

## THE RIGHT TO FOOD

by

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The right to food and to be free from hunger, is firmly established in international law. Article 11 of the International Covenant on Economic, Social and Cultural Rights which was adopted by the UN General Assembly in 1966 recognizes the right to adequate food as part of the right to an adequate standard of living and accords the right to be free from hunger the status of the fundamental right of mankind.<sup>2</sup> The Covenant is a full international legal agreement. It came into force in 1976 and has now been ratified by some 138 parties. This legal recognition of the right to food built on the declaration of “the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, ..” set out in Article 25 of the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, fifty years ago yesterday. It is mirrored in the goal of “... ensuring humanity’s freedom from hunger” enshrined in the Preamble to the Constitution of FAO<sup>3</sup>. It can also be viewed as an essential element of the right to life accorded legal recognition in the International Covenant on Civil and Political Rights adopted by the UN General Assembly also in 1966, since without food man cannot live<sup>4</sup>. Under Articles 1, 55 and 56 of the UN Charter, States Members of the UN have undertaken binding legal commitments to respect, protect, promote and cooperate collectively in the observance of human rights, rights that were later spelled out in the Universal Declaration and the two Covenants referred to above. The right to food in particular has since been explicitly recognized and further defined in a number of international instruments and declarations such as the Declarations adopted by the UN World Food Conference in 1974<sup>5</sup>, by the International Conference on Nutrition convened by FAO and WHO in 1992, and more recently by the Plan of Action adopted by the World Food Summit here in Rome two years ago<sup>6</sup>. The right to food is also protected under certain more specialized international agreements such as the Geneva Conventions and Additional Protocols in times of war<sup>7</sup>, and the 1989 Convention on the Rights of the Child in respect of children<sup>8</sup>.

The human rights recognized in the Covenant on Economic, Social and Cultural Rights differ from those set out in the International Covenant on Civil and Political Rights, also adopted by the UN General Assembly in 1966, in that the Covenant on Civil and Political Rights provides for the immediate respect by States of the rights set out in that Covenant and sets up machinery to enforce their implementation, while the Covenant on Economic, Social and Cultural Rights provides for the progressive realization of the rights set out in that Covenant, and does not set up any implementing machinery beyond the consideration of periodic reports by States Parties to ECOSOC, since 1987 through the medium of the Committee Economic, Social and Cultural Rights. It has also been argued that, as no provision is made for the judicial enforcement of economic, social and cultural

rights and since they call for positive action by States rather than mere “negative” acts of judicial protection, they are in some way inferior rights lacking a true legal basis. Such arguments have been convincingly repudiated<sup>9</sup>, and it seems clear that such rights have full legal status, even though the mechanisms for their realization and implementation, as set out in the Covenant itself, differ from those established for civil and political rights. They are, however, to a certain extent imperfect rights, in that the full extent of the rights and the corresponding obligations required to fulfil them has never been precisely spelled out.

While the main focus of the Covenant on Economic, Social and Cultural Rights is the duty of States Parties to take progressive positive action for the full realization of the rights recognized in the Covenant, one should not underrate the immediate legal impact of the recognition of the right to food and the right to be free from hunger, a right that is expressed as belonging to everyone. Under Article 2 of the Covenant, the States Parties undertake to guarantee that these rights, and the other rights recognized in the Covenant, will be exercised without discrimination of any kind, including discrimination as to political or other opinion or national or social origin. They each undertake to take steps with a view to achieving progressively the full realization of the rights recognized, by all appropriate means including particularly the adoption of legislative measures. A number of legal implications can be drawn from these provisions. First amongst these must be the obligation for States Parties to the Covenant not to take positive action that would have the effect of denying the enjoyment of those rights, such as the use of starvation and food deprivation as a political weapon<sup>10</sup> either on the international or the national level, or the unreasonable denial of access to humanitarian aid in times of food emergencies, whether these be in the national territory of a State Party to the Covenant or in neighbouring areas, access to which lies through its national territory.

It is, however, clear that in considering the nature of the legal right to food and freedom from hunger, the focus should be placed primarily on the duties of the States Parties, as these are the main means established by the Covenant itself for the realization of those rights. These, as enumerated in Article 11.2 of the Covenant, set the goal of improving food production, conservation and distribution at both national and international levels, specifying various means by which this goal may be attained, including the full use of technical and scientific knowledge, the dissemination of knowledge of the principles of nutrition and the development and reform of agrarian systems. They also set the ambitious goal of ensuring an equitable distribution of world food supplies.

To a large degree, the goals and means laid down in Article 11 of the Covenant reflect a general programme for achieving national and international food security as seen in 1966. And indeed the goals and means specified in that Article have inspired the work of FAO and other agencies in the food sector for the last three decades, highlighted by the World Food Conference in 1974, the World Conference on Agrarian Reform and Rural Development in 1979, the FAO World Conference on Fisheries Management and Development in 1984, the adoption of the World Food Security Compact in 1985, and the International Conference on Nutrition in 1992, as well as the expansion of the UN/

FAO World Food Programme established in 1961.

