

## FAO's work on the Right to Food since 1994

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## **Introduction**

Before 1994, the right to adequate food and the fundamental right to be free from hunger had been recognised and affirmed in a number of declarations adopted in FAO. Among these: the 1965 amendment to the FAO Constitution, which inserted “ensuring humanity’s freedom from hunger” in the Preamble; the Universal Declaration on the Eradication of Hunger and Malnutrition (1974 World Food Conference); the 1985 World Food Security Compact and the World Declaration on Nutrition (1992 International Conference on Nutrition - ICN). However, few efforts had been made at the time to operationalize the right to food within the Organization.

This was probably related to cold war circumstances, which in the United Nations led to the adoption of two separate Covenants - one on civil and political rights and the other on economic, social and cultural rights - and to the East-West ideological schism, which resulted in the Western Bloc’s emphasis on civil and political rights, as opposed to the Eastern Bloc’s focus on socio-economic rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) was weaker than that on civil and political rights, and was neglected by comparison after its entry into force. Studies had been undertaken by Asbjørn Eide for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in the Mid-Eighties, but the wider environment was not ready to operationalize economic, social and cultural rights.

Since 1995, however, there has been increased political will to accord real substance to the right to adequate food and the fundamental right to be free from hunger. The mandate given by the WFS in 1996 proved catalytic, and there is now a wider understanding of the concept and its implications.

### **1. World Food Summit**

#### **a) Preparations for the WFS**

At the ICN some governments and many NGOs called for stronger statements on the right to adequate food. Such demand increased during preparations for the World Food Summit of 1996. In 1995, the Government of Venezuela organized a high-level meeting to discuss the meaning of the right to food and ways of enhancing its profile in the Rome Declaration on World Food Security. Senior FAO staff participated in this meeting.

NGOs called for the adoption of a Code of Conduct on the Right to Food and a Convention on Food Security in connection with the WFS. The idea, highly supported by a number of governments, was however unacceptable for others. As negotiations on the draft Rome Declaration progressed in the Committee on World Food Security (CFS), the question of the right to food remained highly controversial and was solved only at the last moment, and by means of language stressing the uncertainty of the right to food concept in the World Food Summit Plan of Action.

## b) WFS Results

The right to adequate food and the fundamental right to be free from hunger were reaffirmed in the Rome Declaration on World Food Security adopted by the WFS, which stressed the importance of human rights and democracy and included the right to development.

The Plan of Action of the WFS, however, contained few substantive directives. Objective 7, on implementation and follow-up, devoted a section to the right to food, stressing that there was a need for clarification of the normative content of the right to adequate food and of the ways of implementing it, and entrusted various human rights bodies, in particular the Committee on Economic, Social and Cultural Rights (CESCR) and the UN High Commissioner for Human Rights (UNHCHR), with a mandate to work on this clarification, the latter “taking into account the possibility of formulating voluntary guidelines for food security for all”.

### **Objective 7.4 World Food Summit Plan of Action**

To clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all.

To this end, governments, in partnership with all actors of civil society, will, as appropriate:

- (a) Make every effort to implement the provisions of Article 11 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) and relevant provisions of other international and regional instruments;
- (b) Urge States that are not yet Parties to the Covenant to adhere to the Covenant at the earliest possible time;
- (c) Invite the Committee on Economic, Social and Cultural Rights to give particular attention to this Plan of Action in the framework of its activities and to continue to monitor the implementation of the specific measures provided for in Article 11 of the Covenant;
- (d) Invite relevant treaty bodies and appropriate specialized agencies of the UN to consider how they might contribute, within the framework of the coordinated follow-up by the UN system to the major international UN conferences and summits, including the World Conference on Human Rights, Vienna 1993, within the scope of their mandates, to the further implementation of this right;
- (e) Invite the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize 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.

*Report of the World Food Summit, part one, appendix, FAO, Rome, 1997.*

These results were considered disappointing by many governments and most NGOs. The NGO Forum at the WFS reiterated the call for a Code of Conduct and a Convention on Food Security, and decided to start work on such a Code, with a view to later presentation to appropriate governmental forums. Three international NGOs took the lead in the drafting of the Code, the International Jacques Maritain Institute, FIAN International (FoodFirst International Action Network) and WANAHN (World Alliance for Nutrition and Human Rights). The draft Code was finalised in late 1997, and obtained the support of over 800 NGOs and some governments.

