FREEDOM FROM HUNGER AS A BASIC HUMAN RIGHT: PRINCIPLES AND IMPLEMENTATION

INTRODUCTION: SYNOPSIS

There is in international human rights law a right to food and to be free from hunger. The content of that right, in particular as spelled out by the UN Committee on Economic, Social and Cultural Rights, is preceded by some comments on famine, chronic hunger, and the right to food, drawing in particular on the work by Amartya Sen and emphasizing that the main problem is not lack of food, but of (failed) entitlements and inadequate capacity to take appropriate public action. This is followed by an examination of possible approaches to the implementation of the right to food and to be free from hunger and the current draft of a set of voluntary guidelines, prepared under the auspices of the FAO Council. All of this should be seen in connection with the ongoing debate on rights-based development and on international shared obligations, including the right to development and a possible development compact. Finally, some brief conclusions are drawn.

THE RIGHT TO ADEQUATE FOOD AND TO BE FREE FROM HUNGER: INTERNATIONAL HUMAN RIGHTS LAW

International human rights law is based on the Universal Declaration of Human Rights (UDHR). All subsequent elaborations in international human rights standards, including legally binding international conventions, are built on the Universal Declaration. The conventions of particular significance here are the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Rights of the Child (ICRC). Important provisions are also found in the International Convention on the Elimination of All Forms of Discrimination against Women (ICEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). There are many other provisions of relevance for the right to food and to be free from hunger in international law, but these will be only briefly mentioned in this chapter.

The proclamation of the right to food started with the fairly general provision in UDHR Article 25 (para 1), and reads:

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

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security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

A much more detailed elaboration is found in ICESCR Article 11, which reads:
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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
   a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
   b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Also important is ICRC Articles 24 and 27. Article 24 includes:
1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
   c. to combat disease and malnutrition.

And Article 27 (in part) reads:
1. States Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
2. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Relevant provisions are also found in ICEDAW, particularly Articles 11 (employment), 12 (healthcare, nutritional rights during pregnancy and lactation), 13 (family benefits), and 14 (special protection of the rights of rural women). ICERD Article 5 obliges States to prevent any discrimination on the grounds of race in the economic life. ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples also contain relevant provisions of great importance, including land rights. The UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities contain provisions that have a more indirect relevance to the right to food and to be free from hunger.
More extreme conditions are addressed in the Convention on the Prevention and Punishment of the Crime of Genocide, where one of the prohibited acts is ‘deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,’ and the prohibition of the use of food as a weapon during armed conflict, as set out in international humanitarian law. This is now also covered by the Statute of the International Criminal Court.

AMARTYA SEN ON FAMINE
AND ENTITLEMENTS – AND HIS CRITICS

Amartya Sen – economist, philosopher, and Nobel laureate – radically changed the way we think about hunger with his studies on starvation. In *Poverty and Famine* he criticized theories that relied on Malthusian ideas about food availability decline, and about climate and mismanagement of resources. While all of these may be relevant factors,

Starvation is the characteristic of some people not *having* enough food to eat. It is not the characteristic of there *being* not enough to eat. While the latter can be a cause of the former, it is but one of many possible causes. Whether and how starvation relates to food supply is a matter for factual investigation. Food supply statements say things about a commodity (or a group of commodities) considered on its own. Starvation statements are about the relationship of persons to the commodity (or that commodity group) (Sen 1981, p. 1).

He introduced his theory of entitlements, focusing on the ability of people to command food through the legal means available in society, including the use of production possibilities, trade opportunities, entitlements vis-à-vis the State, and other means of acquiring food (Sen 1981, p. 45).

Famines are failures, for some, of their entitlements, or lack of such entitlements. The causes can be human-made, natural, or both. To some extent, they are always human-made; at least by passivity, the lack of a will to intervene through public measures, and failures of governmental or international intervention when entitlements fail. Public action is essential for the prevention of hunger, but this requires recognition of the role of the State as a key actor in redressing negative developments in demand capacity. In our time, where neoliberalism is harking back to the laissez-faire of the nineteenth century, it might be useful to recall the following historic case from the Western world,— namely, the Irish famine of 1845–1849.

There were a number of causes, the most direct being the potato blight. But the famine could have been averted through public action. In her book on the history of the Irish famine, Cecil Woodham-Smith writes:

Not only were the rights of property sacred; private enterprise was revered and respected and given almost complete liberty, and on this theory, which incidentally gave the employer and the landlord freedom
to exploit his fellow man, the prosperity of nineteenth-century England had unquestioningly been based.

