

PART ONE

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PART ONE

BACKGROUND: THE RIGHT TO FOOD IN INTERNATIONAL LAW

Starting in the aftermath of the Second World War with the adoption of the United Nations Charter in 1945 and, more particularly, the Universal Declaration of Human Rights (UDHR) in 1948, the affirmation that an individual has certain rights that can be claimed from a state on whose jurisdiction he or she depends paved the way to the development of international human rights law. This body of law has at its centre individuals and the protection of their rights and freedoms. Today, there is an impressive body of human rights instruments adopted at international and regional levels.

Human rights treaties are a special category of international legal agreements. Human rights focus on the inherent dignity of all human beings and the equality of all. Another special characteristic of human rights treaties is that *individuals* (and not other states) are right holders while the main bearers of obligations flowing from the rights are the States Parties to these treaties.

The UDHR was the first international instrument that recognized the human right to food formally, as part of the right to a decent standard of living (Art. 25).¹² Since then, the right to food or some aspects of it have been incorporated into a variety of binding and non-binding human rights instruments, at both international and regional levels. Box 1 explains the difference between binding and non-binding international instruments.

¹² The UDHR, together with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, form what is known as the “International Bill of Human Rights”.

BOX 1. Binding and non-binding international instruments

Binding international instruments – treaties, covenants, conventions – confer legal obligations on states that have ratified them. They thus require States Parties to ensure the effective implementation of the agreement at the national level. Non-binding international instruments – declarations, recommendations, resolutions – provide guidelines and principles and impose moral obligation on states. Although states are not legally bound by their provisions, they usually try to respect as far as possible the non-binding instruments they have committed to implement. In this way, non-binding international instruments have greatly contributed to the development of public international law and, more particularly, human rights law. Furthermore, non-binding instruments or some of their provisions may gain binding value over time, owing to state practice and the acceptance of such practice as law (*opinio juris*). This is the case with some provisions of the UDHR, which have been accepted so widely that they are now considered part of customary international law and are thus binding on all states.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the instrument that deals most comprehensively with the human right to food. The ICESCR, which represents a codification of the earlier norm contained in the UDHR, entered into force ten years after its adoption, in 1976. As of June 2009, 160 States Parties¹³ have ratified it and are legally bound by its provisions.

Other international instruments relevant to the right to food include several international human rights treaties dealing with the rights of certain categories of people (e.g. children,¹⁴ women,¹⁵ refugees,¹⁶ persons with disabilities¹⁷) and with specific situations such as armed conflict.¹⁸ Moreover, the right to food

13 Last update 03 June 2009. Information available at:
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en

14 Convention on the Rights of the Child (CRC) adopted in 1989 and entered into force in 1990.

15 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 (entered into force in 1981).

16 Convention relating to the status of Refugees of 1951 (entered into force in 1954) and related Protocol of 1967.

17 Convention on the Rights of Persons with Disabilities. The Convention entered into force in May 2008.

18 Convention of 1949 relative to the Protection of Civilian Persons in Time of War; Article 54 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), and Articles 69 and 70 of the Protocol Additional to the Geneva Conventions, of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

is addressed in a number of regional human rights instruments¹⁹ in addition to numerous international declarations and UN resolutions.²⁰ Some authors also claim that the right to food or at least the right to be free from hunger is part of customary international law. Discussing this question, however, is beyond the purpose of this Guide and will not be addressed.

The above mentioned binding international instruments are complemented by a number of non-binding ones; these have contributed strongly to a better understanding and interpretation of the meaning of the right to food and the corresponding obligations of states. This is particularly the case for instruments developed within FAO, the United Nations Commission on Human Rights (since 2006, the UN Human Rights Council)²¹ and the Committee on Economic, Social and Cultural Rights (CESCR).

In 1999, the CESCR adopted General Comment (GC) 12 on the right to adequate food which states that the right to adequate food is realized “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 procurement”. It also outlines in some detail the normative content of this right, states’ obligations and implementation at the national level. Although general comments of the CESCR are not legally binding, they give a highly authoritative interpretation of the rights contained in the ICESCR and are generally followed and respected by its States Parties.²²

In 2000, the UN Commission on Human Rights appointed a Special Rapporteur on the right to food.²³ Building on GC 12, the Special Rapporteur has focused especially on further clarifying the contents of the right to food and giving meaning to the government obligations with respect to this right.²⁴

19 American Convention on Human Rights (adopted in 1969 and entered into force in 1978) and its Additional Protocol in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador” which entered into force in 1999), African Charter on Human and Peoples’ Rights (entered into force in 1986), European Union Directive laying down minimum standards for the reception of asylum seekers.