## **2. World Food Summit Follow-up**

### **a) Cooperation with the UN High Commissioner for Human Rights**

#### **i) Memorandum of Understanding**

In light of the mandate given to the UNHCHR regarding the right to food, FAO initiated contacts with the UNHCHR, which led to the signing of a memorandum of understanding between the Director-General and the High Commissioner on cooperation in the follow-up to Objective 7.4 of the WFS Plan of Action.

#### **ii) Expert Consultations of the UNHCHR**

The UNHCHR convened three expert consultations between 1997 and 2001 on the various dimensions of the right to adequate food as a human right; FAO participated in all of them. The first Expert Consultation was held in December 1997, in conjunction with a “day of general discussion” on the right to food in Article 11 of ICESCR, organized by the CESCR, FAO presented a paper and took part in the Consultation planning. The meeting provided groundwork for the Second Consultation.

The Second Expert Consultation was held in October 1998 at FAO Headquarters and was co-hosted by FAO. Consequently, FAO participated very actively in the meeting, including its report. The Consultation led to an agreement on a definition of the right to adequate food and to a comprehensive discussion on the role of international organizations. The outcome of the meeting resulted in the adoption by the CESCR of a General Comment on the Right to Adequate Food in May 1999.

The Third Consultation was held in March 2001 in Bonn, and focused on national implementation measures. The meeting recommended convening national seminars to discuss implementation of the right to food at the country level; in this regard FAO and others took several initiatives, as described below.

The Fourth Consultation is planned for 2003 or 2004 and will focus on poverty reduction strategies and the right to food.

#### **iii) Statements to the Commission on Human Rights and other forums**

Since 1997, FAO has made statements to the annual Commission on Human Rights, in order to keep its Member States and observers informed about the outcome and follow-up to the World Food Summit, in connection with the right to food.

At an ACC Sub-Committee on Nutrition (SCN) seminar held in 1998, FAO also made substantial contributions and constantly maintains contacts with the SCN Working Group on Nutrition, Ethics and Human Rights.

The Director-General and FAO staff have contributed a number of articles and made statements on the right to food to various publications and meetings convened outside FAO.

## **b) Cooperation with the Special Rapporteur on the Right to Food**

By resolution 2000/10, the Commission on Human Rights established the mandate of a special rapporteur on the right to food.<sup>1</sup> Mr Jean Ziegler from Switzerland was subsequently appointed and his mandate was renewed in 2003 for a period of three years. The Special Rapporteur reports to the Commission and to the UN General Assembly and is requested:

- (a) To seek, receive and respond to information on all aspects of the realization of the right to food, including the urgent necessity of eradicating hunger;
- (b) To establish cooperation with Governments, intergovernmental organizations, in particular the Food and Agriculture Organization of the United Nations, and non-governmental organizations on the promotion and effective implementation of the right to food, and to make appropriate recommendations on the realization thereof, taking into consideration the work already done in this field throughout the United Nations system;
- (c) To identify emerging issues related to the right to food worldwide.

The Special Rapporteur paid FAO and the Director-General a visit in 2001, and has remained in contact ever since. His reports have discussed the protection of the right to food in armed conflict, the effects of global trade on the right to food, justiciability and many other important issues. His criticisms of WTO, the Bretton Woods Institutions and of the current international trade regime have aroused some controversy, as well as some of his criticism towards individual countries, in particular the United States, with regard to the war in Afghanistan and the embargo on Cuba. FAO never commented publicly on the substance of his reports.

Much less controversial have been the visits that the Special Rapporteur undertook upon invitation by specific countries. During these visits, he met with UN country teams, including the FAO Representative to discuss his findings. FAO was able to provide some technical support from its Regional Office for his visit to Bangladesh. Previously, Mr Ziegler had visited Niger and Brazil.

## **c) Cooperation with the CESCR**

According to article 18 of the ICESCR, Specialized Agencies of the United Nations may report on the progress made in implementing the Covenant. In this regard ECOSOC has established the Committee on Economic, Social and Cultural Rights (CESCR) as the treaty monitoring body. Up to the time of the World Food Summit, cooperation between FAO and the Committee was temporarily dormant, but it was strengthened in the follow-up to the WFS.