The influence of laissez faire on the treatment of Ireland during the famine is impossible to exaggerate. Almost without exception the high officials and politicians responsible for Ireland were fervent believers in non-interference by Government, and the behaviour of the British authorities only becomes explicable when their fanatic belief in private enterprise and their suspicions of any action which might be considered Government intervention are borne in mind (Woodham-Smith 1961, p. 54).

Subjected to absentee landlords and to this fervent ideology by the government controlling them, the Irish were doomed. The governmental inaction in the economic dynamics, coupled with marginal and misplaced efforts to give some relief, caused 1 million people to die from starvation and related illnesses; nearly 2 million emigrated, a large proportion of them to the USA. Ireland’s population dropped from 8 million before the famine to 5 million after it.

On the basis of his studies of famine, Amartya Sen developed and confirmed his famous thesis that large-scale famines do not occur when there are functioning, democratic governments in place in self-governing countries. This is, of course, not because the introduction of self-determination and democracy leads by itself to more food production, but that responsive governments can ensure that food is made accessible to all, provided appropriate public action is taken. The reason why democracy can have this effect is through freedom of speech and active news media and their impact on political decision-making: Governments cannot remain passive when large-scale famines occur.

However, the significance of formal democracy, though important, is not in itself a sufficient guarantee against chronic hunger. Dan Banik, a scholar of Indian descent now located in Norway, has tested Sen in theory and practice. Banik distinguishes between malnutrition, severe malnutrition, famine threat, famine 1 (a community crisis, destitution for large groups), and famine 2 (very high level of excess mortality). Through a very detailed examination of poverty, drought, and malnutrition in Kalanhandi and Purulia in India, and the governmental response, he concludes that while democracy in India has indeed been able to avert massive famine through public action, the Indian democracy has not been able to prevent widespread death by starvation. Increased food availability in India has not improved the health and nutritional status of large sections of the population. Over 200 million men, women, and children suffer from a combination of chronic malnutrition and severe undernutrition, and more than 2.5 million children in India die before they are five years old (Banik 2002, p. 433).

It can now be clearly asserted that the implications of Amartya Sen’s conclusions have been blown out of proportion, something with which he himself would probably agree. Democracy and the free press are likely to prevent massive and sudden famines. But, based on the work of Banik (2003) and others, and also on
substantial other evidence, it can safely be said that democracy – while important – in itself is not enough to prevent the continuous, silent, and extensive hunger that is so widespread in many countries, including India. The politically dominant elite, even within a functioning democracy, is often quite insensitive to widespread poverty and inequality; the media can also be quite indifferent to the fate of groups traditionally suffering from chronic malnutrition. Only a deliberate rights-based development (as described below), implying a better recognition of State responsibility to respect, protect, and fulfill the right to food, which in no way reduces the need for individuals to take whatever action they can to cover their own needs. Such recognition requires active involvement by critical parts of the civil society in collaboration with international monitoring institutions.

Hunger and poverty cannot be abolished without a clear and deliberate effort to address and remedy the situation of those who are chronically vulnerable. There must be proper management of property, with land reforms where required, proper inheritance arrangements, protection against discrimination on race, caste, gender, and other grounds, taking appropriate public action to facilitate and to fulfill the right to food, as set out in General Comment No. 12 of the UN Committee on Economic, Social and Cultural Rights. Also needed is recognition of an international shared responsibility through the right to development.


The right to food forms part of the broader right to an adequate standard of living. The right to an adequate standard of living or to livelihood sums up the main concern underlying all economic and social rights, which is to integrate everyone into a humane society. The ultimate purpose of promoting the right to adequate food is to achieve nutritional well-being for each individual child, woman, and man. Human nutritional status is determined by at least three major clusters of conditions that interact in a dynamic fashion, relating to food, health, and care, and with education as a cross-cutting dimension. Food alone is not sufficient to ensure good nutrition for the individual. The right to adequate food is a necessary, but not the only sufficient component of the right to adequate nutrition. The full realization of the latter depends also on parallel achievements in the fields of health, care for the vulnerable, and education. Later instruments, especially the Convention on the Rights of the Child, recognize this broader right to nutrition as well as its cross-cutting nature relative to many other rights, including civil and political rights.

