

# NATIONAL HUMAN RIGHTS COMMISSION

## Right to Food - A Brief Background Note<sup>1</sup>

The International Covenants on Human Rights, of which the Covenant on Economic, Social and Cultural Rights (ICESCR) is one, are the attempts of the international community – consisting of the ‘States Parties’ i.e., sovereign States getting together – to lay down for themselves as members of the United Nations, a set of obligations with regard to standards of human dignity, liberties, and fundamental freedoms which form the core of human rights.

Characteristics of human rights are acknowledged to be that *they* --

- *focus on dignity of the human being*
- *are legally protected*
- *are internationally guaranteed*
- *protect the individual and groups*
- *oblige states and state actors*
- *cannot be waived / taken away*
- *are equal and interdependent*
- *are universal*

**Minimum core obligations** : With specific regard to economic, social, and cultural rights, violations can occur when a state fails to satisfy "minimum essential levels of the rights" found in the ICESCR, and thus a State in which "any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is, *prima facie*, violating the ICESCR". Such minimum core obligations apply irrespective of the availability of resources in the country concerned or any other actors and difficulties.

The right to adequate food is a fundamental human right recognized by international law in several dimensions:<sup>2</sup>

**Right to an adequate standard of living, including food.** Article 25 of the Universal Declaration of Human Rights (UDHR) states: "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food ...". Article 11(1) of the ICESCR states: "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 ...".

**Freedom from hunger and right to life.** Article 11(2) of the ICESCR recognizes "the fundamental right of everyone to be free from hunger", i.e. the right to at

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<sup>1</sup> Background Note to the Meeting of Experts held by the Commission on 12-1-2004

<sup>2</sup> Right to Food has been analysed under the Human Rights instruments in several publications. For convenience, the rest of this section is largely based on the FAO publication, 'The Right to Adequate Food in Emergencies' which deals also with the general issue of Right to Food.

least a nutritional intake ensuring survival. This provision is to be read in conjunction with those concerning the right to life (the UDHR; art. 3, the International Convention on Civil and Political Rights (ICCPR), art. 6; the Convention on Rights of the Child (CRC), art. 6). Although there is a widespread narrow interpretation of the right to life merely as a safeguard against arbitrary killing, the Human Rights Committee rejected such restrictive interpretation and invited States to adopt “positive measures” to protect the right to life in a broader sense, including “measures to eliminate malnutrition and epidemics”.

**Rights of the child.** Article 27(1) of the CRC recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. The States Parties to the Convention have the duty to “take appropriate measures” to assist parents in fulfilling their primary responsibility to implement such right, “particularly with regard to nutrition” (art. 27(3)). Moreover, article 24(2)(c) of the CRC commits States to combat child malnutrition.

**Women’s rights.** Under article 12(2) of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), States have to ensure to women “adequate nutrition during pregnancy and lactation”.

**Deprivation of food and of means of subsistence.** Article 1(2) of the ICCPR and of the ICESCR states that “in no case may a people be deprived of its own means of subsistence”

In its General Comment 12, the Committee on Economic, Social and Cultural Rights (CESCR) clarified 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” (para. 6). According to the General Comment, the realization of the right to adequate food requires:

“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” (para. 8); and

the “accessibility” of adequate food, including both economic accessibility (“personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised”) and physical accessibility (i.e. physical access to food, including for vulnerable groups, such as children, elderly people, physically disabled, etc.) (paras. 8 and 13).

A distinction must be made between the right to adequate food and the right to be free from hunger. The right to be free from hunger ensures a minimum daily nutritional intake and the bare survival of the person. The right to adequate food goes beyond freedom from hunger to include also an “adequacy” standard (in terms of quality, quantity and cultural acceptability).

