







The Right to Food:
A Resource Manual for NGOs

Written by
Rolf Künnemann & Sandra Epal-Ratjen

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Foreward

It gives me great pleasure to introduce this important Manual on the Right to Food. This most useful study comes at the right time; it concentrates on the human rights dimension of food security issues and does so with remarkable in-depth analysis. As the introduction rightly points out, food surpluses coexist with continued hunger and malnutrition, often at the same time. It is not the availability of food, but access to food for the vulnerable and disadvantaged people who lack it that is the real issue. The authors, in nine perceptive chapters, look at these problems in remarkably clear language and manage to address the complex inter-relationships of the various dimensions of the right to food.

The Manual sets out with an analysis of hunger and famine, then takes the victims' perspective on food issues, relating them to the right to food. With great conceptual clarity, the linkage to human rights concepts and how to use international and domestic law to realize the human right to food is also addressed in detail. In so doing, very good case examples are provided which highlight the normative content of the right to food in various legal orders. Relevant chapters on the adequacy and access to food and on operationalizing the right to food follow. In chapter nine, addressing the challenge for the full realization of the right to food, the authors outline the roles of the various actors involved in the process of mainstreaming human rights in food policies, strategies and laws. The analysis of actors includes a short overview of the WTO Agreement on Agriculture and on the genetic resources provisions of the TRIPS. A very useful glossary of definitions and explanations for further clarification is added at the end and should facilitate the work of practitioners in the field, particularly of NGOs focusing on right to food problems. As the Voluntary Guidelines on the Right to Food and Food Security at the Domestic Level have just been adopted, the background information on key issues of the right to food debate provided in this Manual comes at a most opportune moment. The Manual deserves wide distribution and should be consulted by States, Non-State Actors, academics, and anyone interested in the burning issues of food, hunger and poverty reduction.

Eibe Riedel
Vice-Chairperson,
UN Committee on Economic, Social and Cultural Rights

0. Introduction

The right to adequate food is a human right just like any other human right. These words exist on paper but the guarantee they represent has not yet made a real difference in the lives of millions of hungry and oppressed people.

Availability of food is not the issue. Food surpluses coexist with hunger and malnutrition—even in the same country. It is not the availability of food, but access to food for the vulnerable and deprived people who lack it that is the real issue. People are deprived of food,

- because they have no opportunity to produce it,
- because they cannot earn a sufficient income to buy the food they need, or
- because they are unable to work at all.

Lack of access to food is almost never the result of a general scarcity of food. It results instead because people are deprived of access to food-producing resources and income as a result of their marginalization. Our planet contains enough food and food-producing resources to enable all of us to feed ourselves, now and in the future. Access to these resources is an issue of social and economic rights.

Human rights are not realised as a result of quoting them. They need to be operationalised in terms of obligations and remedies for victims of violations. Considerable progress has been made in this direction during the past two decades. This manual assesses past achievements, current perspectives and future challenges. It should be read as an invitation and guidebook for building on the achievements, contributing to the perspectives and taking up the challenges.

0.1 Still Hungry After All These Years?

The Food and Agricultural Organization (FAO) of the United Nations estimates that 826 million people suffer from hunger and malnutrition and many millions more are threatened by it. Figures like these have been around for a long time, and have been used (and misused) to promote "development" and economic growth as a solution—at a tremendous ecological cost. Development and growth have primarily served purposes other than feeding people, while the number of hungry and marginalised people has not decreased significantly.

Many people and most governments claim that increased growth is needed to satisfy the basic needs of the poor, and they dream of 10 percent growth in the global economy. But economic growth by itself can be deceptive. What is the effect of $100 of growth in the current global economy? Where does it go? The richest 20 percent pocket more than $83, and the poorest 20%, the ones who are malnourished and in desperate need of food, see less than $1.40.[1] The impact of this growth on the cash income of the poor is marginal. The impact of this growth on hunger and malnutrition adds other dimensions to the story. Producing an additional $83 in value for the rich often brings with it a range of negative effects, but it does not reduce hunger and malnutrition at all. In fact, hunger and malnutrition may increase as a result of economic growth, if poor people lose access to their land and the other resources they need to grow their own food. Outcomes that appear less quantifiable may bring with them psychic as well as economic harm: using up irreplaceable resources, tearing the social fabric of a community, upsetting the fragile balance of an ecosystem, or destroying the beauty and harmony of the world we live in. Most of the poor live in rural areas. More often than not they are the victims of economic growth, not its beneficiaries. Growth is important to the poor, but it must be defined in a new way—in a way that is consistent with human rights. Growth that benefits poor people will not come about through continued operation of the rules of the same economic system that continually marginalized them.

It is absurd to claim that the rich deserve an additional $83 in order to increase the monetary income of the poor by $1.40. That claim is put forward principally by the comparatively small number of the rich themselves, who tend to define success in financial terms, at the expense of factors such as loss of community, social disintegration and isolation, rising crime and environmental degradation, loss of biodiversity, and a climate of accumulating fear, which are the frequent accompaniment to a world that devalues human rights. Although most of the world's

1 UNDP, Human Development Report (1992) 34–36

wealth is concentrated in the developed countries of the North, this wealth is not evenly distributed and there are many poor people living in the North. Similarly, the wealthy elites living in the developing countries of the South have much in common with their counterparts in the North. People in the North, and especially the poor, are themselves victims of an oppressive food system, which is described more fully below. Growing food is a good thing—if it occurs on the fields of poor people. Growing food is a good thing—if the food produced is healthy and remains healthy on the way to the consumer, and if it is produced in a sustainable manner that safeguards the resources of future generations.

Population growth complicates the food situation considerably. Without population growth the number of poor people would be much lower. It is nevertheless a mistake to point to population growth as the main cause of hunger and malnutrition. Population growth per se does not preclude organising food systems in a way that will eradicate hunger and malnutrition. Failure to reduce the rate of population growth is itself a consequence of denying economic and social rights to the poor, and especially to poor women.

0.2 The Northern Side of Malnutrition

The World Health Organization (WHO) estimates that 1.1 billion people are chronically malnourished. WHO estimates the number of malnourished people at roughly three billion. For the first time in history there are slightly more fat people in the world than hungry and malnourished people. The remaining one billion malnourished people suffer micro-nutrient deficiencies (only). Food produced by Northern corporate agriculture has increased in volume, but decreased in quality, and its nutrient content has declined dramatically. Eating habits, aggressively propagated by agribusiness and food corporations—along with an unhealthy way of life, have greatly contributed to the problem of obesity. The overreliance on pesticides and other toxic chemicals in agriculture, combined with other types of ecological destruction, is responsible for the declining nutrient content: Food must be adequate, not just sweet, attractive looking and easy to prepare. What adequacy of food means is explained more fully in chapter 5, section C.2.

In the North as well as the South, lack of access to adequate food is related to poverty. In France, a study carried out by the Fondation pour le Progrès de l´Homme (1998) revealed the difficulties faced by a growing number of poor families in trying to secure access to healthy food. All too often in Northern societies, being poor implies an unbalanced and deficient diet. In the United States, approximately 10 percent of households face forms of food insecurity (including hunger). The poor are the first victims of malnutrition and its related diseases. Rich people have the means to purchase good quality food and they have a much greater awareness of the importance of a balanced life and diet.

Obesity in the United States, for instance, is increasingly a problem among low income minority populations. Obesity rates are 50 percent higher among African Americans and Latinos than among people of European descent. Impoverished sectors of the population are particularly affected by changed eating patterns resulting from financial constraints and lack of education. These include increased consumption of fast food and other high fat foods, sweets and soft drinks, and a correspondingly low consumption of fresh vegetables and fruits. This trend appears to prevail not only in the North but increasingly in the South as well.

0.3 Still Free in One's Own Country? Food and Economic Power

The food system is a global business that generates large profits and wields considerable political power. Governments have not been very active in halting these negative trends. On the contrary: Some government authorities have functioned as door openers for Northern corporations, which has been easy to do under World Trade Organization (WTO) regulations. These trends have been identified as a threat to human rights in both the North and the South by the UN human rights system.[2]

2 In its resolution 1999/8, the UN Sub-Commission on the Promotion and Protection of Human Rights decided to appoint two special rapporteurs to prepare a study on Globalization and its impact on the full enjoyment of all human rights. The first reports appeal to reform trade law for a better compliance with human rights standards. Reports to be found under www.unhchr.org, ref : UN Doc. E/CN.4/Sub.2/2000/13 and E/CN.4/Sub.2/2001/10.

The need for responsible global governance is inseparable from the issue of local and national governance. People look increasingly to human rights as a democratic tool to promote international and national legal systems that will be capable of coping with these challenges. In this context economic and social human rights—including the right to food—have emerged during the past 15 years after a history of marginalization, including marginalization within the human rights community itself.

The human right to freedom from hunger has been termed a fundamental right in international law. What could be more fundamental in any legal system than guaranteeing that each member of every society has her or his access to food and water in dignity respected, protected and fulfilled by the society in which he or she lives? The economic activities of society (global and local) must be encompassed within this legal framework. If not, there is little point in talking about freedom and democracy.

Recognition of the right to food has developed primarily around the most obvious and pressing deprivation: hunger and malnutrition. In the context of this manual hunger refers to an insufficient intake of food. Often hunger does not reach the level of actual starvation that will attract the attention of the news media. Hunger is often invisible. It occurs in situations in which people suffer the consequences of an insufficient intake of food energy and proteins over a longer period of time.

Malnutrition, on the other hand, implies not so much the quantitative, but the qualitative dimension of food intake. The World Health Organization characterizes malnutrition as a number of diseases, each with a specific cause related to one or more nutrients (for example, protein, iodine or calcium) and characterised by an imbalance at the cellular level between the supply of nutrients and energy on the one hand, and the body's demand for them to ensure growth, maintenance, and to carry out specific functions, on the other.

According to WHO, “malnutrition in its many forms persists in virtually all countries of the world in spite of a general improvement in food supplies and health conditions, and the increased availability of educational and social services.”[3]

Malnutrition leads to disease, weakness, disability or death. It is a powerful impediment to personal and family development. Malnutrition destroys lives and hopes for a better future for the next generation. Chronic hunger and malnutrition lead to early death and numerous diseases, which almost invariably entail serious disability. Every year, tens of millions of seriously undernourished mothers give birth to tens of millions of seriously affected babies.

Although statistically speaking, people may simply require a sufficient number of nutritionally balanced calories, real people also require dignity. They need both food and freedom. Real people want to be viewed as individuals in community and not simply, for example, as one among millions of malnourished mothers. They have a personal history, which quite often entails first-hand experience of exclusion and destruction. Indeed, adequate food is not simply a matter of ingesting sufficient nutrients. Food has cultural, social, economic and political dimensions, as well as the very important dimension of the pleasure of eating. People in statistical or abstract and idealized economic systems need only ingest sufficient calories, proteins, vitamins, etc. They just need a certain “intake” of food. But for real human beings the quality of the access to food is what always counts. The means and manner of access to food deeply affect one’s quality of life and cultural expression. Dignity is a crucial component of all our rights.

People may find themselves entirely at the mercy of others in obtaining their food. This is true of prisoners in most countries. People may have to break the law and risk death in order to have food, as is true of street children in Brazil. People may have to work for their food under conditions approximating slavery, as bonded labourers in India do. People may have to defend the land that nourishes them against landgrabbing by landlords or corporations or against an agricultural policy that is driving them into hunger and misery. People may have to defend livelihoods dependent on wage-labour against lay-offs, starvation wages and intolerable working conditions. People may have to rely on a good enabling and social security systems as protection against unemployment, sickness or old age.

3 Fact Sheet Nr.119, November 1996 of the World Health Organisation on Child Malnutrition. To be found under http://www.who.int/inffs/en/fact119.html

0.4 The Manual on the Right to Food: An Overview of Its Purpose and Structure

This manual on the right to food offers a step-by-step introduction to the right to food as a human right. It provides concepts that can be applied for analysis and action, as well as numerous examples and case studies, many of them taken from the work of FIAN International, the human rights organisation for the right to feed oneself. The Manual provides readers with strategies to strengthen the human right to food and with resources they can use in working for its realisation.

The Manual is designed to be a useful tool for local and national NGOs, national institutions, and perhaps even governments and intergovernmental organizations. It is dedicated to all human rights activists in the world, both non-governmental and governmental, who have made the human right to food their cause.

The material is organised so that chapters and sections can be read independently of one another, and the chapters follow a logical step-by-step progression. Cross-referencing and the index in the back of the manual should help to answer questions that remain unclear in a particular chapter.

Chapter 1 describes in detail the normative content of the right to adequate food and what every human being is entitled to under the right to food.

Chapter 2 takes a step back and provides examples of food-related oppression. Because human rights are first of all safeguards against oppression, a useful starting point for thinking about food as a human right is food-related oppression.

Chapter 3 introduces the key concepts of human rights in general and of the right to food in particular as a human right. Among these key concepts are states' obligations, violations, crimes and justiciability.

Chapter 4 introduces some basic features of international law—an increasingly important area of the law, which is developing quickly. Chapter 4 then examines the right to food in international law and explains the importance of relying on international law when promoting, protecting and realising the right to food.

Chapter 5 presents in detail states' obligations and violations of the right to food and presents a variety of case studies, most of them taken from FIAN's work. The interpretation relies on international law as much as possible. Often, however, legal interpretations are not available for cases involving economic and social rights because the rights have not yet been tested in court. Human rights advocates often must rely on their own judgement in deciding whether to pursue a legal strategy.

Chapter 6 reviews other human rights related to the right to food. Invoking other human rights can be an effective strategy for addressing (and redressing) specific situations involving violations.

Chapter 7 provides strategies for action to strengthen the right to food as a human right. Because examples throughout the manual have presented ways to promote realisation of the human right to food, the focus in Chapter 7 is on casework against current or threatened violations.

Chapter 8 identifies challenges to the future development of the right to food, principally the urgent need to mainstream the right to food, and the challenges provided by globalisation and need to create sustainable economies.

The Annex contains a compilation of international legal materials on the right to food.

The purpose of this manual is to give readers a sound understanding of the right to adequate food and how they can make good use of a human rights approach in their work. As is generally true of handbooks, some technical information and vocabulary is unavoidable if the manual is to be effective. Nevertheless, the authors hope that they have also managed to convey some of the meaning and spirit of food as a human right.

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Chapter 1 *Food:* Between Obsession and Oppression

1.1 Food Satisfies More than Hunger

Our days have ups and downs, and often our moods are affected by our food intake. How nice we feel after a good meal—peaceful, a bit sleepy, perhaps. Satisfied. And how cranky we can get when our stomachs are empty. We are not only crabby, but feel dizzy. Unfit to concentrate on our business. Unable to function properly. Where is the chocolate that will keep me going? Where are my potato chips? I cannot wait until the next meal. Do you have regular meals with your family and/or friends? Some of us have given up regular meals with others altogether. We help ourselves from the refrigerator or microwave when we feel hungry.

Taking food together has always been a strong expression of community. Eating together sometimes carries a stronger cultural meaning than having sex. In India a high caste man can have sex with a low caste woman (even a so-called "untouchable" woman below the caste hierarchy), but he would never eat with her. In Burma a man and a woman who regularly ate together were taken to be a couple—and in the past they had to marry. In Madagascar guests would be admitted to stay overnight in the bedroom together with a married couple, and the woman would not feel self-conscious about getting undressed in front of the guest. A guest interrupting the couple's meal, however, would be cause for shame.[4]

In Western cultures, family meals have been standard for the past several centuries: Meals would be taken together by the extended family on the farm or in the workshop, and this would include senior farm workers and other employees. In general, however, and at other times and in other places, such family meals have been the exception. In Africa, India, China and Europe, men would eat by themselves; women and children would eat afterwards or somewhere else. The Bemba of South Africa make an especially honoured guest eat alone. Giving an elder uncle a basket of food, which he eats behind closed doors, means treating him like a chief. An African chief eats alone; he is the owner of the food. European "chiefs" had similar habits. When Charlemagne, the 8th century founder of the Franco-German Empire took food, he was served by the kings and princes of subject peoples. When he had finished, the kings and princes would eat, served by the counts and other high dignitaries. Once they had finished, it was the turn of the knights and guards, and then the servants of the knights, and then the servants of these servants, who were finally able to eat around midnight. Thus, food customs are symbols of hierarchy and power.

Box 1: Here is the menu of a working class family X (husband, wife, and four small children) in southern London in 1913:

Sunday
Breakfast: Loaf of bread, 30 grams of butter, 15 grams of tea, canned milk for twopence, sugar for half a penny. A smoked herring for Mr. X.

Lunch: Chopped beef, pudding, vegetables and potatoes

Dinner: Same as breakfast, but with shrimp instead of a smoked herring for Mr. X.

Monday
Breakfast: same as Sunday. Some cold meat for Mr. X.

Lunch: Cold leftovers from Sunday, with pickles.

Dinner: Loaf of bread, marmalade, tea. Two eggs for Mr. X.

Tuesday
Breakfast: Loaf of bread, 30 grams of butter, cocoa for twopence. A smoked herring for Mr. X.

Lunch: A slice of bread with lard, cheese and tomatoes.

Dinner: Loaf of bread, marmalade and tea. Fish and chips for Mr. X.

4 These observations and the ones in the following paragraphs are documented in G.v.PACZENSKY, A.DÜNNEBIER, Kulturgeschichte des Essens und Trinkens (1994)

The special treatment of Mr. X (Box 1) consisted mainly of access to protein-rich food. Everywhere in the world women eat less meat than men. Meat is a male prerogative. Even the preparation of meat has been considered a male activity: While women prepare the rest of the meal, men often prepare—and eat—the meat. What is the reason for this? Some people claim that the distribution of labour between hunting and gathering was by gender: Men would go out to hunt while women tended the house, garden and crops. However, we are not sure about this basic division of labour, because of cases like the "hunter of Barum", a Stone Age skeleton found in Sweden with a spear and a knife. This example appeared to prove the theory—until it turned out, upon closer investigation of the skeleton, that the hunter was a woman who had already given birth several times.

Meat is a symbol of strength and power, and a status food. It is the preferred food of the gods, as sacrifices from ancient times tell us. In ancient Greece meat was eaten primarily at public and private sacrificial feasts. The immortals would become a small part of the sacrificed animal; the rest was for mortals. Because women were excluded from most of these sacrifices, it was the men who ended up with the meat. Women had their own sacrifices to the goddess Demeter, consisting of corn, figs, oil, honey and cheese.[5]

Sacrificial feasts were religious meals. Food has always had deep religious and spiritual meaning. Many religions have taboos linked to food: no pork for Muslims and Jews, no meat for high caste Hindus, in particular no beef. Most religions provide for periodic fasting. The Last Supper in Christianity and the Jewish Passover meal can be understood as somewhat abstract forms of sacrificial meals, with a strong social function. Meals like Thanksgiving in the United States express the understanding that food is a gift of Nature and that it should be shared within the larger family in a spirit of gratitude to the Divine Creator.

1.2 From Spicy Colonialism to Globalisation

As we all know, eating is a very pleasurable experience, and food can be delicious. We crave the newest new thing, and many cultures and people have created a cult around food and cooking. Mealtimes in France may consist of a seemingly endless sequence of courses. The French often do not end until midnight, even when Charlemagne does not eat first. People enjoy "eating like God in France", as the expression goes. Eating delicious and extraordinary food has become a cultural obsession—or a privilege of the upper classes. In Europe, the opulence of the aristocracy in its heyday led the way, and subsequent generations of the nouveaux riches have followed suit. Rich food is a status symbol for the rich. Although these countries also have experienced famines and chronic malnutrition, they are the province of the poor.

The desire to control the spice trade with Asia was one of the triggers for European colonialism: From the 8th century onwards, trade routes overland between Europe and India were controlled by the Muslim empires, which made a handsome profit on the trade. After the Crusades failed to conquer the Muslim empires, Europeans were forced to find other ways to pocket these profits for themselves. They tried to find a sea route to India in order to enter (and then control) the spice trade. By sailing around Africa, Portuguese soldiers managed to snatch the spice trade out of the hands of Arab traders. One famously unsuccessful attempt to find a shorter alternative to the long trip around Africa led to the European "discovery" of America. Trading posts were established in America, Africa, and Asia. Local economies were turned into colonies, geared to serving European tastes, stomachs and interests. The United States, originally a colony itself, managed to free itself from the British Crown, eventually finding common cause with the quarrelling group of European imperialist powers, which was later joined by Japan as well. For simplicity's sake this group of countries is often referred to as "the North", and the former colonies are termed "the South", corresponding roughly (and imperfectly) to geographic location. Even today two thirds of all exports from the former colonial countries go to the North (25 percent to the US, 22 percent to the European Union, and 19 percent to Japan).

Newly "discovered" foods from the South became status symbols in Europe, including coffee, tea, cocoa, sugar, shrimp, and tropical fruits such as pineapples, papayas, mangos, and bananas. What happened to the peasants who used to grow their own food on land now used to grow food for export? Did they benefit from such trade? Often they lose their land. It is taken from them or they are forced to sell it, and they join the ranks of the poor and

5 G.v.PACZENSKY, A.DÜNNEBIER, Kulturgeschichte des Essens und Trinkens (1994),p.263

destitute looking for work elsewhere. Jobs processing the products grown on the land they used to cultivate are almost never available. Northern markets are open to raw materials, but not to processed products. The strong Northern economies protect their markets against exports from the weak southern economies. Although Northern countries may levy an import tax of one per cent on raw sugar from the South, the tax for refined and packed sugar is 20 percent. Raw coffee carries a tax of 9 per cent (in the European Union), instant coffee of 18 per cent (EU) and 20.5 per cent (Japan): This excludes the South from the profits and jobs related to processing its products (see Box 2). Export of "colonial food products" account for much of Southern export earnings (see Box 3).

Box 2

Import tax levied on imports by	**EU**	**Japan**
Tea, leaves	0	12.5
Tea, packed	5	20
Tea, extract	12	17.3
Cocoa, beans	3	0
Cocoa, butter	12	2.5
Cocoa, powder	16	21.5
Spices, raw	7.5	1.2
Spices, ground and processed	11.8	6.6

Box 3

Percentage of export earnings:

Coffee:		**Cocoa/Tea**	
Uganda	95	Ghana	59
Burundi	87	Sri Lanka	35
Ethiopia	66	Malawi	20
El Salvador	60		
Colombia	51	**Sugar**	
Tanzania	40	Cuba	80
Nicaragua	36	Dominica	30
Guatemala	32		
Kenya	30	**Fish and Shrimp**	
		Mozambique	43
Fruit		Mauritania	42
Honduras	34	Senegal	32
Costa Rica	27	Panama	23
Panama	26		

Source: G.v.PACZENSKY, A.DÜNNEBIER, Kulturgeschichte des Essens und Trinkens (1994),p.456

It should be the other way round. Weak economies should be allowed to protect their infant industries, and strong economies should open their markets to help the weaker economies to grow stronger. There has been a lot of talk recently in the context of the World Trade Organization about eliminating import tax subsidies altogether ("trade

liberalisation"). The aim of this move, which is promoted primarily by the North, is to open Southern economies to Northern exports and transnational corporations. This could lead to recolonisation: the end of self-governed economic development in the South, with severe effects on Southern economies. In return, the North has announced that it will open its own markets to the South. Thus far, this has largely remained an announcement, while the South has been pressurised through structural adjustment programs to "liberalise".

The large majority of rural people are peasants, who traditionally have been able to grow their own food. Peasants continue to lose their lands and livelihoods in the process of their countries' economic adjustment to Northern food demands. Southern agriculture becomes increasingly modernised, concentrated in the hands of fewer and fewer landlords and agribusiness corporations. The displaced peasants are not able to find jobs in the rural areas, for the reasons already described. It is therefore not surprising that the large majority of the hungry and malnourished can be found in the rural areas of the South. These are the very regions where status food is grown, for the North and for the rich.

Status food has status, not because it is healthy, but because it is (or once was) uncommon and fashionable. Habits from yesterday, which once seemed strange, like the aristocracy's fondness for meat, over time become commonplace. At the same time that poverty and misery exist in rural China, Chinese meat consumption is soaring. In the past, meat was produced in pastures or back yards, where pigs and goats used to eat table scraps and other leftovers. Nowadays, cattle are kept in feedlots and fed on grain, thereby benefiting agribusinesses in the United States and Europe, which are guilty of chronic overproduction. More than one third of world grain production is fed to animals to produce steak and chicken for the affluent. That would be more than enough grain to feed two billion poor people. About one billion of the poor are currently malnourished. The malnourished poor are, however, outnumbered by overweight people—globally and sometimes in the same country. It should be obvious that hunger and undernutrition do not result from a general lack of food, even if agribusinesses would like us to believe that.

Agricultural export production in the South exacts a high toll in land resources, in terms of the acreage it uses and the erosion it causes. Soil erosion is, for all practical purposes, an irreversible form of ecodestruction. It takes hundreds of years to generate a layer of new topsoil two to three centimeters thick. The demand on agricultural lands from food consumption in Germany, for example, is 30 per cent greater than the amount of available arable land. Thirty percent of the land producing food for German tables (and 70 per cent of the erosion caused by this production) is located in the South, some of it in rural areas where people suffer from malnutrition. There is no reason to believe that these figures are significantly different in other Northern countries.

Erosion and many of the other forms of ecodestruction linked to food production are a consequence of using inappropriate agribusiness methods instead of sustainable agriculture. Instead of promoting agricultural development that improves and refines sustainable methods that vulnerable farmers can use to feed themselves and their families, and produce some extra food for export, Southern agriculture is under threat of a take-over by Northern agribusiness targeting the global market. Agribusiness has been increasingly criticised in the North for the related ecological destruction and health hazards. Another detrimental effect, however, is its displacement of farmers and farm workers. This process is almost complete in the North, and it has started to proliferate in the South. The strong economies in the North have been able to provide new opportunities for the farmers and farm workers displaced by agribusiness. In the weak economies of the South most of the time there are no alternatives. With no unemployment schemes or social security in place in their countries, Southern agricultural workers face abject poverty and malnutrition.

1.3 Hunger and Famine: Beyond Statistics

When hunger reaches the stage of famine, it is often well publicised. We are moved by the images on television of tiny starving babies in the arms of mothers with empty breasts and bones showing under their skin, or old people who look like skeletons. They are victims of war or other disasters that disrupt the social and economic fabric. Amartya Sen, the Indian economist and Nobel laureate, examined major famines of the past 100 years and concluded that even in times of famine sufficient food was generally available in the affected regions, but

vulnerable people did not have access to it.[6] Food in government granaries or in distant markets will not help the starving if they cannot reach it. If Sen is right, food aid, which typically means importing food from the North, is an inappropriate reaction to famine. If there is enough food in the area, it should be purchased in the region, perhaps in a neighbouring country, and distributed to the people who are starving. This would also save a lot of precious time. Northern grain surpluses, however, are exported not only in emergencies, but even during normal times. This can be seen as a form of dumping: trying to penetrate markets for future grain exports from the European Union or North America, as the case may be. African agriculture suffers when these two highly subsidised competitors struggle over their markets. African peasants cannot compete, and often lose their markets, have to give up farming and join the ranks of the destitute. There is an African saying: "When two elephants fight, it is the grass that suffers".

Less dramatic than the "black hunger" caused by famines is the chronic and widespread "white hunger", which may be even more damaging because of the large numbers affected by it. "White hunger" refers to widespread malnutrition among the rural population, including those who have moved to the urban slums because they could not survive in the rural areas. Their inadequate intake of food is the result of poverty. They lack land and other inputs needed to produce food and they lack the money they need to buy food.

Malnutrition often announces itself to us in the form of statistics. The United Nations Food and Agriculture Organization (FAO) estimates that there are currently 792 million malnourished people in the South. Details are provided in the following illustration box:

Box 4:

Number of malnourished people in 1998, as estimated by the FAO:

Region	Number (in millions)	Percentage of population
South Asia	294	23
Sub-Saharan Africa	186	34
East Asia	155	12
Latin America/Caribbean.	55	11
Near East / North Africa	36	10

Source: FAO, Committee on World Food Security 2001/2, Y0147/E

The FAO estimates are routinely cited in the media. They became the basis of the commitment by the community of states at the 1996 World Food Summit to halve the number of malnourished by the year 2015, a goal that is likely to be missed by a wide margin, if current policies continue. FAO calculations are based on estimates of per capita availability of food (converted to calories) in individual countries. The estimated distribution of available calories across households is derived from household food surveys. The FAO uses a norm for the minimum per-person calorie requirement of an average household. Households below that norm are classified as malnourished. The FAO approach is based on food availability and household surveys. However, as we have seen, food availability is not a reliable indicator for malnutrition. Hence, the estimates depend upon the household food surveys, which supposedly reflect the distribution of calories within the household. The FAO method, nevertheless, conveniently squares with a fundamental tenet of many within the FAO: that the solution consists of increasing food production, and hence more agribusiness.

A more straightforward approach to estimating malnutrition, of course, is simply to look for its obvious signs: low weight for height, for example, or other body measurements. It is disconcerting to note that such direct measurements do not agree with the FAO estimates. Based on physical signs, 49 percent of women in South Asia,

6 K. SEN AMARTYA, Poverty and Famines : An Essay on Entitlement and Deprivation (1981)

but only 11 percent of women in Africa, are malnourished. In South Asia, children also show a larger incidence of malnutrition based on direct measurement than children in Africa, while FAO estimates point to the opposite.

Focusing on the accuracy of the numbers may strike some readers as misplaced when millions of malnourished people are suffering and dying. Malnutrition is experienced by individuals or within communities. We have seen how oppressive some of the experiences of malnutrition are. Any serious attempt to improve the situation must take account of this reality. But even these simple statistics can contribute to sound policymaking. Currently, however, the community of states would not know where to put the priority: whether on Africa, as FAO estimates would suggest, or on South Asia, as direct measurements would indicate. Establishing priorities may sound superfluous, and perhaps even callous, as immediate action is necessary in all situations of hunger and malnutrition.

1.4 What Needs to Be Done?

Would taking more energetic measures to reduce population growth be a solution? The 1994 UN Conference on Population in Cairo agreed to stabilize human population at 7.8 million by 2050. According to current estimates of the UN Population Fund[7] world population is expected to reach 9 billion by 2054. Population will stabilize somewhere around 12 billions (according to the medium UN population predictions) sometime in the 22nd century. Even a population this large would be able to feed itself, if reforms leading to sustainability in agriculture, in our economic way of life and in our consumption patterns are undertaken soon. If not, current trends in climate change, for example, would lead to increases in hunger and malnutrition in a few decades. A faster drop in the rate of population growth as agreed in 1994 in Cairo would be very necessary. A smaller population would have higher incomes and slightly lower food prices.

Is producing more food the answer? This sounds like a good idea, especially since a growing world population will need more food. This is the solution promoted by agribusiness, which wants to promote biotechnology. More food can also be produced by means of sustainable agriculture, with the additional benefit that sustainable agriculture is viable and labour intensive. This is important for rural economies with excess labour. Increasing the quantity of food helps the malnourished only if the food is accessible to them: if it grows on their fields or they have the means to purchase or otherwise acquire it. If more food were simply made available on the world market, without other changes, the increase would be absorbed into the system. Food markets respond to increased supplies with decreased profits. Traders and governments would adapt to reduce supplies on the market and keep prices high, with negligible benefits for poor consumers in poor countries.

What about reducing meat production in the North to free up resources for the South? In general this is a good idea. If everything else remained constant, however, the impact on the hungry would be insignificant. If resource-intensive meat production decreases, any corresponding increase in the production of other types of food would simply be absorbed into the market if no other changes are made to direct food to the poor.

What about reducing Northern agricultural production and opening Northern borders for agricultural imports from the South? Will that work? Decreasing Northern food production will increase world market prices, leading to increased opportunities for Southern exporters. Domestic agricultural prices in the South would rise, thus stimulating agricultural production there. In the long run this would benefit the hungry. In the medium term, however, hunger and malnutrition would likely increase. Food would first become more expensive for the poor, until they gain additional purchasing power. The medium term could last 15 years or longer.

It can be seen that solutions that attempt to address hunger through market mechanisms, whether by increasing the food supply on the world market or agricultural production in the South, do not work well enough. It should be obvious:

1. That vulnerable people's livelihoods must not be destroyed, even if this destruction is "justified" by "larger national interests" or "development". Experience has shown that such destruction is not easily reversed.

7 www.unfpa.org/swp/1999/chapter2d

2. That purchasing power and resources must be transferred to the malnourished, so that they can buy food or produce it for themselves.

Both requirements conflict with powerful interests, on the local, national and international levels. How can the undernourished be empowered to face these realities successfully? How can we help them?

Food is both an expression and an instrument of power. Hunger can be a symptom of oppression. Economic oppression begins in the minds of the oppressor and ends in the minds of the oppressed, when they can no longer imagine a different world and may even reject their own liberation.

Oppression can be found, for example, in the notion that human life should be governed by markets. It begins with the idea that humans relate to each other "efficiently" only through markets: That a human being is basically an "owner" of capital or labour. People are defined by their function in markets. Workers are reduced to functioning as adjuncts to their labour power and productivity. They establish their value through their own productivity. In this context, human dignity, the value of social and cultural life, and people's control over their lives are swallowed up by commercialisation.

Freedom is the absence of oppression. Human rights secure a realm of freedom which transcends markets. They pave the way into a future that offers both food and freedom.

The first and foremost duty imposed by a human rights approach to food is not to collect statistics, but to become involved in helping suffering and struggling people to defend their livelihoods or gain access to the resources and income they need to feed themselves. Human rights work is case work.

This book is a manual on the right to food. Its purpose is to equip its readers to work effectively and well toward realisation of the right to food.

Some of the things you will learn in subsequent chapters of this manual are the following:

How to recognize oppression and its victims.

How to recognize violations of the right to food.

How to develop and maintain a clear focus on human rights concepts, in order to protect the right to food against tendencies to dull its cutting edge.

How to use international and national law on behalf of the right to food.

This manual concludes with a summary of strategies and an overview of the challenges ahead of us.

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Chapter 2 Putting vulnerable people first

Vulnerable people in the present context are people who are at high risk of being (or becoming) a victim of food-related oppression. People who are marginalised for whatever reason face injustice every day, yet they are less likely have their rights respected than other groups in society, and they are much more deeply affected by the impact of violations. They lack the financial and other resources to correct the situation caused by the violation or to survive the waiting period before they can receive compensation or rehabilitation.

Vulnerability to oppression is often directly linked to discrimination. Indeed, vulnerable groups can be thought of as those population groups who do not have the same opportunities as the rest of the society. All too often, economic, political or social discrimination is linked to unequal access to food and food producing resources.

