

Keynote speech by  
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on the occasion of the opening of the  
Right to Food Forum  
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Mr Chair,  
Excellences,  
Ladies and Gentlemen,

What I would really like to do today is to pay homage to the work of the Right to Food Unit of the FAO.

This Unit remains a minority voice in the broad debate on food. There exists one larger voice, vociferous at times. It sees food availability as a main problem, and it sees producing more food as the solution. This is indeed the core business of the FAO. It is the core business of agronomists, and of economists whose work is to achieve the best most efficient allocation of resources in a world of scarce resources and who are trained to produce more with less – not to distribute fairly.

The voice expressed by the Right to Food defenders is distinct. This minority voice tells us that food availability may be *a* problem, sometimes, for instance following drought or floods, or in conflict situations, where food must be brought in from food surplus areas to food deficient regions. But, they add, food availability is not *the* problem: it is one of a number of potential causes which may lead to hunger and malnutrition. For the cause of hunger and malnutrition may, indeed, reside in discrimination, lack of accountability, social inequalities resulting the situation in which there are hungry and malnourished people although there is plenty of food available.

I should stress that these two views are not incompatible : there needs to be enough food for all, before we can discuss questions of accessibility and equitable distribution of resources. But neither would it be absolute right to say that are complementary to one another because, in fact, these two views are not on the same plane. I believe that one, the minority view, has a richer diagnosis to propos. It is more lucid, I believe, about the deep causes of hunger. It is also a voice which is more disquieting because it challenges the power of technocrats who see the question of hunger as a mere technical question – which seeds, how much pesticides and fertilisers, to ensure that enough is produced.

Instead, addressing the question of hunger and malnutrition from the point of view of the right to food poses the question of power: how power is distributed, and how it is exercised. No wonder then if this minority voice sometimes is derided, ignored or even repressed. I have seen this myself first hand in my exchanges with Governments and Agencies on the responses to be given to the global food crisis.

Many want more food to be produced, but forget to ask by whom and for the benefit of whom, as if more food would be automatically alleviating the fate of the hungry. This is

equivalent to saying that having more Wall-mart stores in New York would solve the problem of hunger in that city. They want to invest more in agriculture, and they are right to do so : reinvesting in agriculture, a neglected sector for so many years, is absolutely essential. But they forget to ask for which kind of agriculture: agro-industrial agriculture or one which would sustainably keep small holders in business. They want, and indeed we all would want, the prices to go down on international markets – but they forget that for many years impoverished countrysides have subsidised the cities by dumping cheap food on urban centres at the expense of the livelihood and, sometimes, the very survival of smallholders. They do not see that the real problem is not high prices but rather the insufficient purchasing power of the poor and the widening gap between farmgate prices and the prices paid by the consumer at the end of the food chain. They want more international trade. But they forget that trade all too often if not adequately regulated, has benefited only a privileged minority, has increased inequalities and the dualization of the farming sector, further marginalising family farming.

Isn't it extraordinary that 60 years after the Universal Declaration on Human Rights, those who insist on the centrality of the Right to food in the debate on Food security, those who insist on food being more than a basic need to be fulfilled by public policies, a human right that requires accountability mechanisms for its effectiveness – that these are still a minority, rebelling against the mainstream view?

The Right to Food Unit of the FAO is the vanguard of a programme of action: the programme of the defenders of the Right to Food. And this is a programme which all you in this room are part of today.

There are three components to this programme: one is broadening and strengthening the remedies available for victims of violation of the Right to Food; the second is ensuring institutional mobilization beyond courts; and the third, developing the normative content of the Right to Food.

This programme is first about improving remedies. Significant progress has been made towards justiciability – *exigibilidad* – of the Right to Food, particularly before national courts on the basis of the principles of non-discrimination, non-retrogression (understood as the prohibition to make steps backwards) and the judicial imposition of duties on public authorities, defined by national legislation. And indeed, one of the main advantages of a framework law is to define such duties in order to allow for judicial control : framework laws empower courts by making it possible for them to uphold the Right to Food without being accused of judicial law making – of 'legislating from the bench'.

This development toward the justiciability of the Right to Food shall be pursued further. I believe that the entry into force of the optional protocol to the International Covenant on Economic, Social and Cultural Rights shall very significantly impact this development percolating down to national courts.

The second component of our programme is institutional mobilization beyond courts, not only because courts will only effectively protect the Right to Food if they have the support of a broader social movement – since this is a condition of the legitimacy of courts in the long term –, but also because courts are not always well suited to protect the Right to Food, for three reasons: first, they need to receive claims, actions by victims who may face many obstacles, particularly in the absence of class action, of group action mechanisms; secondly, because courts may, at best, strike down or disapply legislation but they cannot create new

laws when the regulatory framework is deficient; thirdly, courts intervene on an *ad hoc* basis, and therefore they mostly cannot follow up on the remedies they prescribe or monitor implementation over long periods of time. Where, for example, there is a need for agrarian reform ; where there is a need for improving the organization of farmers into cooperatives ; or where marketing boards are to be re-established, courts are powerless to bring about such kind of change. Although there are a few exceptions, particularly from the Indian Supreme Court, these remain few, and will not easily be replicated in other jurisdictions.