FAO participated very actively in the discussion and drafting of the text which was adopted in May 1999 as General Comment 12, the Right to Adequate Food, by the CESCR. It has also prepared briefs on the situation in different States Parties, in connection with their reports to the CESCR, and instituted the sharing of relevant public domain information with the CESCR, in support of its discussions with the State Party on the right to food.

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<sup>1</sup> The Commission has established a number of mechanisms, normally referred to as “special procedures” or Charter-based mechanisms, for monitoring of human rights in specific countries or of specific groups or on specific themes. In the early years, the thematic mandates tended to be exclusively on civil and political rights, but since the late 1990s thematic ones have been established for various socio-economic rights.

Discussions between the Office of the High Commissioner for Human Rights, which serves as the Secretariat of the Committee, and FAO, have focussed on the constant improvement of information sharing, and the complementarities between the CESCR and the CFS, in its function as the follow-up body for the WFS. The CESCR addressed the CFS in 1999 to inform it about the adoption of General Comment 12, which was welcomed by the latter.

#### **d) Advocacy & Information**

##### **i) Publications**

Since the WFS, FAO has increased its efforts to provide information on the right to food to the general public and to professionals. In 1998, in commemoration of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights, FAO published a book entitled “the Right to Food in Theory and Practice” as well as a leaflet on “What is the Right to Food”, which have been distributed at relevant meetings and events.

In 1998, the FAO Legal Office launched new Webpages dedicated to the subject, where FAO publications, articles and speeches were listed, as well as relevant international events and UN documents. A “Focus” article, “Food, a Fundamental Human Right” was published on the FAO homepage in 2001 and “What is the Right to Food” in the “focus on the issues” series was prepared for the WFS: *fyl* in 2002.

##### **ii) Legislative Studies**

Two studies in the ‘FAO Legislative Studies series’ covered the right to food - Legislative Study 68, *Extracts from international and regional instruments and declarations and other authoritative texts addressing the right to food* (1999), and Legislative Study 77, *The right to adequate food in emergencies* (2003), while a third one focused on women’s rights in agriculture - Legislative Study 76, *Gender and law – Women’s rights in agriculture* (2002).

##### **iii) Mainstreaming**

Increasingly over the years, FAO publications and speeches on different subjects made specific reference to the right to food.

The right to food and human rights in general became more and more relevant in FAO’s work, in particular following the 1997 UN reform, which called for human rights mainstreaming in all aspects of the work of the UN system. The links between food insecurity, gender discrimination, lack of access to justice and rule of law have become increasingly clear.

### **3. World Food Summit: *five years later***

Soon after the 1996 World Food Summit, it became apparent that its hunger reduction goals would not be met unless radical action was taken at all levels. For this reason, it was decided that a new summit, the World Food Summit: *five years later* (WFS: *fyl*) should be convened.

#### **a) Preparations for the WFS: *fyl***

The lack of political will and insufficient resources were identified as main reasons for the projected failure to reach the WFS goal of halving the number of hungry people by 2015 at the latest. FAO predicted that with “business as usual”, the goal would not be reached until

decades later. The documentation prepared by the Secretariat for the WFS: *fyl* aimed at mobilizing political will to take the necessary action, and to identify the resources needed to achieve the goals. The concept of the right to adequate food was promoted as a way to empower the food insecure and make them capable of demanding responsible action from their governments, in furtherance of food security goals.<sup>2</sup>

Governments and NGOs interested in promoting the right to food renewed their efforts to gain support for the adoption of a Code of Conduct on the human right to food. Meetings were held in Oslo and Berlin in 2002, and it was affirmed that a better implementation of the right to food, through appropriate legislative, institutional, and administrative measures, - with particular attention for principles such as those of non-discrimination, accountability, transparency, participation and empowerment - would be conducive to the attainment of the WFS goal. The Code of Conduct was promoted as an instrument to provide guidance on practical implementation measures, primarily at the national level, to give effect to international legal obligations of States with regard to the right to adequate food.

Negotiations before and during the WFS: *fyl* resulted in an agreement that voluntary guidelines for the progressive realization of the right to adequate food in the context of national food security should be negotiated under the auspices of FAO, in cooperation with stakeholders.