20 See, for example, the Universal Declaration on the Eradication of Hunger and Malnutrition of 1974, the World Declaration on Nutrition, adopted at the International Conference on Nutrition in 1992, the Rome Declaration on World Food Security of 1966, the UN General Assembly Resolution 2004/19 of 2004, the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Right to Food Guidelines), adopted by the 127th Session of the FAO Council in November 2004.

21 In 2006, the Commission was replaced by the Human Rights Council, established by UN General Assembly Resolution 60/251 of 15 March 2006.

22 See UN. 1999 and Villan Duran, C. 2000.

23 The Special Rapporteur forms part of the special procedure mechanisms of the Commission, which consist of working groups, special rapporteurs, representatives or experts, appointed by the Commission to investigate and address violations on specific human rights thematic issues and on particular countries. For more information on special procedures, see: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

24 The Special Rapporteur has also explored various aspects of the right to food in more detail. The Special Rapporteur’s reports are available at: <http://www2.ohchr.org/english/issues/food/index.htm>

In 2004, the FAO Council adopted the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (the Right to Food Guidelines). The Guidelines recommend actions to be undertaken at the national level in order to build an enabling environment for people to feed themselves with dignity, and to establish appropriate safety nets for those who are unable to do so. The Guidelines invite states to apply them in developing their legislation, strategies, policies and programmes aimed at the realization of the right to food at the domestic level (see Box 2).

BOX 2. Right to Food Guidelines

The value of the Right to Food Guidelines is that they moved away from the theoretical to the practical, with respect to assisting governments in realizing the right to food. The Guidelines:

- cover all necessary elements of a sound food security strategy and process;
- promote a framework for cross-sectoral coordination of activities of relevant government actors;
- translate human rights principles into concrete recommendations for action;
- provide a basis for advocating for more equitable policies and programmes.

The Guidelines can help governments design appropriate policies, strategies and legislation. Although voluntary, because they arise from a consensus among FAO member countries the Guidelines can have a significant influence on state policies.

Guidelines 5, 7, 17 and 18 offer states practical guidance for developing effective institutional and legal frameworks to guarantee the right to adequate food and for establishing independent mechanisms to monitor and evaluate the implementation of these Guidelines towards the realization of this right.

1.1

NORMATIVE CONTENT OF THE RIGHT TO FOOD

The holders of the right to food are individuals. This means, in practice, that every person – woman, man, girl and boy – is entitled to this fundamental human right. The “right to food” encompasses two separate norms contained in Article 11 of the ICESCR (see Box 3). The first, stated in paragraph 1, derives from the right of everyone to “an adequate standard of living, including adequate food” and can be termed “right to adequate food”. The second, proclaimed in paragraph 2 of the same article, is the “fundamental right of everyone to be free from hunger”.

BOX 3. International Covenant on Economic, Social and Cultural Rights

Article 2

1. 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 recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present 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.



BOX 3. International Covenant on Economic, Social and Cultural Rights (cont.)**Article 11**

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.

There is a substantial difference between the two norms. Freedom from hunger is the only right qualified as “fundamental” by the ICESCR. It is considered an “absolute” standard: the minimum level that should be secured for all whatever the level of development of a given state.²⁵ The right to be free from hunger is closely related to the right to life. In its GC 6 on the right to life, the Human Rights Committee (HRC), the body in charge of monitoring the implementation of the International Covenant on Civil and Political Rights, elaborated on the “social dimension of the right to life”. The HRC stated that “the protection of the right to life requires that States adopt *positive measures*” and considered that states should take all possible measures “to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and

25 According to the CESCR, “a State Party in which any significant number of individuals is deprived of essential foodstuffs is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*” (GC 3, para. 10). The notion of the “minimum core” of fundamental rights expresses the idea that the state must give priority to the most urgent needs of individuals.

epidemics”.²⁶ However, the right to adequate food is much broader – it implies the existence of such an economic, political and social environment that will allow people to achieve food security by their own means.

