

FAO AND THE RIGHT TO ADEQUATE FOOD

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1 INTRODUCTION

In this article, we will give an overview of present thinking and activities regarding the right to adequate food and the fundamental right to freedom from hunger, in the past, at present, and hopefully in the near future. We refer to the analytical framework proposed by Asbjørn Eide and adopted by the Committee on Economic, Social and Cultural Rights (CESCR) to illustrate FAO's role at each level of State obligation, and discuss the implications of the General Comment of the CESCR on the right to adequate food.

2 PAST

In the past, FAO was very much involved in discussion about the right to food. In the 1960s it participated actively in the drafting of Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). FAO's Director-General proposed the substance of

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what became paragraph 2 of that Article. In parallel, in 1965, the Preamble of the FAO Constitution was amended, to incorporate as one of its main purposes “ensuring humanity’s freedom from hunger”, echoing the wording of Article 11, paragraph 2 of the ICESCR. This was followed by the Freedom from Hunger Campaign in the 1970s. The World Food Conference in 1974 adopted the Universal Declaration on the Eradication of Hunger and Malnutrition¹ and established the World Food Council² jointly with the United Nations. In the same year, FAO adopted the International Undertaking on World Food Security³ and the World Food Security Compact in 1985.⁴

2.1 WORLD FOOD SUMMIT (WFS)

Since the preparations for the World Food Summit (WFS) started, interest in the right to adequate food was renewed. This was accentuated by the general trend in the UN system to adopt a rights-approach to development. FAO staff is thus increasingly exposed to human rights discussions, and increasingly interested in using that framework. More and more Member Nations of FAO also support further work on the rights related to food and the use of the human rights framework. In the preparations for the World Food Summit, some countries, and most of the NGOs, attempted to obtain agreement on the adoption of a Code of Conduct regarding the right to food. A workshop was convened in Caracas, Venezuela, with the participation of FAO, to discuss these plans. In the end, however, the idea proved not politically feasible at the time, and the Plan of Action of the WFS contains only a rather vague reference to such a code (see below). Nevertheless, the Summit and the Plan of Action did contain various references to the right to adequate food, and to human rights in general.

The very first words of the Rome Declaration on World Food Security are a reaffirmation of the right to adequate food:

We, the Heads of State and Government, or our representatives, gathered at the World Food Summit at the invitation of the Food and Agriculture Organization of the United Nations, reaffirm 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.⁵

A few paragraphs later, the importance of human rights in general is acknowledged:

Democracy, promotion and protection of all human rights and fundamental freedoms, including the right to development, and the full and equal participation of men and women are essential for achieving sustainable food security for all.⁶

¹ Adopted by the World Food Conference, Rome, 5-16 November 1974. UN Doc. E/CONF.65/20. FAO Doc. C 75/INF/5

² The World Food Council was formally abolished in 1997 and its functions entrusted to the FAO Committee on World Food Security (CFS).

³ FAO Council Resolution I/64, 20 November 1974.

⁴ Adopted by the 23rd Session of the FAO Conference, Rome, 9-28 November 1985.

⁵ *Rome Declaration on World Food Security*, paragraph 1. *Report of the World Food Summit*, part one, appendix, FAO, Rome, 1997.

⁶ *Ibid*, paragraph 4. See also Objectives 1.1; 1.2 b); 1.3; 1.4; 2.1; 2.2; 2.3 and 2.4 for provisions on rights, equitable access, support to vulnerable groups, etc.

In the Plan of Action of the World Food Summit, Objective 7.4 is devoted to the human right to adequate food

World Food Summit Plan of Action: Objective 7.4
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.
<i>Report of the World Food Summit, part one, appendix, FAO, Rome, 1997.</i>

The main purpose of Objective 7.4 is to call for the clarification of the content of the right to adequate food and how it may be implemented. These questions were among the main objections made to considering and adopting a code of conduct on the right to food: there can be no discussions about a code of conduct unless the normative contents and effective ways of implementation are clearer. Of course, this was not the only objection, but this need for clarification did provide the basis for the consensus that emerged.

