

The right to food

A new legal instrument is created

In November 2004, after a two-year drafting process, the FAO Council adopted the Voluntary Guidelines on the right to food – in effect, a new legal instrument for defending and enforcing the right to food. This article addresses the following questions: What will this instrument be capable of achieving? Will the effort expended in creating the Guidelines prove to have been worthwhile? And, finally, will the implementation of this new approach to human rights contribute towards reducing the numbers of people suffering from hunger?

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The idea of developing an additional legal instrument to address the right to food was first mentioned in the plan of action agreed at the 1996 World Food Summit in Rome. The opening paragraphs of the summit's final declaration reaffirmed the right of each and every person to adequate food and to a life free from hunger. The Rome plan of action called upon the Food and Agriculture Organization of the United Nations (FAO), along with the Office of the UN High Commissioner for Human Rights (OHCHR), to set out clearly both what the right to food actually means and what responsibilities states have in this regard. It also mentioned the possibility of developing a set of voluntary guidelines, albeit in relation to food security.

This wording was finally amended in 2002 at the «World Food Summit: five years later», thus paving the way for the elaboration of a set of guidelines on the right to food that some governments and civil society representatives had been calling for back in 1996. A process of careful negotiation lasting several years and involving diverse states and civil society representatives had been necessary to this end. In 1996, some countries had strongly resisted such a move, fearing that if people's

852 million people currently suffer from hunger. About 80 percent of these people live in rural areas.

right to food were strengthened, so too might be their legal position, making it easier for governments to be taken to court for human rights violations or inaction.

The OHCHR set about implementing the World Food Summit plan of action by conducting three consultations of experts between 1998 and 2001, aimed at clarifying exactly what the right to food entails and what governments' obligations are in this context. The outcome of this process played a part in the formulation of a General Comment on the legal aspects of the right to food, which was adopted in 1999 by the United Nations Committee on Economic, Social and Cultural Rights – CESCR – (General Comment 12 / GC 12). The content of the General Comment was also influenced by a text that civil society representatives, in collaboration with internationally renowned legal experts, had been working on since 1997 after the World Food Summit, namely the Code of Conduct on the Right to Adequate Food. The

Code of Conduct on the Right to Food subsequently gained the support of more than 1,000 civil society groups around the world.

Given the general pace at which the outcomes of the World Food Summit have been implemented, it is astonishing that the Inter-Governmental Working Group was able to conclude its work on the Voluntary Guidelines within the two years set aside for it. Talks were especially difficult at the beginning, as the material being discussed was new to the Rome negotiators. As some governments took a very rejectionist stance, few would have predicted the speed at which progress was made.

The annual reports on hunger reduction, published by FAO, make for distressing reading, and these reports may well have spurred the participants on in their attempt to produce tangible results in this area at least. The current official figure of 852 million people suffering from hunger is higher than it was in 1996. In addition, a lack of political will on the part of governments clearly poses an obstacle to necessary political change and hinders progress in reducing hunger. Jacques Diouf, Director-General of FAO, has drawn attention to this critical factor in a number of speeches over the last few years.

The Voluntary Guidelines take precisely this issue as their starting point. The idea behind a rights-based approach to hunger reduction is to empower the people suffering from hunger to themselves hold their governments to account and to focus attention on the need for procedures for reviewing and monitoring state policies. The fact that some states were keen to make the process a success and therefore put a lot of energy into constructive dialogue had a further positive impact on the process of negotiation. For their part, civil society organizations had reached broad agreement and were able to participate as a united front, pushing hard in favour of producing a robust final document.

Why is it important for rights to be legally enforceable?

A meaningful way of assessing a human rights-based approach is to look first at the groups that are particularly vulnerable to hunger and malnutrition. The typology of hunger developed by the United Nations Hunger Task Force can be used here. The Hunger Task Force is a group of experts set up under the auspices of the United Nations Development Program that offered advice to the United Nations when formulating the Millennium Development Goal of hunger reduction.