*The 1996 World Food Summit*

The major breakthrough in international attention to the right to food came with the World Food Summit, held at the invitation of the Food and Agriculture Organization of the United Nations (FAO) in Rome in November 1996. Taking into account that the Rome Declaration on World Food Security and the World Food Summit
Plan of Action were adopted by the Summit and thus by the leaders of the world, the commitments made there must be considered to have overriding legal, political, and moral significance for the world community.

The governments assembled at the Summit declared that they considered it intolerable and unacceptable that more than 800 million people throughout the world, particularly in developing countries, did not have enough food to meet their basic nutritional needs. They recognized that this was not the result of a lack of food supplies, which had increased substantially. The constraints were to be found in the access to food. The problems, they noted, resided in the continuing inadequacy of household incomes to purchase food and the instability of supply and demand, as well as natural and human-made disasters.

They also pointed out that the problems of hunger and food insecurity had global dimensions and were likely to persist and even increase dramatically in some regions unless urgent, determined, and concerted action was taken, especially given the anticipated increase in the world’s population and the stress on natural resources. The leaders of the world therefore pledged their political will and their common and national commitment to achieving food security for all and to an ongoing effort to eradicate hunger in all countries, with an immediate view to reducing the number of undernourished people to half the 1996 level no later than the year 2015.

To implement this political will, they made seven commitments spelled out in the World Food Summit Plan of Action. Commitment 7, which deals with implementation, monitoring, and follow-up, is of special importance here. This includes Commitment 7.4:

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

For this purpose, the Summit called on governments, in partnership with all actors of civil society, to make every effort to implement the provisions of Article 11 of the ICESCR; for States that were not yet Parties to the Covenant to adhere to it at the earliest possible time; for the Committee on Economic, Social and Cultural Rights to give particular attention to the Plan of Action in the framework of its activities and to continue to monitor the implementation of the specific measures provided for in Article 11 of the Covenant. The Summit invited the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programs of the United Nations system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all.
The UN High Commissioner for Human Rights (Mary Robinson at that time) energetically pursued the request of the World Food Summit by organizing a number of consultations with relevant agencies and civil society. One of these was the convening of a Symposium, as part of the annual session of the UN Administrative Committee of Coordination/ Subcommittee on Nutrition (ACC/SCN) on ‘The Substance and Politics of a Human Rights Approach to Food and Nutrition Policies and Programmes,’ held in Geneva on 12/13 April 1999 and hosted by the High Commissioner for Human Rights. The Symposium was attended by senior officials of several agencies together with their technical focal points, which can be seen as proof of an increasing receptivity to human rights among the development agencies. The Symposium contributed to a better understanding by the agencies of the work of the human-rights institutions as well as their own place in future collaboration with them.

_Clarifying the Right to Food: General Comment No. 12 of the Committee on Economic, Social and Cultural Rights_

The most significant milestone was the adoption by the UN Committee on Economic, Social and Cultural Rights of General Comment No. 12 (E/C.12/1999/5) on the right to adequate food (Article 11) on 12 May 1999. That General Comment is of central importance.

The foundation principle of the human-rights system is that everyone is ‘born free and equal in dignity and rights and should act towards each other in a spirit of fraternity’ (UDHR, Article 1). The Committee affirms in its General Comment (para 4) that

the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.

The General Comment expresses the core content of the right to adequate food as follows (para 8):

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

The content of ‘adequacy’ is to some extent determined by prevailing social, economic, cultural, climatic, ecological, and other conditions, but there are some core elements which are applicable under all circumstances and are spelled out in
greater detail by the Committee. ‘Sustainability’ incorporates the notion of long-term availability and accessibility and is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations.

In clarifying the content of the term ‘adequate,’ the General Comment (paras 7–11) lays out in some detail the meaning of the subconcepts of dietary needs, absence of adverse substances, and cultural or consumer acceptability. The concept of ‘sustainability’ is explained in terms of availability and accessibility – both physical and economic – for different groups of people (paras 12–13). This level of detail is very useful, as it offers an opportunity for more nuanced reporting by States Parties on the realization of the right to adequate food, which only attains full meaning when ‘food’ also reflects the enjoyment of other rights which will ultimately determine accessibility and constitutes a true carrier of nutritional health.

