Food Policy and the Right to Food in the UK: Coronavirus and Beyond

Clare Alexandra James

Submitted in accordance with the requirements for the degree of PhD.

The University of Leeds School of Law

May 2024

I confirm that the work submitted is my own, except where work which has formed part of jointly authored publications has been included. My contribution and the other authors to this work has been explicitly indicated below. I confirm that appropriate credit has been given within the thesis where reference has been made to the work of others.

Chapter 5 contains work that has also been included in a jointly authored publication: Michael Cardwell and Clare James, 'The Right to Food in the UK' in Louisa Ashley and Nicolette Butler (eds) in *Towards the Implementation of Human Rights Norms in an Era of Unprecedented Universal Exceptionalism,* Routledge forthcoming. The book chapter discusses the food policy and law of the countries in the UK, and the idea of framework legislation to aid implementation of the right to food in the UK. First drafts of the thesis chapter containing the idea of framework legislation to implement the right to food in the UK were written by me before the book chapter was written with Prof Cardwell. The two chapters developed alongside each other, as the law in this area, especially in the devolved legislatures developed over the next 18 months. The discussions about framework legislation in relation to climate change legislation developed following discussions between Prof Cardwell and me after we attended a research seminar presented by environmental lawyer Prof Maria Lee. A less detailed discussion of some of these ideas do appear in Chapter 5. The structure of the book chapter is different from the thesis chapter and does not contain all the material discussed in the thesis chapter. The process of writing the book chapter has been collaborative throughout.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

The right of Clare Alexandra James to be identified as Author of this work has been asserted by Clare Alexandra James in accordance with the Copyright, Designs and Patents Act 1988.

Acknowledgements

I am grateful to my primary supervisor, Professor Michael Cardwell, for his enthusiasm for this project even before he was confirmed as one of my supervisors. His kindness, generosity with his time, and support have been invaluable. Professor Ilias Trispiotis has gone above and beyond the role of a second supervisor. He has contributed so much in terms of expertise and time, as well as patience while I got to grips with human rights theory. His guidance and support were always spot on. Together Professors Cardwell and Trispiotis were the best supervision team I could have imagined. My supervision meetings were something I looked forward to. They were lively and productive and always felt like I was discussing my work with colleagues. I cannot express my thanks enough for all their efforts.

During my time as a PGR at Leeds it was a privilege to be part of the Centre for Law and Social Justice. This research community gave me opportunities to present my work, discuss the work of others and above all provide a supportive and mentoring environment. Specific thanks go to Dr Carrie Bradshaw who has provided invaluable advice and emotional support throughout my PhD. The PGR community at the School of Law has always served as a source of support, advice, and laughs. I would have not got through the last few years without the support and friendship of Kisby Dickinson and Courtney Leader.

I would also like to thank my family, Peter, Carol, Edward, Danielle, and Harry James, and Bridget Dunbar, for their support over the last five years. Acknowledgement must also be given to Eleanor ‘Elbo’ James. My characterful cat was never far away and always willing to demand I take a break when she felt I had been working too long and not paying her enough attention. Most

importantly I am forever grateful to my partner Max Dunbar. Not only has he taken on the role of proof-reader without complaint, but he has supported my career change, helped me through periods of self-doubt, and never once complained about the time I spent working on my thesis. Without his love and support this project would not have been completed and this PhD is dedicated to him.

The thesis was proof-read before submission by a third-party proof-reader. The PGR confirms that the third-party proof-reading was undertaken in accordance with the Postgraduate Researcher Proof-reading Policy.

Abstract

The right to food is an underexplored area of human rights law, especially in developed countries. The UK has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which contains the right to food in Article 11. The UK has rising levels of food insecurity and people skipping meals due to the cost-of-living crisis and cuts in welfare spending. The COVID-19 pandemic also highlighted failings of the food system, such as high levels of obesity and the reliance on supermarkets and just-in-time supply chains to ensure people could access food. Moreover, the COVID-19 pandemic and subsequent war in Ukraine has highlighted the failure of the world to learn lessons from the 2007-8 global food crisis. These failings indicate the UK might be violating some of the obligations it has accepted in relation to the right to food by ratifying the ICESCR. This then raises the issue of what the UK's obligations are in relation to the right to food. In response to the ongoing uncertainty with regards to the legal obligations arising from the right to food, this thesis develops a novel normative framework for the right to food, focusing on the obligations of developed states. The thesis then applies this framework to UK food policy, arguing for the need for framework legislation to facilitate full realisation of the right to food. Supermarkets and their role in the realisation of the right to food is highlighted as another area in need of regulation by the UK Government. The thesis also highlights the need for measures to ensure food safety and to tackle antimicrobial resistance to be embedded in post-Brexit law and trade policy.

Table of Contents

Table of Contents 7

Table of Figures 11

List of Abbreviations 12

Table of Cases 14

Table of UK Legislation 18

Table of EU Legislation 20

Table of International Treaties and Conventions 21

Table of United Nations and World Trade Documents 25

1. Introduction 31

1.0. The right to food in the UK 31
2.0. Threats and failings of the global food system 38
3.0. Food security and the right to food in the UK 39
4.0. Methodology 41
5.0 Thesis Structure 43

2. Foundations of the Right to Food 46

1.0. Introduction 46
2.0. The right to food: a socioeconomic right 47
2.1. The right to food in international and regional human rights law 48
2.2. The nature of socioeconomic rights 52
2.2.1. Obligations for socioeconomic rights: respect, protect and fulfil 55
2.2.2. Indivisible and interdependent rights 57
2.2.3. Progressive realisations and the minimum core of socioeconomic rights 60
2.2.4. Monitoring and justiciability of socioeconomic rights 66
2.2.5. Paternalism and socioeconomic rights 72
3.0. Justifying the right to food as part of elucidating the content of the right 74
3.1. Dignity and the right to food 75
3.2. A consequentialist argument for the right to food 80
3.3. The minimal conception of rights includes the right to food 82
3.4. Capabilities and the right to food 83
4.0. Elucidating the content of the right to food 86
4.1. Food security and the right to food 86
4.2. Security and food 88
4.3. The necessity of a novel of normative framework for the right to food 90

4.4 Sustainable Development Goals 91
5.0. Conclusion 93

3. Domestic Standards and State Obligations for the Right to Food 96

1.0. Introduction 96
2.0. Article 11 ICESCR 98
3.0. The fundamental right to be free from hunger 100
3.1. The right to be free from hunger: a fundamental right necessary for human dignity 106
3.2. Hunger and security 112
3.3 Obligations of states in relation to hunger 117
4.0. Adequate food 118
5.0. Nutrition 127
5.1. Plant-based diets 129
5.2. Taxes on unhealthy foods 132
6.0. Production 138
6.1. Agroecology 139
6.1. Sustainable intensification 141
6.3. Market driven approaches to food security 142
6.4. An approach to production for the right to food 144
7.0 Conclusion 146

4. International Standards and State Obligations for the Right to Food 148

1.0. Introduction 148
2.0. The need for international cooperation to realise the right to food 149
2.1. International cooperation and the right to be free from hunger 151
2.2. International cooperation and the right to adequate food and nutrition 153
2.3. International cooperation and production 154
3.0. International cooperation and extraterritorial obligations in international human rights law 156
3.1. The right to food: an abstract norm with international obligations 157
3.2. Extraterritorial obligations in international human rights law 159
3.3. International cooperation and assistance for socioeconomic rights 161
4.0. International cooperation and the right to food 166
4.1. The right to food in customary international law 167
4.2. International cooperation for the right to food 169
5.0. International food assistance 172
5.1. The nature of emergency food assistance 174
5.2. Non-emergency food aid and the obligation to do no harm 177
6.0. Equitable distribution and trade 178
6.1. The Agreement on Agriculture 179
6.1.1. Market access 182

6.1.2. Domestic support 183
6.1.3. Export competition 185
6.2. The Agreement on Agriculture, food security and the right to food 185
6.3. Free trade and comparative advantage 188
7.0. Conclusion 190

5. The Right to Food in the UK and Government Policy 192

1.0. Introduction 192
2.0. Food and agricultural policy in the UK 195
2.1. Food policy at the UK level 197
2.2. Agriculture policy at the UK level 200
2.2.1. Sustainable food production in the UK 201
2.2.2. Trade of UK food and agricultural products post-Brexit 206
2.3. Food and agriculture policy in the devolved nations 209
2.3.1. Food policy in Scotland and Wales 209
2.3.2. Agriculture policy in the devolved nations 212
2.3.3. Food policy at English local authority level 214
3.0. The status of the right to food in the UK 216
3.1. Freedom from hunger 216
3.1.1. The right to food in UK courts: poverty and hunger 220
3.2. Adequate food 225
3.3. Nutrition 229
3.4. Production 232
4.0. Framework legislation for the right to food in the UK 235
4.1. Possible routes to implementing or incorporating the right to food in the UK 236
4.2. Framework legislation 238
5.0. Conclusion 242

6. Supermarkets and the Right to Food in the UK 244

1.0. Introduction 244
2.0. Food deserts and supermarkets 246
2.1. Seacroft 246
2.2. Food deserts 248
2.3. The impact of the Tesco store in Seacroft 251
3.0. The supermarket industry in the UK and the right to food 253
3.1. The grocery market in the UK 254
3.2. Company law and UK supermarkets 258
3.3. Competition law and supermarkets in the UK 260
3.4. Supermarkets and the proposed framework for the right to food 265
3.4.1. Freedom from hunger 265
3.4.2. Production of food 268
3.4.3. Nutrition and adequate food: access to a nutritious diet 272
4.0. Supermarkets and human rights law 276
4.1. Businesses and human rights law 279

4.1.1. The UNGPs and the draft treaty on business and human rights 279
4.1.2. 'Respect, protect and fulfil' and businesses 281
4.2. Obligations for the UK Government in relation to supermarkets 285
4.3. Progressive realisation of the right to food and the obligations of the UK Government in relation to supermarkets 290
4.3.1 Legislation and progressive realisation: obesity policy 291
4.3.2. Voluntary schemes with mandatory reporting 293
4.3.3. Voluntary schemes and corporate social responsibility 296
5.0. Conclusion 299

7. The Right to Food and Antimicrobial Resistance in the UK Post-Brexit: Domestic Obligations and International Trade 301

1.0. Introduction 301
2.0. Antimicrobial resistance and the right to food 303
2.1. Development and spread of AMR 306
2.2. Food safety, AMR and human rights law 308
2.3. AMR and the right to food 313
2.3.1. Adequate food 314
2.3.2. Production 315
2.3.3. Equitable distribution and international cooperation 318
3.0 AMR and the safety of food produced in the UK 322
3.1 Antibiotic use in food producing animals in the UK 323
3.1.1. Disease eradication schemes 324
3.1.2. Antibiotic use 328
3.2. UK food safety law post-Brexit 330
3.2.1. Food safety post-Brexit 331
3.2.2. Reducing the use of antibiotics in food producing animals in the EU and UK 334
4.0. AMR and the safety of food imported into the UK 336
4.1. Import inspections and food safety 337
4.2. Food safety, AMR and trade agreements 339
4.2.1. UK-Australia Free Trade Agreement 340
4.2.2. Chlorinated chicken, AMR and WTO rules 343
5.0. Conclusion 355

8. Conclusion 358

1.0. A novel normative framework for the right to food 358
2.0. Implementation of the right to food in the UK 362
3.0. The right to food in the UK: future research directions 364

Bibliography 367

Table of Figures

Figure 1: Obligations for governments in relation to supermarkets and the right to food 278

Figure 2: Examples of government approaches to supermarkets and their impacts on the right to food 291

List of Abbreviations

AA	Agriculture Act 2020
AB	Appellate Body
ACHR	American Convention on Human Rights
ACHPR	African Charter of Human and People's Rights
ACmHPR	African Commission on Human and People's Rights
AMR	Antimicrobial Resistance
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
A(W)A	Agriculture (Wales) Act 2023
BVD	Bovine Viral Diarrhoea
CC	Competition Commission
CCA	Climate Change Act 2008
CESCR	Committee on Economic, Social and Cultural Rights
CFEU	Charter of Fundamental Rights of the European Union
CFS	Committee on World Food Security
CIL	Customary International Law
CJEU	Court of Justice of the European Union
CMA	Competition Market Authority
CRC	UN Children Rights Committee
CSR	Corporate Social Responsibility
DEFRA	Department for Environment, Food and Rural Affairs
DSB	Dispute Settlement Body
EA	Environment Act 2021
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ELMS	Environmental Land Management Scheme
ESC	European Social Charter
EU	European Union
FAC	Food Assistance Convention
FAO	United Nations Food and Agricultural Organization
FIES	Food Insecurity Experience Scale
FSA	Food Standards Agency
FSS	Food Standards Scotland
GATT	General Agreement on Tariffs and Trade
GCA	Groceries Code Adjudicator
GDP	Gross Domestic Product
GFN(S)A	Good Food Nation (Scotland) Act 2022
GHG	Greenhouse gases
GMO	Genetically modified organism
HFSS	High fat sugar and salt products
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court
IMA	Internal Market Act 2020
IMF	International Monetary Fund
LDCs	Least-Developed Countries
MFN	Most favoured nation
MRSA	Methicillin-Resistant *Staphylococcus aureus*

MDGs	Millennium Development Goals
NFU	National Farmers Union
NGO	Non-Governmental Organisation
NHS	National Health Service
NPPF	National Planning Policy Framework
SDGs	United Nations Sustainable Development Goals
SDIL	Soft Drinks Industry Levy
SPS	Sanitary and Phytosanitary Agreement
TBT	Agreement on Technical Barriers of Trade
TNC	Transnational Corporation
UDHR	United Nations Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Committee
UNGA	United Nations General Assembly
UNGP	United Nations Guiding Principles for Business and Human Rights
UNRWA	United Nations Relief and Works Agency for Palestine
UNSC	United Nations Security Council
UPF	Ultra-processed food
USDA	United States Department of Agriculture
WB	World Bank
WFP	World Food Programme
WTO	World Trade Organization

Table of Cases

International Court of Justice

Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) Merits, International Court of Justice, 27 June 1986	167
Delimitation of the Maritime Boundary in the Gulf of Maine (Canada v USA (ICJ Reports 1984 p246)	167
Legal Consequences of the Construction of a Wall in Occupied Palestinian Territories, 9 July 2004	160
Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Advisory Opinion of 21 June 1971	160
Trail Smelter case (United States v Canada) 3 R.I.A.A 1905	159
North Sea Continental Shelf Case (Germany v Denmark); Merits, Judgement (20 February 1969) ICJ Rep 3	167

United Nations Human Rights Commission

FB et al v France CRC/C/86/D/R.77/2019 (4 February 2021)	161
Ivan Kitok v. Sweden, Communication No. 197/1985 CCPR/C/33/D/197/1985 (1988)	124
LH et al v France, CRC/C/85/D/79/2019 and CRC/C/85/D/109/2019 (30 September 2020)	161

World Trade Organization Dispute Settlement Body

Australia - Measures Affecting the Importation of Apples from New Zealand, WT/DS367/AB/R (Nov 29 2010)	346
China - Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/AB/R (21 December 2014)	352
European Communities – Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States, WT/DS389/4 (Request for the Establishment of a Panel) (12 October 2009)	343
European Communities - Measures Affecting Asbestos and Asbestos Containing Products. WT/DS135/AB/R (12 March 2021)	349
European Communities - Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R (16 January 1998)	346-50
European Communities – Measures Concerning Meat and Meat Products (Hormones) – Joint Communication from the EC and US, WT/DS26/28, 30 (September 2009)	350
European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R (Appellate Body) (May 22, 2014)	124 352
United States – Certain Country of Origin Labelling (COOL) Requirements WT/DS384/AB/R (June 29 2012) US – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Appellate Body) (12 October 1998)	353 353-4
US – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/ 2 (13 June 2003)	352

US – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R (Appellate Body) (16 May 2012).	353

African Commission on Human and People's Rights

Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, (4 February 2010) Communication no 276/2003	68, 80 110-1 122
Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria, (27 May 2022) Communication no 155/9	68, 80 110-1 122

Court of Justice of the European Union

Centraal Israëlitish Consistorie van Belgie and Others, (Case C-162/21) C53/7 [2021]	123-4
Jippes and others v Minister van Landouw, Natuurbeheer en Visserij (Case C-189/01) [2001] ECR I-5693	124
Mark Hovarth v Secretary of State for Environment, Food and Rural Affairs (Case C-189/01) [2009]	206
Œuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation (Case C-497/17) [2019]	124
Pesticide Action Network Europe ASBL and Others v État Belge (Case C- 162/21) CLI:EU:C:2023:30 [19 January 2023]	203

European Court of Human Rights and European Commission of Human Rights

Airey v Ireland App No 6289/73 Merits, (9 October 1979)	222
Bankovic and others v Belgium and 16 other Contracting States App No 52207/99, (12 December 2001)	160
Belgian Muslims and others v Belgium App Nos 166760/22 and 10 others (13 February 2024)	123
Budina v Russia App No 45603/05, Admissibility, Merits and Just Satisfaction (21 January 2011)	109
Cha'are Shalom Ve Tsedek v France App No 27417/95, (27 June 2000)	123
Ciorap v Republic of Moldova App No 12066/02 (19 June 2007)	119
Dudchenko v Russia App No 37717/05, Merits (7 November 2017)	220
Georgia v Russia (No2) App No 38263/08 (29 January 2021)	160
Golder v United Kingdom App No 4451/70 (1975) 1 EHHR 524	53,163
Jakóbski v Poland App No 1842/06, (7 December 2010)	123
Kaya v. Turkey, App No 22729/93, (19 February 1998)	53
Korneykova and Korneykov v Ukraine App No 56660/12, Merits and Just Satisfaction, (24 March 2016)	109
Loizidou v Turkey App No 15318/89 (18 December 1996) 23 EHRR 513	160
M.S.S. V Belgium and Greece App No30696/09 [GC], Merits and Just Satisfaction (21 January 2011)	109
Nencheva and Others v Bulgaria App No 48609/06 (18 June 2013)	71
Nevmerzhitsky v Ukraine App No 54825/00 (5 April 2005)	117
Öclan v Turkey App No 46221/99 (2005) [GC] 41 EHRR 985)	53

R.R and others v Hungary App No 36037/17 [2021]	68,71, 108-9, 220
Stanev V Bulgaria App No 36760/06 [GC], [2012] 1 ECHR 3	47, 68, 107-9 111-2 220
Stepuleac v Moldova App No 8207/06, Merits and Just Satisfaction (6 November 2007)	109
van Volsen (Francine) v Belgium App No 14641/89, Merits (9 May 1990)	109
Young, James and Webster v UK App No 7806/77 (18 October 1982)	163

Inter-American Court of Human Rights

Case of the Sawhoyamaxia Indigenous Community v Paraguay, Merits reparations and costs Judgement of the Inter-American Court of Human Rights 29 March 2006.	47,68, 80,110-1, 122
Yakye Axa Indigenous Community of the Enxet-Lengua People Paraguay Merits, reparations and costs Judgement of the Inter-American Court of Human Rights 27 February 2002.	110 111-2 122

India

Kishen Pattnayak v State of Orissa AIR 1989 S.C. 677	80, 236
People's Union for Civil Liberties v Union of India. (S.C. 2001) Writ Petition (Civil) No. 196/2001	80, 236

South Africa

Rail Commuter Action Group & Ors. v. Transnet Limited & Ors Case No. 10968/2001, 6 February 2003	70
Republic of South Africa v Grootboom (2001) SA 46 (South African Constitution Court)	62
Richter v The Minister for Home Affairs and Others (with the Democratic Alliance and Others Intervening), and with Afriforum and Another as Amici Curiae) [2009] ZACC 3 (South African Constitutional Court)	53

United Kingdom

JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry [1989] UKHL 3 WLR 969	223
McKerr, Re (AP) (Respondent) (Northern Ireland) [2004] UKHL 12	223
R (Friends of the Earth Ltd) v Secretary of State for International Trade [2023] EWCA Civ 14	194
R (Limbuela) v Home Secretary [2005] UKHL 66	221
R (on the application of Friends of the Earth Limited, Client Earth, Good Law Project and Joanna Wheatley v SSBEIS [2022] EWHC 1841 (Admin)	238-40
R (on the application of SC, CB and 8 children) (Appellants) v Secretary of State for Work and Pensions and others (Respondents) [2021] UKSC 26	221-2

R v Governor of Frankland Prison Ex p Russell [2000] 1 WLR 2027	220-1
R v Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants; R v Secretary of State for Social Security ex parte B [1996] EWCA Civ J0621-9	223
ZH (Tanzania)(FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2011] UKSC 4.	223

Table of UK Legislation

Agriculture Act 2020		196, 204-5, 217
	s1(4)	204
	s1(5)	203
	s2(3)	196
	s19	199, 217
	s37	332
	s37(1)	332
	s37(2)(f)	191, 327
	s56	196
Child Poverty Act 2010		241
Climate Change Act 2008		
	s1 s4	238 238
	s9	239
	s10(2)	239
	s13	238-40
	s14	233-4
	s34	239
Companies Act 2006	s172	258-9
Enterprise Act 2002	s131	262
Enterprise and Regulatory Reform Act 2013	s25	262
Environment Act 2021		240
	s1	240
	s2	240
	s3	240
European Union (Withdrawal) Act 2018	s5(4)	50
Food Safety Act 1990		194
Food Standards Act 1999		194
Grocery Code Adjudicator Act 2013		260, 264
Good Food Nation (Scotland) Act 2022		209, 215
	s1	204,239
	s1(1)(b)	209
	s1(3)	209,211,239
	s1(4)	239
	s1(6)	210
	s2	210
	s3	209, 240
	s4(2)	239
	s5(2)(a)	212
	s8	209
	s10	211
	s19	209,211
	s20	211
Human Rights Act 1998		194,222,224,237
Internal Market Act 2020	 S5	196-7 206

	Schedule 1, para1(2)	206
The Agriculture (Wales) Act 2023		209, 212
	s1(2)	212
	s1(3) –(5)	213
	s4	213
	s8	213
The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) 2024		212

Statutory Instruments

Prisoner Rules 1999 SI 1999/728	220
General Food Law (Amendment etc) (EU Exit) Regulations 2019, SI 2019/641	331
The Bovine Viral Diarrhoea (Scotland) Order 2019, SI 2019/310	325
The Carbon Budget Order 2021, SI 2021/750	238
The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI 2019/1056	238
The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020, SI 2020/369	228
The Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020 SI, 2020/481	228
The CRC Energy Efficiency Scheme Order 2010, SI 2010/768	294
The Food (Promotion and Placement) (England) Regulations 2021, SI 2021/1368	133,231, 275 291
The Specific Food Hygiene (Regulation (EC) No.853/2004) (Amendment) (EU Exit) Regulations 2019, SI 2019/1247	331

Table of EU Legislation

Commission Regulation (EC) 1168/2006 of 31 July 2006 implementing Regulation (EC) No 2160/2003 as regards a Community target for the reduction of the prevalence of certain salmonella serotypes in laying hens of *Gallus gallus* and amending Regulation (EC) No 1003/2005 [2006] OJ L211/4	324
Commission Regulation (EC) No 646/2007 of 12 June 2007 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Community target for the reduction of the prevalence of Salmonella enteritidis and Salmonella typhimurium in broilers and repealing Regulation (EC) No 1091/2005 [2007] OJ L151/21	325
Council Decision (EC) 1999/879 concerning the placing on the market and administration of bovine somatotrophin (BST) and repealing Decision 90/218/EEC	301
Council Directive (EC) 96/22 concerning the prohibition on the use in stock farming of certain substances having a hormonal or thyrostatic action and of beta-agonists [1996] OJ L12	301
Council Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin [2004] OJ L139	72, 301, 331
Council Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products	124
Council and European Parliament Regulation (EC) 1831/2003 of 22 September 2003 on additives for use in animal nutrition [2003] OJ l268/29.	328
Council and European Parliament Regulation (EU) of 11 December 2018 on Veterinary Medicinal Products and Repealing Directive 2001/82/EC [2019] OJ L4/43	334
European Parliament and Council Regulation (EC) 178/2002 of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety	315
European Parliament and Council Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC)	196

Table of International Treaties and Conventions

International Treaties and Conventions

1945	Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI	159
	Art 55	48
	Art 56	48
1945	Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 15 UNCIO 355	
	Art 38(1)(b)	167
1946	Constitution of the World Health Organisation (adopted 22 July 1946, entered into force 7 April 1948) 14 UNTS 185	
	Art 21	320
	Art 22	320
1948	Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)	75 92 101
	Art 28	48 106
1949	International Committee of the Red Cross (ICRC) Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (12 August 1949) 75 UNTS 135	
	Art 26	48 106
1949	International Committee of the Red Cross Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (12 August 1949) 75 UNTS 287	
	Art 55	48
1966	International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) Art 25 999 UNTS 171	75
	Art 2	60, 150
	Art 14	53,67
	Art 15	53
	Art 25	53,349
	Art 27	124
	Art 40	66
1966	International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3	165, 237, 274, 363
	Art 2	60-1, 97-103,126,149-50,161-3 170, 218, 222,365

	Art 11	31,43,47,50-2,78,86,90-102,146,148,167-9, 170, 174,192-4, 210, 212,215,358-9
	Art 16	66
	Art 17	66
	Art 23	162
	Optional Protocol to the International Covenant on Economic Social and Cultural Rights (10 December 2008) UNGA A/RES/63/117	52 67
1969	Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 section I	
	Preamble	57
	Art 10	163
	Art 31	60
1979	Convention on the Elimination of All Forms of Discrimination Against Women, (adopted 18 December 1979, entered into force 3 September 1981) UNTS vol. 1249	48 106
1989	Convention on the Rights of the Child, (adopted 20 November 1989 entered into force 2 September 1990) UNTS vol. 1577	106, 223
	Art 4	106, 159
	Art 24	48
2003	WHO Framework Convention on Tobacco Control (World Health Organisation, 2003)	
	Art 5(3)	137, 320
2007	Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008), UN Doc A/RES/61/106	106
	Art 28	48, 106
2013	Food Assistance Convention, entered into force 1 January 2013	152
	Art 1(a)	175
	Art 2(a)	178
	Art 2(b)	178

Regional Treaties and Conventions

1950	Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) Council of Europe, ETS No 5.	49
	Art 2	53,71
	Art 3	71,106-9,123, 220-1
	Art 6	53
	Art 8	220-1

	Art 9 Art 14	123 221
1954	Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, ETS 9, (20 March 195), Art 2	49
1961	European Social Charter (18 October 1961) Council of Europe ETS 35.	49
1969	American Convention on Human Rights, (Pact of San Jose) Costa Rica, 22 November 1969 OAS Treaty Series no 36 (1969)	159
	Art 26	49
	Additional Protocol, Art 1	159
1981	African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5	
	Art 4	110
	Art 16	49,110
	Art 16(1)	49
	Art 22	110
2008	Consolidated Version of the Treaty of the Functioning of the European Union [2008] C 115/01	
	Art 3	123
	Art 91(2)	204
2012	Charter of Fundamental Rights of the European Union 26 October 2012, 2012/C 326/02	
	Art 34	49-50
	Art 35	49-50
2020	Trade and Cooperation Agreement between the United Kingdom and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community of the other part, Treaty Series No.8 (2021) (entering into force, 20 December 2020	
	Part Two, Title 1, Chapter 2	208

GATT/ WTO Agreements

1994	General Agreement on Tariffs and Trade 1994, Apr. 15, 1994 Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994)	179 339 344
	Art I	339,344
	Art III	344
	Art VIII(1)(c)	334
	Art XI	180-1
	Art XX	12,344,349,351-3
1994	Agreement on Agriculture (15 April 1994) LT/UR/A 1A/2	149, 175,179-86
	Art 4	182
	Art 6	207
	Art 12	181

	Art 12(1)(a)	181
	Art 15	182
	Art 15(2)	182-3
	Art 20	179
	Annex 2	207
	Annex 2, para 3	176-7
	Annex 2, para 4	176-7
1994	Agreement on the Application of Sanitary and Phytosanitary Apr. 15,1994, Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 493	311 344 345
	Art 2.4	345, 349
	Art 3.1	345
	Art 3.3	346-7
	Art 3.4	346
	Art 5.1	346
	Art 5.7	347
	Art 10.4	346
	Annex A	345
1994	Agreement on Technical Barriers to Trade, Apr. 15, 1994 Marrakesh Agreement Establishing the World Trade Organization, 1868 U.N.T.S. 120	345-6 352-3
	Art 2.2	352

Table of United Nations and World Trade Organization Documents

Committee on Economic Social and Cultural Rights General Comments

UN Committee on Economic, Social and Cultural Rights, General Comment No.3: *The nature of State parties' obligations (Article 2 para 1),* (14 December 1990) UN Doc E/1991/23	
	60-66, 98, 104, 128, 230, 241
UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 8: The Domestic Application of the Covenant*, (12 December 1997) UN Doc E/C.12/1997/8	151
UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 9: The Domestic Application of the Covenant*, (3 December 1998) UN Doc E/C.12/1998/24	68
UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN Doc E/C.12/1995/5	
	35, 51, 56, 63-5, 68, 98,116-8, 120-1, 198, 201, 209, 218, 220, 226, 230, 238, 242, 245, 277, 285, 302, 310, 314, 321, 326, 352
UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13)* (8 December 1999) UN Doc E/C.12/1999/10	55-56, 63
UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, (11 August 2000) UN Doc E/C.12/2000/4	
	63, 170, 240, 283, 308-9, 314
UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, (20 January 2003) UN Doc E/C.12/2022/11	170, 277
UN Committee on Economic, Social and Cultural Rights, General Comment No.20: *Non-Discrimination in Economic, Social and Cultural Rights (Article 2 para 2),* (10 June 2009) Un Doc E/C.12/GC/20	126
UN Committee on Economic, Social and Cultural Rights, General Comment No.24: State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017) UN Doc E/C.12/GC/24	
	277, 283-5

Reports of Special Rapporteurs

UNCHR, 'Report on the Right to Adequate Food as a Human Right Submitted by Mr. Asbjørn Eide, Special Rapporteur' (7 July 1987) Un Doc E/CN.4/Sub.2/1987/23	
	55, 281
UNCHR, 'Preliminary report of the Special Rapporteur on the Right to Food, Jean Ziegler' (23 July 2001) UN Doc A/56/210	51
United Nations Economic and Social Council, 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' E/CN/4/2002/58 (10 January 2002)	171
United Nations Economic and Social Council, 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' E/CN/4/2003/54 (10 January 2003)	
	171, 311
UNHRC 'Report Submitted by the Special Rapporteur on the Right to Food, Jean Ziegler (9 February 2004) UN Doc E/CN.4/2004/10	
	121, 139, 312, 315, 333
UNGA 'Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Jean Ziegler' (2005) UN Doc A/60/350	122
UNCHR 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' (2005) UN Doc E/CN.4/2005/47	101
United Nations Economic and Social Council, 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' E/CN/4/2005/57 (24 January 2005)	171
UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (2008) UN Doc A/HRC/9/23	120
UNHRC, 'Olivier De Schutter: The Role of Development Cooperation and Food Aid in Realizing the Right to Adequate Food: Moving from Charity to Obligation' (11 February 2009) Un Doc A/HRC/10/5	172-3
UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (2009) UN Doc A/HRC/10/5/Add.2	
	128
UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (2009) UN Doc A/HRC/13/33	145
UNHRC 'Report of the Special Rapporteur on the Right to Food, Addendum, Oliver De Schutter' (2009) UN Doc A/HRC/13/33/Add.2	141
UNHCR 'Report of the Special Rapporteur on the Right to Food, Oliver De Schutter' (2010) UN Doc A/HRC/16/49	139

UNHRC ‘Report by the Special Rapporteur on the Right to Food, Olivier De Schutter’ (2011) UN Doc A/HRC/19/59	
	90,128, 229
UNHRC, ‘Report of the Special Rapporteur on the Right to Food, Olivier De Schutter. Addendum. Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements’ (19 December 2011) A/HRC/19/59/Add.5	171
UNHRC ‘Report by the Special Rapporteur on the Right to Food, Olivier De Schutter’ (2014) UN Doc A/HRC/25/57	128
UNGA ‘Right to Food Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver’ (2014) UN Doc A/68/288	
	101,119, 121
UNHRC ‘Report of the Special Rapporteur on the Right to Food, Hilal Elver’ (2014) UN Doc A/HRC/28/65	102,171
UNGA ‘Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver’ (2015) UN Doc A/70/287	139
UNGA ‘Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver’ (2016) UN Doc A/71/282	127, 229
UNHRC ‘Report Submitted by the Special Rapporteur on the Right to Food. Hilal Elver’ (24 January 2017) UN Doc A/HRC/34/48	
	312, 313, 317-320, 333
UNHRC, Report of the Special Rapporteur on the Right to Food Hilal Elver (25 January 2018) Un Doc A/HRC/37/61	154, 172
UNHRC, ‘Report on Sustainable Development Goal 2 and the Right to Food, Hilal Elver’ (2019) UN Doc A/74/164	93
UNGA, ‘Report of the Special Rapporteur on the right to food, Michael Fakhri' 24 December 2020, UN Doc A/HRC/46/33	139
UNHRC ‘Critical Perspective on Food Systems, Food Crises, and the Future of the Right to Food. Report of the Special Rapporteur on the Right to Food Michael Fakhri’ (2020) UN Doc A/HRC/43/44	128, 229
UNHRC ‘Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt’ (31 January 2008) UN Doc A/HRC/7/11	
	241, 309

UNHRC 'Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover' (12 April 2011) UN Doc A/HRC/1725	309
UNHRC 'Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover, on Access to Medicines' (1 May 2013) UN Doc A/HRC/23/42	309
UNHRC Report of the Special Rapporteur on Extreme Poverty and Human Rights, Phillip Alston' (28 April 2016) A/HRC/32/31	55

United Nations

United Nations, Proclamation of Teheran: Final Act of the International on Human Rights, (1968) UN Doc. A/CONF.32/41	57
United Nations, 'Report of the World Food Conference' (5-16 November 1974) Un Doc E/CONF.65/20	35
World Summit on Food Security, 'Declaration of the World Food Summit on Food Security' (November 2009, Doc WSFS 2009/2)	
	35, 87, 112, 120, 302
United Nations, 'Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs are Met' (7 February 2022) Un Doc SC/1478	151

United Nations Food and Agricultural Organisation

Food and Agriculture Organisation of the United Nations and the World Health Organisation 'Rome Declaration on Nutrition' (Rome, 19-21 November 2014) Un Doc ICN2 2014/2	88

United Nations General Assembly

UNGA 727th Meeting A/C.3/SR.727 (10 January 1957)	76
UNGA, 740th Meeting A/C.3/SR.740 (24 January 1957)	170
UNGA, '1204th Meeting, General Provisions: Articles 2 to 5 (continued)) (6 December 1962) UN Doc A/C.3/SR.1204	162
UNGA, '1232nd Meeting, Report of the ECOSOC (A/5503), (15 October 1963) UN Doc A/C.3/SR	102
UNGA, '1264th Meeting. Proposal to Include an Article on the Right to Freedom from Hunger in the Draft Covenant on Economic, Social and Cultural Rights' (15 November 1963) UN Doc A/C.3/SR.1264	102
UNGA, '1267th Meeting Proposal to Include an Article on the Right to Freedom from Hunger in the Draft Covenant on Economic, Social and Cultural Rights (continued)' (18 November 1963) UN Doc A/C.3/SR.1267	102 103

UNGA, 'Report of the Third Committee to the General Assembly. Provision on the Right to Freedom From Hunger' (10 December 1963) UN Doc A/5655	102
UNGA, *Vienna Declaration and Programme of Action*, (12 July 1993) UN Doc A/CONF.157/23 (Vienna Declaration) Part I	52
UNGA resolution 60/1 World Summit Outcome 2005, (16 September 2005) UN Doc A/RES/60/1	57
UNGA, 'Transforming Our World: the 2030 Agenda for Sustainable Development' (25 September 2015) UN Doc A/Res/701	91
UNGA, 'Political Declaration of the High-Level Meeting of the General Assembly on Antimicrobial Resistance' (5 October 2016) Un Doc Res A/RES/71/3	323

United Nations Human Rights Bodies

Commission on Human Rights, Report to the ESC on the Seventh Session of the Commission 'Annex I Draft International Covenant on Human Rights' Article 19 (16 April-19 May 1951) Un Doc E/1992	102
UN Commission on Human Rights, 184th Meeting, 'Proposals for Additional Articles to be Inserted in Part II of the Draft Covenant' (19 May 1950) UN Doc E/CN.4/SR.184	102
UN Commission on Human Rights, *Note verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles")*, (8 January 1987), E/CN.4/1987/17	60
UNHRC, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) UN Doc A/HRC/8/5	280, 284
Committee on Economic Cultural and Social Rights 'Report on the 7th Session' (23 November – 11 December 1992) UN Doc E/1993/22 Annex III [5 and 7]	52
UNHRC, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, respect and remedy framework'' (21 March 2011) A/HRC/17/31	277
UN Economic and Social Council, 'Progress Towards the Sustainable Development Goals' (3 June 2016) UN Doc E/2016/75	93
UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) Un Doc. E/C.12/GBR/CO/6	189
UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of Germany' (27 November 2018) Un Doc. E/C.12/DEU/CO/6	166

UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of Denmark' (12 November 2019) Un Doc. E/C.12/DNK/CO/6	165
UN Economic and Social Council, 'Concluding Observations on the Fifth Periodic Report of France' (30 October 2023) Un Doc. E/C.12/FRA/CO/5	165
Philip Alston, Statement on the Visit to the UK, (UN Office of the High Commissioner for Human Rights, 16 November 2018)	
	32, 40, 106, 109, 187, 192, 194, 217

United Nations Security Council

UNSC, '9453rd Meeting' (25 October 2023) UN Doc S/PV.9453	79
UNSC, '9499th Meeting' (8 December 2023) UN Doc S/PV.9499	79
UNSC, '9552nd Meeting' (20 February 2024) UN Doc S/PV.9552	79

World Food Programme

World Food Programme, 'Strategic Plan 2022-25' (12 November 2021) WFP/EB.2/2021/4 A/1/Rev.2	174

World Health Organisation

WHO and FAO, '*Salmonella and Campylobacter* in chicken meat. Meeting Report' (2009)	72, 304

WTO Documents

WTO Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on LDNIDCs	172
WTO, Agreement on Agriculture: Green Box/Annex 2 Subsidies' (23 June 2000) G/AG/NG/W/14	185
WTO, 'Negotiations on WTO Agreement on Agriculture (15 January 2001) G/AG/NG/W/102	185
WTO, Ministerial Decision - Export Competition (19 December 2015) WT.MIN(15)/45. WT/L/980	
	92, 185
WTO, Committee on Agriculture Notification, 20 (12 June 2023) G/AG.N/GBR/	207

Chapter 1

Introduction

1.0. The right to food in the UK

What obligations do developed states have in relation to the right to food? How should the UK implement the legal obligations that arise from the right to food? This thesis seeks to answer these two interrelated questions. In defining the right to food, this thesis focuses on Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[1] This treaty has been ratified by the UK, and yet, as will be discussed throughout this thesis, levels of food insecurity continue to rise in the UK and potential violations of the right to food can be identified in relation to the UK's food and agricultural policy. Although focusing on the UK, in answering these questions I will make suggestions that may also be relevant to the realisation of the right to food in other developed countries.

Several threats and failings of the global food system are considered in the next section of this introduction. These contribute to widespread food insecurity in developing countries and least developed countries (LDCs) as well as in developed countries. Although food insecurity is widespread across the globe, both it, and the consequences of the threats and failings of the global food system are not equally distributed between states or populations within states.[2] In developed countries, Black, Asian and minority ethnic communities are disproportionately affected by food insecurity and dietary related illness, which has been highlighted by the COVID-19 pandemic in the USA and UK.[3] In the UK, even prior to the COVID-19 pandemic there was criticism of the rising levels of

[1] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 11.
[2] Helen Schulze and Dan Crossly with Food Ethics Council, 'On the Road to Food Justice' (*Food Ethics Council,* September 2020) https://www.foodethicscouncil.org/insights/on-the-road-to-food-justice/ accessed 19th October 2020, 2.
[3] ibid; Tony Kirby, 'Evidence Mounts on the Disproportionate Effect of COVID-19 on Ethnic Minorities' (2020) 8 The Lancet Respiratory Medicine 547; Angela M Odoms-Young, 'Examining the Impact of Structural Racism on Food Insecurity: Implications for Addressing Racial/Ethnic Disparities' (2018) 41 Family and Community Health (Supplement 2 Food Insecurity and Obesity) S3.

poverty and use of foodbanks in the UK.[4] Foodbank usage increased and the issue of food insecurity in children during school holidays became front page news in the UK during the COVID-19 pandemic.[5] However, the situation has not improved after the lifting of COVID-19 restrictions. In June 2023, the latest annual figures available at the time of writing, the Trussell Trust reported 14% of all UK adults, an estimated 11.3 million people, experienced food insecurity in the 12 months to mid-2022.[6]

As well as often failing to ensure all within their borders have sufficient food, as a developed nation, the UK is also complicit in food injustice across the globe, impacting the realisation of the right to food in other countries.[7] In developing countries and LDCs, the environmental cost, and costs to the workforce of the global food system are unevenly distributed. Production of products such as 'out of season vegetables', flowers, and palm oil in the global south for export to the global north has wide ranging impacts on land and water availability for local populations. This then impacts food security as well as causing environmental damage.[8] Small scale farmers in the global south are predicted to be among the hardest hit by climate change.[9] Gender inequalities are pervasive, but most severe in developing countries and LDCs, with women,

---

[4] Philip Alston, Statement on the Visit to the UK, (*UN Office of the High Commissioner for Human Rights*, 16 November 2018) https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E accessed 2 April 2019; IFAN, 'Independent Food Bank Emergency Food Parcel Distribution in the UK' (3 June 2020) https://uploads.strikinglycdn.com/files/c181ce8c-2309-43a0-8fbf-05193a0a2d4c/INDEPENDENT%20FOOD%20BANK%20EMERGENCY%20FOOD%20PARCEL%20DISTRIBUTION%20IN%20THE%20UK_FINAL.pdf accessed 22 June 2020; The Food Foundation, 'COVID-19: Latest Impact on Food' (March 2020) https://foodfoundation.org.uk/covid-19-latest-impact-on-food-2/ accessed 22 June 2020.

[5] During the pandemic, in April 2000 the Trussell Trust reported an 89% increase in demand see: The Trussell Trust, 'Summary Findings on the Impact of the Covid-19 Crisis on Food Banks' (June 2020) https://www.trusselltrust.org/wp-content/uploads/sites/2/2020/06/APRIL-Data-briefing_external.pdf accessed 18 March 2024; Marcus Rashford campaigned to ensure free school meal provision was maintained during school holidays, see, for example: Haroon Siddique, 'Marcus Rashford Forces Boris Johnson into Second U-turn on Child Food Poverty', *The Guardian* (8 November 2020) https://www.theguardian.com/education/2020/nov/08/marcus-rashford-forces-boris-johnson-into-second-u-turn-on-child-food-poverty accessed 16 April 2024.

[6] Rachel Bull et al, 'Hunger in the UK' (*The Trussell Trust,* June 2023) https://www.trusselltrust.org/wp-content/uploads/sites/2/2023/08/2023-The-Trussell-Trust-Hunger-in-the-UK-report-web-updated-10Aug23.pdf accessed 8 January 2024.

[7] The UK takes part in and concludes international trade agreements that can impact food security abroad. UK supermarkets purchase luxury goods grown in developing and LDCs and environmentally damaging products such as palm oil. Our contributions to climate change also affect food security in other countries.

[8] Christian Häberli and Fiona Smith, 'Food Security and Agri-Foreign Direct Investment in Weak States: Finding the Governance Gap to Avoid 'Land Grab'' (2014) 77 Modern Law Review 189.

[9] Schulze and Crossly (n 2) 9.

who are often the poorest farmers having insecure land rights within patriarchal societies.[10] Race inequalities are also widespread, with poor working conditions and food insecurity of migrant agriculture and food workers across the globe,[11] as well as racial inequality in diet related illness.

The current Special Rapporteur on the right to food, Michael Fakhri, has suggested that these injustices stem from both the politics of the food system, as well as the national and international laws and institutions that prioritise certain types of wealth and property, whilst devaluing others.[12] In this context the right to food can perform an important role. The right to food can guide the changes in international legal systems that are essential to its realisation. The right to food can provide the basis of national policy frameworks on food and agriculture that are essential to end hunger.

This thesis explores the enormous yet underexplored potential of the right to food to perform these roles. It puts together a novel normative framework for the right to food, focusing on the obligations of developed nations. This framework is then used to guide the design of law and policy related to food and agriculture in the UK. It is posited that the aim of adopting national food policy, in the UK and abroad, is twofold: to ensure full realisation of the right to food within a country; and to prevent any negative effects of state actions on the realisation of the right to food in other states.

This introduction is structured as follows. Section 2 briefly describes the interconnected nature of the global food system. Section 3 then considers food security in the UK. Section 4 indicates the methodology used to answer the research questions addressed by this thesis. Finally, Section 5 provides an outline of the structure of this thesis. Before moving to discuss the threats and failings of the global food system, I first want to clarify the terminology used in this introduction and the thesis more generally. Some of these terms and

---

[10] Koen Dekeyser, Lise Korsten and Lorenzo Fioramonti, 'Food Sovereignty: Shifting Debates on Democratic Food Governance' (2018) 10 Food Security 223, 228-9.
[11] Ted Genoways, *The Chain. Farm Factory and the Fate of Our Food* (Harper 2014); Benjamin Lorr, *The Secret Life of Groceries* (Avery 2020); Teresa M. Mares, *Life on the Other Border. Farmworkers and Food Justice in Vermont* (University of California Press 2019).
[12] Michael Fakhri and Ntina Tzouvala, 'International Law and the Right to Food: What We Can Learn from Racial Justice Movements' (*EJIL: Talk*, 19 August 2020) https://www.ejiltalk.org/international-law-and-the-right-to-food-what-we-can-learn-from-racial-justice-movements/ accessed 19 October 2020.

concepts will be discussed in much more detail later in the thesis, but for clarity some definitions are required at this point.

As the dramatic rise in hunger and food bank usage in the UK has become a growing concern, the terms 'food security' and 'food poverty' appear frequently in academic commentary and the media.[13] This thesis avoids the use of the term 'food poverty,' because for the vast majority of people, a lack of access to sufficient food is the result of insufficient income.[14] Hunger is a problem of poverty. As such, it might seem unclear what specific work *food* does here: poverty captures all the basic necessities that people are unable to access because of it. However, 'food poverty' is neither vacuous nor conceptually redundant. Even if hunger is a ramification of poverty and has to be analysed through its lens, 'food poverty' remains a specific type of poverty. It raises distinctive socio-legal questions and requires distinctive legal and policy responses which sometimes have little to do with poverty, something that both Chapters 3 and 5 which discuss food production will come back to. Food poverty also has significant descriptive and mobilising value when used in the media and in campaigns by Non-Governmental Organisations (NGOs). As a result, although this thesis uses 'food poverty' sparingly – conscious of the fact that wider scholarly engagement with more general questions of poverty falls outside its remit – food denotes specific challenges for law and policy, both in response to poverty and more widely, which deserve attention in their own right.

In contrast, food security is a term used extensively in this thesis. Food security began to be formalised as a concept in the 1970s, during a period of concern over insufficient levels of food production in relation to population needs.[15] It was initially defined in terms of ensuring 'adequate world supplies of

---

[13] See for example: The Guardian Editorial, 'The Guardian View on Food Poverty Charities: Can't Take the State's Place' *The Guardian,* (27 February 2024) https://www.theguardian.com/commentisfree/2024/feb/27/the-guardian-view-on-food-poverty-charities-cant-take-the-states-place accessed 18 March 2024; Elizabeth Dowler and Deirdre O'Connor, 'Rights Based Approaches to Addressing Food Poverty and Food Insecurity in Ireland and UK' (2012) 74 Social Science and Medicine 44; Adam Vaughan, 'Rishi Sunak Tells Farmers Food Security is a Government Priority' *The Times,* (20 February 2024) https://www.thetimes.co.uk/article/rishi-sunak-nfu-conference-farmers-food-security-government-priority-9j3dczr5v accessed 18 March 2024.

[14] Katie Pettifer and Michelle Patel, 'FSA 22-06-09 Household Food Insecurity Main Report' (*FSA,* 15 June 2022) https://www.food.gov.uk/print/pdf/node/9711 accessed 18 July 2022 [1.3].

[15] Nora McKeon, *Food Security Governance. Empowering Communities, Regulating Corporations.* (Routledge 2015) 73.

basic food stuffs.'[16] However, as noted by Sen,[17] and discussed in Chapters 2 and 3, it has long been recognised that famines are not related to the total amount of food the world produces, but to community and individual access to adequate food. Several definitions of food security have developed, but the most widely accepted definition of food security comes from the United Nations Food and Agricultural Organization (FAO).[18] This focuses on individual access to food that is nutritionally sufficient for their physiologic needs. Although the FAO definition is widely used, governments,[19] NGOs,[20] and academic researchers,[21] have developed different definitions. Despite inconsistencies in the definitions, most of these approaches to measuring food security contain an indication of the number of people who cannot access sufficient food. In addition, research into food security by academics and NGOs is extensive. This research is a valuable resource used by this thesis to highlight problems and possible solutions within the global food system.

However, as discussed in Chapters 2 and 3, food security alone is not sufficient to address hunger and the failings of the global food system. Although the FAO definition of food security has some similarities with the definition of the core of the right to adequate food, provided by the Committee of Economic Social and Cultural Rights,[22] some concepts of food security remain embedded in discourses around increased production and intensification.[23] The right to food can consider appropriate forms of food production as well as addressing areas

---

[16] United Nations, 'Report of the World Food Conference' (5-16 November 1974) Un Doc E/CONF.65/20,14.
[17] Amartya Sen, *Development as Freedom* (OUP 1999) 160.
[18] 'Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary and food preferences for an active and healthy life' UN Food and Agricultural Organisation, 2009 Declaration of the World Summit on Food Security' (16-18 November 2009) Un Doc WSFS 2009/2.
[19] Compare the FAO definition (n 18) with the approach indicated in s19 Agriculture Act 2020 considering: global food availability, supply sources for food, resilience of food supply chain, household expenditure on food and food safety.
[20] See, for example: The Food Foundation, 'Food Insecurity Tracking' https://foodfoundation.org.uk/initiatives/food-insecurity-tracking#tabs/Round-14 accessed 18 March 2024 compared to Bull *et al* (n 6) 22.
[21] See, for example: Derek Headey and Olivier Ecker, 'Rethinking the Measurement of Food Security from First Principles to Best Practice' (2013) 5 Food Security 327.
[22] 'The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.' UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN DOC E/C.12/1995/5 [8].
[23] McKeon (n 15) 75.

that are often said to be left out of debates on food security, for example: power in the global food system; socioeconomic and political factors maintaining the status quo; and protection of small-scale producers and peasants.[24] Importantly, the right to food also has the potential to provide redress to individuals whose rights are violated in the courts.[25]

2.0. Threats and failings of the global food system

The global food system consists of complex agri-supply chains, with products transported and traded far beyond territorial boundaries. Large multinational agricultural and food companies are key players in this system. This system developed during the Green Revolution in the 1940s and 1950s, when Norman Borlaug developed new strains of more productive wheat to alleviate hunger in Mexico.[26] In the 1960s and 1970s, similar breeding programmes spread to rice and in many parts of the global south farmers were encouraged to grow new, more productive varieties of rice, dependent on extensive inputs of fertilisers and water.[27] From 1970 to 1990, the amount of food available in the world increased by 11% and the number of hungry fell by over 150 million.[28]

The Green Revolution also initiated the growth of transnational agribusiness and transnational food companies. Seeds, equipment, and fertiliser were all sold by the same large company. In 2013 it was reported that six large transnational corporations (TNCs) such as Syngenta and Cargill, controlled 75% of private sector plant genetic research, 60% of the global seed market and 76% of global agrochemical sales.[29] Dominance of individual companies has resulted from both horizontal merging of companies to form giant agribusinesses and also vertical consolidation, with the same companies controlling multiple stages in the

---

[24] ibid 75-76.
[25] See for example: Aoife Nolan, Bruce Porter and Malcolm Langford, 'The Justiciability of Social and Economic Rights: An Updated Appraisal' (CHRGJ Working paper August 2007) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944 accessed 10 April 2024.
[26] Charles C Mann, *The Wizard and the Prophet* (Vintage Books 2018) 143-153.
[27] Eric Holt-Giménez, 'Hunger, Harvests and Profits: The Tragic Records of the Global Food Crisis' in Eric Holt- Giménez and Raj Patel with Annie Shattuck (eds), *Food Rebellions!: Crisis and the Hunger for Justice* (Pambazuka Press 2009), 24.
[28] ibid 27.
[29] Agni Kalfagianni and Sophia Skordili, 'Localizing Global Food: An Introduction' in Agni Kalfagianni and Sophia Skordili (eds), *Localizing Global Food. Short Food Supply Chains as Responses to Agri- Food Systems* (Routledge 2019) 3

production cycle.[30] In addition, large food TNCs, such as Nestle, Tyson, and Mars, have also consolidated buying, processing and selling food throughout the world, with expanded trade, product uniformity and introduction of highly processed food in many countries.[31] This business model is characterised by long chains of processes as food moves from producers to consumers. Producers receive reduced amounts for their products; value is added, and profit made via processing of products in the chain by intermediaries.[32]

The drive for business efficiency and increased profits has created a just-in-time supply chain.[33] This approach allows extensive consumer choice, cheap food and access to out-of-season products imported from around the globe. It has also led to increasingly long and complex supply chains.[34] Although the food system is dominated by these methods, there are other approaches, both longstanding and newer innovations, that supply food more locally. Farmers markets and farm cooperatives exist across the globe, reducing the number of links in the supply chain and the distance travelled, with producers often supplying directly to consumers.[35] The development of urban farming in part represents a response to concerns about the potential vulnerability of long complex supply changes to threats and sudden shocks and the possibility of the food supply to large cities being interrupted.[36]

The interconnected nature of the global food supply systems can amplify crop failures in one part of the world to result in increased food prices and food shortages across the globe. The 2007-8 global food crisis demonstrated how a combination of factors, most often suggested to be export restrictions, poor harvests due to weather, and increased demand for biofuels, lead to increases in

---

[30] Kaitlin Y Cordes and Olivier De Schutter, 'Accounting for Hunger: An Introduction to the Issues' in Oliver De Schutter and Kaitlin Y Cordes (eds), *Accounting for Hunger: The Right to Food in the Era of Globalization* (Hart 2011), 33-4.
[31] Kalfagianni and Skordili (n 29) 4.
[32] ibid 3.
[33] Madeline Power, *et al*, 'How COVID-19 has Exposed Inequalities in the UK food system: The case of UK Food and Poverty' (2020) Emerald Open Research (https://emeraldopenresearch.com/articles/2-11) 2.
[34] Phillip Garnett, Bob Doherty and Tony Heron, 'Vulnerability of the United Kingdom's Food Supply Chains Exposed by COVID-19' (2020) 1 Nature Food 315.
[35] Kalfagianni and Skordili (n 29) 6.
[35] Robert Gottlieb and Anupama Joshi, *Food Justice* (The MIT Press 2013), 182.
[36] Julian Cribb, *Food or War* (CUP 2019) 223-4.

the prices of rice, wheat, and maize.[37] Other factors, such as increased demand for grain fed meat and speculation and trading on commodities are also thought to have contributed to dramatic food price rises that caused riots in many countries and the beginning of the Arab Spring.[38]

The impacts of the COVID-19 pandemic on food supply chains, and the war in the Ukraine on food prices, both indicate that lessons have not be learnt from the 2007-8 food crisis. Even prior to the COVID-19 pandemic, experts had predicted that a global pandemic would have effects on all parts of the global food chain, due to decreased labour and movement restrictions.[39] Their predictions were confirmed during the COVID-19 pandemic. Harvests were threatened by the lack of migrant labour, due to travel restrictions.[40] Meat packing and processing plants were badly hit by COVID-19 outbreaks, with many having to close.[41] Workers were forced to work in unsafe conditions.[42] In the USA, closing of meat plants resulted in the euthanasia of millions of animals.[43] As a result, these animals did not enter the food chain, wasting the inputs it took to raise them as well as discarding animals that would otherwise have been a source of food. The nature of factory farming was once again being questioned, with concerns raised about workforce safety as well as animal health and welfare in such

---

[37] See, for example: Derek Headey and Shenggen Fan, 'Anatomy of a Crisis. The Causes and Consequences of Surging Food Prices' (IFPRI Discussion paper 00831December 2008) https://ebrary.ifpri.org/digital/collection/p15738coll2/id/16187/rec/1 accessed 25 June 2020.
[38] ibid.
[39] Andrew Huff *et al*, 'How Resilient is the United States' Food System to Pandemics?' (2015) 5 Journal of Environmental Studies and Science 337, 339.
[40] Victoria Stead, 'Australia's Food Supply Relies on Migrant Workers who are Facing Coronavirus Limbo' *The Guardian* (23 March 2020) https://www.theguardian.com/world/commentisfree/2020/mar/24/australias-food-supply-relies-on-migrant-workers-who-are-facing-coronavirus-limbo accessed 18 June 2020; Rory Carroll *et al*, 'Farmers across Europe Bank on Improvised Armies of Pickers to Save Harvest' *The Guardian* (3 April 2020) https://www.theguardian.com/world/2020/apr/03/farmers-across-europe-bank-on-improvised-armies-of-pickers-to-save-harvest accessed 18 June 2020.
[41] Danielle Wiener-Bronner, 'Tyson Warns More Meat Plant Closures are Coming' (*CNN Business*, 4 May 2020) https://edition.cnn.com/2020/05/04/business/tyson-meat-plant-closures/index.html accessed 22 July 2020; Alistair Driver, 'European Market in Turmoil, as COVID-19 Continues to Disrupt Meat Plants' *Pig World* (6 July 2020) http://www.pig-world.co.uk/news/european-market-in-turmoil-as-covid-19-continues-to-disrupt-meat-plants.html accessed 22 July 2020.
[42] Oliver Laughland and Amanda Holpuch, '"We're Modern Day Slaves: How Plant Meat Workers Became the New Frontline in the COVID-19 War' *The Guardian* (2 May 2020) https://www.theguardian.com/world/2020/may/02/meat-plant-workers-us-coronavirus-war accessed 18 June 2020.
[43] Michael Corkery and David Yaffe-Bellany, 'Meat Plant Closures Mean Pigs are Gassed or Shot Instead' *New York Times* (14 May 2020) https://www.nytimes.com/2020/05/14/business/coronavirus-farmers-killing-pigs.html accessed 22 July 2020.

systems.[44] Transport of food was impacted in some areas by closure of ports and delays at border inspection points.[45] In short, the just-in-time food distribution system struggled to meet consumer demand.[46] The Russian invasion of Ukraine which has led to increased prices of grain and sunflower oil,[47] can only suggest ongoing and increasing pressures and uncertainties in the global food system.

The UK is inextricably linked to the global food system. UK Government policy in relation to ensuring there is enough food in the UK to feed its population is heavily dependent on imports, especially in relation to fruit and vegetables.[48] As will be discussed in Chapters 4, 5 and 7, this approach requires appropriate policy in place to mitigate the impact of crises in the global food system, but also carefully crafted trade policy. It also requires the UK to ensure that its actions in relation to the global food system, do not negatively impact the food security and right to food in other countries.

3.0. Food security and the right to food in the UK

As well as highlighting ongoing weaknesses in the global food system, the COVID-19 pandemic focused attention on several pre-existing problems in the UK food system. The more severe consequences of COVID-19 infection related to obesity highlighted the failure of the UK food system to provide a nutritious diet. Around 65% of the UK population is overweight or obese.[49] In response to the pandemic, the Government launched a new obesity strategy to urge the

---

[44] Gene Baur, 'It's Time to Dismantle Factory Farms and Get Used to Eating Less Meat' *The Guardian* (19 May 2020) https://www.theguardian.com/commentisfree/2020/may/19/its-time-to-get-used-to-eating-less-meat accessed 18 March 2024.

[45] Jen Skerrit, Leslie Patton and Emele Onu, 'It's Getting a Lot Harder to Ship Food Around the World' (*Bloomberg*, 9 April 2020) https://www.bloomberg.com/news/articles/2020-04-09/it-s-getting-a-lot-harder-to-ship-food-around-the-world accessed 18 June 2020; Bibi van der Zee, 'Cattle Gridlock: EU Border Delays Add to Coronavirus Strain on Meat Trade' *The Guardian* (23 March 2020) https://www.theguardian.com/environment/2020/mar/23/meat-prices-could-rise-as-covid-19-adds-pressure-to-vulnerable-supply-chain-coronavirus accessed 18 June 2020.

[46] Rebecca Smithers, 'Britons Made 80m Extra Grocery Shops in Less than a Month' *The Guardian* (31 March 2020) https://www.theguardian.com/business/2020/mar/31/coronavirus-britons-made-80m-extra-grocery-shops-in-less-than-a-month accessed 26 June 2020.

[47] Greg Kennedy, 'Has the Invasion of Ukraine Caused our Food Prices to Rise?' (*Kings College London*, 20 February 2023) https://www.kcl.ac.uk/has-the-invasion-of-ukraine-caused-our-food-prices-to-rise-over-the-past-year accessed 4 February 2023.

[48] DEFRA, 'UK Food Security Report 2021' (16 December 2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077015/United_Kingdom_Food_Security_Report_2021_19may2022.pdf accessed 4 March 2024, 103.

[49] Monique Tan, Feng J He and Graham A MacGregor, 'Obesity and COVID-19: the role of the food industry' [2020] British Medical Journal 369; Kirby (n 3).

country to 'lose weight to beat coronavirus (COVID-19) and protect the NHS.'[50] The strategy included banning online and television adverts on food containing high levels of fat, sugar and salt before 9pm and ending 'buy-one-get-one-free' offers on such foods.[51] However, as will be discussed in Chapter 5, this policy has been partially delayed.[52]

As in other parts of the world, both loss of income and the inability to access food during the COVID-19 pandemic resulted in people missing meals and going whole days without food.[53] There was a dramatic increase in food bank use, with the Trussell Trust reporting an 81% increase in demand at its food banks in the last two weeks of March 2020.[54] This raises the question as to why the fifth largest economy in the world had such reliance on food banks prior to the pandemic,[55] and why there was such heavy reliance on charities and NGOs during the pandemic.[56] Any third sector safety net is already stretched and so might not be able to meet the needs of increasing numbers of food insecure people in the future.[57] The situation in the UK has not improved post-pandemic, with the cost of living crisis resulting in ever increasing numbers of people accessing food banks because they are unable to afford sufficient (or any) food.[58]

Although the UK Government has a Department for Environment, Food and Rural Affairs, there is no discrete food policy in the UK, with 16 Government departments sharing some responsibility for English food policy alone.[59] This fragmentation across leadership and policy making in relation to food has created

---

[50] GOV.UK, 'New Obesity Strategy Unveiled as Country Urged to Lose Weight to Beat Coronavirus (COVID-19) and Protect the NHS' https://www.gov.uk/government/news/new-obesity-strategy-unveiled-as-country-urged-to-lose-weight-to-beat-coronavirus-covid-19-and-protect-the-nhs accessed 13 August 2020.
[51] ibid.
[52] James Davey, 'UK High-Sugar Promotion Ban Delay Angers Health Campaigners' (*Reuters,* 19 June 2023) https://www.reuters.com/world/uk/uk-health-campaigners-angered-by-further-delay-high-sugar-promotion-ban-2023-06-19/ accessed 13 July 2023.
[53] The Food Foundation, 'COVID-19: Latest Impact on Food' (n 4).
[54] Environment, Food and Rural Affairs (EFRA) Committee, *Covid-19 and Food Supply*, First Report of Session 2019–20, HC 263*,* 19.
[55] Alston (n 4).
[56] IFAN (n 4).
[57] Peter Taylor-Gooby and Tomas Petricek, 'Food Bank Donations Surged During the Pandemic-but Look Closely at the Date and There's Trouble Ahead' (*The Conversation,* 9 July 2020) https://theconversation.com/food-bank-donations-surged-during-the-pandemic-but-look-closely-at-the-data-and-theres-trouble-ahead-142113 accessed 11 July 2020.
[58] See, for example: The Food Foundation (n 20).
[59] Rosalind Sharp, Kelly Parsons and Corinna Hawkes, 'Coordination Must be Key to how Governments Respond to COVID-19 Food Impacts: A View from England.' Food Research Collaboration Guidance Note. https://foodresearch.org.uk/publications/food-policy-coordination-under-covid-19/ accessed 18 March 2024.

significant vulnerabilities for individuals and communities across the UK. A criticism levelled at the UK Government, especially during the COVID-19 pandemic, was that they have left food supply and emergency food policy to the private sector, especially the larger supermarkets, i.e. ASDA, Tesco, Sainsburys and Morrisons.[60] The food industry requested greater guidance and support from the Government, but the level and timing of the support provided has been questioned.[61] The need for joined-up policy and framework legislation to address the gaps and vulnerabilities in the governance of the UK food system is discussed at length in Chapter 5.

Supermarkets can exert significant influence over fundamental features of the UK food system, such as where produce is sourced.[62] When purchasing fruit and vegetables, some supermarkets have favoured overseas production. The UK cannot grow all the fruit and vegetables consumers purchase. Neither bananas nor citrus fruit can be extensively grown in the UK. However, we also import apples and pears, something the UK can and does grow.[63] Supermarkets will sometimes reject home produced items if they do not conform to a supermarket standard, such as not being spherical enough in the case of apples.[64] As we move through the Brexit process, there continue to have been shortages of food in UK supermarkets.[65] The role of supermarkets is addressed in Chapter 6, in relation to the food people can buy, how much this food costs, and where stores are located. Chapter 6 argues that the legal obligations arising from the right to food could justify increased and more targeted intervention in the UK grocery market to ensure the full realisation of the right to food.

---

[60] Tim Lang, *Feeding Britain. Our Food Problems and How to Fix Them.* (Pelican Books 2020), 39; EFRA Committee (n 54) 7-9.
[61] ibid 11-12.
[62] Joanna Blythman, *Shopped: The Shocking Power of Britain's Supermarkets* (Harper Perennial 2007) 75-91.
[63] Lang (n 60).
[64] Blythman (n 62) 83.
[65] Adam Forrest, 'Brexit Red Tape Risks Winter of Empty Supermarket Shelves, Food Chiefs Warn' *Independent,* (9 May 2023) https://www.independent.co.uk/news/uk/politics/brexit-food-shortages-supermarkets-eu-b2328871.html accessed 18 March 2024; Kevin White and Grace Duncan, 'Why Fruit and Veg Shortages are Only a Tiny Bit About Brexit' *The Grocer* (23 February 2023) https://www.thegrocer.co.uk/buying-and-supplying/why-fruit-and-veg-shortages-are-only-a-tiny-bit-about-brexit/676636.article accessed 13 July 2023.

4.0. Methodology

This thesis follows a diverse and interdisciplinary methodological approach to answer its two main questions on the legal obligations arising from the right to food and the implementation of these obligations in the UK. In places, the thesis engages in a theoretical exploration of the normative core of the right to food and the principles underlying socioeconomic rights more broadly. This theoretical analysis, which takes place predominantly in Chapters 2, 3 and 4, is complemented by doctrinal methods as well as by careful consideration of existing empirical research. In Chapters 5, 6 and 7 the research focuses mostly on doctrinal research and the use of existing empirical research. The interdisciplinary approach of this thesis has resulted in engagement in food policy and food security research from humanities and social sciences. In addition, as someone with a previous career as a veterinary surgeon and a particular interest in production animal diseases, I have also engaged with scientific research. Such research is especially considered in relation to nutrition, farm animal production, food safety and antimicrobial resistance.

Before moving to describe the structure of the thesis, it is first necessary to clarify the scope of the thesis and what it is not aiming to do. Although the World Trade Organization (WTO) is discussed in both Chapters 3 and 6, this thesis does not aim to be a complete analysis of relevant WTO law. WTO rules are highlighted where relevant to indicate possible incompatibility with states obligations in relation to the right to food. This is a possible area where states may have to choose compliance with one area of international law over another. In addition, I have chosen not to discuss the possible human rights obligations of multinational corporations acting outside the UK. How the UK should regulate large multinationals based in the UK, but with operations overseas could have been an additional case study in Part 2 of the thesis. However, to do this area justice would require a more expansive discussion than a single chapter of a thesis.

I have also omitted an extensive discussion of the growing use of food banks in the UK. In several places food banks are mentioned as an illustration of growing food insecurity in the UK and likely violations of the right to food but there is no engagement with the extensive multidisciplinary literature about food banks.

The reason for this omission is that I advocate in Chapter 5 for a minimum basic income as the most dignified way to ensure all can access an adequate diet. Together with measures such as maximum pricing of essential food items, suggested in Chapter 6, this should largely eliminate the need for food banks. More generally, this thesis could not discuss all areas of food policy and potential violations of the right to food the UK currently faces. Extensive discussion of free school meals, food labelling and marketing, and the food system and climate change are examples of such issues mentioned in brief to evidence points being made, but space does not allow for the depth needed to address these issues in full. Food poverty, food insecurity, food and agriculture policy are all rapidly developing areas in UK politics, news and the work of NGOs and so all potentially relevant issues could not be discussed. Likewise, the material in this thesis, in terms of the law, is up to date as of the 31 March 2024.

5.0. Thesis structure

This thesis is structured as follows. Part 1 of the thesis (Chapters 2, 3 and 4) responds to the first research question and creates a novel normative framework for the right to food, focusing on obligations for developed nations. This contrasts to much of the academic literature considering the right to food which focuses on developing countries and LDCs. Chapter 2 begins by considering the right to food as a socioeconomic right and the debates concerning the implementation and normative content of such rights. The discussion establishes that the right to food, along with other socioeconomic rights, can have clear obligations, can be monitored and is justiciable. I also argue that there are three levels of obligations in relation to the right to food for states: the fundamental right to be free from hunger, the core of the right to food, and obligations to be more slowly realised. The chapter then justifies the abstract underlying norm for the right to food, using a universally applicable pluralistic approach.

Chapters 3 and 4 determine obligations for the right to food derived from the abstract norm that was justified in Chapter 2. This original approach to defining the obligations for the right to food considers six standards identified from Article 11 ICESCR: freedom from hunger, adequate food, nutrition, production, equitable distribution (trade) and international cooperation. Chapter 3 focuses on

the first four and continues the discussion of the three levels of obligation proposed for the right to food in Chapter 2. Chapter 4 focuses on extraterritorial obligations the UK may have in relation to the right to food in other countries, arguing for a legal obligation to do no harm in relation to the right to food in other states.

Part 2 of the thesis then addresses the second research question. It focuses on how the framework developed in Part 1 of the thesis should guide the UK Government in implementing the right to food. Chapter 5 considers the nature of food policy in the UK, looking at each of the devolved nations as well as the overall UK level. It highlights the possibility of gaps and deficiencies in UK law, as well as possible divergence between the devolved nations, and proposes UK wide framework legislation to address some of these deficiencies and facilitate the realisation of the right to food.

Chapter 6 is the first of two more specific case studies in the thesis. It considers the right to food and supermarkets in the UK. Supermarkets were chosen as a case study as most of the UK population obtain food from them.[66] They are massive multinational businesses and our reliance on them was highlighted by the COVID-19 pandemic. Despite this, there is little consideration of domestic obligations in relation to businesses and socioeconomic human rights; much of the business and human rights literature focuses on transnational corporations and their actions in other territories. In addition, the impact of building a large Tesco supermarket in Seacroft, an area of Leeds I am familiar with, has been extensively studied, providing a personal link to this chapter.

The final chapter of the thesis also has a personal link. As a veterinary surgeon I am acutely aware of issues relating to animal farming and antimicrobial resistance. Like many I shared concerns about possible importation of animal products from the USA post-Brexit. Chapter 7 uses these concerns around the importation of chlorinated chicken as an entry point into discussions about post-Brexit trade policy and antimicrobial resistance (AMR) as a threat to global food systems. It considers both trade agreements being made by the UK and the impact of WTO rules on the UK being able to maintain a ban on food such as chlorinated chicken being imported into the UK after Brexit, and whether such

[66] Megan Blake and Jonas Cromwell, 'Food Insecurity in UK Communities' (2022) https://www.researchgate.net/publication/365362129_Food_Security_UK_2021 accessed 1 March 2024, 22.

imports would conflict with the UK's obligations for the right to food. This chapter also highlights AMR as a threat not only to human health but also the global food system. My combined expertise provides a unique interdisciplinary lens to consider food safety, AMR, and WTO rules in relation to the right to food.

The final concluding chapter summarises the framework developed by this thesis and its application to the UK. The discussion highlights the enormous potential of the right to food to address the many varied and complex issues facing the UK in relation to food policy. The thesis concludes by indicating areas highlighted as requiring additional research that could utilise the right to food to guide appropriate interventions and policy, as well as clarifying government obligations in relation to the right to food.

Chapter 2

Foundations of the Right to Food

1.0. Introduction

This chapter takes an important first step towards the consolidation of a new normative framework for the right to food. It is a framework that can illuminate the legal obligations in developed nations in relation to food. The general aim of this normative framework is to guide the development of food policy and law in the UK. Its specific aims in this context are two-fold: firstly, to ensure the right to food is realised by all in the UK and secondly, to ensure that the UK does not negatively impact the realisation of the right to food in other states.

This chapter begins with an introduction to the right to food as described in international and regional human rights law. Inevitably the discussion also engages with broader theoretical debates on socioeconomic rights. This section considers why many of the objections to socioeconomic rights or concerns about their implementation are unconvincing. In doing this the right to food is used as an example, most importantly to demonstrate why such arguments concerning socioeconomic rights can be dismissed. The focus of the chapter following the work of James Nickel is on the justification of the right to food as a human right.[1] This discussion, in Section 3, takes a pluralist approach, which shows that the right to food can be justified by several different philosophical approaches. However, the chapter ultimately argues that the right to food is grounded in the concept of human dignity.

The chapter will then finally move to consider how the content of the right to food can be determined. Section 4 of the chapter will introduce the areas of food security and the work of the Food and Agriculture Organization of the United Nations (FAO) as well as the United Nations Sustainable

[1] Nickel indicates three stages in the justification of a human right, 1) justifying underlying abstract norms and values, 2) demonstrating the specific norms that flow from these values and 3) defending measures that would be necessary to implement these rights. Chapters 3 to 7 of this thesis deal with the second and third steps. See: James Nickel, *Making Sense of Human Rights* (2nd edn, Blackwell 2007) 3.

Development Goals (SDGs). These are areas that need to be considered by any normative framework for the right to food. Yet, despite their extensive normative content, this chapter argues that they are not sufficient in themselves to tackle hunger, food insecurity and other challenges that stem from the global food system.

2.0. The right to food: a socioeconomic right

Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR) contains the most expansive statement of the right to food.[2] In addition, components of the right to food can be found in many international treaties.[3] The right to food has also been considered by regional human rights bodies and courts.[4] Despite widespread engagement with the right to food in international and regional human rights law, questions remain about not only the content of the right to food but also its normative justification. Such discourses are inextricably linked to broader debates about the nature of socioeconomic rights, as well as how and if these rights can be implemented. Consequently, this chapter will not only engage with these broader debates, demonstrating their relevance to the right to food, it will also contribute to these debates. It uses the right to food to provide evidence to dismiss some of the claims suggesting socioeconomic rights are not rights or that they lack normative content. However, before turning to consider these areas of contestation, the following subsection presents a brief overview of where the right to food appears in international and regional human rights law.

---

[2] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 11.

[3] For example, see: Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990) UNTS vol. 1577, art 24; Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008), UN Doc A/RES/61/106 art 28.

[4] For example, in *Stanev V Bulgaria* [GC] App No 36760/06, [2012] 1 ECHR 3; the European Court of Human Rights considered inadequate food provided to a person detained in a psychiatric facility to be part of degrading treatment he was subjected to in violation of Article 3 ECHR. In *Case of the Sawhoyamaxia Indigenous Community v Paraguay*, Merits, reparations and costs Judgement of the Inter-American Court of Human Rights 29 March 2006, the InterAmerican Court of Human Rights found a violation of the right to life, when an indigenous community has been deprived of their ancestral land and as a result, they were unable to obtain an adequate diet.

2.1. The right to food in international and regional human rights law

The United Nations Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly (UNGA) in 1948, was the first time a right to food was articulated. Article 28 paragraph 1 states that, 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.'[5] This soft law UNGA declaration,[6] is reinforced by Articles 55 and 56 of the UN Charter, which create the legal obligation for state members and the UN to take joint action to achieve 'higher standards of living, full employment and conditions of economic and social progress and development.'[7]

Provisions relating to people accessing food appear in several other international treaties. The Third Geneva Convention contains provisions relating to the requirement that adequate food is provided for prisoners of war.[8] In addition, the Fourth Geneva Convention indicates that occupying powers have duties in ensuring civilians have access to food supplies.[9] Other provisions in human rights instruments also indicate a right to food. Article 24 of the UN Convention on the Rights of the Child includes the provision of adequate nutritious food as part of the right of the child to the enjoyment of the highest attainable standard of health.[10] The preamble to the Convention on the Elimination of All Forms of Discrimination Against Women highlights the particular concern that situations of poverty often result in women having the least access to food.[11]

---

[5] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 28.
[6] Alan Boyle, 'Soft Law in International Law-making' in Malcom Evans (ed), *International Law* (5th edn, OUP 2018) 123.
[7] Charter of the United Nations art 2(4) (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI arts 55 and 56.
[8] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)* (12 August 1949) 75 UNTS 135 art 26.
[9] ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)* (12 August 1949) 75 UNTS 287 art 55.
[10] Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990) UNTS vol. 1577 art 24.
[11] Convention on the Elimination of All Forms of Discrimination Against Women, (adopted 18 December 1979, entered into force 3 September 1981) UNTS vol. 1249, 13.

The main regional human rights treaties, the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR), and the African Charter of Human and People's Rights (ACHPR) do not contain specific references to the right to food.[12] In the case of the ECHR this is unsurprising, as the convention deals largely with civil and political rights.[13] The ACHR contains a single article, Article 26, on socioeconomic rights. It does not mention food.[14] Nevertheless, the Inter-American Committee on Human Rights has ruled that Article 26 requires states to 'strive to attain the economic and social aspirations of its people by following an order that assigns priority to the basic needs of health, nutrition and education'.[15] The ACHPR contains similar general provisions relating to socioeconomic rights but does not contain a specific right to food or reference to food. Article 16 indicates the right to 'the best attainable state of physical and mental and health' [16] but there are no provisions concerning standard of living.

In Europe there are sources of law that specifically consider socioeconomic rights. The European Social Charter (ESC) does not contain a specific reference to food, but Article 11, dealing with health states that Parties should 'remove as far as possible the causes of ill-health,'[17] which can relate to diet.[18] Similarly, the Charter of Fundamental Rights of the European Union (CFEU) does not contain a provision referring to food.[19] Articles 34 and 35, referring to social assistance and health care, do contain related provisions indicating a right to assistance to 'ensure a decent existence for those who

---

[12] Philip Alston, 'International Law and the Human Right to Food' in Philip Alston and Katarina Tomaševski (eds), *The Right to Food* (Matinus Nijhoof 1984) 27.
[13] Optional Protocol 1, for example contains the right to education, a socioeconomic right. See: Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 9, 20 March 1952, art 2.
[14] American Convention on Human Rights, (Pact of San Jose), Costa Rica, 22 November 1969 OAS Treaty Series no 36 (1969) art 26.
[15] Annual Report of the Inter-American Commission on Human Rights, OAS Doc, OEA/Ser.G, CP/doc, 1110/80 (1980) [152].
[16] African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5 art 16(1).
[17] Council of Europe, European Social Charter (18 October 1961) ETS 35 art 11.
[18] For example, the Committee's 2021 conclusions considered the UK's obesity policy in relation to the right to the protection of health (Article 11 ESC) European Committee of Social Rights, UK Conclusions XXI-2(2017) https://rm.coe.int/conclusions-xxii-2-2021-united-kingdom-en/1680a5da33 accessed 30 March 2023) 14-15.
[19] Charter of Fundamental Rights of the European Union (26 October 2012) 2012/C 326/02 (CFEU).

lack sufficient resources'[20] and 'a high level of human health protections shall be ensured in the definition and implementation of all Union Policies and activities.'[21] However, in relation to the UK the CFEU is no longer applicable law due to Brexit.[22] In relation to the ESC, the UK is not party to its collective complaints procedure,[23] and so highlighting violations of socioeconomic rights in the UK in relation to the ESC relies on the periodic reports. [24] In addition, O'Cinneide has argued that the impact of the ESC in the UK is limited due to British Euroscepticism and the more prominent role of the ECHR.[25] As such, there is little specific regional human rights protection for socioeconomic rights in the UK.

The most expansive international provision detailing the right to food is in the ICESCR, which the UK has ratified. Article 11 states:

> '1. The States Parties to the present Covenant recognize 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
> 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
> (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

---

[20] CFEU art 34.
[21] CFEU art 35
[22] s5(4) European Union (Withdrawal) Act 2018.
[23] Colm O'Cinneide, 'The European Social Charter and the UK: Why it Matters' (2018) 29 KLJ 275, 276 and 279.
[24] Carole Benelhocine, *The European Social Charter* (Council of Europe Publishing 2012) 50.
[25] O'Cinneide (n 23) 279.

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.'[26]

This right has been further explicated by General Comment 12 of the Committee on Economic, Social and Cultural Rights (CESCR). General Comment 12 states that Article 11 requires 'physical and economic access at all times to adequate food or means for its procurement'.[27] The right also includes the elements of availability, accessibility, adequacy, and acceptability.[28] These components have been clarified by the first Special Rapporteur on the right to food:

'The right to food is the right to have regular, permanent and unobstructed 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 from anxiety.'[29]

So, the right to food is included in an international human rights treaty ratified by 171 state parties,[30] and its scope is subject to detailed ongoing interpretation by treaties and soft law instruments on a global and regional level. Yet it has been argued that the right to food, as articulated in Article 11 ICESCR, comprises policy guidance and is not justiciable.[31] In the specific case of the right to food, the lack of examination of the content of Article 11(2)

---

[26] ICESCR art 11.
[27] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN DOC E/C.12/1995/5 (GC 12) [6].
[28] Federica Donati and Margret Vidar, 'International Legal Dimensions of the Right to Food' in George Kent (ed), *Global Obligations for the Right to Food* (Rowman and Littlefield 2008) 51.
[29] UNCHR, 'Preliminary report of the Special Rapporteur on the Right to Food, Jean Ziegler' (23 July 2001) UN Doc A/56/210 [22].
[30] Office of the High Commissioner, United Nations Human Rights, 'Status of Ratification Interactive Dashboard' https://indicators.ohchr.org/ accessed 19 January 2024.
[31] E W Vierdag, 'The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights' (1978) 9 Netherlands Yearbook of International Law 69, 93 and 103.

ICESCR during individual complaints makes it more difficult to counter such arguments. The Optional Protocol of the ICESCR, that details the individual complaint procedure was only adopted in 2008,[32] and so far, there are 26 state parties to the protocol and 23 signatories.[33] The United Kingdom is not one of the signatories to the Optional Protocol.[34] As of the 19 January 2024, no complaints concerning the right to food as part of Article 11 ICESCR have been considered by the Committee.[35] Although this lack of clarity and precision in the potential content of the right to food supports the argument that a normative framework for the right to food is needed, this argument could still potentially be undermined by claims that as a socioeconomic right, the right to food is simply not a human right.

To address these broader claims about socioeconomic rights, including that they are no more than a set of policy goals, or that the obligations they generate are vague, this chapter will now consider the broader theoretical debates about socioeconomic rights. In addition to demonstrating why such views are often found to be unconvincing, this discussion also uses the right to food to demonstrate socioeconomic rights are fundamental human rights, and so add to the arguments refuting such claims about socioeconomic rights.

2.2. The nature of socioeconomic rights

The implementation and realisation of socioeconomic rights around the world is lagging.[36] This is despite the international community indicating that socioeconomic rights are indivisible from civil and political rights,[37] The reasons for this are debated, and include the nature of socioeconomic rights, the meaning of progressive realisation, and issues of monitoring and justiciability.

---

[32] UNGA Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (10 December 2008) UNGA A/RES/63/117.
[33] Office of the High Commissioner, United Nations Human Rights (n 30).
[34] ibid.
[35] Based on a search for the word food in the OHCHR jurisprudence data base available at https://juris.ohchr.org/ accessed 19 January 2024.
[36] Committee on Economic Cultural and Social Rights 'Report on the 7th Session' (23 November – 11 December 1992) UN Doc E/1993/22 Annex III [5 and 7].
[37] UN General Assembly, *Vienna Declaration and Programme of Action* (12 July 1993) A/CONF.157/23 Part I [5].

Some scholars have questioned whether socioeconomic rights are human rights.[38] Others argue the obligations generated by socioeconomic rights are too onerous and so such rights are better described as aspirations.[39] Some suggest that civil and political rights create only negative obligations: the obligation bearer is simply required to refrain from acting, for example the prohibition on torture requires individuals to refrain from torturing someone. In contrast, it is said socioeconomic rights require positive actions for implementation and realisation.[40] It is certainly true that the right to food may require policy development, and for example, resources invested in free school meals or resources allocated to support sustainable agriculture.

However, this does not defeat the claim that the right to food is a human right, especially when many civil and political rights also entail costly positive obligations. For example, the right to vote[41] cannot be realised without specific policies that ensure that everyone eligible can vote, as well as policies that ensure accessible voting locations, which would also require a degree of investment and infrastructure.[42] More specifically, the right to life has been held by the European Court of Human Rights (ECtHR) to include a positive obligation to actively investigate illegal deaths of citizens.[43] Rights of due process and fair trials (Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 ECHR),[44] require a functioning court system, a police service with sufficient funds for such investigations, and access to legal advice, all of which require expenditure and resource allocation.[45]

---

[38] Maurice Cranston, '*What are Human Rights?'* (Basic Books 1964) 40.
[39] See, for example: Mary Robinson, 'Advancing Economic, Social, and Cultural Rights: The Way Forward' (2004) 26 Human Rights Quarterly Review 86.
[40] Jack Donnelly, '*Universal Human Rights. In Theory and in Practice'* (3rd edn, Cornell University Press 2013) 42.
[41] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), Art 25 999 UNTS 171 (ICCPR) art 25.
[42] *Richter v The Minister for Home Affairs and Others (with the Democratic Alliance and Others Intervening), and with Afriforum and Another as Amici Curiae)* [2009] ZACC 3 (South African Constitutional Court). In this case, O'Regan J indicates that the right to vote 'necessitates an electoral system and the calling of elections' [54].
[43] *Kaya v. Turkey*, App No 22729/93 (19 February 1998).
[44] ICCPR arts. 14 and 15.
[45] See, for example: 'free legal advice if it is in the interests of justice' *Öclan v Turkey* App No 46221/99 (2005) [GC] 41 EHRR 985; for the right of access to a court see: *Golder v United Kingdom* App No 4451/70 (1975) 1 EHHR 524.

As Donnelly has indicated, the negative and positive obligations that a right generates are not just a consequence of the content of that right but also the prevailing social, economic and political situation in a state or region at a certain time.[46] For example, the effects of COVID-19 in the UK generated a need for alternative arrangements for free school meals, to prevent children going hungry during periods of home schooling.[47] Arrangements were also made for those shielding from the virus for medical reasons.[48] This resulted in the UK Government arranging for distribution of food to households,[49] previously uncommon in the UK. By way of contrast, in India, food distribution programmes are a central part of the government's measures to ensure the right to food is realised.[50] This clearly demonstrates that what may be an extraordinary measure in one country, is the most expedient solution in another country.

Although the positive negative dichotomy between civil and political and socioeconomic rights can be rejected, it is still acknowledged that rights such as the right to food can contain many complex components. This could require extensive inputs and redistributive projects to address these complex issues. This also means that the obligations required for the realisation of the right to food are potentially numerous. It is unlikely states will be able to achieve all these obligations at once. This raises two sets of questions: what should be prioritised and whether there is a minimum standard of realisation that should be achieved. In addition to questions concerning implementation of the right to food, there remain debates about how levels of realisation of socioeconomic rights should be monitored and if these rights are justiciable.

---

[46] Jack Donnelly, 'Post-Cold War Reflections on the Study of International Human Rights' (1994) 8 Ethics and International Affairs 97, 106.
[47] Department for Education, 'Providing School Meals During the Coronavirus (COVID-19) Outbreak' (Guidance withdrawn 13 April 2022) https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/covid-19-free-school-meals-guidance-for-schools accessed 17 April 2024.
[48] GOV.UK 'COVID-19: Guidance for People Whose Immune System Means They are At Higher Risk' (24 December 2021) https://www.gov.uk/coronavirus-shielding-support accessed 10 June 2021.
[49] Department for Education (n 47) and GOV.UK (n 48).
[50] See, for example: Amit Mitra, 'Food Security and Insecurity in India' in Ian Christoplos and Adam Pain (eds), *New Challenges to Food Security* (Routledge 2015) 29.

2.2.1. Obligations for socioeconomic rights: respect, protect and fulfil

The dichotomy of negative and positive obligations, and the suggestion that socioeconomic rights were only aspirations were both challenged in the mid-1980s. Eide stated in relation to the right to food 'state responsibility for human rights can be examined at three levels: The obligation to respect, the obligation to protect, and the obligation to fulfil human rights.'[51] At the same time, Shue proposed three types of duty for states in relation to human rights: a duty to avoid depriving, a duty to protect from deprivation and a duty to aid the deprived.[52] Shue has differentiated his proposed obligations from respect, protect and fulfil. He suggests that the duty to aid is not equivalent to the duty to fulfil. It is a duty for those whose rights have been violated and includes a 'duty of recovery' which would address situations where there have been failures in the duties to avoid depriving and to protect from deprivation.[53]

In addition to these two approaches to clarifying the obligations generated by human rights, other typologies have been developed. In General Comment 13, the CESCR used obligations of availability, accessibility, acceptability and adaptability in relation to the right to education.[54] Alston has proposed obligations of recognition, institutionalisation and accountability.[55] He argues that the current failure of implementation of socioeconomic rights is a consequence of a lack of legal recognition, institutional arrangements to ensure realisation of the rights and ways to make governments accountable, which is addressed by his suggested typology.[56] However, despite these variations, it is the respect, protect and fulfil typology that has been most widely adopted in relation to socioeconomic rights.[57]

---

[51] UNCHR, 'Report on the Right to Adequate Food as a Human Right Submitted by Mr. Asbjørn Eide, Special Rapporteur' (7 July 1987) Un Doc E/CN.4/Sub.2/1987/23 [66].
[52] Henry Shue, *Basic Rights. Subsistence Affluence, and US Foreign Policy. 40th Anniversary Edition* (Princeton University Press 2000) 52-3.
[53] Henry Shue, 'The Interdependence of Duties' in Philip Alston and Katarina Tomaševski (eds), *The Right to Food* (Matinus Nijhoof 1984) 86
[54] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13)* (8 December 1999) UN Doc E/C.12/1999/10 (GC 13) [6].
[55] UNHRC Report of the Special Rapporteur on Extreme Poverty and Human Rights, Phillip Alston' (28 April 2016) A/HRC/32/31 [21].
[56] ibid.
[57] Olivier De Schutter, *International Human Rights Law* (3rd edn, CUP 2019) 292-93.

In General Comment 12, the CESCR stated that, as with any human right, the right to food contained three types or levels of obligation.[58] Specifically, *respect* requires states to respect current access to food and not take measures preventing access. *Protec*t requires states to stop other individuals or organisations depriving people of access to food. Finally, the CESCR indicated that *fulfil* contains two components. Firstly, states should *facilitate* access to as well as utilisation of resources to ensure food security. Secondly, *provide* as part of *fulfil* requires states to provide food when people are unable to access food, including situations such as natural disasters.[59] The CESCR also acknowledges that some of these obligations are more immediate whereas others are longer term as part of the progressive realisation of the right to food.[60]

Typologies serve a useful purpose in demonstrating that socioeconomic rights do contain levels of obligations for states. They also dispel the idea of the positive and negative dichotomy between socioeconomic and civil and political rights.[61] Yet typologies are not without criticism. Despite their theoretical value, in practice it can often be difficult to determine which level an obligation falls under.[62] Obligations can apparently overlap, and in some situations may require actions under all three obligations.[63] Campbell has argued that the respect, protect and fulfil typology cannot answer questions about gender inequalities.[64] In their Concluding Observations, the CESCR do not uniformly use the respect, protect, and fulfil framework, [65] for example General Comment 13, mentioned above, uses four A's.[66]

These difficulties with typologies have led some to conclude that typologies cannot reflect the complexity of implementing human rights.[67]

---

[58] GC 12 (n 27) [15].
[59] ibid.
[60] ibid [16].
[61] Ida Elisabeth Koch, 'Dichotomies, Trichotomies and Waves of Duties' (2005) 5 Human Rights Law Review 81, 82.
[62] ibid, 92.
[63] ibid. See also, in reference to businesses and the right to housing: David Birchall, 'Reconstructing State Obligations to Protect and Fulfil Socio-economic Rights in An Era of Marketisation' (2022) 71 ICLQ 227.
[64] Meghan Campbell, 'Monitoring Women's Socio-Economic Equality under the ICESCR' (2018) 30 Canadian Journal of Women and the Law 82,106-7.
[65] Koch (n 61) 93.
[66] GC13 (n 54) [6].
[67] Koch (n 61) 92; De Schutter (n 57) 297.

Because of these potential problems with the respect, protect and fulfil typology, this thesis is creating a novel framework, rather than expanding or modifying existing typologies. As the respect, protect and fulfil typology has been adopted as part of the language discussing the implementation of human rights, the thesis at times will engage with literature discussing the right to food and socioeconomic rights using this typology. However, this thesis aims to create a normative framework to clarify how states, and especially developed states such as the UK, should implement the right to food. To do this it will suggest specific obligations and associated measures states should take in response to issues related to the right to food, rather than trying to develop more general obligations uniformly applicable to all socioeconomic rights, in the way that the typologies discussed above do.

2.2.2. Indivisible and interdependent rights

Despite their limitations, typologies do demonstrate that socioeconomic rights are not just policy guidance and can contain implementable obligations. Having established that socioeconomic rights can and do contain obligations for states, the discussion now turns to consider if and how states can prioritise the many obligations socioeconomic and civil and political rights create. The indivisibility of human rights suggests that 'no human right can be fully realised without realising all other human rights.'[68] The Proclamation of Teheran,[69] in 1968, was the first time that it was stated by the UN that human rights are indivisible.[70] The Vienna World Conference 1993 also emphasised the indivisible and interdependent nature of human rights,[71] as well as the 2005 World Summit Outcome.[72]

[68] James Nickel, 'Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights' (2008) 30 Human Rights Quarterly 984.
[69] United Nations, 'Proclamation of Teheran: Final Act of the International on Human Rights' (1968) UN Doc. A/CONF.32/4.
[70] Jan Essink, Alberto Quintavalla and Jeroen Temperman, 'The Indivisibility of Human Rights: An Empirical Analysis' (2023) 23 Human Rights Law Review 1, 4.
[71] Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 section I, preamble.
[72] World Summit Outcome 2005, UNGA resolution 60/1 (16 September 2005) UN DOC A/RES/60/1 part 1 [13].

However, these soft law declarations still leave room for academic debate relating to the indivisibility of human rights. Nickel considers rights to be interdependent, and that this is a relationship between rights that can vary in strength.[73] He considers indivisibility to be a strong form of interdependence.[74] The support that implementation of one right provides for the implementation and realisation of another right varies in strength depending on the rights involved.[75] This interdependent relationship is demonstrated by Shue describing subsistence and security rights as basic because they are necessary for the realisation of other rights.[76] Without food and personal security you cannot enjoy rights such as freedom of expression or the right to education.

Although Nickel recognises there are supporting links between rights, he has argued against true indivisibility. He does not make this argument in an attempt to claim some rights are unjustifiable because they do not support the realisation of other rights.[77] Rather he suggests, due to the variable supporting linkages that rights have for each other, that the relationship and level of interdependence between rights will depend on the rights themselves and the level of realisation already achieved in that particular state.[78] Taken to its full conclusion this would mean claims of true indivisibility are only possible in situations of 'high-quality implementation of all human rights.'[79] He also raises the concern that an approach dependent on true indivisibility would prevent prioritisation during implementation when states could not fully implement all rights at the same time. States unable to implement all rights due to resource constraints may do nothing, rather than partially implementing some rights. However, this approach ignores that some rights are higher priority, such as *jus cogens* norms and the right to life,[80] and so states should take steps to implement these rights, even if other rights cannot be addressed at that time.

---

[73] Nickel 'Rethinking Indivisibility' (n 68).
[74] ibid (n 68) 987.
[75] ibid 988.
[76] Shue, *Basic Rights* (n 52) 20.
[77] Nickel, 'Rethinking Indivisibility' (n 68) 985.
[78] ibid 991.
[79] ibid 993.
[80] ibid 995.

Gilabert suggests partial implementation of some rights can support full implementation of other rights, which supports the idea of the indivisibility of rights.[81] He acknowledges the strengths in Nickel's arguments that absolute indivisibility arguments have weaknesses, but that linkage arguments are still valid and important for implementation of human rights. [82]

Food is a basic subsistence requirement. Without at least sufficient calories to function it is difficult to enjoy other rights. This resonates with the approach of Gilabert and Shue who claim that even partial implementation of a subsistence right may facilitate better realisation of another right. For example, ensuring people have sufficient food to prevent malnutrition and enough energy to function in society would not be considered full realisation of the right to food, as will be discussed in the following chapters. Yet this limited implementation of a component of the right to food may facilitate individuals realising their right to work or their right to education. Sen has also identified a link between strong civil and political rights and famine prevention; people unable to engage in representation and political processes are more likely to suffer poverty and famine.[83]

These debates about indivisibility and interdependence demonstrate that the right to food is a right that supports the realisation of many other rights. It indicates that at least ensuring people have sufficient nutritious food is a right with strong interdependent links to other rights and so should be prioritised. Nickel's argument would then raise questions about how other possible components of the right to food, as listed in article 11 ICESCR should be prioritised. Difficult decisions may have to be made about prioritising components that are to be progressively realised once the fundamental components with the strongest interdependent links have been achieved.

---

[81] Pablo Gilabert, 'The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel' (2010) 32 Human Rights Quarterly 425, 431.
[82] ibid, 438.
[83] Amartya Sen, *Development as Freedom* (OUP 1999) 160.

2.2.3. Progressive realisation and the minimum core of socioeconomic rights

Article 2(1) ICECSR states the rights in the Covenant are to be achieved 'progressively'. This contrasts with Article 2 of the ICCPR, which describes an obligation to 'respect and ensure.'[84] This has been interpreted as requiring immediate implementation of the obligations generated by the rights in the ICCPR.[85] It may be that the drafting of Article 2 of the ICESCR was a pragmatic solution to the problem of the differing socioeconomic status of states, acknowledging that some states may not have sufficient resources to fully realise all rights in the ICESCR.[86] The difference in the approach of the two Covenants has also contributed to claims that socioeconomic rights are not 'true rights', but that they are aspirations and policy guidance and so cannot implemented as justiciable rights.[87] In addition, Hungary raised concerns during drafting, that states could use the idea of progressive realisation to postpone implementation forever.[88] There are also suggestions that the lack of precision in Article 2 ICECSR may remove any substantive normative content from the obligations.[89]

However, good faith interpretation of the ICESCR in line with Article 31 of the Vienna Convention on the Law of Treaties[90] would require states to immediately start implementing their obligations in accordance with their maximum available resources. This interpretation of Article 2 ICESCR, requiring immediate action by states, has been confirmed by the CESCR.[91] In addition, the Limburg principles indicate Article 2 ICESCR generates the

---

[84] ICCPR art 2(1).
[85] Theo Van Boven, 'Categories of Rights' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3rd edn, OUP 2018) 136.
[86] Philip Alston and Ryan Goodman, '*International Human Rights Text and Materials'* (OUP 2013) 285.
[87] See for example Van Boven (n 85) 136, Sandra Fredman, *Comparative Human Rights Law* (OUP 2018) 70 and Robinson (n 39).
[88] Phillip Alston and Gerard Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 156, 172.
[89] Alston and Goodman (n 86) 285.
[90] Vienna Convention on the Law of Treaties (n 21) art 31.
[91] UN Committee on Economic, Social and Cultural Rights, General Comment No.3: *The Nature of State Parties' Obligations (Article 2 para 1),* (14 December 1990), E/1991/23 (GC 3) [2].

obligation for states to move as 'expeditiously as possible' in implementation of these rights and that progressive realisation is not a justification to delay implementation.[92] It should also be noted that the right to non-discrimination within the ICESCR[93] is of immediate realisation, and so any policies adopted, or measures taken to facilitate realisation of the rights in the ICESCR, should apply equally to all within a state.[94]

General Comment 3 of the CESCR on the Nature of State Parties' Obligations confirms that progressive realisation of the rights in the ICESCR does not deprive them of 'meaningful content.'[95] It also sets out that states are required to provide a minimum essential level of each right.[96] The CESCR confirming that a 'State party in which any significant member of individuals is deprived of essential foodstuffs' is 'prima facie, failing to discharge its obligations under the Covenant.'[97] This approach is defended on the grounds that without this minimum core obligation the ICESCR would have minimal impact and undermine its very purpose.[98] However, the CESCR does also indicate that the minimum core obligation is relative; deciding whether a state has discharged its duty in respect to the minimum core should also consider the resource constraints in that country. This still requires states to 'demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.'[99]

Following this explanation in General Comment 3, the minimum core of socioeconomic rights has been discussed both by subsequent General Comments of the CESCR as well as in the academic literature. For instance, Craven has criticised the lack of specificity of the minimum core. He questions

---

[92] UN Commission on Human Rights, *Note Verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles")* (8 January 1987) E/CN.4/1987/17 at 21.
[93] ICESCR art 2(2).
[94] Eibe Riedel, Gilles Giacca and Christophe Golay, 'The Development of Economic, Social and Cultural Rights in International Law' in Eibe Riedel, Gilles Giacca and Christophe Golay. (eds), *Economic, Social, and Cultural Rights in International Law. Contemporary Issues and Challenges* (OUP 2014) 14.
[95] GC 3 (n 91) [9].
[96] GC 3 (n 91) [10].
[97] ibid.
[98] ibid.
[99] ibid.

whether the core is an international standard or state specific.[100] Given that the CESCR has also indicated that achievement of this core obligation is dependent on states' resources, Craven also doubts if the CESCR can 'produce standards of sufficient precision and flexibility.'[101] These concerns are also raised by the South African Constitutional Court. In *Grootboom,* a case concerning the right to adequate housing, Yacoob J indicated that a minimum threshold for the right to housing could not be determined as it is dependent on the opportunities for enjoyment of the right.[102] Factors relevant to these opportunities include the availability of land, employment levels, income levels and the resources of the country.[103] However, this would suggest, returning to Craven's question, that the minimum core should be considered a domestic obligation that is determined based on the resources of a state, not a bright line international standard. If the minimum core, as proposed by Bilchitz, is seen as a duty to realise the basic needs necessary for survival,[104] it then becomes an obligation for the state to ensure the needs most urgently required for survival are protected.

