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# Using International Human Rights Law to Address Hunger in the U.S.

*R. Denisse Córdoba Montes\**

## ABSTRACT

International human rights law recognizes a right to adequate food. The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) upholds “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.”<sup>1</sup> The right is further enumerated in international law through additional conventions and standards and is continuously being interpreted and analyzed by United Nations (“U.N.”) expert bodies.

The United States (“U.S.”), though a signatory to several international human rights conventions, including the ICESCR, has not ratified any convention that would make the right to adequate food enforceable; and the U.S. does not explicitly recognize a right to adequate food in its Constitution or in federal law. The current state of food insecurity and the strategies for addressing hunger in the U.S. are far from what international human rights standards dictate. The growth of more than 60,000 private charitable organizations distributing food to tens of millions of people in need is a clear indication that Americans are not guaranteed the right to food. The COVID-19 pandemic has further exacerbated and revealed the systemic inequities in the food system, which result in hunger and food insecurity. Around 57.4 million Americans have filed for unemployment since the start of the pandemic. The number of insecure people in the U.S. is expected to climb from 37 million pre-pandemic to more than 50 million by the end of the year.

Ideally, the U.S. should ratify and implement the ICESCR; however, until it does so, this paper recommends that government actors draw on the comprehensive approach to the right to food under international human rights law to alleviate some of the issues that plague access to adequate food in the U.S. today. The international law approach to the human right to food does more than provide a framework of concrete standards and goals, as well as practical tools for exerting political pressure and facilitating coalition-building and mobilization. The framework also draws on the international community for its legitimacy, rather than on the fluctuations of political preferences at the national or subnational level. The international community is progressing toward the legal and practical realization of economic, social, and cultural (“ESC”) rights, and the U.S. is poised now to benefit from that process if it is willing to apply the standards and structures of the international human rights regime.

This paper includes an overview of hunger and food insecurity in the U.S. as well as of the U.S.’s relationship to international human rights law and U.N. advocacy. A discussion then follows on current efforts to enshrine the human right to

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1. International Covenant on Economic, Social, and Cultural Rights, Jan. 3, 1976, 999 U.N.T.S. 3 [hereinafter ICESCR].

food as understood by international human rights norms in state constitutions in Maine and West Virginia. Next, this paper reflects on challenges and lessons learned from ongoing legislative efforts and opportunities to translate state and local gains in Maine to other states. Finally, the paper reflects on the role of U.N. advocacy by a growing national right-to-food movement in strengthening standards and policies to address hunger and food insecurity in the U.S.

## INTRODUCTION

Hunger and food insecurity are significant problems in the United States, exacerbated by the federal government's long-standing denial of human rights obligations and in particular a neglect of the legal recognition of the human right to adequate food. Pre-pandemic, 37 million Americans were struggling to get food on the table,<sup>2</sup> while four out of five workers lived paycheck to paycheck.<sup>3</sup> People facing food insecurity are often forced to make impossible decisions between food and receiving medical care, food and paying a mortgage or rent, and food and buying school supplies and clothing for their children. People living with food insecurity also face challenges related to the adequacy of the food they consume, as processed "junk" food is often less expensive than nutritious and sustainably produced food. The most affected are often low-income working families, people of color, women, and children.

The COVID-19 crisis brought to light the stark inequities that leave tens of millions in persistent hunger and poverty in the U.S. and almost a billion worldwide. More than 30 million people across the nation applied for unemployment benefits in the first months of the pandemic,<sup>4</sup> and high unemployment rates continued through 2020 and 2021.<sup>5</sup> What followed was an equally staggering rise in food insecurity. COVID-19 pushed the emergency feeding system to its limits, exposing the true extent of the hunger problem in the U.S. at its roots. The U.S. emergency feeding system, a network of 60,000 frontline pantries, soup kitchens and food banks<sup>6</sup> anchored in almost every community in the U.S., is critical at a time like this. That's what it was designed for in the early 1970s – *emergency relief*. On the frontline of the COVID-19 crisis, hunger hotlines<sup>7</sup> saw a 600% increase in calls over the first few months of the pandemic from individuals facing hunger. Community institutions are doing an essential and life-sustaining job of distributing food against all odds. However, the private charitable emergency feeding system in the U.S.—the largest and most sophisticated in the world—has historically never been

2. *Feeding America Study Projects Local Food Insecurity Rates Amid Pandemic Could Reach Up To 1 in 3 Adults and 1 in 2 Children*, FEEDING AM. (May 20, 2020), <https://www.feedingamerica.org/about-us/press-room/feeding-america-study-projects-local-food-insecurity-rates-amid-pandemic-could>.

3. Emmie Martin, *The Government Shutdown Spotlights a Bigger Issue: 78% of US workers Live Paycheck to Paycheck*, CNBC (Jan. 10, 2019, 9:26 AM), <https://www.cnn.com/2019/01/09/shutdown-highlights-that-4-in-5-us-workers-live-paycheck-to-paycheck.html>.

4. Anneken Tappe, *30 Million Americans Have Filed Initial Unemployment Claims Since Mid-March*, CNN BUS. (Apr. 30, 2020), <https://www.cnn.com/2020/04/30/economy/unemployment-benefits-coronavirus/index.html>.

5. *Unemployment Rates During the COVID-19 Pandemic*, CONG. RSCH. SERV. (Aug. 20, 2021), <https://crsreports.congress.gov/product/pdf/R/R46554>.

6. *Our Work*, FEEDING AM., <https://www.feedingamerica.org/our-work/food-bank-network> (last visited July 21, 2022).

7. See WHYHUNGER, <https://whyhunger.org> (last visited Nov. 12, 2022).

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able to meet the demand or make a real dent in the rate of food insecurity, which has hovered between 11 - 12% over the past 30 years. It is simply not possible to 'foodbank' our way out of hunger.<sup>8</sup>

Hunger advocates have traditionally focused on defending existing (and inadequate) government nutrition assistance, while the average American citizen looks to the private charitable sector to meet the "emergency" needs of hungry families. A human rights approach to hunger would recognize people, communities, and the natural resources we depend on as *rights holders* and governments as *duty bearers*. The human right to food is both a call to action and a global legal framework for coordinated reform in food, labor, and agriculture. As the pandemic reshapes public life around the globe, it also offers an opportunity for a growing right to food movement in the U.S. to organize and call for the protection of everyone's basic human right to food in the U.S.

Despite the federal government's denial of adequate food as an essential human right, many state and local governments in the U.S. are seizing the opportunity brought on by the pandemic to take a new approach to food issues in their jurisdictions and adopt a human rights model. State and local governments are enacting laws that recognize and enforce the human right to food. Notably, on November 2, 2021, Maine voters chose to become the first state in the U.S. to enshrine the human right to food in Article I, Section 25 of their Constitution.<sup>9</sup> The victory in Maine follows a decade of organizing and legislative efforts to advance food sovereignty and the right to food, which include the adoption of Maine's Food Sovereignty Act.<sup>10</sup>

Similarly, in March 2021, Delegate Danielle Walker of West Virginia introduced House Joint Resolution 30, proposing an amendment to the Constitution of the State of West Virginia on the right to food, food sovereignty, and freedom from hunger.<sup>11</sup> The bill is currently sitting in the Health and Human Resources Committee for consideration. As a promising step in the state of West Virginia, on December 7, 2022, the city council of Morgantown, West Virginia unanimously agreed to adopt a municipal resolution<sup>12</sup> that formally recognizes the human right to food. Advocates and legislators from additional states, including Connecticut, Hawaii, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Tennessee, and Washington are actively discussing efforts to advance the right to food in law in their jurisdictions.<sup>13</sup>

This essay explores how a human rights framework can be used to address hunger and food insecurity in the U.S. Moreover, it explores how local and state advocacy led by people with lived experiences of right to food violations, focused on negative state obligations, can pave the way for asserting a more holistic

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8. ALISHA COLEMAN-JENSEN ET AL., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2020, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. 7 (Sept. 2021), <https://www.ers.usda.gov/webdocs/publications/102076/err-298.pdf?v=8867.3>.

