

## **Violence and the Right to Food in the U.S.**

**Submission to the United Nations Special Rapporteur on the Right to Food  
Mr. Michael Fakhri**

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## **Executive Summary**

All people in the United States (U.S.) should have their human right to adequate food fully realized. While the U.S. has taken some steps to demonstrate its commitment to economic and social rights, the right to food remains one of the most violated human rights in the country. In an effort to inform the Special Rapporteur’s upcoming thematic report on violence and the right to food to the United Nations’ Human Rights Council, this submission focuses on the violations of the right to food in the U.S. that are intimately intertwined with (1) gender-based violence (GBV), (2) violence as discrimination that has a disproportionate effect on Black, Indigenous, and people of color communities, including immigrants and low-wage workers in the food system; and (3) ecological violence.

GBV, poverty, and hunger are deeply interconnected and as such require a joint, holistic, and long-term response to be properly addressed. GBV is a pandemic that is globally ubiquitous and pervasive, despite decades of efforts to address it through the criminal justice, public health, education, and social welfare sectors. GBV refers to violence targeting or disproportionately impacting individuals due to their gender or prevailing gender norms. Under international human rights law, GBV includes “physical, sexual, psychological or economic harm or suffering ... threats of such acts, harassment, coercion and arbitrary deprivation of liberty”.<sup>2</sup> GBV is oftentimes worsened by the intersecting discrimination faced by marginalized groups, including racism, homophobia, xenophobia, and economic exploitation. The impacts of GBV have only worsened with the COVID-19 pandemic, intensifying the links between GBV, poverty, and food insecurity and requiring that access to resources that increase economic stability, such as job security, employment protection, living wage jobs, and barrier-free access to cash assistance, be key components of GBV prevention and mitigation efforts.

BIPOC communities are the most affected by food insecurity in the U.S. as a result of systemic racism within the food system.<sup>3</sup> The U.S. has historically placed barriers to land ownership for BIPOC communities, which has severely limited their ability to independently produce food. The land that BIPOC families can obtain is often contaminated by pollution and waste in its water supply.<sup>4</sup> As a result of a failed reservation system and historic dispossession of their lands, Indigenous communities in the U.S. are exceptionally affected by violence in the food system. Indigenous communities also face a lack of affordable, nutritious, and culturally adequate grocery stores. Although BIPOC communities are facing food insecurity at very high rate, the U.S. continues to use vulnerable populations to produce the country’s food, through the labor of migrant and prison populations. BIPOC make up 66.1% of the food processing industry and 69% of the farm labor workforce.<sup>5</sup> Nevertheless, the U.S. does not protect its agricultural workers who provide most of the country’s food; they are often excluded from worker protections guaranteed in other

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<sup>2</sup> Comm. on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, ¶ 14, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017) [hereinafter CEDAW Gen. Rec. 35].

<sup>3</sup> Areeba Haider and Lorena Roque, *New Poverty and Food Insecurity Data Illustrate Persistent Racial Inequalities*, Center for American Progress (Sep. 19, 2021), <https://www.americanprogress.org/article/new-poverty-food-insecurity-data-illustrate-persistent-racial-inequities/>

<sup>4</sup> *How Our Food System Affects Public Health*, FoodPrint (Aug. 11, 2020), <https://foodprint.org/issues/how-our-food-system-affects-public-health/>

<sup>5</sup> *Farm Labor*, USDA, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#size>

industries, such as not qualifying for minimum wage laws, not meeting the definition of “employees” under several state codes, inability to unionize, and not qualifying for worker’s compensation.<sup>6</sup>

Ecological violence is exacerbating right to food violations in the U.S. Discriminatory land-use laws, environmental racism, and the historical dispossession of natural resources and knowledge, together with a corporate food system that fails BIPOC communities, have left these communities more exposed to climate risks.<sup>7</sup> Indigenous Peoples are among the first to face the direct consequences of the climate crisis due to their dependence upon, and close relationship with, the environment and its resources.<sup>8</sup> Indigenous People are also rarely considered when new climate policies are being drafted despite being strongly impacted by the effectiveness, or lack thereof, of these policies. The continuous political and economic marginalization of Indigenous Peoples results in their loss of land and resources and related human rights violations.<sup>9</sup> The U.S.’s lack of oversight of corporate activities disrupts traditional hunting, fishing, farming, and gathering economies in Indigenous communities as pollutants fill these traditional foodways due to corporate ability to “drill, frack, and fell tinder on Native lands”.<sup>10</sup> Additionally, environmental racism exposes BIPOC communities to harmful, environmentally-damaging substances, by placing landfills, trash incinerators, coal plants, and toxic waste dumps primarily in and near BIPOC communities.<sup>11</sup> Fast food restaurants are also more prevalent than other affordable, more nutritious options in BIPOC and low-income communities in the U.S., leading to increased health risks.<sup>12</sup>

In conclusion, the U.S. is violating the human right to food by permitting widespread practices of violence within the food system. The U.S. should expand and increase their recognition of social, and economic rights by promoting the adoption of right to food state constitutional amendments and local ordinances. In addition, the federal government should (1) adopt a rights-based national plan to end hunger that incorporates strong civic participation from those most affected and (2) introduce a required federal periodic National Action Plan to End Gender-Based Violence that requires attention to the intersection of GBV and right to food violations.

## **Introduction: The Right to Adequate Food in the United States**

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<sup>6</sup> *Wages Map*, Farmworker Justice, <https://www.farmworkerjustice.org/wages-map/>; see also *Workers’ Compensation Map*, Farmworker Justice, <https://www.farmworkerjustice.org/workers-compensation-map/>

<sup>7</sup> Annie Young, *Where Food, Climate, and Racial Equity Meet*, Tufts University (Jan. 27, 2022), <https://now.tufts.edu/2022/01/27/where-food-climate-and-racial-equity-meet>.

<sup>8</sup> *Climate Change*, UN Department of Economic and Social Affairs (accessed May 2022), <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>

<sup>9</sup> Q&A with A-dae, first nations development institute (accessed May 8, 2022) <https://www.firstnations.org/native-foods-resources/>

<sup>10</sup> Meghan O’Connell, Dedra S. Buchwald, and Glen E. Duncan, *Food Access and Cost in American Indian Communities in Washington State*, Journal of the Academy of Nutrition and Dieticians, Vol. 111, Iss. 9, (Sept. 1, 2011), [https://www.jandonline.org/article/S0002-8223\(11\)00698-5/fulltext](https://www.jandonline.org/article/S0002-8223(11)00698-5/fulltext); see also Stephanie Woddard, *How the U.S. Government is Helping Corporations Plunder Native Land*, In These Times, (Sept. 6, 2016), <https://inthesetimes.com/features/native-land-plunder-bureau-of-indian-affairs.html>

<sup>11</sup> *Environmental Racism*, Food Empowerment Project (accessed on May 7, 2022), <https://foodispower.org/environmental-and-global/environmental-racism/>.

<sup>12</sup> RNA Lab, race, neighborhoods, and african-american health (accessed on May 7, 2022) <http://rna-lab.com/publishedpapers>.

All people in the United States (U.S.) should have their human right to adequate food fully realized. While the U.S. has taken some steps to demonstrate its commitment to economic, social, and cultural rights, the right to food remains one of the most violated human rights in the country. The U.S. played a significant role in the elaboration and adoption of the Universal Declaration of Human Rights in 1948<sup>13</sup>, which consists of 30 articles affirming the full range of individuals' human rights. Furthermore, the U.S. ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>14</sup> and the Convention Against Torture (CAT)<sup>15</sup> in 1994, both of which prominently contain economic, social, and cultural rights, including the right to food.<sup>16</sup> The U.S. also took part in the development of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines), and even committed to their adoption by the Food and Agriculture Organization of the United Nations (FAO) in 2004.<sup>17</sup> However, the lack of recognition of economic, social and cultural rights on a federal level shows how the human right to food has been grossly neglected by the U.S.<sup>18</sup> The lack of recognition of economic, social and cultural rights in the U.S. is further made evident through the U.S.'s refusal to ratify the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which defines the right to food as the right to feed oneself and one's families with dignity, through sufficient availability, accessibility, and adequate fulfilment of dietary needs in a sustainable manner.<sup>19</sup>

Despite the U.S. federal government's lack of recognition of the international right to adequate food, states, municipalities, and cities around the U.S. are leading the way and enshrining the right to food in law. In 2021, Maine became the first state to adopt a constitutional amendment enshrining the right to food in its constitution. The Maine Amendment reads,

“All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting production or acquisition of food”.<sup>20</sup>

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<sup>13</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December, 1948

<https://www.un.org/en/universal-declaration-human-rights/>

<sup>14</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195,

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

<sup>15</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465.