The recognition of the right to food as part of an adequate standard of living and a fundamental right to be free from hunger acknowledges that hunger and malnutrition are caused not just by a lack of available food, but also and above all by poverty, income disparities and lack of access to health care, education, clean water and sanitary living conditions. It also points to the strong links between the right to food and other human rights. The practical implications of this perspective are substantial. Whereas the concept of freedom from hunger requires the state to provide food to those who are unable to meet their food needs for reasons beyond their control (such as age, disability, economic downturn, famine, disaster or discrimination), the right to food requires a progressive improvement of living conditions that will result in regular and equal access to resources and opportunities so that every individual is enabled to provide for his/her own needs.

In normal circumstances, the majority of persons realize their right to food primarily through their own means – by producing food or by procuring it. The ability to realize the right to food thus depends on access to land, water and other productive resources in addition to access to paid employment or other means of procurement (e.g. social security). In fact, widespread hunger and undernutrition in many countries of the world are not a question of the availability of food but are related to inequities in the distribution of resources and people’s physical or economic access to food. According to the Special Rapporteur on the right to food, “it is clear that reducing hunger does not mean increasing the production of food ... but rather finding ways of increasing access to resources for the poor ...”.²⁷ Discrimination is most often at the root of such inequities. The right to food is thus multidimensional and complex, and is interwoven with other human rights; the capacity of a person to exercise this right freely depends on the proper functioning of many different institutions and actors, both governmental and non-governmental. Exercise of the right can be affected negatively by problems in production, distribution, pricing and information, as well as by lack of access to land and productive resources, discriminatory practices by the state or non-state actors, by lack of, or insufficient, health care and education, by inadequate sanitary systems, by general poverty or factors such as economic decline, climate change, natural and human-induced catastrophes. Any one or more of these may affect an individual’s ability to access food or may cause malnutrition and hunger and thus infringe on an individual’s right to food.

26 See Human Rights Committee’s GC 6, para. 5 (emphasis added).

27 See UN Special Rapporteur on the right to food, 2003a.

The multidimensional nature of the right to food was clarified by the CESCR in its GC 12 on the right to food. According to the CESCR, the right to food does not mean simply a minimum daily package of calories, proteins and other specific nutrients needed to ensure freedom from hunger and malnutrition (GC 12, para 6). It means:

... the right to have regular and permanent access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual or collective, fulfilling and dignified life free of fear.²⁸

This way of conceptualizing the content of the right to food builds on the definition of food security used in the World Food Summit Plan of Action in 1996, although its approach differs (see Box 4). The right to food places the individual human being at its centre, thus complementing the fight against food insecurity and hunger with other human rights and principles, i.e. with dignity, transparency, empowerment and participation.²⁹

BOX 4. Food security and the human right to food

Food security as a concept originated in the 1960s and 1970s, and at that time (and still in certain usages) focused on food supply problems – of assuring the availability and to some degree the price stability of basic foodstuffs at the international and national levels. While defining food security as the “availability at all times of adequate world food supplies of basic foodstuffs ... to sustain a steady expansion of food consumption ... and to offset fluctuations in production and prices”, the Universal Declaration on the Eradication of Hunger and Malnutrition adopted by the World Food Conference (1974) described the food crisis afflicting peoples of the developing countries as an increasing imbalance that is “... not only fraught with grave social and economic implications, but also acutely jeopardizes the most fundamental principles and values associated with the right to life and human dignity enshrined in the Universal Declaration of Human Rights”. A link between food security and human rights was established but it had yet to be developed.

28 See UN Special Rapporteur on the right to food, 2001, p 7.

29 See Mechlem, K. 2004.

BOX 4. Food security and the human right to food (cont.)

Over the years, the focus shifted from availability of food supply to pointing out the difficulties in physical and economic access to food. This evolution was strongly influenced by research showing that some of the worst famines occurred in contexts of abundant food supply – and were caused by people’s lack of entitlements to gain access to available food (Drèze and Sen, 1991). By the mid-1990s, food security was redefined around five basic points to be addressed: (i) who should get the food; (ii) when; (iii) how; (iv) how much food; and (v) what kind of food. In November 1996, the World Food Summit Plan of Action stated that: “Food security, at the individual, household, national, regional and global levels is achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.” This definition established the four pillars of food security: (i) availability; (ii) accessibility; (iii) stability; and (iv) utilization of food.

