

Comment

Human Rights and the Struggle Against Hunger: Laws, Institutions, and Instruments in the Fight to Realize the Right to Adequate Food

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“Hunger is exclusion. Exclusion from the land, from income, jobs, wages, life and citizenship. When a person gets to the point of not having anything to eat, it is because all the rest has been denied. This is a modern form of exile. It is death in life. . . .”¹

-Josué de Castro

I. INTRODUCTION

A. The Status Quo

The Benet community has been living traditionally for hundreds of

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1. Josué de Castro, former President of the Executive Committee of the Food and Agriculture Organization of the United Nations Executive Committee from 1952 to 1956, as quoted in Food & Agric. Org. of the U.N. (FAO), *Right to Food Case Study: Brasil*, at 9, U.N. DOC. IGWG RTFG/INF 4/APP1 (June 2004), available at <http://www.fao.org/righttofood/kc/downloads/vl/docs/AH193.pdf>.

years in Mountain Elgon, in Uganda. The semi-nomad tribal people feed themselves through hunting, gathering forest fruits, and producing handicrafts. In the 1990s a state project, supported by the tourism industry, declared this territory a natural reserve. The community was not included in the project and measures were not taken to ensure its livelihood; on the contrary, community members were evicted from their lands at least two times, and restricted to very small plots of land under precarious living conditions. These state actions left the Benets without any means to survive. Today, their access to food and water is qualitatively, quantitatively, and culturally inadequate. Moreover, their access to the spiritual places they used to enjoy is restricted. Even though the national court has issued a judgment of consent, which orders the competent authorities to restore the lands to the community and to adopt emergency measures to ensure their survival,² nothing has been done since the order was adopted. The natural reserve is now available for tourists, who enjoy the wonderful nature, while the Benets die of hunger. The Food First Information and Action Network International (FIAN International) has addressed the issue with diverse authorities at the national and international level, but possible solutions have not been implemented and the issue has not been dealt with beyond the exchange of emails among public officers. Since a FIAN International delegation made a field visit, in March 2009, at least two children have died due to malnutrition.

That is just one example of how public policies, be they national or international, can directly interfere with the capacity of people to feed themselves adequately, when no rights-based impact assessment is carried out and the relevant reparation measures are not put in place as required by international human rights law. In Asia and Latin America, there are a number of similar situations. FIAN International has documented more than 450 cases of violations of the Right to Adequate Food (RTAF) in more than sixty countries in its twenty-four years of existence. Analyzing a set of 110 cases in five countries on different continents, FIAN International identified that the vast majority of the cases involved the loss of access of the victims—mostly small-scale and landless farmers—to productive resources (land, water, seeds, etc.) along with the loss of the capacity to adequately feed themselves and their families. Most of the violations involved the breach of the obligation to respect or protect the RTAF—that is, they were either the direct result of governmental actions and policies or of the lack of protection by the government of the victims' rights against the actions of economically powerful private third parties.³ Frequently,

2. Consent Judgment and Decree, *Uganda Land Alliance, Ltd. v. Uganda Wildlife Auth.*, Miscellaneous Cause No. 0001 of 2004 (High Court of Uganda at Mbale) (describing settlement between the parties with favorable terms for Benet Community). FIAN International sent a letter, on March 13, 2009, to the Ugandan Minister of Tourism, Trade, and Industry urging the Government of Uganda to duly respect the High Court Judgment; to stop the eviction; to respect the right to housing and food of the Benets; and to stop the harassment and violence against the representatives of the group. Letter from Flavio Valente, Sec'y Gen., FIAN International, to Janat Mukwaya, Minister of Tourism, Trade and Industry, Uganda (Mar. 13, 2009) (on file with authors).

3. Michael Windfuhr, *Experiences in Case Related Right to Food Work: Lessons Learned for*

investment policies promoting mega-development projects such as hydroelectric dams, expansion of the production of agrofuels or mining, among others, are the cause of massive land evictions that forcefully marginalize communities. They lose their livelihoods and become defenseless without access to the means they traditionally used to feed themselves. When they are able to have access to other food products, these frequently do not meet their nutritional or cultural food requirements, and many times the food products themselves are contaminated. With this lack of food begins the deterioration of the quality of their lives and the lives of their families and communities. They suffer every day from hunger and indignity.⁴ This situation generates the potential for conflict and violence, further exacerbating the poor living conditions of those involved. In many cases, the only way out of this desperate situation is to emigrate.⁵

Food, for human beings, is much more than a commodity. It is a basic necessity of life, and an integral part of cultural identity and diversity. Its quality and the way people access it are also strongly linked with basic human values such as dignity, freedom and respect. At the same time, decisions about what, where, how, and by whom food is produced have serious implications not only for the issue of malnutrition, but also for the environment, the climate, and human health. We are certainly much more than what we eat, but the way our food is produced influences who we are and the future of humankind. This is the reason to recognize adequate food as a human right. The right to adequate food is much more than having access to food assistance; it is the right to have access to the productive resources or the income needed to feed oneself and one's family adequately, or, at a minimum, to have access to social security mechanisms.⁶ Nevertheless this does not seem to be the current understanding of food in the world order. Food and all the natural resources necessary for food production (land, water, seeds, and

Implementation, in 2 FOOD AND HUMAN RIGHTS IN DEVELOPMENT: EVOLVING ISSUES AND EMERGING APPLICATIONS 331, 339-41 (Eide & Kracht eds., 2007).

4. For more information, read the following reports produced by FIAN International: SOFIA MONSALVE SUÁREZ ET AL., FIAN INTERNATIONAL, AGROFUELS IN BRAZIL: REPORT OF THE FACT-FINDING MISSION ON THE IMPACTS OF PUBLIC POLICIES ENCOURAGING THE PRODUCTION OF AGROFUELS ON THE ENJOYMENT OF THE HUMAN RIGHTS TO FOOD, WORK AND THE ENVIRONMENT AMONG THE PEASANT AND INDIGENOUS COMMUNITIES AND RURAL WORKERS IN BRAZIL (2008), *available at* <http://www.fian.org/resources/documents/others/right-to-food-in-brazil-summary/pdf>; FIAN INTERNATIONAL ET AL., THE RIGHT TO FOOD IN GUATEMALA: FINAL REPORT OF THE INTERNATIONAL FACT-FINDING MISSION (2010), *available at* <http://www.fian.org/resources/documents/others/the-right-to-food-in-guatemala/pdf>.

5. The Special Rapporteur on the right to food, *Report of the Special Rapporteur on the right to food to the General Assembly*, at 15-21, U.N. Doc. A/62/289.22 (Aug. 22, 2007), *available at* <http://www.righttofood.org/new/PDF/A62289.pdf>.

6. Flavio Luis Schieck Valente, *Segurança Alimentar e Nutricional: Transformando Natureza em Gente*, in DIREITO HUMANO À ALIMENTAÇÃO: DESAFIOS E CONQUISTAS 103, 105-06 (2002); Econ. and Soc. Council, Comm. on Econ., Soc. and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11)*, ¶¶ 6-13, U.N. Doc. E/C.12/1999/5 (Dec. 12, 1999), *available at* <http://www1.umn.edu/humanrts/gencomm/escgencom12.htm> [hereinafter CESCR, *General Comment 12*].

biodiversity, among others) are treated mainly, if not solely, as commodities by the hegemonic political and economic forces in the world.

Considering food a commodity makes access to food easier for those who control the means of production, such as land, or have the income or wealth to acquire goods; that is, for the most well-to-do groups in a society. But when food and natural resources are primarily seen as a potential source of profit, this is also conducive to speculation, land-grabbing, and massive forced evictions. From the free market perspective, these groups have a privileged position over traditional peasants, pastoralists, and fishing communities, which are frequently placed in situations of vulnerability in economic and legal struggles.⁷ Despite the fact that they still represent the bulk of food production, especially for local consumption,⁸ small-scale food producers frequently lack the necessary tools and means to legally defend their interests and rights. They do not have the means to attract politicians to defend their interests. They are usually not adequately informed in accessible ways or in their mother tongues about their rights and the existing administrative and legal recourses potentially available to them. Finally, they do not have channels through which they can influence the design, implementation, and monitoring of public policies.