9. MAINE CONST. art. 1, § 25.

10. ME. STAT. tit. 7, § 283 (2017).

11. H.J.R. 30, 85th Leg., Reg. Sess. (W. Va. 2021).

12. *Morgantown City Council Regular Meeting*, CITY OF MORGANTOWN 38–39 (Dec. 7, 2021), <http://morgantownwv.gov/AgendaCenter/ViewFile/Agenda/12072021-1839>; Opinion, *City Says Food is a Human Right. Now Make It Accessible*, THE DOMINION POST, (Dec. 8, 2021), <https://www.dominionpost.com/2021/12/08/city-says-food-is-a-human-right-now-make-it-accessible>.

13. *Enshrining the Right to Food in Law in the United States*, MIA. L. HUM. RTS. CLINIC (Mar. 2, 2022), <https://miami.app.box.com/s/aaxgiw5sudcixt5b4v3qi206fssyuvu>.

understanding of rights with their affirmative dimensions. Finally, it reflects on lessons learned and next steps to make the holistic right to adequate food a legal obligation in the U.S.

This essay is divided into four main parts. Part I discusses violations of the international human right to food in the U.S. and the predominant federal response. Part II describes the normative content of the international right to food and reflects on the U.S.'s relationship with international human rights law. Part III discusses the decade-long legislative efforts in Maine, including its recently successful effort to amend its state Constitution to enshrine the right to food. Finally, Part IV examines opportunities for implementation of a holistic right to food in the U.S. by showcasing the legislative efforts in West Virginia, the use of the human right to food as an organizing tool in the U.S., and civil society's advocacy with United Nations' human rights bodies to support local organizing and advocacy efforts.

## I. VIOLATIONS OF THE HUMAN RIGHT TO FOOD IN THE U.S.

### *A. COVID-19 has Brought to Light Long-Standing Inequities in the Food System*

During the pandemic, one of the nation's most urgent problems only got worse: hunger. At the height of the pandemic, we got used to frequent images in the media of long lines of people and cars waiting to receive free food – some for the first time in their lives. With high unemployment, the number of food insecure people in the U.S. climbed from 37 million to more than 50 million during the pandemic.<sup>14</sup> Moreover, school closures made it more difficult for the approximately 30 million children who depend on the National School Lunch program to access low-cost or free meals.<sup>15</sup> But this crisis is not new.

The COVID-19 crisis brought to light the stark inequities that leave tens of millions in persistent hunger and poverty in the U.S. Even before the pandemic hit, some 14 million households, or approximately 11 percent<sup>16</sup> of households, in the U.S. were food insecure,<sup>17</sup> lacking consistent access to enough food—both in quality and quantity—for an active, healthy life, with female headed household being the most affected. Before the pandemic, 3.9 percent of households were classified as having “very low food security”<sup>18</sup>—they often had to skip meals, reduce the size of their meals, or go without eating for an entire day.

This is not a new crisis but a deepening of fault lines that millions of working families, low-income people, small holder farmers, and communities of color have been straddling since the U.S. was formed. COVID-19 heightened this persistent poverty crisis and allowed people from around the world to see, and many

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14. FEEDING AMERICA *supra* note 2.

15. *National Level Annual Summary Tables: FY 1969-2021*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <https://www.fns.usda.gov/pd/child-nutrition-tables> (to access, select “National School Lunch Program: Participation And Lunches Served”) (last visited July 21, 2022).

16. *See Household Food Security in the United States in 2019*, U.S. DEP'T OF AGRIC. FOOD ECON. RSCH. SERV. 7 (Sept. 2020), <https://www.ers.usda.gov/publications/pub-details/?pubid=99281>.

17. *Key Statistics & Graphics*, U.S. DEP'T OF AGRIC. FOOD ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/key-statistics-graphics> (last visited July 22, 2022).

18. *Id.*

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Americans for the first time to experience, the deep contradictions in our food and social welfare systems and the resulting uneven distribution of wealth that hits women and children, and Black, Indigenous and People of Color (“BIPOC”) communities in the U.S. the hardest.

Food insecurity affects a broad range of Americans, including working Americans and families with incomes above the U.S. poverty guidelines. Data shows that two-thirds of households that experience food insecurity have annual incomes above the federal poverty level,<sup>19</sup> making them ineligible for federal food assistance programs.<sup>20</sup> Being food insecure means having to make very hard choices. People facing food insecurity are often forced to make impossible decisions between food and receiving medical care, food and paying a mortgage or rent, and food and buying school supplies and clothing for their children. Food insecurity takes a serious toll on individuals, families, and communities and has significant consequences for health and educational outcomes. People living with food insecurity also face challenges related to the adequacy of the food they consume, as processed “junk” food is often less expensive than nutritious and sustainably produced food.<sup>21</sup>

Food insecure families face difficult trade-offs between purchasing low-cost, poor-quality food and higher-cost, healthy foods. A few dollars will buy about 4,000 calories of processed food but only about 300 calories of fresh fruits and vegetables.<sup>22</sup> To add to the lack of accessibility to adequate food, low-income families often face difficulties physically accessing supermarkets that carry a greater variety of fresh and nutritious foods. The time and transportation costs associated with reaching supermarkets from these so-called “food deserts” can make it particularly difficult for low-income households to obtain adequate and healthful foods, further increasing their risk of both food insecurity and obesity. These consequences are especially serious for children and pregnant and breastfeeding women, with significant intergenerational consequences. Children born into food insecure families may not receive adequate nutrition, including during the prenatal period, and might not learn at the same rate as their food secure peers.<sup>23</sup>

Furthermore, inequities that BIPOC communities have faced since the founding of this country have resulted in severe rates of food insecurity today.<sup>24</sup> Over the past 20 years, both Black and Latino households have consistently been at least twice as likely as white households to experience food insecurity.<sup>25</sup> While the

19. Diane Whitmore Schanzenbach et al., *Twelve Facts About Food Insecurity and SNAP*, THE HAMILTON PROJECT (Apr. 2016), [https://www.hamiltonproject.org/assets/files/twelve\\_facts\\_about\\_food\\_insecurity\\_and\\_snap.pdf](https://www.hamiltonproject.org/assets/files/twelve_facts_about_food_insecurity_and_snap.pdf).

20. *Id.*

21. *Interview with Smita Narula – Roosevelt House Public Policy Institute*, HUNTER COLL. N.Y.C. FOOD POL’Y CTR. (May 13, 2015), <https://www.nycfoodpolicy.org/interview-with-smita-narula-roosevelt-house-public-policy-institute-hunter-college>.

22. *Id.*

23. COMMITTEE ON NATIONAL STATISTICS ET AL., RESEARCH OPPORTUNITIES CONCERNING THE CAUSES AND CONSEQUENCES OF CHILD FOOD INSECURITY AND HUNGER: A WORKSHOP SUMMARY (Dec. 2013).

24. Denisse Córdova Montes et al., *Racial Injustice and Violations of the Human Right to Food in the United States*, UNIV. OF MIA. SCH. OF L. HUM. RTS. CLINIC 1 (May 16, 2022), <https://mi-ami.app.box.com/s/w19ppvi3cjw79n9iml9cptji8axs8yl7>.