And this is why the very promising development we are now seeing within the UN Committee on Economic, Social and Cultural Rights, with the IBSA procedure now being road-tested within the Committee upon the initiative of Eibe Riedel, the Vice-chair of the Committee, and FIAN, cannot be replicated at national level by courts. This procedure is based on the definition of indicators and benchmarks, followed by a process of scoping in dialogue between the Committee and Governments, and finally by regular assessment of progress made. Such a procedure, interesting and innovative as it is, requires a form of control which is spread over a time, which is monitoring progress made at regular intervals, something which a judicial body is mostly ill-suited to perform. Therefore, other institutions than courts need to be involved in the realization of the Right to Food.

Much emphasis has been recently on the role of Governments, the Executive branch. We insist for example on Inter-ministerial coordination, on support at the highest political level. These are amongst the lessons learned from Brazil, to borrow from the title of brochure prepared by the Right to Food Unit in 2007. But Parliaments also have a role to play. Parliaments are not simply there to legislate, by voting on the laws presented to them for approval. In mature democracies, their role is increasingly to control the Executive by ensuring participation of civil society organizations ; to debate reforms ; to request from the Government that they explain the choices they make, thereby improving transparency and accountability. Indeed, it is on this theme that I shall focus my proposals to the Inter-Parliamentary Union meeting on the global food crisis in a few days in Geneva.

National Human Rights Institutions also have a tremendously important role to fulfil. They present five advantages over courts. First, such institutions are proactive rather than simply reactive, they are proactive in that they do not depend on the vagaries of individual initiatives but can anticipate problems in order to propose solutions. Secondly, National Human Rights Institutions or Commissions have the ability to ensure the follow-up of their recommendations, and exercise pressure on governments to act upon such recommendations. Thirdly, they have greater flexibility in the remedies they can afford, both individual, for individual victims, and collective, when the problems are of a most structural nature. Fourthly, National Human Rights institutions may more easily rely on the international obligations of States which are contained in norms, which are not self-executing and which therefore courts themselves might be hesitant to take as grounds for their decisions : National Human Rights Institutions may take into account international treaties or other sources of international human rights law despite the lack of precision or clarity of the principles they rely on. Fifthly, finally, National Human Rights Institutions are ideally placed to involve civil society organizations, Non-governmental organizations in monitoring the work of the Executive branch of Government.

There is, finally, a third component of the programme of action which defenders of the Right to Food have today for themselves. This is developing the normative content of the Right to Food.

There are, I would suggest, five areas where the requirements of the Right to Food remain underdeveloped or difficult to monitor, and in which we need to make further progress. One first such area is in the management of food aid: how to improve transparency and accountability in how international food aid is being used and distributed? This is one of the main stakes in the renegotiation of the Food Aid Convention which is currently being discussed. The second area which, I believe, deserves our attention, is the place of the Right to Food in the negotiation of international agreements on trade and investment. All too often these agreements are negotiated by the Executive with little or no oversight of Parliaments and without taking into account the Right to Food. Parliaments are placed before the *fait accompli* when asked, finally, at the end of a long process of negotiation, to ratify whatever has been negotiated. At a minimum, Right to Food impact assessments should be performed on the draft proposals which are being submitted in such negotiations. A third area where more work needs to be done is in the preparation of public budgets. Again, here Government is often the sole arbiter between competing priorities – education, health, agriculture, national defence –, and Parliaments generally defer to the judgement of the Executive on this issue. Well, taking seriously the Right to Food requires obliging the Government to justify its choices, taking into account these international obligations imposed on Governments.

In these three areas, for a variety of reasons, Governments are under very little, if any, scrutiny by the national Parliaments or civil society organizations. And the challenge, I think, is how to implement in these fields – food aid, trade and investment, international agreements and the formation of public budgets – what has been referred to as the ‘*panther*’ requirements, an acronym forged by the Right to Food Unit which refers to the values of participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law. Well, should we, for example, insist on food aid being distributed in accordance with the legislation describing how to map the needs of the hungry in order to ensure adequate targeting? Should we impose impact assessments on the risks to the local agriculture producers in the distribution of food aid? Should we impose that a predefined percentage of the public budgets be earmarked as agriculture or, even more specifically, to support family farming? These are challenging questions which, I think, are posed to us in these three areas of food aid, trade and investment and public budgets.

But we encounter the same kind of difficulty in two other areas. The fourth area is in controlling the role of international organizations, including – but not limited to – international financial institutions. Should we insist on the member states of these organizations exercising a due diligence control on how these organizations operate? Do they comply with the Right to Food and should the member states be the guardians of how they do this? Or, should, instead direct obligations be imposed on such international obligations under general international law? Or, perhaps, should they be imposed obligations to protect and fulfil the Right to Food within their mandate? If we choose this second route, then how to ensure participation, transparency and decision making within these organizations? How to reconcile this with the principle of specialty of international organizations, principle according to which they may only adopt measures which are within the mandates they have been given?

Finally, in a fifth and last area the question is not only how the Right to Food can be implemented but also what it means, which obligations it impose. And the fifth area is the responsibility of private actors in implementing the Right to Food – providers of inputs to agriculture, food processors and traders, and food retailers. There is, I believe, an urgent need

to clarify what it means precisely for these actors to respect the Right to Food and therefore, which measures, the State should take in order to adequately regulate the behaviour of the very influential and increasingly concentrated private actors in the food sector. I intend to convene a consultation on this issue in Berlin, in June 2009, in order to examine this issue in further detail.

I would like to close with this and thank you for your attention. I do look forward to our work together. Thank you.