## **b) International Alliance against Hunger**

In the Declaration “International Alliance against Hunger”, adopted at the WFS: *fyl* in June 2002, the Heads of State and Government reaffirmed *"the right of everyone to have access to safe and nutritious food"* and invited –

*"...the FAO Council to establish at its One Hundred and Twenty-third session an Intergovernmental Working Group, with the participation of stakeholders, in the context of the WFS follow-up, to elaborate, in a period of two years, a set of voluntary guidelines to support Member States' efforts to achieve the progressive realisation of the right to adequate food in the context of national food security; we ask the FAO, in close collaboration with relevant treaty bodies, agencies and programmes of the UN system, to assist the Intergovernmental Working Group, which shall report on its work to the Committee on World Food Security."* (Operative paragraph 10)

At its 2002 session, the Council formally established the Intergovernmental Working Group (IGWG) on Right to Food Guidelines as a subsidiary body of the Committee on World Food Security (CFS) and instructed the FAO Secretariat on further modalities for its operation.<sup>3</sup>

## **c) IGWG-RTFGs**

The first session of the Intergovernmental Working Group on Right to Food Guidelines (IGWG-RTFGs) was held in Rome on 24-26 March 2003. Prior to the meeting, the Secretariat had issued a “Call to States and stakeholders” for their views on the content and form of the Voluntary Guidelines, which were used as a basis for a Synthesis Report. An informal working paper on convergences and divergences of views was also prepared. During the meeting the innovative approach was applied of not distinguishing between members (States and the EC) and observers (IGOs and NGOs) in the general discussions. This enabled a genuine dialogue to take place between all actors concerned. At the end of the session, it was

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<sup>2</sup> Mobilizing the political will and resources to banish hunger, FAO, Rome, 2002

<sup>3</sup> Council Document CL/123/22 and Report of the 123<sup>rd</sup> Session of the Council, Rome 28 October to 2 November 2002, Appendix D.

decided that further submissions could be made and that the IGWG Bureau would produce a first draft of the Voluntary Guidelines for consideration at the Second session in the autumn of 2003.

After receiving further submissions and updating the synthesis report, the Secretariat produced a draft for consideration by the Bureau. The Bureau met for three days in July and made revisions to the draft, which was then sent to regions for further consultations. The Bureau met again in September and finalised its draft of the Voluntary Guidelines.

#### **d) Ad Hoc Unit for the RTFGs**

In order to ensure the servicing of the IGWG, an Ad hoc unit was established in the Office of the ADG, Economic and Social Department, and a Senior Coordinator recruited to act as the Secretary of the IGWG. Other staff of the unit are a human rights officer seconded by the Office of the High Commissioner for Human Rights, the half time services of an APO in the Legal Office and the full time services of an APO in the Economic and Social Department. A core group consisting of staff members from the Legal Office and the Economic Analysis Division has been established for day-to-day contributions to guidelines formulation, and a wider interdepartmental Task Force advises and provides further technical inputs to the process.

Extra budgetary funds for salaries, consultancies, translations, interpretation, travel and meeting costs were provided by various donors, in particular by Germany. The funds were intended not only for the meetings of the IGWG, but also for undertaking related legal, economic and food security studies, as well as country case studies. Some funds were also available to support selected countries directly in exploring and implementing a rights based approach to food security. This work is further explained below.

#### **e) Assistance to the IGWG**

During and after the first Session of the IGWG, additional needs were identified to enable the elaboration of the Guidelines. Information papers must be prepared to clarify a number of issues which are relevant in the preparation of the Guidelines and case studies have to be conducted to learn from practical experience in countries where right to food approaches have been adopted implicitly or explicitly.

Discussion at the first session of the IGWG and at subsequent Bureau meetings revealed the need to elucidate certain aspects related to a right to food approach in order to facilitate guidelines preparation. Better understanding of these areas should assist members of the Bureau, the Secretariat and the IGWG when preparing and considering the Guidelines.

Information papers on the following topics were prepared in 2003:

- Targeting and Reaching Disadvantaged and Vulnerable Groups;
- Social Safety Nets and the Right to Food;
- Recognition of the Right to Food at the National Level;
- Monitoring of the Right to Food;
- The international dimensions to be taken into account when dealing with the right to adequate food in the context of national food security;
- Justiciability of the Right to Food;
- Food sovereignty.

Furthermore, there was a need to gather information about practical experiences of countries with different policies, programmes and mechanisms including legal frameworks,

institutions and processes that are conducive to the realization of the right to adequate food. Compilation of such information through in-country case studies, validated through national workshops, if appropriate, should contribute to the work of the IGWG. Those case studies were conducted in six developing countries (Brazil, India, Nepal, South Africa, Mali, and Uganda). In addition an OECD country (Canada), in order to learn from their experiences in pursuing the right to food, and to demonstrate the applicability of a right to food approach to both developed and developing countries.