25. Areeba Haider & Lorena Roque, *New Poverty and Food Insecurity Data Illustrate Persistent Racial Inequities*, CTR. FOR AM. PROGRESS (Sept. 29, 2021), <https://www.americanprogress.org/article/new-poverty-food-insecurity-data-illustrate-persistent-racial-inequities/#:~:text=Black%20and%20Hispanic%20households%20are,households%20to%20experience%20food%20insecurity>.

massive influxes of federal aid and nutrition assistance in response to the COVID-19 pandemic helped the U.S. avoid a devastating national increase in poverty and food insecurity,<sup>26</sup> Black and Latino households experienced an alarming spike in food insecurity. In 2020, 21.7 percent of Black households experienced food insecurity as did 17.2 percent of Latino households, while only 7.1 percent of white households faced food insecurity.<sup>27</sup> Moreover, about one in four Indigenous people experience food insecurity, compared to one in eight Americans overall.<sup>28</sup> These disparities are not natural; deep structural inequities—such as the wage and wealth gaps, elevated poverty rates, and disparate and racialized access to food—have created this consistent reality.<sup>29</sup>

### *B. U.S. Federal Government Inadequate Responses to Hunger*

The predominant U.S. response to combat the food security crisis—namely a seemingly expansive food entitlement government program—is inadequate when not part of a comprehensive set of policies aimed to tackle hunger at the root. Under the Farm Bill, the Supplemental Nutrition Assistance Program (“SNAP”) (formerly, Food Stamp Program) is a program that provides electronic benefits which are redeemable for SNAP-eligible foods at SNAP-eligible retailers. The monetary benefit amounts vary by the size of household and the benefit calculation rules. SNAP is the U.S.’s largest anti-hunger government program with 40.3 million Americans enrolled in SNAP before the pandemic.<sup>30</sup> SNAP became even more important as the COVID-19 pandemic took off. By 2021, over 20 million households reported they still did not have enough food to consume, even with SNAP, and thus had to rely on charitable food assistance programs such as food banks.<sup>31</sup> The Emergency Food Assistance Program (“TEFAP”) Provides food commodities through states to reach local emergency feeding organizations, such as food banks. The program receives \$623 million<sup>32</sup> dollars in funding per fiscal year. The Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) is a specialized program only for women and children that provides federal grants to states for

26. From 2019 to 2020, the Department of Agriculture’s overall estimate of annual food insecurity remained unchanged at 10.5 percent, *see id.*

27. Jordan Baker, *USDA Report Reveals Unacceptable Levels of Food Insecurity in 2020*, FOOD RSCH. & ACTION CTR. (Sept. 8, 2021), [https://frac.org/news/usdaers2021-report#:~:text=Black%20\(21.7%20percent\)%20and%20Latinx,of%20households%20experienced%20food%20insecurity](https://frac.org/news/usdaers2021-report#:~:text=Black%20(21.7%20percent)%20and%20Latinx,of%20households%20experienced%20food%20insecurity).

28. *Combating Food Insecurity on Native American Reservations*, P’SHP WITH NATIVE AMS. (Apr. 2017), <http://www.nativepartnership.org/site/DocServer/2017-PWNA-NPRA-Food-Insecurity-Project-Grow.pdf?docID=7106>.

29. Nina Sevilla, *Food Apartheid: Racialized Access to Healthy Affordable Food*, NAT’L RES. DEF. COUNCIL (Apr. 2, 2021), <https://www.nrde.org/experts/nina-sevilla/food-apartheid-racialized-access-healthy-affordable-food>.

30. Randy A. Aussenberg & Karen C. Billings, *2018 Farm Bill Primer: SNAP and Nutrition Title Programs*, CONG. RSCH. SERV. (Jan 30, 2019), <https://sgp.fas.org/crs/misc/IF11087.pdf>. (Except as noted, participation and funding data from USDA-FNS Key Data Report, dated November 2018, based on data through September 2018. SFMNP funding and data displayed for FY2017 from USDA-FNS program website).

31. *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and> (last visited May 7, 2022).

32. Aussenberg & Billings, *supra* note 30.

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supplemental foods and nutrition education to low-income pregnant and postpartum women and their children.<sup>33</sup>

However, these programs are subject to a great deal of corporate influence and often do not prioritize the needs of the people who are benefiting from the program. Additionally, Congress has slowly eroded these programs with eligibility issues, bureaucratic and administrative barriers, and insufficiency regarding food quality and quantity. The limitations of government nutrition assistance programs are reflected in Americans' increasing reliance on private "emergency" food providers, like food pantries, which many now turn to as a routine source of food.

Charitable programs combined with federal nutrition programs alone have not—and cannot—accomplish the goals of ending hunger and food insecurity in the U.S. They do not address the root causes, such as racism, falling and stagnant wages, and rising inequality in income and assets—all stemming from reliance on an extractive economic model. They do not critique the entrenched institutions, policies and practices that privilege profits over people. They do not incorporate the communities at the front lines of hunger and food insecurity in their design and implementation. Nor do they respond to this chronic predicament by building robust, diversified, sustainable, and decentralized food and farm economies.

The September 2022 White House Conference on Hunger, Nutrition, and Health is a perfect example of how the U.S. fails to integrate a human right to food approach that centers the voices and needs of the most affected by food insecurity and hunger. It is laudable that the White House brought attention to the problem of hunger for the first time in 53 years and released a strategy<sup>34</sup> that aims to end hunger by 2030.<sup>35</sup> The last White House Conference of its kind was held in 1969, which resulted in the comprehensive federal nutrition assistance programs that exist today. However, on the day of the conference, President Biden welcomed the news of more than \$8 billion in new private commitments to help end hunger, among them food industry pledges.<sup>36</sup> While it's great that these companies want to help, the reality is that they also profit greatly from overproduction,<sup>37</sup> food waste,<sup>38</sup> and low wages<sup>39</sup> in the food system and over the years have repeatedly blocked<sup>40</sup> policy that would

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33. *Special Supplement Nutrition Program for Women, Infants, and Children (WIC)*, FOOD & NUTRITION SERV. U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/wic> (last visited Nov. 24, 2022).

34. *See Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health*, THE WHITE HOUSE (Sept. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf>.

35. *Id.* at 2.

36. *Fact Sheet: The Biden-Harris Administration Announces More Than \$8 Billion in New Commitments as Part of Call to Action for White Conference on Hunger, Nutrition, and Health*, THE WHITE HOUSE (Sept. 28, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/28/fact-sheet-the-biden-harris-administration-announces-more-than-8-billion-in-new-commitments-as-part-of-call-to-action-for-white-house-conference-on-hunger-nutrition-and-health>.

37. *Food and Beverages Global Market Report 2022*, YAHOO SPORTS (June 9, 2022), <https://sports.yahoo.com/food-beverages-global-market-report-085800993.html>.

38. Joshua D. Lohnes, *Regulating Surplus: Charity and the Legal Geographies of Food Waste Enclosure*, 38 AGRIC. & HUM. VALUES 351, 351 (2021).

39. Annie Lowrey, *How the Minimum Wage Helps Rich Companies*, THE ATL. (Jan. 14, 2021), <https://www.theatlantic.com/ideas/archive/2021/01/how-low-minimum-wage-helps-rich-companies/617671>.

40. Hamza Shaban, *McDonald's Says It's Done Lobbying Against Raising the Minimum Wage*, WASH. POST (Mar. 27, 2019), <https://www.washingtonpost.com/business/2019/03/27/mcdonalds-says-its-done-lobbying-against-raising-minimum-wage/>; *Big Food Companies Failing on Climate and Human Rights*, WORLD BENCHMARKING ALL. (Sept. 20, 2021),



improve the conditions of their workers, who often rely on SNAP and food banks to survive.<sup>41</sup> Unfortunately, at this stage, it remains unclear that the White House strategy is the whole-scale system transformation that we need to tackle hunger at the root. What is clear is that it will never be this transformative strategy if it continues to center the voices of corporations over those of the working poor, landless farmers, food workers, Indigenous Peoples, college students, people of color, and others living with food insecurity.

Food insecurity in the U.S. is not the result of a lack of enough food but the result of a lack of a human rights approach to hunger that posits violations of food system workers' rights, racism, poverty, and the corporate capture of natural resources as root causes of hunger. In other words, food insecurity, especially in a country as wealthy as the U.S., is not just a question of availability or access but of justice as well. Food assistance programs, although central to any comprehensive set of policies to reduce food insecurity, when implemented in isolation, fail to adequately address the adequacy, availability, accessibility, and sustainability of food for Americans.

