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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**The right to food**

**Note by the secretariat**

In paragraph 10 of resolution 2002/25, the Commission on Human Rights requested the United Nations High Commissioner for Human Rights to submit to the World Food Summit a comprehensive report pursuant to objective 7.4 of the World Food Summit Plan of Action, building on the work already done by the Special Rapporteur and the outcome of the three expert consultations convened in relation to this matter. In response to this request, the High Commissioner submitted a report to the World Food Summit: five years later, held in Rome in June 2002. That report is annexed to the present note for the information of the members of the Commission on Human Rights.

**Annex**

**WORLD FOOD SUMMIT: FIVE YEARS LATER**

Rome, Italy, 10-13 June 2002



**THE RIGHT TO FOOD:  
ACHIEVEMENTS AND CHALLENGES**

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## **Introduction**

1. On 17 November 1996 the World Food Summit adopted by consensus the Rome Declaration on World Food Security and the World Food Summit Plan of Action, which outlined ways to achieve universal food security. In the Plan of Action, the States attending the Rome Summit made a number of commitments. Under objective 7.4 (e), Governments, in partnership with all actors of civil society, invited

the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, to define better the rights related to food in article 11 of the [International] Covenant [on Economic, Social and Cultural Rights] 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.

2. Significant progress has been made in the implementation of that request, as illustrated in section I of this report. The right to food has been much better defined, and ways to implement and realize it have been proposed. Unfortunately, however, insufficient steps towards implementation have been taken at the national and international levels, and the right to food is therefore far from being realized for all. Section II of the report identifies the main challenges ahead. Section III contains some concluding remarks.

## **I. THE ACHIEVEMENTS**

### **I.1 Developments in the international human rights system**

3. This section summarizes progress by the international human rights system towards producing a better definition of the right to food. Progress has been made through initiatives by the Office of the High Commissioner for Human Rights (OHCHR), normative work by the Committee on Economic, Social and Cultural Rights and action by Commission on Human Rights mechanisms.

#### **I.1.1 Expert consultations**

4. Acting on its mandate under the World Food Summit Plan of Action, the OHCHR held three expert consultations on the right to food. They were organized in close collaboration with relevant treaty bodies, specialized agencies and programmes of the United Nations system, Governments, interested non-governmental organizations and the Special Rapporteur of the Commission on Human Rights on the right to food.

### ***The 1997 consultation***

5. The first consultation was held in Geneva on 1 and 2 December 1997.<sup>1</sup> It concluded that the human right to adequate food is firmly established in international law but its operational content and means of application are generally little understood. The right thus remains scarcely implemented.

6. The consultation clarified a basic misconception regarding State obligations in respect of the human right to adequate food. It was agreed that implementation of the right does not imply that it must be realized immediately by the State concerned (obligation to *fulfil/provide*). States' primary obligations are to *respect* and *protect* the right to food and to *fulfil/facilitate* its enjoyment by ensuring adequate conditions for that purpose. The obligation to *fulfil* (*fulfil/provide*) the right directly exists only when individuals or groups are unable, for reasons beyond their control, to enjoy the right to adequate food through the means at their disposal.

7. The consultation also recommended that the Committee on Economic, Social and Cultural Rights contribute to the clarification of the content of the right to adequate food through the adoption of a general comment.

### ***The 1998 consultation***

8. The second consultation - co-hosted by FAO - was convened in Rome on 18 and 19 November 1998 in order to develop further the discussion of the content and means of implementation of those rights related to adequate food, drawing on the experience of food organizations as well as of the Governments attending the event.<sup>2</sup> Some recommendations dealt with the implementation of the right to food during emergency situations. It was noted that States have specific obligations under humanitarian law such as the duty to receive food aid in times of critical need, to grant access to impartial humanitarian organizations so that they can distribute food aid, and to prohibit the use of starvation as a method of warfare.

9. The consultation also recommended that States adopt a framework law as part of a national strategy on the right to food. In this regard, it proposed that the Rome-based agencies - FAO, the World Food Programme (WFP) and the International Fund for Agricultural Development (IFAD) - should play a supportive role by providing technical expertise.