2.2 WFS FOLLOW-UP

Objective 7.4 foresees a role for several actors, notably the UN High Commissioner for Human Rights (HCHR), the CESCR, other treaty bodies, and specialized agencies – including FAO - as well as governments and civil society. The HCHR has to date held two Expert Consultations on the right to adequate food as a human right, and reported to the Commission

on Human Rights thereon⁷, in response to paragraph e) of this Objective and the CESCR recently adopted a General Comment on the Right to Adequate Food⁸, as specifically requested by the Commission on Human Rights⁹. NGOs have been active on the last words of paragraph e), drafting and advocating for a Code of Conduct on the right to food.

FAO has striven to play an active supporting role in subsequent work of the UN human rights bodies, as well as working on its own on the right to adequate food. Indeed, the Director-General of FAO signed a memorandum of understanding with the High Commissioner for Human Rights in May 1997. FAO also drew the attention of the Commission on Human Rights¹⁰ and the CESCR to the Plan of Action, participated actively in the two Expert Consultations of the High Commissioner on the right to adequate food – and co-hosted the second one of these in November 1998. In April 1999 FAO participated in a symposium on “The substance and politics of a human rights approach to food and nutrition policies and programmes”, organized by the Administrative Committee on Co-ordination/Sub-Committee on Nutrition (ACC/SCN) of the UN, which was hosted by the OHCHR. FAO also provided extensive comments and participated in the deliberations of the CESCR in the process of its adoption of the General Comment on the right to adequate food.

The NGO initiative of drafting and advocating for a Code of Conduct (CoC) on the Right to Food is also of interest to FAO. Although the Organization has not been directly involved it has followed actively these developments. The text of the CoC has been distributed internally for information, as well as reproduced in part in an FAO publication, albeit as an NGO contribution.¹¹ However, as long as the CoC is not submitted to its governing bodies, the Secretariat refrains from having an official position on it. FAO’s function as a neutral forum for negotiations could be jeopardised otherwise. We note that despite this, the CoC has influenced other work, for instance, the Second Expert Consultations of the HCHR agreed that, with some modifications, it could be used as a basis for a definition of the normative contents on the right to adequate food. The CESCR subsequently used that definition in its General Comment on the right to adequate food.

Internally, FAO has held seminars and meetings for awareness raising, including recent internal informal discussions on the implications of the General Comment for its work. FAO also makes sure that its governing bodies are aware of the work undertaken by the human rights bodies. The Office of the High Commissioner for Human Rights (OHCHR) addressed the FAO Committee on World Food Security (CFS) in 1997 and 1998. The CESCR addressed it in 1999 to inform it about the adoption of the General Comment. Indeed, the CFS reacted favourably to the General Comment in its report of the 25th Session,¹² which was endorsed by the Council of FAO.

⁷ *The right to food*, Report of the High Commissioner for Human Rights, UN Document No E/CN.4/1998/21, 15 January 1998. *The right to food*, Report of the High Commissioner for Human Rights, UN Document No E/CN.4/1999/45 20 January 1999

⁸ *General Comment 12, The Right to Adequate Food (Article 11)*, E/C/12/1999/5, 12 May 1999.

⁹ Commission on Human Rights Resolution 1998/23, *The right to food*, adopted without a vote on 17 April 1998, paragraph 7; Commission on Human Rights Resolution 1999/24, *The right to food*, adopted without a vote on 26 April 1999, paragraph 7.

¹⁰ *Contribution by the Food and Agriculture Organization of the United Nations*, UN document No E/CN.4/1997/115, 19 February 1997. Oral statement on behalf of the Director-General available on www.fao.org/Legal, under right to food –timeline of events.

¹¹ *The Right to Food in Theory and Practice*, FAO, Rome, 1998, page 12.

¹² *Report of the 25th Session of the Committee on World Food Security*, Rome, 31 May - 3 June 1999. FAO Document No. CL 116/10

2.3 50TH ANNIVERSARY OF UDHR

On the occasion of the 50th Anniversary of the Universal Declaration of Human Rights (UDHR), FAO published a book entitled “The Right to Food in Theory and Practice”¹³ and a leaflet entitled “What is the Right to Food?” Still forthcoming are other language versions of the two, as well as a trilingual legislative study containing extracts of relevant international and regional instruments and some authoritative texts with direct reference to the right to food.¹⁴ All these publications and many statements of FAO are accessible on the Internet – the Legal Office having launched a new WebPage¹⁵ dedicated to the subject of the right to food, also on the occasion of the 50th Anniversary.