There are a number of regulatory and institutional responses that have attempted to provide remedies for the problems of hunger and malnutrition, as well as for unfair and inequitable power structures, in resource management and in the food system. Nevertheless if one looks at the results, with more than one billion people suffering from hunger and malnutrition in 2009, it appears that these responses have not been effective. Indeed, one could state that all these institutions and norms are a distraction in a system whose central goal is to serve the interests of a minority, and that they thereby yield ongoing exploitation and marginalization of the less powerful groups of society.

B. The Human Rights Framework

To tackle this conflicting reality from a human rights approach has an added value. Fundamentally, human rights are grounded in the notion of human dignity. This means that promoting the dignity of each person must be seen as a goal in itself and that people should not be used as instruments to achieve someone else's goals.⁹ To understand adequate food

7. The Special Rapporteur on the right to food, *Agribusiness and the right to food: Report of the Special Rapporteur on the right to food to the Human Rights Council*, U.N. Doc. A/HRC/13/33 (May 22, 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-33.pdf>.

8. In the case of Brazil, for instance, small-scale farmers produce seventy to eighty percent of the basic staples consumed by the population, despite the fact that they occupy less area than the capital- and chemical input-intensive larger agro-industrial farms. Guilherme Cassel, *Um Novo Modelo de Desenvolvimento Rural*, Portal Do Desenvolvimento Agrário, Oct. 14, 2009, http://www.mda.gov.br/portal/artigosdoministro/item?item_id=3637612 (last visited Apr. 14, 2010).

9. FABIO KONDER COMPARATO, *A AFIRMAÇÃO HISTÓRICA DOS DIREITOS HUMANOS* 21 (2006).

as a human right is to recognize that the state has legal obligations toward each and every person, and that it should promote equity when making policy decisions by giving priority to disadvantaged and marginalized people. This view is contemplated in the United Nations Committee on Economic, Social and Cultural Rights General Comments on the rights to health,¹⁰ water,¹¹ work,¹² and social security,¹³ and in the Voluntary Guidelines on the right to adequate food, which include specific guidelines on vulnerable populations.¹⁴ These Comments also include general legal obligations: a) to adopt measures toward the realization of the right, with all available resources and as soon as possible, and b) not to discriminate and to promote international cooperation. They also include specific legal obligations: to respect, to protect, and to fulfill the right, as well as to allocate resources necessary to comply with these obligations.¹⁵ Moreover, to value food as a human right means to apply principles of participation, transparency, empowerment, non-discrimination, and the rule of law. Such human rights obligations and principles constitute an important framework which guides national and international policy decisions toward an agricultural and food system that can guarantee dignity for producers and consumers, while also providing all the conditions for a healthy, diversified, and culturally adequate diet. These obligations also contribute to the building of a socially, economically, environmentally sustainable, and equitable society for different peoples and social groups, while prioritizing the most disadvantaged and marginalized. Moreover, by tackling food issues as a human right, states, individually or in the international community, are obliged to: a) provide effective monitoring mechanisms, b) assess if public policies related to the right to food are consistent with the states' obligations and principles, and c) make available effective recourse mechanisms which allow people to bring violations, or threats of violations, of their rights to judicial or quasi-judicial bodies.

From a sociopolitical point of view, the main source of all human rights is the continued global struggle against oppression and discrimination and toward life with dignity. It was through such struggle that legal instruments such as the French Constitution, the United States Constitution and the Universal Bill of Rights were created, agreed upon by states, and institutionalized. It is also through the continued struggle and mobilization

(quoting EMMANUEL KANT, *GRUNDLEGENG ZUR METAPHYSIK DER SITTEN* 51 (Felix Meiner ed., Verlag 1994) (1785)).

10. CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶ 43(f), U.N. Doc. E/C.12/2000/4 (Aug. 12, 2000) [hereinafter CESCR, *General Comment 14*].

11. CESCR, *General Comment No. 15: The Right to Water*, ¶ 37(f), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter CESCR, *General Comment 15*].

12. CESCR, *General Comment No. 18: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, ¶ 31(c), U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

13. CESCR, *General Comment No. 19: The Right to Social Security (Art. 9)*, ¶ 59(b), U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008) [hereinafter CESCR, *General Comment 19*].

14. See FAO, Working Group on the Right to Adequate Food, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, ¶¶ 13.1-13.4 (Nov. 2004), available at <http://www.fao.org/righttofood/publi09/y9825e01.pdf>.

15. See CESCR, *General Comment 12*, *supra* note 6, ¶¶ 14-20.

of people that international human rights law has been and continues to be progressively strengthened and delineated.

The adoption of the Universal Declaration of Human Rights in 1948 and the two main human rights treaties—on civil and political rights and economic, social and cultural rights in 1966—can be directly linked to the indignant international reaction of humankind against the abuses committed during World War II. They were inspired by the concept of the four freedoms proclaimed by U.S. President Franklin Roosevelt in 1941: freedom of speech, freedom of creed, freedom from want, and freedom from fear. In the same speech, he defined freedom as “the supremacy of human rights everywhere.”¹⁶

Human rights law is an international social pact that establishes clear limits for the exercise of power on the part of states and public authorities. It also requires that the state protect human beings against abuses of power on the part of economically, politically, socially, or religiously powerful third parties, and that they enact regulations against potential risks.

C. Some Conflicts with Other Regulatory Frameworks in the Application of the Human Rights Framework

The majority of states in the world have ratified the major international human rights treaties. Many of them have also recognized these rights in their constitutions, with national legislators, for example, accepting the Universal Declaration on Human Rights. In reality, however, the implementation of human rights to protect the marginalized and disadvantaged does not live up to these legal acknowledgements. In many cases, states contradict international human rights law through their laws, policies, and administrative acts or omissions, giving priority to, or submitting themselves to the interests of, the more powerful groups in the society and neglecting their international and domestic obligations. This has consequences in their own territories and abroad.¹⁷

In some cases, noncompliance with human rights law has its source in the conflicts between various rights; for instance, between the right to private property and the right to an adequate standard of living. Although in these conflicts, from a human rights approach, a decision should be reached in light of the principles of proportionality and reasonableness, giving priority to the most marginalized and ensuring protection to the core content of the rights,¹⁸ they are frequently solved by reaffirming the superior position of the most powerful in the society.

Another constellation of conflict in the effective application of human rights law has its source in the contradictions caused by the fragmentation of regimes in international law—for example, when human rights are in

16. 87 CONG. REC. 47 (1941).

17. FIAN INTERNATIONAL, EXTRATERRITORIAL STATE OBLIGATIONS: INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 4-7 (2004), available at <http://www.fian.org/resources/documents/others/extraterritorial-state-obligations/pdf>.

18. CESCR, *General Comment No. 3: The Nature of States Parties Obligations*, ¶ 10, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter CESCR, *General Comment 3*].

conflict with environmental law, international trade law or peace-keeping and anti-terrorist law. Although, from a human rights perspective, these kind of conflicts should be solved by giving priority to human rights law or through ensuring solutions are consistent with human rights, in reality these kinds of conflicts are usually solved to the benefit of the most powerful groups and to the detriment of peoples in situations of vulnerability.

D. The Need for Adequate Governance Structures Which Apply and Enforce Human Rights Law

In analyzing the main characteristics of human rights law and looking into some of the conflicts in its application, it is clear that, even if human rights are an adequate tool to work for a more equitable society, the will to change the unfair status quo is clearly missing. A symptom of this lack of will is the gap existing between existing human rights commitments and the concrete reality in which such commitments are not complied with and in which people continue to be subject to hunger and malnutrition. Therefore, there is a need to work for the effective implementation of human rights law, bringing reality closer to the legal premises which contain human rights obligations. In order to close this gap, human rights law must have primacy in the legal pyramid. To achieve this goal, it is necessary to have, on the one hand, a governance system that effectively implements existing human rights standards to fill the gap between an adequate legal framework and an inequitable reality, and, on the other hand, adequate channels for social control.

Especially relevant to closing this gap is the work of social movements that bring out the struggle voices of the most marginalized, usually neglected by governments and international organizations, to demonstrate where the problems really are. The work of human rights organizations is also important. As a result of their expertise and their contact with victims of violations, they can make efforts to ensure that governance structures respect human rights, not just in paper and words, but also in their actions, and that they employ human rights oriented solutions to systemic causes of human rights violations. These tools can effectively and progressively replace the existing imbalance of power with concrete improvement for the living conditions of people.

