

The Voluntary Guidelines on the right to food:

# Commitment to a human rights approach

*The Voluntary Guidelines on the human right to food provide a further instrument of international law in the fight against world hunger. The Guidelines promise to be a powerful new weapon in combating malnutrition. They forge an alliance between development policy and human rights in the struggle for the right to food. The «human rights approach» has become the new watchword in the fight against hunger.*

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The spiritual father of the right to food was US President Franklin D. Roosevelt who, in his «Four Freedoms» speech of 1941, postulated the freedom from need, along with freedom of religion, freedom of speech and freedom from fear. When the United Nations was founded four years later, the protection of human rights became enshrined in international law – in the preamble and in Articles 1 No. 3, 13 b), 55 c) and 56 of the UN Charter. The UN General Assembly's Universal Declaration of Human Rights followed in 1948. While initially non-binding in nature, the Declaration has since been incorporated in large measure into customary international law; in Article 25 it declares that every person has «the right to a standard of living adequate for the health and well-being of himself and his family, including food...».

Originally, the United Nations had intended to adopt a human rights covenant that would be legally binding. However, this project was prevented by the change in political climate which culminated in the Cold War. The world was now divided into two blocs around the remaining world powers, the USA and the USSR, which were diametrically opposed to one another ideologically. This opposition was especially manifested in the two powers' divergent understandings of human rights: While the western world gave absolute priority to civil and political rights (CP rights), economic, social and cultural rights (ESC rights) emphasize equality and participation making them more easily compatible with the communist doctrine of the Eastern Bloc.

Given this situation, the United Nations resolved to adopt two separate human rights covenants, one for CP rights and one for ESC rights. However, it took until 1966 – twenty years later – for the final version of the two treaties to be completed. Another ten years were needed before these human rights covenants came into force in 1976. Since then, protection of the right to adequate food is expressed in Article 11, Paragraph 1 of the International

Covenant on Economic, Social and Cultural Rights (ESC Covenant): «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... .»

Indeed, a host of other instruments of international law in addition to the ESC Covenant have been adopted in the context of the United Nations and its specialized agencies to grant the right to food; however, the ESC Covenant remains the only international treaty that guarantees this right in universal and comprehensive terms. Of course, the right to food is guaranteed only in those states that are party to the Covenant – though more than 150 countries now recognize the ESC Covenant.

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## World food problems

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The incorporation of the right to food in international law has not, however, brought about any lasting improvement in the world food situation. As with most human rights, there continues to be a considerable gap between ideal and reality. The enforcement of human rights continues to be dogged by ideological differences. On account of these insurmountable obstacles the United Nations has concentrated on carrying out its own development work largely separate from efforts to enforce human rights. But this development work has not achieved the desired success against malnutrition. The assistance given has failed to bring lasting improvement to the dire situation experienced in the countries concerned. Indeed,

**Since the World Food Summit, world hunger has been seen as a legal problem. This paradigm shift has generated pressure on states to meet their associated responsibilities.**

the charitable work undertaken in the form of development endeavours has, on occasion, increased levels of dependency and passivity in these countries. The task of creating suitable structures and introducing processes that would stabilize countries from the inside has proven to be a tough one – instead, corruption and indebtedness have often become rampant in the poorest developing countries.

### A return to human rights

At the start of the 1990s the world was ripe for a renaissance of human rights. Whereas human rights policy had been obstructed for decades by the ideological blocs, the end of the Cold War had a revitalizing effect. The Governments present at the Vienna Human Rights Congress in 1993 unanimously reaffirmed the indivisibility and interdependence of human rights. What this signalled above all was that, at long last, the field of human rights was finally rid of ideology. The Office of the High Commissioner for Human Rights took up its work in Geneva that same year. Human rights increasingly became the focal point of efforts undertaken by the United Nations, individual states and civil society. A certain interplay existed between this process and the process of reform taking place within the United Nations. The community of states declared that respect for and the strengthening of human rights would now be the guiding principle of their

activities, particularly where development work was concerned. The right to adequate food was one of the first human rights to benefit from this development, as the shift in focus made it incumbent upon the UN's Food and Agriculture Organization (FAO) to gear its work towards human rights. This was FAO's first step towards a human rights approach.