As a result of government policies that have failed to tackle structural inequities in the food system, BIPOC communities today have less access to land suitable for farming. Similarly, workers in the food system—who are disproportionately BIPOC—continue to have their rights violated, despite being ones who feed the country.<sup>42</sup> The U.S. government has failed to adequately address the increase in poverty and food insecurity in the U.S. and has instead overseen a weakening of the social safety net. Hunger in the U.S. is the result of centuries of systemic racism, where the racial income gap between Black and Latino households and their white counterparts continuously deepens.<sup>43</sup> It is the result of a lack of supermarkets in Black and Latino neighborhoods,<sup>44</sup> and the historical dispossession of land and natural resources<sup>45</sup> that contribute to the cycle of intergenerational poverty for Black, Latino and Indigenous households. It is the result of a corporatized food system that values profits over people, human rights, and the environment and does not value local production, traditional ways of producing food, and culturally specific foods.

## II. THE U.S.'S RELATIONSHIP WITH THE INTERNATIONAL HUMAN RIGHT TO FOOD

Hunger and food insecurity in the U.S. stem, in part, from the country's refusal to guarantee its citizens a universal right to adequate food. The right to food is a human right recognized under international law. The right to food was first articulated in 1948 in Article 25 of the Universal Declaration of Human Rights, as a

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<https://www.worldbenchmarkingalliance.org/news/big-food-companies-failing-on-climate-and-human-rights>.

41. *Federal Social Safety Net Programs*, U.S. GOV. ACCOUNTABILITY OFF. (Oct. 19, 2022), <https://www.gao.gov/products/gao-21-45>.

42. Ken Jacobs et al., *The Public Cost of a Low Federal Minimum Wage*, UC BERKLEY LAB. CTR. (Jan. 14, 2021), <https://laborcenter.berkeley.edu/the-public-cost-of-a-low-federal-minimum-wage>.

43. SCOTT WINSHIP ET AL., *LONG SHADOWS: THE BLACK-WHITE GAP IN MULTIGENERATIONAL POVERTY*, (2021), available at: [https://www.brookings.edu/wp-content/uploads/2021/06/Long-Shadows\\_Final.pdf](https://www.brookings.edu/wp-content/uploads/2021/06/Long-Shadows_Final.pdf).

44. Sevilla, *supra* note 29.

45. Lizzie Wade, *Native Tribes Have Lost 99% of Their Land in the United States*, SCI. (Oct. 28, 2021, 3:00 PM), <https://www.science.org/content/article/native-tribes-have-lost-99-their-land-united-states>.

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critical component of the right to an adequate standard of living.<sup>46</sup> In 1966, the right to food was enshrined in Article 11 of the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”).<sup>47</sup> The right to adequate food is also included in several other international treaties in the context of protecting the rights of marginalized groups: Convention on the Rights of the Child (“CRC”),<sup>48</sup> Convention on the Rights of Persons with Disabilities (“CRPD”),<sup>49</sup> and Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).<sup>50</sup>

The normative content of the right to food was further defined in 1999 by the U.N. Committee on Economic, Social, and Cultural Rights’ General Comment No. 12,<sup>51</sup> which states that “the right to adequate food is realized when every man, woman and child, alone and in community with others, has physical and economic access at all times to adequate food or means for its procurement.” The right to food is further defined as the right to feed oneself and one’s family with dignity, through sufficient availability, accessibility, and adequate fulfilment of dietary needs in a sustainable manner.<sup>52</sup> More specifically, there are four main components of the right to food: accessibility (food must be both economically and physically accessible), availability (food must be available through either one’s land or natural resources, or through an efficient distribution system), adequacy, (food must satisfy dietary needs, be culturally acceptable, and be safe of harmful substances), and sustainability (food must be accessible, available, and adequate for present and future generations).

Moreover, the human right to food has evolved over the last several years and has increasingly been understood through the lens of a food sovereignty framework. La Via Campesina, a global movement of small-scale food producers, led the movement for the promotion of a food sovereignty framework as an alternative to a food security framework. Where food security mainly approaches hunger as a question of accessibility, food sovereignty approaches hunger as a question of power over resources. Hunger can be addressed not just by providing food to those in need, but by breaking the systemic barriers that perpetuate hunger. In 2007, La Via Campesina adopted the Declaration of Nyeleni, which declared that “food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food systems and policies rather than the demands of markets and corporations.”<sup>53</sup> The movement for the recognition of food sovereignty as a right culminated in 2018 when the UN General Assembly adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (“UNDROP”). In that instrument, food sovereignty is defined in Article 15 as access to the “decision-making processes on food and agriculture policy and the right to healthy and

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46. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 25(Dec. 10, 1948).

47. International Covenant on Economic, Social, and Cultural Rights, art. 11, ¶1, Dec. 16, 1966, 6 I.L.M. 360, 993 U.N.T.S. 3 [hereinafter ICESCR].

48. Convention on the Rights of the Child, art. 24 ¶2(c), *adopted on* Nov. 20, 1989, 1557 U.N.T.S. 3.

49. Convention on the Rights of Persons with Disabilities, art. 24 ¶2(c), *adopted on* Dec. 13, 2006, 2515 U.N.T.S. 3.

50. Convention on the Elimination of All Forms of Discrimination against Women, art. 12 ¶ 2, *adopted on* Dec. 18, 1979, 19 I.L.M. 33, 1249 U.N.T.S. 1.

51. High Comm’r for Human Rights, *CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)*, 2 ¶6, E/C.12/1999/5, May 12, 1999.

52. *Id.*

53. Declaration of Nyeleni, 1 ¶ 3, Feb. 27, 2007.

adequate food produced through ecologically sound and sustainable methods that respect...cultures.”<sup>54</sup> Notably, the U.S. voted against the adoption of UNDROP. Food sovereignty is an alternative model for agriculture—one that is farmer-driven, one that serves as a counter to large-scale corporate, industrial agri-business.

While the U.S. has taken some steps to demonstrate its commitment to ESC rights, the right to food remains one of the most violated human rights in the country. The U.S. played a significant role in the elaboration and adoption of the Universal Declaration of Human Rights in 1948<sup>55</sup>, which consists of 30 articles affirming the full range of individuals’ human rights. Furthermore, the U.S. ratified, and thus is legally bound by the International Covenant on Civil and Political Rights (“ICCPR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”),<sup>56</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”),<sup>57</sup> and two Optional Protocols pertaining to the Convention on the Rights of the Child (“CRC”).<sup>58</sup> The U.S. also took part in the development of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines), and even committed to their adoption by the Food and Agriculture Organization of the United Nations (“FAO”) in 2004.<sup>59</sup> However, the lack of recognition of ESC rights is most notably made evident through the U.S.’s refusal to ratify the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), which enshrines the right to food. Over 170 countries have ratified ICESCR,<sup>60</sup> but notably absent from that list is the U.S. While the U.S. does not have positive obligations to implement this treaty, the fact that the U.S. has signed it means that the U.S. must refrain from actions that “would defeat” their “object” and “purpose”.<sup>61</sup>

### III. USING INTERNATIONAL HUMAN RIGHTS TO ADDRESS HUNGER AND THE LACK OF FOOD SOVEREIGNTY IN THE U.S.: THE CASE OF MAINE

The right to food has been recognized in law around the world from national level constitutions to local level resolutions. There are 192 countries that have made

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54. Per Article 15(4) of United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), the right to food sovereignty is the access to the “decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect...cultures,” G.A. Res. 39/12, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 15 (Oct. 8, 2018).

55. *Drafters of the Declaration*, U.N., <https://www.un.org/en/about-us/udhr/drafters-of-the-declaration> (last visited Nov. 13, 2022).