2.1 Vulnerability as a Result of Poverty

In countries of the North, as in the South, poor people are vulnerable to food-related oppression. Life in poverty is a common fact of life for all the vulnerable groups described in the following sections, and poverty is of course the foremost cause of malnutrition and hunger.

2.1.1 Focus on the Poor

> *"Poverty for me is the fact that we bought some black flour with our last money, some flour cheaper than the rest. When we baked the bread it was not edible. We were speechless and forced ourselves to eat it since we did not have anything else".* *A poor person from Macedonia.*[8]

Poverty is defined as a shortage or lack of resources. The resources may vary but they include necessities of life such as food, education, health facilities, land, and capital. Generally, poverty is measured on the basis of income or consumption level. A person is considered poor if her consumption or income level falls below a certain "poverty line". The poverty line can be defined in relation to the survival level within a particular society. This is called the "relative poverty line." Or it can be defined in terms of the minimal level necessary to meet basic needs. This is the absolute poverty line.

International poverty lines have also been developed, based on this concept. Extreme poverty is defined internationally as an income below 1 $PPP per day. 1 $PPP is the purchasing power of one US dollar (USD). PPP stands for purchasing power parity. Approximately 1.2 billion people worldwide have to live on less than this. Several studies on the impact of poverty on human rights show that people living in "extreme poverty" are not able to feed themselves adequately.

Poverty in the World Today

People living on less than $1.00 a day, 1998 (in millions by region)

South Asia	Sub-Saharan Africa	East Asia and Pacific	Latin America and Caribbean	Europe and Central Asia	Middle East and North Africa
522	291	278	78	24	6

Source : WORLD BANK, Annual report (2000) 13

"The numbers of the poor are highest in South Asia, but the proportion of poor people within society as a whole is highest in sub-Saharan Africa. Most poor people live in rural areas, but urban poverty is growing at a faster rate. Women are more likely than men to lack rights to land and other assets. They also have difficulty getting access to credit. And they lack adequate employment and economic security in old age".[9]

8 UN Doc. HR/GVA/POVERTY/SEM/2001/BP.2

9 WORLD BANK, Annual Report (2000) 13

Poverty is almost a hereditary characteristic. Poor people have fewer of the opportunities to participate in economic life that can give them some hope of assuring a better future for themselves and their children. Poor people are frequently the victims of social exclusion and stigmatisation. Economic, social and cultural exclusion prevents poor people from educating themselves and improving their situation. Claiming one's rights and entitlements requires access to information, to understanding the language of the government departments and to following the correct procedures. A report published in 2000 in France, a country with a comprehensive system of social security, by the National Observatory on Poverty and Social Exclusion showed the impact of lack of information, concluding that 30 to 50 percent of the people entitled to family support do not claim it. Deprived of economic, social and political empowerment, very poor people are prisoners of what has been termed a "downward spiral", of poverty, leading to malnutrition, illness, and more poverty. They have little chance of escaping poverty, malnutrition and the other negative consequences that follow from them. Children from very impoverished families inherit poverty as a social handicap.

2.1.2 Focus on the Landless

Eighty percent of hungry and malnourished people live in rural areas. There is a clear relationship among access to land, landlessness and food-related oppression. According to the UN Food and Agriculture Organization (FAO) definition[10], the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood:

1. Agricultural labour households with little or no land;
2. Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services;
3. Other rural households of pastoralists, nomads, peasants practising shifting cultivation, hunters and gatherers, and people with similar livelihoods.

The first two categories are fully or partially landless and must depend on wage labour for all or part of their subsistence.

Landlessness is a major risk factor for hunger and malnutrition. Cultivating land is still a widespread, common and natural means to obtain food, especially in the South.

Globally, among the 800 million people suffering hunger or malnutrition, there are roughly

300 million small farmers

200 million landless agricultural workers

200 million people living in the urban slums in the cities

100 million other people living in rural areas.

2.1.3 Focus on the Unemployed

Access to full employment in the formal labour market and a living wage is out of reach for the vast majority of unemployed people in the world. It is also difficult for unemployed persons to gain access food and food-producing resources through the informal sector. Unemployment and underemployment bring with them a high risk of malnutrition.

Minimum income programmes, even when they exist, often entail dealing with a lot of bureaucracy and red tape, as well as demeaning "means testing", by which officials determine whether an applicant is poor enough to qualify for assistance. Moreover, these programmes do not always benefit the most vulnerable people, who tend to have great difficulty overcoming their own lack of information and gaining effective bargaining power. Some of them are so marginalised that they do not participate in the life of the larger society at all.

10 FAO Economic and Social Development Series no.28, Landlessness: a growing problem, by Radha Sinha, (1984)

2.2 Vulnerability as a Result of Poverty and Discrimination

2.2.1 Focus on indigenous people

> "Teach your children that we have taught our children that the earth is our mother. Whatever befalls the earth befalls the sons of earth. If men spit upon the ground, they spit upon themselves. This we know; the earth does not belong to man; man belongs to the earth. This we know; all things are connected like the blood which unites one family. All things are connected."[11]

After centuries of evictions and genocide, only 300 million indigenous people still survive worldwide. The term "indigenous people" basically refers to the descendants of the original inhabitants of a territory at the time of its conquest. Indigenous people have a long history of living on their land, and with it a very strong link to their natural environment. Indigenous people tend to identify themselves fully with their ancestral territory. Land is regarded as generous and sacred; it provides food, habitat and sanctuary for the soul. Indigenous peoples do not regard land as merely a marketable commodity. They often lack ownership titles for their territories, and their lands are rarely subject to satisfactory registration. Invoking the customary rights of the communities to their traditional territories is seldom successful.

Economic interests usually play a significant role in the loss of traditional land. Traditional indigenous territories are often very rich in raw materials and natural resources, and indigenous peoples usually show less resistance to displacement than mainstream populations. For these reasons, indigenous land has often been first to be exploited for its minerals, wood, oil, and fertile soil, and these enterprises attract investors of all types. The exploitation of natural resources thus leads to indigenous peoples' loss of control over their land and to the loss of the land itself. Indigenous livelihoods are greatly endangered by massive pollution of rivers and soils, for example, as a result of mining in their territory. Indigenous people are also severely affected by the destruction of the forests, which jeopardises traditional habitats, and from there, the livelihood, culture and religious traditions of entire communities.

2.2.2 Focus on Women

Women are particularly susceptible to food-related oppression, because of the severe discrimination they face in their access to and control over food-producing resources. Women are frequently denied the right to ownership of land, and often they do not even enjoy full legal status. In many countries women do not have the right to inherit property.

Women are discriminated against in terms of access to land, credit, education and training, and social facilities. They have fewer opportunities for employment, and when they do find a job, they are often paid less than men, even though most of the time women provide for the subsistence of the family. At the same time women also carry most of the family responsibilities.

In most cultures, women have primary responsibility for providing food for the whole family. In all societies, women provide food for babies, and in many societies, they grow food for immediate family needs, prepare it and ensure that the food the family eats is safe and nutritionally sound.

According to FAO statistics, women farmers produce 80 to 90 percent of the food in sub-Saharan Africa, 50 to 90 percent in Asia and 30 percent in Central and Eastern Europe. Women's responsibility to provide food for their family is often culturally ingrained. Men rarely contribute to the food budget, even when women are unable to provide sufficiently. When traditional subsistence farming changes to cash crop farming, the nutritional levels of women and children often deteriorate because they lack access to the cash generated by this type of agriculture.

11 Quotation from an 1855 speech by Chief Seattle of the Duwamish and Suquamish Indians of Puget Sound, in response to US President Franklin Pierce's proposal to sell indigenous lands to white settlers.

In nearly 20 percent of households in the South, women are the sole source of support for the children. Studies show that the poorest households are those that are headed by women. The "feminisation" of poverty is a new phenomenon, which has been observed in both the North and South. More women than men are found in the poorest groups of the population.

2.2.3 Focus on Children

Children are especially vulnerable to malnutrition and hunger, as a direct result of their mothers' circumstances. Because they are growing, children are more vulnerable to a lack of essential micronutrients and inadequate food intake. In addition, children share the same nutritional health as their mothers. A malnourished pregnant woman is at much greater risk of giving birth to a baby who is already suffering from deficiencies and handicaps.

In addition to increasing children's vulnerability to disease, malnutrition leads to problems with mental and physical development. Because of children's greater vulnerability, nutritional deficiencies and hunger are more likely to lead to death. Malnutrition is involved in 54 percent of child mortality: 12.2 million children die before they reach the age of five, according to data provided by UNICEF.

2.2.4 Focus on the Elderly

Traditionally, the elderly have been part of the extended family, and their food security was dependent on their children. With the extended family breaking up, the elderly find themselves increasingly on their own. Social safety nets for those who are elderly, orphaned, have disabilities or are otherwise incapacitated must include an income sufficient to pay for food. Income is not the sole factor affecting the food situation of vulnerable groups, however (see box, below). These groups must be integrated into local coping mechanisms and social safety nets, which exist in some form in all communities.

Complex Food Situation of the Elderly in the USA

Research on food insecurity has often been limited to younger adults and children, and "insecurity" has often meant lack of access to food owing to inadequate financial resources. An often overlooked population is the elderly. Five percent of U.S. households with elderly members struggle to meet their basic food needs.[12] For the elderly, food insecurity can mean not only lack of food, but also inadequate or altered use of available food. Their circumstances leave them unable to prepare or eat the food that is available. Those who have problems in basic self-care also have problems getting enough food. Food insecurity may also be a matter of an inadequate diet, which can compound their health problems. Poverty is a strong indicator for risk of malnutrition. Almost 20 percent of older adults are poor or near-poor; older women experience nearly twice the poverty rate of older men.

As expenses increase, older adults on a fixed income may opt to reduce their food intake, thereby placing themselves at risk for malnutrition. For example, when physical/mental impairments interfere with grocery shopping and cooking, elders may compensate for the increase in food-related costs from delivery charges, the use of more costly convenience and other special foods, and the higher price of restaurant meals by eating less. In addition, many older adults take a large number of expensive medications. Money spent on medications often reduces the amount of money available to purchase food.

2.2.5 Focus on People with Disabilities

According to United Nations estimates, more than 500 million people in the world today have disabilities. Of these 500 million, 80 per cent live in rural areas in the Global South. Seventy percent of people with disabilities have limited or no access to the services they need.[13]

12 Figures drawn from studies and reports of the US Census Bureau: Source: America´s Second Harvest.

13 UN CESCR, General Comment 5 (1994) § I.8

For people with disabilities, access to food can be extremely difficult. Limited mobility and low incomes put people with disabilities at particular risk for hunger and malnutrition.

Because of their dependence on social services, people with disabilities are highly vulnerable to cuts in social spending. The current trend toward privatisation of basic public services raises the problem of compliance by private entities with non-discrimination principles and equality norms with respect to people with disabilities. Special protective and supportive measures that enable people with disabilities to participate fully in community life must be guaranteed. These measures are essential for ensuring adequate access to food and food-producing resources for the disabled. There is risk involved in the decrease in government participation in fundamental sectors and services. With the expansion of market mechanisms, the risk is high that the special needs of people with disabilities will not be adequately taken into account.

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Chapter 3 *Enough is enough:* Food-related oppression

Lack of access to adequate food is one of the most fundamental forms of human deprivation. An individual can survive its worst form—the complete lack of food—for only a few weeks. In the case of lack of water, death will occur within a few days. Providing oneself with access to food has therefore always been one of the most fundamental human activities. Secure access to adequate food and food-producing resources is a basic standard to which every human being is entitled.

Hunger and malnutrition are the worst forms of severe food deprivation. There are less extreme forms as well. Consuming food that is inadequate food in quantity or quality can ruin one's health and lead to premature death. Inadequate food makes people unhappy, and unable to lead active and fruitful lives. Food, moreover, is a source of pleasure. No wonder most people want not just food, but also good food. They want secure and sustainable access to this food to protect them from the horrifying prospect of hunger and food borne diseases.

Access to food on a strictly individual basis, as was the case for Robinson Crusoe, alone on his desert island, is something that almost never happens. This is an individualistic myth celebrating the "self-made man", who, in reality, consumes the products of current society and earlier generations. Access to food is part of the life of one's family, group, community, society, and state, and of global society and the community of states. Therefore, there is always a lot of interference with the food and food-producing resources of other people. On the one hand people co-operate and assist one another to obtain access to food and food-producing resources. On the other hand there is negative interference when people are in competition to feed themselves. In the worst case some people or groups push others into food deprivation or keep them there: This is a form of food-related oppression.

Control over the access to food and food-producing resources of other people and peoples is one of the most fundamental sources of power over them. For an act to be called oppressive, however, it is not necessary that deprivation be its purpose. It is sufficient that the actors could reasonably be expected to foresee the resulting deprivation and could have known that deprivation was the likely result or by-product.

People experience food-related oppression differently from food deprivation, which results from natural calamities or resource limitations. Deprivation that is free of oppression does not necessarily affect people's dignity. This usually not the case for food-related oppression. Oppression is usually experienced as demeaning. Freedom refers to the absence of oppression—and, in the context of this manual, it means the absence of food-related oppression.

Oppression refers to pushing people down to a point below the minimum human standard and/or keeping them there. Food-related oppression therefore comes in two different categories. The first category entails concerns acts that destroy people´s access to food or food-producing resources. The second category refers to acts or omissions that keep people excluded from food or food-producing resources. These two forms of food-related oppression are described in the sections that follow.

3.1 Destroying people's access to food

In communities with subsistence economies (which encompasses many vulnerable communities in the global South), access to adequate food and to food-producing resources effectively means the same thing. Even in more complex societies, however, the security and sustainability of access to food depend on a certain amount of participatory control over food-producing resources.

3.1.1 Destroying access to food producing resources

Destruction of access to food-producing resources takes place every day all over the world. People's access to these resources is destroyed, for example, by large infrastructure projects such as dams or mines. These projects may be justified by public interest, that is, they should contribute to improving the standard of living of the population. In such cases, the people whose resources have been destroyed are entitled to adequate compensation, and/or resettlement on equivalent land. Unfortunately, there is ample evidence that destruction of vulnerable

people´s food producing resources is rarely adequately compensated. Indeed, people are often harassed and faced with violence, rather than receiving the compensation and rehabilitation to which they are entitled. The local population is frequently seen as an obstacle to "progress"—and to the profits of the companies and governments carrying out the projects, and often it is not invited to participate in the design and the implementation of the project. They are not true decision makers either; typically, a decision to reject the project will not be respected.

A variety of ways that food and food-producing resources may be destroyed are illustrated in the following cases. These examples appear and reappear throughout this manual, providing details on the human rights dimensions of food, advocacy on behalf of the right to food and how these themes may play out in the real world.

Case 1: Atuabo, Ghana 2001: Predatory gold mining

Gold exploitation threatens people's access to food producing resources in many parts of the world. Modern methods to extract gold, which rely on the use of chemicals like cyanide, and the enormous financial interests involved are likely to lead to total disregard for the land and water rights of the local population. Among the numerous negative socio-economic consequences of gold mining is the destruction of agricultural land and fishing grounds. Gold mining also leads to eviction of peasants and indigenous communities from their land and their homes. This typically occurs by force, without adequate compensation, consultation or participation by the local population.

Two gold mining companies are behind the displacements in various villages of Wassa West District in Ghana. In 1997 the South African company, Goldfields Ghana Limited (GGL) began to harass the residents of two villages, Old Atuabo and Akontanse. The company's strategy was to relocate them to a resettlement area, called New Atuabo, without providing adequate compensation for their lost land and crops. The resettlement area had already been completed by GGL and the inhabitants of Akontanse and Old Atuabo were asked to move into their new houses. However, the people refused to leave their ancestral land because they had not been compensated for their land or their crops. Some were offered a little money to move directly into the new resettlement area, but others have received nothing. The resettled population lacks income-earning capacity; they have not been provided with land for future farming activities and cannot feed themselves any more. On February 6, 2001, Kyekyewere village was demolished by the police force. Three hundred villagers were evicted to make way for the Australian TNC (trans-national corporation) affiliate Aboso Ghana Ltd. In both cases harassment was used to prevent those people, who had refused to leave their village, from carrying out any income generating activities, in particular from working their fields. The case of Akontanse and Old Atuabo has been in court for years, now, where it is continually postponed.

Case 2: Raposa/Serra do Sul, Brazil 2000: Indigenous Territories Are at Stake

In many countries in Latin America, the law provides a framework for the protection of indigenous land. However, legislation is often useless for communities who face daily threats of losing their traditional territory, which they depend on to feed themselves. Brazil, for example, passed a law requiring all indigenous territories to be demarcated and legally handed over to the communities by 1993. To date, implementation of the law has hardly begun.

Approximately 10,000 indigenous people from the Macuxi, Wapixana, Taurepang and Ingarikó communities in northern Brazil have suffered the violent invasion of their land by local landlords, as well as acts of harassment. Police threatened to imprison any indigenous leaders who opposed these activities. These communities need close to 1.7 million hectares of undivided territory to be able to continue to live according to their traditional customs. In December 1998 the demarcation of the areas Raposa/Serra do Sol and Javari was carried out. One and a half years later, the President still had not ratified the legal recognition. He is under pressure from influential groups with vested interests, among them landlords, mining companies and politicians. These groups have even tried to divide the indigenous communities, which would lead to the creation of small indigenous reserves within the estates already seized by the landlords. What the communities want is immediate legal recognition of all their territory, so that access to their lands and forests can be ensured.

3.1.2 Destroying Access to Food

The destruction of people´s access to food goes beyond the destruction of food resources. It can occur in various ways, all preventing people from maintaining their existing access to food. Access to food can be destroyed by blocking food transports into vulnerable areas or for vulnerable groups (for example in situations of war or through sanctions) as illustrated by the following case from Sudan.

Case 3: Sudan 1994-2001: Food as a Weapon

Not surprisingly, armed conflict, civil war or international economic sanctions can lead to food-related oppression. A case in point is the Sudan with its civil war and related famines. In the last decade, famines of catastrophic proportions have occurred, which have been widely publicised and documented by the international community. Moreover, many more famines and near famines have occurred silently and without media attention.

As a result Sudan continues to require massive amounts of external food aid from other countries. In southern Sudan, civil war continues to create significant emergency food requirements for war-affected and displaced populations. An estimated 2.4 million people in southern Sudan have been affected by famine; in the north a further 200,000 who have been displaced by the war require assistance. In fact, during the last fifteen years Sudan has become one of the major receivers of international relief aid.

Operation Lifeline Sudan (OLS) is a humanitarian consortium working under the auspices of the UN to provide emergency relief and rehabilitation for drought- and war-affected individuals in Sudan. The consortium was created in 1989 as a response to the chronic war-induced famine and emergency situation of the civilian population of southern Sudan. OLS primarily provides humanitarian assistance to war-affected civilian populations in southern Sudan, a transitional zone and camps for displaced people in northern Sudan (including Kordofa, White Nile State and Khartoum). Almost since its inception, the OLS, especially in southern Sudan, has been forced, by inadequate and land-mined roads[14] and ambushes of overland and river transport (usually carried out by the Sudan Popular Liberation Army, or SPLA, but sometimes by government militia), to conduct the relief operation mostly by means of air drops.

In Sudan, the necessity of using an airborne system for relief distribution is clear. The severity of the famine requires relief to be delivered to where it is needed quickly and efficiently. Moreover, most of the famine-stricken areas are in the south of the country, which is affected not only by the fighting, but also by lack of infrastructure, remote and inaccessible locations, and a harsh climate.

Despite claims to the contrary, it is clear that both the government of Sudan and the SPLA use the manipulation of relief aid as a military strategy. In the past SPLA military tactics have included starving out garrisons with no concessions for the civilian population. The SPLA has prevented relief lorries from travelling freely and has threatened to shoot down relief flights. As early as 1986, the SPLA was blocking relief efforts to Juva and had threatened to shoot down relief flights to Wau.

The government's policy is similar. The government believes that the SPLA can be starved out by cutting off aid to the civilian population in SPLA-held areas. With its goal of starving rebel-held areas into submission, the government has undermined the effectiveness of the OLS.

The government of Sudan grants the OLS permission to deliver relief on a month-by-month, location-by-location basis.[15] Access to different airstrips has been regularly banned throughout the existence of the OLS. Although this is supposed to be done only for security reasons, in practice the pattern of airstrip bans reflects the political and military priorities of the Government of Sudan and its allies. These flight bans have measurably affected the provision of relief supplies to vulnerable people. As a result of the blanket ban in the early 1990s health standards dropped dramatically, and malnutrition and mortality spiked up. Furthermore, in 1994 the World Food Programme

14 The presence of land mines on roads is often a cause for concern. For instance in February 1999 the World Food Program (WFP) was unable to assess the food needs of "Internally Displaced Persons" (hereafter referred to as IDPs) in several camps in Hamashkoreib because the access roads were so heavily mined. Furthermore, the presence of land mines prevented the WFP from distributing food aid to 3,000 IDPs in Momoi. See WFP Monthly Overview of Sudan Emergency Programme, February 1999.

15 Ibid.

was able to meet only 45 percent of the assessed food needs for Bahr el Ghazal. By 1995 it was unable to reach even this low standard. According to a UN study "The entire region of Bahr el Ghazal received only 19 percent of its assessed needs for food aid in 1995."[16]

According to March 2001 data available from the World Food Programme in Nairobi, the Government of Sudan has denied Operation Lifeline Sudan access to 15 locations, 12 of which are in the Bahr el-Ghazal or Western Upper Nile regions. Currently, some three million people in Sudan need food aid; the great majority of them live in Bahr el-Ghazal and Upper Nile provinces.

3.2 Excluding People from Access to Food

Many people in the South, and also to some extent in the North, continually lack access to food and food-producing resources. Their access to adequate food and resources cannot be destroyed because it does not exist in the first place. To satisfy their food needs, they require access to the food available within the society as a whole. Beyond that, they need to be able to access food-producing resources, in the form of natural resources, capital, and skills, in order to feed themselves. For people living in hunger and destitution, or forced to consume unhealthy or otherwise inadequate food, this is one of the most essential freedoms.

The freedom of the hungry and malnourished and other deprived people to gain access to food and food-producing resources is all too often rejected and suppressed by the rich and powerful. Usually this is done in the name of efficiency, productivity, development and growth. Resources which would allow people to feed themselves are withheld from them, using the argument that poor and deprived people make inefficient use of these resources, and that granting them this access such moves would lower the overall productivity of society, and slow down growth.

Excluding deprived people from the freedom to access food and resources existing elsewhere in society is an act of oppression—it means keeping them in a state of deprivation..

3.2.1 Exclusion from Food-Producing Resources

Case 4: Economic Apartheid Continues, South Africa 1994–2001

South Africa used to be branded internationally for its institutionalised racism. When Nelson Mandela and the African National Congress (ANC) took over the government in 1994, apartheid appeared to have been defeated. It is important to note, however, that racism was largely based on the issue of access to land. Until the 1990s it was the policy of the South African government that the African population should not own land. Eighty percent of the land was set aside for Whites. Blacks were squeezed into "homelands", which had very scarce resources. Eighty percent of the population in the homelands were forced to live below the poverty line.[17] By the late 1970s 60,000 white commercial farmers in South Africa owned twelve times more land than the 14 million rural poor.[18] It should therefore not come as a surprise that 25 percent of the population is suffering from malnutrition, and that the victims are exclusively black South Africans.

The liberation struggle against apartheid in South Africa had the land issue on its agenda: Access to land for landless African agricultural workers on white farms. Access to land for the black peasants crowded together in the homelands. The transition to black majority rule, however, was a series of compromises between the ANC and the apartheid government, one of them a limitation on land reform that was incorporated into the new Constitution. The so-called "property clause" protected existing property rights from mass expropriation for land reform.

16 See OLS Review, p. 162–63.

17 E. HARSCH, Land Reform in South Africa: On Whose terms? (1991–1992)TransAfrica Forum 8:(4) 19–38

18 H. HAVENGA and J. ERASMUS, 'A Synopsis of Land Reform in the Context of South Africa', in N. MARONGWE and J.Z.Z. MATOWANYIKA (eds.), Sustainable Land Management Discussion Paper Series No.1, (1998)

The current land reform programme in South Africa is taking place in a neoliberal context with the help of the World Bank and its "market-based" approach. Land goes to those who can pay for it, bypassing the rural poor.

Case 5: Policies that Keep Malnutrition Prevalent, Honduras 1992

A fundamental means to realise access to adequate food in countries like Honduras is to promote agrarian reform, since agrarian reform opens up for access to resources for landless peasants.

The need for integrated agrarian reform in Honduras derives from two fundamental realities. It derives first from data on poverty, and second, from the extremely inequitable land ownership. According to the General Statistics and Census Institute for the year 1997, about 64 percent of the total population of Honduras lives below the poverty line. The corresponding figures for the rural population are even worse: 72.6 percent in 1997. The rural areas represent the focal point of poverty in Honduras. The cause of this relationship between rural poverty and inequitable land distribution is obvious. According to the National Agricultural Census of 1993, more than 126,000 rural families, or 27 percent, have no access to land; an additional 80,000 families own less than one hectare of land (2.4 acres). More than 200,000 rural families lack the productive resources to feed themselves, a situation that was worsened by the catastrophic damage caused by Hurricane Mitch in 1998.

Instead of dedicating more effort in recent decades to implementing agrarian reform, successive governments have allowed land ownership to become severely polarised. Structural adjustment policies initiated in 1990, especially the 1992 "Law for Agricultural Modernisation and Development", practically put an end to the agrarian reform process in Honduras. As part of agrarian reform, land ceilings had been introduced to establish maximum land holdings for rural estates. The law reduced the incorporation of surplus land above these land ceilings into the agrarian reform. Furthermore, it permitted the sale of land already expropriated under the agrarian reform process. One of the consequences was that during the first years the Agricultural Modernisation Law was in effect, more than 30,000 hectares of land made available for agrarian reform were sold. More than half of this land was given to the transnational banana enterprises operating in the country.

3.2.2 Excluding People from Access to Food

Case 6: Full Godowns—and Empty Stomachs, India 2001

Malnutrition levels in India are very high. According to the second National Family Health Survey (1998–99), about half of all Indian children are chronically undernourished. Many Indians are too poor to pay the high food prices on the market or even in the ration shops. India, the land of food scarcity? Quite the opposite. Fifty million tons of grain is stored in government godowns. The government accumulated these massive amounts after the excellent yields of recent years, using a minimum support price for farmers as an incentive. Fifty million tons is certainly more than ample for those threatened with starvation, for example, in the drought-affected areas of Rajasthan. The situation in India, where people starve in the shadow of overflowing godowns is a clear illustration of food-related oppression. Deaths from hunger were criticized in a number of states. A Supreme Court ruling in November 2001 ordered state governments to make these food supplies available to vulnerable groups. Further details about the Petition to the Supreme Court are provided in Chapter 6)

Chapter 4 Understanding Basic Human Rights Concepts

4.1 The Key Elements of Human Rights

The preceding chapters talked about food and its importance to human beings on many different levels, including, of course, the first and most basic: that human beings must have food in order to live. With enough food in the world for everyone, it is realistic and reasonable to think that everyone can have his or her share; that is, sufficient food on which to live. Although this may seem like simple fairness, it is not the reality. Chapter 3 presented a variety of examples of things that people do that deprive others of the food they need to survive or keep them in a state of deprivation. In Chapter 3, acts like these were identified as forms of oppression.

In this chapter we will learn about human rights, which provide an important and effective means for combating human oppression and meeting human needs.

Human rights are derived from the aspirations of ordinary people. Therefore, their premise is very simple. This is still the case, although human rights have been incorporated into a complex and well-developed system of international law. Human rights are grounded in human needs, taking as their point of departure that human beings have a right to the fundamentals of existence, which are those things they need to stay alive. These fundamentals include, of course, food, shelter and clothing. To live happy and fulfilling lives, human beings need more than the satisfaction of their survival needs. People need to live comfortably, and they need love, affection and the companionship of others. They need to be able to provide for their own needs, physical and mental well-being, and opportunities to learn new things. People need to participate in the decisions that affect them, and to be treated fairly, with respect, and on a basis of equality with others. Although we can identify other needs as well, these give us a good place to start.

Human needs provide a point of departure for human rights, but there is more to human rights than the satisfaction of basic human needs. Human rights express deep ethical and moral values, which are similar to principles held by many religions concerning the way that people should treat one another. What distinguishes human rights from ethical and moral principles, however, is that they are entitlements, and as such, they consist of enforceable claims against governments.

Throughout human history, societies have suffered from oppression, violence and the exercise of brute force. The State is (among other things) an attempt to confine the use of force and to rein in oppression within a concept of social justice, based on transparent mechanisms and, ultimately, legal procedures. This is a necessary function, and the need to perform it is one of the reasons for the existence of states in the first place. States have always understood their function to include protecting people against oppression, especially the people who are most likely to suffer oppression: the vulnerable, the marginalized and the poor. Through its very concentration of power, the state also runs the risk of becoming an oppressor itself. Therefore, human rights exist to constrain the state's behavior toward the people living within its jurisdiction and to keep it within acceptable limits.

Human rights provide a mechanism for vulnerable and deprived people to secure a certain basic living standard in society, without being dependent on the benevolence of the rich and powerful. Human rights are intended to have legal force and to be claimed and enforced through the judicial system or equivalent mechanisms, similar procedures—even against the interests of the ruling elites.

From this analysis we can distinguish the three components of a human rights system. First of all, human rights establish certain basic standards in the various realms of life, and hold that all members of society have a legitimate claim to these basic standards. Second, human rights pertain to the relationship between individuals/groups and the state. Human rights provide people with legitimate claims against their government, which in turn give rise to state obligations. A state has an obligation to refrain from being an oppressor, to protect people from oppression, and to ensure that the basic standards referred to above are realized. The third dimension consists of the legal and other mechanisms that enable victims of oppression to compel the state to do its duty and meet its obligations.

We will now look more closely at each of these elements of a human right.

• The First Key Element: A Universal Normative Content and a Basic Standard

Human rights begin by recognizing a certain basic standard as a human rights standard: that is, a quality of life to which everyone in society, without discrimination, has a valid moral claim. This is not a small matter. For someone to accept human rights, she must accept not only the definition of the basic standard itself (What does it mean to have access to adequate food? What is a fair trial? What does freedom from torture mean?). She must also share the ethical conviction that everyone in society (not only within my family, or among my friends, among men, in my country, or belonging to my religion) has a valid claim to enjoyment of this standard. Preventing people from reaching this basic standard, whether actively or simply by not helping them, is ethically perverse and a form of oppression. This global ethics is far-reaching indeed—and not just geographically. Often this ethical stance is seen as identical to human rights itself: as if the human right to food were equivalent to acceptance of the moral claim that all people are entitled to sufficient food and the other resources they need to feed themselves. Nevertheless, this is just the first of the three key elements of human rights. This first key element has a descriptive component (definition of the basic standard) and a moral or normative component (accepting this basic standard as something that all human beings should enjoy). A more complete way to refer to the basic standard of the human right is as the "normative content of the human right". The normative content of human rights is discussed more fully in Chapter 5.

• The Second Key Element: Generic States' Obligations

The second key element recalls that human rights are political. Human rights are not a matter of the ethical behavior of individuals, important though that is. Human rights are a source of states' obligations. The purpose of recognizing human rights was not to lay a foundation for a far-reaching ethical system. Ethics and values are abundantly available from religion, philosophy and other sources. Rather, human rights are a political tool to define the role and duties of states and to combat oppression. States must not be oppressors themselves; moreover, they have an obligation to protect people from oppression by others. States must not deny people access to basic human standards, or keep them in a state of deprivation. Based on this analysis, state duties have been divided into three types of generic obligations. States must respect the basic standard where it is already enjoyed. This means that states must not deprive people of the basic human standard. States must protect the basic standard against infringement by third parties. States must fulfill the basic standard, providing direct assistance to the people who cannot achieve it on their own.

These generic states' obligations are therefore called the "obligation to respect" (or respect-bound obligations), the "obligation to protect" (or protect-bound obligation), and the "obligation to fulfill" (or fulfillment-bound obligations). What is to be respected, protected and fulfilled is the basic standard, or normative content of the human right in question: its first key element.

It is worth repeating that these are states' obligations, not individual duties. This does not mean that human rights are not linked to individual duties. Of course they are. How can someone hold views like the ones described above without feeling a sense of individual responsibility? However, although they may share the same values, priorities and sense of what is important, human rights and individual ethics operate in different spheres. Individual ethics are not derived from human rights; rather the reverse is true. Individual ethics and values precede human rights and shape their content. Ethics and values are a prerequisite for determining the basic human standards that are the first element of human rights. Individual ethics help to shape state ethics, which reinforce state obligations.

• Violations and Abuses

Violations of human rights are breaches of state obligations. They breach one of the generic states' obligations or entail a discriminatory way of meeting these obligations. A violation is therefore an act or omission by a state. It is not a "situation" or the act or omission of a third party. "State" in this context refers not just to nation-states but

to intergovernmental organizations, such as the International Monetary Fund (IMF) or the World Bank as well, because these institutions were created by states and states make up their membership.

Human rights violations are committed by states, because they are defined as breaches of state obligations. Third parties may commit terrible acts of oppression, which affect the basic standard, but such acts of oppression would not be violations of human rights. Human rights obligations are imposed on states, not third parties, and third parties cannot breach obligations they do not have.

Human rights are serious matters affecting the whole of society and the state. Therefore, states must take decisive action in order to meet their protection-bound obligations (their obligations with respect to third parties). Such cases often call for criminal prosecution to punish the third party. In many States parties, there is still no legislation implementing or interpreting the human right to food. Nevertheless third parties destroying human rights standards can be said to abuse the human right in question.

Analogies to civil and political rights provide good reasons to use the term "abuse" in relation to the human right to food as well. In civil and political human rights, for example, the right to physical integrity, "abuse" is the term used for grave acts by third parties. If your neighbors seriously beat you up, their action is an abuse—and in fact a crime. If a policeman beats you up, however, this is a violation of human rights. The same approach works well for the right to food also, and for human rights in general. Abuses are acts that are so serious that the state has an obligation to take serious action to protect the basic standard of the human right in question. Whether there is a law in place that makes this act a legal offense (as there should be) is secondary. In any event, abuses and violations should not be confused. In Chapter 6, abuses of human rights will be reconsidered in the discussion of "horizontal effect".

