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## AT A GLANCE GUIDE

### THE RIGHT TO FOOD

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**Type:** Legal Guide

**Published:** 13 October 2011

**Last Updated:** 19 October 2011

**Keywords:** Right to Food, Socio-economic rights, International law, India

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## Introduction

This A4ID Legal Guide provides an introduction to the key sources for the human right to food under international law, and considers in overview the rights and obligations surrounding the right to food.

## What is the Right to Food?

### *UDHR*

The right to food originated as a human right within the framework of the 1948 Universal Declaration of Human Rights (“**UDHR**”).<sup>1</sup> The UDHR is a non-binding international legal instrument, but is viewed as part of customary international law. Article 25 of the UDHR enshrines the right to food as an element of the human right to an adequate standard of living.

#### **Article 25(1):**

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...

### *ICESCR*

The right to food under the legally-binding<sup>2</sup> 1966 International Covenant on Economic, Social and Cultural Rights<sup>3</sup> (“**ICESCR**”) encompasses two separate norms that make up Article 11: the right to adequate food (Article 11.1); and the fundamental right to be free from hunger (Article 11.2).

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<sup>1</sup> Introduced by General Assembly Resolution 217 (III) A,

[http://www.ohchr.org/EN/UDHR/Documents?UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents?UDHR_Translations/eng.pdf)

<sup>2</sup> 160 State Parties have accepted legally binding obligations by ratifying the ICESCR. (As at 22.09.11: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en))

<sup>3</sup> Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, available at <http://www2.ohchr.org/english/law/cescr.htm>.

## **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.

Monitoring the right to food:

- The CESCR

The Committee on Economic, Social, and Cultural Rights<sup>4</sup> (“**CESCR**”) is a body of independent experts that monitors the implementation of the ICESCR and publishes its authoritative interpretation of the ICESCR in General Comments.<sup>5</sup>

- The UN Special Rapporteur on the right to food (the “**Special Rapporteur**”)<sup>6</sup>

The Special Rapporteur is an independent expert appointed by the UN Human Rights Council who monitors and reports on the implementation of the right to food.

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<sup>4</sup> See further: <http://www2.ohchr.org/english/bodies/cescr>.

<sup>5</sup> E.g., CESCR, *General Comment 12: The right to adequate food*, (12 May 1999), Doc U.N. E/C.12/1999/5.

<sup>6</sup> See further: <http://www2.ohchr.org/english/issues/food/index.htm>.

- The Food and Agricultural Organisation<sup>7</sup>

The Food and Agricultural Organisation (“**FAO**”) is the specialised agency of the United Nations responsible for food and agriculture, and it is mandated to achieve food security.

### *Other International Instruments referring to the Right to Food*

- The 1974 Universal Declaration on the Eradication of Hunger and Malnutrition<sup>8</sup> recognises the right of every human to be free from hunger and malnutrition, and identifies the eradication of hunger as a common objective of the international community.
- The 1989 Convention on the Rights of the Child<sup>9</sup> protects the child’s right to food in the context of the right to life, survival and development, health, nutrition and an adequate standard of living.
- The Convention on the Elimination of All Forms of Discrimination against Women requires state parties to take measures to ensure the rights of women in rural areas, all of which are necessary for the enjoyment of the right to food by women.<sup>10</sup>
- Convention No. 169 on Indigenous and Tribal Peoples<sup>11</sup> of the International Labour Organisation (“**ILO**”) and the UN Declaration on the Rights of Indigenous Peoples<sup>12</sup> recognise that the realisation of indigenous people’s right to food depends on their access to and control of the natural resources of their ancestral lands.
- The Convention on the Rights of Persons with Disabilities<sup>13</sup> recognizes the right to food of persons with disabilities in the

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<sup>7</sup> <http://www.fao.org/>

<sup>8</sup> Adopted on 16 November 1974 by the World Food Conference convened under General Assembly resolution 3180 (XXVIII) of 17 December 1973:

<http://www2.ohchr.org/english/law/malnutrition.htm>.

<sup>9</sup> Adopted by General Assembly Resolution 44/25 of 20 November 1989:

<http://www2.ohchr.org/english/law/crc.htm>; see article 24.2(c).

<sup>10</sup> Convention on Elimination of All Forms of Discrimination against Women, adopted by General Assembly Resolution 34/180 of 18 December 1979:

<http://www2.ohchr.org/english/law/cedaw.htm>; see article 14.

<sup>11</sup> Adopted on 27 June 1989: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>; see articles 14.1 and 19.

<sup>12</sup> Adopted by General Assembly Resolution 61/295 on 13 September 2007:

<http://www.un.org/esa/socdev/unpfii/en/drip.html>; see articles 20 and 21.