At the same time, the obligations are still to be progressively realised. This would require continued improvement within the restraints of the state's resources. Such an approach sees the minimum core as relative and having a temporal component.[105] A state would be required to demonstrate that it has done all it possibly could, given its access to resources.[106] Acknowledging that the minimum core is both relative and temporal does not limit its importance in relation to state obligations. Recognising that even small improvements in rights implementation can improve people's lives gives the minimum core a fundamental role in improving standards of living.[107] It allows the most vulnerable in society to be identified and assisted with urgency.[108] As such,

---

[100] Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development* (Clarendon Press 1995) 141.
[101] ibid, 143.
[102] *Republic of South Africa v Grootboom* (2001) SA 46 (South African Constitution Court) [32]
[103] ibid.
[104] David Bilchitz, *Poverty and Fundamental Rights. The Justification and Enforcement of Socio-Economic Rights* (OUP 2007).
[105] Fredman (n 87) 71.
[106] ibid 71.
[107] Bilchitz (n 104) 189.
[108] ibid.

the minimum core can guide where states should prioritise intervention. In this context what constitutes that minimum core will be state specific depending on the current social and economic conditions, the resources available and what measures have been implemented.[109]

It has been suggested that the minimum core has moved away from this idea of fundamental needs that states need to address with the utmost urgency. Langford and King have suggested there has been 'mission creep' over time in relation to the minimum core of rights within the ICESCR.[110] In General Comment 3, it was clear that 'maximum available resources' also applied to assessing if a state had realised the minimum core of a right. The obligation being met if a state had made 'use of all the resources that are at its disposition.'[111] The minimum core began to be described without this qualification, for example in both General Comments 13 and 14.[112] Expanding the minimum core beyond its original statement of the basic necessities for life risks returning the level of state obligations for the minimum core of a right to a level where its achievement will have to be a long term goal for many states. This then raises the concern, as indicated by Hungary during drafting, that states will postpone implementation as the obligations are so extensive.

In relation to the right to food, in General Comment 12, the core of the right to *adequate* food is described as:

> 'The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
>
> The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.'[113]

---

[109] Katie Boyle, *Economic and Social Rights Law. Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020) 58.
[110] Malcolm Langford and Jeff King, 'Committee on Economic, Social and Cultural Rights' in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (CUP 2008) 493.
[111] GC 3 (n 91) [10].
[112] GC 13 (n 54) [57]; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, (11 August 2000) UN Doc E/C.12/2000/4 (GC 14) [43-44].
[113] GC 12 (n 27) [8].

The CESCR also states that the right to *adequate* food 'will have to be progressively realised.'[114] Given the extensive content of the core of the right to food, there is no question that for many states this would take time to achieve.

Returning to the original exposition of the idea of a minimum core for socioeconomic rights, General Comment 3 stated that a country in which a significant number of individuals were deprived of food would likely be in violation of their obligations under the ICESCR.[115] This is a much simpler fundamental obligation in relation to the right to food than the core content of the right to *adequate* food described in General Comment 12. This focus on alleviating hunger as the fundamental obligation of the right to food is echoed in General Comment 12.[116] However, General Comment 12 does not refer to the minimum core of the right to food, rather it defines a core content of the right to adequate food, which will be discussed further below.[117]

General Comment 12, although not explicitly referring to the minimum core of the right to food, does acknowledge a core obligation to mitigate and alleviate hunger.[118] It also states that '[E]very state is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.'[119] Taking the approach of the CESCR in General Comments 3 and 12, it would be reasonable to conclude that the Committee have defined a fundamental obligation for states to ensure that people at the very least have access to sufficient food to prevent hunger and malnutrition. Indeed, the first paragraph of General Comment 12, acknowledges the possible need for 'more immediate and urgent steps' to ensure the 'fundamental right to freedom from hunger and malnutrition.'[120]

---

[114] GC 12 (n 27) [6].
[115] GC 3 (n 91) [10].
[116] Luke Graham, *International Human Rights Law and Destitution. An Economic, Social and Cultural Rights Perspective* (Routledge 2023) 54.
[117] GC 12 (n 27) [8]
[118] GC 12 (n 27) [6]
[119] GC 12 (n 27) [14]
[120] GC 12 (n 27) [1]

Although the CESCR has suggested a core and urgent obligation to alleviate hunger, the choice of the CESCR to refer to a core of the right to adequate food does suggest a central importance of this core. It also suggests a need for some immediacy in relation to states actions to meet these obligations. However, this then raises the question of how the right to freedom from hunger is related to the core of the right to adequate food, and, given the time between General Comment 3 and 12, whether the CESCR was suggesting the minimum core of the right to food is more than just freedom from hunger and malnutrition, and in fact the core of the right to adequate food. This expanded minimum core would validate the critique of 'mission creep' by Langford and King, and that the minimum core has moved away from this idea of fundamental needs that states need to address with the utmost urgency. [121] Although this critique is legitimate and raises issues about how states should prioritise implementation and concerns that states will postpone implementation as the obligations are so extensive, it does not completely invalidate the use of the idea of core content of rights as guidance for implementation and realisation of rights.

The approach of the CESCR in General Comments 3 and 12 suggests the possibility of three components or levels to the obligations states have in respect of the right to food. The first is an immediate and urgent 'core' obligation to ensure people are free from hunger. Based on the comments of the CESCR most states would be expected to achieve unless there were very strong justifications for persistent hunger in their state.[122] This will be referred to as the *right to be free from hunger* in this thesis. Next there are core obligations in relation to the right to adequate food that are to be realised progressively in line with the maximum available resources.[123] States would be expected to prioritise steps to meet these obligations, and in doing so consider the most pressing needs of their state. Because of the lack of clarity from the CESCR as to whether this is now considered the minimum core of the right to food, or something more expansive, in this thesis this second level

[121] Langford and King (n 110) 493.
[122] The obligation to mitigate or alleviate hunger persists even at times of 'natural or other disasters' see: GC 12 (n 27) [6].
[123] GC 3 (n 91) [10].

of obligations will be referred to as the *core of the right to food*. Finally, the other obligations in relation to the right to food are to be progressively realised more gradually. These are obligations that fall outside of the core of the right to food. These obligations will be less of a priority and may also take more time to achieve, as they might include agricultural policy and perhaps programmes of education in relation to nutrition. This gives a degree of temporality, both in terms of when some states may be able to take steps to progressively realise the obligations, as well as the time taken to realise those obligations. Such obligations will be referred to as *obligations to be more slowly realised.*

It is assumed that very few states would be able to justify significant numbers of people going hungry, as they would also be expected to utilise international aid to alleviate such situations.[124] As such the fundamental right to be free from hunger is not a right to be progressively realised but a right of immediate effect. This distinguishes it from the core of the right to food and the other obligations for the right to food, as these are both to be progressively realised, but with varying urgency and priority. After this fundamental component of the right to food, the obligations that are suggested by the core of the right to food will not always be clearly definable and relative to the current socioeconomic status of a state. State action required to meet the core of the right to food in a particular country at a particular time will vary. The nature of these components of the right to food and the obligations they generate for states will be returned to in Chapters 3 and 4.

2.2.4. Monitoring and justiciability of socioeconomic rights

The ICESCR and ICCPR both require states to report on their implementation of the rights they contain through periodic reporting.[125] Green argues that due to the difference in the nature of the rights dealt with by the two Covenants, they require different kinds of indicators for monitoring.[126] It may appear that

[124] GC 3 (n 91) [13].
[125] ICESCR arts 16 and 17; ICCPR art 40.
[126] Maria Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement' (2001) 23 Human Rights Quarterly 1062, 1091.

civil and political rights would require thematic indicators. An example would be if and how legal representation is provided to those being tried for criminal offences. Such a question assessing compliance with Article 14(3)(d) ICCPR requires a qualitative response. Regarding socioeconomic rights, it may be expected that monitoring would be focused on, for example, levels of poverty, homelessness, and hunger. Such monitoring would usually be in the form of a numerical index, demonstrating whether levels are rising or falling.

However, in practice, monitoring of both rights in most cases will require a combination of both statistical and 'thematic' indicators.[127] Statistical data can also be used for monitoring implementation of civil and political rights.[128] Returning to the example above, metrics indicating the number of people who take up legal representation would also be useful. A low take up rate may be an indication that legal representation is not, in practice, available. In the case of the right to food, food security figures may be an obvious statistic to consider, but as discussed in Chapter 3, food security can be seen to have qualitative subjective components, as well as objective numerical components. It is accepted that in the case of socioeconomic rights, that statistics will be important. Yet to capture the most appropriate statistics, this may need new metrics to be developed to ensure the most appropriate data is collected. In the case of the right to food, implementation at an individual level would need to be measured. Individual level measurements are important in addition to household, regional or national level measures as these broader categories can obscure individual hunger and malnutrition.[129]

Related to critiques about the monitoring of implementation are debates about the justiciability of socioeconomic rights,[130] including the right to food. These debates are considered here using examples from the right to food to demonstrate why some of the claims made in relation to the non-justiciable nature of socioeconomic rights are unconvincing. Although the optional protocol to the ICESCR was only adopted in 2008,[131] limiting this as a source

[127] Ibid 1091-2.
[128] For example, Periodic Reports could consider the number of complaints against the police and numbers of prosecutions of police for abuse of power. See Green (n 122) 1092.
[129] Kerstin Mechlem, 'Food Security and the Right to Food in the Discourse of the United Nations' (2004) 10 European Law Journal 631, 635.
[130] Ayreh Neier, 'Social and Economic Rights: A Critique' (2006) 13 Human Rights Brief 1.
[131] Optional Protocol to the ICESCR (n 32).

of jurisprudence concerning socioeconomic rights, and the right to food, regional human rights courts have begun to consider claims concerning aspects of the right to food.[132] Courts in several countries have adjudicated on the right to food as it is included in their national constitutions. The right to food has also been found to be a component of other constitutional rights, such as the right to life.[133]

Yet it is still argued that courts should not be adjudicating on socioeconomic rights. For instance, it is suggested that socioeconomic rights are too vague and not capable of consideration by courts.[134] The UK Government has generally taken the approach that the provisions in the ICESCR are aspirations and so better dealt with through social policy.[135] However, given the ongoing levels of hunger in the world and poverty and food insecurity in developed countries, it is more important than ever that fundamental rights are justiciable. This then gives the power to constrain political decisions that negatively impact socioeconomic rights.[136]

If, as is often the case, these rights are expressed in vague aspirational language, enforcement by the courts may be difficult. The CESCR has indicated in both General Comment 9, which considers the rights in the ICESCR generally, and General Comment 12, specifically concerning the right to food, that socioeconomic rights are justiciable and framework legislation is often an appropriate way of achieving incorporation of these rights.[137] Although there is evidence socioeconomic rights can be adjudicated on and enforced by courts and that the CESCR favours the use of legalisation to

---

[132] For example: *Stanev V Bulgaria* (n 4) [209-210]; *R.R and others v Hungary* App No 36037/17 [2021]; *Sawhoyamaxia Indigenous Community v Paraguay* (n 4) ACommHPR, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria*, Communication no 155/96 (*Ogoni case*); ACommHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication no 276/2003. (*Endorois case*).

[133] FAO, 'Right to Food Lessons Learned in Brazil', (2007) http://www.fao.org/3/a-a1331e.pdf accessed 17 April 2024; Lauren Birchfield and Jessica Corsi, 'The Right to Life is the Right to Food: Peoples Union for Civil Liberties v Union of India and others' (2010) 17 Human Rights Brief 15.

[134] Neier (n 130).

[135] Fredman (n 87); Joint Committee on Human Rights (JCHR) 21st Report (20 October 2004) https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/183/18302.htm accessed 25 January 2024 [52].

[136] Fredman (n 87) 65.

[137] GC 12 (n 27) [29]; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 9: The Domestic Application of the Covenant*, (3 December 1998) UN Doc E/C.12/1998/24 (GC 9) [6-8].

implement socioeconomic rights, questions remain concerning the scope of the role of courts.[138]

The connected concerns of the polycentric nature of socioeconomic rights, as well as the resource implications of courts adjudicating on these rights are often raised. Polycentricity is considered a particular issue for socioeconomic rights.[139] It has been likened by Fuller to a spider's web, with a complex distribution of tensions. Pulling on a strand of the web will distort it, but doubling the strength of pull will not just necessarily result in double the same pattern of distortion.[140] Some of the weaker connections may break, changing the way the web is distorted. Because of this, Fuller suggests polycentricity can be seen as 'many centred.'[141] In practice, numerous variables that are all interconnected means a particular judicial decision can have multiple knock-on effects, requiring extensive judicial comprehension of such effects.[142] However, as Fuller points out even apparently simple cases can result in knock-on effects, especially if a case establishes new precedent.[143] King has argued that many factors should determine when courts can adjudicate on complex issues, suggesting that 'judicial mandate, degree of polycentricity, access to information, relative competency of the courts or its alternatives, and the flexibility of the remedy' should be considered. [144]

Polycentricity is certainly a potential issue in adjudicating the right to food. A judicial decision about the adequacy of, for example, a government plan to tackle nutrition related diseases could have far reaching implications beyond the case at hand.[145] A ruling on obesity policy and nutrition may require the government to focus spending on education, it may require laws about food content, which could then impact the profitability of both food manufacturing companies and supermarkets, with possible knock on effects on employment and the economy. King has contended that social rights

---

[138] Fredman (n 87) 65.
[139] Jeff King, *Judging Social Rights* (CUP 2012) 5.
[140] Lon Fuller, 'The Forms of and Limits of Adjudication' (1978) Harvard Law Review 353, 395.
[141] ibid.
[142] King (n 139) 5-6.
[143] Fuller (n 140) 397.
[144] King (n 139) 210.
[145] Fredman (n 87) 95.

legislation should also be explicit in the obligations it contains and so limit the possible impact of polycentricity.[146] This would delineate the interventions the court could make, and the potential resource implications of such decisions.

Moreover, appropriate resource allocation relates to the issue of the competence and expertise of courts to deal with polycentric issues.[147] However, Nolan and others have argued that this misunderstands the role of judges; their expertise is in reviewing decisions against requirement of the law.[148] Courts can delegate aspects of research and review to individuals with appropriate expertise.[149] In addition, as with the issue of resource constraints, it is part of the role of courts to identify their competence and what should constrain them. The South African Constitutional Court held:

> 'The problems of polycentricity must clearly act as important constraints upon the adjudication process, particularly when the dispute has distributional consequences. But polycentricity cannot be elevated to a jurisprudential mantra, the articulation of which serves, without further analysis, to render courts impotent to enforce legal duties which have unpredictable consequences.'[150]

The final objection considered here is the issue of judicial deference and separation of powers. Social and economic policy has been said to be a matter for the legislature and executive as the elected representatives in a democracy.[151] Such policies, as discussed above are often considered to require more extensive resources for implementation. How governments spend money should therefore be left to elected representatives as a matter of policy. However, as discussed above this idea is inaccurate. A functioning criminal justice system that complies with civil and political rights obligations also requires expenditure and legislation. It must also be remembered, as

---

[146] King (n 139) 104.
[147] ibid 10.
[148] Aoife Nolan, Bruce Porter and Malcolm Langford, 'The Justiciability of Social and Economic Rights: An Updated Appraisal' (August 2007) CHRGJ Working paper available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944 17.
[149] ibid.
[150] R*ail Commuter Action Group & Ors.* v*. Transnet Limited & Ors* Case No. 10968/2001, 6 February 2003 [112].
[151] Fredman (n 87) 64.

discussed above, that there is some level of indivisibility and interdependence of human rights. Without basic socioeconomic rights, many civil and political rights are not going to be fully enjoyed. This can be seen in relation to the jurisprudence of the ECHR. A lack of adequate food has been considered under both Article 2 ECHR,[152] the right to life and Article 3 ECHR,[153] the prohibition of torture, inhuman and degrading treatment and punishment. Such adjudication by the ECtHR indicates that these rights cannot be separated with bright lines in terms of justiciability.

The UK Government has continued to maintain that socioeconomic rights are guidance for government policy, not rights to be considered by the courts.[154] This is despite the apparent lack of clear divisibility of civil and political and socioeconomic rights in terms of obligations and implementation, including the justiciability of these rights. Gearty supports the UK Government's position, indicating that the focus of implementation of socioeconomic rights should be through political means, not legal processes.[155]

Mantouvalou disagrees with this approach, as it ignores the importance of legislation in the debate.[156] She also emphasises that the powers of judicial review are part of a dialogue in a democracy between the branches of government and so can ensure that minorities and the vulnerable are protected, enhancing democratic legitimacy.[157] In addition to the discussion above, King points out that the legislation created by the Government will delineate the nature and limits of judicial intervention. The justiciability of socioeconomic rights will be returned to in Chapter 5, when the possibility of legislation for the right to food in the UK will be discussed.

---

[152] In the case of *Nencheva and Others v Bulgaria* App No 48609/06 (18 June 2013) the ECtHR found a violation of Article 2 ECHR following the death of people in a care home for disabled children and young adults. The deaths were due to poor socioeconomic conditions including food and medicine shortages and a lack of heating.
[153] In the case of *R.R. and others v Hungary* App No 36037/17 (2 March 2021) a violation of Article 3 ECHR was found due to the lack of food provided to an asylum seeker in a migrant transit zone between Hungary and Serbia.
[154] JCHR (n 135) [54].
[155] Conor Gearty and Virginia Mantouvalou, *Debating Social Rights* (Hart 2011) 1.
[156] ibid 89.
[157] Fredman (n 87) 87.

2.2.5. Paternalism and socioeconomic rights

Paternalism is often raised as another possible barrier to the implementation of socioeconomic rights. It is argued that implementing these rights would result in legal systems that infringe peoples' autonomy and free choices.[158] This is especially the case in relationship to policy targeting marginalised groups such as the poor, as well as in the case of policy to target diet related illness.[159]

In the case of food, this may include attempting to manipulate or control what people can and cannot eat, either directly through bans or via increasing prices through taxation of certain products. Currently in the UK, there are food products that cannot be consumed, and certain farming practices are banned. Chlorinated chicken, which will be returned to in Chapter 7, became a concern in the UK post-Brexit.[160] In many countries chlorine washing of carcasses is seen as a technique to ensure chicken produced in fast throughput meat processing plants is pathogen free and so a way to reduce costs.[161] However, in the EU and UK, chicken produced in this way is banned,[162] even though this ban potentially deprives people of the choice to consume this cheaper product consumed by people in other countries including the USA.[163]

All legal systems feature aspects of paternalism with laws that tell us what we can and cannot do and so constrain our liberty. But accepting the

---

[158] See, for example: Lucas Luxinski and Noam Peleg, 'Paternalism in International Human Rights Law' (2022) 33 Duke Journal of Comparative and International Law 1. Martha C Nussbaum, *Women and Human Development. The Capabilities Approach* (CUP 2000), 51.
[159] Rebecca Goldberg, 'No Such Thing as a Free Lunch: Paternalism, Poverty and Food Justice' (2013) 24 Stanford Law and Policy Review 35.
[160] Erik Millstone, Tim Lang and Terry Marsden, 'Food, Brexit and Chlorinated Chicken: A Microcosm of Wider Food Problems' (2019) 90 Political Quarterly 645; Emily Lydgate and Chloe Anthony, 'Brexit`, Food Law and the UK's Search for a Post-EU Identity' (2022) 85 Modern Law Review 1168, 1169.
[161] Kelvin Balcombe, Dylan Bradley and Iain Fraser, 'Consumer Preference for Chlorine-Washed Chicken, Attitudes to Brexit and Implications for Future Trade Agreements' (2022) 111 Food Policy; See also FAO, 'Guidelines for the control of *Campylobacter* and *Salmonella* in Chicken Meat' (CAC/GL 78-2011) and WHO and FAO, '*Salmonella and Campylobacter* in chicken meat. Meeting Report' (2009) https://iris.who.int/bitstream/handle/10665/44211/9789241547901_eng.pdf?sequence=1 accessed 17 April 2024, which both discuss chlorinated water washing of chicken in terms of efficacy or microbial contamination reduction. There is no indication the process is not safe.
[162] Council Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin [2004] OJ L139, art 3; Millstone *et al* (n 160) 648.
[163] Balcombe et al (n 161).

status quo is not a sufficient justification for additional rules limiting autonomy.[164] If, however, we move away from situations such as laws requiring seat belt use, a classic example used in discussions of paternalism, to constitutional rules that prevent discrimination on grounds of sex or race, this now involves issues of justice.[165] The law is no longer preventing an individual choice that predominantly harms that individual. It is limiting the choices of people, so that they cannot choose action that includes harming or limiting the legitimate pursuits of others.[166] This idea is echoed in the work of even those strongly opposed to paternalism. John Stuart Mill considered state interference appropriate as soon as actions harmed others.[167] Arguments objecting to state paternalism that are based in autonomy and liberty therefore acknowledge that these are universal aspirations that should not be limited by the choices, autonomy, and liberty of others.

As already discussed, if you are hungry, unable to go to school as you need to work to support your family, or have no access to health care, your choices and autonomy are being limited. Nussbaum argues liberties and opportunities should be available for all, each person should be seen as an end in and of themselves, rather than being considered a supporter of the ends of others.[168] As such all are deserving of support to ensure they have equal opportunities to exercise their choices and autonomy.[169] This means some political decisions have to be made, and Nussbaum suggests this would include laws against common ways women can be mistreated.[170] However, this may also require laws that work to ensure certain levels of subsistence rights, such as housing, adequate food and health care. Seen in this way, laws and policies to realise socioeconomic rights are not constraints on liberty but enhance people's choices and autonomy.

The discussion above has considered some general critiques and obstacles in relation to the implementation of socioeconomic rights. Although it is clear the right to food has the potential to be an implementable and

---

[164] Nussbaum, *Women and Human Development* (n 158) 53.
[165] ibid.
[166] ibid.
[167] John Stuart Mill, *On Liberty* (The Floating Press 2009, published from a 1909 edition) 18.
[168] Nussbaum, *Women and Human Development* (n 158) 55.
[169] Nussbaum, *Women and Human Development* (n 158) 58.
[170] ibid.

justiciable right, the respect, protect and fulfil framework is insufficient to create a set of clear state obligations that are necessary to realise the right. As discussed, the components of this typology often overlap, typologies are not rights specific, and several alternative typologies have been proposed, leaving room for a lack of clarity for states. The next section of the chapter begins the process of establishing a framework for the right to food that creates clear obligations for states. The process begins with justifying the right to food as a basic moral normative obligation, arguing for a right grounded in human dignity.

3.0. Justifying the right to food as part of elucidating the content of the right

Nickel has argued that the justification of human rights is a three-stage process. First the abstract right, in this case the right to food, is justified.[171] The specific norms are then derived from these more abstract values and demonstrated to be of universal applicability. Finally, the measures needed to implement, protect, and promote these rights are defended and implemented.[172] It is the second part of this process, that is often neglected.[173] This lack of linking the right to food to specific norms explains the lack of connection between the right people have not to go hungry and food policy. Such food policy is created without consideration or incorporation of the obligations the right to food generates. As a result, it is unlikely to ensure the right to food is realised. The next chapter of this thesis will focus on this necessary second step, and then the second part of the thesis will consider implementation of the obligations and norms in the UK. However, before this can be carried out, the right to food first needs to be justified at a more abstract and philosophical level. This process is important as it demonstrates the universal appeal of the fundamental norm that then underpins the second and

[171] Nickel, *Making Sense of Human Rights* (n 1) 3.
[172] ibid.
[173] ibid.

third stages of this process. It also demonstrates that the norms justified are of high priority and, through their universality, resist claims of cultural bias.[174]

Both Nickel and Buchanan have argued for a pluralistic approach to justifying rights. This prevents a failure in reasoning in one argument defeating the candidate right.[175] It also avoids criticisms relating to non-universality of a particular limited cultural,[176] or religious approach.[177] The following discussion will demonstrate that deontological, consequentialist, and minimum core arguments can all justify the right to food. Ultimately the approach of this thesis is of a right to food based in dignity and justified through a deontological argument. However, it is still accepted that consequentialist and expanded minimum core approaches are also valid and normatively sufficient to ensure wide acceptance and implementation of the right to food. The following section begins by making the deontological argument and rejecting narrow political conceptions of human rights. It then considers consequentialist and minimum core arguments indicating why ultimately a deontological approach is preferred. The final part of this section will then consider capabilities theory as a theory to explain the more expansive conception of the right that will be developed in Chapter 3.

3.1. Dignity and the right to food

The UDHR, ICCPR, ICESCR all contain reference to the 'inherent dignity' of human beings in their preambles. Yet, dignity is a contested term and debate continues about its precise meaning and content.[178] Although its content is not clearly and precisely defined, this does not undermine its use as a foundation for justifying a human right.[179] Conceptions of dignity turn on things that make us uniquely human, including agency,[180] the nature and features of a human

---

[174] ibid.
[175] Allen Buchanan, *The Heart of Human Rights,* (OUP 2013) 51; James Nickel, 'Poverty and Rights' (2005) 220 The Philosophical Quarterly 385, 391.
[176] Buchanan (n 175) 77.
[177] Nickel 'Poverty and Rights' (n 175) 391.
[178] Jeremy Waldron, 'Is Dignity the Foundation of Human Rights?' in Rowan Cruft, S. Matthew Liao and Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (OUP 2015) 121.
[179] ibid 136-7.
[180] James Griffin, *On Human Rights,* (OUP 2008), 200-1.

life,[181] and the equality of these features and status amongst all humans.[182] Considering the impact of inadequate food, starvation and hunger are defined and described not only as physiological states, but as something that causes pain and other unpleasant emotions.[183] It is difficult to make choices and realise other rights if you are hungry or unwell due to malnutrition. As such you are not living a dignified life that recognises your inherent worth and equal status as a human, with autonomy to make choices and decisions.

Evidence of hunger and starvation perceived as an affront to human dignity and political morality can be seen throughout history. During ancient wars, hunger was used as a weapon by besieging armies, resulting in desperate acts from those under siege.[184] During periods of starvation in Petrograd (1919-20) people would steal food, even though the penalty if caught was death by firing squad and people ate food known to be poisonous.[185] During periods of poverty in 19th century France, suicide rates increased in line with increasing starvation.[186] These events suggest that hunger and starvation strips a person of autonomy, rational thought, and free choices, and are sources of pain and degradation. They go against the fundamentals of human dignity.

Religious and charitable responses to starvation are also well documented and described.[187] Vernon has argued that the modern 'humanitarian' approach to hunger only developed when 'novel forms of news reporting connected people emotionally with the suffering of the hungry.'[188] In the 19th Century, reports in national newspapers in the UK, such as the Times,

---

[181] John Tasioulas, 'On the Foundation of Human Rights' in Rowan Cruft, S.Matthew Liao and Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (OUP 2015) 54.
[182] ibid 55.
[183] For example, the FAO defines hunger as: an uncomfortable or painful physical sensation caused by insufficient consumption of dietary energy. FAO, 'Hunger and food insecurity' http://www.fao.org/hunger/en/ accessed 12 June 2021.
[184] Pitirim A Sorokin, *Hunger as a Factor in Human Affairs* (University of Florida Presses 1975) 102.
[185] ibid 103.
[186] ibid 105.
[187] For example, Mr Baroody, the Saudi Arabian delegate to the drafting of the ICESCR indicated Islam has provided for the 'sick, aged and those who for various reasons are unable to work' UNGA 727th Meeting A/C.3/SR.727 (10 January 1957) reproduced in Ben Saul, *The International Covenant on Economic, Social and Cultural Rights. Travaux Préparatories 1948-1966* (Oxford University Press 2016) 1828; For Christianity see James Vernon, *Hunger a Modern History* (Belknap Press of Harvard University 2007).
[188] Vernon (n 187) 17.

described in graphic details the effects of starvation. This altered the existing narrative of lazy moral defectives who were not worthy of saving to a narrative of innocent humans starving because of consequences beyond their control.[189] Reporting of the Irish Famine had similar effects on the public conscience in relation to people starving.[190] This change in narrative suggests there is a moral reaction to hunger and that we instinctively know allowing people to starve is morally wrong. The same reaction was seen again during the COVID-19 pandemic, when the Government delayed and debated the provision of free school meals during school holidays to alleviate food insecurity in children.[191] The thought of children and vulnerable people going hungry again touched the nation's conscience. Marcus Rashford, a professional footballer, started a campaign to ensure free school meal provision was sufficient.[192] The food industry stepped in to offer children free meals, food banks stepped in to ensure people had food, and religious organisations distributed food to the vulnerable.[193] People ultimately recognised the moral wrong that hunger and starvation represent.

Although this discussion demonstrates that people see hunger, and allowing people to go hungry, as an affront to dignity and our collective morality, political conceptions of rights could be seen to reject this as a justification for the right to food. Rawls has argued that moral rights are not necessarily human rights. He sees human rights as a special class of 'urgent rights such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience and security of ethnic groups from mass murder and genocide.'[194] His conception of human rights protects only those interests that

---

[189] ibid 19.
[190] ibid 20.
[191] HC Deb 21 October 2020, vol 682m cols, 1130-1177.
[192] Haroon Siddique, 'Marcus Rashford forces Boris Johnson into second U-turn on child food poverty' *The Guardian* (8 November 2020) https://www.theguardian.com/education/2020/nov/08/marcus-rashford-forces-boris-johnson-into-second-u-turn-on-child-food-poverty accessed 12 June 2020.
[193] Abbey Maclure, 'The Leeds Restaurants and Businesses Offering Free Meals for Children During School Half Term' *Yorkshire Evening Post* (23 October 2020) https://www.yorkshireeveningpost.co.uk/news/politics/leeds-restaurants-and-businesses-offering-free-meals-children-during-school-half-term-3013790 accessed 12 June 2021; The Trussell Trust, 'End of Year Stats' https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/ accessed 12 June 2021; The Interfaith Network https://www.interfaith.org.uk/news/covid-19-acts-of-kindness-and-service accessed 12 June 2021.
[194] John Rawls, *The Law of Peoples* (Harvard University Press 1999) 79.

would justify state action violating the sovereignty of another state, including military action, to protect those rights.[195] Moreover Raz considers human rights to be 'rights which set limits to the sovereignty of states, in that their actual or anticipated violation is a (defeasible) reason for taking action against the violator in the international arena.'[196]

These political conceptions of rights are narrow and would not contain some rights that can be justified as required for human dignity. The right to food may at first consideration appear as one such right, especially the more expansive iteration in Article 11(2) of the ICESCR that mentions production, trade, and reform of agrarian systems. It is arguably unlikely that international action would be considered appropriate because the agriculture policy of a state ran contrary to the deemed best practice of the international community.

However, the 'Right to Protect' doctrine was developed by the international community as a consensus about when humanitarian intervention is appropriate.[197] Since its development the UN Security Council (UNSC) has discussed the possibility of humanitarian intervention to deal with hunger. Following Cyclone Nargis in Myanmar in 2009, France proposed providing humanitarian aid to the region by force if the Government of Myanmar continued to refuse and block aid attempts.[198] China vetoed action,[199] but this still suggests in extreme circumstances states would be prepared to take military action to provide food and similar aid. States will also provide air-dropped aid which violates a state's air space, for example during the war in the former Yugoslavia.[200] These examples suggest that in extreme

---

[195] ibid 80.
[196] Joseph Raz, 'Human Rights without Foundations' Oxford Legal Studies Research Paper No.14/2007 (2007) 9.
[197] See, for example: ICISS 'A Framework for Action for the Responsibility to Protect' (12 July 2023) https://www.globalr2p.org/publications/a-framework-for-action-for-the-responsibility-to-protect-a-resource-for-states/ accessed 17 April 2024.
[198] Alex Bellamy and Catherine Drummond, 'Southeast Asia. Between Non-Interference and Sovereignty as Responsibility', in W Andy Knight and Frazer Egerton (eds), *Routledge Handbook of the Responsibility to Protect* (Routledge 2012), 250.
[199] ibid.
[200] Tony Barber, 'West air-drops food for Muslims: US aircraft shower besieged Mostar with 13,000 ration packs after lorry convoy blocked by Croats' *Independent* (24 August 1993) available at https://www.independent.co.uk/news/west-airdrops-food-for-muslims-us-aircraft-shower-besieged-mostar-with-13-000-ration-packs-after-lorry-convoy-is-blocked-by-croats-1463356.html accessed 26 January 2024.

circumstances, the international community would violate another state's sovereignty to prevent people going hungry.

More recently, events in Gaza starting in October 2023, and ongoing at the time of writing, could suggest the international community has moved away from such intervention. Military action in Gaza by Israel, following attacks by Hamas on the 7 of October 2023,[201] have left 2.3 million people without adequate food and water.[202] Multiple UNSC resolutions calling for ceasefires or at least pauses in fighting in Gaza to allow for humanitarian aid have been vetoed.[203] As none of these resolutions have passed, the steps the international community may have taken to enforce a ceasefire and ensure food and other aid reached the people of Gaza are unknown. However, France, the United Arab Emirates and the USA have air-dropped aid into Gaza.[204] Although the efficacy of such measures are questioned,[205] they do suggest the international community is prepared to enter the sovereign space of another state to prevent starvation.

Rawls's political conception of rights is rejected due to its narrow conception. Yet the discussion above demonstrates the right to food would be considered a right even under his narrow conception. Moreover, there are also other political conceptions of rights beyond Rawls's approach. Buchanan argues for a political conception of human rights which describes rights as morally justified legal rights, rather than pre-legal rights.[206] He suggests that rights can be identified by the way rights are used and understood by practitioners.[207] This again would reject Rawls's and Raz's narrow conception

---

[201] BBC News, 'What is Hamas and Why is it Fighting with Israel in Gaza?' (*BBC,* 13 February 2024) https://www.bbc.co.uk/news/world-middle-east-67039975 accessed 15 March 2024.
[202] UN Office of the High Commissioner for Human Rights, 'Over One Hundred Days Into the War, Israel Destroying Gaza's Food System and Weaponizing Food, Say UN Human Rights Experts' (16 January 2024) https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and accessed 15 March 2024.
[203] See, for example: UN Docs S/PV.9552, S/PV.9499 and S/PV.9453 available at: United Nations, 'UN Security Council Meetings and Outcomes Tables' https://research.un.org/en/docs/sc/quick accessed 15 March 2024.
[204] Oren Liebermann and Samantha Waldenburg, 'US and Jordanian Forces Airdrop Aid into Gaza' (*CNN Politics*, 2 March 2024) https://edition.cnn.com/2024/03/02/politics/us-airdrops-aid-gaza/index.html accessed 15 March 2024.
[205] Amnesty International, 'Gaza: Airdrops and Sea Routes are no Alternative to Aid Delivery by Land' (13 March 2024) https://www.amnesty.org/en/latest/news/2024/03/gaza-airdrops-and-sea-routes-are-no-alternative-to-aid-delivery-by-land/ accessed 15 March 2024.
[206] Buchanan (n 175) 11.
[207] ibid 277.

of rights. As discussed above, the right to food is recognised in several international treaties with large numbers of state signatories. It has also been considered by regional human rights courts. This alone, following Buchanan's political approach, justifies the human right to food. It has been considered important enough by the international community to include in human rights treaties and as such is acknowledged as a human right by the state parties to these treaties. It has also been recognised by judges and other legal practitioners in cases relating to the right to food in both national and regional cases.[208] As such, the right to food can also be justified by a political conception of human rights.

3.2. A consequentialist argument for the right to food

Consequentialist arguments such as utilitarianism hold that the moral value of a normative position is determined by its consequences.[209] In the case of food, such arguments are numerous. The right to food, through ensuring all have enough to eat, would have widespread health benefits for both societies and individuals. A population that has a healthy diet, limiting malnutrition and diet related diseases would also have economic benefits for states in terms of reduced health costs and increased productivity of the workforce. More widely, changes to the food system are required to limit climate change impacts, environmental degradation and prevent additional global food crises that can result in civil unrest and mass migration.

Food riots and wars due to food shortages are recorded throughout civilisation.[210] In more recent history it has been recognised by many that ensuring access to food is important to maintain both national and international stability. Boyd Orr, the founder of the FAO, and Henry Kissinger both

---

[208] See for example: *Sawhoyamaxia Indigenous Community v Paraguay* (n 4); *Ogoni Case* (n 132); *Endorois Case* (n 132); *Kishen Pattnayak v State of Orissa* AIR 1989 S.C. 677; and *People's Union for Civil Liberties v Union of India. (*S.C. 2001*) Writ Petition (Civil) No. 196/2001*.

[209] James E Penner and Emmanuel Melissaris, *McCoubery and White's Textbook on Jurisprudence* (5th Edition, OUP 2012) 93.

[210] Sorokin (n 184) 204- 215.

appreciated this important connection. [211] The link between food and peace was demonstrated again in the 2007-8 global food crisis, when people's inability to access food led to riots.[212] The Arab Spring and subsequent Syrian civil war have been in part attributed to food shortages and food price increases.[213] Internal civil war can rapidly become a threat to international peace and security, with the risk of the spread of conflict to adjacent states and also the massive movement of migrants and refugees, which can destabilise other regions. As such, food crises and widespread hunger have the potential to destabilise large global regions. Pragmatically, a right to food is needed to prevent such food crises and prevent such circumstances.

Such arguments can be persuasive in the international political arena. They may persuade states and other international bodies to act, to prevent the type of war and unrest that followed the Arab Spring. However, although these arguments may be persuasive in encouraging states to act, ultimately, they do not provide the fundamental universal moral foundation for the right to food which Nickel suggests is required. Without a strong moral grounding, human rights, even if expressed in law, will not necessarily be considered to carry significant normative weight unless people recognise the underlying moral grounding of the right. [214] Such consequential arguments do not recognise that some actions, no matter how potentially beneficial for society, are not permissible, as there is an underlying moral wrong that we all recognise. For example, some consequentialist theories would permit killing or torture of people to protect the lives of more individuals.[215]

Deontological theories reject these arguments. Acts like murder and torture are fundamental violations of human dignity that cannot be justified. Nagel has argued that moral intuitions about acts that seem simply wrong

---

[211] William D Schanbacher, *The Politics of Food. The Global Conflict Between Food Security and Food Sovereignty* (Prager Security International) 2010) 2; Nora McKeon, *Food Security Governance: Empowering Communities, Regulating Corporations* (Routledge 2015), 2.
[212] Travis J. Lybbert and Heather R Morgan, *Lessons from the Arab Spring: Food Security and Stability in the Middle East and North Africa* (OUP 2013), 357.
[213] Caitlin Werrell, Francesco Femia and Troy Sternberg, 'Did We See it Coming? State Fragility, Climate Vulnerability, and the Uprisings in Syria and Egypt' (2015) 35 The SAIS Review of International Affairs 29, 44.
[214] Nickel, *Making Sense of Human Rights* (n 1) 53.
[215] Alan Dershowitz, 'Tortured Reasoning' in Sanford Levison (ed), *Torture. A Collection* (OUP 2004) 264.

should not be ignored. He suggests that this 'way of valuing individuals, by treating each of them decently, come what may, and demanding such treatment for ourselves, is a vital part of our lives.'[216] Hunger can be considered an intuitive moral wrong, as demonstrated above, by the way societies have reacted to large numbers of people going hungry. Because of this, justifying the right to food as a fundamental moral norm founded in human dignity is preferred to consequentialist arguments.

3.3. The minimal conception of rights includes the right to food

Shue has developed a minimal conception of rights. This is distinct from the political conception of human rights developed by Rawls discussed above. Rather than being a minimal collection of rights that states will violate the sovereignty of another state to protect, Shue's conception consists of security and subsistence basic rights.[217] In his conception the right to subsistence is defined as 'unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter and minimal preventative health care.'[218] Nickel criticises the minimalistic approaches of Schue and Rawls, and proposes a minimal standard that includes education and health, and the need to focus on people being 'participators and contributors.'[219]

This approach to basic rights by Nickel is referred to as the Vance conception, named after the US Secretary of State Cyrus Vance.[220] It is more expansive than Rawls's and Shue's approaches, but it is still based on the idea that human rights are concerned with ensuring a minimally good life.[221] Nickel argues that social rights consist of subsistence, including food, health, and education.[222] He refers to capability theory in his justification for his more expansive Vance conception for these rights.[223] In addition, he does

---

[216] Thomas Nagel, 'Types of Intuition. Thomas Nagel on Human Rights and Moral Knowledge' (2021) 43 London Review of Books 11.
[217] Shue, *Basic Rights* (n 52) 29.
[218] ibid.
[219] Nickel, 'Poverty and Rights' (n 175) 387.
[220] Nickel, *Making Sense of Human Rights* (n 1) 139.
[221] ibid 140.
[222] ibid.
[223] Nickel, 'Poverty and Rights' (n 175) 387.

acknowledge that in most situations, states would be expected to achieve more than this minimal standard.[224] However, arguably, capability theory requires a more expansive conception of rights than Nickel suggests, as will be discussed in the following subsection.

Human dignity requires more than a minimal conception of life, and once a minimum basic standard has been reached, the demands of dignity move on; once everyone has sufficient nutrients to meet their needs, dignity would require a choice of food, the ability to produce and cook your own food, and participation in the food system and agricultural policies of your state. This is echoed in discussions above concerning the minimum core of a right; it is relative to the socioeconomic situation in a state.[225] In addition, once components of the minimum core have been realised, the state would then move on to obligations that are to be more slowly realised, which from the example above would be having a voice in the food system and agricultural policies of your state. As the next section will demonstrate, capability theory requires more than just a minimum core of basic rights and can address some of the concerns raised more generally about the implementation of socioeconomic rights.

3.4. Capabilities and the right to food

Capability theory provides an account of the basic requirements for human dignity, which is informed by what people are able to do and achieve, rather than what they have.[226] It rejects ideas of average Gross Domestic Product (GDP) and growth as indicators of quality of life as these do not account for uneven distribution.[227] The theory also moves away from subjective utility accounts that enquire about people's satisfaction, as people often have preferences that have been adapted to their current status.[228] Capability theory has been used by the UN to develop the Human Development Index, in a move away from GDP.[229] In the case of the right to food, capability theory

[224] Nickel, *Making Sense of Human Rights* (n 1) 141.
[225] Fredman (n 87) 71.
[226] Nussbaum, *Women and Human Development* (n 158) 5-6.
[227] Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 Feminist Economics 33.
[228] Sen (n 83) 62-63.
[229] http://hdr.undp.org/en/content/human-development-index-hdi

provides an account that requires consideration of distribution of resources at an individual level.[230] This captures the true distribution and identifies where redistribution is needed. It also recognises individuals who may be currently excluded and acknowledges the importance of agency and freedom in processes of development.[231]

More specifically, Nussbaum suggests an open-ended list of human capabilities, to be achieved by every person, that provide a minimum account of social justice.[232] Of most relevance to the right to food is the second capability, bodily health, which requires 'being able to have good health, including reproductive health: to be adequately nourished; to have adequate shelter'.[233] However, these capabilities are indivisible, and achievement of some capabilities cannot occur at the expense or neglect of others; to do so is a failure of justice. [234] This resonates with the indivisibility of human rights, and in the case of food, it is apparent that without nourishment through food, other rights cannot be realised.

Nussbaum's conception of capabilities has other synergies with human rights law. It provides a theory for the 'philosophical underpinning for basic constitutional principles,'[235] for the implementation of both civil and political rights and socioeconomic rights. Capability theory also provides a level of achievement that should be obtained which can then be compared across communities and countries.[236] This enables monitoring of the implementation of rights, addressing one of the concerns discussed in Section 2. Monitoring implementation of the right to food in this way would ensure that all people have the food they need to function as an individual and live a dignified life. Failure to do this would result in violation of the right to food.

Paternalism was discussed as a potential concern around the implementation of socioeconomic rights in Section 2.2.5. above. Although we already accept legal limits concerning the food we are able to access and consume, it remains a critique that needs to be addressed. Capability theory

---

[230] Nussbaum, 'Capabilities as Fundamental Entitlements' (n 227) 39.
[231] ibid 34.
[232] ibid 40.
[233] Nussbaum, *Women and Human Development*) (n 158) 78.
[234] Nussbaum, 'Capabilities as Fundamental Entitlements' (n 227) 40.
[235] Nussbaum, *Women and Human Development*) (n 158) 97.
[236] Nussbaum, 'Capabilities as Fundamental Entitlements' (n 227) 40.

addresses these concerns, by indicating the aim of paternalistic rules is to prevent harm to others. Such a limitation on liberty is accepted even by strong opponents of paternalism as discussed above. Capability theory indicates that preventing harm to others is the guide to when we can impose limits on liberty. The normative account should protect the 'equal worth of the liberties of others' and should be constructed to include 'forms of economic empowerment that are crucial to making the liberties truly available.'[237] This may mean that highly processed foods known to have negative health impacts,[238] are restricted or regulated. It may require regulation to ensure people pay the true cost of their food that includes negative externalities such as environmental costs.[239] However, these measures would be put in place to ensure that all have the capabilities to make choices freely. As such this is an enabling form of paternalism ensuring all have access to the resources that enable living a dignified life, while preventing harm.

Capability theory also aids in discussing concerns that progressive realisation delays implementation and undermines the utility of socioeconomic rights. Capability theory is a partial theory of justice; it specifies a minimum but does not aim to deal with the situation once this minimum has been reached.[240] It does however acknowledge that each nation has to set their own thresholds, and that thresholds do not require equality in material conditions.[241] Dignity is not a finite set point, it is relative, and will be based on the socioeconomic conditions of the country. For people to feel valued and live a dignified life they need to feel their equal worth is acknowledged without those conditions. Such acknowledgement will be manifest by the measures that exist to ensure they have a meaningful functioning life as well as choices and capabilities.

This section has justified the abstract moral right to food, underpinned by the foundational principle of human dignity. It is an affront to human dignity to live in hunger and allowing people to go hungry does not acknowledge their

---

[237] ibid 55.
[238] For example, see: Bernard Srour *et al,* 'Ultra-processed Food Intake and Risk of Cardiovascular Disease: Prospective Cohort Study' (2019) 365 British Medical Journal 1451.
[239] For example, see: Andrew Simms, *Tescopoly* (Constable 2007) 203-230.
[240] Martha C Nussbaum, *Creating Capabilities. The Human Development Approach,* (Belknap Harvard 2011) 40.
[241] ibid 41.

equal moral worth. This section also began the process of addressing some of the critiques of socioeconomic rights, and more specifically the right to food, in part using capability theory. This lays the foundation for the normative framework to be developed in the next two chapters.

4.0. Elucidating the content of the right to food

The next step in the development of a novel normative framework, is considering the specific norms that derive from the abstract right to be free from hunger. These norms need to be determined and then demonstrated to be of universal applicability.[242] To elucidate the specific norms that follow from the abstract moral right, Chapter 3 will engage with the language of Article 11 ICESCR. Although an expansive article compared to many, it still offers scope for interpretation in terms of its precise normative content.

The next chapter will therefore consider the interpretation of the right to food by regional human rights bodies, and national courts. However, this jurisprudence is limited. As a result, the next chapter will also engage with the reports of special rapporteurs and general comments related to the ICESCR. In addition to considering human rights rulings and documents, the chapter will also consider literature and policy documents relating to food security, an area much developed by the FAO. The primary aim of the discussion below is not to engage extensively with issues and debates around food security, but to introduce the concept and justify the need for a framework for the right to food, given the extensive nature of food security literature, as well as the development of the SDGs. The SDGs also seeks to end hunger and improve the global food system.

4.1. Food security and the right to food

Food security first appeared in a World Food Conference report in 1975.[243] The term was related to issues of availability and access to food. The use of

[242] James Nickel, *Making Sense of Human Rights* (n 1) 3.
[243] Lucy Jarosz, 'Comparing Food Security and Food Sovereignty Discourses' (2014) 4 Dialogues in Human Dignity 168, 170.

the term security acknowledged that a lack of food was a threat to peace and potentially could result in riots and wars.[244] It is also suggested that 'securitisation' of food was a way to encourage governments to act,[245] as security is an important broader issue for people and their governments. However, in the last 49 years, food security has become a contested term and field.[246] It is complicated by the huge number of disciplines that research food security,[247] and the number of resulting definitions and methodologies for its measurement.[248] This thesis will focus on policy and guideline documents from two UN bodies, the FAO and the Committee on World Food Security (CFS). The outputs of these organisations are acknowledged as significant by the Special Rapporteurs on the right to food.[249] Their public policy documents often consolidate discussions and debates between states, NGOs and international organisations,[250] and so represent an international deliberative process.

The 2009 FAO definition of food security is widely accepted and states that 'food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary and food preferences for an active and healthy life.'[251] Food security is not simply a factor of enough food being produced. Total calorific production has kept up with population growth, and the world continues to produce enough calories to more than adequately meet the needs of the entire global population.[252] Yet, the UN reported in 2023 in the most recent State of Food Security and Nutrition in the World Report, that in 2022 3.1 billion people could

---

[244] McKeon (n 211), 2; Schanbacher (n 211), 2.
[245] Stephen Steadman, 'Food and Security, in Rosamond Naylor (ed), *The Evolving Sphere of Food Security* (OUP 2014) 349.
[246] Tim Benton, 'The Many Faces of Food Security' (2016) 92 International Affairs 1505, 1507.
[247] Ibid 1508.
[248] Mechlem (n 129) 633; Environment, Food and Rural Affairs Committee, 'Securing food supplies up to 2050: the challenges faced by the UK' – EFRA report HC 213-I Incorporating HC 266, Session 2008-09 Published on 21 July 2009 – fourth report of session 2008-9 House of Commons [6].
[249] Michael Fakhri, 'The International Political Economy of the Right to Food' in Nehal Bhuta (ed) *Human Rights and Global Governance* (Oxford University Press, forthcoming 2019) 2 and 37.
[250] Mechlem (n 129) 633.
[251] Food and Agricultural Organisation, '2009 Declaration of the World Summit on Food Security' (16-18 November 2009) Un Doc WSFS 2009/2.
[252] Walter Willett *et al,* 'Food in the Anthropocene: the EAT-Lancet Commission on Healthy Diets from Sustainable Food Systems' (2019) 393 The Lancet 447.

not afford a healthy diet and that 900 million people faced severe food insecurity.[253]

Given production of insufficient food is not the cause of global malnourishment and food insecurity, the FAO indicates there are four pillars of availability, access, stability, and utilisation.[254] Availability is affected by levels of production. It is also affected by net trade and stock levels in a state.[255] Access can relate to the economic ability to purchase food or the ability of vulnerable people to obtain food.[256] It may also relate to wider issues of infrastructure allowing physical access to food. Stability of food supply refers to a household's abilities to withstand adverse circumstances and 'shocks' and maintain their food security.[257] Finally, utilisation relates to the nutritional aspects of food security.[258] It can refer to the nutritional content and dietary diversity; although sufficient calories may be being consumed, the provision of trace elements and vitamins may be inadequate. In 2014, over 2 billion people in the world suffered from micronutrient deficiencies, in some cases causing devastating effects on their health.[259] Utilisation of food can also be affected by the availability of clean water, cooking facilities and uneven distribution of food to members of the household.[260]

4.2. Security and food

Food security, in using the word 'security' suggests a fundamental issue for both individuals and governments. Yet, as Waldron has pointed out we almost never address what security means.[261] Wolfendale has argued that security

---

[253] FAO, IFAD, UNICEF, WFP and WHO, '*The State of Food Security and Nutrition in the World 2023'* (2023) https://www.fao.org/3/cc3017en/cc3017en.pdf accessed 15 March 2024.
[254] FAO, '2009 Declaration' (n 247).
[255] FAO 'World Food and Agriculture Statistical Pocket Book 2019' (2019) https://www.fao.org/3/ca6463en/ca6463en.pdf accessed 15 March 2024, 15.
[256] ibid 16.
[257] ibid 20.
[258] ibid 22.
[259] Food and Agriculture Organisation of the United Nations and the World Health Organisation 'Rome Declaration on Nutrition' (19-21 November 2014) Un Doc ICN2 2014/2 [12(d)]
[260] FAO, 'Statistical Pocket Book' (n 255) 22.
[261] Jeremy Waldron 'Safety and Security' (2006) 85 Nebraska Law Review 454, 455.

as a basic human right includes moral security.[262] This account adds to Waldron's description of both objective and subjective security.[263] Objective security, which is focused on by policy makers, is achieved when people are safe and secure and subjective security is when they feel safe and secure. Moral security adds a third component, objectively met when peoples' basic interests are regarded as morally important by society and subjectively met when people believe their basic interests will be accorded moral recognition by others.[264]

In addition, Wolfendale indicates that 'to feel insecure is to be insecure',[265] which also has practical consequences for food security. One of the pillars of food security, stability, concerns itself with the ability of households to react to shocks. This could be determined by measures of economic reserves; however, research suggests that peoples' subjective feelings are also highly relevant to how they react and potentially recover after such shocks. Households' subjective resilience has been shown to be related to peoples' decisions as to how to react to shocks and stressors, but also as to how well they engage with programmes aimed at aiding recovery.[266]

Feeling secure, in a subjective way, including subjective moral security, is important to ensure people can engage in planning for their future, engage in programmes aimed at improving food security, and ultimately live a dignified life free from the fear of hunger and food insecurity. Being aware that you have a right to food, a justiciable right, would also likely add to feelings of security and dignity. Nagel has argued that we do not only care about what happens to us, but what may be done to us.[267] Knowing we may be left to go hungry or not have access to adequate food would make us feel insecure. An important part of dignity is equal moral worth, and recognition of this status, for example knowing that we cannot be allowed to starve by our government, provides security by public recognition of this equal status. A normative framework for

---

[262] Jessica Wolfendale, 'Moral Security' (2017) 25 Journal of Political Philosophy 238.
[263] Waldron, Safety and Security (n 257).
[264] Wolfendale (n 262) 238.
[265] ibid 240.
[266] Bene *et al.* 'Is Resilience a Useful Concept in the Context of Food Security and Nutrition Programmes? Some Conceptual and Practical Considerations' (2016) 8 Food Security 123,
[267] Thomas Nagel, 'Personal Rights and Public Space' (1995) 24 Philosophy and Public Affairs 83, 91.

the right to food must also recognise the importance of people knowing their access to adequate food is protected. As such, the fundamental underpinning justification for the right to food, based in human dignity, should guide policy to address food security in a way that also considers subjective and moral security as well as objective security. This will ensure people not only have adequate food, but that they feel this will continue and they are treated as moral equals.

4.3 The necessity of a novel normative framework for the right to food

Having now considered the right to food, as it appears in Article 11 ICESCR and the FAO definition of food security, it is apparent there is considerable overlap in the two definitions.[268] The right to food and food security both require nutritious food in sufficient quantities, cultural acceptability, and that access to food is considered as part of the adequacy of food.[269] This raises the question as to whether both food security and the right to food are needed to eliminate global hunger, to ensure people have access to adequate food, and to create a sustainable global food system. There is more policy focus and public discourse around food security,[270] which suggests food security is a more developed concept and should be a sufficient approach to achieve the right to food.

However, food security is ultimately a technical policy goal. [271] It is often based on economic considerations and, as a policy, it can be easily changed unlike a legal right.[272] Mechlem has suggested that the right to food adds ideas of dignity to discussions about food security.[273] Johnson has highlighted more features of a rights-based approach to food systems, highlighting the following aspects:

---

[268] Mechlem (n 129); Hope Johnson, *International Agricultural Law and Policy* (Edward Elgar 2018) 46
[269] Johnson (n 268) 46.
[270] Mechlem (n 129) 633.
[271] Johnson (n 268) 46.
[272] Mechlem (n 129) 643.
[273] ibid.

> '[P]rocedural standards, frameworks for understanding food system actors' roles, clearer conceptual interlinkages with the environment, greater focus on the route causes, an understanding of mutually reinforcing dynamics between human freedoms, and the ability to empower.'[274]

In addition to these factors, using a human rights framework provides foundations of equal moral worth and dignity. It could ensure that all have access to food, without discrimination, and that when the right is violated, there is the possibility of a judicial recourse. This all ensures food security is achieved in a way that focuses on the needs of people, rather than economics and science. Having established that the right to food adds dimensions to food security, this section will finish by considering why, since the UN Millennium Development Goals (MDGs) and then the SDGs have been adopted, a framework for the right to food is necessary.

4.4. Sustainable Development Goals

The SDGs are a set of goals and associated targets adopted by the UN in 2015. They consist of 17 goals and 169 targets that aim to build on, and finish what the MDGs could not achieve.[275] Of most relevance to the right to food is the second SDG, Zero Hunger.[276] This SDG includes targets related to hunger, malnutrition, production of food, trade, and food commodity markets.[277] However, the SDGs overlap and issues relating to food and food production will also have relevance for: SDG 1: end poverty; SDG 6: clean water and sanitation; SDG 7: affordable and clean energy (due to the use of food products as biofuels); SDG 8: sustainable economic growth; SDG 12: sustainable consumption and production problem; SDG 13: urgent action to combat climate change; SDG 14: life below water; and SDG 15: life on land.[278]

---

[274] Johnson (n 268) 4.
[275] UNGA, 'Transforming Our World: the 2030 Agenda for Sustainable Development' (25 September 2015) UN Doc A/Res/701 25/9/2015 (preamble).
[276] United Nations Department of Economic and Social Affairs, 'Goal 2' https://sdgs.un.org/goals/goal2 accessed 29 January 2024.
[277] ibid
[278] United Nations Department of Economic and Social Affairs, 'The 17 Goals' https://sdgs.un.org/goals accessed 29 January 2024.

Although the interconnected nature of the SDGs has been described as an improvement on the MDGs, it is still suggested they do not go far enough to acknowledge scientific and policy links between the goals.[279] In addition, although the SDGs may indicate links between areas of development, policy makers often operate in silos, and so decisions for one development goal may negatively impact other goals.[280] In addition to concerns about the lack of policy coordination hampering the achievement of the SDGs, there are concerns about the underpinning principles of the SDGs and how they relate to human rights.

The Resolution of the UNGA that adopted the SDGs acknowledges universal respect for human rights and human dignity, and indicates the SDGs are grounded in the UDHR.[281] However, in general questions have been raised about the lack of connections between human rights and human development agendas.[282] The SDGs are an apparent improvement on this, with some of the SDGs linking to human rights, for example SDG 2.[283] However, despite the supposed underpinning of the SDGs with human rights, Elver has suggested that SDG 2 is focused on production of food and the right to food is about much more. Indeed, of the eight targets associated with SDG 2, six relate to production and trade issues.[284] Although it must be acknowledged that since the implementation of the SDGs the World Trade Organization (WTO) has adopted a Ministerial Decision in December 2015 that removed export subsidies for agricultural products and restraining export measures that have an equivalent effect.[285] Such subsidies had a negative effect on a number of factors related to the right to food, including masking

---

[279] David Le Blanc, 'Towards Integration at Last? The SDGs as a Network of Targets.' (DESA Working Paper No. 141, ST/ESA/2015/DWP/141, March 2015) https://www.un.org/esa/desa/papers/2015/wp141_2015.pdf accessed 29 January 2024, 2.
[280] Måns Nilsson *et al*, 'Policy: Map the Interactions Between Sustainable Development Goals' (2016) 534 Nature 320, 321
[281] UNGA 'Transforming Our World' (n 275) [8] and [10].
[282] Philip Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals' (2005) 27 Human Rights Quarterly Review 755.
[283] Markus Kaltenborn et al, 'Introduction' in Kaltenborn *et al* (eds), *Sustainable Development Goals and Human Rights* (Springer Open 2020) 2.
[284] United Nations, Sustainable Development Goals, Goal 2: Zero Hunger' https://www.un.org/sustainabledevelopment/hunger/ accessed 29 January 2024.
[285] WTO, Ministerial Decision of 19 December 2015. Export Competition. (WT.MIN(15)/45. WT/L/980.)

market signals and inequitable distribution of benefits.[286] This is potentially a as a positive step in reducing preventing trade distortions in agricultural markets. Although, there is no mention in the WTO Ministerial Decision that this was a response to the SDGs, the right to food or the need to improve food security of developing countries and LDCs,[287] and so the role of the SDGs in changing these trade rules can be questioned.

The SDGs are unlikely to realise the right to food without considering the obligations generated by the right to food. There are concerns that the SDGs focus on market mechanisms,[288] and that more generally development takes a step-by-step approach to achieving goals.[289] For example, trade liberalisation may eventually improve food security. However, human rights require some immediate action to the maximum available resources, and so ensuring that the fundamental right to be free from hunger is not violated requires immediate reaction. States cannot wait for long term policies to work. This creates tension in the two approaches.[290] As Elver argues, the SDGs have a role, but require human rights to be put at the centre of policies for development.[291] As such, the SDGs and socioeconomic rights can be considered mutually reinforcing, [292] but both are necessary and so the SDGs do not remove the need for a framework for the implementation of the right to food.

5.0. Conclusion

This chapter has justified a right to food based in human dignity and deontological arguments. Deontological approaches were preferred over other

---

[286] UN Economic and Social Council, 'Progress Towards the Sustainable Development Goals' (3 June 2016) UN Doc E/2016/75 [19].
[287] WTO Ministerial Decision (n 281).
[288] Jose Luis Vivero Pol and Claudio Schuftan, 'No Right to Food and Nutrition in the SDGs Mistake or Success?' (2016) 1 BMJ Global Health e000040. doi:10.1136/bmjgh-2016-000040.
[289] Thomas Pogge and Mitu Sengupta, 'Assessing the Sustainable Development Goals from a Human Rights Perspective' (2016) 32 Journal of International and Comparative Social Policy 83, 84.
[290] ibid.
[291] UNHRC, 'Report on Sustainable Development Goal 2 and the Right to Food, Hilal Elver' (2019) UN Doc A/74/164 [2].
[292] Ibid [76].

conceptions of rights because hunger, as an affront to human dignity, provides the moral underpinning that gives the right to food its moral and normative power. We universally recognise it is wrong to let people starve, and it is this that ultimately provides a strong grounding for the right to food and so justifies the normative content that will be developed in the following chapters.

It was acknowledged that the right to food can be justified by other conceptions of rights and consequentialist arguments, as this pluralistic approach to its justification demonstrates that the right to food is a basic moral right that is universal and can resist claims of cultural bias. Consequentialist arguments also serve a purpose in persuading political action in both the domestic and international arena, as the benefits of policy changes become apparent. Such pragmatic arguments will at times be returned to in subsequent parts of this thesis, because of their potential utility in galvanising action.

In addition to justifying the right to food more generally, some of the critiques and difficulties in implementation of socio-economic rights were considered. The discussion confirmed socioeconomic rights are human rights, rather than policy guidance. They are indivisible and interdependent with other human rights and justiciable. Although socioeconomic rights are to be progressively realised, they also contain fundamental obligations that should be achieved by states with the utmost urgency. Specifically in relation to the right to food, the wording of General Comments 3 and 12 suggest three levels of obligation: the fundamental right to be free from hunger; the core of the right to food which is to be progressively realised to the maximum available resources with priority; and obligations to be more slowly realised.

The chapter also engaged with the concept of food security and the sustainable development goals. Food security is a contested term, but the approach of the FAO is widely accepted, and the work of the FAO will be considered in developing the normative framework for the right to food. The concept of food security, in using the word security, also relates to discussions about what it means to be secure, and this includes objective, subjective and moral security. However, although the right to food and achieving global food security have similar aims, ultimately, the right to food is necessary, as it grounds approaches in human dignity and provides an approach that

potentially enables justiciability and challenges to violation of the right. Having justified both the necessity of the right to food, and the fundamental moral norm, the next chapter will continue the process for development of a novel normative framework for the right to food. It will engage with the second part of the process Nickel describes for justifying human rights, deriving the specific norms from the fundamental right.[293]

[293] Nickel, *Making Sense of Human Rights* (n 1) 3.

Chapter 3

Domestic Standards and State Obligations for the Right to Food

1.0. Introduction

Chapter 2 undertook the process that Nickel has described as justifying an abstract value or norm - in this case, the right to food.[1] This was done using a pluralistic approach. Such an approach provides a grounding for the basic moral norm for the right to food for the largest possible audience and ensures maximum agreement and compliance. Ultimately the previous chapter argued in favour of a deontological approach indicating that the right to food is grounded in human dignity. The next two stages Nickel describes during the justification of human rights are: 1) determining the specific norms that derive from the more abstract values, and 2) determining the measures needed to implement, protect, and promote these rights.[2]

This chapter and the next undertake the process of determining the specific norms that derive from the basic moral right to food. These chapters will use the basic moral norm grounded in human dignity to inform the standards and state obligations that stem from the basic moral right to food. This process will also use examples of how the right might be implemented and approaches that may be used. The final stage of Nickel's approach to justifying human rights is largely dealt with in the second half of the thesis. In the final three chapters, specific measures, policy approaches, and possible legislation to implement the right to food in the UK are suggested.

The next two chapters will consider Article 11 of the International Covenant of Economic Social and Cultural Rights (ICESCR). Six standards that need to be elucidated to define the obligations the right to food imposes have been identified. These are:

---

[1] James Nickel, *Making Sense of Human Rights* (2nd edn, Blackwell Publishing 2007) 3.
[2] ibid.

1. The right to be free from hunger,
2. The right to adequate food,
3. Nutrition,
4. Production,
5. Trade, and
6. International cooperation.

Given the extensive nature of these obligations, this chapter will discuss the first four standards and Chapter 4 will discuss the final two standards. This division is based on the first four standards focusing more on areas that involve domestic implementation and policy, although it is acknowledged international cooperation and trade are still relevant to the first four standards. The last two standards cannot be considered outside the arena of international cooperation and international law and so will be the specific focus of the next chapter.

The approach taken in the next two chapters is a new approach to addressing the right to food and its content. It aims to identify areas that states need to engage with to ensure their food policy complies with the obligations created by the right to food. It not only breaks down the right to food into standards to guide policy development, but it also guides the nature of state obligations in relation to the immediacy with which they should be realised. Continuing the argument from the previous chapter concerning states levels of obligations in relation to the right to food, this chapter will argue that the right to food includes a right to be free from hunger. Although Article 2 ICESCR indicates that the rights in the ICESCR are to be progressively realised,[3] given the wording of Article 11 ICESCR and the cases considered by international human rights courts, it is apparent the right to be free from hunger, rightly understood, should be of immediate effect.

The novel approach adopted in this chapter will also return to the discussion in Chapter 2 regarding the core as obligations to be achieved progressively but with priority. Such obligations relate to ensuring people have

[3] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 2.

access to a sufficient and nutritious diet and such policy may be aimed at addressing the effects of poor nutrition and nutritional diseases. Although this aspect of the standard of nutrition is part of the core and should be addressed as a matter of priority, policy such as nutrition education programmes may be ongoing longer-term obligations, and not necessarily part of the core of the right to food.[4] In addition, other standards identified as part of the right to food require extensive changes to global food systems and supply chains. These components can only be progressively realised more slowly, as changes in agricultural systems, supply chains and international initiatives take time. So, although they may require action with a degree of urgency, it is acknowledged their achievement is inherently a longer-term goal.

This chapter begins by reviewing the text of Article 11 ICESCR and then moves to describe each of the four standards most relevant to domestic obligations for the right to food. It should be noted that the discussion below is not expected to be a complete evaluation of all points states may consider under each of the standards; examples are used to demonstrate the issues states may engage with and to illustrate why standards may contain components obligations both within the core of the right to food as well as obligation that are to be more slowly progressively realised.

2.0. Article 11 ICESCR

The process that Nickel describes as determining the specific norms from more abstract values will help convert the standards contained in the ICESCR into rules. This is a process that both Dworkin and Waldron consider necessary.[5] It allows the standards for implementation of the abstract right to

[4] In the previous chapter the levels of obligation are a right to be free from hunger which is of immediate realisation, a core of the right to food as stated in General Comment 12 of the CESCR, to be progressively realised with priority. See: UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN Doc E/C.12/1995/5 (GC 12) [8]; and obligations to be more slowly progressively realised. General Comment 3 indicates that states should 'as a matter of priority' satisfy minimum core obligations. Committee on Economic, Social and Cultural Rights, General Comment No.3: *The Nature of State Parties' Obligations (Article 2 para 1)* (14 December 1990) E/1991/23 (GC 3) [10].

[5] Ronald Dworkin, *Justice for Hedgehogs* (Belknap Harvard 2011) 338; Jeremy Waldron, *Torture Terror and Trade-Offs. Philosophy for the White House* (OUP 2010) 279.

food to be identified and their content elucidated with consideration of the moral standards involved. This ultimately aims to enable the right to be justiciable and enforceable by courts.

The right to food, as stated in Article 11 ICESCR, will be the focus of this process. This is the most expansive international provision detailing the right to food, and states:

> *'1. The States Parties to the present Covenant recognize 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of* ***international co-operation*** *based on free consent.*
> *2. The States Parties to the present Covenant, recognizing the* ***fundamental right of everyone to be free from hunger,*** *shall take, individually and through* ***international co-operation****, the measures, including specific programmes, which are needed:*
> *(a) To improve methods of* ***production****,* ***conservation*** *and* ***distribution of food*** *by making full use of* ***technical and scientific knowledge****, by disseminating knowledge of the* ***principles of nutrition*** *and by developing or reforming agrarian systems in such a way as to achieve the most* ***efficient development and utilization of natural resources;***
> *(b) Taking into account the problems of* ***both food-importing and food-exporting*** *countries, to ensure an* ***equitable distribution*** *of world food supplies in relation to need.'*[6]

The bold words indicate the standards that have been identified and require elucidation. These words can be further grouped, and the following six 'key' standards will be considered (ordered as they appear in the text- italics highlight words directly from the text of Article 11 ICESCR):

[6] ICESCR art 11, emphasis added.

1. *Adequate food*.
2. *The fundamental right of everyone to be free from hunger.*
3. *Production*, which embraces the standards highlighted relating to *conservation, technical and scientific knowledge* and the *efficient development and utilization of natural resources*, all of which relate to methods of agriculture and food production.
4. Nutrition, which is taken as a standard on its own; it could possibly relate to the adequacy of food, but also the ways in which food is produced and processed.
5. Trade, which considers the standards of *equitable distribution* and *the needs of food-importing and food-exporting countries* as well as *distribution of food.*
6. *International cooperation* is the final standard.

These standards will be considered in turn, using the General Comments of the Committee for Economic, Social and Cultural Rights (CESCR) the reports of the Special Rapporteurs for the right to food, regional human rights jurisprudence, and reports of the UN Food and Agricultural Organisation (FAO) and the Committee on Food Security (CFS). In addition to these reports, relevant academic literature will be considered. These sources will inform the discussion of the possible content of the standards and the obligations they may generate. The discussion will consider the standards not in the order listed above (in the order that they appear in Article 11 ICESCR) but in an order related to the nature of the state obligations they generate, beginning with the right to be free from hunger which is to be immediately realised. The chapter then moves to adequacy of food, which is most closely related to freedom from hunger, before finally addressing nutrition and production.

3.0. The fundamental right to be free from hunger

Article 11 ICESCR refers to both a right to be free from hunger and a right to adequate food. However, it is not clear from the text of Article 11 if these are interchangeable terms for a single standard or if they are two standards that potentially require distinct obligations. Alston acknowledges that Article 11

ICESCR contains two distinct norms but has suggested the right to food is much more than a requirement for a sufficient package of nutrients as could be implied by the right to be free from hunger. He argues that the right to be free from hunger and the right to adequate food should be treated as synonymous.[7] His reason for this being that the more expansive obligation encapsulated by the right to adequate food is most consistent with the values contained in the Universal Declaration of Human Rights (UDHR). More specifically, according to Alston, the role of human dignity in the UDHR 'makes it clear that the normative thrust is towards progressive improvement rather than a static concern with the satisfaction of bare needs.'[8]

One reason for the inclusion of these two phrases was to add support for the 1960 FAO Freedom from Hunger Campaign.[9] At the same time as the ICESCR was being drafted, the FAO, under the leadership of Binay Ranjan Sen, attempted to engage governments with the worldwide problem of food insecurity.[10] The FAO contributed to the drafting of Article 11(2) and utilised the opportunity to emphasise the need to tackle global hunger.[11] The use of word hunger in Article11 ICESCR intentionally mirrored the name of the FAO campaign in an attempt to add legal force to their sustained and prolonged campaign to tackle global food insecurity.[12]

The Special Rapporteurs for the right to food have not been conclusive on the relationship between the right to be free from hunger and adequate food. Ziegler, when working as Special Rapporteur for the right to food, stated 'the right to food and the right to freedom from hunger are human rights,'[13] implying two rights. Yet neither of the subsequent Special Rapporteurs for the right to food took this approach. De Schutter described the right to adequate food as the way to alleviate hunger.[14] Elver stated that the ICESCR defines

---

[7] Philip Alston, 'International Law and the Human Right to Food' in Phillip Alston and Katarina Tomaševski (eds), *The Right to Food* (Martinus Nijhoff 1984) 32.
[8] ibid 33.
[9] ibid.
[10] David Shaw, *World Food Security* (Palgrave Macmillan 2007) 77.
[11] Alston (n 7) 33; ibid.
[12] Shaw (n 10) 77.
[13] UNCHR 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' (2005) UN Doc E/CN.4/2005/47 [5].
[14] UNGA 'Right to Food Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver' (2013) UN Doc A/68/288 [8].

the 'right to food as a distinct and fundamental right to be free from hunger and to have sustainable access to food.'[15] This phrasing suggests she viewed freedom from hunger and adequate food as overlapping norms, or even a single norm within the right to food, in contrast to Ziegler.

During drafting, freedom from hunger was considered as a separate fundamental principle. The delegates discussed freedom from hunger specifically and often related it to human dignity and acknowledged its importance to enable other rights and capabilities to be achieved.[16] Hunger is a more emotive term than 'a need for adequate food.' It appeals to ideas of discomfort, weakness, and suffering. As such, it is suggested that the use of this term was deliberate and indicates the fundamental importance of eradicating hunger.

During the Committee discussions several delegates mentioned phrases echoing this proposed reading of Article 11 ICESCR. For example the delegate from Chile stated 'Man could not….have a sense of his own dignity if he was suffering from hunger.'[17] The Israeli delegate confirmed 'that the principle of freedom from hunger was of paramount importance',[18] and the Colombian delegate 'remarked that hunger, together with disease and ignorance, was a cause of unhappiness and strife in the world.'[19] Although initially doubting the need for a separate provision dealing with freedom from hunger, after listening to discussions regarding the levels of hunger in the

---

[15] UNHRC 'Report of the Special Rapporteur on the Right to Food, Hilal Elver' (2014) UN Doc A/HRC/28/65 [2].

[16] The Commission on Human Rights, 184th Meeting, 'Proposals for Additional Articles to be Inserted in Part II of the Draft Covenant' (19 May 1950) UN Doc E/CN.4/SR.184, as reproduced in Ben Saul, *The International Covenant on Economic, Social and Cultural Rights. Travaux Préparatoires 1948-1966* (Oxford University Press 2016) 83-4; Commission on Human Rights, Report to the ESC on the Seventh Session of the Commission 'Annex I Draft International Covenant on Human Rights' Article 19 (16 April-19 May 1951) Un Doc E/1992, as reproduced in Saul 855, UNGA, '1232nd Meeting, Report of the ECOSOC (A/5503), (15 October 1963) UN Doc A/C.3/SR.1232 as reproduced in Saul 2246; UNGA, 'Report of the Third Committee to the General Assembly. Provision on the Right to Freedom From Hunger' (10 December 1963) UN Doc A/5655 as reproduced in Saul 2309.

[17] UNGA '1232nd Meeting' (n 16) [13], as reproduced in Saul (n 16) 2247.

[18] UNGA, '1264th Meeting. Proposal to Include an Article on the Right to Freedom from Hunger in the Draft Covenant on Economic, Social and Cultural Rights' (15 November 1963) UN Doc A/C.3/SR.1264 [6] as reproduced in Saul (n 16) 2250.

[19] UNGA, '1267th Meeting Proposal to Include an Article on the Right to Freedom from Hunger in the Draft Covenant on Economic, Social and Cultural Rights (continued)' (18 November 1963) UN Doc A/C.3/SR.1267 [10] as reproduced in Saul (n 16) 2255.

world the delegate from the USSR indicated its inclusion would be ‘a positive step.’[20]

The discussion in the next subsection will consider regional human rights jurisprudence and argue that freedom from hunger is the most fundamental and minimal obligation in relation to the right to food. It has close links to the fundamental right not to be subjected to degrading treatment and the right to life; hunger, as suggested during the drafting of the ICESCR, is an affront to human dignity. Yet, although suggesting that freedom from hunger is a fundamental and minimal component of the right to food, this thesis is not arguing for a minimalistic conception of the right. Government obligations for the right to food exist beyond ensuring everyone is free from hunger. Alston in making his argument that the right to be free from hunger is part of the more expansive right to adequate food raised concerns that focusing on hunger would allow governments to think that ensuring a minimal standard of life was sufficient to meet their obligations.[21]

However, embracing the right to be free from hunger as a fundamental norm does not allow states to delay introducing measures to address the other standards. As discussed in Chapter 2, and as stated in Article 2 ICESCR, state parties to the Covenant are under an obligation to take steps to the maximum of the available resources to realise the rights the Covenant contains.[22] This would require steps to achieve progressive realisation of the other standards identified, and as discussed in Chapter 2, depending on the nature of the obligation, socioeconomic status of the country and the steps necessary for realisation, the speed this occurs will vary.

The right to be free from hunger, as a fundamental norm for the right to food emphasises the affront hunger is to human dignity. As discussed in Chapter 2, it is both hunger itself as well as allowing people to go hungry that can contribute to this affront to human dignity. As a fundamental component of the right, it indicates no state should allow people to go hungry and not take immediate steps to address this hunger. It also reinforces the obligation that government policy cannot be regressive in terms of people’s ability to access

[20] ibid, [16] as reproduced in Saul (n 16) 2256.
[21] Alston (n 7) 34.
[22] ICESCR art 2.

food and so risk increasing levels of hunger.[23] For example, the UK Government removed COVID-19 related weekly top-up payments to Universal Credit, a social security payment, in September 2021.[24] This step was taken despite concern that it would result in increased numbers of people being unable to afford food and so cause hunger.[25] Reports of increased financial hardship, including going without food did follow the removal of the uplift.[26] Olivier De Schutter, the UN Special Rapporteur on Extreme Poverty and Human Rights at the time, criticised this as a regressive step in relation to the UK's obligations for an adequate standard of living. Such steps can only be justified after a risk assessment showing they are 'compelling, reasonable and proportionate.'[27] He doubts this was the case, and as such the action would not conform to international human rights law.[28] In addition, the removal of these top up payments, which caused people to be unable to afford food, may also violate the UK's obligation in relation to the fundamental right to be free from hunger.

This thesis does however acknowledge that in individual or state emergency situations, the means available to address hunger may be limited. In some very extreme circumstances, it may be that food aid is provided in ways that do not conform with ideas of human dignity and moral security, due

---

[23] GC 3 (n 4) [9].
[24] See, for example: Andrew Mackley, Frank Hobson and Rod McInnes, 'Coronavirus: Legacy Benefits and the Universal Credit Uplift' (House of Commons Library Briefing Paper Number 9246, 28 May 2021) https://researchbriefings.files.parliament.uk/documents/CBP-9246/CBP-9246.pdf accessed 25 March 2024.
[25] Thomas Weeks, Emily Spoor and Rory Weal, 'Dignity or Destitution' (*Trussell Trust*, 2021) https://www.trusselltrust.org/wp-content/uploads/sites/2/2021/02/dignity-or-destitution-UC-standard-allowance-report-final.pdf accessed 2 September 2021; Human Rights Watch, 'Letter from Human Rights Watch to UK Parliamentarians Regarding Impending Cut to Social Security Support' (2 September 2021) https://www.hrw.org/sites/default/files/media_2021/09/Universal%20Credit%20-%20HRW%20Letter%20to%20MPs%20-%20September%202021.pdf accessed 5 September 2021.
[26] Christians Against Poverty, MP Briefing: Initial Impact Revealed of End of the Universal Credit Uplift' (14 December 2021) https://bynder.capuk.org/m/6668ab70911b3c5e/original/UC_uplift_impact_brief_Dec_2021.pdf?_gl=1*irb4l6*_ga*MjA4MjIxMzAzNi4xNzExMzYwNjc5*_ga_JDHF1MTESF*MTcxMTM2MDY3OS4xLjEuMTcxMTM2MTc0NS41NS4wLjA.*_gcl_au*MTcxMTU2NTMyNS4xNzExMzYwNjc5 accessed 25 March 2024.
[27] Patrick Butler, ''Unconscionable' Universal Credit Cut Breaks Human Rights Law Says UN Envoy' *The Guardian* (16 September 2021) available at https://www.theguardian.com/society/2021/sep/16/unconscionable-universal-credit-cut-breaks-human-rights-law-says-un-envoy accessed 21 September 2021.
[28] ibid.

to the situation. In addition, aid provided may not always be compliant with the other obligations and standards within the right to food, such as nutrition, production, and adequacy. The provision of such food is acceptable only in an emergency to relieve hunger; it only discharges a state's obligations in relation to the fundamental right to be free from hunger. A framework for the right to food underpinned by human dignity requires steps to achieve the right to food also respect human dignity. However, given the affront to dignity that is caused by hunger, as well as the risk to life, hunger should be alleviated even if the *only* available means does not do so in a way that respects human dignity and moral security. It should also be remembered that obligations in relation to the other standards in the normative framework remain. In the case of those obligations related to the core of the right to food they should continue, where possible to be progressively realised.

During the first months of the COVID-19 pandemic in the UK, food parcels were supplied to those told to shield from the virus and not leave their homes.[29] There were many criticisms of some of the boxes provided, including the nutritional content, inappropriate food for Muslim families, and poor quality of the food.[30] This demonstrates that the obligations generated by the right to be free from hunger need careful definition to ascertain whether obligations in relation to nutrition and cultural appropriateness are included in the fundamental right to be free from hunger and therefore subject to immediate realisation, rather than progressive realisation. This will be discussed in the following sections. Before that, it is first necessary to defend and analyse the right to be free from hunger as a fundamental norm and clarify what obligations it creates for states.

[29] GOV.UK, 'Over 1 Million Food Boxes Delivered to Those Most at Risk from Coronavirus' (6 May 2020) https://www.gov.uk/government/news/over-1-million-food-boxes-delivered-to-those-most-at-risk-from-coronavirus accessed 21 September 2021.
[30] Good Law Project, 'Government Outsourcing of Food Parcels Forced Clinically Vulnerable to Shield Without Food' (17 December 2020) https://goodlawproject.org/news/food-parcels/ accessed 21 September 2021.

3.1. The right to be free from hunger: a fundamental right necessary for human dignity

As described above, the right to be free from hunger is a component of the right to food that has not been extensively considered by the Special Rapporteurs. However, the inclusion of components of the right to food in other international treaties, and the jurisprudence of regional human rights bodies, suggest the right to be free from hunger is a basic and necessary component for human dignity. As discussed in Chapter 2, elements of food provision and the right to food have been included in international conventions and treaties as well as the UDHR.[31]

In addition to the acknowledged fundamental importance of food at international level, the three main regional human rights treaty bodies have considered cases where people could not access sufficient food. This is despite the regional human rights treaties not containing specific references to the right to food, or the right to be free from hunger.[32] In the case of the European Court of Human Rights (ECtHR), the right to food has featured in cases[33] under Article 3 of the European Convention of Human Rights (ECHR), which prohibits torture, inhuman or degrading treatment and punishment.[34] The African Commission on Human and People's Rights (ACmHPR) and Inter-American Court of Human Rights (IACtHR) have also considered the right to food whilst adjudicating on breaches of rights of indigenous people, dispossessed of their ancestral lands. Each of these bodies' jurisprudence in relation to food will be considered in turn.

---

[31] Universal Declaration of Human Rights (adopted 10 December 1948) United Nations General Assembly (UNGA) Res 217 A(III), art 28. See also, for example: International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)* (12 August 1949) 75 UNTS 135 art 26; Convention on the Elimination of All Forms of Discrimination Against Women, (adopted 18 December 1979) UNTS Vol. 1249, p. 13; Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) A/RES/61/106 art 28; Convention on the Rights of the Child (adopted 20 November 1989) UNTS Vol. 1577, p. 3.

[32] Alston (n 7) 27.

[33] For example, see: *Stanev V Bulgaria* App No 36760/06 [GC] (17 January 2012); *R.R and others v Hungary* App No 36037/17 (2 March 2021) [201-2].

[34] Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) Council of Europe, ETS No 5, art 3.

In the case of *Stanev v Bulgaria,* the ECtHR included being forced to live with insufficient, poor-quality food was part of the degrading treatment the complainant was subjected to whilst living in a psychiatric institution.[35] *Stanev's* living conditions were generally poor, with the court highlighting the inadequate heating, lack of bathroom facilities, outdoor toilets which were dangerous to access and communal clothing, rather than individual's clothing being laundered and returned to them. The court also noted that the 'food was insufficient and of poor quality.'[36] This treatment was considered by the court to be degrading and 'was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance or driving them to act against their will or conscience' [37]

This suggests a psychological component to the right to food. Denial of access to sufficient food can affect peoples' health and ability to function. But it can also cause humiliation and fear. Even so, in *Stanev,* the ECtHR does not elucidate what amounts to sufficient or good quality food. Nutrition is likely to be a component of this, as the court refers to a report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which visited the facility where *Stanev* lived. The report specifically noted the lack of milk, eggs, fruit, and vegetables, as well as the failure to provide for special diets.[38]

In his complaint *Stanev* also refers to the lack of choice in the food and not being able to aid in its preparation,[39] which indicates that for him, food is more than just adequacy in terms of sufficient calories and nutrients. However, the ECtHR does not address this point any further. Being presented with food with no choices or ability to cook could add to the sense of humiliation and a failure to recognise more social and cultural aspects associated with food. Regardless of the limited comment by the ECtHR, the inclusion of inadequate food as a component of the degrading treatment that was found to violate Article 3 ECHR, indicates that insufficient food is not just a question of a

[35] *Stanev v Bulgaria* (n 33) [201-2].
[36] ibid [209].
[37] ibid [203].
[38] ibid [79].
[39] ibid [22].

negative physical impact. It suggests that food has significance beyond a simple caloric physiological calculation and can impact people's dignity and sense of worth. As such, beyond the emergency situations discussed at the start of this section, the fundamental right to be free from hunger, in more stable situations may require something beyond food that provides sufficient calories for survival.

In the more recent case of *R.R and others v Hungary* the ECtHR has again ruled that the inability to obtain sufficient food was a violation of Article 3 ECHR. The complainant was subjected to this degrading treatment whilst confined in the Röszke transit zone at the Hungarian Serbian border for four months.[40] Specifically, *R.R.* had been separated from his family whilst fleeing Iran. He had applied for asylum in Hungary but had then withdrawn the application to reunite with his family in Serbia and re-enter Hungary together. As *R.R.* had previously applied for asylum in Hungary, he was housed, but was not considered entitled to material assistance and was not provided with food.[41] The ECtHR found that this lack of food, leaving him begging, taking food from dustbins, and intermittent charity support from non-governmental organisations (NGOs), was a violation of Article 3 ECHR.[42]

R.R. was not detained in the same way as *Stanev*. He could leave the zone and return to Serbia, but to remain with his family he had to stay in the zone. As such, like *Stanev* the court noted he was in a state of extreme poverty and 'wholly dependent' on the state for food.[43] *R.R.* again indicates the relationship between a lack of food and dignity. However, in this case, it was the lack of food alone, rather than part of more extensive degrading living conditions that was a violation. The court stated the Hungarian Government 'failed to have due regard to the state of dependency in which he lived there.'[44] The Court also criticised the lack of formal agreement with NGOs working in the zone to ensure consistent food provision and also the lack of proper assessment of *R.R.*'s situation.[45] This would also suggest that in situations of

[40] ibid [1].
[41] ibid [21].
[42] ibid [57].
[43] ibid [42].
[44] ibid [57].
[45] ibid [55] and [57].

potential food shortage, reliance on charities and other NGOs providing food is not a substitute for government involvement, unless it is formalised to ensure its adequacy. This could have impact on what the obligations of the governments of developed countries, where reliance on food banks is rising.[46]

At the time of writing the ECtHR has only found violations of Article 3 ECHR, in relation to the provision of food for those detained in psychiatric institutions or prisons,[47] or asylum seekers subjected to specific legal provisions and regimes that make them entirely dependent on the state.[48] However, the ECtHR has indicated that in severe circumstances poor living standards due to poverty, including inadequate food, outside of situations of detention may amount a violation of Article 3 ECHR.[49] Currently, in the UK, there are rising levels of hunger, food insecurity and food bank usage.[50] This is recognised to largely be due to inadequate income.[51] As I have argued elsewhere in more detail, certain aspects of the UK benefit regime may now mean the UK is violating Article 3 ECHR.[52] Those subjected to the 'treatment' of benefit caps and sanctions, which the UK Government is aware often force people into poverty and hunger, may well reach the threshold for degrading treatment that is a violation of Article 3 ECHR.[53]

Turning now to the ACmHPR and the IACtHR, both have considered the right to food of indigenous people dispossessed of their ancestral lands. In

---

[46] For more details, especially in the UK see: Butler detailing De Schutters recent comments (n 27) and also the comments of the previous UN Special Rapporteur for Extreme Poverty and Human Rights see Philip Alston, 'Statement on the Visit to the UK' (*UN Office of the High Commissioner for Human Rights*, 16 November 2018) https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E accessed 2 April 2019.

[47] See for example: *Stanev v Bulgaria* (n34) and for prisoners see, for example*: Stepuleac v Moldova* App No 8207/06, Merits and Just Satisfaction (6 November 2007); *Korneykova and Korneykov v Ukraine* App No 56660/12, Merits and Just Satisfaction (24 March 2016).

[48] M.*S.S. V Belgium and Greece* App No 30696/09 [GC] Merits and Just Satisfaction (21 January 2011) deals with an asylum seeker not detained but wholly dependent on Greece for subsistence.

[49] See for example, *van Volsen (Francine) v Belgium* App No 14641/89, Merits, (9 May 1990); *Budina v Russia* Appl No 45603/05, Admissibility (18 June 2009).

[50] The Trussell Trust, *Emergency Food Parcel Distribution in the UK: April 2022 – March* 2023 (2023) https://www.trusselltrust.org/wp-content/uploads/sites/2/2023/04/EYS-UK-Factsheet-2022-23.pdf accessed 30 January 2024.

[51] Food is often the first essential people cut back on when their income falls. See: Katie Pettifer and Michelle Patel, 'FSA 22-06-09 Household Food Insecurity Main Report' (*FSA*, 15 June 2022) https://www.food.gov.uk/print/pdf/node/9711 accessed 18 July 2022.

[52] Clare James, 'Food, Dignity and the European Court of Human Rights' Legal Studies Published online 2023 doi:10.1017/lst.2023.34.

[53] ibid.

Yakye Axa Indigenous Community of the Enxet-Lengua people v Paraguay the IACtHR unanimously stated that the right to food was inherent in the right to life.[54] The IACtHR ruled that the right to life also included the state not allowing conditions that prevent people from achieving the right to life;[55] the condition in this case was the deprivation of ancestral lands that provided food for the community. In *Sawhoyamaxa Indigenous Community v Paraguay*, the IACtHR again stated the lack of access to land resulted in an inadequate diet and that Paraguay had violated the right to life and was required to provide food aid.[56]

The ACmHPR, in the cases of the *Ogoni* people[57] and the *Endorois* people[58] have also considered the right to food as part of the rights of indigenous people dispossessed from their land. In the case dealing with the pollution of Ogoniland by the oil industry, the ACmHPR indicated the right to food was implicit in Article 4, the right to life, Article 16, the right to health and Article 22, the right to economic, cultural, and social development of the African Charter.[59] The ACmHPR also indicated these rights are breached if the government itself causes contamination of food sources, or allows third parties to cause contamination, and so prevent people feeding themselves.[60] This also suggests a richer conception of the right to food. For some communities, the ability to continue to produce food as their main way of feeding themselves may be part of the fundamental right to be free from hunger.

This was reiterated in *Endorois*, which indicated that in similar circumstances, it was not sufficient for the Kenyan government just to provide

---

[54] *Yakye Axa Indigenous Community of the Enxet-Lengua People v Paraguay* Merits, reparations and costs Judgement of the Inter-American Court of Human Rights 29 March 2006 27 February 2002 (*Yakye Axa Case*)
[55] ibid [161].
[56] *Case of the Sawhoyamaxia Indigenous Community v Paraguay*, Merits, reparations and costs Judgement of the Inter-American Court of Human Rights 29 March 2006 [160-176] (*Sawahoyamaxia Case*).
[57] ACommHPR, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria*, Communication no 155/96. (*Ogoni* case)
[58] ACommHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication no 276/2003. (*Endorois case*).
[59] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).
[60] *Ogoni case* (n 57) [64-66].

food aid; 'the capabilities and choices of the *Endorois* must improve for the right to development to be realised'. [61] In the *Ogoni* case, it was not clear if the ACmHPR considered these rights to be related to the people as an indigenous population who had been removed from their ancestral lands. However, in the *Endorois* case, the ACmHPR does consider the history and link of the affected peoples to their land, and that they are a 'people' with collective rights.

These cases, coming from relevant regional human rights courts, mirror this seminal moral idea that underpins the basic moral norm for the right to food: food is necessary for a dignified life. Given the fundamental nature of this requirement and the resultant indivisibility of the right to be free from hunger from the realisation of other rights, this right should be of immediate realisation, to allow everyone to live a dignified life. However, what is not clear from the jurisprudence is which parts of the right to food are part of the fundamental right to be free from hunger and so ought to be immediately realised. The *Stanev* case suggests a richer conception of sufficient food, including elements of choice and preparation. The *Yakye Axa, Sawhoyamaxa Indigenous Community, Endorois*, and *Ogoni* cases, all relating to indigenous groups, also suggest sourcing of food is also an important part of its sufficiency.

These cases also acknowledge that in extreme cases state provided food aid has a role to play, for example in the *Sawahoyamaxia Case,* the ACmHPR indicated Paraguay was required to provide food aid. In addition, as discussed above, such aid may be necessary in emergencies, such as the early days of the COVID-19 pandemic. Yet, from the jurisprudence discussed above, it is not clear what is required of this food aid in terms of, for example, nutritional content and cultural preferences. In some cases, provision of food containing sufficient calories to meet physiologic needs may be sufficient to meet the requirement for the fundamental right to be free from hunger. For example, as briefly discussed in Chapter 2, the Indian Constitutional Court has recognised the right to food as part of the right to life, resulting in grain distribution.[62] Such an approach in some circumstances may be sufficient to

[61] *Endorois case* (n 58) [283].
[62] Lauren Birchfield and Jessica Corsi, 'The Right to Life is the Right to Food: Peoples Union for Civil Liberties v Union of India and Others' (2010) 17 Human Rights Brief 15.

discharge a government's obligations in relation to the fundamental right to be free from hunger, but in other situations, the jurisprudence discussed above suggest more may be required.

If a right is to be made of immediate realisation, the state obligations it generates need clear definition. This requires an answer to the question as to whether the provision of food aid with sufficient calories is enough to meet this requirement, or does it require access to a choice of nutritious food that may also be culturally appropriate? Is ensuring groups of people can continue to produce food in traditional ways part of the fundamental right to be free from hunger? To explore these questions further the discussion will now consider the relationship between hunger, food security and moral security, touched upon in Chapter 2.

3.2. Hunger and security

The most widely accepted definition of food security does not specifically mention hunger but states that, 'food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary and food preferences for an active and healthy life.'[63] However, if the requirements for food security in this definition are met, people would clearly be free from hunger. This FAO definition of food security also echoes the idea from the case of *Stanev* that sufficient food is more than just sufficient calories to prevent immediate starvation. In addition, it states the importance of dietary and food preferences as well as access to a variety of ways of accessing such food.

Yet in an emergency, a food parcel may be sufficient to prevent a violation of the right to be free from hunger. In acute situations such as natural disasters, famines or mass displacement following war, provision of limited foodstuffs, such as grains, may be the most practical and realistic emergency solution to ensure people have sufficient calories and are not starving. Nevertheless, the World Food Programme (WFP) has acknowledged that

[63] Food and Agricultural Organisation, '2009 Declaration of the World Summit on Food Security' (16-18 November 2009) Un Doc WSFS 2009/2.

simply feeding hungry people is not an appropriate long-term approach to tackling hunger and nutritional needs. Although the WFP still provides more traditional food aid in emergencies, it is shifting from the idea of food aid (direct food provision) to food assistance (cash first approaches), to provide more extensive long-term support to address the causes of hunger.[64]

In contrast the Government in the UK faced extensive criticism in relation to its direct emergency food provision during the COVID-19 pandemic. In this unprecedented and emergency situation food was provided to those unable to go shopping due to them being very vulnerable to the virus.[65] It was also provided to those in receipt of free school meals when schools were closed.[66] Academic criticism was largely due to the quantity and quality of the food in the parcels.[67] The highly critical public response online,[68] suggests the inadequacy of the parcels tapped into a more fundamental point about how to determine the adequacy of government responses to hunger. It has been established above that hunger is an affront to human dignity, and so the question becomes, how to address that hunger in a way that restores and preserves human dignity. We will now return to issues of moral security to assist with the clarification of government obligations in relation to preventing hunger in a way that is underpinned by human dignity.

As discussed in Section 4.2 of Chapter 2, security can be considered to consist of three components: objective, subjective and moral security. These components are not mutually exclusive. Objectively, food security is achieved when people can access sufficient food that meets their dietary and cultural preferences, as indicated in the FAO definition. Subjective security would require people to feel that they are able to do this. Moral security adds an additional component, objectively met when people's basic interests are

---

[64] World Food Programme, 'Food Assistance: Cash and In-Kind' https://www.wfp.org/food-assistance accessed 17 April 2024.
[65] Geraldine McNeill *et al*, 'Inside the Box: An Analysis of the UK's Emergency Food Distribution Scheme' (*Global Academy of Agriculture and Food Systems,* 13 April 2022) https://www.ed.ac.uk/global-agriculture-food-systems/gaafs-news/blogs/inside-the-box-an-analysis-of-the-uk-s-emergency-f accessed 1 February 2024.
[66] ibid.
[67] Rachel Thompson, 'Photos of Free School Meal Packages in the UK Spark Outrage Online' (*Mashable,* 12 January 2021) https://mashable.com/article/free-school-meals-parcels accessed 1 February 2024; McNeill *et al* (n 65).
[68] ibid.

regarded as morally important by society and subjectively met when people believe their basic interests will be accorded moral recognition by others.[69] Moral security can explain why a lack of nutritious food is related to human dignity outside of the potential physiological and physical harm a lack of food can cause. In the UK, providing poor quality food parcels, as occurred during the COVID-19 pandemic, failed to provide subjective moral security as well as objective food security.[70] People relying on charitable food parcels and food banks are unlikely to feel society is considering and respecting their basic needs and welfare.

To be treated as not morally equal in the way one can feed oneself is not going to provide moral security. Failure to ensure people can obtain the nutrients needed to be healthy, is treating someone as though their basic needs are not morally important.[71] This lack of moral security is also an affront to human dignity. In a society where most people have sufficient money to go to a market or store to purchase food they choose, to be given charitable food parcels does not provide people with equal objective moral security. In this situation society is allowing the interests and welfare of some to fall below a common standard of having a degree of choice about what you eat.

In a country where there is acute famine, food aid consisting of a package of sufficient calories would ensure people are not hungry. It would provide objective and moral food security by ensuring that all have availability to some food to ensure immediate objective food security and prevent starvation. The moral security of all in this situation is being respected by provision of that aid, if all have equal access to the aid, and it is provided without discrimination. Longer term, as acknowledged by the WFP, a move to other ways of ensuring food security might be necessary, to ensure all have access to a diet that also contains sufficient nutrients. This would ensure longer term achievement of objective food security, alongside moral security, by ensuring access to food that meets people's dietary requirements.

---

[69] Jessica Wolfendale, 'Moral Security' (2017) 25 Journal of Political Philosophy) 238.
[70] ibid.
[71] Wolfendale has argued that objective moral security requires a person's interests and welfare to be regarded by her society as morally important (ibid).

In contrast, in a developed nation such as the UK, moral security requires cash first approaches. The most dignified way to address suffering due to acute and chronic objective food insecurity and to ensure people feel morally secure and of equal concern to others, is to make sure they have sufficient income to feed themselves a nutritious diet. This focuses on how food is accessed, rather than availability. The situation in the UK is not one of famine with a complete lack of food availability. There is no shortage of food for people to access if they can afford it, and so it is how people access food to meet their needs that is the consideration in terms of moral security and dignity. The right to be free from hunger, outside of exceptional circumstances such as the COVID-19 pandemic, requires people to be able to go and purchase food, as others do. Providing sufficient income for this is required for moral security and an approach underpinned by human dignity.

This discussion also engages with ideas of egalitarianism. An extensive discussion of egalitarian ethics is outside the scope of this thesis. However, it is pertinent at this point to recognise that fairness and respect, as features of egalitarianism, can conflict.[72] You feel respected based on how people treat you whereas fairness requires no one be advantaged or disadvantaged.[73] When looking at the case of unconditional welfare benefits the way these two principles may conflict becomes apparent.[74] It may be seen as unfair that people who have made choices in their lives considered to be poor and found themselves struggling economically should receive the same support as those that are considered to have been unlucky. However, respect requires that people should not be subjected to invasive or disrespectful questioning or processes to obtain support, regardless of the circumstances that have led them to needing that support.[75] Wolff argues that in these cases, respect should be prioritised, even if some may consider this to result in unfair outcomes.[76] If people do not have sufficient access to food, they should be provided with the means to access that food, regardless of the reasons for the

[72] Johnathan Wolff, 'Fairness, Respect, and the Egalitarian Ethos' (1998) 27 Philosophy and Public Affairs 97, 106.
[73] ibid 106-7.
[74] ibid 107.
[75] ibid 11
[76] ibid.

lack of access. This again respects their dignity and ensures their moral security.

Egalitarianism can also be used to help better define the content of the food that is required to realise the fundamental right to be free from hunger. Anderson has argued that if capabilities are being prioritised, they should be selected on the basis that they enable people to avoid or remove themselves from 'oppressive social relationships,' and to enable people to function as equal citizens.[77] This again will be situation and person specific, but demonstrates that calories, protein, and micronutrients will all need to be considered in the medium and long term. Even in emergency situations, the right to be free from hunger would require states to ensure people receive nutrition to continue to be able to function and lead a dignified life, after the initial risk of starvation is alleviated. Longer term, the right to be free from hunger requires additional nutrients to be provided even in emergency situations.

Capability theories are one group of theories that can assist in clarifying the level of nutrition that is required to lead a dignified life. As such, they can help better define obligations in relation to the fundamental right to be free from hunger. Capability theories were introduced in Section 3.4 of Chapter 2. They specify a minimal level of resources that need to be met for a person to fulfil their capabilities,[78] and so can inform the nature of resources that need to be provided to alleviate hunger whilst allowing someone to live a dignified life. Capability theory acknowledges, by assessing what individuals need to fulfil certain capabilities, that the actual nature of the food individuals need will vary due to their physiological needs. This in turn will vary with stage of life, health status and economic and social factors, such as the nature of an individual's work.[79] It is also acknowledged that each nation would set their own thresholds for this minimum, and that thresholds do not require equality in material conditions.[80] As such the threshold of sufficient food that enables

[77] Elizabeth S Anderson, 'What is the Point of Equality?' (1999) 109 Ethics 287, 316.
[78] Martha C Nussbaum, *Creating Capabilities. The Human Development Approach* (Belknap Harvard 2011) 40.
[79] For example, see GC 12 (n 4) [9].
[80] Nussbaum (n 78) 41.

someone to meet the basic capabilities and live a dignified life and with both objective, subjective and moral security will vary from state to state.

3.3. Obligations of states in relation to hunger

The discussion above has indicated that the right to food contains a fundamental norm that people should be free from hunger. It also suggested that the nature of government obligations in response to hunger needs to maintain people's dignity and preserve their objective, subjective and moral security. However, the nature of this obligation needs further clarification. Hunger is not always an affront to human dignity. There are some who choose to go hungry, often to lose weight to address health issues, or as a form of protest or hunger strike. It is the choice that is important. People still have access to food to enable them to live a dignified life; they choose for fully informed reasons not to eat. It is the lack of ability to feed oneself that is the violation of human dignity and the right to food.