Food security is a *policy* concept – establishing a goal to be achieved (e.g. halving the number of hungry by 2015). It is needs based and programme oriented. The right to food is a *legal* concept; it is an internationally recognized human right giving people an entitlement to justice and adequate redress if their right is violated.³⁰

A difference between the two concepts can be further illustrated through an example of a person who regularly receives food through humanitarian aid: although such a person could be considered food secure, her or his right to food is not realized as her/his dependency on external aid in the long term is incompatible with her/his human dignity (as she/he is not considered a subject of the right, but as an object of the aid) and will not ultimately result in her/him becoming self-sufficient, i.e. able to feed her- or himself through her/his own means.

According to the CESCR, the normative content of the right to food is seen as implying: “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; [and] the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights”. States Parties must thus focus their actions on the improvement of living conditions for their people rather than on satisfaction of bare minimum needs in terms of food.

30 *Ibidem*. See also Eide, W.B. 2001.

In terms of *available quantity*, the notion of food implies enough food for a person to live a normal active existence. Availability refers to the possibilities either of 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 in accordance with demand. For this, there must also be *stability* in the supply of food. *Stability* refers to both available and accessible food. In fact, the right to food also implies that individuals are able to gain access to adequate food, both economically and physically (GC 12, paras 8 and 13). Both stability of the supply and accessibility of food presuppose environmental sustainability, implying that there is a judicious public and community management of resources ensuring the availability of sufficient food for both present and future generations. In the words of the CESCR, the notion of sustainability is linked intrinsically to the notion of adequate food (GC 12, para. 7).

The notion of *adequacy* is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible and available can be considered the most appropriate under given circumstances. So, food must be available in quantity and *quality* “sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture” (GC 12, para. 7). As for the quality component, the food obtained must fulfil minimum safety standards, without contamination through adulteration, unsatisfactory environmental hygiene or inappropriate handling at different stages throughout the food chain (GC 12, para. 10). Further, the adequacy standard goes beyond the freedom from hunger or unsafe food and encompasses cultural acceptability of food. In the words of the CESCR, the precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions (GC 12, para. 11). It thus underlines that cultural or consumer acceptability implies the need to take into account *non-nutrient based values* attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies (GC 12, para. 11).

This understanding underlines the interdependence of all human rights, the close connection of the right to food, and adequate nutrition and care. In this sense, while the *utilization* dimension of food security³¹ (i.e. non-food inputs) is not generally considered as a component of the right to food, it should be seen as being implicitly included in the adequacy component of the right to food. Such inputs are particularly relevant for pregnant and breastfeeding women and for children. The relevant international human rights instruments indeed underline explicitly the necessity of ensuring adequate nutrition and care for pregnant and breastfeeding women and for children.³²

31 The utilization pillar brings out the importance of non-food inputs in food security: it refers to the utilization of food through adequate diet, clean water, sanitation and health care to reach a state of nutritional well-being where all physiological needs are met.

32 See Article 12.2 of CEDAW and Article 24 of CRC.

1.2 STATE OBLIGATIONS

For each right held by individuals, there are corresponding obligations on the part of others. Under international law, human rights obligations are primarily held by states.

Under Articles 2 and 11 of the ICESCR, the main obligation of a State Party is to take steps (to the maximum of its available resources) to realize progressively the full enjoyment of the right to food by every person within the state's jurisdiction. Moreover, in accordance with an established principle of international law, States Parties can extend existing protections of the right to food; in contrast, lowering the level of protection already achieved would generally amount to an infringement of this right (i.e. the principle of “non-retrogression”).³³

These general obligations have been interpreted in greater detail by the CESCR in its GC 3 (on the nature of States Parties' obligations) and GC 12 (on the right to food in general). Each of the elements of this obligation is examined in further detail in the next three sections.