3 PRESENT

In this section, we will briefly examine the legal obligations of FAO in regard of human rights, before turning to some present and ongoing activities of the Organization, which are relevant to the implementation of the right to adequate food.

3.1 OBLIGATIONS OF FAO

Article 56 of the Charter of the United Nations, and Articles 2, 11 and 23 of the ICESCR, make special mention of international cooperation. It can be said that international organizations, such as FAO, are the very embodiment of States’ commitment to international cooperation. However, we need to distinguish between international obligations of States, and directly binding obligations of international bodies created by States. FAO is a specialized agency with its own Constitution and Governing Bodies and is not party to the human rights Covenants. The ICESCR foresees an important role for the specialized agencies, but the obligations to be undertaken must be agreed to by FAO itself.

However, given the universal acceptance of the importance of all human rights by FAO Member Nations, including in the Universal Declaration of Human Rights, the 1993 Vienna Declaration and Plan of Action on Human Rights, the Rome Declaration and WFS Plan of Action and other World Conferences of this decade, there can be little doubt that FAO should respect, promote and protect human rights, and assist its Member Nations in their realization, within the framework of its overall mandate and Constitution. Indeed, it would appear untenable to say that FAO had no responsibility with regard to human rights.

In our opinion then, FAO has the minimum obligation of acting in conformity with human rights, and a moral obligation to work towards better incorporation of human rights principles in its own functions, notably the principles of transparency, accountability vis-à-vis all stakeholders, non-discrimination and the inherent dignity of every human being, which in turn demands the participation of people in their own development.

Furthermore, when FAO assists its Member Nations in the fields of food and agriculture, the obligations of its members need to be taken into account. FAO carries out functions related to

¹³ *The Right to Food in Theory and Practice*, FAO, Rome, 1998.

¹⁴ FAO Legislative Study 68, FAO, Rome, 1999.

¹⁵ www.FAO.org/legal/rtf-e.htm

all aspects of the right to adequate food and the fundamental right to freedom from hunger. The exploration of the content and implementation of food rights is therefore of paramount importance to the Organization.

3.2 ACTIVITIES OF FAO

All functions of FAO contribute, of course, to the realization of the right to food, at least implicitly. Efforts are under way to ensure that FAO's work is based on a common understanding of the human rights related to food.

Rather than give an overview of FAO's various departments, we have chosen below a few examples to illustrate FAO's role regarding the right to food using the analytical framework advocated by Asbjørn Eide, Special Rapporteur on the right to food originally¹⁶, and now widely accepted, *inter alia* by the CESCR and FAO itself.

A) RESPECT

The obligation to respect the right to food essentially entails non-interference with people's efforts to provide for themselves. According to General Comments 8 and 12 adopted by the CESCR, respect for the right to food at the international level means that States have a duty when imposing sanctions on other States, even when this is done under the auspices of the UN Security Council, to respect the right to food and such essential necessities, and ensure that the survival of the population is not endangered.¹⁷ In that connection, FAO has monitored and reported on food security and nutrition in Iraq in recent years, including reviews of the magnitude of the problems resulting from the imposition of sanctions, and with reference to the effectiveness of Security Council Resolution 986, and the consequent oil-for-food programme.

Conflict almost invariably goes hand in hand with lack of respect for the right to food, if not direct violations of access to food. FAO's Global Information and Early Warning System on Food and Agriculture (GIEWS) reports regularly draw attention to deterioration in food supplies and access, because of fighting, insecurity, displacement, looting and road blocks as well as natural causes.¹⁸

B) PROTECT

The obligation of the State to protect refers to protection against infringements by third parties, namely through regulation of exchanges between individuals and other non-governmental actors, for instance in trade. Protection of the health of consumers and to ensure fair practices in food trade are the main objectives of the Codex Alimentarius Commission (CAC) which is a joint FAO/WHO intergovernmental body, currently with 165 Member Countries, engaged in preparing international food standards and other recommendations, which promote the quality and safety of food, and consumer protection. In this regard,

¹⁶ See E/CN.4/Sub.2/1989/23, reproduced in UN Human Rights Study Series 1, *Right to Adequate Food as a Human Right*, United Nations, New York, 1989.