The 1996 World Food Summit in Rome finally provided the necessary breakthrough for the right to food, with the issue now having arrived on the agenda of a summit conference. For the first time, world hunger was seen as a legal problem, and with this change in thinking states came under legal pressure to face up to their responsibilities in this field. However, the normative meaning of the right to adequate food had not been fully outlined at this point. In 1999 the UN Committee on ESC Rights published General Comment 12, which provided a universal and comprehensive description of what the right to food entails. While this document was exemplary in delineating the goal of the right to food, the path towards this goal still remained unclear.

### Significance of the human rights approach

In 2004 a signpost towards the right to food appeared in the form of the Voluntary Guidelines on the right to adequate food. The human rights approach incorporated into the Guidelines had been elaborated

by UNICEF and UNDP in the 1990s, though not without a considerable measure of often vehement internal resistance. Like all organizations operating under the auspices of the United Nations, the FAO is also directly bound to the UN Charter and thus committed to the realization of human rights.

The new approach gives conventional development work a new perspective: Programs and policies gain the stronger character of rights, needy people are now holders of rights and benevolent states become guarantors of those rights; charitable organizations advance to advocates of human rights. However, when former «beneficiaries» become acting subjects – people with entitlements – more than just the viewpoint undergoes change.

### Legal impact of the human rights approach

The human rights approach gives development policy a conceptual framework which, from the legal aspect, is based on the standard of human rights laid down in international law and serves to promote human dignity. The Voluntary Guidelines describe in detail how the right to food is to be put into practice in national policies and laws. In summarizing, it can be said that the Guidelines offer states support in creating appropriate structures and processes for implementing the right to food. The fundamental legal principles of human rights are very much in evidence throughout.

## The concept of human and ESC rights

**Human rights** refer to those rights that every single human being possesses by nature; the purpose of these rights is to protect human dignity.

**ESC rights** refer to economic, social and cultural human rights. Unlike civil and political (CP) rights, which are concerned with protection, ESC rights are first and foremost rights of equality and participation intended to establish economic, social and cultural standards.

#### Development of the right to food:

1941	«4 Freedoms» speech by Roosevelt
1945	Founding of the United Nations
1948	Universal Declaration of Human Rights
1966	International Covenant on Economic, Social and Cultural Rights (ESC Covenant)
1976	ESC Covenant comes into force
1993	Human Rights Congress in Vienna, establishment of the Office of the High Commissioner for Human Rights
1996	World Food Summit
1999	General Comment 12
2004	Voluntary Guidelines

#### Human rights principles

1. Universality and inalienability
2. Equality and non-discrimination
3. Indivisibility and interdependence of human rights
4. Responsibility through participation and transparency
5. Rule of law

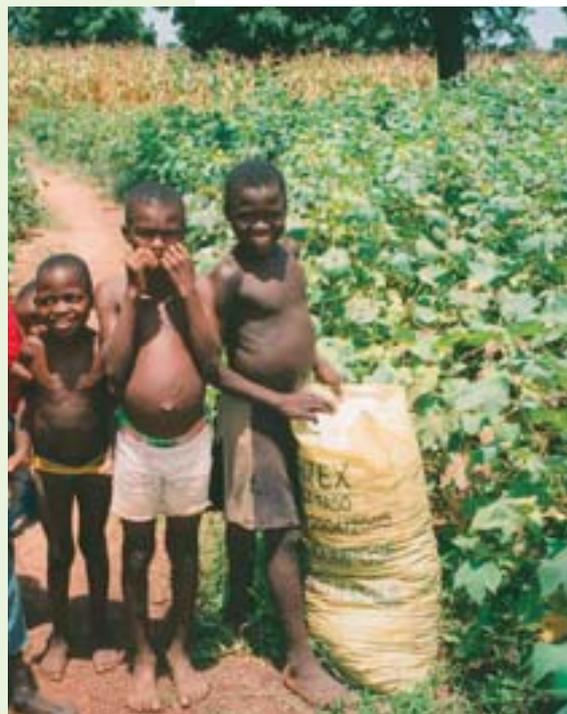


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**One aim of the Voluntary Guidelines is to make the right to food enforceable.**