Indeed, in some circumstances, preventing hunger may be a violation of human dignity. Feeding of those that have eating disorders or are on hunger strike are outside the scope of this thesis and discussion, as they engage with issues of medical ethics, mental capacity, and consent. They do however have the potential to be a violation of human dignity.[81] This demonstrates it is not hunger *per se* that is a violation of human dignity. The violation is the lack of ability to access sufficient food; it may be an individual's choice to then not utilise and consume that food, resulting in hunger, but the hunger itself, is a choice and not a violation of human dignity. Forcing someone to consume food may itself violate human dignity. As such, the government obligation generated from the fundamental right to be free from hunger is not just to ensure no one is hungry, through the provision of a minimal package of nutrients. The obligation is to ensure all can access sufficient food to meet

[81] See for example: *Nevmerzhitsky v Ukraine* App No 54825/00 (5 April 2005); *Ciorap v Republic of Moldova* Application App No 12066/02 (19 June 2007); Jamal Barnes, 'Force-Feeding and the Legacy of Torture in the 'War on Terror'' (2019) 23 International Journal of Human Rights 1074; Beverly Clough, 'Anorexia, Capacity, and Best Interests: Developments in the Court of Protection Since the Mental Capacity Act 2005' (2016) 24 Medical Law Review 434.

their needs in a dignified way, which will be relative to the socioeconomic status of the country, culture, and the demands of maintaining objective, subjective and moral security. However, as acknowledged above in section 3.0, in extreme emergency situations in any state, regardless of socioeconomic status, this may not be possible. In such situations, the priority is preventing hunger, as this is the ultimate affront to human dignity as well as a threat to life. Where possible the provision of food should be done in a way that is not an affront to dignity, but this may not be possible. The priority of states would be to feed people. Whether how this was done would be considered a violation of the right to be free from hunger would relate to what was feasible and reasonable in each situation.

4.0. Adequate food

This chapter will now consider the three remaining standards most relevant for the domestic implementation of the right to food: adequate food, nutrition, and production. At this point, it must be acknowledged that these remaining standards overlap. Adequate food will need to be nutritionally sufficient and the methods of production of food can affect their nutritional value. Indeed, General Comment 12 indicates:

> 'The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates with a minimum package of calories, proteins and other specific nutrients.'[82]

As discussed in Chapter 2, General Comment 12 indicates the core content of the right to adequate food is:

[82] GC 12 (n 4) [6].

> ‘The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
>
> The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.’[83]

Both these definitions suggest adequate food is an expansive standard. Its obligations overlap with obligations in relation to nutrition and production. General Comment 12 also indicates that the adequacy of food includes: its sustainability, ensuring a supply of food for future generations;[84] the availability of sufficient quantity and quality of food as well as its cultural acceptability;[85] and a mixed nutritious diet, free from adverse substances, meeting the needs of each individual.[86] General Comment 12 also discusses the importance of availability in terms of either producing or purchasing one’s food and also the need for economic and physical accessibility.[87] These components contribute to a very expansive definition of adequate food that includes issues relating to production and nutrition, however, General Comment 12 does note that there are part of a right to be progressively realised.[88]

The Special Rapporteurs highlight the various components of adequate food mentioned in General Comment 12. De Schutter has emphasised the importance of sustainable production as part of adequate food.[89] He also emphasises the importance of nutrition, indicating that adequate food allows individuals to live a healthy and active life.[90] Ziegler emphasises that adequate food is often not related to the amount of food in the community or country, but an individual’s access to food. This can be economic or physical access, emphasising that a lack of adequate income is more often an issue than the

---

[83] ibid [8].
[84] ibid [7].
[85] ibid [11].
[86] ibid [8].
[87] ibid [13].
[88] ibid [6].
[89] UNGA ‘Hilal Elver (2003)’ (n 14) [6].
[90] UNHRC ‘Report by the Special Rapporteur on the Right to Food, Olivier De Schutter’ (2011) UN Doc A/HRC/19/59 [1].

actual amounts of food available.[91] This leads him to highlight the importance of considering the state of individuals, especially vulnerable individuals, in terms of their access to adequate food, rather than aggregate measures.[92] Consideration of how to measure adequacy of food is an important component of a normative framework, as it allows monitoring of states' compliance with their obligations. The importance of measures of food access and adequacy will be returned to in Chapter 5, when reporting on food security in the UK is considered.

In addition to the work of the CESCR and the Special Rapporteurs, in considering what adequate food means, there is significant overlap between definitions of food security and the content of the right to adequate food. If people are food secure, it is assumed they will have adequate food. Food security was defined in Chapter 2.[93] The FAO describes four pillars of food security: availability, access, stability and utilisation.[94] Availability refers to production, distribution, trade and levels of stock reserves in a state.[95] Access concerns the economic ability to purchase food or physical access to food.[96] Stability of food supply refers to households' abilities to withstand adverse circumstances and 'shocks' and maintain their food security.[97] Utilisation is less well defined, but relates to factors such as cooking, clean water access and the distribution of food in households. [98] Some suggest utilisation also refers to nutritional aspects of food security.[99] More recently, the CFS has indicated that food security has evolved and now includes a fifth pillar of sustainability. This refers to creation of long-term food security without damage

[91] UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (2008) UN Doc A/HRC/9/23 [4].
[92] ibid.
[93] See Section 4.1, Chapter 2 footnote n 247.
[94] Food and Agricultural Organisation, '2009 Declaration of the World Summit on Food Security' (16-18 November 2009) Un Doc WSFS 2009/2.
[95] Food and Agriculture Organisation of the United Nations 'World Food and Agriculture Statistical Pocket Book 2019' (Rome, 2019) available at https://www.fao.org/documents/card/en?details=ca6463en accessed 3 February 2024, 15.
[96] ibid 16; GC 12 (n 4) [13].
[97] FAO (n 95) 20.
[98] ibid 22.
[99] ibid 22.

to the economic, social, and environmental factors needed for food security.[100] They have also described a sixth pillar of agency.[101]Agency refers to:

> '[T]he capacity of individuals or groups to make their own decisions about what foods they eat, what foods they produce, how that food is produced, processed and distributed within food systems, and their ability to engage in processes that shape food system policies and governance.' [102]

This definition of agency resonates with the requirement in the core of the right to food, that food is acceptable within a given culture.[103] General Comment 12 indicates that this aspect of adequate food requires states 'to take into account as far as possible, perceived non-nutrient based values attached to food.'[104]

There are also many components of the adequate food standard, that overlap with nutrition and production. Because of this resulting complexity, and as stated in General Comment 12, the right to adequate food is of progressive realisation. However, as discussed in Chapter 2, this does not mean that states should not be acting immediately to take steps to achieve progressive realisation, prioritising those steps based on the needs of that state. For example, factors such as ensuring all people can utilise food through provision of equipment and clean water, would require infrastructure and policy development in some states. Although this should be prioritised, ensuring all can meet this component of food security, it may not be possible for it to be immediately attained in all states. Similarly changes in production methods may need changes in agricultural processes, equipment, and investment, which would also be of progressive realisation.

There are several components of the standard of adequate food that will not be part of the fundamental right to be free from hunger in most or, any circumstances. This section considers agency within the definition provided by the CFS, alongside cultural and consumer acceptability as a component of the

---

[100] Committee on World Food Security High Level Panel of Experts, 'Food Security and Nutrition. Building a Global Narrative Towards 2030' (2020) http://www.fao.org/3/ca9733en/ca9733en.pdf accessed 3 September 2021 9.
[101] ibid.
[102] ibid 9.
[103] GC 12 (n 4) [8].
[104] GC 12 (n 4) [11].

core of the right to food. Provision of culturally appropriate food may not always be possible in certain circumstances. However, in some situations culturally and religiously appropriate food availability may be part of the right to be free from hunger. For example, emergency food aid should comply with religious requirements, so people are able to eat it and alleviate their hunger. However, taking the example of aid packages in emergencies, it would not be realistic for states to offer a range of organic, free-range items to recipients. Similarly, although in a developed nation it may be expected that everyone is ensured a minimum income to access a balanced diet with some degree of choice, it would not be reasonable that the amount provided would allow eating luxury food products every day. Such cultural preferences and non-nutrient values would not be considered part of the fundamental right to be free from hunger. These limitations still respect moral security, as will be demonstrated by exploration of the issue of cultural food preferences and religious dietary requirements in the following discussion.

Both De Schutter and Ziegler consider culture to also be an important aspect of adequate food.[105] Ziegler extends this by discussing how, for some indigenous people, food is inseparable from land and culture.[106] The definition of food security indicates that food should meet people's dietary and food preferences including cultural choices, demonstrating a further link between the right to food and food security.[107] However, it is not clear what the extent of the obligations in relation to ensuring people have culturally appropriate food is, and so the approaches of regional human rights courts will now be considered.

The ACmHR and the IACtHR have noted the link between indigenous people, their land, and their methods of feeding themselves and that losing this is a violation of the communities' human rights.[108] However, cultural links to food are relevant in many settings. Food for humans is more than a biological need for calories and nutrients and it has become intertwined with

[105] UNGA, 'Elver (2013) (n 14) [6]; UNCHR 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' (2004) UN Doc E/CN.4/2004/10 [3].
[106] UNGA 'Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Jean Ziegler' (2005) UN Doc A/60/350 [21].
[107] Hope Johnson, *International Agriculture Law and Policy* (Edward Elgar 2018) 46.
[108] *Yakye Axa Case* (n 54), *Sawahoyamaxia Case* (n 56) *Endorois Case* (n 58) and *Ogoni Case* (n 57).

culture, religion, and regional identities in diverse and infinite ways.[109] The obligations generated by the right to food in relation to communities that are not indigenous people and religious dietary requirements are even less clear. The ECtHR has considered access to religiously appropriate food for Buddhist diets, in the context of prisons. Failure to do so was found to be a violation of Article 9 of the ECHR.[110] Although the ECtHR has recognised the right to have access to, or be provided with a religiously appropriate diet, it has not extended this right to being able to have locally obtained meat, slaughtered in accordance with religious dietary requirements, or to take part in that slaughter yourself.[111]

In addition, the Court of Justice of the European Union (CJEU), has found a Belgian ban on slaughter without non-fatal stunning was also not a violation of the Charter of the European Union, as halal and kosher meat could be obtained from other countries and that the ban on non-stun slaughter was proportionate to a legitimate aim of protecting animal welfare.[112] However, the Advocate General reached a contrary conclusion indicating that the Belgian legislation did not accord with European Union (EU) law.[113] The CJEU has also taken a similar approach to animal welfare in a case that indicated that meat labelled as organic cannot be slaughtered without stunning due to the expectation of higher animal welfare standards of organic meat.[114] This approach of the CJEU may in part have been due to the Treaty for the Functioning of the European Union (TFEU) containing an article that requires states to 'pay full regard to the welfare requirements of animals.'[115] Indeed before the TFEU was introduced, the CJEU indicated that animal welfare was not a general principle of EU law when concluding no-vaccination policies in

[109] Ann Grodzins Gold, "Food Values Beyond Nutrition" in Ronald J Herring (ed), *The Oxford Handbook of Food, Politics and Society* (OUP 2015) 545.
[110] For example, *Jakóbski v Poland* App No 1842/06 (7 December 2010).
[111] *Cha'are Shalom Ve Tsedek v France* App No 27417/95 (27 June 2000); *Belgian Muslims and others v Belgium* App Nos 166760/22 and 10 others (13 February 2024).
[112] *Centraal Israëlitish Consistorie van Belgie and Others* (Case C-336/19) C53/7 [2021].
[113] Opinion Advocate General Hogan, *Centraal Israëlitish Consistorie van Belgie and Others* (Case C-336/19) [2021].
[114] *Œuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation* (Case C-497/17) [2019].
[115] Consolidated Version of the Treaty of the Functioning of the European Union [2008] C 115/01, art 13.

relation to foot and mouth disease were not contrary to EU law. This is despite the welfare concerns around culling to control the disease.[116]

The EU has also banned importation of seal products due to concerns about the inhumane slaughter involved in seal hunts.[117] This ban was then addressed by the World Trade Organization (WTO). The appellate body considered protection of animal welfare to be a legitimate aim in relation to the public morals exception under Article XX of the General Agreement on Tariffs and Trade.[118] However, the ban was still found to be in violation of WTO rules as it failed to meet the non-discrimination requirement of the Chapeau of Article XX.[119] This was due to the ban discriminating against indigenous hunts in Canada and Norway compared to Greenland.[120] Concerns have been raised about the impact of the ban on the cultural life of indigenous communities, which is potentially in conflict with human rights law.[121] For example, in the *Kitok* case, the United Nations Human Rights Committee found that Article 27 of the International Covenant on Civil and Political Rights, protected the livelihoods of indigenous peoples as it was central to protecting their culture.[122] Indeed, Herwig has suggested labelling as an alternative that would allow consumers to avoid products that offend their ethics, rather than states engaging in such prescriptive rules that impact indigenous communities.[123]

The academic literature associated with these cases address them in relation to religious freedom, and cultural implications for indigenous communities.[124] Yet many questions about how to balance the right to food, religious rights and animal welfare remain. It is not clear why indigenous communities can slaughter animals in ways that may be compromising for

---

[116] *Jippes and others v Minister van Landouw, Natuurbeheer en Visserij* (Case C-189/01) [2001] ECR I-5693 [74].
[117] Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on Trade in Seal products.
[118] *EC – Measures Prohibiting the Importation and Marketing of Seal Products* WT/DS400/AB/R (Appellate Body) (May 22, 2014).
[119] ibid
[120] ibid
[121] Kamrul Hossian, 'The EU Ban on the Import of Seal Products and the WTO regulations: Neglected Human Rights of the Artic Indigenous Peoples? (2013) 49 Polar Record 154
[122] *Ivan Kitok v. Sweden*, Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988).
[123] Alexia Herwig, 'Too Much Zeal on Seals? Animal Welfare, Public Morals and Consumer Ethics at the Bar of the WTO' (2016) 15 World Trade Review 109, 137.
[124] Hossain (n121).

animal welfare, such as whaling,[125] but religious communities do not have that same right. Equally, it is also not clear what would happen if halal and kosher food became unavailable for import, which, given the potential for outbreaks of animal or human disease restricting trade, is not too remote a possibility. It is however clear that decisions concerning cultural and religious practices and food do require careful considerations by states to ensure they are not arbitrarily failing to meet the obligation to provide culturally appropriate food as part of their obligations in relation to adequate food. The right to food does not prohibit bans on food products that do not comply with certain standards of animal welfare, but moral security requires conversation and consultation with cultural, religious, and indigenous groups as well as clearly justified reasons if restrictions are to be imposed.

The consideration of the right to food and how it intersects with religious freedom and indigenous rights is complex. In the case of the ECtHR, the discussions centred on religious freedom, as the convention focuses on civil and political rights. Within this boundary and applying the applicable law, the cases demonstrate that the right to freedom of religion includes access to appropriate food, but not always the right to produce that food oneself. This respects moral security, if clear reasons and justifications are given, as in a democratic society certain activity may be outlawed due to conflicting rights, and ultimately the ECtHR is indicating people should be given food consistent with their religious beliefs, even if incarcerated. However, in the CJEU cases and in the surrounding academic discussions more generally, the importance of the right to food was not discussed.

This discussion also raises issues concerning access of people to culturally appropriate foods more generally. This is especially relevant when they are in receipt of state aid, or under the supervision or control of the state. For example, in the UK, during the summer of 2020, there was criticism of the vouchers provided to replace free school meals, as they could only be used in large supermarkets, not local shops, which may provide access for individuals

[125] David Attenborough, Foreword, in Philippa Brake, Mark P Simmonds, Andrew Butterworth and P Lumbery (eds), *Troubled Waters: A Review of the Welfare Implications Of Modern Whaling Activities* (2004) https://www.researchgate.net/publication/263444394_Troubled_Waters_A_review_of_the_welfare_implications_of_modern_whaling_activities accessed 17 April 2024.

to more culturally appropriate foods.[126] In such situations, the jurisprudence of human rights bodies and the right to freedom of religion would require religiously appropriate food. Although, arguably, in immediate emergency situations cultural preferences outside of religion may not be accommodated and so although part of the core of the right to food, it would not be part of the right to be free from hunger.

The discussion above has justified the need to consider people's cultural preferences for food on the basis that a dignified life requires moral security. It demonstrates how a framework for the right to food, based in human dignity, also needs to consider whether steps to meet the obligations for the right to food respect human dignity. For example, in the case of religious and cultural food, if you do not feel your preferences are considered, you will not feel respected or considered to be of equal moral worth. However, it must also be remembered the rights in the ICESCR, including the right to food, are to be realised without discrimination.[127] This obligation immediate.[128] As such, failure to ensure access to food that is not compliant with religious beliefs, in some circumstances, would be religious discrimination. In the cases above that concern the provision of food to prisoners, these individuals are totally dependent on the state. A failure to ensure access to food that is compliant with dietary religious rules, is a violation of the core of the right to food, because it is likely to result in access to inadequate food and also because of religious discrimination. Depending on how much food the prisoners could eat, it may also be a violation of the fundamental right to be free from hunger. Likewise, French schools that only provide Muslim school children with pork,[129] compelling them to eat food that is not halal, also violates the core of the right to food because of religious discrimination. Compelling people to eat food that

---

[126] Jon Stone, 'MPs Say Government is Out-of-Touch for Putting Waitrose and M&S on Free School Meals Vouchers Scheme but Not Aldi and Lidl' *Independent* (20 July 2020) https://www.independent.co.uk/news/uk/politics/school-meal-vouchers-waitrose-marks-spencers-aldi-lidl-lockdown-a9644716.html accessed 3 February 2024.

[127] ICESCR art 2.2

[128] UN Committee on Economic, Social and Cultural Rights, General Comment No.20: *Non-Discrimination in Economic, Social and Cultural Rights (Article 2 para 2)* (10 June 2009) Un Doc E/C.12/GC/20 [7].

[129] Angelique Chrisafis, 'Pork or Nothing: How School Dinners are Dividing France' *The Guardian* (13 October 2015) https://www.theguardian.com/world/2015/oct/13/pork-school-dinners-france-secularism-children-religious-intolerance accessed 17 April 2024.

is not religiously appropriate can be discriminatory and so violate the core of the right to food.

5.0. Nutrition

Nutrition is a complex standard. It has been considered by the Special Rapporteurs to be part of adequate food, yet at times it is emphasised as a component of the right to food on its own. It is also related to production systems and can be impacted by components of the global trade system. Lang has highlighted this link between nutrition and production of food in the UK.[130] After a general discussion of the approach of the Special Rapporteurs, this section will go on to discuss two particularly topical discussions in relation to nutrition: the suggested switch to plant-based diets and ways to tackle obesity, focusing on taxation of unhealthy foods. These two areas also highlight the complex nature of creating nutrition policy and that such policies need to be decided on a state-by-state basis. Given the complexity of this standard, some of the obligations would be considered to be part of the core of the right to food and so realisation should be prioritised by states. Others, possibly such as education programmes, would fall within obligations to be progressively realised more slowly, and so may be less of a priority for states, as well as taking longer for the implementation of the policy and realisation of those obligations.

Elver has emphasised nutrition as a component of the right to food requiring special consideration. She describes the complex problems of malnutrition, obesity and micronutrient deficiency that can occur at the same time within communities and within individuals.[131] These nutritional diseases also demonstrate the link between access to a nutritious diet and dignity. If you are unhealthy due to micronutrient deficiencies or suffer from diet related diseases such as type II diabetes or cardiac disease, you may as a result have

[130] Tim Lang, *Feeding Britain. Our Food Problems and How to Fix Them.* (Pelican Books 2020) From page 197 onwards Lang notes our 'Lock-ins' to the global food system such as 'cheap food,' declining nutritional content of food and reliance on imports of products that could be grown in the UK, especially apples.
[131] UNGA 'Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver' (2016) UN Doc A/71/282 [1].

limited life choices. You may have physical or mental symptoms that prevent a dignified life. Elver also raises concerns about the increases in consumption of processed food around the world.[132] These aspects of nutrition also demonstrate the issues of considering community aggregate measurements, as overall calorie intake per person says little about nutritional status.[133] If an average indicates that a particular community has access to sufficient calories per person to prevent hunger, this says nothing about who is consuming these calories. Some may not receive any and some may receive more than enough. It also says nothing about the levels of macronutrient and micronutrient intake.

De Schutter also raises concerns about the increased amounts of processed food in people's diets. He suggests a need to shift to a focus on sustainable production of nutritious food, rather than the provision of cheap calories.[134] Trade policies and tariffs that result in export of fresh fruit and vegetables and import of processed foods by developing countries, can also contribute to malnutrition and obesity.[135] This demonstrates nutrition is a complex component of the right to food. There are potential obligations relating to ensuring access to a nutritionally appropriate diet, but also it has the potential to affect obligations relating to both trade and production methods.

The structure of the global food system also interlinks with the standard of nutrition. This suggests that any interventions to aid in the realisation of the right to food in respect of the standards of production and nutrition may well take longer to achieve significant change. There will be some aspects that can be addressed more immediately, for example facilitating access to fruit and vegetables could be achieved through price restrictions or voucher schemes. Such an approach is consistent with the CESCR acknowledging that obligations of result, for example drastically reducing levels of dietary related disease, will not be achievable 'in a short period of time.'[136] However, in countries with high levels of obesity, such as the UK, this does not mean there

---

[132] UNHRC 'Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food. Report of the Special Rapporteur on the Right to Food, Michael Fakhri' (2020) UN Doc A/HRC/43/44 [30].
[133] UNHRC 'Report by the Special Rapporteur on the Right to Food, Olivier De Schutter' (2014) UN Doc A/HRC/25/57 [5].
[134] UNHRC, 'Olivier De Schutter (2011)' (n 90) [12].
[135] UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (4 February 2009) UN Doc A/HRC/10/5/Add.2 [32].
[136] GC 3 (n 4) [9].

is no urgency in the government action required. It also requires there to be evidence of progress in achieving this goal.

5.1. Plant-based diets

Plant- based diets are a possible way to reduce the impact of agriculture on climate change and improve the nutrition of many people. Yet promoting a plant-based diet alone is not without consequences. A plant-based diet is not always healthier or more nutritious, and its healthiness will depend on what those who move to a largely meat and dairy free diet eat to replace these items. Firstly, although it is entirely possible to eat a balanced vegan or vegetarian diet, research suggests that low levels of Vitamin B12 can be present in both vegans and vegetarians.[137] This risk necessitates careful nutritional information is given alongside the promotion of such diets. In addition, whilst in developing countries animal products are overconsumed, in developing and least-developed countries animal products remain an important source of protein, and a diet without these products could result in protein deficiency.[138] As a result, entirely plant-based diets are not necessarily appropriate in all states.

The increase in people consuming entirely plant-based diets or 'flexitarians' who aim to reduce their meat content has also led to an increase in products such as vegan cheese, plant-based milk, and meat alternatives. Under the NOVA classification,[139] these products often come within the category of ultra-processed foods (UPF). Such foods are associated with

[137] Asok C Antony, 'Vegetarianism and Vitamin B-12 (Cobalamin) Deficiency' (2003) 78 The American Journal of Clinical Nutrition 3.
[138] Garnett *et al*, 'Grazed and Confused?' (Food Climate Research Network, 2017) https://www.oxfordmartin.ox.ac.uk/downloads/reports/fcrn_gnc_report.pdf accessed 1 September 2021 9.
[139] Food processing has been part of preserving and utilising food stuffs for 1000s of years, such as fermentation, drying and smoking. Recently more industrial processing has led to the creation of hyperpalatable products that are convenient but nutritionally inferior to fresh food. For example, see Carlos Augusto Monteiro *et al*, 'The Need to Reshape Global Food Processing: A Call to the United Nations Food Systems Summit (2021) 6 BMJ Global Health e006885. The NOVA system classifies the nature of processing, with ultra-processed foods considered to have undergone excessive processing, contain cosmetic ingredients or industrial additives to change the taste, smell or appearance of the product, for additional details see Anthony Fardet and Edmond Rock, "Ultra-Processed Foods and Food System Sustainability: What are the Links?' (2020) 12 Sustainability 6280. UPFs can be spotted more simply by an ingredient list containing ingredients a home cook would not use.

metabolic and dietary-related chronic diseases.[140] A survey of plant-based milks in the USA, for example, revealed over 90% met the definition of UPF.[141] A study of vegetarians and vegans in France found vegans had the highest consumption of plant-based UPFs and both vegans and vegetarians obtained more energy from UPFs than meat eaters, with the authors concluding a plant-based diet is not necessarily a healthier option.[142] The study also reported that people who had more recently converted to a plant-based diet were more likely to eat UPFs.[143] This raises the possibility that people do not have the time, knowledge, or even cooking equipment to cook the pulses and grains envisaged by those who promote plant-based diets. This risks people swapping meat and dairy for UPF alternatives, deleterious to their health.[144] However, others have suggested that not all UPFs are equal, and some, such as milks[145] and meat alternatives may not be as much of a health risk as non-plant based UPFs.[146]

Consumption of animal products has been deemed negative for the environment and climate change.[147] However, livestock farming has cultural aspects, which are often left out of debates about sustainability and nutritional

---

[140] Fardet and Rock (n 139) 6281.
[141] Adam Drewnowski, Perspective: Identifying Ultra-Processed Plant-Based Milk Alternatives in the USDA Branded Food Products Database' (2021) Advances in Nutrition 1.
[142] Joséphine Gehring *et al*, 'Consumption of Ultra-Processed Foods by Pesco-Vegetarians, Vegetarians, and Vegans: Associations with Duration and Age at Diet Initiation' (2021) 151 Journal of Nutrition 120, 128.
[143] ibid.
[144] Of particular concern is the lack of knowledge about the possible health effects of some industrial additives used. (Fadet and Rock, n 139). Historically, both trans fats and high fructose corn syrup were used extensively before the negative effects on health were realised. See Michael Moss, *Hooked* (Penguin 2021) for details of the history of processed food and its health effects.
[145] Drewnowski (n 141) 6.
[146] Emma Derbyshire, 'Are All 'Ultra-Processed' Foods Nutritional Demons? A Commentary and Nutritional Profiling Analysis' (2019) 94 Trends in Food Science and Technology 98, 103. However, this study raises another issue with nutritional science often discussed by Marion Nestle, in that nutritional studies are often funded by food companies and have findings favourable to the sponsoring company. Derbyshire's study, it is supported by Marlow Foods, who manufacture Quorn, a common meat substitute in the UK. See Marion Nestle, *Unsavory Truth: How Food Companies Skew the Science of What We Eat* (Basic Books 2018) This issue is discussed further at the end of this section.
[147] For example, see: FAO, *Livestock's Long Shadow: Environmental Issues and Options* (2006) http://www.fao.org/docrep/010/a0701e/a0701e00.HTM accessed 24 February 2020. Others question the figures and arguments presented by the FAO. For example, see: Maurice E Pitesky, Kimberly R Stackhouse and Frank M Mitloehner, 'Clearing the air: livestock's contribution to climate change' in Donald Sparks (ed), *Advances in Agronomy Volume 103* (Burlington Academic Press 2009) 33-4.

aspects of diets.[148] Livestock are also vital in mixed-crop and rotational systems, which could be central to agroecology and sustainable intensification in some parts of the world.[149] The world has over 200 million pastoralists, who are some of the world's poorest and most vulnerable people. In pastoral communities, livestock often serve as forms of investment and provide financial security as well as a valuable source of income, especially for women and children.[150] A human rights-based approach cannot only consider calculations about the best approach for reducing greenhouse gas (GHG) emissions and human nutrition requirement calculations, but also must consider the impact on those for who livestock are vital to their livelihood and cultural way of life.

There are still many questions remaining about the potential nutritional impacts of plant-based UPFs and the impact of promotion of a plant-based diet on those who currently rear livestock. There are also potential difficulties in supplying the ingredients and foods that will be needed to meet the demand following from an increase in plant-based diets. Palm oil is used in a wide variety of products, including some vegan and vegetarian items. In Indonesia and Malaysia, palm oil has become an important crop as international demand has increased. Increasing production of palm oil has resulted in extensive deforestation with reductions in forest land of 30% in Indonesia and 20% in Malaysia.[151] Nuts are suggested to be important in a plant-based diet, and a wide variety of nut 'milks' are now available. However, almond production is particularly water intensive and in California farmers are struggling to obtain sufficient water.[152] Cashew nut production has recently been associated with human rights abuses including child labour.[153] Although a plant-based diet may still result in lower GHG emissions and better nutrition on average,

[148] Garnett *et al* (n 138) 10.
[149] ibid.
[150] ibid.
[151] Birka Wicke *et al*, 'Exploring Land Use Changes and the Role of Palm Oil Production in Indonesia and Malaysia', (2011) 28 Land Use Policy 193.
[152] Philpot describes water shortages faced by almond farmers in California and the increasing scarcity of water for farmers and domestic supplies in Tom Philpot *Perilous Bounty* (Bloomsbury 2020)
[153] Impact International, 'Cashews are Delicious, but Come with Human Cost' (2 November 2019) https://impactpolicies.org/en/news/69/Cashews-are-Delicious-but-Come-with-a-Human-Cost accessed 3 February 2024.

decisions that must be made to achieve this are not straightforward, and will need careful consideration of the impact on the environment and on the people involved in farming the plants consumed instead of meat. These decisions will have to be taken in view of the best interests of that state, as well as the overall best interests of the global environment.

5.2. Taxes on unhealthy foods

The standard of nutrition also engages with factors outside of the immediate nutrient content of food. Utilisation, one of the four pillars of food security is less well defined, but relates to factors such as cooking, clean water access and the distribution of food in households.[154] Some suggest utilisation also refers to nutritional aspects of food security.[155] Nutrition and the utilisation of food are complex and interacting processes, with micronutrient deficiencies causing illness in many parts of the world. In addition, utilisation of food and digestion of nutrients can be affected by underlying health conditions. If people cannot digest and convert the calories and protein provided by food, even if on paper the content of their diet is nutritionally adequate, they may be malnourished or starving. This also applies to those who suffer from illness related to poor diet, such as obesity and diabetes. Their ability to live a dignified life is potentially limited by their diet. There are suggestions that, especially in states with high incidence of obesity, diabetes and other diseases relating to poor diet, nutrition has not been a high enough priority and 'nutrition security' should be prioritised.[156]

To address the growing problem of obesity and type II diabetes, many countries have introduced taxes on sugary soft drinks and other unhealthy foods. The UK implemented a Soft Drinks Industry Levy (SDIL) on drinks containing high levels of sugar in 2018. Between the announcement of the SDIL in 2016 and its implementation in 2018, there was no apparent change

[154] FAO, 'Statistical Pocket Book' (n 95) 22.
[155] ibid.
[156] Dariush Mozaffarian, Shelia Fleischhacker and José R Andres, 'Prioritising Nutrition Security in the US' (2021) 325 Journal American Medical Association 1605.

in the amount of sugar consumed from drinks.[157] However, once implemented the SDIL has decreased consumption of sugary drinks in the UK.[158] Other countries have also introduced taxes on soft drinks and Denmark introduced a tax on foods containing high level of saturated fat for 15 months.[159] The tax in Denmark had limited effects in terms of improved health, but its stated aim was not in fact to reduce consumption of fat but to generate revenue.[160] People are now also beginning to suggest carbon taxes on red meat, as a potential way to reduce consumption for the benefit of both population health and the environment.[161]

In the UK, voluntary industry schemes to improve the nutritional content of processed foods have had limited success.[162] The National Food Strategy has suggested a Sugar and Salt Reformulation Tax to improve the nutritional content of processed foods.[163] Although the Government has introduced legislation to limit promotion and placement of high fat, salt and sugar (HFSS) products,[164] legislation returned to in Chapters 5 and 6, it has not considered further measures in line with those suggested in the National Food Strategy to encourage change to the content of these foods. Indeed, the UK Government's response to the recommendations of the National Food Strategy focus on

---

[157] David Pell *et al*, 'Anticipatory Changes in British Household Purchases of Soft Drinks Associated with the Announcement of the Soft Drinks Industry Levy: A Controlled Interrupted Time Series Analysis' (2020) 17 PLoS Medicine e1003269.
[158] Peter Scarborough *et al*, 'Impact of the Announcement and Implementation of the UK Soft Drinks Industry Levy on Sugar Content, Price, Product Size and Number of Available Soft Drinks in the UK, 2015-19: A Controlled Interrupted Time Series Analysis' (2020) 17 PLoS Medicine e1003025, 2.
[159] Emma Smith *et al*, 'Should We Tax Unhealthy Food and Drink' (2018) 77 Proceedings of the Nutrition Society 314.
[160] Ibid, 317.
[161] Marco Springman *et al*, 'Health-Motivated Taxes on Red and Processed Meat: A Modelling Study on Optimal Tax Levels and Associated Health Impacts (2018) 13 PLoS ONE p.e0204139; Marco Springman *et al,* 'Carbon Pricing of Food In Australia: An Analysis of the Health, Environmental and Public Finance Impacts'
(2018) 42 Australian and New Zealand Journal of Public Health 523.
[162] For example, see: Lauren Kate Bandy *et al*, 'Assessing the Healthiness of UK Food Companies' Product Portfolios Using Food Sales and Nutrient Composition Data' (2021) 16 PLoS ONE e0254833 which found any improvement in nutritional content of process food in the UK between 2015 and 2018 was associated with the soft drink levy in the UK, not guidelines introduced by Public Health England.
[163] Henry Dimbleby, 'The National Food Strategy: The Plan (July 2021) https://www.nationalfoodstrategy.org/the-report/ accessed 1 September 2021, 144.
[164] DEFRA, 'Government Food Strategy' (June 2022) https://assets.publishing.service.gov.uk/media/62a6eb418fa8f5039a1bd7b5/government-food-strategy.pdf accessed 17 April 2024.

consumer education and voluntary schemes, outside of the HFSS legislation.[165]

As with the promotion of plant-based diets, the question of what people will actually consume instead is again raised.[166] The SDIL did result in a reduction in both the amounts of sugar in products and the amount of sugar consumed in this way,[167] yet some products with high levels of sugar continue to be sold at higher prices.[168] In the cases of sugary drinks, these are 'empty' calories with no other nutritional value. This cannot be said for food. Processed foods, although not as nutritionally valuable as fresh alternatives, may form the bulk of people's source of protein, calories, and micronutrients. Increases in prices of such foods may instead result in increased food insecurity. This would especially be the case for those with limited access to cooking equipment, for example in some forms of social housing. This may also impact those who have limited time, those who are unable to pay fuel bills to be able to cook and those that do not have the skills or knowledge to cook fresh produce. Although the National Food Strategy has recommended that taxes be introduced alongside 'help to get fresh fruit and vegetables to low-income families', this still requires the knowledge, skills, and equipment to cook. It also returns the earlier discussion around ideas of equality and dignity. Such provisions may be humiliating and degrading if certain groups are given food vouchers or equivalent, rather than there simply being measures to ensure everyone has an adequate income to purchase healthy alternatives. It is important that the measures to address nutritional diseases also respect human dignity, as part of the proposed framework. The idea of a social minimum income will be discussed further in Chapter 5.

The potential for such taxes to be passed on to consumers by price increases raises questions more generally about taxes on food. Taxes on unhealthy food products are a form of Pigouvian taxes.[169] These taxes are used to regulate firms that produce products with negative externalities, the

---

[165] ibid.
[166] Springman *et al* 'Health Motivated Taxes' (n 161) 13.
[167] Scarborough *et al* (n 158) 12.
[168] Scarborough *et al* (n 158) 2.
[169] Ted O'Donoghue and Matthew Rabin, 'Optimal Sin Taxes' (2006) 90 Journal of Public Economics 1825.

most often used example being a polluting production process.[170] If forced to pay for the cost of the pollution through tax, the company will only continue to manufacture that product if the value exceeds the cost of pollution.[171] In the case of food, both the impact on the planet, and the negative public health impacts of certain foods are the negative externalities. A detailed review of the economic theories about such taxes is beyond the scope of this thesis, but concerns including the passing of costs onto consumers warrants further consideration, as it has potential implications for freedom from hunger and the standard of adequate food in the proposed framework. In the case of the SDIL in the UK, the tax did cause reformulation rather than simple price rises for consumers.[172] If the aim of such taxes is to improve the nutritional content of such foods then the SDIL suggests such taxes are effective.

However, it could be argued that the sugar levy, in dealing with drinks is a special case. Sugary drinks, as already discussed, are empty calories with no other nutritional value which people can forgo and so as prices rise, demand should decrease. In the case of food, demand may be less elastic as people must eat, and so demand could stay the same even as prices rise. If the price rises are occurring in the cheapest foods available, this will result in people being able to afford less food and so they may become food insecure. In addition, these taxes assume that people largely choose food based on price. This may not be the case as supermarkets and advertisers actively market certain foods and there is growing research, as well as evidence from food companies obtained through legal proceedings in the USA, that certain foods are addictive.[173] The supply and demand curve for food, may not be as simple as economic models presume. Donoghue and Rabin have suggested that modelling, removing the assumption that people have '100% self-control' still suggests such taxes can be of benefit. Although they do acknowledge the possibility of substitution of certain types of unhealthy food with other unhealthy food, alcohol, or cigarettes.[174]

---

[170] Saul Estrin, David EW Laidler and Michael Dietrich, *Microeconomics* (6th edn, Harlow: Pearson 2012) 560; Jonathan S Masur and Eric A Posner, 'Toward a Pigouvian State' (2015) 164 University of Pennsylvania Law Review 93, 94.
[171] Masur and Posner (n 170) 95.
[172] Scarborough *et al* (n 158).
[173] See Moss (n 144)
[174] O' Donoghue and Rabin (n 169)1841-2

In addition, as with all flat rate taxes, taxes on food are regressive, taxing those on lower incomes more. Unless carefully planned, they may not only tax those that can least afford it, but also leave them with limited alternatives. Healthier food is currently more expensive per calorie in the UK.[175] Yet it may still be more expensive than the unhealthy foods with increased prices, with the result that people can simply afford less food. This again risks increasing levels of food insecurity. Taxing unhealthy foods to decrease consumption places the focus on individual's responsibility for their diet. For many it is not as simple as choosing a healthy over an unhealthy diet for the reasons discussed above, and so unless part of wider food systems changes to ensure good nutritional knowledge, improved cooking skills and access to cheaper healthy food and increased incomes, food taxes alone may have many negative consequences.

Other suggested government interventions to decrease consumption of unhealthy food include advertising bans, especially during children's programmes, or any advertisement aimed at children.[176] Front of pack traffic light labelling, as occurs in the UK, receives mixed results in study in relation to its efficacy.[177] Rather than nutritional information, Peru has adopted a system of warnings on the labels of unhealthy food choices, similar to the warnings and blank packaging used by many countries for cigarettes.[178] Some are calling for UPFs to be treated akin to cigarettes, and that the large transnational corporations that produce and promote these foods should be

---

[175] Dimbleby (n 163) 45

[176] Mark Sweeny, 'UK to ban junk food advertising online and before 9pm on TV from 2023' *The Guardian* (23 June 2021) https://www.theguardian.com/media/2021/jun/23/uk-to-ban-junk-food-advertising-online-and-before-9pm-on-tv-from-2023 accessed 17 April 2024.

[177] A study by Harrington *et al* demonstrated the front of packet label traffic light labelling system, highlighting unhealthy levels of fat sugar and salt with amber and red, combined with online education about the system did not change people's choices when purchasing pizza and ready meals. Richard A Harrington *et al*, 'A Pilot Randomized Controlled Trial of a Digital Intervention Aimed at Improving Food Purchasing Behaviour: The Front-of Pack Food Labels Impact on Consumer Choice Study' (2019) 3 JMIR Formative Research 1, 2. However Scarborough *et al* suggest that consumer do try and avoid 'reds' when purchasing food, especially in relation to saturated fat and salt. Peter Scarborough *et al*, 'Reds are More Important than Greens: How UK Supermarket Shoppers Use the Different Information on Traffic Light Nutrition Label in a Choice Experiment' (2015) 12 International Journal of Behavioural Nutrition and Physical Activity s12966-015-0319-9.

[178] Jane Chambers, 'The Labels Encouraging Chileans to Buy Healthier Foods' (*BBC,* 11 August 2021) https://www.bbc.co.uk/news/world-latin-america-57553315 accessed 2 September 2021.

excluded from discussions of food policy.[179] This would be similar to the World Health Organisation exclusion of tobacco companies from public health discussions in relation to tobacco.[180]

The involvement of food companies in food policy and nutrition research also demonstrates one of the biggest difficulties in nutrition advice and research. Unlike pharmaceutical development, research into nutrition and food is not well-regulated.[181] Food companies can publish or sponsor research, leading to a wide variety of conflicting information, or small-scale studies picked up by newspapers that lead to the idea of 'superfoods' or a miracle cure.[182] Although the situation is now beginning to change, historically nutrition research was not well-funded. Much of the advice given about nutrition may be based on outdated science,[183] and very small studies.[184] Spector has suggested that, given the impact food can have on people's health, nutrition studies should be properly funded and regulated in the same way as new drug research.[185]

In addition, transparency about the nature of our food is needed. If agency is considered a component of food security and people are expected to make good choices about the nutrition of the food they eat, they also need accurate information from the companies that make it. Small scale studies sponsored by food companies should clearly be reported as such. Ideally, as suggested by Spector, nutrition research should be regulated in the same way as pharmaceutical research and any health benefits claimed in adverts and promotions should be similarly regulated. Agency would also require programmes of better nutritional education though public health initiatives, as

---

[179] Anne Lappé and Kelle Louaillier, 'Moving a Mountain' in Saru Jayaraman and Kathryn De Master (eds), *Bite Back. People Taking on Corporate Food and Winning* (University of California Press 2020) 141.
[180] WHO Framework Convention on Tobacco Control (World Health Organisation, 2003), art 5(3).
[181] Tim Spector, *Spoon Fed* (Johnathan Cape 2020) 3.
[182] Monterio *et al* (n 139) 2. Spector (n 181) also discusses food research at length, as does Moss (n 144). See also Nestle (n 146) details of industry sponsored studies on Nestle's blog https://www.foodpolitics.com/tag/sponsored-research/ accessed 2 September 2021.
[183] Most of the calorie calculations today are based on science from the late 18th and early 19th Century. Spector (n 181) 35-36.
[184] ibid 1-18.
[185] ibid.

well as in schools.[186] This component of agency, facilitating better decision making is vital to the standard of nutrition within the right to food.

6.0. Production

Production is the final standard in the proposed normative framework, in relation to predominantly domestic obligations. As already discussed above, it has areas of overlap with adequate food as well as the standard of nutrition. Given that agricultural production cannot be changed quickly, many of the obligations in relation to the standard of production will be those to be progressively realised more slowly. Many factors affect the amount of food needed to feed the global population. For example, climate change is impacting what food can be produced as well as where food can be produced.[187] There are growing concerns about loss of agricultural land due to flooding, climate change and desertification.[188] At the same time bringing new land into agricultural usage can risk a loss of biodiversity.[189] These concerns and threats to current levels of food production have led to development of alternative approaches to agriculture land management and farming. Two of these, agroecology and sustainable intensification are considered here. These models are considered as they are both relevant to agriculture policy in the UK, as discussed in Chapter 5. They have also been considered by the FAO and, in the case of agroecology, the Special Rapporteurs. The section then addresses the ongoing market driven food security approach and how the right to food challenges this dominant discourse.

---

[186] This is suggested in the National Food Strategy, Dimbleby (n 163) 148.
[187] Josef Schmidhuber and Francesco Tubiello, 'Global Food Security Under Climate Change' (2007) 104 Proceedings of the National Academic of Sciences, 19703.
[188] Foresight, 'The Future of Food and Farming: Challenges and Choices for Global Sustainability' (Government Office for Science London, 2011) 15.
[189] Julie Bélanger and Dafydd Pilling 'The State of the World's Biodiversity for Food and Agriculture' (*FAO*, 2019) https://www.fao.org/3/ca3129en/CA3129EN.pdf 65.

6.1. Agroecology

The Special Rapporteurs have considered production as a component of the right to food. All embrace the idea of agroecology.[190] It is associated with the food sovereignty movement and its ideas include socioeconomic aspects such as the rights of peasants and socially and economically sustainable approaches to food production.[191] For example, Alteri *et al* define agroecology as 'the application of ecological concepts and principles to the design and management of sustainable agroecosystems' and continue:

> '[A]groecology. . . is the discipline that provides the basic ecological principles for how to study, design and manage agroecosystems that are both productive and natural resource conserving, and that are also culturally sensitive, socially just and economically viable. Agroecology goes beyond a one-dimensional view of agroecosystems to embrace an understanding of ecological and social levels of co-evolution, structure and function. . . Agroecology is the holistic study of agroecosystems, including all environmental and human elements.'[192]

This definition emphasises an approach which goes beyond a method of production, emphasising the social and political aspects of food systems, taking agroecology beyond techniques for production.[193] Such a definition demonstrates why agroecology is associated with food sovereignty.[194] It has the potential to enable a socially just food system,[195] that protects the

---

[190] UNCHR, 'Ziegler (2004)' (n 105) [24]; UNHCR 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (2010) UN Doc A/HRC/16/49; UNGA, Report of the Special Rapporteur on the right to food, Michael Fakhri, 24 December 2020, UN Doc A/HRC/46/33 [57]; UNGA 'Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver' (2015) UN Doc A/70/287.
[191] Michael Windfuhr and Jennie Jonsén, *Food Sovereignty: Towards Democracy in Localized Food Systems* (FIAN-Interantional 2005), 5.
[192] Miguel A. Alteri *Agroecology: The Science of Sustainable Agriculture* (IT Publications 1995).
[193] Colin Ray Anderson *et al*, 'From transition to domains of transformation: Getting Sustainable and Just Food Systems Through Agroecology' 2019 11 Sustainability, 5272, 5273.
[194] Lucy Jarosz, 'Comparing Food Security and Food Sovereignty Discourses' (2014) 4 Dialogues in Human Geography 168.
[195] UNHCR 'De Schutter (2010)' (n 190) [1].

environment, that protects the rights of small-scale farmers, peasants and agricultural workers, as well as ensuring sustainable production.[196] Such a system that considers the well-being and rights of those that produce food, is also important in a right to food framework based in human dignity. As with the other standards discussed, even the way food is produced, which may seem far removed from hunger as an affront to dignity, should engage with ideas of human dignity and moral security. This would include respecting the rights of those producing food and those that agricultural policy may impact, such as landowners and indigenous communities.

More specifically, Altieri has indicated that agroecology aims to create 'land restorative, environmentally sound, economically viable and socially acceptable agricultural systems' that feature improved soil fertility, diversified production, enhanced biological pest control and other low input technologies.[197] However, agroecology is not just about embracing all low-input farming systems. Agroecology aims to address who makes and owns the input and why that input is needed.[198] Switching an external nitrogen source for another does not address the root cause of the loss of nitrogen from the soil and poor soil quality which could be, for example, monoculture cropping of maize in Iowa.[199] Agroecology requires changes to the system of farming causing that damage which will then change the need for extensive external inputs.[200]

Agroecology also challenges the idea of large corporations controlling external inputs needed for farming, arguing for 'social activating approaches.'[201] This includes farmers themselves becoming an integral part of technology development and knowledge accumulation, as well as being a

---

[196] Ibid [4] and [8].
[197] Miguel Altieri, 'Agroecology: A New Research and Development Paradigm for World Agriculture' (1989) 27 Agriculture, Ecosystems and Environment, 37.
[198] Peter M Rosset and Miguel A Altieri, 'Agroecology Versus Input Substitution: A Fundamental Contradiction of Sustainable Agriculture' (1997) 10 Society and Natural Resources 283, 288
[199] For example, for description of soil damage and loss, requiring extensive inputs, following maize and soya monoculture in Iowa see Philpott (n 152) Chapter 4.
[200] Rosset and Altieri (n 198) 288.
[201] Altieri, 'Agroecology: A New Research and Development Paradigm for World Agriculture' (n 197) 38, argues for all involved to take part in technological developments considering 'what is produced, how it is produced and for whom it is produced' from the very start of projects developing new agricultural inputs and approaches, to determine who will ultimately benefit from new products and processes.

strong political constituency contributing to policy development. This idea of producers becoming heavily involved with policy decisions and developments in agriculture is consistent with the CFS indicating that food security should include a sixth pillar of agency. The FAO is also now starting to embrace agroecology as a production system.[202] However, agroecology may not be the only production method that can meet the underlying requirements and obligations required by the standard of production and ensure agency for farmers and improve the underlying socioeconomic and ecological components of the food system. For example, the National Food Strategy suggested a three-compartment model for UK farming, where some land is set aside and not used for agriculture, some is used for lower yield farming that enables biodiversity alongside farming, and some is higher yielding, using new technologies to increase sustainability. [203] This is a mixed approach that could include agroecology and sustainable intensification, to be discussed in the next subsection, alongside each other. Any approach used will also have to consider how to address the local needs in food systems.[204] Finally, some have questioned whether agroecology could be scaled up sufficiently to meet the growing demand for food as the world's population grows.[205]

6.2. Sustainable Intensification

Sustainable intensification is one model that addresses the need to produce more food without increasing damage to the planet. It embraces the idea that more needs to be produced with the level of resources currently used, including land, whilst limiting greenhouse emissions.[206] In academic literature, sustainable intensification is often described with features that overlap with agroecology. Such descriptions suggest the importance of local knowledge, adaptive measures, and low input technologies, rather than the approach of

---

[202] FAO, Agroecology Knowledge Hub http://www.fao.org/agroecology/en accessed 25 February 2021.
[203] Dimbleby (n 163) 155.
[204] UNHRC 'Report of the Special Rapporteur on the Right to Food, Addendum Oliver De Schutter' (2009) UN Doc A/HRC/13/33/Add.2 [8].
[205] Henry Bernstein, 'Food Sovereignty: A Skeptical View' (Food Sovereignty: A Critical Dialogue, Yale University, 14-5 September 2013), 23.
[206] Jules N Pretty, 'The Sustainable Intensification of Agriculture' (1997) 21 Natural Resources Forum 247.

packages of inputs supplied by a single company and favouring monoculture that arose from the green revolution.[207] Sustainable intensification also recognises the importance of addressing social inequality, rather than focusing on 'technological fixes,'[208] as well as the need for political and economic recognition that 'agriculture matters.' [209] Sustainable intensification continues to be described as a process that requires diverse stakeholders and involvement of all food chain actors to ensure legitimacy. [210]

However, the term has now been utilised more widely and there is debate regarding whether it refers to a new way of growing food or whether intensification and increased production is actually focused on rather than sustainability.[211] It has also been associated with increased intensification and industrial farming.[212] This is not helped by the adoption of the term by agriculture companies,[213] and other organisations such as the World Bank and the Gates Foundation, that focus on intensive technologically advanced agriculture.[214]

6.3. Market driven approaches to food security

Debates about alternative agricultural models relate to wider debates about food security in the global food and agriculture systems. It has been suggested that discussions around food security are 'embedded in dominant technocratic neoliberal development discourses'[215] focusing on the need to increase

---

[207] ibid
[208] David Christian Rose *et al*, 'Agriculture 4.0: Making It Work for People, Production and the Planet' (2021) 100 Land Use Policy 104933, 104934.
[209] Jules Pretty, 'Editorial: Sustainable Intensification in Africa' (2011) 9 International Journal of Agricultural Sustainability 3, 4. For more detail of projects in Africa that found success with such support see Foresight (n 188).
[210] Rose *et al* (n 208) 104934.
[211] Lynn V Dicks *et al*, 'What Agricultural Practices Are Most Likely to Deliver 'Sustainable Intensification' in the UK?' (2018) 8 Food and Energy Security e000148, 3.
[212] E Diamond Collins and Kirtana Chandrasekaran, 'A Wolf in Sheep's Clothing? An Analysis of the 'Sustainable Intensification' of Agriculture' (*Friends of the Earth International*, 2012) https://www.foei.org/wp-content/uploads/2013/12/Wolf-in-Sheeps-Clothing-for-web.pdf accessed 26 June 2020.
[213] H Charles Godfray and Tara Garnett, 'Food Security and Sustainable Intensification' (2014) 369 Philosophical Transactions of the Royal Society B: Biological Sciences 20120273, 6
[214] Nadia Lambak, 'The UN Committee on World Food Secuity's Break from the Agricultural Productivity Trap' (2018) 9 Transnational Legal Theory 415, 418.
[215] Jarosz (n 194) 169.

productivity and make improvements in technology. The FAO has stated that, within the 'concept of food security is an understanding of food producers and consumers as economic agents.'[216] This demonstrates a fundamentally economic, market driven approach to food security.[217] Such an approach is embedded in the current dominant approach to achieving food security through increasing production, efficiency, and free trade, and is apparently contradictory to their promotion of agroecology.

This view is also supported by Fraser *et al,* whose review of the literature concerning solutions to the global food crisis indicated technology for production is a strong theme in the food security literature.[218] Such production-based approaches, appear to be a neutral policy based on increasing production by using technology. As with other terms relating to agriculture, sustainable intensification should not privilege a certain production system, yet it has now become associated with ideas of input intensive industrial agriculture.[219]

The FAO and the idea of food security may also overemphasise the idea of increased production, above actually ensuring people's access to food. As Sen initially indicated famines generally do not result from a lack of food but the lack of economic and political power of people to access that food.[220] The FAO does highlight access as one of the pillars of food security. However, as an idea to guide policy it does little more than describe economic and physical access, rather than engaging in discussions of power and moral entitlement to such power. The CFS however, in adding a component of agency to food security, does suggest a consideration of people's moral and subjective security. As has been discussed above, a human rights framework founded in dignity needs to consider not only people's objective ability to access food, but the way they do this, how they feel about their ability to access food and the associated power dynamics.

---

[216] FAO, *'The State of Food and Agriculture 1996'* (Rome, 1996) http://www.fao.org/3/w1358e/w1358e.pdf accessed 20 February 2020, 226.
[217] William D Schanbacher, *The Politics of Food. The Global Conflict Between Food Security and Food Sovereignty* (Prager Security International) 2010), 229.
[218] Evan Fraser *et al,* 'Biotechnology or Organic? Extensive or Intensive? Global or Local? A Critical Review of Potential Pathways to Resolve the Global Food Crisis' (2016) 48 Trends in Food Science and Technology 78, 79.
[219] Godfray and Garnett (n 213) 6.
[220] Amartya Sen, *Development as Freedom* (OUP 1999) 161.

Arguably, a tension exists within different parts of the United Nations (UN). The FAO and CFS have moved towards agroecology and the idea of NGO, producer and small holder participation, yet there sometimes remains a focus on industry and technology. In the run up to the World Food Summit in October 2021, there was criticism that the dominant discourse had embraced the 'intensive' in sustainable intensification, supporting technological approaches to agriculture. The World Food Summit was criticised both for the lack of inclusion of the right to food and the appointment of a Special Envoy to the summit who favours technological and agribusiness solutions to meet the food needs of the world.[221] The Special Rapporteur pushed for the inclusion of the right to food within the discourse of the summit, however the right to food remained a marginal issue.[222] This demonstrates that the *status quo,* focusing on technology and large agribusiness, remains the dominant position within some parts of the UN. This is despite the ongoing failures and inequalities in the global food system. States need to consult with producers, from small holder farmers to larger producers, to ensure valuable knowledge and approaches are not lost, and policies do not negatively impact the right to food of small holders, peasants and indigenous peoples and impact the ability of future generations to produce food.[223]

6.4. An approach to production for the right to food

The right to food can indicate certain principles that should be considered in terms of production in any food system. As mentioned above, a framework based in human dignity suggests the importance of considering the human dignity of those impacted by agricultural policy. The protection of agricultural

[221] Agnes Kalibata has held the roll of president of AGRA (https://agra.org/zt_team/dr-agnes-kalibata-2/), an organisation promoting green-revolution style agriculture in Africa, however this organisation has been heavily criticised for lack of results and transparency for example see Timothy A Wise, 'New AGRA Reports Offer Little Evidence to Justify Continued Donor Support' (*Institute for Agricultural and Trade Policy*, 2021) https://www.iatp.org/documents/new-agra-reports-offer-little-evidence-justify-continued-donor-support accessed 2 September 2021.
[222] Office of the High Commissioner for Human Rights, 'UN Food Systems Summit Marginalizes the Human Rights and Disappoints, Say Experts' (*UN*, 22 September 2021) https://www.ohchr.org/en/statements/2021/09/un-food-systems-summit-marginalizes-human-rights-and-disappoints-say-experts accessed 24 April 2024.
[223] Pretty (n 206).

workers, sustainability and land rights all feature in the Special Rapporteur's reports. Such protection includes issues around 'land grabs' and international investment in countries that can affect food security by reducing land available for national food production.[224] The structures of global markets may need changing so they provide small holders better access to markets, as well as the possibility of supplier not buyer led supply chains.[225] Taken together, this suggests the importance of stakeholder involvement. The rights of all of those who produce food and work in agriculture need to be considered as well as the need for environmentally sustainable food that is nutritious with limited processing where possible. This requires engagement and involvement in a way that respects moral security, not just a tick box exercise regarding consultation. Many of these considerations again would need policy changes, infrastructure development, and investment as well as international cooperation, and so could only be of progressive realisation.

In the UK, the need for a localised approach, that may involve some technology as well as agroecological approaches, can be seen. The Foresight Report, in 2011, considered the global food chain and food security in the UK. It suggested the importance of technology, specifically the need for targeted research into crops, livestock, nutrition, and soil science,[226] to increase productivity whilst reducing negative environmental effects of food production.[227] More recently, as mentioned above, the National Food Strategy has suggested a 'three compartment model' to manage land in the UK, with some being used as high-yield farmland, some as low yield farm land and the rest as semi-natural land, with the aim of utilising both traditional farming methods and more technological approaches to achieve the UK's net zero commitment and nature preservation goals.[228] This has some advantages as it allows land to potentially be set aside for rewilding type approaches, as has been carried out at the Knepp estate, where low input farming is carried out

[224] Christian Häberli and Fiona Smith, 'Food Security and Agri-Foreign Direct Investment in Weak States: Finding the Governance Gap to Avoid 'Land Grab.' (2014) 77 The Modern Law Review 189.
[225] UNHRC 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter' (2009) UN Doc A/HRC/13/33 [37].
[226] Foresight (n 188) 90-91.
[227] Foresight (n 188) 35.
[228] Dimbleby (n 62) 99 and 156.

alongside habitat restoration and the reintroduction of rare wildlife species. [229] However, this approach potentially risks a dichotomy of approaches with land that is very intensively farmed and other land that is managed more as nature reserves.

The concern with such a dichotomy is that the inputs and the necessary level of intensification on land that is farmed will still damage the environment and result in unfavourable conditions for animal welfare.[230] In addition, apparently missing from these approaches is a commitment to farmer participation, as well as the inclusive approaches to technology suggested by both agroecology and sustainable intensification. These suggestions for the UK highlight the complex decisions that states need to make in relation to agriculture policy and the standard of production. In addition to assessing the best approaches for sustainability, participation of stakeholders is fundamental, with farmer participation and inclusive approaches to technology, something arguably missing, from the current approach of the UK. Recent developments in UK agriculture policy will be returned to in Chapter 5.

7.0. Conclusion

This chapter has discussed the obligations for the right to food that can be derived from the first four standards, derived from Article 11 ICESCR, in the proposed framework. A right to food based in human dignity firstly requires an urgent obligation of immediate realisation that no one should be hungry. The precise content of this obligation is dependent on the socioeconomic situation of a state and could range from emergency food aid parcels, or food distribution schemes to ensuring everyone in a state can access or purchase a nutritional appropriate diet. This right overlaps with the content of the obligation to provide people with adequate food.

Adequate food requires a variety of obligations to be progressively realised. Food should be nutritious, culturally appropriate, and accessible.

---

[229] See: 'Knepp Estate' https://knepp.co.uk/knepp-estate/ accessed 2 February 2024.
[230] See for example: Farm Animal Welfare Committee, 'Sustainable Agriculture and Farm Animal Welfare' (2016) https://assets.publishing.service.gov.uk/media/5a7f9365ed915d74e33f747f/Advice_about_sustainable_agriculture_and_farm_animal_welfare_-_final_2016.pdf accessed 17 April 2024; Jeremy Franks, 'Sustainable Intensification: A UK Perspective' (2014) 47 Food Policy 71.

Concerns about cultural appropriateness are in part underpinned by considerations of moral security, human dignity and treating people as if they are of equal moral worth. However, in the case of religiously appropriate food, not providing such food where there are no alternatives and so compelling people to either eat the food or be hungry is a violation of the of the right to food due to religious discrimination. Non-discrimination is part of the right to food, and indeed all socioeconomic rights, that is also to be immediately realised.

The standard of adequate food also overlaps considerably with production and nutrition, which generate obligations that, in the case of nutrition may be part of the core of the right to food, but in the case of production will most often be more slowly and progressively realised. The standard of nutrition not only includes the requirement that states develop appropriate policy to tackle diet related diseases but also consider whether recommendations for diets are sustainable. Plant-based diets may offer an option for healthier and more sustainable diets, but as discussed this is not a panacea, and different states may need to take more nuanced approaches depending on what people may eat as an alternative and the risk of dietary deficiencies.

Production is similarly complex with states needing to take individual and nuanced approaches to developing sustainable food production that protects soil, the climate and biodiversity. This may involve models such as agroecology and sustainable intensification, however states need to be aware these models can be embedded in the current ‘production to increase food security’ discourse, which may not provide the most sustainable approach. Also missing from such approaches are focus on the impact of those that work in agriculture, their needs and knowledge. As such the right to food has the potential to guide policy approaches in relation to production of food that are not only sustainable but ensure the interests of those involved in the production of food are considered. The next chapter will now consider the standards of trade and international cooperation, which require engagement with international relations and international law.

Chapter 4

International Standards and State Obligations for the Right to Food

1.0. Introduction

Chapters 2 and 3 justified the right to food and then considered obligations in relation to four of the standards indicated in Article 11 of the International Convention on Economic, Social and Cultural Rights (ICESCR): the right to be free from hunger; the right to adequate food; production; and nutrition. These four standards were addressed in relation to the obligations states owe to those within their territory and how they should be incorporated into policies for food and agriculture. This chapter will address the final two standards from Article 11 ICESCR, international cooperation and equitable distribution, which both require consideration of possible obligations to people outside a state's territory.

Human rights obligations owed to those in other states is a controversial topic, with much written both on extraterritorial obligations and international cooperation. The literature in this area argues for many approaches ranging from extremely limited obligations,[1] to much more extensive systems of obligations owed to those in other states.[2] However, given the nature of the global food system, without some form of international cooperation the right to food will not be realised by all. For example, states need to cooperate with each other to ensure food safety and standards are maintained in relation to food and agricultural products imported into their territories, an issue returned to in Chapter 7 of this thesis.

---

[1] For example: Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on Its Development* (Clarendon Paperbacks 1995) 75; Ben Saul, David Kinley, and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary Material and Cases* (OUP 2014) 140.

[2] For example: Olivier De Schutter, *et al* 'Commentary to The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2012) 34 Human Rights Quarterly 1084; Margot E Salomon, *Global Responsibility for Human Rights* (OUP 2007).

This chapter will begin by demonstrating why international cooperation and trade is necessary to realise the right to food for all by considering the COVID-19 pandemic and events in Ukraine and Gaza. After establishing the need for international cooperation and trade to achieve realisation of the right to food, the chapter will then briefly review the complexity and lack of agreement about international cooperation and legal obligations for states in relation to socioeconomic rights. The discussion will then consider the right to food specifically in relation to international cooperation. After considering the status of the right to food in customary international law (CIL), the comments of the Committee for Economic Social and Cultural Rights (CESCR), the Special Rapporteurs, and academic commentary, it will be concluded that legal obligations for international cooperation in relation to the right to food are limited to the principle of doing no harm. Although it is possible to justify more extensive cooperation based on moral obligations and consequentialist arguments, it is not possible, at this point, to conclude that legal obligations for more extensive cooperation exist. The chapter then moves to two specific examples of international cooperation, international food assistance and the World Trade Organization (WTO) Agreement on Agriculture (AoA). Both demonstrate that states may engage in more extensive cooperation, and once they do, they may take on additional obligations. However, these obligations should not undermine the principle of doing no harm in relation to the realisation of the right to food in other states.

2.0. The need for international cooperation to realise the right to food

Article 11(2) of the ICESCR specifically mentions international cooperation. This is in addition to the overarching obligation from Article 2 ICESCR to ‘take steps, individually and through international assistance and cooperation’ to progressively achieve the rights within the Covenant. This emphasises the importance of this component of the right to food. Given the complexities of the global food system, states cannot act in isolation to achieve food security for their populations and realise the right to food. Some states cannot produce all the food they need, and so trade and imports are the only way they can

feed their populations.[3] Around 25% of global food production is traded on international markets,[4] and this in of itself requires cooperation not only for the trade to take place, but also to ensure safety standards are maintained throughout the global food supply chain. Transnational Corporations (TNCs) are heavily involved in all stages of the global food chain and so a degree of international cooperation is required to regulate their activities. Unlike the International Covenant on Civil and Political Rights, the ICESCR has no jurisdictional limit, again indicating the importance of states cooperating to achieve the rights contained within the ICESCR.[5]

Considering the right to development and the level of poverty in the world, which are closely linked to the ability of people to feed themselves, many authors have argued that states cannot realise socioeconomic rights in isolation.[6] International financial organisations and more powerful states can influence domestic policy within developing and least developed countries (LDCs), which in turn affects the state's infrastructure, as well as their agricultural, health and more general financial policies.[7] Such international organisations and more powerful developed states need to consider the impact of such policies on the human rights obligations of developing countries and LDCs. They should not impose or encourage policies on these developing countries and LDCs which make it more difficult for their populations to realise the right to food or their governments to comply with their obligations for the right to food. More generally, an international environment that enables and

---

[3] Pascal Lamy, 'Letter to Olivier De Schutter' (14 December 2011) https://www.wto.org/english/news_e/news11_e/agcom_14dec11_e.htm accessed 28 June 2020; Olivier De Schutter, 'The World Trade Organisation and the post-global food crisis agenda' (Briefing note 04, November 2011) https://www.wto.org/english/news_e/news11_e/deschutter_2011_e.pdf accessed 4 February 2024.

[4] Jennifer Clapp, *Food* (Polity Press 2020) 66.

[5] Article 2 ICCPR (International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), Art 25 999 UNTS 171) indicates 'individuals within its territory and subject to jurisdiction' which is absent from Article 2 ICESCR (International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3).

[6] Margot E Salomon, *Global Responsibility for Human Rights* (n 2) 50; Thomas Pogge, *World Poverty and Human Rights* (2nd edn, Polity 2008) 38-39; De Schutter *et al* (n 2) 1085.

[7] Margot E Salomon, 'Of Austerity, Human Rights and International Institutions' (2015) 21 European Law Journal 521, Fons Coomans, 'The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights' (2011) 11 Human Rights Law Review 1, 17-8.

facilitates states achieving the right to food for everyone is needed.[8] In addition to a facilitating environment, each of the standards that were discussed in Chapter 3 require some degree of international cooperation for full realisation. These will now be considered in turn.

2.1. International cooperation and the right to be free from hunger

Chapter 3 of this thesis argued that the fundamental right to be free from hunger is a right of immediate realisation. Although primary responsibility for this right in most situations will rest with the state of those going hungry, in certain situations the action of other states may be needed to prevent or alleviate hunger. The first situation to be considered is economic sanctions. The CESCR has stated that economic sanctions should not result in hunger in people living in the sanctioned state.[9] To prevent this, the international community needs to cooperate and monitor the effect of any sanctions imposed to ensure there are no intended consequences and that they 'do no harm' in relation to creating hunger in people in the sanctioned state. This is a legal obligation, rather than a moral obligation, and the United Nations Security Council has started creating 'humanitarian carve-outs' when calling for sanctions to limit the impact on the civilian populations, for example in both Syria and Afghanistan.[10]

The Israeli Government's military action in Gaza following terrorist attacks by Hamas in October 2023 has resulted in mass displacement and death of civilians and has led to claims by some countries that Israel is committing Genocide.[11] A discussion of the findings of the International Court

---

[8] Pogge (n 6) 15; Salomon *Global Responsibility for Human Rights* (n 2) 186; Ralph Wilde, 'Socioeconomic Rights, Extraterritorially' in Eyal Benvenisti and Georg Nolte (eds), *Community Interests Across International Law*, (OUP 2018) 21.

[9] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 8: The Domestic Application of the Covenant*, (12 December 1997) UN Doc E/C.12/1997/8; Malcolm Langford, Fons Coomans and Felipe Gómez Isa, 'Extraterritorial Duties in International Law' in Malcolm Langford, Wouter Vandenhole, Martin Scheinin and Wilelm van Genugten (eds), *Global Justice, State Duties. The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2013) 95-6.

[10] United Nations, 'Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs are Met' (UN SC/1478, 7 February 2022) https://press.un.org/en/2022/sc14788.doc.htm accessed 4 February 2024.

[11] International Court of Justice, 'Application on the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) see https://www.icj-cij.org/case/192 accessed 4 February 2024.

of Justice (ICJ) in relation to the complaint made by South Africa are outside the scope of this thesis. However, there is evidence that Israel is denying access of civilians to food and water.[12] In addition, 16 countries have recently withdrawn support for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The withdrawal of aid has been stated to relate to concerns that UNRWA staff were involved in the attacks in October by Hamas.[13] However, without facilitating other routes of aid into Gaza, this action further threatens the supply of food and other aid to over 2 million people in the area.[14] Removal of this aid is an example of why states should consider whether their actions may be doing harm in relation to the right to food when they engage in international relations. In this case the actions of these states have increased the risk of starvation in Gaza.

In addition to refraining from imposing sanctions and taking other actions that may cause hunger, the right to be free from hunger also potentially requires states to provide aid and assistance to alleviate acute food insecurity such as may occur during famines, military action, and natural disasters. In such situations, countries may be unable to prevent hunger in their populations due to a lack of food or infrastructure. Provision of such aid is long established.[15] The Food Assistance Convention (FAC), with sixteen signatories,[16] demonstrates the accepted importance of food assistance amongst developed countries. However, food assistance is not without issues relating to what and how aid is provided.[17] Section 4 of this Chapter will return to this issue.

---

[12] Human Rights Watch, 'Israel: Starvation Used as Weapon of War in Gaza' (18 December 2023) https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza accessed 4 February 2024.
[13] Bethan McKernan, 'UK, US and Other Countries to Pause Funding for Key UN Aid Agency for Palestinian Refugees' *The Guardian* (28 January 2024) https://www.theguardian.com/politics/2024/jan/27/uk-to-pause-funding-for-key-un-aid-agency-for-palestinian-refugees accessed 4 February 2024.
[14] UNRWA, 'The Gaza Strip: Humanitarian Crisis Deepens at a Time Funding Suspensions put UNRWA Aid Operations in Peril' (1 February 2024) https://www.unrwa.org/newsroom/news-releases/gaza-strip-humanitarian-crisis-deepens-time-funding-suspensions-put-unrwa-aid accessed 4 February 2024.
[15] UNHRC, 'Report of the Special Rapporteur on the Right to Food, Hilal Elver' (25 January 2018) Un Doc A/HRC/37/61 [77].
[16] Food Assistance Convention, entered into force 1 January 2013, available at https://www.foodassistanceconvention.org/en/about.aspx accessed 4 February 2024 (FAC).
[17] Annamaria La Chima, 'Food Security and the Right to Food: Finding the Balance in the 2012 Food Assistance Convention' (2016) 65 International and Comparative Law Quarterly 99.

2.2. International cooperation and the right to adequate food and nutrition

The right to adequate food and nutrition are closely linked with overlapping components and considerations, as seen in Chapter 3. In the context of international cooperation, they are also closely linked. There are many countries that could never be entirely self-sufficient in food and provide all their population with an adequate, nutritionally balanced diet. As such, trade, will always be a part of the global food system.[18] Trade is also of vital importance to ensure not just sufficient food in terms of macronutrients, but also micronutrients. Trade 'improves the ability of many countries, especially poorer countries, to meet their nutrient needs.'[19] However, trade is also necessary for some developed countries to ensure access to the variety of food necessary for a nutritionally balanced diet. The UK is dependent on imports for the supply of the fruit and vegetables it consumes. The UK produces around 57% of the vegetables and 12% of the fruit by value it consumes.[20] The UK relies on imports largely from the European Union (EU) for vegetables and imports from around the globe for the fruit consumed.[21] In addition to trade being necessary to provide food, even in countries that may be able to grow a large proportion of the food they require, trade in agricultural products may be needed to enable this production.

Finally, global and regional events, such as extreme weather or conflict can affect global food prices. As discussed in Chapter 1, this was demonstrated by the food crisis of 2007-8 when rapid increases in food prices

[18] Michael Trebilcock, Robert Howse and Antonia Eliason, *The Regulation of International Trade* (4th edn, Routledge 2013) 440.
[19] Stephen Wood *et al*, 'Trade and the Equitability of the Global Food Nutrient Distribution' (2018) 1 Nature Sustainability 34.
[20] Tim Lang, *Feeding Britain. Our Food Problems and How to Fix Them* (Pelican Books 2020) 90-91.
[21] DEFRA, 'UK Food Security Report 2021' (16 December 2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077015/United_Kingdom_Food_Security_Report_2021_19may2022.pdf accessed 4 March 2024, 110.

resulted in an increase in global hunger and riots.[22] The causes of the crisis included poor harvests in some areas due to the weather.[23] More recently the ongoing Russian invasion of Ukraine, has caused price rises of basic commodities such as wheat and sunflower oil, in part contributing to dramatically high levels of food inflation and food insecurity in the UK and across Europe.[24] In addition, the international community came together to negotiate Russia releasing grain from Ukraine so supplies to food assistance programmes could be maintained and food price rises limited.[25] As such, international cooperation is required to mitigate the effects of such events, to ensure all receive an adequate nutritious diet.

2.3. International cooperation and production

As mentioned above, production of food may require states to trade in agricultural products and inputs such as seeds and fertiliser. In addition to trade, international cooperation in relation to production may require sharing of knowledge and best practice in relation to agriculture. As mentioned above, international organisations such as the UN Food and Agricultural Organisation (FAO), International Monetary Fund (IMF) and World Bank (WB) may influence agricultural policy in states. As international organisations they also involve states working together to develop policy guidance or soft law in relation to production of food and agriculture. States work together in these organisations,[26] and so this is also a way in which states may cooperate and

---

[22] Eric Holt-Giménez, 'Hunger, Harvests and Profits: The Tragic Records of the Global Food Crisis' in Eric Holt- Giménez and Raj Patel with Annie Shattuck (eds), *Food rebellions!: Crisis and the Hunger for Justice* (Pambazuka Press 2009).

[23] Holt- Gimenez (n 22) 10-18; Derek Headey and Shenggen Fan, 'Anatomy of a crisis. The causes and consequences of surging food prices' (IFPRI Discussion paper 00831December 2008https://ebrary.ifpri.org/digital/collection/p15738coll2/id/16187/rec/1 accessed 25 June 2020.

[24] Greg Kennedy, 'Has the Invasion of Ukraine Caused our Food Prices to Rise?' (Kings College London, 20 February 2023) https://www.kcl.ac.uk/has-the-invasion-of-ukraine-caused-our-food-prices-to-rise-over-the-past-year accessed 4 February 2023.

[25] Caitlin Welsh, 'Russia, Ukraine and Global Food Security: A One-Year Assessment' (Center for Strategic and International Studies, 24 February 2023) https://www.csis.org/analysis/russia-ukraine-and-global-food-security-one-year-assessment accessed 4 February 2024.

[26] For example, the FAO produces guidelines on range of topics related to agriculture https://www.fao.org/food-agriculture-statistics/resources/publications/guidelines-and-handbooks/en/ accessed 4 February 2024; the WFP works with governments in over 54 countries (as of 2015) to increased capacity and resilience in addition to provision of

provide assistance, through discussion, policy development and soft law declarations, rather than creating specific legal obligations and treaties.

For example, the FAO has developed The Voluntary Guidelines on the Right to Food.[27] These are a set of policy recommendations, that have been described as a 'novel and *primae facie* promising approach.'[28] They were the first document negotiated by states to provide detail as to how to implement a socioeconomic right.[29] The FAO has also created similar guidelines and recommendations in relation to a range of areas relevant to food production, such as The Code of Conduct for Responsible Fisheries,[30] and the Committee on World Food Security has created The Principles for Responsible Investment in Agriculture and Food Systems.[31] Although these are sources of guidance that have resulted from discussions between state representatives, they are voluntary and non-binding.

It is clear from the discussion above that the right to food, to be realised by all, does require international cooperation. However, this does not necessarily mean that legal obligations to cooperate can be stated to exist. States may work with international organisations and other states out of moral obligation or simply the benefit they receive from such cooperation. The next section will now consider if the fundamental norm underpinning the right to food justifies legal obligations for states to cooperate in relation to the right to food. It then moves to discuss the controversy and uncertainty around the content of extraterritorial obligations in human rights law generally and the socioeconomic rights more specifically.

---

emergency food aid, which includes improving food production https://www.wfp.org/country-capacity-strengthening accessed 24 April 2024.

[27] FAO, 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security' (FAO Rome, 2005) https://www.fao.org/publications/card/en/c/cceef08f-0627-5ec9-a8e2-63d7c0b608c2/ accessed 13th October 2023.

[28] Marie von Engelhardt, 'Opportunities and Challenges of a Soft Law Track to Economic and Social Rights – The Case of the Voluntary Guidelines on the Right to Food' (2009) 42 Law and Politics in Africa and Latin America 502.

[29] ibid.

[30] FAO, 'Code of Conduct for Responsible Fisheries' (FAO Rome 1995) https://www.fao.org/3/v9878e/v9878e.pdf accessed 11 April 2024.

[31] CFS, 'Principles for Responsible Investment on Agriculture and Food Systems' (15 October 2014) https://www.fao.org/3/au866e/au866e.pdf accessed 11 April 2024.

3.0. International cooperation and extraterritorial obligations in international human rights law

The aim of this section is not to provide an extensive discussion of the debates around extraterritorial obligations and international cooperation and assistance in international human rights law. The purpose of this discussion is to demonstrate the complexity of this area of law and the lack of agreement as to the nature of any general extraterritorial obligations for states in relation to socioeconomic rights and international cooperation. It also serves to indicate that, although the extent of any obligations is contested, there is widespread agreement that states do have some extraterritorial obligations. The following discussion will also demonstrate why, as indicated by Campbell the obligations for international cooperation should be determined on a right-by-right basis.[32] This follows the approach suggested by Nickel, that having justified the right to food in Chapter 1, using a pluralistic approach, the obligations generated are then considered.[33] This section will first consider why obligations for the right to food in relation to those outside of a state's territory are justifiable. It then describes approaches to extraterritorial obligations in international human rights law generally, and then more specifically in relation to extraterritorial obligations in the context of socioeconomic rights.

Before considering these areas, it is first necessary to clarify the terminology being used. Many terms are used for the impacts and actions of states outside of their territorial boundaries.[34] Many, such as 'transnational,' 'transboundary,' 'transborder' and 'cross-border' come from international environmental law, an area that has long-established the idea of transboundary harm.[35] However, these terms have been rejected by Skogly,

---

[32] Meghan Campbell, 'Cooperating to Continuously Improve' in Jessie Hohmann and Beth Goldblatt (eds) *The Right to the Continuous Improvement of Living Conditions* (Hart 2021) 45; Sandra Fredman, *Comparative Human Rights Law* (OUP 2018) 60; James Nickel, *Making Sense of Human Rights* (2nd edn, Blackwell Publishing 2007) 70.
[33] Nickel (n 32) 3.
[34] Mark Gibney, 'On Terminology. Extraterritorial Obligations' in Malcolm Langford, Wouter Vandenhole, Martin Scheinin and Wilelm van Genugten (eds), *Global Justice, State Duties. The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2013) 33.
[35] Ibid 33.

who prefers the term extraterritorial obligations. This term moves away from the suggestion of geographical closeness often associated with pesticide runoff or similar environmental harms. Using the term extraterritorial obligations acknowledges that human rights in one state can be affected by another state. This state could be a neighbouring state or a state that is many thousands of miles away.[36] This reasoning is convincing and so in this chapter, the term extraterritorial obligations will be used when other authors have referred to such obligations by this term. However, ultimately, this thesis will use the terms international cooperation and international assistance in its normative framework as these are the terms used in the ICESCR. It is likely that in practice the obligations discussed could be referred to either as extraterritorial obligations or obligations of international cooperation and assistance.

3.1. The right to food: an abstract norm with international obligations

Section 2 of this Chapter demonstrated why realisation of the right to food by all in the world requires cooperation. Yet imposing extraterritorial legal obligations requires a justification beyond necessity. Turning to the pluralistic framework suggested by Nickel and used in Chapter 2,[37] several justifications for states to engage in ensuring the right to food is realised in other states can be put forward. As indicated in Chapter 2, a deontological approach, based in human dignity, is preferred to justify obligations in relation to the right to food, although a pluralistic approach justifies a right to the widest possible audience.

Hunger is an affront to human dignity whether people are going hungry in a state's territory or outside of it. Hunger is a violation of the foundational moral principle of human dignity,[38] considered one of the foundations of contemporary human rights law.[39] The dignity of the vulnerable should be protected by those that are strong. This also applies to more powerful rich

[36] Sigrun I Skogly, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Intersentia 2006) 5.
[37] Nickel (n 32) 53.
[38] Jeremy Waldron, *One Another's Equals* (The Belknap Press of Harvard University Press 2017) 3-4.
[39] ibid.

states who should protect the dignity of the hungry, even in other states.[40] However, such an obligation could, and has been rejected by states.[41]

As indicated in Chapter 2, a political conception of rights may reject the right to food, as it would not be sufficient to justify a state violating the sovereignty of another to protect the right.[42] Raz's conception of a political right may reject the idea that a state would have an obligation to protect the right to food in other states. Other conceptions of political rights, such as Buchanan's would recognise obligations for the right to food in other states.[43] As previously discussed in the second chapter, Buchanan argues that rights are identified by how they are recognised by practitioners.[44] Given the statement of the right in the ICESCR, along with the general comments of the CESCR, reports of the Special Rapporteurs and academic discussion of international cooperation and the right to food, Buchanan's conception would acknowledge obligations in relation to those outside of a state's territory.

Finally, consequentialist arguments can also justify states having concern for the realisation of the right to food for those outside of their territory. This is the case even if states were to completely reject the notion of economic, social, and cultural rights.[45] Shortages of food are common causes of riots and in some cases wars.[46] As mentioned above, shortages of food in one country can result in world food prices going up, affecting many more states. In addition, refugee crises can be sparked by food shortages, for example the Arab Spring caused mass migration, both within states and to other countries.[47] Ensuring people have sufficient food is important for international stability,[48] which is in all state's interests.

---

[40] Pogge (n 6) 5.
[41] For example, the USA has argued that socioeconomic rights are goals, not rights as indicated in Philip Alston and Gerard Quinn, 'The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 156, 158.
[42] John Rawls, *The Law of Peoples* (Harvard University Press 1999) 80.
[43] Allen Buchanan, *The Heart of Human Rights* (OUP 2013) 11.
[44] ibid 116.
[45] See Alston and Quinn (n 41).
[46] Pitirim A Sorokin, *Hunger as a Factor in Human Affairs* (University of Florida Presses 1975) 204-215.
[47] Susana de Sousa Ferriera, 'Migrations and the Arab Spring – a New Security Nexus' (2014) 10 Human Security Perspectives 62, 74
[48] William D Schanbacher, *The Politics of Food. The Global Conflict Between Food Security and Food Sovereignty* (Prager Security International 2010) 2; Nora McKeon, *Food Security Governance: Empowering Communities, Regulating Corporations* (Routledge 2015) 2.

3.2. Extraterritorial obligations in international human rights law

So, states should have moral and political concern for the right to food in other countries, but does this mean they have legal obligations? If so, what form should these obligations take? This section considers general extraterritorial legal obligations in international human rights law, as this is a more developed area than extraterritorial obligations for socioeconomic rights and the right to food.[49]

Outside the ICESCR, which contains the most extensive provisions relating to international cooperation,[50] obligations to cooperate internationally can be found in numerous other treaties. For example, the UN Charter establishes the idea in Article 56, stating: 'All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.'[51]

The Convention on the Rights of the Child also refers to 'the framework of international cooperation' in Article 4 in relation to the realisation of economic, social, and cultural rights.[52] The American Convention on Human Rights includes international cooperation in both Article 26 and in Article 1 of the Additional Protocol that deals with socioeconomic rights. [53] However, international cooperation in these treaties is not further defined, and so jurisprudence in relation to international cooperation and extraterritorial obligations will now be considered.

The ICJ has considered the nature of extraterritorial obligations in several cases. The Trail Smelter case established the principle that 'one state cannot use or permit the use of its territory in such a manner as to cause injury' in the territory of another state.[54] It has been suggested that since this case,

---

[49] Campbell (n 32) 43.
[50] Magdalena Sepúlveda Carmona, 'The Obligations of 'International Assistance and Cooperation under the International Covenant on Economic, Social and Cultural Rights. A Possible Entry Point to a Human Rights Based Approach to Millennium Development Goal 8' (2009) 13 International Journal of Human Rights 86, 87.
[51] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.
[52] Convention on the Rights of the Child, (adopted 20 November 1989 entered into force 2 September 1990) UNTS vol. 1577 art 4.
[53] American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969
[54] Trail Smelter case (United States v Canada) 3 R.I.A.A 1905.

extraterritorial obligations have not developed further.[55] The ICJ has tended to limit extraterritorial obligations in relation to human rights to situations where states have 'effective control' of territories.[56] For example in the Opinion concerning the building of a wall in Palestine Occupied Territory, the fact that the area had been under the jurisdiction of Israel meant Israel was responsible for human rights in the area.[57] Similarly, although finding that Namibia was outside of South Africa's jurisdiction as its continued presence in the area was illegal, it was still responsible for apartheid due to its control of the area.[58]

The European Court of Human Rights (ECtHR) has however taken an increasingly limited approach to state responsibility as its case law has developed. In the case of *Loizidou vs Turkey,* the court found that Turkey's responsibility for its acts extended into Northern Cyprus. During the time of the complaint Turkey had effective control over the area due to the presence of its troops.[59] From this point, state responsibility outside of a state's territory has become limited to state agents or areas of 'effective control.'[60] For example, in the *Bankovic* case, the ECtHR considered that the applicants and the deceased did not come within the jurisdiction of Belgium during NATO bombing in Belgrade, due to lack of *de facto* control of the airspace.[61] Similar reasoning was applied in the case of *Georgia v Russia.* The ECtHR found that, in relation to five days of shelling by Russia, the affected area was outside of Russia's jurisdiction.[62]

This limited approach of the ECtHR contrasts with the UN Human Rights Committee (UNHRC) which has recently taken a more expansive approach to extraterritorial obligations.[63] In complaints against France

---

[55] Sigrun I Skogly and Mark Gibney, 'Transnational Human Rights Obligations' (2002) 24 Human Rights Quarterly 781.
[56] Skogly (n 36) 171
[57] Legal Consequences of the Construction of a Wall in Occupied Palestinian Territories, 9 July 2004 [112].
[58] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Advisory Opinion of 21 June 1971 [118].
[59] *Loizidou v Turkey* App No 15318/89 (18 December 1996) 23 EHRR 513.
[60] Bernadette Rainey, Pamela McCormick and Clare Ovey, *Jacobs, White and Ovey. The European Convention on Human Rights.* (8th edn, OUP 2021) 95.
[61] *Bankovic and others v Belgium and 16 other Contracting States* App No 52207/99 (12 December 2001).
[62] *Georgia v Russia* (No 2) App No 38263/08 (29 January 2021) [133-134].
[63] Lea Raible, 'Extraterritoriality Between a Rock and a Hard Place' (2021) 82 Questions of International Law 7, 8.

concerning children of French nationality detained in camps in Syria, the UNHRC found France had jurisdiction in relation to the complainants.[64] Raible suggests the Committee made this finding on the grounds of both the Nationality of the children as well as the 'power and capacity' of France to assist.[65] Raible questions the principles behind the UNHRC reasoning, suggesting that capacity alone is not sufficiently principled to allocate duties, and something more principled is required, such as jurisdiction.[66]

The divergency in courts' approaches and the criticism that there is a lack of principled reasoning suggests that creating clear legal obligations in relation to international cooperation is a difficult if not impossible task. Different rights may require different obligations, based on different factors, for example, causation when discussing harm caused by pollution or effective control of territory when dealing with human rights abuses in occupied territories. As such, the extraterritorial legal obligations that a human right generates need to be determined for that specific right. The preceding discussion above has demonstrated a search for overarching principles for all rights has been of limited success. However, before considering specific obligations in relation to the right to food, the literature specifically relating to socioeconomic rights and international cooperation will be considered. This literature is a potential source to inform the obligations that will be suggested in relation to the right to food.

3.3. International cooperation and assistance for socioeconomic rights

Extraterritorial obligations and international cooperation in relation to socioeconomic rights are also much contested and discussed. The ICESCR mentions jurisdiction and territory only in Articles 2 and 11. The CESCR has indicated that Articles 55 and 56 of the UN Charter, along with general principles of international law create obligations for all states for the realisation

[64] *LH et al v France* CRC/C/85/D/79/2019 and CRC/C/85/D/109/2019 (30 September 2020) and 109/2019 and *FB et al v France*, CRC/C/86/D/R.77/2019 (4 February 2021).
[65] Raible (n 63) 13 and 16.
[66] ibid 19.

of economic, social, and cultural rights.[67] They also indicate this is especially so for states which can assist others in realisation of these rights.[68] This would suggest that developed nations do have an obligation to assist developing countries and LDCs in realisation of economic social and cultural rights.

In addition, Article 23 ICESCR indicates:

> 'The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.'

This could be interpreted as requiring the creation of specialist international bodies, the creation of additional treaties creating additional legal obligations, and an obligation to provide extensive assistance to developing states. Craven has argued this provision requires states to provide humanitarian aid.[69] However, there is no direct mention of humanitarian aid or the provision of economic assistance.[70] As a result even the basic provision of aid could be contested as a legal obligation in relation to socioeconomic rights.

It has also been argued that the requirement for international cooperation lacks precision in terms of the obligations it generates.[71] Examination of the Travaux Préparatories for the ICESCR does suggest agreement amongst states that international cooperation would be required for full realisation of the rights in the ICESCR.[72] However, there was no clear elucidation of associated obligations, with states indicating that it would be

---

[67] Committee on Economic, Social and Cultural Rights, General Comment No.3: *The Nature of State Parties' Obligations (Article 2 para 1)* (14 December 1990) E/1991/23 [14].
[68] ibid.
[69] Craven (n 1) 75.
[70] ibid 147.
[71] Saul, *et al* (n 1) 140.
[72] See, for example: UNGA, '1204th Meeting, General Provisions: Articles 2 to 5 (continued)) (6 December 1962) UN Doc A/C.3/SR.1204 [14] as reproduced in Ben Saul, *The International Covenant on Economic, Social and Cultural Rights. Travaux Préparatories 1948-1966* (Oxford University Press 2016) 2198-2200.

wrong to specify the details of such assistance.[73] States were also keen to make sure that such assistance could not be demanded and that there would be no right to it.[74] The questions remaining about the nature of extraterritorial obligations persisted during the drafting of the Optional Protocol to the Covenant; developed states argued that the obligation to cooperate was moral not legal.[75] Alston and Quinn have also concluded that legally binding obligations for international cooperation are difficult to ascertain from the ICESCR and Travaux Préparatories.[76] At the same time Alston and Quinn acknowledge that as policy develops overtime reinterpretation of Article 2(1) ICESCR may be necessary.[77] This subsidiary role of the Travaux Préparatories that they suggest is supported by the Vienna Convention of the Law of Treaties that states Travaux Préparatories should only be used as a supplementary means of interpretation.[78] In addition, the ECtHR have suggested that Travaux Préparatories may in fact be unhelpful in interpretation.[79] As such, heavy reliance on the Travaux Préparatories to determine state obligations should be avoided, and the reluctance of states to be specific about the nature of obligations for international cooperation does not preclude their existence.

Academics have suggested more expansive interpretations of international cooperation. Salomon has discussed the right to development and the extraterritorial obligations it creates. She suggests that the right to development accepts that nation states are interdependent, and it creates rights for LDCs and developing countries.[80] This approach moves away from the traditional approach of human rights law that provides redress for individuals against their own state. [81] Such a new approach requires rethinking of the global economic structure. People and their needs are central, and

[73] ibid.
[74] ibid [14].
[75] De Schutter *et al* (n 2) 1094.
[76] Alston and Quinn (n 41) 191.
[77] ibid.
[78] Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 10.
[79] See, for example *Golder v UK* App No 4451/70 (21 February 1975); *Young, James and Webster v UK* App No 7806/77 (18 October 1982).
[80] Salomon, *Global Responsibility for Human Rights* (n 2) 6
[81] ibid 6.

growth and trade should only be pursued to aid people's development rather than as ends in themselves.[82] States should have obligations when part of international financial institutions; their negotiating representatives should ensure their actions are compliant with international human rights, along with the impact of any policy agreed. [83] Most extensively, Salomon suggests that in the current global order, state responsibility cannot be disaggregated from the existing global systems that by design cause and maintain poverty and inequality.[84] It is for all powerful, developed states to remedy this situation. [85]

The Maastricht Principles are another much more expansive approach to extraterritorial obligations. They concern the extraterritorial obligations of states in relation to economic, social, and cultural rights, and were adopted by a group of experts in international law and human rights law in 2011.[86] These principles are soft law, as they have not been agreed by states. Yet they do provide possible justifications and content for extraterritorial legal obligations for socioeconomic rights and so are briefly discussed here. The Maastricht Principles indicate international assistance, should include, but not be limited to, aid, technical and financial assistance, as well as the development of international rules that provide an 'enabling environment' for the realisation of socioeconomic rights.[87] They indicate state responsibility should be premised on the principle of foreseeability, with state obligations triggered when it is known the conduct of that state would bring about substantial human rights effects in another territory.[88] Especially relevant for the right to food are the principles that indicate how states should act in relation to 'trade, investment, taxation [and] finance' agreements.[89] Such obligations would be much more extensive than suggested by the ICESCR and General Comments of the CESCR. However, such obligations may not be agreed to by all states.

---

[82] ibid 113.
[83] ibid 105.
[84] ibid 186.
[85] ibid 187.
[86] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf accessed 18 April 2024.
[87] De Schutter *et al* (n 2) 1104.
[88] ibid 1109.
[89] Principle 29 Maastricht Principles (n 86).

It is apparent from the discussion above, there is no overarching agreement about the basis of extraterritorial obligations in relation to socioeconomic rights. Jurisdiction and effective control which have been found to require obligations in relation to socioeconomic rights and potentially food provision are limited to situations of state occupation.[90] However, the ICESCR does not indicate that the scope of the rights in the treaty are delineated by territory and jurisdiction.[91] Alternative bases for extraterritorial obligations for socioeconomic rights have been suggested to be responsibility for a state's actions or omissions,[92] or states' shared responsibility for violations of socioeconomic rights.[93] Although many violations of socioeconomic rights can be said to result from the nature of global economic structures,[94] such approaches to state obligations makes individual state obligations more difficult to define and delineate, as well as what should be done to remedy violations of these obligations.

Even when the CESCR has accepted certain benchmarks and standards that are commented on in its Concluding Observations, the lack of clarity regarding legal obligations and possible remedies for violations arguably limit the impact of the Concluding Observations. It is suggested that developed nations should provide 0.7% of GDP as international assistance, and this figure is used by the CESCR in Concluding Observations. However, this is not an accepted legal obligation, with many authors considering this a target or political commitment.[95] Although the CESCR does comment on states budget for international assistance, it often does little more than to encourage states to increase spend if they fall below this level.[96] Even when in the Concluding Observations on the UK in 2016 raised concerns about financial aid being spent on private education projects that potentially affected

[90] Langford, Coomans and Isa (n 9) 51; Coomans (n 7) 13.
[91] Coomans (n 7) 7
[92] Sigrun I Skogly, 'Global Responsibility for Human Rights' (2009) 29 Oxford Journal of Legal Studies 827, 839
[93] Margot E Salomon, *Global Responsibility for Human Rights* (n 2).
[94] ibid, 3.
[95] Langford, Coomans and Isa (n 9) 110; Coomans (n 7) 26.
[96] See, for example: UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of Denmark' (12 November 2019) Un Doc. E/C.12/DNK/CO/6 [14]; UN Economic and Social Council, 'Concluding Observations on the Fifth Periodic Report of France' (30 October 2023) Un Doc. E/C.12/FRA/CO/5 [10-11].

free education as well as being discriminatory, the CESCR only called for human rights impact assessments for projects, monitoring, and a complaint mechanism for receiving countries.[97] There was no indication of how such aid could be better spent. Similarly, when the German Government was criticised for the impact of the EU's Common Agricultural Policy on food security of low-income farmers in developing countries,[98] there was no suggestion that this could be remedied using financial or food assistance.[99] This lack of guidance by the CESCR in Concluding Observations will be returned to in section 6.2 of this chapter.

The lack of overarching agreement about obligations in general in relation to socioeconomic rights and international cooperation again supports the need for an approach that considers the obligations that are necessary and justifiable for each individual right. The possible obligations for international cooperation will now be considered specifically in relation to the right to food.

4.0. International cooperation and the right to food

The preceding sections have illustrated the complexity and debate around extraterritorial obligations for human rights and especially socioeconomic rights. There is no agreement amongst academics or human rights courts concerning the nature of legal obligations generated by various human rights instruments. However, the preceding discussion did demonstrate moral and political justifications for states engaging in international cooperation in relation to the right to food. Continuing with this right specific approach, as suggested by Campbell,[100] this section will first briefly consider CIL, as it is a possible source of international obligations in relation to the right to food. The section will then argue for a limited legal obligation that states should do no harm when engaging in international activities that may impact the right to food.

---

[97] UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) Un Doc. E/C.12/GBR/CO/6 [14-15].
[98] UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of Germany' (27 November 2018) Un Doc. E/C.12/DEU/CO/6 [12-13].
[99] ibid, [20].
[100] Campbell (n 32) 43.

4.1 The right to food in customary international law

This thesis is focusing on the right to food as stated in Article 11 ICESCR. However, CIL has significance for states that are not signatories to this Convention, as both CIL and *jus cogens* norms generate obligations for states that are not parties to a treaty.[101] The status of norms in CIL can also impact how treaty dispute bodies and international courts may interpret rules when reaching their conclusions.[102] The status of the right to food in CIL can also suggest that intergovernmental bodies should consider these norms when creating policy. However, Simma and Alston have argued against packing of customary law with human rights norms, for example to compensate for the USA's reluctance to engage with certain human rights. This could potentially dilute CIL's normative force as increasing numbers of obligations are suggested.[103] They describe a tendency towards 'instant' customary law in human rights law, for example suggesting that all of the content of the Universal Declaration of Human Rights is now CIL.[104]

Simma and Alston also question whether CIL is the most appropriate way to achieve the realisation of human rights, given it is an area of contestation with a lack of clarity about its content.[105] It can also be difficult to establish the necessary components of CIL in relation to human rights law. Although an extensive discussion of the nature and determination of CIL is outside the focus of this chapter, a brief consideration of its nature is appropriate at this point. CIL is identified based on state practice[106] and *opinio juris,* which is a belief by states that the rule is obligatory.[107] However in human

---

[101] James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 18-28.
[102] For example, see: Article 38 (1)(b) Statute of Permanent International Court of Justice indicates that the ICJ should apply international custom. Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 15 UNCIO 355.
[103] Bruno Simma and Philip Alston, 'The Sources of Human Rights Law: Custom, *Jus Cogens* and General Principles' (1988-1989) 12 Australian Yearbook of International Law 83.
[104] ibid 82, 84.
[105] ibid 83.
[106] *Delimitation of the Maritime Boundary in the Gulf of Maine (Canada v USA)* (ICJ Reports 1984 p246) [11].
[107] *North Sea Continental Shelf Case (Germany v Denmark); Merits, Judgement* (20 February 1969) ICJ Rep 3 [77], *Case Concerning Military and Paramilitary Activities in and*

rights law, this is not always straight forward to assess.[108] Countries may not state their reasons for action to avoid any future obligation to act in a similar way.[109]

Narula has concluded that there is a strong argument that the right to be free from hunger, as part of the right to food, has reached the status of CIL.[110] This conclusion has been reached following a survey of UN resolutions and declarations alongside the fact that the right to food has been included by many countries in both normal domestic and constitutional law. Narula also suggests that the inclusion of the right to food in international humanitarian law, at a time when even the right to life is not absolutely protected, demonstrates its fundamental nature.[111] Although she considers the right to be free from hunger to be part of CIL, she does not however suggest it has reached the status of a *jus cogens* norm.[112]

Chen has also reached the conclusion that components of the right to food have reached the status of CIL.[113] However, Chen suggests a more extensive obligation to respect, protect and fulfil the right to food.[114] It is not clear if this would include extraterritorial obligations as the focus of her discussion is on domestic behaviour to establish state practice and *opinio juris.* Most significant is the conclusion by both authors that the right to food has not reached the status of *jus cogens.* As such, the USA and other states that have persistently objected to socioeconomic rights as legal rights or the legally binding nature of international cooperation,[115] cannot be said to be breaching a legal obligation to, for example, provide food assistance, as they have consistently objected to such obligations existing. This discussion has not established a legal obligation for international cooperation and assistance in relation to the right to food. As a result, the next section returns to the approach

---

Against Nicaragua (Nicaragua v. United States of America); Merits (27 June 1986), International [184].

[108] Simma and Alston (n 103) 92.

[109] Smita Narula, 'The Right to Food: Holding Global Actors Accountable Under International Law' (2006) 44 Columbia Journal of Transnational Law 691, 778.

[110] ibid 798.

[111] Ibid, 779.

[112] Ibid, 780

[113] Ying Chen, 'The Right to Food' (2010) 12 European Journal of Law Reform 158, 177.

[114] ibid.

[115] Alston and Quinn (n 41) 9; Langford, Coomans, and Isa (n 9) 62.

of Nickel, used in Chapter 3 to justify a legal obligation for international cooperation in relation to the right to food.

4.2. International cooperation for the right to food.

Part of the process of justifying specific rights is asking if a norm weaker than a legal obligation would be effective.[116] In the case of the right to food, given the complexity of the right, as stated in Article 11 ICESCR, this is particularly pertinent. Firstly, too large a burden may be posed by extensive obligations.[117] Such obligations may have to be overly broad to deal with the many and variable situations faced by states, in relation to food and agriculture and so of little use due to their lack of specificity. Further, as demonstrated by the work of the World Food Programme (WFP), FAO, and other UN bodies alongside Non-Governmental Organisations (NGOs), soft law or policy guidance may be effective in directing global approaches to food, nutrition, and agriculture.[118] It is still acknowledged the more 'command and control' approach of hard law has a role in directing states activities in relation to the right to food. For example, the Common Agricultural Policy of the EU impacted the choices farmers made.[119] However, generating legal obligations and agreements in the EU is arguably less time consuming and complex than creating binding legal agreements in relation to international law. In such a legal environment soft law is an important tool to provide guidance to facilitate the realisation of the right to food.

This leaves the question of what if any legal obligation exists in relation to the right to food and international cooperation. After considering the comments of the CESCR and Special Rapporteurs in relation to Article 11

---

[116] Nickel (n 32) 75-6.
[117] ibid.
[118] As discussed above (see section 2.3), the FAO has provided much soft law guidance in relation to aspects of the right to food and food production. In addition, Abbot and Snidal have argued that in some circumstances states may prefer soft law guidance and soft law has advantages. For example, it is easier to create, it can adapt to changing circumstances more quickly as well as facilitating cooperation between states with different interests, values, and degrees of power. Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 Legalization and World Politics 421, 423.
[119] For example, see: Andrew Barnes *et al*, 'The Effect of the Common Agricultural Policy Reforms on Intentions Towards Food Production: Evidence from Livestock Farmers' (2016) 50 Land Use Policy 548; Erwin Schmid and Franz Sinabell, 'On the Choice of Farm Management Practices After the Reform of the Common Agricultural Policy in 2003' (2007) 82 Journal of Environmental Management 332.