### ***The 2001 consultation***

10. The third consultation was convened in Bonn from 12 to 14 March 2001 and hosted by the Government of the Federal Republic of Germany.<sup>3</sup> While the first two consultations were held prior to the adoption by the Committee on Economic, Social and Cultural Rights of its General Comment No. 12 (see below, para. 13), this third consultation took place after its adoption. It focused on implementation at the national and international levels and was guided by the general comment as the authoritative legal interpretation clarifying the normative content of the right to food and State obligations.

11. The consultation recommended that States review existing impediments to full implementation of the right to adequate food, develop a legislative agenda to strengthen implementation and repeal incompatible laws.

12. The consultation identified areas that required further policy development such as facilitating access to productive resources for the food-insecure and the vulnerable, including land tenure and access to water. Noting that fulfilment of the right to food is closely linked to the adoption of appropriate economic, environmental and social policies and in particular efforts to eradicate poverty, it concluded that poverty reduction should be guided by strategies to implement the right to food and related human rights.

### **I.1.1 General Comment No. 12 of the Committee on Economic, Social and Cultural Rights**

13. The Committee on Economic, Social and Cultural Rights (CESCR) is the body established by the International Covenant on Economic, Social and Cultural Rights to monitor compliance by States parties with its provisions. In carrying out this task, the Committee formulates general comments, which are authoritative interpretations of rights under the Covenant. Their purpose is to assist States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant.

14. General Comment No. 12 on the right to adequate food<sup>4</sup> was adopted by the Committee in 1999 in response to objective 7.4 of the World Food Summit Plan of Action. It includes in its definition of the right to adequate food a requirement that there be physical and economic access at all times to adequate food or means for its procurement. Furthermore, the Committee considers that the core content of the right to food implies: (a) 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 (b) the *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

15. While acknowledging that the right to food should be realized progressively, General Comment No. 12 points out that States have a core obligation to take action to ensure that, at the very least, people under their jurisdiction have access to the minimum essential food that is needed to ensure their freedom from hunger. The general comment also interprets progressive realization to mean that States should move as expeditiously as possible towards that goal.

16. The Committee considers that the right to adequate food imposes three levels of obligation on States parties. In the first place, States must refrain from taking measures liable to deprive anyone of access to food (the obligation to *respect*). This obligation would be violated, for example, if the State arbitrarily deprived an individual of his/her land in a case where the land was the individual's physical means of securing the right to food. Secondly, States must ensure, by adopting legislative or other measures, that third parties, whether other individuals or companies, do not interfere with the right of access to adequate and sufficient food (the obligation to *protect*). The obligation to *fulfil (facilitate)* means that States must proactively engage in activities intended to strengthen people's access to and utilization of resources and

means to ensure their livelihood. And it is only when individuals or groups are unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, that States have the obligation to *fulfil (provide)* that right directly.

17. General Comment No. 12 also refers to violations of the right to food, which occur when the State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. While recognizing that a distinction has to be made between the unwillingness and the inability of States to take action, the Committee considers that a State which claims that it is unable to fulfil its obligation for reasons beyond its control (e.g. resource constraints) has to demonstrate that it has done everything in its power to ensure access to food, including appealing for support from the international community.

18. While recognizing that means of implementing the right to food at the national level inevitably vary from one State party to another, the Committee considers that States parties should develop a national strategy to ensure food and nutrition security for all, based on human rights principles. At the international level, States are required to recognize the essential role of international cooperation and to comply with their commitment to take joint and separate action to achieve the full realization of the right to food.

### **I.1.3 Studies by the Special Rapporteur of the Sub-Commission**

19. In 1999, the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Mr. Asbjørn Eide, updated his pioneering study on the right to food and to be free from hunger.<sup>5</sup> The Special Rapporteur recognized the role played by the World Food Summit Plan of Action in changing attitudes and acknowledged the important contribution of General Comment No. 12 in clarifying the content of the right and of corresponding State obligations. He noted that international institutions were increasingly endorsing a human rights approach to food and nutrition issues and called on States, international organizations, NGOs and civil society to act in a concerted way to eliminate the scourge of hunger from humanity.