1.2.1 OBLIGATION TO TAKE STEPS, TO THE MAXIMUM OF AVAILABLE RESOURCES, TO PROGRESSIVELY FULLY REALIZE THE RIGHT TO FOOD

Taking steps

Although the full realization of the right to food may take time, States Parties are required to take “steps” towards this end, within a reasonably short time

³³ In GC 3, the CESCR stated that any deliberately retrogressive measures would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources (see para. 9).

after ratification of the ICESCR. According to the CESCR, these steps should be deliberate, concrete and targeted (GC 3, para. 2). They may include the adoption of legislation or the implementation of administrative, economic, financial, educational or social reforms. It is up to each State Party to decide what kind of measures will be the most appropriate to ensure the realization of the right to food for the persons under its jurisdiction. This flexibility acknowledges the many cultural, historical, legal and economic differences between States Parties having the same legal obligations. It is to be noted, however, that “the adoption of legislative measures” is specifically singled out by the ICESCR (Art. 2.1).

To the maximum of available resources

The full realization of the right to food requires, like many other rights, government to invest resources. Under Article 2.1 of the ICESCR, States Parties are to take the steps necessary to ensure full realization of the right to food for its population “to the maximum of their available resources”.

States Parties are thus not obliged to expend all the resources they have or to spend resources that are not available on satisfying the right to food. Nevertheless, they must allocate some resources to realizing this human right. In its GC 3, the CESCR expressly stated that “even where the available resources are demonstrably inadequate, the obligation remains for a state party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances”. For example, the CESCR considered that the “obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints” (GC 12, para. 11).

In practice, States Parties must ensure that resources that *can* be invested in food are not diverted into other fields or do not disappear through corruption. The realization of the right to food (as well as of other economic, social and cultural rights) can be successful even if resources are limited, provided that government plays a proper role in the allocation of resources.

To progressively fully realize the right to food

By requiring governments to realize the right to food progressively, the ICESCR acknowledges that the full realization of this human right requires time. This means that some measures States Parties must take are more immediate, while others are more long term. States Parties have a duty to “move as expeditiously and effectively as possible” (GC 3, para. 9) towards full realization of the right to food for all.

There are various obligations that must be realized *immediately*³⁴ and which are not dependent on available resources. The concept of progressive realization does not justify government inaction on the grounds that a state has not reached a certain level of economic development. The obligation not to discriminate takes immediate effect and is not subject to the standard of progressive realization.³⁵

Furthermore, every State Party has a minimum core obligation to ensure the satisfaction of, at the very least, the minimum essential level of each right recognized by the ICESCR (GC 3, para. 10). This is also an immediate obligation. Under the right to food, this minimum essential level is freedom from hunger; in practical terms, this means an obligation to provide minimum basic resources to enable individuals to be free from threats to their survival.³⁶ The legal implication of this approach is that a State Party's failure to take appropriate measures to deal with hunger and malnutrition would constitute not only a violation of its obligations under the right to food (ICESCR) but also a violation of its obligations under the right to life (International Covenant on Civil and Political Rights [ICCPR]). Thus, a state is obliged not to deny access to food and to make sure people do not starve at the very least,³⁷ and to provide food for those who are in danger of starving.

1.2.2 OBLIGATION NOT TO DISCRIMINATE

The universality of human rights means they are applicable to each and every person within a state. No condition of any kind (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) may be linked to a person's right to exercise his or her right to food freely (ICESCR, Art. 2.2). This principle of non-discrimination is among the most fundamental elements of international human rights law. This is because there are some persons and groups that have more difficulties in enjoying their human rights.

34 See GC 12, para. 16. See also The Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, reproduced in UN doc. E/CN4./1987/17, Annex (1987), Principle 21. The Limburg Principles were adopted in 1996 by a group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America).

35 The CESCR considers that a state claiming that it is unable to carry out this obligation must demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, these minimum obligations (GC 12, para. 17).

36 According to the HRC, a State Party's failure to take appropriate measures to deal with hunger and malnutrition would constitute not only a violation of its obligations under the ICESCR (right to food) but also its obligations under the ICCPR (right to life). This is because "the protection of the right to life requires that states adopt all possible measures "to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics". See GC 6 of the HRC, para. 5.

37 In addition to the ICESCR, international humanitarian law (the branch of international law governing armed conflicts and other related situations) prohibits starvation of civilians as a method of warfare (see Geneva Conventions of 1949).

In addition to the general guarantee against discrimination established by Article 2.2, the ICESCR underlines the need to ensure equal enjoyment by men and women of all rights guaranteed in the ICESCR separately (Art. 3). Still today, discrimination against women continues to exist in every society, developed and developing alike. The spread of this pledge and the willingness to combat these situations led to the adoption of a separate international treaty to guarantee women the protection of their rights (see Box 5). The Right to Food Guidelines also specifically underline the need to eliminate discrimination against women. The Guidelines invite states to “promote women’s full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender-sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies” (Guideline 8.7).