ICESCR, a legal obligation to 'do no harm' is suggested. Article 11 ICESCR is unique in the Covenant as it specifically mentions international cooperation in an article relating to specific rights. During the drafting there was much debate over the inclusion of this wording in Article 11.[120] Alston has suggested the drafting of this complex provision was hasty, and as a result 'relatively confused'.[121] The Travaux Préparatories do suggest that delegates were concerned that international cooperation and assistance would be required for developing countries to achieve the rights in Article 11 ICESCR.[122] Yet, as Alston has also concluded, the lack of agreement and clarity about what this would entail should not make the reference to international cooperation meaningless. This is especially the case considering the similar wording in Article 2 ICESCR, and that the provision does 'import a legally binding obligation to cooperate internationally'.[123]

In General Comment 12 on the right to food, the CESCR has also indicated the importance of international cooperation and assistance.[124] The Committee indicates the importance of food assistance as well as requiring states not to impose food embargos as part of sanctions against other states due to the risk of food shortages and hunger.[125] Beyond this no further clarity is provided in relation to the legal obligations for international cooperation and assistance. General Comment 15 of the CESCR espouses the idea that states should do no harm in relation to realisation of the right to water. It indicates a number of international legal obligations states have in relation the right to water, and that they should 'refrain from actions that interfere directly with the enjoyment of the right to water in other countries'.[126] These include not imposing embargoes, preventing their citizens and companies from violating

---

[120] Saul et al (n 1) 863.
[121] Philip Alston, 'International Law and the Human Right to Food' in Phillip Alston and Katarina Tomaševski (eds), *The Right to Food* (Martinus Nijhoff 1984) 32.
[122] For example see: UNGA, 740th Meeting A/C.3/SR.740 (24 January 1957) [25] and UNGA 1267th Meeting A/C.3/SR.1267 (18 November 1963) as reproduced in Saul (n 72) 1913 and 2259.
[123] Alston (n 121) 41.
[124] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN Doc E/C.12/1995/5 [36].
[125] GC12 (n 124) [37] and [38].
[126] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, (20 January 2003) UN Doc E/C.12/2022/11 [31].

the right, giving due attention to the right in international legal agreements and also ensuring their actions as members of international organisations take account of the right to water.[127] Water has a number of features that make international cooperation vital due to the impact upstream states may have on water supplies downstream both in terms of quality and quantity. However, as the second section of this chapter illustrated, cooperation is also vital in the global food system, and as will be discussed in Section 6, export bans on foods can impact the global economy and food supply, and so the same principles should apply.

This overarching idea of 'doing no harm' is also a thread running through the reports of the Special Rapporteurs for the right to food. Each Rapporteur tends to have specific recurring themes in their reports, but all deal with aspects of international cooperation. Ziegler considered aspects of international aid and international development, including the obligations of international organisations such as the IMF and WTO. He points out how the policies and rules of these organisations could negatively impact the right to food.[128] He also criticises the lack of joined up policy in relation to the right to food at both national level and within intergovernmental organisations.[129] He himself summarises the obligations in relation to international cooperation as an obligation 'to refrain from taking action that negatively affects the right to food in other countries.'[130]

De Schutter often considered international trade and the WTO in his reports. This will be discussed in detail in Section 6 on equitable distribution. but briefly, he emphasised the importance of human rights impact assessments when concluding trade and investment agreements.[131] Elver also emphasised the role of international financial institutions in relation to the

---

[127] ibid [32-36].
[128] For example: United Nations Economic and Social Council, 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' E/CN/4/2002/58 (10 January 2002) [107-119] and United Nations Economic and Social Council, 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' E/CN/4/2003/54 (10 January 2003) [31-33].
[129] United Nations Economic and Social Council, 'Report of the Special Rapporteur on the Right to Food, Jean Ziegler' E/CN/4/2005/57 (24 January 2005) [40]
[130] UNESC, 'Ziegler (2003)' (n 128) [30].
[131] See, for example: UNHRC, 'Report of the Special Rapporteur on the Right to Food, Olivier De Schutter. Addendum. Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements' (19 December 2011) A/HRC/19/59/Add.5.

right to food and the potential negative impact they can have.[132] She also specifically emphasises the idea of a 'no harm principle.'[133] It is this 'no harm principle' that this thesis suggests is the only legal obligation in relation to international cooperation and the right to food.

It requires states to undertake risk assessments in terms of possible impacts on the right to food when concluding international agreements and when acting as part of international organisations. Such an obligation can be defined based on due diligence, this requires 'reasonable foreseeability of harm and a capacity to intervene.'[134] Of most relevance to the requirement to do no harm is the foreseeability of harm, when one state is dealing with another and concluding agreements or making policy, there will clearly be capacity. A requirement to do no harm would prevent bilateral and multilateral agreements as well as the policies of international organisations such as the IMF and WB negatively impacting the right to food, as the WTO has already started to do.[135] It would also require states to ensure TNCs and NGOs do not impinge on the right to food in other states. Outside of this legal obligation, states should continue to work together to ensure the other obligations suggested by the standards are met, but through organisations such as the FAO using policy guidance and soft law instruments. The following two sections will now demonstrate the principle of 'no harm' in relation to food assistance and then international trade and the equitable distribution of food.

5.0 International food assistance.

International food assistance has been used for over 60 years to tackle hunger in emergencies such as famines, wars, and natural disasters, and to try and tackle chronic food insecurity.[136] The Special Rapporteurs have often

---

[132] UNGA, 'Report of the Special Rapporteur on the Right to Food, Hilal Elver' (12 January 2014) A/HRC/28/65 [38]
[133] Ibid [43].
[134] Raible (n 63) 17.
[135] For example, see: WTO Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on LDNIDCs https://www.wto.org/english/docs_e/legal_e/35-dag_e.htm accessed 4 February 2023.
[136] La Chima (n 17) 100; Jennifer Clapp, *Hunger in the Balance. The New Politics of International Food Aid* (Cornell University Press 2015) 1.

indicated the need for international food assistance.[137] However, as discussed above, there have been persistent claims by many states that there is no legal obligation for states to provide food assistance.[138] State practice, including donations to the WFP may suggest otherwise. Yet demonstration of the accompanying *opinion juris* is more difficult.[139] Although the existence of CIL legal norms in relation to the provision of food assistance is doubtful, there is the FAC. The FAC governs commitments of states to provide a certain level of assistance and how this assistance should be provided.[140] Signatories to the FAC, as discussed below, have obligations derived from this treaty. However, their actions in relation to food assistance should also be guided by the legal obligation to do no harm.

Although international food assistance is the oldest form of aid, it is still an area of debate.[141] It is not contested that food assistance in emergency situations saves peoples' lives,[142] but many aspects of food assistance are controversial. De Schutter, the former Special Rapporteur for the right to food, has suggested the main critiques of food assistance relate to states developing dependency on aid and its disruption of local markets and trade.[143] Such critiques have led some to argue that food assistance is not an appropriate tool to tackle chronic food insecurity. This section considers two types of food assistance. Firstly, aid that is provided in emergency situations to alleviate acute immediately life-threatening hunger. Secondly, it considers the use of food assistance to address more chronic food insecurity. It is appreciated that this is an artificial distinction. In some situations, acute food insecurity may occur, due to a sudden event, in a population already suffering from chronic

---

[137] In general, see: UNGA, 'Report of the Special Rapporteur on the Right to Food, Mr Olivier De Schutter,' A/HRC/10/5 (11 February 2009) and UNGA, 'Elver (2018)' p15 onwards.
[138] In 2020, the largest donors to the WFP, a UN body providing a variety of food assistance, were the USA, Germany, UK, European Commission and Canada. Over 100 states contributed to the work of the WFP, see: WFP, 'Annual Review 2020' (7 July 2021) https://www.wfp.org/publications/annual-review-2020 accessed 18 April 2024.
[139] Many developed states have repeatedly stated that the food assistance they provide is voluntary, suggestion they do not consider the provision of food assistance a legally binding norm. See: UNGA, 'De Schutter (2009)' (n 137) [6].
[140] La Chima (n 17) 101.
[141] FAO, *The State of Food and Agriculture, 2006* https://www.fao.org/documents/card/en/c/80a57cb8-da7e-5cf4-a767-afb9b2a1fed5/ 3.
[142] Ibid, Clapp, *Food* (n 4) 1.
[143] UNHRC, 'Olivier De Schutter: The Role of Development Cooperation and Food Aid in Realizing the Right to Adequate Food: Moving from Charity to Obligation' (11 February 2009) Un Doc A/HRC/10/5 [3].

food insecurity. In addition, acute food insecurity may lead to situations of chronic insecurity, for example after a shock such as a war, resulting in large populations of long-term displaced people. However, the principles described below should govern the response even in such complex situations.

5.1. The nature of emergency food assistance

Most food assistance provided is in the form of cereals.[144] For example, the USA provides grain and Japan provides rice that has been purchased under WTO rules and that is then stored and donated.[145] However, these grains may not be nutritionally or culturally appropriate for those that receive the aid. Inappropriate food aid has seen shifts in diets of nomadic populations, a refusal to eat culturally inappropriate food assistance, and a refusal to consume food assistance that is not considered safe, such as genetically modified food.[146] In addition, food harvests are seasonal and so the harvest surpluses, often donated as food assistance may not coincide with periods when people need food. This can lead to storage of grains, spoiling and additional transport costs.[147]

Local or regional markets may not be able to provide all food needed in a crisis, even if money transfers are used.[148] Because of this some food assistance will always have to be delivered as actual food. The WFP indicates that such provision needs to be risk-informed and integrated, with action anticipating food shortages when possible.[149] This should limit the need to provide grains and other food directly when it is the only realistic option for emergency food assistance. Wherever possible, food aid should be nutritionally and culturally appropriate and, unless there are strong reasons why not, it should be provided as money transfers. In emergency response to

---

[144] Jennifer Clapp and C Stuart Clark, Improving the Governance of the Food Aid Convention: Which Way Forward? (The Centre for International Governance Innovation, September 2010). https://www.cigionline.org/static/documents/policy_brief_20_0.pdf accessed 4 February 2024.
[145] Clapp, *Hunger in the Balance* (n 136) 34 and 64.
[146] ibid 38-9.
[147] ibid 34.
[148] ibid 40.
[149] World Food Programme, 'Strategic Plan 2022-25' WFP/EB.2/2021/4-A/1/Rev.2 (12 November 2021.

disasters, food may be the more appropriate way to provide aid.[150] However such decisions require justification, so the assistance complies with the obligation to do no harm. The FAC itself recognises food aid should be 'adequate, safe and nutritious.'[151]

Yet such decisions and actions are not always straightforward, and in some circumstances the immediate best option may not comply with the cultural appropriateness requirements. Plumpy'nut is an emergency food substance for severely malnourished children and has saved the lives of millions of children. It consists of peanuts, sugar, oil, and milk powder that is fortified with vitamins and minerals that comes as a single dose in a plastic wrapper making it easily distributed.[152] Although this simple product has saved millions of children, it also raises questions about food assistance. Plumpy'nut is a registered trademark, and its formula is protected by Nutriset, the French company that manufactures it and owns the intellectual property rights.[153] Marion Nestle has questioned the ethics of the use of imported aid that is protected by such rights.[154] There may be concerns about the ethics of intellectual property rights in relation to a life-saving food product or the preferred use of local food staples rather than giving children something that is similar to sweet ultra-processed foods. Yet in some situations, purchasing Plumpy'nut, or similar products, made in Europe or under licence in other countries may be the only option. In situations of war or natural disaster, local alternatives may not be available.

Food aid provisions in relation to the AoA are also not without controversy. 'Green box' subsidies under the AoA are not limited and so states can use them freely. They include provisions related to public stockholding for

---

[150] Christopher Barrett, 'Food Aid as Part of a Coherent Strategy to Advance Food Security Objectives' (FAO Agriculture Economics Working Paper, 2006) https://www.fao.org/publications/card/en/c/a56ccfe7-c45c-5eb9-896a-23a07a011053/ accessed 4 February 2024.
[151] FAC art 1(a).
[152] UNICEF, 'The Lifesaving Peanut Paste' https://www.unicef.org/supply/lifesaving-peanut-paste accessed 4 February 2024
[153] Andrew Rice, 'The Peanut Solution' *The New York Times Magazine* (2 September 2010) https://www.nytimes.com/2010/09/05/magazine/05Plumpy-t.html accessed 4 February 2024.
[154] For example, local versions either using peanuts or other ingredients cannot be made and arguably it promotes sweet, packaged foodstuffs, rather than local healthy staples. See: Marion Nestle, Food Politics, https://www.foodpolitics.com/2010/09/the-plumpynut-furor-international-food-politics-in-action/ accessed 18 April 2024.

food security purposes,[155] and domestic food aid.[156] Subsidies are permitted in the former case if the stockholding forms an 'integral part of a food security programme identified in national legislation.'[157] Domestic food aid has to have clearly defined eligibility criteria and can consist of food, or means to purchase at market, or subsidised prices.[158] These provisions are of importance to consumers, as they can stabilise the supply and prices of food as well as providing direct aid if necessary.[159] However, they can be problematic to producers, as release of food from stockpiles can lower prices on agricultural markets.[160] In addition, if the acquisition of the stock and its release is made at administered prices that are lower than the current domestic market price, then the difference between the current domestic market price and the administered price must be included in a state's Aggregate Measure of Support (AMS).[161] A states AMS is limited, and so although the money spent on purchasing stockpiles and provision aid may come within the Green Box, use of these measures could still result in use of some of a state's Current Total AMS calculation. This may then reduce the amount of other forms of support that can be given to farmers. As such there have been calls to remove this aspect from AMS calculations.[162] Making changes based on this request by developing countries and LDCs is an example of how states should employ the no harm principle when concluding and amending international agreements. Removal of this kind of price support for producers during food stockpiling could improve food security and available domestic support for food producers.

[155] Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2, https://www.wto.org/english/docs_e/legal_e/14-ag.pdf accessed 12 April 2024 (AoA), Annex 2, para 3.
[156] AoA Annex 2, para 4.
[157] AoA Annex 2, para 3.
[158] AoA Annex 2, para 4.
[159] Pedro De Camargo Neto and Renato Henz, 'Towards a Green Box Subsidy Regime that Promotes Sustainable Development: Strategies for Achieving Change' in Ricardo Meléndez-Ortiz, Christophe Bellmann and Jonathan Hepburn (eds) *Agricultural Subsidies in the WTO Green Box* (CUP 2009) 639.
[160] ibid 640.
[161] ibid 640.
[162] Ibid 640.

5.2. Non-emergency food aid and the obligation to do no harm

Non-emergency food assistance is more controversial than emergency assistance. Many of the unintended negative consequences of food assistance are related to food being given to countries or individuals without careful evaluation of their needs and its possible effects.[163] In the last century, food aid was tied, meaning it was procured by the donor country in the markets of the donor country, and so was a way to support agriculture and dispose of surpluses.[164] This meant large quantities of food, usually grain, would arrive in the recipient country. This had several possible effects that in part depended on the state of governance, economic robustness, and market integration of the recipient country.[165] These effects included food price decreases in the recipient markets. This could be due to an increased supply when donated food is placed for sale on local markets, or decreased demand if food was distributed to households for free.[166] One of the worst practices to affect local markets was monetisation, a practice where aid agencies sell donated food to fund other development projects.[167]

There are also possible behavioural effects associated with food being directly distributed. Moral hazard can occur when households, coming to expect food aid, engage in increased risk taking in relation to their work. This can then result in reduced resilience to future shocks.[168] In addition, dependency on aid can develop if prices for local products decrease resulting in less local production. Lower levels of local production then increase the need for imports or food assistance.[169] These effects of food being provided as assistance should be limited and require extensive risk assessments, so no harm is done.

---

[163] Christopher Barrett, Food Aid's Intended and Unintended Consequences' (FAO Background Paper, March 2006) http://barrett.dyson.cornell.edu/files/papers/MixedEffectsv2Mar2006.pdf accessed 4 February 2024.
[164] Clapp, *Hunger in the Balance* (n 136) 5.
[165] Axel Dreher, Valentin F. Lang, and Sebastian Ziaja, 'Foreign Aid' in Anke Draude, Tanja A Börzel and Thomas Risse (eds), *The Oxford Handbook of Governance and Limited Statehood* (OUP 2018) 396.
[166] Barrett (n 163) 10.
[167] Clapp, *Hunger in the Balance* (n 136) 75.
[168] Barrett (n 163) 3.
[169] ibid 7.

The FAC indicates that food assistance should only be provided when it is the most 'effective means of addressing food and nutritional needs.'[170] It should be provided so that it 'protects livelihoods and strengthens the self-reliance and resilience of vulnerable populations,'[171] avoids dependency and does not adversely affect local markets, production, and trade.[172] As such the best way to address chronic food insecurity is poverty reduction.[173] Having sufficient income to feed themselves is the most dignified way for people to be able to be food secure and realise the right to food. Other forms of social assistance should be the focus for reducing poverty, with food assistance an option of last resort, targeted to places where it is known to work such as nutritional programmes targeting children in the first 1000 days of life or school feeding programmes.[174] Food assistance and trade are closely linked. One of the often-stated concerns about food assistance is that it can impact trade, and it is also sometimes a way of heavily subsidising exports. The next section of this chapter will now consider trade and the standard of equitable distribution in relation to the right to food.

6.0. Equitable distribution and trade

Equitable distribution is the final standard identified in the previous chapter. Equitable distribution could refer to distribution of food within a state. However, this aspect is not considered here as state domestic policies in relation to the standards of freedom from hunger and adequate food would be the most appropriate in most circumstances to deal with issues of equitable distribution within states. In Article 11 ICESCR, equitable distribution is mentioned in relation to food importing and exporting countries, and so this standard is considered largely to refer to trade. As indicated in Article 11 ICESCR, both exporting of food and importing of food can impact the right to food. In developing countries, exports can be a source of income and better food

[170] FAC art 2(a)(i).
[171] FAC art 2(b)(ii).
[172] FAC arts 2(b) (iii) and (iv).
[173] Erin Lentz and Christopher Barrett, 'The Economics and Nutritional Impacts of Food Assistance Policies and Programs' (March 2013) http://barrett.dyson.cornell.edu/Papers/Lentz%20Barrett%20Food%20Assistance%20Food%20Policy%2025%20Mar%202013.pdf accessed 4 February 2024, 23.
[174] ibid 10 and 14.

security for farmers. Imports can provide foods that improve the nutrition of people's diet. In developed states, exports are similarly a source of income. In addition, food imported may affect food safety, as part of the standard of adequate food, a topic that will be returned to in relation to food and trade agreements in the UK post-Brexit in Chapter 7. In addition, as already mentioned, in Section 2 of this Chapter, the UK depends on imports of fruit and vegetables, which are important for the nutritional content of the country's diet. The focus of this section is however how international trade agreements can help or hinder food security in developing nations. This is an example of where developed countries, such as the UK, should engage with the no harm principle when conducting their trade policy, and engagement with international organisations.

This section will briefly consider the AoA as an international agreement that has the potential to impact the realisation of the right to food. It will discuss the background to the AoA and then discuss the impact of the 'three pillars' of the agreement. Finally, it will consider the idea of liberalised trade as a solution to food insecurity. The aim of this section is not to provide a detailed summary of the operation and caselaw of the AoA. It aims to engage with the critiques of this aspect of the international trade regime, as well as suggestions as to what states can do to limit the negative impacts of the AoA, especially as a new agreement seems unlikely in the next few years.

6.1. The Agreement on Agriculture

Prior to the AoA, food and agricultural trade was not regulated by General Agreemnt on Tariffs and Trade (GATT).[175] The aim of the AoA was to end agricultural exceptionalism and achieve market liberalisation. It was negotiated during a time of surplus rather at a time when crop shortages were considered unlikely, and climate change was not widely acknowledged. However, the AoA was only supposed to be the first part of this liberalisation process. An express provision in Article 20 of the AoA requires that 'negotiations for continuing the process will be initiated one year before the

[175] Hope Johnson, *International Agriculture Law and Policy* (Edward Elgar 2018) 286.

end of the implementation period.'[176] A round of negotiations were launched in 2000 and continued until negotiations broke down in the Doha round.[177] McMahon has noted that the difficulties in negotiating and achieving agreement about changes to the AoA indicate 'agriculture is special.'[178] The task of balancing a fair and market orientated trade system without restrictions and distortions is not easy.[179] However, in addition to be compliant with the right to food, a new agreement would also have to address some of the issues discussed below in relation to developing countries and LDCs.

The 2007-8 food crisis demonstrated the effect trade restrictions can have. Export restrictions during the crisis are one of the reasons food prices rose dramatically. India, followed by Vietnam, Cambodia and Egypt all placed restrictions on rice exports during 2007 and the Philippines imported a massive amount of rice in early 2008.[180] Countries also placed export bans on wheat, in part due to weather events resulting in poor harvests in Australia, Russia and the Ukraine.[181] A survey of 105 countries between the period of 2007 to 2011 indicated 31% had imposed measures in an attempt to limit exports, including bans and various taxes,[182] indicating how widespread such measures were.

Such measures are not necessarily contrary to WTO rules.[183] GATT Article XI (1) states:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting

[176] AoA art 20.
[177] Clapp, *Food* (n 4) 68.
[178] Joseph McMahon, *The WTO Agreement on Agriculture* (OUP 2006), 222.
[179] ibid.
[180] Headey and Fan (n 23) 7.
[181] Headey and Fan (n 23) 7; Holt-Gimenez (n 23) 14-15.
[182] Ramesh Sharma, 'Food Export Restrictions: Review of the 2007-2010 Experience and Considerations for Disciplining Restrictive Measures' (FAO Commodity and Trade Policy Research Working Paper No 32, 2011) https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1268745/ accessed 5 February 2024.
[183] ibid.

party …… on the exportation or sale for export of any product destined for the territory of any other contracting party.' [184]

This indicates export taxation is within the WTO rules. In addition, Article XI GATT, also makes an exception for measures applied to 'prevent or relieve critical shortages of food stuffs',[185] indicating that other measures employed, such as export quotas by Ukraine, could be justified in situations of food shortage to protect food security in that state by limiting export of foodstuffs.

The AoA does not prevent such measures either. Article XI GATT indicates such measures should be temporary.[186] Article 12 AoA provides details of considerations and notifications when restricting measures are implemented.[187] This includes the requirement to 'give due consideration to the effects of such prohibition or restriction on importing Members' food security.'[188] The food security implications of such bans are however severe. Export restrictions by larger exporting countries can potentially limit availability and access to certain staple food stuffs and cause prices to rise, making food unaffordable for many. The world is again facing such a crisis because of the Russian war in Ukraine, with limited exports from both countries, who are amongst the biggest producers of wheat.[189] In response India implemented export restrictions.[190] This suggests that there is still work to be done to limit the effect of such global events on food supplies.

On one hand the AoA includes provisions that allow states to restrict exports if necessary to maintain food security in that state. However, such

---

[184] General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) (GATT) art XI.
[185] ibid.
[186] GATT, art XI.
[187] AoA art 12.
[188] AoA art 12(1)(a).
[189] Fiona Harvey and Sarah Butler, 'Ukraine's Wheat Harvest May Fall by 35% Raising Fears of Global Shortage' *The Guardian* (6 May 2022) https://www.theguardian.com/world/2022/may/06/ukraine-wheat-harvest-may-fall-by-35-percent-satellite-images-suggest accessed 25 May 2022.
[190] Gino Spocchia 'Ukraine War: International Efforts to Restore Wheat Supply Gather Pace' *Independent* (19 May 2022) https://www.independent.co.uk/world/ukraine-wheat-supply-india-ban-b2081728.html accessed 25 May 2022.

actions can have a widespread impact on food security on other states. As the 2007-8 food crisis demonstrates, it is unlikely states will agree not to impose such export bans as they are arguably necessary for states to maintain their own food security. However, it does raise the question as to whether any new AoA should accommodate changes regarding AMS and food stockpiles, discussed above, so states depending on imports can have a buffer against export restrictions. It also suggests better mechanisms for cooperation between states in situations of export restrictions may be required to limit the impact on world food prices.

6.1.1. Market access

The first pillar of the AoA are provisions relating to market access. These aim to improve access to foreign markets for countries exporting agricultural products and require states to reduce tariffs and convert all non-tariff import barriers to tariff equivalents.[191] LDCs did not have to undertake reduction commitments.[192] Developing states were required to reduce their tariffs by smaller amounts over a longer time period.[193] However, these provisions have not opened the markets to developing countries as would be expected in a system of fair trade. Firstly, the USA and EU chose a date when they had high tariff levels from which they would reduce their tariffs. This limited the amount they truly reduced their tariffs.[194] Tariffs are also reduced as an average and so developed countries could maintain higher tariffs on products of most interest to the country. This was compensated for by reductions in other areas. Such high tariffs were often maintained on items such as sugar or tobacco from developing countries. This process of 'dirty tariffication' in some cases resulted in higher levels of protection than before the AoA.[195] Processed foods were also often the focus of tariffs, preventing developing countries from

[191] Clapp, *Food* (n 4) 75; AoA art 4.
[192] AoA art 15(2).
[193] AoA art 15.
[194] Joseph McMahon and Melaku Desta, 'The Agreement on Agriculture: Setting the Scene' in Joseph McMahon and Melaku Desta (eds), *Research handbook on WTO Agriculture Agreement* (Edward Elgar 2012) 6.
[195] Carmen G Gonzalez, 'Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries' (2002) 27 Columbia Journal of Environmental Law 433, 461.

gaining the profit from processing the raw products they produced; instead having to export the raw materials which limits the profit available to them.[196]

Market access is also limited for developing countries due to Structural Adjustment Programmes (SAPs). The World Bank and International Monetary Fund encouraged SAPs in developing countries that required several economic policy changes. These included trade liberalisation and changes to agricultural policy. As a result, many developing countries entering the AoA, had already engaged in programmes of trade liberalisation. Although they were required to reduce their tariffs by a smaller percentage than developed countries, it has been suggested they were already much more liberalised than some developed states.[197] As a result the provisions of the AoA did not open markets in developed states for developing countries. Instead, it continued to open markets in developing countries to developed states.[198] Finally, lack of infrastructure prevents access to international markets for farmers in developed countries. The market access for goods is now relatively open, but if, for example, there are no suitable roads, chilled storage facilities, or established supply chains, producers may not be able to access export markets, regardless of how liberalised trade is.

6.1.2. Domestic support

The second pillar of the AoA aimed to reduce domestic policies that made payments to farmers and so enabled food production at lower prices. This food could then potentially be sold below cost, distorting competition and prices on international markets. States were allowed to continue some *de minimis* support which varied between developed and developing countries.[199] Some support that was production limiting was placed in the 'blue box', such as set aside schemes in the USA. The green box, mentioned above in relation to food stock holding, contained support with no or minimal trade distorting effect. These two boxes were not subject to the reductions.[200] Under Article 15(2)

[196] ibid 462.
[197] Clapp, *Food* (n 4) 81.
[198] ibid.
[199] McMahon (n 178) 69-70.
[200] ibid.

AoA LDCs were not required to reduce domestic support. However, the amount of support that developing countries and LDCs can provide due to Article 15(2), *de minimis* support, and the blue and green boxes is often limited due to lack of resources in these countries.[201] As with the lack of infrastructure potentially prohibiting access to export markets, funds available to states can limit the support they can provide to producers, regardless of AoA rules.

This is apparent in practice, as use of green box support, calculated by the amount spent, is lower in developing countries (with the notable exception of Brazil, India, Thailand and Colombia) compared to developed countries.[202] As a result the agriculture sector in developing countries could receive much more support in compliance with WTO rules than they currently do.[203] There are many critiques of aspects of the green box, and one has been discussed above in relation to aspects of public stockholding for food security purposes. In addition, there are concerns about the impact of environmental support programmes, which can be exempt from domestic support reductions.[204] These are commonly used in developed countries, but are usually voluntary, whereas they are often imposed on farmers in developing countries.[205] There are questions about how 'green' these programmes are; for example paying farmers to not farm certain areas, which can avoid addressing the true environmental impacts of intensive farming on other areas of land. It has also been suggested that this failure to address such externalities creates a competitive imbalance between farmers in developing and developed countries.[206]

As a result, the green box has become a focus of suggested reforms. Developing states have suggested that the green box has actually resulted in increased domestic support due to a lack of clear definition as to what meets

---

[201] Michael Cardwell and Fiona Smith, 'Renegotiation of the WTO Agreement on Agriculture: Accommodating the New Big Issues' (2013) 62 International and Comparative Law Quarterly 865, 890.
[202] André Nassar *et al*, 'Agricultural Subsidies in the WTO Green Box: Opportunities and Challenges for Developing Countries' in Ricardo Meléndez-Ortiz, Christophe Bellmann and Jonathan Hepburn (eds), *Agricultural Subsidies in the WTO Green Box* (CUP 2009) 341.
[203] ibid.
[204] ibid 351-2.
[205] ibid 352-3.
[206] ibid 351.

the requirement of 'no or at most minimal, trade distorting effects.'[207] India has described domestic support measures as 'inequitous and discriminatory.'[208] Developing states have proposed changes to the green box that would increase transparency or its complete removal with support placed in a single subsidies box.[209] Although there are issues about development funding and having sufficient funds to provide support, if negotiations to amend the AoA restart, this is an example of where states should be applying the no harm principle; damaging impacts of the current green box regime should be remove to ensure developing states can enable their producers to realise the right to food, and negative impacts of the AoA on food security are limited.

6.1.3. Export competition

The final pillar of the AoA requires reductions in export subsidies and is possibly the most successful part of the agreement.[210] In addition, following the Nariobi Ministerial Conference it is even less contentious. The Nairobi Ministerial conference made changes to support developing countries. Export subsidies were eliminated, enabling farmers in developing countries and LDCs to compete with those in developed countries.[211] This ban on such subsidies prevents states boosting their exports through subsidies, lowering the price of goods on markets. This was also discussed in Chapter 2 in relation to the Sustainable Development Goals.

6.2. The Agreement on Agriculture, food security and the right to food

It is clear from the discussion above that the AoA has not fully liberalised trade and still allows protectionist policies by developed states. The impact of the agreement on food security is however most relevant for discussions about trade and the right to food. Those that are food insecure are not realising the

---

[207] WTO, Agreement on Agriculture: Green Box/Annex 2 Subsidies' (23 June 2000) G/AG/NG/W/14.
[208] WTO, 'Negotiations on WTO Agreement on Agriculture (15 January 2001) G/AG/NG/W/102.
[209] WTO (n 197).
[210] McMahon and Desta (n 194) 15; McMahon (n 178) 143.
[211] WTO, 'Export Competition, Ministerial Decision of 19 December 2015 (21 December 2015) WT/MIN(15)/45 — WT/L/980.

right to food. Food security is mentioned in the preamble of the AoA as a non-trade concern.[212] Johnson has argued this in of itself is problematic as a requirement to address food insecurity should be integrated into the AoA.[213] Food security is always going to be intimately related to trade, as although some states may wish or be able to be entirely self-sufficient in food, many will always have to import some food to feed their populations or import agricultural products such as fertiliser.

De Schutter has argued that the WTO rules negatively impact food security policy in developing countries. Such countries lack the legal expertise and financial capacity to determine if new policies are WTO compliant or risk legal challenges by other states. This makes policy makers risk adverse and may limit their choices when making policy in relation to food security.[214] Research considering the impact of trade openness has found that openness increases undernourishment in some countries and so suggests states move towards self-sufficiency where possible.[215] Although food security is a non-trade concern of the AoA, food security is not defined. Smith has suggested that the approach of many considering the impact of the AoA on food security do not consider that the WTO and organisations such as the FAO view the relationship between trade and food security differently.[216] The WTO sees food security as something that is not the aim of the rules, but that can be achieved through liberalised trade. Although, as discussed above, it is a non-trade concern mentioned in the preamble.[217]

Häberli is critical of the lack of consideration of the right to food by both the AoA and the judicial body of the WTO.[218] That said, this does require a suitable case coming before the Dispute Settlement Body to establish what their level of engagement with the right to food would be, and how they

---

[212] AoA preamble.
[213] Johnson (n 175) 289.
[214] De Schutter, The World Trade Organisation and the post-global food crisis (n 3) 3.
[215] Sébastien Mary, 'Hungry for Free Trade? Food Trade and Extreme Hunger in Developing Countries' (2019) 11 Food Security 461.
[216] Fiona Smith, Food Security and International Agricultural Trade Regulation: Old Problems, New Perspective' in Joseph McMahon and Melaku Desta (eds), *Research Handbook on the WTO Agriculture Agreement* (Edward Elgar 2012) 6.
[217] AoA, preamble.
[218] Christian Haberli, 'Do WTO Rules Improve or Impair the Right to Food' in Joseph McMahon and Melaku Desta (eds), *Research handbook on the WTO Agriculture Agreement* (Edward Elgar 2012), 75, 83.

interpret food security as a non-trade concern. Häberli also suggests that the AoA needs to contain a specific reference to the right to food and that trade rules should not be concluded that harm the right to food,[219] which is consistent with the principle of doing no harm proposed by this chapter. However, the principle of doing no harm specifically in relation to the right to food and trade, may not be sufficient to ensure food security as trade policy develops. Using trade liberalisation to increase food security is not in of itself at odds with the right to food. Yet, what is not acceptable from a human rights perspective, is that we wait for trade to liberalise for food security to improve. Short term suffering and hunger for long term gains is still an affront to human dignity and is not permissible within the proposed framework for the right to food.

If countries support the liberalisation of trade to achieve longer term gains, this still risks food insecurity and hunger before the longer-term gains have been achieved. It is arguable that if states promote policies that aim to have long term benefits, these need to be accompanied by aid to ensure food security in the interim. However, as discussed above, in sections 3 and 4, such positive legal obligations are not agreed on by academics or states. Even the provision of 0.7% GDP as international aid by developed countries is not considered a definitive legal obligation.[220] As such, it cannot be said that legal obligations extend beyond ensuring that new trade policies do not exacerbate food insecurity. However, returning to the discussion of the Concluding Observations of the CESCR, it would be of benefit if alongside recommendations regarding impact assessments, the CESCR recommended specific food assistance to improve food security. This would be appropriate both when trade policies could be negatively impacting the right to food in developing and LDCs as well as to support states while waiting for the benefits of trade liberalisation. As such, food assistance would become more closely linked to human rights impact assessments in relation to international trade in food and agriculture, and this may be a positive move to see provision of such assistance as a legal rather than moral obligation.

[219] ibid, 94.
[220] Langford, Coomans and Isa (n 9) 110; Coomans (n 7) 26.

The lack of engagement of the WTO and AoA with the right to food also has consequences for indigenous and small holder farmers. There is no acknowledgment of individuals or groups, such as indigenous farmers having rights.[221] States are a focus of the AoA, and not individuals. However, such farmers, often championing agroecology have a role to play in developing more sustainable farming.[222] This demonstrates a lost opportunity for the AoA to engage with aspects of the right to food. It also suggests that the AoA approaches food only as a commodity and makes no room for other considerations in relation to the right to food such as cultural and social aspects of food and agriculture.[223] Arguably, without significant changes in both the conception of food and food security, the AoA will remain focused on trade liberalisation, which may require mitigation of its negative food security impacts for some time.

6.3. Free trade and comparative advantage.

The section above introduced the gap between some of the wider conceptual issues in relation to the WTO and the right to food and food security. These issues were debated by Pascal Lamy, the then Director General of the WTO, and Olivier De Schutter, the Special Rapporteur for the right to food. As already discussed, De Schutter has been critical of the AoA and the WTO. Lamy accepts some failings in the AoA and argues there is still work needed to develop a coherent international trade policy. He argues for increased free trade with fewer restrictions.[224] Although food security is not recognised as an overarching aim of the AoA,[225] the agreement is not necessarily incompatible with achieving food security, and food security is considered a non-trade concern mentioned in the preamble. 'Noting that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment.'[226]

---

[221] Fiona Smith, 'Indigenous Farmer's Rights, International Agricultural Trade and the WTO' (2011) 2 Journal of Human Rights and the Environment 157.
[222] ibid.
[223] ibid.
[224] Lamy (n 3).
[225] Olivier De Schutter, 'The World Trade Organisation and the post-global food crisis (n 3) 7.
[226] AoA preamble.

The idea of liberalised trade improving food security is comes from the economic theory of comparative advantage. This is based on the idea that states have certain opportunity costs to produce goods such as labour, land, climate, and technology. Free trade allows states with the best opportunity costs to produce products most efficiently and so they are available internationally at the lowest price possible. Countries export those products they are best able to produce and import others. [227] This approach has the potential to be advantageous in terms of sustainable intensification, as countries produce what they are best suited to, with the minimum use of land and minimum inputs. However, in the modern global food system, circumstances are very different to those in 1817 when the theory was proposed. [228]

The AoA has tried to liberalise trade but as discussed above there are still some trade distorting tools available to governments. Such tools are part of the measures to protect LDCs and developing countries, but also include 'dirty tariffication' by developed states which is discussed above in Section 6.1.1. Comparative advantage also relies on the idea that farmers and producers trade commodities, but the global trade in food commodities is largely controlled by TNCs. These organisations are vertically integrated which may undermine comparative advantage due to imperfect competition.[229] There are also difficulties with negative externalities in the food and agriculture sector. Many costs of food production, such as environmental or social costs are not internalised and so the price of food does not truly represent its cost of production.[230] Comparative advantage theory also assumes that capital is not mobile between countries, which is now not the case.[231] Finally, and perhaps most concerning from a human rights perspective, capital costs may be low in some countries due to poor or even illegal working conditions. For example, imports of cheap chicken into the UK may occur post-Brexit, and the low costs are in part due to the low-cost migrant labour with poor health and safety

[227] Jennifer Clapp, 'The Trade-ification of Food Sustainability Agenda' (2017) 44 The Journal of Peasant Studies 335, 340.
[228] ibid 343.
[229] Carmen G Gonzalez, 'Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage' (2006) 17 Berkeley La Raza Law Journal 65, 83.
[230] ibid 75.
[231] Clapp, The Trade-ification of Food Sustainability Agenda (n 227) 344.

provisions in US meat processors.[232] The fishing industry in Southeast Asia has also been shown to use slave labour to reduce costs.[233]

This section demonstrates that the AoA, in promoting liberalised trade, has taken a particular stance in relation to food security. Although ultimately this policy may reduce food insecurity, for the reasons suggested above, we are a long way from reaching a free trade system, and so the principle of doing no harm requires states to mitigate the effects of the AoA and undertake risk assessments before concluding new trade agreements. Outside of this legal obligation, other assistance can be provided as part of a moral obligation to developing countries to try and help them access the trade markets, such as support to improve infrastructure, development of sustainable agriculture and social assistance schemes, both individually and through bodies such as the FAO.

7.0. Conclusion

This chapter has considered the obligations for states in relation to international cooperation and trade. It argued that due to the lack of agreement about the issue of extraterritorial obligations in relation to socioeconomic rights, the content of any legal obligations for international cooperation need to be considered specifically in the context of the right to food. There is little support or evidence for a legal obligation for international cooperation beyond the principle of doing no harm, despite the fundamental importance of international cooperation to facilitate the realisation of the right to food for all.

However, in addition to this legal obligation, states have moral obligations for international cooperation and assistance that require engagement with soft law, policy development, and working with intergovernmental organisations such as the FAO and WFP. States do however need to consider the no harm principle in their engagement with international organisations, and in their overseas development policies, as was demonstrated through the examples of food assistance and the AoA.

---

[232] See, for example: Ted Genoways, *The Chain* (Harper 2014).
[233] See: Benjamin Lorr, *The Secret Life of Groceries* (Avery 2020) 213 onwards.

The first half of this thesis has identified six standards that inform a normative framework for the right to food: freedom from hunger, adequate food, nutrition, production, trade, and international cooperation. The right to food also contains three levels in relation to domestic obligations. Firstly, freedom from hunger is a fundamental right, which is of immediate realisation. The second level is the core of the right to food which contains aspects of adequate food, nutrition, and some obligations in relation to sustainable production. It is to be progressively realised but states should take steps with priority to their maximum available resources to realise this component. Finally, other components of nutrition and much of the standard of production may take longer to realise and so are of more long-term progressive realisation. International cooperation requires states to do no harm. This extends to their actions in relation to equitable distribution including trade. The second half of this thesis will consider this framework in the context of post-COVID-19, post-Brexit UK. Chapter 5 considers the status of the right to food in the UK and proposes framework legislation to better facilitate realisation of the right to food. Chapter 6 engages with how supermarkets in the UK impact realisation of the right to food and proposes government obligations in relation to these impacts. Finally, Chapter 7 discusses trade in the UK post-Brexit through the lens of chlorine washed chicken, food safety and antimicrobial resistance

Chapter 5

The Right to Food in the UK and Government Policy

1.0. Introduction

The first half of this thesis proposed a novel normative framework for the right to food. The framework consists of six standards derived from Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR), and three levels of obligations for states. This chapter now begins the process of considering these standards and obligations within the context of food policy and law in the UK. In 2022, despite the UK being the fifth wealthiest nation in the world,[1] the Food Standards Agency (FSA), an independent government department, reported 15% of people were living with household food insecurity.[2] This figure is derived from surveys of 6271 adults from 4338 households across the UK.[3] Household food security levels were classified using the US Adult Food Security Model, which uses both objective questions concerning food security, for example about missing meals, and also questions about subjective food security, such as worry over whether a household's food will run out.[4]

In 2018, before the COVID-19 pandemic, the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston stated that 'it thus seems patently unjust and contrary to British values that so many people are living in poverty. This is obvious to anyone who opens their eyes to see the immense growth in foodbanks and the queues waiting outside them.'[5] Following the COVID-19 pandemic things have not improved. The cost of living is rising and

[1] Wealth here refers to GDP.
[2] Katie Pettifer and Michelle Patel, 'FSA 22-06-09 Household Food Insecurity Main Report' (*FSA,* 15 June 2022) https://www.food.gov.uk/print/pdf/node/9711 accessed 18 July 2022.
[3] Beth Armstrong et al, 'Food and You 2: Wave 3 Key Findings' (*FSA,* January 2022) https://www.food.gov.uk/sites/default/files/media/document/Food%20and%20You%202%20-%20Wave%203%20Key%20Findings%20FINAL.pdf accessed 1 April 2024.
[4] US Adult Food Security Survey Module (USDA, September 2012) https://www.ers.usda.gov/media/8279/ad2012.pdf accessed 1 April 2024.
[5] Philip Alston, 'Statement of visit https://www.ohchr.org/sites/default/files/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf accessed 17 April 2024.

food insecurity and food bank usage have exceeded levels seen from 2018-19 and the early stages of the COVID-19 pandemic.[6] The most recent figures at the time of writing, released by the Trussell Trust, indicate that half of people in receipt of the welfare benefit Universal Credit were unable to purchase food by the end of the month.[7] Between the 1st of April and 30th September 2023 the Trussell Trust distributed 1.5 million food parcels, an increase of 16% compared to the same period in 2022.[8]

During the pandemic, the National Food Strategy, led by Henry Dimbleby was published in two parts. It recommended several policy changes to ensure that people did not go hungry during the pandemic; that the levels of obesity in the UK were addressed; and that agriculture in the UK was sustainable for future generations.[9] In June 2022, the Government published a response that was widely criticised for a lack of content and ambition.[10] The UK Government only fully implemented three of the 14 recommendations in the National Food Strategy and indicated a general lack of willingness for legislative responses.[11] This chapter argues that the lack of UK-wide legislation for food and agriculture as well as the lack of a national food policy makes violations of the right to food more likely.

The UK has not incorporated the ICESCR into domestic law. It has also not ratified the optional protocol to the ICESCR, which would allow individuals to make complaints when their rights are violated. However, it has ratified the

---

[6] The Food Foundation, 'Food Insecurity Tracking' https://foodfoundation.org.uk/initiatives/food-insecurity-tracking accessed 18 July 2022.
[7] The Trussell Trust, 'Over Half of People Receiving Universal Credit Unable to Afford Enough Food' (21 February 2024) https://www.trusselltrust.org/2024/02/21/over-half-of-people-receiving-universal-credit-unable-to-afford-enough-food/ accessed 5 March 2024.
[8] The Trussell Trust, 'Mid-Year Stats (21 February 2024) https://www.trusselltrust.org/news-and-blog/latest-stats/mid-year-stats/ accessed 5 March 2024.
[9] Henry Dimbleby, 'National Food Strategy' https://www.nationalfoodstrategy.org/wp-content/uploads/2021/10/25585_1669_NFS_The_Plan_July21_S12_New-1.pdf accessed 18 July 2022.
[10] For example: Helena Horton, Rowena Mason and Patrick Butler, ''Worse than Half-Baked': Johnson's Food Strategy Fails to Tackle Cost of Climate' *The Guardian* (London, 10 June 2022) https://www.theguardian.com/politics/2022/jun/10/worse-than-half-baked-johnsons-food-strategy-fails-to-tackle-cost-or-climate accessed 18 July 2022.
[11] See DEFRA, Government Food Strategy (June 2022) https://assets.publishing.service.gov.uk/media/62a6eb4be90e07039944ed5c/government-food-strategy-print-ready.pdf accessed 1 April 2024 and Orla Delargy, 'Government Food Strategy- Which NFS Recommendations Were Passed, Failed or are on Their Way' (*Sustain,* 14 June 2022) https://www.sustainweb.org/blogs/jun22-which-nfs-recommendations-included-in-government-food-strategy/ accessed 12 April 2024.

ICESCR and so accepted the obligations contained within Article 11 of the Covenant.[12] Policies that could enable realisation of the right to food are dealt with by a wide number of government departments and ministries. Legislation that relates to the right to food, and the normative framework proposed in this thesis, is found in several places.[13] This leads to a lack of coherent joined up policy from central UK Government and a lack of clear institutional responsibility for both food policy and the obligations the UK has in relation to the right to food. Such a policy landscape makes violations of the right to food more likely due to the possibility of governance gaps as well as insufficient guidance for devolved nations and local authorities. At the outset, it should be noted that the Committee for Economic Social and Cultural Rights (CESCR) indicated in its 2016 concluding observations that the responsibility for implementation of the rights in the ICESCR lies with the state party.[14] As such, the overall responsibility for realisation of the right to food and implementation of appropriate legislation, policies, and frameworks, even for devolved competencies lies with the UK Government.

This chapter will consider how policy is affecting the realisation of the right to food in the UK. It focuses on the standards of freedom from hunger, adequate food, nutrition, and to a lesser extent food production. The next section will consider the current policy and legislative landscape in the UK demonstrating the disjointed nature of food policy at UK, devolved, and local authority level. The third section will then consider how this disjointed approach is affecting the realisation of the right to food in the UK. As part of this discussion a social minimum, a minimum level of income for all, is

[12] The UK has ratified the ICESCR and so aggreged to the obligations in this Covenant. However, the UK has a dualist constitution and so specific legislation is required for international treaties to be incorporated into domestic law. For example, the Human Rights Act 1998 incorporates the European Convention of Human Rights. This position was recently confirmed in *R (Friends of the Earth Ltd) v Secretary of State for International Trade* [2023] EWCA Civ 14.

[13] Kelly Parsons, 'Who Makes Food Policy in England?'(*Centre for Food Policy, City University of London*, May 2020) https://foodresearch.org.uk/publications/who-makes-food-policy-in-england-map-government-actors/ accessed 18 July 2022, 9. In addition to the Agriculture Act, examples of other revenant legislation are the Food Standards Act 1999 and Food Safety Act 1990 which deal with food safety and the Environment Act 2021 which has relevance for agriculture and production in terms of waste, biodiversity and improvement of the natural environment.

[14] UN Economic and Social Council, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) Un Doc. E/C.12/GBR/CO/6 [8].

suggested. A social minimum is an important step to address current levels of food insecurity and food bank usage in the UK and to ensure the UK is not violating its obligations in relation to the fundamental right to be free from hunger. However, further consideration of this topic such as the political and economic implications are beyond the scope of this thesis and will not be engaged with. The fourth section argues that to facilitate realisation of the core of the right to food, as well as those obligations that are to be progressively realised more slowly, the UK should consider framework legislation.

This chapter does not aim to provide a full and detailed discussion of all aspects of UK, devolved and local authority food and agriculture law and policy. Alongside broad overviews of the current situation, specific examples will be used to illustrate the lack of joined up food policy in the UK and its potential impacts on the right to food. This chapter also does not address the situation in Northern Ireland as, at the time of writing, the Northern Ireland Assembly has only recently been restored, and for a period of two years there was no development of food and agricultural policy. [15]

2.0. Food and agricultural policy in the UK

This section will discuss food policy in the UK moving from the central UK level to the devolved governments, and then to local government level, focusing on England. It is acknowledged that this distinction between the level of governance is in some senses artificial. Organisations and government bodies that deal with some aspects of food policy can cut across these levels. In addition, much of the law relating to food and agriculture is devolved, making post-Brexit food policy complex, which risks divergence between the devolved nations.[16] It has been argued this risks 'lessened transparency and disunity between the UK nations.'[17] The disunity of UK food and agricultural policy will

[15] Jayne McCormack, 'NI's Government has Returned. Stormont – What You Need to Know' (*BBC,* 3 February 2024) https://www.bbc.co.uk/news/uk-northern-ireland-67726389 accessed 1 April 2024; Mary Dobbs, 'Northern Ireland's Agricultural Quagmire' in Irene Antonopoulos, Matt Bell, Aleksandra Čavoški and Ludivine Petetin (eds), *The Governance of Agriculture in Post-Brexit UK* (Routledge 2022) 192.
[16] Emily Lydgate and Chole Anthony, 'Brexit, Food Law and the UK's Search for a Post-Eu Identity' (2022) 85 The Modern Law Review 1168.
[17] ibid.

be considered in this chapter. Chapter 7 will consider issues of transparency in specific relation to food safety and disunity in relation to agricultural policy and trade policy post-Brexit.

Prior to Brexit, the agricultural policies of the four countries in the UK were subject to the overarching framework of European Union (EU) law. Following Brexit, the UK government replaced this framework with the Agriculture Act 2020 (AA 2020), the main Act dealing with food and agriculture in the UK, and the Internal Market Act 2020 (IMA 2020). Despite being the main overarching UK legislation dealing with food and agriculture, the AA 2020 largely deals with England.[18] Important areas such as financial support schemes for farmers only apply to England.[19] Scotland persistently refused to engage with drafting of the AA 2020,[20] and both the Scottish and Welsh legislatures did not give consent to the IMA 2020.[21] The enactment of the AA 2020 and the IMA 2020 despite the devolved nations objections suggest Anthony and Lydgate's fears of disunity in relation to food policy and law is justified.

As well as disunity, as will be demonstrated with the discussion below, the combined effect of these two acts has reduced some of the flexibility EU law provided for the devolved nations. Under the EU Common Agricultural Policy, the devolved nations had the flexibility to consider the nature of farmers in their country, and tailor policy accordingly to the size and type of farms.[22] This is still possible as, within the confines of the expenditure levels set by Westminster, the devolved nations can create their own farmer support schemes.[23] Yet such policies may still be undermined by the IMA 2020. The IMA 2020 makes it difficult for the devolved countries to block the sale of goods

[18] ibid 1178.
[19] See s 2(3) and s56 Agriculture Act 2020 (AA 2020).
[20] Ludivine Petetin, 'Setting the Path for UK and Devolved Agriculture' in Irene Antonopoulos, Matt Bell, Aleksandra Čavoški and Ludivine Petetin (eds), *The Governance of Agriculture in Post-Brexit UK* (Routledge 2022) 44.
[21] Lydgate and Anthony (n 16) 1180.
[22] See, for example: European Parliament and Council Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, art 96.
[23] See, for example: Civil Service, 'Introduction to Devolution' https://assets.publishing.service.gov.uk/media/5c37319aed915d731281fe13/IntroductionToDevolution.pdf accessed 1 April 2024, 5.

from the other parts of the Union that are cheaper due to production under lower standards.[24] Such products would outcompete goods that may be produced to higher standards in compliance with a devolved countries support scheme or legal requirements in relation to food production, and so put the devolved nation's farmers at a competitive disadvantage.

2.1. Food policy at the UK level

At UK level, there is no single unified food policy and at least 16 ministries have some responsibility for aspects of food policy in Westminster.[25] This potentially results in several departments having poorly defined competencies to deal with overlapping areas of food policy. For example, the Department for Health and Social Care deals with nutrition and childhood obesity plans, but at the same time the Department for Education is responsible for policy such as food education and school meals, which will also be important to achieve reductions in obesity and improving people's dietary choices.

There are also many executive agencies, executive non-departmental public bodies and non-ministerial departments that have responsibility for some aspects of food policy in the UK.[26] These bodies have a wide range of responsibilities and activities. For example, the Veterinary Medicine Directorate which deals with aspects of veterinary medicine safety, including medicine residues in food,[27] and the rural payments agency which administers farmer support schemes in England;[28] are both part of the Department for Environment, Food and Rural Affairs (DEFRA). The Groceries Code Adjudicator, responsible for complaints regarding the treatment of suppliers by large supermarket companies works with the Department for Business and

[24] Internal Market Act 2020 (IMA 2020) s1 to s8.
[25] Parsons (n 13) 8-9.
[26] Parsons (n 13).
[27] GOV.UK, 'About Us' (Veterinary Medicines Directorate) https://www.gov.uk/government/organisations/veterinary-medicines-directorate/about accessed 1 April 2024.
[28] GOV.UK, 'About Us' (Rural Payments Agency) https://www.gov.uk/government/organisations/rural-payments-agency accessed 1 April 2024.

Trade.[29] Of specific relevance to this chapter are the FSA and Office for Health Improvement and Disparities. The FSA has responsibility for 'protection of public health from risks that may arise in connection with the consumption of food.'[30] It works at central, devolved, and local levels, in England, Wales and Northern Ireland; Scotland has its own body, Food Standards Scotland.[31] The Office for Health Improvement and Disparities has recently been created as one of the bodies replacing Public Health England.[32] Its role is to develop policy using scientific evidence in a number of areas including obesity.[33] The remit of these two agencies clearly includes policies for the realisation of the right to food (e.g. policies relating to nutrition and food safety as part of adequate food). However, they are stand-alone agencies. They are not part of a central framework for the right to food. Stand-alone agencies acting without sufficient oversight, together with the lack of joined up food policy and overlapping departmental competencies all increase the risk of violations of the right to food.

Of the UK government departments that have specific responsibility for food, DEFRA is the most important. It is responsible for agricultural policy in England and its Secretary of State has a duty to report on food security under s19 of the AA 2020. Whilst reporting food security may be a useful monitoring exercise, the requirement to report under s19 of the AA 2020 is of little use for developing and monitoring policy in relation to reducing food insecurity. It does not contain requirements to set goals to improve food security nor to introduce policy to achieve those goals.

The CESCR in General Comment 12 indicates the importance of measurable targets in relation to implementing the right to food,[34] as discussed in Chapter 3. Although monitoring of food security in the UK is potentially a

---

[29] GOV.UK, 'About Us' (Groceries Code Adjudicator) https://www.gov.uk/government/organisations/groceries-code-adjudicator accessed 1 April 2024.
[30] Parsons (n 13) 17.
[31] Parsons (n 13) 16.
[32] GOV.UK, 'Office for Health Improvement and Disparities: About Us' https://www.gov.uk/government/organisations/office-for-health-improvement-and-disparities/about accessed 5 March 2023.
[33] ibid.
[34] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN Doc E/C.12/1995/5 (GC 12) [29-30].

very useful tool as part of monitoring the realisation of the right to food, the factors listed in the AA 2020 to be reported in relation to food security arguably limit its utility. The 2021 UK Food Security Report, in line with the factors for consideration listed in s19(2) of the Act,[35] focuses on overall food security of the country, with only one section out of the five considering food security factors at the household level.[36] It is acknowledged that there is no single accepted method for measuring food security. Variations of the approach used by the United States Department of Agriculture (USDA) have been used by NGOs in the UK, such as The Food Foundation,[37] as well as the FSA in the survey quoted at the beginning of this chapter.[38] The FAO State of Food Security and Nutrition in the World is reported annually and measures a variety of factors primarily focused on individuals. Factors include undernourishment, the Food Insecurity Experience Scale (FIES),[39] gender gaps in food security, low birth weight, rates of stunting in children, as well as diseases such as anaemia, related to micronutrient deficiencies.[40] It also includes in 2022, for the first time, the cost and affordability of a healthy diet.[41]

Importantly, both the USDA and the FAO approaches to measuring food security consider both objective elements, such as levels of malnutrition, as well as the subjective experiences of individuals. The UK Food Security Report, in contrast, focuses on the amount of food produced in the UK and entering the UK from imports.[42] It does consider household expenditure on food,[43] and so provides some information on food security at an individual level. However, the UK Food Security Report does not engage with issues of

[35] These factors are global food availability, supply sources for food, resilience of food chain, household expenditure on food, food safety and consumer confidence in food.
[36] DEFRA, 'UK Food Security Report 2021' (16 December 2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077015/United_Kingdom_Food_Security_Report_2021_19may2022.pdf accessed 4 March 2024.
[37] The Food Foundation, 'Food Insecurity Tracker' (n 6).
[38] Pettifer and Patel (n 2).
[39] The FIES is a series of eight questions that focus on the individual or households' experiences relating to food and behaviours associated with increasing difficulties accessing food. See: FAO, 'Voices of the Hungry' https://www.fao.org/in-action/voices-of-the-hungry/fies/en/ accessed 5 March 2023.
[40] FAO, 'The State of Food Security and Nutrition in the World' (Rome, 2022) https://www.fao.org/3/cc0639en/cc0639en.pdf accessed 5 March 2024, executive summary.
[41] ibid.
[42] DEFRA, 'UK Food Security Report' (n 36), Themes 1, 2 and 3.
[43] ibid, Theme 4.

distribution within households, nor does it carry out surveys like the FIES or USDA survey which aim to capture food insecurity in broader and more nuanced ways. In Section 4.2 of Chapter 2 of this thesis, food security was considered to contain an objective need for sufficient calories and nutrients based on individuals' physiological requirements; a subjective component; and a moral component, relating to individuals' equal moral worth. Although the UK Food Security Report does consider subjective attitudes to food safety, such as whether people trust food,[44] there is no consideration of how reliance on food banks, for instance, can impact health, subjective food security or moral security.

Food security measurements need to consider objective, subjective and moral security. As discussed in Section 3.3 of Chapter 3 of this thesis, the way people feel about how they access food is important for a rights-based approach, grounded in human dignity. The focus on the current and future overall supply levels of food in the UK in the UK Food Security Report, although an important component of a state's overall food security, fails to engage with objective and subjective factors at the individual level. This omission may undermine data collection and measurement in relation to the realisation of the fundamental right to be free from hunger as well as aspects of the core of the right to food. Without knowing the true extent of food insecurity and peoples' experiences, violations of the right to food are more likely. Although of limited utility in relation to violations of the right to food at the individual level, consideration of food supply levels in the UK, is relevant for developing agriculture policy in the UK.

2.2. Agriculture policy at the UK level

This section considers governance of agriculture in the UK, focusing on sustainability and some aspects of trade post-Brexit which can impact UK farmers and food producers. Agriculture policy is of fundamental importance to the standard of production in the normative framework for the right to food proposed by this thesis. Government policies regarding financial support to

[44] ibid, Theme 5.

farmers, research funding and associated legislation can all steer the type of food production and farming practices used in the UK. Production systems used in the UK have importance, alongside trade in the UK for the states ongoing food security.[45] Together they ensure the UK has supplies of sufficient and nutrient diverse food for the right to food to be realised. The core of the right to food, as defined in Chapter 3, also requires 'accessibility of such food in ways that are sustainable.'[46] As such both trade policy and agricultural policy have implications for realisation of the core of the right to food, sustainability should be front and centre of the policy in relation to both these factors. It is however acknowledged that, although steps should be taken to ensure as far as possible food policy is moving to sustainable approaches, changes in agricultural approaches, due to the nature of farming, will largely be obligations that are to be progressively realised more slowly. This section will consider food policy in the UK in relation to sustainable production and how changes to trade policy post-Brexit could impact farmers.

2.2.1. Sustainable food production in the UK

Sustainable delivery of food production is a subject of much debate, as discussed in Section 3 of Chapter 3, aroecology and sustainable intensification are often suggested to be two approaches to facilitating sustainable food production. Agroecology involves the use of ecological principles to develop sustainable agricultural systems.[47] It is a system that not only deals with production but also considers social and political aspects of food systems.[48] Sustainable intensification has been suggested to share some features with agroecology as the ideas of sustainable intensification also embrace the importance of local solutions and knowledge, adaptation, and low input technology.[49] Sustainable intensification aims to increase food production, but without increasing environmentally damaging outputs or using more land.

[45] ibid, Themes 1 and 2.
[46] GC 12 (n 34) [8].
[47] Miguel A. Alteri *Agroecology: The Science of Sustainable Agriculture* (IT Publications, 1995), chapter 2.
[48] ibid.
[49] For example: Jules N Pretty, 'The Sustainable Intensification of Agriculture' (1997) 21 Natural Resources Forum 247.

Although, as discussed in Chapters 2 and 3, there is concern that the term has been hijacked by agricultural companies and focus is shifting to technologies focusing only on intensification, rather than sustainability.[50]

The overall direction of travel of agricultural policy, in relation to sustainability and intensification in the UK echoes some of these concerns. It has been suggested that there has been a move towards increased intensification in UK agricultural policy.[51] Intensified farming can be accompanied by land that is set aside and 're-wilded',[52] but the concern is that the 'intensification' on agricultural land is input intensive and not always sustainable. Several successive Secretaries of State for the Environment, Food and Rural Affairs have suggested the importance of a more market-based approach to agriculture, with less public money support for farming.[53] Michael Gove when Secretary of State championed a 'fourth agricultural revolution' and George Eustice promoted 'value for money for the tax-payer' as part of the new Environmental Land Management Scheme (ELMS) for farmer payments.[54] The Government has recently challenged claims that they are reducing spending on farmer support, indicating that a spend below the forecasted amount in 2022-23 will be made up in the next financial period, and overall the Government will spend the promised £2.4 billion per year on farmer support over the five years of the current Parliament.[55]

---

[50] E Diamond Collins and Kirtnan Chandrasekaran, 'A Wolf in Sheep's Clothing? An Analysis of the 'Sustainable Intensification' of agriculture' (*Friends of the Earth International*, 2012) https://www.foei.org/wp-content/uploads/2013/12/Wolf-in-Sheeps-Clothing-for-web.pdf accessed 26 June 2020; H Charles Godfray and Tara Garnett, 'Food security and sustainable intensification' (2014) 369 Philosophical Transactions of the Royal Society of London. Series B, Biological Sciences 20120273.

[51] Ludivine Petetin and Mary Dobbs, *Brexit and Agriculture* (2022 Routledge) 79.

[52] See Dimbleby (n 9), The Nation food Strategy Plan which suggests a three-compartment model with areas of land sharing (agroecology) and land sparing (intensification) and areas with a combination of both these and areas set aside for nature.

[53] Viviane Gravey, 'Brexit and the Common Agricultural Policy' in Irene Antonopoulos, Matt Bell, Aleksandra Čavoški and Ludivine Petetin (eds), *The Governance of Agriculture in Post-Brexit UK* (Routledge 2022).

[54] ibid 108-9.

[55] DEFRA, 'Farming and Countryside Programme annual report, 2022 to 2023' (25 October 2023) https://www.gov.uk/government/publications/farming-and-countryside-programme-annual-report-2022-to-2023/farming-and-countryside-programme-annual-report-2022-to-2023-html-version accessed 1 April 2024; DEFRA in the Media, 'Inaccurate Coverage on Our Farming Budget' (*UK.GOV*, 3 January 2024) https://deframedia.blog.gov.uk/2024/01/03/inaccurate-coverage-on-our-farming-budget/ accessed 1 April 2024.

There is also an apparent government preference for the intensification of farming, focusing on technology.[56] This is despite agroecology being mentioned in the AA 2020.[57] Without a requirement in legislation for target setting and plans for attainment, even if the AA 2020 refers to agroecology and sustainability, these approaches may not impact government policy. This concern is amplified by the approach of the Government to pesticides and genetically modified crops (GMOs) post-Brexit. Neonicotinoids are pesticides that are particularly harmful to bees. Bees are very important as pollinators, both for biodiversity and agriculture. The use of these substances is restricted in the EU.[58] In January 2021, an emergency temporary authorisation for use of a neonicotinoid pesticide was issued for sugar beet crops. [59] This has been repeatedly renewed, including in 2024.[60] EU law allows for such emergency authorisations,[61] and France has used derogations in 2021 and 2022. However, the Court of Justice of the European Union recently ruled these to be illegal,[62] and the French Conseil D'État has subsequently revoked the French emergency authorisations.[63] The repeated UK authorisations raise questions about the priority of environmental protection in the UK post Brexit,[64] as well as possible divergence from the approach of the EU.

The post-Brexit approach to GMOs also raises concerns about possible policy divergence between devolved nations in the UK as well as with the EU. In Northern Ireland, EU law still applies, and based on the precautionary

---

[56] Gravey (n 53) 108-9.
[57] AA 2020, s1(5).
[58] European Commission, 'Neonicotinoids' https://food.ec.europa.eu/plants/pesticides/approval-active-substances/renewal-approval/neonicotinoids_en accessed 5 March 2024.
[59] DEFRA, 'Emergency Pesticide Authorisation to Protect Sugar Beet Crops' (*UK.GOV*, 1 March 2022) https://www.gov.uk/government/news/emergency-pesticide-authorisation-approved-to-protect-sugar-beet-if-specific-conditions-are-met accessed 5 March 2024.
[60] DEFRA, 'Emergency pesticide authorisation to protect sugar beet crop conditionally approved.' (*UK.GOV,* 18 January 2024) https://www.gov.uk/government/news/emergency-pesticide-authorisation-to-protect-sugar-beet-crop-conditionally-approved accessed 1 April 2024.
[61] European Commission (n 58).
[62] *Pesticide Action Network Europe ASBL and Others v État* Belge (Case C- 162/21) (19 January 2023) CLI:EU:C:2023:30.
[63] Conseil D'État, 'Neonicotinoids: No Exemptions to the European Ban' (3 May 2023) https://www.conseil-etat.fr/en/news/neonicotinoids-no-exemptions-to-the-european-ban accessed 1 April 2024.
[64] Petetin and Dobbs (n 51) 201.

principle,[65] GMO crops are strictly regulated.[66] Northern Ireland, Scotland, and Wales all restrict cultivation of GMO crops.[67] However, England seems to be taking a less cautious approach, having already created legislation to allow use of gene-edited products and cultivation of GMO crops.[68]

It is possible that the AA 2020 may provide additional legal support for truly sustainable intensification. It states production of food should be encouraged and in a way that is sustainable,[69] and this seemed to be the aim and early intention of the Environmental Land Management Scheme (ELMS),[70] the scheme replacing EU farmer support payments. This approach would align with the requirement of the core of the right to food that production of food is sustainable and ensures food access for future generations. However, the recent rapid turnover of the executive, including the Secretary of State for the Environment, Food and Rural Affairs, means clarity about the direction of travel of Government policy is unclear. For example, in October 2022, a freeze on the new land management scheme payments was announced with a possible return to per acreage payments like the EU Common Agricultural Policy.[71] In December 2022 it was then announced that the Government will proceed with some parts of ELMS,[72] but full details would

---

[65] Consolidated Version of the Treaty of the Functioning of the European Union [2008] C 115/01 art 191(2). The precautionary principle is a 'better safe than sorry' approach, see: Joanne Scott, 'Legal Aspects of the Precautionary Principle' (British Academy, November 2008) https://www.thebritishacademy.ac.uk/documents/309/Legal-Aspects-of-the-Precautionary-Principle.pdf accessed 13 October 2023. It will be discussed in more detail in Chapter 7.

[66] European Commission, 'GMO Legislation' https://food.ec.europa.eu/plants/genetically-modified-organisms/gmo-legislation_en accessed 5 March 2024.

[67] Petetin and Dobbs (n 51) 5.

[68] DEFRA, 'Plans to Unlock Power of Gene Editing Unveiled' (*UK.GOV,* 29 September 2021) https://www.gov.uk/government/news/plans-to-unlock-power-of-gene-editing-unveiled accessed 5 March 2024.

[69] AA 2020 s1(4).

[70] DEFRA, 'Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit' (February 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684003/future-farming-environment-consult-document.pdf accessed 5 March 2024.

[71] Helena Horton and Patrick Barkham, 'Government Poised to Scrap Nature 'Brexit Bonus' For Farmers' *The Guardian* (24 September 2022) https://www.theguardian.com/environment/2022/sep/24/brexit-bonus-farmers-poised-to-scrap accessed 5 March 2023.

[72] Claire Marshall, 'Nature-Based Farming-Subsidies Scheme Given Green Light' (*BBC*, 1 December 2022) https://www.bbc.co.uk/news/science-environment-63826740 accessed 5 March 2024.

not be announced until 2023.[73] In June 2023, a policy paper was released, detailing how the Government would pay for 'land-based environment goods and services.'[74]

ELMS is now moving forward, and farmers are signing up to the various schemes that provide them with payments.[75] However, the lack of initial clarity about the direction of government travel, the time to implement the new scheme, combined with rising input costs, such as fuel and fertiliser,[76] has resulted in uncertainty in the agriculture sector. Unlike other production sectors, farming cannot rapidly adjust its inputs and outputs to respond to changing costs, consumer demands, and rapidly evolving support schemes. Even crops such as wheat require land preparation, planting, and growing over the space of a year. Cattle are long lived, and in the case of dairy cows take at least two years to start producing milk. Increasing numbers of chickens on farms usually requires new buildings and commitments to increased fuel and feed bills. In a situation of rising input costs, possible fertiliser shortages and uncertainty about government financial support, farmers may be reluctant to make drastic changes or may even make the choice to leave the sector.[77] It has been reported that a billion pounds of payments have not been taken up by farmers.[78] This is concerning as this money has not entered the rural economy, potentially increasing levels of poverty in some areas. To enable farming to move in a sustainable direction farmers need certainty and appropriate support.

---

[73] Shaun Peel and Nic Rigby, 'Farming: Delay to post-EU Subsidy Scheme ELMS Not Acceptable Say Farmers' (*BBC,* 3 December 2022) https://www.bbc.co.uk/news/uk-england-cambridgeshire-63758117 accessed 5 March 2023.
[74] DEFRA, 'Environmental Land Management Update' (*UK.GOV,* 21 June 2023) https://www.gov.uk/government/publications/environmental-land-management-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services/environmental-land-management-elm-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services accessed 5 March 2024.
[75] DEFRA, 'Environmental Land Management in 2024: Details of Actions and Payments' (*UK.GOV*, 4 January 2024) https://defrafarming.blog.gov.uk/2024/01/04/environmental-land-management-in-2024-details-of-actions-and-payments/ accessed 2 April 2024.
[76] Eddy Wax and Bartosz Brzeziński, '"Enormous" Fertilizer Shortage Spells Disaster for Global Food Crisis (*Politico,* 9 August 2022) https://www.politico.eu/article/fertilizer-soil-ukraine-war-the-next-global-food-crisis/ accessed 5 March 2024.
[77] Farming Today (BBC Radio 4, 21 October 2022).
[78] ibid.

2.2.2. Trade of UK food and agricultural products post-Brexit

Trade within and outside of the UK is also controlled by the UK Government. The IMA 2020 aims to insure functioning of the UK internal market. The devolved nations can set their own standards and policies in relation to the production of food, but the IMA 2020 means that standards set in Westminster will, by default, often be the standards across the UK. The Welsh and Scottish Governments would be unable to ban English goods coming into their markets.[79] Producers in Wales and Scotland are not likely to be able to compete with goods from England if they are produced at lower standards and cost.[80] Schedule 1 of the IMA 2020 does allow bans of products to protect against threats to human, animal, or plant health. However, the purpose of this measure is to limit movement of pests and diseases within the UK.[81] It is not a more general exception that would allow a devolved nation to ban the sale of food considered deleterious to health, such as ultra-processed food. It has been argued the IMA 2020 alters the division of UK constitutional powers, due to the limits it places on devolved competencies.[82] It also appears to reduce the latitude the devolved nations had under EU law.

In addition, the IMA 2020 could result in adjacent farms, falling on either side of national borders, being given very different levels of government support whilst having to compete on the same market. Such an approach was challenged under the EU subsidy scheme in the *Horvath* case. The European Court of Justice indicated that legislation by a devolved administration within a member state, although needing to comply with EU rules, was not discriminatory if it varied levels of support compared to other regions in that state.[83] Arguably, the UK and devolved governments have missed an opportunity to agree on a mutually acceptable framework to ensure similar support for similar farms throughout the UK. They could also have agreed an overall UK policy in relation to sustainable agriculture and subsidies. Such a

[79] This is due to principles of non-discrimination (s5 IMA 2020) and mutual recognition, that requires goods to be sold in one part of the UK to be sold in all others (s 2 IMA 2020)
[80] Petetin and Dobbs (n 51) 45.
[81] IMA 2020 Schedule 1, para 1(2).
[82] Petetin and Dobbs (n 51) 46.
[83] *Mark Hovarth v Secretary of State for Environment, Food and Rural Affairs* (Case C-428/07) [2009].

framework would also have benefits for the UKs future trade policy in relation to the World Trade Organization (WTO) as will now be discussed.

Following Brexit, the UK must now trade on its own under WTO rules. These rules include the Agreement on Agriculture (AoA), which limits the amount of support states can pay to farmers and producers. As discussed in Chapter 4, support that is considered not to be trade distorting, 'green box' measures, are not limited, whereas trade distorting 'Amber Box' measures are limited.[84] States' Amber Box amount is related to their Aggregate Measure of Support for each agricultural product and non-product-specific support, and states commit to reduce this. The UK government will negotiate these amounts with the WTO and the amounts will apply for all agricultural products produced in the UK. As a result, this has the potential to limit the type of payments both England and the devolved states could make to farmers.

If devolved governments, as they have stated, are attempting to move to more sustainable agriculture with policies supporting the environment, careful crafting of such policies would allow them to fall within the Green Box and so not be subject to restrictions related to overall UK levels of support.[85] The focus on payments in ELMS for 'environmental goods' should ensure this is the case for England, and indeed, the UK is currently providing subsidies within its WTO limits through heavy use of the Green Box.[86] Although this allows the devolved nations to implement similar policies, the lack of overarching policy to guide the approach of the UK governments in developing sustainable agriculture is a missed opportunity. Such a policy would also ensure subsidies that support the lowest income farms in the UK are compliant with the rules of the AoA.[87] Such policy could then determine the approach to negotiating future trade agreements, as discussed in Chapter 7. This would ensure trade agreements do not impact or undermine the UK's approach to sustainable agriculture.

---

[84] Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2, Annex 2 and art 6.
[85] Michael Cardwell and Fiona Smith, 'Renegotiation of the WTO Agreement on Agriculture: Accommodating the New Big Issues' (2013) 62 International Law Quarterly Review 865, 881.
[86] WTO, Committee on Agriculture Notification, G/AG.N/GBR/20 (12 June 2023).
[87] Petetin and Dobbs (n 51) 57; See also: Ludivine Petetin 'Post-Brexit Agricultural Support and the WTO: Using Both the Amber and Green Boxes?' (Brexit and Environment, 21 June 2018) https://www.brexitenvironment.co.uk/2018/06/21/post-brexit-agricultural-support-wto-using-amber-green-boxes/ accessed 5 March 2024.

The other possible trade implications of Brexit are many and it is beyond the scope of this discussion and thesis to review them all. However, the impact of country-of-origin rules for goods imported from the UK into the EU has caused problems for smaller producers. The UK's Trade and Cooperation Agreement with the EU is the first UK trade agreement creating, rather than removing barriers to trade.[88] It enables tariff free and quota free trade between the EU and UK, subject to rules of origin being met.[89] Rules of origin require importers into the EU to demonstrate that the goods have not come into the UK from outside the EU to be moved directly into the EU.[90] This is a complex process and is especially complex for smaller producers who may only be exporting small amounts of goods filling only part of a container.[91] They thereby risk other goods in the container they share not complying with the rules and as a result the entire container being held or even rejected by the EU. Larger international manufacturers will benefit from economies of scale, moving containers full of products and a ratio of paperwork to amount of goods exported that is much lower.

The lack of coherent agriculture and food policy across the UK government is leaving room for possible violations of the right to food. There is no overarching legislation to indicate which government departments have responsibility for aspects of the right to food. Agriculture policy stands alone without linkage to other aspects of the right to food. There was disappointment that the AA 2020 did not provide such linkages, for example between agriculture, public health, international trade, and fair dealing in the supply chain.[92] Central UK agricultural policy on matters of finance and trade has been created without extensive involvement and consent of the devolved governments. Framework legislation to provide guidance for the UK, and the

---

[88] Petetin and Dobbs (n 51) 192.
[89] Trade and Cooperation Agreement between the United Kingdom and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community of the other part, Treaty Series No.8 (2021) (entering into force, 20 December 2020 Part Two, Title 1, Chapter 2.
[90] Petetin and Dobbs (n 51) 193.
[91] Alex Dean, 'Rules of Origin: The Biggest Brexit Problem You Didn't Know About' (*Prospect,* 16 March 2018) https://www.prospectmagazine.co.uk/ideas/economics/45865/rules-of-origin-the-biggest-brexit-problem-you-didnt-know-about accessed 4 March 2024.
[92] See, for example: Sustain, 'Agriculture Act 2020' https://www.sustainweb.org/sustainable-farming-campaign/agriculture_bill/ accessed 12 April 2024.

devolved countries, with benchmarks to be reviewed, would address these deficits in the policy landscape. The Good Food Nation (Scotland) Act 2022 (GFN(S)A) does this and will be discussed in the next section which considers food and agricultural policy at the of the devolved nations.

2.3. Food and agriculture policy in the devolved nations

As already mentioned, most of the law relating to food and agriculture is devolved. The Scottish and Welsh Governments are attempting to create more expansive food policy than England and the UK.[93] Wales now has the Agriculture (Wales) Act (A(W)A) 2023, and Scotland is in the process of consulting on agriculture policy.

2.3.1. Food policy in Scotland and Wales

Scotland has enacted the GFN(S)A 2022. This aims to create links between policy at national and local level.[94] It is an example of framework legislation that coordinates policy across many departments.[95] Such legislation is suggested to be an effective way to implement the right to food by the CESCR in General Comment 12.[96] Specifically the GFN(S)A 2022 requires Scottish Ministers to publish and lay before the Scottish Parliament a national food plan.[97] Section 1(3) of the GFN(S)A 2022 then states that the plan must set out outcomes to be achieved in relation to the food-related issue, the indicators or measures by which this progress is to be assessed and the policies to be pursued to achieve these outcomes.

---

[93] Scottish Parliament, 'Proposed Right to Food (Scotland) Bill https://www.parliament.scot/bills-and-laws/proposals-for-bills/session-6-right-to-food-scotland-bill accessed 5 March 2024.; Welsh Parliament, 'Development of the Food Wales Bill' https://senedd.wales/senedd-business/legislation/proposed-member-bills/development-of-the-food-wales-bill/ accessed 5 March 2024.
[94] Scottish Government 'Good Food Nation Bill Passed' (15 June 2022) https://www.gov.scot/news/good-food-nation-bill-passed/ accessed 5 March 2023.
[95] Lidija Knuth and Margaret Vidar, *Constitutional and Legal Protection of the Right to Food around the World* (FAO 2011) https://www.fao.org/right-to-food/resources/resources-detail/en/c/80544/ accessed 5 March 2024, 30.
[96] GC 12 (n 34) [29].
[97] Good Food Nation (Scotland) Act (GFN(S)A) 2022 s1.

The GFN(S)A 2022 emphasises the need, when food plans are created, to consider social and economic well-being, the environment, health and well-being, child poverty, economic development, animal welfare, education, and child poverty.[98] The right to food, as expressed in Article 11 ICESCR, is acknowledged by the GFN(S)A 2022 as essential to the realisation of other human rights.[99] The plans developed by ministers are laid before the Scottish Parliament and there is an obligation to subsequently review and revise the plan at least every five years.[100] Importantly the GFN(S)A 2022 establishes a Scottish Food Commission which is to provide oversight, and so adds another layer of scrutiny and ensures effective joined-up policy.[101]

In 2021, a Senedd Member Bill, the Food (Wales) Bill, was introduced.[102] This Bill included requirements to advance primary and secondary goals, set targets for secondary goals, create a national food strategy and establish a Welsh Food Commission.[103] Its primary goal was 'the provision of affordable, healthy, and economically, environmentally, and socially sustainable food for the people of Wales'.[104] Secondary goals included economic well-being, health education, environment, and food waste.[105] As with the GFN(S)A 2022, this is also an example of framework legislation, with coordination of food policy alongside setting policy goals and targets. The motion to agree the general principles of the Bill was voted down on 24 May 2023.[106]

Both the GFN(S)A 2022 and the proposed legislation in Wales can be considered steps towards more coherent food policy. Although the Welsh Bill was voted down, its intentions demonstrate widening acknowledgment of the need for framework legislation. The GFN(S)A 2022 addresses many factors

---

[98] ibid, s1(6).
[99] ibid s2.
[100] ibid s1(b), s3 and s8.
[101] ibid, s19.
[102] Welsh Parliament, *Food (Wales Bill)* (12 December 2022) https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=40509 accessed 5 March 2024.
[103] ibid.
[104] ibid Clause 2.
[105] ibid Clause 3.
[106] Martine Shipton, 'Food Security Law Voted Down by Senedd' (*Nation Cymru*, 25 May 2023) https://nation.cymru/news/food-security-law-voted-down-by-senedd/ accessed 5 March 2024.

related to the standards in the normative framework this thesis proposes, such as considering the environmental effects of food policy and nutrition. Importantly, it requires the plan to indicate the aims to be achieved and how attainment of these targets will be measured.[107] This is important to assess the right to food as it provides evidence as to whether obligations are being progressively realised. Creation of a Food Commission provides another mechanism to coordinate food policy.[108] The GFN(S)A 2022 also requires similar plans from local authorities,[109] demonstrating how such legislation can provide frameworks at different levels of government.

The GFN(S)A 2022 specifically mentions poverty in children. Yet this may not be the most appropriate legislation to address food insecurity in children, and the fundamental right to be free from hunger. Framework legislation, given the planning and consultation involved, is more appropriate to address the core of the right to food and the obligations to be more slowly realised. Indeed, to more immediately address issues relating to hunger, Scotland is currently consulting on policy to remove the need for food banks.[110] This advocates a cash-first approach, indicating food banks are not an appropriate or long-term policy response to poverty.[111] If this results in legislation containing obligations to prevent hunger and ensure access to adequate food, the combined pieces of legislation provide a potential model for both the UK government and the other devolved governments. This combination of legislative measures could ensure the fundamental right to be free from hunger is realised alongside those parts of the right to food that are to be progressively realised.[112] In addition, the Scottish approach demonstrates how framework legislation can be used to facilitate realisation

[107] GFN(S)A 2022 s1(3).
[108] ibid s19 and s20.
[109] ibid s10.
[110] Scottish Government, 'Ending the Need for Food Banks: Consultation on a Draft National Plan' (October 2021) https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2021/10/ending-need-food-banks-consultation-draft-national-plan/documents/ending-need-food-banks-consultation-draft-national-plan/ending-need-food-banks-consultation-draft-national-plan/govscot%3Adocument/ending-need-food-banks-consultation-draft-national-plan.pdf accessed 5 March 2024.
[111] ibid, p. 6.
[112] See Section 2.2.2 in Chapter 2 and the discussion of the framework standards in Chapter 3.

of the right to food, even when the ICESCR has not been incorporated into UK law. [113]

The reference to the ICESCR in the GFN(S)A 2022 is also a positive step. However, the requirement for Ministers to have regard for the ICESCR when preparing their plan,[114] does not incorporate the right to food into Scottish law.[115] A private member's bill seeking to do this did not move beyond the consultation phase.[116] The Scottish Parliament is currently seeking to incorporate several human rights treaties into Scottish law, including the ICESCR.[117] It is intended that this legislation will enable the right to food to be justiciable in Scottish courts.[118] This is following the now successful passing of The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill which became an Act on 16 January 2024.[119]

2.3.2 Agriculture policy in the devolved nations

Post-Brexit Agriculture policy in Scotland and Wales is developing at the time of writing. The A(W)A 2023 passed in August 2023. It focuses on 'Sustainable Land Management' as the legislative framework for agriculture in Wales.[120] It has been laid before the Welsh Assembly following several years of consultation.[121] The Act contains four objectives, the first being to produce food and other goods in a sustainable manner.[122] The other three relate to climate change mitigation, enhancing ecosystem resilience and conserving

---

[113] For the position of the UK regarding incorporation of international treaties into law see (n 12).
[114] GFN(S)A 2022 s5(2)(a).
[115] See (n 12).
[116] Scottish Parliament, 'Proposed Right to Food Bill' (n 93).
[117] Scottish Government, 'Good Food Nation – Programme of Measures: Interim Update 2022' (15 March 2022) https://www.gov.scot/publications/good-food-nation-programme-measures-2022-interim-update/pages/3/ accessed 5 March 2024.
[118] ibid.
[119] Scottish Parliament, 'United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill' https://www.parliament.scot/bills-and-laws/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/bill-becomes-an-act#topOfNav%3E accessed 5 March 2024.
[120] Welsh Government, 'Written Statement: Introduction of the Agriculture (Wales) Bill' (26 September 2022) https://gov.wales/written-statement-introduction-agriculture-wales-bill accessed 5 March 2024.
[121] ibid.
[122] Agriculture (Wales) Act 2023 s1(2).

and enhancing 'the countryside and cultural resources.'[123] The A(W)A 2023 also permits but does not require the Welsh Minsters to provide farmer support in line with these four objectives.[124] The Welsh Ministers are also required to provide a statement that sets out an indicator and a target for each of the four objectives,[125] which as discussed above, is an important part of monitoring attainment of obligations for the right to food that are to be progressively realised. However, Welsh farmers have recently been protesting the proposed requirement in the Sustainable Farming Scheme for farmers to set aside 10% of agricultural land for trees and 10% for wildlife habitat.[126] Although areas of set aside and 're-wilding' are suggested in the National Food Strategy,[127] a lack of UK wide approach is again a missed opportunity. A UK wide approach to sustainable agriculture could facilitate better assessment of the most appropriate land to be set aside, alongside consideration of the economic impact on farmers, as well as overall food production levels in the UK.

The approach to agricultural policy in Scotland is based on four key principles: stability, sustainability, security, and simplicity.[128] The Agricultural and Rural Communities (Scotland) Bill was introduced to the Scottish Parliament on the 28 September 2023. This Bill, if enacted, will allow Ministers to create payment schemes for farmers,[129] and provide more general support for agriculture, forestry, and rural communities.[130] The Bill indicates the overarching aims of agriculture policy are 'adoption of sustainable and regenerative agricultural practices,' 'production of high quality food,' 'facilitation of on-farm nature restoration and climate mitigation' and 'enabling rural communities to thrive.'[131] The Bill also requires a 'Rural Support Plan' to

[123] Ibid ss 1(3) – (5).
[124] ibid s8.
[125] ibid s4.
[126] Steffan Messenger and Miriam Barker, 'Thousands of Protesting Farmers Descend on Cardiff' (*BBC,* 28 February 2024) https://www.bbc.co.uk/news/uk-wales-68414032 accessed 2 April 2024.
[127] Dimbleby (n 9) 99.
[128] Scottish Government, 'Stability and Simplicity: Proposals for a Rural Funding Transition Period' (20 June 2018) https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/ accessed 5 March 2024.
[129] Agriculture and Rural Communities (Scotland) Bill [As Introduced] s5.
[130] Agriculture and Rural Communities (Scotland) Explanatory Notes. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/agriculture-and-rural-communities-scotland-bill/introduction/explanatory-notes-accessible.pdf accessed 1 April 2024 [13].
[131] Agriculture and Rural Communities (Scotland) Bill [As Introduced] s1.

be laid before the Scottish Government.[132] Disappointingly, the Bill does not require target setting, nor policies for achieving those targets. Ideally, legislation in relation to agriculture policy would also take the form of framework legislation to help facilitate the realisation of the right to food. Such framework legislation in relation to food and agriculture policy is also important in guiding local authority policy. The discussion below considers this using English Local Authority food policy as an example.

2.3.3. Food policy at English local authority level

Local authorities have a role in food policy, and in England were given a particular role in the childhood obesity plan, with responsibilities in relation to improving the health of their local populations.[133] In addition to a role in policy relating to the standard of nutrition, local authorities also have roles in ensuring access to adequate food, through planning law to prevent the development of food deserts.[134] Local planning policy law is a tool that can be used to address this by carrying out health impact assessments of new retail planning applications and focusing on reducing social exclusion as part of retail planning.[135] This area of law and issues of food deserts will be returned to in the next chapter considering supermarkets and the right to food in the UK.

Local authorities can also play a role in ensuring freedom from hunger using Household Support Funds, which are used to help families in poverty.[136] The Government guidance to accompany the funds was criticised as it indicated food banks could form part of this assistance. This 'institutionalises' the state of food insecurity many find themselves in, as well normalising reliance on charitable and NGO intervention rather than Government

---

[132] ibid s2(4).
[133] ibid.
[134] Neil Wrigley, ''Food Deserts' in British Cities: Policy, Context, and Research Priorities' (2002) 11 Urban Studies 2029; Minister of Housing, Communities and Local Government, 'National Planning Policy Framework' 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf accessed 10 July 2023 (NPFF).
[135] NPFF (n 134).
[136] GOV.UK, 'Household Support Fund: Guidance for Local Councils' (13 September 2023) https://www.gov.uk/government/publications/household-support-fund-guidance-for-local-councils/household-support-fund-final-guidance-for-county-councils-and-unitary-authorities-in-england#working-with-other-organisations accessed 5 March 2024.

solutions.[137] Free-School Meals in England are supplied to children whose parents are in receipt of certain benefits and also to all children in years 1 and 2.[138] Outside of this requirement, provision is left to the discretion of the local authority, and the Mayor of London has provided free school meals for all primary age children in London. [139]

Local authorities can influence production systems and supply chains through their food procurement policies,[140] and such policies need guidance to ensure they are coordinated and in line with national nutritional and agriculture policy. Without an overarching central policy and framework, local policies may not be working towards realisation of the right to food in a consistent way. In addition, as funding for local authorities is limited this can cause fragmentation in levels of provision around the country, for example in relation to free-school meals.[141] Framework legislation may make it possible to challenge insufficient funding, especially where it limits support for those experiencing hunger and food insecurity.

The discussion above indicates that food and agriculture policy are disjointed across the UK which increases the likelihood of violations of the right to food. There is no overall policy or legislative framework to ensure implementation and realisation of the obligations contained within Article 11 ICESCR. Scotland has enacted the GFN(S)A 2022 which is a positive step forward. The following section will now consider how this lack of joined-up policy has impacted the realisation of the right to food in the UK.

---

[137] Hannah Westwater, *Big Issue* (12 November 2021) 'Government accused of 'Institutionalising' Food Banks in New Guidance for Councils' https://www.bigissue.com/news/social-justice/government-accused-of-institutionalising-food-banks-in-new-guidance-for-councils/ accessed 5 March 2024.
[138] Department for Education, 'Free School Meals. Guidance for Local Authorities, Maintained Schools, Academies and Free Schools' (March 2024) https://assets.publishing.service.gov.uk/media/65fdad5965ca2f00117da947/Free_school_meals.pdf accessed 12 April 2024.
[139] Mayor of London, 'Mayor Announces Every London Primary Schoolchild to Receive Free School Meals' (20 February 2023) https://www.london.gov.uk/mayor-announces-every-london-primary-schoolchild-receive-free-school-meals accessed 12 April 2024.
[140] For example: Joyce Thompson and Tim Jackson, 'Sustainable Procurement in Practice: Lessons from Local Government' 50 Journal of Environmental Planning and Management (2007) 421; Elena Dawkins *et al* 'Advancing Sustainable Consumption at the Local Government: Level: A Literature Review' 10 Journal of Cleaner Production (2019) 1450.
[141] County Councils Network, 'Worse Than Austerity' (27 October 2022) https://www.countycouncilsnetwork.org.uk/worse-than-austerity-councils-warn-that-any-cuts-to-their-budgets-next-year-would-mean-they-are-only-able-to-offer-the-bare-minimum-in-local-services/ accessed 5 March 2024.

3.0. The status of the right to food in the UK

The following subsections will consider the four standards from the proposed normative framework in Chapter 2 that are most relevant to domestic food policy and domestic realisation of the right to food: freedom from hunger, the provision of adequate food, nutrition, and production. The first section, on freedom from hunger also continues the discussion of 'cash-first approaches' being considered in Scotland to tackle food insecurity and food bank usage. It argues that the UK needs a basic income, a social minimum to ensure all can afford to purchase adequate nutritious food.

3.1. Freedom from hunger

The fundamental right to be free from hunger is the part of the proposed normative framework that is to be immediately realised. In a wealthy developed country such as the UK, except in very limited and emergency circumstances, this would equate to access to food that is also nutritionally appropriate. It is also necessary to ensure people can feed themselves in a dignified way.[142] Food insecurity, either acute or chronic, results in people going hungry. The COVID-19 pandemic highlighted the issue of hunger and food insecurity in the UK with the use of food banks and access to school meals being of particular concern.[143] However, use of food banks and food insecurity were already ingrained in UK society before the COVID-19 pandemic,[144] but the true extent of food insecurity in the UK is difficult to track over time. Before the AA 2020 was implemented, there was no statutory requirement for the Government to report food security levels in the UK, and,

[142] See Chapter 2 for a discussion of addressing hunger in a way underpinned by dignity.
[143] Rajeev Syal, Heather Stewart and Helen Pidd, 'Johnson makes U-turn on Free School Meals After Rashford campaign' *The Guardian,* (16 June 2020) https://www.theguardian.com/politics/2020/jun/16/boris-johnson-faces-tory-rebellion-over-marcus-rashfords-school-meals-call accessed 26 June 2020; Peter Taylor-Gooby and Tomas Petricek, 'Food bank donations surged during the pandemic- but look closely at the date and there's trouble ahead' (*The Conversation,* 9 July 2020) https://theconversation.com/food-bank-donations-surged-during-the-pandemic-but-look-closely-at-the-data-and-theres-trouble-ahead-142113 accessed 11 July 2020.
[144] Alston (n 5).

as discussed above, the approach to food security in the AA 2020 does not measure individual food insecurity.

Charities running food banks report levels of food bank usage. Yet these figures are likely to be an inaccurate reflection of chronic hunger. Food bank usage figures often capture only those who suddenly became food insecure due to a change in financial circumstances.[145] For example, only 8% of households in York between 2018 and 2019 reported using food banks, even though 24% of households had experienced food insecurity.[146] The discussion below does use food bank figures, as they will be linked to levels of food insecurity in the UK. However, for the reasons given above, these figures are likely to underestimate levels of food insecurity and hunger. Figures relating specifically to food security in the UK, published by the Government in 2021 as required by the AA 2020,[147] indicate that in 2020 8% of households reported they were food insecure, with 4% of these having very low food security.[148] During the first COVID lock-down, this figure rose to 9.7%.[149]

Food insecurity is not evenly distributed, with non-white ethnic groups, the disabled, and households with children being disproportionately affected.[150] Throughout the pandemic and into September 2022, the Food Foundation reported 25.8% of households with children were food insecure compared to 16.0% of households without children. The risk of food insecurity increases as the number of children in the household increases.[151] These figures are much higher than those reported by the Government, which may be a consequence of different methodologies, as discussed earlier in this chapter. This again emphasises the need for an approach to measuring food security that is consistent across the Government and NGOs in the UK. Food

---

[145] Madeline Power *et al*, 'How Covid-19 has Exposed Inequalities in the UK Food System: The Case of the UK Food and Poverty' (2020) 2 Emerald Open Research https://www.researchgate.net/publication/341367293_How_COVID-19_has_exposed_inequalities_in_the_UK_food_system_The_case_of_UK_food_and_poverty accessed 5 March 2024.
[146] Madeline Power, 'Seeking Justice: How to Understand and End Food Poverty in York' (York Food Justice Alliance, York 2019) https://eprints.whiterose.ac.uk/151502/1/Seeking_Justice_How_to_understand_and_end_food_poverty_in_York.pdf accessed 22 September 2022.
[147] AA 2020, s19.
[148] DEFRA, 'UK Food Security Report' (n 36).
[149] Food Foundation (n 6).
[150] ibid.
[151] ibid.

insecurity is also reported to be greater in those with disabilities that result in more severe limitations. 45.4% of people with more severe disabilities and limitations reported food insecurity compared to 13.1% of people with disabilities resulting in no limitations.[152] Black, Asian and minority ethnic groups report food insecurity at a rate of 26.9% compared to 18.5% in those that are white.[153] These massive disparities suggest that there may also be a violation of the ICESCR through a failure to ensure measures implemented do not discriminate.[154] In a developed country, the CESCR has indicated that adequate food should always be provided, especially for vulnerable populations in the face of severe resource constraints,[155] and that states should use all the resources at their disposal to prevent people from going hungry and being unable to access an adequate diet.[156] The UK may be in violation of this obligation, given food bank usage is persistently rising. However, to address this, the cause of such hunger needs to be considered.

In the UK, hunger and food insecurity are 'a symptom of poverty'.[157] When people's incomes fall either relatively or absolutely, food is often the first essential that is sacrificed to enable fixed bills, such as rent and utilities, to be paid.[158] Even if UK crops fail due to extreme weather or pests, we have access to home-produced food and imported food in shops. The UK Government emphasises that imports of food, from a variety of other countries bolsters food security in the UK.[159] The 'just-in-time-system' utilised to stock supermarkets ensures shops contain a variety of food that can be purchased or delivered, if people have sufficient income to pay for it, in usual circumstances. However, at times this has not been the case, for example during the COVID-19 pandemic supermarket shelves were sometimes emptied of basic foods.[160]

---

[152] ibid.
[153] ibid.
[154] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 2(2).
[155] GC 12 (n 34) [28].
[156] GC 12 (n 34) [17].
[157] House of Lords, 'Hungry for change: Fixing the Failures in Food. Report of the 2019-20 session.' HL Paper 85 https://publications.parliament.uk/pa/ld5801/ldselect/ldfphe/85/85.pdf accessed 24 April 2024 [52].
[158] Pettifer and Patel (n 2) [1.3].
[159] DEFRA, 'UK Food Security Report' (n 36).
[160] The Guardian Editorial, 'The Guardian View on Empty Supermarket Shelves: Panic is Not the Problem' *The Guardian* (27 March 2020) https://www.theguardian.com/commentisfree/2020/mar/27/the-guardian-view-on-empty-

This suggests that, although for the most part, income levels are a central part of ensuring people do not go hungry, joined up food policy also requires emergency planning, to ensure food supplies and that all can access food during unprecedented emergencies such as the COVID-19 pandemic.

The lack of policy to deal with hunger has been criticised.[161] The UK welfare system has also come under much criticism. Concerns have been raised about the absolute level of benefits,[162] the benefit sanction regime that punishes those that fail to comply with requirements for receiving benefits,[163] and measures such as the benefit cap, which particularly affect families with children,[164] especially single mothers.[165] Although it is beyond the scope of this thesis to engage in an in depth analysis of the UK benefit system, it is estimated that since 2010, there has been a £40 billion cut in social security spending and that at the same time there has been a steady increase in child poverty.[166] Poverty in pensioners has also increased since 2020, and the overall rate of poverty is currently at 22% of the population.[167] It is clear that poverty in the UK is a long-term problem, and food insecurity has been a significant issue in the UK for over a decade,[168] in violation of the fundamental right to be free from hunger. At the same time, the UK is facing an

---

supermarket-shelves-panic-is-not-the-problem accessed 17 April 2024; Environment, Food and Rural Affairs (EFRA) Committee, EFRA Committee, *Covid-19 and Food Supply*, First Report of Session 2019–20, HC 263, 53.

[161] House of Lords, 'Hungry for Change' (n 157) 91.

[162] For example see: Isabella McCrae and Hannah Westwater, 'Food Poverty in the UK: The Causes, Figures and Solutions' *The Big Issue* (2 May 2023) https://www.bigissue.com/news/social-justice/food-poverty-in-the-uk-the-causes-figures-and-solutions/ accessed 25 July 2023; The Food Foundation 'Food insecurity in Households in Receipt of Benefits' (May 2022).https://foodfoundation.org.uk/sites/default/files/2022-08/Universal%20Credit%20and%20Food%20Insecurity%20Briefing%202022_1.pdf accessed 25 July 2023.

[163] Mark Simpson, 'Assessing the Compliance of the United Kingdom's Social Security with its Obligations Under the European Social Charter' (2018) 18 Human Rights Law Review 745, 755 and 759.

[164] Child Poverty Action Group (CPAG), 'Falling Further Behind: Hardship Among Benefit Capped Families as Prices Rise' (21 June 2022) https://cpag.org.uk/policy-and-campaigns/briefing/falling-further-behind-hardship-among-benefit-capped-families-prices accessed 19 July 2022.

[165] Meghan Campbell, '*Capping Motherhood'* in Martha F Davis, Morten Kjaerum and Amanda Lyons (eds), *Research Handbook on Human Rights and Poverty* (Edward Elgar 2023), 163-4.

[166] Tom Lewis, 'The Austerity Generation: The Extent of the Damage in Josephine Tucker (ed) *2020 Vision. Ending Child Poverty for Good* (CPAG 2020) 5-6.

[167] Joseph Rowntree Foundation, 'UK Poverty Statistics' https://www.jrf.org.uk/ accessed 5 March 2024.

[168] Sabine Goodwin, 'A Cursory National Food Strategy Lacks Substance and Joined Up Thinking on Food Insecurity' (2022) British Medical Journal 2022;377:o1549.

unprecedented cost of living crisis, with food and fuel prices rising dramatically.[169] As discussed in Chapter 3, and as I have argued elsewhere, the levels of hunger associated with the UK benefit regime may be a violation of Article 3 of the European Convention on Human Rights (ECHR).[170] However, the UK courts have taken a restricted approach on adjudicating on issues of poverty and hunger.

3.1.1. The right to food in UK courts: poverty and hunger

UK courts have considered claims relating to inadequate food in relation to Article 3 ECHR. Claims have also been made that aspects of the UK benefits regime violate Article 8 ECHR. As discussed in Chapter 3, the ECtHR has found violations of Article 3 ECHR in several cases where people are detained or are restricted in their movements and income due to laws concerning asylum seekers.[171] The UK courts have also considered food in the context of prisoners. In *R v Governor of Frankland Prison ex P Russell,* the High Court considered the decision of a prison governor to deny prisoners access to normal meals as a punishment for refusing to wear prison uniforms. The prisoners were instead provided only a single meal a day in their cells.[172] The court found the governor's policy unlawful, as it was not authorised by the Prisoner Rules 1999. The court stated indicated that adequate food was more than a basic level of calories to allow someone to survive.[173] The court also

---

[169] Daniel Harari *et al,* 'House of Commons Library: Rising Cost of Living in the UK' 21 September 2022, https://researchbriefings.files.parliament.uk/documents/CBP-9428/CBP-9428.pdf accessed 18 April 2024; Office of National Statistics 'What Actions are People Taking Because of the Rising Cost of Living' (5 August 2022) https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/expenditure/articles/whatactionsarepeopletakingbecauseoftherisingcostofliving/2022-08-05 accessed 22 September 2022; Niels do Hoog, Ashley Kirk and Hilary Osborne, 'How the Cost of Living Crisis is Hammering UK Households' *The Guardian* (21 June 2022) https://www.theguardian.com/business/ng-interactive/2022/jun/21/cost-of-living-crisis-uk-households-charts-inflation?utm_term=Autofeed&CMP=twt_gu&utm_medium&utm_source=Twitter#Echobox=1655812883 accessed 19 July 2022.

[170] Clare James, 'Food, Dignity and the European Court of Human Rights' Legal Studies Published online 2023 doi:10.1017/lst.2023.34.

[171] For example: *Stanev V Bulgaria* App No 36760/06 [GC] Merits and Just Satisfaction (17 January 2012); *R.R and others v Hungary* App No 36037/17, Merits and Just Satisfaction, 2 March 2021, *Dudchenko v Russia* Application No 37717/05, Merits, (7 November 2017).

[172] *R v Governor of Frankland Prison Ex p Russell* [2000] 1 WLR 2027.

[173] ibid [17]; Prisoner Rules 1999 SI 1999/728.

indicated that the punishment may have violated Article 3 ECHR.[174] Although this case does consider the nature of adequate food, within the context of a statutory regime, it is in a very specific circumstance in relation to those in prison.