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

<sup>16</sup> *Id.*

<sup>17</sup> *Right to Food*, Food & Ag. Org. of the U.N. <http://www.fao.org/policy-support/policy-themes/right-to-food/en/> (accessed October 2).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> <https://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP0061&item=1&snum=130>

West Virginia has also proposed a resolution, HJR 30, which would be the second Right to Food constitutional amendment in the U.S.<sup>21</sup> Similarly, Washington and other states are also considering similar constitutional efforts.

In an effort to inform the Special Rapporteur's upcoming thematic report on violence and the right to food to the United Nations' Human Rights Council, this submission focuses on the violations of the right to food in the U.S. that are intimately intertwined with (1) gender-based violence (GBV), (2) violence as discrimination that has a disproportionate effect on Black, Indigenous, and people of color communities, including immigrants and low-wage workers in the food system; and (3) ecological violence.

## **Part I: Gender-Based Violence and the Right to Food**

GBV, poverty, and hunger are deeply interconnected. GBV is a pandemic that is globally ubiquitous and pervasive, despite decades of efforts to address it through the criminal justice, public health, education, and social welfare sectors. GBV refers to violence targeting or disproportionately impacting individuals due to their gender or prevailing gender norms. Under international human rights law, GBV includes intimate partner violence, sexual assault, and stalking *and encompasses "physical, sexual, psychological or economic harm or suffering . . . threats of such acts, harassment, coercion and arbitrary deprivation of liberty."*<sup>22</sup> GBV undermines fundamental human dignity and prevents individuals from exercising their right to adequate food.

### **a. GBV is oftentimes worsened by the intersecting discrimination being faced by marginalized groups.**

GBV respects no geographic, social, or economic boundaries, although it poses especially complex challenges to marginalized populations who experience intersecting discrimination, including racism, homophobia, xenophobia, and economic exploitation, impacting their safety and ability to access support. In the U.S., approximately three women die per day as a result of domestic violence, and for every woman killed, nine more are critically injured.<sup>23</sup> Nearly one in five women (19.1%) have been raped,<sup>24</sup> and half of transgender people and bisexual women will experience sexual violence at some point in their lives.<sup>25</sup> According to the UN Special Rapporteur on the Rights of Indigenous Peoples, Native American and Alaska Native women experience sexual

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<sup>21</sup> WVU Center for Resilient Communities advances work toward the Right to Food in West Virginia, Mountaineer E News (May 13, 2021), <https://enews.wvu.edu/articles/2021/05/13/wvu-center-for-resilient-communities-advances-work-toward-the-right-to-food-in-west-virginia>

<sup>22</sup> Comm. on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, ¶ 14, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017) [hereinafter CEDAW Gen. Rec. 35].

<sup>23</sup> U.S. DEP'T OF JUST., IDENTIFYING AND PREVENTING GENDER BIAS IN LAW ENFORCEMENT RESPONSE TO SEXUAL ASSAULT AND DOMESTIC VIOLENCE 6 (2015), <https://www.justice.gov/opa/file/799366/download>; *see also* BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 3 (2013), <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

<sup>24</sup> NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010-2012 STATE REPORT 18 (2010), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

<sup>25</sup> *Sexual Assault and the LGBTQ Community*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community> (last visited Oct. 11, 2022).

assault at a rate 2.5 times higher than other women with 86% of perpetrators being non-Native men.<sup>26</sup> The U.S. government has recognized that Black transgender women “face epidemic levels of violence” and account for 66% of all victims of fatal violence against transgender and gender nonconforming people in the U.S.<sup>27</sup>

**b. COVID-19 intensified the links between GBV, poverty and food insecurity, especially for workers in the food system.**

GBV has further intensified with the COVID-19 pandemic, leading UN Women to refer to rising rates of GBV, and particularly domestic violence, as a “shadow pandemic.”<sup>28</sup> The COVID-19 pandemic has also underscored the links between GBV, food insecurity, low-wage work, and inequities in access to social and economic protections. Women who are less economically independent have a higher exposure to violence, which results in weaker bargaining positions within the household and the community. Furthermore, women workers are often denied access to even the most basic of rights. The situation of women workers in the food system is particularly dire as their jobs are usually seasonal, part-time, low-wage, dangerous, isolated, and unregulated. Moreover, survivors of GBV in low-wage jobs in the food system often lack access to paid safe leave policies and thus are unable to take time off to seek protection, to meet with advocates and therapists, to file or attend legal proceedings, to relocate, or to recover emotionally or physically without risking their job or income, exacerbating the impacts of GBV. The lack of workplace protections and adequate incomes combined with a poor safety net in the U.S. forms a perfect storm for survivors employed in the U.S. food system. A study conducted by FreeFrom showed that GBV survivors who are essential workers are especially at risk of facing pronounced food insecurity during the pandemic, with nearly twice as many survivors of color experiencing high economic insecurity compared with white survivors.<sup>29</sup> For example, among survivors, eight out of 10 essential Black, Indigenous, and people of color (BIPOC) workers faced food insecurity under COVID-19 compared to five out of 10 white essential workers.<sup>30</sup> FreeFrom also found that survivors who experienced landlord sexual coercion were 38.7% more likely to experience food and housing insecurity than those who did not.<sup>31</sup>

GBV in the food system is also made evident by the fact that women and girls, particularly BIPOC women and girls, are among the most marginalized in our food system and experience poverty and hunger at disproportionate levels in the U.S.<sup>32</sup> Our current food system is one shaped by patriarchy; it is a system that holds men and their labor as the baseline for production.<sup>33</sup> Women foodservice

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<sup>26</sup> Victoria Tauli Corpuz (Special Rapporteur on the rights of indigenous peoples), ¶ 47(d), *Report of the Special Rapporteur on the rights of indigenous peoples*, U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

<sup>27</sup> THE WHITE HOUSE, NATIONAL STRATEGY ON GENDER EQUITY AND EQUALITY 15 (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/National-Strategy-on-Gender-Equity-and-Equality.pdf>.

<sup>28</sup> *The Shadow Pandemic: Violence against women during COVID-19*, U.N. WOMEN, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19#facts> (last visited Nov. 2, 2022).

<sup>29</sup> See *Measuring the Economic Impact of COVID\_19 on Survivors of Color*, FreeFrom, [https://www.freefrom.org/wp-content/uploads/2021/06/MeTooFreeFrom\\_CovidImpactReport2020.pdf](https://www.freefrom.org/wp-content/uploads/2021/06/MeTooFreeFrom_CovidImpactReport2020.pdf).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Farm Labor*, USDA, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#size>

<sup>33</sup> Madison Barbour and Julie Guthman, (En)gendering exposure: pregnant farmworkers and the inadequacy of pesticide notification, *Journal of Political Ecology* <https://journals.librarypublishing.arizona.edu/jpe/article/id/2085/>

workers have united to resist sexual harassment and violence among fast food, hotel, and casino employees.<sup>34</sup> Women farmworkers are concentrated in the lowest-paying farm jobs and are neglected for promotion and are frequently subject to gendered harassment at work and denied benefits offered to men – these issues exist in “all four sectors of the food system: production, processing, distribution, and service”.<sup>35</sup> Pregnant women who work agricultural fields are particularly vulnerable to pesticide exposure.<sup>36</sup> Acute side effects of pesticide exposure and pesticide poisoning are “cancer, Parkinsons’ Disease, asthma, birth defects, and neurological harms, including developmental and learning disabilities”.<sup>37</sup> Per the U.S. Department of Labor, “farmworkers suffer from higher rates of toxic chemical injuries and skin disorders than any other workers in the country”.<sup>38</sup> White supremacy and patriarchy built a food system based on exploitation rather than care.<sup>39</sup>