II. THE GOVERNANCE OF THE FOOD SYSTEM AND PUBLIC POLICIES

A. The Human Right to Adequate Food in International Human Rights Law

The right to adequate food can be found in Article 25 of the Universal Declaration of Human Rights, in the context of the right to a standard of living adequate for health and well being, together with the right of

mothers and children to special care and assistance.¹⁹

This right was further elaborated in Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR). In the ICESCR the realization of the right to adequate food is linked to the obligation of states to implement national and international policies, including agrarian reform to improve methods of production, extension, and nutrition to “ensure an equitable distribution of world food supplies in relation to need.”²⁰

The right to adequate food is also incorporated in some of the special treaties, such as the Convention on the Rights of the Child²¹ (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²² In both of these conventions there is a strong focus on nutrition and the rights to social security, health, and water.

The decision of the Food and Agriculture Organization of the United Nations (FAO) member states present in the 1996 Rome World Summit to call upon the U.N. human rights institutions to clarify the possible ways in which the right to adequate food could accelerate the promotion of food security for all and the fight against hunger²³ led to the issuance of General Comment No. 12 by the U.N. Committee on Economic, Social and Cultural Rights (CESCR) in 1999. It also led, in 2004, to the approval of the Voluntary Guidelines for the promotion of the progressive realization of the right to adequate food in the context of national food security by the 187 FAO member states.²⁴

CESCR General Comment No. 12 defines the nature, details, and contents of the right to adequate food and identifies the respective state obligations, presenting some recommendations toward the realization of the right. General Comments are considered non-binding soft law which orient governments on how to implement the binding provisions of the ICESCR.²⁵

The nature of the legal obligations of States parties in relation to the RTAF, as with all other economic, social and cultural rights, are set out in

19. Universal Declaration of Human Rights art. 25, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

20. International Covenant on Economic, Social and Cultural Rights art. 11, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966), *available at* <http://www.wfrrt.org/humanrts/instree/b2esc.htm>.

21. Convention on the Rights of the Child art. 49, G.A. Res. 44/25, art. 49, 44 U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Nov. 20, 1989), *available at* <http://www1.umn.edu/humanrts/instree/k2crc.htm>.

22. Convention on the Elimination of All Forms of Discrimination Against Women art. 12 G.A. Res. 34/180, U.N. GAOR, 34th Sess., 107th plen. mtg., U.N. Doc A/34/46 (Dec. 18, 1979), *available at* <http://www.un-documents.net/a34r180.htm>.

23. CESCR, *General Comment 12*, *supra* note 615.

24. See FAO, *supra* note 14 (creating a set of guidelines later adopted by the 127th session of the FAO council); FIAN INTERNATIONAL, THE FAO VOLUNTARY GUIDELINES FOR THE RIGHT TO FOOD: LASTING SOLUTIONS AGAINST HUNGER 2 (2005), *available at* http://www.fao.org/righttofood/kc/downloads/vl/docs/AH269_en.pdf.

25. Office of the U.N. High Commissioner for Human Rights (OHCHR), *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process*, ¶ 116, U.N. Doc. HRI/MC/2008/4 (June 5, 2008), *available at* <http://www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.4.doc>.

Paragraph 2 of the ICESCR, and were addressed by CESCR General Comment No. 3.²⁶ The CESCR General Comment No. 12 details states' RTAF levels of obligations as follows:

[T]he obligations to *respect*, to *protect* and to *fulfil*. In turn, the obligation to *fulfil* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil* (*facilitate*) means the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, 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, States have the obligation to *fulfil* (*provide*) that right directly. This obligation also applies for persons who are victims of natural or other disasters.²⁷

The Voluntary Guidelines represent a set of recommendations to governments and states, agreed upon by the 187 state members of FAO themselves, on what specific strategies, policies, programs, and initiatives should be adopted towards the realization of the different dimensions of the RTAF.²⁸ As the title indicates, they are voluntary guidelines on how the States parties of the ICESCR should meet their obligations under the Covenant. Over the last decade, several countries have enacted national food security legislation addressing the right to adequate food and have explicitly included the RTAF in their constitutions.²⁹ The Committee on World Food Security has also adopted a work plan, which is based on the right to adequate food and promotes the implementation of the guidelines of the RTAF at the national level.³⁰

This set of documents points clearly to the fact that the promotion and protection of the right to adequate food is much more than, and must not be reduced to, the provision of emergency food assistance to those living in acute or chronic situations of hunger and food deprivation. According to these documents, the promotion and protection of the right to adequate food implies that national and international public policies must primarily

26. CESCR, *General Comment 3*, *supra* note 18.

27. CESCR, *General Comment 12*, *supra* note 615, ¶ 5.

28. ANA-MARIA SUAREZ-FRANCO ET AL., FIAN INTERNATIONAL, SCREEN STATE ACTION AGAINST HUNGER! HOW TO USE THE VOLUNTARY GUIDELINES ON THE RIGHT TO FOOD TO MONITOR PUBLIC POLICIES? 9 (2007), *available at* <http://www.fian.org/resources/documents/others/screen-state-action-against-hunger/pdf>.

29. Interview with Anonymous, Right to Food Unit, FAO (Feb. 2010) (regarding ongoing study "Constitutional and Legal Protection of the right to food around the World").

30. FAO, Comm. on World Food Sec., *Reform of the Committee on World Food Security: Final Version*, ¶ 4, U.N. Doc. CFS:2009/2 Rev.2, (Oct. 14, 15, 17, 2009), *available at* <ftp://ftp.fao.org/docrep/fao/meeting/017/k3023e3.pdf>.

respect and protect the capacity of human beings to feed themselves. This means respecting, protecting, and facilitating access to an adequate diet through direct access to productive resources (land, water, seeds, etc.), jobs, and adequate income or social security programs. Food assistance is certainly a relevant tool in fighting hunger, but it must be seen as a last resort; the problem must be approached from a much broader perspective.

B. The Existing Institutions Before the Declaration of the "Food Crisis"

Looking at the international organic structure that governed food issues until 2008, one could identify a number of decision-making bodies which directly or indirectly affected the realization of the right to food. In fact, in the U.N. human rights system, decisions or recommendations pertaining to the right to food and related rights are made mainly by the Human Rights Council, the Advisory Committee to the Council, the Committee on Economic, Social and Cultural Rights, and the Special Rapporteur on the right to food. Other treaty bodies, for example the CEDAW or the Committee on the Convention of the Rights of the Child, can also adopt decisions which influence the implementation of the right to food.

Decisions and projects implemented by specialized agencies, including the FAO, the World Food Program (WFP), the International Fund for Agricultural Development (IFAD), the World Health Organization (WHO), U.N. Children's Fund (UNICEF), the World Bank, the International Monetary Fund (IMF), or the World Trade Organization (WTO) (which, though of a different status, is also international in character), can have a positive impact on the realization of the right to food. The consistency of the work of most of these organizations with human rights law is questionable. Moreover, the work between them seems not to be very coordinated or transparent.³¹ Even if the institutions belonging to the human rights system are valuable, and although all the mentioned bodies have the potential to promote positive change in the hunger situation, it seems that they have not achieved improvement in the realization of the right to food as foreseen in the Millennium Development Goals and other international documents. Additionally, some of them have systematically promoted policies or projects which have made, and continue to make, the situation of hunger in the world even worse.³²

31. See Special Rapporteur on the right to food, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶¶ 24-32, U.N. Doc. A/HRC/7/5 (Jan. 10, 2008), available at <http://www.righttofood.org/new/PDF/CHR2008.pdf>; Special Rapporteur on the right to food, *Preliminary Report of the Special Rapporteur of the Commission on Human Rights on the right to food*, ¶¶ 72-87, U.N. Doc. A/56/210 (July 23, 2001), available at <http://www.righttofood.org/new/PDF/A56210.pdf>.

32. See, e.g., PEOPLE'S FOOD SOVEREIGNTY NOW!, CIVIL SOCIETY ORGANIZATIONS FORUM PARALLEL TO WORLD SUMMIT ON FOOD SECURITY, WORKING GROUP: WHO DECIDES ABOUT FOOD AND AGRICULTURE?, 1-2 (2009), available at http://peoplesforum2009.foodsovereignty.org/preparatory_documents.