The House of Lords have also considered access to food as part of a broader issue relating to poverty and destitution. In the case of *Limbuela*, the courts upheld a complaint that a decision of the Home Secretary to deny support to the complainants, left them destitute and violated Article 3 ECHR.[175] However, the House of Lords also suggested there was not a general right to an adequate standard of living.[176] Lord Bingham stated that a breach of Article 3, would require deliberate action by the state that resulted in denial of shelter or food.[177] The need for degrading or ill *treatment* was emphasised in the case, and the lack of provision, of what claimants may consider a necessary level of support alone, is not treatment.[178]

The use of Article 3 ECHR to address a lack of food, following *Limbuela,* has been limited by the UK Courts due to the need for complainants to have been subject to punishment or treatment. Until the ECtHR finds a violation of Article 3 ECHR more generally in relation to poverty or access to food, it is unlikely the UK courts will. The Supreme Court has taken a firm line in relation to the ability of the courts to adjudicate on government policy that has financial and political implications, suggesting a shift to a more conservative approach to the separation of powers. In *R (on the application of SC, CB and 8 children),* a complaint that the two-child benefit cap violated articles 8 and 14 ECHR was considered. The comments of the court suggest that despite the severity of the situation many face regarding the adequacy of their benefits and the benefit regime, the Supreme Court may now be less willing to rule against Government policies. They have stated that such cases 'present a risk of undue interference by the courts in the sphere of political choices.'[179] Campbell has argued this ruling fails to engage with the discriminatory nature of these

[174] *R v Governor of Frankland Prison* [19]; Prisoner Rules.
[175] *R (Limbuela) v Home Secretary* [2005] UKHL 66.
[176] ibid [66].
[177] ibid [7].
[178] *R (on the application of SC, CB and 8 children) (Appellants) v Secretary of State for Work and Pensions and others (Respondents)* [2021] UKSC 26.
[179] ibid [162].

policies, as they overwhelmingly affect single mothers.[180] As such, these welfare policies are also concerning in relation to Article 2.2 ICESCR, as these policies are apparently discriminating against women.

The Supreme Court did acknowledge that they could intervene in situations where government policy was 'manifestly without reasonable foundation'.[181] This leaves the question of when and how the court may intervene in cases relating to the right to food. Although the ECtHR has indicated in *Airey v Ireland* that there is no discrete division between civil and political rights and socioeconomic rights,[182] the scope of Article 3 ECHR is limited to situations of extreme destitution and poverty, and so far, has only been found to be violated for individuals detained or subject to specific legal regimes as asylum seekers. However, prior to enacting the HRA 1998 the UK did consider cases relating to fundamental rights through judicial review and given the uncertainty in the UK over the future of the HRA 1998,[183] people are once again beginning to consider the utility of these approaches to enforce human rights.[184]

Judicial review in the UK can be carried out on several grounds and can involve adjudication on matters related to human rights.[185] The review of decisions through Wednesbury unreasonableness, however, is often insufficient to protect rights.[186] The courts have utilised principles of decisions being *ultra vires,* the principle of legality, justificatory scrutiny within the principle of legality, and the enhanced level of 'anxious scrutiny in cases involving fundamental rights.[187] This then leaves the question as to what fundamental rights would be used in these processes, and would they contain any obligations in relation to the right to food. As a dualist nation, the courts have rejected the implementation of international obligations that have not

[180] Meghan Campbell, '*The Austerity of Lone Motherhood: Discrimination Law and Benefit Reform'* (2021) 42 Oxford Journal of Legal Studies 1197.
[181] *R (on the application of SC, CB and 8 children)* (n 178) [97].
[182] *Airey v Ireland* App No 6289/73 Merits, (9 October 1979) [26].
[183] UK Parliament, 'Bill of Rights Bill' (28 June 2023) https://bills.parliament.uk/bills/3227 accessed 5 March 2024.
[184] Mark Elliot, 'Beyond the European Convention: Human Rights and the Common Law' 68 Current Legal Problems 85.
[185] ibid
[186] ibid
[187] ibid

been incorporated into UK law through legislation.[188] Although this is still precedent, there have been some moves away from this rigid approach.[189] Lord Steyn indicated in the *McKerr* case that this rigid approach may no longer be appropriate in human rights cases.[190] In the *ZH Tanzania* case, the principle of the best interests of a child, from the Convention on the Rights of the Child was considered, even though this treaty has not been incorporated into UK law.[191] This inclusion of human rights obligations from treaties the UK has ratified, but not incorporated occurs on a case-by-case basis. As such it provides little, if any guarantee that the courts would engage with issues relating to the right to food in judicial review cases.

The courts have also indicated that the common law includes a fundamental right to elementary needs. In the *Joint Council for the Welfare of Immigrants Case*, Simon Brown LJ stated:

> 'Either that, or the Regulations necessarily contemplate for some a life so destitute that to my mind no civilised nation can tolerate it. So basic are the human rights here at issue that it cannot be necessary to resort to the European Convention of Human Rights to take note of their violation.'[192]

Although this is a powerful statement, it would suggest that the common law would only object to destitution. In most circumstances in the UK, as discussed in Chapters 2 and 3, the right to be free from hunger requires more than simply having sufficient calories to survive. The nature of judicial review means the approach of the courts tends to focus on the way decisions have been made, rather than the substance of that decision,[193] and so although Lord Brown

---

[188] JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry [1989] UKHL 3 WLR 969.
[189] Katie Boyle, *Economic and Social Rights Law. Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020) 167.
[190] *Re McKerr (AP) (Respondent) (Northern Ireland)* [2004] UKHL 12.
[191] *ZH (Tanzania)(FC) (Appellant) v Secretary of State for the Home Department (Respondent)* [2011] UKSC 4.
[192] *R v Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants; R v Secretary of State for Social Security ex parte B* [1996] EWCA Civ J0621-9.
[193] Jeff A King, 'United Kingdom. Asserting Social Rights in a Multi-layered System' in Malcolm Langford (ed), *Social Rights Jurisprudence. Emerging Trends in International and Comparative Law* (Cambridge University Press 2008) 284.

suggests resort to the ECHR should not be necessary, the ECHR has been the focus of cases addressing socioeconomic issues in UK courts.

The scope of protection for the right to be free from hunger provided by the HRA 1998 and ECHR, judicial review, and common law protections is extremely limited. The protections in the UK Courts for those in poverty and experiencing hunger would seem to apply only to situations of extreme destitution.[194] Such protection is insufficient and has led to calls for statutory duties to ensure people are not destitute.[195] This thesis advocates for legislation that creates a social minimum.[196] All would be entitled to receive the social minimum through combinations of welfare benefits and minimum wage levels. Although framework legislation is a potentially powerful tool for the progressive realisation of the right to food, the UK faces increasing numbers of people that are facing food insecurity and going hungry in violation the fundamental right to be free from hunger. As indicated by the consultation in Scotland on removing the need for food banks,[197] additional legislation to prevent hunger is needed now.

King has proposed a social minimum that would include resources including cash benefits and benefits in kind, such as housing. Together these would provide peoples' basic needs. These needs are further defined as physical and mental health, social participation, and the need for a level of education and economic stability to provide individuals with sufficient agency to make plans.[198] The precise nature would vary with social and economic conditions.[199] However, most importantly, as Simpson *et al* discuss, such a social minimum, framed in their argument as a right against destitution, would allow a 'system that protects dignity under which a state can no longer justify inflicting extreme hunger on those who are dependent on it.'[200] As argued by Simpson *et al* this is a way to address hunger, whilst respecting human dignity, consistent with the framework proposed in this thesis. A social minimum would

---

[194] Mark Simpson, Gráinne McKeever and Ciara Fitzpatrick, 'Legal Protection Against Destitution in the UK: The Case for a Right to a Subsistence Minimum' (2023) 88 Modern Law Review 465.
[195] ibid.
[196] Jeff King, *Judging Social Rights* (CUP, 2012) 29.
[197] Scottish Government (n 109).
[198] King, *Judging Social Rights* (n 196) 29-30
[199] ibid.
[200] Simpson *et al* (n 194) 495

help facilitate rapid realisation of the fundamental right to be free from hunger. In a developed country such as the UK, a social minimum would require sufficient income to provide for a balanced diet, based on Government guidance, without having to forgo any other necessities. In addition, to ensure people do not go hungry in emergencies or unprecedented global events, additional policy provision to ensure people could still access food would also be required.

The discussion above has argued for the right to be free from hunger to be addressed by a social minimum. This would be part of welfare benefit and minimum wage policy and so not part of the framework legislation for the right to food. However, the framework legislation being proposed in this chapter, and discussed in more detail in the following sections would contain some measures relevant to freedom from hunger and the social minimum. For example, as discussed above, framework legislation would require emergency provision planning to address situations such as the COVID-19 pandemic. Nutrition policy, the planning of which would be required by framework legislation, would help determine the amount provided for the social minimum so an adequate nutritious diet could be afforded. Although there will be some parts of the framework legislation relevant for the standard of freedom from hunger, framework legislation would mostly consider the obligations for the right to food that are to be progressively realised and the standards of adequate food, nutrition, and production. The status of these three standards in the UK will now be considered. As stated in the introduction to this chapter, this is not intended to be a full survey of UK or devolved food policy. The areas discussed have been chosen to highlight areas of dis-jointed policy or policy incoherence.

3.2 Adequate food

Chapter 3 discussed how the standard of adequate food overlaps with the other standards in the normative framework being developed. Adequate food, a central part of the core for the right to food, deals with a wide range of factors including sustainability, cultural acceptability, quantity and quality, nutritional

content, and safety.[201] Adequate food includes an obligation to ensure people can access food meeting these requirements.

In the UK, it is reported that over 95% of the English population can reach a food shop within 30 mins without needing a car.[202] However, this figure does not assess the type of food shop nor the food it sells. The UK has areas considered to be food deserts, where only more unhealthy convenience food is accessible at higher prices compared to larger supermarkets.[203] The next chapter of this thesis will discuss this problem in more detail. For the purposes of this argument, it is clear that food deserts hinder the ability of people to realise the right to food in terms of adequacy, if access to lower cost healthier food is not possible. Recent research suggests 70% of UK Parliamentary constituencies have at least one area where people struggle to access affordable food.[204] As mentioned earlier, local authorities have a role to play in this through planning law and this should be supported within an overall framework law that indicates priorities for local authorities in terms of the core of the right to food.

The COVID-19 pandemic resulted in another potential violation of the core for the right to food for some people. For the first time since rationing associated with the second World War, people in the UK were unable to obtain a choice of food during the COVID-19 pandemic regardless of income. Some food was simply not available to be purchased. Although there have been previous specific shortages of foodstuffs, such as sugar and salt,[205] the first weeks of the pandemic saw people unable to buy staple food stuffs as supermarket shelves were empty.[206] Yet this example of unavailability does not amount to a violation of the right to food for most people. Most people could go to other shops, buy alternatives that were available or rely on food they already had.

---

[201] GC 12 (n 34) [7-11].
[202] DEFRA, 'UK Food Security Report' (n 36) 208.
[203] Wrigley (n 134) 2030.
[204] Which?, 'Priority Places for Food Index' https://priorityplacesforfood.which.co.uk/ accessed 5 March 2024.
[205] John Rentoul, 'The Top 10: Forgotten National Crisis' *Independent* (3 April 2020) https://www.independent.co.uk/voices/top-10-national-crises-cod-war-ladybird-invasion-chartism-vinyl-sugar-a9443176.html accessed 18 July 2022 accessed 18 April 2024.
[206] EFRA Committee (n 160) 53.

However, for those who live in more isolated communities, with limited ability to travel such as the elderly or those with disabilities, such shortages may result in a violation of the core of the right to food. If people cannot reach alternative shops or cannot afford the alternative choices of food,[207] at this point they cannot access food, and this may be a violation of the core of the right to food. In extreme circumstances, the most isolated in society may have gone hungry. As the Environment Food and Rural Affairs Committee acknowledged, those with lower incomes may have limited food at home or be unable to purchase alternatives available in shops if they are more expensive.[208] If people in these circumstances cannot access adequate food, this may result in a violation of the core of the right to food or, in extreme circumstances, a violation of the fundamental right to be free from hunger. In addition, as the underlying cause of this was a lack of availability of some food in some shops combined with a possible restricted ability to get to alternative shops, these possible violations may not have been prevented entirely even if people were in receipt of a social minimum.

The UK government has been criticised for leaving food supply and food policy to the private sector prior to the COVID-19 pandemic, especially the large supermarkets, ASDA, Tesco, Sainsburys and Morrison's.[209] The food industry requested greater guidance and support from the government when availability of food became a concern during the first days of the pandemic, and the level and timing of the support provided has been questioned.[210] Supermarkets in the UK rely on just-in-time supply chains, that do not have large volumes of stored product in the chain. At the start of the pandemic, consumer behaviour changed as people had to eat all their meals at home and may have stored food in case they needed to isolate at home. This led to empty shelves, [211] and shortages of goods such as flour, pasta, and tinned goods. [212] Many people who were advised by the government to shield would have attempted to have their groceries delivered, massively increasing demand for

[207] ibid 57.
[208] ibid.
[209] Tim Lang, *Feeding Britain. Our Food Problems and How to Fix Them.* (Pelican Books 2020), 39.
[210] EFRA Committee (n 160) 11-12.
[211] The Guardian Editorial (n 160).
[212] EFRA Committee (n 160) 53.

such services. The drive for efficiency has led to potential vulnerabilities in the food chain which may mean future inability for people to be able to obtain adequate food in emergency situations.

The just-in-time supply chain could not adapt to unpredictable behaviour. At the same time, other products were wasted due to decreased demand in the catering and restaurant trade.[213] In the case of the dairy sector, a support package for farmers was introduced,[214] as well as alterations in competition law to allow farmers to more easily divert milk to other purchasers or be made into other products.[215] To help maintain food supply, the UK government also relaxed competition law in the grocery sector to help improve logistics, and limit shortages causing empty shelves.[216] The government provided supermarkets with lists of the most vulnerable shielding patients to enable supermarkets to prioritise online deliveries to those in most need.[217] Many supermarkets increased their delivery provision and provided telephone services. However, there were also reports that in some cases, online deliveries were only being offered to longstanding customers, rather than those with a need due to shielding.[218]

The UK supply chain 'bounced back' relatively quickly, and food was available for most as it was before the pandemic. However, many, including the disabled, and those shielding due to pre-existing health conditions still struggled to get deliveries, and the government has been criticised for overestimating the capacity of supermarkets to meet the potential demand for

---

[213] Colin Drury, 'Coronavirus: Dairy farmers throwing thousands of litres of milk away as demand dries up in lockdown' *Independent* (9 April 2020) https://www.independent.co.uk/news/health/coronavirus-dairy-milk-farmers-throw-away-shortage-lockdown-a9457001.html accessed 26 June 2020.
[214] GOV.UK, 'New funding to support dairy farmers through coronavirus (6 May 2020) https://www.gov.uk/government/news/new-funding-to-support-dairy-farmers-through-coronavirus accessed 22 July 2020.
[215] EFRA Committee (n 160) 10; The Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020, SI 2020/481.
[216] The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020, SI 2020/369.
[217] EFRA Committee (n 160).
[218] Ellis Hawthorn, 'Coronavirus: What Are Tesco, Asda, Sainsburys and Other Supermarkets Doing in Response? *The Grocer* (30 March 2020) https://www.thegrocer.co.uk/service-and-availability/coronavirus-what-are-tesco-asda-sainsburys-and-other-supermarkets-doing-in-response/603183.article accessed 26 June 2020; George Nott, 'Ocado on Supplying the Shielding: We're Doing More than Our Share' *The Grocer* (6 May 2020) https://www.thegrocer.co.uk/online/ocado-on-supplying-the-shielding-weve-done-more-than-our-share/604644.article accessed 26 June 2020.

online grocery deliveries.[219] Given the prominence of supermarkets in the UK food supply system, the role of supermarkets will be the focus of the next chapter. However, the discussion above suggests a supply chain susceptible to shocks, leaving the potential for food insecurity and a lack of food policy to monitor and respond quickly to shocks in the system. The reliance on supermarkets to adapt their policies to facilitate accessibility of food to the elderly, disabled and those shielding, without government intervention also left space for potential violations of the right to be free from hunger and the core of the right to food.

3.3. Nutrition

The standard of nutrition overlaps with the standard of adequate food. This is also emphasised by the Special Rapporteurs, who consider nutrition as part of the right to adequate food, but also as a stand-alone element of the right to food.[220] The current global food system raises many questions around nutrition and how people should feed themselves including the level of highly processed foods consumed,[221] and the possibility of taxing unhealthy foods such as sugary drinks.[222] More generally, the right to food, includes the need for diets that allow people to avoid malnutrition, obesity, and micronutrient deficiencies.[223] Healthier diets are more expensive, and currently, it is calculated that only half of households spend enough on food to afford the 'Eatwell Plate', the government nutrition guidance.[224] For the 20% of the population on the lowest incomes, to achieve these dietary recommendations,

---

[219] EFRA Committee (n 160) 14.
[220] UNGA 'Note by the Secretary General: Interim Report of the Special Rapporteur on the Right to Food, Hilal Elver' (2016) UN Doc A/71/282 [1]; UNHRC 'Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food. Report of the Special Rapporteur on the Right to Food, Michael Fakhri' (2020) UN Doc A/HRC/43/44 [30]; UNHRC 'Report by the Special Rapporteur on the Right to Food, Olivier De Schutter' (2011) UN Doc A/HRC/19/59 [12].
[221] UNHRC 'De Schutter (2011)' (n 220) [12].
[222] Smith *et al*, 'Should We Tax Unhealthy Food and Drink' (2018) 77 Proceedings of the Nutrition Society 314.
[223] UNGA 'Elver (2016)' (n 220) [1].
[224] Courtney Scott, Jennifer Sutherland, Anna Taylor, 'Affordability of the UK's Eatwell Guide' (*Food Foundation,* September 2018) https://foodfoundation.org.uk/sites/default/files/2021-10/Affordability-of-the-Eatwell-Guide_Final_Web-Version.pdf accessed 19 July 2022.

it would require spending 50% of their income on food.[225] This is in comparison to the 20% with the highest incomes who would need to spend only 11% of their income to achieve the government nutrition guidance.[226] The social minimum this chapter advocates for would need to ensure people could afford the diet recommended by the Government.

The UK also has high levels of obesity and diet related illness, whilst at the same time, there are increased rates of nutrient deficiency related diseases being reported.[227] Being able to access a nutritious diet is part of the core of the right to food.[228] This should be progressively realised with priority, to the maximum of a state's available resources, as indicated in General Comment 12, and in line with state obligations in General Comment 3.[229] However many of the other components discussed in relation to nutrition, such as longer-term policies to address obesity, or move away from animal protein based diets are to be more slowly realised, due to the time such policies would take to implement and achieve change.

The causes of obesity are complex, but poverty is linked with obesity, and those who struggle to afford to eat are more likely to purchase inexpensive, less nutritious but more calorie dense food.[230] In the UK in 2019, 64.2% of adults in the UK were overweight or obese and 28% were obese.[231] In the same period 10% of children aged 4 to 5 and 21% of 10- and 11-year-olds were obese.[232] It is estimated that obesity cost the National Health Service (NHS) £6.3 billion in 2014/15 and this is predicted to rise to £9.7 billion in 2050.[233] This is only the cost to the NHS, it is also suggested that in 2017

---

[225] The Food Foundation, 'The Broken Plate 2023 Report' (28 June 2023) https://foodfoundation.org.uk/press-release/new-data-government-recommended-diet-costs-poorest-5th-uk-half-their-disposable accessed 12 April 2024.
[226] ibid.
[227] Alex Matthews-King, 'Huge Increase in 'Victorian Diseases' Including Rickets, Scurvy and Scarlet Fever, NHS Data Reveals' *Independent* (25 February 2019) https://www.independent.co.uk/news/health/victorian-disease-gout-rickets-vitamin-d-mumps-scurvy-measles-malnutrition-nhs-hospital-admitted-a8795686.html accessed 19 July 2022.
[228] GC 12 (n 34) [8]
[229] GC 12 (n 34) [6]; Committee on Economic, Social and Cultural Rights, General Comment No.3: *The nature of State parties' obligations (Article 2 para 1)* (14 December 1990) E/1991/23 (GC 3) [2].
[230] Scott *et al* (n 224).
[231] Bukky Balogun *et al* 'Obesity' (House of Commons Library Number 9049), 12 July 2021 [2.1].
[232] Ibid [2.2].
[233] Ibid [2.3].

obesity cost £27 billion to wider society, and this is also predicted to rise to nearly £50 billion in 2050.[234]

During the pandemic, the Government announced a new obesity strategy.[235] The strategy included, in England, banning buy-one-get-one-free offers on some unhealthy food as well as limiting where these products could be promoted in stores. Only the part of the legislation limiting product placement came into force in October 2022.[236] Commencement of the limits on volume price promotions (buy-one-get-one-free) have been delayed twice and will not come into force until 1 October 2025. The implementation of these rules will be considered again in Chapter 6. However, the slow implementation is particularly disappointing considering the reduction in sugar consumption that has resulted from the Soft Drink Industry Levy in the UK.[237] In addition, the National Food Strategy advocated for taxes to encourage salt and sugar reduction in processed food.[238] Scotland has just undertaken a consultation on similar rules.[239] In Wales, there is a proposal for legislation to be introduced in 2024 and implemented across Wales by 2025.[240] Overall, targets that reduce diet related disease should be included in framework legislation, alongside a joined-up policy approach to address obesity and other diet related disease.

---

[234] Lang (n 209) 281.
[235] Department for Health and Social Care, 'New Obesity Strategy Unveiled as Country Urged to Lose Weight to Beat Coronavirus (COVID-19) and Protect the NHS' (*GOV.UK*, 27 July 2020) https://www.gov.uk/government/news/new-obesity-strategy-unveiled-as-country-urged-to-lose-weight-to-beat-coronavirus-covid-19-and-protect-the-nhs accessed 5 March 2024.
[236] The Food (Promotion and Placement) (England) Regulations 2021, SI 2021/1368.
[237] Peter Scarborough *et al*, 'Impact of the Announcement and Implementation of the UK Soft Drinks Industry Levy on Sugar Content, Price, Product Size and Number of Available Soft Drinks in the UK, 2015-19: A Controlled Interrupted Time Series Analysis' (2020) 17 PLoS Medicine e1003025, 2.
[238] Dimbleby (n 9) 144.
[239] Scottish Government, 'Restriction Promotions of Food and Drink High in Fat, Sugar or Salt: Consultation (1 July 2022) https://www.gov.scot/publications/consultation-restricting-promotions-food-drink-high-fat-sugar-salt/pages/3/ accessed 5 March 2024.
[240] Welsh Government, Restriction on High Fat, Sugar and Salt Products to be Introduced (27 June 2023) https://www.gov.wales/restriction-high-fat-sugar-and-salt-products-be-introduced accessed 1 April 2024.

3.4. Production

The final standard being considered from the proposed normative framework is production. This requires states to consider the sustainability of their production methods, including the possible impacts of agriculture on climate change, biodiversity, and soil quality. These factors all impact the ongoing ability to produce food in the UK. Agriculture accounts for up to 75% of land use in the UK and 19% of GHG emissions.[241] However, we do not produce all the food we consume and are around 75% sufficient in products that we can produce domestically.[242] We import 50% of the vegetables we consume and 84% of fruit.[243] The UK is highly dependent on imports from the EU for fresh salad products and fruit. The government has argued that increasing the diversity of countries from which we import increases the UK's food security, as we are not dependent on a single source,[244] but it also acknowledges that we are susceptible to shortages or price increases in soy, due to its importance as animal feed.[245]

However, such a strategy is not without difficulties in a complex global food market at times of crises. We are currently facing the cumulative effects of COVID-19, Brexit, and the war in Ukraine which is impacting availability of wheat and sunflower oil on the world market,[246] as well as the price of fertiliser.[247] Climate change is also expected to increase the frequency and

---

[241] The Parliamentary Office of Science and Technology, 'A Resilient UK Food System' (June 2020) available at https://researchbriefings.files.parliament.uk/documents/POST-PN-0626/POST-PN-0626.pdf accessed 19 July 2022.
[242] DEFRA, 'UK Food Security Report' (n 36), 11
[243] ibid 84
[244] ibid 83
[245] ibid 12
[246] For example: FAO, 'Ukraine: Rapid Response Plan, March – December 2022' (19/04/22) https://www.fao.org/documents/card/en/c/cb9457en accessed 22 April 2022; Fiona Harvey and Sarah Butler, 'Ukraine's Wheat Harvest May Fall by 35% Raising Fears of Global Shortage' *The Guardian* (6 May 2022) https://www.theguardian.com/world/2022/may/06/ukraine-wheat-harvest-may-fall-by-35-percent-satellite-images-suggest accessed 25 May 2022; George Sandeman 'Tesco Latest Supermarket to Ration Cooking Oil Due to War in Ukraine' *The Times* (23 April 2022) https://www.thetimes.co.uk/article/tesco-latest-supermarket-to-ration-cooking-oil-due-to-war-in-ukraine-b528vlqh9 accessed 12 April 2024.
[247] Patti Dom, 'A Fertilizer Shortage, Worsened by War in Ukraine, is Driving Up Global Food Prices and Scarcity' (*CNBC,* 6 April 2022) https://www.cnbc.com/2022/04/06/a-fertilizer-shortage-worsened-by-war-in-ukraine-is-driving-up-global-food-prices-and-scarcity.html accessed 5 March 2024.

intensity of adverse weather events. Such events can impact food production around the world and the UK. The result is the risk of unpredictable shortages of food available for import,[248] as well as impacts on food production in the UK. Recently the National Farmers Union (NFU) has called for government action to address food security. Severe wet weather is predicted to reduce production of significant arable crops such as wheat and oilseed rape by more than 15%.[249] The NFU president, Tom Bradshaw, stated:

> '[I]t is another example of how vulnerable British food producing businesses are and highlights the possibility of more crops being imported, potentially produced to standards that would be illegal here, all adding further to market volatility. That's why domestic food production must be given the right policy framework and the priority it deserves.'[250]

As such, adverse weather events can affect the availability and affordability of the food in the UK and demonstrate why sustainable food production is so important for the right to food. It also indicates why framework legislation needs to include plans to address climate change and the impact of adverse weather events on agriculture and the food supply chain.

Intermittent food shortages have persisted in the UK beyond the impact of the COVID-19 pandemic.[251] In addition, UK agriculture is highly dependent on EU workers for several significant food production roles, including harvesting, meat processing and veterinary inspections.[252] A lack of migrant workers following Brexit has led to concerns about wasted food due to failed

---

[248] For example, a drought in the summer of 2022, affected vegetable imports from Europe into the UK. Tom Rees, 'Vegetable Shortage Looms as Europe Battles Heatwave' *The Telegraph* (7 August 2022) https://www.telegraph.co.uk/business/2022/08/07/vegetable-shortage-looms-europe-battles-heatwave/ accessed 5 March 2024.
[249] NFU, 'Government Urged to Deliver for UK Food Security with Drastic Reduction in Crops Expected Due to Wet Weather' (18 March 2024) https://www.nfuonline.com/media-centre/releases/government-urged-to-deliver-for-uk-food-security-with-drastic-reduction-in-crops-expected-due-to-wet-weather/ accessed 2 April 2024.
[250] ibid.
[251] Chris Elliot, 'The Food Crisis is Here, and it Will Only Get Worse' *New Food Magazine* (14 June 2022) https://www.newfoodmagazine.com/article/165764/uk-food-crisis/ accessed 22 August 2022.
[252] Grace Duncan, 'UK Farms Missing up to 75% of Seasonal Workers Needed for Harvest' *The Grocer* (19 May 2022) https://www.thegrocer.co.uk/fruit-and-veg/uk-farms-missing-up-to-75-of-seasonal-workers-needed-for-harvest/667635.article accessed 19 July 2022; Ludivine Petetin and Mary Dobbs, (n 51) 6.

harvests. Pigs whose slaughter was delayed due to worker shortages and that were then too large to enter the food chain were euthanised.[253] The Government implemented a seasonal worker scheme, providing visas for seasonal agricultural workers, in 2022. This has now been extended to 2024, with a period of additional visas available in areas with shortages, such as the pig and poultry farming sectors.[254] However, the wage requirement for these visas was increased, raising concerns at the time that food prices will need to increase, or farmers will lose money.[255] These wage requirements have since reverted to the National Living Wage.[256]

In response to the COVID-19 pandemic and these issues, some now advocate for shorter supply chains, with more reliance on local foods to increase resilience in the food chain.[257] It also suggests more central monitoring of the food supply chain is required to anticipate and respond faster to potential labour or other resource shortages, before they result in wastage or shortages in supply to consumers, especially considering the UKs reliance on imports to maintain food availability.[258] Framework legislation could require monitoring of potential international impacts and shocks to food systems, with clearly delineated responsibility for responding to such situations, limiting the impact of food availability and possible violations of the right to food.

The lack of overarching food policy or framework legislation in the UK leads to a risk of violations of the right to food. Alongside a social minimum to help ensure people do not go hungry and can afford a basic nutritious diet, it is suggested that the UK needs framework legislation to facilitate better realisation of the right to food through more coherent planning and policy in relation to the right to food. The next section will discuss such legislation,

---

[253] Joanna Partridge, 'Hundreds of Healthy Pigs Slaughtered Amid UK Shortage of Abattoir Workers' *The Guardian* (5 October 2021) https://www.theguardian.com/business/2021/oct/05/pigs-culled-amid-uk-shortage-abattoir-workers accessed 19 July 2022.
[254] House of Commons Library, 'Recruitment Support for Agricultural Workers' (24 May 2022) https://commonslibrary.parliament.uk/research-briefings/cdp-2022-0094/ accessed 5 March 2024.
[255] NFU, 'Seasonal Workers Scheme – Latest Information (2 February 2024) https://www.nfuonline.com/updates-and-information/seasonal-worker-scheme-wage-requirements/ accessed 5 March 2024.
[256] ibid.
[257] Petetin and Dobbs, (n 51) 139; Dobbs (n 15) 180.
[258] DEFRA, 'UK Food Security Report' (n 36) Themes 1 and 2.

however first other possible routes to incorporation and implementation of the right to food will be discussed. The aim of this discussion is not to say that framework legislation is the ideal route, but that given the constitutional makeup of the UK and current political climate it is the most pragmatic solution to address potential violations of the right to food in the UK.

4.0. Framework legislation for the right to food in the UK

In Chapter 2 of this thesis, the idea that socioeconomic rights were not justiciable was challenged. Briefly returning to this discussion and considering it in relation to framework legislation, the more complex nature of these rights and their potential spending implications was suggested to be a bar to justiciability. Gearty argues that this means socioeconomic rights are more appropriately addressed by Government policy.[259] However, Mantovalou's argument that judicial review is a fundamental component of democratic dialogue,[260] supports the introduction of framework legislation as parts of such legislation is often amenable to judicial review. In addition, the polycentric nature of the rights is sometimes suggested to be problematic for courts.[261] It is certainly true that a ruling by a court concerning food policy could have massive spending implications for the government, but this is true for many matters courts adjudicate. In addition, as King has argued, this is one of the factors courts will consider when deciding if they can adjudicate on a matter.[262] The legislation that the court is interpreting can also provide bounds to the role of the court, which can limit the impact of polycentricity.[263] Carefully drafted framework legislation could do just this. However, before considering framework legislation in more detail, other possible routes to implementing or incorporating the right to food will first be considered.

---

[259] Conor Gearty and Virginia Mantouvalou, *Debating Social Rights* (Hart 2011) 1
[260] ibid 89.
[261] Lon Fuller, 'The Forms of and Limits of Adjudication' (1978) Harvard Law Review 353, 395
[262] King, *Judging Social Rights* (n 196) 5-6.
[263] ibid, 199.

4.1. Possible routes to implementing or incorporating the right to food in the UK

How could the UK incorporate the right to food in national law? Countries can incorporate the right to food by adding it to their constitution. South Africa, Colombia and Belarus have included the right to food in their constitutions.[264] In other countries, courts have considered the right to food to be implicit in another constitutional right, for example, the right to development in Ethiopia and the right to life in India, as mentioned in Chapter 3.[265] Boyle suggests that constitutional inclusion of rights is the most robust approach for realisation and incorporation.[266] However, the UK has an uncodified constitution. Creating a constitution would mean a dramatic shift in the legal and political landscape in the UK. In addition, given the complexity of the right to food, a detailed legal framework legislation may do more to ensure there are extensive protections and more coordinated policy.[267] Such legislation is common in Latin America.[268]

In India, the Supreme Court, in response to public interest litigation, recognised the right to food as part of the right to life in article 21 of the Indian Constitution. Through a series of judgments and interim orders, the Indian Supreme Court has been pivotal in establishing systems of food redistribution. Benefits and legal entitlements to food were created by the interim orders of the court. [269] However, such an activist judicial approach is unlikely in the UK. In *R (on the application of SC, CB and 8 children),* the UK Supreme Court stated that:

---

[264] Knuth and Vidar, (n 95).
[265] ibid.
[266] Katie Boyle (n 189) 147.
[267] Nadia Lambek and Priscilla Claeys, 'Institutionalizing a Fully Realised Right to Food: Progress, Limitations, and Lessons Learned from Emerging Alternative Policy Models' (2016) 40 Vermont Law Review 743, 752.
[268] Knuth and Vidar, (n 95).
[269] *Peoples Union for Civil Liberties v. Union of India & Ors. (*S.C. 2001*) Writ Petition (Civil) No. 196/2001; Kishen Pattaynak and Another v State of Orissa* A.I.R 1989 S.C. 677
For example: Lauren Birchfield and Jessica Corsi, 'The Right to Life is the Right to Food: Peoples Union for Civil Liberties v Union of India and others' (2010) 17 Human Rights Brief 15; Amit Mitra, 'Food security and insecurity in India' in Ian Christoplos and Adam Pain (eds), *New Challenges to Food Security* (Routledge 2015).

> '[A] low intensity of review is generally appropriate, other things being equal, in cases concerned with judgments of social and economic policy in the field of welfare benefits and pensions, so that the judgment of the executive or legislature will generally be respected unless it is manifestly without reasonable foundation.' [270]

This low level of scrutiny together with comments regarding the deference that should be shown by the Courts to the legislative process in Parliament,[271] suggests the UK Supreme Court is unlikely to interfere with government welfare policy.

The UK could also incorporate the ICESCR into domestic law. The UK has incorporated the ECHR into UK law through the HRA 1998. Scotland, as discussed above, is currently incorporating several human rights treaties into its national law. It would be possible for the UK to incorporate the ICESCR into law with an act like the HRA 1998. However, incorporation of the ICESCR into domestic law would not remove the need for framework legislation in relation to the right to food. The rights in the ICESCR may give rise to issues for courts, including polycentricity, deference to the government on resource distribution and lack of judicial expertise, all of which may make the judiciary reluctant to adjudicate on issues around food policy. Framework legislation that included targets, and requirements to set out plans would provide both the grounds and the bounds for the courts to adjudicate. As King has argued, legislation providing for incorporation and justiciability of such rights would delineate the role of the court limiting these impacts.[272]

Although there are several routes to incorporating and implementing the right to food in the UK, it is considered unlikely the UK will develop a written constitution and judicial activism as seen in India is also unlikely. Even if the ICESCR was incorporated into UK law, framework legislation for the right to food would be required to indicate the governments obligations in relation to the right to food as stated in Article 11 ICESCR. The same would potentially be true of any constitutional right to food; a constitution is unlikely to lay out all

---

[270] *R (on the application of SC, CB and 8 children)* (n 178) [158].
[271] ibid [207-9].
[272] King, *Judging Social Rights* (n 192) 104.

government obligations in relation to such a right. As such, framework legislation is an appropriate way to implement the right to food. Even if the right to food was subsequently incorporated into UK law, the need for such legislation would persist.

4.2 Framework legislation

Framework Legislation is suggested in General Comment 12 to have:

> '[P]rovisions on its purpose; the targets or goals to be achieved and the time frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures.'[273]

The GFN(S)A provides an example of such legislation, and the UK has examples of such legislation in the context of environmental law.

The Climate Change Act (CCA) 2008 requires the Secretary of State to ensure the net UK carbon account for 2050 is at least 100% below the baseline from 1990.[274] The Secretary of State's plan to achieve this was recently challenged in the High Court,[275] which will be discussed below. The CCA 2008 contains two benchmarks in relation to reducing the UK's carbon account and Green House Gas emissions. s1 requires the Secretary of State for Business, Energy, and Industrial Strategy to ensure the net carbon account is 100% below the 1990 baseline by 2050 and s4 to set net carbon budgets for five successive years, as part of reaching the overall 2050 target. These budgets have been set until 2037 and have been affirmed by Parliament.[276] s13 and

---

[273] GC 12 (n 34) [29].
[274] Climate Change Act 2008 (CCA), s1 following amendment by The Climate Change Act 2008 (2050 Target Amendment) Order 2019, S.I 2019/1056.
[275] *R (on the application of Friends of the Earth Limited, Client Earth, Good Law Project and Joanna Wheatley v SSBEIS* [2022] EWHC 1841 (Admin) (*Friends of the Earth case*).
[276] The Carbon Budget Order 2021, SI 2021/750.

s14 of the CCA 2008 require the Secretary of State to prepare policies to reach these targets, which must also be laid before Parliament. These policies must take into account the advice provided by the Committee on Climate Change, including matters relating to science and technology relevant to climate change, the impact of the plan on the economy and matters such as fuel poverty, as well as matters such as international aviation and shipping energy usage.[277]

The GFN(S)A 2022 shares similarities with the CCA 2008. The Scottish Ministers must lay before Parliament and publish their food plan.[278] The plan needs to set out the outcomes and indicators to assess progress and the policies to be followed to achieve these outcomes. [279] As with the CCA 2008, the plan must be affirmed by Parliament, with room for revision as necessary.[280] The GFN(S)A 2022 is more limited in who the Scottish ministers must take advice from. It indicates only the views of food businesses must be considered, with other people being consulted as the Ministers consider appropriate.[281] In contrast the CCA 2008 requires advice to be taken from an expert committee, the Committee on Climate Change.[282]

A recent case in the High Court challenged, through judicial review, the net-zero strategy produced to meet the s13 CCA 2008 requirements.[283] The claimants submitted that the plan did not include predicted effects of the policies, but instead contained aspirations and requirements for meeting the carbon budget.[284] This ground of review was not upheld, as the court found the wording of s13 CCA 2008 did not require the Secretary of State to indicate the reduction in the carbon budget by quantitative methods alone. The court also found that the s13 CCA 2008 did not impose a specific time by which such quantitative analysis of the plan had to be carried out.[285]

However, the challenge by the claimants did succeed on the grounds that the report produced under s14 CCA 2008 for Parliament was inadequate.

---

[277] CCA, s9, s10(2) and s34.
[278] GFN(S)A 2022, s1(1).
[279] ibid s1(3).
[280] ibid s1(4).
[281] ibid s1(4)(c) and s4(2).
[282] CCA 2008, s9(1)(a)
[283] *Friends of the Earth case* (n 268) [13].
[284] Ibid [158].
[285] ibid [222].

It did not contain sufficient detail to allow Parliament and the public to 'understand and address the Government's proposals and policies and their effect on emissions reductions and socioeconomic matters.'[286] This demonstrates that judicial review in the UK provides a route for challenge of plans generated under framework legislation. Such judicial review has the potential to ensure accountability and that government plans are suitable to be scrutinised by both the public and Parliament. However, the wording of the legislation can impact the extent that judicial review can consider policy decisions. The degree of review possible will depend on the discretion the legislation gives the Secretary of State or other persons responsible for developing plans and proposals under the legislation. The *Friends of the Earth Case* demonstrates this as the wording of s13 CCA 2008 limited the nature of the plans the Secretary of State was required to produce. As such, framework legislation for the right to food would have to be worded to balance the limits of the courts' competency with the need for meaningful judicial review to ensure the obligations for the right to food are met by the government.

More recently the Environment Act (EA) 2021 has been passed. It is another example of framework legislation. This legislation again demonstrates the importance of how such legislation is worded. Lee has pointed out the targeting setting in the EA 2021 is largely left to the discretion of the minister;[287] the EA 2021 only specifies limited areas that must be addressed by targets.[288] This indicates the importance of framework legislation in relation to its utility. Ideally targets need to be precise and both they and the plans to achieve them should be arrived at through appropriate consultation required by the legislation. Finally targets need to be placed before Parliament, as required by the GFN(S)A 2022. [289]

Longer term experience with environmental framework legislation suggests that such legislation is only the start of ensuring government

---

[286] ibid [278].
[287] Maria Lee, 'Politics and Expertise: New Environmental Targets in English Environmental Law' Forthcoming in Chris Hilson and Josephine van Zeben (eds), *A Research Agenda for Environmental Law* (Edward Elgar, 2024) 6.
[288] Environment Act 2021 s2 and 3 require the Secretary of State to set targets in relation to particulate matter and species abundance. Otherwise s1 provides discretion as to which other priority areas have long-term targets set.
[289] GFN(S)A 2022 s3.

compliance with its obligations. In development of policies, setting of targets and goals, and monitoring, NGOs and other organisations need to keep up campaigning and pressure, and if necessary, resort to judicial review.[290] Finally, the largest possible drawback in relation to framework legislation is that, in the UK, it can simply be repealed. This occurred with the Child Poverty Act 2010, which set targets for reducing poverty. These targets were clearly not going to be met and the Act was repealed.[291]

It should also be noted that framework legislation is not being suggested as the end point of government obligations in relation to the right to food. It would form part of a developing policy approach and conversation with the electorate, food sector stakeholders including farmers, and NGOs about food policy. Although national food strategies as well as framework legislation are described as being important for implementation of the right to food in General Comment 12, neither are considered part of the core obligation for the right to adequate food.[292] This is in contrast with the right to health, where General Comment 14 indicates that adoption of a national public health strategy and plan of action is part of the minimum core of the right to health.[293]

The right to health, like the right to food, is a complex right requiring joined up policy approaches by governments for its realisation. As a detailed plan is required for the implementation of the right to health,[294] and is considered part of the core of the right to health, it is arguable similar plans should also form part of the core of the right to food. Such plans should be developed and implemented by the Government as soon as practicable, in line with obligations for progressive realisation as described in General Comment 3.[295] However, despite this requirement the Special Rapporteur for the right to health has noted that even if plans are made, they often fail to be

---

[290] See for example: Maria Lee, 'Brexit and the Environment Bill: The Future of Environmental Accountability' (2022) 13 Global Policy 119; Alina Averchenkova, Sam Fankhauser and Jared J Finnegan, 'The Impact of Strategic Climate Legislation: Evidence from Expert Interviews on the UK Climate Change Act' (2021) 21 Climate Policy 251.
[291] Collin T Reid, 'A New Sort of Duty? The Significance of "Outcome' Duties in The Climate Change and Child Poverty Acts' [2012] Public Law 749.
[292] GC 12 (n 34) [21, 29-30].
[293] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, (11 August 2000) UN Doc E/C.12/2000/4 [43].
[294] Ibid [36]
[295] GC 3 (n 229) [2-3].

implemented.[296] This is also likely to be the case for the right to food, and indeed, the UK National Food Strategy, as discussed above, which was not a government plan but an independent review mostly focusing on England, has not been implemented by the UK Government. Framework legislation is needed to accompany the requirement for national health or food plans. If correctly drafted it allows the public, Parliament and, if necessary, the courts to hold governments to account. As argued by Mantovalou, judicial review is a fundamental component of democratic dialogue,[297]and framework legislation could facilitate such a dialogue in relation to implementation of the right to food in the UK.

5.0. Conclusion

This chapter has argued that breaches of the right to food under international human rights law are made more likely by the lack of specialised framework legislation in the UK. Despite some positive steps by Scotland and Wales in relation to food policy, the lack of joined-up policy approaches and incoherence risk undermining attempts to tackle hunger and ensure all can access healthy food. It also undermines policies to address obesity and develop sustainable agriculture across the whole UK. The levels of food bank usage, food deserts and supply chain issues during and post the COVID-19 pandemic, and the slow development of farmer support schemes all suggest a lack of policy coordination at UK level.

To address this, two legislative measures are suggested. The first, a social minimum is an important component to help ensure the fundamental right to be free from hunger is realised. In addition, to address the core of the right to food and parts of the right to food to be more slowly progressively realised, framework legislation is suggested. Such legislation would require objectives, targets, and plans in relation to the standards for the right to food. These would then be affirmed by Parliament. If the objectives, targets, and

[296] UNHRC 'Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt' (31 January 2008) UN Doc A/HRC/7/11 [88].
[297] Gearty and Mantouvalou (n 259) 89.

plans were not appropriate, they could then be subject to judicial review. As with the right to health, it is also suggested a national food plan, is required as part of the core of the right to food. This plan would be an important part of the targets and plans required by the proposed framework legislation. However, this would not address all issues relating to the right to food in the UK. In the UK the food environment of many people is heavily shaped by supermarkets. The next chapter will consider the nature of the role of supermarkets in relation to the right to food in the UK, and what provisions may be needed in any framework legislation to ensure the activities of supermarkets do not contribute to violations of the right to food.

Chapter 6
Supermarkets and the Right to Food in the UK

1.0. Introduction

The previous chapter explored the state of the right to food in the UK and the extent to which the realisation of the full scope of the right depends on the adoption of framework legislation. This and the next chapter add more detail on the specific policy and regulatory steps that the UK Government ought to take in this context. The final chapter addresses the relationship between food safety and the right to food. This chapter focuses on the role of supermarkets and the right to food. In the UK, nearly all adults (98%) use supermarkets or mini-market convenience shops to buy some or all their food.[1] As a result, supermarkets can potentially have a significant influence on where people can buy their food, what food they can buy, how much this food costs, and what producers grow and manufacture and how much they receive for their products.

Criticisms have been levelled at supermarkets for decades. For example, where they locate their stores can leave town centres and lower income areas without access to healthy food;[2] they have been accused of unfair practices towards suppliers in the UK;[3] and there are accusations of

[1] Megan Blake and Jonas Cromwell, 'Food Insecurity in UK Communities' (2022) https://www.researchgate.net/publication/365362129_Food_Security_UK_2021 accessed 1 March 2024, 22. Further categorised figures of shopping in larger versus smaller stores are not available, however, it is reported people are shopping more in convenience stores, which will be returned to later in the chapter see for example: Kristian Bayford, 'Convenience Store Sector Grows by 4.1% as more than a third fail ID checks' *Grocery Gazette* (7th November 2022) https://www.grocerygazette.co.uk/2022/11/07/convenience-store-sector-grows/ accessed 8 June 2023.

[2] Josie Clarke, 'Which" Tells Supermarkets to Do More for Customers Through Cost-of-Living Crisis' *Independent* (8 November 2022) https://www.independent.co.uk/news/uk/dundee-belfast-north-west-north-east-leeds-university-b2219938.html accessed 23 February 2023.

[3] For example, see: Andrew Simms, *Tescopoly* (Constable London 2007) pp 139-40; Joanna Blythman, *Shopped*. T*he Shocking Power of Britain's Supermarkets* (Harper Perennial 2007) 135- 193; and more recently: Sustain, 'Unpicking Food Prices' (2 December 2022) https://www.sustainweb.org/news/nov22-unpicking-food-prices-new/ accessed 10 July 2023.

overseas practices sometimes described as abusive.[4] Supermarkets may encourage purchase of excessive amounts of unhealthy food with promotions, making unhealthy products cheaper than more nutritious food.[5] Supermarket policies may also lack transparency with regards to food pricing.[6] Such concerns indicate the negative impact that supermarkets could have on the realisation of the right to food in the UK. They also raise two broader, and related questions. Firstly, do businesses have their own obligations in relation to the right to food? Secondly, if they do, could corporate obligations be dealt with through corporate social responsibility or is government intervention, including through law, required to ensure that supermarkets do not impede the realisation of the right to food?

General Comment 12 of the Committee on Economic Social and Cultural Rights (CESCR) indicates that states should 'take appropriate steps to ensure that activities of the private business sector….are in conformity with the right to food.'[7] However, despite the specific mention in General Comment 12, there is more limited discussion of the obligations of the state, or companies themselves, in relation to companies based in and operating in developed countries and their potential impact on the right to food.[8] This chapter will focus on these obligations by considering the way that supermarkets can impact people's ability to access an adequate nutritious diet. Through this lens, the chapter will focus on a well-documented case study concerning the impact of building a large Tesco superstore on food and diet in Seacroft, an area of Leeds. The third section of the chapter considers the nature of the grocery market in the UK and how some of their activities are regulated by company law and competition law. The section then concludes

[4] For example, see Blythman (n 3) pp 171-6 concerning Kenyan farmers growing green beans and Benjamin Lorr, *The Secret Life of Groceries* (Avery 2020) 225-240 on human rights abuses in the Thai shrimp industry.
[5] For example, see: Henry Dimbleby, 'National food strategy: The Plan' https://www.nationalfoodstrategy.org/the-report/ accessed 17th April 2023, 4.
[6] For example, see: CMA, 'Groceries Unit Pricing: Pricing Analysis' (30 January 2024) https://assets.publishing.service.gov.uk/media/65b8c153b5cb6e000d8bb747/___Groceries_unit_pricing_pricing_analysis_2__.pdf accessed 1 March 2024.
[7] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, (12 May 1999) UN Doc E/C.12/1995/5 (GC 12) [27].
[8] Business and Human Rights Center, 'Taking Stock: Reflections on the Progress of the UN Binding Treaty https://www.business-humanrights.org/en/blog/?opinion_series=27 accessed 10 July 2023.

by demonstrating how supermarkets can impact the proposed normative framework for the right to food.[9] It concludes that the current approach to the impacts that supermarkets may have on the realisation of the right to food are insufficient and in some circumstances government intervention is required. The final section then argues that this intervention should be guided by the three levels of obligation the right to food creates for states: the fundamental right to be free from hunger, the core of the right to food, and obligations to be more slowly realised, such as long-term agricultural policy.[10]

2.0. Food deserts and supermarkets

To illustrate how supermarkets can impact the right to food, this section travels to Seacroft, an area of Leeds, which was considered a food desert in the 1990s due to the lack of large food shops. After a large supermarket was built in Seacroft, the area was the focus of an extensive study that aimed to assess the impact of 'retail-provision intervention' on food consumption patterns.[11] As such, Seacroft is an ideal location to consider whether policy approaches used to address food deserts are sufficient to ensure people can access a nutritious diet.

2.1. Seacroft

Seacroft is an area in the Northeast of Leeds, UK. It began with municipal housing built by Leeds City Council in the 1930s and 1940s. The area was redeveloped and expanded into the Swarcliffe, Whinmoor, and Stanks areas during the 1960s and 1970s with both houses and high-rise flats being added to the housing estates.[12] The area is located within 6km of Leeds city centre and is split in half by the Leeds outer ring road.[13] In the 1980s and the 1990s,

[9] See: Chapter 3. The proposed normative framework contains six standards: freedom from hunger, adequate food, nutrition, production, equitable distribution, and international cooperation.
[10] See Section 2.2.2 of Chapter 2.
[11] Neil Wrigley, Daniel Warm and Barrie Margetts, 'Deprivation, diet, and food-retail access: findings from the Leeds 'food deserts' study' (2003) 35 Environment and Planning A 151.
[12] Neil Walker, 'Seacroft History' http://www.ls14trust.org/seacroft-history.html accessed 1 March 2024.
[13] Amanda Whelan *et al*, 'Life in a 'Food Desert' (2002) 39 Urban Studies 2083, 2085.

Seacroft was an area where residents had limited access to affordable and healthy food.[14] In 2003, it was one of the most deprived wards in the UK,[15] with a high proportion of households classified as being in the DE socioeconomic grade (including unemployed, semi-skilled occupations and economically inactive households).[16] Seacroft also had low levels of car ownership.[17]

During this time, the nearest large supermarket and the food market in the city centre were located a bus journey away.[18] Within walking distance (usually thought to be around 500m) were a discount store and small retailers selling a very restricted range of fresh or frozen fruit and vegetables.[19] The main shopping area of Seacroft was built in the 1960s and had become degraded, with many empty and boarded up units.[20] Smaller local convenience stores were available but largely consisted of newsagents or off licences with some grocery provision, mainly consisting of dried or tinned food. Such stores often had metal cages or sheets on their doors and windows giving a 'derelict' appearance.[21] Limited access to fresh and healthy food was recognised to be a feature of lower income urban communities in the 1990s; low levels of car ownership isolated people from city centres and the out-of-town large hypermarkets that were being built. Areas like Seacroft, with limited food access, have been described as food deserts.

---

[14] Graham Clarke, Heather Eyre, and Cliff Guy, 'Deriving indicators of access to food retail provision in British cities: Studies of Cardiff, Leeds and Bradford' (2002) 39 Urban Studies 2041, 2053

[15] Wrigley *et al* (n 11) 155.

[16] D and E households are two of the socio-economic grades produced by the Office of National Statistics, ranging from A to E. DE and grades are composed of semi-skilled, unskilled occupations, unemployed and lowest grade occupations. Inactive are those that are retired or otherwise economically inactive. It was replaced by a new scheme in 2010. See: https://www.ons.gov.uk/methodology/classificationsandstandards/otherclassifications/thenationalstatisticssocioeconomicclassificationnssecrebasedonsoc2010#deriving-the-ns-sec-self-coded-method and https://www.ukgeographics.co.uk/blog/social-grade-a-b-c1-c2-d-e both accessed 23 February 2023.

[17] Clarke *et al* (n 14) 2049.

[18] Whelan *et al* (n 13) 2085.

[19] ibid.

[20] Wrigley *et al* (n 11) 155.

[21] Whelan *et al* (n13) 2085.

2.2 Food deserts

The term food desert has been used since the 1990s to describe one aspect of the social isolation experienced by some lower income urban communities. However, there is no agreed definition of a food desert.[22] It is commonly used to describe areas where people have limited geographical and economic access to shops selling affordable healthy food.[23] Despite being a long-recognised aspect of some urban communities, which has captured the attention of policy makers, academic researchers and the media, a recent report by Which? (a consumer rights organisation) and the University of Leeds indicates that areas similar to food deserts still persist.

In this new study, such areas are referred to as Priority Places for Food.[24] Geographical locations are graded using a metric that considers socioeconomic factors (access to cars, fuel poverty, income deprivation and eligibility for free-school meals), poor access to food retailers, or poor access to online supermarket delivery services.[25] The study then identifies areas with the lowest scores as places of priority where intervention is needed most urgently to improve access to affordable food.[26] The study reveals large numbers of such areas in the Northeast, West Midlands, and Yorkshire and Humber within England, as well as the Valleys in Wales, and the Central Belt in Scotland. [27] In contrast to the image of food deserts described in the media as urban areas with convenience stores and boarded up shopping centres, this study also identified rural food deserts, especially in Wales and Northern Ireland.[28]

The use of the expression ‘food deserts’ is appealing due to the image the phrase evokes. Many people are familiar with housing estates or

---

[22] See, for example: Michael Widener, ‘Spatial Access to Food: Retiring the Food Desert Metaphor’ (2018) 193 Physiology and Behaviour 257.
[23] Dianna Smith and Claire Thompson, *Food Deserts and Food Insecurity in the UK. Exploring Social Inequality* (Routledge 2023) 9.
[24] Consumer Date Research Centre, ‘Priority Places for Food Index’ https://www.cdrc.ac.uk/priority-places-for-food-index/ accessed 23 February 2023.
[25] Which? ‘Affordable Food For All: How Supermarkets Can Help in the Cost of Food Crisis’ (November 2022) https://www.which.co.uk/policy/consumers/9142/affordable-food-for-all-how-supermarkets-can-help-in-the-cost-of-food-crisis accessed 23 February 2023, 15.
[26] ibid.
[27] ibid, 16.
[28] ibid, 16.

neighbourhoods with signs of deprivation such as empty and boarded up parades of shops. It is also a term that has been widely used by the media and academia.[29] In addition to the imagery the term conjures, the popularity of the term from a policy perspective may be that the solution is relatively simple. Rather than having to address the multiple factors that lead to food insecurity and social exclusion, the defining feature of a food desert, i.e. poor retail food provision, can be simply addressed by building a larger supermarket. This would then be expected to improve people's access to healthy food and improve their diets. Planning laws and local authority private sector partnerships could then encourage companies to develop supermarkets in food deserts.[30] Planning policy in England is set by the Government in the National Planning Policy Framework (NPPF), and this has been used to change the nature of retail provisions in certain locations.

The NPPF indicates the purpose of England's planning strategy is sustainable development and refers to the Sustainable Development Goals (SDGs).[31] However, even though SDG 2 is zero hunger, food deserts and supermarkets are not mentioned in the framework. Food is only mentioned in the policy once and this is not in reference to hunger, but in reference to healthy communities.[32] The current approach for retail planning, which has been in place since 1993, is a 'town-centre first' approach that aims to preserve the 'vitality' of city centres.[33] The framework uses a sequential test that requires developers to justify new retail spaces outside of town centres. They must demonstrate that there is no scope for the development in a town centre;[34] then, as the next option, adjacent to a town centre; finally moving to

---

[29] For example: Smith and Thompson (n 23); Patrick Butler, 'More than a Million UK Residents Live in 'Food Deserts' says study' *The Guardian* (12 October 2018) https://www.theguardian.com/society/2018/oct/12/more-than-a-million-uk-residents-live-in-food-deserts-says-study accessed 10 July 2023.
[30] Wrigley *et al* (n 11).
[31] Minister of Housing, Communities and Local Government, 'National Planning Policy Framework' 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf accessed 10 July 2023 (NPFF) [7].
[32] ibid [92].
[33] ibid [86]. Anne Findlay and Leigh Sparks, 'Retail Planning Policy in the UK' (2013) https://stirlingretail.files.wordpress.com/2011/04/retail-planning-policy-in-the-united-kingdomfinal.pdf accessed 11 June 2023, 6.
[34] NPFF (n 31) [87].

out-of-town locations as the last option.[35] Initially the sequential test was paired with a needs test, which required planning applications to also demonstrate future predicted need for more retail provision as well as consumer demand for the development. This was removed by the Baker report, as it was considered to undermine competition.[36]

The removal of this needs test also demonstrates the underlying tensions between planning policy aiming to promote market competition and efficiency with measures to achieve socioeconomic goals such as tackling social exclusion and reducing areas with poor access to healthy food.[37] Achieving social economic goals may require market interventions, which can limit competition. As such, planning law, has also been considered by the Competition Commission (CC) as part of its report 'The Supply of Groceries in the UK Market Investigation.' There is an obvious tension between local authorities and central government guiding where supermarkets are built rather than allowing competition and consumer demand to determine where companies chose to build their stores. The 2008 'Supply of Groceries' CC report concluded that planning law did, in pursuing its town centre first approach, limit market entry for large grocery stores, due to the time and cost involved in applications.[38] However, as mid-sized grocery stores and convenience stores can locate in town centres, the planning regime did not create a barrier to entry to the market, and so was not problematic from a competition law perspective.[39] This conclusion in 2008 has been borne out by the continued expansion of the large supermarket chains in the UK into the convenience market through 'local' stores,[40] selling their branded goods in

[35] ibid.
[36] Kate Barker, 'Barker Review of Land Use Planning' (2006) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228605/0118404857.pdf accessed 1 March 2024, 29.
[37] ibid, 35-6.
[38] CC, 'The Supply of groceries in the UK market investigation' (2008) https://www.ias.org.uk/uploads/pdf/Price%20docs/538.pdf accessed 10 July 2023 [7.65].
[39] ibid [7.68].
[40] For example, in the case of Tesco, see: Andrew Seth and Geoffrey Randall, *The Grocers* (Kogan Page 2011), 27.

existing convenience chains,[41] and more recently in the case of ASDA, expanding into convenience stores attached to petrol stations.[42]

Planning policy can and has been used to encourage retail developments in certain locations. Planning policy and law is potentially a powerful tool that determines where new supermarkets are developed. However, this tool will only be effective if building a supermarket in a food desert impacts people's ability to access nutritious food in a positive way. Before considering building new supermarkets to resolve issues of access to nutritious food, we must ask if there is evidence that building a large supermarket addresses poor diet in an area considered a food desert. To answer this question, let us return to Seacroft.

2.3. The impact of the Tesco store in Seacroft

A new Tesco store was built in Seacroft due to a partnership between the community, local authority, and business. An extensive research project found 45% of residents in the area did switch to the new Tesco store.[43] Reasons most commonly indicated for switching were that the new store was easy to get to and was convenient due to its extended opening hours.[44] Overall, however, there was only a slight, statistically insignificant, increase in fruit and vegetable consumption, used in the study as a proxy for healthy diet amongst all respondents.[45] More positively, amongst those with the poorest diets before the store opened, those that switched to the new store did see a significant increase in fruit and vegetable consumption.[46]

More importantly, the reasons for people not switching suggest that developing new supermarkets is not a sufficient response to the complex

---

[41] Julian Amani, 'Morrisons Launches 'Together with Morrisons' Dual-Branding for Independent Convenience Stores' *Grocery Gazette* (18 May 2022) <https://www.grocerygazette.co.uk/2022/05/18/morrisons-concept-independents/ accessed 10 July 2023.
[42] Paul Sandle, 'UK's Asda to buy EG petrol stations unit in $2.9 billion deal' (*Reuters* 30 May 2023) https://www.reuters.com/markets/deals/uk-supermarket-asda-buy-eg-group-2023-05-30/ accessed 10 July 2023.
[43] Wrigley *et al* (n 11).
[44] ibid 165.
[45] ibid.
[46] ibid.

socioeconomic problems of food deserts. Some people were reluctant to change due to fears of increasing their food spending outside of their established shopping patterns and budget.[47] Others saw the store as being for people from outside of the area, due to the perceived expense of items in the shop. Those that were interviewed about the development also expressed disappointment about the reduced number of cafes and the new smaller post office. They lamented the lack of 'social spaces' within the development,[48] which echoes the idea that food deserts are not simply about shops; they are also about social exclusion. Quality of food and access to healthier options were rarely mentioned by focus groups when discussing their attitudes to the new development. [49]

The mixed results of the Seacroft development indicate that building a new food store in a food desert may not be a 'quick fix.' For example, building a new store does not address people's income, people's abilities to cook, availability of cooking equipment and the affordability of energy needed to cook. The complex socioeconomic factors causing poor access to healthy food and the lack of conclusive evidence that new supermarkets significantly improve diets and health outcomes in such areas,[50] have led to suggestions that the food desert idea should be abandoned. However, as Lang and Caraher pointed out:

> 'There is little point in encouraging low-income consumers to eat more healthily if their district has inadequate local food suppliers and if shops which do offer choice are located inconveniently for socially disadvantaged groups such as single parents, women, the elderly, disabled individuals and the poor who tend to have worst access to cars and transport.' [51]

---

[47] Neil Wrigley, Daniel Warm, Barrie Margretts and Michelle Lowe, 'The Leeds "food deserts" intervention study: what the focus groups reveal' (2004) 32 International Journal of Retail and Distribution Management 123.
[48] ibid.
[49] ibid.
[50] Wrigley *et al* (n 11).
[51] Tim Lang and Martin Caraher, 'Access to Healthy Foods: Part II. Food Poverty and Shopping Deserts: What are the Implications for Health Promotion Policy and Practice?' (1998) 57 Health Education Journal 202, 203.

Accordingly, projects such as the Priority Places Index are important for policy makers, both nationally and locally, when designing planning policy. Yet, encouraging the development of independent food shops or supermarkets alone is not enough to address all the issues that can result in poor access to nutritious food, as demonstrated by the research in Seacroft. The idea of 'fixing' a food desert just by building new shops betrays an overly narrow conception of the right to food and food security. As demonstrated by the Seacroft study, building a supermarket only resulted in a small improvement in the diet of some in the community. This does not address all aspects of food security or the right to food for the local community. It also neglects to explore fully how supermarkets can impact the realisation of the right to food. The next section describes the nature of the supermarket industry in the UK in more detail and examines the ways that supermarkets can interact with the normative framework for the right to food proposed by this thesis. This inquiry is important to find out if the right to food requires the UK Government to do more than guide where supermarkets are built.

3.0. The supermarket industry in the UK and the right to food

Research around food deserts has attempted to link the locations of where supermarkets are built to the diet of people in certain areas. However, as already observed, this is not the only way that supermarkets can potentially impact the right to food. This section begins with a general discussion of the supermarket industry in the UK demonstrating the size, scope, and power of supermarkets as businesses. The section then considers aspects of corporate and competition law, as examples of existing legislation that regulate the activities of supermarkets but may not be adequate to address concerns in relation to the impact supermarkets can have on the right to food. Finally, the section considers the ways, given their size and domination of food retailing in the UK, supermarkets could possibly impact the normative framework proposed by this thesis.

3.1 The grocery market in the UK

The modern supermarket was developed in the USA at the beginning of the 20th Century. Grocer shops changed from customers being served by clerks to customers picking their own goods and serving themselves in the hope people, through this 'grazing' approach, would buy more.[52] Clarence Saunders is credited with opening the first store that resembles a modern supermarket.[53] In 1916, he opened the first Piggly Wiggly in Memphis, Tennessee with the aim of combating increases in food prices by reducing costs.[54] This was achieved through economies of scale, reducing the number of staff required to operate the store, and by tempting consumers to buy items not on their lists by providing a set route through the store so tempting them with products they may not have thought of.[55] In his own words this 'provided a store equipment by which the consumer will be enabled to serve himself and, in so doing, will be required to review the entire assortment of goods carried in stock, conveniently and attractively displayed.' [56]

Within eight years of the first store opening, there were 1200 Piggly Wiggly stores in the USA,[57] and the brand continues to this day with around 600 stores still operating in the USA in 2023.[58] This approach of high volume sales and low overheads has been continued and developed by supermarket companies around the world.[59] It has resulted in cheaper food, increased consumer choice, and longer opening hours providing convenience for customers.[60] Such positive consequences for consumers, especially lower prices, have been a justification for the light touch regulation that supermarkets are subject to.[61] Market liberalisation has allowed supermarkets to integrate

---

[52] Raj Patel, *Stuff and Starved* (Granta 2012) 223-4; Geoffrey Lawrence and David Burch, 'Understanding Supermarkets and Agri-food Supply Chains' in David Burch and Geoffrey Lawrence (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007) 3.
[53] Patel (n 52) 224.
[54] ibid.
[55] Patel (n 52) 225-6, Lawrence and Burch (n 52) 3.
[56] Patel (n 52) 224-5.
[57] Patel (n 52) 228.
[58] Russell's Piggly Wiggly, 'About Us' https://mypigglywiggly.com/aboutus/ accessed 10 July 2023.
[59] Lawrence and Burch (n 52) 3.
[60] ibid 2.
[61] Christopher Arup, Caron Beaton-Wells and Jo Paul-Taylor, 'Regulating Supermarkets: The Competition for Space' (2017) 40 UNSW Law Review 1035,1038.

both vertically, through partnerships with suppliers and control of supply chains, and horizontally, through mergers and acquisitions.[62] This increasing power has allowed supermarkets to enter into other markets, such as white goods, petrol and even financial services.[63] There is also evidence supermarkets have been able to pressure suppliers to reduce prices, at the same time as introducing cheap own brand products, placing additional pressure on the manufacturers of branded goods to reduce their prices further.[64] This business model has resulted in cheaper food and more choice for consumers.

From their inception, supermarkets were designed to change consumer behaviour, which has clear implications for the right to food. As supermarkets have grown, so has their ability to influence consumer behaviour. 'Atmospherics' has become an area of research that considers the impact of music, lighting, smell, and positioning of goods on the amount consumers purchase.[65] If used to encourage consumers to buy increased amounts of unhealthy foods, this is a potentially harmful tool. However, this research could be beneficial if it was used to encourage consumers to purchase increased amounts of healthier food. Supermarkets may be reluctant to do this, as sales of high fat, salt, and sugar ultra-processed goods is highly profitable. Sugar, fats, and refined carbohydrates that go into these products are cheap.[66] Companies have invested in processes that make these ingredients taste nice, creating addictive foods that are easy to sell.[67] Ultimately, supermarkets are corporations whose aim is profit maximisation for shareholders or owners.[68] Their vertical and horizontal integration has allowed them to do this. This integration has increased choice for consumers and the availability of low-cost foods. However, this has also resulted in unhealthy calories being three times

---

[62] Lawrence and Burch (n 52) 5.
[63] For example: Seth and Randall (n 40) 33-34 and 69; Jane Dixon, 'Supermarkets as New Food Authorities' in David Burch and Geoffrey Lawrence (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007) 29.
[64] Lawrence and Burch (n 52) 6.
[65] Patel (n 52) 230.
[66] Henry Dimbleby, *Ravenous* (Profile Books 2023) 12.
[67] Ibid 45; Michael Moss, *Hooked* (Penguin 2021) 103-4; Michael Pollen, *The Omnivores Dilemma* (Bloomsbury 2011) 85-99.
[68] John Patterson, 'Corporate Governance and Corporate Social Responsibility' in Ilias Bantekas and Michael Ashley Stein (eds), *Cambridge Companion to Business and Human Rights Law* (CUP 2021).

cheaper than healthier calories with 80% of processed food sold in the UK considered unhealthy.[69]

Horizontal and vertical integration in the grocery market resulted in the UK having a 'big four' group of supermarkets for several years.[70] The discounter companies, Aldi and Lidl, have now moved into the market and disrupted this domination to some extent. The 'big four', are Tesco, Sainsbury's, ASDA, and Morrison's (previously Safeway).[71] However, at the time of writing, in the 12 weeks ending the 17th of March 2024, Aldi, a discount store, had overtaken Morrisons market share.[72] Tesco PLC remains the market leader, with a market share of 27.3%.[73] Its success and dominance of the market has been suggested to being due to it providing the most 'comprehensive consumer offer'[74] with extensive expansion into non-food sales and local convenience stores.[75] Sainsburys PLC, Tesco's leading competitor for many years,[76] has a market share of 15.2%.[77] ASDA is now a close third to Sainsburys with a market share of 13.8%.[78] Unlike Tesco and Sainsbury's, ASDA is privately owned by brothers Zuber and Mohsin Issa and private equity group TDR capital.[79] The financial information for ASDA is only available on a website that requires a password to view the material, and so

---

[69] Dimbleby (n 66) 13; Access to Nutrition Initiative, "UK Retailed Index 2022; (May 2022) https://accesstonutrition.org/app/uploads/2022/05/UKRI-Final-Report-20220510-KH.pdf accessed 10 July 2023; Lauren Kate Bandy et al 'Assessing the Healthiness of UK Food Companies' Product Portfolios using Food Sales and Nutrient Composition Data' (2021) 16 PLoS ONE e0254833.

[70] Lawrence and Burch (n 52) 8.

[71] Seth and Randall (n 40) 22; Morrisons took over Safeway in March 2004, see: Mark Tran, 'Safeway takeover hits Morrisons Sales' *The Guardian* (2 July 2004) https://www.theguardian.com/business/2004/jul/02/supermarkets.money accessed 10 July 2023.

[72] Kantar, 'Great Britain Grocery Market Share (12 Weeks Ending) https://www.kantarworldpanel.com/grocery-market-share/great-britain accessed 13 April 2024.

[73] ibid

[74] Seth and Randall (n 40) 27; Tesco, as market leader, had sales of £53.4 billion and profits of £1.815 billion in 2020 and currently operates in the UK, Ireland, and central Europe. See https://www.tescoplc.com/about/how-we-do-business/ accessed 8 June 2023.

[75] Seth and Randall (n 40) 43.

[76] Seth and Randall (n 40) 21.

[77] Kantar (n 72); Sainsbury's PLC had revenue of £29,895 million revenue and a profit before tax of £730 million in 2022. See https://www.about.sainsburys.co.uk/~/media/Files/S/Sainsburys/documents/reports-and-presentations/2022/Annual Report 2022/J Sainsbury plc Annual Report and Financial Statements 2022.pdf, accessed 8 June 2023.

[78] Kantar (n 72).

[79] Ben King, 'Asda: How to Buy a £6.8bn Supermarket for £780m (*BBC,* 16 February 2021) available at https://www.bbc.co.uk/news/business-56085128 accessed 10 July 2023.

is not reported here.[80] However, like Tesco, ASDA is expanding further into the fuel and convenience market, having recently purchased fuel station operator EG. This is not a straightforward purchase of another company as both EG and ASDA are owned by the Issa brothers.[81] The stated aim of this purchase is to grow its convenience retail market share, and it is also expected to push ASDA nearer to being the second largest supermarket company in the UK.[82] Morrisons is owned by Clayton, Dublier, and Rice, an American private equity company. [83] Its market share is now fifth in the UK, at 8.7%,[84] and it reported a 15% drop in full-year profits in 2022.[85]

In addition to the previous 'big four' the UK grocery market also contains the discounters (Aldi and Lidl).[86] Aldi currently has the fourth largest share of the market with 9.8% and Lidl has the sixth largest share with 7.8%.[87] Aldi is two companies (Aldi Sud and Nord) that operate in several European countries and also in the USA, including as Trader Joe's. It is the Aldi Sud company that owns UK stores and this company is privately owned by the Siepmann foundation.[88] Lidl also started in Germany as a family business and is now owned by the Schwarz Gruppe, another privately owned company, which owns the Lidl and Kaufland (German hypermarket) brands, making it the largest European retailer.[89] The model of the discount stores is to offer fewer products at lower prices in stores that have fast checkouts and limited instore display and decoration, all to keep prices low.[90]

The final group of larger food retailers are Waitrose, the Co-op and what Seth and Randall refer to as the 'niche' stores Marks and Spencer and

---

[80] See: SS&C Intralinks, https://iam.intralinks.com/idp/login/?applicationid=98e3df54-2ef1-48b4-82d4-02b83d273d23&hostname=services.intralinks.com accessed 10 July 2023.
[81] Sandle (n 42).
[82] ibid.
[83] Morrisons Corporate, 'Company History' https://www.morrisons-corporate.com/about-us/company-history/ accessed 10 July 2023.
[84] Kantar (n 72).
[85] Sahar Nazir, 'Morrisons Full-Year Profits and Sales Slump as Brits Face Inflation Squeeze' (*Retail Gazette,* 26 January 2023) https://www.retailgazette.co.uk/blog/2023/01/morrisons-earnings/ accessed 10 July 2023.
[86] Seth and Randall (n 40) 111.
[87] Kantar (n 72).
[88] Grace Dean, 'Aldi is America's Fastest-Growing Grocer' (*Insider,* 3 June 2023) https://www.businessinsider.com/aldi-history-albrecht-family-karl-theo-grocery-store-shop-retail-2022-12?r=US&IR=T accessed 10 July 2023.
[89] Schwarz, 'Business Areas' https://gruppe.schwarz/en/business-areas accessed 10 July 2023.
[90] Seth and Randall (n 40) 107.

Iceland.[91] Waitrose has tended to be favoured by the middle class for its high-end products. It is part of the John Lewis Partnership and has spread from the Southeast to now have 4.5% of the grocery market share.[92] The Co-op has a 5.5% market share,[93] and has smaller stores located on high streets. [94] It is a consumer co-operative owned by individuals and smaller Co-ops. [95] Marks and Spencer is one of the 'niche' food retailers in the UK. [96] However, it does not have a significant food retail market share (under 2%). [97] The other niche food retailer of significance is Iceland, with a market share of 2.2%.[98] It largely sells frozen food,[99] but now also sells some fresh and dried goods with both branded and some own brand products available.[100]

3.2. Company law and UK supermarkets

As discussed above, ASDA, Morrisons, Aldi and Lidl are all privately owned supermarket chains, whereas Tesco and Sainsbury's are publicly listed companies. Ownership of supermarkets is relevant both in terms of corporate governance models and in the ways that corporate social responsibility may affect a company's behaviour. For example, s172(1) of the Companies Act 2006 requires that:

> (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
> (a) the likely consequences of any decision in the long term,
> (b) the interests of the company's employees,

---

[91] ibid 111.
[92] ibid 18; Kantar (n 72).
[93] Kantar (n 72).
[94] Seth and Randall (n 40) 103.
[95] CO-OP, 'What is a Co-operative, https://www.co-operative.coop/about-us/what-is-a-coop accessed 1 March 2024.
[96] Seth and Randall (n 40) 111.
[97] Kantar (n 72).
[98] ibid.
[99] Seth and Randall (n 40) 114.
[100] Iceland, 'About Iceland' https://about.iceland.co.uk/ accessed 10 July 2023.

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

Disclosures on these matters in company reports allows shareholders to hold management to account. As a result, shareholders can influence, for example, a company's approach to its local community and the environment (s172(1)(d)), which may have relevance for the realisation of the right to food. These duties do extend to private as well as publicly listed companies, but if there are fewer private owners, there are fewer people to exert this pressure or control potentially reducing the utility of s172. Activist shareholders, defined as 'dissatisfied investors attempting to initiate change in a company without change in control',[101] cannot drive changes in companies that are not publicly listed. This method has been used to bring about company policy changes in both Tesco and Sainsbury's.[102] However, this is not an option to change company policy for ASDA, Aldi, Morrisons and Lidl.

Even if shareholder action is not possible, the market should still be regulated by consumer choice and competition.[103] For example, consumers may choose sustainable goods, in turn increasing the demand and therefore the supply of such goods as well as decreasing the demand and supply of less

[101] Anna L Christine and JS Liptrap, 'Mapping Judicial Reactions to Shareholder Activism in the UK' (2020) 79 The Cambridge Law Journal 21.
[102] Igor Filatochev and Oksana Dotensko, 'Shareholder Activism in the UK: Types of Activists, Forms of Activism and their Impact on a Targets Performance' (2015) 19 Journal of Management and Governance 5. For example, Sainsbury's was targeted by activist shareholders promoting the living wage, see: Mohammed Senouci and Aisling Arthur , 'Shareholder Activism in the UK (England and Wales): Overview (*Thomson Reuters*, 01 February 2023) https://uk.practicallaw.thomsonreuters.com/w-029-1019?transitionType=Default&contextData=(sc.Default)&firstPage=true accessed 8 June 2023 and Tesco was targeted by a group pushing the move to more healthy options being available in store, see: James Davey, 'Britain's Tesco Concedes to Activist Shareholders on Health Targets' (*Reuters,* 5 May 2021) https://www.reuters.com/world/uk/britains-tesco-concedes-activist-shareholders-health-targets-2021-05-04/ accessed 8 June 2023.
[103] See, for example: Richard Whish and David Bailey, *Competition Law* (10th edn, OUP 2021) 6-8.

sustainable products. Plant based food now regularly features in many areas of supermarkets as demand for vegan alternatives have grown,[104] and does demonstrate how in some cases supermarkets will respond to consumer demand and preferences. However, the share of the market that supermarkets have also provide them with opportunities to steer consumers, rather than being steered by consumers. As Burch and Lawrence have argued, a simple model of supply and demand may no longer be appropriate in the grocery market.[105] This has implications for market competition, and competition law as a means of regulating supermarkets.

3.3 Competition law and supermarkets in the UK

Competition law has been suggested to be a possible tool to limit the negative impacts of buyer power on farmers and producers who sit at the start of the supply chain. This argument has been made by De Schutter, a previous Special Rapporteur for the right to food, as well as academics Lianos and Darr.[106] The CC investigated the grocery industry in the UK in 2008. This investigation resulted in the establishment of a body to specifically deal with unfair practices in supply chains, the Groceries Code Adjudicator (GCA).[107] However, there are limitations to the use of competition law to implement obligations in relation to the right to food. This is due to the differences in underlying objectives and principles of competition law and human rights law.

As discussed above, the approach of limited intervention in the grocery market has been suggested to be justified due to the benefits to consumers. A free-market approach requires competition to achieve such benefits. Competition law will intervene to ensure the market functions correctly and to

---

[104] For example, between 2020 and 2022, sales of plant-based foods in the UK have gone from £881.9 million to £963.8 million. Good Food Institute Europe, 'UK-Plant Based Food Retail Markets Insights (2020-2022)' (2023) https://gfieurope.org/wp-content/uploads/2023/04/2020-2022-UK-retail-market-insights_updated.pdf accessed 13 April 2024, 5.
[105] Lawrence and Burch (n 52) 7.
[106] Olivier De Schutter, 'Addressing Concentration in Food Supply Chains' (December 2010) http://www.srfood.org/en/briefing-note-addressing-concentration-in-food-supply-chains accessed 10 July 2023; Ioannis Lianos and Amber Darr, 'Hunger Games: Connecting the Right to Food and Competition Law' (CLES Research Paper Series, June 2019) https://www.ucl.ac.uk/cles/sites/cles/files/cles_2-2019.pdf accessed 10 July 2023.
[107] Groceries Code Adjudicator Act 2013.

prevent practices that limit or prevent competition.[108] At its most basic, competition should ensure low prices, greater efficiency, better products, innovation, and more choice.[109] However, as can be seen in the UK supermarket industry, the lowest prices are often on less nutritious food,[110] and much of the choice consumers have is between types of unhealthy processed food.[111]

Prices in supermarkets have also risen dramatically and in the summer of 2023, investigations were started by both the Competition Market Authority (CMA), the body that replaced the CC, and committees in parliament.[112] However, the CMA emphasised that its remit was to look for weak or ineffective competition,[113] indicating that it found no evidence that supermarkets were 'profiteering' from rising prices.[114] It did however highlight that not all consumers can access the 'discounter' supermarkets; that food deserts remain an issue for some; and that the minimum spend and availability of online shopping prevent some consumers from accessing the cheapest options.[115] The CMA also initiated reports into misleading unit pricing and misleading loyalty card schemes.[116] Although these investigations are welcomed at a time when so many people are struggling to purchase food, they are focused entirely on price. There is no consideration, for example, of whether loyalty card schemes could be better used to assist people to access more nutritious food because this is beyond the CMA's remit and scope. It is

---

[108] Whish and Bailey (n 103) 3-4.
[109] ibid 6.
[110] Dimbleby, *Ravenous* (n 66) 13.
[111] Dimbleby, *Ravenous* (n 66) 13 and 45; Moss (n 67) 103-4; Pollan (n 67) 85-99.
[112] Gov.UK, 'CMA update on action to help contain cost of living pressures (15 May 2023) https://www.gov.uk/government/news/cma-update-on-action-to-help-contain-cost-of-living-pressures accessed 13 July 2023; Environment, Food and Rural Affairs Committee, 'MP's to investigate fairness in food prices supply' (12 May 2023) https://committees.parliament.uk/committee/52/environment-food-and-rural-affairs-committee/news/195195/mps-to-investigate-fairness-in-food-prices-and-supply/ accessed 13 July 2023.
[113] CMA, 'Competition, Choice and Rising Prices in Groceries' (July 2023) https://assets.publishing.service.gov.uk/media/64b80adaef5371000d7aeefb/Competition__choice_and_rising_prices_in_groceries.pdf accessed 4 March 2024, 12.
[114] ibid 8.
[115] ibid 75.
[116] CMA, 'Groceries Unit Pricing: Pricing Analysis' (30 January 2024) https://assets.publishing.service.gov.uk/media/65b8c153b5cb6e000d8bb747/___Groceries_unit_pricing_pricing_analysis_2__.pdf accessed 4 March 2024; GOV.UK, 'Loyalty Pricing in the Groceries Sector' (30 January 2024) https://www.gov.uk/cma-cases/loyalty-pricing-in-the-groceries-sector accessed 4 March 2024.

therefore questionable whether the competition law model, which focuses on lowest price and maximum choice, is in people's best interests in terms of accessing an affordable nutritious diet and ensuring full realisation of the right to food.

The UK grocery market is no longer a truly free market based on supply and demand. The degree of horizontal and vertical integration in the UK grocery market, alongside the techniques used by supermarkets to steer consumers towards specific products, discussed above, have altered the dynamics of competition. The question then becomes whether there are sufficient interventions in the form of competition law to limit the negative effects of the nature of the UK supermarket industry on consumers.[117] s25 of the Enterprise and Regulatory Reform Act 2013, requires the CMA to promote competition for the benefit of consumers.

However, the idea of a 'benefit for consumers' is narrowly construed, as can be seen in a 2008 report by the CC. Following a referral from the Office of Fair Trading under s131 of the Enterprise Act 2002, the CC considered many aspects of the supermarket and grocery industry in the UK. The report identified:

> 'The broader public policy issues concerning grocery retailing raised with us during this investigation include the social cohesion of urban and rural communities, the character of UK high streets, the social and health consequences of alcohol sales by grocery retailers, the impact of grocery retailing on the nation's health, the environmental impact of the groceries supply chain, working conditions among agricultural workers both in the UK and abroad, and the security of UK food supplies and the sustainability of the supply base. '[118]

The 2008 report acknowledged the importance of the factors in the paragraph quoted above as 'context and background to the investigation.'[119] Yet, they were not considered issues of competition and so not addressed by the report. A competition law approach that defines consumer benefit through

[117] Whish and Bailey (n 103) 3.
[118] CC (n 38) [2.12].
[119] CC (n 38) 7.

a limited number of demand-related features, such as low price and increased choice, and does not assign sufficient weight to health, social cohesion, and environmental impact, cannot be said to share objectives with the right to food.[120] More specifically in relation to the framework proposed by this thesis, price, range of products, unit-pricing, and loyalty schemes, the main focuses of the CMA all have relevance. They are clearly related to the right to be free from hunger and the adequacy of food people can access. Choice is also relevant to some extent for the standard of nutrition, however, as discussed above, this is not a straightforward area, as supermarkets can influence people's choices.

The CMA, under its current mandate, does not seem sufficient to regulate the impacts supermarkets can have on the right to food. It has however been suggested that the scope of competition law could be expanded to consider factors such as price and choice. As mentioned above, it has been suggested that competition law could be 'refocused' to provide better protection against the power of large corporations and their ability to force producers and farmers to provide them with products at low prices.[121] This is an area that has often been excluded from the remit of bodies regulating unfair competition in markets, as such practices often result in lower prices for consumers.[122] The CC report in 2008, also recognised these practices:

> '[I]n the hope of gaining a competitive advantage, grocery retailers transfer excessive risks or unexpected costs to their suppliers, this is likely to lessen suppliers' incentives to invest in new capacity, products and production processes. If unchecked, we conclude that these practices will ultimately have a detrimental effect on consumers.'[123]

Couched in language suggesting supply chain practices would eventually limit consumer choice, following the 2008 CC report, a Groceries Code Adjudicator (GCA) Bill was introduced to Parliament in 2011 and the

---

[120] See Sections 2.2.2 in Chapter 2 for the definition of the core of the right to food which includes aspects related to nutrition, sustainable production and culture.
[121] Lianos and Darr (n 106) 26.
[122] Lianos and Darr (n 106) 26.
[123] CC (n 38) [9.83].

GCA Act 2013 passed. The GCA will be discussed further in the subsection below on production, but its focus on supply chain contracts and unfair practices does move away from an approach focusing only on limited demand side factors. In relation to the areas the CC was unable to consider in relation to supermarkets,[124] the GCA does engage with issues that can impact the sustainability of food production in the UK, the working conditions of UK agricultural workers and the security of UK food supplies,[125] all relevant to the standard of production in the proposed framework for the right to food.

Competition law and the CC report of 2008 has resulted in some regulation and intervention in the UK grocery market. However, the focus on demand side benefits for consumers, as a fundamental principle of competition law, limits its potential utility as a tool to facilitate realisation of the right to food. Unless it is dramatically refocused, the scope of competition law is limited to issues of pricing and choice, which engages with some aspects of the fundamental right to be free from hunger and the core of the right to food, especially the standard of adequate.

The GCA expands the scope of competition law to some aspects of the standard of production. It has powers to limit some of the negative impacts of supermarkets in supply chains. Expansion of its scope to deal with some of the 'non-competition' factors identified in the 2008 report could be a possible route to limit negative impacts of supermarkets on the realisation of the right to food. Notably absent from the remit of either the CMA or the GCA are considerations of the impact supermarkets can have on people's diet and health. Such an approach also needs to be part of a national food policy and framework legislation, as proposed in Chapter 5. This would allow identification of areas where supermarkets are negatively impacting the right to food and assessment of whether competition law was the most appropriate tool to address these negative impacts.

People's choices in relation to food are not just about cost and quality, and the right to food is not just about people being able to access and afford

[124] See CC quote above (n 118).
[125] See: Department for Business and Trade, 'Guidance, Groceries Supply Code of Practice' (GOV.UK, 4 August 2009) https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice#payments-for-wastage accessed 14 April 2024.

sufficient calories to keep them alive. Supermarkets have developed techniques to encourage the purchase of certain products, which may distort consumer behaviour away from choices based simply on cost and quality. As such, competition law leaves untouched many ways supermarkets can impact the right to food.

3.4. Supermarkets and the proposed framework for the right to food

This section returns to the large Tesco store in Seacroft to consider the ways the grocery market in the UK can impact the right to food. It focuses on the ability of people to access an adequate nutritious diet. Of the four standards described in Chapter 3, this is most relevant to adequate food and nutrition. It is also linked to the discussion of food deserts in Section 2 of this chapter, as one of the defining features of food deserts is the lack of shops to purchase affordable healthy food. Given the current cost of living crisis, and associated CMA investigations, this section also briefly considers freedom from hunger and possible interventions in the grocery market that may help those who are living in poverty and on low incomes. Production will also be briefly considered in relation to food waste and the impact of supermarket power on producers in supply chains.

3.4.1. Freedom from hunger

In May 2023, the rate of inflation for food was around 15% with the rate of inflation for fresh food reaching nearly 18%.[126] Some foods rose in price by 25% compared to the previous year.[127] Levels of food poverty and food insecurity have also risen, with people missing meals.[128] However, price rises did not affect all goods equally. Supermarkets were criticised over the level of

[126] Philip Inman, 'UK food inflation dips in May, raising hopes rate of price is slowing' *The Guardian* (30 May 2023) https://www.theguardian.com/business/2023/may/30/uk-food-inflation-falls-in-may-raising-hopes-prices-may-have-peaked accessed 4 March 2023.
[127] Sarah Butler, 'UK Government Urged to Act as Some Meat and Veg Prices Double in a Year' *The Guardian* (16 May 2023) https://www.theguardian.com/business/2023/may/16/uk-government-meat-veg-prices-which-rishi-sunak?CMP=Share_AndroidApp_Other accessed 13 May 2023.
[128] Which, 'Affordable Food for All' https://campaigns.which.co.uk/affordable-food/ accessed 13 July 2023.

price rises in budget food ranges compared to other own-brand goods. A survey by Which? found that budget food brand prices increased by 21% in the year between January 2022 and January 2023, compared to an average food price increase of 15.9% and price increases in premium food products of 13.4%.[129] Food companies and supermarkets have also been criticised for continuing to make substantial profits.[130]

There were associated claims of 'greedflation.' It was suggested companies were taking advantage of increased production costs to hide profit increases by justifying higher prices on the basis of increased raw ingredient and production costs.[131] Such behaviour is not illegal, but if it did occur, it would make it harder for consumers to afford food, risking increased levels of food insecurity. Such practices are also morally questionable, and perhaps, given the fundamental importance of food, is a practice that should be prevented by legislative measures. As indicated above, the CMA has not found evidence that supermarkets are 'profiteering' from increased prices.[132] In May 2023, the Environment, Food and Rural Affairs Committee announced an inquiry into 'fairness in the food supply chain', which is considering food prices.[133] It has heard oral evidence in relation to how the interests of suppliers and consumers are balanced, the impact of the cost-of-living crisis on peoples food purchasing habits and what Government could do to protect consumers in the event of future shocks in the food supply chain.[134] The final report has not been published as of 31 March 2024.

This is not the first time that the CMA has considered complaints about pricing practices in the groceries market. In 2015 a complaint by Which?

---

[129] ibid.
[130] Unite the Union, 'Unite Investigates: Food Profiteering Update- June 2023' https://www.unitetheunion.org/what-we-do/unite-investigates/new-analysis-rips-apart-dodgy-claims-of-squeezed-supermarket-profits/unite-investigates-food-profiteering-update-june-2023/ accessed 13 July 2023.
[131] Chris Giles, 'UK Corporate Profitability Stable Despite 'Greedflation' Claims' *Financial Times* (20 May 2023) https://www.ft.com/content/642f5313-b105-4188-827c-d6c97790f80 accessed 12 July 2023; Philip Inman, ''Global Greedflation': Big Firms 'Driving Shopping Bills to Record Highs' *The Guardian* (12 March 2023) https://www.theguardian.com/business/2023/mar/12/global-greedflation-big-firms-drive-shopping-bills-to-record-highs accessed 12 July 2023.
[132] CMA, 'Competition, Choice and Rising Prices in Groceries' (n 113) 8.
[133] EFRA Committee (n 112).
[134] Environment, Food and Rural Affairs Committee, Fairness on the Food Supply Chain- Oral Evidence' (14 November 2023) https://committees.parliament.uk/event/19404/formal-meeting-oral-evidence-session/ accessed 14 April 2024.

resulted in an investigation into misleading pricing practices, such as special offers, the ease of comparing unit pricing and mis-leading price matching schemes, all of which could impact the ability of consumers to buy the best value options.[135] The CMA found that retailers have put practices in place to ensure compliance with consumer protection legislation, misleading practices were identified.[136] They also indicated they would work with Trading Standard Services to enhance monitoring and enforcement of consumer protection legislation.

Trading Standards largely responds to consumer complaints[137] and funding for its activities is also insufficient.[138] This is an issue that will be returned to when considering access to nutritious food. The problems identified in the 2015 report, have been considered again in the CMA's Groceries Unit Pricing: Pricing Analysis investigation. This report found that unit pricing for consumers is not always clear, and goods on special offer are not always the cheapest unit price.[139] The CMA is also considering whether loyalty card pricing can also mislead consumers.[140] The repeated occurrence of such issues suggests that although these issues are identified, there is insufficient monitoring and enforcement to address uncompetitive practices that impact prices for consumers.

Supermarkets could also do more to support low-income families through loyalty cards and promotion of schemes such as the National Health Service Healthy Start Scheme, which provides healthy food vouchers to low-income families.[141] Sainsburys and Co-op have demonstrated this can be done and have 'topped up' these vouchers, increasing the amount of healthy food the vouchers provide.[142] In addition, it has been proposed that support

---

[135] CMA, 'Pricing Practices in the Groceries Market' (16 July 2015) https://assets.publishing.service.gov.uk/media/55a6c83540f0b61562000005/Groceries_Pricing_Super-Complaint_response.pdf accessed 12 July 2023, 1.
[136] ibid 3.
[137] ibid.
[138] Ian Quin, 'Trading Standards Set to Receive just 35K to Enforce HFSS Rules' *The Grocer* (12 May 2023) https://www.thegrocer.co.uk/stores/trading-standards-set-to-receive-just-35k-to-enforce-hfss-rules/679144.article accessed 12 July 2023.
[139] CMA, 'Groceries Unit Pricing' (n 116) 7, 8, 9, 15 and 16.
[140] GOV.UK, 'Loyalty Pricing in the Groceries Sector' (n 116).
[141] GOV.UK, 'Healthy Start' https://www.gov.uk/healthy-start accessed 13 July 2023
[142] Kelli Kennedy and Carolyn Snell, How Can Supermarkets Help End Food Security' (*University of York,* July 2021) https://www.york.ac.uk/media/spsw/documents/research-and-

could be provided by using supermarket loyalty cards to provide discounts to those in receipt of certain welfare benefits.[143] This is a good example of policy that also respects human dignity and moral security, consistent with the proposed framework. As mentioned in section 5 of Chapter 3, providing vouchers that differentiate people in receipt of income support, could be associated with stigma. The use of loyalty cards, which all shoppers may have removes this possibility. Similarly, access to online shopping has been highlighted as an issue by the more recent CMA reports.[144] The minimum spend requirement could be reduced for those with disabilities and those on low incomes to ensure they have access to a wide range of foods, even if they cannot access a large store or afford the minimum spend due to income levels.[145]

3.4.2. Production of food

To demonstrate how supermarkets can affect the production of food and food supply chains, two examples are considered. Firstly, reducing food waste as part of sustainable food production and retailing and, secondly, the way supermarket business practices can affect supply chains. Reducing food waste is one way that supermarkets impact the sustainability of supply chains as well as the production and manufacturing of food. Much has been written on food waste and supermarkets.[146] Consumers are often blamed for much of this waste and figures of the percentages of food waste at household level vary from around 50% to 70%.[147] However, it has been reported that supermarkets themselves waste 282,338 tonnes of food a year, that could have provided 190 million meals.[148] Supermarkets have also been called on

publications/How%20can%20Supermarkets%20help%20end%20food%20insecurity%20Final%20Report.pdf accessed 13 July 2023, 10.
[143] ibid; Which? (n 128).
[144] CMA, 'Competition, Choice and Rising Prices in Groceries' (n 113) 75.
[145] Which? (n 128).
[146] For example, see: Carrie Bradshaw, 'Waste Law and the Value of Food' (2018) 30 Journal of Environmental Law 311; Effie Papargyrpoulou *et al*, 'The Future of Surplus Food Redistribution in the UK: Reimagining a 'Win-Win' Scenario' (2022) 108 Food Policy 102230.
[147] Bradshaw (n 146); Sally Dray 'Food Waste in the UK' (*House of Lords Library,* 12 March 2021) https://lordslibrary.parliament.uk/food-waste-in-the-uk/ accessed 13 July 2023.
[148] David Cohen, 'Revealed: UK's Largest Supermarkets Throw Away Enough Food for 190 Million Meals a Year' *Independent* (27 February 2021)

to do more in relation to charitable donations of surplus food, to help get food to food banks and similar organisations to alleviate food poverty. [149] However, despite various charities, NGOs, and the Government's provision of aid to Fareshare, a food distribution charity, encouraging schemes to redistribute unsold food,[150] only 9% of unsold food is being utilised in this way.[151]

The major UK supermarkets signed a pledge in 2019 to reduce food waste by half by 2030.[152] Such pledges are a good example of corporate social responsibility (CSR), where companies choose to engage in activities that are beneficial to the wider community and environment. However, although supermarkets do voluntarily report food waste figures,[153] there is no compulsory food waste reporting scheme for food companies, despite promises of such a system being developed by Government over seven years ago.[154] This raises questions about what waste is reported and how companies calculate food waste figures, and if figures reported can be compared between companies. There are especially concerns about waste that does not leave farms,[155] as well as products destined to become own brand goods, that are not necessarily assigned to a particular company at the point of waste.[156] The lack of mandatory reporting means it is not always clear

---

https://www.independent.co.uk/news/uk/home-news/supermarket-waste-food-poverty-b1807617.html accessed 13 July 2023.

[149] Kennedy and Snell (n 142).

[150] DEFRA, 'New £16 Million Winter Support Grant to Fareshare to Provide Meals for Those in Need' (*GOV.UK,* 1 December 2020) https://www.gov.uk/government/news/new-16-million-winter-support-grant-to-fareshare-to-provide-meals-for-those-in-need accessed 12 July 2023; other food distribution charities include Waste and Resources Action Programme and Foodcycle.

[151] Cohen (n 148).

[152] DEFRA, 'UK Supermarkets Sing Government Pledge to Help Halve Food Waste (*GOV.UK,* 13 June 2019) https://www.gov.uk/government/news/uk-supermarkets-sign-government-pledge-to-help-halve-food-waste accessed 13 July 2023.

[153] For example see: Sainsburys, 'Reduce Food Waste' https://www.about.sainsburys.co.uk/sustainability/better-for-the-planet/food-waste accessed 13 July 2023.

[154] Ian Quinn, 'Defra Urged to Take Action on Food Waste Reporting' (*The Grocer,* 16 May 2023) https://www.thegrocer.co.uk/sustainability-and-environment/defra-urged-to-take-action-on-food-waste-reporting/679646.article accessed 13 July 2023; Morrisons Corporate, 'Reducing Food Waste' https://www.morrisons-corporate.com/morrisons-sustainability/planet/food-waste/ accessed 13 July 2023.

[155] Quinn 'Defra Urged to Take Action on Food Waste Reporting' (n 154).

[156] Sarah Butler, 'Supermarkets Wasting 200,000 Tonnes of Food That Could go to Needy, Say Charities' *The Guardian* (22 February 2023) https://www.theguardian.com/business/2022/feb/22/supermarkets-wasting-200000-tonnes-of-food-that-could-go-to-needy-say-charities accessed 13 July 2023.

if this production waste, which may be due to supermarket supply chain practices,[157] is included in waste reporting by supermarkets.

Although the amount of food wasted at household level is significant, households alone are not responsible for all the food wasted. Food waste is a structural issue, which individuals alone cannot control or tackle.[158] The supermarkets themselves may contribute to the amount of food wasted by consumers. In this context, food labelling is a particular issue as it gives too much latitude to industry to label food with dates, at which they become 'unsafe.'[159] While it is clearly important from a food safety and public health approach that products such as meat and fish, with high risks of foodborne illness are labelled to ensure food consumed is safe, other than for highly perishable foods, regulations do not indicate in what circumstances date labelling is required.[160]

As a result, although not required to legally, supermarkets often label baked goods, fruit, and vegetables with 'best before dates.' These can have large margins of error to protect against reputational damage and possible liability over spoilt food.[161] Whilst it is acknowledged the reputational damage of selling food that is rotten or not what it purports to be is potentially massive,[162] this practice is problematic from the perspective of reducing the amount of food waste produced. More recently some supermarkets have been removing best before dates on some vegetables to tackle food waste.[163] Although this is a step in the right direction, the levels of food waste, and latitude provided by the current legal regime suggest that, as a minimum,

---

[157] ibid.
[158] Bradshaw (n 146), 312.
[159] ibid 316.
[160] ibid.
[161] ibid, 317.
[162] The 'horse meat scandal' where meat from horses was found in beef burgers in a number of UK supermarkets is reported to have reduced Tesco's market value by £300 million. See: Nick Fletcher, 'Horse Meat Scandal Wipes £300m off Tesco's market value' *The Guardian* (16 January 2013). https://www.theguardian.com/business/marketforceslive/2013/jan/16/horse-meat-tesco-market-value-shares accessed 14 April 2023. Increased usage of social media arguably increases this risk. See, for example: Bradley Jolly and Zesha Saleem, 'Aldi, Asda, and Tesco in Rotten Turkey Christmas Row as Shoppers Slam 'Rancid' Dinners' *Mirror* (25 December 2023) https://www.mirror.co.uk/news/uk-news/aldi-asda-tesco-rotten-turkey-31747815 accessed 14 April 2024.
[163] Elizabeth Atkin, 'Which Supermarkets are Scrapping Best Before Dates and Why?' *Metro* (1 September 2022) https://metro.co.uk/2022/08/03/which-supermarkets-are-scrapping-best-before-dates-and-why-17117556/ accessed 13 July 2023.

tighter guidelines are needed to reduce food waste. If such guidelines do not work, more specific legislation may be required to reduce food waste by both consumers and supermarkets, including waste created at the beginning of the supply chain due to supermarket business practices. The UK wide food policy, and framework legislation suggested in Chapter 5, would guide the creation of this policy and possible legislation and its monitoring and regulation.

Turning to briefly consider the supply chain more generally, the way supermarkets contract with and pay suppliers, producers and farmers in UK supply chains has long been a subject of criticism.[164] Despite the introduction of the GCA, which has the power to investigate unfair practices in supply chains, there are ongoing concerns about how producers are treated by the supermarkets, and that they receive a very small percentage of the final price charged for goods they produce.[165] This has potential impacts for the ongoing sustainability of farming and food production in the UK, an element that should be considered by the UK Government under the standard of production in the proposed normative framework. Such factors will also form part of the overall national food policy and framework legislation the UK should implement as part of its obligations to realise the right to food.