In general terms, the legal obligations of States Parties to the ICESCR, set out in Article 2 of the Covenant, are clarified in paragraphs 14–16 of the General Comment, based on a study by the present author of a study for the UN Sub-Commission completed in 1987, which was intended as a contribution to the clarification of the nature and levels of State obligations under economic and social rights.

I there introduced an analytical framework under which State obligations can be assessed on three levels: the obligation to respect, the obligation to protect, and the obligation to assist and fulfill human rights. State obligations must be seen in the light of the assumption that human beings, families, or wider groups seek to find their own solutions to their needs. States should, at the primary level, respect the resources owned by the individual, their freedom to find a job of preference, to make optimal use of their own knowledge, and the freedom to take the necessary actions and use the necessary resources – alone or in association with others – to satisfy their own needs.

The State cannot, however, passively leave it at that. Third parties are likely to interfere negatively with the possibilities that individuals or groups otherwise might have had to solve their own problems and meet their own needs. At a secondary level, therefore, State obligations require active protection against other, more assertive or aggressive subjects’ more powerful economic interests, such as protection against fraud, against unethical behavior in trade and contractual relations, against the marketing and dumping of hazardous or dangerous products. This protective function of the State is widely used and is the most important aspect of State obligations with regard to economic, social, and cultural rights, similar to the role of the State as protector of civil and political rights.

At the tertiary level, the State has the obligation to facilitate opportunities by which the rights listed can be enjoyed. This takes many forms, some of which are spelled out in the relevant instruments. For example, with regard to the right to food, the State shall, under the International Covenant (Article 11, para 2), 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.

At the fourth and final level, the State has the obligation to fulfill the rights of those who otherwise cannot enjoy their economic, social, and cultural rights. This fourth-level obligation increases in importance with increasing rates of urbanization and the decline of group or family responsibilities. Obligations towards the elderly and disabled, which in traditional agricultural society were taken care of by the family, must increasingly be borne by the State and thus by the national society as a whole.

The Committee generally endorsed this approach in its General Comment No. 12 (para 15).

Economic and social rights, like all other human rights, are often violated, but there has been some controversy over what constitutes a violation of such rights, including the right to food. This is dealt with in the General Comment (paras 17–20). Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. Resource constraints do not free the government from responsibility; it still has to show that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. Any discrimination in access to food, as well as to means and entitlements for its procurement, constitutes a violation of the Covenant. Violations can occur through the direct action of States or other entities insufficiently regulated by States. Non-State actors also have responsibilities, and the State should provide an environment that facilitates implementation of these responsibilities. In regard to the private business sector, whether national or transnational, a code of conduct should be agreed upon and made use of.

STRATEGIES OF IMPLEMENTATION

Conditions differ widely between countries, and the most appropriate ways and means to ensure freedom from hunger and to implement the right to adequate food therefore also varies considerably. If they are true to the commitments, each State Party to the ICESCR and the Convention on the Rights of the Child must nevertheless take the measures required under the particular conditions prevailing in its own country to ensure that everyone is free from hunger, and thereupon move as quickly as possible to a situation where everyone can enjoy their right to adequate food. In so doing, the different levels of State obligations discussed above should be applied, using the particular combination of measures warranted by the national situation.

Every country should therefore have or develop a national strategy to implement the right to food. The first step in any such strategy should be to map the situation for different groups and different regions within the country, taking into account
the differences that might exist on the basis of gender, ethnicity, or race, and between rural and urban areas. Such mapping is necessary to identify those who are food-insecure and to develop appropriate responses to food insecurity.

Food security is currently defined as access by all people at all times to the food needed for a healthy and active life. Achieving food security means ensuring that sufficient food is available, that supplies are relatively stable, and that those in need of food can obtain it. National food security would therefore mean that everyone has effective entitlements to adequate food or resources for food and that there is, in principle, enough food to go around. Achieving food security at household level means ensuring that sufficient food is available throughout the territory, that supplies are relatively stable, and that everyone within that territory in need of food has the capacity to obtain it in order to lead a healthy and productive life. Food insecurity is understood as the reverse: where some people at some or all times do not have access to adequate food and therefore cannot lead a healthy and active life.

Food security can therefore be seen as the corollary of the right to food: the State must take the necessary measures to ensure food security for everyone under its jurisdiction. In their national efforts to identify the groups which are food-insecure, States should review – periodically and/or when special circumstances cause significant changes, including serious economic depressions – who is likely to be affected and how different groups may be affected differently on the basis of chronic or transitory vulnerability.