56. *Status of Ratification Interactive Dashboard*, U.N. HUM. RTS OFF. OF THE HIGH COMM’R, <https://indicators.ohchr.org> (last visited Nov. 13, 2022).

57. *Id.*

58. *Ratification Status for United States of America*, U.N. HUM. RTS OFF. OF THE HIGH COMM’R, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN) [<https://perma.cc/B4K8-6FTX>] [hereinafter OHCHR].

59. *Right to Food*, FOOD & AGRIC. ORG. OF THE U.N., <http://www.fao.org/policy-support/policy-themes/right-to-food/en> (last visited Nov. 16, 2022).

60. *Chapter IV Human Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) (last visited Nov. 13, 2022).

61. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

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extensive commitments on the right to adequate food at national levels.<sup>62</sup> The right to food has started to see recent support in the U.S. with several states adopting laws and policies recognizing the right to food and its four dimensions. Some of these states include Massachusetts,<sup>63</sup> New York,<sup>64</sup> Texas,<sup>65</sup> and Wyoming.<sup>66</sup>

On November 2, 2021, Maine voters overwhelmingly supported a statewide referendum approving an amendment to enshrine the right to food in the Maine Constitution. Maine is the first state in the nation to enshrine the right to food in their Constitution. This was a stunning victory, not just for Maine, but for the right to food movement in the U.S. overall. With Maine being the first state to formally enshrine the right to food, other states are seeking to follow suit.

The amendment, Article 1, §25, adds the following text to Maine's Constitution:

**Section 25: Right to food.** All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.<sup>67</sup>

### A. *The Road to the Ballot*

Maine has dedicated over a decade of advocacy surrounding the right to food. Since 2011, over 100 towns and cities in all of Maine's 16 counties<sup>68</sup> have adopted various ordinances and resolutions promoting food sovereignty, often using the same template.<sup>69</sup> These ordinances developed as a response to state regulations that applied industrial-scale food processing regulations on small-scale operations,<sup>70</sup> and help facilitate the sale of food from small-scale farmers directly to consumers. In 2017, the legislature adopted the Maine Food Sovereignty Act,<sup>71</sup> which upheld the authority of these ordinances. The Maine Food Sovereignty Act drew inspiration from Wyoming's Food Freedom Law,<sup>72</sup> which specifically protects the exchange

62. *The Right to Food Around the Globe*, FOOD AND AGRIC. ORG. OF THE U.N., <https://www.fao.org/right-to-food-around-the-globe/countries/en> (last visited Jan. 26, 2022).

63. *Food Justice*, CITY OF BOST., <https://www.boston.gov/departments/food-justice> (last visited Jan. 26, 2022).

64. *Food Forward NYC: A 10-year Food Policy Plan*, THE CITY OF N.Y. (Feb. 2021), <https://www1.nyc.gov/assets/foodpolicy/downloads/pdf/Food-Forward-NYC.pdf>.

65. City of Austin, Resolution No. 20160303-020 (Mar. 2016).

66. H.R. 0056, 63d Leg. (Wyo. 2015).

67. MAINE CONST., *supra* note 9.

68. *Mapping Food Sovereignty*, LOCALFOODRULES.ORG, <https://www.localfoodrules.org/mapping-food-sovereignty> (last visited Nov. 24, 2022).

69. *Local Food and Community Self-Governing Ordinance Form*, LOCALFOODRULES.ORG, [https://www.localfoodrules.org/wp-content/uploads/2020/02/D09\\_LFCSGO\\_PDF-Template.pdf](https://www.localfoodrules.org/wp-content/uploads/2020/02/D09_LFCSGO_PDF-Template.pdf) (last visited Nov. 24, 2022).

70. Jesse Labbe-Watson, *Food Sovereignty as A Step Toward Community Resilience*, LOCALFOODRULES.ORG, [https://www.localfoodrules.org/wp-content/uploads/2019/11/D02\\_FoodSovereigntyCommunity.pdf](https://www.localfoodrules.org/wp-content/uploads/2019/11/D02_FoodSovereigntyCommunity.pdf) (last visited Nov. 24, 2022).

71. ME. STAT. tit. 7, §§ 281–86 (2017).

72. *Wyoming Food Freedom Act*, CMTY. ACTION OF LARAMIE CNTY.,

and consumption of homegrown food and the operation of farmers' markets. Many other states<sup>73</sup> facing food insecurity have adopted their own variation of food sovereignty and right to food regulations.

In 2015, and again in 2019, Democratic Maine Senator Craig Hickman, also a local dairy farmer, introduced a resolution<sup>74</sup> to enshrine the right to food in Maine's Constitution. Although those resolutions did not pass, efforts in support of the right to food did not cease. In 2021, legislative efforts to amend the state Constitution resurged—this time successfully. In 2021, Republican Maine Representative Billy Bob Faulkingham, also a lobster fisher, re-introduced LD 795, or legislation<sup>75</sup> to amend the state Constitution. Supporters of this bipartisan constitutional amendment sought to empower local farmers and take back control of food production and sale from large corporate agribusiness, considering Maine currently imports over 90% of the food they consume.<sup>76</sup> Farmer and co-author of the right to food amendment Heather Retberg summarized the bi-partisan rationale when she said:

"It's been and continues to be an uphill road, but we really believe that a proactive measure with this kind of foresight is necessary and vital now. As more corporate control infringes on our ability to grow our own food, access our own water, and feed ourselves, we will need this bulwark in place, so individual people have the legal rights secured and able to be protected/defended under the law."<sup>77</sup>

On March 23, 2021, the Maine legislature's standing committee on Agriculture, Conservation, and Forestry ("ACF") held a work session on LD 795. There, committee members debated the language of the bill and its possible impacts on seed certification, a program where Maine officials inspect seeds for blight, disease, and pests before allowing them to be sold commercially.<sup>78</sup> Supporters of the bill, including the Human Rights Clinic of the University of Miami, who authored a legal memo on the issue,<sup>79</sup> argued that the amendment only applied to the non-commercial exchange of seeds between individuals, but skeptics and critics remained concerned about its potential effects on seed certification. One committee member noted that constitutional amendments are generally written in broad terms, and the legislature, through its police powers, can specify the exact scope of the amendment through statute afterward. But at the end of the session, another committee member moved to send the amendment to the state Attorney General to get an informal opinion on this issue. The bill was tabled pending this informal opinion. Senator Hickman and Republican Representative Faulkingham were able to walk the ACF

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<http://www.calc.net/wp-content/uploads/2018/01/WYFoodFreedomAct2017.pdf> (last visited Nov 24, 2022).

73. MIAMI LAW HUMAN RIGHTS CLINIC, *supra* note 13.

74. LD 795, 129th Leg., 1st Spec. Sess. (Me. 2020).

75. H.P. 61, 130th Leg., 1st Reg. Sess. (Me. 2021).

76. *Resolution, Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 765 Before the Joint Standing Comm. on Agric., Conservation & Forestry*, 2020 Leg., 129th Sess. (Me. 2020) (testimony of Craig V. Hickman, Chair, Joint Standing Comm. on Agric., Conservation & Forestry). See also Cheryl Wixson, *Can Maine Feed Itself?*, ME. ORGANIC FARMERS AND GARDENERS, <https://www.mofga.org/can-maine-feed-itself> (last visited July 22, 2022).

77. *Food Freedom at Stake—Help Support Maine Right to Food*, THE WESTON A. PRICE FOUND. (Dec. 3, 2021), <https://chapters.westonaprice.org/midlandtx/2021/12/03/food-freedom-at-stake-help-support-maine-right-to-food-nov-2nd-referendum>.

78. Memorandum from William Talley, Law Student Intern at University of Miami School of Law Human Rights Clinic to Maine Attorney General Aaron Frey (Apr. 13, 2021) (on file with author).