¹⁷ Cf. paragraph 37 of *General Comment 12*, op.cit., and *General Comment 8, The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C.12/1997/8, 5 December 1987.

¹⁸ For instance, GIEWS Special Alert No.289, *Sierra Leone*, 18 January 1999; GIEWS Special Alert No.293, *Somalia*, 8 July 1999; GIEWS Special Report: *FAO/WFP Crop and Food Supply Assessment Mission to Angola*, 15 June 1999

governments are expected to have an appropriate national food control legislation and effective food control systems to protect the rights of consumers to fair marketing and food safety. Codex Alimentarius offers an appropriate framework for this. Many governments have taken the necessary steps to strengthen their food legislation in accordance with Codex standards and guidelines. Many developing countries however still require technical advice and assistance, by FAO, in establishing the necessary food legislation and food control systems.

C) FULFILL

The third level of obligation is the obligation to fulfill. In turn, a distinction may be made between obligations to facilitate, and obligations to provide.¹⁹ We will discuss each of these below.

I) FACILITATE

The obligation to facilitate is the duty to create an enabling environment where people can become self-sufficient. Most people nowadays rely on the food market to purchase their food or sell their surplus production. But markets sometimes fail to enable fair exchanges. Rather than intervening directly, the State may facilitate the effective functioning of the market, for instance by reducing the barriers to obtaining trade licenses, charging reduced value-added taxes on food commodities, prohibiting monopolies or oligopolies, and setting up market information systems.

FAO supports the provision of market information in many countries of the world, gives support to food security policy makers through capacity building of domestic statistical services, provides support to early warning and food information systems and directly provides food security and world market information. This information enables States to intervene in cases of market failures, etc. It also helps private traders to operate more efficiently and keep food prices down.

II) PROVIDE

Even in a country where state policies are optimal to ensure self-sufficiency, there might still be persons who can not provide for themselves, besides the physically disabled, the old and the young. Unemployment or disaster may prevent people from feeding themselves, at least temporarily. Therefore, as a last resort, the State has a duty to provide, in order to ensure, as a minimum, freedom from hunger.²⁰ This obligation does not necessarily have to be carried out by the State itself; it may also rely on community structures, churches, mosques and other actors of civil society. If the State is unable to do so, or ensure that it is done, it has the right, and even a duty to request international assistance. FAO, together with WFP, undertakes joint missions to identify food aid needs in emergency situations and to estimate the international resource requirements where domestic governments have little control or highly restricted resources. FAO provides timely information in the form of faxed and e-mailed reports, alerting the international community of the magnitude, locations and causes of these emergencies. Increasingly, FAO is involved in mobilising resources for emergency agricultural interventions to restore the food production sectors.

¹⁹ Cf *General Comment 12*, op.cit., paragraph 15.

²⁰ *Ibid.*, paragraph 17.

3.3 RIGHTS-BASED APPROACHES

Moving from these selected examples of the many ways in which FAO contributes at present to the respect, protection and fulfilment of State obligations, we will now touch briefly upon the rights-based approach, which all UN agencies have been encouraged by the Secretary-General to adopt. Many UN bodies and agencies, for instance UNICEF, ILO and UNDP have already declared that their policies are rights-based. FAO is yet to issue a clear statement in that regard, but is following these developments with great interest. As stated earlier, human rights, democracy, empowerment and the rule of law figure prominently in the WFS Plan of Action. In addition, the Strategic Framework of FAO for the years 2000-2015, in the form in which it is being submitted to the FAO Conference for approval and adoption in November 1999, contains references to human rights and international law.

Despite the lack of an explicit policy document on a rights approach, some specific programs of FAO have already adopted many of the inherent principles of a rights-based approach. For instance, the Women in Development Service refers to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), periodically reports to the treaty body, and generally strives through participatory training methods to promote the rights of the disadvantaged, who often are women. FAO's last World Food Day also drew attention to the essential roles that women play in food security.