C. The Food Crisis of 2008: New Crisis or Resurgence of a Chronic Problem?

Hunger and malnutrition once more made headlines as food riots erupted in more than thirty countries in early 2008.³³ There certainly has been an aggravation of food and nutritional insecurity since 2007, with the number of undernourished surpassing the one billion mark for the first time since FAO started collecting statistics on hunger, in the early 1970s.³⁴ However, this crisis is not new for the more than 840 million people who have constantly been subjected to hunger over the last thirty years, millions of whom died of malnutrition and associated diseases, or had their quality of life severely affected by the consequences of malnutrition.

The steep increase in food prices, especially since 2007, has been identified as the central reason for the new crisis, and, in turn, the main causes for the food price increase were marked increases in oil prices, increased demand for food in Asia, harvest failures linked to climate change, accelerated increase in production of agrofuels, and speculation in the commodity futures market.³⁵ The most relevant reasons for the price hikes, according to some institutional sources, were increased demand for agrofuels, especially linked to policy decisions by the U.S. and E.U. governments to progressively replace fossil fuels with agrofuels, and financial speculation on food.³⁶

FIAN International and other authors note that this is not a new crisis, but rather the aggravation of a chronic situation resulting from poorly devised international and national public policies. Under the influence of the Washington Consensus and the WTO-led trade liberalization process, these policies in fact continuously increase hunger and malnutrition.³⁷ According to civil society organizations and social movements, these

33. For example, see Carl Mortished, *Already We Have Riots, Hoarding, Panic: The Sign of Things to Come?*, TIMES ONLINE, Mar. 7, 2008, <http://www.timesonline.co.uk/tol/news/environment/article3500975.ece>; and *Riots, Instability Spread as Food Prices Skyrocket*, CNN.com, Apr. 14, 2008, <http://www.cnn.com/2008/WORLD/americas/04/14/world.food.crisis/>.

34. See FAO, *Hunger*, <http://www.fao.org/hunger/en/> (last visited Mar. 25, 2010) (providing hunger statistics for the increase in the number of undernourished in the world and in the different countries and regions of the world).

35. IFPRI, *HIGH FOOD PRICES: THE WHAT, WHO, AND HOW OF PROPOSED POLICY ACTIONS 3-4* (2008), available at <http://www.ifpri.org/sites/default/files/publications/foodpricespolicyaction.pdf>.

36. See *id.* at 4, 6; Donald Mitchell, The World Bank Development Prospects Group, *A note on Rising Food Prices 16, 17* (Policy Research Working, No. 4682, 2008), available at http://www-wds.worldbank.org/external/default/WDSCContentServer/IW3P/IB/2008/07/28/000020439_20080728103002/Rendered/PDF/WP4682.pdf.

37. See CHRISTOPHER GOLAY, *THE GLOBAL FOOD CRISIS AND THE RIGHT TO FOOD 5* (2008), available at http://www.cetim.ch/en/documents/report_3.pdf; Coopération Internationale Pour le Développement et la Solidarité (CIDSE), *Food Price Crisis Highlights the Need for Real Reform 2* (2008), available at http://www.cidse.org/uploadedFiles/Publications/Publication_repository/cidse_statement_food_crisis_sept08_EN.pdf; Sign-on letter Int'l Planning Comm. for Food Sovereignty, Civil Society Statement on the World Food Emergency (2008), available at http://www.foodsovereignty.org/public/terrapreta/22-05-2008_CSOfoodemergency-en.pdf.

policies have severely hindered the capacity of developing countries to regulate their own agricultural public policies, and have progressively reduced access of the most affected people to productive resources, jobs, income, and social security.³⁸

Several studies and authors document the negative impact of the policy recommendations included in the structural adjustment programs on national agriculture of developing countries in Africa and Latin America, within the framework of the Washington Consensus. The reduction of financial support to small farmers, extinction of food stock facilities, closing of agricultural extension, reduction of social programs, privatization of services, and reduction of import tariffs, all in the name of a smaller and more efficient state, severely reduced the capacity of local small farmers to continue producing and to compete with agricultural imports from more developed countries.³⁹ The productive capacity of small farmers in the developing world was further decreased by other international public policy decisions, such as:

- reduction of the agricultural support component in Official Development Assistance from twenty percent to approximately five percent in the last thirty years;⁴⁰
- continued subsidies to farmers in developed countries and the dumping of their products in Global South markets with extremely negative impact on small-scale farmers;⁴¹
- support for the expansion of the agro-industrial export model;
- intensified commoditization and concentration at all food system levels (inputs, marketing, retail, etc.).

The recent food price increases hit much harder in the developing countries that had their public and national agricultural sectors severely weakened by the international and national policies imposed under the umbrella of the Washington Consensus, and later by international agricultural trade liberalization under the WTO. These nations had no capacity to buffer the effect of the price increases, because they had become

38. FIAN International et al., *"The World Doesn't Need More of the Same Medicine": Joint Declaration Addressed to Governments on the World Food Crisis* (2008), available at <http://www.fian.org/resources/documents/others/the-world-doesnt-need-more-of-the-same-medicine/pdf>; see also FIAN.org, List of Signatories to Joint Declaration Addressed to Governments on the World Food Crisis, available at <http://www.fian.org/resources/documents/others/the-world-doesnt-need-more-of-the-same-medicine/?searchterm=Joint%20declaration> (last visited Mar. 29, 2010).

39. Special Rapporteur on the right to food, *Interim Report of the U.N. Special Rapporteur on the right to food*, ¶¶ 40-43, U.N. Doc. A/60/350 (Dec. 9, 2005), available at <http://www.righttofood.org/new/PDF/A60350.pdf>; see also CIDSE & INST. FOR AGRIC. & TRADE POL'Y (IATP), *GLOBAL FOOD RESPONSIBILITY: THE EUROPEAN UNION AND THE UNITED STATES MUST CHART A NEW PATH* 8-9, 13 (2009), available at http://www.cidse.org/uploadedFiles/Publications/Publication_repository/CIDSE%20IATP%20Global%20Food%20Responsibility%20paper.pdf.

40. CIDSE & IATP, *supra* note 39, at 14.

41. Armin Paasch, *World Agricultural Trade and Human Rights – Case Studies on Violations of the Right to Food of Small Farmers*, in *THE GLOBAL FOOD CHALLENGE – TOWARDS A HUMAN RIGHTS APPROACH TO TRADE AND INVESTMENT POLICIES* 40-49 (Sophia Murphy & Armin Paasch eds, 2009), available at <http://www.fian.org/resources/documents/others/the-global-food-challenge/pdf>.

heavily dependent on imports and had no national stocks or access to regional food stocks at reasonable prices.

It is worrisome that, in response to the price increases, several rich countries with limited availability of land for agriculture have, in order to produce food for their own use, decided to purchase large tracts of land in developing countries in partnership with multinational corporations based in their territories. The immediate impact of this increased demand for land has been more forceful evictions, increased land prices, and the slowing of agrarian reform processes in some countries.⁴²

This analysis must be taken into account, and measures be taken to guarantee that the voice of the social movements and of the people are heard and their participation is guaranteed in the search and implementation of solutions to overcome the scourge of hunger and malnutrition.

D. The Proposed Responses to the “Food Crisis”

The food riots in more than thirty countries, and the questioning by many governments of the capacity of the international globalized food market to guarantee food security at the national level, prompted several responses from the international community, intended to improve the governance of the food security system.

- In April 2008, the U.N. Secretary General instituted the U.N. High Level Task Force on the Global Food Crisis. This task force originally incorporated a broad set of U.N. specialized agencies as well as the Bretton Woods institutions and the WTO. In July 2008, the HLTf produced a Comprehensive Framework for Action (CFA).
- The Group of Eight (G8), under the initiative of the government of France, proposed in June 2008 the creation of a Global Partnership on Agriculture, Food Security and Nutrition (GPAFS), including significant involvement of the private sector.
- A set of governments linked to the Group of Seventy Seven (G77), in coordination with FAO, proposed the revitalization of the Committee on World Food Security (CFS), in the context of FAO reform process, and with the objective of transforming CFS into the most relevant intergovernmental platform for Food Security.
- Many international and intergovernmental High Level Conferences and Summits dealing with the issues of food security and agriculture were held during the years of 2008 and 2009, and the debate on how to prioritize or harmonize the three above-mentioned proposals permeated all of them.