The basic norms of equality and non-discrimination demand that each person in a society be equal before the law and that all kinds of discrimination are forbidden. In relation to implementing the right to food, this means that all people must have equal access to adequate food. Any instances in which people are disadvantaged by the law must be eliminated immediately, and the state must implement appropriate measures to counter any discrimination in practice. The identification of vulnerable groups, as set out in Guideline 13, is an important strategy in the struggle for equality and non-discrimination.

The basic rule of non-divisibility and interdependence of human rights means that the realization of each human right is inextricably linked to the realization of all the others. Human dignity can be achieved only when all the dimensions of human rights merge into one another. Many parts of the Voluntary Guidelines uphold this principle, for example when they affirm the importance of protecting other ESC rights such as the right to health, water, adequate housing, culture and education, as well as civil and political rights.

The principle of responsibility demands that states undertake certain obligations. Only when states assume legal responsibility can human rights be enforced effectively. As a means of developing a sense of duty in relation to their own conduct, the countries concerned must provide information. Governments will act responsibly only once they have made their processes of decision making and distribution transparent, thereby offering civil society more options for influencing political and societal decisions.

Finally, the principle of the rule of law should lay the legal foundations for the creation of reliable structures. Competent, unbiased and independent institutions must be created that are capable of resolving legal disputes. For the right to food to be realized, violations of rights must be subject to judicial challenge and the effectiveness of the legal system guaranteed. The Voluntary Guidelines, especially in Guideline 7, describe the normative structures required in each instance.

Thus the principles of the human rights approach entail not just rethinking the theory, but also changes in practical development work. The Voluntary Guidelines offer an exemplary guide to the concrete measures that may be used to implement the human rights approach.

**Challenges and threats**

Most states and international organizations currently declare human rights a priority that cuts across all others, professing their commitment to the human rights approach. The approach requires a high level of coherence. Wherever possible, all actors involved in development work and in human rights institutions need to coordinate their efforts. The United Nations and its organizations should take a leading role in this. However, international

financial institutions such as the World Bank and the World Trade Organization also need to be involved in human rights work. There needs to be a shared understanding of human rights across the various policy domains both within and between individual states. Training (see Guideline 11) must be provided in the various organizations, institutes and official bodies. Only when the actors are versed in the human rights approach can they put it into practice in their day-to-day work. Just one remark to conclude: Not all states recognize ESC rights – and therefore the right to food – as international law. Foremost among these states is the USA, where charitable works are seen as an elementary component of Christian compassion: The notion of needy people possessing enforceable rights threatens to damage a self-perception based on charitable giving. Thus, there is a need to examine to what extent human rights approaches may have a counterproductive impact in certain circumstances. At least the USA did not speak out explicitly against the Guidelines, which were adopted in a process of consensus; in the end, then, the human rights approach was confirmed.

**Next steps and outlook**

The Voluntary Guidelines have to be translated into reality over the next few years. Appropriate strategies are required if implementation is to be made easier for the developing countries. One important component of this is that the human rights approach must be integrated at all levels of development cooperation. States must set up monitoring systems with appropriate indicators and benchmarks in order to guarantee transparency and responsibility, as provided for in Guideline 17. Development cooperation should specifically support and reward the setting up of monitoring procedures and thereby cultivate good governance, participation and non-discrimination. Perhaps the Voluntary Guidelines will have a wider impact on other human rights and other UN organizations. One possibility would be a set of voluntary guidelines on the right to health or the right to education: the Voluntary Guidelines on the right to food could serve as a blueprint. A universal human rights instrument could also be used, describing the general requirements of development work based on a human rights approach and the impact of such work on specific human rights. Indeed, in keeping with the doctrine of the indivisibility of human rights, the FAO Voluntary Guidelines already take account of a host of other human rights in addition to the right to food.