Recently, the consequences of the difficulties of contracting with UK supermarkets was suggested as a cause of a tomato shortage in UK stores in early spring 2023.[166] Weather in Africa and Europe was largely blamed for a shortage of salad products.[167] However, there was no apparent similar shortage in European supermarkets.[168] It has been suggested that this was partly due to farmers and producers in Europe not wanting to deal with UK

---

[164] For example, see Simms (n 3) 64; Blythman (n 3) 135-197.
[165] For example: Sustain, 'Unpicking Food Prices: Where Does Your Food Pound Go, and Why do Farmers Get So Little?' (*Sustain,* 2 December 2022) https://www.sustainweb.org/news/nov22-unpicking-food-prices-new/ accessed 13 July 2023.
[166] Kevin White and Grace Duncan, 'Why Fruit and Veg Shortages are Only a Tiny Bit About Brexit' *The Grocer* (23 February 2023) https://www.thegrocer.co.uk/buying-and-supplying/why-fruit-and-veg-shortages-are-only-a-tiny-bit-about-brexit/676636.article accessed 13 July 2023.
[167] Daniel Woolfson, 'Britain Faces Tomato Shortage as Bad Weather Squeezes Supply' *The Telegraph* (20 February 2024) https://www.telegraph.co.uk/business/2023/02/20/uk-supermarkets-face-tomatoes-shortage-morocco-restricts-exports/ accessed 14 April 2024.
[168] Helena Horton and Joanna Partridge, 'Food Tsar Blames Shortages on UK's Weird Supermarket Culture' *The Guardian* (4 March 2023) https://www.theguardian.com/environment/2023/mar/04/food-tsar-blames-shortages-on-uks-weird-supermarket-culture accessed 13 July 2023.

supermarkets due to their harsh practices.[169] The Secretary of State for the Environment, Food and Rural Affairs, Thérèse Coffey, suggested consumers should learn to use products available in the UK seasonally, specifically suggesting turnips as an alternative. However, due to the supermarket pressures on farmers to produce certain products, turnips were also in short supply.[170]

Industry specific schemes continue to be negotiated and have resulted in some new regulations for the dairy industry being laid before Parliament.[171] However, the ongoing issues in the sector suggest that the GCA is not fit for purpose. The recent issues regarding salad products, and even turnips, indicate that relying on trade and imports of fresh food is not without its difficulties. Such reliance could affect food security in the UK, especially as the Government has emphasised the importance of imports for UK food security.[172] Both food waste and the way supermarkets deal with producers and suppliers have the potential to impact the progressive realisation of the right to food, through the environmental and economic sustainability of production and food supply chains within the UK. It would also now appear, that practices of UK supermarkets in relation to suppliers is now affecting the ability of the UK to rely on imports, especially of fresh produce.

3.4.3. Nutrition and adequate food: access to a nutritious diet

En route to the large Tesco store in Seacroft, one of the smaller convenience stores in the area has now been replaced by a Morrison's Local.[173] The spread

---

[169] ibid.
[170] James Tapper, 'Thérèse Coffey's 'Eat Turnips' Message Leaves Bitter Taste After UK's Biggest Grower Gives Up' *The Guardian* (18 March 2023) https://www.theguardian.com/food/2023/mar/18/therese-coffeys-eat-turnips-message-leaves-bitter-taste-after-uks-biggest-grower-gives-up accessed 13 July 2023.
[171] See, for example: Draft Statutory Instrument, The Fair Dealing Obligations (Milk) Regulations 2024; Alistair Driver, 'NPA Press Release: Defra Commitments on Pig Supply Chain Reform Will Deliver for Industry (*National Pig Association,* 6 April 2023) http://www.npa-uk.org.uk/Defra_commitments_on_pig_supply_chain_reform_will_deliver_for_industry.html accessed 13 July 2023.
[172] DEFRA, 'UK Food Security Report 2021' (16 December 2021) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077015/United_Kingdom_Food_Security_Report_2021_19may2022.pdf> accessed 13 July 2023, 82
[173] The author visited the Seacroft Tesco store and surrounding area on 17 March 2023.

of the ‘big four’ into smaller local stores has become common over the last 20 years as a way to increase the business of the stores, despite limits on development of out-of-town centres.[174] However, the range of products stocked in these stores is often smaller, consisting mainly of less healthy and more expensive options. If healthier options and basic foods are stocked, they are often more expensive than the same products in the larger store formats of the same company.[175]

A recent Which? report highlights that it is often the poorest in society, who do not own cars, that rely on ‘local stores’ due to lack of accessible larger supermarkets through public transport.[176] The survey checked the availability of a list of around 29 budget items in 123 stores of varying sizes and concluded that shoppers that have to rely on shopping in local stores ‘cannot access a decent range of cheap, healthy foods.’[177] The survey also identified some larger stores that also have a very limited range of budget goods.[178]

The supermarkets have criticised the survey for its lack of robust methodology.[179] A representative of the British Retail Consortium stated, ‘convenience stores do not have the space to stock the same range as a supermarket, but retailers will maximise all available space to offer maximum value for their local community.’[180] However, if local stores are the main shops available to those with lower incomes, then the decision to not stock a range of healthy affordable foods and budget staples does limit people’s ability to obtain sufficient and adequate food. This business decision is contributing to food insecurity and hunger.

---

[174] Seth and Randall (n 40).
[175] Xanthe Clay, ‘The Food Shopping Habit That’s Costing You More Than You Think’ *The Telegraph* (6 February 2023) https://www.telegraph.co.uk/food-and-drink/features/big-convenience-supermarket-rip-off/ accessed 13 July 2023; Ellie Simmonds, ‘Supermarkets Fail to Make Cheaper Food Ranges Available to Most-At-Risk Shoppers’ *Which?* (25 April 2023) https://www.which.co.uk/news/article/supermarkets-fail-to-make-cheaper-food-ranges-available-to-most-at-risk-shoppers-az9sx1n2sJY9?utm_campaign=UPDATE&utm_content=1682404202&utm_medium=social&utm_source=twitter accessed 13 July 2023.
[176] Simmonds (n 175).
[177] ibid.
[178] ibid.
[179] Ian Quinn, ‘Less-Than-Shocking Which? Research Into C-Stores is a Sign of the Times’ *The Grocer* (25 April 2023) https://www.thegrocer.co.uk/convenience/less-than-shocking-which-research-into-c-stores-is-a-sign-of-the-times/678609.article accessed 13 July 2023.
[180] Andrew Opie quoted ibid.

Upon entering the large Tesco in Seacroft, the shopper used to be greeted by displays of multibuy promotions, often on crisps, chocolate, biscuits, and fizzy drinks.[181] Recent legislation has banned such prominent placement of high fat, sugar and salt products (HFSS).[182] This legislation bans prominent placement of HFSS as well as discounts on volume sales of such products, for example buy-one-get-one-free. The placement rules have been introduced and are currently active, but the ban of volume sale promotions has been delayed until October 2025.[183] There is evidence that the rules have resulted in decreased sales of some confectionary.[184] Yet there are still concerns with the efficacy of the legislation in terms of its overall aim to decrease sales of less healthy food, as will be discussed below.

Firstly, on the date of my visit to the Seacroft Tesco store, in the run up to Easter 2023, a little further into the store, displays had large numbers of chocolate products labelled with a price and a lower price for Tesco Clubcard members. This practice of offering loyalty card holders reduced prices on products has been followed, at the time of writing, by Sainsbury's and Morrisons.[185] This practice arguably complies with the pending law concerning HFSS special offers and the current law around display of HFSS. Yet the result is that supermarkets can now offer such HFSS at reduced prices, as they did with multibuy pricing, just a little further into the store. Website searches of these three supermarkets on the 11th of June 2023, found a range of products, including non-food items being offered for loyalty card holders, but all included, biscuits, crisps, chocolate, fizzy drinks, energy drinks and alcohol.[186] Some supermarkets may have also increased displays of goods such as instore

[181] Author observation.
[182] The Food (Promotion and Placement) (England) Regulations 2021, SI 2021/1368.
[183] James Davey, 'UK High-Sugar Promotion Ban Delay Angers Health Campaigners' (*Reuters,* 19 June 2023) https://www.reuters.com/world/uk/uk-health-campaigners-angered-by-further-delay-high-sugar-promotion-ban-2023-06-19/ accessed 13 July 2023.
[184] Sally Ball, 'Weighing the Impact of HFSS Laws' (*Kantar,* 28 June 2023) https://www.kantar.com/uki/inspiration/health/weighing-the-impact-of-hfss-laws accessed 4 March 2024.
[185] Tesco, 'Special Offers' https://www.tesco.com/groceries/en-GB/promotions accessed 11 June 2023; Sainsbury's, 'Nectar Prices https://www.sainsburys.co.uk/gol-ui/offers/nectar-prices accessed 11 June 2023; Morrisons, 'More Card Exclusives. https://www.morrisons.com/more/exclusives accessed 11 June 2023.
[186] ibid.

bakery cakes in prominent locations,[187] which again complies with the letter of the regulations, if not with its overall aims.

In addition, there are concerns about enforcement of the HFSS placement rules. The enforcement of this legislation falls to Trading Standards and local authorities, which are underfunded.[188] It has been reported, following a freedom of information request, that since December 2022, only two English local councils have identified breaches of the HFSS rules.[189] Suspected breaches have, however, been posted in trade magazines and on social media,[190] highlighting that legislation is only effective if it can provide clear guidance for those that have to comply, and that compliance can be monitored and enforced. These two concerns indicate that legislation has to be carefully worded to ensure it captures all promotion of HFSS and also that funding is required for enforcement.

The final issue this section will consider in relation to supermarkets and accessing a nutritious diet, is the content of supermarket own brand products. The UK had much higher consumption rates of 'ready meals' than the rest of Europe, and this is one of the areas that supermarkets in the UK dominate with own brand products.[191] In Chapter 3 taxes on unhealthy foods were discussed, and the Soft Drinks Industry Levy is considered a success in this area, as it has led to reformulation and reduced sugar consumption through soft drinks by up to 30g per household per week.[192] However, food companies and supermarkets continue to be criticised for their over reliance on unhealthy

---

[187] Beth Bradshaw, 'Retailers are Breaking HFSS Rules without Consequence' (*The Grocer,* 7 December 2023) https://www.thegrocer.co.uk/hfss/retailers-are-breaking-hfss-rules-without-consequence/686080.article accessed 4 March 2024.
[188] Sarah Muir *et al* 'UK Government's New Placement Legislation is a 'Good First Step': a Rapid Qualitative Analysis of Consumer, Business, Enforcement and Health Stakeholder Perspectives' (2023) 21 BMC Medicine https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-023-02726-9#Tab accessed 13 July 2023.
[189] Sally Ball, 'Treading Lightly on HFSS Trading Compliance' (*Kantar,* 14 March 2023) https://www.kantar.com/uki/inspiration/health/2023-wp-treading-lightly-on-hfss-trading-compliance accessed 4 March 2024.
[190] ibid.
[191] Mark Harvey, 'The Rise of Supermarkets and Asymmetries of Economic Power' in David Burch and Geoffrey Lawrence (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007) 55.
[192] Sustain, 'Children's Food Campaign' https://www.sustainweb.org/childrens-food-campaign/can/ accessed 13 July 2023.

food lines to make profits.[193] This is despite the now defunct Public Health England, running a voluntary scheme to reduce sugar and salt in processed foods.[194] This illustrates how enforcement through appropriate legislation can be successful, when voluntary schemes have not been.

4.0. Supermarkets and human rights law

The discussion above has demonstrated some of the ways in which supermarkets can affect the realisation of the right to food, through pricing, marketing, food composition, and business practices in supply chains. The issues highlighted suggest that current UK law and the CSR policies of supermarkets are often not preventing negative impacts of supermarkets on the right to food. Given the number of people who buy food from supermarkets in the UK, and the size of these companies, they also have the potential to be a powerful ally in the realisation of the right to food. However, the question as to how best to engage with supermarkets to use their knowledge of marketing, food production, supply, and distribution to facilitate realisation of the right to food, rather than hamper it, has not been addressed in academic literature. The extent of government obligations in relation to the right to food and other socioeconomic rights in relation to companies operating within their jurisdiction is also not clearly defined in international human rights law.

To address these issues, this section will begin by describing the current approaches to human rights law and business. General Comments of the CESCR use the familiar tripartite typology of respect, protect, and fulfil.[195] They focus on the obligation to protect from the harm of corporations in relation to human rights, with later General Comments discussing limited obligations

[193] Sonia Pombo, 'Four of Five Food Giants are Over-Reliant on Unhealthy Lines. Now is the Time for Change' *The Grocer* (8 March 2023) https://www.thegrocer.co.uk/health/four-of-five-food-giants-are-over-reliant-on-unhealthy-lines-now-is-the-time-for-change/677059.article accessed 13 July 2023; Dimbleby (n 66) 13.
[194] Tory Corbin, 'Voluntary Reformulation Not Working, Say Health Experts in Response to Govt Sugar Reduction Programme' *Talking Retail* (2 December 2022) https://www.talkingretail.com/news/industry-news/voluntary-reformulation-not-working-say-health-experts-in-response-to-govt-sugar-reduction-programme-02-12-2022/ accessed 13 July 2023.
[195] See Chapter 2, Section 2.2.1.

to fulfil in relation to business impacts on human rights.[196] At the same time, the UN developed the Guiding Principles for Businesses and Human Rights (UNGP) which include obligations for corporations as well as states in relation to human rights, although this is soft law and does not create legal obligations.[197] Although businesses have moral obligations not to violate the right to food, these obligations cannot be said to tally with their legal obligations in this context, at least based on international human rights law as it stands. For this reason, this section focuses on the obligations of the UK Government to influence the behaviour of supermarkets and, if necessary, use law to prevent harmful corporate behaviours.

This discussion will also demonstrate that current human rights law does not provide sufficient guidance for governments as to how to fulfil these obligations in relation to businesses and the right to food. To fill this normative gap, this section argues for an approach relying on two parallel sliding scales (see Figure 1). The first orders obligations in terms of where they lie in relation to the three levels of obligation proposed in this thesis. For example, the right to be free from hunger is a fundamental right to be realised with urgency. Next are obligations within the core of the right to food, which are to be progressively realised with priority, depending on the needs of the state, in this case the UK. Finally, sustainable agricultural policy, although important, is to be progressively realised on an ongoing and long-term basis, so would be at the opposite end of the scale. However, the scale also aims to consider the specific needs of that particular state, so for example, in the UK, obesity is a

[196] See for example General Comment 24 and GC 12 (n7) which both focus on protect and GC 15 which indicates obligation under fulfil. (UN Committee on Economic, Social and Cultural Rights, General Comment No.24: State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (10 August 2017) UN Doc E/C.12/GC/24 (GC 24); UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, (20 January 2003) UN Doc E/C.12/2022/11).

[197] The UNGPs and drafts of the UN treaty on businesses include obligations for corporations to respect human rights see: UNHRC, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, respect and remedy framework'' (21 March 2011) A/HRC/17/31; Business and Human Rights Resource Centre, 'Binding Treaty' https://www.business-humanrights.org/en/big-issues/binding-treaty/ accessed 25 April 2024. However, the treaty is a draft and the UNGPs are soft law. Businesses have opposed legal liability for human rights abuses despite excepting some non-legal responsibility for human rights see: Peter Muchlinski, 'The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights' (2021) 6 Business and Human Rights Journal 212, 225.

serious and increasing issue, and so although obligations to tackle obesity, as discussed in Chapter 3, section 5, would straddle the core of the right to food and obligations to be slowly progressively realised, the UK should prioritise measures to tackle obesity. This would place obligations in relation to obesity to the left of the scale in Figures 1 and 2.

The other parallel sliding scale guides the level of intervention by Government that is required. At one end, under the fundamental right to be free from hunger and core obligations are legal interventions, including legislation. This scale then moves through policy guidance, with law that requires mandatory reporting, rather than legally enforced compliance, policy guidance and then encouragement of corporate social responsibility approaches. Finally, the Government may consider supermarkets are not the best way to address a particular aspect and so not intervene in the supermarket industry, instead choosing policy or law aimed at other individuals or companies in the food system. This second sliding scale is not intended to be absolute, but it should act as a starting point, when deciding what measures to use in relation to the right to food and regulating supermarkets.

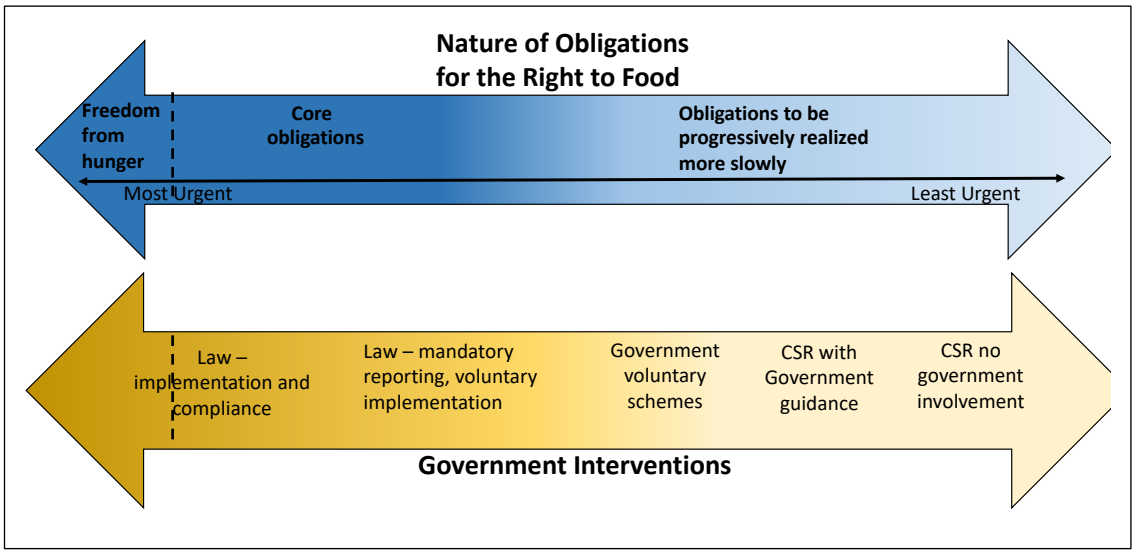


Figure 1: Obligations for governments in relation to supermarkets and the right to food.

4.1 Businesses and human rights law

At the outset, it must be stated that there is no hard law concerning business and human rights in international human rights law. The General Comments of the CESCR are not legally binding, although they are a valuable authoritative source to aid with interpretation of the ICESCR.[198] Similarly, the soft law UNGP and the treaty currently being developed in relation to businesses and human rights do not create legally binding norms yet.[199] As such, there is guidance as to how states should deal with businesses in relation to realising human rights, but no definitive legal norms in relation to businesses that can be applied to supermarkets and their impact on the right to food. This discussion begins by considering the development of the UNGP and the latest draft of the binding treaty on businesses and human rights. It then considers the respect, protect, and fulfil typology in the context of business and human rights, as a source of more specific obligations for states in relation to businesses and the right to food.

4.1.1. The UNGPs and the draft treaty on business and human rights

The development of the idea that businesses have some responsibility for violations of human rights began in the 1970s. This progress was halted by a more neoliberal agenda that aimed for limited business regulation, especially in the UK and USA.[200] By the late 1990s, following cases of gross violations of human rights by TNCs,[201] there was a renewed interest in corporations being

[198] As indicated by Khaliq and Churchill, nothing in the ICESCR indicates the GCs are legally binding, however they do have legal significant as interpretations of the ICESCR, but these interpretations are not considered as authoritative as interpretation by an international court see: Urfan Khaliq and Robin Churchill, 'The Protections of Economic and Social Rights a Particular Challenge' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies. Law and Legitimacy* (CUP 2015) 205; see also Helen Keller and Leena Grover 'General Comments of the Human Rights Committee and their legitimacy' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies. Law and Legitimacy* (CUP, 2015).
[199] Barnali Choudhury, 'Balancing Soft and Hard Law for Business and Human Rights' (2018) 67 ICLQ 961.
[200] Muchlinski (n 197) 213.
[201] See for example: Human Rights Watch, 'The Price of Oil. Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities' (January 1999) https://www.hrw.org/reports/1999/nigeria/ accessed 14 April 2024.

more aware of their human rights obligations.[202] On a voluntary basis companies began to avoid investment in the apartheid regime in South Africa, and, following Shell's involvement in human rights abuses in the Niger Delta, began a new approach to CSR strategies and accepted some responsibility for human rights protection.[203]

This voluntary corporate approach was expanded by the development of the UNGP in the 2000s by John Ruggie. The UNGP are based on a framework of 'protect, respect and remedy.'[204] They aim to address situations where globalisation has caused a governance gap that allows businesses to carry out harmful actions without states and societies being able to limit these harms.[205] The proposed framework consists of, 'the state duty to protect against human rights abuses by third parties including businesses; the corporate responsibility to respect human rights; and the need for more effective access to remedies.'[206] This approach has been described as 'institutionalised voluntarism,' requiring more efforts to limit human right abuses of businesses, possibly reinforced with domestic law, but without international legal liability for human rights violations.[207]

The responsibilities of businesses are based on due diligence, meaning they take necessary steps to be aware of possible human rights impacts, and then address or prevent them.[208] This process would require appropriate policies, impact assessments, integration of human rights into their corporate social responsibility, and monitoring performance of these actions.[209] Such due diligence reporting is being accepted by corporations;[210] however, it has

---

[202] Muchlinski (n 197) 213.
[203] See Human Rights Watch (n 201) and Draft United Nations Code of Conduct [14] that specifically considers 'Non-collaboration by transnational corporations with racist minority regimes in southern Africa. Draft United Nations Code of Conduct on Transnational Corporations (1983) https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2891/download accessed 14 April 2024.
[204] UNHRC, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) UN Doc A/HRC/8/5.
[205] ibid.
[206] ibid [9].
[207] Muchlinski (n 197) 219.
[208] See: OHCHR, 'Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy Framework"' (2011) https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf accessed 14 April 2024.
[209] UNHRC (n 204) [60-64].
[210] Muchlinski (n 197) 225.

been suggested voluntary schemes are insufficient,[211] and it may be necessary to move to mandatory schemes.[212] This would require states to create legislation to make such reporting a legal requirement, rather than a moral obligation for corporations. This has been done in some European Countries.[213]

4.1.2. 'Respect, protect and fulfil' and businesses

As discussed in Section 2.2.1 of Chapter 2, the tripartite typology for human rights obligations has developed since its suggestion by Shue and expansion by Eide.[214] The three obligations can be summarised as: the obligation to respect, requires states to refrain from interfering with socioeconomic rights;[215] the obligation to protect requires states to stop third parties interfering with the enjoyment of socioeconomic rights;[216] and finally, the obligation to fulfil, which is closely linked with progressive realisation,[217] requires measures such as legislation, budgetary provision and policy to ensure the state moves to realisation of socioeconomic rights.[218] This typology has been widely used by the CESCR. However, it has been criticised for the overlapping nature of the obligations.[219] Similar criticisms about the overlapping nature of protect and

---

[211] Surya Deva, 'The UN Guiding Principles on Business and Human Rights and its Predecessors' in Ilias Bantekas and Michael Ashley Stein (eds), *The Cambridge Companion to Business and Human Rights Law* (CUP 2021) 155.
[212] See for example: International Council on Human Rights Policy, 'Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies' (February 2002) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551200 accessed 14 April 2024; Business and Human Rights Resource Centre, 'Mandatory Due Diligence' https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/ accessed 14 April 2024.
[213] For example, France, Denmark and Switzerland require reporting and due diligence in relation to human rights, see: Choudhury (n 199) 982-3.
[214] Henry Shue, *Basic Rights. Subsistence Affluence, and US Foreign Policy. 40th Anniversary Edition* (Princeton University Press 2000); UN Economic and Social Council, 'Report on the Right to Food as a Human Rights submitted by Mr Asbjørn Eide, Special Rapporteur' (7 July 1997) UN Doc E/CN.4/Sub 2/1987/23.
[215] Mathew Craven, *The International Covenant on Economic, Social and Cultural Rights* (OUP 2002) 110.
[216] ibid, 111.
[217] Aiofe Nolan, 'Privitisation and Economic and Social Rights' (2018) 40 *Human Rights Quarterly* 815, 832.
[218] ibid
[219] For example Ida Elisabeth Koch, 'Dichotomies, Trichotomies and Waves of Duties' (2005) 5 Human Rights Law Review 81; Katie Boyle, *Economic and Social Rights Law. Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020) 63.

fulfil have also been made by Birchall and Nolan in relation to Government obligations in relation to businesses.[220]

Nolan makes this argument in the context of using the obligation to protect when socioeconomic rights are provided through privatisation. Privatisation is an active process, and Nolan suggests that, as part of the privatisation process, the obligation to fulfil should include planning to ensure human rights compliance once the service has been privatised. Protect, which usually contains obligations in relation to private actors, is the more appropriate obligation to ensure there is compliance with such processes and schemes when they are already set up.[221] Although the scope of her argument is limited to services that have been actively privatised, the argument can be extended to the right to food and supermarkets and also socioeconomic rights such as health that are in part privatised (production of medicines in the UK) and in part public (in the UK the National Health Service).

Food has largely been supplied by the private market throughout history in the UK. The decision to leave supply of food to private actors with limited regulation, has been shown more recently to be an active choice by the UK Government. This approach was seen during supply chain issues during the Covid-19 pandemic and more recently during a shortage of certain vegetables in the UK.[222] In addition, General Comment 24 of the CESCR indicates that states may need to provide goods and services to ensure realisation of socioeconomic rights. If they choose to not do this, and rely on the market, this cannot absolve their responsibility, just as Nolan argues privatisation does not absolve a state's responsibility to fulfil a right.[223] The way the grocery market has developed over the last century to become the dominant provider of most people's food, cannot absolve a state's responsibilities for the realisation of the right.

---

[220] Nolan (n 217); David Birchall, 'Reconstructing State Obligations to Protect and Fulfil Socio-economic Rights in An Era of Marketisation' 2022 71 ICLQ 227.
[221] Nolan (n 217) 833-838
[222] Tim Lang, *Feeding Britain. Our Food Problems and How to Fix Them* (Pelican 2020) 39; Horton and Partridge (n 168); Tapper (n 170).
[223] Nolan (n 217) 840.

The right to health requires a national health care plan.[224] It also requires states to ensure 'health goods' are economically accessible by being affordable to all whether provided by the public or private sectors. [225] Similarly, the previous chapter discussed the need for framework legislation and a national food plan for the UK. As such, following the approach of General Comment 14, a national food plan would require states to draw up plans to deal with the impact of supermarkets on the right to food. The obligation to fulfil requires monitoring and, if necessary, market intervention to ensure the right is realised.[226] Such intervention would more correctly be considered an obligation to protect. As such, both the obligations to fulfil and protect can be seen as imposing legal obligations for states to act, and potentially through legal intervention in the grocery market to ensure full realisation of the right to food. Because of this, it is questionable whether the distinction between fulfil and protect serves a useful purpose when addressing the legal obligations of governments in relation to businesses.

Birchall demonstrates an additional concern with the use of the protect, respect, and fulfil typology in relation to business and human rights.[227] General Comment 24 conflates the obligations of protect and fulfil, and his discussion highlights one of the criticisms of the typology, that the components of the obligations often overlap, and so blur the nature of states obligations.[228] For example, in discussing the right to housing, General Comment 24 indicates states should exercise rent control as part of the obligation to protect.[229] However, as Birchall argues, this step would require legislation which is more consistent with obligations to fulfil the right. The right would also have to be protected through enforcement in relation to rent control. There is also the wider issue of how to address business practices, that cannot be said to

---

[224] See Section 4.2 of Chapter 5, and UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, (11 August 2000) UN Doc E/C.12/2000/4 (GC 14) [43].
[225] GC 14 (n 224) [12b].
[226] Birchall (n 220) 234.
[227] ibid 233.
[228] Koch (n 219); Eibe Riedel, Gilles Giacca and Christophe Golay, 'The Development of Economic, Social and Cultural Rights in International Law' in Eibe Riedel, Gilles Giacca and Christophe Golay. (eds), *Economic, Social, and Cultural Rights in International Law. Contemporary Issues and Challenges* (OUP 2014) 20.
[229] GC 24 (n 196) [19].

directly infringe an individual person's rights but make the realisation of the right more unlikely for the entire population. Land hoarding, resulting in increased prices for rent and property generally, is one such practice. One incidence of land hoarding cannot be said to violate a particular person's right to affordable adequate housing, yet it is a problematic practice from the perspective of realisation of the right to adequate housing generally, due to increased prices within the market.[230]

In relation to the right to food, and the marketisation of food as a commodity, there may be some similar difficulties in drawing bright lines between the requirements of the obligations to protect, respect and fulfil. Firstly, as indicated above, CSR has not been successful in addressing all the negative impacts of supermarkets on the right to food. Therefore, more specific policy guidance or even legislation may be required to address these negative impacts on the right to food. However, this would have to sit within broader policy aims and legislation, such as the framework legislation suggested in Chapter 5. As a result, it cannot be seen only as a 'protect' intervention in the market to protect the right to food, it would also be fulfilling that right. In addition, in situations such as marketing of unhealthy foods by supermarkets, this cannot be said to violate the individual right to food; individuals can choose not to purchase such items. However, the use of persuasive tactics to encourage us to do so, overall, makes rising levels of dietary related disease in the UK more likely and so is problematic for the full realisation of the right to food in the UK.

To address this lack of clarity, this chapter proposes the development of specific obligations based on the three levels of obligation for the right to food described in Chapter 2.[231] States have primary responsibility for human rights obligations in relation to business and human rights.[232] Corporations have a duty to respect human rights, but at the moment, it is unlikely this is a legal obligation.[233] Given states may need to adopt legislative and other

---

[230] Birchall (n 220) 237-8.
[231] The levels of obligation are the fundamental right to be free from hunger, the core of the right to food and obligations to be more slowly progressively realised. See Sections 2.2.2, Chapter 2.
[232] Committee on Economic, Social and Cultural Rights, General Comment No.3: *The Nature of State Parties' Obligations (Article 2 para 1),* 14 December 1990, E/1991/23.
[233] UNHRC (n 204) [23].

measures to ensure businesses do not hamper the realisation of human rights,[234] the UK Government has an obligation to at least consider legislative intervention in the UK grocery market given the way it is currently impacting realisation of the right to food. The next two sections discuss when the Government is more likely to be under an obligation to use law to ensure supermarkets do not hamper the realisation of the right to food, and under what circumstances other measures may be more appropriate.

4.2. Obligations for the UK Government in relation to supermarkets

As discussed in Chapter 3, General Comment 12 indicates the right to food contains a fundamental right to be free from hunger. The CESCR also indicates the core of the right to adequate food as:

> 'The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.
>
> The accessibility of such food in ways that are sustainable and do not interfere with the enjoyment of other human rights.'[235]

This requires people to be able to access safe and nutritionally adequate food. There are various approaches to the minimum core of socioeconomic rights and its definition. In addition, specifically in relation to the right to food, as discussed in section 2.2.3 of Chapter 2, this is complicated by a lack of clear definition of the minimum core of the right to food by the Committee for Economic, Social and Cultural Rights. However, the approach of this thesis, is that this is not a fixed core applicable to all states, nor is it fixed for each state. The core is relative. It relates to the requirements of individuals in a particular society to obtain adequate food in a dignified way.[236] For the UK, as

---

[234] GC 24 (n 196) [12].
[235] GC 12 (n 7) [8].
[236] David Bilchitz, *Poverty and Fundamental Rights. The Justification and Enforcement of Socio-Economic Rights* (OUP 2007) 192.

discussed in Chapter 5, a large component of this means having sufficient income to purchase an adequate nutritious diet, without forgoing other necessities. However, this alone does not fulfil all a state's obligations for the right to food.

The UK is likely violating its human rights obligations in relation to the right to food. The rising levels of food bank usage and food insecurity suggest violations of the fundamental right to be free from hunger as well as aspects of the core of the right to food. As earlier chapters have discussed, inadequacy of income is a significant cause of food insecurity in the UK. However, the cost-of-living crisis has highlighted practices of supermarkets that make it more difficult for people to access affordable, nutritionally adequate food. This contributes to both the failure of the fundamental right to be free from hunger and components of the core of the right to food to be realised by some in the UK. As such, the UK Government is obligated to consider making legal interventions to address this. Only compelling justifications that an alternative approach would work would remove the need for legal intervention. The discussion below considers some possible legislative approaches to deal with likely violations of the right to food that could be attributed to the practices of supermarkets.

As discussed above pricing differentials between convenience stores and larger stores is an issue highlighted by a Which? campaign. Supermarkets are massive companies making large profits.[237] Although the larger overheads of such stores can justify higher prices,[238] it is difficult to believe that ensuring price consistency and access to budget foods in all stores of a particular supermarket would make the supermarket business unprofitable. As such and given the defensive response of the supermarkets to the Which? report, legislation requiring all stores to stock at their usual price, a range of healthy staple budget foods should be considered. This could include items such as milk, pasta, eggs, rice, a range of fruit and vegetables, healthier cheaper cuts of meats and healthier tinned goods such as vegetables, fruit, and soup. Such legislation would not require all goods in convenience stores to be equivalently

[237] See: n 74 and n 77 for details of Sainsburys and Tesco's recent profits.
[238] Clay (n 175).

priced; only those that could form the basis of an adequate affordable diet. The decision as to what these specific goods were would be determined considering the local community and its culture as well as the current Government nutritional advice to ensure people can access culturally appropriate adequate nutritious food.

Such legislation may also need to be accompanied by improved measures to make unit pricing clear. This is another issue currently facing consumers, as discussed above, that limits their ability to purchase the cheapest option. There may also need to be law that triggers investigations into dramatic food price rises. This may be needed in part to stop supermarkets increasing prices in all shops to accommodate the price limitations and budget range requirements in local shops, without impacting their profits. Although the CMA does currently have some powers to investigate pricing, as discussed above, its focus is on competition in markets, which may not address all factors necessary in relation to supermarket pricing. Most recently, it has often only intervened in matters of pricing after receiving complaints,[239] suggesting it is not as reactive as may be required in situations of food price rises. In addition, if necessary, certain essentials could be subject to maximum pricing and price controls, to limit the impact of such profiteering on people's ability to realise the fundamental right to be free from hunger and the core of the right to food.

Maximum pricing strategies, often referred to as price controls, are not always popular. At the end of May 2023, the UK Government announced that they were working with supermarkets to organise a voluntary cap on the price of basic foods.[240] A similar scheme has been introduced in France.[241] Countries such as Hungary and Croatia have capped the cost of essential goods,[242] and Greece has taken an alternative approach of capping profit

[239] See, for example: CMA, 'Competition, Choice and Rising Prices' (n113) and CMA, 'Groceries Unit Pricing' (n 116).
[240] Rupert Jones and Peter Walker, 'UK Ministers Discuss Voluntary Price Limits for Basic Foods but Rule Out Imposing Caps' *The Guardian* (28 May 2023) https://www.theguardian.com/business/2023/may/28/uk-voluntary-price-limits-basic-foods-rule-out-caps accessed 4 March 2024.
[241] ibid.
[242] Ian Johnston and Marton Dunai, 'Europe's Politicians Impose Price Caps to Address Soaring Food Costs' *Financial Times* (21 May 2023) https://www.ft.com/content/133ca49d-b25a-47ee-9bfa-d8c2f62a5f3b accessed 4 March 2023.

margins,[243] which would also address the current claims of 'greedflation.' Spain has cut value added tax on food.[244] Despite these steps being taken in several European countries, concerns about price controls have been raised. Companies may attempt to find work arounds that comply with the letter, but not the spirit of any rules or agreements. Without rules about pricing in smaller convenience stores run by supermarkets, the issues discussed above about price differentials between store size will remain.[245] Concerns have also been raised, that without accompanying regulations supermarkets may further reduce the price paid to suppliers, at a time when farmers are already struggling.[246]

Food companies bypassing or only complying with the letter, not the spirit, of price controls was seen in Argentina, where price controls were used between 2007 and 2015. During this time, price controls targeted goods that made up the consumer price inflation calculation, and the regulations governing price controls targeted specific products of specific brands and were labelled to indicate they were part of the scheme.[247] The Government initially made confidential price agreements with major supermarkets, but in 2013, the government made new agreements with retailers, and released details of the products and agreed prices.[248] There were several responses to this reported in the media. Firstly, the issue of 'stockouts', where price controlled goods were produced and supplied in low numbers and so not available to purchase, only leaving more expensive goods for consumers to purchase.[249] Secondly, the introduction of virtually identical, but non-controlled goods, for example a

---

[243] ibid.
[244] ibid.
[245] Jess Clark, 'Not Point in Food Price Measures Without Targeting Small Stores, Which? Warns' *The Guardian* (5 June 2023) https://www.theguardian.com/business/2023/jun/05/no-point-food-price-cuts-small-stores-which-warns-chancellor?utm_term=Autofeed&CMP=twt_gu&utm_medium&utm_source=Twitter#Echobox=1685919731 accessed 4 March 2023.
[246] James Hockaday, 'Rishi Sunak's Supermarket Price Cap Plan 'Won't Make a Jot of Difference, BRC Says' (*Yahoo News*, 28 May 2023) https://uk.news.yahoo.com/rishi-sunaks-supermarket-price-cap-plan-wont-make-a-jot-of-difference-brc-says-131610368.html accessed 4 March 2024.
[247] Diego Aparicio and Alberto Cavallo, 'Targeted Price Controls on Supermarket Products' (National Bureau of Economic Research, Cambridge MA, NBER working paper no 24275, 2018) https://www.nber.org/system/files/working_papers/w24275/w24275.pdf accessed 4 March 2023.
[248] ibid 8.
[249] ibid 17.

chilled desert was price controlled in chocolate and vanilla flavours and so a new chocolate-vanilla flavour was introduced, and could be sold at a higher price.[250]

These practices during the Argentinian price controls based on government agreements with retailers, and the concerns raised about a voluntary scheme in the UK indicate why law may be required, rather than voluntary schemes. Appropriately constructed law would prevent supermarkets bypassing the legislation or passing on all costs to suppliers and farmers. There is also a need, for any legislation that is introduced to be clear about how it is to be enforced, as demonstrated by the HFSS legislation. There are fundamental economic concerns about price controls such as they cause price inflation and so exacerbate the situation.[251] They can also distort the distribution of goods in markets.[252] It is beyond the scope of this thesis to discuss the economics and precise implementation of price controls for food. However, the discussion above demonstrates the importance of food pricing in relation to the core of the right to food, and so a starting point for governments should be to consider market intervention through law, for a limited range of basic products.

In addition to ensuring access to affordable food, legislation may also be necessary to address the situation this chapter began with, the lack of food shops in some areas. The Priority Places study clearly identifies both urban and rural areas where people may struggle to access adequate nutritious food. As part of ensuring the core of the right to food Governments are obligated to intervene in such areas and use law if necessary to promote the development of supermarkets or smaller local shops in such areas. It may be necessary to use financial incentives to encourage businesses to move to 'food deserts.' If

---

[250] ibid 19.

[251] In Venezuela, price controls are suggested to have contributed to extremely high inflation and shortages of basic goods, which became unaffordable. See, for example: Girish Gupta, 'Price Controls and Scarcity Force Venezuelans to Turn to the Black Market for Milk and Toilet Paper' *The Guardian* (16 April 2015) https://www.theguardian.com/global-development-professionals-network/2015/apr/16/venezuela-economy-black-market-milk-and-toilet-paper accessed 4 March 2024.

[252] Price controls not accompanied by rationing can lead to people who can afford to stockpiling lower price goods, and so those on lower incomes would still not be able to access the food they need. Allen B Paul, 'Food Price Controls Reconsidered' (1958) 40 Journal of Farm Economics 30, 33.

necessary, government supported local cooperatives or similar shops may also be used, when businesses are reluctant to open shops in particular areas.

The actions of businesses that contribute to people's hunger or inability to access adequate nutritious food need to be addressed with urgency. The fundamental right to be free from hunger is of immediate realisation and the core of the right to food is to be realised with priority. As such the Government should use law to prevent such violations, unless it is clear that an alternative would have immediate effect to stop harmful practices. However, there are many other aspects of the right to food that are to be progressively realised. The next section will consider other possible approaches that could be used when dealing with parts of the right to food that are of progressive realisation. For these obligations, legislation may not always be the most appropriate way for governments to limit the impact of supermarkets on the realisation of the right to food.

4.3. Progressive realisation of the right to food and the obligations of the UK Government in relation to supermarkets

This section considers the other types of intervention that could be used by governments in relation to the progressive realisation of the right to food. The section begins by considering the use of legislation to address some of the causes of obesity and diet related illnesses, as a policy concern that needs urgent attention. It then moves to consider how voluntary schemes concerning implementation, together with legislation to require mandatory and transparent reporting can be a useful tool for policy makers, using food waste as an example. The chapter finally considers partnerships and guidance in relation to store layout and persuading consumers to make healthy swaps, the least interventionist approach suggested (see Figure 2).

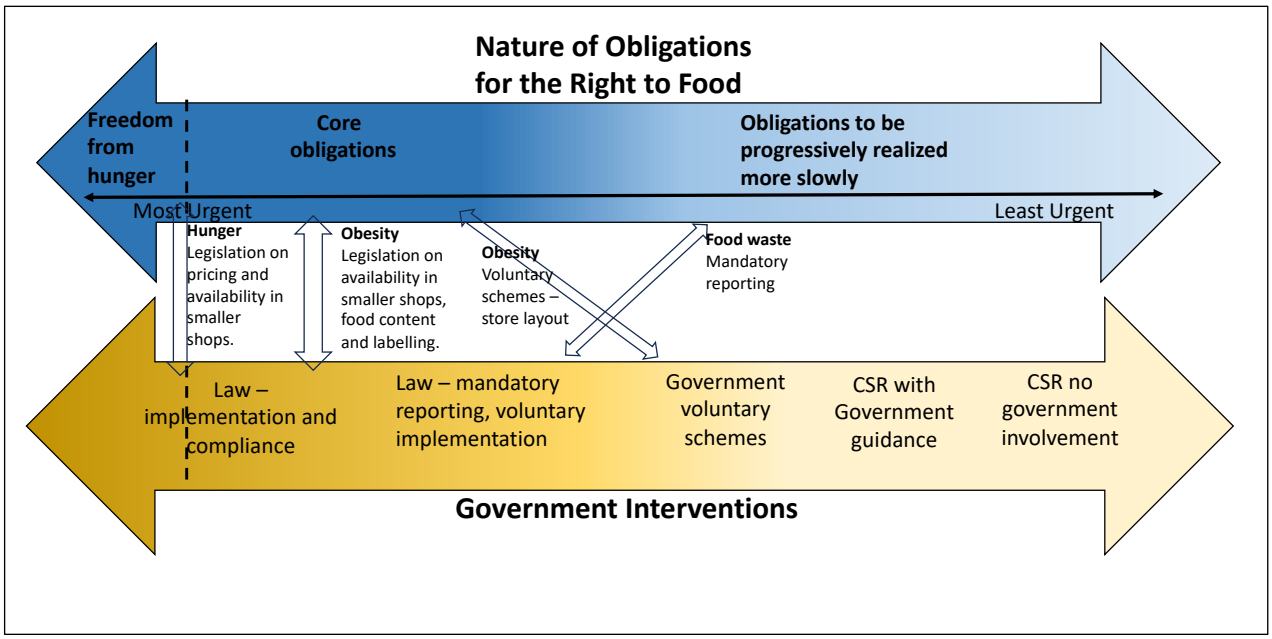


Figure 2: Examples of government approaches to supermarkets and their impacts on the realisation of the right to food.

4.3.1. Legislation and progressive realisation: obesity policy

Obesity is a continuing and increasing public health issue in the UK, which has been discussed in Chapters 3 and 5. It has relevance to the standard of nutrition in the proposed normative framework. The government has already used legalisation to try and address this in the form of the Soft Drinks Industry Levy and the Food (Promotion and Placement) (England) Regulations 2021. The Levy has been considered a success. It is too early to fully assess the impact of the HFSS legislation as it has only been partially implemented and in force for months at the time of writing, but there is early evidence of some success.[253] However, as discussed above, there are concerns about enforcement, and the ways supermarkets may circumvent the regulations. Obesity policy is an example of when governments already use legislation to limit the impact of supermarkets on the realisation of the right to food. This is

[253] See, for example: Ronan Hegarty, 'HFSS Restrictions 'Pushing Shoppers to Healthy Products'' *The Grocer* (29 September 2023) https://www.thegrocer.co.uk/buying-and-supplying/hfss-restrictions-pushing-shoppers-to-healthy-products/683764.article accessed 14 April 2024.

even though many aspects of obesity policy could be subject to progressive realisation. Such interventionism is justified due to the importance and urgency of addressing the UK's obesity crisis.

The voluntary scheme run by Public Health England to reduce sugar, salt and fat in processed food is an example of when, if a voluntary scheme fails,[254] the Government should consider legal intervention to force changes. Another such policy is mandatory warning labelling on HFSS, as have been introduced in other countries, especially in South and Latin America.[255] The UK Government currently has on hold plans to introduce TV and online advertising restrictions on HFSS. [256]

There is evidence that such laws do have positive impacts with projections for all four policies that have been introduced in the UK and scheduled to be introduced (soft drink levy, HFSS placement rules, HFSS promotions and advertising restrictions) could provide £4.5 billion in NHS savings and £5.1 billion in social care savings over the next 25 years.[257] Overall, it has been suggested that these four measures would provide a net benefit to the UK of £76 billion pounds.[258] Although it is not argued here that finances should be the main driver to ensure realisation of a component of a human right, such stark financial impacts do indicate the urgency of the situation. In addition, reducing the amount of chronic disease in the UK would enable more people to live fulfilled and dignified lives. Given the combined urgency of obesity levels in the UK, and the success of legal interventions previously, combined with evidence that planned interventions will also have positive benefits,[259] it is argued here that legal interventions are the most

---

[254] Corbin (n 194).
[255] Niamh Michail, 'Peru: Nutrition Warning Labels Become Mandatory' (*Food Navigator,* 17 June 2019) https://www.foodnavigator-latam.com/Article/2019/06/17/Peru-Nutrition-warning-labels-become-mandatory accessed 4 March 2023.
[256] GOV.UK, 'Introducing Further Advertising Restrictions on TV for Products High in Fat, Salt or Sugar: Consultation on Secondary Legislation' (9 December 2022) https://www.gov.uk/government/consultations/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-secondary-legislation/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-consultation-on-secondary-legislation accessed 14 April 2024.
[257] Niall Daly *et al*, 'Quantifying the Impact of Obesity Prevention Policies in the UK' (The Behavioural Insights Team, 23 November 2022) https://www.bi.team/blogs/quantifying-the-impact-of-obesity-prevention-policies-in-the-uk/ accessed 4 March 2024.
[258] ibid.
[259] ibid

appropriate approach to help ensure progressive realisation of this aspect of the standard of nutrition in the proposed framework for the right to food. Given the seriousness of the obesity 'crisis' in the UK, it should be given priority and legal intervention is warranted.

4.3.2. Voluntary schemes with mandatory reporting

Government obligations to prevent negative impacts of supermarkets on the right to food could also be realised by use of voluntary schemes. However, the food waste scheme and the scheme to improve the health of processed foods, discussed above, were both voluntary and both have been unsuccessful. Lawton has argued such schemes are a way to 'nudge' corporations, rather than using mandatory compliance schemes.[260] Nudge theory is considered a way to encourage people to do what is considered to make their lives simpler and safer.[261] For example, laying food out in a cafeteria in a certain way to encourage people to choose healthy options.[262] Nudge theory has been described as liberal paternalism,[263] and 'liberty-preserving approaches that steer people in particular directions, but also allows them to go their own way.'[264]

However, nudge theory is not without critics, as the use of nudges is not always transparent.[265] Especially as nudges are said by some to work best in the 'dark' when the individual does not know they are being nudged.[266] In addition, there is risk of authoritarian manipulation,[267] and the fact that nudges have the potential to undermine our liberty, as we are not making completely free choices and are being manipulated.[268] These critiques may be valid, and

---

[260] Amy Lawton, Nudging the Powerful: Reflecting on How to Make Organisations Comply with Environmental Regulation' (2020) 32 Journal of Environmental law 25, 27.
[261] Cass R Sunstein, 'Nudging: A Very Short Guide' (2014) 37 Journal of Consumer Policy 583.
[262] Richard H Thaler and Cass R Sunstein, *Nudge* (Penguin 2008) 1.
[263] ibid 5.
[264] Sunstein (n 261) 583.
[265] Robert Baldwin, 'For Regulation to Behavioural Change: Giving Nudge the Third Degree' (2014) 77 Modern Law Review 857, 844.
[266] Luc Bovens, 'The Ethics of Nudge' in Till Grüne-Yanoff and S O Hansson (eds), *Preference Change: Approaches from Philosophy, Economics and Psychology* (Springer 2008).
[267] David Campbell, 'Clever Than Command?' (2017) 26 Social and Legal Studies 111, 120.
[268] ibid.

this thesis is not arguing for nudge theory to play a normative role in the implementation of human rights law. However, it is arguable that in this context, nudges could be used to modify company behaviour. Nudge theory also has relevance for supermarkets, as the ways supermarkets influence consumer choice in store, discussed in Section 3.1 of this chapter, are very similar to nudge theory. As such, the discussion below suggests ways to limit the negative impact of such 'supermarket nudges.'

Nudge theory has largely been discussed in relation to individuals, their choices and behaviour.[269] Lawton, however, has discussed the potential utility of nudge theory in relation to corporations, an underexplored area in literature concerning nudge theory.[270] The energy efficiency scheme she discusses requires mandatory reporting on energy usage.[271] There is no requirement to change energy usage, only report it. However, as companies must report their energy usage, the result is public information that can drive both social pressure and reputational pressure to change.[272] Lawton argues that as companies have both macro-level company policy and also individuals complying with and creating this policy, nudges can operate at two levels. Firstly, companies will make decisions as to how to react to and comply with a scheme, and then individuals in a company may also make decisions that will be impacted by nudges. [273] At the individual and company level, there are drivers to do better than competitors on factors being reported. [274]

Lawton's paper considers environmental law and energy usage, a topic that many are currently aware of; people are starting to make purchasing choices based on companies' environmental credentials.[275] This is important, as the impetus for companies to change is removed if their customers have no interest in the information being provided, even if reporting is mandatory. People are aware of issues such as food waste and the impact food can have on health and so voluntary schemes that require reporting would provide the social and reputational drivers to nudge companies to do better. This sort of

[269] Thaler and Sunstein (n 262) 1.
[270] Lawton (n 260).
[271] The CRC Energy Efficiency Scheme Order 2010, SI 2010/768.
[272] Lawton (n 260) 27.
[273] Lawton (n 260) 35.
[274] ibid 41.
[275] ibid 44.

'nudging' has advantages because, although reporting is mandatory, companies have the freedom to change and improve the figures they report on, and if they choose to do this, they also have the freedom to choose how to make improvements.[276] There is still business freedom, with limited interference and regulation. Such systems are suggested to be preferred by corporations and so more likely to be cooperated with.[277]

Mandatory reporting also addresses concerns regarding what, how and when companies report. Nestle and Unilever have both started to report on the nutritional health of the products they produce, however concerns have been raised about what system of reporting they are using, and that they have chosen a system of reporting that shines the most positive light on their product lines, especially as multinational corporations can choose which national scheme they use to report.[278] A report looking at UK retailers in 2021 created a nutrition and health index to compare the large food retailers, that considered commitment, performance and disclosure in relation to production, placement, and affordability of healthy products and also influencing consumer behaviour.[279] One of the major findings of this report was the patchy performance and lack of transparency in information provision.[280]

It is possible that the implementation of mandatory reporting may have helped the Public Health England scheme achieve reductions in fat, salt and sugar in processed foods. Although mandatory reporting of metrics in relation to voluntary schemes still requires legislation, it is arguably a less interventionist approach than, for instance, adopting legislation requiring supermarkets to reduce the salt content in ready meals. Mandatory reporting gives supermarkets a choice as to whether and how to act. However, if they choose not to, consumers would have the information to inform their choices about which companies they buy from. An issue such as food waste is relevant to the standard of production, which is of progressive realisation, but given the

---

[276] ibid 27.
[277] ibid.
[278] Ian Quinn, 'Nestle and Unilever Risk Causing Confusion with Health Reporting. But it is a Positive First Step' (*The Grocer,* 23 March 2023) https://www.thegrocer.co.uk/hfss/nestle-and-unilever-risk-causing-confusion-with-health-reporting-but-its-a-positive-first-step/677588.article accessed 4 March 2024.
[279] Access to Nutrition Initiative (n 69) 8.
[280] ibid, 10.

failure of entirely voluntary schemes, the Government should consider moving towards more legal interventions, such as mandatory reporting (see Figures 1 and 2).

4.3.3. Voluntary schemes and corporate social responsibility

Voluntary schemes, without mandatory reporting, are also a good way for supermarkets and governments to cooperate without the need for legislation. Supermarkets have a wealth of knowledge about marketing and how to persuade consumers to buy certain goods.[281] They have spent years researching consumer behaviour,[282] and so could be a powerful resource to deal with aspects of the right to food that require people to be encouraged to change their diets. Government guidance can help clarify for supermarkets what the components of the right to food are, and how supermarkets can impact them as part of their CSR policy, even absent Government voluntary schemes. Such guidance would also give consumers information to assess how businesses are performing and make decisions about where they shop.

There are also certain aspects of food supply and sale that are not suited to Government intervention through law. For example, extensive legislation about how supermarkets layout their stores, create the in-store environments, and other marketing techniques would be both difficult to write in a way that could be implemented, let alone enforced. Throughout this thesis, the right to food has been described as more than ensuring people have a sufficient package of nutrients to sustain life. Food has cultural and social importance,[283] and is also a source of pleasure. Although there may be a need to encourage people to choose more healthy options more often, allowing people to enjoy and choose less healthy options from time to time is not a violation of the right to food. A healthy diet achieved by rationing, such as seen in the second World War or a supermarket with no choice, that conjures

[281] Patel (n 52) 230.
[282] ibid.
[283] See the definition of the core of the right to food above and the FAO definition of food security in Section 4.1 Chapter 2 at (n 235).

images of Eastern Europe in the 1970s would also potentially violate the right to food.

Governments could work with supermarkets to develop schemes that may nudge consumers to making more healthy choices. One example of this would be using the ways supermarkets place products and use other marketing techniques to persuade consumers to purchase healthy options. As discussed above, this is an example of nudge theory, as it encourages people to make choices that make their lives 'longer, healthier and better'[284] through steering them in certain directions whilst leaving them the option to choose to go in another direction.[285]

However, as discussed above, especially in relation to human rights, this approach can be seen as problematic as it undermines individual autonomy.[286] Capability theory can address some concerns around paternalism and the right to food, as discussed in Section 2.2.5 of Chapter 2. Nudge theory helps limit harm people do to themselves and the harm corporations can do to the entire population. This is consistent with the approach of capability theory that suggests preventing harm is a justification for limiting liberty.[287] Encouraging people to buy healthier products with nudges in supermarkets but still retaining their choice maintains a balance between harm limitation and choice. In addition, more pragmatically, due to their very nature, unless there is no choice and only a very limited number of products, supermarkets will always nudge behaviour to some extent. Supermarkets are already an environment where we are nudged and so have our free choice and autonomy limited. In the case of supermarkets, it would only be the nature of the nudge that is changing. Governments could develop policy to work with supermarkets to change the nudges to those that result in consumers making more healthy choices.

Providing guidance for CSR is the one of the least interventionist ways governments may influence the impact of supermarkets on the right to food, as they are not creating legislation or government voluntary schemes. The

---

[284] Thaler and Sunstein (n 262) 5.
[285] ibid.
[286] ibid.
[287] Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 Feminist Economics 33, 55.

government is simply providing suggestions and guidance in relation to the right to food. An example here would be suggesting to supermarkets they use their loyalty card schemes to promote seasonal healthy food, rather than more unhealthy choices. CSR has no single definition; but includes the idea that companies have a responsibility for public good, as well as responsibilities to their shareholders.[288] Some food retailers do already have extensive CSR policies, which they promote and use to bolster their reputation. [289] In addition, as discussed above, reputational damage to supermarkets can be extremely financially damaging.[290]

CSR has developed in parallel to the developments in business and human rights described above,[291] and some see the developing business and human rights regimen as critical of CSR approaches.[292] One of the main issues with CSR is that companies primarily exist to promote the interest and make profit for shareholders. Although different economic theories cannot agree why, they do all agree that shareholders are the priority for a company.[293] If companies start to consider other stakeholders, and other goals, such as environmental protection, points of conflict can arise.[294] Spending money on environmental goods, or in the case of supermarkets, the money to alter the composition of processed foods, costs money that is ultimately not going to shareholders.[295]

In the case of improving the nutrition of food in supermarkets and changing the instore marketing and layout to encourage healthy choices, these would not be without significant costs for businesses. Because of the high profit margins on highly processed foods, these form much of the

---

[288] Michael Blowfield and Alan Murphy, *Corporate Social Responsibility* (4th edn, OUP 2019) 7.
[289] See, for example: M&S, 'Plan A: Our Planet' https://corporate.marksandspencer.com/sustainability/plan-a-our-planet accessed 14 April 2024; Waitrose & Partners, 'Sustainability' https://www.waitrose.com/ecom/content/sustainability accessed 14 April 2024.
[290] See (n 162).
[291] Florian Wettstein, 'The History of 'Business and Human Rights' and its Relationship with Corporate Social Responsibility' in Surya Deva and David Burchill (eds), *Research Handbook on Human Rights and Business* (Edward Elgar 2020) 34.
[292] ibid 35.
[293] Patterson (n 68) 65.
[294] Carrie Bradshaw, 'The Environmental Business Case and Unenlightened Shareholder Value' (2013) 33 Legal Studies 141.
[295] ibid 143.

offerings of food companies, and are where large profits are made.[296] Profits would be reduced, if people purchased less of such products, and in addition to the costs of changing product formulations, may result in much reduced profits and as a result, lower dividends for shareholders. However, companies and shareholders are starting to see unhealthy food lines as potential financial risks, due to public perception, and the risk of increasing government regulation.[297] As shareholders become more concerned about such risks, and potentially more activist about healthy food as a public good, supermarkets may make changes. However, as discussed in Section 3, a concern here is that of the major supermarkets and discounters in the UK, only two are publicly owned, which may limit the impact of such shareholder action.

Another criticism of CSR is that it can serve corporate interests and legitimise the status quo, rather than push for changes to industry power structures and damaging practices. [298] However, this chapter has suggested a range of government interventions, and leaving companies to use CSR alone is mainly suggested for aspects of the right to food that are to be progressively realised, or components of the core of the right to food that are not suited to other methods of intervention. In addition, given the complexity of the right to food, it is also expected that governments, as part of their food policy would provide guidance to supermarkets and other food businesses about how to positively impact the realisation of the right to food.

5.0. Conclusion

Chapter 5 discussed the reasons why framework legislation, as a key part of national food policy, is necessary to realise the full scope of the right to food in the UK. This chapter explored the implications of this conclusion for supermarkets and, more broadly, government intervention in this context. Supermarkets dominate the retail, production, and supply chains for groceries in the UK. Their impact on what is available to be purchased by consumers

[296] Share Action, 'Big Food Brands Still Hooked on Junk Food' (24 September 2021) https://shareaction.org/news/big-food-brands-still-hooked-on-junk-food accessed 4 March 2024.
[297] Alistair Gray, 'Nestlé Investors Warn of 'Systemic Risks' From Unhealthy Foods' *Financial Times* (19 April 20230 https://www.ft.com/content/0d5c7c7f-821c-4e63-8a55-46f9edbbc4f0 accessed 4 March 2024.
[298] Bradshaw (n 294) 148.

cannot be overstated. Supermarkets can also affect what consumers choose to buy, through the environment they create in store, as well as through marketing, pricing, and promotions.

Supermarkets can impact the standards in the proposed normative framework for the right to food in many ways and of particular concern is rising prices of food, the unclear unit pricing in some supermarkets and the price and range of goods stocked in convenience stores. It has been demonstrated that company law and competition law are not sufficient to limit these impacts on the realisation of the right to food. Indeed, the CMA and its predecessor have admitted that their ability to intervene in the practices of supermarkets is constrained by their remit. Their role is to consider levels of competition in the market which results in them focusing on price and quality. This fails to engage with the impact of supermarkets on nutrition, food supply chains (other than unfair practices in relation to suppliers) and production of food in the UK, all of which are relevant to the realisation of the right to food in the UK.

The chapter has argued that the UK Government should intervene more in the grocery market to enable better realisation of the right to food. Rather than using the respect, protect and fulfil typology or the concept of business due diligence, it instead suggests that the obligations for states should be determined based on the requirements of the fundamental right to be free from hunger and the core of the right to food. These levels of government obligation are best addressed with government intervention unless alternative interventions can be demonstrated to be rapidly effective. For those components of the right to food that are to be progressively realised, government obligations are to consider a range of options ranging from legislation to voluntary schemes, possibly with mandatory reporting, and cooperation with supermarkets to providing guidance for corporate social responsibility. The next chapter discusses another under considered area of the right to food, food safety and antimicrobial resistance.

Chapter 7

The Right to Food and Antimicrobial Resistance in the UK Post-Brexit: Domestic Obligations and International Trade

1.0. Introduction

In the run up to the Brexit referendum, and during the post-Brexit negotiations, there was limited coverage of the possible implications of Brexit on the UK agri-food supply chain.[1] Yet there was concern about agri-food practices in the USA, such as the use of hormones in milk and beef production and the possible importation of these products. The UK would be leaving the European Union (EU), where such milk and beef is heavily regulated and largely banned.[2] Any future trade deals with the USA would have to negotiate the issue of whether the UK would now import food products currently banned in the EU.

Alongside concerns about beef produced with growth hormones, the possibility of importation of chlorine-washed chicken from the USA grabbed the imagination of the public and media.[3] The practice of washing chicken carcasses, other meat, and even salad leaves in solutions to kill bacteria is widespread in the USA.[4] The practice of washing chicken carcasses in anything other than potable water is banned in the EU, and at the time of writing, in the UK.[5] Post Brexit, the Food Standards Agency (for England,

[1] Erik Millstone, Tim Lang, and Terry Marsden, 'Food, Brexit, and Chlorinated Chicken: A Microcosm of Wider Food Problems' (2019) 90 Political Quarterly 645.
[2] ibid; Council Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin [2004] OJ L139, art 3; Council Directive (EC) 96/22 concerning the prohibition on the use in stock farming of certain substances having a hormonal or thyrostatic action and of beta-agonists [1996] OJ L12; Council Decision (EC) 1999/879 concerning the placing on the market and administration of bovine somatotrophin (BST) and repealing Decision 90/218/EEC.
[3] Millstone *et al* (n 1) Emily Lydgate and Chloe Anthony, 'Brexit, Food Law and the UK's Search for a Post-EU Identity' (2022) 85 Modern Law Review 1168, 1169.
[4] Millstone *et al* (n 1) 648.
[5] Council Regulation (EC) 853/2004 (n 2) art 3; Millstone *et al* (n 1) 648.

Wales and Northern Ireland) (FSA) and Food Standards Scotland (FSS) are now responsible for deciding if such chicken is safe.[6]

Food safety is described as a component of the right to food and food security. The core of the right to food includes access to adequate food and that food 'should be free from adverse substances.'[7] In addition the Food and Agricultural Organization of the UN (FAO) definition of food security requires access to 'safe and nutritious food.'[8] If people do not have access to *any* safe food, this would be a violation of the fundamental right to be free from hunger as they would be unable to access food to prevent hunger. In relation to the UK where a range of food products are available, this is a component of the core of the right to food and so is to be progressively realised with priority. People should not run the risk of unknowingly purchasing unsafe food, but we do not face a situation where the only food staples that can be accessed are, for example, contaminated with mycotoxins.

Some food products, such as chicken are inherently risky if not stored, handled, and cooked appropriately. This risk can be minimised through consumer education, limiting contamination during processing and safe storage in supply chains.[9] However, if the UK Government was to knowingly allow the sale of unsafe or dangerous food, it would potentially be violating its obligations in relation to the right to food. This chapter will consider the obligations the core of the right to food creates for the UK government to ensure access to food 'free from adverse substances.'[10] This then raises the question as to whether products freely sold in the USA, that are banned in the UK and EU are unsafe, and how this relates to state obligations for the right to food.

---

[6] The Food Standards Agency protects 'public health and consumers wider interests in relation to food' in three of the devolved nations: England, Wales, and Northern Ireland. See: https://www.food.gov.uk/about-us/who-we-are. Food Standards Scotland performs this role in Scotland. See: https://www.foodstandards.gov.scotd.

[7] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)* (12 May 1999) UN Doc E/C.12/1995/5 (GC 12), [10].

[8] World Summit on Food Security, 'Declaration of the World Food Summit on Food Security' (November 2009) Doc WSFS 2009/2.

[9] For example, see: FAO, 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security' (FAO, 2005) https://www.fao.org/publications/card/en/c/cceef08f-0627-5ec9-a8e2-63d7c0b608c2/ accessed 13th October 2023, Guideline 9 concerning food safety and consumer protection.

[10] GC 12 (n 7) [8].

This chapter considers these questions by focusing on chlorinated chicken and the related global health threat of antimicrobial resistance (AMR).[11] As will be seen the spread and creation of AMR through chlorinated chicken is a concern. Microbes can rapidly cross state borders and spread throughout the globe making AMR a threat that needs coordinated international action.[12] Like climate change it is a global crisis that can affect food production, but can also be worsened or improved by the way we produce and process food and how we use antimicrobials in agriculture.[13] This chapter will begin by briefly explaining how AMR develops and spreads, and then how it impacts the proposed normative framework for the right to food. The chapter then suggests that the UK's obligations in relation to food safety can be divided into two broad areas: the safety of food produced in the UK and the safety of food imported into the UK. Each of these will be considered in turn, arguing that before Brexit, the UK was in a strong position regarding both areas, but following Brexit, there are concerns about the direction the UK is taking in relation to AMR, and food safety more widely. The chapter will consider post-Brexit divergence from the EU in the UK's approach to veterinary antimicrobial usage and disease control. It then considers issues relating to delayed introduction of border inspections, and the recent Australia Free Trade Agreement as a missed opportunity to embed steps to tackle AMR in a trade agreement. Finally, the chapter considers the position of the UK, now trading under WTO rules, and the current ban on importing chlorinated chicken.

2.0. Antimicrobial resistance and the right to food

The idea of the sale of chlorinated chicken in the UK post-Brexit touched something in the public consciousness about how the food we consume should be produced. In addition, although not discussed widely in the media, the spread of AMR is a concern in relation to chlorine washed chicken. The

[11] Erik Baekkeskov, Louise Munkholm and Olivier Rubin, 'Steering Against Superbugs. Research Agenda and Four Perspectives for Global Governance' in Olivier Rubin, Erik Baekkeskov and Louise Munkholm (eds), *Steering Against Superbugs* (OUP 2023) 5.
[12] Hoffman *et al*, 'An International Legal Framework to Address Antimicrobial Resistance' (2015) 93 Bulletin of the WHO 66.
[13] ibid.

chlorine wash itself is very unlikely to be a health risk.[14] Killing bacteria on poultry meat potentially makes the chicken safer for consumers by reducing contamination with pathogenic bacteria such as *Salmonella* and *Escherichia Coli.* Chlorination allows faster processing of carcasses, as less care needs to be taken over faecal contamination of carcasses during slaughter and processing. It can also compensate for poorer welfare standards that result in higher levels of bacterial disease in birds before slaughter. The chlorine wash removes pathogenic bacteria that persist in diseased birds after slaughter.[15] This allows USA production costs to be around 20% lower than EU costs,[16] resulting in cheaper food for consumers. However, surveys of the UK public indicate that the possible sale of chlorinated chicken in the UK is not popular, with a preference for retaining EU food safety standards.[17]

Although it potentially results in cheaper chicken with low levels of bacterial contamination, chlorination does not always result in safer meat. Research indicates that chlorination can subdue bacteria. These subdued bacteria are not cultured by routine methods, suggesting the meat is safe.[18] However, sufficient viable bacteria may remain to cause disease, especially in those that are immunocompromised, children, or the elderly.[19] Another very concerning component of bacterial contamination of meat is the possibility that those viable bacteria may be carrying genetic material encoding resistance to antibiotics. Not only would these bacteria be more resistant to treatment if they

---

[14] Kelvin Balcombe, Dylan Bradley and Iain Fraser, 'Consumer Preference for Chlorine-Washed Chicken, Attitudes to Brexit and Implications for Future Trade Agreements' (2022) 111 Food Policy 1; See also FAO, 'Guidelines for the control of *Campylobacter* and *Salmonella* in Chicken Meat' (CAC/GL 78-2011) and WHO and FAO, '*Salmonella and Campylobacter* in chicken meat. Meeting Report' (2009) https://iris.who.int/bitstream/handle/10665/44211/9789241547901_eng.pdf?sequence=1, which both discuss chlorine washing of chicken. There is no indication the process of chlorine washing itself is not safe.

[15] ibid.

[16] Balcombe *et al* (n 14).

[17] Shefalee Loth, 'Which? Disagrees that Fears Around Chlorinated Chicken are 'Unfounded' (*Which?,* 12 May 2019) https://www.which.co.uk/news/article/which-disagrees-that-fears-around-chlorinated-chicken-are-unfounded-a52dn5G9h0TP accessed 22 November 2023.

[18] Highmore *et al*, 'Viable-but-Nonculturable *Listeria Monocytogenes* and *Salmonella enterica* Serovar Thompson Induced by Chlorine Stress Remains Infectious' (2018) 9 mBio:e00540-18. https://doi.org/10.1128/mBio.00540-18.

[19] Ibid; Johanna Hanefeld *et al*, "Trade is Central to Achieving the Sustainable Development Goals: A Case Study of Antimicrobial Resistance' (2017) BMJ 358:j3505.

cause illness, but they can also cause spread of AMR amongst other bacterial populations.[20]

By 2050, it is predicted that 10 million people a year will be killed by infections resistant to antimicrobials.[21] For comparison, in 2019 8.9 million people were killed by ischaemic heart disease, currently the most common cause of death, that results in 16% of deaths globally.[22] The predicted impact of AMR is contested, however in 2019 around 1.27 million people were killed by antimicrobial resistant infections, making it a bigger global health threat than malaria and HIV.[23] Research also suggests that the highest burden of resistant infections is in Sub-Saharan Africa due to pneumonia and tuberculosis.[24] At its simplest, AMR is caused by overuse of antimicrobials. However, the global use and availability of antimicrobials is not equitable and in developing and least-developed countries around a million children die of sepsis a year, in part due to lack of access to antibiotics.[25] Tackling AMR simply by reducing the use of antimicrobials in people across the globe would likely increase inequitable access to these lifesaving medicines.[26] Reducing the use of antimicrobials in agriculture is also an important way to tackle AMR. Importantly, it could provide a route to tackle AMR that would not amplify inequitable access to antibiotics in humans. As such, AMR should be a central consideration in conversations regarding sustainable agriculture and food production. The following sub-sections begin to consider how the development of AMR can be increased by certain food production techniques and how it is a threat to global food production. This first requires a very brief introduction as to how AMR develops and spreads for context, before discussing human rights obligations and AMR and the right to food.

---

[20] Vincent Perreten, 'Resistance in the Food Chain and in Bacteria from Animals: Relevance to Human Infections' in David White, Michael Alekshun and Patrick McDermott (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005) 447.
[21] Antimicrobial Resistance Collaborators, 'Global Burden of Bacterial Antimicrobial Resistance in 2019: a Systematic Analysis' (2019) 399 Lancet 629.
[22] World Health Organisation, 'The Top 10 Causes of Death' (9 December 2020) https://www.who.int/news-room/fact-sheets/detail/the-top-10-causes-of-death accessed 26 February 2024.
[23] Antimicrobial Resistance Collaborators (n 21) 630.
[24] Antimicrobial Resistance Collaborators (n 21) 629.
[25] Hanefeld (n 19).
[26] Hoffman *et al* (n 12) 66.

2.1. Development and spread of AMR

Methicillin-Resistant *Staphylococcus aureus* (MRSA) and hospital acquired resistant *Clostridial Difficile* infections are well-known medical concerns. People are often tested for these bacteria before they attend hospitals for surgery. In addition to the risk from these pathogenic bacteria, resistance to antibiotics is also widespread in commensal bacteria. These are bacteria that live in humans, animals, and the environment, but do not cause disease. Antibiotics are used widely in agriculture and bacteria can easily move between the environment, food producing and other domestic animals and humans, and so the focus of this chapter is on bacteria and antibiotics, rather than other microbial diseases.

Bacteria are single cell organisms. They carry genetic material that codes for cellular proteins both in their nucleus and on plasmids, rings of genetic material that can be passed between bacteria.[27] There are many different classes of antibiotics, which have different modes of action, and some types of bacteria are more effectively killed by different antibiotics. When bacteria are exposed to antibiotics, they may be killed. However, due to naturally occurring genetic mutations, or the previous transfer of plasmids carrying resistance, some bacteria will survive, and these will then reproduce, increasing the number of resistant bacteria in the person or animal being treated.[28] There are numerous ways that bacteria can be resistant to antibiotics. For example, they can develop pumps that remove the antibiotic molecule from the cell, they may develop mechanisms to destroy the antibiotic molecule, or they can develop mechanisms to stop the molecule binding to its target site.[29] If an organism is resistant to a single antibiotic or a single class of antibiotic this usually means a different class could be used to treat the infection. The most concerning aspect of antibiotic resistance is the ‘collecting’

[27] FAO, *Foodborne Antimicrobial Resistance. Compendium of Standards* (FAO 2023) https://www.fao.org/documents/card/en/c/cb8554en accessed 27 September 2023, 8.
[28] Baekkeskov et al (n 11), 8.
[29] Frederic Sapunaric, Mila Aldema-Ramos and Laura McMurry, ‘Tetracycline Resistance: Efflux, Mutation and other Mechanism’ in David White, Michael Alekshun and Patrick McDermott (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005) 3.

of genes by bacteria for resistance to different antibiotics on plasmids.[30] Organisms such as MRSA, and multiple drug resistant *Salmonella* species, and *E. Coli* then become challenging to treat and can result in death, from an infection that would otherwise be treatable.[31]

Antibiotic resistance can develop whenever bacteria are exposed to antibiotics in the environment, in animals, or in people.[32] This includes commensal bacteria which can be 'reservoirs' of antibiotic resistance, and pass resistance genes to pathogenic bacteria.[33] Whenever animals or people are treated with antibiotics, some antibiotics are excreted, and if waste is not properly processed, this risks environmental contamination. Prophylactic use in animal agriculture to prevent bacterial infections and use as growth promoters also results in excretion into the environment.[34] Antibiotics and antimicrobials are also used in plant agriculture, for example fruit trees in the USA are sprayed with antibiotics, which can then run off into the environment.[35] The environment can be contaminated by antibiotics due to production techniques that allow run off into waterways.[36] These many uses and sources of contamination can all result in increasing levels of antibiotic resistance in both pathogenic and commensal bacteria and create a cycle of amplification of antibiotic resistance between people, animals and the environment.[37] Because of the way AMR develops, governance of AMR requires reduced use of antimicrobials in people and agriculture, reduced

---

[30] Anthony M George, 'Multiple Antibiotic Resistance' in David White, Michael Alekshun and Patrick McDermott (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005) 151-2.
[31] Reidar Staupe-Delgado, Alina Engström and Sebastián Andres Frugome Cádiz 'Conceptualizing AMR as a Creeping Disaster in Terms of Pace and Space' in Olivier Rubin, Erik Baekkeskov and Louise Munkholm (eds), *Steering Against Superbugs* (OUP 2023) 49-50.
[32] Baekkeskov *et al* (n 11) 1.
[33] Samantha L Lammie and James M Hughes, 'Antimicrobial Resistance, Food Safety and One Health: The Need for Convergence' (2016) 7 Annual Review of Food Science and Technology 287.
[34] Sarah Coe, Bukky Balogun and Nikki Sutherland 'The Use of Antibiotics on Healthy Farm Animals and Antimicrobial Resistance' (House of Commons Library, Debate Pack CP 2023/012, 13 January 2023) https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0012/ accessed 27 September 2023.
[35] Anne K Vidaver, 'Antimicrobial Use in Plant Agriculture' in David White, Michael Alekshun and Patrick McDermott (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005) 465.
[36] FAO, OIE and WHO, 'Global Framework for Development and Stewardship to Combat Antimicrobial Resistance – Draft' (2018) https://www.who.int/groups/framework-development-stewardship-AMR accessed 27 September 2023, 26.
[37] Baekkeskov *et al* (n 11), 1.

environmental contamination and the development of new drugs, that can be reserved to treat resistant infections in people.[38]

2.2. Food safety, AMR and human rights law

It is clear from the discussion above that AMR is a relevant concern for human health. AMR engages with issues of access to and equitable distribution of antibiotics and other antimicrobials. It also has implications for food safety and food production. Given the broad nature of the causes and impacts of AMR, both the right to health and right to food are sources of potential human rights obligations in relation to AMR.

Both the right to food and the right to health require access to safe, nutritious food.[39] Fredman has suggested that the right to health can be understood as a broad framework within which policy initiatives should be structured.[40] Similarly, the proposed normative framework in this thesis is also a broad framework, aiming to guide legal and policy initiatives to enable realisation of the right to food. Recall that central to the proposed frameworks are six standards: freedom from hunger, adequate food, nutrition, production, equitable distribution, and international cooperation.[41] Any policy steps to address AMR would be a consideration in frameworks for both the right to health and right to food and would need to be coordinated to ensure a joined-up and effective approach.

As such, the discussion below will first consider possible obligations in relation to AMR derived from the right to health as well as the right to food, despite the focus of this thesis being the right to food. AMR is not a frequent consideration in the General Comments of the Committee on Economic Social and Cultural rights (CESCR) or reports of the Special Rapporteurs for the right to food or the right to health. It is presumed this is due to its relatively recent emergence as a global threat. For these reasons the discussion below will

---

[38] FAO, OIE and WHO (n 36).
[39] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2019, (GC 14), [3], [4], [11].
[40] Sandra Fredman, *Comparative Human Rights Law* (OUP, 2018) 243.
[41] See Chapter 3.

therefore consider related principles and norms. The discussion will then move to consider more specifically how AMR interacts with the normative framework proposed in this thesis.

General Comment 14 and the Special Rapporteurs for the right to health have acknowledged the importance of access to an adequate supply of safe food. [42] This is alongside acknowledging the importance of food supplies and nutrition as an essential health intervention.[43] In addition to the importance of safe food in relation to the right to health, the Special Rapporteurs and General Comment 14 discuss the need for good sanitation,[44] and effective vaccination programmes.[45] Such interventions are also identified as necessary to reduce disease burdens and reduce the spread of pathogenic bacteria. This reduces the need for antibiotics, and reduced antibiotic use limits the development of AMR.[46]

General Comment 14 also recognises the importance of not contaminating water and soil generally,[47] and as indicated above, antibiotic run off leading to soil and water contamination is a specific concern in relation to AMR. Soil contamination and water contamination is also clearly a concern in relation to the production of sufficient, sustainable, and safe food. Equitable access to medicines, including antivirals and antibiotics and how these drugs are prescribed and used are also important concerns in relation to the right to health.[48] They are also key concerns in relation to policies to reduce AMR.[49] As discussed above, the highest burden of resistant infections is due to pneumonia and tuberculosis in Sub-Saharan Africa,[50] yet countries in the

[42] GC 14 (n 39) [3], [4], [11] and for example also see: UNHRC 'Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover' (12 April 2011) UN Doc A/HRC/1725 [19].
[43] UNHRC 'Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt' (31 January 2008) UN Doc A/HRC/7/11 [23].
[44] ibid [52].
[45] GC 14 (n 39) [36]
[46] Jim O'Neill, 'Tackling Drug-Resistant Infections Globally: Final Reports and Recommendations' (Review on Antimicrobial Resistance, May 2016) https://amr-review.org/sites/default/files/160525_Final%20paper_with%20cover.pdf accessed 11 October 2023.
[47] GC 14 (n 39) [34-36].
[48] UNHRC 'Report by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover, on Access to Medicines' (1 May 2013) UN Doc A/HRC/23/42 [3], [40], [57].
[49] Lammie and Hughes (n 33) 287.
[50] Antimicrobial Resistance Collaborators (n 21) 629.

Global South often have the least access to antimicrobials.[51] Simply reducing antibiotic use in people may limit the development of AMR, but is also likely to exacerbate the inequity of antibiotic availability around the world.[52] As such, issues around access to medicines are also a key consideration when creating policies to address AMR.

There is also no direct mention of AMR in General Comment 12 or the reports of the Special Rapporteurs on the right to food. However, these documents do comment on issues of food safety, creating principles and norms that can be extrapolated to propose norms to tackle AMR. As stated in the introduction to this chapter, General Comment 12 indicates that the core of the right to food includes the requirement that food is free from adverse substances.[53] The CESCR indicates that this 'sets requirements for food safety and a range of protective measures.'[54] The protective measures should prevent contamination of the food due to deliberate or accidental processes during the various stages of the food supply chain.[55] In addition to suggesting norms that relate specifically to food safety, General Comment 12 also contains more general norms that require measures to deal with both private and public entities, including businesses, indicating that any food safety strategy should address all stages of production, processing and distribution as well as consumption of food.[56] It is clear from General Comment 12 that food safety should be a key component of any food policy framework and would be an important consideration in the framework legislation suggested in Chapter 5.

The FAO has produced 'Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security.' These guidelines provide extensive guidance to assist states in creating law and policy to facilitate the realisation of the right to food.[57] There are 19 guidelines and Guideline 9 specifically deals with food safety and consumer protection. More precisely, it indicates that states should

[51] Baekkeskov *et al* (n 11) 2.
[52] Hoffman et al (n 12) 66.
[53] GC 12 (n 7) [9].
[54] ibid [10].
[55] ibid [10].
[56] ibid [10] [25] [27].
[57] FAO 'Voluntary Guidelines - Right to Food' (n 9) 2.

have measures in place to ensure that food produced in that state as well as food that is imported into the state is safe.[58] This requirement for measures to be in place for imported food has particular relevance for the UK, as the UK's food security report indicates the importance of imported food to maintain UK food security.[59] The guidelines go on to indicate that states should *inter alia* have comprehensive systems to reduce the risk of foodborne disease by using 'risk analysis and supervisory mechanisms to ensure food safety in the entire food chain including animal feed.'[60] The FAO guidelines also recognise the importance of educating consumers about safe food preparation and storage as well as the importance of consumer protection in terms of misrepresentation in the labelling and marketing of food.[61] There is emphasis on the importance of science based food standards and the international standards set by Codex Alimentarius, as well as setting standards in accordance with the Sanitary and Phytosanitary Measures Agreement (SPS).[62] These World Trade Organization (WTO) rules and Codex will be returned to in section four below.

The Special Rapporteurs for the right to food have not directly addressed AMR in their reports. However, both Ziegler and Elver have addressed issues related to food safety. More specifically, Ziegler has indicated that the obligation to protect the right to food includes the requirement that states adopt food safety regulations.[63] He considers this to be part of the obligation to protect a state's citizens from the actions of third parties by ensuring food produced and sold is safe. This would suggest that adopting and enforcing food safety laws are an important component of a state's obligations for the right to food. Zeigler has also suggested that protecting consumers from unsafe food should be based on the precautionary

---

[58] ibid 19.
[59] Department for the Environment Food and Rural Affairs (DEFRA), 'UK Food Security Report 2021' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077015/United_Kingdom_Food_Security_Report_2021_19may2022.pdf accessed 9 February 2024, 11.
[60] FAO 'Voluntary Guidelines - Right to Food' (n 9) 19.
[61] ibid 20.
[62] ibid 19-20.
[63] UNHRC 'Report Submitted by the Special Rapporteur on the Right to Food, Jean Ziegler (10 January 2003) UN Doc E/CN.4/2003/54 [18].

principle.[64] The precautionary principle has many variants and definitions, but the basic premise is that if the scientific evidence is equivocal, then policy intervention to prevent the possible risk is justified; what Joanne Scott calls a 'better safe than sorry' approach.[65]

Elver has engaged more extensively with the issue of food safety, with a specific focus on the issue of the right to food and pesticide usage.[66] The potential threats of pesticides to food safety and the right to food more generally have similarities to the threats posed by AMR. Pesticides can cause acute poisoning, most often following contamination of drinking water, or toxic levels of exposure in farm workers.[67] In addition, contamination of food by pesticide residue is suggested to cause a range of health conditions in people.[68] Pesticides can accumulate in the environment, causing soil and water pollution, and so negatively impact future food production,[69] but at the same time, they are promoted as necessary to feed the world's growing population.[70]

There are clear analogies between incorrect use of pesticides in agriculture and AMR. Such incorrect usage includes overuse, use outside of the manufacturers or licensing guidelines and incorrect storage.[71] Overuse and incorrect usage is also a concern in relation to antibiotics and AMR.[72] In addition, even when used appropriately in accordance with guidance, pesticides have been associated with risks to human health.[73] The same is true of antibiotic use, as even appropriate therapeutic use can increase AMR. Pesticides are widely used in agriculture, but their long-term use can threaten sustainable production of food.[74] Antibiotics are also necessary to treat

---

[64] UNHRC 'Report Submitted by the Special Rapporteur on the Right to Food, Jean Ziegler (9 February 2004) UN Doc E/CN.4/2004/10 [32].
[65] Joanne Scott, 'Legal Aspects of the Precautionary Principle' (British Academy, November 2008) https://www.thebritishacademy.ac.uk/documents/309/Legal-Aspects-of-the-Precautionary-Principle.pdf accessed 13 October 2023.
[66] UNHRC 'Report Submitted by the Special Rapporteur on the Right to Food. Hilal Elver' (24 January 2017) UN Doc A/HRC/34/48.
[67] ibid [15].
[68] ibid [12].
[69] ibid [32-33].
[70] ibid [2].
[71] ibid [2].
[72] Baekkeskov *et al* (n 11) 8.
[73] UNHRC (Elver) (n 66) [9-14].
[74] ibid [2-3].

disease in food producing animals,[75] but AMR is also a potential threat to longer term sustainable food production.[76] As with the use of pesticides, AMR can also result in unsafe food and environmental contamination.

To address pesticide contamination in food, and the danger pesticides pose to farmworkers, rural communities and the environment, Elver suggests that states work together to create an international binding treaty concerning the use of pesticides.[77] At the same time, individual states need to implement measures such as cohesive policies around pesticide usage,[78] risk-assessment processes,[79] and rigorous and regular analysis of food to determine if safe residue levels are exceeded.[80] Given the similarities between the threat of pesticide usage and the threat of AMR, the following subsection will engage with Elver's proposed measures in relation to pesticides, whilst also considering in more detail the ways AMR interacts with the proposed normative framework in this thesis.

2.3. AMR and the right to food

The six standards proposed in the normative framework developed in this thesis are described in Chapter 2 and listed in Section 2.2 above. It is conceivable that widespread AMR could prevent antimicrobials being effective against animal and plant disease. Increased levels of disease would impact food production levels, possibly to the extent of insufficient food being produced to feed the global population. However, it is anticipated that consideration of AMR in relation to the other standards and implementation of appropriate measures would prevent AMR having such an extreme impact on the right to food. As such, the standard of freedom from hunger is not considered here. Similarly, although nutrition can be affected by production methods and the food that can be produced, it is again less directly related to AMR, and so will also not be discussed further in this subsection or chapter.

---

[75] Coe, Balogun and Sutherland (n 34).
[76] WHO 'Global Action Plan on Antimicrobial Resistance' (WHO, 2015) https://www.who.int/publications/i/item/9789241509763 accessed 28 September 2023, 3.
[77] UNHCR (Elver) (n 66) [106].
[78] ibid [107].
[79] ibid.
[80] ibid.

The remaining four standards will now be considered in turn. The discussion will focus on soft law guidance discussed above, and obligations this suggests for the right to food in relation to AMR.

2.3.1. Adequate food

Food cannot be considered adequate if it is not safe.[81] Food that carries pathogenic bacteria that can cause food poisoning is potentially unsafe and so may also not be adequate. In addition, the risk of serious illness because of bacterial contamination is then increased if the bacteria are resistant to antibiotics used to treat the infection. Food can also carry non-pathogenic bacteria or genetic elements that might add to the overall load of resistant bacteria in a person, and so such food could also be considered unsafe due to it potentially raising overall levels of AMR. The FAO guidelines, discussed above, recommend education about cooking and food storage in relation to food safety.[82] Although for many food products proper cooking kills bacteria, removing the risk, responsibility for food safety cannot only be the responsibility of consumers and those preparing food.

Governments have a legal obligation to take measures to ensure food is safe. The importance of safe food is stated in General Comments 12 and 14. [83] As such, limiting contamination of food by resistant bacteria is an important obligation in relation to the core of the right to food. The FAO guidelines for the right to food and Ziegler suggest food safety regulations are important,[84] and so such regulations and food policy more broadly should address AMR. For example, there have been recent concerns that the Government Buying Standards for Food and Catering guidance do not deal with the issue of AMR.[85] Ensuring food procurement policies are in line with other areas of government policy, such as AMR, requires joined up food policy, as advocated for in Chapter 5. Elver, when discussing a framework for

[81] GC 12 (n 7) [10]; GC 14 (n 39) [11].
[82] FAO, 'Voluntary Guidelines - Right to Food' (n 9) 20.
[83] GC 12 (n 7) [10] and [25]; GC 14 (n 39) [11].
[84] FAO, 'Voluntary Guidelines - Right to Food' (n 9) 19; UNHRC (Ziegler, 2003) (n 63) [18].
[85] Sustain, 'Gov Must Strengthen Public Sector Food Standards so Catering Companies don't Fuel Antibiotic Crisis' (12 October 2023' https://www.sustainweb.org/news/oct23-report-government-buying-standards-food-failing-to-control-antibiotic-use/ accessed 15 April 2024.

pesticides, also emphasises the important of risk assessments and frequent testing, both of which would be important approaches to ensuring food is safe and adequate in relation to AMR.

In addition, Ziegler emphasises the importance of the precautionary principle.[86] As mentioned above, this approach to risk requires erring on the side of caution in the face of scientific uncertainty,[87] and is the approach used by the EU in relation to food safety.[88] However, this is not always the approach used by other countries or international bodies.[89] Continued use of this approach, which may provide the best protection for consumers, is also not guaranteed post-Brexit.[90] The concern that the UK's risk assessments in relation to both food produced in the UK and food imported into the UK will no longer be based on the precautionary principle will be discussed in more detail in Section 4, in relation to food imported into the UK and international law frameworks.

2.3.2. Production

The standard of production can be affected by AMR in many ways. As with pesticides, modern agriculture relies on antimicrobials to enable some intensive farming practices. Firstly, production and intensive farming methods often rely heavily on antimicrobials as growth promoters.[91] Antibiotics are used prophylactically to prevent infections, for example in feedlot cattle whose high grain diet predisposes them to certain infections.[92] Antibiotics are also used to treat bacterial infections, for example pneumonia, the risk of which can be

---

[86] UNHRC (Ziegler, 2004) (n 64) [32].
[87] Nicolas de Sadeleer, *Environmental Principles. From Political Slogans to Legal Rules* (2nd edn, OUP 2020) 135.
[88] European Parliament and Council Regulation (EC) 178/2002 of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [19-21] (EU General Food Law Regulation).
[89] Neal D Fortin, *Advanced Introduction to International Food Law* (Edward Elgar 2023) 88-89.
[90] Lydgate and Anthony, (n 3) 1187-8.
[91] Mark Woolhouse *et al*, 'Antimicrobial Resistance in Humans, Livestock and the Wider Environment' (2015) 370 Philosophical Transactions of the Royal Society B 20140083**,** 2-3.
[92] For example see: Reynold Bergen, 'Antibiotic Use in Canadian Feedlots' (*Beef Cattle Research Council Canada*, 29 October 2018) https://www.beefresearch.ca/blog/antibiotic-use-in-canadian-feedlots/ accessed 28 September 2023.

increased by overcrowded, poor housing.[93] Such antibiotic use in farming is linked to increased levels of AMR in a country. In Denmark, banning of the use of certain antimicrobials in pig farming resulted in lower levels of AMR.[94]

However, antibiotics do potentially have a place in agriculture to treat disease. If microbes that are significant pathogens in domestic animals become resistant to antimicrobials this could be devastating for farmed animal populations.[95] For example, mastitis in dairy cows is a common, and potentially serious condition that reduces milk yield and in severe cases can be fatal.[96] Antibiotics are widely used to treat mastitis when cows are producing milk and also to prevent mastitis in the 'dry period' when cows are not lactating.[97] If these antibiotics are no longer effective, the productive life of many cows would be reduced. Milk would contain high somatic cell counts (effectively pus) making milk undesirable for consumers and in severe cases not fit for human consumption. Longer courses of antibiotics used to treat resistant infections could also result in increased antibiotic residue in milk.[98] In addition to difficulties in treating disease in animals, which would increase the cost of animal food products, tackling AMR is likely to require reduced use of antibiotics in agriculture. This with necessitate increased biosecurity measures on farms, less intensive farming and better housing and ventilation to reduce the risk of disease.[99] These measures would increase the cost of animal products, reduce access and availability of animal products as a source of protein, and have effects on the ability of people to access an adequate nutritious diet.

---

[93] Robert Callan and Franklyn B Garry, 'Biosecurity and Bovine Respiratory Disease' (2002) 18 Veterinary Clinics of North America Food Animal Practice 57.
[94] Prativa Baral *et al* 'Lessons from Ten Countries on Regulating Antimicrobials for Farm Animals (2019) 34 Canadian Journal of Law and Society 521 (Machine translated by Google) 532.
[95] WHO, 'Global Action Plan on AMR' (n 76) 3.
[96] Ronald Erskine, 'Mastitis in Cattle' in MSD Veterinary Manual (*Merck,* October 2022) https://www.msdvetmanual.com/reproductive-system/mastitis-in-large-animals/mastitis-in-cattle accessed 28 September 2023.
[97] ibid.
[98] ibid.
[99] WHO 'World Leaders and Experts Call for Significant Reduction in the Use of Antimicrobial Drugs in Global Food Systems' (WHO, 24 August 2021) https://www.who.int/news/item/24-08-2021-world-leaders-and-experts-call-for-significant-reduction-in-the-use-of-antimicrobial-drugs-in-global-food-systems accessed 28 September 2023.

The use of antibiotics in food production has some commonalities with pesticide usage. There is not the same risk of acute disease due to pesticide poisoning which can occur due to large run offs into waterways or acute high-level exposure of agriculture workers.[100] Although farm workers and their families may risk greater exposure to AMR organisms than the rest of the population,[101] possible death due to acute exposure is much rarer than for pesticides. Similarly, although very important in the cycle of antibiotic resistance, antibiotic run off into water courses does not risk the severe environmental damage that can result from pesticide contamination.[102] However, measures such as reducing pesticide usage and shifting to alternative methods of production that are less dependent on pesticides, both suggested by Elver, are still relevant in relation to regulation of antibiotics and the right to food.

In a similar way to pesticides bioaccumulating in the food chain,[103] AMR can develop through transfer of bacteria from the environment to plants and animals increasing the overall burden of antibiotic resistance.[104] In both cases regulation and policy to reduce the use of pesticides and antibiotics in the production of food as well as animal feedstuffs is required.[105] Environmental contamination with pesticides can have devastating consequences for decades.[106] Although it may not have the immediate and dramatic impact of pesticide contamination, run off of antimicrobials during production or use in agriculture is a major contributor to the development of AMR in some parts of the world.[107] Finally, the move to more sustainable alternatives to reduce use of potentially harmful products in terms of both environmental accumulation

[100] UNHRC (Elver) (n 66) [10] and [15].
[101] Maryn McKenna, *Plucked the Truth About Chicken,* (Little Brown 2017) 112-7.
[102] For example, escape of malathion used as a pesticide on palm oil plantations into a Guatemalan river killed 1000s of fish and affected 23 species of fish, impacting the food and livelihood of 12,000 people reported by UNHRC (Elver) (n 66) [34].
[103] UNHRC (Elver) (n 66) [29].
[104] Mirfin Mpundu *et al* 'What Would it Take to Move the Global AMR Agenda in the Global South?' in Olivier Rubin, Erik Baekkeskov and Louise Munkholm, (eds) *Steering Against Superbugs* (OUP 2023) 83.
[105] Elver UNHRC (Elver) (n 66); FAO, OIE and WHO (n 36) 4.
[106] Elver UNHRC (Elver) (n 66) [9].
[107] Ipshita Chaturvedi and Natasha Kavalakkat, 'A Case for Global Governance of AMR by Regulating the Pharmaceutical Supply Chain' in Olivier Rubin, Erik Baekkeskov and Louise Munkholm, (eds) *Steering Against Superbugs* (OUP 2023) 239.

and food safety is a common theme in addressing both AMR,[108] and improper pesticide usage.[109]

Measures suggested by Elver in relation to reducing pesticide usage include national plans with specific measurable and binding targets,[110] and movement to alternative production systems, less dependent on pesticides, such as agroecology.[111] Ongoing scientific studies and risk assessments are also considered important to address the potential risks posed by pesticides.[112] The same can be said for AMR, with the risks posed by certain practices, such as chlorine washing of chicken, not conclusively understood in terms of development of AMR.[113] Finally, the importance of working with farmers and corporations that produce pesticides is a key component of Elver's suggestions,[114] and are also important for AMR, to encourage farmers, veterinarians and pharmaceutical companies to adopt best practice in terms of reducing development of AMR.[115]

2.3.3. Equitable distribution and international cooperation

Turning to consider the final two standards in the normative framework proposed in this thesis, given the global nature of the food system, and the global nature of AMR,[116] the standards of equitable distribution (trade) and international cooperation are both relevant for how states limit the development and spread of AMR within food products and environment

---

[108] Ivar Vågsholm, Naser Shah Arzoomand and Sofia Boqvist, 'Food Security, Safety and Sustainability – Getting the Trade-Offs Right' (2020) 4 Frontiers in Sustainable Food Systems 1.
[109] UNHRC (Elver) (n 66) [107].
[110] ibid
[111] UNHRC (Elver) (n 66) [90-95].
[112] ibid [107].
[113] For example, there is some evidence that AMR may be increased by carcass washing during production, because bacteria develop non-specific efflux pumps for the chemicals used in the wash, which may then be effective in removing antibiotics from bacteria as well, but the evidence is not definitive. For example, see: Mohamed Rhouma *et al*, 'Antimicrobial Resistance Associated with the Use of Antimicrobial Processing Aids During Poultry Processing Operations: Cause for Concern? (2021) 61 Critical Reviews in Food Science and Nutrition 3279.
[114] UNHRC (Elver) (n 66) [107].
[115] FAO, OIE and WHO (n 36) 19-25.
[116] Hanefeld (n 19); Hoffman *et al* (n 12) 799; Vågsholm *et al* (n 108); Luria Founou *et al,* 'Antimicrobial Resistance in the Farm-to-Plate Continuum: More than a Food Safety Issue' (2021) Future Science OA FSO692.

around the world. Trade agreements and WTO rules are important for creating standards in relation to antibiotic use in production, antibiotic residue, and bacterial contamination,[117] and will be discussed in the fourth section of this chapter. In addition, AMR is a global threat, as bacteria and people and products carrying bacteria can cross borders, and so international cooperation, for example around how antibiotics are used in food production, is vital to tackling the threat of AMR.

International cooperation in relation to AMR requires the UK to consider AMR in its development and aid programmes. These obligations are suggested by the FAO more generally in relation to food safety and the right to food.[118] Programmes could include ensuring access to antibiotics when medically required, developing laboratory capabilities and standardised monitoring of AMR, as well as sharing knowledge about best practices, especially in farming and food production.[119] This is something the UK has already included in its five year plan to tackle AMR, with dedicated funds available for UK aid focusing specifically on developing AMR surveillance capacity in low and middle income countries.[120] Such monitoring and surveillance is considered an important component of tackling AMR, and laboratory capacity is a challenge often faced by developing nations.[121] The FAO also suggests the importance of working with Codex, and being involved in international standard setting in relation to food safety.[122] Such obligations would sit within the broader moral international cooperation obligations discussed in Chapter 4. However, the fundamental importance of the legal obligation to do no harm should be remembered when such programmes are undertaken, and so for example, programmes involving agricultural

[117] For example, see: Hanefeld (n 19).
[118] FAO, 'Voluntary Guidelines - Right to Food' (n 9) 21.
[119] For example, see: O'Neill (n 46); WHO, 'Global Action Plan on AMR' (n 76) 8.
[120] HM Government, 'Tackling antimicrobial resistance 2019-2024. The UK's five-year national action plan' (DEFRA and Department for Health and Social Care, 24 January 2019) https://www.gov.uk/government/publications/uk-5-year-action-plan-for-antimicrobial-resistance-2019-to-2024 accessed 9 February 2024, 14.
[121] Antimicrobial Resistance Collaborators (n 21), 630.
[122] Codex is a body of the FAO and WHO that protects consumer health and facilitates fair international trade practices see Fortin (n 89) 26.

development should not promote systems dependent on high levels of antibiotic usage.[123]

The other component of international cooperation that needs to be considered by governments is the way states work together to set standards, rules, and guidance for tackling AMR. There is no specific treaty that deals with AMR. Elver, noting only very limited and very specific international law provisions for dealing with pesticides,[124] has called for a specific international binding treaty to reduce pesticide usage, ensure consistent global standards regarding the use of pesticide, promote agroecology and place obligations on producers of pesticides.[125] The lack of treaty or other specific hard law dealing with AMR internationally has also led to calls for a specific treaty dealing with AMR.[126]

However, there are ways an international binding agreement could be created within the World Health Organisation (WHO). The WHO has previously facilitated the creation of a binding international global health treaty, the WHO Framework Convention on Tobacco Control, which was signed by 168 states in 2005.[127] The WHO can create regulations for all its members under Article 21 of its constitution.[128] These are then binding on WHO members, unless they notify the Director General of the WHO of a reservation or rejection during the notice period of the regulations.[129] The International Health Regulations (IHR) is an example of one set of such regulations, which create an international framework for countries obligations and their rights

[123] See Chapter 4 regarding states' obligations in relation to not harming the realisation of the right to food in other states through their international activities.
[124] There are limited protections regarding trade and movement of pesticides internationally, see: Rotterdam Convention and Basel Convention. There is also a requirement in the Montreal Protocol on Substances that Deplete the Ozone Layer to phase out and stop usage of Methlybromide. See UNHRC (Elver) (n 66) [54-57].
[125] UNHRC (Elver) (n 66) [106].
[126] For example, see: Hoffman *et al*, 'How Law Can Help Solve the Collective Action Problem of Antimicrobial Resistance' (2019) 33 Bioethics 798; Louise Munkholm and Susan Rogers Van Katwyk, 'International Law and Antimicrobial Resistance: Learning from Fifteen Years Implementing the International Health Regulations' in Olivier Rubin, Erik Baekkeskov and Louise Munkholm (eds), *Steering Against Superbugs* (OUP 2023) 277.
[127] Ponnu Padiyara *et al*, 'Global Governance Mechanisms to Address Antimicrobial Resistance' (2018) 11 Infectious Diseases: Research and Treatment 1, 2.
[128] Constitution of the World Health Organisation (adopted 22 July 1946, entered into force 7 April 1948) 14 UNTS 185 art 21.
[129] ibid art 22.

when handling public health emergencies and disease outbreaks.[130] This set of regulations has also been suggested as a legally binding set of international obligations that could be used to address AMR.[131]

It should also be remembered that creation of international treaties can be a lengthy and sometimes contentious process.[132] For example, returning to the topic of Chapter Six, supermarkets and the right to food, discussions have been taking place for the last nine years at the time of writing to establish a binding treaty in relation to transnational corporations and human rights.[133] The threat posed by AMR may need a more rapid response. There are existing legal mechanisms within the constitution of the WHO to create legally binding rules regarding AMR. In addition, the requirement that states ensure access to safe food for those in their jurisdiction is an existing legal human rights obligation derived from the core of the right to food and Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR). Clarification of the legal obligations in relation to the right to food may provide a quicker route to defining legal obligations in relation to tackling AMR.

These existing mechanisms do not mean that a standalone specific treaty that sets targets to reduce AMR and antibiotic use, would not have a positive effect on AMR, and this chapter is not arguing against such a treaty. However, the focus of this chapter is the obligations in relation to AMR that are part of the existing legal and moral obligations states have in relation to the right to food. From the discussions above, the primary focus of states should be ensuring access to safe food, that is produced in a sustainable way in relation to AMR. For most states, including the UK, this means that they ensure food produced in their state is safe and food that is imported is safe. The next two sections will consider these two aspects of food safety and AMR, focusing on the UK.

---

[130] WHO, 'International Health Regulations' https://www.who.int/health-topics/international-health-regulations#tab=tab_1 accessed 9 February 2024.
[131] See for example: Padiyara *et al* (n 127) and Munkholm and Van Katwyk (n 126) 267.
[132] Munkholm and Van Katwyk (n 126) 267.
[133] UN Office of the High Commission, 'BHR Treaty Process' https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process accessed 23 October 2023.