• A Violation Is Not a Situation, But an Act or Omission

Another source of confusion in terminology comes when the term "human rights violation" is used to refer to a situation where the basic standard is not met. In chapter 3, we called this situation a "deprivation". Conditions of hunger or malnutrition are not by themselves violations of human rights. The following example of Robinson Crusoe shows why. A case of hunger may indicate that a violation of the right to food has taken place. However, making this determination requires additional analysis of the relevant states' obligations.

Robinson Crusoe

If Robinson Crusoe, alone on his island, suffers hunger or malnutrition, he is clearly deprived of the basic standard, "access to adequate food." However, no state act or failure to act pushed Robinson Crusoe into this situation or is keeping him there. Even if his island is part of the British Empire, the British government does not know he is there and cannot be expected to send food. Neither it is reasonable to expect the Empire to stock food on every uninhabited island within its jurisdiction in case of shipwreck. Although Robinson Crusoe may want to blame someone or something for his fate, in this situation, he cannot find a breach of state obligations. He will have to look for something else.

There are good reasons for a cautious use of violations terminology. The term has a sharp edge, and frequent and inflationary use may dull it. Second, states deserve fair treatment too, and should not be blamed automatically for unfortunate situations. States often operate under severe resource constraints, for example, and even a very responsible state may be unable, for financial reasons, to meet its obligations to fulfill. Human rights requires that in this situation, the state take steps to the maximum of its ability, and it places the burden of proving this claim on the state, but it does not require a state to do the impossible. Third, in many cases the most useful approach is to undertake an analysis that will identify precisely the violating act or omission, thus opening the way for a pragmatic discussion of how to redress the situation and avoid similar problems in the future. Inappropriate use of violations terminology is likely to close the door to a pragmatic approach to finding solutions. It is sensible to undertake a preliminary analysis of the state's obligation and how it was breached before claiming that a particular state of deprivation is the result of a human rights violation.

- **The Third Key Element: Redress and Justiciability**

For human rights to be meaningful, states must meet their obligations, and individuals must have means of recourse in case states fail to meet them. Human rights are meant to be legal rights and states' obligations are meant to be legal obligations. States have an obligation to incorporate their human rights obligations into their legal systems as soon as possible, and to make them justiciable. By "justiciable" we mean that people can seek remedies for violations through the formal legal system. The third key element of human rights is therefore the obligation for justiciability as soon as possible. Justiciability can be instituted in a variety of ways, among them, by means of laws, executive and court orders, administrative regulations, policies and programmes. All of them provide those who believe that the government has breached its obligations with an effective means for making their claim and seeking remedy, compensation and/or satisfaction.

These terms each refer to a different form of redress. "Remedy" compels a state to meet its obligation. For example, a court might order a government to make a maternal-child feeding program available to a minority group that was previously excluded as a result of discrimination. "Compensation" allows the victim to be "made whole," generally by the payment of money or other consideration equal in value to the victim's loss. "Satisfaction" entails punishment for the person or persons responsible for the violation.

4.2 Cases for Human Rights? Revisiting the Cases from Chapter 3

Using the human rights framework introduced in this chapter, we can now return to the examples of food-related oppression presented in Chapter 3 to determine whether the situations described can be characterized as human rights violations. The analysis begins by identifying the state obligations involved and deciding whether they have been breached. In general, two different actions are involved: destroying people's access to food and keeping them in a state of deprivation. In the first situation, we would expect to find violations of the obligations to respect and protect; the second type is likely to involve the obligation to fulfill.

A short analysis of the right to food for each of the cases in Chapter 3 is provided below. A more detailed presentation of states' obligations in a variety of cases is given in Chapter 5, along with references to relevant international law.

Case 1: Atuabo, Ghana 2001: Predatory Gold Mining

This is a case of destruction. Villagers' access to their food-producing resources (their fields) was destroyed by the mining company. The mining operations caused severe damage to soil and water resources, affecting future generations' access to food-producing resources. There was no compensation from the company for damaging or destroying people's access to food. As a nongovernmental entity, the company does not have human rights obligations; therefore, it cannot be considered guilty of violating human rights. Nevertheless, it appears that the company has abused the human right to food.

What about the state's obligations? Thus far the villagers have been able to feed themselves. Therefore, the states' obligations at issue are the obligations to respect and protect, rather than the obligation to fulfill. There is a clear violation of the obligation to protect. The government should have protected the villagers against such a large-scale destruction of their food-producing resources. If the state could not or chose not to prevent the destruction of the food-producing resources of present and future generations, it should have secured adequate compensation and rehabilitation for the villagers before their food-producing resources were destroyed in the first place.

It is likely that the state has violated its obligation to respect as well. The government of Ghana used state funds to assist mining companies with their activities. In similar cases, harassment and eviction of the villagers and destruction of their food-producing resources have been carried out by security forces employed by the mining company, in collusion with the state police, as well as by the state police directly. This degree of state involvement would point to a violation of the obligation to respect.

In addition to the government of Ghana, the World Bank's obligations are relevant for a human rights analysis. As part of the United Nations, the World Bank is an international states' authority, which gives it state's obligations under the human right to food, as well as other human rights. The World Bank continued to promote gold mining activities, even after being informed by FIAN and other human rights organizations about the human rights violations involved. The World Bank breached its obligation to respect and protect the villagers' access to food.

FIAN's international interventions led to an out-of-court settlement securing appropriate compensation for the victimized villagers.

Case 2: Raposa/Serra do Sul, Brazil 2000: Indigenous Territories at Stake

For most indigenous communities, land is far more than a food-producing resource. Land is not a commodity to be bought and sold, and it has deep social, cultural and spiritual significance for the indigenous communities living on it. Indigenous communities, who are fully aware of the complete dependence of human communities on land, are particularly vulnerable to seizure of their land. This destroys their cultural and social fabric as well as their food-producing resources, and leaves them at risk for hunger and malnutrition.

A human rights analysis of Brazil's obligations starts with the requirement to demarcate and register indigenous territories, to provide legal safeguards against landgrabbing. Land invaders find it easy to ignore the customary rights of indigenous people over their territories, asserting that these territories belong to no one and can therefore be claimed. Without demarcation and registration, state entities might not know which stretches of land, if invaded, trigger their obligation to protect.

Demarcation of the areas of Raposa/Serra do Sol and Javeri in 1998 was a preliminary step toward fulfilling this obligation. The state recognized, correctly, that in order to secure food in their traditional ways, communities required extensive territories, not a reserve or a patchwork of farms or ranches.

Postponing the decisive step–the legal recognition of the demarcated land–in the face of ongoing land invasions, however, breaches the state's obligation to protect the indigenous people's resources. Hence, it is a violation of their right to feed themselves, since it will almost surely lead to a loss of food producing resources the indigenous communities need to feed themselves.

The landgrabbing by landlords, mining companies and other actors is an abuse of the indigenous communities' human right to feed themselves.

Even without a clear demarcation of the contested territory, it is a normal judicial procedure to preserve the status quo until a legal decision has been made. The local police, however, did not care about the status quo. The fact that the police took part in the harassment perpetrated by the landlords and threatened indigenous leaders who opposed the land seizures indicates that local authorities may have breached the obligation to respect access to food and food-producing resources, thereby violating the communities' human right to feed themselves.

A special international intervention by FIAN helped the local communities to improve their bargaining position in defending themselves against invasions of their territory, demonstrating that international attention and reference to national and international law can have an effect, even in the Amazon.

Case 3: Sudan 1994–2001: Food as a Weapon

The preceding two cases dealt with access to productive resources. This case deals directly with immediate access to food provided by the international community. In situations of war many people cannot feed themselves because of the displacements, destruction and disruption brought on by the war. The human right to food, like other human rights, remains in effect in times of war—at least in terms of fulfilling its core content. These rules have been codified in the Geneva Conventions on humanitarian law. The food-related norms in the Geneva Conventions have been reproduced in the Appendix and should be read as background for a human rights analysis of this case.

In a civil war determining states' obligations becomes more difficult, as states may lack the resources to carry out certain of their protection- or fulfilment-bound obligations even if they wish to. On the other hand, because the SPLA effectively controls certain territory, it can be considered to function as a state in the territory it controls and to be bound to states' obligations.

This case reveals endemic and serious breaches of the obligation to respect people's access to food. Food has been deliberately used as a weapon. This is a gross violation of the human right to food and has reduced many people to a state of deprivation.

In this case the international community has a fulfilment-bound obligation, because Sudan is not in a position to carry out its own obligation to fulfil people's access to food. This state's obligation is first of all a moral obligation. Under international human rights law, however, a legal obligation to this effect can be identified, over and above the moral obligation.

The efforts of the OLS to meet this international obligation encountered interference and obstruction. (For additional information on international obligations, fulfilment-bound obligations and retrogressive measures refer to chapters 4.B.3 and 4.B.5). This interference has breached the obligation to respect people's access to food, which would otherwise have been secured by international food aid; therefore, it violates the human right to food.

Case 4: Economic Apartheid Continues, South Africa 1994–2001

This is a case of deprivation. In such a situation, states have an obligation to fulfil access to food and food-producing resources for the deprived groups, to the maximum of available resources. South Africa is a country of ample resources including land. The land was taken by the white minority during apartheid and before. There is no lack of resources to carry out land reform in South Africa. Hence, the South African government has an obligation to fulfil access to food and food-producing resources for millions of hungry and malnourished Africans. Are there other fulfilment-bound measures that could substitute for agrarian reform? Deprived people should be able to choose how to realize their right to food. They should therefore be able to choose among different resource and income sharing programmes. Many rural Africans would like to be able to feed themselves by growing their own food. Offering an effective agrarian reform programme to these deprived groups is therefore an incumbent state obligation for South Africa. The current land reform programme does not meet these requirements. To date, there has been no effective program of agrarian reform. This is an endemic violation of African communities' human right to feed themselves.

Case 5: Policies Keeping Undernutrition Prevalent, Honduras 1992

Analysis of the government's fulfilment-bound obligation to offer an effective agrarian reform programme for hungry and malnourished people in Honduras is similar to the case of South Africa. Resources in Honduras are less abundant than in South Africa; nevertheless, they are sufficient to carry out an effective agrarian reform programme.

Two factors, which were not discussed in the case of South African land reform (although they could have been), should be highlighted here: the transnational banana corporations, and the role of international finance institutions, which promoted structural adjustment and the collapse of the agrarian reform programme by means of the "Law for Agricultural Modernisation and Development". The banana corporations which benefited from the overturn of agrarian reform were active in shaping this policy change. In such a case the principle needs to be applied that measures taken by third parties to obstruct the implementation of states' obligations under human rights law are abuses of human rights. If intergovernmental institutions like the IFIs take measures that are instrumental in preventing a state from implementing its obligations under the human right to food, they have violated this right, as they are duty-bound under international obligations to assist with implementation instead (see Chapter 6.E).

Case 6: Full Godowns—and Empty Stomachs, India 2001

This case concerns the needs of people who are hungry and malnourished. The type of obligation at issue is the obligation to fulfil access to adequate food. India is a state with scarce resources per capita. Nevertheless, India has sufficient resources to establish a fulfilment system to provide access to food for all its citizens. This obligation is therefore incumbent upon India. Failure to create such a system violates the human right to food, and leads to the hunger and malnutrition described in Chapter 3. A more detailed analysis would have to analyse the gaps in the Indian fulfilment system, as well as the malfunctioning of existing programmes, which led to the famine conditions in Rajasthan and Orissa in 2001 (see the end of Chapter 5 for more details on this case).

Chapter 5 Using International Law to Respect, Protect, and Fulfill the Right to Food

Taking up cases like the ones presented in the preceding chapters may put your organization in contact with states and other powerful actors, with a large stake in the particular issue at hand. This in turn increases the possibility of conflict and the likelihood that you will have to use all the political and legal resources at your disposal to defend the human right to food. One important resource is international law. International law is an especially valuable tool for organizations that are intervening in a human rights issue from outside the country. International human rights law is also useful in domestic cases or situations in which some of stakeholders are international. This chapter provides an introduction to international human rights law relevant to protecting and promoting the human right to food.

5.1 A Short Introduction to International Law

• What Is International Law?

As its name suggests, international law is law that applies within the international community. In contrast to national or local laws, international law supplies the rules that govern relationships among states. Increasingly, international law also imposes standards on third parties, such as individuals or corporations. Although states still play the major role within the international community, international law is departing from its exclusive focus on states. International organizations, whether intergovernmental organizations like the various branches of the United Nations, or non-governmental organizations (NGOs), play an increasingly important role internationally, and are increasingly recognized as subjects of international law. The long-running and ultimately successful efforts to establish an international criminal court, which will have the authority to try individuals, illustrate this trend.

International law can be divided into two parts. General international law applies to the international community as a whole, while special international law pertains to relations between a restricted number of states: for example, a group of states that has negotiated a treaty governing relations among them in a particular area.

• How Is International Law Generated?

International law exists in both written and unwritten form, although the written form is more important. Unwritten international law is called “customary” international law, because it derives from customs, practices and beliefs that are generally recognized by the international community. It is analogous to common law in the English system. Much of customary international law has by now been codified in written form. Written international law is referred to as “conventional” or treaty-based law, and the various sources from which it derives correspond to their counterparts in domestic law. In addition to treaties, sources of international law include case law, general principles, the acts of international organizations, and the writings of international law experts.

A very important source of international law is the so-called “imperative norms” of international law, which are usually referred to by their Latin name, jus cogens. These norms are found in written and customary law. They enshrine universal principles, which are recognized and accepted by the international community as a whole. Prohibitions against piracy and slavery are examples of jus cogens. States should recognize and accept the obligatory nature of these norms. According to the International Court of Justice in The Hague, the imperative norms provide a kind of moral and ethical framework for international law. In general, the body of human rights law is encompassed within these imperative norms. The overwhelming majority of states have voluntarily accepted human rights standards and obligations. Indeed, one recent human rights treaty, the 1989 International Covenant on the Rights of the Child, has been ratified by all but two countries.

Human rights, or at least their key components, are part of general international law. Human rights are enshrined in and protected by international treaties and conventions, which are signed and ratified by states that have agreed to comply with them. Signing a treaty signifies that a state accepts the provisions in the treaty and will work toward its ratification. Ratification signals that a state has formally committed itself to the treaty, whose provisions then become legally binding on the state.

To become binding, a treaty must enter into force. This happens when a designated number of states, specified by the treaty itself, ratify it. When a treaty comes into force, the states that have already ratified it (called States Parties) are duty-bound to respect their commitments arising from the treaty. A general principle in international law is the principle of good faith. Article 26 of the Vienna Convention on the Law of Treaties (1969) stipulates that "every treaty in force is binding upon the parties to the treaty and must be performed by them in good faith." The binding nature of treaties and the good faith principle thus apply to human rights conventions.

International human rights law has codified the three components of human rights that were introduced in Chapter 4: recognition of basic human standards, the related generic states' obligations, and the obligation to justiciably implement these obligations as soon as possible. The fact that international human rights have this legal dimension is one of their most important characteristics. The legally binding nature of human rights gives them additional force, beyond the ethical and moral framework in which they originated.

Of the human rights treaties and other documents now in existence, three are especially important. The basic source document for international human rights is the Universal Declaration of Human Rights (UDHR), which was adopted without opposition by the United Nations General Assembly in 1948. Because of the UDHR, 1948 is commonly considered to signal the start of the modern human rights era. The UDHR is a declaration, not a treaty. Therefore, it expresses generally agreed principles, but it is not a legally binding document. Many people argue, though, that the UDHR has become international customary (or unwritten) law. Almost all the provisions in the UDHR have been codified in one of two treaties, which, because they are treaties, do have legal force. As a result, whether or not the UDHR itself is legally binding, almost all of its provisions are binding because of their inclusion in these treaties. The two treaties, which were drafted, opened for signature, and came into force at the same time, are called the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition to their common origin in the Universal Declaration of Human Rights, one of the characteristics that distinguishes the two covenants from the human rights treaties that came later is their universal applicability. Between them they cover the entire range of human rights—civil, cultural, economic, political and social—and they apply to all human beings everywhere, regardless of age, gender, ethnic group or other demographic factor. Together, the Universal Declaration of Human Rights and the two International Covenants are called the International Bill of Rights. Other human rights treaties focus on a particular category or violation of human rights, such as torture, or spell out the rights of vulnerable segments of the population such as women or children. There are also regional human rights treaties for Africa, Europe and the Americas, drafted and ratified under the auspices of the Organization of African Unity (replaced in 2002 by the African Community), the Council of Europe, and the Organization of American States, respectively.

It is worth noting that the power that exists on paper does not always find its counterpart in practice. Lack of good enforcement mechanisms is a chronic problem in international human rights law, which the human rights community continues to address, with qualified success. The new International Criminal Court, referred to above, marks an important advance in making human rights law enforceable. Even though making human rights law truly enforceable is an ongoing project, the fact that international human rights have a legal foundation is a great asset, which human rights practitioners and advocates should learn about and use. Formal and informal ways to make use of human rights law and mechanisms are discussed in more detail in subsequent chapters.

5.2 Why Is International Law Important for the Right to Food?

> "In the area of international law dealing with human rights the right to food is equally firmly entrenched as a basic norm. Whether on the basis of treaty obligations, of customary international law principles, or of established practice, all states in the international community have recognized the existence of the right to adequate food."[19]

• International Law Provides Sources for Monitoring and Legal Interpretation

The principal source in international law for the human right to food is the International Covenant on Economic, Social and Cultural Rights. Article 11 of the ICESCR guarantees the human right to an adequate standard of living, including food, housing and clothing. It goes on to specify the fundamental nature of the right to freedom from hunger, the only right in the Covenant that is termed "fundamental." The ICESCR and the ICCPR entered into force in 1976. The Covenants establish a reporting system for states parties to these treaties. States parties' reports are submitted every five years for review by a committee of international experts established by the treaties themselves under the auspices of the United Nations. This system, made up of states parties' self-reports and the review and comments of the relevant treaty monitoring committee, is the chief monitoring and enforcement mechanism in international human rights law.

The Committee on Economic, Social and Cultural Rights (CESCR or the Committee) is the treaty monitoring body for the International Covenant on Economic, Social and Cultural Rights. It currently meets two to three times a year in Geneva to review states parties' reports. As part of its mandate to provide guidance to states parties in fulfilling their treaty obligations and preparing their reports, the Committee issues General Comments, which interpret and amplify provisions in the Covenant. Although the General Comments do not have the status of international law, they provide an authoritative source of guidance in understanding the rights in the Covenants. In 1999, the CESCR issued General Comment No. 12, on the Right to Adequate Food. This General Comment, which is reproduced in the Appendix to this Manual, provides the fullest description currently available of what the right to food encompasses.

• International Law as a Safeguard Against International Violations

Although violations are experienced at the local level of the individual, the family and the community, the source of the violation, especially in a time of increasing globalization, often originates outside the country. International law provides a vehicle for dealing with international violations of the right to adequate food. It clarifies for states and intergovernmental authorities their international obligations. It provides individuals with remedies against international violations of their rights and freedoms. In addition, in our increasingly interconnected world, international law helps to harmonize the legal framework affecting domestic implementation of the right to food in different countries.

• The Impact of International Law on Domestic Jurisprudence

It is in the domestic arena that people live their lives, realize (or not) their right to food, and experience violations. In classic human rights terms, violations are breaches of a state's domestic obligations, and forms of redress for violations are generally based within the domestic legal system. Even in the domestic context, though, international law is important.

Can international right to food law be applied in national courts? Most international treaties are not self-executing. They cannot be applied directly by judicial and administrative authorities, and judgments cannot rely solely on international law. In some countries, however, international law is self-executing, which means that once a country has ratified a treaty, the provisions of that treaty have the force of law within that country. When countries

19 Philip Alston, former chairperson of the UN Committee on Economic, Social and Cultural Rights. ALSTON, Philip, 'International Law and the Human Right to Food', in ALSTON & TOMASEVSKI(ed.), The Right to Food, (1984) 9–68

in which international law is not self-executing ratify a treaty they assume the obligation to enact the treaty's provisions into their domestic law.

Nevertheless, even when a treaty is not self-executing, there is considerable scope for the application of international human rights law in domestic courts. Even if a judge cannot base a judgment directly on international law, he or she must interpret national legislation in terms of international human rights law. Ratifying a treaty signals a state's intention to be bound by the provisions of that treaty and to enact them into domestic law. This is especially true when a treaty establishes rights and duties for individuals, which is the case for human rights.

National jurisdictions increasingly refer to international conventions and principles in the interpretation, development and application of their domestic legislation.[20] Examples can be found in the case of Indian jurisprudence on the right to life, presented in Chapter 6, and in Chapter 7.A.3. In addition, international law establishes international standards, which can be used in court to strengthen a domestic claim.

Although the right to food is firmly established in international law, it rarely appears explicitly in national constitutions or legislation. Nevertheless, most of the time the right to food is considered to be part of the right to an adequate standard of living, which does appear in many national constitutions, where it may take a variety of forms.

5.3 The Human Right to Food in International Law

• Economic, Social and Cultural Rights as Fundamental Concepts within the United Nations

The "Four Freedoms Address" of Franklin D. Roosevelt

World War II and the Holocaust marked a turning point in the development of human rights, preparing the way for the first incorporation into international law in the 1945 Charter of the United Nations (arts. 1 and 55):

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:...

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Four Freedoms Address of United States President Franklin D. Roosevelt, excerpted in the box above, was an important precursor to the incorporation of human rights into the UN system. Economic and social rights were integral to Roosevelt's conception of human rights, under the heading of "Freedom from Want." Roosevelt's Four Freedoms expressed the political will to fully include economic and social rights within the emerging international human rights system from the very beginning. Later, as a result of political pressures, economic and social rights came to be thought of as "second generation rights" in the emerging international human rights system, following

20 See Matthew Craven, The Domestic Application of the International Covenant on Economic, Social and Cultural Rights.

behind civil and political rights. The Four Freedoms were among the premises of the Atlantic Charter, which the Allies endorsed as providing principles for the post-War order. Moreover, economic and social rights were included in the Draft International Bill of Rights, completed by the American Law Institute in 1944. That same year, President Roosevelt even promoted the idea of establishing an Economic Bill of Rights.[21]

As the first step in executing its human rights program, the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. The UDHR reflects an international consensus on equality of treatment and the indivisibility of human rights. Indeed, the UDHR makes no distinction among civil, cultural, economic, political and social rights, placing them all on an equal footing. This includes the right to food.

• The Marginalisation of Economic, Social and Cultural Rights

The Cold War began at the end of the 1940s, splitting former allies into two blocs: the socialist "East" and the capitalist "West." One of the first casualties of the Cold War was human rights, which became an ideological battleground until the end of the 1980s. On the basis of the conflict between the two dominant economic and political models—capitalism and socialism—led by the United States and the Soviet Union, respectively, human rights were split into two categories, with each of the truncated fragments becoming a warhorse for one of the two superpowers. The Western bloc claimed that civil and political rights were the only "true" rights that could bring individuals the freedom and well-being they were striving for. For its part, the Eastern bloc maintained that economic and social rights—that is, food to eat and a roof over one's head—are necessary preconditions for a democratic system in which civil and political rights can flourish at all.

The UN General Assembly adopted a resolution in 1950, encouraging the Commission on Human Rights to prepare a single Covenant incorporating the rights in the UDHR into a legally binding document. In light of the different views then current, and especially the opposition of the Western states, the project of drafting only one text had to be abandoned. The result was two covenants instead of one: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both were adopted in 1966 and entered into force in 1976. From the beginning, civil and political rights were accorded more attention and better monitoring and protection mechanisms. The Western bloc considered economic, social and cultural rights to be merely political aspirations and refused to grant them the same protective mechanisms as are in the ICCPR.

The United Nations allows individuals to file complaints against violations of the ICCPR, but not for violations of the ICESCR. The UN adopted an Optional Protocol to the ICCPR in 1966, when the Covenants were opened for signature, "packaging" it with the ICCPR itself. There was no such optional protocol for the ICESCR. Finally, in 1993, at the World Conference on Human Rights in Vienna, a proposal for an Optional Protocol permitting individual complaints alleging violations of the ICESCR was included in the final Declaration and Plan of Action. A draft protocol was written, but it is still stuck in the UN Commission on Human Rights, showing that despite progress in important respects, economic, social and cultural rights are still disadvantaged relative to civil and political rights.

The Revival of Economic, Social and Cultural Rights

• The Right to Food as a Pioneer in the 1980s

Since the 1980s, economic, social and cultural rights have continuously improved their standing in international law and in terms of popular acceptance, led by the right to food. In 1983, the UN Economic and Social Council commissioned a report on the right to food as a human right from Asbjørn Eide: the first study ever undertaken within the UN system on a specific right in the International Covenant on Economic, Social and Cultural Rights. It was also in the 1980s that the current, widely accepted three-part framework for states' obligations was first proposed. In an article entitled "Basic Rights, Affluence and U.S. Foreign Policy," Henry Shue identified three

21 See Paul HUNT, Reclaiming Social Rights (1996).

types of state duties for the realization of the basic rights he was describing: the duty to avoid depriving, the duty to protect from deprivation by others, and the duty to aid the deprived.[22] In 1984, Asbjørn Eide revised this typology, changing it to the three-part framework of states' obligations to respect, protect and fulfill human right, and applied this framework to the right to food, in the report referred to above.

In the same year the International Law Association formed a Right to Food Committee, and the Netherlands Human Rights Institute in Utrecht organized an international conference on the right to food. In 1987, the UN Human Rights Commission approved the Eide report on the right to food. In 1986, a group of international legal experts, meeting at Limburg University in the Netherlands (now Maastricht University), formulated the influential Limburg Principles on the Implementation of Economic, Social and Cultural Rights, which provided additional guidance for interpreting and implementing the rights in the International Covenant. The 1980s were a fruitful period for economic, social and cultural rights, producing a number of important reports and studies that took the right to food as their point of departure. (Cf. the work of Philip Alston, Asbjørn Eide and Katarina Tomasevski during the 1980s)[23]

• The Contribution of FIAN and Other International NGOs

The disproportionate focus on civil and political rights within the UN and among states found its echo in the work of non-governmental human rights organizations (NGOs). In 1986, however, the ice finally broke, with the founding of FIAN as an international human rights organization advocating for the human right to food. Since then, economic, social and cultural rights have made important inroads in civil society generally as well as in the human rights community itself.

As part of its programme, in the late 1980s FIAN began contributing to the work of the UN Committee on Economic, Social and Cultural Rights. FIAN and the Habitat International Coalition (HIC) were the first international NGOs to prepare "parallel reports," providing the Committee with additional and independent information for its review of states parties' reports under the Covenant. In 1992, FIAN and HIC began lobbying for an Optional Protocol permitting individual complaints under the ICESCR. Over the years the two organizations have provided numerous reports and other submissions to the CESCR, have participated in the CESCR's Days of General Discussion on topics in the ICESCR, and have contributed substantially to the Committee's General Comments 4, 7, and 12 (on the right to adequate housing, forced evictions, and the right to adequate food, respectively). NGO contributions to the CESCR have benefited both groups. The CESCR lacks resources and an independent investigation and monitoring capacity. Without NGO input the Committee would have a very one-sided view, consisting solely of states parties' self reports concerning their compliance with the ICESCR. NGO expertise, advocacy and lobbying on economic, social and cultural rights have helped the Committee to move forward in establishing standards, clarifying state obligations, identifying violations, and resolving other issues concerning the rights in the Covenant. Progress made by the Committee in turn benefits the NGOs whose goal it is to advance and clarify these rights and ensure that they are realized for all people.

The work of FIAN, HIC and other international NGOs with the CESCR and other UN bodies on behalf of specific rights is an effective form of advocacy that other civil society organizations can learn from and emulate.

• The World Food Summit 1996

FIAN, along with other organizations promoting the right to food, was actively involved in the preparations and implementation of the World Food Summit, which was held in Rome in 1996. The Declaration of the World Summit was significant. It referred to food as a human right and, in objective 7.4, it called for clarification of states' obligations with respect to the right to food and development of voluntary guidelines for their implementation (see also Chapter 5.C.). In response, FIAN and other NGOs drafted and are now promoting a Draft Code of Conduct on the Right to Adequate Food. The Draft Code of Conduct was welcomed by the UN

22 See also Henry SHUE, Basic Rights (1996)

23 See Bibliography for specific references.

High Commissioner for Human Rights as an important step in addressing objective 7.4 of the 1996 Declaration of the World Food Summit.

- **General Comment No. 12, 1999**

The purpose and significance of General Comment No. 12 on the right to adequate food have already been described. General Comment No. 12 amplifies and interprets the rather brief treatment of the right to food which is found in the Covenant, identifying the normative content, states' obligations (including states' international obligations), and violations of the right to food. This manual makes extensive use of General Comment 12 in its discussion of these topics.

International law provides important legal sources for the human right to adequate food. This Manual includes in the Annex a list of conventions and declarations concerned with the right to adequate food, reproducing the relevant articles and paragraphs for easy reference.

5.4 Normative Content of the Right to Food

To what does the right to food entitle every human being? What must be guaranteed to all of us? These questions address what is called (in legal terminology) the "normative content" of the right to food. The normative content is the basic standard or quality of life to which a person is entitled by a particular human right.

Chapter 4 presented the three components of a human right. The basic standard is the first component.

To begin with, the human right to adequate food entitles each and every human being to access to adequate food. But this raises a whole set of new questions. When is food adequate? And what is meant by "access to food"? Specifying the normative content of the right to adequate food means providing answers to these questions. The normative content of the right to food has several dimensions, which General Comment No. 12 addresses.

5.4.1 Minimum Core Content

The most basic answer to questions about the normative content of the right to food is not to define what is meant by access or by adequacy, but simply to say that food is adequate if it keeps hunger away. Thus, we arrive at what is generally referred to as the "minimum core content" of the right to adequate food: Freedom from hunger.

The normative content of "the right of everyone to "an adequate standard of living... including adequate food..." in Covenant Article 11.1 therefore specifies that the core content of the right to food is the "fundamental right of everyone to be free from hunger" in Article 11.2. The UN human rights system,[24] as well as the Maastricht Guidelines,[25] have used concepts of minimum core obligations and minimum essential level to establish state obligations when a state lacks the resources for full implementation.

Freedom from hunger is the only right in the Covenant that is termed "fundamental". This coincides with the principle that the CESCR articulated in its General Comment No. 3,[26] that states must see to it that everyone within their territory has access to the minimum core content of economic, social and cultural rights under all circumstances (with the assistance of the international community if necessary). Failure to do so is a prima facie violation of the human right in question by the state and/or the international community.

Full realization of the right to adequate food entails much more than freedom from hunger. According to General Comment No. 12 the right to adequate food is fully realised when "every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its

24 The 1993 World Conference on Human Rights in UN Doc. A/CONF.157/PC/62/Add.5, Annex I, paragraph 16. The Committee on Economic, Social and Cultural Rights referred to it for example in UN Doc. E/C.12/1993/11, paragraph 5. The Commission on Human Rights called upon states "to consider identifying special national benchmarks designed to give effect to the minimum core obligations to ensure the satisfaction of minimum essential levels of each of the rights. (Resolution 1993/14, paragraph 7)

25 See for example Netherlands Human Rights Quarterly June 1997

26 General Comment No.3, UN Doc.E/1991/23, Annex III, paragraph 10

procurement" (para. 6) and (as we may add for the sake of completeness), if this access is safeguarded by justiciable provisions providing remedy and satisfaction. Paragraph 6 warns that "The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients." This sentence of the General Comment links the definition of the normative content of the right to adequate food to the preceding sentence in paragraph 6, namely, "physical and economic access at all times to adequate food or means for its procurement." This definition of the normative content is given additional detail when the General Comment describes what is meant by "access" (in paras 8 and 13) and what is meant by "adequate quantity and quality" (paras 8 to 11). We will consider in detail both dimensions of the normative content (adequacy and access).

5.4.2 What is Adequate Food?

According to paragraph 8 of General Comment 12, adequate food must be "sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture". Each of these aspects is further detailed in paras 9, 10 and 11.

Dietary needs require a mix of nutrients for "physical and mental growth, development and maintenance," depending on one's occupation, gender, or age. "Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast feeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake" (para. 9).

Food must be free from adverse substances. Adverse substances include substances that originate from contamination or adulteration in the food chain, as well as from naturally occurring toxins. Various food-related crises in recent decades (including hormone and pesticide scandals) have shown that food safety is a concern in the South as well as the North. Food production patterns aimed at high productivity have been implicated in the debate over food quality and safety.

Cultural or consumer acceptability refers to "non-nutrient based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies" (para.11). Food plays a large role in the cultural life of communities and in developing and maintaining regional identity. Indigenous peoples offer a good illustration of the importance of the cultural dimension of food. Food that is traditionally grown and/or collected in a particular area has traditionally corresponded to the needs and available resources of the people living in the area. People have adapted their nutrition according to factors like geography, climate, religious beliefs and traditional knowledge concerning local flora and fauna, people have adapted their nutrition. Traditional foods are often a very important part of a community's cultural life. Religious celebrations are almost always accompanied by the preparation of traditional foods and beverages.

It should not be surprising, therefore, that the right to adequate food has a comprehensive normative content: Food is perhaps the single most important determinant of human health in both the Global North and South.[27] The health implications of a poor or unbalanced diet are severe. Hungry and chronically malnourished with severe deficiencies of macro- and micronutrients, of whom there are many in the South, are much more likely to suffer from physical and mental retardation. Approximately 3.5 billion people suffer from anemia and other disorders as a result of iron deficiency. Diseases linked to inadequate intake of vitamins and iodine also affect hundreds of million people. In both the North and the South, overeating and obesity have led to a worrisome increase in diabetes, coronary heart disease and cancer.

In addition, food has deep cultural and spiritual significance. All these dimensions of the normative content are important. In a situation of very scarce resources, however, the minimum core content—that is, freedom from hunger—deserves priority in the allocation of resources.

27 General Comment No.14 on the Right to Health includes among the core obligations under the human right to health the obligation "to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone" (General Comment No. 14, para. 43(b)). Adequate food can be seen as a key determinant of health, even beyond mere freedom from hunger.

5.4.3 What Does Proper Access to Food Mean?

a. Economic Accessibility, Access to the Means of Procurement, Access to Resources

"Accessibility encompasses both economic and physical accessibility..." (General Comment 12, para. 13). Food is economically accessible to a person or community if the person or community has access to food as a result of their economic activities in the widest sense. These economic activities may entail food production based on access to natural productive resources (land, water, forests, pastures, fishing grounds, etc.) and other resources and means of production. Economic activities may also include work as a self-employed or wage-employed person.