79. *Id.*

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Committee through a legal memo addressing this issue and the ACF Committee voted 10-3 ought to pass as amended.<sup>80</sup>

The next step required a two-thirds vote from the House and Senate to send the proposed amendment to the ballot box. Three-fourths of the legislature supported this bi-partisan bill. In November 2021, the right to food appeared as Question 3 on the Maine ballot.<sup>81</sup> The question read: “Do you favor amending the Constitution of Maine to declare that all individuals have a natural, inherent, and unalienable right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being?”

To establish an organizing platform in support of Question 3, the Right to Food for ME Campaign<sup>82</sup> was formed by the drafters and supporters of the proposed amendment, individuals involved with the food sovereignty ordinances and the Maine Food Sovereignty Act, and state and national supporters, including the Human Rights Clinic of the University of Miami School of Law and WhyHunger. With a clear understanding of the political landscape in Maine, which is a traditionally libertarian state, the campaign focused on presenting the right to food as a negative right in need of protection from government interference in order to be fully realized. In line with this framing, the campaign sought to capitalize on the gains and messages it had made during its food sovereignty efforts. The Right to Food for ME campaign<sup>83</sup> prevailed in November 2021—a total of 60.3% of voters<sup>84</sup> voted in favor of the amendment.

### *B. Understanding the Meaning of the Right to Food in Maine*

In drafting the amendment language, the authors found it important to stipulate that individuals have a right to food, including the right to save and exchange seeds at a non-commercial scale, so long as the individual’s exercise of their right to food does not violate current animal welfare and property laws. The authors of the amendment were mindful to include limiting language when drafting the amendment, which was re-drafted multiple times. Much of the work towards getting the right to food constitutionally recognized involved explaining what the right to food is and is not, what it would mean for addressing hunger, and how it would be implemented once in the Constitution.

The drafters of the language of the amendment, Senator Craig Hickman and homesteader Heather Retberg, consider the amendment to have three main clauses:

(1) Right to food: “All individuals have a natural, inherent and unalienable right to food,”

(2) Right to food sovereignty: “including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being,”

80. Agriculture, Conservation and Forestry–Maine, *ACF Work Session 4/15/2021*, YOUTUBE (Apr. 15, 2021), <https://www.youtube.com/watch?app=desktop&v=PdyY8LU20EA> (April 15, 2021 session).

81. *Maine Question 3, Right to Produce, Harvest, and Consume Food Amendment (2021)*, BALLOTPEdia, [https://ballotpedia.org/Maine\\_Question\\_3,\\_Right\\_to\\_Produce,\\_Harvest,\\_and\\_Consume\\_Food\\_Amendment\\_\(2021\)](https://ballotpedia.org/Maine_Question_3,_Right_to_Produce,_Harvest,_and_Consume_Food_Amendment_(2021)) (last visited Nov. 24, 2022).

82. Right to Food for Maine (@righttofoodforme), INSTAGRAM, <https://www.instagram.com/righttofoodforme>.

83. Right to Food for Maine, FACEBOOK, <https://www.facebook.com/righttofoodforme> (last visited Dec. 17, 2022).

84. BALLOTPEdia, *supra* note 81.

(3) Limiting language: “as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.”

Each clause speaks to specific areas of focus regarding the right food movement in the U.S., and particularly this movement as it relates to Maine. The first clause seeks to respond to the issue of food insecurity in Maine. Hunger impacts hundreds of thousands of Mainers<sup>85</sup> and jeopardizes the vitality of their communities. As recently as 2020, over 168,300 people in Maine received SNAP benefits.<sup>86</sup> Similar federal hunger programs, including WIC and the National School Lunch Program (“NSLP”), have high enrollment rates in the state.<sup>87</sup> Food banks/pantries are another response to food insecurity, albeit a temporary one. It is estimated that there are over 290 food pantries in Maine.<sup>88</sup> While all these charitable programs are working to address hunger and food insecurity across Maine, even after the federal programs, there remains a meal gap of over 33 million meals annually.<sup>89</sup> Charitable programs are currently only meeting 68 % of the gap, leaving a gap of over 10 million meals annually.<sup>90</sup> While charitable programs are fulfilling immediate food and nutrition needs in Maine, they do not address the root causes of hunger.

While Maine’s right to food constitutional amendment was not a direct extension of the Maine Food Sovereignty Act, the second clause of the amendment sought to respond to the fact that the right to food movement in Maine arose primarily as a response to government regulations that disenfranchised small-scale farmers.

Finally, drafters of the constitutional amendment sought to ensure that limiting language in the amendment was included to curtail large opposition points. The right to food movement in Maine had (and has) opponents. The opposition was concerned that wording of the amendment was vague and may challenge local zoning and other ordinances, resulting in “cows grazing in front yards.”<sup>91</sup> Moreover, they were concerned that the amendment would be left to judges to interpret and define<sup>92</sup> and that the seeds provision goes against federal law.<sup>93</sup> Amendment supporters dispelled this critique by arguing that the legislature, through its police powers, can further define the language of the amendment. Concerns over mistreatment

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85. AMANDA E. BEAL, *EVERYONE AT THE TABLE: MAINE’S ROADMAP TO END HUNGER BY 2030*, (2021).

86. *SNAP Data Tables*, FOOD AND NUTRITION SERV. U.S. DEP’T OF AGRIC., <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap> (last visited Nov. 24, 2022).

87. LEG. 129-1159, 2<sup>ND</sup> SESS., at 9,10 (Me. 2020).

88. ME. FOOD PANTRIES, <https://www.foodpantries.org/st/maine> (last visited Nov. 10, 2022).

89. *Food Insecurity Among Overall (All Ages) Population in the United States*, FEEDING AM., <https://map.feedingamerica.org> (last visited Nov. 10, 2022).

90. *Id.*

91. *Maine’s New ‘Right to Food’ Could Sprout Legal Challenges*, THE ECONOMIST (Nov. 27, 2021), <https://www.economist.com/united-states/2021/11/27/maines-new-right-to-food-could-sprout-legal-challenges>.

92. Noah Wicks, *What Does Maine’s ‘Right to Food’ Amendment Mean for Ag? The Courts Will Decide*, AGRIPULSE (Nov. 11, 2021, 6:25 AM), <https://www.agri-pulse.com/articles/16771-what-does-maines-right-to-food-amendment-mean-for-agriculture-in-the-state-thats-up-to-the-courts-to-decide>.

93. Sam Schipani, *Advocates Fear Maine’s ‘Right to Food’ Amendment Puts the Humane Treatment of Animals in Jeopardy*, BANGOR DAILY NEWS (Nov. 15, 2021), <https://bangordailynews.com/2021/11/16/homestead/advocates-fear-maines-right-to-food-amendment-puts-the-humane-treatment-of-animals-in-jeopardy>.