The respective lead consultants would send a first draft of the country case studies for distribution at the second session of the IGWG in October 2003. The final report should be available by the end of January 2004.

#### **f) Cooperation with NGOs at country level**

With regard to issues mentioned above FAO strengthened its cooperation with key non-governmental partners, in particular the International Project on the Right to Food in Development (IPRFD) and the FoodFirst Information and Action Network (FIAN).

The IPRFD is a partnership between the Human Rights Institute and the Nutrition Institute at the University of Oslo and has long-standing activists and scholars in its ranks, including one of the foremost authorities on the right to food, Asbjorn Eide, former Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and current Chair of the FAO Panel of Eminent Experts on Ethics in Food and Agriculture.

Under the auspices of IPRFD, funding has been obtained from NORAD for national seminars on the right to food in a number of countries, namely South Africa in January 2002, Uganda in January 2003 and Mali in March 2003. When Sierra Leone sought FAO assistance to implement the country's commitment to the right to food, FAO teamed up with the IPRFD and drew on its experience in the seminars already held. A national seminar was held with financial support from Germany in May 2003.

These seminars have catalysed further developments. In **South Africa**, a draft food security bill is under consideration by the Government. In **Uganda**, the national Food and Nutrition policy was revised and explicitly made rights-based. In **Mali**, new institutional partnerships have been formed to strengthen the new Under-Ministry for Food Security. In **Sierra Leone**, legal studies were undertaken and a project approved for German funding to establish and operate a Right to Food Secretariat to coordinate all actors involved in food security.

Important developments can also be seen in Asia. In **Nepal**, the National Human Rights Commission is planning a national seminar on the role of economic and social rights in peace-building, using the right to food as an example. At the same time, this Commission is providing inputs in the case study on Nepal for the IGWG. In **India**, various national and local NGOs are running a Right to Food Campaign and seized the Supreme Court of India with a case alleging various violations of the right to food. The Supreme Court has made an interim ruling that such violations are taking place and issued a number of interim orders to the federal and various state governments to take action. It has also set up commissions to monitor the implementation of its orders and is keeping the matter under constant review. FIAN-India and FIAN-International have been exploring possible framework legislation in

national and regional workshops. FAO was the first<sup>4</sup> to recommend framework law to implement the right to food, which was later taken up in General Comment 12 of the CESCR.

In Latin America, the FAO Regional Office has undertaken a survey on the right to food in the region. **Brazil's** *Fome Zero* program is also seen as an important experiment in practical implementation of the right to food. In this regard, Germany is supporting a project on monitoring the right to food, providing financial support to the Brazilian Rapporteur on the right to food. In **Ecuador**, a draft food security bill was introduced in 2002, but not yet adopted. The bill aims at strengthening institutional accountability and providing a framework for action.

The case studies being prepared for the IGWG, the seminars on the right to food, and donor-funded projects, are providing excellent opportunities for strengthening FAO's partnerships with NGOs as well as contributing to a better global understanding of how the right to food can be implemented at the national level. Whether the first efforts are made at the institutional, judicial, political or legislative levels, at the initiative of FAO, of national governments or NGOs, they have the potential of inspiring actors in other countries and showing that obstacles can be overcome through participation, empowerment and improved accountability.

## Future Challenges

Among the many tasks awaiting future action by FAO and its partners, the finalisation and adoption of the Voluntary Guidelines is of paramount importance. The success of the exercise is not yet assured; it is further complicated by the fact that the Guidelines aim at implementing a right on the basis of a Covenant that not all FAO and UN members have ratified. The right to food is a complex issue, and its implementation must take into account the different cultures and realities of States, while supporting the universal values and principles that are part of viewing access to adequate food as a human right.

Differences between countries will also mean that implementation of the Voluntary Guidelines will not be uniform. There will be a need for continued FAO support in the further operationalization of the right to food, especially at the national levels. In this regard, it will be important to seek ways to work more closely with the UN country teams, providing them with adequate guidance and ensuring the effective dissemination of lessons learned.

Internal Note, prepared by Margret Vidar, LEGA.

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<sup>4</sup> The Right to Food in Theory and Practice, FAO, Rome, 1998.