### c. GBV has a disproportionate impact on BIPOC women and children.

GBV also hinders women’s self-determination and dignity to make and enact decisions related to their bodies, sexual health, and nutrition as well as the nutrition of their children and families, with intergenerational and community-wide repercussions on the right to food. Violations of the right to food linked with GBV begin with breastfeeding, the “first food”<sup>40</sup> or the most local of food systems. It is well established that breastfeeding is beneficial for the mother, baby, and society.<sup>41</sup> However, low rates of breastfeeding are prevalent in BIPOC communities in the U.S.<sup>42</sup> This is particularly an issue for Black women, who have the lowest breastfeeding rates out of all racial groups.<sup>43</sup> One reason for this is that hospital maternity wards serving larger Black populations are less likely to help Black women initiate breastfeeding after giving birth or offer lactation support following delivery.<sup>44</sup> Furthermore, studies show that Black mothers lack the necessary workplace protections that support breastfeeding. Black mothers need to return to work shortly after giving birth and are often confronted with inflexible work hours and lack of privacy to lactate.<sup>45</sup>

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<sup>34</sup> Stephane Fortado. *Workplace Sexual Abuse, Labor and the#MeToo Movement*. Labor Studies Journal. 43(4) (2018); Kathleen P. Hunt, *#LivingOffTips: Reframing food system labor through tipped workers’ narratives of subminimum wage exploitation*. Journal of Agriculture, Food Systems, and Community Development. 6(2) (2016). <https://foodsystemsjournal.org/index.php/fsj/article/view/454>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Protecting People from Pesticides*, EarthJustice, <https://earthjustice.org/advocacy-campaigns/pesticides>

<sup>38</sup> *Injustice On Our Plates*, Southern Poverty Law Center, <https://www.splcenter.org/20101107/injustice-our-plates>

<sup>39</sup> Ashanté M. Reese and Dara Cooper, *Making Spaces Something Like Freedom*, Acme, Vol. 20, No. 4 (2021), <https://acme-journal.org/index.php/acme/article/view/2024>

<sup>40</sup> Andrea Freeman, “First food” justice: Racial disparities in infant feeding as food oppression. *Fordham Law Review*, 83(6), 3053–3087 (2015) [http://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol\\_83/No\\_6/Freeman\\_May.pdf](http://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol_83/No_6/Freeman_May.pdf).

<sup>41</sup> Katherine Jones et. al., *Racial and Ethnic Disparities in Breastfeeding*, National Library of Medicine (May 1, 2015) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4410446/>.

<sup>42</sup> Amani Echols, *The Challenges of Breastfeeding as a Black Person*, AMERICAN CIVIL LIBERTIES UNION (Aug. 15, 2019) <https://www.aclu.org/blog/womens-rights/pregnancy-and-parenting-discrimination/challenges-breastfeeding-black-person>.

<sup>43</sup> *Id.*

<sup>44</sup> Laura Santhanam, *Racial disparities persist for breastfeeding moms. Here’s why*, PUBLIC BROADCASTING SERVICE (Aug. 29, 2019) <https://www.pbs.org/newshour/health/racial-disparities-persist-for-breastfeeding-moms-heres-why>.

<sup>45</sup> *Id.*

#### **d. GBV worsens food insecurity of the LGBTQ+ community.**

Finally, GBV has had a unique and pervasive impact on LGBTQ+ individuals' access to food in the U.S. Today, LGBTQ+ adults living in the U.S. are nearly twice as likely to experience food insecurity than non-LGBTQ+ individuals.<sup>46</sup> Numerous reports have confirmed that as a result of structural barriers, including discrimination by food and service providers, lack of family and community support, and stigma and fear, LGBTQ+ individuals face unsurmountable barriers in their access to food.<sup>47</sup>

### **Part II: Violence as Discrimination in the Food System**<sup>48</sup>

Poverty and wealth disparity is a direct assault on human dignity, equality, and the right to adequate food and nutrition. Poverty reflects structural discrimination against Black, Indigenous, and People of Color (BIPOC) communities that are the most affected by food insecurity in the U.S. because of systemic racism and racial discrimination.<sup>49</sup> BIPOC communities have historically faced structural barriers to land ownership, which is intrinsically tied to their ability to produce food. Throughout the 1930s-1960s, the Federal Housing Administration “redlined” Black communities, restricting their access to mortgages.<sup>50</sup> Black farmers were historically excluded from federal farm programs.<sup>51</sup> Today, zoning laws have a negative impact on BIPOC communities' climate resilient practices. Most urban Black and Indigenous communities are zoned in areas with poor soil and water quality, making most farming attempts unsuccessful. Additionally, such urban centers are often characterized by less green space and canopy, which are critical to minimizing heat and improving air quality.<sup>52</sup> This green space and canopy also have the potential for expanding local food system development through gardens, farms, and food forests in urban centers.<sup>53</sup>

#### **a. Systemic racism is a leading cause for disproportionate impacts of food insecurity among BIPOC households.**

Systemic racism and racial discrimination in the U.S. have led to disparate impacts of food insecurity upon these populations. 21.7% of Black households and about 17.2% of Latinx

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<sup>46</sup> <https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html>

<sup>47</sup> [https://mazon.org/news/mazon\\_news/were-still-hungry/](https://mazon.org/news/mazon_news/were-still-hungry/)

<sup>48</sup> For more information on the links between racial discrimination and violations of the right to food in the U.S., please see our joint shadow report on Racial Injustice and Violations of the Human Right to Food in the U.S. submitted to the U.N. Committee to End Racial Discrimination (CERD) and available at <https://miami.app.box.com/file/984308281609?s=kh6lxfo335319j8zst9jmd31xwdlefkx>.

<sup>49</sup> Areeba Haider and Lorena Roque, *New Poverty and Food Insecurity Data Illustrate Persistent Racial Inequalities*, Center for American Progress (Sep. 19, 2021), <https://www.americanprogress.org/article/new-poverty-food-insecurity-data-illustrate-persistent-racial-inequities/>

<sup>50</sup> Terry Gross, *A 'Forgotten History' Of How The U.S. Government Segregated America*, NPR (May 3, 2017), <https://npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-segregated-america>

<sup>51</sup> Fred De Sam Lazaro and Simeon Lancaster, *Historically denied 'pivotal' loans, Black farmers still struggle to get support*, PBS (Dec. 7, 2021), <https://pbs.org/newshour/show/historically-denied-pivotal-loans-black-farmers-still-struggle-to-get-support>

<sup>52</sup> Clare Salerno, *Food Sovereignty Can Advance Racial Equity and Climate Resilience*, Urban Wire (July 9, 2021), <https://www.urban.org/urban-wire/food-sovereignty-can-advance-racial-equity-and-climate-resilience>

<sup>53</sup> *Id.*



households experienced food insecurity in 2020, compared to 7.1% of white households.<sup>54</sup> One out of five Black households are situated in a food desert.<sup>55</sup> One out of four Indigenous persons experience food insecurity, compared to one out of eight Americans overall.<sup>56</sup> BIPOC communities are also more likely to be located near large polluting industries, such as waste dumps and industrial livestock operations. The pollution from the dumps and confinement animal operations hinders communities from acquiring adequate farming resources and contaminates the water supply, which places already vulnerable communities at extreme risk for poor health, and housing and food insecurity.<sup>57</sup>

- **Case Study of Miami, Florida criminalizing poverty through violence in the food system.**<sup>58</sup>

The city of Miami, Florida, has slowly been criminalizing poverty since 2017, when Miami Beach hired a special prosecutor for “nuisance” crimes, such as loitering, jaywalking, or consuming alcohol in public (which have been predominantly enforced against people experiencing homelessness).<sup>59</sup>