Paragraph 12 of General Comment No. 12 outlines the criteria for determining the availability of food: "Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed..." Moreover, "[e]conomic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food" (para. 13). The income generated by such acquisition patterns and entitlements is to be sufficient for an adequate standard of living, including food and other basic needs as well: "Economic accessibility implies that personal and household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised" (para. 13). Without the means to procure food, economic access to food is impossible. The normative content pertaining to both economic and physical access to food therefore implies entitlement to access to the means to procure food: natural and other resources, which include things like skills, knowledge, markets etc. Paragraph 13 lists several groups whose economic access to food is particularly threatened: "Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes." "A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened." "Victims of natural disasters, people living in disaster-prone areas and other specifically disadvantaged groups may need special attention..." For all these groups, ensuring physical access to food is the highest priority. Nevertheless economic accessibility must be fulfilled as well.

b. Physical Accessibility

In contrast to economic accessibility, physical accessibility of food is not concerned with whether the food thus accessed is the result of an economic activity, entitlement or acquisition pattern. It emphasises the question of immediate access. According to paragraph 13 of General Comment No. 12, "Physical accessibility implies that adequate food must be accessible to everyone..." Physical accessibility of food imposes a requirement that people who may not be in a position to make use of resources—or even of money to buy food—still have access to it: General Comment No. 12 mentions in particular "physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill". Physical accessibility of food is unconditional, just as the right to an adequate standard of living in Article 11 of the ICESCR is unconditional. Access to food is not conditional upon an individual's economic activities or specific merits, that is, whether or not a person "deserves" aid.

c. Sustainable Accessibility

In paragraph 8, General Comment No. 12 places particular emphasis on "[t]he accessibility of such food in ways that are sustainable..." This echoes the report on the right to food by Asbjørn Eide, which stipulates that "[a]ccess to food must be sustainable over time" (para. 135).[28] This is an ecological as well as an economic imperative. "The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations." "[S]ustainability incorporates the notion of long-term

28 Report on the right to adequate food as a human right submitted by Mr. Asbjørn Eide, Special Rapporteur, ECOSOC E/CN.4/Sub.2/1987/23, 7 July 1987.

availability and accessibility" (GC 12, para. 7). Whereas long-term availability points to the ecological limitations of food production and distribution, the long-term accessibility of food points to the need to ensure that the access to food must not be risky or variable but continuous over time, even over a long period of time.

d. Accessibility in Dignity

Moreover, food must be "accessible in a manner which does not destroy one's dignity as a human being" (UN report, para. 52). This concern about non-interference with the enjoyment of other human rights reminds us that the right to food is an integral part of human rights, and in particular of the human right to an adequate standard of living. Access to food must therefore not be seen in isolation from the lack of an adequate standard of living. An inadequate standard of living is the embodiment of poverty: Exclusion from the resources of humankind and the services of society.

5.5 The General Nature of Obligations under the ICESCR

Article 2 of the ICESCR spells out the general obligations of all states with respect to the rights in the Covenant, including the right to adequate food in Article 11. The wording of Article 2 is almost the same in both the ICCPR and the ICESCR, reflecting their common origin and the original intention to combine all the rights in the Universal Declaration of Human Rights into one Covenant. In fact, the first five articles in both Covenants are practically identical. The differences are described more fully below.

According to Article 2 of the ICESCR, "Each state party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The nature and scope of these obligations were further defined in General Comment No. 3, "On the Nature of States Obligations," which the UN Committee on Economic, Social and Cultural Rights adopted in 1990. The key terms are to be interpreted as follows:

- **Appropriate Measures**

According to General Comment No. 3, appropriate measures for taking steps toward the realization of rights in the Covenant can take many forms. The Committee highlights the importance of legislative measures. Nevertheless, it also insists on the importance of a full range of measures, depending on the circumstances in the individual state, including programmatic, policy, administrative, educational, social, judicial or financial measures leading to full achievement of the right.

- **Progressive Achievement**

The flexibility given to states to achieve full realization of the rights in the ICESCR over time, rather than immediately, recognizes that some state obligations, including the obligation to protect and especially the obligation to fulfill, will require resources. Even the best of states may not be able to implement all their obligations immediately. The realization of human rights requires states to take steps but it does not require them to do the impossible. The language of progressive realization is found in the ICESCR, but not in the ICCPR, even though the first five articles in both Covenants are practically identical, reflecting their common origin and the original project to encompass all the rights in the UDHR within one treaty. The ICCPR requires immediate implementation of its provisions.

This difference between the two Covenants represents a misconception or oversimplification concerning their resource implications. Although it may generally be true that realization of ESC rights entails the expenditure of financial resources, there are exceptions. Obligations to respect, for example, which impose a requirement that

states do not themselves violate peoples' basic human rights standard, do not have resource requirements. Trade union rights in Article 8 of the ICESCR obligate states to establish a supportive legal framework for trade union activities, and after that, to let them operate freely, provided that their activities do not violate the legal framework thus established. It is equally erroneous to assume that civil and political rights are cost free. For example, establishing and maintaining judicial and criminal justice systems is generally quite expensive. Yet doing so is a normal and expected part of governance, and full implementation of civil and political rights requires it. Moreover, putting the necessary administrative measures in place will take time, both for civil/political and economic/social/cultural rights. As long as a state is taking reasonable steps to establish the administrative measures, it will be in compliance with its human rights obligations.

- **Maximum Available Resources: As Quickly as Possible**

The requirement to take steps "to the maximum of available resources" is both a safety valve for states and an ambitious requirement. On the one hand, it recognizes that states have resource limitations and that a state cannot be required to use more resources than it possesses in order to meet its human rights obligations. On the other hand, it challenges states, obliging them to utilize all of these available resources to meet their human rights obligations. Priority is given to meeting core obligations, which means, in turn, addressing the needs of the most vulnerable members of the population. According to General Comment 3, para. 12, "the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints."

General Comment 3 assumes that all states, no matter how poor, could do a better job of meeting their human rights obligations, if they reprioritized their spending in accordance with these obligations: emphasizing basic food production rather than subsidizing agricultural commodities for export, for example, or targeting programs to the most vulnerable members of the population. Maternal/child nutrition and feeding programs, for example, have significant health benefits, and will reduce the need for costly curative health care later on. It is also worth noting that the resources referred to in Article 2 of the Covenant are not limited to financial resources, but include all the resources available in society.

States are expected to use all means at their disposal to meet their obligations. Obligations that can be met immediately are immediately incumbent upon states. This includes the obligation to respect economic and physical access to adequate food. Taking steps progressively, rather than immediately, is only permissible due to lack of resources, and the states that make this claim have the burden of proving it. Paragraph 10 of General Comment No. 3 stipulates that a state claiming that it is unable to meet its obligations for reasons beyond its control must show that it has been unsuccessful in seeking international assistance.

Using these tools and concepts, let us return to an example from an earlier chapter, to analyze whether the Indian government has lived up to its human rights obligations in the case of the hungry people and the full godowns.

Failure to Use Maximum Available Resources: Petition of the People's Union for Civil Liberties before the Supreme Court of India

India is a State party to the International Covenant on Economic, Social and Cultural Rights. According to international law, this means that the Indian state is obliged to "ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger" (General Comment 12, para. 14). General Comment 12 also stipulates in paragraph 15 that "whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural and other disasters." And in paragraph 17, " Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level to be free from hunger."

In the case of the petition before the Supreme Court of India, starvation deaths occurred during a period of drought despite large surpluses of food in public godowns. The failure of the national and state governments to respond to the drought was a violation of Articles 2 and 11 of the ICESCR. Government studies and statistics themselves showed that there was a surplus of food in government stocks. These surpluses should have been distributed to people facing starvation. The government's failure to meet its obligation to ensure that every person was, at a minimum, free from hunger therefore violated the right to food. This failure was the result of unwillingness, not inability. Although the resources were available, the state did not use them to meet its obligations.

The general legal obligations of states under ICESCR Article 2.1 provide important tools to evaluate States' performance with respect to their protection-bound and fulfillment-bound obligations.

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Chapter 6 Fighting Violations and Abuses

6.1 Obligations to Respect and Protect Access to Adequate Food

The obligations to respect, protect and fulfil were introduced in Chapter X as the generic obligations that apply to every human right. We will now explore what these obligations mean for the right to access to adequate food.

The obligation to respect access to adequate food prohibits states parties from taking any measures preventing or harming such access. The obligation to protect requires states to ensure that third parties do not deprive individuals of their access to adequate food. Note that in both these situations, the individuals or groups in question already enjoy access to food. (Whether this food is adequate is a separate issue.) This differs from the obligation to fulfil, which pertains to individuals or groups who lack access to food.

The essence of the obligation to respect is very simple. It is the requirement that states not act to deprive people of their existing access to food or food-producing resources. Examples of state actions that breach the obligation to respect include:

- Passing a law or adopting administrative measures which destroy people's existing access to food or food-producing resources;
- Undertaking activities which prevent people from maintaining their existing access to food or productive resources;
- Authorizing, actively supporting, or participating in such activities of third parties.

The obligation to protect access to adequate food is the state's obligation to actively prevent or stop third parties from depriving people of their existing access to food or food-producing resources. The destructive agent in this case is the third party. This makes the obligation to protect more difficult to uphold than the obligation to respect. States cannot regulate everything. They cannot—and should not—put a policeman next to every vulnerable person or group. What can be reasonably expected from states can best be determined on a case-by-case basis.

Both types of obligations deal with the destruction of access to adequate food. If the destructive agent is a state authority, the obligation that has been breached is the respect-bound obligation, and the act is a violation of the human right to food. If the destructive agent is a third party, this act may be an abuse of the human right to food. It is likely also to be a violation of the right to access to adequate food: a violation by the state of its obligation to protect, if the state could reasonably have been expected to prevent this act and/or failed to take reasonable precautions. It is not a violation by the third party. Remember that it is states, not private actors, that have human rights obligations. If state authorities actively collaborate with, support or directly authorize the third party's action, the state's direct involvement turns the action into a violation of its obligation to respect access to adequate food. Unfortunately, it is all too common for states to actively assist third parties in their destructive activities.

Horizontal Effect, Abuse, and Impunity

The human right to food, like other human rights, refers to the relation between states and (vulnerable) individuals and groups. In a given case, an actor outside this specific relation between the rights-holder (the person/group) and the duty-holder (the state) is a "third party". These third parties can be another person, a group or a corporation.

If human rights are legal rights in a particular state (that is, they are self-executing or the state has enacted them into its domestic law, the rights-holder has a legal claim:

Human rights law is therefore part of public law. Much of it can be viewed as equivalent to constitutional law. Human rights law, if properly implemented, provides for legal claims against states (including the community of states): States can be sued in national and international courts for violating human rights.

If we characterize the relationship between a human being and a state "vertical", then the relationship between a human being and a third party is "horizontal". What effect do human rights have on these "horizontal relations"? The state's obligation to protect implies that third parties must not destroy the basic human standard of the rights-holder. Otherwise the third party commits an abuse of human rights (a term introduced in Chapter 4). What are the consequences of this "horizontal effect", if the human right is also a legal right? This is an important question in human rights law. It is clear (from the state's obligation to protect) that victims should be able to sue states for failing to protect them against an action by a third party that destroys their access to food. Should human rights law also allow an individual to sue a third party directly, without any intermediate legislation by the state? Does human rights law allow direct individual claims on the basis of human rights alone against non-state actors?

The question of horizontal effect is a difficult one in constitutional law and human rights law. One widely held view can be summarized as follows: Human rights law requires implementing legislation (under the obligation to protect). In its absence a direct domestic case against a third party cannot be brought. Human rights law, however, does have a horizontal effect, even in such cases: Courts must interpret existing domestic legislation in a manner consistent with human rights law.

6.2 Examples of Breaches of the Obligations to Respect and/or Protect

The following examples of breaches of the obligations to respect and/or protect illustrate some of the different ways that access to food and to food-producing resources may be destroyed.

6.2.1 Destruction of People's Food-Producing Resources by the Effects of Activities such as Predatory Mining, Oil Exploitation, Dam Construction or Industrial Fishing

Millions of vulnerable people lose their access to food-producing resources as a result of large industrial projects such as dams or mines. To undertake these projects, it is necessary first to ensure that the affected people are adequately compensated and receive equivalent land. Even then, such projects should be avoided unless it can be shown that doing so would create undue hardship for the rest of the population.

The experience of FIAN and other NGOs has shown that the destruction of people's food-producing resources rarely receives adequate compensation. More often, people face harassment and violence, rather than an invitation to participate in the decision-making process concerning such industrial projects. Most of the time, the local population is viewed not only to be an additional cost to the project, but completely irrelevant. They are not invited to take part in the project's design or implementation, thereby eliminating their opportunity to accept or reject it.

Oil Exploitation: A Long and Notorious History of Destruction

Oil companies have earned their reputation for not respecting local people's rights. Oil drilling and pipeline construction have had a severe negative impact on indigenous communities, peasants and farmers, and herders all over the world. Forcible evictions, harassment, destruction of natural and food-producing resources are some of the widespread violations and abuses of vulnerable people's right to feed themselves. The long and destructive history of Shell Oil in the Niger Delta area of Nigeria, home of the Ogoni people, and the 1997 execution of Ogoni activist Ken Saro-Wiwa may be an extreme case, but it is not an isolated one.[29]

29 ONOOKOME OKOME (ed.) Before I am hanged: Ken Saro Wiwa, Literature, Politics and Dissent (1999)

Ecuador: ARCO Block 10

After a spectacular march of 600 km from their territories in the Amazon region of Ecuador to the capital, Quito, in June 1992, the indigenous communities of the province of Pastaza finally obtained land titles to their traditional territories. Soon afterwards the North American transnational oil company ARCO penetrated these territories in search of oil. Several communities were severely affected. ARCO reportedly set off 13,000 blasts in 18 months. This is only one example of ARCO's impact on the wildlife and the rain forest on which the communities depended. In the past, communities could gather in one day all the food they would need for a week or more. A few months after ARCO's arrival, however, malnutrition and disease were prevalent in those same communities. ARCO tried to break the resistance of the indigenous communities. At the same time the whole area became increasingly militarized. FIAN directed a campaign at the Ecuadorian government, reminding it of its protection-bound obligation. There was only one response to the letters addressed to the government—but it came from ARCO in the United States.

Forwarding the letter to ARCO was an insufficient effort by the Ecuadorian government to protect the indigenous communities' right to feed themselves against the actions of ARCO. Unless it can be shown that the Ecuadorian state lacked the ability to constrain ARCO, the state violated the communities' right to food through its failure to protect. This violation is in addition to the abuses of human rights committed by ARCO.

Aggressive Deforestation for Profit: Destruction of Indigenous Habitat and Means of Subsistence

Forests are the traditional habitat of many hunters and gatherers. Without the forest and its natural resources, most forest dwellers have no means of livelihood. Deforestation is an acute problem all over the world, as forests give way to agriculture, industry, road construction, cities, and other accompaniments of modern life. The disappearance of the forests has echoed for the hundreds of thousands of indigenous people whose way of life has been destroyed because of it. The story of the Baka people of Cameroon and the deforestation of mangrove forests in Ecuador are recent examples of the impact on people's livelihoods that destruction of the forests can have.

Destruction of the Natural Resources of the Pygmies of Cameroon

Large areas of Cameroon's rain forests continue to be destroyed by commercial logging companies. Every year more than 200,000 hectares of rain forest in Cameroon are cut for timber, most of which is destined for Europe. By severely depleting the rain forest's natural reserves, these logging activities threaten the ability of the Baka Pygmies to feed themselves. The Baka Pygmies are the traditional inhabitants of the rain forests of Cameroon. A nomadic people, they have lived and hunted there for thousands of years, surviving on the rain forest's natural resources. They are heavily dependent not only upon the animals of the forest but also its fruits, berries and other plants for both food and medicine. Such dependency has ensured that, throughout their existence, the Baka pygmies have used the resources at their disposal in a sustainable manner. Their traditional access to food, however, is now being destroyed. By failing to protect these communities or provide adequate compensation and rehabilitation, the government of Cameroon has violated the Bakas' human right to feed themselves.

Ecuador: Deforestation of the Mangroves by the Shrimp Industry Destroys the Means of Subsistence of Local Fishing Communities

For the past 15 years, shrimp have been exported from the Latin American and Asian countries where they are bred in shrimp farms located along coastal basins. This delicacy is produced in the South to feed the northern markets.

In the province of Esmeralda in northeastern Ecuador, 15,000 families (approximately 90,000 people) live in fishing communities that are threatened by the indiscriminate cutting of the mangrove forests along the mouth of the river Muisne. The livelihoods of 25 percent of the coastal population depend directly or indirectly on the mangroves. For the last three decades, the shrimp industry has been cutting down the mangroves and turning them

into aquaculture farms. The shrimp boom has led to the loss of 60 per cent of the mangrove forests, as well as to salinization of large agricultural areas and drinking water sources. The local population is affected not only by the loss of the mangrove forests on which their livelihood and food sources depend, but also by pollution of the surrounding tidelands, which have become pools of chemicals and antibiotics. Destruction of the mangrove forests also leads to loss of a natural protective barrier against heavy seas and river flooding. The shrimp industry has destroyed an ecosystem and a source of livelihood for local communities. In allowing this to happen, the government of Ecuador has breached its protection-bound obligation and violated the right to feed themselves of these fishing communities.

6.2.2 Theft of People's Food-Producing Resources through Forcible Eviction of Peasants, Fisherfolk, and Nomadic and Indigenous People from their Land, Fishing Grounds or Forests

India: Access to Fishing Grounds Threatened with Destruction by Construction of Maroli Port in Umbargaon Taluka, Gujarat

In April 2000, Lt. Colonel Pratap Save died in hospital, reportedly from the torture inflicted on him in prison. The Lt Colonel was one of the leaders of the "Save the Coast" movement, which opposed construction of the Maroli Port in Umbargaon Taluka in Gujarat, India. The port jeopardises the livelihoods of more than 100,000 inhabitants of the area.

Maroli Port is the project of a local company called NATELCO; it would affect 20–25 villages in Gujarat. The need for an additional port in the area is highly questionable. A study conducted by activists and experts determined that additional harbour traffic in the future could be absorbed by making the existing ports more efficient. In Umbargaon Taluka more than 100,000 people depend exclusively on fishing for their livelihoods, and 75,000 depend solely upon agriculture. Constructing a new port would severely affect their means of subsistence. Marine breeding grounds would be destroyed and water would be contaminated by spillage, thereby damaging marine life further. Construction of a lagoon harbour would cover the marshy lands used by small fishermen to fish for creek prawns, crabs and other marine life. Wetlands also filter sediments and pollutants from the water, maintaining water quality, and their removal would reduce the productivity of the local agricultural land. Agricultural land would be further affected by the enormous dredging operations that would have to be undertaken. This, along with the construction of breakwaters (barriers that break the impact of waves), would inevitably increase the salinity of the ground water, adversely affecting agricultural land. In April 2000 many fishers in one of the affected villages, Umbargaon, took part in a demonstration against the proposed port. The police responded to these demonstrations with brute force and the use of tear gas. Many people were arrested and later subjected to torture at the police station. One of the demonstrators was Lt. Colonel Pratap Save, who died later in hospital.

In addition to the obvious violations of civil and political rights committed by the Indian police there is an underlying violation of the affected communities' human right to feed themselves: For vulnerable groups in India and elsewhere, loss of their livelihood means hunger and malnutrition.

Israel: Forcible Eviction of the Jahalin Bedouin Community of Ma'ale Adumim

In 1995, about 300 Jahalin (45 families) faced immediate eviction from their homes, and another 150 families (800 people) were threatened by the expansion plans of Jewish Israeli settlers. The only alternative encampment site proposed to the Jahalin was located next to the regional garbage dump and was deemed "unfit for human habitation" by Israeli experts. The Jahalin people proposed alternatives sites, which were all rejected by the authorities.

The Jahalin people had already been forcibly evicted from their traditional home in the Negev in 1950 after creation of the State of Israel. They settled in the Jordanian-held West Bank on the edge of the Judean desert

between Jerusalem and Jericho and became tenants on land owned by nearby villagers. After 1967, the Israeli army occupied the area and closed off increasing amounts of it for military use. The whole area was eventually declared "state land" by Israel in 1982, and the Jahalin people were displaced by construction of a Jewish settlement. Forced evictions without equivalent resettlement are illegal in both local and international law. In Israel, forced evictions are generally supported by the armed forces. The remaining living and grazing area was restricted again through more recent construction of an Israeli college, especially since 1993, when road building and other infrastructure projects were started, and when construction of the new settlement reached the Jahalin encampment. The Jahalin people depend upon sheep and goats for their livelihood, selling the dairy products and wool. In the absence of a comprehensive resettlement plan including sufficient land for grazing, they were forced to sell their remaining animals and seek work as cheap labourers in Israel, where many could not find jobs at all. Forced displacement meant destruction of the Jahalins' entire means of subsistence.

6.2.3 Destroying People´s Food-Producing Resources through Ecological Destruction

India: Pollution of Food-Producing Resources by Leather and Paper Industries in Tamil Nadu

In June 1997, the Government of Tamil Nadu in India decided to establish an industrial complex housing leather, paper and other industries in the Cuddalore District. The Tamil Nadu Corporation for Industrial Infrastructure Development Limited (TACID), a government corporation, was assigned to manage the project. For this purpose 2,411 acres of land situated in the villages of Andarmullipallam, Kayalpattu, Periapattu and Silambimangalam were to be acquired, under the supervision of the District Revenue Officer of Cuddalore. As a result, roughly 15,000 small farmers and landless agricultural workers, the great majority of them semi-literate, would be unable to feed themselves. The government has made no offers for compensation other than a promise that one member of each family would be given a job in the proposed industries. The principal source of income in the four villages most directly affected comes from growing paddy, cumbu, finger millet, groundnuts and cotton. In the surrounding Vandiyanpallam and Villiyanallur villages, 30,000 people would be affected by industrial pollution. Effluents from the planned industries, including the leather tanning park, are known to contain pollutants that can degrade the quality of water, land and soil. Allowing them to escape into the environment would not only destroy precious natural resources, but would eventually make thousands of agricultural workers and others jobless, and negatively affect the health of the population as well.

6.2.4 Withholding Water, Reducing Biodiversity and Destroying Access to Other Essential Inputs

Withholding inputs that are essential for food production, such as water or seeds, from people who are dependent upon agriculture for food production is also a form of food-related oppression. Access to these inputs has become a major international issue. Peasants and subsistence farmers need water for irrigation. They also need access to and control of inputs such as seeds. More generally, they should not be prevented from using and cultivating the plants they need to feed themselves. This includes traditional crops for indigenous communities. Loss of biodiversity, the result of an interconnected web of factors, which includes ecological destruction, monocropping and large-scale agriculture, competing claims for ownership of genetic resources, climate change, urbanization and population growth, and changing consumer tastes, among others, is a complex problem with an enormous present and future impact on food production.

Agenda 21 is a document that was drafted and issued at the UN Conference on Environment and Development (UNCED), also known as the Earth Summit, which took place in 1992 in Rio de Janeiro. Agenda 21 is a visionary and ambitious, but achievable (with international cooperation), road map to an environmentally sustaining, sustainable and equitable world in the 21st century. According to Agenda 21, genetic heritage is part of the commonwealth of all humanity.

However, there is a vigorous debate today concerning the patenting of life forms, genetic engineering, and the practices of some large international pharmaceutical and chemical companies concerning ownership of these genetic resources. Intellectual property protection for life forms is permitted by the 199X TRIPS (Trade-Related Aspects of International Property Protection) Agreement, drafted and administered under the auspices of the World Trade Organization.

Ownership of genetic resources, loss of bio-diversity and environmental degradation pose significant risks to the livelihoods of small producers, subsistence farmers and indigenous peoples. Large companies like Monsanto have been criticized for patenting seeds, giving them effective control over crop production in many parts of the world. Of 65 million acres of genetically modified organisms (GMOs) planted worldwide, some 50 million are planted with Monsanto's patented seeds.[30] A related problem is "biopiracy," a milder version of which is known as "bioprospecting."

Briefly, bioprospecting refers to the efforts of corporations, university researchers and others to find plants with potential useful applications in medicine, agriculture, cosmetics, and other domains. Typically, these plants are found in the Global South, often in rain forests and other sparsely populated areas. Almost universally, their useful properties are already well known to the people who live there, many of whom are indigenous peoples. Biopiracy refers to the corporations' or researchers' efforts to gain control of the plants for the purpose of exploiting, marketing and profiting from their useful properties. This often takes the form of patenting the plant or some part of it, usually without compensation to the local people who discovered its useful properties in the first place.[31]

6.2.5 Dumping food on a local market of vulnerable producers

Burkina Faso: Dumping by the European Union Violates the Right to Food of Nomads in the Sahel

The Sahel region of Africa (Mali, Niger and Burkina Faso) is well known for its sad history of famines resulting from the hard climatic conditions and droughts that prevail there. One of the major economic activities in the Sahel is cattle-breeding. About four million people survive there thanks to cattle breeding and the sale of beef. For as long as anyone can remember, they have traded their beef for cereals and fruits grown by peasants in the tropical countries to the south. They have few other opportunities to survive in this dry region.

Despite the fragility of the livelihood of the nomadic people in the Sahel, highly subsidized meat from the European Union (EU) entered the market, where it competed with the local beef. Beef producers were encouraged to increase production by various grants and subsidies in the EU's Common Agricultural Policy. Beef producers were so successful that the EU became the second largest producer and exporter in the world. Therefore, by the 1980s, the European Union sought other markets to dispose of its overproduction. Low quality meat (by-products) that could not be sold on the European market benefited from high export grants and progressively took over the African markets. By the early 1990s, small producers in Africa, especially in the Sahel, could no longer withstand the competition. The nomadic people could no longer sell their cattle, meat and dairy products. Without their income from cattle breeding, the people could no longer trade or purchase essential food items. What makes the situation even worse is that meat is not a basic food product. Meat is a luxury item that essentially enables its producers to exchange it for grain. Thus, the widespread availability of cheap meat from Europe does not increase the food security of the local population, and it does not benefit poor consumers. EU dumping destroyed the nomadic people´s means of subsistence and severely endangered their ability to feed themselves.

30 For more information, see the report of IATP, FPH et SOLAGRAL, Proceedings of the Washington D.C. Meeting on the WTO Agreement on Agriculture : Food Security, Farmers and a Fair Place for the South (1998)

31 You can find more information on this issue in 9.B.2.

6.2.6 Destroying a Person's or a Community's Food Supplies

Indonesia: Destruction of Food Supplies as a Strategy to Combat East Timor's Independence

Destruction of food supplies has been used as a systematic and intentional intimidation strategy. The recent conflict in East Timor provides an example. According to Human Rights Watch (HRW), the violence in East Timor demonstrated a clear military intention to prevent independence. In 1999, Sidney Jones, head of the Asian Division of HRW, stated that

> the catastrophe... in East Timor today is the end result of an Indonesian military plan to thwart independence. That plan was put into action in January 1999, shortly after President Habibie announced that he would give East Timorese the option of leaving Indonesia. It involved establishing a network of armed anti-independence militias and using violence, threats, and murder to try to intimidate independence supporters into not registering and not voting in the referendum...

The reports of various UN missions to East Timor support this claim. They unanimously report the massive forced displacement of the population East Timorese population. The systematic destruction of villages and of food supplies, including houses, fields and crops, accompanied these displacements.

According to the report of the UN mission, people

> displaced by the violence, both in East Timor and West Timor, now face the threat of malnutrition and disease as domestic and international humanitarian efforts are hampered by militia and military activity which block access to camps for displaced persons. They have no access to food, water, urgently needed medicine, shelter, sanitation and human security. Many are barely surviving on roots and leaves. There is no milk for the children. Unless food and water is delivered to these people immediately, the international community will witness a significant number of East Timorese lives in serious jeopardy.

Destruction of food supplies does not occur only in times of war, as the fumigation process undertaken by "Plan Colombia" shows.

Colombia: Fumigating the Food in the Fields

In the war against drug traffic, the Colombian government uses airplanes to spray the fields of peasants to eradicate illegal crops, such as coca plants, and to halt drug trafficking. At the same time, the food crops of peasants and indigenous communities are also destroyed.

The Colombian government has been applying this fumigation strategy in the Colombian Amazon region (Lower Putumayo, South Caquetá and eastern areas) for the past 25 years. Gliphosphate, a substance used in the fumigation, contaminates and destroys the food and productive resources of the peasant and indigenous communities in the region, including basic grains, fruit trees, pastures, water wells and domestic animals. It causes diseases, including blindness, diarrhoea, vomiting, skin rashes, and respiratory problems in the population and has been responsible for a number of casualties. The state's fumigation policy is a major cause of hunger and the exodus of peasants and indigenous communities from the affected region to the cities.

The policy has been ineffective. Even though fumigation has increased, coca production has increased further.

The United States views the drug traffic as a threat to its security and is imposing increasing pressure on Colombia to implement this policy. Despite its failure to eradicate illegal crops, the Colombian government intends to extend the policy, in the context of the so-called "Plan Colombia". The government receives massive financial aid from the United States (USD1.3 billion), of which 85 percent is earmarked for the military fumigation strategy. The implementation of "Plan Colombia" will contribute to the large-scale rural exodus (about 150,000 persons annually) and extensive damage to the ecosystem.

6.2.7 Dismantling Social Programmes or Legislation which Ensured Access to Food

Dismantling social programmes is a breach of respect-bound obligations under the human right to food, if it destroys vulnerable people's ongoing and guaranteed access to food.

Poor people without access to food and food-producing resources depend on basic social programmes for their livelihood. Hundreds of millions of people rely on food distribution and other social security measures for their survival. Ongoing government efforts to reduce social expenditures and social services can easily violate the human right to adequate food.

Starving the Poor: Welfare "Reform" in the USA, 1996

The United States has never enjoyed generous European-style social welfare systems, which would guarantee access to food for everyone. Nevertheless, since the 1930s and President Franklin Roosevelt's New Deal, welfare and social assistance programmes have provided minimum levels of income, housing and food to low-income women with children. These programmes have kept the number of malnourished people at around 10 million, according to the US Department of Agriculture) in one of the richest countries in the world and the number one agricultural producer.

Although the United States clearly has the capacity to ensure freedom from hunger and access to adequate food for its entire population, this is not what has happened. In 1996 the social support system was drastically curtailed by the "Personal Responsibility Act". This "welfare reform" limited participation in the Aid to Families with Dependent Children Program (welfare) to a total of five years, made participation after two years dependent upon finding employment, and reduced the food stamp program by 13 percent. Food stamps were the primary mechanism for preventing hunger and malnourishment in low-income families by helping them to purchase food. The United States has not ratified the ICESCR and has therefore not voluntarily assumed the human rights obligations that the ICESCR confers. However, the 1996 welfare reform law is a retrogressive measure that violates the international standards with respect to the right to food.

Sri Lanka: Violations of the Right to Food as a Consequence of Structural Adjustment

The situation in countries of the South is made more complicated by the role of the international finance institutions (IFIs): the World Bank and the International Monetary Fund (IMF). These international institutions, which are part of the United Nations, make their loans and financial support to developing countries conditional on acceptance by these countries of "Structural Adjustment Programmes" (SAPs). Intended to reform the economies in poor countries through currency reform, promotion of market-based systems and privatization, Structural Adjustment Programs entail sudden drastic cuts in social spending. The impact of SAPs on the right to food and food-producing resources can be severe:

Sri Lanka used to be a model in promulgating effective measures to promote food security despite its low per capita GNP. From the 1940s to the late 1970s, Sri Lanka had a universal system of food rationing that made cheap, subsidized food widely available. Everyone was entitled to obtain rice free or at very low cost. However, in 1977 a large deficit and rapid inflation led the government into negotiations with the IMF. The IMF favoured the total elimination of food subsidies. Following the negotiations, the universal system of food ration was abandoned and replaced with targeted measures reserved for the "poorest" households. In 1979 food stamps were introduced for the lowest income groups only and were not indexed to inflation. The measures led to a drastic reduction in the number of beneficiaries, eliminating particularly vulnerable families from the programme, as well as to rising prices for basic food items. The nutritional status of the population was severely affected. Studies showed a "decline in per capita calorie intake for persons in the lowest three deciles of the population" and "an increase in the proportion of children suffering from acute malnutrition".

By adopting retrogressive measures that destroyed poor people's access to food, the government of Sri Lanka violated their human right to food, as did the IMF, which had promoted this violation. As intergovernmental organizations, the IMF and the World Bank have human rights obligations.

The Obligation to Fulfil

Fulfilment-bound obligations require the state to take necessary measures to guarantee deprived groups' access to adequate food and food-producing resources. Obligations to fulfil therefore come into play in situations where individuals and/or communities lack adequate food or food-producing resources.

Part A dealt with people who are vulnerable because their access to food or resources is threatened. Part Be now enters the realm of the (already) hungry and malnourished. The absence of hunger and malnutrition was identified as the core content of the right to food. There is every reason to give them priority in the struggle for the right to food. In most cases, hunger and malnutrition are the results of poverty—not of a general lack of food in a country or area. India, for example, the nation with the largest number of malnourished—has huge amounts of grain rotting in the godowns, because the starving people next door cannot buy them. People could, of course, plant food for themselves—but they lack the resources: Land, inputs and an agrarian policies supporting small holder agriculture. Instead agribusiness is about to displace even more peasant farmers. People could, of course, work to earn money. In most countries, however, jobs providing a decent pay are lacking. Moreover, some people won't be able (or should not be expected) to work even if they had the chance to do so (the elderly, children, labor-scarce households)—and therefore need transfers.

This background is the reason why the following section deals with income poverty much more than with the general availability of food. General availability of food is, of course, a human rights issue as well, but it is secondary in the current context, as there is more than enough food available in general—but not for the poor who lack the land, the capital, the jobs and the state policies which would allow them to feed themselves.

Ultimately the human right to food includes guaranteeing access to food for each person. For persons and groups who cannot provide for themselves this implies a states' obligation to provide food or—better—income which buys whatever is needed most, including food. The right to food implies more—it implies providing access to land and other resources, and it requires in addition facilitating policies so that people can make use of these resources to feed themselves.

Human rights are an individual concept. For this matter judges must eventually be able to adjudicate to an individual malnourished claimant access to food and resources and provide immediate relief. This implies the existence of specific transfer programs—in terms of land, work, income and food. These programs are a necessary part of implementing the human right to food for the largest and most severely affected "vulnerable group"—the hundreds of millions of landless and jobless. Considering the necessity and urgency of the task the state is under an obligation to organize society-wide sharing of food and resources.

