

**Mandate of the Special Rapporteur on the right to food**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right to food, pursuant to Human Rights Council resolution 32/8.

In this connection, I would like to bring to the attention of your Excellency's Government information I received concerning the **adoption of three laws last year: The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act 2020, The Essential Commodities (Amendment) Act 2020, and The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020.**

Reports continue to document the hundreds of thousands of farmers protesting the adoption of these pieces of legislation with demonstrations beginning at the time of adoption in September 2020. Meanwhile, in January 2021, the Supreme Court suspended the implementation of the laws and appointed a three-member committee to study the three farm laws and consult all stakeholders. The committee submitted their report to the Supreme Court at the end of March 2021 and that report has not yet been made public<sup>1</sup>.

I would like to offer my comments on the above-mentioned laws and, in particular, their collective impact on the accessibility, availability, adequacy, and sustainability of food in India, all essential components to the full realization of the human right to food. In particular, I am concerned that these laws may interfere with the full enjoyment of the right to food of India's farmers, especially women as constituting the majority of small-scale farmers in the country, and all interrelated human rights.

More specifically, the Farmers Produce Trade and Commerce (Promotion and Facilitation) Act 2020, the Essential Commodities (Amendment) Act 2020, and the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020, may significantly undermine access to and availability of food. This concern is derived from certain provisions that appear to dismantle safeguards against price fixing, market intervention, and could provide fertile ground for predatory contracts that disproportionately impact the rights of small and marginalized farmers. In a previous communication addressed to your Government on this issue on 9 March 2021 ([IND 2/2021](#)), concerns were relayed to your Excellency's Government over how these laws may affect previous guarantees of a minimum selling price for crops. Furthermore, the same communication highlighted the possible negative impact of the new legislation on traditional local markets, and how the laws may potentially replace traditional ways whereby farmers have historically sold their crops directly to public intermediaries, by allowing corporations to buy directly from

<sup>1</sup> Krishnadas Rajagopal, Farmers' Protest: Supreme Court Stays Implementation of 3 Controversial Farm Laws, HINDU (Jan. 12, 2021), <https://www.thehindu.com/news/national/sc-suspends-implementation-of-three-farm-laws/article33557081.ece>. The Supreme Court suspended the implementation of the three acts until a committee of experts has an opportunity "to listen to the grievances of the farmers on the farm laws and the views of the government to make recommendations".

farmers and potentially hoard commodities and thereby affect prices. Additional concerns were also expressed about provisions which could facilitate stockpiling by corporations to the detriment of small-scale farmers.

The acts were passed as ordinances during the COVID-19 pandemic, at a time when most farmers, agricultural workers, and other stakeholders did not have an opportunity to formally express potential concerns about certain provisions. In this context, I would respectfully invite the Government of your Excellency to consider re-opening the discussion around the new legislation to ensure that all stakeholders, including those who were not in a position to fully participate at the time, have the opportunity to take an active role in the consultation process.

### **The Farmers Product Trade and Commerce (Promotion and Facilitation) Act 2020**

The Farmers Product Trade and Commerce (Promotion and Facilitation) Act 2020 purports to provide “an ecosystem where the farmers and traders enjoy the freedom of choice relating to sale and purchase of farmers’ produce [to] facilitate[] remunerative prices.”<sup>2</sup> To provide this choice, the law allows the creation of privately-operated markets outside the scope of government regulation and the guaranteed minimum support price (MSP), challenging the objectives behind the current system. The existing system ensures that specific agricultural commodities, including cereals, pulses, oilseeds and commercial crops, are sold in *mandis* or government-regulated markets. These *mandis* are set up and run by state Agricultural Produce Market Committees composed of elected members from different stakeholder groups.

However, there are concerns that the new legislation will weaken if not eventually eliminate the *mandis* system through the following measures: introducing an alternative to the current system, eliminating the ability of Agricultural Produce Market Committees to cover their costs through a market fee under section 6, and deregulating the price of certain foodstuffs by amending section 3 of the Essential Commodities Act of 1955 (discussed below). The new legislation significantly increases the chances that a small number of corporate buyers in the private market will become the principal purchasers – this would diminish small and marginalized farmers’ bargaining power and may force them to accept minimal remuneration in exchange for their goods within these private markets, with very limited procedural safeguards. While the law aims at providing farmers with more freedom to sell and buy crops including in the private market, farmers may face unstable economic conditions. This includes challenges securing MSP price for their products and avoiding waste when market prices are not favourable.