In 2020, the City of Miami passed an ordinance criminalizing food sharing, or the feeding of people experiencing homelessness in groups of twenty-five or more without a permit and at non-designated feeding locations (with only five inconvenient locations designated).<sup>60</sup> By passing this ordinance, the City of Miami is “using hunger as a weapon against the poor”.<sup>61</sup> The public feeding ordinance requires people to register with Miami government officials and limits the time they are allowed to feed homeless populations to once a week.<sup>62</sup> Violators of the ordinance will have to pay a fine of \$250 for the first offense and \$500 for the second offense; the City claims that the permit lets the City know where the feedings will be and will make sure there are trash receptacles at that location.<sup>63</sup> As described by attorneys from the ACLU, the ordinance “would effectively serve as

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<sup>54</sup> *Id.*

<sup>55</sup> *Too many Black Americans live in food deserts*, KcKinsey & Company (Sept. 9, 2021),

<https://www.mckinsey.com/featured-insights/coronavirus-leading-through-the-crisis/charting-the-path-to-the-next-normal/too-many-black-americans-live-in-food-deserts>

<sup>56</sup> *How Hunger Affects Native American Communities*, Move for Hunger, <https://moveforhunger.org/native-americans-food-insecure>

<sup>57</sup> *How Our Food System Affects Public Health*, FoodPrint (Aug. 11, 2020), <https://foodprint.org/issues/how-our-food-system-affects-public-health/>

<sup>58</sup> For more information on this, please see University of Miami Human Rights Clinic Shadow Report to the UN Committee on the Elimination of Racial Discrimination on *Racial Injustice in Housing and Homelessness in the U.S.*, <https://miami.app.box.com/s/x2obqtgy84o5qkfipyxcts03nzd4g0l>.

<sup>59</sup> UNIV.MIA.SCH.L.HUM.RTS.CLINIC ET AL., A RACIAL JUSTICE RESPONSE TO HOMELESSNESS 1(2021).

<sup>60</sup> MIA.,FLA.,CODE2020 § 25-25; Maya Lora, Miami passes ordinance requiring permits to feed large groups of homeless people, SUN SENTINEL(Jun. 26, 2020), <https://www.sun-sentinel.com/local/miami-dade/fl-ne-miami-homeless-permits-20200626-qptfs42vsfdr5kr64zpfsgdl4m-story.html>.

<sup>61</sup> Zoom Interview with David Peery, Exec. Dir., Miami Coalition to Advance Racial Equity (Feb. 25, 2022)(Peery continues by saying there is no difference between the food sharing ordinance and what the United Nations condemns as a war crime in cutting off the flow of food to people.).

<sup>62</sup> Francisco Alvarado, *Miami Escalates Assault on Homeless People by Regulating Public Feedings*, Miami New Times (July 13, 2020), <https://www.miaminewtimes.com/news/miami-ordinance-limits-public-feeding-of-homeless-11665011>

<sup>63</sup> *Id.*

an unlawful ban on all public food service to the homeless throughout the city”.<sup>64</sup> As one Miami man facing homelessness states, ”Without them, we don’t have any food. The shelters can’t feed everybody”.<sup>65</sup>

**b. Indigenous communities are exceptionally affected by violence in the U.S. food system.**

Additionally, Indigenous communities are severely affected by violations of their rights to food and food sovereignty. A driving factor behind Indigenous food insecurity is the reservation model that restricts physical access to obtaining food, restrains ability to produce food, and distributes food that is often culturally inadequate.<sup>66</sup> Between 2000-2020, Indigenous Peoples experienced consistently double and even in some cases triple the rate of food insecurity that white Americans faced.<sup>67</sup> Low population density and high poverty rates often discourage grocery stores from operating in reservation areas.<sup>68</sup> On Federal reservations, grocery stores often provide food that is more affordable and nutritious, and the scarcity of this otherwise prevalent food source limits Indigenous Peoples’ physical and economic access to nutritious food.<sup>69</sup> This issue is further exacerbated by the fact that those on reservations often pay higher prices for groceries than the average U.S. consumer, stretching already thin budgets.<sup>70</sup> A lack of access to transportation may cause reservation residents to choose to buy the less healthy but costlier options in convenience stores closer to home.<sup>71</sup> The Food Distribution Program on Indian Reservations (FDPIR), while working to incorporate indigenous foods, is still fraught with issues regarding the availability of fresh, healthy food.<sup>72</sup>

**c. The U.S. relied on vulnerable populations to produce the country’s food at the expense of their rights to food and food sovereignty.**

The U.S. states and corporations alike rely on the labor of migrant and prison populations – some of the most vulnerable populations in the U.S. – to support the food and agriculture industry. BIPOC make up 66.1% of the food processing industry and 69% of the farm labor workforce.<sup>73</sup> It

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *The Reservation System*, Nebraska Public Media, <http://www.nebraskastudies.org/en/1900-1924/native-american-citizenship/the-reservation-system/>

<sup>67</sup> Sara Usha Maillacheruvu, *The Historical Determinants of Food Insecurity in Indigenous Communities*, Center of Budget and Policy Priorities (Oct. 4, 2022), [The Historical Determinants of Food Insecurity in Native Communities | Center on Budget and Policy Priorities \(cbpp.org\)](https://www.cbpp.org/center-on-budget-and-policy-priorities)

<sup>68</sup> Michelle Saksena and Phillip Kaufman, *Native Americans Living in Tribal Areas Face Longer Trips to the Grocery Store*, USDA (Apr. 6, 2015), <https://www.ers.usda.gov/amber-waves/2015/april/native-americans-living-in-tribal-areas-face-longer-trips-to-the-grocery-store/>

<sup>69</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3164540/>

<sup>70</sup> A-dae Romero-Briones and Raymond Foxworth, *Indian Country Food Price Index: Exploring Variation in Food Pricing Across Native Communities – A Working Paper*, First Nations Development Institute (2016), <https://www.firstnations.org/publications/indian-country-food-price-index-exploring-variation-in-food-pricing-across-native-communities/>.

<sup>71</sup> *Supra*, note 11: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3164540/>

<sup>72</sup> *Supra*, note 47: [The Historical Determinants of Food Insecurity in Native Communities | Center on Budget and Policy Priorities \(cbpp.org\)](https://www.cbpp.org/center-on-budget-and-policy-priorities)

<sup>73</sup> *Supra*, note 21: <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic>

is presumed that at 50% of the farm labor workforce is undocumented.<sup>74</sup> As recently as 2019, over 30,000 incarcerated men and women – the majority of which are Black – worked in farms or in other food-related jobs.<sup>75</sup>

Corporate food industries not only rely on prison labor, but they in fact benefit from it as well.<sup>76</sup> Under the Work Opportunity Tax Credit, employers receive a tax credit of \$2,400 for every work-release inmate that they employ as a reward for hiring “risky target groups.”<sup>77</sup> Corporations also save money by avoiding having to provide employees with costly benefits such as health insurance, sick days, vacation time, unions, raises, or family conflicts, not to mention the extremely low wages they are paying to begin with.<sup>78</sup> These workers make about ninety cents to four dollars a day and tend to be predominantly Black males.<sup>79</sup> Large food corporations such as McDonald’s, Wendy’s, and Starbucks all partake in this practice.<sup>80</sup> Other examples of this type of labor include work release programs, which allow incarcerated people to work at private companies at offsite locations as they near the end of their sentence and need program support to transition out of prison and back into the community.<sup>81</sup> Many individuals working through work release programs end up at poultry plants, working under hazardous conditions that have led to injury and even death.<sup>82</sup> This type of labor has not been limited to incarcerated people; judges have sent people to poultry plants instead of prison, under the guise of sending them to be rehabilitated.<sup>83</sup> These individuals were not paid anything for their labor and threatened with prison if they did not meet work demands.<sup>84</sup> Other programs allow individuals to be sent to perform this labor in order to pay off restitution that they owe to the state, allowing the state to act as a “temp agency.”<sup>85</sup>

**d. The U.S. does not protect its agricultural workers who provide most of the country’s food.**

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<sup>74</sup> *Immigrant Farmworkers and America’s Food Production: 5 Things to Know*, fwd (Sept. 14, 2022), <https://www.fwd.us/news/immigrant-farmworkers-and-americas-food-production-5-things-to-know/#:~:text=Undocumented%20farm%20workers%20make%20up,food%20would%20otherwise%20go%20unharvested.83Employment>

<sup>75</sup> Stian Rice, *Convicts are returning to farming – anti-immigrant policies are the reason*, *The Conversation* (June 7, 2019), <https://theconversation.com/convicts-are-returning-to-farming-anti-immigrant-policies-are-the-reason-117152>

<sup>76</sup> Rick Riley, *12 Corporations Benefit From Prison Industrial Complex*, *Popular Resistance* (July 7, 2015), <https://popularrsistance.org/12-mainstream-corps-benefiting-from-the-prison-industrial-complex/>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Work Release Program Factsheet*, Minnesota Department of Corrections (July 2021), [https://mn.gov/doc/assets/Work%20Release\\_tcm1089-309002.pdf](https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf).