The International Covenant on Economic, Social and Cultural Rights, however, was fashioned, not as a static legal charter, but as a dynamic framework for action that should be in constant and continual evolution. This much is clear from the general provisions of Article 2, under which States Parties to the Covenant undertake to take steps, both individually and through international assistance and cooperation, to the maximum extent of their available resources with a view to achieving progressively the full realization of the rights recognized by the Covenant by all appropriate means. It is clear also from the specific provisions of Article 11 dealing, *inter alia*, with the right to food, where it is stated that States Parties will take appropriate steps to ensure the realization of this right.

While most of the measures to be taken relate to practical measures to improve world food security, the Covenant makes special mention of the importance of the development of the legal basis for the protection of human rights, including particularly the adoption of legislative measures. Presumably this legal basis should be developed and strengthened not only at the national level, but also at the global level in the crystallization and realization of the right to food and the right to be free from hunger. This process has been initiated at the global level by the UN, FAO and WHO through the world conferences referred to above<sup>11</sup>, as well as through the adoption by FAO of a non-legally binding framework for world food security<sup>12</sup>. However, it is now some three decades since the International Covenant on Economic, Social and Cultural Rights was adopted and new concepts and programme imperatives have evolved, including indeed the very concept of food security, that called for a wider revisiting of the general programme of action set out in Article 11.2 of the Covenant and for the taking of further steps in the legal realization and crystallization of the right to food and to be free from hunger.

To large extent, that new programme has been provided by the Declaration and Plan of Action adopted by the World Food Summit in Rome in November 1996<sup>13</sup>. The Declaration and Plan of Action provides a concrete updated programme of action for the achievement of food security by ensuring an enabling political, social and economic environment designed to reduce poverty and improve access by all to sufficient nutritionally adequate and safe food and its effective utilization. It also sets out a commitment to policies for sustainable food, agricultural and rural development, as well as tackling food security related problems of trade and investment. Following the fundamental dichotomy between the right to food as a component of the right to an adequate standard of living and the fundamental right to be free from hunger, the Plan of Action also deals with the prevention of crisis situations and the need to meet transitory and emergency food requirements in ways that encourage recovery, development and a capacity to satisfy future needs. Finally, it provides for a system of implementation and monitoring and follow-up.

The World Food Summit Plan of Action also deals specifically with the Right to Food. In the Plan of Action, Governments committed themselves to the objective of clarifying the content of that

right and providing for its realization. Commitment 7.4, in particular, invited the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialised agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the International Covenant on Economic, Social and Cultural Rights. It further called for the formulation of proposals for implementing these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all. This mandate of the High Commissioner has been repeatedly endorsed by the UN Commission on Human Rights itself, and great interest in the right to food has been demonstrated by the Committee on Economic, Social and Cultural Rights, which is in the process of developing a General Comment on the subject.

To date, the High Commissioner has held two Expert Consultations on the Right to Adequate Food as a Human Right, in implementation of her mandate. The first Consultation explored the definition of the right to food and the various levels of State obligations to respect, protect, fulfil and implement the right to food. **Obligations to respect** stipulate limits on the exercise of state power, rather than positive action. The state should generally not interfere with the livelihood of its subjects or their abilities to provide for themselves. Where any review indicates the existence of national legislation that has such an effect, either directly or indirectly, then immediate action will be called for to rectify the situation. **Obligations to protect** require regulating the conduct of non-state actors. This entails the establishment of an enabling regulatory environment, e.g. in the fields of food safety and nutrition, protection of the environment and land tenure. **Obligations to facilitate and fulfill** require positive action by the State to identify vulnerable groups and design, implement and monitor policies which would facilitate their access to food producing resources or an income. As a last resort, direct assistance may have to be provided, to ensure, at a minimum, freedom from hunger.

The second round of Consultations took place at FAO Headquarters here in Rome barely three weeks ago. The Consultation adopted a series of concrete conclusions and recommendations. Of particular interest was the adoption of a working definition of the right to adequate food<sup>14</sup>, and a series of recommendations for future action regarding the implementation of the right to food. These included the adoption of national strategies and framework legislation at the national level. International agencies were encouraged to provide assistance on these matters as requested. The meeting also stressed the need to consolidate efforts for inter-agency training in the field of human rights, and expressed strong support for the recommendation of Chairpersons of human rights treaty bodies to organize a seminar with international financial and trade institutions to enhance dialogue and encourage consultations on a regular basis.

Throughout its work, the Consultation laid great stress on the need for concrete action at the national level to turn the right to food from a theoretical concept into reality. Much of the

substantive work for the realization of the right to food is already being done, through the day to day actions of the Rome-based food agencies. What has been lacking to date has been a human rights based approach and framework that can bring focus to the ongoing efforts, as well as accountability, transparency and the empowerment of people. In this context, one of the approaches recommended by the Consultations was the development of national framework legislation that would set targets for achieving the rights to food, identify vulnerable groups, set modalities, provide for institutional implementing mechanisms and monitoring and allow for accountability in reaching those targets. One of the documents presented to the consultations, a small book entitled the Right to Food in theory and practice, prepared together with a leaflet on the meaning of the Right to Food to commemorate the Fiftieth Anniversary of the Universal Declaration of Human Rights, dealt specifically with the recognition of the right to food in national constitutions. Already at least 20 countries have recognized the right to food of its people in one form or another. The Consultation called for further work to develop legislation to implement those provisions.