Such an outcome is contrary to the obligation to respect, protect, and fulfil the right to food. The proposed legislation poses potential challenges to food availability and accessibility by enacting a system that may affect farmers’ ability to earn a living wage, and thus afford food and other necessities. Additionally, while the right to food is subject to progressive realization as per the International Covenant on Economic, Social and Cultural Rights, some obligations such as non-discrimination and non-retrogression are not. If such a parallel market is put into place, possibly jeopardizing small farmers’ ability to obtain a fair and stable price for their crops, I am gravely concerned about risk of retrogression in the realization of the right to food.

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<sup>2</sup> The Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, §A.

With potential important impacts on farmers' livelihood in general and their financial access to food in particular, this provision is at odds with international standards. More specifically, as highlighted by the Committee on Social Economic and Cultural Rights, economic accessibility of food "applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food."<sup>3</sup> In this context, the legislation should put a mechanism in place ensuring that farmers can secure a fair and stable price for their products, including in the private market, in order to ensure their financial access to food and avoid potential waste, which also constitutes an important concern from a sustainability and environmental perspective.

Furthermore, the Act's expected outcome is likely to disproportionately impact women, as an estimated 73.2% of rural woman workers in India are engaged in agriculture.<sup>4</sup> In its General Recommendation No. 34, the Committee on the Elimination of Discrimination against Women acknowledged the "vital contributions of rural women and the urgent need to improve recognition and protection of their human rights."<sup>5</sup> The Committee further highlighted the State's obligation to take measures to eliminate all forms of discrimination against women, and to ensure that economic policies respond to the needs of rural woman.<sup>6</sup> Yet, weakening the guaranteed MSP may undermine the ability of women to sell at a fair price in markets, violate their right to food, undercut their livelihood, and thus potentially increase poverty among women.

The development of private markets may also jeopardize the procurement and distribution system established by your Government under the National Food Security Act of 2013. The procurement system of the Food Corporation of India and the Public Distribution System is designed to ensure that producers receive adequate remuneration for basic foods—thus enabling the access of farmers to secure their own food—and to offer highly subsidized foods for India's most disadvantaged populations. The expansion of private markets has the potential to directly conflict with this procurement mechanism, reducing the supply of food facilitated through this system, and undermining food access for the most vulnerable populations that rely on this assistance.

The Act eliminates farmer's ability to seek redress from the courts under sections 13 and 15. Instead, under section 8, the Act establishes a binding conciliation mechanism "in case of any dispute arising out of a transaction between the farmer and a trader". This raises serious concerns since many such alternative dispute resolution mechanisms have proven to limit if not extinguish people's ability to claim their human rights and receive a just remedy. This mechanism may further conflict with Article 32 of the Indian Constitution, and which guarantees a right to constitutional and judicial remedies for all justiciable rights, including the right to food. As highlighted by the former Special Rapporteur on the right to food, "Governments should ensure that regulatory oversight keeps pace with the level of the expansion and the complexity of business models".<sup>7</sup>

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<sup>3</sup> Committee on Economic, Social and Cultural Rights, General Comment No, 12, para 13.

<sup>4</sup> Annual Report, *Periodic Labour Force Survey 2017-18*, 64 (May 2019).

<sup>5</sup> Committee on Elimination of Discrimination against Women, General Recommendation No. 34, ¶1 (Mar. 4, 2016).

<sup>6</sup> Ibid.  
<https://undocs.org/A/HRC/25/57>, p. 24.

## **The Essential Commodities (Amendment) Act 2020**

The original Essential Commodities Act of 1955 was passed to control the “production, supply and distribution” of essential commodities in the interest of the general public, and its purpose was to maintain adequate supplies of essential agricultural commodities and foodstuffs at a fair price. Yet, the recent amendments to section 3 of the Act undermine this stated purpose by removing the stock limits imposed on private corporations. As it stands, the new law would only allow stockpiling limitations in “exceptional circumstances” including: (i) war, (ii) famine, (iii) extraordinary price rise and (iv) natural calamity of grave nature, thus permitting the practice in any other circumstances. Circumscribing the power to impose stock limits to respond to regular price rises could seriously restrict people’s access to food in this context. Furthermore, with a reduced ability to limit stockpiling, certain safeguards would be eliminated since market actors will more easily fix purchase prices, stockpile surplus, and sell at an inflated rate to consumers.