Fulfilment Systems

States must fulfil access to adequate food for every person within their jurisdiction. Although the appropriate policies are essential, policies by themselves cannot assure that every individual is reached. The elements of a system that will ensure fulfilment of the right to adequate food include the following. The right to food must be justiciable and provide people with effective remedies. To make the right to food operational for people living in deprivation a specific set of programmes—a fulfilment system—is needed. The programmes in the fulfilment system will be both income-based and resource-based, and include policies aimed at making fulfilment of the right to food sustainable. To be complete, the fulfilment system must find a place for every man, woman and child in the society to have access to food.

As laid out in ICESCR Article 2, fulfilment systems are to be established progressively to the maximum of available resources. This means "as quickly as possible" on the basis of present resources, rather than as a result of future economic growth. Full employment policies are often conditioned on economic growth. This cannot be

justified on human rights grounds. Moreover, the phenomenon in recent years of increases in joblessness and environmental destruction accompanied by economic growth has reduced the enthusiasm for this approach.

We already know a lot about how to set up appropriate and workable fulfilment systems for the right to food. In recent decades the experience with welfare states and development processes has led to a considerable body of knowledge and experience concerning the kind of food policies and programmes needed to address hunger and malnutrition effectively and provide access to adequate food. In the context of the right to food this experience can be transformed into a normative system for states, as called for in Objective 7.4 of the World Food Summit Plan of Action, 1996 and in General Comment No. 12 on the Right to Food.

A great deal of relevant information can be found in international declarations, resolutions, and the reports of national governments and international governmental organizations. Some of the recommendations and conclusions have met with a high degree of consensus among experts. Another important resource is the experience of non-governmental organizations and the successful practice of governments.

Economic access to food for deprived people entails the sharing of resources; physical access (in particular) requires the sharing of income. Therefore, fulfilment programmes have a two-fold structure reflecting both deprived people's "right to be fed" and their "right to feed oneself."

Resource-Sharing Programmes include the following:

- natural resources and capital resources
- human resources
- employment

Income-Sharing Programmes include the following:

- minimum income programmes, including minimum wage enforcement, employment programmes, basic income, social security payments
- food stamps and food subsidies
- feeding programmes for the disabled, sick and imprisoned, and
- emergency food aid

Resource-Sharing Programmes

Human beings need resources to produce income through work. To do so, a certain level of resource-sharing must be reached through programmes concerning: 1) the transfer of land and capital (natural and artificial resources); 2) provision of skills by means of training programmes (human resources); and 3) placement services and policies which would assist people in gaining access to labour markets successfully (employment sharing).

Sharing Natural and Capital Resources

A classic means of sharing natural resources is redistributive land reform. Land reform has been successfully implemented in many diverse circumstances and in many places (for example, Japan, China, Taiwan and Cuba) and has fulfilled access to food and resources for many of the rural landless.

Market-Oriented Agrarian Reform versus Redistributive Land Reform? Brazil´s Land Banks

Brazil has one of the highest concentrations of land ownership in the world: one percent of land owners own more than 100 hectares each, comprising 45 percent of all the registered land in the country. The concentration is closely related to the land's lack of productivity. In contrast, there are five million peasant families who are landless or have insufficient land to feed themselves.

According to Article 184 of the Brazilian Constitution, the state can expropriate land on the grounds of social benefit and for the purpose of agrarian reform for those properties that are not fulfilling their social function. However, the government has tried to ignore its obligations by decentralising the agrarian reform process, implementing compensatory policies and stimulating land buying and selling programmes.

The Cédula da Terra (Land Bank) is a land-buying and selling programme that began in five states in northeastern Brazil. Before the plan could be efficiently implemented and its impact evaluated, the National Congress in 1998 extended the programme nationwide. The national version is known as the Banco da Terra (Land Bank). Both programmes depend on the support and financial resources of the World Bank. In these programmes families have to borrow money to buy land which they will have to repay. Studies indicate that even under favourable productive conditions, formerly landless families will not be able to repay their huge debts and will be ruined in a few years. The government presents these programmes as complementary to the existing redistributive agrarian reform process. In reality, however, the new programmes threaten to replace the principal mechanism of actual agrarian reform: Resource-sharing through land redistribution. By introducing the Land Bank as a "complementary" programme Brazil tend to evade the sharing of resources, and risks to breach its fulfilment-bound obligations and violate the human right to food of millions of malnourished landless families.

Sharing natural and capital resources is the most controversial part of the fulfilment system: A certain minimum level of resources is a prerequisite both for an adequate standard of living and for real economic and political freedom. Control over resources is the basis for economic and political power. Sharing power (a basic element of democracy and human rights) by sharing economic resources is not popular among the privileged.

Nevertheless, the basic principle of resource sharing cannot be avoided if economic human rights are to be taken seriously. The UN recognized this with respect to the right to food in General Comment 12: In § 6 it stipulates that each person much have "[e]conomic access at all times to adequate food or means of its procurement. The right to food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients." In §13 the comment specifies that "Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes." And in §15 the Committee explains that "The obligation to fulfil(facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security."

Sharing Skills

The sharing of human resources is usually carried out by means of training and technical assistance. Deprived people need training in order to be integrated into a sustainable form of self-employment or employment in the labour market.

Regenerating Agriculture by Sharing the Appropriate Skills

The "Green Revolution" promoted a capital intensive agriculture with high inputs of agrochemicals and high yielding varieties. These technologies need good soils, plenty of water and a farmers with sufficient resources of their own to manage credits and failing crops. All these prerequisites for increasing yields through fail on the two billion peasants living in marginal areas and vulnerable to hunger and malnutrition. These areas and communities are not suitable for green revolution technologies and agribusiness.

It has been established by a number of studies[32] that the transition to sustainable agriculture in these marginal areas will double or triple the yield per acre on the fields of the poor, but it requires the correct policy system: training and extension services focusing on the needs of the peasants. Focusing on the marketing of unsuitable agribusiness products would lead to the peasants´ ruin.

States have an obligation to fulfil access for the peasants to appropriate skills and technology for sustainable production. The absence of such services is a severe problem in the fulfilment system, violating the right of access to food-producing resources. State extension agents often view their role as assisting agribusinesses to market their products.

In an appropriate fulfilment system the task is to place each deprived person who is interested in a training programme that will qualify him or her for future (self) employment. This type of programme is not unusual in welfare states. In a human rights fulfilment system there must be full coverage. The system cannot be satisfied with serving the lucky few; states are obliged to guarantee that they will accommodate every deprived person who shows interest.

An integral part of sharing human resources is the state's obligation to provide functioning placement services for everyone. This requirement is expressed in ICESCR Article 6.2: "The steps to be taken shall include technical and vocational guidance and training programmes..."

Sharing Employment

Employment is also a resource. The sharing of employment is implemented through full employment policies and the shortening of working hours. Other elements might include wage subsidies for employers or employees. Providing guaranteed employment in the public sector—offering work that may not be profitable at current rates of compensation, but which is nevertheless useful for the community—is a possible approach for states.

The much praised Maharashtra Employment Guarantee Scheme, described below, unfortunately continues to remain an isolated example.

32 J.PRETTY, Regenerating Agriculture (1995)

Maharashtra Employment Guarantee Scheme

The Employment Guarantee Scheme (EGS) in the Indian state of Maharashtra has been in existence for 25 years. The EGS provides a guarantee of employment to all adults above 18 years of age who are willing to do unskilled manual work on a piece-rate basis. The employment has to be located near where the person lives. If the scheme is not in a position to provide employment it has to pay a daily penalty, however small, to the applicant.

The main objective of the scheme is to secure a minimum income (in the short run) for vulnerable rural groups. The work should be productive and strengthen rural infrastructure. The EGS is one of the state's most popular programmes, because it offers something for everybody, not just the target group. Affluent people in urban areas want to reduce migration to the cities and overcrowding, wealthy people in rural areas benefit from the assets created by the scheme, and politicians and state bureaucrats benefit from its popularity.

The programme is totally financed by the state government, with half the cost covered by taxes on the urban population.

There is much work to be done in the public, or "common," sector, for example, with families, youth or the environment, which cannot and must not be commercialized, but which nevertheless deserves to be compensated. At the very least, someone seeking useful work must be accommodated in this "common sector". This type of employment programme has a double character. It comes close to being an income-sharing programme, if this type of sharing is in fact the main purpose of the programme.

Income-Sharing Programmes

Minimum Income Programmes

Minimum income programmes have as their primary purpose the sharing of income, to the effect that a minimum income (covering basic needs) is provided to otherwise deprived persons. Minimum wage legislation can be seen as an income-sharing programme enabling dependent labour to combat starvation wages. This type of programme operates best for those who have employment and for those employers who have something to share, namely the income generated by the economic activities of the firm and its employees. Workers will sometimes opt to work below the minimum wage, because they prefer this violation of their right to feed themselves to another violation that might be even worse: loss of their job and income altogether.

Employment programmes have already been described under "resource programmes." They can also be considered income programmes, depending on one's perspective. As an income sharing programme the key factor is the "income generation" for the deprived, rather than the transfer of skills and employment. In this type of programme, conditioning the income sharing on "work" operates like a targeting device. It helps the programme to reach the poor by offering work which is unattractive for others. Other ways of targeting minimum income programmes include imposing schooling requirements, as described in the illustration box below.

Brazil: The School Grant Programme (Renda Minima and Bolsa Escola)

In a large number of Brazilian municipalities a minimum income system has been recently introduced. The scheme is also before the parliament to become a federal law.

The scheme provides a guaranteed minimum income to certain target groups of deprived persons, on condition that they send their children to public school.

Conditioning participation in the minimum income scheme on sending children to school has a two-fold purpose. The obvious purpose is to provide an incentive for parents to get their children off the streets (or out of the labour market) and to provide them with skills for more productive jobs in the future. The other purpose is to help identify the target group: In Brazil only the very poor would send their children to public schools.

Fulfilment-bound obligations focus on the deprived as a target group. Experience shows, however, that sharply targeted programmes tend to exclude a considerable proportion of the target group. Universal programmes, such as basic income programmes that provide a guaranteed minimum income to each resident with no strings attached, avoid this serious shortcoming of fulfilment programmes. There are numerous studies indicating the other benefits of basic income programmes and showing how they can be financed.[33]

Social welfare is a sophisticated form of a minimum income programme. All European Union member states except Italy and Greece have a legally guaranteed minimum income. The last EU country to introduce a minimum income scheme was Portugal in 1997. These programmes, however, remain conditional on the fact that the individual's own income is below a certain threshold or poverty line. They are also often linked to work requirements, for example, participants are required to accept a suitable job if offered or participate in a training programme.

South Africa: Guaranteed Minimum Income on the Horizon

In South Africa, a solidarity tax to introduce a minimum income was first considered (but not introduced) in 1994 at the time when black majority rule come into being. Eight years later, in 2002, the deprivation of the black majority has still not been properly addressed. Agrarian reform is at a standstill, discontent is rising, and the proposal for a solidarity tax is back on the agenda, pushed by a coalition of South Africas trade unions, churches and civil society organisations. The programme would provide 100 rand per month to every person lacking an old age pension, unemployment benefits or similar support. Beneficiaries would be the 20 percent of South Africans who have less than 50 rand per month for food, and would be considered "absolutely poor" under international poverty guidelines. In terms of purchasing power 100 rand amounts to 1USD and would eradicate the worst forms of poverty in South Africa.

Food Stamps and Subsidies

Food stamps and food subsidies have many flaws when compared to minimum income programmes.

Food Stamps in the USA

According to data from the US Department of Agriculture, 10 million people in the United States are hungry. Nevertheless, the 1996 welfare reform (see Box, p. x) has severely affected the federal food stamp program. In addition to cuts in funding, the program is underutilized and excludes entire vulnerable groups, such as undocumented aliens, whose survival depends on food stamps. The food stamp program is administered by states

33 www.basicincome.org

and municipalities, which leads to sizable differences in its administration and effectiveness. In New York City, for example, where 400,000 of the 10 million hungry people live, the program has suffered numerous problems, including racial discrimination, denial of benefits to eligible applicants, and misuse of funds. By denying food stamps to eligible applicants, the state breaches its obligation to fulfil access of people to adequate food. By reducing or misusing funds designated for the food stamp program, the government violated the human right to be free from hunger. The United States clearly has the resources to ensure access to food for vulnerable groups and individuals, who include immigrants, women and the working poor. By discriminating against applicants on the grounds of race or gender, federal, state and municipal authorities have also violated the human right to food.

In analyzing state obligations and violations and deciding on the type of action to take in a situation like this, it is helpful to distinguish between structural problems inherent in the way the entire programme is set up, and administrative problems and errors at the operational level. Denying food stamps to eligible applicants is a mistake resulting from poor management and administration, and the system itself has an interest (or at least it should) in rectifying the problem. Eligibility criteria that exclude certain groups such as undocumented aliens is not a local mistake, but a system-wide structural issue that must be addressed at the system-wide level, for example by lobbying the US Congress to change the law.

As noted above in Box X on Welfare Reform, the United States has not ratified the ICESCR and therefore does not recognize access to adequate food and freedom from hunger as a human right.

Feeding the disabled, sick and imprisoned + Emergency Food Aid

The last two elements of income sharing leave the monetary realm. Having money to buy food will be helpful only if the person can in fact carry out the act of buying it. Under some certain circumstances (disability, imprisonment, emergency) this may not be possible. Nevertheless, the right to food remains intact and physical access must be guaranteed to people in these circumstances.

a. The freedom of choice

There is nothing in the ICESCR that places conditions on the enjoyment of the right to adequate food (such as work): The right to an adequate standard of living including adequate food is unconditional. Nobody is to be excluded from access to food for any reason other than lack of resources within the community of states.

Most people, if given the opportunity, prefer to feed themselves by means of their work, rather than having to depend on government transfers of food or money. Moreover, most people prefer to work in the labour market (as long as conditions are just and favourable) than to working in an employment programme. According to the ICESCR everyone has the right to feed oneself by means of work freely chosen. A person must not only be able to choose whether to enter a specific programme; he or she must also be able to choose suitable (and economically sustainable) occupations according to her liking from among the resource programmes, and the programmes must be adapted to people's preferences and choices.

b. The question of resources

Persons not participating in economic activities still have the right to an adequate standard of living including food. The EU sets the relative poverty line at 50 percent of the average disposable income in the area.[34] The obligation to guarantee at least this "relative minimum income" in the fulfilment system can perhaps be considered incumbent on each state, as these programmes do not depend on the amount of available resources, but merely on their distribution.

In some countries with very limited resources this relative minimum income may still be insufficient to cover the basic food needs of each person. In such a situation it must be recalled that the human right to food entails

34 The EU (for example in European Commission's Statement COM (2000) 79, "Building an Inclusive Europe") stipulates 60 percent or 50 per cent of the median income. This roughly corresponds to roughly 45 or 55 percent of the average disposable income in the European context. Social scientists usually prefer average income to median income when it comes to defining relative poverty lines.

international obligations. Art. 2.1 of the ICESCR refers to steps to be taken by a state party "individually and through international assistance and co-operation" to the maximum of its available resources. This refers both to recipient and to donor states,[35] so that for the totality of States Parties the limiting factor should only be the availability of resources within all of them collectively. Such a limiting factor, however, does not exist anymore, at least in terms of addressing hunger and malnutrition, as there is enough food in the world to feed everyone.[36] Even though there is a joint obligation incumbent on the States Parties, primary responsibility to meet the obligation is usually seen to lie with the individual state. The international obligations are considered subordinate to the use of resources within the state to meet its own needs.

This raises the question of the point at which such a subsidiary duty under the human right to food is triggered for the international community. One option is to invoke international subsidies for national fulfilment systems whenever the relative minimum income in a country is insufficient to satisfy basic food needs: The universality of human rights would suggest keeping distributional requirements under the right to an adequate standard of living consistent (say at 50 percent), independent of the average income in a country. In a country with limited resources, where 60 percent of income would be needed to guarantee freedom from hunger, the suggested subsidy principle would invoke a subsidiary obligation to fulfil in the international community in the amount of the missing 10 percent. For the right to freedom from hunger, the international availability[37] of resources is not an obstacle.[38]

Breaches of fulfilment-bound obligations

As with respect- and protection-bound obligations, a breach of a fulfilment-bound obligation is a violation of the right to adequate food:

A state violates the human right to food of a hungry or malnourished person (by breaching a fulfilment-bound obligations), if irregularities in the realisation of one of the programmes in the fulfilment system mean the system becomes ineffective for a given individual.

A state systematically violates the human right to food, if

- an individual cannot choose from among the major programme types in the fulfilment system in her region of residence (for example, because the programmes do not exist, or because the choice among existing programmes is unreasonably restricted).
- the state fails to demonstrate that it lacks the resources to establish these programmes.
- the state shows lack of resources, but does not demonstrate that it has taken steps to the maximum of its available resources.
- the state shows that it has taken these steps, but it has not sought needed assistance from the international community to establish and maintain a fulfilment system.

35 There is no indication in art.2.1 that the maximum resources provision refers only to recipient states.

36 This view is corroborated in the 1974 Universal Declaration on the Eradication of Hunger and Malnutrition, art 1: "...Society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective. ...". "Society" here can only mean "global society".

37 What is meant by resources "available" to a state or the community of states? We have to distinguish between the resources available in the respective economies of the country as a whole and the resources available to the state government. How much of the economic resources in the country are available to the state is normally a matter for the legislature to decide, as it is the body with the budgetary power. The executive power (government) must operate within these budgetary constraints, which limits its obligations. On the other hand, the legislative branch, as part of the government, is equally duty-bound by international human rights law (once it has assumed these duties) and in a position to legislate respective budgets that include the provisions necessary to carry out the programmes mentioned.

38 See Article 1 of the Universal Declaration on the Eradication of Hunger and Malnutrition, which was adopted by the World Food Conference in 1974 organised by the FAO in Rome. The Declaration was endorsed by General Assembly Resolution 3348 (XXIX)
"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. Society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective. Accordingly, the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help."

In this case, the onus passes to the international community of states to contribute resources for to the fulfilment system in the state that is unable to meet its international human rights obligations without such assistance.

The reason for the additional term "systematic" is that these violations refer to flaws in the setup of fulfilment systems as opposed to mere malfunctioning of otherwise satisfactory systems.

If the right to food was fully implemented, every hungry or malnourished person (claiming violations of her or his human right to food) would have standing before the courts. As a matter of immediate remedy the court would grant relief by means of an injunction ordering the state to provide the minimum income to this person. If the court found (upon investigation) that the state violated the person's right to food in the context of the fulfilment system, the court could order the state to address the violation in a reasonable period of time. Until the breach had been rectified the payments to the person continued, unless the person found an additional source of income above the minimum income.

Fulfilment Systems: State of Implementation

The international community of states slowly appears to be becoming aware of the massive and systematic violations of the right to food committed by many of its member states and some intergovernmental institutions. Fulfilment systems are often far from adequate. This alarming state of affairs can be confirmed quite easily by looking at states' reports to the Committee on Economic, Social and Cultural Rights on their compliance with the ICESCR, or simply by investigating the programmes available to deprived persons in particular countries. One telling indicator is, of course, the enormous numbers of hungry and malnourished people living in a world of plenty.

States claim to be uncertain about their obligations almost thirty years after the International Covenant entered into force as international law. In 1996, Objective 7.4 of the Rome Declaration and Programme of Action of the World Food Summit in Rome called for a clarification of the normative content of the right to food. The 1999 General Comment No. 12 on the Right to Adequate Food was a response to this call. The General Comment, however, is fairly vague, in particular when it comes to articulating fulfilment-bound obligations. It does, however, strongly recommend enacting "framework legislation" with benchmarks. Similar suggestions were already implied in the 1989 UN reporting guidelines under the Covenant.

So far only bits and pieces of a fulfilment system have been implemented at national level. Some of these programmes have been nevertheless quite impressive: The Scandinavian social programmes are noteworthy—so have been those of the Netherlands. Despite their weaknesses, minimum income programmes are now standard in most OECD countries. In the South there are interesting programmes such as the universal pension schemes in South Africa and Namibia. The Indian public distribution system functions well in political environments of a vivid civil society and high public awareness—such as in the state of Kerala, where it contributed to a marked reduction in the incidence of malnutrition.[39]

Recently retrogressive measures (often in the name of "neoliberalism") have put considerable pressure on fulfilment systems in the North and dismantled some important programmes in the South.[40] These measures amounted to massive violations of the human right to food.[41]

Resource-sharing programmes are a different story. There are redistributive policies in most European countries, and in the form of land reform they remain crucial for the implementation of the right to feed oneself in many Southern countries. These efforts, however, fall far short of meeting the obligations imposed by the human right to food, which states carry vis-a-vis the hungry, malnourished, marginalised and unemployed, both within their borders and internationally.

39 M.SWAMINATHAN/Weakening Welfare, (2000), p.58–61

40 M.SWAMINATHAN/Weakening Welfare (2000),p.64ff

41 The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights §14.g

To fulfil their obligations under the right to food, states must enact framework legislation to govern and regulate implementation of the human right to feed oneself, explicitly relate it to realization of the human right to adequate food, and establish a timetable for filling the gaps in the fulfilment framework.

The Principle of Non-Discrimination

In addition to the obligations to respect, protect and fulfil access to adequate food, States parties to the ICESCR have an obligation to ensure that everyone has equal opportunity to access food or food-producing resources. The principle of non-discrimination is articulated in Article 2 of the ICESCR. Article 2 stipulates that states must ensure that the rights in the Covenant "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The principle of non-discrimination is further detailed in paragraph 18 of General Comment No. 12, according to which:

> any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

The principle of non-discrimination is a cornerstone of the human right system. This principle derives from and expresses the equality of rights and dignity to which every human being is entitled. On the basis of equality, all people are entitled to the same opportunities and to enjoy their human rights without discrimination. The principle of non-discrimination applies to the three types of obligations. The state shall respect and protect the right to food without discrimination. For instance, a state cannot prevent a third party from destroying the access to food of some groups or individuals and do nothing when a minority group is affected by the same act of the third party. The obligation to ensure non-discrimination is directly applicable and justiciable. Whether or not a state has made international human rights law self-executing, almost all states have passed laws prohibiting discrimination, which can therefore be invoked directly in domestic courts.

Article 1

All human beings are born free and equal in dignity and rights (...)

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Universal Declaration of Human Rights

1) Discrimination on the Basis of Gender

According to numerous human rights instruments and declarations, as well as to domestic law in most countries, women are entitled to full enjoyment of their human rights without discrimination and to equal treatment. This means that discrimination against women in the civil, cultural, economic, political and social domains is forbidden. Women must have equal opportunities, and this applies, of course, to the fundamental right to be free from hunger.

All international human rights standards are to be implemented in the same way for women and men. The equality and non-discrimination provisions of the Covenant mean that women have the human right to full enjoyment of an adequate standard of living, including adequate food, and the fundamental right to be free from hunger.

The reality of women´s situation today with respect to poverty and the lack of food shows clearly that violations of the principle of non discrimination are frequent. (see section 1.B, on vulnerable groups, which discusses the situation of women).

To fulfil the principle of non-discrimination against women, in exercising their obligations under the right to food, states are expected inter alia to nullify laws with discriminatory intent or effect against women's access to adequate food and food-producing resources. States must not pass any legislative measure or institute any programme to realise the right to food that excludes or discriminates against women.

2) Discrimination Against Future Generations and the Principle of Sustainability

The principle of sustainability protects future generations against discrimination. Unsustainable production models (in exploiting natural resources, especially in agriculture) and the destruction of food-producing resources endanger the access to food of future generations. States have an obligation to respect, protect and fulfil the right to adequate food without discriminating against future generations in relation to present generations. To meet this non-discrimination provision, states should take measures to ensure that the coming generations have the same opportunities for access adequate food that are enjoyed by present generations.

International Obligations

1) The Nature of International Obligations

National obligations of states have been detailed in the first sections of this chapter. States have to respect, protect and fulfil access to adequate food and food-producing resources for all persons under their jurisdiction. Under the human right to food, however, states also have obligations to people outside their territory: international obligations The three types of obligations apply in a modified form to international cooperation and relations and to the activities of intergovernmental organisations.

According to General Comment No. 12:

36. In the spirit of article 56 of the Charter of the United Nations, the specific provisions contained in articles 11, 2.1, and 23 of the Covenant and the Rome Declaration of the World Food Summit, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required. States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end.

37. States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights.

International obligations to respect, protect or fulfil can be described as follows:

To comply with their international respect-bound obligations, states, whether individually or through their intergovernmental institutions, cannot destroy the access to food or food-producing resources for people in other countries.

To comply with their international protection-bound obligations, states, individually and through their intergovernmental institutions, must take measures to the maximum of their available resources to protect access to food and food-producing resources of people in foreign countries against the actions or omissions of third parties and to assist the state to meet its domestic protection-bound obligations if it is not able to do so through its own resources. States must also promote and encourage a climate of promoting, protecting and respecting human rights around the world.

International fulfilment-bound obligations call on states, individually and through their intergovernmental institutions, to take measures to the maximum of available resources to fulfil access to food and food-producing resources of persons in foreign countries, when and if those countries cannot do it on their own, and to assist and encourage other states to meet their domestic fulfilment-bound obligations.

This means that, in the framework of their obligations derived from general international law, states shall not violate or support the violation of the right to food of individuals under the jurisdiction of another state. This obligation also encourages states to make sure that the right to food is adequately integrated into relevant international agreements.

Moreover, states' international policies and programmes must respect and encourage the full realization of people´s right to adequate food. This has implications for states' trade and finance policies, and for technology transfers. It also requires states to consider the international implications of their domestic agricultural policies and use of technology.

In cases of food emergency, international obligations imply that states shall provide disaster relief and humanitarian assistance to any country that needs it. As far as possible, food should be mobilized from the nearest available sources. If necessary, states should provide assistance in distributing food to the most vulnerable people. It is important that food aid programmes be designed in such a way as not to create long-term dependence and to assure that the affected people regain self-reliance in food as soon as possible.

Chapter 4.B.2 includes several cases entailing international obligations, for example, the dumping case in Burkina Faso or the fumigation case in Colombia. The Burkina Faso case entailed violation of its international obligations by the European Union, and the Colombia case involved violation by the United States of its international obligations.

2) Multilateral International Obligations

States have international obligations under the right to food bilaterally and through their participation in intergovernmental organisations. At the multilateral level, intergovernmental organisations (states in community) can themselves be seen as having international obligations of their own. International organizations have an obligation not to pressurize a state or another international organization to violate the human right to adequate food. In addition, international organizations must support states in protecting and fulfilling people´s access to adequate food.

Intergovernmental organizations are accountable under the international provisions relevant to the human right to adequate food and should submit to similar standards of transparency, public control and freedom of information as individual states. International organizations should not take any measure that would entail a violation of the provisions concerning the right to food in the International Covenant on Economic, Social and Cultural Rights by any of its member states.

Finally, nothing in the treaties establishing international organizations or governing other international matters such as international finance and trade, shall be interpreted to override the obligations of international organizations under the right to adequate food.

Unfortunately, breaches of international obligations under the right to food by intergovernmental organisations do occur. The UN itself has been criticised in the context of its sanctions against Iraq, the International Monetary Fund has been criticised concerning the devastating impact of many of its Structural Adjustment Programmes on vulnerable groups. The World Bank is regularly reproached for supporting projects and encouraging policies that lead to violations of the right to adequate food.

> "The World Bank is set up by governments, and these governments constitute their decision-making bodies", says Sigrun Skogly, former president of FIAN International. "These same governments have undertaken various international human rights obligations depending upon the number and character of the human rights conventions that they have ratified. These human rights obligations cannot be neglected simply by operating through an international organisation." Therefore, the World Bank must respect human rights in its operations and make sure that its policies and activities do not in any way make the human rights situation worse.

The failures and disastrous impacts of Structural Adjustment Programmes (SAPs) are widely criticised. Structural Adjustment refers to a new lending policy of the World Bank introduced in the early 1980s conditioning loans on "economic reforms". The reforms require to reduce government spending, liberalize imports and foreign investment, devalue the currency and dismantle labour laws. These programmes primarily affect the poor because the state (by definition a poor or financially troubled state with a large international debt) is obligated to devote scarce financial resources to debt service rather than to improving the population's living standards. Thus, the SAPs result in lower expenditures for health care and education, lower wages, and, export-oriented production. These programmes, therefore, often present yet another obstacle to states' ability to comply with their obligations to respect, protect and fulfil access to adequate food. The deprivation or reduction to access to productive resources for vulnerable groups threatens their means of subsistence, and violates their human rights. Millions of peasants (especially women) have been affected by cuts in the provision of credit and a decrease in agricultural services. In sub-Saharan Africa, the infant mortality rate has increased and 40 percent of the population suffers from some degree of malnutrition. According to the World Bank, 63 of the 69 countries operating under a Structural Adjustment Programme experienced an increase in their external debt, even though these programmes are supposed to reduce their indebtedness. In the late 1980s, a study sponsored by UNICEF and called "Adjustment with a Human Face" showed more precisely and directly the negative impact of SAPs on the nutrition of the population. According to the study, in nine of the eleven countries in Africa, Asia and Latin Amercia with SAPs in which data were collected, there was an increase in the number of underweight and stunted children.[42]

The World Bank in Cameroon:

Structural Adjustment Programmes—An Open Door to Rural Poverty

Hardest hit by Cameroon's structural reforms have been the rural poor. To begin with, the devaluation of the currency in 1994 greatly increased the cost of essential agricultural inputs, such as fertiliser and seeds. Consequently, the livelihoods of many small farmers suffered as they could not absorb the increased costs, nor were they able to respond effectively to the new price incentives offered by trade liberalisation.

The situation of these small farmers has been made even more precarious by the other policies put in place by the government of Cameroon to accommodate the structural adjustment being demanded of the economy. Agricultural subsidies were halted, and reforms in rural credit institutions caused a collapse in the availability of rural credit. As a result, the access of small farmers to basic agricultural inputs has been further jeopardised. Such measures hinder rural farmers' ability to feed themselves, and violate their right to adequate food.

Moreover, the quality and scope of social services provided by the government have been seriously reduced. At the rural community level, budget cutbacks range from one-half to two-thirds the pre-reform allocations. This has

42 G.CORNIA,R.JOLLY,F.STEWART, Adjustment with a Human Face (1987)

not only weakened social services and safety nets but has also led the government to withdraw goods and services which contributed to increasing the long-term productivity and security of the rural population. Consequently, the rural poor are experiencing increasing downward pressure on their living standards.

In an effort to maintain their incomes, farmers have reacted expanding or intensifying agricultural production. They have cleared previously uncultivated land for farming, thereby increasing pressure on the region's natural resource base. Where uncultivated land is scarce, farmers have tried to intensify production without sufficient means to do so. Fallow periods have been shortened, thus intensifying pressure on already marginally productive and overtaxed agricultural land. Overall, soil fertility is being reduced and soil erosion is occurring. Land is being degraded to the point of threatening future yields, putting at risk the ability of future, as well as current, generations to feed themselves.

Whether such policy measures lead to growth in the GNP (a very misleading indicator for living standards) is irrelevant from the point of view of the human right to food. The issue is whether the World Bank and the Government of Cameroon violated human rights by implementing these measures.

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Chapter 7 *Finding Allies:* Related Human Rights

Food is necessary for life and human rights are necessary for maintaining access to food. Friends and allies are necessary for protecting and promoting human rights. The preceding chapter presented several examples of violations of the human right to food. Almost all of these cases involved violations of other human rights as well: not only economic and social rights like the right to health or the right to work, but also civil and political rights as well. Many cases are like a cluster of entangled violations. No matter which end you pull, you always get the whole case.

This has important practical implications: If you decide to intervene against a violation of the right to food in a particular situation, you should start networking with other people or organisations who may have a different reason for their interest in this case: There is strength in numbers and networking reflects the reality that modern human rights are a coherent unified web of concepts.

Some people see the human right to be free from hunger as the foundation on which other human rights build. In the International Covenant on Economic, Social and Cultural Rights the right to freedom from hunger is the only right that is termed "fundamental." Such characterizations should not be misused to undermine the equal importance of other human rights. Human rights are fully interdependent. Therefore, one human should never be invoked to defend violations of other human rights. In the early 1990s China advocated the "full belly view", disregarding the principle that human rights are interdependent and indivisible. Indeed, China tried to establish a hierarchy of human rights, with the right to food and basic subsistence in first place. "Defending" its numerous violations of civil and political rights, the government of China affirmed, in a 1991 statement, that "It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question".[43] In the same way the position once held by many Western countries that civil and political rights were a precondition for the realisation of social rights (which were considered secondary) also disregarded the indivisibility of human rights. Today, the indivisibility of human rights is one of the most widely used and recognised principles in international human rights, although it must still be advocated and implemented in practice. The examples in the following sections, showing the relationship between the right to food and other human rights, illustrate the indivisibility and interdependence of human rights.

7.1 Indivisibility

7.1.1 The concept of indivisibility

Indivisibility is a key principle that promotes the realisation of all human rights. For the victims of human rights violations, indivisibility is a logical and obvious principle. At an international seminar, one of the speakers, who represented people living in extreme poverty, explained his view of indivisibility. He believes that the indivisibility of all human rights is based on the fact that all human beings depend on one another for our subsistence. In addition, the human person who is the subject of those rights is indivisible.[44]

Many declarations, resolutions and other international human rights instruments express the fundamental importance of indivisibility. The Vienna Declaration and Programme of Action, which was adopted by 170 States at the conclusion of the 1993 World Conference on Human Rights in Vienna formally ended the debate about the relationship among human rights by stating clearly and unequivocally in paragraph 5:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States,

43 Quoted by Alexander De Waal, In Famine Crimes

44 Report of the UN seminar on extreme poverty (1995). UN Doc. E/CN.4/Sub.2/1995/15

regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

The right to food has multiple dimensions. On the political dimension, it is clear that dictatorship, oppressive social structures and corruption work against realisation of the right to food. Political will is needed to promote resource-sharing. Governments have a responsibility to safeguard the access of vulnerable people to food and resources. Sometimes this means protecting them against the vested interests of government officials, who may be large landowners or major shareholders with considerable economic and political power themselves.

The right to adequate food clearly has an economic dimension. And this cuts both ways. Markets are blind to the needs of those who cannot participate in them, and investors may be blind to the importance of resources such as land, water and fishing grounds to vulnerable groups, particularly if developers want to put these resources to alternative and "more productive" uses that benefit their own interests. On the other hand people suffering from hunger or malnutrition have difficulty participating productively in economic life. Hunger and malnutrition may be resistant to increases in production, unless the increased production is on the fields of the poor, or unless people can rely on a minimum income.