### **I.1.4 The Special Rapporteur on the right to food**

20. In 2000, the Commission on Human Rights appointed Mr. Jean Ziegler (Switzerland) as its first Special Rapporteur on the right to food.<sup>6</sup> He has since submitted two reports<sup>7</sup> and one mission report<sup>8</sup> to the Commission on Human Rights and one preliminary report to the General Assembly.<sup>9</sup> In his reports, the Special Rapporteur has focused on the following priority issues for implementation of the right to adequate food:

21. *Water as a human right.* The Special Rapporteur stressed that the term “food” covers not only solid foods but also the nutritional aspects of drinking water. He also pointed out that water - like food - is vital for life. Clean drinking water is an essential part of healthy nutrition and also a necessary condition for the enjoyment of other human rights (such as the right to life and to health). In his reports, the Special Rapporteur stated that, as a component of the right to food, access to safe, clean drinking water and basic irrigation water must be protected, including through international cooperation.

22. *Justiciability.* The Special Rapporteur considered that justiciability is essential for the implementation of the right to food to enable people to seek a remedy and accountability if their right to food is violated. He analysed the reasons why, historically, economic, social and cultural rights have not been considered justiciable and provides examples to show that today the right to food is indeed justiciable and can be adjudicated by a court of law. He stressed, however, that notwithstanding these encouraging developments at the national and international levels, a great deal remains to be done to ensure the justiciability of the right to food.

23. *Right to food in international humanitarian law.* In his analysis, the Special Rapporteur refers to the fact that the right to food applies both in peacetime and during armed conflict. During armed conflict the protection afforded by human rights law is supplemented by international humanitarian law, especially the provisions aimed at ensuring that persons or groups not taking or no longer taking part in hostilities are not denied access to food. These provisions include the prohibition of starvation of civilians as a method of warfare, the prohibition of forcible transfers of civilians in situations of occupation, and the obligation to respect rules on relief and humanitarian assistance so that relief is not blocked, diverted or delayed. The Special Rapporteur noted that despite important developments in respect of enforcement mechanisms, including in particular the recent establishment of the International Criminal Court (ICC), violations of the right to food during armed conflicts still occur. He calls on the international community to renew its efforts to ensure compliance with the rules and principles of international humanitarian law.

24. *Right to food and international trade.* The Special Rapporteur has urged the international community to review international trade obligations so as to ensure that they do not conflict with the right to food and food security. He considers that a market economy cannot per se guarantee the basic needs of the whole of society. Efforts should be made, as a matter of urgency, to incorporate respect for human rights, particularly the right to food, in the new trade agreements. The Special Rapporteur also recommends investigating the effects of economic sanctions on respect for the right to food.

#### **I.1.5 Enforcing the right to food: the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights**

25. In 1997, the Committee on Economic, Social and Cultural Rights submitted a draft optional protocol to the Covenant to the Commission on Human Rights. The draft protocol would enable individual complaints to be considered. This would contribute to the better definition of economic, social and cultural rights and would also reinforce compliance with the Covenant.<sup>10</sup> OHCHR organized in February 2001 a Workshop on the justiciability of economic, social and cultural rights, with particular reference to the draft optional protocol to the Covenant. The Workshop concluded, inter alia, that economic, social and cultural rights are justiciable not only in theory but also in practice, and pointed to recent case law at the international and national levels.

26. Subsequently, the Commission on Human Rights decided in 2001 to appoint an independent expert (Mr. H. Kotrane, Tunisia) to examine the question of a draft optional protocol to the Covenant. In his report, the independent expert expressed the belief that it is

necessary to move towards the possible adoption of the draft optional protocol through the establishment of an open-ended working group of the Commission.<sup>11</sup> His mandate has been extended for a further year.

