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Special Rapporteur on the right to food

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Mr. President, Distinguished members of the Human Rights Council, Excellency's, Ladies and Gentlemen,

It is an honor to present my first report to the Human Rights Council in my capacity as Special Rapporteur on the right to food pursuant to resolution 22/9.

Before I present my thematic report, allow me to briefly highlight the activities I have participated in since assuming the mandate. In October 2014, I submitted my first report to the General Assembly (A/69/33689) highlighting my priorities for the mandate. I have also had the honor of participating in a number of public engagements including the General Assembly of the Committee on World Food Security in Rome, as well as numerous events organized by United Nations agencies, academic institutions and non-governmental organizations. In addition, I recently undertook my first official country visit as Special Rapporteur from 20 to 27 February. In this regard, I would like to take this opportunity to extend my sincere gratitude to the Government of the Philippines for the invitation extended to me and for its excellent cooperation during my visit. I very much appreciate the spirit of openness with which I was able to engage in dialogue with the authorities and I look forward to working with the Government in a spirit of cooperation on the implementation of my recommendations. Given the limited amount of time following the visit I will present my final report to the 31st session of the Human Rights Council in March 2016.

Ladies and gentlemen allow me to now present my thematic report

The report I present to you today explores the obstacles faced by those wishing to seek remedy for violations related to the right to food by analysing the current international legal framework, and identifying examples of good practice as a means of encouraging States to develop judicial remedies in accordance with the optional protocol to the International Covenant on Economic, Social and Cultural Rights.

The right to food is enshrined in international human rights law with States obliged to ensure its progressive realization, through the development of supportive domestic and national legislation. States are responsible for respecting, protecting and fulfilling the right to adequate food for its citizens. However, many countries have failed to develop a judicial culture of recognition in practice or the necessary legal frameworks required to ensure that the rights enshrined in the ICESCR are justiciable.

The reluctance of a number of States to recognise that ESCR rights are justiciable has done much to precipitate unfounded misconceptions about them. However the entry into force of the Optional Protocol to the ICESCR in May 2013, should serve to put such misconceptions to rest. The Optional Protocol reaffirms that ESCR rights and real human rights, and not merely political aspirations, by establishing an individual complaints procedure, and providing an opportunity for victims of violations to make effective appeals through an international mechanism. The Optional Protocol is intended to complement rather than replace national legal systems and should not be considered as the principal means of seeking justice. It reaffirms that the right to food is a right that can be legitimately claimed. Complaint procedures remind governments of their responsibility to respect, protect and fulfil the right to adequate food and I believe that the Optional Protocol will be influential in ensuring the implementation of the right to food at the international and national level.

Similarly the Right to Food Guidelines have been instrumental in promoting the importance of recognizing the right to food in national legal frameworks. States should refer to the Guidelines when developing constitutional principles and framework laws to ensure the progressive realisation of the right to food at the domestic level. Indeed over the last few years, there has been an important increase in the number of States that have adopted provisions containing explicit recognition of the right to food or freedom from hunger and my report highlights some examples of case law in relation to the justiciability of the right to food.

While there has been significant legislative and judicial progress in many countries throughout the world, examples of cases whereby national courts have actually issued rulings on the regulations relating to the right to food are disappointingly scarce. The only way that the full realisation of the right to adequate food and nutrition can be achieved is by ensuring that the rights of victims are protected. A rights based approach to food security is therefore essential to ensure that the fundamental right to be free from hunger is upheld, with States obliged to do everything in their power to guarantee that everyone has access at all times to adequate, safe and nutrient rich food in order to lead healthy lives.

Mr President

In my report I have highlighted some of the obstacles that continue to hamper progress in this regard with a lack of political will on behalf of many States preventing the right to food from being recognised as a human right with justiciable effect. A lack of awareness of legal rights and entitlements, as well as the State's obligations and duties to protect these rights is also a major barrier. Public information in relation to the adoption of new laws or amendments to existing legislation must be accessible for everyone. States are obliged to ensure that this information is made readily available and easily accessible without discrimination, and must take into consideration the individual needs of persons with disabilities, as well as those with low levels of literacy, migrants and minority groups. Women in particular, face significant barriers to accessing justice given their sub-ordinate position in many societies, and the lack of information and knowledge about their rights and the ways to claim their protection.

In addition to a lack of awareness of their rights, victims of violations often face considerable institutional and structural barriers. This is particularly burdensome for those living in rural and remote areas as well as peri-urban settings where simply accessing a court is in itself a significant challenge. Complex and inflexible court systems also have a significant impact on victims, often requiring a high burden of proof for applicants. Ensuring justiciability of the right to food is also hindered by the fact that individual cases often end up stagnating within the court system amidst protracted, costly and bureaucratic proceedings.