<sup>82</sup> Kristi Graunke and Will Tucker, *Why Incarcerated People At Poultry Plants Deserve Better*, *The Marshall Project* (Aug. 13, 2018), [https://www.themarshallproject.org/2018/08/13/why-incarcerated-poultry-workers-deserve-better?utm\\_medium=email&utm\\_campaign=share-tools&utm\\_source=email&utm\\_content=post-top](https://www.themarshallproject.org/2018/08/13/why-incarcerated-poultry-workers-deserve-better?utm_medium=email&utm_campaign=share-tools&utm_source=email&utm_content=post-top).

<sup>83</sup> Amy Julia Harris and Shoshana Walter, *They thought they were going to rehab. They ended up in chicken plants.*, *Reveal News* (Oct. 4, 2017), <https://revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/>.

<sup>84</sup> *Id.*

<sup>85</sup> Michelle Liu and Anna Wolfe, *How Mississippi’s ‘supercharged temp agencies’ provide inmate labor to employers*, *Mississippi Today* (Jan. 9, 2020), <https://mississippitoday.org/2020/01/09/restitution-labor/>

Agricultural workers are often excluded from worker protections guaranteed in other industries. In several states, agricultural workers are not covered under minimum wage laws, nor are they considered “employees” under several state codes.<sup>86</sup> Agricultural workers are not guaranteed worker’s compensation – only 14 states require employees to cover agricultural workers; the remaining states mandate either limited coverage or optional coverage.<sup>87</sup> Federal laws regarding worker protections, such as the Migrant & Seasonal Agricultural Worker Protection Act, give deference to farm labor contractors to establish wage schemes, as opposed to establishing specific protections for farm laborers.<sup>88</sup>

Across industries, the federal government and states enact policies, such as “Right-to-Work” laws, to destabilize trade unions.<sup>89</sup> As recently as 2020, unionized workers earned an average of 11.2% more in wages than their non-unionized peers.<sup>90</sup> Black workers in Right-to-Work states tend to have lower wages than in non-Right-to-Work states.<sup>91</sup>

### **Part III: Ecological Violence and Violations of the Right to Food**<sup>92</sup>

Ecological violence, or the disruption of people’s relationship with land and the natural resources needed to feed themselves with dignity, has a long history in the U.S. that continues to this day. The corporate food system is implicated in the global climate crisis, with severe repercussions for the right to food of BIPOC communities in the U.S. U.S. policies have created a global climate crisis by producing more non-food crops than food crops and using highly mechanized monocropping practices that result in the loss of nutrients in the soil.<sup>93</sup> Discriminatory land-use laws, environmental racism, and the historical dispossession of natural resources and knowledge,

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<sup>86</sup> *Wages Map*, Farmworker Justice, <https://www.farmworkerjustice.org/wages-map/>

<sup>87</sup> *Workers’ Compensation Map*, Farmworker Justice, <https://www.farmworkerjustice.org/workers-compensation-map/>

<sup>88</sup> *The Migrant & Seasonal Agricultural Worker Protection Act*, U.S. Department of Labor, [https://www.dol.gov/agencies/whd/laws-and-regulations/laws/mspa#title\\_2.88Fair](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/mspa#title_2.88Fair)

<sup>89</sup> David Cooper and Julia Wolfe, *So-called right-to-work is wrong for Montana*, Economic Policy Institute (Feb. 25, 2021), <https://www.epi.org/publication/so-called-right-to-work-is-wrong-for-montana/#:~:text=By%20making%20it%20harder%20for,unions%20or%20maintain%20existing%20ones>

<sup>90</sup> *Union workers are paid 11.2% more and have greater access to health insurance and paid sick days than their nonunion counterparts*, Economic Policy Institute (Aug. 25, 2020), <https://www.epi.org/press/union-workers-are-paid-11-2-more-and-have-greater-access-to-health-insurance-and-paid-sick-days-than-their-nonunion-counterparts-policy-makers-must-strengthen-workers-ability-to-form-unions/>

<sup>91</sup> Valerie Wilson and Julia Wolfe, *Black workers in right-to-work (RTW) states tend to have lower wages than in Missouri and other non-RTW states*, Economic Policy Institute (May 15, 2018) <https://www.epi.org/publication/black-workers-in-right-to-work-rtw-states-tend-to-have-lower-wages-than-in-missouri-and-other-non-rtw-states/>

<sup>92</sup> For more information on the links between ecological violence and violations of the right to food in the U.S., please see our joint shadow report on Racial Injustice and Violations of the Human Right to Food in the U.S. submitted to the U.N. Committee to End Racial Discrimination (CERD) and available at <https://miami.app.box.com/file/984308281609?s=kh6lxf0335319j8zst9jmd31xwdlefkh>.

<sup>93</sup> *How Industrial Agriculture Affects Our Soil*, Food Print (Oct. 8, 2018, updated Dec. 1, 2021), <https://foodprint.org/issues/how-industrial-agriculture-affects-our-soil/>; *Climate Change*, UN Department of Economic and Social Affairs (accessed May 2022), <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>

together with a corporate food system that fails BIPOC communities, have left these communities more exposed to climate risks.<sup>94</sup>

Indigenous Peoples are among the first to face the direct consequences of the climate crisis due to their dependence upon, and close relationship with, the environment and its resources.<sup>95</sup> At the same time, they are rarely considered when new climate policies are being drafted. As a result, many Indigenous Peoples in the U.S. no longer feel a dependence on or connection to the land.<sup>96</sup> Political and economic marginalization of Indigenous Peoples results in their loss of land and resources and related human rights violations.<sup>97</sup> This loss of land and resources violates Indigenous Peoples' right to food because their methods of farming, growing, producing, and consuming food are negatively impacted. Further, Indigenous communities have several agroecological methods that are important for climate resiliency and can help combat the negative impacts of the climate crisis,<sup>98</sup> yet are not considered because Indigenous Peoples are often left out of decision-making processes.<sup>99</sup>

**a. Corporate control of the food system in the U.S. has worsened the situation for Indigenous Peoples' access to food.**

The U.S.'s lack of oversight of corporate activities disrupts traditional hunting, fishing, farming, and gathering economies in Indigenous communities as pollutants fill these traditional foodways.<sup>100</sup> Corporations have been able to "drill, frack, and fell timber on Native lands" at the expense of Indigenous Peoples' land rights, which in turn, negatively impacts their access to food.<sup>101</sup> Although Indigenous communities represent only 2% of land in the U.S., they sit atop approximately 20% of the U.S. fossil fuel supplies.<sup>102</sup> Congress, in the early twentieth century, authorized leasing of lands allotted to Indigenous groups to non-indigenous groups, leaving Indigenous Peoples vulnerable to exploitation -- this is seen through the Homestead Act of 1862, which granted adult heads of families 160 acres of surveyed public land for a minimal filing fee and five years of continuous residence on that land.<sup>103</sup> This continues to this day and Indigenous communities are forced to lease their land to corporations to obtain money for basic necessities,

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<sup>94</sup> Annie Young, *Where Food, Climate, and Racial Equity Meet*, Tufts University (Jan. 27, 2022), <https://now.tufts.edu/2022/01/27/where-food-climate-and-racial-equity-meet>.

