

# TWENTEETH INTERNATIONAL CONGRESS OF PENAL LAW (Rome, 13-16 November 2019)

## Section II: Food regulation and Criminal Law

### *Preamble*

Considering that food security, as it is defined in the General Comment 12 of the Committee on Economic, Social and Cultural Rights, is part of the universal system of human rights and this circumstance creates the state obligation for respect, protect and fulfil this right,

Considering that the obligation to protect may require the use of criminal law when it is necessary to achieve an effective protection of food security,

Considering that States have an obligation to guarantee that corporations respect human rights, including the right to adequate food,<sup>1</sup>

Considering that food security is threatened severely during armed conflicts or natural disasters; in these circumstances, in order to guarantee and provide people with an adequate protection,

Considering that the principle of prevention is fundamental to a state's obligation of ensure the right to adequate food,

Considering that collaboration between States and between public and private sectors is essential to ensure the right to adequate food,

Considering that scientific developments and new technologies, as well as globalization pose new risks to food safety, security, and authenticity, and that

Taking into account the international character of food regulation, and the important role that international organizations, such as the WTO, play in its development,

Bearing in mind the importance of standards developed by private sector entities as well as the cooperation between public authorities and the private sector in improving the quality of the regulation and enhancing supervision,

Mindful that conduct that seriously affects the right to food, constitutes genocide, crimes against the humanity and/or war crimes, if the rest of the elements of such crimes are present in the case.

Taking into account the United Nations' Guiding Principles on Business and Human Rights, the Maastricht Principles on Extraterritorial Obligations on States in the area of Social, Economic and Cultural Rights, and the recommendations of the XIV International Congress (Vienna, 1989) on the legal and practical problems posed by the difference between criminal law and administrative penal law of the X International Congress (Rome, 1969), about endangering offenses,

Section II of the XXth International Congress of Penal Law, Food Regulation and Criminal Law, makes the following recommendations:

### *Resolutions*

#### *1. Criminal law protection of the right to food*

1. Corporations, including multinational corporations, given their size and cross-border nature, play a large impact on the realization of the right to adequate food. In order to increase accountability, States should provide for the civil, administrative and/or criminal liability of corporations and heads of businesses.

2. Corporations, including multinational corporations, should assess the risk that their activity generates for the right to adequate food, and set up adequate procedures in order to mitigate it, and ensure that they are reviewed periodically. The disclosure of this assessment, through non-financial statements, should be mandatory.

3. Omission of the publication of non-financial compliance statements or publications in an incorrect, incomplete manner ought to be punished in the same manner the case of financial false statements.

4. In cases where there are serious violations of the right to food, sanctions should take into account the principles of

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food E/C.12/1999/5 (22 May 1999): 'The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.'

restorative justice concerning victim's rights.

5. States should ensure that corporations with the centre of activity, its registered office or domicile or its main place of business or substantial business activities in their territory respond also in relation to serious offences committed abroad, which violate the right to food abroad, provided that the State where the fact has been committed is unwilling or unable to hold those responsible accountable.

6. In case of emergency, humanitarian aid is a part of the right to adequate food. Therefore, States should punish the theft, misappropriation, subsidy fraud or other property crimes related to the provision of humanitarian aid if this conduct violates the right to food abroad, provided that the State where the fact has been committed is unwilling or unable to hold those responsible accountable.

#### *II. Food Safety and Criminal Law*

1. Given that self-regulation of the food industry and administrative regulation relating to standards of food safety frequently determine the elements of criminal liability, the offence definitions that refer to administrative norms or self-regulatory norms the reference should be as concrete as possible, in order to ensure compliance with the legality and proportionality principles. In addition, States should ensure that the self-regulatory standards are transparent and checked against food safety principles.

2. Due to the prominent role of administrative agencies in setting food safety standards, States should ensure that the regulatory process is transparent.

3. States should, in accordance with their legal systems, hold corporations and individuals liable for the intentional creation of serious food safety risks even in the absence of the violation of specific provision of food safety regulations.

4. States should punish corporations and individuals for violations of food laws that create a risk, even without the proof of concrete harm.

5. States should criminalize the violation of the duty to withdraw food that has been produced, processed or distributed in violation of food safety requirements, and to promptly inform consumers of related health risks.

6. In cases of food safety violations, States should punish producers, manufacturers, distributors and other operators involved in the food supply chain according to their legal duty and level of effective control over food safety standards.

7. States should encourage that compliance management systems in the area of food safety provide for a clear delegation of functions.

8. States should establish legal regimes which ensure that private certification entities are independent and are held accountable for acts of fraud, corruption and the issuance of false certifications.

#### *III. Food fraud and consumer protection*

1. States should prevent the production and commercialization of food that does not correspond to the representation of its content, quality, quantity or manner in which it is manufactured or traded.

2. States should punish the behavior described above if committed with the purpose of economic or professional gain regardless of the impact on food safety.

#### *IV. Interaction among States*

1. States should share information, cooperate and coordinate in order to prevent, investigate and prosecute food safety crimes and food fraud.