in order to control the worst abuses;

B. Another response is to absolutely forbid the transformation of staple foods into agrofuels. The ease of mobility brought about by the use of hundreds of millions of cars in the northern hemisphere should not be paid for by hunger and undernourishment in the Southern hemisphere;

C. All States should ensure that their international political and economic policies, including international trade agreements, do not have negative impacts on the right to food in other countries. All international trade agreements should include the

participation of all stakeholders, including civil society. The implementation of the concept of food sovereignty should be discussed;

D. The Bretton Woods institutions and World Trade Organization should change the paradigm of their agricultural policy and give absolute priority to investments in subsistence agriculture and local production, including irrigation, infrastructure, seeds, pesticides etc. Peasant farmers and subsistence agriculture have been neglected for too long. The issue of the exclusion of peasants from the development process, and the neglect of their rights, should be immediately addressed, including by drafting an International Convention on the Rights of Peasants. National governments, international organizations and bilateral development agencies should give absolute priority to investments in subsistence agriculture and local production;

E. There is a problem of coherence. Most of the countries who signed the International Convention on Economic, Social and Cultural Rights are also members of the Bretton Woods institutions and the WTO. When their representatives vote in the General Council of the WTO, in the Executive Council of the IMF, and in the Governing Council of the World Bank, they should give absolute priority to the realization of the right to food, and take into account the above mentioned proposals;

F. The Human Rights Council should entrust the Advisory Committee with the task of preparing two studies, on “Current Food Crisis, the Right to Food and Hunger Refugees: Definition and Situation” and on “Current food crisis, the right to food and the Rights of Peasants”;

G. The Human Rights Council should launch an urgent appeal to Member States to increase their voluntary contributions substantially and as soon as possible so as to enable UNHCR to discharge its mandate.

¹ Of 815 million, 777 million were from developing countries, 27 million from transition countries and 11 million from industrialized countries. See Food and Agriculture Organization of the United Nations, *The State of Food Insecurity in the World 2001*, Rome, FAO, 2001, p. 2.

² World Food Programme (WFP), *World Hunger Map*, WFP, 2001, Geneva.

³ International Fund for Agricultural Development, *Rural Poverty Report 2001: The Challenge of Ending Rural Poverty*, Oxford University Press, New York, 2001 ; Shaohua Chen, Martin Ravallion, *The*

Developing World Is Poorer Than We Thought, But No Less Successful in the Fight against Poverty, World Bank Policy Research Working Paper, August 2008.

⁴ Iron and zinc are vital for the development of mental abilities. Micronutrients contain other substances too (such as enzymes).

⁵ UNICEF, *La situation des enfants dans le monde 1998. Regard sur la nutrition*, UNICEF, Geneva, 1998.

⁶ See updated study on the right to food, submitted by Mr. Asbjørn Eide in accordance with Sub-Commission decision 1998/106, E/CN.4/Sub.2/1999/12.

⁷ Régis Debray and Jean Ziegler, *Il s'agit de ne pas se rendre*, Paris, Editions Arléa, 1994.

⁸ *General Comment 12*, para.6.

⁹ Declaration of Jacques Diouf, Rome, 16 October 2008.

¹⁰ Donald Mitchell, *A Note on Rising Food Prices*, World Bank Policy Research Working Paper, July 2008.

¹¹ Banque mondiale, *Hausse des prix alimentaires, options de politiques gouvernementales et action de la Banque mondiale*, April 2008.

¹² Donald Mitchell, *A Note on Rising Food Prices*, World Bank Policy Research Working Paper, July 2008.

¹³ Shaohua Chen, Martin Ravallion, *The Developing World Is Poorer Than We Thought, But No Less Successful in the Fight against Poverty*, World Bank Policy Research Working Paper, August 2008.

¹⁴ Maros Ivanic, Will Martin, *Implications of Higher Global Food Prices for Poverty in Low-Income Countries*, World Bank Policy Research Working Paper, April 2008.

¹⁵ UN Standing Committee on Nutrition, *The Impact of High Food Prices on Maternal and Child Nutrition*, October 2008.

