

## Analysis on Legal Status of The Right to Food

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### Abstract

The notion of food as a right is relatively recent development but has gained a momentum recently. It has significant implication and it consists of international human rights law, international humanitarian law and international criminal law. In relation to the right to food international human rights law provides particularly freedom from hunger. It puts the state as the primary duty bearer of the right, and the individual as the recipient. Violation of the right to food occurs when a state fails to ensure the minimum threshold of freedom from hunger. Many states have already ratified all the relevant human rights conventions relating to food and prevention from hunger; nevertheless there is a gray area in the legal system of many countries (in the Proclamations and state Constitutions) which hinders the justiciability of the right to food in practice.

**Keywords:** Human rights; Right to food; Legal status; Social and cultural rights

other international, regional and national instruments are also relevant to our analysis.

### Legal Status of The Right to Food

Combating hunger and malnutrition is more than a moral duty or a policy choice in many countries to be a legally binding human rights obligation. The right to food is recognized in the 1948 UDHR Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights [1,2]. It is also protected by regional treaties and national constitutions. Furthermore, the right to food of specific groups has been recognized in several international conventions. All human beings, regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger.

The necessity of providing access to land in order to facilitate the realization of human rights has been considered in several international principles and interpretive documents.<sup>1</sup> But the obligation of states towards individuals and the right to food has not been given adequate attention. However, a review of the international human rights framework as it stands makes clear that while not wholly defined, the right to food is invoked in a number of key areas, suggesting that further consideration by the international community is necessary.

The right to food has essentially been developed as a treaty right; it is embodied mainly in the two International Covenants and has been refined by the often subtle and creative work of the committees set up by States to monitor the implementation of the Covenants. However,

### International Instruments

#### International humanitarian law

International humanitarian law preceded the Covenants. It is fascinating to watch the birth of a new and original norm in the collective consciousness of nations. The ICRC was the first organization to systematically defend and develop the concept of humanitarian law: founded in the aftermath of the Battle of Solferino in 1859, it is today the promoter and guardian of this law.

Consciousness of identity is the foundation of humanitarian law. The first Geneva Convention of 1864, put forward for signature by Henry Dunant, was based on the following principle:

*The life of a wounded man must be saved; he is your adversary but he is also your fellow-man, he is like you; prisoners must be given food and water. The "consciousness of the world", which comes from the spontaneous perception of the identity of all beings, requires it.*<sup>2</sup>

The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, stipulates [3,4]:

*"Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of*

<sup>1</sup> Vancouver Declaration on Human Settlements, UN Conference on Human Settlements, Adopted June 11, 1976, General Principles: Land

<sup>2</sup> Sergio Vieira de Mello, "Consciousness of the world: the United Nations faced with the irrational in history". Geneva, 2000

foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.<sup>3</sup>

International humanitarian law protects the access of civilians and prisoners of war to food and water during armed conflicts<sup>4</sup> and prohibits the deliberate starvation of civilians as a method of warfare.<sup>5</sup> Under international criminal law, violations of such protection constitute war crimes.<sup>6</sup> Deliberate starvation, whether in war or peace, may also constitute genocide or a crime against humanity.<sup>7</sup>

### The universal declaration of human rights (1948)

The right to food was recognized for the first time at the international level in the 1948 UDHRs. In this document, the countries of the world proclaimed [1]:

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>8</sup>*

The importance of the Universal declaration of Human Rights lies in its being accepted today by all countries though it is a non-binding document.

### The international covenant on economic, social and cultural rights (1966)

In 1966, almost twenty years after the UDHRs, the International Covenant on Economic, Social and Cultural Rights was adopted [5].<sup>9</sup> In this treaty, governments recognized several economic, social and cultural human rights, among which the right to food, the right to health, the right to education, the right to adequate housing and the right to work. In Article 11, governments committed themselves to taking all measures necessary to ensure:

*“The right of everyone to an adequate standard of living for himself and his family, including adequate food... and to the continuous improvement of living conditions” Also it recognizes “the fundamental right of everyone to be free from hunger.”<sup>10</sup>*

The International Covenant on Economic, Social and cultural Rights are treaty, legally binding for the 151 countries that have ratified it. The right to food, recognized in the UDHRs and the ICESCRs, applies to everybody, without exception. The meaning of these provisions has

been clarified by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 12 of 1999. Other General Comments are also relevant to the right to food (e.g. General Comments 3 of 1990 and 15 of 2000) [6-8]. While not binding per se, General Comments constitute the authoritative interpretation of legally binding treaty provisions, issued by the UN body responsible for monitoring the application of the treaty.