## **I.2 Other developments**

27. The efforts of the international human rights system to implement objective 7.4 of the World Food Summit Plan of Action have been complemented by many initiatives, at the national and international levels, of civil society, States and international organizations. These have played a critical role in achieving progress.

### **I.2.1 Developments at the national level**

28. Some 20 countries have adopted constitutions that more or less explicitly refer to the right to food or a related norm.<sup>12</sup> However, only a few have developed and implemented a framework law on the right to food or national legislation and policies to ensure its enjoyment.

29. Countries such as Brazil, Mali, Nepal, South Africa, Senegal and Uganda have started a dialogue on ways of operationalizing the right to food at the national level. Norway leads the field in terms of comprehensive action. In 1999 it approved a Human Rights Act<sup>13</sup> under which the main human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, enjoy the force of law in Norway. Subsequently, the Ministry of Agriculture presented to Parliament *White Paper No. 19 on Agricultural Food Production*, which adopts a rights-based approach to agricultural policy. The needs of the consumer are a basic premise and the importance of the consumer's influence on and participation in food and agricultural policy development is stressed. The *White Paper* expressly refers to the right to food and to General Comment No. 12. Reference to the Covenant is also made in the Budget Bill (2001-2002), which requires the Government to ensure that people have physical and economic access at all times to sufficient, safe and nutritious food to meet their dietary needs and food preferences so that they can lead an active and healthy life.

30. Although enforcement mechanisms are generally weak, there has been some encouraging progress. An expanding body of national jurisprudence makes the right to food justiciable.<sup>14</sup> The decisions of India's Supreme Court, one example of which is cited below, are of particular relevance.

31. In April 2001 a human rights NGO, the People's Union for Civil Liberties, filed a complaint with the Indian Supreme Court, arguing that several federal institutions and local state Governments should, inter alia, be responsible for mass malnutrition among the people living in the states concerned.<sup>15</sup> In one of its interim orders relating to the case, the Supreme Court affirmed that where people are unable to feed themselves adequately, Governments have an obligation to provide for them, ensuring, at the very least, that they are not exposed to malnourishment, starvation and other related problems.<sup>16</sup>

### **I.2.2 Developments at the international level**

32. In the World Food Summit Plan of Action, Heads of State and Government committed themselves to cooperate actively with one another and with United Nations organizations, financial institutions, intergovernmental and non-governmental organizations, and the public and private sectors on programmes directed towards the achievement of food security for all.

33. The international development summits and conferences held since the World Food Summit have reaffirmed the international community's commitments to achieve global rights and goals. These commitments were reaffirmed at the Millennium Summit<sup>17</sup> and encapsulated in the eight Millennium Development Goals (MDGs), which represent a new global agenda for development. The first goal reaffirms the international community's commitment to reduce the number of people suffering from hunger to half its 1996 level by 2015 at the latest.

34. As a follow-up to the Millennium Summit, the Secretary-General has issued a "roadmap" containing an integrated and comprehensive overview of the issues outlined in the Declaration and identifying potential strategies for action.<sup>18</sup> The roadmap specifically calls for a human rights approach to the MDGs.

35. Today, some 145 countries have ratified the International Covenant on Economic, Social and Cultural Rights and each year the Committee monitors progress towards the realization of those rights, including the right to food, in approximately 12 countries. Significantly, in recent years it has also begun to monitor legislation and policies adopted by developed countries, States parties to the Covenant, to cooperate with developing countries for the full realization of economic, social and cultural rights, including the right to food.

### **I.2.3 Mainstreaming human rights in the United Nations system**

36. The Secretary-General's 1997 Programme for Reform called for the integration of human rights into all United Nations activities and programmes.<sup>19</sup> Several United Nations agencies have now formulated policies and developed strategies and methodologies to incorporate human rights in their activities and programmes.<sup>20</sup>

37. Under the Programme for Reform, OHCHR was mandated to facilitate the mainstreaming of human rights in United Nations development activities. Accordingly, the Office is promoting awareness of the norms and standards of the United Nations human rights system among development agencies. Its active participation in United Nations development coordination mechanisms such as the (former) Administrative Committee on Coordination (ACC)<sup>21</sup> and the United Nations Development Group (UNDG) has resulted in the incorporation of human rights in the guidelines for the elaboration of Common Country Assessments (CCAs) and United Nations Development Assistance Frameworks (UNDAFs) and in the publication of guidelines for the integration of human rights into the work of Resident Coordinators.