## **Obligations for States and non-State entities**

States are the duty-bearers under international human rights law. Article 2(1) of the ICESCR spells out the obligation of States “to take steps, individually and through international assistance and cooperation, ... with a view to achieving progressively the full realization of the rights recognized in the ... Covenant”. A similar norm is contained in article 11(2) of the Covenant with specific regard to the right to freedom from hunger, to the effect that States shall take measures, individually and through international cooperation. Under international law, States have both “progressive” and immediate obligations to realize the right to adequate food. State obligations may be classified in three categories: the obligation to respect, the obligation to protect and the obligation to fulfil. In turn, the obligation to fulfil includes an obligation to facilitate and an obligation to provide. This classification has been endorsed by the CESCR in its General Comment 12, as well as by scholars, and provides a useful analytical framework to consider obligations under all relevant branches of international law.

### **Progressive realization and immediate obligations**

The fundamental obligation of States under the ICESCR is to “take steps ... with a view to achieving *progressively* the full realization of the rights” (article 2(1), emphasis added). This concept was clarified by the CESCR in its General Comment 3: “the concept of progressive realization constitutes recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. ... Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. ... (The Covenant) imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard 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” (para. 9).

Furthermore, some State obligations under the Covenant are of immediate effect, namely:

The obligation not to discriminate in the exercise and enjoyment of all rights recognized under the Covenant, including the right to adequate food (ICESCR, arts. 2(2) and 3);

The obligation for States to implement the right to adequate food “to the maximum of [their] available resources” (ICESCR, Art, 2(1)); in this sense, the Covenant limits States’ discretion in allocating their resources, directing them to give due priority to the realization of the rights recognized in the Covenant;

The obligation to pursue the full realization of the right to adequate food “by all appropriate means” (ICESCR, art. 2(1)); therefore, while States have wide discretion in deciding what measures to take, a standard of “appropriateness” is established, which can be used by the CESCR when reviewing measures adopted by States parties (cf. General Comment 3, para. 4).

In addition, a State violates its obligations under the Covenant if it “fails to ensure the satisfaction of, at the very least, minimum essential level required to be free from hunger”, provided that this failure is due to unwillingness on the part of the State (rather than to inability linked to lack of resources) (General Comment 12, para. 17; cf. also General Comment 3, para. 10).

### **Obligation to respect**

The obligation to respect requires States not to take any measures that would result in preventing individuals from having access to adequate food. Indeed, the right to adequate food is primarily to be realized by right holders themselves through their economic and other activities. States have a duty not to unduly hinder the exercise of those (lawful) activities.

### **Obligation to protect**

The obligation to protect requires measures by the State to ensure that third parties (individuals, armed groups, enterprises, etc.) do not deprive right-holders of their access to adequate food. Under the obligation to protect, the State could be held liable for violations of the right to adequate food committed by non-State actors. Indeed, several judgments and reports issued by international human rights bodies (although with regard to human rights other than the right to adequate food) held States responsible “because of the lack of due diligence to prevent the violation [committed by non-State actors] or to respond to it”. With specific regard to the right to adequate food, the CESCR listed among the examples of violations the “failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others” (General Comment 12, paragraph 19).

### **Obligation to facilitate**

The obligation to facilitate requires States to adopt measures aimed at improving right-holders’ access to and utilization of resources and means to ensure their livelihood. This is exemplified by article 11(2) of the ICESCR, which reads: “the States Parties to the present Covenant [...] shall take [...] the measures [...] which are needed [...] 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 [...]”.

The obligation to facilitate also applies in natural and man-made emergency situations, for instance with regard to the facilitation of transit of humanitarian

consignments. In armed conflicts, international humanitarian law explicitly affirms that States have an obligation to grant free passage to humanitarian relief and to facilitate the work of the humanitarian agencies and the distribution of food aid

For facilitation measures that are not explicitly determined by international instruments, States have a wide margin of discretion as to which measures are the most appropriate. An example of possible facilitation activity in emergencies is the adoption of regulations permitting and promoting private trade in such a way that it can supply food to regions affected by food shortages, so as to complement inflows of food aid provided by the government or by international humanitarian agencies.

### **Obligation to provide**

The obligation to provide entails that the State, as a last resort, must provide food “whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal” (General Comment 12, para. 15). Emergency situations, because of their very nature, often entail a shift from the obligation to facilitate to the obligation to provide. The State may of course delegate the implementation of the obligation to provide to the local level, but it remains ultimately responsible for such provisions taking place.