The Special Programme on Food Security (SPFS) has also adopted explicit principles that are compatible with the rights approach. The SPFS was initiated in 1994 to help developing countries to improve their national food security - through rapid increases in productivity and food production, reducing year-to-year variability in production and through improving people's access to adequate nutritious food - on an economically and environmentally sustainable basis. The SPFS is founded on the concepts of national ownership, a participatory approach, environmental awareness and sensitivity, and regard for the role of women, all of which are principles inherent in or consistent with the rights approach, and the notion of state responsibility.

4 FUTURE

Despite the recent important developments, much remains to be done. FAO needs to continue normative development in many areas, establish better links with the CESC, WFP, IFAD and other partners and explore further the implications of the General Comment on its regular work. Country case studies and projects need to be undertaken to learn by doing how to better assist Member Nations. We shall now explore some selected questions that are the focus of FAO's attention for further action in the future.

4.1 POLICY ADVICE

One of FAO's roles in assisting its Member Nations is to give them advice on policies and strategies for food security. At present, this advice is mainly based on traditional economic analysis and does normally not refer to State human rights obligations, but assumes that sovereign States adopt the policies they choose. In other areas, however, FAO has a long-standing experience of advising States on complying with international obligations, in particular regarding international trade and agreements negotiated under FAO's auspices.

If FAO's food security policy advice was based on the notion of the right to food as its starting point, the advice would remind State Parties to the International Covenant of their obligations and the restrictions these put on the policies adopted. Some obligatory administrative and legal measures would be identified, as well as, of equal importance, which policies and measures were not permissible for State Parties. However, this may not yet be politically feasible, nor is it yet clear to FAO analysts how this could be done and what exactly these rules would be. This is an area that will need more work and internal thinking, analysis and digestion, before it could be ventured upon. Normative development, in conjunction with country case studies, would constitute the first steps towards equipping FAO in taking international human rights obligations into account in its policy advice work.

4.2 SOCIAL SAFETY NETS

The obligation to provide may imply the need to establish safety nets for the food insecure.²¹ The implications of a rights approach for such social safety nets need to be explored, in particular with respect to a fair eligibility criteria that balance the need to prevent abuse with the duty to ensure at a minimum, freedom from hunger for each individual. The right to food also necessarily entails that there must be an accessible and just recourse system for individuals whose claims on transfers under a safety net system have been rejected. As a practical measure, a stronger case needs to be made for the benefits of social spending, as malnutrition may seriously hinder productivity, economic growth and development. Linking social responsibility at the community level with infrastructure projects is being explored. Debt forgiveness to enable investment in food security is also being discussed. Following a study on national legislation on the right to food, FAO is currently researching social security legislation and administrative measures in various countries, and a "best practices" study on social safety nets is to be undertaken in the autumn of 1999.

4.3 INDICATORS: FIVIMS

FAO hosts the international secretariat for the inter-agency Food Insecurity and Vulnerability Information Mapping Systems (FIVIMS) initiative, which endeavours to build a technical consensus on standards for national food security information systems and seeks to provide co-ordinated cross-donor technical and material support to these systems. The establishment of FIVIMS was called for in the World Food Summit Plan of Action.²² Information at the

²¹ This is also reflected in the World Food Summit Plan of Action Objective 2.2:

To enable food insecure households, families and individuals to meet their food and nutritional requirements and to seek to assist those who are unable to do so.

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

...

(b) Implement, where appropriate, cost-effective public works programmes for the unemployed and underemployed in regions of food insecurity;

(c) Develop within available resources well targeted social welfare and nutrition safety nets to meet the needs of the food insecure, particularly needy people, children, and the infirm.

²² Ibid., paragraph (a):

Develop and periodically update, where necessary, a national food insecurity and vulnerability information and mapping system, indicating areas and populations, including at local level, affected by or at-risk of hunger and malnutrition, and elements contributing to food insecurity, making maximum use of existing data and other information systems in order to avoid duplication of efforts;

national and global levels, about who is food insecure and why, is an essential tool for action. The indicators will be of direct use for those involved in targeting policies and support measures for the food insecure, and for those involved in monitoring success or failure in reducing the number of hungry and malnourished, at both the national and international levels, in accordance with the goals of the World Food Summit. For this purpose, FIVIMS could also generate quantitative as well as qualitative indicators of performance in respecting, protecting and fulfilling the right to food. It would thus also serve as an information bridge between different bodies, such as FAO's Committee on World Food Security (CFS) and the CESCR.