<sup>95</sup> *Climate Change*, UN Department of Economic and Social Affairs (accessed May 2022), <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>

<sup>96</sup> Q&A with A-dae, FIRST NATIONS DEVELOPMENT INSTITUTE (accessed May 8, 2022) <https://www.firstnations.org/native-foods-resources/>

<sup>97</sup> *Id.*

<sup>98</sup> *The Effects of Climate Change on Indigenous Peoples*, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS (ACCESSED MAY 8, 2022) <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>

<sup>99</sup> *Indigenous Peoples: Respect NOT Dehumanization*, United Nations Fight Racism, <https://www.un.org/en/fight-racism/vulnerable-groups/indigenous-peoples>.

<sup>100</sup> Meghan O'Connell, Dedra S. Buchwald, and Glen E. Duncan, *Food Access and Cost in American Indian Communities in Washington State*, Journal of the Academy of Nutrition and Dieticians, Vol. 111, Iss. 9, (Sept. 1, 2011), [https://www.jandonline.org/article/S0002-8223\(11\)00698-5/fulltext](https://www.jandonline.org/article/S0002-8223(11)00698-5/fulltext)

<sup>101</sup> Stephanie Woddard, *How the U.S. Government is Helping Corporations Plunder Native Land*, In These Times, (Sept. 6, 2016), <https://inthesetimes.com/features/native-land-plunder-bureau-of-indian-affairs.html>

<sup>102</sup> Tracey Osborne, *Native Americans Fighting Fossil Fuels*, Scientific American (Apr. 9, 2018) <https://blogs.scientificamerican.com/voices/native-americans-fighting-fossil-fuels/#:~:text=In%20the%20U.S.%20Native%20American,Council%20of%20Energy%20Resource%20Tribes>

<sup>103</sup> *Homestead Act (1862)*, National Archives, <https://www.archives.gov/milestone-documents/homestead-act>.

like food or gas money.<sup>104</sup> The contamination of traditional foodways by industrial pollutants has caused Indigenous Peoples to lose access to vital parts of their identity.<sup>105</sup> For example, the drastic effects logging and extractive industries can have on the environment can be seen in the state of Washington, which has lost over 50% of its riparian habitat since statehood in 1889, causing significant declines in native fisheries.<sup>106</sup>

- **Case Study of Indigenous Peoples' Response to Ecological Violence: In 2018, Minnesota's White Earth Band of Ojibwe and the 1855 Treaty Authority adopted laws recognizing the Rights of Manoomin (Wild Rice).**<sup>107</sup>

In Minnesota, Manoomin (Wild Rice) continues to play an important role in the spiritual and cultural life of the White Earth Band of Ojibwe.<sup>108</sup> Manoomin is a grain producing grass, native to Minnesota, which grows in shallow water and slow flowing streams.<sup>109</sup> Due to the importance of this grain, the White Earth Band's 1837 treaty with the U.S. Government specifically mentions the gathering of Manoomin as a treaty right on ceded lands and reservations.<sup>110</sup> Traditional foods, such as Manoomin, hold a place within indigenous communities as medicine.<sup>111</sup> Limited access to these healthy foods can be linked to the higher rates of diseases like diabetes and heart disease in tribes due to nutritional deficiencies.<sup>112</sup> Manoomin has seen a variety of threats over the years due to settler colonialism such as water pollution and genetic contamination.<sup>113</sup>

The pollution of Minnesota's water bodies is a pressing issue for the preservation of Manoomin supporting wetlands. The Polymet and Twin Metals mining projects has the potential to affect a 1,000 acres of wetlands and waters miles away from the mines.<sup>114</sup> The extraction of nickel from sulfide-rich ore bodies create sulfates as a byproduct.<sup>115</sup> When these sulfates make contact

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<sup>104</sup> *Tracking the COVID-19 Economy's Effects on Food, Housing, and Employment Hardships*, Center on Budget and Policy Priorities (Feb. 10, 2022), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and>

<sup>105</sup> Brian Bienkowski, *Contaminated Culture: Native People Struggle with Tainted Resources*, Scientific American, (Oct. 25, 2012), <https://www.scientificamerican.com/article/contaminated-culture-native-people-struggle-with-tainted-resources/>

<sup>106</sup> *State of Our Watersheds: A Report by the Treaty Tribes in Washington*, Northwest Indian Fisheries Commission (2020), [state-of-our-watersheds-sow-2020-final-web.pdf \(nwifc.org\)](https://www.nwifc.org/state-of-our-watersheds-sow-2020-final-web.pdf)

<sup>107</sup> *Rights of Manoomin (Wild Rice): White Earth Law and Enforcement Case*, Center for Environmental Rights, <https://www.centerforenvironmentalrights.org/rights-of-manoomin>

<sup>108</sup> *Id.*

<sup>109</sup> *2018 Tribal Wild Rice Task Force Report*, Minnesota Tribal Wild Rice Task Force, (2018), <https://mnchippewatribe.org/pdf/TWRTF.Report.2018.pdf>

<sup>110</sup> John Enger, *Explaining Minnesota's 1837, 1854 and 1855 Ojibwe treaties*, mprnews (Feb. 1, 2016), <https://www.mprnews.org/story/2016/02/01/explaining-minnesota-ojibwe-treaties>

<sup>111</sup> *Supra*, note 101: <https://mnchippewatribe.org/pdf/TWRTF.Report.2018.pdf>

<sup>112</sup> *Id.*

<sup>113</sup> Kaitlin Stack Whitney, *Manoomin: The Taming of Wild Rice in the Great Lakes Region*, Environment and Society Portal, Arcadia (2015), no. 2 Rachel Carson Center for Environment and Society, <https://www.environmentandsociety.org/arcadia/manoomin-taming-wild-rice-great-lakes-region>

<sup>114</sup> Jennifer Bjorhus, *What you need to know about Minnesota's PolyMet and Twin Metals mine projects*, StarTribune (May 4, 2022), <https://www.startribune.com/what-you-need-to-know-about-minnesota-s-polymet-and-twin-metals-mine-projects/513211171/?refresh=true>

<sup>115</sup> *Id.*

with air or water, they create sulfuric acid runoff which can permanently poison the surrounding waters and wetlands.<sup>116</sup> When sulfates are broken down by anaerobic microbes in water bodies, the resulting sulfides can poison Manoomin and interfere with their ability to absorb water and nutrients by destroying its root system.<sup>117</sup> Not only will this affect Manoomin but it also has grave implications for the environmental and human health at large.<sup>118</sup>

In particular, the proposed Polymet mine is located on land where the Lake Superior Chippewa hold treaty rights.<sup>119</sup> The land is also crossed by two rivers which flow downstream to waters located in the Fond du Lac Band reservation.<sup>120</sup> The progress of these projects have been hampered by legal challenges by tribal and environmental activists and the cancellation of the Twin Metals leases by the federal government.<sup>121</sup> Still, sulfates present a current threat in the form of taconite mining and industrial electrical plants which has been responsible for elevated sulfate concentrations in downstream waters.<sup>122</sup> Many of these industrial dischargers are located within 10 miles of waters which support Manoomin.<sup>123</sup>

Oil pipelines are another potential polluter as spills cause irreversible damage to the ecosystem.<sup>124</sup> The proposed corridor of the Enbridge 3 pipeline replacement project will bring it close to the northeastern edge of the White Earth Band's reservation and Lower Rice Lake as well as through treaty territory.<sup>125</sup> Enbridge has a long track record of causing oil spills, with 1,276 ruptures between 1996 to 2014.<sup>126</sup> The very construction of pipelines are a danger as the seepage of drilling fluids into surrounding water can suffocate aquatic life and harm wetlands.<sup>127</sup> Pollutants are not the only source of ecological violence, interference with the Manoomin's genetic makeup by non-tribal actors has been a factor affecting tribes since the 19<sup>th</sup> century.<sup>128</sup>

Since the 1800s, the University of Minnesota has conducted research into the domestication of Manoomin due to its fragility and varied ripening rates in its natural form.<sup>129</sup> Germ plasm collected in 1950s from 24 Ojibwe rice beds has formed the basis for nine strains of cultivated wild rice between 1968-2000.<sup>130</sup> The adoption of these strains by non-tribal farmers in