Realisation of the right to adequate food has a social dimension. Violations of the right to adequate food are directly linked to poverty, and poverty is not only an economic but also a social phenomenon. Hunger and malnutrition are closely linked to social exclusion and discrimination. Women feel the brunt of malnutrition much more than men. Indigenous people or other groups subject to discrimination like the Dalits ("Untouchables") are particularly affected. Moreover, the right to food has a cultural dimension. Different populations have different nutritious habits and needs, adapted to their specific climatic, geographical and religious situations and values. Food has always had deep spiritual, religious and cultural meaning.

The right to adequate food has an ecological dimension. Current models of development in the North have proved destructive to life-supporting ecological systems, particularly when applied in the South. The agricultural sector continues to be subject to mechanisation, intensified use of pesticides and mineral fertilizers and over-exploitation or even destruction of soils, water resources, and biodiversity. Such models have marginalised the poor, and endangered the food supplies of future generations.

Sustainability is a cross-cutting human rights principle like non-discrimination. The other dimensions described above are reflected in the following list of human rights from the International Bill of Rights, which are organized into five classes and 16 groups. Most of the rights are related to the human right to food. Rights in which the connection is particularly close will be considered in the following sections.

7.1.2 Sixteen Human Rights Groups

CIVIL RIGHTS

Group 1

The rights to life and to personal security

2. The right to life
3. The right to personal security, including freedom from arbitrary arrest

Group 2

The right to a fair trial

4. The right to recognition as a person before law
5. The right to equity before law
6. The right to a fair trial and hearing
7. The right to non-retroactivity of the law

Group 3

The rights of prisoners

8. The rights related to capital punishment
9. The right not to be imprisoned for failing to fulfil a contractual obligation
10. The right to freedom from torture
11. The right to separate treatment (of juveniles and adults, and of convicted and accused persons)

CULTURAL RIGHTS

Group 4

The right to participation in cultural life

12. The right to participate in one's own culture
13. The right to participate in the arts and sciences
14.

Group 5

The right to education

15. The right to education
16. The right to compulsory primary education

Group 6

Minority rights

17. The right of minorities to enjoy their own culture
18. The right of minorities to practise their own religion
19. The right of minorities to use their own language

ECONOMIC RIGHTS

Group7

The right to work

20. The right to work to earn one´s living
21. The right to freely choose or accept work

Group 8

The right to just conditions of work

22. The right to just and favourable conditions of work
23. The right to decent remuneration for one's labour
24. The right to freedom from slavery
25. The right to form and join trade unions
26. The right to strike

POLITICAL RIGHTS

Group 9

The right to participate in political life

Group 10

The right to freedom of opinion

27. The right to privacy
28. The right to freedom of religion
29. The right to freedom of expression
30.

Group 11

The right to freedom of association

Group 12

The right to freedom of peaceful assembly

Group 13

31. The right to liberty of movement and residence
32. The rights of foreigners in case of expulsion

SOCIAL RIGHTS

Group 14

The Right to an adequate standard of living and to social security

33. The right to an adequate standard of living
34. The right to adequate food
35. The right to freedom from hunger
36. The right to adequate housing
37. The right to social security

Group 15

The right to health

Group 16

The right of families

38. The rights of families
39. The rights of mothers
40. The rights of children

All these groups are interrelated and interdependent. The right to food is influenced by other human rights, and it influences them in turn. Nevertheless, it is evident that some rights are more closely linked to the right to food than others, and these special relationships are detailed below.

7.2 Relationship to Other Economic, Social and Cultural Rights

7.2.1 Relationship to the Right to an Adequate Standard of Living

> "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." ICESCR, Article 11

The right to food is part of the human right to an adequate standard of living, along with the right to adequate housing (which is taken up later in this section).

Poverty is the main reason for hunger and malnutrition. Therefore, the right to food and its realisation depend on the access of people to an adequate standard of living, which in turn has as its prerequisite certain minimum standards of income and wealth. People living in poverty lack sufficient income or wealth to feed themselves and their families. And food is only one component of an adequate standard of living. Food's share of a household budget should not be so high that people have to sacrifice other basic needs. When food represents 60, 70, or even 80 percent of a person's expenditures, her right to an adequate standard of living will be difficult or impossible to achieve.

The right to an adequate standard of living may therefore include the right to minimum income and capital, sufficient to provide oneself and one's family with certain basic requirements, including food, housing and clothing. Moreover, the standard of living should be adequate to ensure for the individual and his family enjoyment of a life of dignity. An adequate standard of living is a relative concept based on the overall availability of resources in society. Questions concerning the distribution of income and wealth must therefore be taken into consideration when defining an adequate income.[45] (see Chapter 4.B.3)

Moreover, individuals have the right to an opportunity to improve their situation. The right to adequate food as part of an adequate standard of living appears in the ICESCR before the right to be free from hunger. Reviewing the drafting history for Article 11, Philip Alston, the former Chair of the CESCR, sees in the right to adequate food placed in the framework of an adequate standard of living a desire to adopt a "maximalist" approach. Beyond the simple satisfaction of minimum daily nutritional needs, an important objective of the norm is the progressive movement toward dignity and well-being. Measures to implement the right to be free from hunger are only a starting point for national and international efforts.

7.2.2 Relationship to the Right to Health

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food..." UDHR, Article 25(1)

In 2000 the CESCR adopted General Comment No. 14 on the Right to the Highest Attainable Standard of Health, which recognises the close links between health and food. The right to the "highest attainable standard of physical and mental health" in ICESCR Article 12(2) is not limited to a right to health care. On the contrary, both the drafting history and the express wording of Article 12 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions whereby people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition (...). Access to adequate nutrition has been included as the second most important element in the core content of the right to health in GC 14, expressed as "access to the minimum essential food, which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger to everyone".[46]

45 The relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution; UN Doc. E/CN.4/Sub.2/1997/9 (Report by Mr. José Bengoa).

46 CESCR, General Comment No. 14, para 43(2).

Food and the Right to Health

Food is the best medicine—and also the most important direct or indirect cause of ill health. People suffering from hunger and malnutrition are far more vulnerable to deficiencies and illnesses. Hunger and malnutrition are the direct cause of many health problems in children, including developmental failures and delays, and they can also cause or contribute to ill health in adults—for example, as a result of an unbalanced or poor quality diet. A person who does not eat enough or whose diet is poor in nutrients is at greater risk for a weakened immune system. Nutritional deficiencies can lead to ill health, disease, and, if severe enough, to irreversible disabilities.

According to the Director-General of the World Health Organization,[47] "208 million people are stunted and 49 million are wasted; more than 900 million people suffer from goitre, 16 million are severely retarded and another 50 million suffer other forms of brain damage due to a deficiency of iodine; 3 million children are at increased risk of infection, blindness and death because they are vitamin A-deficiency, anaemia and iron deficiency affect more than 2,000 million people the world over; and some 22 million children and more than 200 million adults are obese, and thus at significant risk from a range of serious non-communicable diseases and other threats to health."

Insufficient or inadequate food intake is a phenomenon in all countries, severely affecting health. In many countries, problems caused by malnutrition are numerous and various. Access to food that is adequate in quantity and quality and therefore not harmful to one's health depends on having sufficient money to buy for carefully grown food—or opting out of the dominant food system altogether and producing one's own food. In the North, almost everyone has access to food in sufficient quantity, but the overall quality of food is decreasing. Moreover, unbalanced diets containing too much sugar or fat can have severe health consequences.

Adequate food is necessary for good health. Nutritional deficiencies and food-related diseases affecting women during pregnancy increase the chances of disabilities and other negative health consequences for their children and poses a long-term threat to realisation of the right to health.

The right to health also affects the right to food. In order to eat and earn their living (especially in the absence of an effective social security system), people's health must be good enough to enable them to work, sometimes under harsh conditions. The dramatic increase in the prevalence of AIDS in rural areas illustrates how seriously infectious diseases can affect food security and food production. A study by the Food and Agriculture Organization confirms that AIDS is no longer simply a health problem, but it has become a serious risk to food production and the survival of rural communities. According to FAO statistics, 95 percent of the 36.1 million people living with HIV are in developing countries, and the majority live in rural areas. Africa is particularly hard hit: seven million agricultural workers there have died of AIDS since 1985. The epidemic has also caused havoc in rural communities in Asia and the Caribbean states. When an adult affected by the HIV becomes sick, the food security of the entire household is at stake. AIDS undermines agricultural systems and affects the nutritional status and food security of rural families. The presence of AIDS in a family implies very high medical expenditures, and family members who are no longer able to work and who must, instead, be fed and cared for. Often it is the men in the family who were working in the cities who are affected and who come back to their villages when they become ill. The loss of an adult's productive capacity due to illness or death reduces sharply the family's ability to produce or buy food.

7.2.3 Relationship to the Right to Housing

The rights to adequate food and adequate housing are both integral parts of the right to an adequate standard of living. Often, both rights are violated at the same time. According to a recent UN special report on the right to housing, "access to safe drinking water and sanitation is intrinsically linked to the full realization of the right to

47 As quoted by Asbjørn Eide in his update study on the right to food presented at the 51st session of the UN Commission on Human Rights.

adequate housing.". Access to drinking water is essential for food preparation and consumption. General Comment No. 15 on the Right to Water, which was adopted by the Committee on Economic, Social and Cultural Rights in November 2002 and declares that water is a human right, acknowledges this link.[48] In addition to this direct link, many violations of the right to food are simultaneously violations of the right to housing, for example, forced evictions. For vulnerable people whose access to food depends on access to their fields, fishing grounds, markets or employers, being driven away from their homes can mean the loss of this access. The Barra da Tijuca case, described below, is a case in point.

Brazil, 1994, Barra da Tijuca, Rio de Janeiro

In Brazil, when smallholders are expelled from their land by powerful interests their access to food is destroyed and their very existence is called into question.

Many rural families in Brazil have given up their struggle for a piece of land and have lost hope for agrarian reform that would distribute the immense tracts of idle land to the rural poor and promote sustainable agriculture for domestic food needs instead of agribusiness. Millions of landless rural workers or smallholders moved to the cities and became landless urban squatters. Many of them face eviction, violating their rights to feed and house themselves.

The right to housing has been promoted and defended in numerous instances by HIC (Habitat International Coalition), an international coalition of non-governmental and community organisations working in slums or low-income urban and rural communities. Both FIAN and HIC were alarmed by the situation in Barra da Tijuca, a coastal strip on the Tijuca lagoon on the southern edge of Rio de Janeiro, and decided to launch a joint urgent action against the imminent expulsion of 25,000 people by a massive deployment of police forces.

The first settlers had come to this lagoon some 40 years ago and made a living by fishing. Later, many more poor squatters arrived from both rural and urban areas. Nowadays they are organized in 56 communities, trying to survive on various marginal occupations. With the outskirts of the city growing closer to the lagoon, hundreds of multi-story industrial and residential buildings for the wealthy of Rio have been built nearby, bringing the ecology of Tijuca lagoon, which is home to the last mangrove forest in Rio de Janeiro, to the verge of collapse. Industrial and general pollution has made fishing has almost impossible. The area is under environmental protection by law, and some poor communities are making successful efforts to save the mangroves and the lagoon.

Today, however, the poor communities and the last mangroves are threatened by real estate speculators and builders. The municipal advisor on environmental affairs, who rejected the 1989 application of the Carvalho Horsken Company to build 364 large buildings on the squatters' land along the shores of the lagoon, was subsequently fired and received death threats. Municipal permission was granted in 1990, and the communities were simply told to move, without a place to go, rehabilitation or compensation. Ironically, the authorities' argument was that the communities had illegally invaded environmentally protected land.

Community members, however, refused to leave. Many of the families are malnourished. Depriving them of their homes, land and community infrastructure would lead to hunger and destitution and violate their rights to food and housing. In response, some of the most outspoken community leaders and members of their families have been assassinated; 27 people have been killed since 1989. None of the killings were properly investigated and the killers and their patrons have not been judged or punished.

Moreover, many cases of forced evictions in rural areas entail not just the destruction of houses by powerful interests, but of people's productive resources as well (land, fishing ground, forests, etc).

48 UN Doc. E/C.12/2002/11

Borwa Tola, Philippines, 1999: Forced Evictions for the Benefit of a Coal Mining Company

Testimony

"Mother, our house is gone!" Little Sunita said sadly as she saw her house being bulldozed right before her eyes by Central Coalfields Limited. It was 22 December 1999, just a week away from the dawn of the new millennium. We were sitting outside in the sun taking in its warmth, in our village of Borwa Tola in Parej.

Jeeps started arriving along with armed police personnel. One officer got down from one of the jeeps and said, "Take this cheque and leave the place." We said, "But our husbands are away. You have not given us prior notice, besides we haven't got jobs or an alternative source of livelihood, and our land is not compensated for." No one listened to our protests. We fought with the Central Coalfields security guards who tried to shout us down and control us, but we did not give in. Finally the Magistrate said. "Take your cheques with one hand, remove your houses with the other. We shall not listen to anything." One of us said, "Sir, we need a few days time to take the spirit of our ancestors to the new site". Another among us said, "Sir, we have already started building our house in Pindra. When it is complete we will move. All we are asking is good rehabilitation and resettlement." Thus we and our little belongings were herded like cattle and dumped in communal places. Huge bulldozers arrived, funded by World Bank money, and razed our houses to the ground: refugees on our own land.

(Source:FIAN)

7.2.4 Relationship to the Right to Work

The ICESCR stipulates in Articles 6 and 7:

Article 6

> 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 7

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Remuneration which provides all workers, as a minimum, with: (...) A decent living for themselves and their families in accordance with the provisions of the present Covenant(...)

The key source of income is work. Work can take many forms: earning one's living as peasant, fisherfolk, trader, industrial worker, business woman—whatever the case may be. Work in this sense is an activity that provides a return, either through direct interaction with natural resources, or by participating in the processes of production and reproduction, whether independently, as part of a cooperative or team, or as someone else's employee.

The right to work therefore has three aspects. It includes 1) a guarantee of participation in society's remunerated activities; 2) free choice in doing so; and 3) remuneration "in accordance with the provisions of the present Covenant".

An important aspect of the relationship between the right to food and the right to work is the option of feeding oneself and not only being fed. The normative content of the right to adequate food (described in Chapter 4.A) emphasises economic accessibility, encompassing access to resources, and rejects a narrow understanding of the right to adequate food as a package of nutrients. Economic access and resources are impossible without work.

Work and fair remuneration are directly linked to the right to adequate food since the right is fulfilled by means of programs and laws providing access to resources in the form of minimum wages, employment guarantees and agrarian reform.

7.2.5 Relationship to the Right to Education

The right to food and the right to education each influence the other. Hungry and malnourished people are unable to profit from the same educational opportunities as the well fed. Malnutrition and nutritional deficiencies among children contribute to educational failures and delays. Poverty and hunger are serious impediments to a normal education. For the poor, food often takes priority over education. Children often work to safeguard the family's food security. Food may take such a large share of a poor family's budget that all members must work to provide for its subsistence: either by helping the parents on the land or by earning cash to purchase food.) Many educational systems do not cater to working children's schedules.

On the other hand, education is a precondition for earning an adequate living through work. People who cannot read, write or calculate are at a serious disadvantage when it comes to participation in political, social and economic life. People without access to education have fewer opportunities to learn about their rights, to defend them, or to take advantage of administrative and social services. Thus, the right to education has a direct influence on the right to food.

7.3 Relationship to Civil and Political Rights

Interdependence and indivisibility of human rights imply that the right to food influences civil and political rights and is influenced by them. It is difficult or impossible to defend one's rights when all one's energy and daily efforts are fully engaged in finding enough food to survive. On the other hand, democratic structures are a precondition for the realisation of all rights, including, of course, economic, social and cultural rights. In circumstances of widespread corruption and a malfunctioning judicial system, realization of all human rights, including the right to food, will encounter serious obstacles.

In addition, groups who are vulnerable in terms of their economic and social rights are very likely to be also vulnerable in terms of their civil and political rights as well. For example, in many countries women are a very vulnerable to threats to their land tenure and access to productive resources such as land, credit, and adequately compensated jobs. Women often suffer a severe lack of political empowerment and violations of their right to participate in decision-making.

7.3.1 Relationship to the Right to Life

"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." International Covenant on Civil and Political Rights, Article 6

The right to life, which originally had a much broader scope, has been reduced in course of time to a civil right providing protection against arbitrary killing (see Chapter 2.C). In its General Comment on Article 6, however, the Human Rights Committee (the equivalent of the CESCR, monitoring the International Covenant on Civil and Political Rights) promotes a broader interpretation of the right to life and considers positive action by states to eliminate serious hunger and malnutrition as protecting the right to life.

The right to life is clearly at stake when vulnerable people do not have access to food. Food is the basis for human survival. To deprive someone of food is to deprive him or her of the possibility of maintaining human life.

The direct link between the right to life and the right to an adequate standard of living has been highlighted by the Indian judiciary. In several cases, the Indian Supreme Court adopted a broad interpretation of the right to life (in Article 21 of the Indian Constitution) and considered livelihood, health, food, and housing as part of the right to life. The Supreme Court even referred to the right to life and to human dignity under Article 21 in protecting the

rights to work and to education.[49] In the 1985 Bombay pavement dwellers´case, Chief Justice YV Chandrachud affirmed:

> the sweep of the right to life conferred by Article 21 is quite far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law, that is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living (...). If the right to livelihood is not treated as part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation....

The case law of the Indian Supreme Court demonstrates that there are multiple ways to argue successfully in court for the right to food and other economic and social rights. It also shows the proactive role that judges can play in operationalising the right to food (even if national law does not explicitly recognise the right). Finally, it demonstrates the practical impact of the indivisibility of human rights.

7.3.2 Relationship to the Right to a Fair Trial

> 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (...)
>
> 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. ICCPR, Article 14

The right to a fair trial and the right to food have mutual implications. For instance, in the case of conflicts over land, access to adequate food for landless families in Brazil often depends on a fair trial. If the courts, which are charged with resolving conflicts fairly, choose to protect the interests of the landlords (and their gunmen), poor people's claims to land through agrarian reform, and with it their means of subsistence, will be worthless. An independent judiciary and fair trials are preconditions for successful claims in court on behalf of the right to adequate food, as many cases of food-related oppression are linked to powerful vested interests.

7.3.3 Relationship to the Right to Participate in Political Life

Deprived or oppressed groups often lack power, the ability to influence political decisions, or to take part in economic activity and the social system… They are "second-class" citizens. Most women and indigenous people, for example, have very little influence upon the structures that oppress them. In the case of agrarian reform and other resource redistribution programs, women are often excluded from the communal and political bodies where decisions regarding the implementation of these programs are made. There is a vicious circle of exclusion. People who are denied their rights cannot therefore make use of their rights to improve their situation and realise their rights...

Further, without legal protection or an independent judiciary, political participation and political action become even more important as a means to the goal of realising the right to food.

7.3.4 Relationship to the Right to Freedom of Association

The opportunity for people to organise themselves into associations, trade unions, NGOs, and other groups to defend their rights has a clear and strong impact on the realisation of human rights, including the right to adequate food.

Associations and NGOs are an important means to enable the victims of violations or civil society at large to defend the right to adequate food and address violations of it. Lobbying activities are important to the work of civil society. Peasant unions struggle for agrarian reform and indigenous people's organisations defend their land

49 assessment by Kuldip Singh, J., in Mohini Jain´s case (1992), SCC 666.

rights. The freedom of association is important in gaining political momentum to address violations of the right to food. Vested interests sometimes intervene against this freedom, for example by firing workers who form an independent trade union. This has negative repercussions on realisation of the right to food, for the workers and for their cause, as can be seen in the box below.

> ***Guatemala, 1997: A Coffee Workers' Union Struggles for Subsistence***
>
> On March 19, 1997, 32 workers at the Nueva Florencia farm who had formed a trade union were dismissed, losing the income they needed to feed themselves. They had organised themselves in order to improve the poor working conditions in the coffee-growing region of Colomba, where the minimum salary was so low that it could not even pay for one fifth of the basic family food basket. On coffee farms it is quite common for women to receive only half of what men earn for the same work.

On June 16, 1998, the Fourth Chamber for Work and Social Provision passed Resolution No. 215–98 ordering immediate reinstatement of all illegally dismissed female and male workers and payment of back wages retroactive to the day of their dismissal. The employer appealed this decision in court. Finally on January 4, 2000, the Constitutional Court handed down its decision, ordering the immediate implementation of Resolution No. 215–98. Nevertheless, the owners of the Nueva Florencia farm refused to comply with the order of the highest court in Guatemala.

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Chapter 8 Getting a Grasp on the Right to Food

The human right to food is a key political and legal concept. Moreover national and international law has codified its normative content and many of the related obligations. Universal recognition and frequent affirmation of the fundamental nature of this human right, however, continue to coexist with hunger, malnutrition and food insecurity. This following chapter proposes strategies to strengthen the right to food, so that it can be realised by millions of hungry and oppressed people today and tomorrow. These strategies can be applied by human rights activists, victims' groups and NGOs on the local and national levels. On the international level, NGOs also have various strategies at their disposal to promote realisation of the right to food.

8.1 Strategies at the National Context

8.1.1 Supporting People's Struggle for their Rights

> "(...) it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."
>
> Third paragraph in the Preamble to the Universal Declaration of Human Rights.

The observance of the rule of law and the implementation of human rights are the very essence of democracy and freedom. Sometimes freedom comes about only through struggle—and, if necessary, rebellion. There are many individuals and communities whose last chance to put an end to the violations of their rights is to resist and to organise themselves. Indeed, the first and the most natural means of action has been and continues to be peoples' struggle, whether violent or non-violent, against what they experience as injustice. Human rights provides the opportunity to take action, if necessary, before the courts or state authorities and with reference to international (and national) human rights law, or to base political struggles on human rights law and principles. When all other avenues have been exhausted or when no legal remedy is available, it is direct action by the people that reminds decision-makers and powerful economic and social authorities that they have obligations to meet. Support groups, social movements, citizens' associations, trade unions and NGOs can make effective use of economic and social human rights, like the right to food, at all levels of their struggles. People's activism on behalf of their rights can take many forms, including international campaigns, letter-writing, petitions, providing expertise, financial support, support to trade unions' negotiations and strikes, and mediation among them. All these forms of activism encourage people in their efforts, help them to connect their struggles to an inclusive vision of human rights, and increase awareness and solidarity among people throughout the world. Organisations like FIAN advocate for the human right to food in dozens of grassroots campaigns every year, often with notable success.

8.1.2 Using Human Rights Education Based on Casework

Despite the increasing interest in them, economic and social rights are still marginalised relative to civil and political rights and are still subject to the persistent belief that they are second-class human rights—desirable policy goals rather than full-fledged human rights. There is still a great need to explain and publicise the scope and content of the right to food and other economic, social and cultural rights. Victims of violations of the right to food clearly need to know that access to adequate food is their right and the various means available to pursue their claims and redress violations. However, dissemination of this information is also important for government officials and public opinion in both the North and the South.

The experience of FIAN and other civil society organisations has shown that grassroots work is an effective way both to raise awareness concerning violations of the right to food and to put a stop to them. Interventions in specific cases of forced evictions, failure to abide by minimum wage legislation, or destruction of fishing grounds help to prevent or halt violations of the right to food. Increased awareness of and additional information regarding these situations enable all parties to discuss and conceptualize these oppressive situations within a human rights framework. The vulnerable groups who are especially affected by violations of the right to food, are for the most

part poor people, subject to discrimination for a variety of reasons: because they are women, indigenous, poor or come from marginalised or disfavoured ethnic or social groups. They have great difficulty gaining access to information on their rights, available legislation and programmes, or remedies for violations of their human rights.

The role of local and national justice is essential. Supreme courts can contribute actively to realisation of the right to food through a progressive and just interpretation of the constitution and existing legislation. Case law develops when judges rule in favour of victims' groups and their human right to food. Human rights education and awareness-raising are therefore vital for lawyers, judges, politicians and government officials, as well as students in these fields. Human rights are still considered to belong to the domain of politics rather than law. Human rights law must overcome its marginalisation in many universities, a process that is helped by the increasing interest in human rights on the part of students. An independent and sensitised judicial system is a fundamental ingredient in operationalising the human right to food.

More generally, educating the people who have the ability to make things change is an effective long-term strategy. A parallel can be drawn to education efforts in the area of civil and political rights. For instance, in the fight against torture and ill treatment (in Article 7 of the ICCPR), educating police forces has proven to be an effective strategy. It is also worthwhile to educate and sensitise new generations of civil servants concerning human rights and the responsibilities and duties that they impose. Education helps to overcome practices that are often embedded in existing systems and so common as to be considered "normal".

Intervening in specific cases is likely to attract the interest of the local and national media. Just as with civil and political rights, a focus on concrete violations with victims' names and faces attached is an excellent way to draw public attention to the real scope of the right to food, and to teach the public how to recognise a violation when they see (or read about) one. Successfully assisting victims to stand up for their rights against acts of oppression shows how human rights mechanisms operate and how ordinary people can make use of them.

Making effective use of the media and other modern forms of communication, such as the Internet, can provide a powerful boost to human rights education and awareness-raising. Because of their marginalisation, victims generally receive little understanding and support from the rest of the population. Taking the case to a wider national or international context helps to overcome the isolation of vulnerable groups and create solidarity in society. Often, people and groups struggling for their right to feed themselves are treated like criminals and discredited because realisation of their rights is viewed as a threat by vested economic interests. To overcome the isolation of victims, it is essential to develop new information networks or use the existing one more intensively. The Internet has of course become an essential communication tool for human rights and there are many useful sites for operationalising the right to food. A number of them are listed in the reference section at the back of this manual.

8.1.3 Using National Instruments and Institutions

a. Effective lobbying

Interventions in direct co-operation with local and national associations and movements draw the attention of national and local authorities to their responsibilities and their obligations to vulnerable individuals and communities. Indeed, lobbying with national and local institutions is another important strategy for NGOs and victims' organisations. Therefore, co-operation is essential among civil society organisations, from grassroots movements to advocacy organisations. The more authorities are made aware of violations, the greater the chances that the violations will stop.

Grassroots work includes lobbying with local and national authorities in the South as well as the North. Efforts directed at embassies and diplomatic missions can be quite effective. With the use of specific cases, attention can be drawn to violations of human rights in a broader context. As NGOs who work directly with victims know, organising meetings between victims and members of parliament or ministers (or ambassadors) is one of the best ways to move the authorities in favour of an intervention. In the North, NGOs therefore have an important role to play in sensitising concerned embassies, ministries of development cooperation or foreign affairs officials, as well

as members of parliament with responsibility for the concerned commissions and groups. The latter are much more likely to react quickly and efficiently in cooperation with the concerned officials of the state in which the violation occurred if they have been directly confronted with dramatic situations—if they have heard victims' voices and seen their faces. Furthermore, advocacy and awareness-raising among national authorities encourages and influences positive changes in policies (for example, the human rights dimensions of agrarian reform). Advocacy, education and awareness-raising provide opportunities for NGOs to contribute their expertise in adapting laws and government practices to the protection of human rights.

b. Using National Human Rights Institutions

Created by governments but operating independently, national human rights institutions are privileged partners, serving as "bridge" between authorities and victims.

National human rights commissions can be of significant help in monitoring states authorities' compliance with their obligations under international and national human rights law.

> ***Involving the National Human Rights Commission of Ghana***
>
> The National Human Rights Commission of Ghana took up the case of violations of the right to food in Old Atuabo and Akontanse, as a result of gold exploitation that was described in Chapter 3. After fact-finding missions led by FIAN researchers in co-operation with local support groups, a report was drafted and submitted to the Commission, which was very concerned about the violations of the right to food that were documented in the report. The Commission undertook its own investigation into the violations in the gold mining region. In addition, it organised a national hearing, with both victims and mining companies represented. The hearing proved to be a great support for the victims. They have been heard by national authorities, who will follow up on the compensation issue and organise investigations into the violations.

The national human rights commission has stated its commitment to stop the violations affecting communities in the gold mining areas.

Institutions like ombuds offices men are being promoted in the field of human rights, as a means to reinforce democracy and good governance (for example, in the former Yugoslavia). Ombudsmen originated in the Scandinavian countries to protect citizens against administrative and bureaucratic abuses through mediation and reform proposals. Ombudsmen have been very helpful in protecting and promoting human rights. More flexible and less formal than the judicial system, mediators sometimes have a better chance of intervening in human rights violations. Their role is limited to reporting and making recommendations; they do not have judicial prerogatives. In Latin America human rights ombudsmen have taken independent positions on human rights violations. In Mexico or Honduras, ombudsmen have condemned and publicised human rights violations committed by governmental authorities.

It is important, therefore, to sensitise national human rights commissions and ombudsmen to the human right to food and its fundamental importance.[50]

c. The Right to Food before the Supreme Court

The end of the year 2001 was a milestone in the history of the right to food. For the first time, civil society actors in two countries brought cases directly related to the right to food before their national Supreme Courts. Both of the cases, the petition in India and the popular recourse action in Argentina mark significant progress toward justiciability, independent of the final outcome of the cases. They both show how a human rights framework and mechanisms can be used within the national legal system to halt violations of the right to food.

50 See References and links at the end of this manual

The Indian Petition

As already mentioned in Chapter 5, in the section on the relationship between the right to food and the right to life, the Supreme Court of India has invoked Article 21 of the Indian Constitution (guaranteeing the right to food to everyone) to underscore the State's obligations with respect to basic human rights. The right to food and the right to work were explicitly incorporated into the petition, as follows:

People's Union for Civil Liberties (Rajasthan): writ petition in the Supreme Court on starvation deaths
Versus:
Union of India, Food Coporation of India, State of Orissa, State of Rajasthan, State of Chattishgarh, State of Gujarat, State of Himachal Pradesh, State of Maharashtra

Considering the numerous cases of starvation deaths in India[51] and especially in Rajasthan due to three years' drought in a row, and considering the unused food grains surpluses in the state godowns, the PUCL alleged a violation of the State's obligation to safeguard the right to life of every person.

Background

In several Indian states, and especially in the state of Rajasthan, 2001 was the third year in a row of drought, as a result of variability in the monsoon rains. After three years of drought, misery and hunger have increased, in regions where mal- and undernutrition were already a daily problem. Indeed, according to figures from the National Family Health Survey, quoted by the PUCL, more than half of all children under three were undernourished in 1998-1999. Moreover, the National Sample Survey showed that in 1993-1994 almost half of the rural population in Rajasthan lived below the poverty line, and were unable to meet their minimum calorie needs. Three years of bad harvests dramatically worsened this already alarming nutritional situation.

Furthermore, drought not only had dramatic consequences on harvests and cattle but it also induced severe and widespread unemployment in areas that depended primarily on agriculture. The massive unemployment led in turn to increased indebtedness among poor families, higher school dropout rates, and destabilisation of the whole region.

Violations of the Rajasthan Famine Code, organising relief operations:

In the light of the widespread hunger and starvation, it is clear that the relief measures in different states, and especially in Rajasthan, were insufficient or inadequate, failing to comply with the measures against famine to which Rajasthan committed itself, through its Famine Code of 1962. According to the PUCL petition, as a result of numerous administrative irregularities in the relief measures, many eligible households were excluded.[52] Even when there was public distribution of food, the amount of food was inadequate to meet families' minimum nutritional needs (about 400 calories per capita per day, against the standard daily requirement of 2,400 calories). Finally, under clause 75 of the Famine Code, every person able and willing to work was entitled to relief work, for example, in public works projects in construction and irrigation, at legal minimum wage rates. This "Food for Work" programme also suffered from irregularities and inadequate implementation.

51 According to governmental figures, out of 360 million people living below the poverty line, more than 50 million have been victim of chronic malnutrition. See PUCL Petition.

52 "The identification of BPL (households living below the poverty line) household is known to be highly unreliable, due to inaccuracies in the baseline surveys as well as personal and political influences." in PUCL Petition.

Violations of Article 21 of the Indian Constitution:

The PUCL petition invoked Article 21 of the Constitution of India, which guarantees the right to life of every person. According to existing case law, the right to live as a human being is not ensured by meeting only the animal needs of man. (...) the Right to Life guaranteed in any civilised society implies the right to food, water, shelter, education, medical care and a decent environment. (...) The civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.[53]

The function of a welfare state was also emphasised. Ensuring the welfare of the population and the provisions of Article 21 undoubtedly mean safeguarding life and liberty for all. Financial constraints cannot be invoked to justify or excuse a failure to meet these fundamental constitutional obligations.

Indeed, the violation of the right to food is all the more evident and unacceptable in view of the fact that, according to official figures, there were approximately 50 tonnes of rice and wheat in public godowns, far exceeding the 20 million tonnes needed for food security and price stabilisation. Storing these enormous surpluses is very expensive and storage conditions were not adequate. At the time of the petition there was a dramatic lack of storage space and about one million tonnes of food were rotting, at the same time that severe malnutrition and hunger were widespread. Moreover, some of the godowns were located only about 75 kms from places where people were facing starvation.

Supreme Court Orders

In response to the petitioners' demands, there were several hearings and court orders. The most relevant points in these orders issued by the Supreme Court included the following: In July 2001, the Supreme Court ordered states to (re-)open the public distribution shops and to ensure that they were functional and well stocked. In an Order dated 21 November 2001, the Court directed the national and state governments to respect the objectives and the procedures of the various public distribution and social security programmes. The Court ordered the states and the central government to take all necessary measures to identify eligible beneficiaries and to ensure that they received all the benefits to which the various programmes entitled them.

As of 21 January, 2002, the states and the central government had done little or nothing to comply with the Supreme Court's orders. Nevertheless, the orders exist and the case remains a fundamental contribution to the justiciability of ESC rights.

An Accion de Amparo in Argentina[54]

Currently, an acción de amparo (in accordance with Article 43 of the Argentine Constitution),[55] is pending before the national Supreme Court. An acción de amparo is a constitutional complaint before the Supreme Court that individuals can make. If an individual believes that a norm violates rights guaranteed under the Constitution, or domestic or international law, they can seek a declaration of unconstitutionality from the Supreme Court. In the present case, the complaint was filed by beneficiaries of a social programme for food and family support

53 See the case of Chameli Singh v State of UP, 2 SCC 549 (1996). See also the case of Franic Caralie v Union of Territory of Delhi, 1 SCC, 608 (1981). See also Chapter 6 of this Manual, Section C.1., The Right to Life.