BOX 5. Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly in 1979 to reinforce the provisions of existing international instruments designed to combat the continuing discrimination against women. It identifies many specific areas where there has been discrimination against women – for example in regard to political rights, marriage and the family and employment. In these and other areas the Convention spells out explicit goals and measures that are to be taken to facilitate the creation of a global society in which women enjoy full equality with men and thus fully realize their guaranteed human rights.

To combat gender-based discrimination, the Convention requires States Parties to recognize the important economic and social contribution of women to the family and to society as a whole. It emphasizes that discrimination will hamper economic growth and prosperity. It also expressly recognizes the need for a change in attitudes, through education of both men and women, to accept equality of rights and responsibilities and to overcome prejudices and practices based on stereotyped roles. Underlying the concerns that in situations of poverty women have the least access to food and resources, the CEDAW establishes the right of women to adequate nutrition during pregnancy and lactation (Art. 12) and requires States Parties to take measures to ensure that women, notably in rural areas, also have access to resources, services and economic opportunities (Art. 14).

Another important feature of the Convention is its explicit recognition of the goal of actual, in addition to legal, equality, and of the need for temporary special measures to achieve that goal.

Like the obligation to ensure freedom from hunger, the obligation not to discriminate is of immediate effect. It requires that the level of protection of the right to food is objectively and reasonably the same for everybody, irrespective of race, colour, sex and so on. The list of grounds for discrimination mentioned in Article 2.2 is not exhaustive as is indicated by the words “or other status”.³⁸

Although the ICESCR speaks of discrimination “of any kind”, not every distinction in treatment will constitute discrimination if the criteria for such distinction are objective and reasonable, and if the aim is to achieve a legitimate purpose.³⁹ At the international level, two main human rights treaties relating to prohibition of discrimination expressly recognize that special measures may be necessary to correct existing discrimination and ensure that a given human right is truly enjoyed by discriminated persons or groups (see Box 6). Such special measures will not be considered discriminatory with regard to other persons possibly facing difficulties in fully exercising their right to food.

BOX 6. Special measures and promotion of equality in international human rights treaties

According to Article 4 of CEDAW, “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved”.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires States Parties “when the circumstances so warrant, [to] take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms” (Art. 2.2).

In its GC on non-discrimination, the HRC recognizes that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant” (GC 18, para. 10). Whether such different treatment will constitute discrimination or not will thus depend on the specific circumstances of each case.

38 These may be, for example, age, disability or HIV/AIDS.

39 See the GC 18 of the HRC, which is also relevant, *mutatis mutandis*, for the interpretation of Article 2.2 of the ICESCR.

In the context of persons with disabilities, the CESCR also noted that because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such measures should not be considered discriminatory as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that principle.⁴⁰ Thus, in realizing the right to food, governments may make distinctions for a legitimate purpose, such as correcting *de facto* discrimination or eliminating conditions that cause or help to perpetuate discrimination.

The process of eliminating discrimination and promoting equality in the enjoyment of the right to food for all entails more than affirming the equality of rights and specifying government obligations through legislation. In many states, stereotyped attitudes and social prejudices, customary and cultural practices, traditions, attitudes and religious beliefs create ongoing barriers for certain categories of persons to develop capacities that would allow them to feed themselves by their own means. Customary laws and practices may play a larger role in developing countries where they may condition everyday life and practices more strongly. Eliminating *de facto* discrimination will thus require changing behavioural patterns prejudicial to rights,⁴¹ which is a government obligation well supported in international law (see Box 7).

BOX 7. Discrimination and the role of stereotypes, prejudices and cultural practices

CEDAW recognizes clearly that abuses and exclusions affecting women and girls are integral to social structures; it therefore requires States Parties “to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Art. 5).

The first Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa is also explicit in this sense. It requires State Parties “to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving elimination of harmful cultural and traditional practices”.⁴²

40 See CESCR, GC 5 on persons with disabilities.

41 See Landgren, K. 2005, p 233.

42 The Protocol was adopted on 11 July 2003 and entered into force on 25 November 2005.

BOX 7. Discrimination and the role of stereotypes, prejudices and cultural practices (cont.)