3.0. AMR and the safety of food produced in the UK

The 2021 UK Food Security Report of the UK Government acknowledges the importance of both food safety and consumer confidence in food safety.[134] The report indicates that a component of food security is 'the systems of inspection that allow consumers to be confident their food is safe, authentic, and of high standard.'[135] The report goes on to indicate that such confidence in food is important to ensure proper utilisation of supplies and avoidance of shocks in the supply chain if there are rapid changes in consumer demand linked to fears over food safety.[136] As well as being acknowledged as an important component of UK food security, based on the discussion in section two, access to safe food is a component of the core of the right to food and an important component of the right to health.

Ensuring food sold in the UK is safe, as part of the core of the right to food, is a legal obligation.[137] The fourth section of this chapter will consider this obligation in relation to the safety of food imported into the UK. This section will focus on reducing AMR in food produced in the UK and the possibility of post-Brexit divergence from the world-leading EU food safety systems.[138] AMR also requires action in relation to human medicine and the pharmaceutical industry, but it is outside the scope of this chapter to discuss the steps being taken in these areas to tackle AMR. It should also be noted that this section is not intended to be a comprehensive review of the entire food production chain in the UK. It is focusing on antibiotic use in food animals, as this is both a significant driver of AMR, but also an area where it has been suggested the UK is diverging from the EU standards,[139] and so highlights some of the concerns about food safety in post-Brexit UK.

---

[134] DEFRA 'UK Food Security Report' (n 59), 8.
[135] ibid.
[136] ibid 246.
[137] See GC 12 (n 7) [8].
[138] For example, see Rudolf Krska, Maria Eskola and Chris Elliot, *Toxin-Free Food?* (Picus 2023) 15.
[139] Tom Levitt, 'UK Risks Falling Behind in Reducing Farm Antibiotics After EU ban' *The Guardian* (28 January 2022) https://www.theguardian.com/environment/2022/jan/28/uk-risks-falling-behind-on-reducing-farm-antibiotics-after-eu-ban accessed 9 February 2024.

3.1. Antibiotic use in food producing animals in the UK

As already mentioned in relation to overseas development, the UK has a '5-year action plan' as well as a '20-year vision' to tackle AMR.[140] This is consistent with the approach recommended by the WOAH (World Organisation for Animal Health, previously the Office International des Epizooties (OIE)), WHO and FAO.[141] The UK has been a leader in this area and was one of the first states to establish a National Action Plan.[142] Both the Global Action Plan, and the Codex Code of Practice to Minimize and Contain Foodborne Antimicrobial Resistance are authoritative sources of guidance on the use and reduction of use of antimicrobials in food producing animals.[143] They both indicate the importance of the reduction of use of antibiotics in farm animals and regulation of their use based on clinical decision making and risk assessments.[144]

One component of reducing antibiotic use is eradication and minimisation of infections that require increased use of antibiotics. Production animal disease eradication programmes are relevant to the standards of production and adequate food in the proposed normative framework. Eradicating disease is important for sustainable production that is less dependent on the use of antibiotics. In addition, reducing antibiotic use and eradicating zoonotic diseases such as certain strains of *Salmonella* is also relevant for the standard of adequate food, as it makes food safer. The UK has

---

[140] GOV.UK, "Antimicrobial resistance (AMR)' https://www.gov.uk/government/collections/antimicrobial-resistance-amr-information-and-resources accessed 24 October 2023.

[141] WHO, 'Global Action Plan on AMR' (n 76) 12; This Global Action Plan was reaffirmed by the UNGA as the approach to be adopted by the world to tackle AMR see UNGA, 'Political Declaration of the High-Level Meeting of the General Assembly on Antimicrobial Resistance' (5 October 2016) Un Doc Res A/RES/71/3.

[142] HM Government, 'Tackling Antimicrobial Resistance' (n 120) 10.

[143] Both these documents are indicated to be international sources creating standards for antimicrobial use in the WHO, WOAH and FAO, 'International instruments on the use of antimicrobials across the human, animal and plant sectors' (2020) https://www.woah.org/app/uploads/2021/03/en-oie20triparite20amu20joint20instruments-v5-web.pdf accessed 27 October 2023.

[144] WHO, 'Global Action Plan on AMR' (n 76) 10; Codex Alimentarius, 'Code of Practice to Minimize and Contain Foodborne Antimicrobial Resistance CXC 61-2005' (FOA and WHO, Adopted 2005, Amended 2021) https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXC%2B61-2005%252FCXC_061e.pdf accessed 27th October 2023, 4-5.

such programmes that aim to reduce and eradicate Bovine Viral Diarrhoea (BVD) and *Salmonella* infections in chickens.

3.1.1. Disease eradication schemes

Salmonella contamination of chicken and eggs is a cause of foodborne illness. The European Community issued a series of regulations to tackle the levels of *Salmonella Typhimurium* and *Salmonella Enteritidis* in eggs and broiler chickens slaughtered for meat.[145] These regulations were implemented in the UK through the National Control Programme for *Salmonella* in Chickens.[146] In the EU, the regulations reduced reports of human Salmonellosis from around 200,000 in 2003 to 90,000 cases in 2014, with the number of countries recording cases increasing from 15 to 28 over this time, due to the expanding membership of the EU.[147] In the UK, the rate of infection in UK broiler flocks has fallen and remains at less than 1%, the target value for the scheme.[148] This reduction has decreased contamination by bacteria that are pathogenic and so improves the safety of food, demonstrating how successful eradication schemes can be. It also reduces the risk that people will be exposed to strains of resistant bacteria from chicken and eggs produced in the UK and EU. Other eradication programmes can however reduce the need to use antimicrobials in animals, reducing the development of AMR, rather than reducing the risk of bacterial contamination of food.

---

[145] Commission Regulation (EC) 1168/2006 of 31 July 2006 implementing Regulation (EC) No 2160/2003 as regards a Community target for the reduction of the prevalence of certain salmonella serotypes in laying hens of *Gallus gallus* and amending Regulation (EC) No 1003/2005 [2006] OJ L211/4; Commission Regulation (EC) No 646/2007 of 12 June 2007 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Community target for the reduction of the prevalence of Salmonella enteritidis and Salmonella typhimurium in broilers and repealing Regulation (EC) No 1091/2005 [2007] OJ L151/21.

[146] For example see: Gov.UK, 'The UK National Control Programme for Salmonella in Chickens (*Gallus gallus*) reared for meat (broilers) (1 January 2008) https://www.gov.uk/government/publications/the-uk-national-control-programme-for-salmonella-in-chickens-gallus-gallus-reared-for-meat-broilers accessed 29 October 2023.

[147] Eur-Lex, 'Control of Salmonella and Other Zoonotic Agents' (EU, 28 July 2016) https://eur-lex.europa.eu/EN/legal-content/summary/control-of-salmonella-and-other-zoonotic-agents.html accessed 29 October 2023.

[148] See: APHA Science Blog, 'Chicken Run: APHA's Response to a Regulated Salmonella in Broiler Chickens' (UK.GOV, 27 February 2020) https://aphascience.blog.gov.uk/2020/02/27/salmonella-in-broiler-chickens/ accessed 29 October 2023.

BVD is a complex disease that can cause many different conditions in cattle including immunosuppression.[149] Although the virus that causes BVD cannot be treated with antibiotics, the immunosuppression it causes results in diseases that may require antibacterial treatment, such as bacterial pneumonia.[150] It also results in reproductive loss and poor growth rates,[151] and so as well as acting as a driver of antibiotic use in cattle farming, it can also be a significant economic cost to farmers.[152] England has a voluntary BVD eradication scheme which began on the 1st of July 2016. Despite the UK AMR plan indicating that the Rural Development Programme (RDP) would provide funding to support testing and advice for farmers and veterinarians,[153] the funding for such work in relation to BVD, the 'Stamp It Out' scheme was stopped by the RDP in June 2021.[154]

Wales and Scotland are working towards BVD eradication with government support. In Scotland, the government is supporting an industry led BVD eradication scheme. The scheme began in 2010 and has now entered its fifth phase. It has been very successful, with most breeding herds in Scotland now disease free.[155] In 2019 Scottish legislation was introduced to ensure farmers continue to test for the disease at least annually. Herds that then test positive are placed under movement restrictions alongside requirements for investigations and increased biosecurity measures.[156] In Wales, the Government undertook a consultation on plans to eradicate BVD which ended in August 2022.[157] In December 2022, the Welsh Government issued a statement in response.[158] The statement indicated that most respondents to

---

[149] Sasha Lanyon *et al*, 'Bovine viral diarrhoea: Pathogenesis and diagnosis' (2014) 199 The Veterinary Journal 201, 202.
[150] ibid.
[151] ibid.
[152] It has been estimated BVD costs farmers in the UK between £25 and £61 million. See: AHDB, 'BVDFree England' https://ahdb.org.uk/bvdfree-england accessed 27 October 2023.
[153] HM Government, 'Tackling Antimicrobial Resistance' (n 120) 38.
[154] AHDB, 'BVD Stamp It Out funding ending soon' (14 April 2021) https://ahdb.org.uk/news/bvd-stamp-it-out-funding-ending-soon accessed 27 October 2023.
[155] Scottish Government, 'BVD eradication scheme phase 5-December 2019:Guidance' https://www.gov.scot/publications/guidance-bvd-eradication-scheme-phase-5-december-2019/pages/4/ accessed 27 October 2023.
[156] The Bovine Viral Diarrhoea (Scotland) Order 2019 SI 2019/310.
[157] Welsh Government, 'Compulsory Bovine Viral Diarrhoea Eradication Scheme' (23 December 2022) https://www.gov.wales/compulsory-bovine-viral-diarrhoea-eradication-scheme accessed 27th October 2023.
[158] Welsh Government, 'Welsh Government Response to the Summary of Responses following the Bovine Viral Diarrhoea (BVD) Eradications Scheme Consultation' (December

the consultation believed that eradication of the disease would have a positive impact on both the health of the national herd and the economic sustainability of farming.[159] Although some supported legislation, the approach now taken in Scotland, some suggested the current voluntary scheme was making sufficient progress to negate the need for a compulsory scheme.[160] However, the Welsh Government has indicated that as the majority of respondents favoured a compulsory scheme, this will form the basis of future policy in this area.[161]

As has been seen, disease eradication schemes are potentially important to reduce AMR. They can reduce the risk of pathogenic bacterial contamination of food, as well as managing and eradicating endemic disease that increases the need for antibiotic use on farms. However, as indicated in the report on BVD eradication in Wales, disease control and eradication programmes are also important for sustainable food production.[162] The sustainability of food production is also an obligation that forms part of the core of the right to food.[163] At present animal products continue to be an important dietary source of protein and certain fats as a part of a nutritionally adequate diet. If AMR worsens antibiotics may have to be reserved for use only in humans. This would mean antibiotics could no longer be used to treat animals with disease. Diseases that suppress animal's immune systems such as BVD in cattle or Porcine Reproductive and Respiratory syndrome in pigs,[164] would result in high levels of disease that could not be treated. This would increase levels of death and decrease productivity and so increase costs for farmers. Such increasing costs may make animal protein sources prohibitively expensive for many or even make pig or cattle farming economically unsustainable.

2022) https://www.gov.wales/sites/default/files/consultations/2022-12/compulsory-bovine-viral-diarrhoea-eradication-scheme-welsh-government-response-to-the-summary-of-responses.pdf accessed 27th October 2023.

[159] ibid 2.

[160] ibid 3.

[161] ibid 9.

[162] ibid 2.

[163] The core of the right to food includes accessibility of food in 'ways that are sustainable' and GC 12 also indicates 'sustainability includes the 'long-term availability and accessibility of food' GC 12 (n 7) [7-8].

[164] The University of Edinburgh, 'PRRS Resistant Pigs' (13 February 2020) https://www.ed.ac.uk/roslin/facilities-resources/larif/case-studies/industry-partners accessed 27 October 2023.

The approach of Scottish and Welsh Governments in relation to BVD should be considered more widely. Eradication, control, and vaccination should be the default approach to deal with endemic disease, rather than reliance on antibiotics to treat and minimise the impact of such diseases. In England the rollback of funding for BVD eradication is concerning given the lack of progress in eradication of the disease. In addition, England's lack of progress may be problematic for farmers in Scotland and Wales who wish to purchase cattle from England. The lack of a compulsory eradication scheme makes ascertaining English animals' disease status more difficult. More widely, in the UK, the spending on veterinary surveillance, and the number of state-run diagnostic labs has reduced over the last 20 years.[165] There has been a recent injection of money into the UK's central veterinary and plant health laboratory,[166] but given that surveillance is a key component of tackling AMR,[167] the overall direction of funding and UK level government support for disease eradication programmes is concerning.

Industry run schemes are filling some of the gaps this may leave.[168] However, given the implications for food safety and sustainability as well as the right to food, this should be something the Government is leading on. That the Government appears not to be taking the lead on this is particularly disappointing considering the Government stating 'leaving the European Union (EU) provides a once-in-a-generation opportunity to reform agriculture.'[169] The 'Health and Harmony' report, detailing the future of food

---

[165] DEFRA, 'A Review of the Implementation of the Veterinary Surveillance Strategy (VSS)' (February 2011) https://assets.publishing.service.gov.uk/media/5a78c2a740f0b63247699f54/pb13568-vss-review-110204.pdf accessed 27 October 2023; British Veterinary Association, 'BVA Position on Veterinary Scanning Surveillance' (August 2018) https://www.bva.co.uk/media/3115/bva-position-on-veterinary-scanning-surveillance.pdf accessed 27 October 2023.

[166]The central UK laboratory for animal and plant disease surveillance has received £1.4 billion in additional budget, but there is no mention of surveillance in relation to AMR specifically. See GOV.UK, 'The Animal and Plant Health Agency receives £1.4 billion budget boost for world-leading Weybridge Laboratory' (*GOV.UK*, 16 March 2020) https://www.gov.uk/government/news/the-animal-and-plant-health-agency-receives-14-billion-budget-boost-for-world-leading-weybridge-laboratory accessed 27 October 2023.

[167] Codex Alimentarius (n 144) 5.

[168] For example, see: AHDB, 'Pig Health Scheme' https://ahdb.org.uk/pig-health-scheme accessed 27th October 2023.

[169] DEFRA, 'Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit' (DEFRA, CM 9577, February 2018) https://assets.publishing.service.gov.uk/media/5a952ad9e5274a5b849d3ad1/future-farming-environment-consult-document.pdf accessed 9 February 2024, 3.

and agriculture in the UK post-Brexit, proposed working with industry to develop plans to tackle endemic disease.[170] Just as the agriculture sector and devolved governments are filling the disease eradication governance gap left by the UK Government, the UK veterinary profession is taking the lead on reducing antibiotic usage in animals. It is setting high professional standards for the use of antibiotics in food producing animals, which will now be discussed.

3.1.2. Antibiotic use

In addition to using disease eradication, reducing the use of antimicrobials in food producing animals is an important way to reduce AMR. As discussed above, reduction of antibiotic use in farm animals reduces the development of resistant bacteria, reduces antibiotic contamination in the environment due to animal waste, and reduces the risk of resistant bacteria being passed to people via their food. WHO, WOAH and FAO indicate the importance of veterinary supervision for the use of antimicrobials in farm animals.[171] Codex guidelines emphasise the importance of this during prophylactic/preventative administration.[172] Codex also prohibits the use of antibiotics for growth promotion in animals that are medically significant,[173] and indicate other antimicrobials should only be used for growth promotion in animals following a risk assessment in relation to human health.[174]

Since 2006, the EU and UK have banned the use of all antimicrobials as growth promoters.[175] This ban remains in place in the UK post Brexit and goes beyond the standard suggested in the Codex guidelines, which allows such use when a thorough risk assessment in terms of possible impacts for

---

[170] ibid 43.
[171] Codex Alimentarius (n 144) 5; FAO, OIE and WHO (n 36) 20; WOAH, 'The OIE Strategy on Antimicrobial Resistance and the Prudent Use of Antimicrobials' (OIE, WOAH, November 2016) https://www.woah.org/fileadmin/Home/eng/Media_Center/docs/pdf/PortailAMR/EN_OIE-AMRstrategy.pdf accessed 21 April 2024.
[172] Codex Alimentarius (n 144) 5.
[173] ibid.
[174] ibid; FAO, OIE and WHO (n 36) 20.
[175] Council and European Parliament Regulation (EC) 1831/2003 of 22 September 2003 on additives for use in animal nutrition [2003] OJ l268/29.

human health have been carried out.[176] The UK Government has also recognised the importance of reducing further the use of antibiotics and antimicrobials in both the UK's Five-year National Action Plan as well as the longer term 20-year Vision on Antimicrobial Resistance.[177] The strategies adopted by the veterinary and agriculture sectors have resulted in a 40% decrease in sales of veterinary antibiotics from 2013 to 2017 and the level of use in food producing animals specifically was further reduced by 25% between 2016 and 2020.[178] This has been achieved by prescribing guidance and regulation, alongside disease eradication schemes.

In the UK, antibiotics can only be given to animals following prescription by a veterinary surgeon.[179] In addition, the advertising of veterinary antibiotics is not encouraged.[180] Both of these restrictions are in line with international guidance.[181] Prudent use of antibiotics is also heavily encouraged by veterinary professional bodies such as the British Veterinary Association, which has issued guidance in relation to antimicrobial use.[182] This is in addition to guidance from the Veterinary Medicines Directorate, an executive agency sponsored by the Department for the Environment, Food and Rural Affairs (DEFRA).[183] Farming industry bodies, such as the Responsible Use of Medicines in Agriculture Alliance,[184] and the Agriculture and Horticulture Development Board offer guidance to farmers.[185] This guidance includes using antibiotics as little as possible, treating in accordance with veterinary

[176] Codex Alimentarius (n 144) 5.
[177] HM Government 'Tackling Antimicrobial Resistance' (n 120) 60; HM Government, 'Contained and Controlled. The UK's 20-Year Visions for Antimicrobial Resistance' (24 January 2019) https://assets.publishing.service.gov.uk/media/5c48896a40f0b616fe901e91/uk-20-year-vision-for-antimicrobial-resistance.pdf accessed 29 October 2023,10.
[178] HM Government, 'Contained and Controlled' (n 177) 6.
[179] GOV.UK, 'Advertise Veterinary Medicines Legally' (7 June 2019) https://www.gov.uk/guidance/advertise-veterinary-medicines-legally#advertising-prescription-medicines accessed 29 October 2023.
[180] ibid.
[181] See, for example WHO, WOAH and FAO (n 143).
[182] British Veterinary Association, 'Responsible Use of Antimicrobials in Veterinary Practice 7-Point Plan' (2019) https://www.bva.co.uk/resources-support/medicines/responsible-use-of-antimicrobials-in-veterinary-practice-poster/ accessed 29 October 2023.
[183] GOV.UK, 'Guidelines and Guidance on the Responsible Use of Veterinary Medicines' (*Veterinary Medicines Directorate*, 19 August 2022) https://www.gov.uk/guidance/guidelines-and-guidance-on-the-responsible-use-of-antibiotics accessed 29 October 2023.
[184] RUMA, 'Antibiotics' https://www.ruma.org.uk/antibiotics/ accessed 29 October 2023.
[185] For example: AHDB, 'Antibiotic Use on Diary Farms' https://ahdb.org.uk/antibiotic-use-on-dairy-farms accessed 29 October 2023.

instructions, and limiting routine use as a measure to prevent disease.[186] A particular success in animal antibiotic use is that the sales of the highest priority critically important antibiotics such as fluroquinolones, which should largely be reserved for humans, has fallen to only 0.4% of antibiotic sales for food producing animals in the UK.[187]

More recently the Royal College of Veterinary Surgeons has brought in new rules regarding the meaning of being 'under the vet's care' for the purpose of prescribing medications. Of relevance to AMR is that a clinical examination must be performed before prescribing antimicrobials.[188] The only other class of drugs this applies to is controlled drugs, which would include opioids, sedatives and drugs open to abuse. This indicates the significance prescribing antimicrobials carries, the importance of prescribing only when necessary, and the responsibility and leadership of the UK veterinary profession in this area. At this stage, the UK is reaching and, in some areas, exceeding the standards suggested by international guidelines in relation to the control of AMR and food producing animals. However, it cannot stop at this point, and there is room for improvement, especially in relation to disease control and prevention to ensure both safe food and sustainable production in line with the UK's obligations to realise the right to food. Concerns have been raised that the UK is not maintaining its world-leading position on AMR by falling behind the EU in measures to reduce antibiotic use in agriculture. There is also concern in relation to food safety standards more generally post-Brexit.

3.2. UK food safety law post-Brexit

The introduction to this chapter highlighted several concerns about food produced in the US that people feared may be imported into the UK in the future. It has been suggested that chlorinated chicken became 'symbolic of post-Brexit lowering of consumer protection standards.'[189] The National Audit Office estimated 90% of food law in the UK was derived from the EU prior to

[186] Coe, Balogun and Sutherland (n 34) 14.
[187] ibid 12.
[188] ibid.
[189] Lydgate and Anthony, (n 3) 1169, referencing Millstone *et al* (n 1).

Brexit.[190] Concern has been raised about the way EU food law has been retained following Brexit, with particular concern over ministerial powers.[191] Following a discussion of these concerns in relation to the issue of food safety, this subsection will then consider divergence between the EU and UK in the regulation to antibiotic use in food producing animals. Any policies that could reduce the safety of food in the UK are relevant in relation to retrogression of the realisation of the core of the right to food.

3.2.1. Food safety post-Brexit

Food hygiene and the regulation of use of substances other than potable water to wash chicken in retained EU law has been discussed by Lydgate and Anthony.[192] They emphasised the difficulty of tracking the development of legislation post-Brexit that impacts food safety and its regulation.[193] The discussion below briefly highlights what has happened in relation to the law and chlorinated chicken and then more widely food safety, to demonstrate areas of concern and uncertainty. It is not intended to be a full account nor critique of EU retained legislation in the UK. Returning to chlorinated chicken, initially the UK retained EU General Food Law which allows only potable water for the washing of chicken carcasses.[194] The retained law also indicates additional substances for carcass washing could be authorised by the 'Food Safety Authority' (FSA in England, Wales and Northern Ireland and FSS in Scotland).[195] However this procedural component of the retained legislation was subsequently repealed and powers were given to ministers for the whole of the UK to potentially make decisions on such issues.[196] Given the concerns

[190] National Audit Office, 'Ensuring Food Safety and Standards' HC 2217 (June 2019) https://www.nao.org.uk/wp-content/uploads/2019/06/Ensuring-food-safety-and-standards.pdf accessed 9 February 2024, 11.
[191] Lydgate and Anthony (n 3) 1173.
[192] ibid.
[193] ibid.
[194] General Food Law (Amendment etc) (EU Exit) Regulations 2019 SI 2019/641. Schedule 2 of these regulations specifically indicates that the 'Requirement that food business operators do not use any substance other than potable water or, when Regulation 852/2004 or Regulation 853/2004 permits its use, clean water, to remove surface contamination from products of animal origin unless use of the substance has been approved is retained'.
[195] ibid.
[196] The Specific Food Hygiene (Regulation (EC) No.853/2004) (Amendment) (EU Exit) Regulations 2019 SI 2019/1247; Lydgate and Anthony (n 3) 1173.

about chlorinated chicken in relation to bacterial contamination and food borne illness,[197] as well as the possibility it may increase AMR,[198] decisions about carcass washing should be made based on scientific risk analysis. Engaging with risk analysis ensures food is safe in compliance with obligations for the core of the right to food. Ministers making decisions may prioritise other factors, such as economics and UK trade agreements when making decisions about products and their retail in the UK.

Against this background, there remains uncertainty about how in practice decisions will be made about whether food is safe for UK consumers.[199] EU food law sets out how delegated legislation is to be made and the scientific risk analysis process that is carried out by the EU Food Safety Authority.[200] Following Brexit, ministers can now make secondary legislation in relation to food safety.[201] In addition, the Agriculture Act 2020 provides powers for the Secretary of State to set standards for food marketed in England,[202] including 'specific substances used in production.'[203] However, it must be noted that the legislation indicates that the Secretary of State *may* create regulation, that *may* cover certain features of agricultural products.[204] There is no duty to create such regulations nor a duty about what should be considered or included when such regulations are created.

Although the FSA and FSS carry out risk assessments and perform similar functions to the European Food Safety Agency, their role in contributing to any new food safety legislation or decisions about access to the UK market of new products is not clear.[205] Indeed, the Food and Feed Safety and Hygiene Common Framework, one of a series of frameworks for devolved competencies in areas of retained EU law, states 'governance arrangements are needed for how the appropriate authorities (namely UKG and DA Ministers) take decisions based on joint recommendations from food safety

[197] Highmore *et al* (n 18); Hanefeld *et al* (n 19).
[198] Rhouma *et al* (n 113).
[199] Lydgate and Anthony (n 3) 1175.
[200] EU General Food Law Regulation (n 88) Art 6; Lydgate and Anthony (n 3) 1174.
[201] SI 2019/64 (n 194).
[202] Agriculture Act (AA) 2020, s37.
[203] AA 2020, s37(2)(f).
[204] AA 2020, ss37(1) and 37(2)
[205] Lydgate and Anthony (n 3) 1175.

bodies.'[206] It then goes on to state ministers will retain the right to make individual decisions for their nations.[207] Yet, as discussed in Chapter 5, due to the Internal Market Act 2020, they may not be able to stop products from the other UK nations from entering their market, even if they do not accord with that country's safety standards.[208]

In general, the delegated powers given to ministers post-Brexit has been the subject of criticism.[209] In relation specifically to food law, this increased ministerial power to make decisions in relation to food safety has been suggested to decrease transparency, something the EU was attempting to improve in relation to food safety decisions.[210] Given the UK's Food Security Report's emphasis on the importance of consumer confidence in the food they eat,[211] reduction in transparency about decisions regarding new products or food production techniques being introduced to the UK market risks undermining this. Questions have also been raised about how the UK will approach risk assessment and areas of scientific uncertainty.[212] As discussed above, the precautionary principle as an approach to scientific uncertainty is included in EU General Food Law,[213] and both Elver and Ziegler when they were Special Rapporteurs for the Right to Food have indicated that it is the preferred approach when dealing with food safety issues.[214] Currently the references to the precautionary principle have been retained in legislation relating to food, however, as will be discussed in the section below on trade, this may not persist, depending on how the UK approaches trade agreements with countries outside the EU. There is much uncertainty around how food safety risk assessment and regulation will proceed post-Brexit, however

---

[206] Food Standards Agency, 'Food and Feed Safety and Hygiene Common Framework. (Provisional)' (Minister for Health and Social Care, November 2020, CP 231) https://www.gov.uk/government/publications/food-and-feed-safety-and-hygiene-provisional-common-framework.
accessed 26 February 2024, 17.
[207] ibid.
[208] Ludivine Petetin and Mary Dobbs, *Brexit and Agriculture* (Routledge 2022) 45.
[209] See for example: Secondary Legislation Scrutiny Committee, 'Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform Bill) (House of Lords, 2 February 2023).
[210] Lydgate and Anthony (n 3) 1175.
[211] Defra 'UK Food Security Report' (n 59) 8.
[212] Lydgate and Anthony, (n 3) 1169, referencing Millstone *et al* (n 1).
[213] EU General Food Law Regulation (n 88) art 7.
[214] UNHRC (Ziegler, 2004) (n 64) [32]; UNHRC (Elver) (n 66) [39].

considering AMR specifically, there is already a potential area of divergence in standards between the UK and the EU; antimicrobial use in food producing animals, which will now be discussed.

3.2.2. Reducing the use of antibiotics in food producing animals in the EU and UK

The EU Farm to Fork Strategy sees tackling AMR as a key component of 'ensuring sustainable food production'.[215] In early 2022, newspapers and non-governmental organisations (NGOs) in the UK raised concerns that the UK was not introducing rules that mirrored new EU rules regarding the use of antibiotics in farm animals.[216] A new EU regulation came into force in 2022 that replaced the previous EU directive on veterinary medicine products.[217] This new legislation includes a number of rules that aim to further limit the circumstances where antimicrobials and antibiotics can be used in food producing animals. Specifically, use of antimicrobials for growth promotion is prohibited, prophylactic (preventative) use is to be limited to individual or restricted numbers of animals, and metaphylactic (control of a disease outbreak that treats those that are clinically ill and prevents spread to others) use is only permitted where there is a high risk of spread of infection and no other appropriate methods of disease control are available.[218] Article 127 dealing with antimicrobial use starts by stating, 'antimicrobial medicinal products shall not be applied routinely nor used to compensate for poor hygiene, inadequate animal husbandry or lack of care to compensate for poor farm management.'[219]

These new rules are clearly an attempt to reduce overall antimicrobial and antibiotic use. This is in accordance with international guidance on

---

[215] European Union, 'Farm to Fork Strategy' (EU, 2020) https://food.ec.europa.eu/system/files/2020-05/f2f_action-plan_2020_strategy-info_en.pdf accessed 21 April 2024, 10.
[216] Levitt (n 139); for example, also see: Sustain, 'UK Falls Behind EU on Farm Antibiotic Standards' (*Sustain,* 28 January 2022) https://www.sustainweb.org/news/jan22-antibiotics-divergence-eu/ accessed 31 October 2023.
[217] Council and European Parliament Regulation (EU) of 11 December 2018 on Veterinary Medicinal Products and Repealing Directive 2001/82/EC [2019] OJ l4/43.
[218] ibid art 107 (2)-(4).
[219] ibid art 107(1).

AMR.[220] Despite the EU Regulation being seen as a step in the right direction, the UK has not followed its approach. The UK Government has said it will produce similar legislation, however, there is concern that this proposed legislation falls short of the EU Regulation.[221] The proposed UK legislation does include bans on the use of antibiotics to compensate for poor hygiene and husbandry and use as growth promoters.[222] Yet, unlike the EU rules, metaphylaxis (treating clinically healthy in-contact animals that have been exposed to a disease) is not specifically addressed.[223] The approach to prophylactic use diverges from the EU. There is the requirement for a high risk of infection as with the EU rules, and there are a series of further circumstances and conditions that may introduce a lack of clarity around prophylactic use. The proposed UK rules indicate that the prophylactic use of the product cannot be 'routine or predictable,'[224] and that a 'management review is carried out at, or as soon as reasonably practicable after administration of the product in order to identify factors and implement measures for the purpose of eliminating the need for any future such administration.'[225]

Nunan has raised important questions in relation to who will carry out the management review.[226] It is not clear if this is a role for the farmer, the farmer's veterinary surgeon, or a veterinary surgeon from an agency of DEFRA. There is also no guidance as to what is meant by routine or predictable in this context. It is presumed the need for a review would limit the frequency of use, but these additional components included in the conditional ban on prophylactic use may cause uncertainty. This risks the use of antibiotics when not intended by the legislators, undermining the aim of such

[220] Codex Alimentarius (n 144) 5.
[221] For example, see: Cóilín Nunan, 'The UK May Soon (at last!) Ban Routine Farm Antibiotic Use (Sustain, 24 May 2023) https://www.sustainweb.org/blogs/may23-routine-antibiotic-use-ban-due/ accessed 31 October 2023.
[222] DEFRA, 'Draft Amendments to the Veterinary Medicines Regulations 2013' https://consult.defra.gov.uk/vmd/review-of-the-veterinary-medicines-regulations-201/supporting_documents/Draft%20amended%20VMR%20text%20with%20tracked%20changes%20to%20reflect%20proposals.pdf accessed 31 October 2023.
[223] Nunan (n 221).
[224] DEFRA, 'Draft Amendments to the Veterinary Medicines Regulations 2013' (n 222) 7A (4)(a).
[225] DEFRA, 'Draft Amendments to the Veterinary Medicines Regulations 2013' (n 222)) 7A (4)(c).
[226] Nunan (n 221).

rules in reducing overall antibiotic use. Ultimately this could undermine the safety of food produced in the UK.

The UK, as a member of the EU, was part of a world leading food safety system and was also taking steps to manage and tackle AMR. However, following Brexit, concerns have been raised about the future direction of risk management and legislation in food safety, and that the UK may diverge and fall below EU standards. At this stage it is not clear how the FSA and FSS will operate in a system with increased delegated ministerial powers. These concerns seem to be justified in the specific case of AMR. Attempts to further reduce antibiotic use in food producing animals appears to be falling behind the EU approach. However, the safety of food produced in the UK is only one part of making sure food sold in the UK is safe. As indicated in the UK's Food Security Report, import of food is a key component of ensuring the UK has a sufficient supply of food.[227] For the UK government to meet its obligations in relation to the right to food, and specifically the standard of adequate food in the proposed normative framework, this food must also be safe and should not increase the risk of AMR in the UK. The safety of food imported into the UK now the UK is no longer part of the EU is considered in the next section.

4.0. AMR and the safety of food imported into the UK

Importation of food can pose risks to food safety in several ways.[228] However, the focus of this section is on two aspects of ensuring food brought into the UK is safe to consume: the first is border inspection of food; the second is trade agreements. Post-Brexit, the UK has to negotiate trade agreements, and these could potentially lower food safety standards in the UK. Countries such as the USA may require the UK to import products currently banned in the UK.[229] More specifically in relation to AMR, trade agreements can be an

[227] Defra 'UK Food Security Report' (n 59), 11.
[228] Food imported can carry plant, animal, and human disease, be deliberately contaminated, accidently contaminated, not be fit for human consumption as it has not been stored and transported correctly and may not be properly labelled as to its content (food fraud), which is particularly problematic for those with allergies and those who do not eat certain foods for religious or cultural reasons. For a general discussion of these issues see: Johnathan Rees, *Food Adulteration and Food Fraud* (Reaktion Books 2020).
[229] Millstone *et al* (n 1) 647.

important tool to help lift standards of food production around the globe and limit the spread of unsafe food and resistant bacteria and their genetic material.[230] The issue of banning certain products due to safety concerns is then considered more widely in the context of WTO rules.

4.1. Import inspections and food safety

In late August 2023 it was announced that for the fourth time, the implementation of inspection of food imports were being delayed, this time until January 2024.[231] The reason for this delay was stated to be limiting the impact of additional costs associated with border checks on the current rate of inflation amid concerns about the cost-of-living crisis.[232] Prior to Brexit, animal products could be brought into the UK from the EU without any paperwork. The Government acknowledges that import controls are needed to protect consumers. High risk products should be imported through border control points so contaminants such as *Salmonella,* can potentially be detected.[233] High risk products include many products of animal origin.[234] The UK has yet to introduce such checks including sanitary and phytosanitary checks on EU imports at border control posts, safety and security declarations on EU imports, and restrictions on import of chilled meat from the EU.[235] The Government has not built a sanitary and phytosanitary system, nor, by the end of 2023, secured land for random checks to carried out.[236]

---

[230] Hanefeld (n 19) 2.
[231] GOV.UK, 'The Border Target Operating Model August 2023' (29 August 2023) https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023 accessed 26 February 2024.
[232] ibid
[233] Food Standards Agency, 'Importing High-Risk Food and Feed into GB' (Food Standards Agency, 17 December 2021) https://www.food.gov.uk/business-guidance/importing-high-risk-food-and-feed-into-gb accessed 1 November 2023
[234] HM Government, 'The Border with the European Union. Importing and Exporting Goods' (June 2022) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083393/2022-06-15_Border_Operating_Model__1_.pdf accessed 26 February 2024, 73.
[235] ibid 6.
[236] Joanna Partridge, 'UK-Post Brexit Checks on Fresh Food from EU Delayed for Fifth Time' *The Guardian* (29 August 2023) https://www.theguardian.com/business/2023/aug/29/uk-brexit-checks-on-food-eu-delayed accessed 1 November 2023.

The UK is currently relying on the assumption that food imported from the EU is safe. Due to the high food safety standards in the EU, discussed above, food imported into the UK from the EU would be considered a low risk as it would be expected to comply with these EU safety standards. However, several reports of eggs and chicken products imported from Poland may suggest this assumption is risking food being imported into the UK that is unsafe, both from a risk of immediate disease outbreaks and the potential spread of AMR. In 2000, Polish chicken products caused an outbreak of antibiotic resistant *Salmonella* in the UK which killed five people and caused infections in an estimated 1300 people,[237] which is particularly concerning given the previous success of EU *Salmonella* control programmes discussed above. More recently meat has been found from the same Polish producer for sale in the UK, in ASDA, Iceland and Lidl. Of particular concern in this case is that this meat producer, uses fluoroquinolone antibiotics. In general, agricultural sales of both fluroquinolone and colistin antibiotics are rising in Poland.[238] Fluroquinolones and colistin are considered by WHO to be of critical importance for human health, and colistin is often the last resort in resistant infections and so should not be used in animals.[239] Import of eggs and chicken produced using these antibiotics is a risk for development and spread of resistant bacteria in the UK.

Random border checks, even of EU products, are vital to try and stop, limit, and trace the import of products that can carry both dangerous pathogens and bacteria resistant to antibiotics. Until these checks are introduced, imports of food that are unsafe can continue. At the time of writing, a new report concerning eggs imported from Poland was released, again raising concerns about *Salmonella* contamination and the safety of food being imported from the EU.[240] To meet their obligations for the right to food, especially regarding

---

[237] Sustain, 'Three UK Supermarkets source antibiotic treated chicken from producer linked to Salmonella outbreak.' (*Sustain,* 20 June 2023) https://www.sustainweb.org/news/jun23-uk-supermarkets-sell-chicken-dosed-human-critical-antibiotics/ accessed 1 November 2023.
[238] Misbah Khan, Andrew Walsey and Agata Skrzypczyk, 'UK Supermarket Supplier's Chickens Given Antibiotics Critical for Humans' (*The Guardian,* 20 June 2023) https://www.theguardian.com/environment/2023/jun/20/uk-supermarket-suppliers-chickens-given-antibiotics-critical-for-humans accessed 26 February 2024.
[239] WHO 'Global Action Plan on AMR' (n 76) 18.
[240] Sarah Marsh and Helena Horton, 'Low-Welfare Eggs from Caged Hens Imported into UK in 'Staggering' Numbers' *The Guardian* (24 October 2023)

the standard of adequate food, the UK Government should take steps to limit the risk of unsafe food being imported into the UK. It also needs to develop systems that allow tracing of imported foods so that recalls and bans can be implemented if certain suppliers are importing unsafe food. Such requirements echo the suggestions of Elver in relation to monitoring of pesticide residues in food. The lack of current uniformity in border checks between EU food and food imported from the rest of the world could also be considered discriminatory. This leaves room for a possible challenge under WTO law.[241] However, post-Brexit concerns about food safety extend beyond inspection of food imported into the UK from the EU, as the UK now must negotiate trade agreements with states throughout the world, as it is no longer a member of the EU.

4.2. Food safety, AMR and trade agreements

The UK Government indicated the importance of importing food for national food security in the first UK Food Security Report.[242] However, despite this, the UK's approach to trade post-Brexit seems to focus on strengthening exports.[243] The use of trade to support and strengthen domestic policies in relation to food and agriculture appears to be less of a concern for the Government.[244] Against this apparent lack of coherent policy,[245] the UK-Australia Free Trade Agreement can be seen as a lost opportunity to embed goals for reduction of antibiotic use in agriculture in the agreement as a way to help tackle AMR.

---

https://www.theguardian.com/business/2023/oct/24/low-welfare-eggs-from-caged-hens-imported-to-uk-in-staggering-numbers?utm_term=Autofeed&CMP=twt_gu&utm_medium&utm_source=Twitter#Echobox=1698128070 accessed 1 November 2023.

[241] This matter will not be discussed further as it is only tangentially related to food safety, chlorinated chicken and AMR, the focuses of this chapter. The preamble to GATT emphasises the importance of the elimination of discriminatory treatment. In addition, Article VIII:1(c) GATT 1999 indicates that import formalities should be minimalised, and Article 1 GATT indicates the importance of the non-discriminatory 'Most-Favoured-Nation-Treatment.' It is possible the UK may be in breach of such obligations due to the differential inspection of products arriving from the EU compared to those from outside the EU.

[242] DEFRA 'UK Food Security Report' (n 59), 8

[243] Fiona Smith, 'A New Dawn? The UK's Emergent Agri-food Trade Strategy after Brexit' (2023) 34 King's Law Journal 30, 36

[244] ibid, 38

[245] ibid, 31

4.2.1. UK-Australia Free Trade Agreement

The UK and Australia signed a free trade agreement in December 2021. It was the first new post-Brexit trade deal signed by the UK, that did not 'roll-over' previous EU-deals.[246] This agreement has been criticised due to the possibility it may allow food imported from Australia that has been produced using products banned in the UK, as well as risking lower welfare meat products being imported.[247] The Government was provided with advice on the agreement with Australia by the Trade and Agriculture Commission, with their report presented to Parliament.[248] However, the agreement was criticised by the Environment Food and Rural Affairs Committee,[249] which suggested the agreement did not undergo proper scrutiny,[250] as it was signed just six months after the Agreement in Principle was made in June 2021.[251] Neil Parish, chair of the Committee, was reported as stating:

> 'It seems nonsensical that the Government has jumped the gun and finalised the new UK-Australia Free Trade Agreement without first demonstrating that it has taken on board the thorough and well-researched conclusions of the Trade and Agriculture Commission's report. The Trade Secretary has stated that the TAC was established to 'advise on future strategy', yet the Government has pushed ahead with striking new trade

---

[246] Dominic Webb, 'UK-Australia Free Trade Agreement' (House of Commons Library Number 9484, 12 May 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-9484/ accessed 1 November 2023, 5

[247] Orla Delargy, 'Government Has Laid the UK-Australia Trade Deal Before Parliament – Here Are Some Key Questions' (*Sustain*, 19 June 2022) https://www.sustainweb.org/blogs/jun22-trade-agriculture-commission-section-42-australia/ accessed 1 November 2023.

[248] Department for International Trade, 'Trade and Agriculture Commission: Advice for the Secretary of State for International Trade on the UK-Australia Free Trade Agreement' (April 2022) https://assets.publishing.service.gov.uk/media/625680a3e90e072a02602266/trade-and-agriculture-commission-advice-to-the-secretary-of-state-for-international-trade-on-the-uk-australia-free-trade-agreement.pdf accessed 15 April 2024.

[249] House of Commons Library, 'UK-Australia Free Trade Agreement' (*UK Parliament*, 12 May 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-9484/ accessed 1 November 2023

[250] Farming Online, 'Govt pushes ahead with Australian Trade Agreement, but TAC Recommendations Risk Being 'Left to Gather Dust' (*Farming Online*, 16 June 2021) https://farming.co.uk/news/govt-pushes-ahead-with-australian-trade-agreement-but-tac-recommendations-risk-being-left-to-gather-dust accessed 1 November 2023.

[251] Webb (n 246) 5.

> deals that have major implications for the future of farming in this country, while the TAC's report risks being left to gather dust.' [252]

Indeed, the lack of time as well as the limited formal power to scrutinise free trade agreements have been highlighted as concerns in relation to the strength of parliamentary scrutiny of free trade agreements.[253]

Although there were food production and food safety concerns raised about this agreement, the focus of the rest of this subsection is AMR. Chapter 25 of the agreement deals with animal welfare and AMR. Specifically in relation to AMR there are no concrete limits on use of antibiotics in food production and no goals for work reducing the use of antimicrobials. The chapter states:

> 'Each Party shall explore initiatives to promote the reduced need for and appropriate use of antimicrobial agents in animal production and health, and in crop production, including promoting guidance on the prudent and responsible use of antimicrobial agents in good husbandry and veterinary practices, and biosecurity.' [254]

The lack of restrictions on antibiotic use is concerning as, discussed in more detail below, arguably antibiotic use in Australian agriculture is not as restrictive as in the UK and EU. This places the UK at risk of importing animal products that carry resistant bacterial or genetic material carrying antibacterial resistance.

Australia is leading the way in some aspects of tackling AMR as its antibiotic approval process is one of the most restrictive in the world.[255] It does not licence fluroquinolones and other antibiotics important for human health

---

[252] Farming Online (n 250).
[253] Trade and Public Policy Network, 'Six Practical Steps to Strengthen Parliamentary Scrutiny of UK Trade Agreements' (*UK Trade Policy Observatory,* 13 June 2022) https://blogs.sussex.ac.uk/uktpo/2022/06/13/six-practical-steps-to-strengthen-parliamentary-scrutiny-of-uk-trade-agreements/ accessed 26 February 2024.
[254] Article 25.2 (3) UK-Australia Free Trade Agreement https://assets.publishing.service.gov.uk/media/61b86a31d3bf7f055fce74e8/uk-australia-free-trade-agreement-fta-chapter-25-animal-welfare-and-antimicrobial-resistance.pdf accessed 1 November 2023.
[255] Baral *et al* (n 94).

for use in animals.[256] In addition, in 2011, its antibiotic use in agriculture was reported to be the fifth lowest in the world, compared to the UK at fifteenth.[257] However, since this time, as described above, the UK has reduced its agricultural antibiotic use and comparable figures for use in Australia are not available.[258] This makes it difficult to assess antibiotic use in Australian agriculture and as a result the risk posed by importation of Australian animal products. There are more specific concerns about high levels of antibiotic use in poultry and pig farming in Australia,[259] the use of antimicrobials as growth promoters,[260] and the antibiotics used to provide infection protection after inserting hormone implants in cattle. [261]

Importation of meat produced in a way that could undermine the UK's rules around AMR and food safety in the UK is problematic in relation to the standard of adequate food proposed in the normative framework. The safety of food imported should be a key consideration in UK trade policy to ensure food brought into the UK is safe and adequate as part of the core of the right to food. If the trade agreement with Australia results in import of food that is less safe than that produced in the UK or the importation of food that increases the risk of development of AMR, the UK will likely be in violation of its obligations in relation to the right to food. Finally, returning to the issue at the start of this chapter, as with the USA, chlorine washing of chicken is allowed in Australia. [262] Currently the UK Government is assuring consumers that

---

[256] Jo Coombe, 'Antimicrobial Stewardship in Australian Livestock Industries' (2nd edn, Animal Industries' Antimicrobial Stewardship RD&E Strategy June 2021) https://animalhealthaustralia.com.au//wp-content/uploads/dlm_uploads/2018/11/Antimicrobial-stewardship-in-Livestock-Report-2021-.pdf accessed 1 November 2023.

[257] Jim O'Neill, 'Antimicrobials in Agriculture and the Environment: Reducing Unnecessary Use and Waste' (*Review on Antimicrobial Resistance*, December 2015) https://amr-review.org/sites/default/files/Antimicrobials%20in%20agriculture%20and%20the%20environment%20-%20Reducing%20unnecessary%20use%20and%20waste.pdf accessed 1 November 2023.

[258] Alliance to Save Our Antibiotics – Written Evidence (AUT0018) https://committees.parliament.uk/writtenevidence/12245/pdf/ accessed 1 November 2023 [4.1].

[259] ibid, [1.5].

[260] ibid, [1.6].

[261] ibid, [1.7].

[262] Hand Sourced, https://www.handsourced.com.au/behind-the-scenes/are-australian-meat-chickens-bleached/ accessed 1 November 2023.

these products will not be sold in the UK.[263] However, this leaves the question as to whether the UK continuing a ban on importation of chlorine washed chicken would fall foul of WTO rules. This will be considered in the next subsection.

4.2.2. Chlorinated chicken, AMR and WTO rules

The UK has a trade agreement with Australia, a country that uses chlorine to wash chickens. This could put pressure on the Government to use the delegated powers provided post-Brexit to allow the importation of chlorinated chicken. Some countries would argue such chicken is perfectly safe with no risk to human health. However, as discussed above, there is some, early evidence this may not be the case.[264] Rishi Sunak, the UK Prime Minister at the time of writing, has stated that chlorinated chicken will not be sold in the UK.[265] So far, the UK Government has kept its promises in relation to maintaining bans of food UK consumers are concerned about. Indeed, in early 2024, trade negotiations broke down between the UK and Canada in part due to the UK refusing to relax bans on hormone-treated beef. [266]

However, it is not clear if the UK can maintain a ban on chlorinated chicken under WTO rules. The USA previously brought a case against the EU regarding their ban on the sale of chicken washed in anything other than potable water, but it was suspended.[267] The discussion below considers the issue of food safety, the right to food and WTO rules using chlorinated chicken as an example. The discussion here can be distinguished from the discussion of the WTO in Chapter 4 as it focuses on a different aspect of WTO law. Chapter 4 engaged with the extensive literature on the WTO Agreement on

---

[263] Lisa O'Carroll and Helena Horton, 'No Chlorinated Chicken or Hormone-Fed Beef in Future Trade Deals, Sunak Vows' *The Guardian* (16 May 2023) https://www.theguardian.com/politics/2023/may/16/no-chlorinated-chicken-or-hormone-fed-beef-in-future-trade-deals-rishi-sunak-vows accessed 1 November 2023.
[264] Highmore *et al* (n 18); Rhouma *et al* (n 113).
[265] O'Carrol and Horton (n 263).
[266] Paul Seddon and Kate Whannel, 'UK Halts Trade Negotiations with Canada over Hormones in Beef Ban' (*BBC*, 26 January 2024) https://www.bbc.co.uk/news/uk-politics-68098177 accessed 15 April 2024.
[267] *European Communities – Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States*, WT/DS389/4 (12 October 2009) (Request for the Establishment of a Panel).

Agriculture and its impact on food security in developing and least developed nations.[268] This section however focuses on the impact of the SPS. It considers states abilities to impose requirements, restrictions and bans on imported food that allow them to fulfil their obligations for the right to food in relation to food safety under this agreement. This issue has not been explored extensively in the academic literature concerning the right to food and the WTO.[269] This discussion is not intended to be an extensive in-depth description of the operation of the SPS, nor a full review of WTO rules and related case law. The section aims to highlight a potential conflict between WTO rules and the core of the right to food.

WTO rules in the General Agreement on Tariffs and Trade (GATT) limits tariffs and other non-tariff measures that can act as barriers to trade.[270] One of the overarching aims of GATT, stated in the Chapeau of the Agreement is' 'the elimination of discriminatory treatment in international commerce.'[271] The basic principles that prevent discrimination are the most favoured nation (MFN) treatment obligation,[272] and the national treatment obligation.[273] The MFN obligation requires that if a state provides favourable treatment to one state, it must be given to all states. This means like products should be treated equally.[274] The national treatment obligation means that products imported cannot be treated differently on the national market to domestic products.[275] These rules could potentially prevent labelling requirements or banning of importation of goods produced using certain methods such as chlorine washing. However, GATT Article XX(b) does include General Exceptions that

---

[268] For example, see: Ricardo Meléndez-Ortiz, Christophe Bellmann and Jonathan Hepburn (eds), *Agricultural Subsidies in the WTO* (CUP 2009).
[269] Joseph considers the SPS and TBT in one section of her book. Sarah Joseph, *Blame it on the WTO? A Human Rights Critique?* (OUP 2011), 120-8. Other literature dealing with issues around the TBT and food tend to focus on nutrition and labelling, but do not engage specifically with the right to food. For example, see: Jill E Hobbs and William A Kerr, 'Consumer Information Labelling and International Trade in Agri-Food Products' (2006) 31 Food Policy 78; Anne Marie Thow *et al,* 'Nutrition Labelling is a Trade Policy Issue: Lessons from an Analysis of Specific Trade Concerns at the World Trade Organization' (2017) 33 Health Promotion International 561.
[270] General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) (GATT), Preamble.
[271] ibid
[272] GATT Article I
[273] GATT Article III
[274] GATT Article I
[275] GATT Article III

allow states to apply measures 'necessary to protect human, animal or plant life or health' that may otherwise be considered discriminatory.[276]

As well as GATT, the Agreement on SPS and the Agreement on Technical Barriers to Trade (TBT) have relevance in this area. The SPS will be the focus of this section, as it is a standalone agreement dealing with measures states implement to protect human, animal, and plant health.[277] If there is conflict between the SPS and GATT, the SPS takes priority.[278] In addition, if a measure is considered an SPS measure it is considered under the SPS, not the TBT even if it relates to a measure, such as labelling, that would usually be dealt with under the TBT.[279] As such it is the most relevant in dealing with food safety and the right to food. The section will only consider the TBT in relation to labelling to inform consumers as an alternative to banning the import of chlorinated chicken. This may be a necessary alternative because, as the discussion below will demonstrate, it is not clear if the UK maintaining a ban on importation of chlorinated chicken would be compliant with WTO rules.

The SPS applies to measures that are implemented with the aim of protecting animal, human or plant health. This includes measures to protect against disease and pests, as well as risks arising from 'additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs.'[280] The SPS uses assessments of scientific risk to determine if measures are truly aimed at protecting from disease or if they are protectionist.[281] This focus on science is unique in the WTO agreements.[282] The SPS also encourages WTO members to set food safety standards based in international standards.[283] This means that the standards of Codex Alimentarius are used in food safety as benchmarks, which if members go

[276] GATT Article XX(b)
[277] Lukasz Gruszczynski and Joanne Scott, *The WTO Agreement on Sanitary and Phytosanitary Measures. A Commentary* (2nd edition, OUP 2023) 1.
[278] SPS art 2.4 indicates that measures that comply with the SPS are presumed to comply with GATT, in particular Article XX(b). Agreement on the Application of Sanitary and Phytosanitary, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 493 (SPS).
[279] Gruszczynski and Scott (n 277), 21.
[280] SPS Annex A.
[281] Fortin (n 89) 66.
[282] Gruszczynski and Scott (n 277), p xi.
[283] SPS art 3.1

above, they have to justify using science.[284] This requirement aims to promote harmonisation of SPS measures.[285] States are also encouraged to engage in the setting of these standards.[286]

As mentioned, if countries want to exceed the safety measures in relevant international standards they can, but such measures should be based on scientific risk. This raises the question as to how the SPS and Dispute Settlement Body (DSB) approach this requirement. Briefly, a measure under the SPS has to have a 'nexus to one of the specified purposes' listed in Annex A(1), which has a 'clear and objective relationship' between the measure and its purported purpose.[287] This must be a rational and objective relationship.[288] Article 2.2 SPS requires scientific evidence for the measure as well as sufficient evidence for the ongoing application of a measure. However, the Appellate Body (AB) has not created a test for the evaluation of whether something is a rational relationship, leaving room for uncertainty. [289]

In addition, there has been some debate about how to deal with very low levels of risk or possible risks that the scientific evidence available cannot exclude. The AB has stated that there is no minimum magnitude of risk that a risk assessment would need to demonstrate.[290] Any ascertainable risk can therefore be regulated by states.[291] However, the AB has also indicated that 'theoretical uncertainty is not the kind of risk which, under Article 5.1, is to be assessed.'[292] It is therefore not clear as to how countries should deal with suspected risks, where there is no concrete scientific evidence that allows quantification of the risk. This creates another area of uncertainty around the SPS agreement and when measures may be contrary to the rules. [293]

---

[284] SPS art 3.3
[285] Gruszczynski and Scott (n 277), 223.
[286] SPS art 3.4 and 10.4.
[287] *Australia Measures Affecting the Importation of Apples from New Zealand,* WT/DS367/AB/R (Nov 29 2010) (*Australia-Apples*) [176].
[288] Lukasz Gruszczynski, *Regulating Health and Environmental Risks under WTO Law: A Critical Analysis of the SPS Agreement* (OUP 2010), 108.
[289] ibid, 109.
[290] *EC Measures Concerning Meat and Meat Products (Hormones),* WT/DS26/AB/R, WT/DS48/AB/R (January 161998) (*EC-Hormones*) [186].
[291] Gruszczynski and Scott (n 277), 76.
[292] *EC-Hormones* [186].
[293] Gruszczynski (n 288) 119.

In such situations, the EU has used the precautionary principle.[294] As mentioned above this is a principle derived from environmental law, and indicates that, where there is scientific uncertainty, policy makers should err on the side of caution until the magnitude of risks can be ascertained.[295] The SPS does not explicitly prohibit the use of the precautionary principle. In the *EC-Hormones case,* the AB indicated that although the precautionary principle is reflected in the preamble, Article 3.3 and Article 5.7 of the SPS Agreement, it is not an explicit component of the SPS Agreement.[296] As such, the indication that a country has used the precautionary principle to introduce particular SPS measures does not override the SPS Agreement nor remove the need for a panel to apply the SPS Agreement provisions, following the normal principles of treaty interpretation, meaning such measures would still have to conform with the SPS Agreement. Article 5.7 SPS allows members to adopt provisional SPS measures where scientific evidence is insufficient. However, this is not the same as the presence of scientific uncertainty, which is what usually triggers the use of the precautionary principle.[297] This is a more exacting standard and in addition it has been suggested the DSB has met attempts to invoke the precautionary principle 'with hostility'.[298]

Considering both these issues, the *EC-Hormones* case demonstrates the potential difficulty in distinguishing between a minimal but ascertainable risk and a theoretical uncertainty. An expert providing evidence in the cases suggested a risk in relation to eating beef from oestrogen treated animals as being zero to one in one million people.[299] The DSB indicated this was not a scientifically identified risk, an approach that confused experts involved in dispute panels.[300] Arguably this is a situation where the precautionary principle would apply. There is a suspected small risk from eating meat produced with the use of hormones, but it is increasing the risk of cancer, a significant

---

[294] Commission of the European Communities, 'Communication from the Commission on the Precautionary Principle' (Brussels, 2nd February 2000, COM (2000) 1 final) https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0001:FIN:en:PDF accessed 27 November 2023.
[295] de Sadeleer (n 87) 135; Scott (n 65) 4.
[296] *EC- Hormones* (n 290) [124].
[297] Scott (n 65) 7.
[298] Gruszczynski (n 288) 157.
[299] Gruszczynski (n 288) 120.
[300] Gruszczynski and Scott (n 277) 77.

consequence. Given the potential consequence of the risk, it could be deemed by governments that it is reasonable to ban the product until more evidence could be collected. However, the AB in this case indicated that, although the precautionary principle was a principle of customary international environmental law, it was not yet clear if it was a general principle of international law or a principle of customary international law,[301] which meant it was not required to be considered under the normal rules of treaty interpretation. This would suggest, under WTO rules, the use of the precautionary principle, when there are small amounts of evidence or a possible low risk, may leave the UK open to possible successful complaints.

EC-Hormones also highlights another uncertainty in the DSB approach to SPS measures. Its approach to the difference between risk assessment and risk management and consideration of public opinion and political factors in imposing SPS measures has also been criticised.[302] Policy decisions that are made in response to risk are usually considered to consist of a scientific risk assessment followed by risk management that considers societal, political and other features that decision makers take into account when deciding if and how to regulate a risk.[303] What can be considered in this two part process, and also how it is to be evidenced is not clear, with the AB in the EC Hormones case indicating the strict requirements for risk assessment, focusing on the particular type of harm rather than a generalised risk of harm.[304] For example it appears the DSB tend to focus on the likelihood of risks, rather than considering both the objective likelihood and more subjective magnitude of the risk as both components of risk assessment.[305] Likelihood of risk is easily established if sufficient scientific evidence is available.[306] However, when

[301] *EC- Hormones* (n 290) [123].
[302] For example, see: Joseph (n 269) 121; Diahanna L Post, 'The Precautionary Principle and Risk Assessment in International Food Safety: How the World Trade Organisation Influences Standards' (2006) 26 Risk Analysis 1259; Ludivine Petetin, 'The Precautionary Principle and Non-Scientific Factors in the Regulation of Biotech Foods' (2017) 8 European Journal of Risk Regulation 106.
[303] Commission of EC (n 289) 2.
[304] Gruszczynski (n 294) 122.
[305] Joseph (n 269) 123; Caroline E Foster, 'Public Opinion and the Interpretation of the World Trade Organisation's Agreement on Sanitary and Phytosanitary Measures' in Sarah Joseph, David Kinley and Jeff Waincymner (eds), *The World Trade Organisations and Human Rights. Interdisciplinary Perspectives* (Edward Elgar 2009) 294-296.
[306] Joseph (n 269) 123.

determining the magnitude of a risk, this will necessarily involve questions about a society's willingness to accept certain costs and benefits and if they are prepared to be subjected to a particular risk.[307] The SPS is based in science and so is not well equipped to deal with the wider issues states such as the magnitude of a risk is and so how accepting society is of that risk.

The focus on science in the SPS has been criticised in relation to *EC-Hormones.* Joseph has argued that the lack of consideration of public opinion moves away from democratic participation principles, including those derived from Article 25 of the International Covenant on Civil and Political Rights. [308] She also argues that the use of the precautionary principle by the EC in the *EC-Hormones* case would have been applauded by both the Special Rapporteurs for health and food, who have indicated the importance of the precautionary principle.[309] Despite this, the AB found the ban on beef produced using hormones breached WTO rules, without taking these factors into account. Considering such measures would not completely displace the role of science in attempting to decide if SPS measures are legitimate or in fact protectionist.[310] Science is used for risk assessment and then states could demonstrate why they have made the decisions they have in terms of risk management. This would allow for consideration of public opinion and societal views about certain risks. It is however acknowledged that some public opinions may not be rational, and so such opinions could be rightly dismissed either by governments or the DSB.

Given how Codex standards are set, it seems contradictory to not allow public opinion, cultural and political factors to be considered in the risk management process under the SPS agreement. It is acknowledged that GATT XX(a) does allow measures to protect public morals. In the event of a conflict between GATT and the SPS Agreement, the SPS Agreement would be considered first.[311] As such, SPS measures, which would include measures to tackle AMR, would be first considered in relation to the SPS Agreement.

---

[307] Foster (n 305) 288; Joseph (n 269) 123.
[308] Joseph (n 269) 124.
[309] ibid.
[310] Joseph (n 269) 124.
[311] SPS art 2.4; *European Communities- Measures Affecting Asbestos and Asbestos-Containing Products.* WT/DS135/AB/R (12 March 2021) [80].

Although Codex standards are based on science and risk assessment, the final stage of adoption of a Codex standard is a vote by member states.[312] In the case of use of hormones in beef production, the vote was hardly unanimous with a vote of 33 for, 29 against and seven abstentions.[313] There is also the possibility that states do not vote in Codex based only on their interpretation of the science, but instead may consider economic, cultural, political factors, and even lobbying from business.[314] As such measures that want to exceed these standards, which were voted on by state representatives that potentially considered a host of non-scientific factors, are then assessed largely on the basis of science. Allowing states more latitude to consider public opinion and to invoke the precautionary principle would remove this contradiction and give states more options to ensure food entering their markets is safe, in compliance with the core of the right to food.

Turning now to consider the specific issue that this chapter began with, the sale of chlorinated chicken in the UK, this uncertainty makes it difficult for the UK to know if maintaining a ban on chlorinated chicken could lead to a complaint from another WTO member. The USA has previously lodged a complaint about the EU banning such chicken,[315] and although they have withdrawn this complaint, the possibility of a complaint against the UK remains. Now the UK is outside of the EU, it may become a target of complaints about its policies.[316] In addition, as the UK is smaller than the EU, it may not be able to weather any measures imposed if it is considered to have breached WTO rules. The EU, despite losing cases in relation to hormones in beef production maintained their bans and accepted the retaliatory tariffs.[317] The UK may not be able to do this if it lost a challenge. Chlorinated chicken may then have to

---

[312] FAO, 'Rules of Procedure of Codex Alimentarius Commission' https://www.fao.org/3/Y2200E/y2200e03.htm accessed 26 February 2024.
[313] Joseph (n 269) 125.
[314] Gruszczynski and Joanne Scott (n 277) 226-8.
[315] *European Communities – Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States*, WT/DS389/4 (12 October 2009) (Request for the Establishment of a Panel).
[316] For example, see: James Kane 'Trade and Regulation after Brexit' (*Institute for Government*, August 2020) https://www.instituteforgovernment.org.uk/sites/default/files/publications/trade-and-regulation-after-brexit.pdf accessed 26 February 2024, 4.
[317] *EC – Measures Concerning Meat and Meat Products (Hormones) – Joint Communication from the EC and US*, WT/DS26/28, 30 September 2009.

be imported into the UK. It is therefore necessary to determine if such a ban complies with WTO rules, and if not whether there are alternative measures to limit the impact of importation of such chicken.

The first consideration is that chlorinated chicken is not prohibited by Codex and has been recommended by the FAO to limit *Salmonella* and *Campylobacter* contamination of carcasses.[318] As such the UK bears the burden of justifying why a ban is necessary and would need to provide a scientific risk assessment that contrary to the opinion of most states, chlorinated chicken is not safe, and an absolute ban on its sale is necessary. There are suggestions that there is a risk from low numbers of residual bacteria on carcasses to those that are immunocompromised.[319] In addition, there is some evidence that chlorine washing may exacerbate the development of AMR.[320] These may be considered minority scientific opinions, and states are able to base their risk assessments on such opinions.[321] However, the evidence at this stage is limited and may not be enough to establish more than a theoretical risk, and so the SPS would not allow measures to protect against them.[322] This is a situation where the precautionary principle would be appropriate. Although the chlorine itself is unlikely to affect human health,[323] there is early evidence that there may be microbiological evidence of risks associated with chlorinated chicken, and so the UK should be able to ban it and collect more evidence, and this approach is supported by the Special Rapporteurs for health and food, as discussed above.

However, the WTO DSB may take a similar line to the *EC-Hormones* case, in that this is a cultural or societal preference and so not truly an SPS measure. This however in of itself is problematic in terms of the core of the right to food. The core requires food to be culturally acceptable, and there is no direct provision for this in the SPS, TBT or GATT, other than the 'public morals' exception in GATT XX. The public morals exception has previously

[318] FAO, Guidelines for the Control of *Campylobacter* and *Salmonella* in Chicken Meat' (n 14).
[319] Highmore *et al* (n 18)
[320] Rhouma *et al* (n 113)
[321] de Sadeleer (n 87) 325 Gruszczynski (n 288) 137-8.
[322] *EC- Hormones* (n 290) [186].
[323] Balcombe, Bradley and Fraser (n 14).

been used in relation to gambling,[324] animal welfare in relation to seal products,[325] and import of certain AV products into China.[326] There is no clear guidance from these cases about the general requirements to establish a measure which protects public morals.[327] Although chlorinated chicken does compensate for lower welfare standards, these lower standards are a matter of degree when compared to the UK. This is not the same as the situation as the seal products case, where there were clear animal welfare issues in relation to 'clubbing' seals. As such it is not clear that lower standards within similar systems in the USA would be sufficient for the public moral's exception. Similarly, the apparent knee-jerk aversion to chlorine washing amongst the British public, may not be considered a public moral in need of protection. This uncertainty is problematic as the desire to not import food products produced with certain techniques relates to cultural acceptability and are 'perceived non-nutrient values attached to food.'[328]

The final way the risk to those that are immunocompromised could be limited and also ensure people don't purchase and consume chicken that has been produced in a way that they object to, is to label the chicken with a warning. Labelling requirements imposed on imports are regulated by the TBT. As the focus of this chapter is on food safety rather than the TBT Agreement, a full discussion of the TBT is outside the scope of this discussion. The TBT does allow trade-restrictive measures in pursuit of a legitimate objective, which includes the 'protection of human health or safety, animal or plant life of health.'[329] The AB has indicated that providing consumers with information about the countries animals were raised and slaughtered in is a legitimate objective. As such it is likely that labelling of chicken with country or origin

[324] *US – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/ 2 (13 June 2003).
[325] *EC – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R (AB) (May 22, 2014).
[326] *China-Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products,* WT/DS363/AB/R (21 December 2014).
[327] Ben Cazpnik, '"Moral" Determinations in WTO Law: Lessons from the Seals Dispute' (2022) 25 Journal of International Economic Law 390, 391.
[328] GC 12 (n 7) [11].
[329] Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1868 U.N.T.S. 120 (TBT) art 2.2.

would be permitted, allowing consumers to avoid chicken from countries that chlorine-wash.[330]

In addition, specific labelling indicating that chicken has been chlorine washed is also likely to be permitted. This is due to the distinction in the TBT between product related processes and production methods (PPMs) and non-product related PPMs.[331] Chlorine washing is likely to be considered part of the production process rather than the physical characteristic of the product itself.[332] As such it is a non-product related PPM. There has been debate about whether the TBT cover such measures at all,[333] due to the definitions in the Annexes of the TBT. Although this area of WTO law is not certain, the *US-Shrimp* case does suggest that under GATT XX such labelling may be permitted if the measure is not considered to fall under the TBT.[334] Equally *US-Tuna II (Mexico)* found a 'dolphin friendly' labelling requirement in the US not to violate the TBT,[335] again suggesting a chlorine washed chicken labelling scheme would be permitted. As such labelling of chlorine washed chicken, either regarding the production method or the country of origin would likely be permitted under WTO rules. This conclusion has also been reached by the Trade and Agriculture Commission.[336]

In conclusion and returning to AMR, SPS measures aimed at maintaining the UK's current high standards in relation to AMR could be problematic for similar reasons to the ban on chlorinated chicken. All the international guidance and many national plans indicate the need for more research and evidence in relation to development of AMR and its possible

---

[330] *United States – Certain Country of Origin Labelling (COOL) Requirements* WT/DS384/AB/R (June 29 2012) [453].
[331] Mitsuo Matsushita *et al*, *The World Trade Organization. Law, Practice and Policy* (3rd edn, OUP 2015) 443.
[332] ibid.
[333] Michael Cardwell and Fiona Smith, 'Contemporary Problems of Climate Change and the TBT Agreement: Moving Beyond Eco-Labelling' in Tracey Epps and Michael J Trebilcock (eds) *Research Handbook on the WTO and Technical Barriers to Trade* (Edward Elgar 2013) 406-8.
[334] *US – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (AB) (12 October 1998) (*US Shrimp*).
[335] *US – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R (AB) (16 May 2012).
[336] Department for Business and Trade, 'Trade and Agriculture Commission: Advice to the Secretary of State for Business and Trade on the UK's Accession Protocol to CPTPP' (December 2023) https://www.gov.uk/government/publications/cptpp-fta-advice-from-trade-and-agriculture-commission accessed 14 April 2024.

spread in food.[337] This uncertainty should allow use of the precautionary principle. However, from the discussion above the approach of the DSB to risk and the precautionary principle cannot be predicted with certainty, which in of itself is problematic for states attempting to create food safety regulations. In addition, the possibility that states may have to roll back measures to be compliant with lower international standards is risking lowering levels of food safety. This then becomes a possible retrogressive measure in relation to the right to food. [338] Such measures can only be justified after 'the most careful consideration,' and the context of the 'full use of the maximum available resources.'[339] In addition, the SPS and TBT regime may not provide room for states to regulate to meet the cultural requirements of their citizens, and so this may also violate the core of the right to food, except where labelling would be permitted to allow consumers to avoid such products was permitted. These clashes of obligations for the right to food could be avoided if the WTO DSB consider the requirements of the core of the right to food and the ICESCR when making their decisions. An appropriate case to see how far the DSB will consider the right to food in relation to food safety may provide answers to some of these questions. The DSB has previously considered other international treaties in their judgements, for example the Convention on the International Trade in Endangered Species of Wild Flora and Fauna,[340] suggesting they may now consider human rights treaties in appropriate cases.

More widely, based on the comments of the Special Rapporteurs, in areas where there is persistent scientific uncertainty such as AMR, it could be argued that obligations in relation to safe food require the use of the precautionary principle in negotiation of trade agreements and application of WTO rules. However, these comments are not hard law and so at most are highly persuasive. Although ensuring access to safe food is a legal obligation for states derived from the core of the right to food, the remaining scientific uncertainty related to some aspects of AMR means it cannot also be said that

---

[337] For example: FAO, OIE and WHO (n 36); HM Government, 'Tackling Antimicrobial Resistance' (n 120).
[338] Joseph (n 269) 125.
[339] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, (14 December 1990) E/1991/23) [9].
[340] *US-Shrimp* (n 334) [25] and [132].

taking measures to reduce antibiotic use in food production is an absolute legal norm in relation to the right to food, as the science is not yet conclusive of spread of AMR through food. In addition, unlike chlorine washed chicken, which is for most a safe product, any introduction of food into the UK that is produced in a way that risks development of AMR is concerning. Once the bacteria are in the UK, they may add to levels of AMR in the UK, and so unlike chlorinated chicken, an absolute ban of such products is necessary. Labelling would not be an appropriate alternative. States may then be in a situation where there is concern over AMR, for example, the early evidence that chlorine washing may increase levels of AMR, [341] but the SPS regime does not consider this sufficient evidence of the risk. The state then potentially must choose between maintaining a high level of food safety and use of the precautionary principle as suggested by the right to food or following WTO SPS rules.

5.0. Conclusion

The public concern over chlorinated chicken post-Brexit has highlighted a larger concern regarding food safety in the UK. AMR is a global health threat that has the potential to affect food production systems and impact the sustainability of food production. AMR is an issue that relates to the right to food and the normative framework proposed in this thesis. Organisms that are resistant to antimicrobials can be carried on food, causing both acute illness that is potentially more difficult to treat and spread AMR. As such, AMR and bacterial contamination of food is a food safety concern, and so is relevant for the core of the right to food, which requires access to safe food. In addition, AMR has implications for food production methods and the safety of food imported into the UK. Government policy should therefore consider issues around food production and food importation when creating policy in relation to AMR. Framework legislation, as discussed in Chapter 5 of this thesis would also require benchmarks, processes, and targets in relation to AMR and food safety. Such legislation would also require clear indication of responsible

[341] Rhouma *et al* (n 113).

Government departments for various aspects of food safety and AMR in relation to food.

The discussion above has indicated that, when part of the EU, the UK benefited from a world leading food safety system. In addition, the UK was taking steps beyond those recommended in international guidelines to tackle AMR. However, post Brexit, the way food safety law and guidelines will be developed is not clear, and concerns that the UK standards may fall or at least not keep up with the EU seem to have been realised in relation to legislation regarding antibiotic use in food producing animals. The UK government should also be focusing on the risks of AMR when agreeing new international trade agreements. The recent agreement with Australia raises concerns about this, as although AMR is mentioned in the agreement, no concrete measures or limits are included. There is evidence that Australia uses more antibiotics than the UK in certain aspects of food production increasing the risk that AMR will be 'imported' into the UK. Australia also uses chlorine to wash chicken carcasses, which according to assurances from the current Prime Minister, will not be available in the UK, but the issue of chlorine washed chicken where this chapter started highlights the UK's vulnerability in relation to WTO rules and maintaining the standards of imported food now the UK has left the EU.

Although the UK would be able to use risk assessments and potentially rely on the precautionary principle, where evidence was inconclusive about the safety of certain products in relation to chlorine washing or AMR more widely, such bans would have to be very carefully constructed to ensure they cannot be successfully challenged by other countries. This could breach the obligations for the core of the right to food, as discussed in earlier parts of this thesis. In relation to chlorine washing, labelling regimes may protect customers and allow them to choose if to consume such products. However, labelling is not a suitable alternative for protection against AMR, and so there is a possible clash between a desire to reduce AMR through trade rules and WTO SPS rules.

Any framework that addresses the right to food needs to consider AMR as a global threat to human, animal, and plant health, as well as to the global food system. States have legal obligations to ensure food consumed in their country is safe, and this includes limiting contamination with microorganisms

and genetic elements carrying antimicrobial resistance. This requires states to have appropriate laws in place regarding food safety and to ensure reduced use of antimicrobials in food production. It also requires states to ensure food that they import is safe and to cooperate in improving international standards and trade rules to develop better international standards leading to improved food safety of all as part of the realisation of the right to food.

Chapter 8

Conclusion

The COVID-19 pandemic and subsequent war in Ukraine made food prices and the nature of the global food chain front page news. Although much of the academic literature on the right to food and food security focuses on developing and least-developed countries, one of the things that the COVID-19 pandemic highlighted was the levels of food insecurity in developed countries. This thesis aimed to address this gap in the literature, as well as determine the UK's obligations in relation to the right to food. The two interrelated questions that traverse this work were, firstly, what obligations developed states have in relation to the right to food; and, secondly, how the UK should implement these obligations. These pressing and underexplored research questions were inspired both by the rising levels of food insecurity, highlighted during the COVID-19 pandemic, and by policy and legislative developments post-Brexit.

To answer these questions the first part of the thesis created a framework for the right to food. This framework identified six standards, based on Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR): freedom from hunger, adequate food, nutrition, production, equitable distribution, and international cooperation. In the second part of the thesis, the novel normative framework was applied to situations creating obligations for the right to food in the UK. First, the thesis considered the status of these standards in the UK in relation to domestic food policy and legislation. It then considered the specific difficulties faced in relation to supermarkets and the right to food. Finally, the thesis considered the position of the UK in relation to food safety and international trade now the UK has left the European Union (EU), considering possible issues in relation to the right to food through the lens of antimicrobial resistance (AMR).

1.0. A novel normative framework for the right to food

To create a framework for the right to food, Chapter 1 considered the underlying norms and moral values that justify the right to food. Taking a pluralistic approach,

the chapter examined consequentialist and political conceptions of rights to illuminate the normative justification of the right to food. Ultimately, the chapter adopted a deontological approach, based on the seminal idea that hunger is an affront to human dignity: driving people to hunger violates our collective understanding of what it is to live a dignified life. Human dignity and the equal moral worth of individuals lie at the very core of the normative justification of the right to food.

The first chapter also addressed some of the critiques of socioeconomic rights. It contributed to debates in this area by using the right to food to illustrate why socioeconomic rights are rights are monitorable and justiciable. Through engagement with the General Comments of the Committee on Economic Cultural and Social Rights (CESCR), the chapter identified a fundamental right to be free from hunger. It then argued for the importance of the core of socioeconomic rights as a potential guide to state obligations, and placed emphasis on using this to delineate human rights law obligations that states need to address with priority, even though socioeconomic rights are to be progressively realised. This approach was then used in Chapters 4 and 5 to determine the possible context of legislation to implement the right to food in the UK and the obligations the UK Government has in relation to regulating supermarkets.

Having justified the underlying abstract norm that hunger is an affront to human dignity, the thesis then embarked on the next stage of human rights justification: determining the specific obligations that derive from the abstract norm. This was the main underlying theme of Chapters 2 and 3. The aim of this process was to illuminate the specific rules that flow from the standards identified from the text of Article 11 ICESCR. This is necessary to show whether and how the right to food is justiciable and enforceable. Throughout this process, the thesis engaged with a wide range of hard and soft law sources, as well as with policy guidance from international bodies, including reports of the CESCR and Special Rapporteurs, as well as the work of the Food and Agricultural Organization (FAO).

Chapter 3 argued that freedom from hunger was a fundamental duty flowing from the right to food, a duty related to but distinct from the duty that people have access to adequate food. Hunger, as an affront to human dignity, has been found to violate specific provisions of regional human rights treaties,

even when they do not contain distinct rights to food. The European Court of Human Rights has found the provision of inadequate food to those detained, or otherwise wholly dependent on the state, to be a violation of Article 3 of the European Convention on Human Rights, which prohibits torture, inhuman and degrading treatment, and punishment. As such, it was argued that the right to be free from hunger *is* a fundamental right, of immediate realisation. In Chapter 4, this argument was supported by suggestions that freedom from hunger is also part of Customary International law.

Alongside the argument that freedom from hunger is a fundamental right, Chapter 2 also considered the relationship between hunger, food security and moral security. For a dignified life, a person requires both objective and subjective moral security. Not only do you need your right to be free from hunger to be respected and acted upon, but you also need to believe your basic interests and welfare are considered important by society. This idea drives suggestions as to how to ensure the fundamental right to be free from hunger is realised in the UK. People in the UK need sufficient income to purchase their own food, as discussed in Chapter 5 in relation to basic minimum incomes, rather than rely on charitable handouts. The fundamental nature of the right to be free from hunger and the requirement that approaches to ensure its realisation respect human dignity and moral security is central to determining the obligations states have in relation to the right to food.

Chapter 3 then went on to discuss the obligations derived from three of the remaining five standards. Components of these standards can form part of the core of the right to food to be progressively realised with priority. They can also contain obligations that are to be more slowly progressively realised, due to the long-term nature of the obligation and associated policy goals. The first of these standards is adequate food. This standard sits mostly within the core of the right to food and links closely to the FAO definition of food security. The standard of adequate food suggests many obligations for states. Firstly, as discussed in Chapter 3, adequacy embraces non-nutrient and cultural values attached to food. A discussion of religious slaughter cases again engaged with ideas of moral security. When a state considers whether people should be able to access culturally appropriate food in a way that clashes with other values, such as animal welfare, this is not in of itself a violation of the right to food. However, ideas of

moral security and dignity require appropriate reasoning is provided. In addition, adequacy of food requires a state to consider the safety of food, as discussed in Chapter 7. It is also important to consider if and how people can access a sufficient nutritious diet, as discussed in Chapter 6, in relation to where supermarkets are located and how they stock their smaller convenience stores. As such the standard of adequate indicates a range of obligations for states, that spread into many policy areas.

Nutrition overlaps with the adequate nature of food that people can access. However, distinct issues relating to people's diets are relevant to this standard. Chapter 3 discussed two such examples: a move to plant-based diets and taxation of unhealthy food. The discussions demonstrated the complexity of these matters. For instance, some vegan diets may reduce the consumption of unhealthy processed foods and decrease the impact of food consumption on the climate. At the same time, some vegan diets rely heavily on ultra-processed foods, which are now suggested to be a severe health threat.[1] The possibility of taxing unhealthy foods is also a complex issue which if chosen as a way for governments to address dietary related diseases needs careful planning. The standard of nutrition sits across the core of the right to food, in that people need to be able to access a nutritious diet. However, it also encompasses obligations that may be more slowly progressively realised, such as education and changing our overall food environment. However, as discussed in Chapter 6 in relation to supermarkets, the action the UK Government takes in relation to these obligations needs to be carried out with a degree of urgency given the levels of diet associated disease in the UK.

The final standard considered in Chapter 3 is the standard of production. This standard also relates to the core of the right to food, as the CESCR has indicated the core of the right to food includes sustainable food. However, given many aspects of food production and agriculture cannot be changed instantly this is very much an obligation of progressive realisation. The standard requires states to consider approaches to agriculture, including sustainable intensification

[1] See, for example: Chris Van Tulken, *Ultra-Processed People. Why Do We All Eat Stuff That Isn't Food…and Why Can't We Stop?* (Cornerstone Press 2023); Carlos Augusto Monteiro *et al*, 'The Need to Reshape Global Food Processing: A Call to the United Nations Food Systems Summit (2021) 6 BMJ Global Health e00688; Anthony Fardet and Edmond Rock, 'Ultra-Processed Foods and Food System Sustainability: What are the Links?' (2020) 12 Sustainability 6280.

and agroecology, that continue to produce sufficient food to feed the world's population, but at the same time limiting the environmental impact of this food production. Chapter 7 also highlighted the need to consider AMR when agricultural policy is being developed. In general, the obligations suggested by the standard of production relate to agriculture, food waste, climate change and the possible impact of AMR on food production. The UK is currently in a transition stage in terms of agricultural policy post-Brexit, and as discussed in Chapter 5, there is evidence that this transition is resulting in policy that is not joined up and has missed an opportunity to ensure sustainable production in the UK that supports farmers to transition into farming practices such as agroecology.

2.0. Implementation of the right to food in the UK

Having created a framework for the right to food, the second part of the thesis considered the current level of realisation of the right to food in the UK, the lack of food and agriculture policy coherence in the UK, as well as the disparity in the approaches of the devolved nations. The rising level of food bank usage suggests that the UK is falling short of its fundamental duty to ensure that people should be free from hunger. In addition, the rising levels of obesity and diet-related illness, and the ongoing supply-chain issues that occurred during COVID-19 and post-Brexit, suggest the UK is likely to be in violation of the core of the right to food, as well as making insufficient progress in relation to obligations that are to be more gradually progressively realised.

In addition to a social minimum income, the UK needs overarching food policy that is discussed and agreed upon by all the devolved nations. This policy should engage with all aspects of the right to food and the way they interact, including agricultural policy and a trade policy that considers how trade can support or undermine other food and agricultural policy in the UK. Framework legislation for the right to food in the UK was suggested as a pragmatic approach to address the lack of policy coordination in relation to food and agriculture.

Framework legislation is not a panacea and is not expected to be a complete resolution to the issues highlighted in the thesis. It was argued that framework legislation would set the foundations for joined-up national food policy and better delineation of the relevant departmental responsibilities. It would also

clarify and strengthen accountability for the implementation of the legal obligations that arise from the right to food. However, the limitations of this legislation were also recognised. NGOs and other stakeholders would have to continue to put pressure at all levels of government to ensure policy is moving in the correct direction, not just rely on court proceedings. Also, appropriate drafting and enactment of the legislation would only be the beginning of ensuring appropriate policy to realise the right to food. But it would be a positive step and a sign of commitment from government to work towards realisation of the right to food. Ultimately framework legislation is considered the most pragmatic option available to the UK at this time, given the country's constitutional arrangement and the fact that the rights contained in the ICESCR are unlikely to be directly incorporated into UK law.

Chapters 6 and 7 then looked at two specific case studies that applied the framework for the right to food. Given their size and the large proportion of the UK population that obtain food from supermarkets it was suggested that there needs to be more government guidance and, in some cases, legislative intervention, where supermarkets have the potential to hinder the full realisation of the right to food. Specifically, the chapter advocated an approach based on the core of the right to food. The more urgent and fundamental the obligation arising from the right to food, the more justifiable legal intervention is. Legal intervention would be considered appropriate in this situation, unless other policy approaches, such as voluntary schemes or corporate social responsibility are likely to be effective. Ultimately this chapter argued that states have obligations in relation to dealing with businesses that can impact the right to food such as supermarkets. It also indicated in the UK, given the market domination of supermarkets and their potential to influence consumers, that legal intervention in the market is warranted in relation to some of the obligations created by the standards in the proposed normative framework.

Chapter 7 started with the public outcry at the thought of the importation of chlorinated chicken from the USA post-Brexit. It considered chlorinated chicken as a product that was not only culturally unacceptable to the UK population, but also a potential risk as a vehicle to bring antimicrobial resistant bacteria into the UK. The chapter highlighted the safety of food as an important component of its adequacy that creates clear obligations for states to ensure that

the food supply chain is safe, as well as educating consumers about food safety. The chapter also discussed the many ways that AMR, as a global concern for human, animal and environmental health intersects with the right to food. AMR demonstrates that the standard of adequacy creates obligations for coordinated policy that ensures food that is produced in the UK is safe. As the UK is no longer part of the EU and is beginning the process of entering into new trade agreements, such issues should be a central concern in relation to food and agricultural imports. The free trade agreement between the UK and Australia was a missed opportunity to reduce antibiotic use, limit the importation of food contaminated with antimicrobial resistant organisms and ensure that food imported into the UK is safe. The UK needs coordinated food and agricultural policy that feeds into trade policy and negotiations. As the UK navigates the post-Brexit landscape, trade agreements should be seen as a mechanism to facilitate the progressive realisation of the right to food and should not to regress on the level of realisation already achieved.

3.0. The right to food in the UK: future research directions

The normative framework of this thesis and its application to the UK have suggested several areas that need to be addressed by the UK Government. Firstly, to ensure a broader and more sustained way of addressing increasing levels of hunger as one manifestation of poverty, the UK should consider the introduction of a minimum social income. This would need further research into the economic arguments and consequences of such policies. The UK also needs overarching food policy that is discussed and agreed upon by all the devolved nations. This policy should engage with all aspects of the right to food and the way they interact, including agricultural policy and a trade policy that considers how trade can support or undermine other food and agricultural policy in the UK. In addition, this policy would require a combination of working with supermarkets and in some areas, where voluntary schemes or discussions with supermarkets have failed, such as reformulating food recipes, legislation is suggested as a necessary step to achieve obligations in relation to nutrition and people being able to access an adequate diet.

This thesis was unable to engage with all the issues and considerations that discussion of implementation of the right to food in the UK highlights. From this thesis, three broad areas of further research have arisen. 1) Discrimination in realisation of the right to food in the UK; 2) appropriate rights-based policies to address nutrition and diet related illness in the UK; 3) AMR, international trade, and the right to food. Throughout this thesis, racial and gender disparities in aspects of realisation of the right to food have been highlighted. For example, the impact of diet related illnesses on different races and the increased levels of poverty in women, in part due to the indirect discrimination of the UK benefit scheme. In addition, the difficulties of disabled people in accessing adequate food in some circumstances, such as during the COVID-19 pandemic, was identified. Further research regarding the underlying causes of these disparities, their intersectional nature, their impacts on people, and the most appropriate way to tackle these disparities and discrimination are necessary to ensure that the UK also meets its obligations under Article 2 ICESCR, the requirement that the rights in the Covenant are 'exercised without discrimination.'[2]

The UK is facing an obesity and diet-related-illness crisis. Some approaches to tackle this have been briefly discussed, such as the HFSS regulations. However, there is much more to be researched and considered for example the efficacy of schemes such as the voluntary traffic light labels on the front of packaging. The efficacy of such schemes raises more complex questions regarding individual responsibility for obesity. Are individuals responsible for this crisis or is the food environment, transnational corporations and supermarkets partly or totally to blame? This then engages again with issues in Chapter 6 around the appropriate way to deal with the impact supermarkets and large multinational corporations have on the right to food. It has been suggested supermarkets themselves have reached the status of normative authorities.[3] Further research is needed to assess if this is the case, and what implications this may have for governments in relation to the right to food. If it is the case, then the role of supermarkets in guiding people's food choices, any advice they give

[2] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 2.

[3] Jane Dixon, 'Supermarkets as New Food Authorities' in David Burch and Geoffrey Lawrence (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007) 30.

consumers, and the foods they promote are an important area of future research, both in terms of its content and how it should be monitored and regulated.

The threat that AMR poses to the right to food shares similarities with climate change in terms of it being both a threat to food production as well as something that can be reduced by certain approaches to agriculture. However, the link between AMR and the right to food is underdeveloped at this point. This link would benefit from further research especially in relation to policy advice for governments to tackle AMR. More specifically in relation to trade and the World Trade Organization, the concerns around how the Sanitary and Phytosanitary Agreement (SPS) may deal with issues around AMR is required, as if the SPS may be a block to measures aiming to tackle AMR, revision of this agreement will be necessary.

The UK exhibits regression in several areas of socio-economic rights. At the time of writing, the Prime Minister is considering further cuts to the welfare budget,[4] which will only force more people into destitution, hunger, and reliance on food banks. The Environmental Land Management Scheme is still not fully implemented, and is still much criticised, leaving doubt about the direction of UK agricultural policy in terms of its commitment to sustainable food production.[5] Delayed or inadequate anti-obesity policies are placing the health of a generation of children at risk.[6] As food insecurity, poverty and unhealthy diets are combining to create health and societal disparities for generations to come, the need to fully realise the normative and legal power of the human right to food has never been greater.

---

[4] Kiran Stacey, 'Sunak Says He Wants to Cut Workers Taxes this Year and May Cut Benefits' *The Guardian* (7 January 2024) https://www.theguardian.com/politics/2024/jan/07/rishi-sunak-says-he-wants-to-cut-workers-taxes-this-year-and-may-reduce-benefits accessed 12 January 2024.

[5] NFU, 'SFI Expansion Welcome, but Deliverability Questions Remain' (4 January 2024) https://www.nfuonline.com/updates-and-information/sfi-2024-expansion-revealed-at-ofc-2024/ accessed 12 January 2024

[6] Andrew Gregory, 'Health of England's Children at Risk from Policy Inaction on Obesity, Report Finds' *The Guardian* (25 December 2023) https://www.theguardian.com/uk-news/2023/dec/25/health-england-children-risk-obesity-report accessed 12 January 2024.

Bibliography

Abbott KW and Snidal D, 'Hard and Soft Law in International Governance' (2000) 54 Legalization and World Politics 421

Access to Nutrition Initiative, "UK Retailed Index 2022; (May 2022) https://accesstonutrition.org/app/uploads/2022/05/UKRI-Final-Report-20220510-KH.pdf

AHDB, 'Antibiotic Use on Diary Farms' (AHDB) https://ahdb.org.uk/antibiotic-use-on-dairy-farms

AHDB, 'BVDFree England' https://ahdb.org.uk/bvdfree-england

AHDB, 'Pig Health Scheme' https://ahdb.org.uk/pig-health-scheme

AHDB, 'BVD Stamp It Out funding ending soon' (14 April 2021) https://ahdb.org.uk/news/bvd-stamp-it-out-funding-ending-soon

Alliance to Save Our Antibiotics – Written Evidence (AUT0018 https://committees.parliament.uk/writtenevidence/12245/pdf/

Alston P, 'International Law and the Human Right to Food' in Alston P and Tomaševski A (eds), *The Right to Food* (Matinus Nijhoof 1984)

--'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals' (2005) 27 Human Rights Quarterly Review 755

-- and Goodman R, *International Human Rights Text and Materials* (OUP 2013)

-- and Quinn G, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 156

Altieri MA, 'Agroecology: A New Research and Development Paradigm for World Agriculture' (1989) 27 Agriculture, Ecosystems and Environment, 3

-- *Agroecology: The Science of Sustainable Agriculture* (IT Publications 1995)

Amani J, 'Morrisons Launches 'Together with Morrisons' Dual-Branding for Independent Convenience Stores' *Grocery Gazette* (18 May 2022) <https://www.grocerygazette.co.uk/2022/05/18/morrisons-concept-independents/

Amnesty International, 'Gaza: Airdrops and Sea Routes are no Alternative to Aid Delivery by Land' (13 March 2024) https://www.amnesty.org/en/latest/news/2024/03/gaza-airdrops-and-sea-routes-are-no-alternative-to-aid-delivery-by-land/

Anderson CR *et al*, 'From Transition to Domains of Transformation: Getting Sustainable and Just Food Systems Through Agroecology' (2019) 11 Sustainability, 5272

Anderson ES, 'What is the Point of Equality?' (1999) 109 Ethics 287.

Antimicrobial Resistance Collaborators, 'Global Burden of Bacterial Antimicrobial Resistance in 2019: a Systematic Analysis' (2019) 399 Lancet 629

Antony AC, 'Vegetarianism and Vitamin B-12 (Cobalamin) Deficiency' (2003) 78 The American Journal of Clinical Nutrition 3

Aparicio D and Cavallo A, 'Targeted Price Controls on Supermarket Products' (National Bureau of Economic Research, Cambridge MA, NBER working paper no 24275, 2018) https://www.nber.org/system/files/working_papers/w24275/w24275.pdf

APHA Science Blog, ‘Chicken Run: APHA’s Response to a Regulated Salmonella in Broiler Chickens’ (*UK.GOV,* 27 February 2020) https://aphascience.blog.gov.uk/2020/02/27/salmonella-in-broiler-chickens/

Armstrong B *et al*, ‘Food and You 2: Wave 3 Key Findings’ (*FSA*, January 2022) https://www.food.gov.uk/sites/default/files/media/document/Food%20and%20You%202%20-%20Wave%203%20Key%20Findings%20FINAL.pdf

Arup C, Beaton-Wells C and Paul-Taylor J, ‘Regulating supermarkets: The Competition for Space’ (2017) 40 UNSW Law Review 1035

Attenborough D, ‘Foreword’*,* in Brake P, Simmonds MP, Butterworth A and Lumbery P (eds), *Troubled Waters: A Review of the Welfare Implications Of Modern Whaling Activities* (2004) available at https://www.researchgate.net/publication/263444394_Troubled_Waters_A_review_of_the_welfare_implications_of_modern_whaling_activities

Atkin E, ‘Which Supermarkets are Scrapping Best Before Dates and Why?’ *Metro* (1 September 2022) https://metro.co.uk/2022/08/03/which-supermarkets-are-scrapping-best-before-dates-and-why-17117556/

Averchenkova A, Fankhauser S and Finnegan JJ, ‘The Impact of Strategic Climate Legislation: Evidence from Expert Interviews on the UK Climate Change Act’ (2021) 21 Climate Policy 251

Baekkeskov E, Munkholm L and Rubin O, ‘Steering Against Superbugs. Research Agenda and Four Perspectives for Global Governance’ in Rubin O, Baekkeskov E and Munkholm L (eds), *Steering Against Superbugs* (OUP 2023)

Balcombe K, Bradley D and Fraser I, ‘Consumer Preference for Chlorine Washed Chicken, Attitudes to Brexit and Implications for Future Trade Agreements’ (2022) 111 Food Policy

Baldwin R, ‘For Regulation to Behavioural Change: Giving Nudge the Third Degree’ (2014) 77 Modern Law Review 857

Ball S, ‘Treading Lightly on HFSS Trading Compliance’ (*Kantar,* 14 March 2023) https://www.kantar.com/uki/inspiration/health/2023-wp-treading-lightly-on-hfss-trading-compliance

-- ‘Weighing the Impact of HFSS Laws’ (*Kantar,* 28 June 2023) https://www.kantar.com/uki/inspiration/health/weighing-the-impact-of-hfss-laws

Balogun B, Baker C, Conway L, Long R, ‘Obesity’ (House of Commons Library Number 9049), 12 July 2021

Bandy LK *et al*, ‘Assessing the Healthiness of UK Food Companies’ Product Portfolios Using Food Sales and Nutrient Composition Data’ (2021) 16 PLoS ONE e0254833

Baral P *et al* ‘Lessons from Ten Countries on Regulating Antimicrobials for Farm Animals (2019) 34 Canadian Journal of Law and Society 521

Barber T, ‘West air-drops food for Muslims: US aircraft shower besieged Mostar with 13,000 ration packs after lorry convoy blocked by Croats’ *Independent* (24 August 1993) available at https://www.independent.co.uk/news/west-airdrops-food-for-muslims-us-aircraft-shower-besieged-mostar-with-13-000-ration-packs-after-lorry-convoy-is-blocked-by-croats-1463356.html.

Barker K, ‘Barker Review of Land Use Planning’ (2006) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228605/0118404857.pdf

Barnes A, Sutherland L-A, Toma L, Matthews K, Thomson S, 'The Effect of the Common Agricultural Policy Reforms on Intentions Towards Food Production: Evidence from Livestock Farmers' (2016) 50 Land Use Policy 548

Barnes J, 'Force-Feeding and the Legacy of Torture in the 'War on Terror'' (2019) 23 *International Journal of Human Rights* 1074

Barrett C, Food Aid's Intended and Unintended Consequences' (FAO Background Paper, March 2006) http://barrett.dyson.cornell.edu/files/papers/MixedEffectsv2Mar2006.pdf

-- 'Food Aid as Part of a Coherent Strategy to Advance Food Security Objectives' (FAO Agriculture Economics Working Paper, 2006) https://www.fao.org/publications/card/en/c/a56ccfe7-c45c-5eb9-896a-23a07a011053/

Baur G, 'It's Time to Dismantle Factory Farms and Get Used to Eating Less Meat' *The Guardian* (19 May 2020) https://www.theguardian.com/commentisfree/2020/may/19/its-time-to-get-used-to-eating-less-meat.

BBC News, 'What is Hamas and Why is it Fighting with Israel in Gaza?' (*BBC,*13 February 2024) https://www.bbc.co.uk/news/world-middle-east-67039975.

Bélanger J and Pilling D 'The State of the World's Biodiversity for Food and Agriculture' (FAO Rome, 2019) https://www.fao.org/3/ca3129en/CA3129EN.pdf

Bellamy A and Drummond C, 'Southeast Asia. Between Non-Interference and Sovereignty as Responsibility', in Knight WA and Egerton F (eds), *Routledge Handbook of the Responsibility to Protect* (Routledge 2012)

Bene *et al.* 'Is Resilience a Useful Concept in the Context of Food Security and Nutrition Programmes? Some Conceptual and Practical Considerations' (2016) 8 Food Security 123

Benelhocine C, *The European Social Charter* (Council of Europe Publishing 2012)

Bernstein H, 'Food Sovereignty: A Skeptical View' (Food Sovereignty: A Critical Dialogue, Yale University, 14-15 September 2013) https://www.tni.org/files/download/1_bernstein_2013.pdf

Benton T, 'The Many Faces of Food Security' (2016) 92 International Affairs 1505

Bergen R, 'Antibiotic Use in Canadian Feedlots' (*Beef Cattle Research Council Canada,* 29 October 2018) https://www.beefresearch.ca/blog/antibiotic-use-in-canadian-feedlots/

Bilchitz D, *Poverty and Fundamental Rights. The Justification and Enforcement of Socio-Economic Rights* (OUP 2007).

Birchall D, 'Reconstructing State Obligations to Protect and Fulfil Socio economic Rights in An Era of Marketisation' (2022) 71 ICLQ 227

Birchfield L and Corsi J, 'The Right to Life is the Right to Food: Peoples Union for Civil Liberties v Union of India and Others' (2010) 17 Human Rights Brief 15

Blake and Cromwell J, 'Food Insecurity in UK Communities' (2022) https://www.researchgate.net/publication/365362129_Food_Security_UK_2021

Blowfield M and Murphy A, *Corporate Social Responsibility* (4th edn, OUP 2019).

Blythman J, *Shopped: The Shocking Power of Britain's Supermarkets* (Harper Perennial 2007).
Bovens L, 'The Ethics of Nudge' in Grüne-Yanoff T and Hansson SO (eds), *Preference Change: Approaches from Philosophy, Economics and Psychology* (Springer 2008)
Boyle A, 'Soft Law in International Law-making' in Malcom Evans (ed), *International Law* (5th edn, OUP 2018)
Boyle K, *Economic and Social Rights Law. Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020).
Bradshaw B, 'Retailers are Breaking HFSS Rules without Consequence' *The Grocer* (7 December 2023) https://www.thegrocer.co.uk/hfss/retailers-are-breaking-hfss-rules-without-consequence/686080.article
Bradshaw C, 'The Environmental Business Case and Unenlightened Shareholder Value' (2013) 33 Legal Studies 141.
-- 'Waste Law and the Value of Food' (2018) 30 Journal of Environmental Law 311.
British Veterinary Association, 'BVA Position on Veterinary Scanning Surveillance' (August 2018) https://www.bva.co.uk/media/3115/bva-position-on-veterinary-scanning-surveillance.pdf
-- 'Responsible Use of Antimicrobials in Veterinary Practice 7-Point Plan' (BVA 2019) https://www.bva.co.uk/resources-support/medicines/responsible-use-of-antimicrobials-in-veterinary-practice-poster/
Buchanan A, *The Heart of Human Rights,* (OUP 2013)
Bull R, Miles C, Newbury E, Nichols A, Weekes T and Wylde G, 'Hunger in the UK'(*The Trussell Trust,* June 2023) https://www.trusselltrust.org/wp-content/uploads/sites/2/2023/08/2023-The-Trussell-Trust-Hunger-in-the-UK-report-web-updated-10Aug23.pdf.
Business and Human Rights Resource Centre, 'Mandatory Due Diligence' https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/
-- 'Taking Stock: Reflections on the Progress of the UN Binding Treaty https://www.business-humanrights.org/en/blog/?opinion_series=27
Butler P, 'More than a Million UK Residents Live in 'Food Deserts' says study' *The Guardian* (12 October 2018) https://www.theguardian.com/society/2018/oct/12/more-than-a-million-uk-residents-live-in-food-deserts-says-study
-- ''Unconscionable' Universal Credit Cut Breaks Human Rights Law Says UN Envoy' *The Guardian* (16 September 2021) available at https://www.theguardian.com/society/2021/sep/16/unconscionable-universal-credit-cut-breaks-human-rights-law-says-un-envoy
Butler S, 'Supermarkets Wasting 200,000 Tonnes of Food That Could go to Needy, Say Charities' *The Guardian* (22 February 2023) https://www.theguardian.com/business/2022/feb/22/supermarkets-wasting-200000-tonnes-of-food-that-could-go-to-needy-say-charities
-- 'UK Government Urged to Act as Some Meat and Veg Prices Double in a Year' *The Guardian* (16 May 2023) https://www.theguardian.com/business/2023/may/16/uk-government-meat-veg-prices-which-rishi-sunak?CMP=Share_AndroidApp_Other
Callan R and Garry FB, 'Biosecurity and Bovine Respiratory Disease' (2002) 18 Veterinary Clinics of North America Food Animal Practice 57.

Campbell D, ‘Clever Than Command?’ (2017) 26 Social and Legal Studies 111

Campbell, ‘Monitoring Women’s Socio-Economic Equality under the ICESCR’ (2018) 30 Canadian Journal of Women and the Law 82.