54 For further details, contact CELS (Centro de Estudios Legales y Sociales) at desc@cels.org.ar.

55 "Toda persona podrá interponer acción expedita y rápida de amparo, siempre que no exista otro medio judicial más idóneo, contra todo acto u omisión de autoridades públicas o de particulares, que en forma actual o inminente lesione, restrinja, altere o amenace, con arbitrariedad o ilegalidad manifiesta, derechos y garantías reconocidas por esta Constitución, un tratado o una ley. En el caso, el juez podrá declarar la inconstitucionalidad de la norma en que se funde el acto u omisión lesiva..." (Translation: Each person could hand in expeditious and rapid protective action, given that there is no other more suitable judicial measure, against each act or omission of public authorities or persons, which in actual or imminent form affects, restricts, alters, or threatens, with arbitrary action or open illegality the rights and guarantees recognized in this Constitution, in an agreement or in law. In this case, the judge could declare the unconstitutionality of the norm on which the respective act or ommission is based ...) or Article 43 of Argentina's Constitution.

(Programa Alimentario y de Apoyo Familiar) against an administrative decision from the Ministry of Social Development cutting funds for the programme. Invoking the state's international responsibilities and obligations with respect to the treaties it had ratified, the complaint called on the Court to declare the administrative decision invalid and to order the state to refrain from adopting measures affecting the status of the right to food of the programme's beneficiaries.

This is the first time that a complaint against a national measure has directly and explicitly relied on respect for the right to adequate food as guaranteed in the Constitution and the international treaties ratified by Argentina, specifically the ICESCR. NGOs and all interested civil society actors should follow the progress of this case with great interest and attention. It could be a very valuable precedent and an encouragement to constitutional courts and civil society actors in other countries.

8.1.4 Promoting the Human Right to Food in the Development Context

> "Developments in the present decade have underscored that human rights are inherent to the promotion of peace, security, economic prosperity and social equity (...). A major task for the future will be to enhance the human rights programme and integrate it into the broad range of the Organization´s activities, including in the development and humanitarian affairs areas."[56]
>
> UN Secretary General Kofi Annan

The human rights approach to development is becoming an important part of development discourse. UNICEF has increasingly been using human rights language and concepts since the adoption of the Convention on the Rights of the Child in 1989. The 2000 Human Development Report, published by the United Nations Development Programme (UNDP) was devoted to this topic and carried the title "Human Rights and Development". More and more governments and non-governmental development organisations (NGDO) are starting to think of human rights as provifing framework conditions for their work.

One aspect of promoting the human right to food in development discourse is to make sure that development measures meet states' international obligations. A rights approach to development co-operation requires orienting development policies or programmes in such a way that they fully support the requirements for implementation of the right to adequate food.

There are basically five roles that development co-operation can play in supporting implementation of the right to adequate food. The first three roles are linked to positive elements to support implementation of the right, and the last two address the responsibilities of development co-operation in minimising possible negative outcomes of policies or states' ability to comply with their human rights obligations.

(1) Development co-operation can help resource-poor states that are unable to guarantee the right to adequate food and the right to freedom from hunger for all residents, whether this inability is temporary, periodic or long term. The support can be in cash or in-kind, in the form of technical or financial support or as an advisory service. The possibility of receiving external support should not allow states—even resource-poor states—to evade their immediate obligations under the right to adequate food to use the maximum of available resources as expeditiously as possible.

(2) Development co-operation can provide legal, political or administrative advice to states that are not complying with their obligations under the right to adequate food, even though they have the means to carry out adequate policies. There are many reasons for inadequate policies, including the role of influential lobbying groups, unwillingness to make necessary changes, lack of knowledge concerning the potential impact of particular policies and programmes, etc.

(3) The third role emphasises active support or promotion of the right to adequate food. Development co-operation can actively promote full implementation by advising states, analysing and publicising information on known implementation problems, and encouraging and supporting important actors within governments and civil society.

56 UN Secretary-General Kofi Annan on his Programme for Reform. Extracts from the report of the Secretary-General to the General Assembly, Renewing the United Nations: A Programme for Reform, A/51/950, 14 July 1997

(4) Development co-operation must ensure that donors' own policies and programmes do not restrict states' ability to implement the right to adequate food. In addition to creating options, development co-operation can limit the choices of governments by imposing conditionalities. In that sense development co-operation influences the policies available to governments. It therefore shares responsibility for possible problems in implementation. Governments' responsibility extends to their positions, decisions and roles in international organisations such as the World Bank, which may influence countries' policies.

(5) Development co-operation should monitor donors' own governments' policies and programmes in related policy fields such as trade and finance, to ensure that they do not contribute to violations of the right to adequate food in other countries.

The right to food can provide direction to development policies, according to the following guidelines:

1. The right to food establishes minimum standards for state behaviour with respect to the rule of law, the accountability of governments for their actions, and similar governing principles. It therefore provides a frame of reference for policy dialogue.
2. In many countries, indigenous communities, landless people, the elderly and other vulnerable groups are victims of violations of the right to adequate food. A rights approach starts out by identifying the vulnerable groups in specific countries.
3. A rights approach will make development co-operation sensitive to the human rights dimensions of land tenure, security of access to land, land distribution and agrarian reform, and other fulfilment programmes.
4. A rights approach needs as a precondition people's right to complain and hold their government accountable for its actions and omissions. Access to complaints mechanisms is essential for accountability.
5. A rights approach can be supported and reinforced through projects specifically designed to help victim groups or broader groups of affected people, for example, legal aid services or access to the judicial system.
6. A rights approach can and should lead to complementary activities in education, training and the creation of knowledge networks.
7. Complementary advocacy work is needed to support the work of victims and other affected groups in holding their governments accountable. A human rights approach also requires governments and civil society actors to shine the lens on their own development policies and programmes, to ensure that they remain accountable to and consistent with a human rights approach to development.

Promoting the human right to food in development cooperation can therefore have both educational and practical benefits in both the North and South.

8.2 Making use of the international monitoring procedures

8.2.1 Human Rights Networking

Internationally as well as at the national level, a well-organised and functioning network of NGOs working toward realisation of the human right to food is essential. Unity is strength! Mutually supportive action by local, national and international civil society organisations is a prerequisite for the optimal use of the available human rights monitoring systems. In recent years, FIAN has regularly invited NGOs and social movements from all over the world to report on compliance by their national governments with their domestic obligations under the right to adequate food. Networking and co-operation are necessary not only for reasons of strategy and efficiency reasons but also for formal reasons. For example, only NGOs having consultative status with ECOSOC, the Economic and Social Council of the United Nations, can submit parallel reports to the UN Committee on Economic, Social and Cultural Rights or provide accreditation to grass-roots workers and victims' representatives who wish to submit information to the Committee concerning their governments' human rights records.

At the international level, monitoring states' compliance with their obligations under the right to food relies on information submitted to Committee about the measures taken by the states. The treaty monitoring bodies examine the information supplied by the states, as well as information submitted by NGOs about the states, present their observations and recommendations, and can eventually "sanction" a state that fails to implement the Committee's decisions and recommendations by making their concluding observations public. One illustration of this control system at the global level is, of course, the reporting procedure under the ICESCR. However, the ILO and the Council of Europe have other supervisory mechanisms to monitor states' compliance with their human rights obligations.

8.2.2 Monitoring in the global sector (UN system)

a. The Committee on Economic, Social and Cultural Rights

At the international level, there are several bodies that examine states' compliance with their obligations under human rights law. The monitoring procedures available for the two Covenants reflect the secondary status of the right to food and other economic, social and cultural human rights (see Chapter 3.B). By means of the 1966 Optional Protocol, the International Covenant on Civil and Political Rights permits complaints from individuals alleging violations of it. The International Covenant on Economic, Social and Cultural Rights does not yet have a similar mechanism.

Because the ICESCR applies to everyone, the reporting procedure supervised by the Committee on Economic, Social and Cultural Rights (the body responsible for monitoring states' compliance with it) is one of the most authoritative mechanisms in international law for monitoring the right to food. According to Articles 16 and 17 of the ICESCR:

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.a. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

b. The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Covenant.

Currently, states' reports are due every five years. NGOs play a key role in providing the CESCR with information that supplements (and often differs from) the information in states' reports concerning compliance with their Covenant obligations. The Committee relies on this parallel information in its examination of states' reports.

FIAN's experience, as well as that of numerous NGOs and social movements, shows that the Committee's examination of states' reports can have a positive impact on the situation of the victims. First, the presentation in Geneva of concrete cases of violations of the right to food allows the voices of the victims to be heard in an international forum. It encourages greater attention to states' failures to comply with their obligations, which can be useful at both the national and local levels. Second, the Committee's concluding observations provide guidance for improving legislation and establishing new measures and programmes to promote the right to food. Third, the Committee's co-operation with UN special agencies and its recommendations concerning the obligations of the international community facilitate the adaptation of international co-operation to human rights requirements. Finally, reporting to the CESCR provides an occasion for international NGOs to co-operate with local and national victims' organisations. Indeed, each parallel report submitted by FIAN to the Committee has included examples of violations of the right to food. These cases have been documented with the assistance of local groups working directly with the victims at the grassroots level. Such close co-operation between international NGOs and local and national civil society organizations encourages work at the national and local levels and strengthens supervision of states' compliance with their obligations under the human right to food.

Parallel reports and other information provided by NGOs to the CESCR can even have a preventative effect. There have been several cases in which the CESCR, made aware by NGOs of threats against economic and social rights, has issued recommendations and injunctions to the concerned governments, which then desisted from their intention to violate the rights. Information from NGOs that supplements the information supplied by state authorities has prevented a number of serious violations of the right to food. Although NGOs should be realistic about the Committee's limitations, in view of the marginalisation of economic, social and cultural rights in the UN human rights system, the CESCR should not be underestimated and NGOs should make regular and effective use of the reporting system supervised by the Committee.

FIAN's Parallel Report Honduras, November 2000

The parallel report submitted by FIAN to the CESCR during its 24th session in November 2000 is a good example of how the Committee's Concluding Observations, addressed to the State Party, can be influenced by NGOs. On the basis of concrete cases and FIAN interventions, the parallel report listed violations of the right to food in Honduras. These violations were classified into four categories, corresponding to four areas in which the Honduran government needed to take action. FIAN first documented cases of forcible evictions of peasant groups. FIAN then denounced discrimination against women and indigenous people with regard to realisation of ESC rights, as well as violations of labour rights, as a result of a minimum wage that did not allow people to satisfy their basic needs. The parallel report also called on the government to carry out agrarian reform in order to comply with its obligations under the right to food. The Committee took careful note of FIAN's concerns. In May 2001, the CESCR presented its Concluding Observations on Honduras's report, in which it recommended inter alia:

8 better awareness and education concerning human rights, and especially ESC rights, among civil servants in the judiciary and the police force;

9 adoption of legislative and administrative measures to overcome discrimination against indigenous people as a vulnerable minority, and against women, particularly with respect to their work in the informal sector, working conditions, and representation in public services;

10 an increase in the number of labour inspectors;

11 pursuit of all necessary measures to carry out agrarian reform, and resolution of land ownership problems, taking into account the needs and rights of peasants and indigenous people.

Following release of the Committee's Concluding Observations, FIAN-Honduras organised a successful press conference, highlighting the Committee's support of the right to food in Honduras, which helped to draw significant attention to the plight of victims.

In conclusion, parallel reports are useful tools because they provide the CESCR with information gathered by grass-roots organisations, which presents a realistic picture of the situation of ESC rights in the concerned country and offering a perspective that differs from the official version provided by states. Moreover, when publicised by the media, parallel reports provide for victims and their support groups with political capital.

The status of states' reporting under the ICESCR can be found at www.unhchr.ch[57], the website of the Office of the High Commissioner for Human Rights at United Nations headquarters in Geneva. It is important to know when one's country report will be on the agenda, in order to provide the Committee well in advance (at least six months) with parallel information about the human rights situation. Organisations with consultative status at the UN can help by highlighting violations by means of parallel reports or by raising these issues before other UN human rights bodies like the Commission on Human Rights or the Subcommission on the Promotion and Protection of Human Rights. (Refer to Chapter x, section y for more information).

b. Monitoring with ILO Instruments

Minimum wage legislation can be a means to promote fulfilment of the right to food for the working poor. Establishing and protecting minimum wages falls within the purview of the International Labour Organization (ILO) and are the subject of numerous ILO Conventions and Recommendations. This is especially interesting with respect to the right to food because the ILO offers some very progressive supervision procedures. The ILO is an unusual organisation within the United Nations, because its governing bodies represent governments, employers and workers. Civil society organisations promoting the right to food may channel their contributions through any of the components of this tripartite system.

Through its database International Labour Standards (ILS) database, the ILO helps to document and "codify" national legislation and practice. The ILO also provides a forum for preparing, signing and ratifying conventions on labour standards and related issues.

National legislations and ILO conventions are interpreted and amplified by ILO Recommendations (which operationalise the Conventions), the General Survey on Implementation, and the criteria and "case law" of the ILO supervising bodies. Among the latter, the most important is the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR fulfils a jurisdictional function. The Committee monitors the compliance of national legislation and practice with ILO standards, even unratified standards. Finally, the ILO has two unique and somewhat contentious procedures. The first is an "objective claim". In this procedure, one state can introduce a claim against another state of violating its obligations, even if the violations do not affect the complainants. The matter can eventually reach the International Court of Justice. The second procedure enables workers' and employers' organisations to file a complaint against a State.

The ILO also organises missions all over the world. About 600 experts undertake these missions through the ILO's technical cooperation programme.

8.2.3 Monitoring at the Regional Level: The European Social Charter

The European Social Charter contains provisions linked to the protection and the realisation of the right to adequate food (see Chapter 3.C). Its monitoring system combines both reporting and collective complaints mechanisms.

a. Reporting Procedure

States parties to the European Social Charter must report on the domestic implementation of the Charter on a regular basis. The reports are transmitted to the European Committee of Social Rights (ECSR), which is made up of independent experts. The ECSR also reviews reports from trade unions and NGOs. An ILO representative may attend ECSR deliberations with consultative status. The ECSR evaluates whether national legislation and practice

57 The reporting status of a particular state can be found at www.unhchr.ch, Sections Documents, treaty-body database, Reporting status, ICESCR. You can also download the reporting guidelines from the website (Ref: HRI/GEN/2/Rev.1).

comply with the obligations in the charter. The ECSR transmits the results of its analysis to the Governmental Committee, which is charged with preparing the decision that will be eventually taken by the Committee of Ministers. The Committee of Ministers is a political body that can make recommendations to the states on compliance with the charter's provisions. The European Social Charter also has a procedure of collective complaints.

b. Collective Complaints under the Additional Protocol to the European Social Charter

Adopted in 1995, the Additional Protocol entered into force in 1998. The protocol establishes a system for collective complaints. Under this procedure, international civil society organisations (e.g., trade union federations, international NGOs registered with the Governmental Committee), national trade unions and national NGOs (if their state has expressed its agreement through a special declaration) may file a complaint with the ECSR. The ECSR decides whether the complaint is admissible and transmits its conclusions concerning the alleged violation of the Charter to the Committee of Ministers. The Committee of Ministers, in consultation with the Governmental Committee, adopts a resolution closing the procedure. It may also adopt a recommendation to the state violating the Charter.

The first collective complaint was brought against Portugal in 1999. It concerned the issue of child labour and is described in the box below. Similar procedures could be used for cases on the right to food.

Successful Use of the Collective Complaint Procedure Addressing Child Labour in Portugal

An international NGO, the International Commission of Jurists (ICJ), successfully introduced a complaint alleging that Portugal was a de facto violator of Article 7 of the Charter, protecting children and young persons. According to Portuguese NGOs and social movements, some 40,000 children worked illegally in Portugal. Child labour reportedly had particularly severe consequences for children's education and development in the northern part of the country, in the Braga region, where the textile industry utilised child labour. In the context of an investigation by national and local NGOs and mediation of the complaint, Portugal announced and introduced a number of social programmes to combat child labour. More generally, the complaint against Portugal has had positive effects by raising awareness of what to do to avoid such complaints. It has had an encouraging effect on other European governments as well, which have launched national studies and social programmes in favour of better protection and education of children.

Consult www.coe.int for ratification status of the Additional Protocol, as well as for a list of international NGOs with consultative status, which are authorised to introduce your complaint if your organisation cannot do so because your state did not make the necessary declaration concerning national NGOs. This procedure can contribute significantly to operationalising the right to adequate food. For example, national trade unions can use it to try to improve minimum wages and working conditions, and social movements can seek improved social security programmes. In both cases this would help to fulfil the right to food of vulnerable individuals and groups.

8.2.4 Right to Food Indicators and Benchmarks: Toward a Quantification of What Can Be Expected from States

To facilitate the monitoring of states' compliance with their obligations under the right to food, quantifying what can be expected from them can be useful. This can be done by establishing indicators and benchmarks. An indicator is an aspect or attribute of something that is measurable. By measuring this attribute and making comparisons over time or against a standard, useful information is obtained which can be used to evaluate progress toward a goal, for example, realising the human right to food. A benchmark is the standard or target

established for a particular state, with that state's concurrence. When the state reaches it, a new and higher benchmark is established. While the indicator or indicators will be the same for all states, benchmarks are individualised goals for particular countries. Benchmarks set forth the agreed level of compliance: the expected (or progressive) values of the indicators over time. By using a monitoring system that employs indicators and benchmarks, states' progress toward meeting their obligations can be measured individually against a uniform standard.

The use of an example may make this clearer. For example, the indicator selected might be birthweight, as a measure of the mother's and the infant's health and nutritional status. Low birthweight babies are more vulnerable to disease or death and women who are in poor health themselves or receive inadequate prenatal care are more likely to give birth to low birthweight babies. Infants are weighed, the information is collected and averaged. In human rights terms, it is important to have "disaggregated data," that is to have different averages for different subgroups, to make sure that vulnerable groups are not overlooked. If the average is low, benchmarks or targets can be established for individual states or populations that will raise the target birthweight over time. The baseline measurement is taken and periodic benchmarks are established for a particular state, so that it can evaluate and improve its own performance and achieve full realisation over a defined period of time, for example, five to ten years. Comparing the periodic measurements against the benchmark helps to evaluate whether programs are succeeding, and if not, they show where adjustments need to be made.

Indicators and benchmarks were originally developed within the context of establishing a minimum threshold of well-being. According to Andreassen et. al., this minimum threshold is defined as "a practicable minimal floor of well-being as a standard for distributive analysis of each of the key economic and social rights."[58] This means that the purpose of such indicators on economic and social rights was to look at the satisfaction of needs in society with a view to redistribution. For the right to food, minimum thresholds are defined at the national level as quantitative measures that establish minimum nutritional standards. These minimum nutritional standards should be enacted into national legislation. Based on the nationally established normative standards, internationally binding benchmarks could then be determined and employed universally.

a. Types of Indicators

Indicators are numerical data that try to capture, or indicate, a certain property. Right to food indicators are meant to assist in assessing the level of implementation or determining whether the violations of the human right to food have occurred. If specific values of indicators are "benchmarked" for some future point in time, these benchmarks can be used both in planning and monitoring progressive realisation of the right to food. They can be a useful tool in determining whether states are meeting or breaching their obligations with respect to the right to food. There are numerous food and nutrition related indicators addressing states' obligations and the normative content of the right, vis-à-vis individual victims of violations.

In selecting indicators for certain properties one can distinguish between "ranking indicators" and "threshold" indicators. Indicators are considered to be hard indicators when they interpret a property by means of a "threshold": If the numerical value of the indicator falls below (or rises above) a predetermined threshold, a certain value is ascribed to the property being measured. A classic threshold indicator is the poverty line: If the average daily income of a person falls below a certain value (the poverty line), the person is considered to be poor. An indicator is a soft indicator if it is used for ranking: Soft indicators are used to ascribe more (or less) of a certain property without defining a threshold. An example of a soft indicator is the Gini coefficient[59] for the distribution of income in society. If one country has a higher Gini coefficient than another, it is considered to suffer from a more inequitable distribution of income. Although countries can be ranked according to these indicators, there is generally no attempt to establish threshold values for a Gini coefficient so that countries with a higher Gini

58 Andreassen, Smith and Stokke, 'Compliance with Economic and Social Human Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations', in Eide & Hagtvet, Human Rights in Perspective : A Global Assessment (1992)

59 The Gini coefficient is based on the Lorenz curve, a curve comparing the distribution of a specific variable with the uniform distribution that represents equality. This equality distribution is represented by a diagonal line, and the greater the deviation of the Lorenz curve from this line, the greater the inequality. The Gini Coefficient ranges from 0 to 1, 0 representing perfect equality and 1 total inequality. It corresponds to twice the area between the Lorenz curve and the diagonal.

coefficient are considered more unjust in terms of income distribution. A soft indicator is sometimes called an "index", for example, the human development index (HDI)[60] and other indices used by the United Nations Development Program (UNDP). Thresholds in social indicators are always somewhat arbitrary. In the case of poverty, however, there is considerably more justification for drawing a line (for example by referring to a certain purchasing power in terms of a basket of goods or with reference to basic needs) than in the case of income distribution.

b. Indicators on the use of resources

Right to food indicators refer to the main features of the right to food: The normative content and—even more interestingly—the related states' obligations. Any court dealing with an alleged violation of the right to food must make a judgement as to whether certain states' obligations were met. The availability of resources is usually a crucial variable, indicating whether a state has the capacity to operate certain programmes. Indicators to evaluate a state budget in terms of the right to food could be quite helpful for courts in evaluating states' claims that they have been using the maximum of available resources (as they are obliged to do under ICESCR 2.1). There has been some progress along these lines of approach, for example in the field of human rights budgeting.

Human Rights Budgeting

Using a human rights perspective to assess how public resources are used has been actively advocated in recent years, and various schemes and initiatives have been proposed. The goal of all of them is to monitor states' performance in terms of human rights implementation: What action has a state taken to improve the status of economic and social rights for its population? Does it dedicate the maximum available resources to realising these rights? Does the budget show that more resources were devoted to military expenditures than to nutrition and health programmes for instance? Should people expect more from their government?

Human rights budgeting has two dimensions: democratising budgeting and decision-making on the one hand, and evaluating the management of public resources on the other. In both dimensions, economic and social rights are essential criteria for analysing budgets and improving policies.

The goal of the first dimension is to ensure the participation of people and especially of the poor in budget formulation. By involving people who depend on social expenditures to realise their rights, as well as their support groups, resource allocation will become more transparent and will correspond more closely to the priorities and needs of the population. One of the first experiments in participatory budgeting was carried out very successfully in Brazil, in the city of Porto Alegre. It is now spreading to other cities and areas around the world.[61]

The second dimension of human rights budgeting is monitoring a state's performance as it pertains to its human rights commitments and obligations. Budget monitoring in a human rights context entails analysing whether public resources are adequately allocated and efficiently managed by the state, and thus whether this state has complied with its national and international obligations. Budget monitoring can also mean defining the budgetary decisions to be taken and estimating future costs in order to put in place concrete measures that will improve the status of economic, social and cultural rights.

60 The Human Development Index is a composite of three basic elements illustrating human development: life expectancy, adult literacy, and purchasing power measuring standard of living.

61 There are many different initiatives, models and actors in the field of human rights budgeting. For contacts and details, please consult the list of Web addresses at the end of this manual.

Various schemes, methods and indicators are available to analyse public resource allocations and to assess states' compliance with their human rights obligations. One approach to human rights budgeting[62], the 20/20 Initiative, which emerged at the 1995 World Summit for Social Development in Copenhagen, is now supported by several UN agencies, including UNICEF and UNDP. This Initiative calls for the allocation of 20 percent of the budget in Southern countries and 20 percent of Northern official development assistance to basic social services. It responds to the reality that many deprived people still lack access to these services. UNDP data estimate the total cost of the 20/20 Initiative at $200 billion, which represents less than one percent of global output. The UNDP also uses the human expenditure ratio (HER) as indicator to assess the proportion of public social spending in national budgets. HER is the product of three ratios: the PER, or public expenditure ratio (the government's share of the gross national product); the SAR, or social allocation ratio (social services' share of public expenditure); and the SPR, or social priority ratio (share of social expenditure devoted to human priority concerns). After analysing national budgets in light of these ratios, the UNDP has concluded that meeting priority human needs requires an HER of about 5 percent.[63]

c. Indicators for physical accessibility

A simpler type of indicator measures the various dimensions of the normative content of the right to food, including physical and economic accessibility and adequacy. Indicators for the core content of the right to food (freedom from hunger) are widely used. Protein-energy malnutrition is usually measured by anthropometric data (see box). These indicators measure deprivation against the core content of the right. They can also be viewed as indicators of physical accessibility in terms of the full normative content of the right. Because states have an obligation to fulfil the right to food, every deprived person triggers a duty to act for the state. Determining deprivation (in terms of malnutrition) is therefore a necessary first step in enabling a court to decide whether the right to food has been violated.

Other indicators for physical accessibility are intake indicators, such as the number of calories consumed. The FAO and WHO perform complex statistical calculations on the basis of such indicators, as well as on the availability and distribution of food, to make estimates of the number of malnourished people.

A third type of malnutrition indicator is income. Determining the income of a person or family is more difficult than measuring anthropometric data. On the other hand, income data may be more readily available. Comparison of family incomes with anthropometric data in India have shown that families need an average daily income of 1 $PPP (purchasing power parity) to be free from malnutrition. This figure became the "international poverty line". Persons whose incomes fall below this line are considered to be "extremely poor". Even extremely poor families do not devote all their resources to obtaining food because of competing urgent needs (although in India the average is around 80 percent of income for food). This "food share" (the percentage of income used for food) is sometimes used to define national poverty lines (for example in China, where 60 percent of income goes for food, and the United States, where the food share is 30 percent).

Several food-related statistical indices used by intergovernmental institutions like the World Bank and UNDP usually refer to the overall availability of food. The UN Development Report for the Year 2000 calculates average daily per capita supplies for energy, protein and fat, as well as data on food production, food imports and food aid.

The right to food, however, like any other human right, is not a statistical concept but an individual concept. Statistical indicators provide a general background, but individual indicators for the normative content of the right are more important.

62 Most of the indicators can be found in the work of the UNDP. See www.undp.org for the yearly UNDP Human Development Reports (especially the 1991 Report). See also 20/20 Initiative and the document entitled "Analytical Tools for Human Development", at www.undp.org/hdro/anatools.htm.

63 UNDP Human Development Report 1991, pages 38–60

Anthropometric Indicators for Malnutrition

For adults:

The body mass index (BMI) is the ratio of weight (in kg) to the square of the height (in metres).

A body mass index below 18.5 is an indicator for malnutrition.

A body mass index below 16 is an indicator for severe malnutrition.

For children:

1. Birth weight

A birth weight of less than 2,500g indicates poor nutrition of the mother and is associated with high infant mortality

2. Weight for age

The Gomez classification gives the following indicators for protein energy malnutrition by comparing the weight for age of the child with the average for a healthy population:

Weight for age between 75% and 90%: light malnutrition (first degree malnutrition)

Weight for age between 60% and 75%: moderate malnutrition (second degree malnutrition)

Weight for age below 60%: severe malnutrition (third degree malnutrition).

This indicator is mostly used for preschool children.

An indicator used by the World Health Organization:

Weight for age of less than two standard deviations below the median of the healthy reference population indicates malnutrition.

Weight for age of less than three standard deviations below the median for a healthy population indicates severe malnutrition.

3. Height for age

Height for age below 90% of the average in a healthy population is called stunting and indicates chronic malnutrition.

4. Weight for height

Weight for height below 80% of the average is called "wasting" and indicates acute energy malnutrition.

d. Indicators for economic accessibility

Indicators for economic accessibility are much more complex. Income is an important indicator for physical accessibility. However, the availability of income is not sufficient to ensure economic accessibility if this income is not linked to economic activities. For example, young children, people with disabilities and/or elderly persons are likely to be unable to make use of monetary income to buy food or to prepare the food bought. With its definition of economic accessibility General Comment No. 12 included access to resources in the normative content of the right to food. This, however, means income linked to economic activities for the particular person in question. Both physical and economic access need to be legally guaranteed. For full realisation of the normative content this implies that economic access to resources and work is needed for a person deprived of economic

access to food (even if physical access is available), so that she can feed herself. One possible indicator for economic accessibility is therefore the income of a person generated through employment (self-employment or wage employment). This indicator in turn depends on access to productive resources such as land and water, to employment in the labour market, or to other arrangements recognising and remunerating an activity as an "economic activity".

In assessing states' obligations the use of indicators is particularly important in the context of the fulfilment system. The progressive implementation of fulfilment systems can be monitored once indicators have been agreed upon which describe the status of the component programmes: the amount of land distributed to the target group under an agrarian reform programme, the percentage of persons otherwise without economic access who have been placed in resource sharing programmes, the percentage of persons otherwise without physical access but covered by minimum income or feeding programmes. Again, these are statistical indicators. If linked to indicators on right to food budgeting, however, they may assist courts to decide particular cases of persons lacking physical or economic access to food. Courts may then try to place the individual in a suitable programme, bring an existing but inadequate programme up to standard, or, if such programmes do not exist, determine whether a state could reasonably be expected to establish such a programme under the maximum resources provision of ICESCR 2.1. Courts may then formulate their judgements and orders accordingly.

The value of indicators in the field of human rights should not be overestimated. Indicators can assist observers and participants to assess a particular situation, but they cannot replace the case by case procedure establishing legal standards by means of reasonable judgements reached in the cases of individual victims. However, indicators can be very helpful in reaching such reasonable judgements, and they can provide important points of reference or benchmarks for court orders. They are useful tools in improving the monitoring of states' obligations.

Indicators and benchmarks can be used to assess whether states are in compliance with their obligations under the right to food. This would in particular facilitate a judgement on whether a state is addressing gaps in its fulfilment system and moving as quickly as possible toward full realisation of the right to food. In this context, indicators and benchmarks provide a useful framework for the work of the Committee on Economic, Social and Cultural Rights and other monitoring efforts.

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Chapter 9 Challenges for the realisation of the right to food

Realising the human right to adequate food today presents some formidable challenges, and meeting them will require extraordinary efforts on the part of civil society, states, and the international community.

First, the human right to food continues to be marginalised, in spite of the progress charted in this manual. Seriously addressing the issue of endemic hunger and malnutrition will entail mainstreaming the human right to food, including the right to feed oneself. The right to food and other economic, social and cultural rights must assume their proper place in politics, in the human rights system, and, not least, in people's minds. Only then will the rights to freedom from hunger and to adequate food be made operational and justiciable.

Realisation of the right to food faces two important additional challenges: neo-liberal globalisation and the destruction of ecological resources. The right to food for the poor of and tomorrow must be safeguarded in the face of these challenges. International and national human rights law can be an important asset in this context, if full mainstreaming of human rights does, indeed, succeed.

9.1 Mainstreaming the Human Right to Food

9.1.1 Overcoming Marginalisation in Politics and Law

There is an urgent need to promote economic, social and cultural rights as human rights and to make them fully justiciable. Social rights are still considered by most governments as mere nonbinding political aspirations. Even among civil society organisations, misunderstanding and prejudice concerning the so-called "second generation" rights still remain strong. The term "second generation" itself is a tool for marginalisation, implying that the "first generation" civil and political human rights are more important and have priority in implementation. The human right to adequate food, and in particular the fundamental right to freedom from hunger, are fairly straightforward rights, which can continue to serve as pioneers in combatting the marginalisation of economic, social and cultural rights.

What needs to be done? During the past 15 years the human right to food has advanced in international law, among governments and in civil society. A number of civil society organisations in different parts of the world have started to view economic, social and cultural human rights as a common frame of reference for national and international networking. These preliminary efforts need to be broadened and explicitly integrated into the policies of victims' organisations and NGOs. Unless NGOs are strongly determined to insist that food is a human RIGHT, mainstreaming will be difficult.

Mainstreaming can count an increasing number of supporters among states' authorities and intergovernmental organisations. However, the reluctance in many states to assume real obligations toward a constituency devoid of political and purchasing power is considerable. Progress in international law must not be overrated. For mainstreaming to succeed it will be crucial that common people "own" their right to food instead of seeing it as an issue for "experts". People must not be alienated from their rights, they must share the vision embodied in the human right to adequate food, and be willing to take it into their own hands. Civil society organisations can serve as catalysts in this context. Human rights is an arena where states and civil society meet. States will begin to implement the human right to food (so that people can start to realise this right), once mainstreaming has created sufficient push and pull in this direction. There is a need to overcome the de facto marginalisation of the human right to adequate food. The indivisibility of human rights has been affirmed and re-affirmed so often that it is well past time to apply this doctrine to the right to food. Marginalisation must be overcome in the way states' authorities, as well as the media and public opinion, understand these rights.

The human right to food also remains marginalised de jure, that is, "in law". Progress here can have a positive effect on mainstreaming. An obvious sign of the de jure marginalisation of economic, social and cultural rights can be found in the UN human rights system itself: Indivisibility and interdependence should mean that all human rights benefit from equal protection in cases of violations. The lack so far of an Optional Protocol to the

International Covenant on Economic, Social and Cultural Rights, which would provide the right to petition against violations of the human right to food before the UN human rights system symbolises this de jure marginalisation of economic and social human rights. However, even when recognised and reaffirmed, often the right to food can still not be claimed before a court. This is the challenge of justiciability and, more precisely, the challenge of overcoming the reluctance of states and the international community to give individuals the ability to claim the right to adequate food. If an individual has exhausted the internal means of redress within a state—that is, if she has unsuccessfully brought her case before all domestic courts, including appeals courts—she should be able to seek an international jurisdictional body that can re-examine the case and hold the state accountable for its violations of the rights enshrined in the international instruments that it has ratified. At the international level, the Optional Protocol to the ICCPR provides such a procedure for individual complaints. This has proved important in the international development of civil and political rights. A system of individual complaints for economic, social and cultural rights (through an optional protocol to the ICESCR) would stimulate a similar development in this hitherto marginalised area of human rights. Here too, much will depend upon the efforts of civil society.

9.1.2 Actors Involved in the Mainstreaming the Right to Food

Human rights are a means of holding states accountable for the realities of vulnerable groups and individuals and of future generations. The human right to food has been asserted, reasserted and codified in international law. Existing instruments and mechanisms in international human rights law can be used and further reinforced by non-governmental organisations.

Human rights in general, and the human right to food in particular, can become a kind of "foundation of a future world order"

- if they are widely recognised by the public,
- if they are used as common terms of reference,
- if they are brought to the top of political agendas,
- and if people from many different backgrounds collaborate in making all of this happen.

In this section you will find some concrete proposals directed to a number of important actors interested in the right to food. There are suggestions on how to introduce a human rights programme to various organisations and constituencies and how to network internationally on behalf of the realisation of the human right to food. FIAN will be happy to collaborate and assist such actors in their efforts to make the human right to food a common term of reference.

a. Community Based Organisations (CBOs)

Most CBOs help the poor to deal with the problems they are facing. Reference to the human right to food in this context can be a great source of encouragement and empowerment. Many of their struggles are struggles against violations of human rights. States' obligations in these situations are quite clear and are often spelled out in domestic or international law.