The Hunger Task Force has published a number of background papers since 2003, including the hunger typology (UNDP 2003). Of the 852 million people in the world who suffer from hunger, about 800 million live in developing countries. A more precise analysis of the extent of hunger in different parts of the world and among different population groups reveals a remarkable picture. Hunger remains predominantly a rural phenomenon. Nearly 80 percent of all people suffering from hunger currently live in rural areas.

Half of all people suffering from hunger or malnutrition live in small farming families. Despite living as farmers, they are unable to feed themselves adequately from the resources at their disposal. In order to explain this phenomenon, the Hunger Task Force report introduces the concept of marginalization. At least two thirds of these families can be described as being especially marginalized. Marginalization may involve a number of different elements: the area of available land is too small; many farms are often located in ecologically unsuitable areas – on steep slopes or in regions that can quickly become arid or be flooded. Marginalization can also mean that farming families have no security of land tenure or – especially if they are headed by women – have no access to credit or, as a result, to seeds. The lack of a transport system and poor infrastructure often make families de-

pendent on a few middlemen. Agricultural extension services are generally not available.

In many cases, a combination of such factors explains why these farming families are unable to feed themselves from their land. They are also highly vulnerable to external impacts such as climate fluctuations and increasing pressure from imports, such as subsidized surplus produce from EU countries. Another 22 percent of people suffering from hunger and malnutrition belong to families who have no access to land and who generally survive by working as agricultural labourers. Eight percent are people who live as nomads, from fishing or from exploiting forest resources.

To be effective, strategies aimed to reduce the number of people suffering from hunger and malnutrition must begin with measures to improve the specific problems of access these groups experience. Whatever measure is devised, the first question must always be: how will it affect these groups? It is no coincidence that these groups have been overlooked in agricultural policy to date. The background report produced by the Hunger Task Force points to precisely this set of problems. For too long now, the international and national agricultural research establishment has been concerned only with regions that enjoy favourable agricultural conditions, regions where it is possible to irrigate good soils. Agricultural

What use are the Voluntary Guidelines?

Although the Guidelines are voluntary, this by no means diminishes the legal force of the right to food. The right to adequate food is contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which so far has 151 signatory states. In addition, the right to food is also a part of the Universal Declaration of Human Rights. The signatories to ICESCR have a duty to transpose the rights of the Covenant into national law and thereby make them enforceable.

The Guidelines describe the policy measures with which a government may implement the right to food and contain a list of good ideas and suggestions. The Guidelines do not prescribe any legally binding policy measures as such; instead, they describe what course of action a government had best take if it wishes to put the right to food into practice. They are also directed at those FAO member states that have not signed the Covenant on Economic, Social and Cultural Rights. Civil society groups had been calling for the development of a code of conduct on the right to food since 1995. Such a code would have made it possible to set down Guidelines for the conduct not only of states but also of private-sector actors, such as transnational corporations. This proposal failed in 2002. What was agreed, however, was the development of a set of guidelines for the progressive realization of the right to food. As far as their legal status is concerned, the two instruments would not differ, because a code of conduct is also a non-binding instrument of «soft law». Even though the Guidelines are voluntary, they can nonetheless be put to good effect over the next few years. For one thing, all governments have declared their support for them. Government bodies wishing to put the right to food into practice now have a set of meaningful principles to work with and know that their government has accepted these principles. National human rights organizations can use the Guidelines as an effective way of keeping an eye on their respective governments. In particular, civil society groups working for the implementation of the right to food also benefit, for in future they can refer to the Voluntary Guidelines in their work, given that their governments have themselves recognized them. The formal title of the Guidelines is somewhat wordy: «Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security».

funding programs and extension services have likewise focused more on regions with favourable conditions, or else on a few important export products such as bananas, coffee or cocoa. The total amount of funds provided for agricultural development over the last ten years has been at least halved so that the support available for marginalized regions is now barely adequate. In most developing countries, agricultural budgets have been on the decrease for years. In addition, international development assistance agencies have been cutting their funding for agriculture and rural development for some time now, with official development assistance for agriculture provided by all bilateral and multilateral donors falling from 25 billion US dollars in 1986 to around 12 billion in 2000.