The Convention on the Rights of the Child (CRC) calls on States Parties to take “all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” (Art. 24.3), and the Committee on the Rights of the Child underlines specifically the importance of modifying societal practices and patterns toward these ends.⁴³

1.2.3 OBLIGATION TO RESPECT, PROTECT AND FULFIL

To clarify the specific nature of state obligations and to assist States Parties in their implementation at national level, in GC 12 on the right to food, the CESCR stated that the right to food, like any other human right, imposes three types of obligations: (i) obligation to respect; (ii) obligation to protect; and (iii) obligation to fulfil the right to food.

The typology of state obligations illustrates that compliance with the right to food – as with each and every human right – requires measures varying from passive non-interference to active ensuring of the satisfaction of individual needs, all depending on the concrete circumstances.

The obligation to **respect** requires States Parties to refrain from taking any measure – through actions, policies or the failure to act of its own agencies and public officials – that may result in preventing or denying individuals or groups to provide food for themselves. The obligation to **protect** requires the adoption of specific legislative or other measures regulating third parties’ activities so as to ensure that they do not negatively affect peoples’ enjoyment of the right to food. The obligation to **fulfil** means that States Parties must take positive measures to facilitate and provide for individuals’ enjoyment of their rights. Facilitating the realization of the right to food requires more far-reaching measures on the part of the government in that it has actively to seek to identify vulnerable populations and implement policies and programmes to improve these people’s access to food and their capacity to feed themselves. The obligation to fulfil the right to food by providing food directly will only apply at times and for persons or groups that are not able to exercise their right to food by their own means. The obligation to provide also includes the obligation to ensure, as a minimum, that no one in a country suffers from hunger. In a number of its recent General Comments, the CESCR considered that the

43 See for example Landgren, K. 2005, p. 233.

obligation to fulfil also incorporates an obligation to promote.⁴⁴ The state should promote awareness of human rights among its own agents and private actors. In recent years, the need to clarify state obligations and responsibilities for actions taken by themselves and also by other actors outside their borders has become stronger.

1.2.4 OBLIGATION OF INTERNATIONAL COOPERATION AND ASSISTANCE

In view of countries' vastly different economic powers, international cooperation and assistance are crucial to realizing the right to food of all people.⁴⁵ Articles 2.1 and 11 of the ICESCR refer to international cooperation and assistance as among the means to achieve the full realization of the right to food. In GC 12, the CESCR underlined the essential role of international cooperation in achieving the full realization of the right to food (para. 36).

The obligation to cooperate requires States Parties not to permit – or to conduct – activities within their jurisdiction without regard to the rights of other states. States Parties should refrain from any act that could deprive another state of the ability to realize the right to food for its inhabitants. As a general matter, the obligation to cooperate also implies a duty on States Parties to refrain from unilateral measures that are not in accordance with international law. Such measures include the use of food as an instrument of political pressure, making food aid conditional on economic or political issues, setting up blockades hindering food supplies reaching another country and the imposition of sanctions that affect food supplies of the population (GC 12, para. 37).⁴⁶ The obligation to cooperate also requires those countries facing serious resource constraints to seek international assistance in situations where widespread starvation would otherwise occur (GC 12, para. 17).

According to the CESCR, the obligation of international assistance requires that States Parties, according to their available resources, facilitate realization of the right to food in other countries, for example through financial and technical assistance, and through disaster relief and humanitarian assistance in times of emergency,

44 See CESCR, GC 14 on the right to the highest attainable standard of health, or GC 15 on the right to water.

45 In light of (1) the relevant provisions of the UN Charter (notably Articles 1, 55 and 56); (2) a large number of bilateral, regional or multilateral treaties concluded with the aim of specifically establishing and reinforcing cooperation among the states concerned; and (3) an even more voluminous quantity of non-binding legal instruments asserting the obligation of cooperation, it can be said that the general cooperation in all sectors – thus including the human right to food – is the expression of a truly universal *opinio juris* (See Dupuy, P.M. 2000). Under international law, then, it thus represents a binding obligation on all states.