Using the human right to food as a common term of reference will greatly facilitate solidarity activities by CBOs because it enables a situation in a specific local context to be explained in human rights terms in a manner that allows other organizations in different parts of the world to join the conflict on the side of the victims.

Using a human rights framework will encourage and empower the CBOs, enabling them to link their work to a political and legal framework which favours them, rather than the powers that be.

Using a human right framework will strengthen their bargaining position with the authorities, as these authorities have internationally recognised human rights obligations.

To be able to use the human right to food properly and in accordance with international standards and practice, human rights education and training are necessary.

This should start with training for CBOs that has the following aims:

i) learning to recognize breaches of the human right to food in situations that are characteristic of the CBO's work;

ii) documenting violations and breaches of the human right to food, and reporting them in the national and international arenas.

iii) articulating human rights claims nationally and internationally.

b. Trade Unions

In some countries trade unions are community based-organisations; in others (especially in the North) they can also be seen as NGOs. Hence, the suggestions regarding CBOs also pertain to trade unions. Moreover, promoting the human right to food may assist the unions' public relations efforts. Trade union leaders should articulate the human right to food in the media and at public events. ILO standards are often involved in trade union problems. Reference to the human right to food can further strengthen ILO standards and increase their value and impact in the media.

c. Social Action Groups

Social action groups often see their role in assisting CBOs in their work. There is a wide field for social action groups to foster expertise concerning the human right to food among CBOs and to assist them with the education and training programmes referred to above, as well as in documenting, articulating and monitoring violations of human right to food.

Moreover, many violations may occur in places where local CBOs able to defend human rights do not exist, as a result of oppression, lack of resources for local organising, or lack of awareness on the part of the community. In these situations social action groups may see it necessary to intervene directly on behalf of the victims, and

- inform the victims about their rights;
- document violations of the human right to food;
- make these violations known nationally and perhaps internationally
- articulate demands and seek remedy and redress for the violations.

d. The Human Rights Community

Human rights organizations should support the human right to food by clear statements, independently of their mandates in the different fields of human rights. They should incorporate these statements and a holistic vision of human rights into their public relations efforts.

In the conceptual development of human rights in their particular field of expertise (their "local human rights"), human rights organizations should adopt a coherent approach, with the totality of human rights in mind. They should use concepts that are compatible with other fields of human rights (that is, they should "think globally").

In their practical work, human rights organisations should focus on their fields of expertise. However, in their general public relations they should promote a full and holistic vision of human rights, rather than limiting themselves to a purely technical approach.

e. Development Organisations

The community of large development organisations is in search of new paradigms after the collapse of much of traditional development ideology. There is considerable risk that development organisations will take rhetorical hold of humans terminology and fill it with development content, to the detriment of the human right to food. If you have a developmental background, please keep the following caveats in mind: Do not adopt a human rights

approach to food unless you mean to adopt human rights concepts as well. There is no need for another round of "basic needs discussion" using "rights terminology" as a strong moral basis for promoting development programmes. Human rights are about states' obligations, and they are meant to help people who are oppressed by states or third parties. The first sign that a development organisation is really serious about the human right to food is to realize that "Many activities undertaken in the name of development have subsequently been recognized as ill-conceived and even counter-productive in human rights terms".[64] Development organisations can nevertheless play a positive role in implementing the human right to food. As agents of economic change they have considerable insight into whether states' authorities and intergovernmental institutions take seriously their obligation to fulfill the needs of the deprived. A development organisation can therefore draw attention to violations of states' obligations.

f. Sustainability Organisations (environmentalists, advocates for "limits to growth", and others)

Environmental and sustainability organisations can play an important role in incorporating a human rights approach to food into their efforts to advocate for a transition to a sustainable world economy. For sustainability organisations the human right to food can be crucial for a number of reasons intimately linked to their mandates.

i) Many violations of the human right to food involve environmental destruction. This has become very clear, for example in the situation of indigenous peoples.

ii) The transition to a sustainable economy needs a positive paradigm. Using realisation of the human right to food as a starting point is very positive, while using limits to material growth and consumption as a starting point may have little appeal. Both approaches reach the same conclusion in terms of sustainability but from different points of departure and with different emphases. In addition the human right to food approach has the appeal of emphasising a future based on human dignity.

iii) The transition to a sustainable economy will be seen by many as a social risk and social stressor. The human right to food will not only function as a "safety net" in this transition, but it will also be an important structural component of the transition process, shaping the sustainable economy of the future.

Environmentalists should realise that in most cases the poor are the allies of sustainability rather than a threat to it. We suggest collaboration between sustainability organisations and human rights organisations linked to the human right to food.

g. Government Officials, and Staff of International Institutions and UN Agencies

Officials of governmental and intergovernmental institutions are well positioned to promote education, awareness and formal recognition of the human right to food and related governmental obligations within their institutions. Creating and institutionalising this perspective will require incorporating human rights training within these institutions.

Governmental institutions are under constant lobbying pressure from the rich and powerful sectors at the national and international levels. States will meet their human rights obligations only if government officials recognise the importance of their human rights obligations and give them a higher priority than the lobbying of vested interests.

Preventing violations of the human right to food will sometimes require providing early information on governmental acts or omissions to NGOs working on the human right to food. Governmental officials should be courageous enough to act accordingly, if they come across information on states activities involving imminent or ongoing violations of the right to food.

h. Media

The media have an important role to play in these initiatives. It is important to make sure that journalists know and can use the concepts associated with the human right to food. Each of the groups described above should

64 UN Committee on Economic, Social and Cultural Rights, General Comment No.2 §7, 1990

explain to journalists who are sympathetic to their work how to use these standards—by providing them with information in human rights terms and by carrying out media training for them on the human right to food.

9.2 Regulating Globalisation

Economic globalisation provides challenges for the realisation of human rights in general, and the right to food in particular. Nation states claim that their ability to meet their obligations under the right to food is increasingly limited. With the advent of globalisation, the neo-liberal economic model attempts to change the face of national economies all over the world by integrating them into a global economy dominated by some 100 major transnational corporations most of them from the U.S.A..[65] It imposes new constraints and generates new forms of violations of the right to food. International trade agreements in agricultural products, for instance, have direct consequences for the food security of individuals and therefore on their right to food. International states' obligations, both bilateral and multilateral, have become increasingly important in the implementation of the human right to food (see Chapter 4.B.5).

9.2.1 The WTO and the Agreement on Agriculture

The World Trade Organization (WTO) has become the symbol of economic globalisation. The WTO and its policies are often blamed for worsening inequalities between states, hampering the development of poor countries, and the lack of transparency in decision-making and other procedures. There is a great need for the WTO to respect the primacy of human rights standards and to assure coherence with the standards established by UN agencies.

In the context of the WTO agreements, several basic principles govern world trade; these include liberalisation, non-discrimination and "most-favoured-nation" treatment. These principles also apply to agricultural products. The related trade regime is regulated by the Agreement on Agriculture (AoA). Since 1994, the AoA has imposed three major conditions on the agricultural sector: to open up national markets (with some exceptions and different deadlines for developing countries); to cut national subsidies to the agricultural sector; and to reduce export subsidies. In 1994, the agreement was welcomed by many as a means to facilitate access to Northern markets for countries in the South, and to reduce unfair competition created by subsidies, especially in Europe and the United States. Several studies have shown that eight years later, the AoA has not benefited small producers in the South. Instead, it seems to have had a negative effect on economic access to food in a number of countries.

Under WTO rules, Southern countries must reduce tariff barriers and therefore allow indirectly subsidised food products from the North to compete with their domestic products. Small local producers in Asia, Africa, and Latin America cannot withstand the often unfair competition that agricultural overproduction in the European Union and the United States presents to their markets. Local economies in the South are increasingly integrated into international economies, with fewer and weaker tariff barriers providing less protection to producers against the invasion of artificially cheap foreign products. Agricultural dumping can have dramatic consequences on the ability of small producers to feed themselves and to realise their right to food. With the growing concentration of (small farmers being replaced by large producers), poverty has increased in countries where social security systems are inadequate or lacking. In theory, small producers, unable to compete, could shift to other economic activities. Nevertheless, the economic and social situation in many countries, and especially in the South, is characterised by high unemployment rates and poor educational systems, which rarely gives people the ability to earn a living from paid employment in another economic sector. Moreover, for "unqualified" workers, wages are so low and jobs so insecure that their ability to feed themselves is severely affected.

65 One of the tools for this process is structural adjustment (cf chapter 6).

The following two examples show how the AoA can affect the right to food:

- **Sri Lanka**

According to FAO studies, some 300,000 producers of potatoes and onions in Sri Lanka have lost their means of livelihood since the market opening in 1996.

- **India**

Between 1995 and 1998, tariffs on cooking oil decreased from 65 percent to 15 percent. According to the NGO Action Aid, the livelihood of some three million people was severely affected by the resulting pressure on prices.

Globalisation needs checks and balances. Globalisation must not mean, at best, the thoughtless application of unsustainable Northern models in Southern countries, or, at worst, an aggressive conquest of Southern resources and markets. Globalization has shown a tendency to dominate the political space, undermine democratic processes, and threaten economic, social and cultural human rights.

The negative aspects of globalisation have raised strong opposition among many segments of global civil society and the international public. Human rights, in particular economic, social and cultural rights, including the right to food, are challenged to assert themselves in this international space. Human rights must defend their primacy over the rest of international law, and operationalise the multilateral obligations of intergovernmental agencies as well as the interpretation of international treaties. UN Secretary General Kofi Annan has emphasised the need to maintain human rights standards and principles as the essential framework for globalization. Responding to the same impulse, the UN Sub-Commission on the Promotion and Protection of Human Rights named a Special Rapporteur to investigate and analyse the impact of globalisation on human rights.[66] Other steps in this direction have been taken by the UN Subcommission on the Promotion and Protection of Human Rights, for example in the context of the TRIPS Agreement, as described below.

9.2.2 TRIPS and Genetic Resources

Control by small-scale farmers over biodiversity and seeds has become a major international issue. According to Agenda 21, adopted at the 1992 UN Conference on Environment and Development in Rio de Janeiro (the "Earth Summit"), genetic heritage is part of the commonwealth of humanity and should not be considered a commodity. However, today, the debate on patenting of life forms, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), genetic engineering and the practices of certain huge transnational agribusiness companies challenge the right to food. Indeed, the exclusive ownership of genetic resources, loss of bio-diversity and increasing ecological instability put at risk the livelihoods of small producers, subsistence farmers and indigenous people.

If such trends continue food and food producing resources like land and agricultural inputs could be treated as mere commodities in the hand of private companies. Indeed, the TRIPS Agreement contains potential dangers for the right to food. Article 27 of the TRIPS agreement, which establishes patentable subject matter, stipulates that member states may exclude from patentability "plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof." This provision means that patentholders may impose the conditions under which the patented plants may be used. This can exclude traditional users, producers and farmers from the free cultivation and use of plants because a private actor has a patent on a substance extracted from this plant.

66 Sub-Commission on the Promotion and Protection of Human Rights, Globalization and its impact on the full enjoyment of human rights, Preliminary report submitted by J. Oloka-Onyango and Deepika Udagama UN Doc. E /CN.4/Sub.2/2000/13 + Progress report : UN Doc. E/CN.4/Sub.2/2001/10

The TRIPS agreement is often accused of encouraging "bio-piracy." According to Article 1 of the ICESCR, " all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." However, the TRIPS Agreement prevents states from protecting their biological resources against patenting by foreign companies. In so doing, the TRIPS Agreement is inconsistent with the principles and provisions of the Convention on Biological Diversity (one of the key agreements adopted at Rio), and other international instruments.

One example of "bio-piracy" is the case of Basmati rice, which has caused an uproar in the international community. A company (RiceTec) obtained a patent in the United States on a new sort of rice, the "Texmati", crossbreeding the original Basmati rice (the result of careful selection carried out for generations by small farmers in India) and an American variety of rice. The case illustrates how easy it can be to monopolise and appropriate the properties of high quality traditional products: In India and Pakistan, many farmers depend on the sale and export of Basmati rice. RiceTec could potentially develop into a serious competitor for these peasants both on the international and US markets: The United States is a major importer of Basmati rice, buying some 10 percent of Indian Basmati exports). In response to vocal protests by Indian authorities and civil society, the US Patent and Trademark Office has declared most of RiceTec's claims invalid.

With the advent of the TRIPS Agreement, deep changes affecting access to seeds have been taking place. The survival of small and subsistence farmers in the South is highly dependent on their access to means of production and to agricultural inputs like seeds. Traditionally, seeds have been freely selected, cultivated and exchanged among communities over generations, and plants have become well adapted to local conditions. This free use could be endangered by the TRIPS patenting process. Agribusinesses like the US corporation Monsanto are frequently reproached for monopolising essential inputs like seeds, which gives them substantial influence on agricultural production all over the world.

These same big companies are also often accused of making peasants dependent on their seeds by distributing seeds for free to small farmers and by purchasing local seed companies. This leads to market concentration and to a decrease in biodiversity. The dependence of farmers on seeds from large agribusiness corporations is especially alarming with respect to the right to food. These companies invest considerable resources in genetic engineering, developing serious obstacles to farmers' freedom to produce. Approximately 65 million acres of genetically manipulated organisms are planted worldwide, some 50 million of them with seeds patented by Monsanto.[67] The debate surrounding the so-called "terminator" seeds is intense. "Terminator" seeds are sterile in the second generation, which forces peasants to buy new seeds every year. Other plants have been genetically manipulated to resist only one weedkiller, which is of course produced exclusively by the company selling the seeds.

In August 2000 the UN Sub-Commission on the Promotion and Protection of Human Rights passed a resolution in which it noted that "actual and potential conflicts exist between the implementation of the TRIPS Agreement and the realization of economic, social and cultural rights in relation to, inter alia, impediments to the transfer of technology to developing countries, the consequences for the enjoyment of the right to food, of plant variety rights and the patenting of genetically modified organisms …" The resolution "remind[ed] all governments of the primacy of human rights obligations over economic policies and agreements;" and "request[ed] all Governments and national, regional and international economic policy forums to take international human rights obligations and principles fully into account in international economic policy formulation".[68]

In view of the preceding discussion, human rights can be crucial in controlling the adverse effects of globalisation. Globalisation can bear fruit through increased international co-operation, if such co-operation respects a fair political and legal framework based on international economic, social and cultural rights. To regulate globalisation in economic and financial arenas, human rights must serve as the basis for designing policies and projects. Human rights are also critical in establishing legal protection and remedies for individuals and groups oppressed by the

67 For more information, see for example the report of IATP, FPH and SOLAGRAL, Proceedings of the Washington D.C. Meeting on the WTO Agreement on Agriculture : Food Security, Farmers and a Fair Place for the South (1998)

68 Commission on Human Rights, Subcommission on the Promotion and Protection of Human Rights, 55th session, E/CN.4/Sub.2/2000/7.

machinery of globalisation. Creating and maintaining an international order founded on human rights principles in the context of neo-liberal globalisation presents a great challenge for advocates of human rights.

9.3 Regulating the Transition to Sustainability

There is increasing interaction between human rights and environmental organisations. The reason is simple: Human beings are an integral part of the ecosystems in which they live, and their activities deeply influence the conservation or the degradation of these ecosystems. Human beings alter (most of the time negatively) the services that ecosystems provide. Human beings are highly dependent on such services and on natural resources to feed themselves. Destruction of forests, mangroves, and grasslands, as well as soil erosion, pollution, and overfishing have caused serious damage to our environment. Even more alarming is the trend to ignore or discount the consequences of ecological degradation on the ability of future generations to feed themselves.

The current Northern economic paradigm is not sustainable and cannot be globalised. The need to shift the paradigm toward a sustainable economy is increasingly apparent. The transition to sustainability will have winners and losers—at least in the short run. The social consequences of such a change in the dominant paradigm need to be balanced by safeguarding economic, social and cultural rights. Postponing such a transition will put even greater strain on the human right to food, both for poor people today and for future generations tomorrow.

The destruction of the food-producing resources and food security of future generations is permanent but often overlooked. Throughout the world, destructive and unsustainable methods of production (including agricultural production) damage water resources, soils and forests. Many of the case studies in this manual demonstrate permanent adverse effects on food-producing resources.

Climatic changes and global warming present serious challenges to people's ability to feed themselves in some regions of in the Global South. Climate change will seriously affect the right to food for already vulnerable populations, particularly with respect to cereal crops. The livelihoods of millions of poor people and their children are already threatened by ecological destruction, and poor people will be the first victims of any eco-collapse. The International Institute for Applied Systems Analysis (IIASA) anticipates the loss of around 280 million tons of cereal production, affecting 65 countries ("representing more than half the developing world's total population in 1995"), as a result of climate change.[69] The first victims of climate change will be people living in the world's poorest countries. Many of these countries are suffering from drought, but are the least responsible for the global warming which is helping to cause it.

Reports from environmental organisations document many examples of the risk to food security caused by environmental degradation.[70] The impoverishment of marine resources as a result of pollution and overfishing is causing a decrease in fish catches. Grain harvests are also threatened by loss of productivity. Grain production dropped from more than 2 percent a year for the period 1950–1990 to 1 percent a year for the period 1990–1995.

Deforestation leads to flooding, exacerbates soil erosion, and severely depletes natural resources. Forests are the traditional habitat of indigenous peoples. Without the forest and its natural resources, most of these people have no means of livelihood. Deforestation is an acute problem all over the world. Forests recede in the face of agriculture, industry, roads, housing, cities, and other forms of development. As the forests vanish, indigenous peoples disappear as well. Does their fate reveal the future of the rest of humanity?

Water scarcity will also be a major problem in the coming decades. Water is a crucial food producing input. Existing fresh water resources cannot meet the increasing needs of irrigation and consumption for much longer. Water consumption has tripled since 1950. Irrigation now uses 70 percent of water resources; 20 percent is used by industry; and 10 percent is consumed for household purposes. The demand for water keeps rising, but water supplies do not keep pace and even decrease.

69 See G. FISCHER, M. SHAH and H.VELTHIZE Climate Change and Agricultural Vulnerability, a report written n for IIASA as a contribution to the World Summit on Sustainable Development.

70 See, for example, WorldWatch Institute, Paper 136: Agriculture–The Missing Link.

In view of the projected increases in world population in the coming decades, the ongoing destruction of food-producing resources presents an immense challenge. People's ability to feed themselves decreases in response to the decline of soil productivity, the exhaustion of natural resources, and the destruction of biodiversity. According to UN estimates world population will stabilise in 70 years at a global population twice the size of the six billion people of today. The human rights principle of sustainability prohibits discrimination against future generations. Sustainable methods of global food production exist, which, if utilised properly, will provide the population of the future—including vulnerable groups—with healthy food. Agribusiness, however, has a different agenda. Whether future populations will be able to feed themselves depends to a large extent on decisions made by the current generation, the economic paradigm we choose, and how long we continue to postpone the transition to sustainability.

The sustainability principle confronts the human right to food with great challenges: What will the related states' obligations be, both individually and multilaterally? How can these obligations be made justiciable? Even during the recent period of abundant resources the dominant food system has been unable to address or redress discrimination against the poor and has failed to implement their right to adequate food.

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Intergovernmental Organizations

The United Nations and Specialized Agencies

www.un.org

Office of the High Commissioner for Human Rights

www.unhchr.ch

Food and Agriculture Organization (FAO)

www.fao.org

International Fund for Agricultural Development (IFAD)

www.ifad.org

United Nations International Children's Emergency Fund (UNICEF)

www.unicef.org

International Labour Organization (ILO)

www.ilo.org

World Food Programme (WFP)

www.wfp.org

United Nations Development Programme (UNDP)

www.undp.org

United Nations Environment Programme (UNEP)

www.unep.org

United Nations Population Fund (UNFPA)

www.unfpa.org

World Health Organization (WHO)

www.who.int

World Bank Group

www.worldbank.org

International Monetary Fund (IMF)

www.imf.org

World Trade Organization (WTO)

www.wto.org

Other International Organizations

Organization for economic co-operation and development (OECD)

www.oecd.org

Regional Intergovernmental Organization

Africa

Organization of African Unity (OAU)

www.oau-oua.org

Americas

Organization of American States (OAS)

www.oas.org

Europe

European Union

www.europa.eu.int

Council of Europe

www.coe.int

Organization for Security and Co-operation in Europe

www.osce.org

Human Rights Commission and Ombudsmen

International

The Ombudsman Association

www.ombuds-toa.org

The International Ombudsman Institute

www.law.ualberta.ca/centres/ioi

Central and South America, Spain and Portugal

Federación Iberoamericana de Ombudsmen (Iberian-American Federation of Ombudsmen)

www.fio.org

Europe

European Union

www.euro-ombudsman.eu.int

Council of Europe

www.commissioner.coe.int

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NORTH AMERICA

Canada, United States of America

NGOs

Foodfirst Information and Action Network (FIAN)

www.fian.org

Human Rights Watch

www.hrw.org

International Commission of Jurists (ICJ)

www.icj.org

Oxfam International

www.oxfam.org

Solagral

www.solagral.org

Action against Hunger

www.acf-fr.org

International Movement ATD Fourth World

www.atd-fourthworld.org

Research Institutes

Food First / Institute for Food and Development Policy

www.foodfirst.org

Institute for Agriculture and Trade Policy (IATP)

www.iatp.org

WorldWatch Institute

www.worldwatch.org

Institute for Applied Systems Analysis (IASA)

www.iiasa.ac.at

International Food Policy Research Institute

www.ifpri.org

Glossary of Human Rights Terms and Concepts

The following directory provides definitions and explanations, within a human rights context, of basic terms and concepts used in this manual. Words in <brackets> within the definitions have their own separate entries in this glossary. Consulting them may provide further clarification of the concepts in the entries below.

Abuse (of human rights)

An act of a third party that harms or destroys the human rights standard of a vulnerable person or community. In general, an act or omission of a third party breaching legislation that implements human rights, or which fails to fulfill the duties arising as a <horizontal effect> of human rights.

Accountability

The concept of accountability assigns responsibility to a private or public entity to undertake particular actions or activities vis-à-vis the public. Accountability imposes on this authority the obligation to be answerable to the public for the fulfillment of these responsibilities, as well as for providing information concerning its efforts to carry out these human rights responsibilities, responding to grievances, offering remedies in the case of errors, and accepting responsibility for the actions of its employees or subordinates.

Basic human standard (or human rights standard)

A basic human standard is a certain minimum quality of life (such as access to food, political participation, etc.) to which people normally aspire and whose absence is a form of deprivation. A basic human standard recognized by a human right is called its <human rights standard>. In lax language a basic human standard is sometimes identified with the human right with which it is associated. A human right has three components: the basic human standard, the corresponding state obligation, and some form of redress for violations, normally through the judicial system.

Breach

A failure to meet an obligation is called a breach of that obligation. The breach of a human rights obligation is a violation of that human right.

Charter based system

Human rights mechanisms and the bodies that were created by the UN Charter (rather than by international human rights treaties) are called “charter based” mechanisms. An example of a charter-based mechanism is the UN Commission on Human Rights, established by the Economic and Social Council (ECOSOC).

Civil rights

Civil rights is the class of rights that pertains to the proper functioning of the judicial system and the standards of penal systems, for example the right to a fair trial and prisoners' rights.

Classes of human rights:

The five classes of economic, social, cultural, civil and political rights refer to human rights in different spheres of life (the economic sphere, social sphere, cultural sphere, the judicial sphere, and political sphere). Because human rights are <interdependent> and <indivisible>, it is difficult to clearly allocate human rights in all situations to a particular class.

Content of a human right

See < normative content>.

Convention- or treaty-based system

This term refers to the mechanisms and bodies of the United Nations that have their origin in international treaties (such as covenants and conventions), rather than the UN charter. For example, the UN Committee on Economic,

Social and Cultural Rights is a treaty-based mechanism because it has its origin in the International Covenant on Economic, Social and Cultural Rights. Compare to <charter-based system>.

Cultural Rights

The human rights dealing primarily with the cultural sphere of life are called cultural human rights, or just cultural rights. Culture here has two aspects: A specific way of life (like ethnic culture or subculture). Culture can also mean the arts and sciences.

Deprivation

A person is in a state of deprivation under a certain human right if the related <basic human standard> is not attained. Example: A person deprived of food suffers deprivation under the right to food. If the deprivation is due to a breach of the states' obligations under this right (which was not beyond the control and resources of the state to meet), then the breach is a violation of human rights. In lax language, a deprivation (a quality of life that falls below the <basic human standard> or fails to meet the <human rights threshold>) and a violation (which is an act or omission of a state) are sometimes incorrectly used synonymously.

Deprived person

A deprived person is a person living in a state of deprivation. In lax language we might hear something like, “Someine is deprived of her human right to food.” Strictly speaking, this is impossible. Human rights may be violated, but they cannot be missing or taken away. We should say instead that the person is deprived of her basic standard—or, more concretely, that this individual is deprived of food.

Discrimination

In the human rights context, discrimination would be any act by a state authority that gives persons an advantage or a disadvantage in the protection or fulfillment of a basic standard—on the basis demographic classifications such as race, religion, gender, nationality, or social origin. Human rights must observe the principle of <non-discrimination>.

Domestic obligations

Obligations of states vis-à-vis persons in their own territory (compare with <international obligations>).

Economic Rights

The class of human rights that addresses the economic sphere, in particular the right to work, and rights at work, including labour rights.

Economic Security Policies

These are policy measures that regulate the market economy in order to secure or provide possibilities for economic participation to everyone seeking such participation. Together with <fulfillment systems>, economic security policies are directed to implementation of the <obligation to fulfill> with respect to economic human rights.

Employment (Guarantee) Programmes

Government programmes offering work that benefits the public interest to persons seeking such work. See also <income sharing programmes>.

Enforcement

Enforcement of a human right is the process by which a state compels or otherwise ensures implementation of a human right. Under the <obligation to protect> or the <obligation to fulfill> such acts may require the use of coercive measures by the state (for example, use of the police force). Enforcement of human rights law means that states ensure adherence to the laws, rules and regulations that bring about realization of the human rights.

Freedom

In human rights terms, freedom is the absence of <oppression>.

Food Security (of a community)

A state of affairs where all people in the community at all times have sustainable access to food.

Full realization of a human right

Full realization is the result of the <realization> process, once the basic standard is attained and can always be reestablished by realization.

Fulfillment System

A fulfillment system a system of legislation, orders, programmes and procedures which meets the <obligation to fulfill> for a given right with respect to everyone. For example, the fulfillment system under the right to food for example includes as its major components <resource-sharing programs> and <income-sharing programs>.

State's obligation

The generic obligation refers to the duty assumed by a state when it officially recognizes a human right by ratifying the treaty in which it is contained. States have an obligation to respect, protect and fulfill the basic human standard affirmed by this right (its <human rights standard>). A human right and its generic obligation are equivalents. The generic obligation, together with the corresponding basic human standard, supply the <normative content> of a human right.

Horizontal Effect

The obligations undertaken by a state affect third parties. This is most obvious in the case of the protection-bound obligations which call on the state to prevent third parties from destroying the basic standard of vulnerable persons or communities. The fulfillment-bound obligations introduce certain programming and financing requirements as well, which could involve third parties. Normally third parties are bound by the legislation enacting such state obligations into law. Because human rights have this "horizontal effect," even in the absence of such legislation, the fact that the state or the international community of states has assumed such obligations introduces a very strong moral duty on third parties (for example, transnational corporations) to respect basic human standards and to cooperate in their protection and fulfillment. A third party's failure to carry out such duties can said to be an abuse of human rights. <abuse>

Human rights

A human right is a relationship between (vulnerable) individuals or communities and states, including the community of states. Human rights exist before they are recognized by states. The basic nature of this relationship is to protect people from <oppression> by third parties and by the states themselves. A human right is a source of the generic states' obligation to respect, protect and fulfill the related basic human standard.

A human right is not a vague "legitimate need", but the source of clear states' obligations.

Human rights standard

See <basic human standard>.

Implementation

The implementation of a human right refers to the process by which a human right is realised and the related human standard is respected, protected and fulfilled. Implementation and <realization> are closely linked and frequently used interchangeably, with implementation emphasizing the process and realization emphasizing the result. A more specific use is recommended for reasons of clarity (who does what).

Income Sharing Programs

This refers to one of the two major components of a <fulfilment system> for the right to food—the other component being <resource sharing programmes>. Income is something (cash or kind) which can be consumed without touching assets, while resources refer to assets and skills. Income-sharing programs transfer access to consumption (in the form of cash or kind) and include minimum income programs; basic income programs

enforcing <minimum wages>; <employment programmes>; basic income; social security payments; food stamps and food subsidies; food programs for the disabled, sick and imprisoned; and emergency food aid.

Indivisibility

The indivisibility of human rights refers to the fact that human rights from different <classes> (and even within classes) cannot be separated. If Right X is threatened, so is Right Y (and vice versa). The indivisibility of human rights has its origin in the indivisibility of <classes of human rights>, as well as the indivisibility of fundamental principles like security, identity and participation. Concepts of indivisibility and <interdependence> reinforce the principle that different human rights are of equal importance.

Interdependence

The concept that human rights are interdependent affirms the reality that implementation and realization (or the violation) of one human right are affected by the realization or the violation of others. Interdependence is closely related to the concept of <indivisibility> and reaffirms the truth that all human rights are interconnected. Although one can separate human rights on paper for the sake of conceptual clarity, they cannot be separated in real people's lived lives. The separation of human rights into different classes is somewhat arbitrary to begin with, as human rights are interrelated. The effective exercise of one's right to political participation, for example, is enhanced by access to education. Adequate nutrition is indispensable to maintaining good health. Education increases one's ability to find a good job with decent pay, which in turn improves one's ability to purchase adequate food.

Intergovernmental organisations

These are international organizations that are composed of and governed run by the community of states or a group of states. One of the best examples is the United Nations, with its multiple branches, agencies and related organizations, including, to cite just a few examples, the Office of the High Commissioner for Human Rights, the Food and Agriculture Organization, the World Bank, and the International Monetary Fund. Regional intergovernmental organizations exist as well, for example the Organization of American States and the African Union.

International Obligations

Obligations of a state to persons or to other states outside its own jurisdiction.

Minimum wage

A wage level which is designed to provide a decent standard of living, based on a normal work week. With a few narrow exceptions, employment that offers less than minimum wage will fall short of the human rights norms of work. Minimum wage levels are the outcome of political negotiations and tradeoffs and are determined through the operation of the political process. As a result they are not always set at a level that will guarantee an adequate standard of living.

Non-discrimination

A principle establishing that, in meeting their obligations, states must not make distinctions among people and treat them differently from one another, according to specific qualities or characteristics—often demographic—that have no relevance for the basic human standard in question. See also <discrimination>.

Normative content

That aspect or part of a human right which gives rise to the norms emanating from this right, such as the <basic human standard> and the related states obligations.

Oppression

An act of oppression is an act (or omission) of a state or a third party, which pushes or keeps people below a <basic human standard> through the unjust use of authority or power.

Obligation to fulfill

The state's obligation to use the maximum of its available resources to realise and maintain the basic human standard pertaining to a particular human right, for a vulnerable person or community deprived of this basic human standard.

Obligation to protect

The state's obligation to use the maximum of its available resources to prevent third parties from harming or destroying the basic human standard pertaining to a particular human right of a vulnerable person or community. The harm can occur via commission or omission.

Obligation to respect

The state's obligation not to harm or destroy, either by action or the failure to act, the basic human standard pertaining to a particular human right for a vulnerable individual or group.

Political Rights

Political rights are those human rights that deal with basic conditions for participation in political power. They include the human rights like participation in political life, freedom of opinion, freedom of association or freedom of peacefull assembly.

Realisation

A process or actions undertaken by vulnerable persons and communities to attain the basic standard by making use of state mechanisms and programmes (<implementation>): Buying food or eating food is not a "realization" of the human right to food, because this right has not been invoked nor made use of (and hence not realised) in this process. Realizing the right to food as a human right is only possible, if states provide ways and means (the "implements") to do so.

Resource-Sharing Programs

One of the two major components of the <fulfilment system> for the right to food. Resource-sharing programs entail the sharing of natural resources, capital resources, skills, and employment to allow people threatened by or faced with food deprivation to feed themselves. These programs focus on the transfer of productive resources (for example, land, capital, and tools) rather than goods for consumption, as in <income sharing programs>. Agrarian reform is an example of a resource-sharing program.

Self-employment programme

Self-employment programmes are part of the <Fulfilment-System> under the right to feed oneself and the right to work. They provide access to resources and tools to integrate people into the market sector, earning their own livelihood and managing their own economic enterprises, as peasants, fisherfolk, traders, artisans, etc.

Social rights

Human rights that pertain to the social sphere in the narrow sense, that is, to circumstances and situations that do not entail direct participation in economic activities. Social rights include the right to an adequate standard of living, including housing and food, the right to social security, the rights of mothers, children and families, and the right to health.

States' reports

These are periodic reports from states that have ratified international human rights treaties concerning the implementation status of the human rights standards enshrined in a particular treaty. In the United Nations human rights system, states' parties reports are submitted to the committees created by the terms of the treaties themselves to monitor states' compliance with their treaty obligations. Six international human rights treaties are currently in force, monitored by six different committees.

Sustainability

In human rights terms, sustainability refers to a way of meeting <obligations to fulfill> and <obligations to protect> that does not jeopardize the basic human standard of future generations.

Threshold

The level of human standards (for example, access to food, political participation, a fair trial, etc.) that is minimally acceptable in human rights terms as a "basic human standard". The term is sometimes used to describe the point below which deprivation of the <basic human standard> sets in, and above which states are in compliance with their minimum human rights obligations.

Treaty body

A supervisory committee of experts for a human rights treaty, created by the terms of the treaty itself to monitor states' compliance with the treaty. For example, within the United Nations system, the Committee on Economic, Social and Cultural Rights monitors states' compliance with the International Covenant on Economic, Social and Cultural Rights. See also <states' reports>.

Universality

The principle of universality acknowledges the fact that human rights apply to all human beings independent of their specific cultural, historical or other backgrounds.

Violation

A violation of a given human right is either

a breach of a state's obligation, or

a discriminatory or unsustainable way of meeting obligations to fulfill or obligations to protect under that human right.

Violations may be by omission or commission.

HURIDOCS

HUMAN RIGHTS INFORMATION AND DOCUMENTATION SYSTEMS, INTERNATIONAL



AAAS

ADVANCING SCIENCE, SERVING SOCIETY