Voluntary Guidelines: How powerful is this instrument?

What are we to make of the Voluntary Guidelines as a new instrument? The text is about 30 pages long and contains an introductory section, followed by a section with 19 Guidelines and a section setting out the international framework conditions relevant to the Guidelines. One very positive point about the process of developing the Guidelines is that all the major standards of interpretation of the right to food that had been developed by experts in international law and by civil society groups over the last ten years (e.g. in the form of General Comment 12) were confirmed and adopted. As a result we now have, for the first time, a text on one of the ESC rights that has been agreed at intergovernmental level and which sets far-reaching standards of interpretation for these rights.

The Guidelines have been unanimously adopted by all members of FAO (187 states) and therefore carry considerable weight when it comes to future interpretations of the right to food. They can provide a foundation and a point of orientation for national human rights commissions in their work of monitoring state policy measures on the right to food. They will provide a point of orientation in relevant court proceedings and will also be a useful tool for civil society groups checking whether governments are taking their state duties seriously in relation to the right to food. The text has two major areas of weakness, however. One concerns the political «commitment» of states to implement the Guidelines.

Although the language used in the text was made substantially stronger overall during the final few months of negotiations, some very weak formulations remain, such as «states may wish to...». This is why, in their joint response to the text in Rome, civil society organizations described the Guidelines as «no masterpiece of political will». Secondly, much of the language in the third – international – section is weak. Here, the signatories barely managed to go beyond formulations that already existed in other contexts of international negotiation, because participating countries did not wish to debate issues of trade or debt in Rome.

A positive aspect, however, is that there is an international section at all, as this amounts to a recognition on the part of states that they have international obligations in the sphere of human rights. Unsurprisingly, there was considerable resistance from some quarters to the inclusion of this section.

The text will be very important for the future interpretation of ESC rights in general. Initial responses in the UN system and from governments during the session of the Commission on Human Rights in March/April 2005 in Geneva and during the meeting of the UN Standing Committee on Nutrition in March 2005 in Brasilia demonstrate that the text is being received very positively and that it is

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being accorded considerable political significance – precisely by governments. Considerations are now underway in other United Nations forums as to whether a comparable instrument should be developed, for example on the right to health. Initially, the process was viewed very sceptically by many observers in the field of international law and by many in civil society groups. Their fear was that the process of developing the Voluntary Guidelines might come to involve too great a political risk: it could involve discussing all over again what the right to food actually entails (something that had already been captured in General Comment 12), bringing with it the danger that



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the standards of interpretation already agreed would be watered down again. Proponents of the process, by contrast, always emphasized that this was a necessary risk to take, since a general legal comment that was well formulated but not adopted or implemented by governments was not enough on its own to guarantee progress with implementing the right to food. A text that had been agreed politically and adopted by governments would carry much greater political weight. During the two-year period of negotiation, it often looked as if the doubters would be proven right. However, the outcome of the process has turned out so positively overall that the final conclusion has to be: it was a risk worth taking.

The particular benefits of a value-added approach to rights

The Voluntary Guidelines provide a precise description of the broader context and of the kinds of measures required in the various areas of state policy. They set out what governments can be expected to do in order for the right to food to be implemented at national level. This amounts to a definition of what is expected of governments in terms of the rule of law (good governance) with respect to the right to food.