38. OHCHR has also established cooperative relationships with United Nations programmes, departments and agencies such as the United Nations Development Programme (UNDP), the United Nations Department of Peacekeeping Operations (DPKO), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Human Settlements Programme

(UN-HABITAT) through the signing of memoranda of understanding (MOUs) and the development of joint programmes. The purpose of these agreements is to assist in mainstreaming human rights into the activities of the department or agency concerned and to cooperate in the effective implementation of human rights.

39. In particular, OHCHR and FAO concluded an MOU in 1997 to ensure the effective implementation of the right to food.<sup>22</sup> FAO has taken several initiatives in this regard, including the publication of a booklet on the right to food,<sup>23</sup> the collection of international instruments relating to the right to food<sup>24</sup> and the setting up of a web site entirely dedicated to the right to food.<sup>25</sup> In April 1999, OHCHR hosted a session of the inter-agency mechanism for harmonizing nutrition policy, the Sub-Committee on Nutrition of the Administrative Committee on Coordination (ACC/SCN).<sup>26</sup> During the session, a symposium was held on the substance and politics of a human rights approach to food and nutrition policies and programmes. In the keynote address, the High Commissioner for Human Rights stated that the realization of the right to food was inseparable from appropriate economic, environmental and social policies oriented towards the eradication of poverty and the satisfaction of basic needs.

#### **I.2.4 The role of civil society**

40. Less would have been achieved without the substantive commitment and dedicated action of civil society. The International Code of Conduct on the Human Right to Adequate Food was drafted in 1997 by the NGO community as a follow-up to the World Food Summit and deserves special mention.<sup>27</sup> The Code of Conduct, developed under the leadership of organizations such as the International Jacques Maritain Institute, the Food First Information and Action Network (FIAN) and the World Alliance for Nutrition and Human Rights (WANAHR), is now an important reference document and has had a major impact on the work of international organizations and NGOs operating in the fields of human rights and food security.<sup>28</sup>

41. The leadership of the academic world has also been of valuable assistance in developing a conceptual understanding of the right to food and promoting its implementation. The research and promotional activities of the International Project on the Right to Food in Development (IPRFD) have been particularly significant.<sup>29</sup>

## **II. THE CHALLENGES**

42. Objective 7.4 of the World Food Summit Plan of Action has been largely fulfilled. A new agenda is now needed to transform legal concepts and political commitments into actions that lead to practical progress towards full realization of the right to food. The goal is to liberate humanity from the scourge of hunger. It is a goal that is now within reach since the world has sufficient food resources to feed the whole population of the planet. This section explores the challenges that this task presents to national and international communities.

### **II.1 National implementation**

43. National strategies based on human rights principles to ensure food and nutritional security for all remain the exception rather than the rule. States are urged to review their policies in the areas of agriculture, nutrition, social development, environment, trade and international

development in order to define a coherent policy framework that is conducive to the elimination of hunger and the realization of the right to food at the national level. States are also encouraged to increase the number of programmes designed to implement pro-right-to-food strategies and to develop new programmes addressing unresolved dimensions of the hunger problem.

44. States are encouraged to seek guidance from General Comment No. 12 in developing their national strategies, which should be firmly based on the principles of accountability, transparency, popular participation, decentralization, legislative capacity and the independence of the judiciary. States should consider the adoption of a framework law as a strategic instrument. The law should specify goals and institutional responsibilities and contain an estimate of the resources required. Verifiable benchmarks for national and international monitoring and effective remedies for violations of the right to food should be core components of any national strategy.