A close analysis of the final declarations and resolutions from these

42. For more information, see GRAIN, BRIEFING: SEIZED! THE 2008 LAND GRAB FOR FOOD AND FINANCIAL SECURITY (2008), available at <http://www.grain.org/briefings/?id=212>.

meetings shows that the diagnosis of the causes of the crisis and the recommendations on how to overcome them differ little. Most of the recommendations point to the need for better global governance, more coordination, more accountability, and more investments in the agricultural sector of developing countries, with an emphasis on support to small-scale farmers as a way to increase their food security and stimulate the local economy. These recommendations are placed, however, side by side with proposals to continue supporting policies that have led to the present situation. At the same time, these proposals do not make clear how to guarantee that the set of new and old measures will effectively work to the benefit of those most affected. The seriousness of the commitment of the developed countries to overcome the crisis was also put in doubt when, after one year, the real funds allocated to overcome the crisis did not reach twenty percent of the twenty billion dollars pledged. At the same time, these governments had already spent trillions of dollars to save bankrupt insurance companies, auto companies, and banks in their efforts to offset the financial crisis.

However, the most important debate, parallel to and concurrent with the meetings, was the political dispute between the proposal of the G8 and that of the G77. The G8 and its allies defended the argument that governance of food security should be at the level of a multi-stakeholder mechanism, heavily controlled by developed countries and with the strong involvement of the private sector. In contrast, the G77 proposed that the central governance mechanism should be given to an intergovernmental body, such as CFS, in which each country has one vote.

From the human rights field and social movement's perspective, the first important confrontation was with the HLTF. The initial composition of the HLTF excluded the Office of the High Commissioner on Human Rights (OHCHR), and included the Bretton Woods Institutions and the WTO, which were identified by human rights organizations and civil society organizations as part of the problem. The content and the nature of the CFA were also strongly questioned.⁴³ The fact that the CFA was produced without consultation with governments, and contained a broad set of recommended policies, many of which were identified as contributing to the crisis, was seen as unacceptable. After this initial confrontation, the HLTF included the OHCHR in its composition and the rights-based language in its discourse, and adopted a facilitating role in the debate over the broader governance issue.

The second and biggest confrontation took place between social movements and the proposed GG\PAFS. After the launch of the idea by the G8 in 2008, there was an attempt to launch or legitimize the GPAFS in the High Level Conference on Food Security, organized by the Government of Spain, with the support of the G8 and of the UN, in

43. FIAN INTERNATIONAL, TIME FOR A HUMAN RIGHT TO FOOD FRAMEWORK OF ACTION: FIAN POSITION ON THE COMPREHENSIVE FRAMEWORK OF ACTION OF THE HIGH LEVEL TASK FORCE ON THE GLOBAL FOOD CRISIS, (2008), *available at* <http://www.fian.org/resources/documents/others/time-for-a-human-right-to-food-framework-of-action/pdf>.

Madrid, in January 2009. The meeting was organized in such a way that privileged the participation of country delegations that were in favor of the proposal. At the same time, the representation of civil society and social movements, especially food producers, was very limited. Due to strong opposition to the idea by a few governments from Africa and Latin America, from the small but vocal civil society representation, and from FAO, the goal of legitimizing the GPAFS was not achieved.

The CFS had been, since the onset of the FAO reform in 2005, under the threat of becoming extinct or having its political role decreased, because the industrialized countries understood that there was no reason to maintain a forum with the mandate to discuss food security when most of the related relevant decisions were made somewhere else in the U.N. These countries believed the FAO should concentrate on providing technical assistance to governments in its areas of competence. The aggravation of the food crisis in 2008, and the results of the High Level Conference of June 2008, led the 34th Session of the CFS, in October 2008, to decide:

[T]o redefine the CFS' vision and role to focus on the key challenges of eradicating hunger; expanding participation in CFS to ensure that voices of all relevant stakeholders are heard in the policy debate on food and agriculture; adapt its rules and procedures with the aim to become the central United Nations political platform dealing with food security and nutrition; strengthening its linkages with regional, national and local levels; and supporting CFS discussions with structured expertise through the creation of a High Level Panel of Experts (HLPE) so that the decisions and the work of the CFS are based on hard evidence and state of the art knowledge.⁴⁴

The process of revitalization of the CFS gained strength with the establishment, in early 2009, of a broadened CFS contact group, which incorporated the active participation of civil society organizations and social movements, including the La Via Campesina, to discuss the CFS reform proposal. The final document was approved by the CFS in October 2009, reaffirmed by the World Food Summit of November 2009, and approved at the FAO Conference.

The unanimous approval, by 191 FAO state members, of the new CFS vision, mission, composition, and instruments, represents a breakthrough in terms of governance in the U.N. system and at the same time strengthens the role of governments in the global governance of food and nutritional security. It also launches the possibility of implementing this within the framework of promoting the RTAF with increased participation of different stakeholders, and with improved accountability mechanisms.

The main highlights of the proposal represent the result of the political scrimmages that occurred in the prior two years, and are not the end point of these disputes. The states in the revitalized CFS document:

44. FAO, *supra* note 30.

- Affirm the relevance of the HLTF as a necessary but transient U.N. coordination mechanism, and take notice of the CFA as an important input into the proposed Global Strategic Framework for Food Security and Nutrition to be developed by the CFS;
- Recognize the need for a broader Global Partnership for Agriculture, Food Security and Nutrition, and decide to create an independent U.N. High-Level Panel of Experts on Food Security and Nutrition, to better inform CFS plenary decisions, as proposed by the original G8 GPAFS proposal;
- Decide that the revitalized CFS must be the most relevant intergovernmental policy body in food security and nutrition must be at the center of the GPAFS, having a broader range of active participants, and must “strive for a world free from hunger where countries implement the voluntary guidelines for the progressive realization of the right to adequate food in the context of national food security”;⁴⁵
- Reaffirm that governments are responsible for decision making, guarantee an “unprecedented level and quality of participation . . . for civil society, with particular attention to organizations representing small food producers, poor urban consumers, women and other key constituencies,” as recognized in one of the preparatory documents of the Civil Society Organization Forum parallel to the World Food Summit, 2009;⁴⁶
- Establish that the CFS cannot limit itself to an annual session, but must carry a continuum of inter-sessional activities, and promote participatory and improved policy coordination at the regional and national level; and
- Decide the CFS should immediately fulfill the following roles: a) coordination at a global level, b) policy convergence, and c) support and advice to countries and regions; additionally and gradually taking on additional roles such as: coordination at national and regional levels, promoting accountability and sharing best practices at all levels, and developing a Global Strategic Framework for food security and nutrition.⁴⁷

Important as well was the reaffirmation of the relevance of the revitalization of the CFS as a central tool to face and overcome the existing food and nutritional crises in the world by the World Summit on Food

45. *Id.* at 2. The report also states:

The CFS is and remains an intergovernmental Committee in FAO. The reformed CFS as a central component of the evolving Global Partnership for Agriculture, Food Security and Nutrition will constitute the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner and in support of country-led processes towards the elimination of hunger and ensuring food security and nutrition for all human beings. *Id.*

46. See PEOPLE'S FOOD SOVEREIGNTY NOW!, *supra* note 32.

47. See FAO, *supra* note 30, ¶¶ 5, 6.

Security. The Summit also established the following Five Rome Principles for Sustainable Global Food Security that should form the basis for state commitments and actions,⁴⁸ underpinned by the reaffirmation and commitment to promote the right to adequate food:⁴⁹

Invest in country-owned plans, aimed at channeling resources to well designed and results-based programmers and partnerships.

Foster strategic coordination at national, regional and global level to improve governance, promote better allocation of resources, avoid duplication of efforts and identify response-gaps. . . .

Strive for a comprehensive twin-track approach to food security that consists of: 1) direct action to immediately tackle hunger for the most vulnerable and 2) medium and long-term sustainable agricultural, food security, nutrition and rural development programmes to eliminate the root causes of hunger and poverty, including through the progressive realization of the right to adequate food. . . .

Ensure a strong role for the multilateral system by sustained improvements in efficiency, responsiveness, coordination and effectiveness of multilateral institutions. . . .