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<sup>116</sup> Paige Mitchell and Chris Rico, *Project: "The Rights of Manoomin" (Wild Rice)*, Humanities Action Lab, 2018, <https://climatesofinequality.org/project/the-rights-of-manoomin-wild-rice-2/>

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Supra*, note 106: <https://www.startribune.com/what-you-need-to-know-about-minnesota-s-polymet-and-twin-metals-mine-projects/513211171/?refresh=true>

<sup>122</sup> Marshall Helmberger, Tribal Report: Urgent action needed to protect wild rice, *The Timberjay* (Jan. 17, 2019), <https://www.timberjay.com/stories/tribal-report-urgent-action-needed-to-protect-wild-rice,14751>

<sup>123</sup> *Supra*, note 101: <https://mnchippewatribe.org/pdf/TWRTF.Report.2018.pdf>

<sup>124</sup> *Supra*, note 108: <https://climatesofinequality.org/project/the-rights-of-manoomin-wild-rice-2/>

<sup>125</sup> Angely Mercado, *Minnesota's Line 3 pipeline threatens one of North America's only native grains*, *Popular Science* (Oct. 12, 2021), <https://www.popsoci.com/environment/line-3-indigenous-wild-rice/>

<sup>126</sup> *Supra*, note 108: <https://climatesofinequality.org/project/the-rights-of-manoomin-wild-rice-2/>

<sup>127</sup> *Id.*

<sup>128</sup> *Supra*, note 105: <https://www.environmentandsociety.org/arcadia/manoomin-taming-wild-rice-great-lakes-region>

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

Minnesota has destabilized the Ojibwe economy which relied on selling wild rice.<sup>131</sup> Genome research by the university has been a point of contestation as the development of Manoomin into a cash crop threatens **native food sovereignty** due to its disregard of indigenous relationships with the environment and this sacred crop.<sup>132</sup> The White Earth Band has responded to actions of non-tribal actors by bringing attention to their treaty rights and their culture as well as enacting laws in their tribal legal system to reflect these values.<sup>133</sup>

The 2018 laws based on the Rights of Nature were enacted with the purpose of “[providing] a legal basis to protect wild rice and fresh water resources as part of [their] primary treaty foods for future generations.”<sup>134</sup> Rights conferred upon the culturally important and sacred food source includes “the right to clean water and freshwater habitat, the right to a natural environment free from industrial pollution, the right to a healthy, stable climate free from human-caused climate change impacts, the right to be free from patenting, the right to be free from contamination by genetically engineered organisms.”<sup>135</sup> In 2021, the new laws served as a basis for the White Earth Band to challenge the Enbridge 3 pipeline in *Manoomin v. Minnesota Department of Natural Resources*.<sup>136</sup> Although the tribal court’s 2022 decision that the rights did not apply to off reservation actions like the pipeline, the court affirmed that the laws permit the tribes to enforce the rights of Manoomin against non-Indians when their actions occur on reservation lands.<sup>137</sup> This has opened the avenue for the White Earth Band to protect Manoomin should anything occur on tribal lands as in the past.

**b. Environmental racism leads to climate laws which often worsen the conditions of BIPOC communities by exposing them to harmful, environmentally damaging substances.**

Certain climate-related laws and policies deliberately target already vulnerable BIPOC communities, exposing them to toxic waste. Landfills, trash incinerators, coal plants, and toxic waste dumps are typically found in BIPOC communities, which result in significant health implications for those who live in these communities.<sup>138</sup> As a result of the placement of these facilities, the health of these communities is often severely compromised due to the direct impact these facilities have on the environment and the subsequent indirect impact on accessing healthy and affordable foods. Additionally, some of the workers on the animal farms and meatpacking facilities are undocumented, which makes them less inclined to participate in the health monitoring programs because they are fearful of legal repercussions.<sup>139</sup> In addition to the location of these

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<sup>131</sup> *Id.*

<sup>132</sup> *Supra*, note 108: <https://climatesofinequality.org/project/the-rights-of-manoomin-wild-rice-2/>

<sup>133</sup> *Supra*, note 99: <https://www.centerforenvironmentalrights.org/rights-of-manoomin>

<sup>134</sup> Winona Laduke, *The White Earth Band of Ojibwe Legally Recognized the Rights of Wild Rice*, *yes! Magazine* (Feb. 1, 2019), <https://www.yesmagazine.org/environment/2019/02/01/the-white-earth-band-of-ojibwe-legally-recognized-the-rights-of-wild-rice-heres-why>

<sup>135</sup> *Id.*

<sup>136</sup> Matthew Fletcher, *White Earth Ojibwe Appellate Court Dismissed Manoomin Suit Against Minnesota DNR*, *Turtle Talk* (Mar. 21, 2022), <https://turtletalk.blog/2022/03/21/white-earth-ojibwe-appellate-court-dismissed-manoomin-suit-against-minnesota-dnr/>

<sup>137</sup> *Id.*

<sup>138</sup> *Environmental Racism*, Food Empowerment Project (accessed on May 7, 2022), <https://foodispower.org/environmental-and-global/environmental-racism/>.

<sup>139</sup> *Id.*



harmful facilities, fast food restaurants have been shown to be more prevalent BIPOC and low-income communities in the U.S., which result in increased health risks.<sup>140</sup>

Examples of communities in the U.S. that experience the impact of environmental racism abound. For example, a community in San Joaquin Valley, California is experiencing long-term effects of environmental racism. The population in the San Joaquin Valley is 49% Latinx. Of these Latinx families, one in six children suffer from asthma, which has been directly linked to the dairy farms located in the Valley.<sup>141</sup> The waste from the dairy farms, industrial emissions, dust particles, and pesticides create a foggy atmosphere, impacting the health of the community and their ability to grow and access healthy, nutritious foods.<sup>142</sup> An additional example of a specific example of ecological violence, and efforts to counteract the impact, in Maine is presented below.

- **Case Study of Ecological Violence Affecting Small-Scale Food Producers: Toxic Sludge Contaminating Maine’s Farms with PFAS**

Recent testing in Maine has revealed that sludge contaminated with PFAS was spread across farmland in Maine over many decades.<sup>143</sup> PFAS, which stands for per- and poly-fluoroalkyl substances and are also known as “forever chemicals,”<sup>144</sup> include thousands of chemicals created by 3M and DuPont chemical companies in order to make household products more resistant to damage from external damage like fire damage, water damage, and other stains.<sup>145</sup> According to the Environmental Protection Agency (EPA), individuals are often exposed to PFAS through sources such as contaminated water, soil, food, or products.<sup>146</sup> In high quantities, PFAS can have serious effects on human health, including increased risk of cancer, decreased immune functions, developmental effects or delays, cholesterol effects, hormone interference, and decreased fertility or high blood pressure in pregnant women.<sup>147</sup> These effects increase with years of exposure.<sup>148</sup> The sludge that was used as fertilizer and spread across hundreds of farms in Maine was contaminated with levels of PFAS that are higher than state accepted levels.<sup>149</sup> The Maine Department of Environmental Protection revealed a state map<sup>150</sup> showing the farms that received permits

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<sup>140</sup> RNA Lab, RACE, NEIGHBORHOODS, AND AFRICAN-AMERICAN HEALTH (accessed on May 7, 2022) <http://rna-lab.com/publishedpapers>.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Annie Ropeik, *Sludge explained: What you need to know about “forever chemical” contamination on some Maine farms*, Spectrum News (Mar. 8, 2022), <https://spectrumlocalnews.com/me/maine/news/2022/03/07/sludge-explained--tracing-contamination-on-maine-farms>

<sup>144</sup> Marina Schaufli, *‘Forever chemicals’ on farmland are a slow-motion disaster*, The Maine Monitor (Mar. 13, 2022), <https://www.themainemonitor.org/forever-chemicals-on-farmland-are-a-slow-motion-disaster/>.