Under refugee law, States have to grant refugees the same treatment as their nationals with regard to public relief and assistance (article 23 of the 1951 Convention Relating to the Status of Refugees) and any rationing system (article 20 of the same Convention).

There is a great variety of ways to implement the obligation to provide: gratuitous relief or work-for-food programmes; provision of food or of cash (in the latter case, measures to fulfil/provide can be coupled by measures to fulfil/facilitate the access of private trade to the affected region); etc.

**CONCERNS REGARDING RIGHT TO FOOD IN INDIA:** Based on various studies and information from official sources, the following general observations may be made.

Thanks to all-round development in agriculture, the Green Revolution, the foodgrains production of the country rose from 50 million tonnes in 1950-51 to around 211 million tonnes in 2001-02, with appreciable increase in the production of oilseeds, cotton, sugarcane, fruits, vegetables and milk. India is today self sufficient in foodgrains with a surplus of foodgrains. Non-cereal food items however, still show insufficiency in availability.

However, in the year 1999-2000, the calorie intake was 1626 kcal per day for the bottom 30% of population, a level much below the norm of 2400 calories in rural areas. Apart from prevalence of anemia due to iron and folic acid deficiency, in the vulnerable group of young children, and pregnant women, multiple nutritional problems coexist including inadequate intake of energy as well as of

micronutrients other than Vitamin A. The harmful long-term effects of malnutrition coupled with poor hygiene and lack of potable water, on pregnant women, the new-born, and children, are well-known.

There has been improvement in nutritional status; however, the percentage of rural children affected by malnutrition in 2000-01 was still about 47.7% of the total. Among women, undernourishment at the all-India level was 36 percent (1998-99).

Interstate variation in nutrition as well as access to food is considerable. There is also intra-household discrimination in distribution of food, in some areas at least, against the women and the children.

In hunger and poverty ratios, again, regional variations are sizeable. Less than 10 % of people are said to suffer from hunger (two square meals a day), but the percentage is much higher in poorer states like Bihar and Orissa. Rural poverty at all India level is reported at 26.10 %, but in three states, viz., Orissa, Bihar and Assam, it is over 40% and in three States (M.P., U.P. and West Bengal) it was above 30 %.

Incidence of poverty amongst SCs still continues to be very high with 36.25 % in rural areas and 38.47% in urban areas. In respect of Scheduled Tribes, the rate of decline in poverty is much lower, and the incidence of poverty among STs is 45.86% and 34.75% respectively in rural and urban areas.

The denial of the right to food is traceable to the large proportion – 92 % of the total workforce – which is engaged in the informal economy, which is characterized by low skills and productivity, low irregular incomes, child labour and bonded labour and other social and economic features common to the poor, compounded by lack of social security and protection under a legislative framework.

Most hungry people live in rain-fed farming areas, which are drought-prone and resource-stressed. Here agricultural productivity is low and risk is high.

## **GOVERNMENT AND FOOD SUPPLY**

The Public Distribution System has been in existence in India for more than five decades, and there are about 450,000 Fair Price Shops in the country. Targeted Public Distribution System (TPDS) was introduced w.e.f. June 1997. The total number of ration cards issued are 218 million, of which 67 million are for the BPL and nearly 10 million for the Antyodaya Anna Yojana. PDS offtake in 2002-03 was nearly 20 million tonnes against 12 million in 2000-01.

Apart from the PDS the other major schemes are food-for-work, Mid-day Meals, and ICDS.

It is widely known that the public schemes suffer from a number of problems of implementation, including under-utilization and diversion of stocks, discrimination

in distribution, absence of cards and FPS in several areas, irregular and late supply, over-charging, etc. In many cases, the poor lack the means even to purchase the PDS grains.

It appears overall that the efforts of the state to ensure food to those most in need in remote and backward regions in particular, are often untimely, or even fail to reach the targeted group. Food security issues need to be integrated with child and gender concerns. In rural areas there is need for employment-intensive investment.

Given the importance of food to a life with dignity and productivity, there is scope for critical interventions, such as monitoring, study of the working of schemes, training, and sensitization to the human rights angle in framing food and agriculture policy.