Having identified the groups that are food-insecure, the national strategy should recreate food security for those groups and the population as a whole, formulate policies required for this purpose, and identify the resources available, including human resources that, through self-help, can contribute to meet the goals set. When new and severe resource constraints emerge, caused by a process of economic adjustment, economic recession, climatic conditions, or other factors, measures should be undertaken to ensure, as a minimum, that vulnerable population groups and individuals do not face hunger. This should be achieved through social programs, safety nets, and international assistance.

The realization of the right to food requires full attention also to other human rights. In the elaboration and implementation of the national strategy for the right to food, people’s informed participation is essential. Appropriate decentralization can often be required to ensure that the particular conditions in the different regions of the country are taken into account. The central government must at all times remain responsible for ensuring the enjoyment of this and other human rights, i.e., because the dominant groups within particular regions can sometimes be insensitive to pockets of chronic hunger within their part of the territory.

Care must be taken to ensure sustainable management of natural and other resources required for access to food, including the management of land, water, and fishery resources. Furthermore, attention must be given to all aspects of the food chain, from production to consumption. Attention must further be given to the processing of food in order to ensure food safety, to the physical distribution of food in order to enable access for all, and to improving markets, inter alia in
order to prevent misleading and potentially harmful influences. At the level of the consumer, adequate information is required on the composition of healthy diets. Sanitary conditions and clean water are essential in ensuring that the food actually consumed is safe.

The strategy should give particular attention to the need to prevent discrimination in access to food or resources for food. It should keep in mind the need to give particular attention to vulnerable groups and to the gender situation. Indigenous peoples and some minorities often suffer from more serious malnutrition than the average population, and we have seen that women in many societies face far greater difficulties than men. The strategy should therefore include, *inter alia*: guarantees of full and equal access, particularly for women, to economic resources including the right to inheritance and ownership of land and other property, credit, natural resources, and appropriate technology; measures to respect and protect self-employment and work which provides adequate remuneration to ensure a decent living for wage-earners and their families (as stipulated in Article 7a, para ii, of the ICESCR); maintaining registries on land rights (including forests) and fishing resources important for food production or other means of livelihood in rural areas; special legislation to protect the land rights of indigenous peoples and prevent forced evictions from their land; measures to protect or secure entitlements to land or other sources of livelihood among vulnerable smallholders, landless peasants, and the urban poor without discrimination as to race or ethnicity. It is also essential to ensure access to health, in particular for the child in conformity with Article 24 of the Convention on the Rights of the Child (which through ratifications has become binding on all States with the exception of Somalia and the USA). Also essential in order to avoid malnutrition for children is the necessity to ensure adequate opportunities and time to care for infants and small children.

**GUIDELINES TO SUPPORT THE REALIZATION OF THE RIGHT TO FOOD**

General Comment No. 12, adopted by the UN Committee on Economic, Social and Cultural Rights, was a major achievement in clarifying the content of the right to food and its corresponding obligations. Nevertheless, its reach is limited; it is only advisory, not binding, and is likely to be read and studied only by a limited circle of persons within the national administration and concerned individuals from academia and relevant non-governmental organizations (NGOs).

The NGOs that took a particular interest in the realization of the right to food and to be free from hunger have, for a long time, advocated that a more operational code of conduct should be developed in order to guide States on how to implement the right to food. They obtained a partial success when, at the 2002 World Food Summit: Five Years Later, the Council of the FAO decided to establish an Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to support
Member States’ efforts to achieve the progressive realization of the right to food in the context of food security.

The Intergovernmental Working Group completed its work in September 2004 and presented the guidelines for the 127 session of the FAO Council, which adopted ‘The Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security’ in November 2004. The objective of the guidelines is to provide practical guidance to States in the implementation of the right to food. They are based on the legal standards mentioned earlier in this chapter. The following guidelines are listed:

Guideline 1: Democracy, good governance, human rights, and the rule of law
Guideline 2: Economic development policies
Guideline 3: Strategies
Guideline 4: Market systems
Guideline 5: Institutions
Guideline 6: Stakeholders
Guideline 7: Legal framework
Guideline 8: Access to resources and assets (labor, land, water, genetic resources for food and agriculture, sustainability, and services)
Guideline 9: Food safety and consumer protection
Guideline 10: Nutrition
Guideline 11: Education and awareness-raising
Guideline 12: National resources
Guideline 13: Support for vulnerable groups
Guideline 15: Safety nets
Guideline 16: International food aid
Guideline 17: Monitoring, indicators, and benchmarks
Guideline 18: National human-rights institutions
Guideline 19: International dimensions.