Ladies and gentlemen

Economic globalization and the increasing involvement of corporate entities in State affairs have challenged the traditional understanding of territoriality of human rights. In recent years the scope of a States' human rights obligations has progressively evolved to include duties to exercise jurisdiction over activities that are connected to one State but have an impact in another. In principle, corporations

can also be held accountable either by States responsible for regulating, monitoring, and preventing human rights violations; or through intergovernmental instruments or voluntary codes of conduct. The extraterritorial obligations of States in relation to the right to food are referred to in General Comment 12 which notes that “States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.”

While home States of companies operating abroad have an obligation to clearly set out the expectation that such companies respect human rights throughout their operations, it is the host States which have the primary responsibility to prevent human rights violations. However, agreements between Transnational Corporations and host governments often limit the host State’s ability to perform these duties. Indeed some States have even taken retrogressive steps in this regard. Some States have failed to take vigorous steps to ensure that victims have access to judicial remedies for human rights abuses that have arisen extraterritorially due to the activities of businesses or their subsidiaries. By creating or allowing these obstacles and barriers to remain, States have failed in their duty to protect human rights by ensuring access to effective remedy through the judicial process. Implementing national legislation is essential to ensuring that States hold TNCs accountable abroad.

Besides from taking steps to help preventing human rights abuses caused by the activities of TNCs operating abroad, governments also have a duty to support and cooperate in ensuring the fulfilment of the right to food in poorer countries. International obligations in relation to extraterritorial obligations are enunciated in a number of international treaties that emphasize the importance of international cooperation among States to ensure the protection of human rights. The application of extraterritorial obligations is supported indirectly by the International Court of Justice, in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Court observed that: “while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory”.

In my report I have highlighted a number of examples of case law both at the regional and national level. However, the remedies available for individuals whose ESCR are violated by actions committed by foreign states are somewhat limited. Considerable improvements in this regard are essential for cases involving violations of the right to food to be protected from violations committed by foreign and national actors.

Distinguished delegates

Recent years have witnessed various attempts to regulate the impact of business activities on human rights outside of the territorial boundaries of the home state and I have outlined some of these endeavours in my report. Perhaps one of the most significant developments that I wish to highlight today is the adoption of the UN Guiding Principles on Business and Human Rights in 2011. To date the Guidelines are considered the most authoritative statement of the human rights responsibilities of corporations and corresponding state duties adopted at the UN level. The Guiding Principles notes how human rights treaty bodies have recommended that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction, and also underlines that there are strong policy reasons for home States to do so. The Maastricht Principles are also an example of progressive

development efforts of international law.

While these mechanisms, along with others highlighted in my report, have the common goal of preventing and addressing human rights abuse by business enterprises they fail to provide sufficient monitoring mechanisms. Indeed law is not limited to what States set forth and the legally-binding nature of voluntary rules may also emerge with the help of national law and voluntary standards can often be enforced in accordance with competition or consumer laws.

I support the recommendations made by my predecessor in this regard and urge States to consider his proposals to the Human Rights Council for further clarification on the States' obligation in relation to non-regulatory means; to identify best practices regarding cooperation between States; and the adoption of a Resolution to draw attention to the *Maastricht Principles*.

Ladies and gentlemen

The question of justiciability of ESCR has long been debated in the international sphere. States have been reluctant to allow for individual complaint procedures before the ICESCR. The Optional Protocol has the potential to contextualize and operationalize the right to food at international and national levels. However we should not be complacent much remains to be done beyond the scope of the Optional Protocol. Wealthy States not only have moral obligations to address poverty and hunger beyond their borders, they are also legally obliged to do so under international law. International cooperation and development assistance must become the legal norm in an increasingly global world. Despite established duties in a number of human rights documents, and voluntary principles, significant barriers and loopholes exist in relation to the extraterritorial application of States obligations in human rights law. A coordinated international response is essential in order to maintain international peace and security and to ensure protection of the most vulnerable in times of economic globalization.

Ladies and Gentlemen,

In order to advance the implementation of the right to adequate food renewed political commitment is essential, and we must look to those countries that have made significant progress in adopting policies and legislation in this regard. A key focus should now be placed on the implementation of relevant legal frameworks and policies to promote the right to adequate food for all. Indeed it is the responsibility of *all* States, individually and through international co-operation, to implement sustainable food system policies as well as through international trade and investment policies and practices, to take necessary measures to meet the vital food needs of their people, especially of vulnerable groups and households. States should take steps to implement gender mainstreaming in relation to domestic policies on agriculture property and inheritance rights to ensure empowerment of women by guaranteeing their basic rights to access adequate and healthy food.

Thank you.

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