Developing the FIVIMS indicators and methodologies is a lengthy process given the current weakness of many of the national systems, which need to be addressed. The CESCR and other socio-economic rights experts should at some point be involved in the development of appropriate indicators, for instance by participating in an annual meeting of the Inter-Agency Working Group (IAWG). Although the purpose of FIVIMS is ultimately to measure the enjoyment of the right to food, it has not yet been formally on the agenda of the IAWG. One of the tasks in the near future will be to elaborate the conceptual and operational links between FIVIMS and the food-rights framework, to demonstrate the mutual benefits of cross-fertilisation.

4.4 COOPERATION WITH CESCR

The role of FAO is distinct from the role of the CESCR, which monitors the implementation of the ICESCR through State reports, information from other sources and dialogue with the State party. The CESCR may express its concerns over State performance and violations of the ICESCR. Such is not FAO's role, nor should it be. But as the primary provider of global information and technical assistance in matters related to food and agriculture, the CESCR obviously looks towards FAO for cooperation and information. In turn, FAO looks towards the CESCR, and other human rights bodies, for a better understanding of the obligations of its Member Nations related to the human right to adequate food.

At the last session of the Committee on World Food Security (CFS), in June 1999, a member of the CESCR presented the General Comment on the right to adequate food. The CFS welcomed the General Comment as an important step in implementing Objective 7.4 of the WFS Plan of Action. The CFS noted the reference to the need for UN agencies, including FAO, to provide assistance to developing countries, upon request, and noted that this assistance should draw fully on the expertise of the OHCHR. The CFS commended the collaboration between FAO and CESCR and welcomed the proposal that the cooperation between these institutions should be strengthened on a continuing basis.²³

In addition to defining rights-indicators as described in the previous section, FAO now needs to decide on the modalities of strengthened and continuing cooperation. First, how its public domain information may be shared systematically and at the relevant times with the CESCR, and secondly whether, and eventually how, other information, unpublished or confidential reports could be shared with the CESCR. Finally, FAO must consider whether to participate in pre-sessional meetings, contribute to the list of issues prepared in connection with the examination of a state report, or participate in the dialogue with the State Party. These

²³ *Report of the 25th Session of the Committee on World Food Security (CFS)*. Rome, 31 May – 3 June 1999, to the FAO Council. FAO Document No. CL 116/10.

questions need careful consideration to ensure transparency and complementarity and avoid duplication as well as possible controversies.

4.5 LEGISLATIVE FRAMEWORK

One of the recommendations in General Comment 12 on the Right to Adequate Food relates to the adoption of framework legislation for the implementation of the right to food.²⁴ FAO advocated for the idea in its publication on the right to food on the occasion of the 50th Anniversary of the Universal Declaration of Human Rights.²⁵ We believe that the adoption of such framework legislation at the national level could also be most useful as a tool for achieving the goals of the WFS. Thus, we need now to explore, as a first step, in a particular country that is interested in such an exercise, and committed to human rights and improving food security, how such legislation might be formulated and drafted with wide and meaningful participation. Donor contributions would have to be sought to help financing workshops and other preparatory work

Framework legislation would include spelling out the basic principles, identifying the relevant public and private agencies and setting up processes for progressively achieving the full realization of the right to food, as well as containing mechanisms that enable accountability. The exact content of such legislation would reflect the particularities of the situation in each country, and should be tailor made to suit its legal and administrative system. Therefore, it would seem premature at this stage to attempt to draw up a model law.

As there are many intentional agencies concerned with aspects of food security and human rights, close collaboration would be necessary between international actors, in particular FAO, WFP, IFAD, UNICEF, UNDP, the World Bank and of course the OHCHR or the CESCR. International NGOs, such as FIAN, WANHR, Global Forum for Food Security and Institut International Jacques Maritain, should also be involved, as well as academics. Participation of Governments and NGOs from other countries, to share their experiences and compare approaches would definitely be most valuable. Most crucial of all, however, is the participation and commitment of all relevant government departments, NGOs and grassroots organizations of the country in question in any legislative process.