In fulfilling the right to food, the world needs action rather than words. FAO and the other Rome-based food agencies are providing that action on a daily basis. Linking that action with the human rights approach provides the framework that will allow for the empowerment of people in ensuring for themselves their own freedom from hunger. Such a framework for action is essential if the world is to reach the ambitious target set by the World Food Summit of reducing the number of undernourished people to half their present level of 800 million no later than the year 2015.

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<sup>2</sup> Article 11 of the Covenant, provides as follows:

*"1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."*

*2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programme, which are needed:*

*(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*

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

<sup>3</sup> This wording was introduced into the Constitution in 1965.

<sup>4</sup> Article 6(1) of the International Covenant on Civil and Political Rights provides that “*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*” While the right to food is normally reported on under the Covenant on Economic, Social and Cultural Rights, the Human Rights Committee has used examples in its reports that would indicate that widespread malnutrition leading to extensive child mortality could be considered as evidence of a State’s failure to protect the right to life. Certainly the intentional starvation of its population or parts thereof would constitute a breach of the right to life.

<sup>5</sup> The Universal Declaration on the Eradication of Hunger and Malnutrition, adopted at the 1974 UN World Food Conference declares, in operative paragraph 1, that “*Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.*”

<sup>6</sup> In the first paragraph of the Rome Declaration on World Food Security, the Heads of State and Government “reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.”

<sup>7</sup> The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949 provides, inter alia, for the free passage of essential foodstuffs intended for children expectant mothers and maternity case, the provision of food supplies in occupied territories, the facilitation of relief schemes in such areas, including the provision of consignments of foodstuffs and the according of free passage for such consignments and the provision of food to internees. The Geneva Convention Relative to the Treatment of Prisoners of War of 1949 also provides for the provision of adequate daily food rations to prisoners of war.

<sup>8</sup> Article 6.1 of the Convention recognizes the inherent right to life of children while 24.1 provides that the States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health. In implementation of this right, States Parties are to take appropriate measures, inter alia, to combat disease and malnutrition through, inter alia, the provision of adequate nutritious foods.

<sup>9</sup> See, e.g. Van Hoof, G The Legal Nature of the Rights contained in the International Covenant on Economic, Social and Cultural Right: a Rebuttal of some Traditional Views. in *The Right to Food* 97, 100 (Philip Alston & Katarina Tomasevski eds. 1984). Van Hoof argues that, viewed from the point of view of State duties deriving from the recognition of the right to food and freedom from hunger, “four “layers” of obligations may ... be discerned: an obligation to respect, an obligation to protect, and obligation to fulfil, and an obligation to promote.”

<sup>10</sup> Article 6 of the 1992 Declaration of Barcelona specifically provides that “*Foods should not be used, in any case, as a political weapon. Under no circumstances is it permissible for international, regional or local blockades to limit access to foods.*” The Rome Declaration World Food Security provides that “*Food should not be used as an instrument for political and economic pressure. We reaffirm the importance of international cooperation and solidarity as well as the necessity of refraining from unilateral measures not in accordance with the international law and the Charter of the United Nations and that endanger food security.*”

<sup>11</sup> The World Food Conference in 1974 solemnly proclaimed that “*Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.*” In 1992, the International Conference on Nutrition adopted a World Declaration on Nutrition in which the Ministers and Plenipotentiaries “recognize that access to nutritionally adequate and safe food is a right of each individual.”

<sup>12</sup> The World Food Security Compact adopted by the FAO Conference in 1985.

<sup>13</sup> See Report of the World Food Summit, FAO Rome, 1997.

<sup>14</sup> Normative Content of the Right to Adequate Food

*The right to adequate food means that every man, woman and child alone and in community with others must have physical and economic access at all times to adequate food or by using a resource base appropriate for its procurement in ways consistent with human dignity. The right to adequate food is a distinct part of the right to an adequate standard of living.*

*The realization of the right to adequate food requires*

*1 a) the availability of food, free from adverse substances and culturally acceptable, in a quantity and quality which will satisfy the nutritional and dietary needs of individuals;*

*b) the accessibility of such food in ways that do not interfere with the enjoyment of other human rights and that is sustainable.*

*2. The ultimate objective of the right to adequate food is to achieve nutritional well-being. Nutritional well-being is dependent on parallel measures in the fields of education, health and care. In this broader sense, the right to adequate food is to be understood as the right to adequate food and nutrition.*

*3. The realization of the right to adequate food is inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, both at the national and international level, oriented to the eradication of poverty and the satisfaction of basic needs.*

The Consultation noted the need to take into account also the right to food aid assistance in times of emergency in this definition. The draft definition and additional point will be considered by the Committee on Economic, Social and Cultural Rights at its next session.