¹⁶ Jacques Berthelot, *Démêler le vrai du faux dans la flambée des prix agricoles*, mai 2008.

¹⁷ Heiner Flassbeck, *The global food crisis: What can be done?*, 2008. See also UNCTAD, *Trade and Development Report, 2008. Commodity prices, capital flows and the financing of investment*, UNCTAD, Geneva, September 2008.

¹⁸ Communication from World Bank, 14 April 2008.

¹⁹ Interview in *Tages-Anzeiger*, Zürich, 14 May 2008.

²⁰ Yannick Groult, "La financiarisation de l'agriculture est un drame pour l'humanité. Rencontre avec Jacques Carles, Momagri", Planetlibre, Été 2008. (Quote translated from French)

²¹ Donald Mitchell, *A Note on Rising Food Prices*, World Bank Policy Research Working Paper, July 2008.

²² Donald Mitchell, *A Note on Rising Food Prices*, World Bank Policy Research Working Paper, July 2008.

²³ Speech given by John Lipsky before the Council on Foreign Relations in New York, reported by Agence France Presse, 9 May 2008.

²⁴ *Directive 2003/30/CE, dite "promotion des biocarburants"*.

²⁵ F.Nicolino, *La faim, la bagnole, le blé et nous. Une dénonciation des biocarburants*, 2007.

²⁶ Fidel Mingorance, *The Flow of Palm Oil: Colombia-Belgium/Europe; A Study from a Human Rights Perspective* (HREV, 2007).

²⁷ Report of François Houtard, University of Leuven, Belgium, 2008.

²⁸ Asbjørn Eide, *The Right to Food and the Impact of Liquid Biofuels (Agrofuels)*, FAO Right to Food Studies, FAO, Rome, 2008.

²⁹ Asbjørn Eide, *The Right to Food and the Impact of Liquid Biofuels (Agrofuels)*, FAO Right to Food Studies, FAO, Rome, 2008.

³⁰ Friends of the Earth International, "Sale of the century? Peoples' food sovereignty", 2003, www.foe.co.uk/resource/reports/qatar_food_sovereignty_1.pdf.

³¹ For example, *Trade, Politics and Hunger: The impact of trade liberalization on the Right to Food of rice farming communities in Ghana, Honduras and Indonesia*, published by Ecumenical Advocacy Alliance (written by Armin Paasch (ed), Frank Garbers and Thomas Hirsch), 2007.

³² FAO, *Perspectives de récoltes et situation alimentaire*, 2008.

³³ Maros Ivanic, Will Martin, *Implications of Higher Global Food Prices for Poverty in Low-Income Countries*, World Bank Policy Research Working Paper, April 2008.

³⁴ Via Campesina, Press release of 4 July 2008, available at : <http://www.europe-solidaire.org/spip.php?article10755>.

³⁵ Erosion, Technology and Concentration Action Group, Communiqué, November/December 2003, Issue 82.

³⁶ Erosion, Technology and Concentration Action Group, Communiqué, November/December 2003, Issue 82.

³⁷ FAO, *Trade Reforms and Food Security*, FAO, Rome, 2003.

³⁸ Via Campesina, *Final Declaration of International Conference on Peasants' Rights*, adopted on 24 June 2008 in Jakarta.

³⁹ *Tribune de Genève*, 14 December 2006.

⁴⁰ BBC News, 30 November 2006, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/6160633.stm>.

⁴¹ BBC News, 24 October 2006, http://news.bbc.co.uk/go/pr/fr/-/2/hi/talking_point/5404816.stm.

⁴² *Le Courrier*, Geneva, 10 December 2006.

⁴³ Amnesty International, 3 October 2005, AI Index EUR 41/011/2005 at www.amnesty.org.

⁴⁴ BBC News, 10 September 2006, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/5331896.stm>.

⁴⁵ Irin, "WFP halves rations for the hungry", 10 November 2006.

⁴⁶ IRIN, Critical funding shortfall threatens United Nations food lifeline for 500,000 Zambians, 27 February 2007.

⁴⁷ IRIN, Namibia: WFP cuts rations for orphans, 12 January 2007.