Ensure sustained and substantial commitment by all partners to investment in agriculture and food security and nutrition, with provision of necessary resources in a timely and reliable fashion, aimed at multi-year plans and programmes.⁵⁰

E. The Role of Social Movements, CSOs, Human Rights Institutions and Organizations in the Process

FIAN International understands that human rights law and instruments are tools at the service of humankind for the protection and promotion of human dignity and for moving toward a more equitable and sustainable society at the international and national level. Human rights law must prevail over international, regional, bilateral, and national laws and agreements. Therefore, international, regional, and national governance must be informed by, fully based on, and coherent with human rights principles and laws. This proposed rights-based governance is not a panacea that will automatically solve all injustices, inequities, and conflicts.

48. FAO, World Summit on Food Security, Nov. 16-18, 2009, *Declaration of the World Summit on Food Security*, ¶¶ 3, 7.1, 7.2, WSFS 2009/2 (2009) available at http://www.fao.org/fileadmin/templates/wsfs/Summit/Docs/Final_Declaration/WSFS09_Declaration.pdf.

49. *Id.* ¶ 16.

50. *Id.* ¶ 9-41.

But it provides the only framework known to and created by humankind that allows for moving forward with processes that take into account the diversity of interests, cultures, and biases, and has the capacity to protect people, minorities, and sometimes majorities against abuses of power by the state and other powerful social, political, economic, and religious third parties.

The process leading to the present international food security and nutrition governance configuration reflects, to a certain extent, in the opinion of the authors, how international and national civil society organizations, social movements, and human rights organizations have been intensely involved in the questioning of international and national public policies related to food and nutritional security, especially after the finalization of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994, the creation of the WTO in 1995, and the World Food Summit in 1996.

The negative impact on the food and nutritional security of peoples resulting from the international public policies implemented under the auspices of the Washington Consensus, and led by the IMF, the World Bank, and the WTO, has been strongly denounced by civil society organizations over the last twenty years. This movement was significantly strengthened with the creation of La Via Campesina in 1993.

La Via Campesina was created by peasant organizations from all over the world and is defined as “the international movement of peasants, small- and medium-sized producers, landless, rural women, indigenous people, rural youth and agricultural workers.”⁵¹ La Via Campesina is the most important global peasant and small-scale food producer movement in defense of peasant rights and food sovereignty. At the same time, it is the organizational tool of the small-scale food producers of the world against the massive evictions, the impoverishment, and the destruction of national small-scale agriculture by the above-mentioned set of policies. Policies that have destroyed the capacity of developing countries to regulate and protect their national agriculture, have promoted dumping of agricultural surplus produced in developed countries, the fast expansion of agribusiness and other development projects at the cost of small-scale farmer evictions, with no adequate redress or reparation, and have promoted patenting of seeds under private control.

The central political banner of La Via Campesina has been the promotion of food sovereignty, defined as the:

RIGHT of peoples, countries, and state unions to define their agricultural and food policy without the “dumping” of agricultural commodities into foreign countries. Food sovereignty organizes food production and consumption according to the needs of local communities, giving priority to production for local consumption. . . . Food sovereignty and sustainability are a higher

51. See What is La Via Campesina?, <http://viacampesina.org/en/index.php> (follow “Organisation” hyperlink) (last visited Apr. 12, 2010).

priority than trade policies.⁵²

The food sovereignty concept was launched and consolidated at the Civil Society Forum on Food Security, in 1996, which gathered more than two thousand representatives of civil society organizations and social movements from all over the world in parallel to the World Food Summit.⁵³ The same Civil Society Forum decided that civil society should pursue a parallel strategy towards the strengthening of the promotion of the RTAF. As a result of that, the Civil Society Forum launched a draft Code of Conduct on the Right to Adequate Food in 1997,⁵⁴ which by 2002 already had the support of more than eight hundred civil society organizations, and was used as a lobbying tool in the elaboration of both General Comment 12 by the CESCR and the Voluntary Guidelines on the Right to Adequate Food.

The advances observed in the incorporation of the rights-based approach and in the strengthened civil society participation are, to a great extent, a result of the strong alliance built among the civil society organizations, social movements, and human rights organizations around the defense of the banner of food sovereignty and the promotion of the right to adequate food. All the resolutions of the civil society meetings carried out since 1995, and from 2000 on with the facilitation of the International Planning Committee for Food Sovereignty (IPC), reaffirmed the commitment of civil society with the promotion of the two issues.⁵⁵

F. The Role of U.N. Human Rights Systems

The active involvement of human rights organizations in the promotion of the RTAF has also contributed to the advancement of the discussions in the clarification of the obligations of states and in the progressive recognition of the food sovereignty concept as a relevant tool for the promotion of the right to adequate food, among other rights. Beyond the elaboration by the CESCR of General Comment 12 on the right to adequate food, which served as a fundamental input into the elaboration of the Voluntary Guidelines on the RTAF, the Committee has tackled collaterally the issue of the right to food in its General Comments on the rights to health, water, social security, and non-discrimination.⁵⁶ Moreover, the CESCR has included specific recommendations regarding the national

52. See *id.* for full explanation of food sovereignty.

53. For more information on the history of the International Planning Committee for Food Sovereignty, see History of the IPC, <http://www.foodsovereignty.org/new/history.php> (last visited Mar. 29, 2010).

54. The elaboration of the Code of Conduct was coordinated by FIAN International, World Alliance for Nutrition and Human Rights (WANAHR) and Institute Jacques Maritain. See *Código de Conduta Internacional sobre o direito humano à Alimentação*, in Valente, *supra* note 6, at 187, 187-205.

55. For more information see the IPC website, *supra* note 5153.

56. See CESCR, *General Comment 14*, *supra* note 10; CESCR, *General Comment 15*, *supra* note 11; CESCR, *General Comment 19*, *supra* note 13; CESCR, *General Comment 20: Non-Discrimination in Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

implementation of the right to food in its Concluding Observations to specific states.⁵⁷ Also the Office of the OHCHR and the previous U.N. Special Rapporteur on the right to food, Jean Ziegler, and his team, provided expert input into work of the Intergovernmental Working Group. This working group was created under the auspices of the FAO Council to elaborate the Voluntary Guidelines on the RTAF, which were finally unanimously approved by the state members of FAO in 2004.

Jean Ziegler produced several reports orienting governments on the implementation of the Voluntary Guidelines⁵⁸ and on the relation of food sovereignty⁵⁹ to human rights law, and its implications for state obligations. More recently, Ziegler, as a member of the Human Rights Council Advisory Committee, has issued a background document⁶⁰ on peasant farmers and the right to food, in which he documents the systematic violations suffered by small-scale farmers, fishers and other food-producing social groups, in particular women, and highlights the “Declaration of Rights of Peasants—Women and Men”⁶¹ elaborated by La Via Campesina, with the support of FIAN International in 2009. On the basis of this document, the Human Rights Advisory Committee has approved a preliminary report on the theme,⁶² which annexes the La Via Campesina declaration and recommends that the Human Rights Council further detail the rights of peasants.⁶³

These initiatives certainly strengthen the voice of civil society, especially the claim of social movements and small-scale food producers,

57. The concluding observations are issued by the CESCR after analysis of the periodic report by the different States, and parallel reporting by other relevant social actors, such as social movements, civil society organizations, etc., and their implementation will be monitored in the next reporting event. For an example, please see the observation for India, which refers to the right to adequate food in paragraphs 28, 68, and 69. CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: India*, U.N. Doc. E/C.12/IND/CO/5 (May 2008), available at <http://www2.ohchr.org/english/bodies/cescr/cescrs40.htm>.

58. Special Rapporteur on the right to food, *Economic, Social and Cultural Rights: the Right to Food*, ¶¶ 27-33, report submitted to the U.N. Commission on Human Rights, U.N. Doc. E/CN.4/2005/47 (Jan. 24, 2005), available at <http://unispal.un.org/unispal.nsf/0/2808702D166702EA85256FEB006B3995>.

59. Special Rapporteur on the right to food, *Economic, Social and Cultural Rights: the Right to Food*, ¶¶ 24-34, submitted to the Economic and Social Council, U.N. Doc. E/CN.4/2004/10 (Feb. 9, 2004), available at <http://unispal.un.org/unispal.nsf/0/BCFFFF2CC84AE9BC85256E2B00685371>.

60. U.N. Human Rights Council, Advisory Comm., *Peasant Farmers and the right to food: a History of Discrimination and Exploitation*, U.N. Doc. A/HRC/AC/3/CRP.5 (Aug. 4, 2009) (prepared by Jean Ziegler), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/advisorycommittee/A.HRC.AC.3.CRP.5.pdf>.