## **II.2 International implementation**

45. Notwithstanding the commitments made by the World Food Summit and the Millennium Assembly through the MDGs to reduce the number of hungry people to 400 million by 2015, current data show that the number of undernourished people is falling at an average rate far below the 22 million per year needed to reach the World Food Summit target. Should this slow pace continue, the World Food Summit target will not be reached until 2030. This is unacceptable in a world which has sufficient resources to feed its entire population. The elimination of hunger through full enjoyment of the right to food should be at the centre of international cooperation policies.

46. In this context, the OHCHR welcomes the initiative of an increasing number of Member States and civil society organizations in adopting a voluntary code of conduct on the right to adequate food. Such a code would assist in identifying substantive measures to make the right to food a reality, thereby contributing to its implementation.

47. The international human rights system plays a central role in the realization of the right to food and the elimination of hunger. It must be further strengthened. All States should ratify the International Covenant on Economic, Social and Cultural Rights and other international instruments relating to the right to food, and States parties should review and withdraw their reservations, and implement concluding observations by the Committee. OHCHR encourages States parties to implement its suggestions and recommendations in their domestic legal systems. It also calls on States to continue their efforts to develop a mechanism that provides international protection for individual victims.

48. Although most United Nations agencies are developing policies to mainstream human rights into their activities, the policy implications of mainstreaming human rights need to be more clearly understood. Best practices must be developed and lessons learned about the underpinnings of successful rights-based approaches and programmes. A greater effort must be made to develop methodologies, indicators, benchmarks, training packages and accountability systems that empower development practitioners to implement rights-based approaches.

49. OHCHR notes the influence of transnational corporations on food security, especially through international trade and investment, and highlights the responsibility of the private sector to ensure that companies in particular act to promote the right to food.

## **II.3 Research and policy development**

### **II.3.1 Right to food and the right to development**

50. The 1993 World Conference on Human Rights recognized in the Vienna Declaration and Programme of Action that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.<sup>30</sup> It also reaffirmed the right to development, established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. The human person is thus at the core of the development process.

51. In his third report, the independent expert on the right to development, Mr. Sengupta (India), underlined that access to food, access to primary health care and access to primary education are fundamental for the implementation of the right to development and the alleviation of poverty.<sup>31</sup> The realization of basic rights such as the right to food should be at the centre of a country's overall development programme. He suggested that, on the basis of this programme, development compacts establishing reciprocal obligations for implementation of the right to development should be agreed between the developing country concerned and the international community.

52. The independent expert's study is of considerable value in clarifying the relationship between the right to food and the right to development. However, there is a need for further analysis of the role of the right to food in ensuring the realization of the right to development.

### **II.3.2 Right to food and poverty reduction strategies**

53. Poverty is a multifaceted phenomenon involving the violation or even denial of most human rights, including the right to food. At the same time, people are reduced to poverty and maintained in poverty by human rights violations. The vicious cycle is now increasingly recognized. As the Committee on Economic, Social and Cultural Rights observed in General Comment No. 12, "the roots of the problem of hunger and malnutrition are not lack of food but lack of *access* to available food, inter alia because of poverty, by large segments of the world's population".<sup>32</sup>

54. In the last decade, the goals of poverty reduction and the elimination of hunger have at times come into conflict with other macroeconomic goals. Human rights, including the right to food, could be a useful operational tool for designing and implementing poverty reduction strategies. OHCHR is now elaborating guidelines to integrate human rights, including the right to food, into poverty reduction strategies. Other initiatives include the Social Forum to be held in July 2002, which will examine the relationship between poverty reduction and the realization of the right to food. A fourth consultation on the right to food will be held in early 2003 and will focus on the realization of the right to food as part of strategies and policies for the eradication of poverty.

### **II.3.3 Right to food and humanitarian assistance**

55. For millions of people around the world, access to food is threatened by armed conflict and natural disasters. In recent decades, the international community has been increasingly called upon to respond to complex emergencies, defined as humanitarian crises within a country or region involving a total or considerable breakdown in authority as a result of external or internal conflict. In these emergency situations, humanitarian assistance is often the only way of ensuring the right to food for populations affected by war or natural disasters.