-- ‘Cooperating to Continuously Improve’ in Hohmann J and Goldblatt B (eds), *The Right to the Continuous Improvement of Living Conditions* (Hart 2021)

-- ‘The Austerity of Lone Motherhood: Discrimination Law and Benefit Reform’ (2021) 42 Oxford Journal of Legal Studies 1197

-- ‘*Capping Motherhood’* in Davis MF, Kjaerum M and Lyons A (eds), *Research Handbook on Human Rights and Poverty* (Edward Elgar 2023)

Cardwell M and Smith F, ‘Contemporary Problems of Climate Change and the TBT Agreement: Moving Beyond Eco-Labelling’ in Tracey Epps and Michael J Trebilcock (eds) *Research Handbook on the WTO and Technical Barriers to Trade* (Edward Elgar 2013)

-- and Smith F, ‘Renegotiation of the WTO Agreement on Agriculture: Accommodating the New Big Issues’ (2013) 62 International and Comparative Law Quarterly 865

Carroll R, Jones S, Giuffrida A, Wilsher K and Connolly K, ‘Farmers across Europe Bank on Improvised Armies of Pickers to Save Harvest’ *The Guardian* (3 April 2020) https://www.theguardian.com/world/2020/apr/03/farmers-across-europe-bank-on-improvised-armies-of-pickers-to-save-harvest.

Cazpnik B, ‘“Moral” Determinations in WTO Law: Lessons from the Seals Dispute’ (2022) 25 Journal of International Economic Law 390

CFS, ‘Principles for Responsible Investment on Agriculture and Food Systems’ (*CFS*, 15 October 2014) https://www.fao.org/3/au866e/au866e.pdf

Chambers J, ‘The Labels Encouraging Chileans to Buy Healthier Foods’ (*BBC*, 11 August 2021) https://www.bbc.co.uk/news/world-latin-america-57553315

Chaturvedi I and Kavalakkat N, ‘A Case for Global Governance of AMR by Regulating the Pharmaceutical Supply Chain’ in Rubin O, Baekkeskov E and Munkholm L (eds), *Steering Against Superbugs* (OUP 2023).

Chen Y, ‘The Right to Food’ (2010) 12 European Journal of Law Reform 158.

Child Poverty Action Group ‘Falling Further Behind: Hardship Among Benefit Capped Families as Prices Rise’ (21 June 2022) https://cpag.org.uk/policy-and-campaigns/briefing/falling-further-behind-hardship-among-benefit-capped-families-prices.

Choudhury B, ‘Balancing Soft and Hard Law for Business and Human Rights’ (2018) 67 ICLQ 961

Chrisafis A, ‘Pork or Nothing: How School Dinners are Dividing France’ *The Guardian* (13 October 2015) https://www.theguardian.com/world/2015/oct/13/pork-school-dinners-france-secularism-children-religious-intolerance

Christians Against Poverty, MP Briefing: Initial Impact Revealed of End of the Universal Credit Uplift’ (14 December 2021) https://bynder.capuk.org/m/6668ab70911b3c5e/original/UC_uplift_impact_brief_Dec_2021.pdf?_gl=1*irb4l6*_ga*MjA4MjIxMzAzNi4xNzExMzYwNjc5*_ga_JDHF1MTESF*MTcxMTM2MDY3OS4xLjEuMTcxMTM2MTc0NS41NS4wLjA.*_gcl_au*MTcxMTU2NTMyNS4xNzExMzYwNjc5

Civil Service, 'Introduction to Devolution' https://assets.publishing.service.gov.uk/media/5c37319aed915d731281fe13/IntroductionToDevolution.pdf

Clapp J, *Hunger in the Balance. The New Politics of International Food Aid* (Cornell University Press 2015)

-- 'The Trade-ification of Food Sustainability Agenda' (2017) 44 The Journal of Peasant Studies 335

-- *Food* (Polity Press 2020)

-- and C Stuart Clark, Improving the Governance of the Food Aid Convention: Which Way Forward? (*The Centre for International Governance Innovation*, September 2010) https://www.cigionline.org/static/documents/policy_brief_20_0.pdf

Clarke G, Eyre H, and Guy C, 'Deriving Indicators of Access to Food Retail Provision in British Cities: Studies of Cardiff, Leeds and Bradford' (2002) 39 Urban Studies 2041

Clarke J, 'Which" Tells Supermarkets to Do More for Customers Through Cost of-Living Crisis' *Independent* 8 November 2022 https://www.independent.co.uk/news/uk/dundee-belfast-north-west-north-east-leeds-university-b2219938.html

-- 'Not Point in Food Price Measures Without Targeting Small Stores, Which? Warns' *The Guardian* (5 June 2023) https://www.theguardian.com/business/2023/jun/05/no-point-food-price-cuts-small-stores-which-warns-chancellor?utm_term=Autofeed&CMP=twt_gu&utm_medium&utm_source=Twitter#Echobox=1685919731

Clay X, 'The Food Shopping Habit That's Costing You More Than You Think' *The Telegraph* (6 February 2023) https://www.telegraph.co.uk/food-and-drink/features/big-convenience-supermarket-rip-off/

Clough B, 'Anorexia, Capacity, and Best Interests: Developments in the Court of Protection Since the Mental Capacity Act 2005' (2016) 24 Medical Law Review 434

Codex Alimentarius, 'Code of Practice to Minimize and Contain Foodborne Antimicrobial Resistance CXC 61-2005' (FAO and WHO, Adopted 2005, Amended 2021) https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXC%2B61-2005%252FCXC_061e.pdf

Cohen D, 'Revealed: UK's Largest Supermarkets Throw Away Enough Food for 190 Million Meals a Year' *Independent* (27 February 2021) https://www.independent.co.uk/news/uk/home-news/supermarket-waste-food-poverty-b1807617.html.

Collins ED and Chandrasekaran K, 'A Wolf in Sheep's Clothing? An Analysis of the 'Sustainable Intensification' of Agriculture' (*Friends of the Earth International*, 2012) https://www.foei.org/wp-content/uploads/2013/12/Wolf-in-Sheeps-Clothing-for-web.pdf.

Corbin T, 'Voluntary Reformulation Not Working, Say Health Experts in Response to Govt Sugar Reduction Programme' *Talking Retail* (2 December 2022) https://www.talkingretail.com/news/industry-news/voluntary-reformulation-not-working-say-health-experts-in-response-to-govt-sugar-reduction-programme-02-12-2022/.

CMA, ‘Pricing Practices in the Groceries Market’ (16 July 2015) https://assets.publishing.service.gov.uk/media/55a6c83540f0b61562000005/Groceries_Pricing_Super-Complaint_response.pdf

-- ‘Competition, Choice and Rising Prices in Groceries’ (July 2023) https://assets.publishing.service.gov.uk/media/64b80adaef5371000d7aeefb/Competition__choice_and_rising_prices_in_groceries.pdf

-- ‘Groceries Unit Pricing: Pricing Analysis’ (30 January 2024) https://assets.publishing.service.gov.uk/media/65b8c153b5cb6e000d8bb747/___Groceries_unit_pricing_pricing_analysis_2__.pdf

Commission of the European Communities, ‘Communication from the Commission on the Precautionary Principle’ (Brussels, 2nd February 2000, COM (2000) 1 final) https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0001:FIN:en:PDF.

Committee on World Food Security High Level Panel of Experts, ‘Food Security and Nutrition. Building a Global Narrative Towards 2030’ (2020) http://www.fao.org/3/ca9733en/ca9733en.pdf

Competition Commission, ‘The Supply of Groceries in the UK Market Investigation’ (2008) https://www.ias.org.uk/uploads/pdf/Price%20docs/538.pdf

Conseil D’État, ‘Neonicotinoids: No Exemptions to the European Ban’ (3 May 2023) https://www.conseil-etat.fr/en/news/neonicotinoids-no-exemptions-to-the-european-ban

Consumer Date Research Centre, ‘Priority Places for Food Index’ https://www.cdrc.ac.uk/priority-places-for-food-index/

Coomans F, ‘The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights’ (2011) 11 Human Rights Law Review 1

Coombe J, ‘Antimicrobial Stewardship in Australian Livestock Industries’ (Animal Industries' Antimicrobial Stewardship RD&E Strategy, 2nd edition, June 2021) https://animalhealthaustralia.com.au//wp-content/uploads/dlm_uploads/2018/11/Antimicrobial-stewardship-in-Livestock-Report-2021-.pdf

Coe S, Balogun B and Sutherland N ‘The Use of Antibiotics on Healthy Farm Animals and Antimicrobial Resistance’ (House of Commons Library, Debate Pack CP 2023/012, 13 January 2023) https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0012/

CO-OP, ‘What is a Co-operative, https://www.co-operative.coop/about-us/what-is-a-coop

Coe S, Balogun B and Sutherland N ‘The Use of Antibiotics on Healthy Farm Animals and Antimicrobial Resistance’ (House of Commons Library, Debate Pack CP 2023/012, 13 January 2023) https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0012/

Cordes K Y and De Schutter O, ‘Accounting for Hunger: An Introduction to the Issues’ in De Schutter O and Cordes K Y (eds), *Accounting for Hunger: The Right to Food in the Era of Globalization* (Hart 2011),

Corkery M and Yaffe-Bellany D, ‘Meat Plant Closures Mean Pigs are Gassed or Shot Instead’ *New York Times* (14 May 2020) https://www.nytimes.com/2020/05/14/business/coronavirus-farmers-killing-pigs.html.

County Councils Network, 'Worse Than Austerity' (27 October 2022) https://www.countycouncilsnetwork.org.uk/worse-than-austerity-councils-warn-that-any-cuts-to-their-budgets-next-year-would-mean-they-are-only-able-to-offer-the-bare-minimum-in-local-services/

Cranston M, '*What are Human Rights?'* (Basic Books 1964)

Craven M, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development.* (Clarendon Press 1995)

Crawford J, *Brownlie's Principles of Public International Law* (9th ed, OUP 2019)

Cribb J, *Food or War* (Cambridge University Press 2019).

Daly N et al, 'Quantifying the Impact of Obesity Prevention Policies in the UK' (The Behavioural Insights Team, 23 November 2022) https://www.bi.team/blogs/quantifying-the-impact-of-obesity-prevention-policies-in-the-uk/

Davey J, 'Britain's Tesco Concedes to Activist Shareholders on Health Targets' (*Reuters,* 5 May 2021) https://www.reuters.com/world/uk/britains-tesco-concedes-activist-shareholders-health-targets-2021-05-04/

-- 'UK High-Sugar Promotion Ban Delay Angers Health Campaigners' (*Reuters,* 19 June 2023) https://www.reuters.com/world/uk/uk-health-campaigners-angered-by-further-delay-high-sugar-promotion-ban-2023-06-19/

Dawkins E *et al* 'Advancing Sustainable Consumption at the Local Government: Level: A Literature Review' 10 Journal of Cleaner Production (2019) 1450

Dean A, 'Rules of Origin: The Biggest Brexit Problem You Didn't Know About' (*Prospect,* 16 March 2018) https://www.prospectmagazine.co.uk/ideas/economics/45865/rules-of-origin-the-biggest-brexit-problem-you-I-know-about.

Dean G, 'Aldi is America's Fastest-Growing Grocer' (*Insider,* 3 June 2023) https://www.businessinsider.com/aldi-history-albrecht-family-karl-theo-grocery-store-shop-retail-2022-12?r=US&IR=T

DEFRA, 'A Review of the Implementation of the Veterinary Surveillance Strategy' (February 2011) https://assets.publishing.service.gov.uk/media/5a78c2a740f0b63247699f54/pb13568-vss-review-110204.pdf

-- 'Draft Amendments to the Veterinary Medicines Regulations 2013' https://consult.defra.gov.uk/vmd/review-of-the-veterinary-medicines-regulations-201/supporting_documents/Draft%20amended%20VMR%20text%20with%20tracked%20changes%20to%20reflect%20proposals.pdf

-- 'Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit' (DEFRA, CM 9577, February 2018) https://assets.publishing.service.gov.uk/media/5a952ad9e5274a5b849d3ad1/future-farming-environment-consult-document.pdf

-- 'UK Supermarkets Sing Government Pledge to Help Halve Food Waste (*GOV.UK,* 13 June 2019) https://www.gov.uk/government/news/uk-supermarkets-sign-government-pledge-to-help-halve-food-waste

-- 'New £16 Million Winter Support Grant to Fareshare to Provide Meals for Those in Need' (*GOV.UK,* 1 December 2020) https://www.gov.uk/government/news/new-16-million-winter-support-grant-to-fareshare-to-provide-meals-for-those-in-need

-- 'Plans to Unlock Power of Gene Editing Unveiled' (*UK.GOV*, 29 September 2021) https://www.gov.uk/government/news/plans-to-unlock-power-of-gene-editing-unveiled
-- 'UK Food Security Report 2021' (16 December 2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077015/United_Kingdom_Food_Security_Report_2021_19may2022.pdf.
-- 'Emergency Pesticide Authorisation to Protect Sugar Beet Crops' (UK.GOV, 1 March 2022) https://www.gov.uk/government/news/emergency-pesticide-authorisation-approved-to-protect-sugar-beet-if-specific-conditions-are-met
-- 'Government Food Strategy' (June 2022) https://assets.publishing.service.gov.uk/media/62a6eb418fa8f5039a1bd7b5/government-food-strategy.pdf
-- 'Environmental Land Management Update' (*UK.GOV,* 21 June 2023) https://www.gov.uk/government/publications/environmental-land-management-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services/environmental-land-management-elm-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services.
-- 'Farming and Countryside Programme annual report, 2022 to 2023' (25 October 2023) https://www.gov.uk/government/publications/farming-and-countryside-programme-annual-report-2022-to-2023/farming-and-countryside-programme-annual-report-2022-to-2023-html-version
-- 'DEFRA in the Media, 'Inaccurate Coverage on Our Farming Budget' (*UK.GOV*, 3 January 2024) https://deframedia.blog.gov.uk/2024/01/03/inaccurate-coverage-on-our-farming-budget/
-- 'Environmental Land Management in 2024: Details of Actions and Payments' (*UK.GOV,* 4 January 2024) https://defrafarming.blog.gov.uk/2024/01/04/environmental-land-management-in-2024-details-of-actions-and-payments/
-- 'Emergency pesticide authorisation to protect sugar beet crop conditionally approved.' (*UK.GOV*, 18 January 2024) https://www.gov.uk/government/news/emergency-pesticide-authorisation-to-protect-sugar-beet-crop-conditionally-approved
Dekeyser K, Korsten L and Fioramonti L, 'Food Sovereignty: Shifting Debates on Democratic Food Governance' (2018) 10 Food Security 223.
Delargy O, 'Government Food Strategy- Which NFS Recommendations Were Passed, Failed or are on Their Way' (*Sustain,* 14 June 2022) https://www.sustainweb.org/blogs/jun22-which-nfs-recommendations-included-in-government-food-strategy/
-- 'Government Has Laid the UK-Australia Trade Deal Before Parliament – Here Are Some Key Questions' (*Sustain,* 19 June 2022) https://www.sustainweb.org/blogs/jun22-trade-agriculture-commission-section-42-australia/
Department for Business and Trade, 'Guidance, Groceries Supply Code of Practice' (*GOV.UK*, 4 August 2009) https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice#payments-for-wastage
-- 'Trade and Agriculture Commission: Advice to the Secretary of State for

Business and Trade on the UK's Accession Protocol to CPTPP' (December 2023) https://www.gov.uk/government/publications/cptpp-fta-advice-from-trade-and-agriculture-commission

Department for Education, 'Providing School Meals During the Coronavirus (COVID-19) Outbreak' (Guidance withdrawn 13 April 2022) https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/covid-19-free-school-meals-guidance-for-schools

-- 'Free School Meals. Guidance for Local Authorities, Maintained Schools, Academies and Free Schools' (March 2024) https://assets.publishing.service.gov.uk/media/65fdad5965ca2f00117da947/Free_school_meals.pdf

Department for Health and Social Care, 'New Obesity Strategy Unveiled as Country Urged to Lose Weight to Beat Coronavirus (COVID-19) and Protect the NHS' (*GOV.UK*, 27 July 2020) https://www.gov.uk/government/news/new-obesity-strategy-unveiled-as-country-urged-to-lose-weight-to-beat-coronavirus-covid-19-and-protect-the-nhs

Department for International Trade, 'Trade and Agriculture Commission: Advice for the Secretary of State for International Trade on the UK-Australia Free Trade Agreement' (April 2022) https://assets.publishing.service.gov.uk/media/625680a3e90e072a02602266/trade-and-agriculture-commission-advice-to-the-secretary-of-state-for-international-trade-on-the-uk-australia-free-trade-agreement.pdf

Derbyshire E, 'Are All 'Ultra-Processed' Foods Nutritional Demons? A Commentary and Nutritional Profiling Analysis' (2019) 94 Trends in Food Science and Technology 98

Dershowitz A, 'Tortured Reasoning' in Levison S (ed), *Torture. A Collection* (OUP 2004)

De Camargo Neto P and Henz R, 'Towards a Green Box Subsidy Regime that Promotes Sustainable Development: Strategies for Achieving Change' in Meléndez-Ortiz R, Bellmann C and Hepburn J (eds), *Agricultural Subsidies in the WTO Green Box* (CUP 2009).

de Sadeleer N, *Environmental Principles. From Political Slogans to Legal Rules* (2nd edn, OUP 2020)

De Schutter O, 'Addressing Concentration in Food Supply Chains' (December 2010) http://www.srfood.org/en/briefing-note-addressing-concentration-in-food-supply-chains

-- 'The World Trade Organisation and the post-global food crisis agenda' (Briefing note 04, November 2011) https://www.wto.org/english/news_e/news11_e/deschutter_2011_e.pdf

-- *International Human Rights Law* (3rd edn, CUP 2019).

-- *et al* 'Commentary to The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2012) 34 Human Rights Quarterly 1084

de Sousa Ferriera S, 'Migrations and the Arab Spring – a New Security Nexus' (2014) 10 Human Security Perspectives 62.

Deva S, 'The UN Guiding Principles on Business and Human Rights and its Predecessors' in Bantekas I and Stein MA (eds), *The Cambridge Companion to Business and Human Rights Law* (CUP 2021).

Dicks LV *et al*, 'What Agricultural Practices Are Most Likely to Deliver 'Sustainable Intensification' in the UK?' (2018) 8 Food and Energy Security e000148

Dimbleby H, 'The National Food Strategy: The Plan (July 2021) https://www.nationalfoodstrategy.org/the-report/

-- *Ravenous* (Profile Books 2023).

Dixon J, 'Supermarkets as New Food Authorities' in Burch D and Lawrence G (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007)

Dobbs M, 'Northern Ireland's Agricultural Quagmire' in Antonopoulos I, Bell M, Čavoški A and Petetin L (eds), *The Governance of Agriculture in Post-Brexit UK* (Routledge 2022).

Niels do Hoog, Ashley Kirk and Hilary Osborne, 'How the Cost of Living Crisis is Hammering UK Households' *The Guardian* (21 June 2022) https://www.theguardian.com/business/ng-interactive/2022/jun/21/cost-of-living-crisis-uk-households-charts-inflation?utm_term=Autofeed&CMP=twt_gu&utm_medium&utm_source=Twitter#Echobox=1655812883

Dom P, 'A Fertilizer Shortage, Worsened by War in Ukraine, is Driving Up Global Food Prices and Scarcity' (*CNBC*, 6 April 2022) https://www.cnbc.com/2022/04/06/a-fertilizer-shortage-worsened-by-war-in-ukraine-is-driving-up-global-food-prices-and-scarcity.html

Donati F and Vidar M, 'International Legal Dimensions of the Right to Food' in Kent G (ed), *Global Obligations for the Right to Food* (Rowman and Littlefield (2008).

Donnelly J, 'Post-Cold War Reflections on the Study of International Human Rights' (1994) 8 Ethics and International Affairs 97.

-- '*Universal Human Rights. In Theory and in Practice'* (3rd edn, Cornell University Press 2013)

Dowler E and O'Connor D, 'Rights Based Approaches to Addressing Food Poverty and Food Insecurity in Ireland and UK' (2012) 74 Social Science and Medicine 44.

Dray S 'Food Waste in the UK' (*House of Lords Library,* 12 March 2021) https://lordslibrary.parliament.uk/food-waste-in-the-uk/

Dreher A, Lang VL, and Ziaja S, 'Foreign Aid' in Draude A, Börzel TA and Risse T (eds), *The Oxford Handbook of Governance and Limited Statehood* (OUP 2018).

Drewnowski A, Perspective: Identifying Ultra-Processed Plant-Based Milk Alternatives in the USDA Branded Food Products Database' (2021) Advances in Nutrition 1.

Driver A, 'European Market in Turmoil, as COVID-19 Continues to Disrupt Meat Plants' (*Pig World*, 6 July 2020) http://www.pig-world.co.uk/news/european-market-in-turmoil-as-covid-19-continues-to-disrupt-meat-plants.html.

-- 'NPA Press Release: Defra Commitments on Pig Supply Chain Reform Will Deliver for Industry (*National Pig Association,* 6 April 2023) http://www.npa-uk.org.uk/Defra_commitments_on_pig_supply_chain_reform_will_deliver_for_industry.html

Drury C, ‘Coronavirus: Dairy farmers throwing thousands of litres of milk away as demand dries up in lockdown’ *Independent,* (9 April 2020) https://www.independent.co.uk/news/health/coronavirus-dairy-milk-farmers-throw-away-shortage-lockdown-a9457001.html

Duncan G, ‘UK Farms Missing up to 75% of Seasonal Workers Needed for Harvest’ *The Grocer* (19 May 2022) https://www.thegrocer.co.uk/fruit-and-veg/uk-farms-missing-up-to-75-of-seasonal-workers-needed-for-harvest/667635.article

Dworkin R, *Justice for Hedgehogs* (Belknap Harvard 2011)

Elliot C, ‘The Food Crisis is Here, and it Will Only Get Worse’ (*New Food Magazine,* 14 June 2022) https://www.newfoodmagazine.com/article/165764/uk-food-crisis/

Elliot M, ‘Beyond the European Convention: Human Rights and the Common Law’ 68 Current Legal Problems 85

Environment, Food and Rural Affairs Committee, ‘Securing food supplies up to 2050: the challenges faced by the UK’ – EFRA report HC 213-I Incorporating HC 266, Session 2008-09 Published on 21 July 2009 – fourth report of session 2008-9 House of Commons.

-- *Covid-19 and Food Supply*, First Report of Session 2019–20, HC 263.

Environment, Food and Rural Affairs Committee, ‘MP’s to investigate fairness in food prices supply’ (12 May 2023) https://committees.parliament.uk/committee/52/environment-food-and-rural-affairs-committee/news/195195/mps-to-investigate-fairness-in-food-prices-and-supply/

-- Fairness on the Food Supply Chain- Oral Evidence’ (14 November 2023) https://committees.parliament.uk/event/19404/formal-meeting-oral-evidence-session/

Erskine R, ‘Mastitis in Cattle’ in MSD Veterinary Manual (*Merck*, October 2022) https://www.msdvetmanual.com/reproductive-system/mastitis-in-large-animals/mastitis-in-cattle

Essink J, Quintavalla A and Temperman J, ‘The Indivisibility of Human Rights: An Empirical Analysis’ (2023) 23 Human Rights Law Review 1.

Estrin S, Laidler DEW and Dietrich M, *Microeconomics* (6th edn, Harlow: Pearson 2012) 560

Eur-Lex, ‘Control of Salmonella and Other Zoonotic Agents’ (EU, 28 July 2016 https://eur-lex.europa.eu/EN/legal-content/summary/control-of-salmonella-and-other-zoonotic-agents.html.

European Commission, ‘GMO Legislation’ https://food.ec.europa.eu/plants/genetically-modified-organisms/gmo-legislation_en.

-- ‘Neonicotinoids’ https://food.ec.europa.eu/plants/pesticides/approval-active-substances/renewal-approval/neonicotinoids_en

European Union, ‘Farm to Fork Strategy’ (EU, 2020) https://food.ec.europa.eu/system/files/2020-05/f2f_action-plan_2020_strategy-info_en.pdf

Fakhri M, 'The International Political Economy of the Right to Food' in Bhuta N (ed), *Human Rights and Global Governance* (OUP, forthcoming 2019)
-- and Tzouvala N, 'International Law and the Right to Food: What We Can Learn from Racial Justice Movements' (*EJIL: Talk*, 19 August 2020) https://www.ejiltalk.org/international-law-and-the-right-to-food-what-we-can-learn-from-racial-justice-movements/.
FAO, 'Agroecology Knowledge Hub' http://www.fao.org/agroecology/en
-- 'Guidelines for the control of *Campylobacter* and *Salmonella* in Chicken Meat' (CAC/GL 78-2011)
-- 'Hunger and Food insecurity' http://www.fao.org/hunger/en/
-- 'Rules of Procedure of Codex Alimentarius Commission' https://www.fao.org/3/Y2200E/y2200e03.htm
-- 'Voices of the Hungry' https://www.fao.org/in-action/voices-of-the-hungry/fies/en/
-- 'Code of Conduct for Responsible Fisheries' (1995) https://www.fao.org/3/v9878e/v9878e.pdf
-- 'The State of Food and Agriculture 1996' (1996) https://www.fao.org/documents/card/en/c/80a57cb8-da7e-5cf4-a767-afb9b2a1fed5/
-- 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security' (2005) https://www.fao.org/publications/card/en/c/cceef08f-0627-5ec9-a8e2-63d7c0b608c2/
-- 'Livestock's Long Shadow: Environmental Issues and Options' (2006) http://www.fao.org/docrep/010/a0701e/a0701e00.HTM
-- 'Right to Food Lessons Learned in Brazil', (2007) http://www.fao.org/3/aa1331e.pdf
-- 'World Food and Agriculture Statistical Pocket Book 2019' (2019) https://www.fao.org/3/ca6463en/ca6463en.pdf
-- 'The State of Food Security and Nutrition in the World' (2022) https://www.fao.org/3/cc0639en/cc0639en.pdf
-- 'Ukraine: Rapid Response Plan, March – December 2022' https://www.fao.org/documents/card/en/c/cb9457en
-- *Foodborne Antimicrobial Resistance. Compendium of Standards* (2023) https://www.fao.org/documents/card/en/c/cb8554en
-- IFAD, UNICEF, WFP and WHO, '*The State of Food Security and Nutrition in the World 2023'* (2023) https://www.fao.org/3/cc3017en/cc3017en.pdf.
-- OIE and WHO, 'Global Framework for Development and Stewardship to Combat Antimicrobial Resistance – Draft' (2018) https://www.who.int/groups/framework-development-stewardship-AMR
Fardet A and Rock E, "Ultra-Processed Foods and Food System Sustainability:What are the Links?' (2020) 12 Sustainability 6280.
Farm Animal Welfare Committee, 'Sustainable Agriculture and Farm Animal Welfare' (2016) available at https://assets.publishing.service.gov.uk/media/5a7f9365ed915d74e33f747f/Advice_about_sustainable_agriculture_and_farm_animal_welfare_-_final_2016.pdf
Farming Online, 'Govt pushes ahead with Australian Trade Agreement, but TAC Recommendations Risk Being 'Left to Gather Dust' (*Farming Online,* 16 June 2021) https://farming.co.uk/news/govt-pushes-ahead-with-australian-trade-agreement-but-tac-recommendations-risk-being-left-to-gather-dust

Farming Today (BBC Radio 4, 21 October 2022)
Filatochev I and Dotensko O, 'Shareholder activism in the UK: Types of Activists, Forms of Activism and Their Impact on a Targets Performance' (2015) 19 Journal of Management and Governance 5.
Findlay A and Sparks L, 'Retail Planning Policy in the UK' (2013) https://stirlingretail.files.wordpress.com/2011/04/retail-planning-policy-in-the-united-kingdomfinal.pdf
Fletcher N, 'Horse Meat Scandal Wipes £300m off Tesco's market value' *The Guardian* (16 January 2013). https://www.theguardian.com/business/marketforceslive/2013/jan/16/horse-meat-tesco-market-value-shares.
Food Standards Agency, 'Importing High-Risk Food and Feed into GB' (Food Standards Agency, 17 December 2021) https://www.food.gov.uk/business-guidance/importing-high-risk-food-and-feed-into-gb
-- 'Food and Feed Safety and Hygiene Common Framework. (Provisional)' (Minister for Health and Social Care, November 2020, CP 231) https://www.gov.uk/government/publications/food-and-feed-safety-and-hygiene-provisional-common-framework
Foresight, 'The Future of Food and Farming: Challenges and Choices for Global Sustainability' (Government Office for Science London, 2011)
Forrest A, 'Brexit Red Tape Risks Winter of Empty Supermarket Shelves, Food Chiefs Warn' *Independent,* (9 May 2023) https://www.independent.co.uk/news/uk/politics/brexit-food-shortages-supermarkets-eu-b2328871.html
Fortin ND, *Advanced Introduction to International Food Law* (Edward Elgar 2023).
Foster CE, 'Public Opinion and the Interpretation of the World Trade Organisation's Agreement on Sanitary and Phytosanitary Measures' in Joseph S, Kinley D and Waincymner J (eds), *The World Trade Organisations and Human Rights. Interdisciplinary Perspectives* (Edward Elgar 2009).
Founou L *et al,* 'Antimicrobial Resistance in the Farm-to-Plate Continuum: More than a Food Safety Issue' (2021) Future Science OA FSO692.
Franks J, 'Sustainable Intensification: A UK Perspective' (2014) 47 Food Policy 71
Fraser E *et al,* 'Biotechnology or Organic? Extensive or Intensive? Global or Local? A Critical Review of Potential Pathways to Resolve the Global\ Food Crisis' (2016) 48 Trends in Food Science and Technology 78
Fredman S, *Comparative Human Rights Law* (OUP 2018)
Fuller L, 'The Forms of and Limits of Adjudication' (1978) Harvard Law Review 353.
Garnett P, Doherty B and Heron T, 'Vulnerability of the United Kingdom's Food Supply Chains Exposed by COVID-19' (2020) 1 Nature Food 315.
Garnett T *et al*, 'Grazed and Confused?' (Food Climate Research Network, 2017) https://www.oxfordmartin.ox.ac.uk/downloads/reports/fcrn_gnc_report.pdf
Gearty C and Mantouvalou V, *Debating Social Rights* (Hart 2011)
Gehring J *et al*, 'Consumption of Ultra-Processed Foods by Pesco Vegetarians, Vegetarians, and Vegans: Associations with Duration and Age at Diet Initiation' (2021) 151 Journal of Nutrition 120
Genoways T, *The Chain. Farm Factory and the Fate of Our Food* (Harper 2014)

George AM, ‘Multiple Antibiotic Resistance’ in White D, Alekshun M and McDermott P (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005)
Gibney M, ‘On Terminology. Extraterritorial Obligations’ in Langford M, Vandenhole W, Scheinin M and van Genugten W (eds), *Global Justice, State Duties. The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2013).
Gilabert P, ‘The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel’ (2010) 32 Human Rights Quarterly 425
Giles C, ‘UK Corporate Profitability Stable Despite ‘Greedflation’ Claims’ *Financial Times* (20 May 2023) https://www.ft.com/content/642f5313-b105-4188-827c-d6c97790f80
Godfray HC and Garnett T, ‘Food Security and Sustainable Intensification’ (2014) 369 Philosophical Transactions of the Royal Society B: Biological Sciences 20120273.
Gold AG, “Food Values Beyond Nutrition” in Herring RJ (ed), *The Oxford Handbook of Food, Politics and Society* (OUP 2015)
Gonzalez CG, ‘Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries’ (2002) 27 Columbia Journal of Environmental Law 433
-- ‘Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage’ (2006) 17 Berkeley La Raza Law Journal 65
Goldberg R, ‘No Such Thing as a Free Lunch: Paternalism, Poverty and Food Justice’ (2013) 24 Stanford Law and Policy Review 35.
Good Food Institute Europe, ‘UK-Plant Based Food Retail Markets Insights (2020-2022)’ (2023) https://gfieurope.org/wp-content/uploads/2023/04/2020-2022-UK-retail-market-insights_updated.pdf
Good Law Project, ‘Government Outsourcing of Food Parcels Forced Clinically Vulnerable to Shield Without Food’ (17 December 2020) https://goodlawproject.org/news/food-parcels/
Goodwin S, ‘A Cursory National Food Strategy Lacks Substance and Joined Up Thinking on Food Insecurity’ (2022) British Medical Journal 377:o1549
Gottlieb R and Joshi A, *Food Justice* (The MIT Press 2013).
GOV.UK, ‘About Us’ (Groceries Code Adjudicator)
-- ‘About Us’ (Rural Payments Agency) https://www.gov.uk/government/organisations/rural-payments-agency.
--, ‘About Us’ (Veterinary Medicines Directorate) https://www.gov.uk/government/organisations/veterinary-medicines-directorate/about
-- ‘Antimicrobial Resistance (AMR)’ https://www.gov.uk/government/collections/antimicrobial-resistance-amr-information-and-resources
-- ‘Healthy Start’ https://www.gov.uk/healthy-start https://www.gov.uk/government/organisations/groceries-code-adjudicator.
--, ‘Office for Health Improvement and Disparities: About Us’ https://www.gov.uk/government/organisations/office-for-health-improvement-and-disparities/about
-- ‘The UK National Control Programme for Salmonella in Chickens (*Gallus gallus*) reared for meat (broilers) (1 January 2008) https://www.gov.uk/government/publications/the-uk-national-control-programme-for-salmonella-in-chickens-gallus-gallus-reared-for-meat-broilers

--, ‘Advertise Veterinary Medicines Legally’ (7 June 2019) https://www.gov.uk/guidance/advertise-veterinary-medicines-legally#advertising-prescription-medicines
-- ‘The Animal and Plant Health Agency receives £1.4 billion budget boost for world-leading Weybridge Laboratory’ (16 March 2020) https://www.gov.uk/government/news/the-animal-and-plant-health-agency-receives-14-billion-budget-boost-for-world-leading-weybridge-laboratory
-- ‘New Funding to Support Dairy Farmers through Coronavirus (6 May 2020) https://www.gov.uk/government/news/new-funding-to-support-dairy-farmers-through-coronavirus
--, ‘Over 1 Million Food Boxes Delivered to Those Most at Risk from Coronavirus’ (6 May 2020) available at https://www.gov.uk/government/news/over-1-million-food-boxes-delivered-to-those-most-at-risk-from-coronavirus.
-- ‘New Obesity Strategy Unveiled as Country Urged to Lose Weight to Beat Coronavirus (COVID-19) and Protect the NHS’ (27 July 2020) https://www.gov.uk/government/news/new-obesity-strategy-unveiled-as-country-urged-to-lose-weight-to-beat-coronavirus-covid-19-and-protect-the-nhs
-- ‘COVID-19: Guidance for People Whose Immune System Means They are At Higher Risk’ (24 December 2021) https://www.gov.uk/coronavirus-shielding-support
-- ‘Guidelines and Guidance on the Responsible Use of Veterinary Medicines’ (Veterinary Medicines Directorate, 19 August 2022) https://www.gov.uk/guidance/guidelines-and-guidance-on-the-responsible-use-of-antibiotics
-- ‘Introducing Further Advertising Restrictions on TV for Products High in Fat, Salt or Sugar: Consultation on Secondary Legislation’ (9 December 2022) https://www.gov.uk/government/consultations/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-secondary-legislation/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-or-sugar-consultation-on-secondary-legislation
-- ‘CMA update on action to help contain cost of living pressures (15 May 2023) https://www.gov.uk/government/news/cma-update-on-action-to-help-contain-cost-of-living-pressures
-- ‘The Border Target Operating Model August 2023’ (29 August 2023) https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023
-- ‘Household Support Fund: Guidance for Local Councils’ (13 September 2023) https://www.gov.uk/government/publications/household-support-fund-guidance-for-local-councils/household-support-fund-final-guidance-for-county-councils-and-unitary-authorities-in-england#working-with-other-organisations
https://www.gov.uk/government/organisations/office-for-health-improvement-and-disparities/about
--, ‘Loyalty Pricing in the Groceries Sector’ (30 January 2024) https://www.gov.uk/cma-cases/loyalty-pricing-in-the-groceries-sector
Graham L, *International Human Rights Law and Destitution. An Economic, Social and Cultural Rights Perspective* (Routledge 2023)

Gravey V, 'Brexit and the Common Agricultural Policy' in Antonopoulos I, Bell M, Čavoški A and Petetin L (eds), *The Governance of Agriculture in Post-Brexit UK* (Routledge 2022)
Gray A, 'Nestlé Investors Warn of 'Systemic Risks' From Unhealthy Foods' *Financial Times* (19 April 2023) https://www.ft.com/content/0d5c7c7f-821c-4e63-8a55-46f9edbbc4f0
Green M, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement' (2001) 23 Human Rights Quarterly 1062
Gregory A, 'Health of England's Children at Risk from Policy Inaction on Obesity, Report Finds' *The Guardian* (25 December 2023 https://www.theguardian.com/uk-news/2023/dec/25/health-england-children-risk-obesity-report
Griffin J, *On Human Rights,* (OUP 2008)
Gruszczynski L, *Regulating Health and Environmental Risks under WTO Law: A Critical Analysis of the SPS Agreement* (OUP 2010)
-- and Scott J, *The WTO Agreement on Sanitary and Phytosanitary Measures. A Commentary* (2nd edition, OUP 2023).
Gupta G, 'Price Controls and Scarcity Force Venezuelans to Turn to the Black Market for Milk and Toilet Paper' *The Guardian* (16 April 2015) https://www.theguardian.com/global-development-professionals-network/2015/apr/16/venezuela-economy-black-market-milk-and-toilet-paper.
Häberli C, 'Do WTO Rules Improve or Impair the Right to Food' in McMahon J and Desta M (eds), *Research Handbook on the WTO Agriculture Agreement* (Edward Elgar 2012).
-- and Smith F, 'Food Security and Agri-Foreign Direct Investment in Weak States: Finding the Governance Gap to Avoid 'Land Grab'' (2014) 77 Modern Law Review 189.
Hand Sourced, https://www.handsourced.com.au/behind-the-scenes/areaustralian-meat-chickens-bleached/.
Hanefeld J *et al*, "Trade is Central to Achieving the Sustainable Development Goals: A Case Study of Antimicrobial Resistance' (2017) BMJ 358:j3505
Hansard, HC Deb 21 October 2020, vol 682m cols, 1130-1177.
Harari D *et al,* 'House of Commons Library: Rising Cost of Living in the UK' 21 September 2022, https://researchbriefings.files.parliament.uk/documents/CBP-9428/CBP-9428.pdf
Harrington RA *et al*, 'A Pilot Randomized Controlled Trial of a Digital Intervention Aimed at Improving Food Purchasing Behaviour: The Front-of Pack Food Labels Impact on Consumer Choice Study' (2019) 3 JMIR Formative Research 1
Harvey F and Butler S, 'Ukraine's Wheat Harvest May Fall by 35% Raising Fears of Global Shortage' *The Guardian* (6 May 2022) https://www.theguardian.com/world/2022/may/06/ukraine-wheat-harvest-may-fall-by-35-percent-satellite-images-suggest
Harvey M, 'The Rise of Supermarkets and Asymmetries of Economic Power' in Burch D and Lawrence G (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007).
Hawthorn E, 'Coronavirus: What Are Tesco, Asda, Sainsburys and Other

Supermarkets Doing in Response? *The Grocer* (30 March 2020) https://www.thegrocer.co.uk/service-and-availability/coronavirus-what-are-tesco-asda-sainsburys-and-other-supermarkets-doing-in-response/603183.article

Headey D and Ecker O, 'Rethinking the Measurement of Food Security from First Principles to Best Practice' (2013) 5 Food Security 327.

-- and Fan S, 'Anatomy of a Crisis. The Causes and Consequences of Surging Food Prices' (IFPRI Discussion paper 00831December 2008) https://ebrary.ifpri.org/digital/collection/p15738coll2/id/16187/rec/1

Hegarty R, 'HFSS Restrictions 'Pushing Shoppers to Healthy Products'' *The Grocer* (29 September 2023) https://www.thegrocer.co.uk/buying-and-supplying/hfss-restrictions-pushing-shoppers-to-healthy-products/683764.article

Herwig A, 'Too Much Zeal on Seals? Animal Welfare, Public Morals and Consumer Ethics at the Bar of the WTO' (2016) 15 World Trade Review 109

Highmore *et al*, 'Viable-but-Nonculturable *Listeria Monocytogenes* and *Salmonella enterica* Serovar Thompson Induced by Chlorine Stress Remains Infectious' (2018) 9 mBio:e00540-18

HM Government, 'Tackling antimicrobial resistance 2019-2024. The UK's five year national action plan' (Department for Environment, Food, and Rural Affairs and Department for Health and Social Care, 24 January 2019) https://www.gov.uk/government/publications/uk-5-year-action-plan-for-antimicrobial-resistance-2019-to-2024

-- 'Contained and Controlled. The UK's 20-Year Visions for Antimicrobial Resistance' (24 January 2019) https://assets.publishing.service.gov.uk/media/5c48896a40f0b616fe901e91/uk-20-year-vision-for-antimicrobial-resistance.pdf

-- 'The Border with the European Union. Importing and Exporting Goods' (June 2022) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083393/2022-06-15_Border_Operating_Model__1_.pdf

Hobbs JE and Kerr WA, 'Consumer Information Labelling and International Trade in Agri-Food Products' (2006) 31 Food Policy 78

Hockaday J, 'Rishi Sunak's Supermarket Price Cap Plan 'Won't Make a Jot of Difference, BRC Says' (*Yahoo News,* 28 May 2023) https://uk.news.yahoo.com/rishi-sunaks-supermarket-price-cap-plan-wont-make-a-jot-of-difference-brc-says-131610368.html.

Hoffman *et al*, 'An International Legal Framework to Address Antimicrobial Resistance' (2015) 93 Bulletin of the WHO 66.

-- 'How Law Can Help Solve the Collective Action Problem of Antimicrobial Resistance' (2019) 33 Bioethics 798

Holt-Giménez E, 'Hunger, Harvests and Profits: The Tragic Records of the Global Food Crisis' in Holt- Giménez E and Patel R with Shattuck A (eds), *Food Rebellions!: Crisis and the Hunger for Justice* (Pambazuka Press 2009).

Horton H, Mason R and Butler P, ' 'Worse than Half-Baked': Johnson's Food Strategy Fails to Tackle Cost of Climate' *The Guardian* (10 June 2022) https://www.theguardian.com/politics/2022/jun/10/worse-than-half-baked-johnsons-food-strategy-fails-to-tackle-cost-or-climate.

-- Barkham P, 'Government Poised to Scrap Nature 'Brexit Bonus' For

Farmers' *The Guardian* (24 September 2022) https://www.theguardian.com/environment/2022/sep/24/brexit-bonus-farmers-poised-to-scrap.
-- and Partridge J, 'Food Tsar Blames Shortages on UK's Weird Supermarket Culture' *The Guardian* (4 March 2023) https://www.theguardian.com/environment/2023/mar/04/food-tsar-blames-shortages-on-uks-weird-supermarket-culture
Hossian K, 'The EU Ban on the Import of Seal Products and the WTO Regulations: Neglected Human Rights of the Artic Indigenous Peoples? (2013) 49 Polar Record 154
House of Commons Library, 'Recruitment Support for Agricultural Workers' (24 May 2022) https://commonslibrary.parliament.uk/research-briefings/cdp-2022-0094/
-- 'UK-Australia Free Trade Agreement' (UK Parliament, 12 May 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-9484/
House of Lords, 'Hungry for change: Fixing the Failures in Food. Report of the 2019-20 session.' HL Paper 85 https://publications.parliament.uk/pa/ld5801/ldselect/ldfphe/85/85.pdf accessed 22 September 2022
Huff A, Beyeler W, Kelley N and McNitt J, 'How Resilient is the United States' Food System to Pandemics?' (2015) 5 Journal of Environmental Studies and Science 337
Human Rights Watch, 'The Price of Oil. Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities' (January 1999) https://www.hrw.org/reports/1999/nigeria/
-- 'Letter from Human Rights Watch to UK Parliamentarians Regarding Impending Cut to Social Security Support' (2 September 2021) https://www.hrw.org/sites/default/files/media_2021/09/Universal%20Credit%20-%20HRW%20Letter%20to%20MPs%20-%20September%202021.pdf
-- 'Israel: Starvation Used as Weapon of War in Gaza' (18 December 2023) https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza
Iceland, 'About Iceland' https://about.iceland.co.uk/.
ICISS 'A Framework for Action for the Responsibility to Protect' (12 July 2023) https://www.globalr2p.org/publications/a-framework-for-action-for-the-responsibility-to-protect-a-resource-for-states/
IFAN, 'Independent Food Bank Emergency Food Parcel Distribution in the UK' (*IFAN,* 3 June 2020) https://uploads.strikinglycdn.com/files/c181ce8c-2309-43a0-8fbf05193a0a2d4c/INDEPENDENT%20FOOD%20BANK%20EMERGENCY%20FOOD%20PARCEL%20DISTRIBUTION%20IN%20THE%20UK_FINAL.pdf.
Inman P, ''Global Greedflation': Big Firms 'Driving Shopping Bills to Record Highs' *The Guardian* (12 March 2023) https://www.theguardian.com/business/2023/mar/12/global-greedflation-big-firms-drive-shopping-bills-to-record-highs
-- 'UK food inflation dips in May, raising hopes rate of price is slowing' *The Guardian* (30 May 2023) https://www.theguardian.com/business/2023/may/30/uk-food-inflation-falls-in-may-raising-hopes-prices-may-have-peaked
International Council on Human Rights Policy, 'Beyond Voluntarism: Human

Rights and the Developing International Legal Obligations of Companies' (February 2002) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551200

International Court of Justice, 'Application on the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) see https://www.icj-cij.org/case/192

James C, 'Food, Dignity and the European Court of Human Rights' Legal Studies Published online 2023 doi:10.1017/lst.2023.34

Jarosz L, 'Comparing Food Security and Food Sovereignty Discourses' (2014) 4 Dialogues in Human Dignity 168

Johnson H, *International Agricultural Law and Policy* (Edward Elgar 2018)

Johnston I and Dunai M, 'Europe's Politicians Impose Price Caps to Address Soaring Food Costs' (*Financial Times,* 21 May 2023) https://www.ft.com/content/133ca49d-b25a-47ee-9bfa-d8c2f62a5f3b

Joint Committee on Human Rights (JCHR) 21st Report (20 October 2004) https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/183/18302.htm

Jolly B and Saleem Z, 'Aldi, Asda, and Tesco in Rotten Turkey Christmas Row as Shoppers Slam 'Rancid' Dinners' *Mirror* (25 December 2023) https://www.mirror.co.uk/news/uk-news/aldi-asda-tesco-rotten-turkey-31747815

Jones R and Walker P, 'UK Ministers Discuss Voluntary Price Limits for Basic Foods but Rule Out Imposing Caps' *The Guardian* (28 May 2023) https://www.theguardian.com/business/2023/may/28/uk-voluntary-price-limits-basic-foods-rule-out-caps

Joseph Rowntree Foundation, 'UK Poverty Statistics' https://www.jrf.org.uk/

Joseph S, *Blame it on the WTO? A Human Rights Critique?* (OUP 2011).

Kalfagianni A and Skordili S, 'Localizing Global Food: An Introduction' in Kalfagianni A and Skordili S (eds), *Localizing Global Food. Short Food Supply Chains as Responses to Agri- Food Systems* (Routledge 2019).

Kaltenborn M et al, 'Introduction' in Kaltenborn M et al (eds) *Sustainable Development Goals and Human Rights* (Springer Open 2020) 2

Kane J 'Trade and Regulation after Brexit' (*Institute for Government,* August 2020) https://www.instituteforgovernment.org.uk/sites/default/files/publications/trade-and-regulation-after-brexit.pdf

Kantar, 'Great Britain Grocery Market Share (12 Weeks Ending) https://www.kantarworldpanel.com/grocery-market-share/great-britain

Keller H and Grover L 'General Comments of the Human Rights Committee and their legitimacy' in Keller H and Ulfstein G (eds), *UN Human Rights Treaty Bodies. Law and Legitimacy* (CUP, 2015).

Kennedy G, 'Has the Invasion of Ukraine Caused our Food Prices to Rise?' (Kings College London, 20 February 2023) https://www.kcl.ac.uk/has-the-invasion-of-ukraine-caused-our-food-prices-to-rise-over-the-past-year

Kennedy K and Snell C, How Can Supermarkets Help End Food Security' (*University of York,* July 2021) https://www.york.ac.uk/media/spsw/documents/research-and-publications/How%20can%20Supermarkets%20help%20end%20food%20insecurity%20Final%20Report.pdf

Khaliq U and Churchill R, 'The Protections of Economic and Social Rights a Particular Challenge' in Keller H and Ulfstein G (eds), *UN Human Rights Treaty Bodies. Law and Legitimacy* (CUP 2015)

Khan M, Walsey A and Skrzypczyk A, 'UK Supermarket Supplier's Chickens Given Antibiotics Critical for Humans' *The Guardian* (20 June 2023) https://www.theguardian.com/environment/2023/jun/20/uk-supermarket-suppliers-chickens-given-antibiotics-critical-for-humans
King B, 'Asda: How to Buy a £6.8bn Supermarket for £780m (*BBC,* 16 February 2021) available at https://www.bbc.co.uk/news/business-56085128
King JA, 'United Kingdom. Asserting Social Rights in a Multi-layered System' in Malcolm Langford (ed), *Social Rights Jurisprudence. Emerging Trends in International and Comparative Law* (CUP 2008)
-- *Judging Social Rights* (CUP 2012).
Kirby T, 'Evidence Mounts on the Disproportionate Effect of COVID-19 on Ethnic Minorities' (2020) 8 The Lancet Respiratory Medicine 547.
Knepp Estate https://knepp.co.uk/knepp-estate/
Knuth L and Vidar M, *Constitutional and Legal Protection of the Right to Food around the World* (*FAO,* 2011) https://www.fao.org/right-to-food/resources/resources-detail/en/c/80544/
Koch IE, 'Dichotomies, Trichotomies and Waves of Duties' (2005) 5 Human Rights Law Review 81.
Krska R, Eskola M and Elliot C, *Toxin-Free Food?* (Picus 2023).
La Chima A, 'Food Security and the Right to Food: Finding the Balance in the 2012 Food Assistance Convention' (2016) 65 International and Comparative Law Quarterly 99
Lambek N, 'The UN Committee on World Food Security's Break from the Agricultural Productivity Trap' (2018) 9 Transnational Legal Theory 415
-- and Claeys P, 'Institutionalizing a Fully Realised Right to Food: Progress, Limitations, and Lessons Learned from Emerging Alternative Policy Models' (2016) 40 Vermont Law Review 743
Lammie and SL Hughes JM, 'Antimicrobial Resistance, Food Safety and One Health: The Need for Convergence' (2016) 7 Annual Review of Food Science and Technology 287
Lamy P, 'Letter to Olivier De Schutter' (14 December 2011) https://www.wto.org/english/news_e/news11_e/agcom_14dec11_e.htm
Lang T, *Feeding Britain. Our Food Problems and How to Fix Them* (Pelican Books 2020).
-- Caraher C, 'Access to Healthy Foods: Part II. Food Poverty and Shopping Deserts: What are the Implications for Health Promotion Policy and Practice?' (1998) 57 Health Education Journal 202
Langford M, Coomans F and Isa FG, 'Extraterritorial Duties in International Law' in Langford M, Vandenhole W, Scheinin M and van Genugten W (eds), *Global Justice, State Duties. The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2013)
-- and King J, 'Committee on Economic, Social and Cultural Rights' in Langford M (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (CUP 2008).
Lanyon S *et al*, 'Bovine viral diarrhoea: Pathogenesis and diagnosis' (2014) 199 The Veterinary Journal 201
Lappé A and Louaillier K, 'Moving a Mountain' in Jayaraman S and De Master K (eds), *Bite Back. People Taking on Corporate Food and Winning* (University of California Press, 2020)
Laughland O and Holpuch A, ''We're Modern Day Slaves': How Plant Meat

Workers Became the New Frontline in the COVID-19 War' *The Guardian* (2 May 2020) https://www.theguardian.com/world/2020/may/02/meat-plant-workers-us-coronavirus-war.

Lawrence G and Burch D, 'Understanding Supermarkets and Agri-food Supply Chains' in Burch D and Lawrence G (eds), *Supermarkets and Agri-food Supply Chains* (Edward Elgar 2007)

Lawton A, 'Nudging the Powerful: Reflecting on How to Make Organisations Comply with Environmental Regulation' (2020) 32 Journal of Environmental law 25.

Le Blanc D, 'Towards Integration at Last? The SDGs as a Network of Targets (DESA Working Paper No. 141, ST/ESA/2015/DWP/141, March 2015) available at https://www.un.org/esa/desa/papers/2015/wp141_2015.pdf

Lee M, 'Brexit and the Environment Bill: The Future of Environmental Accountability' (2022) 13 Global Policy 119

-- 'Politics and Expertise: New Environmental Targets in English Environmental Law' Forthcoming in Chris Hilson and Josephine van Zeben (eds), *A Research Agenda for Environmental Law* (Edward Elgar 2024)

Lentz E and Barrett C, 'The Economics and Nutritional Impacts of Food Assistance Polices and Programs' (March 2013) http://barrett.dyson.cornell.edu/Papers/Lentz%20Barrett%20Food%20Assistance%20Food%20Policy%2025%20Mar%202013.pdf

Levitt T, 'UK Risks Falling Behind in Reducing Farm Antibiotics After EU ban' *The Guardian* (28 January 2022) https://www.theguardian.com/environment/2022/jan/28/uk-risks-falling-behind-on-reducing-farm-antibiotics-after-eu-ban

Lewis T, 'The Austerity Generation: The Extent of the Damage in Tucker J (ed) *2020 Vision. Ending Child Poverty for Good* (CPAG 2020)

Lianos I and Darr A, 'Hunger Games: Connecting the Right to Food and Competition Law' (CLES Research Paper Series, June 2019) https://www.ucl.ac.uk/cles/sites/cles/files/cles_2-2019.pdf

Liebermann O and Waldenburg S, 'US and Jordanian Forces Airdrop Aid into Gaza' (*CNN Politics*, 2 March 2024) https://edition.cnn.com/2024/03/02/politics/us-airdrops-aid-gaza/index.html

Lorr B, *The Secret Life of Groceries* (Avery 2020).

Loth S, 'Which? Disagrees that Fears Around Chlorinated Chicken are 'Unfounded' (*Which?,* 12 May 2019) https://www.which.co.uk/news/article/which-disagrees-that-fears-around-chlorinated-chicken-are-unfounded-a52dn5G9h0TP

Lybbert TJ and Morgan HR, *Lessons from the Arab Spring: Food Security and Stability in the Middle East and North Africa* (OUP 2013)

Lydgate E and Anthony C, 'Brexit, 'Food Law and the UK's Search for a Post EU Identity' (2022) 85 Modern Law Review 1168

Luxinski L and Peleg N, 'Paternalism in International Human Rights Law' (2022) 33 Duke Journal of Comparative and International Law 1

M&S, 'Plan A: Our Planet' https://corporate.marksandspencer.com/sustainability/plan-a-our-planet.

Mackley A, Hobson F and McInnes R, 'Coronavirus: Legacy Benefits and the Universal Credit Uplift' (House of Commons Library Briefing Paper Number 9246, 28 May 2021)

https://researchbriefings.files.parliament.uk/documents/CBP-9246/CBP-9246.pdf
Maclure A, 'The Leeds Restaurants and Businesses Offering Free Meals for Children During School Half Term' *Yorkshire Evening Post* (23 October 2020) https://www.yorkshireeveningpost.co.uk/news/politics/leeds-restaurants-and-businesses-offering-free-meals-children-during-school-half-term-3013790
Mann CC, *The Wizard and the Prophet* (Vintage Books 2018)
Mares TM, *Life on the Other Border. Farmworkers and Food Justice in Vermont* (University of California Press 2019)
Marsh S and Horton H, 'Low-Welfare Eggs from Caged Hens Imported into UK in 'Staggering' Numbers' *The* Guardian (24 October 2023) https://www.theguardian.com/business/2023/oct/24/low-welfare-eggs-from-caged-hens-imported-to-uk-in-staggering-numbers?utm_term=Autofeed&CMP=twt_gu&utm_medium&utm_source=Twitter#Echobox=1698128070
Marshall C, 'Nature-Based Farming-Subsidies Scheme Given Green Light' (*BBC,* 1 December 2022) https://www.bbc.co.uk/news/science-environment-63826740
Mary S, 'Hungry for Free Trade? Food Trade and Extreme Hunger in Developing Countries' (2019) 11 Food Security 461.
Masur JS and Posner EA, 'Toward a Pigouvian State' (2015) 164 University of Pennsylvania Law Review 93
Matsushita M et al, *The World Trade Organization. Law, Practice and Policy* (3rd edn, OUP 2015)
Matthews-King A, 'Huge Increase in 'Victorian Diseases' Including Rickets, Scurvy and Scarlet Fever, NHS Data Reveals' *Independent* (25 February 2019) https://www.independent.co.uk/news/health/victorian-disease-gout-rickets-vitamin-d-mumps-scurvy-measles-malnutrition-nhs-hospital-admitted-a8795686.html
Mayor of London, 'Mayor Announces Every London Primary Schoolchild to Receive Free School Meals' (20 February 2023) https://www.london.gov.uk/mayor-announces-every-london-primary-schoolchild-receive-free-school-meals
McCormack J, 'NI's Government has Returned. Stormont – What You Need to Know' (*BBC*, 3 February 2024) https://www.bbc.co.uk/news/uk-northern-ireland-67726389
McCrae I and Westwater H, 'Food Poverty in the UK: The Causes, Figures and Solutions' *The Big Issue* (2 May 2023) https://www.bigissue.com/news/social-justice/food-poverty-in-the-uk-the-causes-figures-and-solutions/
McKenna M, *Plucked the Truth About Chicken,* (Little Brown 2017).
McKeon N, *Food Security Governance. Empowering Communities, Regulating Corporations.* (Routledge 2015).
McKernan B, 'UK, US, and Other Countries to Pause Funding for Key UN Aid Agency for Palestinian Refugees' *The Guardian* (28 January 2024) https://www.theguardian.com/politics/2024/jan/27/uk-to-pause-funding-for-key-un-aid-agency-for-palestinian-refugees
McMahon J, *The WTO Agreement on Agriculture* (OUP 2006).
-- Desta M, 'The Agreement on Agriculture: Setting the Scene' in McMahon J and Desta M (eds), *Research handbook on WTO Agriculture Agreement* (Edward Elgar 2012)

McNeill G *et al*, 'Inside the Box: An Analysis of the UK's Emergency Food Distribution Scheme' (*Global Academy of Agriculture and Food Systems*, 13 April 2022) https://www.ed.ac.uk/global-agriculture-food-systems/gaafs-news/blogs/inside-the-box-an-analysis-of-the-uk-s-emergency-f

Mechlem K, 'Food Security and the Right to Food in the Discourse of the United Nations' (2004) 10 European Law Journal 631

Meléndez-Ortiz R, Bellmann C and Hepburn J (eds), *Agricultural Subsidies in the WTO* (CUP 2009).

Messenger S and Barker M, 'Thousands of Protesting Farmers Descend on Cardiff' (*BBC*, 28 February 2024) https://www.bbc.co.uk/news/uk-wales-68414032

Michail N, 'Peru: Nutrition Warning Labels Become Mandatory' (*Food Navigator,* 17 June 2019) https://www.foodnavigator-latam.com/Article/2019/06/17/Peru-Nutrition-warning-labels-become-mandatory

Mill JS, *On Liberty* (The Floating Press 2009, published from a 1909 edition)

Millstone E, Lang T and Marsden T, 'Food, Brexit and Chlorinated Chicken: A Microcosm of Wider Food Problems' (2019) 90 Political Quarterly 645

Minister of Housing, Communities and Local Government, 'National Planning Policy Framework' 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf

Mitra A, 'Food Security and Insecurity in India' in Christoplos I and Pain A (eds), *New Challenges to Food Security* (Routledge 2015).

Monteiro CA *et al*, 'The Need to Reshape Global Food Processing: A Call to the United Nations Food Systems Summit (2021) 6 BMJ Global Health e006885

Morrisons, 'More Card Exclusives https://www.morrisons.com/more/exclusives.

Morrisons Corporate, 'Company History' https://www.morrisonscorporate.com/about-us/company-history/

-- 'Reducing Food Waste' https://www.morrisons-corporate.com/morrisons-sustainability/planet/food-waste/

Moss M, *Hooked* (Penguin 2021).

Mozaffarian D, Fleischhacker S and Andres JR, 'Prioritising Nutrition Security in the US' (2021) 325 Journal American Medical Association 1605

Mpundu M, Mathew P, Chanda R and Chiara F, 'What Would it Take to Move the Global AMR Agenda in the Global South?' in Rubin O, Baekkeskov E and Munkholm L (eds), *Steering Against Superbugs* (OUP 2023)

Muchlinski P, 'The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights' (2021) 6 Business and Human Rights Journal 212

Muir S et al 'UK Government's New Placement Legislation is a 'Good First Step': a Rapid Qualitative Analysis of Consumer, Business, Enforcement and Health Stakeholder Perspectives' (2023) 21 BMC Medicine https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-023-02726-9#Tab.

Munkholm L and Van Katwyk SR, 'International Law and Antimicrobial Resistance: Learning from Fifteen Years Implementing the International Health Regulations' in Rubin O, Baekkeskov E and Munkholm L (eds), *Steering Against Superbugs* (OUP 2023).

Nagel T, 'Personal Rights and Public Space' (1995) 24 Philosophy and Public Affairs 83.

--Types of Intuition. Thomas Nagel on Human Rights and Moral Knowledge' (3 June 2021) 43 London Review of Books
Narula S, 'The Right to Food: Holding Global Actors Accountable Under International Law' (2006) 44 Columbia Journal of Transnational Law 691
Nassar A *et al*, 'Agricultural Subsidies in the WTO Green Box: Opportunities and Challenges for Developing Countries' in Meléndez-Ortiz R, Bellmann C and Hepburn J (eds), *Agricultural Subsidies in the WTO Green Box* (CUP
National Audit Office, 'Ensuring Food Safety and Standards' HC 2217 (June 2019) https://www.nao.org.uk/wp-content/uploads/2019/06/Ensuring-food-safety-and-standards.pdf.
Nazir S, 'Morrisons Full-Year Profits and Sales Slump as Brits Face Inflation Squeeze' (*Retail Gazette,* 26 January 2023) https://www.retailgazette.co.uk/blog/2023/01/morrisons-earnings/
Neier A, 'Social and Economic Rights: A Critique' (2006) 13 Human Rights Brief 1
Nestle M, *Unsavory Truth: How Food Companies Skew the Science of What We Eat* (Basic Books 2018)
-- 'Food Politics- Plumpy-Nut Furor' https://www.foodpolitics.com/2010/09/the-plumpynut-furor-international-food-politics-in-action/
-- 'Food Politics – Sponsored Research' https://www.foodpolitics.com/tag/sponsored-research/.
NFU, 'SFI Expansion Welcome, but Deliverability Questions Remain' (4 January 2024) https://www.nfuonline.com/updates-and-information/sfi-2024-expansion-revealed-at-ofc-2024/
-- 'Seasonal Workers Scheme – Latest Information (2 February 2024) https://www.nfuonline.com/updates-and-information/seasonal-worker-scheme-wage-requirements/
-- 'Government Urged to Deliver for UK Food Security with Drastic Reduction in Crops Expected Due to Wet Weather' (18 March 2024) https://www.nfuonline.com/media-centre/releases/government-urged-to-deliver-for-uk-food-security-with-drastic-reduction-in-crops-expected-due-to-wet-weather/
Nickel J, 'Poverty and Rights' (2005) 220 The Philosophical Quarterly 385
-- *Making Sense of Human Rights* (2nd edn, Blackwell 2007).
-- 'Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights' (2008) 30 Human Rights Quarterly 984.
Nilsson M *et al*, 'Policy: Map the Interactions Between Sustainable Development Goals' (2016) 534 Nature 320.
Nolan A, 'Privitisation and Economic and Social Rights' (2018) 40 Human Rights Quarterly 815
-- Porter B and Langford M, 'The Justiciability of Social and Economic Rights: An Updated Appraisal' (CHRGJ Working paper August 2007) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944
Nott G, 'Ocado on supplying the shielding: We're doing more than our share' (*The Grocer,* 6 May 2020) https://www.thegrocer.co.uk/online/ocado-on-supplying-the-shielding-weve-done-more-than-our-share/604644.article
Nunan C, 'The UK May Soon (at last!) Ban Routine Farm Antibiotic Use (*Sustain,* 24 May 2023) https://www.sustainweb.org/blogs/may23-routine-antibiotic-use-ban-due/
Nussbaum MC, *Women and Human Development. The Capabilities Approach*

(CUP 2000)
-- 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 Feminist Economics 33
-- *Creating Capabilities. The Human Development Approach* (Belknap Harvard 2011)
O'Carroll L and Horton H, 'No Chlorinated Chicken or Hormone-Fed Beef in Future Trade Deals, Sunak Vows' *The Guardian* (16 May 2023) https://www.theguardian.com/politics/2023/may/16/no-chlorinated-chicken-or-hormone-fed-beef-in-future-trade-deals-rishi-sunak-vows accessed 1 November 2023
O'Cinneide C, 'The European Social Charter and the UK: Why it Matters' (2018) 29 KLJ 275
O'Donoghue T and Rabin M, 'Optimal Sin Taxes' (2006) 90 Journal of Public Economics 1825
Odoms-Young AM, 'Examining the Impact of Structural Racism on Food Insecurity: Implications for Addressing Racial/Ethnic Disparities' (2018) 41Family and Community Health (Supplement 2 Food Insecurity and Obesity) S3
Office of National Statistics 'What Actions are People Taking Because of the Rising Cost of Living' (5 August 2022) https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/expenditure/articles/whatactionsarepeopletakingbecauseoftherisingcostofliving/2022-08-05
OHCHR, 'BHR Treaty Process' https://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process
-- 'Status of Ratification Interactive Dashboard' https://indicators.ohchr.org/.
-- 'Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy Framework"' (2011) https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
-- 'UN Food Systems Summit Marginalizes the Human Rights and Disappoints, Say Experts' (*UN*, 22 September 2021) https://www.ohchr.org/en/statements/2021/09/un-food-systems-summit-marginalizes-human-rights-and-disappoints-say-experts
--'Over One Hundred Days into the War, Israel Destroying Gaza's Food System and Weaponizing Food, Say UN Human Rights Experts' (16 January 2024) https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and
O'Neill J, 'Antimicrobials in Agriculture and the Environment: Reducing Unnecessary Use and Waste' (Review on Antimicrobial Resistance, December 2015) https://amr-review.org/sites/default/files/Antimicrobials%20in%20agriculture%20and%20the%20environment%20-%20Reducing%20unnecessary%20use%20and%20waste.pdf
-- 'Tackling Drug-Resistant Infections Globally: Final Reports and Recommendations' (Review on Antimicrobial Resistance, May 2016) https://amr-review.org/sites/default/files/160525_Final%20paper_with%20cover.pdf
Padiyara P *et al*, 'Global Governance Mechanisms to Address Antimicrobial Resistance' (2018) 11 Infectious Diseases: Research and Treatment 1
Papargyrpoulou E, Fearnyough K, Spring C, and Antal L, 'The Future of Surplus

Food Redistribution in the UK: Reimagining a 'Win-win' Scenario' (2022) 108 Food Policy 102230
Parsons K, 'Who Makes Food Policy in England?' (*Centre for Food Policy, City University of London*, May 2020) https://foodresearch.org.uk/publications/who-makes-food-policy-in-england-map-government-actors/
Partridge J, 'Hundreds of Healthy Pigs Slaughtered Amid UK Shortage of Abattoir Workers' *The Guardian* (5 October 2021) https://www.theguardian.com/business/2021/oct/05/pigs-culled-amid-uk-shortage-abattoir-workers
-- 'UK-Post Brexit Checks on Fresh Food from EU Delayed for Fifth Time' *The Guardian,* (29 August 2023) https://www.theguardian.com/business/2023/aug/29/uk-brexit-checks-on-food-eu-delayed
Patel R, *Stuff and Starved* (Granta 2012)
Patterson J, 'Corporate Governance and Corporate Social Responsibility' in Bantekas I and Stein MA (eds), *Cambridge Companion to Business and Human Rights Law* (CUP 2021).
Paul AB, 'Food price controls reconsidered' (1958) 40 Journal of Farm Economics 30.
Peel S and Rigby N, 'Farming: Delay to post-EU Subsidy Scheme ELMS Not Acceptable Say Farmers' (BBC, 3 December 2022) https://www.bbc.co.uk/news/uk-england-cambridgeshire-63758117
Pell D et al, 'Anticipatory Changes in British Household Purchases of Soft Drinks Associated with the Announcement of the Soft Drinks Industry Levy: A Controlled Interrupted Time Series Analysis' (2020) 17 PLoS Medicine e1003269
Penner JE and Melissaris E, *McCoubery and White's Textbook on Jurisprudence* (5th edn, OUP 2012).
Perreten V, 'Resistance in the Food Chain and in Bacteria from Animals: Relevance to Human Infections' in White D, Alekshun M and McDermott P (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005) 447.
Petetin L 'Post-Brexit Agricultural Support and the WTO: Using Both the Amber and Green Boxes?' (Brexit and Environment, 21 June 2018) https://www.brexitenvironment.co.uk/2018/06/21/post-brexit-agricultural-support-wto-using-amber-green-boxes/
-- 'Setting the Path for UK and Devolved Agriculture' in Antonopoulos I, Bell B, Čavoški A and Petetin L (eds), *The Governance of Agriculture in Post-Brexit UK* (Routledge 2022).
-- and Mary Dobbs, *Brexit and Agriculture* (2022 Routledge)
Pettifer K and Patel M, 'FSA 22-06-09 Household Food Insecurity Main Report' (*FSA*, 15 June 2022) https://www.food.gov.uk/print/pdf/node/9711.
Philpott T, *Perilous Bounty* (Bloomsbury 2020).
Pitesky ME, Stackhouse KR and Mitloehner FM, 'Clearing the air: Livestock's Contribution to Climate Change' in Donald Sparks (ed), *Advances in Agronomy Volume 103* (Burlington Academic Press 2009)
Pogge T, *World Poverty and Human Rights* (2nd edn, Polity 2008)
-- and Sengupta M, 'Assessing the Sustainable Development Goals from a Human Rights Perspective' (2016) 32 Journal of International and Comparative Social Policy 83.
Pol LVJ and Schuftan C, 'No Right to Food and Nutrition in the SDGs Mistake or

Success?' (2016) 1 BMJ Global Health e000040.
Pollen M, *The Omnivores Dilemma* (Bloomsbury 2011)
Pombo S, 'Four of Five Food Giants are Over-Reliant on Unhealthy Lines. Now is the Time for Change' *The Grocer* (8 March 2023) https://www.thegrocer.co.uk/health/four-of-five-food-giants-are-over-reliant-on-unhealthy-lines-now-is-the-time-for-change/677059.article
Power M, 'Seeking Justice: How to Understand and End Food Poverty in York' (*York Food Justice Alliance*, York 2019) https://eprints.whiterose.ac.uk/151502/1/Seeking_Justice_How_to_understand_and_end_food_poverty_in_York.pdf
-- Doherty B, Pybus K and Pickett K, 'How COVID-19 has Exposed Inequalities in the UK food system: The case of UK Food and Poverty' (2020) Emerald Open Research (https://emeraldopenresearch.com/articles/2-11)
Pretty JN, 'The Sustainable Intensification of Agriculture' (1997) 21 Natural Resources Forum 247
-- 'Editorial: Sustainable Intensification in Africa' (2011) 9 International Journal of Agricultural Sustainability 3
Quinn I, 'Nestle and Unilever Risk Causing Confusion with Health Reporting. But it is a Positive First Step' *The Grocer,* (23 March 2023) https://www.thegrocer.co.uk/hfss/nestle-and-unilever-risk-causing-confusion-with-health-reporting-but-its-a-positive-first-step/677588.article
-- 'Less-Than-Shocking Which? Research Into C-Stores is a Sign of the Times' *The Grocer* (25 April 2023) https://www.thegrocer.co.uk/convenience/less-than-shocking-which-research-into-c-stores-is-a-sign-of-the-times/678609.article
-- 'Trading Standards Set to Receive just 35K to Enforce HFSS Rules' *The Grocer* (12 May 2023) https://www.thegrocer.co.uk/stores/trading-standards-set-to-receive-just-35k-to-enforce-hfss-rules/679144.article.
-- 'Defra Urged to Take Action on Food Waste Reporting' *The Grocer* (16 May 2023) https://www.thegrocer.co.uk/sustainability-and-environment/defra-urged-to-take-action-on-food-waste-reporting/679646.article
Raible L, 'Extraterritoriality Between a Rock and a Hard Place' (2021) 82 Questions of International Law 7.
Rainey B, McCormick P and Ovey C, *Jacobs, White and Ovey. The European Convention on Human Rights.* (8th edn, OUP 2021).
Rawls J, *The Law of Peoples* (Harvard University Press 1999)
Raz J, 'Human Rights without Foundations' Oxford Legal Studies Research Paper No.14/2007 (2007).
Rees J, *Food Adulteration and Food Fraud* (Reaktion Books 2020).
Rees T, 'Vegetable Shortage Looms as Europe Battles Heatwave' *The Telegraph* (7 August 2022) https://www.telegraph.co.uk/business/2022/08/07/vegetable-shortage-looms-europe-battles-heatwave/
Reid CT, 'A New Sort of Duty? The Significance of "Outcome' Duties in The Climate Change and Child Poverty Acts' [2012] Public Law 749
Rentoul J, 'The Top 10: Forgotten National Crisis' *Independent* (3 April 2020) https://www.independent.co.uk/voices/top-10-national-crises-cod-war-ladybird-invasion-chartism-vinyl-sugar-a9443176.html accessed 18 July 2022
Rhouma M *et al*, 'Antimicrobial Resistance Associated with the Use of Antimicrobial Processing Aids During Poultry Processing Operations: Cause for Concern? (2021) 61 Critical Reviews in Food Science and Nutrition 3279

Rice A, 'The Peanut Solution' *The New York Times Magazine* (2 September 2010) https://www.nytimes.com/2010/09/05/magazine/05Plumpy-t.html
Riedel E, Giacca G and Golay C, 'The Development of Economic, Social and Cultural Rights in International Law' in Riedel E, Giacca G and Golay C. (eds), *Economic, Social, and Cultural Rights in International Law. Contemporary Issues and Challenges* (OUP 2014).
Robinson M, 'Advancing Economic, Social, and Cultural Rights: The Way Forward' (2004) 26 Human Rights Quarterly Review 86
Rose DC *et al*, 'Agriculture 4.0: Making It Work for People, Production and the Planet' (2021) 100 Land Use Policy 104933
Rosset PM and Altieri MA, 'Agroecology Versus Input Substitution: A Fundamental Contradiction of Sustainable Agriculture' (1997) 10 Society and Natural Resources 28
RUMA, 'Antibiotics' https://www.ruma.org.uk/antibiotics/
Russell's Piggly Wiggly, 'About Us' https://mypigglywiggly.com/aboutus/
Sainsbury's, 'Nectar Prices https://www.sainsburys.co.uk/gol-ui/offers/nectar-prices
-- 'Reduce Food Waste' https://www.about.sainsburys.co.uk/sustainability/better-for-the-planet/food-waste
Salomon ME, *Global Responsibility for Human Rights* (OUP 2007)
-- 'Of Austerity, Human Rights and International Institutions' (2015) 21 European Law Journal 521
Sandeman G 'Tesco Latest Supermarket to Ration Cooking Oil Due to War in Ukraine' *The Times* (23 April 2022) https://www.thetimes.co.uk/article/tesco-latest-supermarket-to-ration-cooking-oil-due-to-war-in-ukraine-b528vlqh9
Sandle P, 'UK's Asda to buy EG petrol stations unit in $2.9 billion deal' (*Reuters* 30 May 2023) https://www.reuters.com/markets/deals/uk-supermarket-asda-buy-eg-group-2023-05-30/
Sapunaric F, Aldema-Ramos M and McMurry L, 'Tetracycline Resistance: Efflux, Mutation and other Mechanism' in White D, Alekshun M and McDermott P (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005) 3
Saul B, *The International Covenant on Economic, Social and Cultural Rights. Travaux Préparatories 1948-1966* (OUP 2016)
-- Kinley D, and Mowbray J, *The International Covenant on Economic, Social and Cultural Rights: Commentary Material and Cases* (OUP 2014)
Scarborough P *et al*, 'Reds are More Important than Greens: How UK Supermarket Shoppers Use the Different Information on Traffic Light Nutrition Label in a Choice Experiment' (2015) 12 International Journal of Behavioural Nutrition and Physical Activity s12966-015-0319-9
-- 'Impact of the Announcement and Implementation of the UK Soft Drinks Industry Levy on Sugar Content, Price, Product Size and Number of Available Soft Drinks in the UK, 2015-19: A Controlled Interrupted Time Series Analysis' (2020) 17 PLoS Medicine e1003025
Schanbacher WD, *The Politics of Food. The Global Conflict Between Food Security and Food Sovereignty* (Prager Security International) 2010)
Schmid E and Sinabell F, 'On the Choice of Farm Management Practices After the Reform of the Common Agricultural Policy in 2003' (2007) 82 Journal of Environmental Management 332.

Schmidhuber J and Tubiello F, 'Global Food Security Under Climate Change' (2007) 104 Proceedings of the National Academic of Sciences, 19703
Schulze H and Crossly D with Food Ethics Council, 'On the Road to Food Justice' (*Food Ethics Council,* September 2020) https://www.foodethicscouncil.org/insights/on-the-road-to-food-justice/
Schwarz, 'Business Areas' https://gruppe.schwarz/en/business-areas.
Scott C, Sutherland J, Taylor A, 'Affordability of the UK's Eatwell Guide' (*Food Foundation*, September 2018) https://foodfoundation.org.uk/sites/default/files/2021-10/Affordability-of-the-Eatwell-Guide_Final_Web-Version.pdf
Scott J, 'Legal Aspects of the Precautionary Principle' (British Academy, November 2008) https://www.thebritishacademy.ac.uk/documents/309/Legal-Aspects-of-the-Precautionary-Principle.pdf.
Scottish Government, 'Stability and Simplicity: Proposals for a Rural Funding Transition Period' (20 June 2018) https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/
-- 'BVD eradication scheme phase 5-December 2019:Guidance' https://www.gov.scot/publications/guidance-bvd-eradication-scheme-phase-5-december-2019/pages/4/
-- 'Ending the Need for Food Banks: Consultation on a Draft National Plan' (October 2021) https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2021/10/ending-need-food-banks-consultation-draft-national-plan/documents/ending-need-food-banks-consultation-draft-national-plan/ending-need-food-banks-consultation-draft-national-plan/govscot%3Adocument/ending-need-food-banks-consultation-draft-national-plan.pdf
-- Good Food Nation – Programme of Measures: Interim Update 2022 (15 March 2022) https://www.gov.scot/publications/good-food-nation-programme-measures-2022-interim-update/pages/3/
-- 'Good Food Nation Bill Passed' (15 June 2022) https://www.gov.scot/news/good-food-nation-bill-passed/
-- 'Restriction Promotions of Food and Drink High in Fat, Sugar or Salt: Consultation (1 July 2022) https://www.gov.scot/publications/consultation-restricting-promotions-food-drink-high-fat-sugar-salt/pages/3/
Scottish Parliament, 'Proposed Right to Food (Scotland) Bill https://www.parliament.scot/bills-and-laws/proposals-for-bills/session-6-right-to-food-scotland-bill.
-- United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill https://www.parliament.scot/bills-and-laws/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/bill-becomes-an-act#topOfNav%3E
Secondary Legislation Scrutiny Committee, 'Losing Control?: The Implications for Parliament of the Retained EU Law (Revocation and Reform Bill) (House of Lords, 2 February 2023).
Seddon P and Whannel K, 'UK Halts Trade Negotiations with Canada over Hormones in Beef Ban' (*BBC*, 26 January 2024) https://www.bbc.co.uk/news/uk-politics-68098177
Sen A, *Development as Freedom* (OUP 1999).

Senouci M and Arthur A, 'Shareholder Activism in the UK (England and Wales): Overview (*Thomson Reuters*, 01 February 2023) https://uk.practicallaw.thomsonreuters.com/w-029-1019?transitionType=Default&contextData=(sc.Default)&firstPage=true.

Sepúlveda Carmona M, 'The Obligations of 'International Assistance and Cooperation under the International Covenant on Economic, Social and Cultural Rights. A Possible Entry Point to a Human Rights Based Approach to Millennium Development Goal 8' (2009) 13 International Journal of Human Rights 86

Seth A and Randall G, *The Grocers* (Kogan Page 2011).

Share Action, 'Big Food Brands Still Hooked on Junk Food' (24 September 2021) https://shareaction.org/news/big-food-brands-still-hooked-on-junk-food.

Sharma R, 'Food Export Restrictions: Review of the 2007-2010 Experience and Considerations for Disciplining Restrictive Measures' (FAO Commodity and Trade Policy Research Working Paper No 32, 2011) https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1268745/

Sharp R, Parsons K and Hawkes C, 'Coordination Must be Key to How Governments Respond to COVID-19 Food Impacts: A View from England.' Food Research Collaboration Guidance Note. https://foodresearch.org.uk/publications/food-policy-coordination-under-covid-19/

Shaw D, *World Food Security* (Palgrave Macmillan 2007)

Shipton M, 'Food Security Law Voted Down by Senedd' (*Nation Cymru*, 25 May 2023) https://nation.cymru/news/food-security-law-voted-down-by-senedd/

Shue H, 'The Interdependence of Duties' in Alston P and Tomaševski K, *The Right to Food* (Matinus Nijhoof 1984)

-- *Basic Rights. Subsistence Affluence, and US Foreign Policy. 40th Anniversary Edition* (Princeton University Press 2000).

Siddique H, 'Marcus Rashford Forces Boris Johnson into Second U-turn on Child Food Poverty', *The Guardian* (8 November 2020) https://www.theguardian.com/education/2020/nov/08/marcus-rashford-forces-boris-johnson-into-second-u-turn-on-child-food-poverty

Simma B and Alston P, 'The Sources of Human Rights Law: Custom, *Jus Cogens* and General Principles' (1988-1989) 12 Australian Yearbook of International Law 83

Simms A, *Tescopoly* (Constable 2007)

Simmonds E, 'Supermarkets Fail to Make Cheaper Food Ranges Available to Most-At-Risk Shoppers' *(Which?,* 25 April 2023) https://www.which.co.uk/news/article/supermarkets-fail-to-make-cheaper-food-ranges-available-to-most-at-risk-shoppers-az9sx1n2sJY9?utm_campaign=UPDATE&utm_content=1682404202&utm_medium=social&utm_source=twitter

Simpson M, 'Assessing the Compliance of the United Kingdom's Social Security with its Obligations Under the European Social Charter' (2018) 18 Human Rights Law Review 745.

-- Gráinne McKeever and Ciara Fitzpatrick, 'Legal Protection Against Destitution in the UK: The Case for a Right to a Subsistence Minimum' (2023) 88 Modern Law Review 465

Skerrit J, Patton L and Onu E, 'It's Getting a Lot Harder to Ship Food Around

the World' (*Bloomberg*, 9 April 2020) https://www.bloomberg.com/news/articles/2020-04-09/it-s-getting-a-lot-harder-to-ship-food-around-the-world.

Skogly SI, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Intersentia 2006).

-- 'Global Responsibility for Human Rights' (2009) 29 Oxford Journal of Legal Studies 827

-- and Mark Gibney, 'Transnational Human Rights Obligations' (2002) 24 Human Rights Quarterly 781

Smith D and Thompson C, *Food Deserts and Food Insecurity in the UK. Exploring Social Inequality* (Routledge 2023)

Smith E *et al*, 'Should We Tax Unhealthy Food and Drink' (2018) 77 Proceedings of the Nutrition Society 314.

Smith F, 'Indigenous Farmer's Rights, International Agricultural Trade and the WTO' (2011) 2 Journal of Human Rights and the Environment 157

-- 'Food Security and International Agricultural Trade Regulation: Old Problems, New Perspective' in McMahon J and Desta M (eds), *Research Handbook on the WTO Agriculture Agreement* (Edward Elgar 2012)

-- 'A New Dawn? The UK's Emergent Agri-food Trade Strategy after Brexit' (2023) 34 King's Law Journal 30

Smithers R, 'Britons Made 80m Extra Grocery Shops in Less than a Month' *The Guardian* (31 March 2020) https://www.theguardian.com/business/2020/mar/31/coronavirus-britons-made-80m-extra-grocery-shops-in-less-than-a-month.

Sorokin PA, *Hunger as a Factor in Human Affairs* (University of Florida Presses 1975).

Spector T, *Spoon Fed* (Johnathan Cape 2020)

Spocchia G 'Ukraine War: International Efforts to Restore Wheat Supply Gather Pace' *Independent* (19 May 2022) https://www.independent.co.uk/world/ukraine-wheat-supply-india-ban-b2081728.html.

Springman M *et al,* 'Carbon Pricing of Food In Australia: An Analysis of the Health, Environmental and Public Finance Impacts' (2018) 42 Australian and New Zealand Journal of Public Health 523

-- 'Health-Motivated Taxes on Red and Processed Meat: A Modelling Study on Optimal Tax Levels and Associated Health Impacts (2018) 13 PLoS ONE p.e0204139

Srour B *et al,* 'Ultra-processed food intake and risk of cardiovascular disease: prospective cohort study' (2019) 365 British Medical Journal 1451

Stacey K, 'Sunak Says He Wants to Cut Workers Taxes this Year and May Cut Benefits' *The Guardian* (7 January 2024) https://www.theguardian.com/politics/2024/jan/07/rishi-sunak-says-he-wants-to-cut-workers-taxes-this-year-and-may-reduce-benefits

Staupe-Delgado R, Engström A and Cádiz SAF, 'Conceptualizing AMR as a Creeping Disaster in Terms of Pace and Space' in Rubin O, Baekkeskov E and Munkholm L (eds), *Steering Against Superbugs* (OUP 2023).

Stead V, 'Australia's Food Supply Relies on Migrant Workers who are Facing Coronavirus Limbo' *The Guardian* (23 March 2020) https://www.theguardian.com/world/commentisfree/2020/mar/24/australias-food-supply-relies-on-migrant-workers-who-are-facing-coronavirus-limbo.

Steadman S, 'Food and Security, in Naylor R (ed), *The Evolving Sphere of*

Food Security (OUP 2014)
Stone J, 'MPs Say Government is Out-of-Touch for Putting Waitrose and M&S on Free School Meals Vouchers Scheme but Not Aldi and Lidl' *Independent,* (20 July 2020) https://www.independent.co.uk/news/uk/politics/school-meal-vouchers-waitrose-marks-spencers-aldi-lidl-lockdown-a9644716.html
Sunstein CR, 'Nudging: A Very Short Guide' (2014) 37 Journal of Consumer Policy 583.
Sustain, 'Agriculture Act 2020' https://www.sustainweb.org/sustainablefarmingcampaign/agriculture_bill/.
-- 'Children's Food Campaign' https://www.sustainweb.org/childrens-food-campaign/can/
-- 'UK Falls Behind EU on Farm Antibiotic Standards' (28 January 2022) https://www.sustainweb.org/news/jan22-antibiotics-divergence-eu/
-- 'Unpicking Food Prices: Where Does Your Food Pound Go, and Why do Farmers Get So Little?' (2 December 2022) https://www.sustainweb.org/news/nov22-unpicking-food-prices-new/.
-- 'Three UK Supermarkets source antibiotic treated chicken from producer linked to Salmonella outbreak.' (20 June 2023) https://www.sustainweb.org/news/jun23-uk-supermarkets-sell-chicken-dosed-human-critical-antibiotics/
-- 'Gov Must Strengthen Public Sector Food Standards so Catering Companies don't Fuel Antibiotic Crisis' (12 October 2023) https://www.sustainweb.org/news/oct23-report-government-buying-standards-food-failing-to-control-antibiotic-use/
Sweeny M, 'UK to ban junk food advertising online and before 9pm on TV from 2023' *The Guardian* (23 June 2021) https://www.theguardian.com/media/2021/jun/23/uk-to-ban-junk-food-advertising-online-and-before-9pm-on-tv-from-2023
Syal R, Stewart H and Pidd H, 'Johnson Makes U-turn on Free school Meals After Rashford campaign' *The Guardian* (16 June 2020) https://www.theguardian.com/politics/2020/jun/16/boris-johnson-faces-tory-rebellion-over-marcus-rashfords-school-meals-call
Tan M, He FJ and MacGregor GA, 'Obesity and COVID-19: the role of the food industry' [2020] British Medical Journal 369.
Tapper J, 'Thérèse Coffey's 'Eat Turnips' Message Leaves Bitter Taste After UK's Biggest Grower Gives Up' *The Guardian* (18 March 2023) https://www.theguardian.com/food/2023/mar/18/therese-coffeys-eat-turnips-message-leaves-bitter-taste-after-uks-biggest-grower-gives-up
Tasioulas J, 'On the Foundation of Human Rights' in Cruft R, Liao SM and Renzo M (eds), *Philosophical Foundations of Human Rights* (OUP 2015).
Taylor-Gooby P and Petricek T, 'Food Bank Donations Surged During the Pandemic-but Look Closely at the Date and There's Trouble Ahead' (*The Conversation,* 9 July 2020) https://theconversation.com/food-bank-donations-surged-during-the-pandemic-but-look-closely-at-the-data-and-theres-trouble-ahead-142113
Tesco, 'Special Offers' https://www.tesco.com/groceries/en-GB/promotions
Thaler RH and Sunstein CR, *Nudge* (Penguin 2008)
The Food Foundation, 'Food Insecurity Tracking' https://foodfoundation.org.uk/initiatives/food-insecurity-tracking#tabs/Round-14
-- 'COVID-19: Latest Impact on Food' (March 2020)

https://foodfoundation.org.uk/covid-19-latest-impact-on-food-2/.
-- 'Food insecurity in households in receipt of benefits' (May 2022) https://foodfoundation.org.uk/sites/default/files/2022-08/Universal%20Credit%20and%20Food%20Insecurity%20Briefing%202022_1.pdf
-- 'The Broken Plate 2023 Report' (28 June 2023) https://foodfoundation.org.uk/press-release/new-data-government-recommended-diet-costs-poorest-5th-uk-half-their-disposable
The Guardian Editorial, 'The Guardian View on Empty Supermarket Shelves: Panic is Not the Problem' *The Guardian* (27 March 2020) https://www.theguardian.com/commentisfree/2020/mar/27/the-guardian-view-on-empty-supermarket-shelves-panic-is-not-the-problem
-- 'The Guardian View on Food Poverty Charities: Can't Take the State's Place' *The Guardian* (27 February 2024) https://www.theguardian.com/commentisfree/2024/feb/27/the-guardian-view-on-food-poverty-charities-cant-take-the-states-place.
The Interfaith Network https://www.interfaith.org.uk/news/covid-19-acts-of-kindness-and-service
The Parliamentary Office of Science and Technology, 'A Resilient UK Food System' (June 2020) available at https://researchbriefings.files.parliament.uk/documents/POST-PN-0626/POST-PN-0626.pdf
The Trussell Trust, End of Year Stats, https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/.
-- 'Summary Findings on the Impact of the Covid-19 Crisis on Food Banks' (June 2020) https://www.trusselltrust.org/wp-content/uploads/sites/2/2020/06/APRIL-Data-briefing_external.pdf.
-- 'Emergency Food Parcel Distribution in the UK: April 2022 – March 2023' (2023) https://www.trusselltrust.org/wp-content/uploads/sites/2/2023/04/EYS-UK-Factsheet-2022-23.pdf
-- 'Mid-Year Stats (21 February 2024) https://www.trusselltrust.org/news-and-blog/latest-stats/mid-year-stats/
-- 'Over Half of People Receiving Universal Credit Unable to Afford Enough Food' (21 February 2024) https://www.trusselltrust.org/2024/02/21/over-half-of-people-receiving-universal-credit-unable-to-afford-enough-food/
The University of Edinburgh, 'PRRS Resistant Pigs' (13 February 2020) https://www.ed.ac.uk/roslin/facilities-resources/larif/case-studies/industry-partners.
Thompson J and Jackson T, 'Sustainable Procurement in Practice: Lessons from Local Government' 50 Journal of Environmental Planning and Management (2007) 421
Thompson R, 'Photos of Free School Meal Packages in the UK Spark Outrage Online' (*Mashable,* 12 January 2021) https://mashable.com/article/free-school-meals-parcels accessed 1 February 2024
Thow AM *et al,* 'Nutrition Labelling is a Trade Policy Issue: Lessons from an Analysis of Specific Trade Concerns at the World Trade Organization' (2017) 33 Health Promotion International 561
Trade and Public Policy Network, 'Six Practical Steps to Strengthen Parliamentary Scrutiny of UK Trade Agreements' (*UK Trade Policy Observatory,* 13 June 2022)
Tran M, 'Safeway takeover hits Morrisons Sales' *The Guardian* (2 July 2004)

https://www.theguardian.com/business/2004/jul/02/supermarkets.money
Trebilcock M, Howse R and Eliason A, *The Regulation of International Trade* (4th edn, Routledge 2013).
UK Parliament, 'Bill of Rights Bill' (28 June 2023) https://bills.parliament.uk/bills/3227
UNICEF, 'The Lifesaving Peanut Paste' https://www.unicef.org/supply/lifesaving-peanut-paste.
Unite the Union, 'Unite Investigates: Food Profiteering Update- June 2023' https://www.unitetheunion.org/what-we-do/unite-investigates/new-analysis-rips-apart-dodgy-claims-of-squeezed-supermarket-profits/unite-investigates-food-profiteering-update-june-2023/
United Nations, 'Sustainable Development Goals, Goal 2: Zero Hunger' https://www.un.org/sustainabledevelopment/hunger/
United Nations Department of Economic and Social Affairs, 'Goal 2' https://sdgs.un.org/goals/goal2.
-- 'The 17 Goals' https://sdgs.un.org/goals.
UNRWA, 'The Gaza Strip: Humanitarian Crisis Deepens at a Time Funding Suspensions put UNRWA Aid Operations in Peril' (1 February 2024) https://www.unrwa.org/newsroom/news-releases/gaza-strip-humanitarian-crisis-deepens-time-funding-suspensions-put-unrwa-aid
US Adult Food Security Survey Module (*USDA*, September 2012) https://www.ers.usda.gov/media/8279/ad2012.pdf
Vågsholm I, Arzoomand NS and Boqvist S, 'Food Security, Safety and Sustainability – Getting the Trade-Offs Right' (2020) 4 Frontiers in Sustainable Food Systems 1
Van Boven T, 'Categories of Rights' in Moeckli D, Shah S and Sivakumaran S (eds), *International Human Rights Law* (3rd edn, OUP 2018)
van der Zee B, 'Cattle Gridlock: EU Border Delays Add to Coronavirus Strain on Meat Trade' *The Guardian,* 23 March 2020 https://www.theguardian.com/environment/2020/mar/23/meat-prices-could-rise-as-covid-19-adds-pressure-to-vulnerable-supply-chain-coronavirus.
Van Tulken C, *Ultra-Processed People. Why Do We All Eat Stuff That Isn't Food…and Why Can't We Stop?* (Cornerstone Press 2023).
Vaughan A, 'Rishi Sunak Tells Farmers Food Security is a Government Priority' *The Times,* (20 February 2024) https://www.thetimes.co.uk/article/rishi-sunak-nfu-conference-farmers-food-security-government-priority-9j3dczr5v.
Vernon J, *Hunger a Modern History* (Belknap Press of Harvard University 2007).
Vidaver AK, 'Antimicrobial Use in Plant Agriculture' in White D, Alekshun M and McDermott P (eds), *Frontiers in Antimicrobial Resistance* (ASM Press 2005)
Vierdag EW, 'The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights' (1978) 9 Netherlands Yearbook of International Law 69.
von Engelhardt M, 'Opportunities and Challenges of a Soft Law Track to Economic and Social Rights – The Case of the Voluntary Guidelines on the Right to Food' (2009) 42 Law and Politics in Africa and Latin America 502.
Waitrose & Partners, 'Sustainability' https://www.waitrose.com/ecom/content/sustainability
Waldron J 'Safety and Security' (2006) 85 Nebraska Law Review 454
-- *Torture Terror and Trade-Offs. Philosophy for the White House* (OUP, 2010),
-- 'Is Dignity the Foundation of Human Rights?' in Cruft R, Liao SM

and Renzo M (eds), *Philosophical Foundations of Human Rights* (OUP 2015).
-- *One Another's Equals* (The Belknap Press of Harvard University Press 2017).
Walker N, 'Seacroft History' http://www.ls14trust.org/seacroft-history.html
Wax, E and Brzeziński B, '"Enormous" Fertilizer Shortage Spells Disaster for Global Food Crisis (Politico, 9 August 2022) https://www.politico.eu/article/fertilizer-soil-ukraine-war-the-next-global-food-crisis/.
Webb D, 'UK-Australia Free Trade Agreement' (House of Commons Library Number 9484, 12 May 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-9484/
Weeks T, Spoor E and Weal R, 'Dignity or Destitution' (Trussell Trust, 2021) https://www.trusselltrust.org/wp-content/uploads/sites/2/2021/02/dignity-or-destitution-UC-standard-allowance-report-final.pdf
Welsh C, 'Russia, Ukraine and Global Food Security: A One-Year Assessment' (Center for Strategic and International Studies, 24 February 2023) https://www.csis.org/analysis/russia-ukraine-and-global-food-security-one-year-assessment.
Welsh Government, 'Welsh Government Response to the Summary of Responses following the Bovine Viral Diarrhoea (BVD) Eradications Scheme Consultation' (December 2022) https://www.gov.wales/sites/default/files/consultations/2022-12/compulsory-bovine-viral-diarrhoea-eradication-scheme-welsh-government-response-to-the-summary-of-responses.pdf
-- 'Compulsory Bovine Viral Diarrhoea Eradication Scheme' (23 December 2022) https://www.gov.wales/compulsory-bovine-viral-diarrhoea-eradication-scheme
-- Restriction on High Fat, Sugar and Salt Products to be Introduced (27 June 2023) https://www.gov.wales/restriction-high-fat-sugar-and-salt-products-be-introduced
Welsh Parliament, 'Development of the Food Wales Bill https://senedd.wales/senedd-business/legislation/proposed-member-bills/development-of-the-food-wales-bill/
-- 'Written Statement: Introduction of the Agriculture (Wales) Bill' (26 September 2022) https://gov.wales/written-statement-introduction-agriculture-wales-bill
-- *Food (Wales Bill)* (12 December 2022) https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=40509
Werrell C, Femia F and Sternberg T, 'Did We See It Coming? State Fragility, Climate V ulnerability, and the Uprisings in Syria and Egypt' (2015) 35 The SAIS Review of International Affairs 29.
Westwater H, 'Government accused of 'Institutionalising' Food Banks in New Guidance for Councils' *Big Issue* (12 November 2021) https://www.bigissue.com/news/social-justice/government-accused-of-institutionalising-food-banks-in-new-guidance-for-councils/
Wettstein F, 'The History of 'Business and Human Rights' and its Relationship with Corporate Social Responsibility' in Deva S and Burchill D (eds), *Research Handbook on Human Rights and Business* (Edward Elgar 2020).
WFP, 'Annual Review 2020' (7 July 2021) https://www.wfp.org/publications/annual-review-2020
-- 'Food Assistance: Cash and In-Kind' https://www.wfp.org/food-assistance.

Whelan A, Wrigley N, Warm D and Cannings E, 'Life in a 'Food Desert' (2002) 39 Urban Studies 2083
Which?, 'Affordable Food for All' https://campaigns.which.co.uk/affordable-food/.
-- 'Priority Places for Food Index' https://priorityplacesforfood.which.co.uk/
-- 'Affordable Food For All: How Supermarkets Can Help in the Cost of Food Crisis' (November 2022) https://www.which.co.uk/policy/consumers/9142/affordable-food-for-all-how-supermarkets-can-help-in-the-cost-of-food-crisis.
Whish R and Bailey D, *Competition Law* (10th edn, OUP 2021)
White K and Duncan G, 'Why Fruit and Veg Shortages are Only a Tiny Bit About Brexit' *The Grocer* (23 February 2023) https://www.thegrocer.co.uk/buying-and-supplying/why-fruit-and-veg-shortages-are-only-a-tiny-bit-about-brexit/676636.article
WHO, 'International Health Regulations' https://www.who.int/health-topics/international-health-regulations#tab=tab_1
-- 'Global Action Plan on Antimicrobial Resistance' (WHO, 2015) https://www.who.int/publications/i/item/9789241509763
-- 'The Top 10 Causes of Death' (9 December 2020) https://www.who.int/news-room/fact-sheets/detail/the-top-10-causes-of-death
-- 'World Leaders and Experts Call for Significant Reduction in the Use of Antimicrobial Drugs in Global Food Systems' (24 August 2021) https://www.who.int/news/item/24-08-2021-world-leaders-and-experts-call-for-significant-reduction-in-the-use-of-antimicrobial-drugs-in-global-food-systems
-- and FAO, '*Salmonella and Campylobacter* in chicken meat. Meeting Report' (2009) https://iris.who.int/bitstream/handle/10665/44211/9789241547901_eng.pdf?sequence=1
-- WOAH and FAO, 'International instruments on the use of antimicrobials across the human, animal and plant sectors' (2020) https://www.woah.org/app/uploads/2021/03/en-oie20triparite20amu20joint20instruments-v5-web.pdf
Wicke B, Sikkem R, Dornbug V and Faij A, 'Exploring Land Use Changes and the Role of Palm Oil Production in Indonesia and Malaysia' (2011) 28 Land Use Policy 193
Widener M, 'Spatial Access to Food: Retiring the Food Desert Metaphor' (2018) 193 Physiology and Behaviour 257
Wiener-Bronner D, 'Tyson Warns More Meat Plant Closures are Coming' (*CNN Business,* 4 May 2020) https://edition.cnn.com/2020/05/04/business/tyson-meat-plant-closures/index.html
Wilde R, 'Socioeconomic Rights, Extraterritorially' in Benvenisti E and Nolte G (eds) *Community Interests Across International Law*, (OUP 2018)
Willett W *et al,* 'Food in the Anthropocene: the EAT-Lancet Commission on Healthy Diets from Sustainable Food Systems' (2019) 393 The Lancet 447
Windfuhr M and Jonsén J, *Food Sovereignty: Towards Democracy in Localized Food Systems* (FIAN-Interantional 2005), 5

Wise TA, ‘New AGRA Reports Offer Little Evidence to Justify Continued Donor Support’ (Institute for Agricultural and Trade Policy, 2021) https://www.iatp.org/documents/new-agra-reports-offer-little-evidence-justify-continued-donor-support

WOAH, ‘The OIE Strategy on Antimicrobial Resistance and the Prudent Use of Antimicrobials’ (OIE, WOAH, November 2016) https://www.woah.org/fileadmin/Home/eng/Media_Center/docs/pdf/PortailAMR/EN_OIE-AMRstrategy.pdf

Wolfendale J, ‘Moral Security’ (2017) 25 Journal of Political Philosophy 238

Wolff, J ‘Fairness, Respect, and the Egalitarian Ethos’ (1998) 27 Philosophy and Public Affairs 97

Wood S *et al*, ‘Trade and the Equitability of the Global Food Nutrient Distribution’ (2018) 1 Nature Sustainability 34.

Woolfson D, ‘Britain Faces Tomato Shortage as Bad Weather Squeezes Supply’ *The Telegraph* (20 February 2024) https://www.telegraph.co.uk/business/2023/02/20/uk-supermarkets-face-tomatoes-shortage-morocco-restricts-exports/

Woolhouse M *et al*, ‘Antimicrobial Resistance in Humans, Livestock and the Wider Environment’ (2015) 370 Philosophical Transactions of the Royal Society B 20140083

Wrigley N, ‘Food Desserts’ in British Cities: Policy, Context, and Research Priorities’ (2002) 11 Urban Studies 2029

-- Warm D and Margetts B, ‘Deprivation, Diet, and Food-Retail Access: Findings from the Leeds ‘Food Deserts’ Study’ (2003) 35 Environment and Planning A 151

-- Warm D and Margetts B and Lowe M, ‘The Leeds “Food Deserts” Intervention Study: What the Focus Groups Reveal’ (2004) 32 International Journal of Retail and Distribution Management 123