### Conventions on vulnerable groups

In order to protect particularly vulnerable groups, other international treaties have been agreed by the governments of the world. Some of them are:

**Convention on the rights of the child (CRC):** It was established in 1989 and with the exception of two states (USA and Somalia) all states of the world are members to this convention [9]. This recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”.<sup>11</sup> The CRC requires states to combat child malnutrition<sup>12</sup>; and to “take appropriate measures” to assist parents in fulfilling their primary responsibility to implement children’s right to an adequate standard of living, “particularly with regard to nutrition”.<sup>13</sup>

**Convention on the elimination of all forms of discrimination against women (CEDAW):** This also requires states to ensure that women have “adequate nutrition during pregnancy and lactation”<sup>14</sup>; and to “take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications” [10].<sup>15</sup>

**International convention on the protection of the rights of all migrant workers and members of their families:** This instrument was adopted in 1990 [11]. It recognizes equal treatment for nationals and migrant workers and their families with regard to the enjoyment of economic, social and cultural rights; in particular, it establishes the right of migrant workers to “transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State”.<sup>16</sup>

Others also include for refugees in the Convention Relating to the Status of Refugees (Articles 20 and 23); for stateless persons in the Convention Relating to the Status of Stateless Persons (Articles 20 and

<sup>3</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II art 14)

<sup>4</sup> Geneva Convention III relative to the Treatment of Prisoners of War (1949), arts. 20 and 26

<sup>5</sup> (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 54

<sup>6</sup> Rome Statute of the International Criminal Court 1998, art 8 (2) (b) (xxv)

<sup>7</sup> Ibid arts 7 (1) (b) and 7 (2) (b)

<sup>8</sup> UDHR Article 25, Paragraph 1

<sup>9</sup> It entered into force on 3 January 1976 and has been ratified by 151 countries to date

<sup>10</sup> ICESCR article 11

<sup>11</sup> CRC Art. 21(1)

<sup>12</sup> Ibid Art. 24(2)(c)

<sup>13</sup> Ibid Art. 27(3).

<sup>14</sup> CEDAW Art. 12(2)

<sup>15</sup> Ibid art. 14(2)(h)

<sup>16</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art 47 (1)

23); and for indigenous peoples and tribes in the Indigenous and Tribal Peoples Convention (mainly Articles 14 to 19). All the above mentioned treaties are binding for the countries that have ratified them.

## Regional Instruments

Alongside international treaty laws, developed chiefly within the framework of the United Nations, there are also regional treaty laws.

### San Salvador protocol of the American convention on human rights (1988)

The Protocol of San Salvador completes the 1969 American Convention on Human Rights and is the only text at the regional level that explicitly recognizes the right to food [12]. Article 12 states that: *“Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.”* In the same Article, in order to ensure the enjoyment of this right and to eradicate malnutrition, the ratifying countries commit themselves to improving methods of food production as well as supply and distribution systems and to encouraging broader international cooperation in support of national policies in this area.

### European social charter

The European Social Charter does not specifically recognize the right to food [13]. It considered that there is no need to protect this right as long as the right to work, the right to social security and the right to social welfare were guaranteed. The protection of the right to food in Europe is thus only partial. By ratifying the European Social Charter, the countries committed themselves to recognizing “the right of workers to remuneration such as giving them and their families a decent standard of living”<sup>17</sup>; the right to establish or maintain a system of social security<sup>18</sup>; and the right to social and medical assistance<sup>19</sup>, including for the mother and the child<sup>20</sup> and migrant workers and their families<sup>21</sup>. The European Social Charter today is binding on the 27 countries that have ratified it.<sup>22</sup>

### African charter on human and people’s rights

In Africa, the right to food is protected in treaties of: the 1981 African Charter on Human and Peoples’ Rights and the 1990 African Charter on the Rights and Welfare of the Child [14,15]. The African Charter on Human and Peoples’ Rights does not explicitly recognize

the right to food; however, several other rights, such as the right to health are recognized<sup>23</sup> and can be interpreted as protecting the right to food. The African Charter also stipulates<sup>24</sup> that African governments should implement the right to food recognized by these governments on the international level, such as by their accepting the International Covenant on Economic, Social and Cultural Rights. All countries that have accepted the African Charter and the International Covenant thus have the obligation to take measures to fulfill the right of their peoples to food and should prove that they have done so before the compliance monitoring bodies that have been set up throughout Africa.