56. In conflict situations, the protection afforded by human rights law is supplemented by international humanitarian law. As the Special Rapporteur on the right to food pointed out in his last report to the Commission on Human Rights, much needs to be done to ensure that international humanitarian law is respected and civilian populations protected from starvation.<sup>33</sup> In particular, it is important to investigate how the principles and rules governing humanitarian assistance, particularly food assistance, should be applied in order to ensure consistency and coherence with human rights law. This is especially true of modern conflicts, which can no longer be characterized as inter-State conflicts. Furthermore, human rights-based strategies should be developed to strengthen current disaster preparedness and prevention practices.

### **II.3.4 Right to food and international trade**

57. The connection between the right to food and international trade is apparent in a number of fields, most notably agricultural trade, but also in trade-related aspects of intellectual property protection. Agricultural trade offers enormous potential for development and food security, above all for developing countries. However, developing countries still have difficulty in obtaining access for their products to the markets of member countries of the Organization for Economic Cooperation and Development (OECD). At the same time, the liberalization of agricultural trade in developing countries, especially net food-importing developing countries, has increased the vulnerability of local markets to international price fluctuations and has failed to take sufficient account of the food security of the poor and vulnerable such as poor farmers and farm workers.

58. In her report on globalization to the Commission on Human Rights this year, the High Commissioner for Human Rights proposed a right-to-food approach to agricultural trade in the framework of the WTO's Agreement on Agriculture.<sup>34</sup> While noting that the Agreement on Agriculture is only a first step to more openness in developed country markets, the report highlighted the fact that the Agreement does not sufficiently take into account the concerns of the poor and vulnerable or of net food-importing developing countries. A right-to-food approach to the Agreement would stress the human rights principle of non-discrimination and consequently encourage affirmative action for the poor, allowing certain special trade rules for the protection of vulnerable people.

59. The report's recommendations underlined the need for targeted food aid, the importance of operationalizing special and differential treatment for developing countries, the need for greater openness in wealthy countries to agricultural products from developing countries and the need for assistance to developing countries in negotiations at the WTO. In this connection, the report welcomed the commitments at the Fourth WTO Ministerial Conference in Doha to

substantial improvements in market access and reductions in all forms of export subsidies with a view to phasing them out, as well as the commitment to make special and differential treatment an integral part of the rules and disciplines of the Agreement on Agriculture.

### III. CONCLUSIONS

60. This report shows that the mandate entrusted to the High Commissioner under objective 7.4 of the World Food Summit Plan of Action has been largely accomplished. The international legal framework to respect, protect and fulfil the right to food is more fully in place. Progress in understanding the right to food and in clarifying its content has been made possible by the efforts of the international human rights system, Governments, organizations of the United Nations system and NGOs. The Committee on Economic, Social and Cultural Rights has made a significant contribution through General Comment No. 12.

61. Fewer people are undernourished today than a decade ago. However, current data indicate that the decline in the number of people suffering from hunger has slowed. Should this trend persist, the World Food Summit and MDG targets will take 15 years longer to reach than originally agreed and that would still leave more than 400 million people hungry and malnourished. This is morally and legally unacceptable.

62. The World Food Summit should give a fresh impetus to international action and enable the international community to agree new steps to implement the right to adequate food. National implementation of the right to food, strengthening of the international human rights system, active participation by civil society, and United Nations engagement in an ambitious research and operational agenda are crucial elements in a multi-track strategy for implementation of the right to food.

### Notes

<sup>1</sup> E/CN.4/1998/21.

<sup>2</sup> E/CN.4/1999/45.

<sup>3</sup> E/CN.4/2001/148.

<sup>4</sup> CESCR, "General Comment No. 12: The Right to Adequate Food" (E/C.12/1999/5).

<sup>5</sup> "The right to adequate food and to be free from hunger", updated study on the right to food submitted by Mr. Asbjørn Eide pursuant to Sub-Commission decision 1998/106 (E/CN.4/Sub.2/1999/12). The initial study by Mr. Eide, which introduced for the first time the analytical framework of State obligations, was published by the United Nations Centre for Human Rights in 1989 as item No. 1 in the *Study Series*.