<sup>13</sup> Adopted by General Assembly Resolution A/RES/61/106 on 13 December 2006:

<http://www.un.org/disabilities/convention/conventionfull.shtml>.

context of the right to health,<sup>14</sup> and the right to an adequate standard of living and social protection.<sup>15</sup>

## Interpretation of the Right to Food

*The right to adequate food as part of the right to an adequate standard of living: Article 11.1 ICESCR*<sup>16</sup>

The CESCR considers that the right to adequate food contains three essential elements:

**Availability:** Food should be available through the production of food or sale in markets and shops.

**Accessibility:**

- (a) *Economic:* Individuals should be able to afford food for an adequate diet without interfering with the enjoyment of other human rights or basic needs.
- (b) *Physical:* Food should be accessible to everyone, including all physically vulnerable individuals.

**Adequacy:** Food must be sufficient and adequate in quantity and quality.

*The fundamental right to be free from hunger: Article 11.2 ICESCR*

The CESCR considers that the right to be free from hunger requires that food be sufficient, in order to avoid physical deterioration, and that any food intake also forms a nutritionally adequate diet and is safe for human consumption.<sup>17</sup>

*Conclusion*

The right to be free from hunger is closely related to the right to life and as such is the only right expressly identified as “fundamental” in the ICESCR. In contrast to the fundamental right to be free from hunger, which is more pressing and immediate, the right to adequate food implies a progressive improvement of

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<sup>14</sup> Article 25(f).

<sup>15</sup> Article 28(1).

<sup>16</sup> See further the definitions provided by the CESCR in *General Comment 12: The right to adequate food*, (12 May 1999), Doc U.N. E/C.12/1999/5, paragraphs 6-8 and the First Special Rapporteur on the Right to Food in Ziegler, J, *Report by the Special Rapporteur on the Right to Food*, (7 February 2001), Doc. U.N. E/CN.4/2001/53, paragraph 14.

<sup>17</sup> CESCR, *General Comment 12: The right to adequate food*, (12 May 1999), Doc U.N. E/C.12/1999/5, paragraphs 14 and 17.

economic, political and social living conditions that will enable individuals to achieve food security, rather than the satisfaction of bare minimum needs.

## Obligations and Responsibilities surrounding the Right to Food

Like many other human rights, the right to food imposes three key obligations on state parties, to respect, protect (both negative obligations) and fulfil (a positive obligation):

**Respect:** This obligation is imposed on states, preventing them from arbitrarily taking away people's right to food, or making it difficult for people to gain access to food, such as by arbitrarily evicting or displacing people from their land.<sup>18</sup>

**Protect:** This requires states to ensure that private parties (companies or individuals) do not deprive other individuals of access to adequate food, and obliges states to implement a legislative and institutional framework appropriate for the protection of the right to food.<sup>19</sup>

**Fulfil:** This incorporates both an obligation to facilitate (e.g. pro-actively strengthening people's access to – and use of – resources and means of ensuring their livelihoods, through training or agrarian reform) and an obligation to provide when food insecurity is threatened (e.g. providing basic necessities for those unable to provide for themselves).<sup>20</sup>

Responsibilities set out in Article 2<sup>21</sup> ICESCR:

### Article 2, ICESCR

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 recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

<sup>18</sup> Ziegler, J, *Report by the Special Rapporteur on the Right to Food*, (16 March 2006), Doc UN E/CN.4/2006/44, paragraph 22.

<sup>19</sup> Ziegler, J, *Preliminary Report to the General Assembly*, (23 July 2001), Doc UN A/56/210, paragraph 28.

<sup>20</sup> CESCR General Comment No. 12, paragraph 15.

<sup>21</sup> Available at <http://www2.ohchr.org/english/law/cescr.htm>.

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.

The key responsibilities of state parties to the ICESCR are as follows:

- taking steps – states should seek to achieve the full realisation of the right to food, to the maximum of their available resources. Even where a state has inadequate resources overall, it still has an obligation to seek to ensure the fulfilment of the right to food;<sup>22</sup>
- non-regression – states cannot allow the existing level of fulfilment of the right to food to deteriorate unless there are strong justifications for it;<sup>23</sup>
- minimum subsistence – states are subject to the core obligation to provide a minimum essential level of the right to food for everyone under its jurisdiction in order to ensure their fundamental right to freedom from hunger,<sup>24</sup> and must “...demonstrate that every effort has been made to satisfy, as a matter of priority, those minimum obligations.”;<sup>25</sup>
- non-discrimination – states have an obligation not to discriminate against persons in the application of legislation or programmes providing food.<sup>26</sup>

## Case Study: Right to Food litigation in India

In April 2001, the People’s Union for Civil Liberties (“**PUCL**”) filed a petition in the Supreme Court of India which led to the landmark case *PUCL vs. Union of India and others*<sup>27</sup> on the right to food in India. The petition essentially argued that Central

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<sup>22</sup> CESCR, *General Comment 3: The Nature of States Parties’ Obligations*, (14 December 1990), contained in document E/1991/23, paragraph 11

<sup>23</sup> Ziegler, J, *Report by the Special Rapporteur on the Right to Food*, (16 March 2006), Doc UN E/CN.4/2006/44, paragraph 26.