61. See *id.* at 66 (discussing LA VIA CAMPESINA, DECLARATION OF RIGHTS OF PEASANTS – MEN AND WOMEN (2009), available at <http://viacampesina.net/downloads/PDF/EN-3.pdf>).

62. U.N. Human Rights Council, Advisory Comm., Drafting Group on the Right to Food, *Study: Discrimination in the Context of the right to food*, U.N. Doc. A/HRC/AC/4/2 (Jan. 15, 2010), available at <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/session4/documentation.htm> (follow “A/HRC/AC/4/2” hyperlink).

63. U.N. Human Rights Council, Advisory Comm., *Advanced Unedited Version of a Preliminary Study: Discrimination in the Context of the right to food* (Jan. 29, 2010), available at <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/recommendation4-3.doc>.

the groups most affected by food and nutritional insecurity, to have the right to participate in the policy decisions that directly affect their lives and livelihoods, and to which they can bring their expertise as actors directly involved in the process.

However, more related to the recent discussion on the aggravation of the food crisis and its causes, to the revitalization of the CFS and related governance issues, and to the challenges which lie ahead of us, we must recognize the huge contribution of the new U.N. Special Rapporteur on the right to food, Olivier de Schutter, who replaced Jean Ziegler in 2008. Less than one month after he was in office, he moved that the Human Rights Council hold a Special Session in May 2008 on “[t]he negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by soaring food prices,” the first special session of the Council on Economic, Social and Cultural Rights.⁶⁴ The tone of the final resolution of the session was set by the interventions of the High Commissioner Louise Arbour,⁶⁵ the Special Rapporteur,⁶⁶ and civil society organizations.⁶⁷ It pointed to the need to tackle the root structural causes of the crisis, recommended that, prior to implementation, states evaluate the human rights impact of proposed policies, and requested that the Special Rapporteur closely follow the development of the situation.

The Special Rapporteur on the right to food issued several reports⁶⁸ in which he analyzes in detail the causes of the crisis, identifies the main challenges presented by the crisis, and presents recommendations for states and intergovernmental organizations on how to tackle the root causes. He also produced special written contributions to the different international events that discussed the food crisis, and participated actively in the process of revitalizing the CFS. His input strongly influenced the outcome of the CFS process,⁶⁹ the Food Summit, and the FAO Conference, and some

64. Vice President and Rapporteur, Human Rights Council, *Report of Human Rights Council on its Seventh Special Session*, U.N. Doc. A/HRC/S-7/2 (July 17, 2008), available at <http://www.unhcr.org/refworld/category/reference/unhrc/sessionalreport,49997aea1f,0.html>.

65. Louise Arbour, U.N. High Commissioner on Human Rights, Address at the Seventh Special Session of the Human Rights Council (May 22, 2008), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8335&LangID=E> (last visited Mar. 29, 2010).

66. Olivier De Schutter, U.N. Special Rapporteur on the right to food, Statement to the Human Rights Council (May 22, 2008), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8477&LangID=E> (last visited Apr. 12, 2010).

67. U.N. Human Rights Council, *Joint Written Statement Submitted by Europe-Third World Centre, a Non-Governmental Organization in General Consultative Status, ActionAid International, Habitat International Coalition (HIC), International Federation of Human Rights Leagues (FIDH), Non-Governmental Organizations in Special Consultative Status, and Foodfirst Information and Action Network (FIAN), a Non-Governmental Organization on the Roster* U.N. Doc. A/HRC/S-7/NGO/3 (May 21, 2008), available at <http://daccess-dds-ny.un.org/doc/undoc/gen/g08/135/68/pdf/go813568.pdf?OpenElement>.

68. All the official reports and documents issued by the Special Rapporteur on the right to food since May 2008 can be found at <http://www.srfood.org/> (last visited Mar. 29, 2010).

69. Olivier De Schutter, Special Rapporteur on the right to food, *Contribution to the Second Meeting of the Contact Group to Support the Committee on World Food Security* (May, 22 2009), available at <http://www.srfood.org/images/stories/pdf/otherdocuments/20-srftcontributioncfs22may2009-rev.pdf>.

of his key recommendations were used in the final documents, in strong synergy with civil society and social movement positions.

The Rapporteur has also alerted the international community that the possible solutions for the present manifestations and chronic dimensions of the food crisis demand that careful attention be given to the consequences of these measures to those most affected by hunger, and those most at risk of being affected. He stresses that measures geared toward increasing food production in the past have, for the most part, excluded small-scale farmers from the benefits, and that the food produced was not accessible to the hungriest in the rural and urban sectors, confirming what has been stated on many occasions by civil society organizations and social movements involved in the discussion of food security, such as peasants', agricultural workers', fishers', indigenous peoples', women's organizations, environmental, and human rights organizations.

The Rapporteur has also analyzed, from a right to food perspective, the relationship of trade negotiations and agreements to hunger,⁷⁰ the impact of intellectual property rights on biodiversity and innovation,⁷¹ and pointed to the fact that small-scale farmer agriculture, utilizing agro-ecological and diversified crops, could contribute both to end hunger and cool the planet.⁷²

The contributions of the U.N. Special Rapporteur on the right to food were fundamental to the finalization of the revitalized CFS proposal and to the outcome of the World Food Summit. We are also sure that his continued input to the CFS process⁷³ will be valuable to CFS as it takes steps towards an improved participatory governance of food security.

III. CONCLUSIONS AND RECOMMENDATIONS

In the guise of a conclusion, we would like to affirm that the recent so-called World Food Crisis of 2007-2009 has unveiled the incapacity of the present world economic order to promote equitable and sustainable human development; most importantly, it has not guaranteed food security for all, and even less so has it eradicated hunger and malnutrition and promoted

70. See Special Rapporteur on the right to food, *Report of the Special Rapporteur on the right to food on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, delivered to the Human Rights Council*, U.N. Doc. A/HRC/10/5/Add.2 (Feb. 4, 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.

71. See Special Rapporteur on the right to food, *Report on the right to food – Seed Policies and the Right to Food: Enhancing Agrobiodiversity and Encouraging Innovation, delivered to the U.N. General Assembly*, U.N. Doc. A/64/170 (July 23, 2009), available at <http://www.ip-watch.org/weblog/wp-content/uploads/2009/11/n0942473.pdf>.

72. See Special Rapporteur on the right to food, *The Right to Food and a Sustainable Global Food System, contributed to the Seventeenth Session of the U.N. Commission on Sustainable Development* (May 2009), available at <http://www.srfood.org/images/stories/pdf/otherdocuments/19-srftsubmissioncsd-01-05-09-1.pdf>; OLIVIER DE SCHUTTER, GUIDANCE IN A TIME OF CRISIS: IAASTD AND THE HUMAN RIGHT TO FOOD (U.N. 2009), available at <http://www.srfood.org/images/stories/pdf/otherdocuments/18-iaastd-rtf-25-2-2009.pdf>.

73. Olivier De Schutter, *The Future Tasks of the Committee on World Food Security (CFS): Three Proposals* (May 22, 2009) (on file with authors).

the realization of the human right to adequate food. This economic order includes the free-trade-based Washington Consensus, the pervasive plundering of natural resources in the name of “development,” and the agro-industrial agricultural model and its consequences.

Most of the diagnoses of intergovernmental food security conferences point to the lack of political will of the international community and national governments as one of the causes for the failure to reduce poverty, inequality, hunger, and malnutrition. We do not agree with this diagnosis. We contend that there is a strong will on the part of the powerful political and economic elites at the global and national levels to continue with the same presently hegemonic economic order, that serves the interests of powerful and influential minorities. If there is a lack of will, it is the lack of will to abide by the international legal obligations contained in the multiple human rights treaties, which have been ratified by the vast majority of states, such as the ICESCR, the CRC, and CEDAW. The lack of effective global governance, the lack of effective accountability mechanisms, the fragmentation of the regulatory systems, and the prioritization of private and corporate interests over public interests and over those of human kind as a whole, and specifically, over the vast proportion of humankind who live below the poverty line, are a conscious and deliberate omission on the part of the ruling elites.

Therefore, paraphrasing Josué de Castro, we believe that the present world economic and political order has, and has had for decades, a food and nutrition policy that can be characterized as a policy of hunger and malnutrition, and which the governments of the richest countries of the world, and the Bretton Woods institutions, implement with all available will and might.