The African Charter on the Rights and Welfare of the Child, for its part, is more explicit. The countries that have ratified it, by recognizing the child’s right to health, have effectively committed themselves “to ensure the provision of adequate food and safe drinking water.”<sup>25</sup> They are also committed to taking, in accordance with the means at their disposal, all appropriate measures to assist parents or other persons responsible for the child and to providing, if need be programs of material assistance and support, notably as regards nutrition<sup>26</sup>. Implementation of the African Charter on the Rights and Welfare of the Child is binding on the 35 countries of the African Union that have ratified it.<sup>27</sup>

## National Instruments (Practice of Selected Countries)

What does effective protection of the individual and collective right to food by domestic law mean? The Committee on Economic, Social and Cultural Rights gives an answer in its General Comment No. 12, in the following terms: *“States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.”*<sup>28</sup> Every right must give rise to a remedy. The right to food, to be effective, is no exception.

As stated again in General Comment No. 12:

<sup>17</sup> Part II, Article 4(1) of the European Social charter

<sup>18</sup> Ibid Article 12

<sup>19</sup> Ibid Article 13

<sup>20</sup> Ibid Article 17

<sup>21</sup> Ibid Article 19

<sup>22</sup> Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Macedonia, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Turkey, United Kingdom

<sup>23</sup> Article 16 of ACHPR

<sup>24</sup> Ibid Article 60

<sup>25</sup> ACHPR Article 14

<sup>26</sup> Ibid Article 20

<sup>27</sup> Algeria, Libya, Angola, Benin, Malawi, Botswana, Mali, Burkina Faso, Mozambique, Burundi, Cameroon, Mauritius, Namibia, Cape Verde, Niger, Chad, Nigeria, Rwanda, Comoros, South Africa, Djibouti, Senegal, Egypt, Seychelles, Equatorial Guinea, Sierra Leone, Eritrea, Ethiopia, Gambia, Tanzania, Togo, Guinea, Kenya, Lesotho, Zimbabwe

<sup>28</sup> HRI/GEN/1/Rev.4, pp. 62-63, para. 29.

*“Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition, compensation, satisfaction or guarantees of non-repetition.”*<sup>29</sup>

Those states parties to the International Covenant on Economic, Social and Cultural Rights are under obligation to incorporate the right to food into their national legislation. At present, the right to food is recognized, on the national level, in various forms:<sup>30</sup>

- By the incorporation in national legislation of international or regional texts recognizing the right to food,
- By asserting it in the constitution as a basic human right;
- By its inclusion in the constitution as a principle, as a goal or as an essential social or political objective of the country expressed as access to food
- As an integral part of the other basic rights guaranteed by the constitution, for example the right to life;
- By guaranteeing, in the constitution, elements of the right to food such as access to land, access to water, the guarantee of a livable minimum wage or of social security.

### Switzerland

In 1996 the Swiss Federal Court, which is the highest court in Switzerland, recognized the right to minimum basic conditions, including ‘the guarantee of all basic human needs, such as food, clothing and housing to prevent a situation where people are reduced to beggars, a condition unworthy of being called human [16]. Transforming the hitherto unwritten constitutional right, the 1999 Swiss Constitution contains an explicit constitutional provision on the right to assistance in situations of distress, as set out in the constitution; “Anyone, who is in a situation of distress and unable to provide for his or her basic needs, has a right to help and assistance and to receive the necessary means for an existence consistent with human dignity.”<sup>31</sup>

### India

The Indian Constitution recognizes the right to life, and contains a specific provisions related to food [17]. The right food is stated as a fundamental right and under the directive principles of state policies. Therefore, the constitution states that: “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”<sup>32</sup> In this case therefore the right to food which is the base for the fundamental right to life is recognized as a fundamental right of the people. The constitution also imposes a duty for the state to raise the level of nutrition and the standard of living and to improve public

health. The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.<sup>33</sup> The Supreme Court has thus formally recognized the right to food, and has ordered the central and state governments to take a number of measures to improve the situation. The justiciability of this right is therefore confirmed, and the Court has issued a number of orders to government, entailing expenditure of resources.