46 For more information on this issue, see Donati, F. & Vidar, M. 2008.

including assistance to refugees and internally displaced persons (GC 12, para. 38). Naturally, assistance should be provided in a manner consistent with the ICESCR and other human rights as well as relevant humanitarian law standards.⁴⁷

It is increasingly held among experts in economic, social and cultural rights that three sets of steps also apply to States Parties' international obligations.⁴⁸ Such understanding implies that where state action in another country undermines directly the ability of that country's population to realize their right to food (failure to respect) or where failure to regulate domestic actors results in right to food abuse abroad (failure to protect), States Parties should be held to account.⁴⁹

47 See Cotula, L. & Vidar, M. 2003.

48 See Coomans, F. 2004. For more information on international legal dimensions of the right to food see Donati & Vidar, 2008 and Skogly, S. & Gibney, M. 2002.

49 See UN Special Rapporteur on the right to food. 2004.

1.3

RIGHT TO FOOD IN RELATION TO OTHER HUMAN RIGHTS

All human rights are universal, indivisible and interdependent and interrelated.⁵⁰ Although many consider that the right to food needs to be properly secured before one can turn to the luxury of the right to vote or to the privilege of freedom of expression, today all governments generally accept that there should be no prioritization among different types of rights.⁵¹ Different human rights are seen to be mutually reinforcing: better nutrition, health and education will lead to improvements in civil and political freedoms and the rule of law. Similarly, freedom of expression and association can ensure that the best decisions are taken to protect rights to food, health and education.

As noted above, the full realization of the right to food at the national level requires not only dealing with factors that determine overall food security in a country (i.e. ensuring availability and accessibility of food, and planning for shortages, emergencies and distribution problems), it equally requires ensuring progress in the exercise of other human rights. These include, for example, those rights related to land and property, to health, education and work; those concerning participation in decision-making, freedom of association and freedom of expression and information in addition to eliminating inequalities and improving underlying conditions of life that may hamper the achievement of food security.⁵² The notion of these interrelationships can help governments with limited resources to set priorities for action, and every individual to help promote the right to food and other human rights.⁵³

50 Vienna Declaration and Programme of Action of the World Conference on Human Rights, 1993. UN doc. K/CONF.157/23, 12 July 1993.

51 See Clapham, A. 2007.

52 For an analysis of the interrelationship between different human rights and the right to food, see Vidar, M. 2005.

53 *Ibidem*, p. 142.

The interrelatedness between the right to food and other human rights is also at the basis of international consensus on the requirement for states to ensure that decision-making processes (from policy formulation to law making down to administrative acts) to implement the right to food and their outcomes comply with participation, accountability, non-discrimination, transparency, human dignity, empowerment and rule of law (following the “PANTHER” framework developed by the FAO Right to Food Unit).

Full, free and meaningful participation is a human right as well as a practical way of gaining consensus. Effective participation enables persons and groups to share meaningfully in decisions that affect their livelihood and their capacity to feed themselves; it also promotes transparency and accountability in decision-making. The principle of accountability stresses that government and all its officials must be accountable to supervisors and to the people they serve. People should be able to challenge both the process and the substance of decisions that affect their livelihood. Non-discrimination, as discussed above, may require that persons and groups in fundamentally different situations are treated differently.

Transparency is closely related to the right to freedom of information. The government must ensure that information about right to food activities, policies, laws and budgets, is published in ways that are accessible to those who need to know it, that it uses language that can be understood easily and that it is disseminated through appropriate media. The principle of human dignity requires public authorities to ensure that measures affecting people’s livelihoods and the capacity to realize their right to food are carried out in a way that respects them and their dignity. Empowerment means a change in power relations within a society and between a government and its people; it requires authorities to give people a choice and to enable them to influence and exert control over decisions affecting their livelihood.

Finally, respect for the rule of law means that every member of society, including decision-makers, must obey the law. The most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. Accountability and access to justice (through tribunals, human rights institutions or other means of conflict resolution) are essential for the rule of law to be upheld.⁵⁴

⁵⁴ Despite long-standing debates on the “justiciability” of the economic, social and cultural rights, it is now generally accepted that violations of these rights can be brought before both, national and international judicial bodies (see below, section 3.14).

The implementation of the right to food into domestic law will equally have to be based on and conform to these principles (see below, section 3.2.5).

Parts Two to Four of the present Guide, which follow below, will address each of the three legislative strategies for the incorporation of the right to food into the national legal system in turn.