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of animals<sup>94</sup> and environmental impacts, such as the potential contamination of water supplies and the introduction of invasive species,<sup>95</sup> were addressed by amendment supporters who stated that the amendment's limiting language would uphold current animal welfare and private property laws. Finally, the opposition was concerned that the amendment would negatively impact commercial activity in Maine.<sup>96</sup> Tied to commercial activity was the concern that established producers would now have to compete with local farmers<sup>97</sup> who do not need to follow the same regulations, and that the seeds provision would ultimately inspire companies with seed patents to stop selling seeds to Maine.<sup>98</sup>

### *C. Developments Following the Adoption of the Right to Food Constitutional Amendment in Maine*

In April 2022, months after Maine officially amended its Constitution to include Section 25 on the Right to Food, Virginia and Joel Parker filed a civil action before the Kennebec Superior Court against Judith A. Camuso, the Commissioner of the Maine Department of Inland Fisheries and Wildlife. Plaintiff challenged state law 12 M.R.S. §11205 banning hunting on Sundays arguing that the ban “infringes on their now constitutionally enshrined right to legally harvest food for their own sustenance.”<sup>99</sup> Plaintiffs have five children and say they rely on hunting, especially deer hunting, to feed their family. Because of work and school schedules, as well as the state-wide ban on hunting on Sundays, Plaintiffs are only able to hunt on Saturdays. Plaintiffs further argued that “because the Sunday hunting ban cannot be justified based on the need to protect private property, public safety, or natural resources, the ban is superseded by the Right to Food Amendment and thus unconstitutional as applied to the Parkers, who are Maine citizens who wish to harvest food for their own consumption through hunting.”<sup>100</sup> Defendant filed a Motion to Dismiss under FRCP 12(b)(6) for failure to state a claim, arguing that the right to food amendment does not apply to 12 M.R.S. §11205. Defendant sought to dismiss Plaintiff's claim on the basis that (1) the right to food amendment does not encompass the right to hunting, and (2) even if the right to food amendment did encompass hunting, the amendment does not change or limit the state's power to regulate or restrict hunting.<sup>101</sup>

Before the lawsuit was filed, the Right to for ME Campaign, which includes all of amendment authors, had expressed the intention to publicly define the right to food using international human rights standards and tools. This approach aimed to educate the broader public, including legislators and government officials tasked with its protection and implementation. According to members of the Right to for ME Campaign, the lawsuit filed in April 2022 has increased the impetus for such a

94. THE ECONOMIST, *supra* note 91.

95. *Id.*

96. *Id.*

97. Wicks, *supra* note 92.

98. *Id.*

99. Anne Ropiek, *Readfield Couple Sues to Overturn Sunday Hunting Ban*, SPECTRUM NEWS (Apr. 27, 2022, 2:05 PM), <https://spectrumlocalnews.com/me/maine/news/2022/04/27/readfield-couple-sues-to-overturn-sunday-hunting-ban>.

100. *Id.*

101. Defendant's Motion to Dismiss at 1, Parker v. Camuso, No. CV-2022-87 (Super. Ct. Me. June 10, 2022).



human rights-based tool that helps define what the right to food is and how it should be implemented for the people of Maine.

#### IV. OPPORTUNITIES MOVING FORWARD: THE NATIONAL RIGHT TO FOOD COMMUNITY OF PRACTICE

Maine was the first in the U.S. to successfully enshrine the right to food in its state Constitution. Today, other states, such as West Virginia, are actively looking to follow in Maine's footsteps and amend their own state constitutions. Experiences in Maine are serving as a reference point and educational tool piece for states on successful advocacy and lessons learned throughout the process, highlighting the international right to food standards and how these standards were molded into Maine's right to food vision. Furthermore, in part prompted by the need for legal support for Maine's legislative efforts, a group of people with lived experiences of hunger, legislators, food justice advocates, human rights scholars, practitioners, and students from around the country have come together to form a national Right to Food Community of Practice.

##### *A. U.N. Advocacy*

Since 2019, members of this nascent right-to-foo movement have strategically engaged with human rights mechanisms to build awareness and accountability around hunger in the U.S. Use of the international human rights framework helped to exert political pressure, contributed to social mobilization, and sought to further develop international standards and recommendations that could then be implemented domestically. As part of this advocacy, people with lived experiences of hunger, advocates, and scholars engaged in self-education and training, supporting organizing efforts around a human rights framework, convened strategy meetings with other movements also focused on ESC rights, and have engaged with several U.N. human rights mechanisms, including the U.N. Special Rapporteur on the Right to Food, U.N. Committee on the Elimination of All Forms of Racial Discrimination ("CERD"), and Universal Periodic Review ("UPR") by the U.N. Human Rights Council.

In 2019, the growing right-to-food movement engaged for the first time with the U.N. Human Rights Council's UPR process of the U.S.<sup>102</sup> The UPR is a peer-review political process whereby U.N. Member States undergo review of their human rights records by their peers. It is a unique process where all States are treated equally and asked to declare what actions they've taken to improve the human rights situation in their countries.<sup>103</sup> The process culminates in a series of recommendations that are issued to the country in question. In 2020, the U.S., a member of the U.N. Human Rights Council, was scheduled to undergo review; however, the COVID-19 pandemic delayed the review. In October 2019, the coalition turned in

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102. *Miami Law Human Rights Clinic Submits Four Reports to the United Nations Alleging Violations in the U.S.*, UNIV. OF MIA. SCH. OF L. (Oct. 31, 2019), <https://news.miami.edu/law/stories/2019/10/miami-law-human-rights-clinic-submits-four-reports-to-the-united-nations-alleging-violations-in-the-u.s.html>.

103. *Universal Periodic Review*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/upr-main> (last visited Nov. 8, 2022).

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a written submission on the right to food in the context of the rights to non-discrimination and political participation.<sup>104</sup> The submission sought to highlight violations of the right to food in the U.S. by framing these as violations of civil and political rights given the fact that the U.S. had ratified the ICCPR and had incorporated many of those rights into its own legal framework. While the UPR process did not result in any concrete recommendation on the right to food in the U.S., it was an opportunity to bring academics, legislators, advocates, and people with lived experience of hunger together around the idea of holding the U.S. accountable for its human rights obligations. Up until this moment, these groups had primarily used the human right to food as an organizing framework; however, for the first time, there was an opportunity to talk about the right to food to hold the U.S. accountable for violations of the right to food. The process was also an opportunity for groups in the U.S. focused on food justice issues to engage with international actors, including foreign embassies, to lobby them to put pressure on the U.S. vis-à-vis its human right to food obligations.

Following this experience, the University of Miami Human Rights Clinic convened two additional processes to draft submissions for the U.N. that highlighted violations of the right to food in the U.S. In June 2020, a report on systemic racism and hunger in the context of COVID-19 in the U.S. was submitted to the U.N. Special Rapporteur on the Right to Food.<sup>105</sup> In the summer of 2022, the Human Rights Clinic together with members of the budding National Right to Food Community of Practice submitted a shadow report<sup>106</sup> on racial discrimination and the right to food to the U.N. CERD and engaged in lobbying during the actual review session in Geneva.<sup>107</sup> The U.N. advocacy was highly successful this time around and resulted in the adoption of the first set of U.N. recommendations to the U.S. focused on their obligation to realize the right to food of Americans. More specifically, in August 2022, the U.N. CERD Committee issued the following powerful Concluding Observations to the U.S.:

“The Committee recommends that the State party take all necessary measures to guarantee the right to adequate food, to strengthen its efforts to combat hunger and food insecurity, which disproportionately affects racial and ethnic minorities, and especially women and children, including by strengthening the institutional framework and adopting a comprehensive and rights-based national plan to end hunger. The Committee encourages the State party to take effective measures against hunger, in consultation with all relevant stakeholders, including members of the communities most affected by food insecurity, including through the White House Conference on Hunger that will take place in September 2022.”<sup>108</sup>

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104. See DENISSE CÓRDOVA MONTES ET AL., *THE HUMAN RIGHT TO FOOD IN THE CONTEXT OF POLITICAL PARTICIPATION, EQUALITY AND NONDISCRIMINATION* (Oct. 3, 2019).

105. See DENISSE CÓRDOVA MONTES ET AL., *VIOLATIONS OF THE HUMAN RIGHT TO FOOD DURING COVID-19 IN THE UNITED STATES* (June 19, 2019).

106. See DENISSE CÓRDOVA MONTES ET AL., *RACIAL INJUSTICE AND VIOLATIONS OF THE HUMAN RIGHT TO FOOD IN THE UNITED STATES*, (July 14, 2022).

107. *Human Rights Clinic Advocates for the Rights to Food, Health, and Housing at the U.N.*, UNIV. OF MIA. SCH. OF L. (Sept. 21, 2022), <https://news.miami.edu/law/stories/2022/09/human-rights-clinic-advocates-for-rights-to-food.html>.