### South Africa

The South African Constitution adopted in 1994 after the abolition of apartheid, is in many ways very progressive [18]. The way in which the social, economic and cultural rights are drafted leaves no doubt as to the justiciability of those rights. In section 7 (2) of the constitution the state is required to respect, protect, promote and fulfill the rights in the Bill of Rights. Section 38 of the constitution states that a class, group or individual can ‘approach a competent court, alleging that a right in the bill of rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.’ The right to food is protected in three different articles of the constitution.

Everyone has the right to have access to: “*sufficient food and water, and social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*”<sup>34</sup> The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.<sup>35</sup>

It also states every child has the right to: basic nutrition, shelter, basic health care services and social services<sup>36</sup>, everyone who is detained, including every sentenced prisoner, has the right to: conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.<sup>37</sup>

### Ethiopia

In 1994, after a four-year transition period following 17 years of the Mengistu dictatorship, Ethiopia adopted one of the most progressive Constitutions in the world, which includes civil and political rights and economic, social and cultural rights [19,20]. Although it does not explicitly recognize the right to food, it recognizes economic, social and cultural rights, including the right of farmers and pastoralists to receive a fair price for their products, the right to equal access to publicly funded social services, and the obligation of the state to allocate resources to provide social services (art. 41). The right to food

<sup>29</sup> CESCR 1999, The right to adequate food, General Comment. 12 para 32

<sup>30</sup> Christophe Golay and Melik Özden, The Right to Food; A fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions.

<sup>31</sup> Article 12 of the Federal Constitution of Switzerland

<sup>32</sup> Article 21 of the constitution of India

<sup>33</sup> Ibid Article 47

<sup>34</sup> Section 27(1) of south African constitution

<sup>35</sup> Ibid Section 27 (2)

<sup>36</sup> Ibid section 28 (1)

<sup>37</sup> Ibid section 35 (2)

enshrined in international law is also part of Ethiopian law, by adoption and interpretation [21,22]. The FDRE Constitution clearly states that “*All international agreements ratified by Ethiopia are an integral part of the law of the land*”.<sup>38</sup> According to article 13 (2), human rights “shall be interpreted in a manner conforming to the principles of the UDHRs, the International Covenants on Human Rights and international instruments adopted by Ethiopia”. However, the clause will not be applicable since food (as a right or as an objective) has not been considered as part of fundamental rights and freedoms [23]. As opined by the Human Rights Committee, the right to life could be broadly interpreted to include the right to food. Under chapter three of the FDRE Constitution the only notable reference to the right to food and freedom from hunger can be indirectly applied from article 43 (1) which deal with the right to improved standard of living, article 40 (3-5) which covers land ownership/use and article 41 (8) which takes up adequate remuneration [24-26]. The Constitution under the policy objectives and directive principles states that “Every Ethiopian shall be entitled, within the limits of the country’s resources, to food, clean water, shelter, health, education and security of pension.”<sup>39</sup>

### Legal Obligations of State on the Right to Food

The Right to Food is, of course, meaningless unless it is upheld. Under the international law governments are the primary bodies responsible for ensuring that people’s human rights are met. The State parties are obliged to take steps to achieve progressively the full realization of the Right to Food by all appropriate means, including particularly adoption of legislative measures.<sup>40</sup> The qualification “within its available resources” refers to those available resources within a State as well as resources available from the international community.<sup>41</sup> While acknowledging that the Right to Food should be realized progressively, GC 12 points out that as minimum core obligations, every 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.<sup>42</sup> Thus, a State where a significant number of individuals are deprived of essential foodstuffs is, *prima facie*, violating the Covenant.<sup>43</sup>

The World Food Summit provides that States can fulfill this obligation through developing national laws, strategies, policies and programs [27]. The measures would also, as stated in Commitment 7.4 of the Plan of Action, assist in clarifying the content of the right to adequate food and the fundamental right of everyone to be free from hunger.<sup>44</sup> Director-General of FAO, provides State’s obligations in

respect of the Right to Food more vigorously: States shall take the measures which are needed:<sup>45</sup>

- To improve methods of production, conservation and distribution of food;
- To disseminate knowledge of the principles of nutrition;
- To develop or reform agrarian systems.

The Right to Food, like any other human right, imposes three levels of obligation on State Parties:<sup>46</sup> the obligations to respect, to protect and to fulfill (which incorporates both an obligation to facilitate and to provide) [28].