It also contains a separate section on international measures, actions and commitments, dealing with international cooperation and unilateral measures, the role of the international community, technical cooperation, international trade, external debt, official development assistance, international food aid, partnerships with NGOs, civil society organizations (CSOs), and the private sector (corporations, enterprises).

The guidelines are likely to increase substantially the awareness of the right to food and to be free from hunger and the corresponding responsibility of States to ensure the enjoyment of that right. It is not possible to enter into a discussion of the different guidelines in this chapter, for reasons of space. It should be pointed out that very cautious language is sometimes used. While many guidelines use the phrase ‘States should,’ in other cases the phrase ‘States may wish’ is used. This reflects underlying differences of opinion among the States participating in the
drafting. Nevertheless, a great step forward has been made in making the right to food and the freedom from hunger a concrete and operational concern.

ON ‘RIGHTS-BASED DEVELOPMENT’

The term ‘rights-based development’ has appeared with increasing frequency in development discourse and has been taken on board, at least in principle, by several important donor organizations such as DFID, SIDA, and NORAD and by international agencies, funds, and programs such as UNICEF and UNDP (Nyamumusembi and Cornwall 2004). The term should be applicable to all countries, however; and human-rights-based approaches ought to become fully integrated into institutional and policy changes in developed countries as well. As defined by the Office of the High Commissioner of Human Rights,

A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights…. It includes the following elements: express linkage to human rights, accountability, empowerment, participation, nondiscrimination and attention to vulnerable groups.5

The requirement to base human development on international standards has been repeatedly stressed in international human-rights instruments and in international conferences. It has already started with the obligations undertaken by States when becoming members of the United Nations and thereby becoming bound by the United Nations Charter, where Articles 1, 55, and 56 set the basis for human-rights commitments by States. It was reinforced by the International Bill of Human Rights, in particular, the Universal Declaration of Human Rights Article 28 provides that:

Everyone is entitled to a social and international order in which the rights and freedoms in this Declaration can be fully realized.

The United Nations Declaration on the Right to Development (1986) proclaims in Article 1 that:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

In its Article 2 (para 3), it is stated that:

States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of
their active, free and meaningful participation in development and in
the fair distribution of the benefits resulting therefrom.

The Vienna Declaration and Programme of Action (UN World Conference on
Human Rights 1993), states in Article 1, that:

The promotion and protection of human rights is the first responsibility
of governments.

Since promotion and protection of human rights is the first responsibility of govern-
ments, they should be held accountable for their policies of development and change
on the basis of human rights. That includes both their internal policies and their
policies at the international level. At least, they must be held accountable to ensure
that they avoid engaging in any international obligation that undermine their own
capability to implement human rights at home. They should also be held accountable
to ensure that their policies do not harm the capacity of other States to implement
human rights in their society.

The linkage to international human rights standards must be comprehensive,
respecting the interdependence and indivisibility of human rights. Economic, social,
and cultural rights must be given the same weight and importance as civil and
political rights. This is what requires the greatest change as compared to present
trends, and which is most strongly resisted by neoliberal ideologies.

ON THE RIGHT TO DEVELOPMENT

Reference has been made above to the Universal Declaration Article 28, which
proclaims that everyone has a right to a social and international order in which
the human rights can be fully realized. This brings in the question of duties of
international cooperation in ensuring human rights, including the right to food and
to be free from hunger.

The United Nations Charter Article 1 (para 3) sets out as one of the main
purposes of the Organization to achieve international cooperation in solving inter-
national 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.

This is further emphasized in Article 55 of the Charter:

The United Nations shall promote higher standards of living, full
employment, and conditions of economic and social progress and develop-
ment; and solutions of international economic, social, health, and
related problems; and international cultural and educational coopera-
tion as well as universal respect for, and observance of, human rights
and fundamental freedoms for all without distinction as to race, sex,
language, or religion.
Under Article 56, all States Members of the United Nations pledge themselves
to take joint and separate action in cooperation with the Organization for the
achievement of the purposes set forth in Article 55.