<sup>24</sup> CESCR, *General Comment 12: The right to adequate food*, (12 May 1999), Doc U.N. E/C.12/1999/5, paragraph 14

<sup>25</sup> CESCR, *General Comment 3: The Nature of States Parties’ Obligations*, (14 December 1990), contained in document E/1991/23, paragraph 10.

<sup>26</sup> CESCR, *General Comment 3: The Nature of States Parties’ Obligations*, (14 December 1990), contained in document E/1991/23, paragraph 5; CESCR, *General Comment 12: The right to adequate food*, (12 May 1999), Doc U.N. E/C.12/1999/5, paragraph 18.

<sup>27</sup> Writ Petition [Civil] No. 196 of 2001

and State Governments violated the right to food, implied in the fundamental “right to life” enshrined in Article 21 of the Indian Constitution, by failing to respond to the drought situation at that time. The petition highlighted two specific aspects of state negligence: the breakdown of the public distribution system (“PDS”), and the inadequacy of drought relief works.

The petition requested that the Supreme Court issue orders directing the government to:

- (a) provide immediate open-ended employment in drought-affected villages;
- (b) provide “gratuitous relief” to persons unable to work;
- (c) raise food entitlements under the PDS; and
- (d) provide subsidised food grain to all families.

The scope of the litigation has increased significantly, now covering issues including the implementation of food-related schemes and general issues of transparency and accountability.

Supreme Court hearings have been held at regular intervals since April 2001.<sup>28</sup> Although the final judgment is still awaited, significant interim orders have been passed by the Supreme Court, for example directing the Central and State Governments to:

- introduce cooked mid-day meals in all primary schools;<sup>29</sup>
- provide 35 kgs of grain per month at highly subsidized prices to 15 million destitute households;<sup>30</sup>
- double resource allocations for Sampoorna Grameen Rozgar Yojana (“SGRY”) (India's largest rural employment programme, now superseded by the Employment Guarantee Act);<sup>31</sup> and
- universalise the Integrated Child Development Services (“ICDS”) to provide additional nutrition and healthcare to children of up to 6 years of age.<sup>32</sup>

The Supreme Court has also appointed “Commissioners” to monitor the implementation of all orders relating to the right to food. The Commissioners are

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<sup>28</sup> The Right to Food Campaign, “Supreme Court Orders on the Right to Food: A Tool for Action”, available at <http://www.righttofoodindia.org/case/case.html>.

<sup>29</sup> Supreme Court Order of 20 April 2004.

<sup>30</sup> Supreme Court Order of 28 November 2001.

<sup>31</sup> Supreme Court Order of 2 May 2003 and National Rural Employment Guarantee Act (NREGA 2005).

<sup>32</sup> Supreme Court Order of 13 December 2006.

empowered to enquire about any violations of these orders and to demand redress.<sup>33</sup>

The interim orders are far from being fully implemented. Generally, the efforts of the State are insufficient and often fail to reach the targeted group. The SGRY order is routinely violated in most states and there has been little progress on the expansion of the ICDS. Ultimately, the realisation of the Right to Food requires much more than interim orders. Nevertheless, they do provide legal safeguards for some important aspects of the Right to Food.<sup>34</sup>

## Conclusion

The key sources containing the right to food under international law are Article 25 UDHR and Article 11 ICESCR. The content of the obligations surrounding the right to food have been explored by numerous commentators, notably the CESCR, FAO and the Special Rapporteur.

Whilst under international law states are obliged to respect, protect and fulfil the right to food, the practical difficulties in achieving this human right are demonstrated by prevalent food insecurity across the world, and ongoing litigation in countries such as India.

## References/Further Information

CESCR, *General Comment 12: The right to adequate food*, (12 May 1999), Doc U.N. E/C.12/1999/5.

CESCR, *General Comment 3: The Nature of States Parties' Obligations*, (14 December 1990), contained in document E/1991/23

FAO and OHCHR Factsheet No. 34 – The Right to Adequate Food:  
<http://www.fao.org/righttofood/publi10/FactSheet34en.pdf> (September 2010)

Reports of the Special Rapporteur on the right to food (2001, 2006, 2008), available at: <http://www2.ohchr.org/english/issues/food/index.htm>

Useful websites

- First Special Rapporteur on the right to food:  
<http://www.righttofood.org/>

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<sup>33</sup> [http://www.righttofoodindia.org/comrs/comrs\\_intro.html](http://www.righttofoodindia.org/comrs/comrs_intro.html)

<sup>34</sup> The Right to Food Campaign, "Supreme Court Orders on the Right to Food: A Tool for Action", available at <http://www.righttofoodindia.org/case/case.html>.

- Current Special Rapporteur: <http://www.srfood.org/>
- FAO on the right to food: <http://www.fao.org/righttofood/>
- Right to food in India: <http://www.righttofoodindia.org/index.html>