### Obligation to respect

The obligation to respect requires States to ensure that every individual has permanent access at all times to sufficient and adequate food, and not to take any measures that would result in preventing individuals from having access to adequate food.<sup>47</sup> Eide explains:

“States should, at the primary level, respect the resources owned by the individual and the individual’s freedom to find a job of preference, to make optimal use of her or his own knowledge and to take the necessary actions and use the necessary resources alone or in association with others to satisfy his or her own needs.”<sup>48</sup>

Principle 25 of the Limburg Principles reaffirms that “*States Parties are obligated, regardless of the level of economic development to ensure respect for minimum subsistence rights for all.*” This implies that the State must not do anything that interferes with people’s ability to provide for themselves and their families. They must not be taken off their lands, they must be free to work and earn money, they must not have goods confiscated by the government, they must not be taxed excessively, etc.<sup>49</sup>

In addition to national obligations of the States, the recent report of the Special Rapporteur also spells out the transnational obligations to respect of the States [29]. States must not take actions that negatively impact on the Right to Food of people in another country (e.g. refrain from food embargos, or from using food as an instrument of political and economic pressure, or ensuring that their trade relations do not violate the Right to Food of people in other countries).<sup>50</sup>

### Obligation to protect

Under this obligation, States must ensure that individuals and companies do not deprive people of permanent access to adequate and sufficient food [30]. According to Eide:

<sup>38</sup> FDRE Constitution, article 9 (4)

<sup>39</sup> Ibid article 90

<sup>40</sup> Article 2, ICESCR

<sup>41</sup> CESCR 1991, The nature of States parties obligation, General Comment 3, para.13 and the Limburg Principles (1986), para.26.

<sup>42</sup> CESCR 1999, The right to adequate food, General Comment 12, para. 14; also CESCR 1991, The nature of States parties obligation, General Comment 3, para.10.

<sup>43</sup> The Right to Food, Report of the High Commissioner for Human Rights, E/CN.4/1998/21, para.17.

<sup>44</sup> Item 12 of the Plan of Action adopted at the World Food Program, Rome 13-17 November 1996.

<sup>45</sup> Article 11(2) of the ICESCR

<sup>46</sup> CESCR 1999, The right to adequate food, General Comment 12, para.15; Guideline 6, part II, the Maastricht Guidelines

<sup>47</sup> Supra n.17, para.15; also see Report by the SR, 2001, supra n.6, para.27.

<sup>48</sup> Eide A., Human Right to Adequate Food and Freedom from Hunger, an updated study on the Right to Food, para.12, E/CN.4/Sub.2/1999/12.

<sup>49</sup> Supra n.3, Chapter VII, p.7

<sup>50</sup> Supra n.2, para.29, p.10.

*“At a secondary level, therefore, state obligations include active protection against other, more assertive or aggressive subjects, in particular against more powerful economic interests. There is a need for state protection from fraud, unethical behavior in trade and contractual relations, and the marketing and dumping of hazardous or dangerous products.”*<sup>51</sup>

Similar to the protection of one’s capacity to provide for oneself and his family against any threat by government action, one of the major duties of the State is to provide its citizens with a measure of security, from those outside the country and also from fellow citizens [31,32]. In the transnational issues, the States have a duty to regulate their companies and corporations that operate in other countries to prevent violations.<sup>52</sup>

### Obligations to fulfill (facilitate and provide)

Fulfilling the Right to Food means that government must take positive steps to ensure that everyone is, at a minimum, free from hunger.<sup>53</sup> This does not imply that government must feed everyone, since most people have the resources to feed themselves. Rather, it requires that government must create the conditions (“enabling environment”) where people can feed themselves.<sup>54</sup> The State’s third obligation to “fulfill” the Right to Food is summarized by Eide as:

*At the tertiary level, the state has the obligation to facilitate opportunities by which the rights listed can be enjoyed... It takes many forms, some of which are spelt out in the relevant instruments. For example, under ICESCR Article 11(2), the state shall take steps to “improve measures of production, conservation and distribution of food by making full use of technical and scientific knowledge and by developing or reforming agrarian systems.”*<sup>55</sup>

Furthermore, according to GC 12 the obligation to “provide” involves: “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 fulfill (provide) the Right to Food directly [33].”<sup>56</sup>