Such deregulation would disproportionately affect farmers who do not have access to the capital necessary to stockpile goods, and is likely to benefit private corporations, including transnational corporations, with the necessary resources to hoard. The most economically disadvantaged populations may also be unable to afford food at higher costs, should those in control of the stockpiles choose to raise the price, which would seriously reduce people’s access to food jeopardizing the full realization of the right to food for many. I worry that such amendments might encourage the private sector to stockpile and invest in storage and warehousing sectors in order to do so. In sum, I am concerned that the Essential Commodities (Amendment) Act 2020 would exacerbate issues of food access and availability, contrary to the original purpose of the Act.

## **Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020**

There is widespread concern that the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020 could worsen certain power imbalances by allowing private corporations to contract with small farmers for predetermined crops at fixed prices. More specifically, section 5 of the Act provides private buyers with the ability to determine the price of produce contractually through farming agreements.

Such arrangement elicits human rights concerns, and the inherent dangers in contract farming for small farmers, as this mandate has previously addressed.<sup>8</sup> Contract farming commonly results in the production of niche commodities that have high export value and undermine a region’s food security.<sup>9</sup> Instead of producing commodities that provide adequate food for India, small farm contracts with private corporations could shift agriculture towards crops that are not essential to local food security. Export-oriented crop production often employs industrial agricultural techniques that increase the risk of unemployment (as export-orientated crops typically employ fewer workers), farmer debt, soil degradation, and increased exposure to toxic chemicals.

<sup>8</sup> *UN Human Rights Expert Warns of Pitfalls of Contract Farming*, UN NEWS (Oct. 24, 2011), <https://news.un.org/en/story/2011/10/392782-un-human-rights-expert-warns-pitfalls-contract-farming>.

<sup>9</sup> Braja Bandhu Swain, *Contract Farming and Farmers’ Empowerment & Protection Bill 2020*, UNIVERSITY PRACTICE CONNECT, <https://practiceconnect.azimpremjuniuniversity.edu.in/contract-farming-and-farmers-empowerment-protection-bill-2020/>.

Sections 13 and 14 of the Act require all disputes to be resolved through binding conciliation. This raises the same concerns noted above with respect to the Farmers Product Trade and Commerce (Promotion and Facilitation) Act 2020.

Your Government has recognized that it must “take appropriate steps to ensure the realization of th[e] right” to food, as derived from Article 25 of the Universal Declaration of Human Rights, which recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by India in 1979, further recognizes “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.” India acceded to the ICESCR in 1979 and subsequently enshrined the right to food as part of the fundamental right to life in Article 21 of the Indian Constitution. Your Government therefore accepted its corresponding obligation to respect, protect, and fulfil the right to food for all individuals, as explained by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12. This obligation also includes avoiding any measures that would interfere with accessibility, availability, adequacy, or sustainability of food (CESCR, General Comment No. 12).

In light of these concerns that your Government adopted the Farmers Produce Trade and Commerce (Promotion and Facilitation) Act 2020, the Essential Commodities (Amendment) Act 2020, and the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020, despite the laws’ potential interference with the enjoyment of the right to food, I would be grateful for your observations on the following matters:

1. Please provide any further information or comments you may have on the issues raised.
2. What protective measures does your Government plan to adopt to ensure that the emerging private markets under the Farmers Produce Trade and Commerce (Promotion and Facilitation) Act 2020 do not undermine the MSP or otherwise guarantee a fair price for farmers?
3. The Government has repeatedly assured farmers that the existing system of public procurement at minimum support price and operation of APMC *mandis* (markets) will continue. Can you please describe how you will put in place such support?
4. How does your Government intend to ensure that the food procurement and distribution systems established under the National Food Security Act continue to support the most economically disadvantaged and food insecure populations?
5. How does your Government plan to restrict stockpiling and resulting price manipulation in response to new permissions afforded under the Essential Commodities (Amendment) Act 2020? If your Government does not intend to adopt restrictions, how will your Government ensure that smaller farmers and those with financial restraints are able to

acquire the capital and space for storage?

6. How does your government intend to protect against price manipulation that may result from the Essential Commodities (Amendment) Act 2020 to the detriment of smaller producers?
7. How does your government plan to protect farmers' access to justice and fair remedy in the event that a contract dispute arises under the Farmers Product Trade and Commerce (Promotion and Facilitation) Act 2020 or Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020?
8. What steps is your Government taking to ensure that women farmers and those engaged in agricultural production are not adversely impacted by the new laws, and are afforded the full scope of rights and protections guaranteed under international human rights law?
9. What measures are in place to ensure that any necessary amendments to, implementation and enforcement of these laws involves open public discussion, and that those who are most affected have a reasonable opportunity to influence the legislative process?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Michael Fakhri  
Special Rapporteur on the right to food