<sup>145</sup> *Id.*

<sup>146</sup> *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, Environmental Protection Agency (Mar. 16, 2022), <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Annie Ropeik, *Sludge explained: What you need to know about “forever chemical” contamination on some Maine farms*, Spectrum News (Mar. 8, 2022), <https://spectrumlocalnews.com/me/maine/news/2022/03/07/sludge-explained--tracing-contamination-on-maine-farms>

<sup>150</sup> *PFAS Data Map*, Maine Department of Environmental Protection, <https://maine.maps.arcgis.com/apps/webappviewer/index.html?id=815b4093464c405daf7a17e43a1d9da7>.

for use of the sludge, which are currently being tested for PFAS. Toxic sludge not only affects the health of the farmers whose land has been contaminated, but also the animals and plants on the land, which in turn could produce meat, poultry, and crops that are contaminated with PFAS.<sup>151</sup> PFAS contamination has also poisoned the well water near a dozen farms in Maine.<sup>152</sup> Without federal and state government support of those farmers whose soil and water have been contaminated by PFAS, local farmers have no incentive to report high levels of PFAS, and are even disincentivized by the potential loss of their livelihood upon reporting.<sup>153</sup>

The toxic sludge has devastated the farming community in Maine, and this is only the beginning of a long process of testing hundreds of farms that may have been exposed to high levels of PFAS.<sup>154</sup> However, despite the crisis following toxic sludge in Maine, other states continue to encourage the use of sludge and biosolids as fertilizer without testing it for PFAS.<sup>155</sup> This crisis has not and will not be confined to the state of Maine; toxic sludge stands to affect the soil, water, food, and human health in communities around the nation, and these effects will only worsen the longer that states, the government, and corporations continue to downplay or ignore this problem.<sup>156</sup> In response to this crisis, activists<sup>157</sup> in Maine successfully pushed for legislation banning the use of sludge to prevent PFAS contamination to farms, and have called for the state to fund further testing and treatment, as well as health interventions.<sup>158</sup> They are the first state to do so, as well as the first state to enshrine a right to food constitutional amendment in their state constitution.<sup>159</sup>

The state of Maine led the way in food sovereignty and right to food movements in the U.S., showcasing the importance the state and its farming communities place on food

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<sup>151</sup> *Id.*

<sup>152</sup> Tom Perkins, *Maine bans use of sewage sludge on farms to reduce risk of PFAS poisoning*, The Guardian (May 12, 2022) <https://www.theguardian.com/environment/2022/may/12/maine-bans-sewage-sludge-fertilizer-farms-pfas-poisoning#:~:text=Maine%20last%20month%20became%20the,the%20country%20may%20be%20contaminated>.

<sup>153</sup> *Id.*

<sup>154</sup> Annie Ropeik, *Sludge explained: What you need to know about “forever chemical” contamination on some Maine farms*, Spectrum News (Mar. 8, 2022), <https://spectrumlocalnews.com/me/maine/news/2022/03/07/sludge-explained--tracing-contamination-on-maine-farms>

<sup>155</sup> *Id.*

<sup>156</sup> John Rumpler, *Toxic ‘forever chemicals’ don’t belong in our farms*, Environment America (Oct. 13, 2022), <https://environmentamerica.org/articles/toxic-forever-chemicals-dont-belong-in-our-farms/#:~:text=Wastewater%20treatment%20byproducts%20called%20biosolids,contaminated%20with%20toxic%20PFAS%20chemicals>; Jared Hayes, ‘Forever chemicals’ may taint nearly 20 million cropland acres, EWG (April 14, 2022), <https://www.ewg.org/news-insights/news/2022/04/ewg-forever-chemicals-may-taint-nearly-20-million-cropland-acres>.

<sup>157</sup> *No More Toxic Sludge*, Defend Our Health, <https://defendourhealth.org/campaigns/safe-food/sludge-dumping/>.

<sup>158</sup> Annie Ropeik, *Sludge explained: What you need to know about “forever chemical” contamination on some Maine farms*, Spectrum News (Mar. 8, 2022), <https://spectrumlocalnews.com/me/maine/news/2022/03/07/sludge-explained--tracing-contamination-on-maine-farms>

<sup>159</sup> Tom Perkins, *Maine bans use of sewage sludge on farms to reduce risk of PFAS poisoning*, The Guardian (May 12, 2022) <https://www.theguardian.com/environment/2022/may/12/maine-bans-sewage-sludge-fertilizer-farms-pfas-poisoning#:~:text=Maine%20last%20month%20became%20the,the%20country%20may%20be%20contaminated>; Tess Brennan, *Maine becomes the first US state to recognize the Right to Food in a Constitutional amendment*, Universal Rights Group (Jan. 19, 2022), <https://www.universal-rights.org/blog/maine-becomes-the-first-us-state-to-recognise-the-right-to-food-in-a-constitutional-amendment/#:~:text=On%202%20November%202021%2C%20in,recognizes%20the%20right%20to%20food>.

sovereignty and ecological protection. The right to food constitutional amendment in Maine, as well as the Food Sovereignty Act<sup>160</sup> and now the banning of the use of sludge on farms, are all legislative expressions by the people of Maine that ecological independence and autonomy is a prerequisite to ensure that their food sources are protected and sustainable for generations to come.

**Conclusion: Violence in the U.S. food system is a violation of individuals' and communities' the right to adequate and nutritious food.**

The U.S. has a long way to go in recognizing social, economic, and cultural rights; however, through the adoption of right to food state constitutional amendments and other rights-based policies to address hunger, systemic violence in the food system will also begin to be addressed. To address GBV, racial discrimination, and ecological violence as part and parcel of violations of the right to food, the U.S. should:

- Uphold the ICERD and ICCPR and ratify the ICESCR, CEDAW, and CRC.
- Adopt a rights-based national plan to end hunger that incorporates strong civic participation from those most affected.
- Introduce a required federal periodic National Action Plan to End Gender-Based Violence that requires attention to the intersection of GBV and right to food violations.
- Strengthen anti-trust laws to de-monopolize the food and agriculture industry.
- Address income and wealth inequality with more progressive tax structure, for example, by re-visiting the top marginal tax rate (presently 37% versus 91% in the early 1960s).<sup>161</sup>
- Protect the fishing, hunting, water, and land rights of Indigenous Peoples.
- Promote land ownership among women and BIPOC small-scale food producers.
- Regulate corporate influence over research and lobbying on food.
- Require increased transparency of corporate campaign donations and lobbying.
- End proliferation of fast-food restaurants in low-income neighborhoods and ensure that fresh and affordable food is accessible in all neighborhoods.
- Ensure adequate working conditions, living wages, and gender and racial equity.
- Fund economic security programs, including direct unrestricted cash assistance programs and access to tax credit, and create paid and protected leave for GBV survivors.
- Secure and protect land access for independent producers, BIPOC communities.
- Pay reparations to communities whose labor has been systematically exploited and have been dispossessed of their land since the founding of the U.S. and address the unequitable redistribution of land.
- Address access, adequacy, and quality of affordable housing, healthcare, and employment.
- Pass comprehensive immigration reform that includes a pathway to citizenship for agriculture and food industry workers.
- Promote and fund cooperative ownership of land and community food stores

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<sup>160</sup> The Maine Food Sovereignty Act was passed in 2017 and shifted the control of the food industry to communities/municipalities, promoting democratic engagement in local government, strengthening rural economic development, encouraging small-scale farming and food production, strengthening rural resilience, encouraging face-to-face transactions involving food or food products, as well as improving health and well-being and allowing for self-reliance and personal responsibility.

<sup>161</sup> David Leonhardt, *When the Rich Said No to Getting Richer*, The New York Times (Sept. 5, 2017), <https://www.nytimes.com/2017/09/05/opinion/rich-getting-richer-taxes.html>.

- Support, subsidize, and incentivize independent and small-scale food producers.
- Incentivize food producers that implement sustainable practices and strengthen labor protections against pesticide exposure.
- Hold agricultural companies and extractive industries liable for their impacts on the environment, and water and food supplies.
- Prioritize Indigenous Peoples' demands in federal government's conservation plan.
- End prison labor unless it is fairly compensated and builds skills for future employment.