When “no other possibility exists,” for the elderly or the disadvantaged, when unemployment sets in, or for those who are marginalized by structural shifts in the economy, for example, government must provide direct subsidies of food or resources to procure food.<sup>57</sup> The obligation to fulfill by the government’s directly providing what is needed is treated as a kind of residual category, becoming operational when respect, protect and facilitate prove inadequate.<sup>58</sup> Under transnational obligations, the States are required

to create social and international order (e.g. by way of international cooperation and assistance) in which the Right to Food could be fully realized.<sup>59</sup>

### Implementation of the State Obligations for Realization of the Right to Food

The global reaffirmation and recognition of the right is by itself not sufficient. The right must be enforced and its corresponding obligations must be implemented. Under international law the primary obligation to realize the Right to Food is incumbent upon national governments [34]. Article 11 (2) of the Covenant states that the State Parties will take appropriate steps to ensure realization of this right.

### National strategy

The implementation of the right to adequate food will require the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives and the formulation of policies and corresponding benchmarks.<sup>60</sup> GC 12 emphasizes the adoption of national strategy to ensure food and nutrition for all and the formulation and implementation of such national strategies requires full compliance with the principles of accountability, transparency, people’s participation, decentralization, legislative capacity and the independence of the judiciary. Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.<sup>61</sup>

### Legal framework

The national legal and institutional framework is decisive for the implementation of the right to food. Many countries have included the right to food in their constitutions, either specifically or as part of the provisions on the right to an adequate standard of living.<sup>62</sup> Several countries are developing a framework law on the right to food [35]. This is useful for fleshing out any constitutional provisions, clarifying rights and obligations, as well as elaborating on institutional roles and coordination for the realization of the right to food. It can also provide for remedies for violations of the right to food and strengthen the mandates of National Human Rights Institutions (NHRIs).<sup>63</sup> This must be reviewed to ensure there is nothing that hinders people’s ability to feed themselves or their right to social assistance.<sup>64</sup>

<sup>51</sup> Eide A., Human Right to Adequate Food and Freedom from Hunger, an updated study on the Right to Food, para.12, E/CN.4/Sub.2/1999/12.

<sup>52</sup> Supra n.71

<sup>53</sup> Committee on Economic, Social and Cultural Rights, general comment No. 12,, paras.14 and 21

<sup>54</sup> Ibid, para.15, Eide, Supra n.69

<sup>55</sup> Eide A., Human Right to Adequate Food and Freedom from Hunger, at:www.fao.org/docrep/W9990E/w9990e03.htm

<sup>56</sup> Committee on Economic, Social and Cultural Rights, general comment No. 12,, para.15

<sup>57</sup> Ibid, paras.13 and 15; also see Eide supra n.69

<sup>58</sup> Supra n.3, Chapter VII, p.10

<sup>59</sup> Art.28, UDHR

<sup>60</sup> Ibid, paras. 2–28

<sup>61</sup> Supra n.17, paras.21-28

<sup>62</sup> The Right to Food Guidelines: Information Papers..., pp. 134–137

<sup>63</sup> Fact sheet number 34

<sup>64</sup> FAO, Guide on Legislating for the Right to Food (Rome, 2009).

## Institutions

It may also be necessary to reform and improve the public institutions relevant to the realization of the right to adequate food. States should ensure that the coordinated intersectoral mechanisms necessary for the concerted implementation, monitoring and evaluation of policies, plans and programs are in place.<sup>65</sup> NHRIs, such as national human rights commissions and ombudsmen, can also be mandated to promote and protect the realization of the right to food. Their functions include monitoring the realization of human rights, advising the Government and recommending policy or legislative changes, handling complaints, carrying out investigations, ensuring the ratification and implementation of international human rights treaties, and providing training and public education.<sup>66</sup>

## Monitoring

Monitoring is also an essential part of the effort to realize the right to food. To monitor the implementation of the right to food, States should set verifiable benchmarks to be achieved in the short, medium and long term, and develop a set of indicators.<sup>67</sup> Furthermore, to maximize its effectiveness, the monitoring process needs to be based on human rights principles. For example, information gathering, management, analysis, interpretation and dissemination should be transparent and conducted with the participation of a broad range of stakeholders, particularly those groups and individuals who are the most affected by food insecurity and the most marginalized.<sup>68</sup>

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<sup>65</sup> Fact sheet number 34

<sup>66</sup> Principles relating to the status of national institutions ("Paris Principles"), General Assembly resolution 48/134

<sup>67</sup> Fact sheet number 34

<sup>68</sup> FAO, Methods to Monitor the Human Right to Adequate Food, vol. I (Rome, 2008).