108. U.N. Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, ¶ 42, U.N. Doc. CERD/C/USA/CO/10-12 (Aug. 30, 2022).

### *B. Domestic Advocacy and Opportunities for Strategizing and Learning*

During all phases of U.N. advocacy, advocates not only engaged with international bodies, but also with members of the U.S. government, and in parallel organizing efforts to advance human rights standards domestically. For example, the National Right to Food Community of Practice held a satellite event<sup>109</sup> during the 2022 White House Conference on Hunger, Nutrition, and Health that revolved around the U.N. CERD Committee recommendations. Through the satellite event, the Community of Practice critically assessed whether the Conference followed a human right to food approach when seeking to address hunger.

Moreover, in November 2020, the University of Miami Human Rights Clinic together with the Cardozo Law Institute in Holocaust and Human Rights hosted a strategy meeting on *Realizing the Rights to Food, Health and Housing in the U.S.* The two-day meeting focused on strengthening ESC rights in the U.S. and brought members of the National Right to Food Community of Practice together with advocates and scholars from the housing and health movements in the U.S. to share strategies for realizing the rights to housing, health and food and explore collaborations. The Community of Practice will have a follow-up symposium and strategy meeting on *Food, Housing, and Racial Justice* at the University of Miami School of Law in April 2023. The two-day symposium will offer an opportunity to reflect on the links between racial discrimination and violations of the right to food in the U.S. and ways to implement U.N. CERD recommendations to the U.S.

### *C. Translating Efforts to West Virginia*

As a result of these learning exchanges, food justice advocates from West Virginia became interested in starting their own efforts to enshrine the right to food in law in West Virginia. Currently, members of the National Right to Food Community of Practice are actively supporting right to food legislative efforts in West Virginia. On March 15, 2021, Delegate Walker, who has publicly shared her struggles with poverty, hunger, and food insecurity, introduced House Joint Resolution 30 (“HJR 30”).<sup>110</sup> The proposal strives to add the “Right to food, food sovereignty and freedom from hunger” to West Virginia’s Constitution. Unlike efforts in Maine, which focused primarily on precluding government interference with Mainers’ right to grow and consume the food of their choosing, West Virginians are espousing a holistic understanding of the human right to food that is more in line with the international human right to adequate food, with its negative and positive dimensions. Through their legislative efforts, West Virginians are demanding that the government protect the right to food by both respecting communities’ food sovereignty, but also by strengthening social safety nets, investing in communities’ grocery stores, and increasing the minimum wage to ensure that everyone can economically and physically access adequate food.

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109. *White House Conference on Hunger, Nutrition, and Health: Satellite Events*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://health.gov/our-work/nutrition-physical-activity/white-house-conference-hunger-nutrition-and-health/satellite-events> (last visited Nov. 7, 2022).

110. H.J.R. 30, 85th Leg., Reg. Sess. (W. Va. 2021).

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In 2021, the Human Rights Clinic of the University of Miami assisted Seventh Ward City Councilor Brian Butcher, who has publicly shared his experiences with homelessness and hunger, in drafting a Morgantown Resolution supporting the Human Right to Food. The City Council of Morgantown unanimously adopted the resolution in December 2021. While primarily aspirational in nature, it does include budgetary and compliance provisions. Currently, similar resolutions are being considered in other counties in West Virginia.

The legal recognition of the right to food in West Virginia would be a first step towards alleviating some of the significant food access issues in the state. West Virginia is plagued with food deserts, meaning that many residents do not have easy access to grocery stores that sell healthy, affordable produce and meats.<sup>111</sup> Of the 76 food retailers in Monongalia County, only 19 have fresh produce.<sup>112</sup> Further, 70% of retail food stores have out-of-state ownership.<sup>113</sup> Many residents of Morgantown have shared their lived experiences with food insecurity at one of the monthly Voices of Hunger meetings, with many struggles being directly related to the above statistics. Citizens have described their struggle to afford enough gasoline to fuel their cars for the extended mileage required to get to and from the store. Others described how they would often forego meals to ensure their children or sick elderly parents would be well-fed and properly nourished.

West Virginia's recognition of the right to food in local resolutions places food and the need to address hunger at the center of cities' planning and budgeting. The city of Morgantown will receive around \$11,000,000 from the American Rescue Plan Act<sup>114</sup> to spend prior to December 31, 2024. The passage of the Resolution in Morgantown helps to ensure that some of these funds will be used for food related investments, which in turn will strengthen the relationship between food, public health, and the community. By passing right to food resolutions and amending its state Constitution to enshrine the right to food, West Virginia will be one of the states, together with Maine, leading the nation in recognizing that the right to feed oneself in dignity should be a priority and justiciable.

## V. CONCLUSION

Throughout the various local, state, and international processes described in this essay, advocates, scholars, and people with lived experiences of hunger have used international human rights law to address hunger in the U.S. The nascent National Right to Food Community of Practice meets virtually and in-person on a regular basis to share, learn from each other, and engage in mutual support and solidarity around the right to food. What drives this budding movement is the understanding that the current state of food insecurity and the strategies for addressing hunger in the U.S. are far from what international human rights standards dictate.

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111. *Food Justice in Appalachia: Art in the Libraries Exhibit 2021-22*, W. VA. UNIV., <https://assets.adobe.com/id/urn:aaid:sc:US:45fe41b7-24df-48aa-a8e8-c091303470f1?view=published> (last visited Jan. 27, 2022).

112. *WV Food Link 2021 Food Access Profile: Mongolia County*, W. VA. UNIV., <http://foodlink.wvu.edu/wp-content/uploads/2021/05/Monongalia-County-Profile.pdf> (last visited Nov. 7, 2022).

113. *Id.*

114. *American Rescue Plan Act of 2021*, CITY OF MORGANTOWN W. VA., <https://www.morgantownwv.gov/636/American-Rescue-Plan-Act-of-2021> (last visited Nov. 7, 2022).

The international law approach to the human right to food provides a framework of concrete standards and goals, as well as practical tools for exerting political pressure and facilitating coalition-building and mobilization. In addition, it also relies on the international community for its legitimacy, rather than on the fluctuations of political preferences at the national or subnational level. Furthermore, the focus on centering the experiences and leadership of people with lived experiences that accompanies a human rights approach to addressing hunger in the U.S. is a particularly useful tool given the U.S.'s reliance on corporations to alleviate hunger, as evidenced during the recent White House Conference. In contrast, as demonstrated by the state examples in Maine and West Virginia,<sup>115</sup> people with lived experiences of right-to-food violations are leading legislative and organizing efforts in their respective states. Ideally, the U.S. should ratify and implement the ICESCR; however, until it does so, a growing right-to-food movement will continue leading efforts to demand that local, state, and national governments draw on the comprehensive approach to the right to food under international human rights law to alleviate some of the issues that plague access to adequate food in the U.S. today.

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115. *Human Rights Clinic Supports Maine's First-in-the-Nation Right to Food Constitutional Amendment*, UNIV. OF MIA. SCH. OF L. (Nov. 17, 2021), <https://news.miami.edu/law/stories/2021/11/human-rights-clinic-supports-maines-first-in-the-nation-right-to-food-constitutional-amendment.html> (Senator Craig Hickman, Heather Retberg, and Representative Billy Bob Faulkingham of Maine are small-scale food producers (dairy farmer, homesteader, and lobster fisher) who have experienced violations of the right to food); *Human Rights Clinic Contributes to Victory for Right to Food in West Virginia as City of Morgantown Adopts New Municipal Resolution*, UNIV. OF MIA. SCH. OF L. (Mar. 9, 2022), <https://news.miami.edu/law/stories/2022/03/human-rights-clinic-contributes-to-victory-for-right-to-food-in-west-virginia-as-city-of-morgantown-adopts-new-municipal-resolution.html> (Delegate Danielle Walker and Councilor Brian Butcher have both publicly shared their experiences with hunger and food and housing insecurity).