In order for States to have the capacity to pursue a rights-based development,
other States and the international community as represented through interna-
tional organizations should recognize the need for States to have the necessary
space to adopt the measures required in line with Article 2 of the Covenant on
Economic, Social and Cultural Rights. Under that Article, States have committed
themselves to take measures to the maximum of their available resources with
a view to achieving progressively the full realization of the rights contained
in the Covenant. It is therefore essential that States do not commit themselves
to international agreements that reduce that space for States that have diffi-
culties in realizing those rights. This means, above all, that sufficient flexi-
bility must exist in international agreements such as those of the WTO to
make it possible for developing countries and countries in transition to take the
necessary protective measures where required, while at the same time having
full access to the markets of the developed countries, which do not need such
protection.

The Declaration on the Right to Development, adopted by the UN General
Assembly in 1986, has the following formulation in its Article 4:

1. States have the duty to take steps, individually and collectively, to
formulate international development policies with a view to facili-
tating the full realization of the right to development.

2. Sustained action is required to promote more rapid development
of developing countries. As a complement to the efforts of devel-
oping countries, effective international co-operation is essential in
providing these countries with appropriate means and facilities to
foster their comprehensive development.

Efforts to operationalize the terms of the Declaration on the Right to Development
has given rise to considerable controversies within the United Nations, mainly
regarding international obligations of assistance. The UN Commission on Human
Rights appointed a so-called ‘Independent Expert’, the Indian professor of
economics, Arjun Sengupta, to study the possible mechanisms by which the
Declaration could be implemented. One of his proposals has been to adopt what he
calls ‘development compacts,’ which he defines as

a mechanism for ensuring that all stakeholders recognize the mutuality
of obligations, so that the obligations of developing countries to carry
out rights-based programmes are matched by reciprocal obligations
of the international community to cooperate to enable the implemen-
tation of the programmes. The purpose of development compacts is to
assure the developing countries that if they fulfil their obligations, the
programme for realizing the right to development will not be disrupted owing to lack of financing.\textsuperscript{6}

The process of instituting a development compact involves several steps, which he has spelled out in his \textit{Fifth Report to the UN Commission on Human Rights}. He proposes that initially the focus should be on realizing a few rights, such as the right to food, to health and to education, and to specify the obligations of both the national authorities and the international community.

\textbf{CONCLUSIONS}

An impressive set of legal standards is available. Regrettably, much of it is ‘soft law,’ at least in the sense that it there are no generally available enforcement mechanisms of these standards. Their impact depends primarily on their recognition and the degree to which they can be brought to influence political choices and legal behavior. This, however, can be much influenced by academics, including research institutions and think-tanks, by NGOs as agents of civil society, and by national institutions for human rights. Thus it is a challenge to us all, and in meeting that challenge we need all the insights we have from our respective academic disciplines and our practical experience, in order to find the optimal ways to move it forward.

Amartya Sen (1999, p. 160) argues in \textit{Development as Freedom} that appropriate polices and actions can indeed eradicate the terrible problems of hunger in the modern world. Based on recent economic, political, and social analysis, it is possible to identify the measures that can bring about the elimination of famines and the abolition of chronic undernourishment.

What is needed is a more thoroughgoing recognition of the responsibility that governments have under international human rights law, and of the commitments undertaken by all members of the international community to ensure the fundamental right of everyone to be free from hunger. This will not only require responsive governments at the national level, making full use of available economic, political, and social tools of public action in line with human rights, but also a corollary duty of outside States and international organizations to assist the affected States in meeting their responsibility, in line with their commitment under the United Nations Charter Articles 55 and 56.

\textbf{NOTES}

\textsuperscript{1} Among the antecedents, mention must also be made of the World Nutrition Conference, held in Rome in 1974, where ‘Freedom from Hunger’ was explicitly included in the final Declaration.

\textsuperscript{2} UN Doc E/CN.4/Sub.2/1987/23: \textit{The Right to Adequate Food as a Human Right}.

\textsuperscript{3} Prominent among these is FIAN: Food First International Action Network, headquartered in Germany.

\textsuperscript{4} The guidelines can be downloaded from the FAO homepage, http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm

\textsuperscript{5} From the Office of the High Commissioner for Human Rights [see www.unhchr.ch/development/approaches.html].
REFERENCES