<sup>6</sup> In resolution 2000/10, the Commission on Human Rights defined the Special Rapporteur's mandate as follows:

“(a) To seek, receive and respond to information on all aspects of the realization of the right to food, including the urgent necessity of eradicating hunger;

(b) To establish cooperation with Governments, intergovernmental organizations (in particular, FAO) and non-governmental organizations, on the promotion and effective implementation of the right to food, and to make appropriate recommendations on the realization thereof, taking into consideration the work already done in this field throughout the United Nations system; and

(c) To identify emerging issues related to the right to food worldwide.”

<sup>7</sup> “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2000/10 (E/CN.4/2001/53). “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2001/25 (E/CN.4/2002/58).

<sup>8</sup> “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2001/25; “Addendum: Mission to Niger” (E/CN.4/2002/58/Add.1).

<sup>9</sup> “Preliminary report of the Special Rapporteur of the Commission on Human Rights on the right to food” (A/56/210).

<sup>10</sup> It also stressed that as a matter of fact many elements of various Covenant rights are described with sufficient precision and clarity to be justiciable.

<sup>11</sup> E/CN.4/2002/24, para. 9 (f).

<sup>12</sup> One of the most explicit references is in the South African Constitution, which states in section 27: “Everyone has the right to have access to (...) sufficient food and water.”

<sup>13</sup> Human Rights Act of 21 May 1999, No. 30.

<sup>14</sup> Some interesting cases regarding South Africa, India and Switzerland are referred to in the “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2001/25 (E/CN.4/2002/58), paras. 53-58.

<sup>15</sup> Writ Petition (Civil) No. 196 of 2001 (*People's Union of Civil Liberties v. Union of India and Ors.*).

<sup>16</sup> Order of the Supreme Court of India of 23 July 2001.

<sup>17</sup> General Assembly resolution 55/2 of 8 September 2000.

- <sup>18</sup> General Assembly resolution 56/95 of 14 December 2001.
- <sup>19</sup> “Renewing the United Nations: A Programme for Reform”, Report of the Secretary-General, 14 July 1997 (A/51/950).
- <sup>20</sup> For example, the United Nations Children’s Fund’s “Guidelines for a Human Rights-Based Programming Approach” (1998) and the United Nations Development Fund’s policy on “Integrating human rights with sustainable human development” (1997).
- <sup>21</sup> Now the High-Level Programme Committee (HLPC).
- <sup>22</sup> Memorandum of Understanding between the High Commissioner for Human Rights and the Director-General of the Food and Agriculture Organization of the United Nations, 29 May 1997.
- <sup>23</sup> FAO, *The Right to Food in Theory and Practice*, Rome 1998.
- <sup>24</sup> FAO, *Legislative Study No. 68*, Rome 1999.
- <sup>25</sup> <http://www.fao.org/Legal/rtf-e.htm>.
- <sup>26</sup> Twenty-sixth session of the ACC/SCN, 8-15 April 1999.
- <sup>27</sup> International Code of Conduct on the Human Right to Adequate Food, draft endorsed by the Food First Information and Action Network (FIAN), the World Alliance for Nutrition and Human Rights (WANAHR) and the International Jacques Maritain Institute, September 1997.
- <sup>28</sup> Some 800 NGOs have adopted the Code of Conduct.
- <sup>29</sup> A collaborative undertaking established in 2000 between two departments of the University of Oslo and Akershus University College in Norway.
- <sup>30</sup> A/CONF.157/23.
- <sup>31</sup> E/CN.4/WG.18/2001/2.
- <sup>32</sup> General Comment No. 12, para. 5.
- <sup>33</sup> “Report by the Special Rapporteur on the right to food” submitted pursuant to Commission on Human Rights resolution 2001/25 (E/CN.4/2002/58).
- <sup>34</sup> E/CN.4/2002/54.

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