If we do not manage to reverse this disturbing trend, the grab of large extensions of agricultural land will continue without avail,⁷⁴ displacing dozens or hundreds of millions of peasants, traditional populations, fishers, indigenous people, and others from the territories on which they have lived and produced. This, in turn, will lead to further social exclusion, poverty, and hunger in rural and urban areas. This will continue to be done in the name of development, development assistance, the production of more agro-fuels to “feed” cars, the production of more tourist resorts to serve a few, and the growth of more grain to feed cows and pigs; and all of this with very little or no return to those directly affected by the process.

How can we stop this, or at least slow down, this trend? How can we guarantee that rights-based social and environmental impact reports are carried out on all development projects and mega-investment proposals, and that adequate measures are taken to respect and protect small-scale farmers and indigenous peoples’ access to productive resources? How can we guarantee that, when necessary, adequate reparation is provided? The answer is that a set of processes must be strengthened or put in motion.

We believe that history has shown us that the energy behind relevant social change is always in the hands of the people who organize

74. See GRAIN, *supra* note 42.

themselves against injustice, discrimination, and violence. In the process they defend and “build” their rights and eventually get them codified into national and international law. Over the last few decades, the organization of the social actors directly affected by the Washington Consensus development model has markedly increased through the building of broader alliances. The banner of food sovereignty launched by La Via Campesina, strongly rooted in the promotion of the RTAF, and other rights, has galvanized other sectors of civil society, such as indigenous people, women and youth organizations, other peasant and small-scale farmer organizations, fishers, pastoralists, the homeless, urban community organizations, environmental movements, many relevant development civil society organizations, and human rights organizations. This process must be strengthened, deepened, and consolidated.

Similarly, we must recognize the role that the human rights system has had as an important instrument in promoting equity, and as a tool in the hands of those most affected by violations. The international human rights system, due to the struggle of the people and the support of rights friendly states, has progressively taken root at the regional and national level.

It is becoming more and more difficult for governments and intergovernmental organizations, and for those even more powerful, such as the IMF, the World Bank, and the WTO, to refuse to acknowledge that their decisions and actions must be coherent with, and accountable to, the overriding human rights principles and provisions contained in the U.N. Charter and the International Bill of Human Rights.⁷⁵ It is important to point out that the Committee on Economic Social and Cultural Rights was only established in 1985, with the mandate to monitor the implementation of the ICESCR by States parties.⁷⁶ In 1993, the World Conference on Human Rights reaffirmed the human rights principles and the indivisible nature of human rights, once again placing economic, social, and cultural rights at the same level of recognition as civil and political rights.⁷⁷ The Conference also proposed the establishment of a more robust human rights system to protect and promote human rights. Since then, in 1993, the U.N. General Assembly created the Office of the High Commissioner on Human Rights. From 1993 on, the number of special procedure mandates was significantly increased and many were established for an increasing number of economic, social, and cultural rights. In 2000, the mandate of U.N. Special Rapporteur on the right to food was instituted. The U.N. Human Rights Commission was transformed into the Human Rights Council, reporting directly to the U.N. General Assembly with a broadened mandate in 2006. And in December 2008, the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights was approved by the U.N. General Assembly and is awaiting ratification. These institutions, instruments, and procedures have played an invaluable role in

75. See Special Rapporteur on the right to food, *supra* note 39, ¶¶ 44-53.

76. Economic and Social Council Res. 1985/17, U.N. Doc., E/RES/1985/17 (May 28, 1985), available at <http://ap.ohchr.org/documents/E/ECOSOC/resolutions/E-RES-1985-17.doc>.

77. See World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, *supra* note 14, ¶ 3, U.N. Doc. A/CONF. 157/23 (July 12, 1993).

documenting both violations of the right to adequate food and related rights, as well as violence committed against people defending their, and others', rights. They have helped to make these violations visible and issued public recommendations to states in relation to their obligations under human rights law to respect, protect, and fulfill the right to adequate food, in the context of the indivisibility of rights. They have also made public the role of third parties who abuse human rights, and have demanded action from public authorities. Over the last thirty years, social movements and civil society organizations have increasingly made use of human rights tools to denounce violations of their rights and to demand reparations through national and regional human rights system, through both parallel reports to the CESCR and direct requests to the U.N. Special Rapporteur.

These institutions must be further strengthened and put at the service of all peoples throughout the world. This is the role of social movements, states, international organizations, and the community of human rights experts as well, including human rights civil society organizations.

International and national civil society human rights organizations have also played an extremely important role in supporting social movements and affected communities in obtaining adequate documentation of the violations, bringing cases to the national, regional, and international human rights bodies, and pressuring these organizations and their respective governments to stop the ongoing violations and provide redress as needed. On the basis of the documented cases, human rights organizations, such as FIAN International and HIC, provided constant inputs to the standard-setting work of the CESCR, and supported the elaboration of documents such as the General Comment 12 and the FAO Voluntary Guidelines. They are expert organizations that provide support to the peoples' struggles through the use of human rights instruments. The development of the Voluntary Guidelines on the RTAF, in the policy space of FAO, which is a specialized agency on food and nutrition issues, represents an interesting breakthrough. This is the first experience of detailing the implications of the promotion of an economic, social and cultural right outside U.N. human rights institutions. It opens up the possibility of putting human rights principles, tools, and instruments at the service of the elaboration of rights-based strategies to promote food and nutritional security, including the respective international and national governance, monitoring and accountability mechanisms.

However, social movements, victims of violations and human rights defenders, especially those working with economic, social and cultural rights, have come under an increasing wave of violence and criminalization of their activities, hindering their capacity to protect and guarantee the realization of the rights of the affected communities.⁷⁸ Recent

78. Special Representative of the Secretary-General, *Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders*, ¶¶ 78-84, delivered to the Human Rights Council, U.N. Doc. A/HRC/4/37 (Jan. 24, 2007), available at http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc_4th.htm.

decisions of the U.N. show some relevant progress, but much is still to be done in this field.⁷⁹

The revitalization process of the CFS has been shaped by these factors and other conflicting forces. The new proposed governance mechanism for food security is not encompassing enough to promote all the changes necessary to reverse the trend, because many decisions that are relevant to food security are taken in more powerful fora. But the CFS has the potential to catalyze important forces at the international, regional, and national levels. In the context of food security, it can make the right to adequate food a priority issue, one that should be taken into account in the different relevant global fora, such as the trade, climate change, and economic fora overall. This is especially likely if CFS is in synergy with the efforts developed by social movements and civil society, and with the support of human rights instruments and tools.

However, the success of the efforts of the CFS also depends on four developments:

- (1) the mobilization of social movements and civil society organizations and their capacity to broaden their alliances and work together on key issues, making use of all available human rights instruments;
- (2) the increased protection of human rights defenders;
- (3) the cooperation and coherence among intergovernmental organizations in support of this effort to eradicate hunger and malnutrition, and the promotion of the right to food;
- (4) the strengthened effectiveness of the overall human rights system at the national and international level, with the ratification of the ICESCR optional protocol and the push towards the effective recognition of human rights as the set of overarching principles and regulations that should guide all policy fields.

We are facing a new moment in history in which the emperor has once more gone naked in front of our own eyes. People in different parts of the world are demanding their governments regain control over their public policies and resources, while at the same time demanding to participate actively in the shaping and implementation of these policies. In doing this, these people are not giving up on the human rights they achieved through hard struggle, and they want their states to be held to account by the

79. The U.N. Secretary General will present a report to the Human Rights Council on the intimidation and reprisals against human rights defenders in response to a council resolution. See Human Rights Council Res. 12/2 on Cooperation with the United Nations its Representatives and Mechanisms in the Field of Human Rights, ¶ 8, U.N. Doc A/HRC/RES/12/2 (Oct. 12, 2009), available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_12_2.pdf.

international community in their obligations to respect, protect, and fulfill the human rights of all human beings in their respective territories. But even more, people want to establish clear international and national regulation mechanisms over multinational corporate interests and international organizations at the service of those interests, since their economic and political power today significantly surpasses the political power of the majority of individual governments and of existing global regulatory mechanisms.

We still have the chance to meet these goals. If we do not soon manage to reverse the present trend, this and future generations will see the even further aggravation of the barbarism perpetrated against women, children, and men of all ages in the name of so-called development, or worse, in the name of profit for a few.