One of the text's strengths lies in the fact that it sets out the elements of a national implementation strategy in some detail. Governments are called upon, first, to identify groups that are especially vulnerable. Second, they are to ensure that relevant legal measures aimed at protecting and promoting these groups are reviewed and – where necessary – amended, so that the people concerned are afforded adequate protection with regard to their human rights. Third, governments should adopt specific policy and support mea-



The right to food must be mainstreamed not only in national agricultural policy but also in social, legal and economic policy.

asures for each of these groups. Fourth, governments are called upon to set up monitoring systems for assessing the outcomes of their policy measures. Finally, the Guidelines contain a detailed discussion on how it might be possible to create or improve the means whereby these groups can monitor government progress and seek redress if need be. A multi-stage implementation strategy of this kind aims to enable governments to be made accountable for their actions.

The Guidelines establish a link to crucial human rights principles that should be observed upon implementation of any measure by the state – principles that are not specific to the right to food. These include the principles of transparency and participation in information dissemination, decision making and monitoring processes, as well as the principle of non-discrimination.

The human rights approach is based on individual entitlements. These set limits to state policy. Human rights cannot simply be violated in order to achieve some other goal. A dam project may be exceptionally important for a country in terms of energy policy, and yet the importance of the project does not give a carte blanche for forced resettlements without adequate compensation. A human rights based approach thus strengthens the legal position of especially marginalized groups.

A number of different policy fields are addressed in the Guidelines. This reflects the fact that for the right to food to be implemented, more is required than simply a set of agricultural policy measures. The ministry of justice, for example, is responsible for establishing legal mechanisms for the right of appeal and legal safeguards for land title and rights of tenure. Food security issues involve concerns about consumer protection. Economic issues are touched upon just as

much as the social-policy design for transfer payments and safety nets. Another strength of the Guidelines is that key implementation measures are described in relation to the different policy areas and that none of the recommendations are based on monocausal responses. This means that the Guidelines have significance for various government ministries. Governments do need to ensure, however, that a public institution is given chief responsibility for implementation.

What must happen and what can happen now?

If full use is to be made of these Voluntary Guidelines, especially if they are to interact with and be mainstreamed in other development cooperation strategies in rural areas, it is crucial that they be applied by development policy makers and practitioners alike. The «Policies against Hunger IV» conference organized

by the German government in Berlin in summer 2005 drew together human rights activists and development practitioners and generated some initial results. The Guidelines were discussed one by one during this conference with regard to how the legal stipulations contained in them might feed into everyday policy making. The important thing now is for the Guidelines to be used in the different countries and make it possible to realize the right to food in a practical way. As a matter of priority, initial experiences in applying the Guidelines ought to be documented and made available to other actors. It is important for each country to start applying the Voluntary Guidelines, or specific parts of them, in the national context. The task of FAO will be to set up its own working party on the right to food, capable of advising governments in the process of using the Voluntary Guidelines as a point of orientation in their national policy making.

The civil society groups involved in the process over the last few years met during the Berlin conference in 2005 to coordinate their work plans for the months and years ahead. Civil society groups can use the Voluntary Guidelines in a two-fold manner: they can call for their governments to implement the Guidelines – and therefore the right to food – effectively at national level; and they can use the Guidelines to monitor government policy and, if necessary, make public any instances in which implementation takes a wrong turn or does not occur at all.

Will implementing the right to food not be far too expensive?

A thirty-page text referring to many different policy areas could suggest that implementation of the right to food requires special financial resources. The main point to stress here is that while Article 2 of the International Covenant on Economic, Social and Cultural Human Rights does demand that states take courageous and decisive action towards the progressive realization of the rights contained in the Covenant, it does not demand the impossible. The state is called upon to deploy «the maximum of its available resources». However – and this is set out very clearly in the Voluntary Guidelines – these resources should be put to very specific, targeted use. Groups that are especially vulnerable should be identified within a national implementation strategy and made the focus of that implementation. The Guidelines also make clear that there are many important steps in the implementation of the right to food that do not require any special use of resources but rather refer to activities that are inexpensive, such as improving legislation or desisting from measures that lead to human rights violations.