It must be borne in mind that this has not been done yet, and that FAO does not know – yet – how exactly it might be done. Workshops would be a mutual learning exercise, rather than top-down technical advice. It may be hoped, however, that learning by doing would

²⁴ *General Comment 12*, op.cit.:

29. In implementing the country-specific strategies referred to above, States should set verifiable benchmarks for subsequent national and international monitoring. In this connection, States should consider the adoption of a *framework law* as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.

30. Appropriate United Nations programmes and agencies should assist, upon request, in drafting the framework legislation and in reviewing the sectoral legislation. FAO, for example, has considerable expertise and accumulated knowledge concerning legislation in the field of food and agriculture.

²⁵ *Right to Food in Theory and Practice*, op.cit., page 40.

eventually build up FAO ability to give sound policy and legislative advice to its Member Nations. As a by-product, the experiences would greatly enhance a general understanding of the right to food and its implications at the international level, and help more effective implementation of this right.

4.6 EMERGENCY ASPECTS

There are many layers of questions that relate to the right to food in emergencies that are still inadequately researched and considered as human rights and humanitarian law questions.

Some guidance regarding violations of the right to food in armed conflicts is to be found in international humanitarian law, both about humanitarian assistance, and other aspects. For instance in Article 14 of Protocol II to the Geneva Conventions of 1949, and relating to the protection of civilians in non-international armed conflict, which states:

Starvation of civilians as a method of combat is prohibited.

It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

The problem, of course, is that such actions may often be undertaken for strategic and military purposes, rather than with the purpose of deliberately starving civilians.

Although most of the chronic hunger in the world today is the result of poverty, inadequate policies and structural problems, direct and deliberate violations of the right to food are not unknown. Such violations are often discriminatory in nature, directed against ethnic or religious minorities and most often take place in the context of internal strife or armed conflicts and such man-made emergencies. The international community has many times proclaimed that food must never be used as a political weapon, but warfare usually entails breaking off supply lines, including for food, restricting or forcing population movements and laying of landmines, which undermines production and access to food. Requisition of food, looting and feeding of soldiers before civilians further exasperate to the problems.

The right to access of victims of conflict to humanitarian assistance, including food aid, is therefore vital to uphold. The humanitarian community, however, is often faced with deliberate lack of such access, and thus a violation of the right to food in emergencies. The right to receive national and international assistance, the duty to request international assistance in emergencies and the international duty of states to assist other countries in emergency situations, are all questions that have not been fully explored, although it would seem that most if not all developed countries do indeed regard it as at least a moral duty to render humanitarian assistance.

There are other aspects that merit consideration in a human rights framework, such as the effects of food aid on local production and local markets. And what do human rights entail for programming and planning of assistance? Is it enough to keep people fed to ensure their right to food? How can emergency assistance become rule-based, fair and empowering? For international organizations, such as FAO, WFP, UNHCR and UNICEF, which are engaged in

food assistance, there are implications regarding food quality, quantity and safety that may need to be addressed, as well as how to ensure a return to self-sufficiency.

Asbjørn Eide, Special Rapporteur on the right to food concludes in his report to the Sub-Commission on the Promotion and Protection of Human Rights²⁶ this year²⁷ that further research is needed on the emergency aspects of the right to adequate food. One cannot but agree with this conclusion. This year marking the 50th Anniversary of the Geneva Conventions, it would seem opportune to do so now.

5 CONCLUSIONS

In this article, we have given a short historical overview of FAO's past and present activities related to the right to adequate food. We have discussed some of the aspects of FAO's work where we are exploring ways and means of progressing further, but where more normative, analytical and empirical research should be undertaken in the future. Joint research with UN bodies, NGOs and academics should be envisaged, bearing in mind that FAO needs to internalise methodologies and approaches if it is to progress as an organization.

²⁶ The Sub-Commission's name was changed by ECOSOC decision of 27 July 1999; former name is Sub-Commission on Prevention of Discrimination and Protection of Minorities.

²⁷ E/CN.4/Sub.2/1999/12