

THE RIGHT TO FOOD

*A fundamental human right affirmed by the
United Nations and recognized in regional treaties
and numerous national constitutions*

Brochure prepared by

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INTRODUCTION

The right to food is a human right. It is *universal*, acknowledged at the national, regional and international level, and applies to *every* person and group of persons.

Currently, however, some 852 million persons throughout the world are seriously – and permanently – undernourished, 815 million of whom are in developing countries, 28 million in countries in transition and 9 million in developed (“industrialized”) countries. Furthermore, every five seconds, a child under ten years of age dies of hunger or malnutrition¹ – more than 5 million per year!

Out of these 852 million persons, 50% are small farmers, 20% are landless rural dwellers, 10% are nomadic herders, or small-scale fishermen, and 10% live in urban poverty. Barely 5% are affected by food emergency situations arising from armed conflicts, by exceptional climatic conditions (mainly drought or floods) or by violent economic transitions². Of the 5 million children dying each year from hunger and the side effects of malnutrition, only 10% are victims of armed conflict or famine.

Thus, the causes of undernourishment and of death from hunger and malnutrition are immensely complex, and they cannot be simply attributed to *war* or *natural catastrophes*. They are primarily due to *social injustice*, to *political and economic exclusion* and to *discrimination*.

Hundreds of millions of undernourished persons suffer from political and social *exclusion* while their right to food is *violated*.

Political and Social Exclusion

These hundreds of millions of persons are effectively excluded from all decision-making processes, even when their lives are directly affected by the decisions. They have no political power, nobody represents them, and nobody asks them their opinion. They are equally *excluded* from all access to those *resources* that would enable them to

¹ United Nations Food and Agricultural Organization, *The State of Food Insecurity in the World*, 2004:

http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/y5650e/y5650e00.htm

² Ibid.

lead a *dignified life, free from hunger*. Indeed, although the quantity of food available throughout the world today is more than sufficient to feed the entire world's population, these 852 million persons remain undernourished because they do not have access to sufficient productive resources, (essentially, land, water, seeds, but also fishing) nor an income sufficient to allow them to provide themselves, as well as their families, with a dignified life free from hunger. This situation is intimately linked to the unequal terms of North-South trade.

Josué de Castro (1908-1973), a Brazilian sociologist and chairman of the executive committee of the United Nations Food and Agricultural Organization (FAO), summed it up thus:

*“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 ...”*³

Violation of the Right to Food

If there are 852 million persons undernourished in the world, the right to food is being violated at any given moment in practically all countries. Except for some rare cases, *no complaint* has ever been lodged, no government has ever been sued, no victim has ever obtained *redress* and *compensation*.

The right to food is a *human right* and not a political option that governments can choose to implement or to ignore. Acknowledging this means obligations for governments. It is neither normal nor tolerable that governments observe only their obligations arising from economic and commercial agreements on the international level, and this to the detriment of their obligations regarding human rights, which are, moreover, often incompatible with trade agreements. Yet the *primacy* of human rights over any economic or commercial agreement has been affirmed over and over again by resolutions adopted by U.N. bodies and by its member states.

In point of fact, the means of demanding one's right to food and the chances of obtaining redress depend for the most part on the information and enforcement mechanisms available at the national, regional and

³ Right to Food Case Study: Brazil, February 2004, p. 9, FAO Documents IGWG RTFG /INF 4/APP.1:
www.fao.org/righttofood/common/ecg/51629_fr_template_case_study_Brazil_Annex.pdf

Committee on the Elimination of Racial Discrimination, CERD (to file complaints and request information)

Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland
Fax: +4122 9179022
E-mail: nprouvez@ohchr.org

Committee on the Rights of the Child, CRC (to request information)

Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland
Fax: +4122 9179022
E-mail: pdavid@ohchr.org

Human Rights Committee, HRC (to file complaints and request information)

Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland
Fax: +4122 9179022

At regional level

Secretariat of the African Commission on Human and Peoples's Rights (to file complaints and request information)

Avenue Kairaba, P.O. Box 673, Banjul – Gambia
Tel.: + 220 4392962 Fax: + 220 4390764
E-mail: achpr@achpr.org

Inter-American Commission on Human Rights (to file complaints and request information)

Organization of American States
1889 F Street, N.W., Washington, D.C. 20006, USA
Fax: (202) 458-3992
E-mail: cidhoea@oas.org

European Committee of Social Rights (to file collective complaints and request information)

Secretariat of the European Social Charter
Directorate General of Human Rights – DGII
F-67075 Strasbourg Cedex, France
Tel.: +33 (0)3 88 41 32 58 Fax: +33 (0)3 88 41 37 00
E-mail: social.charter@coe.int Web: <http://www.coe.int/collective>

Annex 8:

MAIN REFERENCE WEBSITES AND INSTANCES TO WHICH ONE MAY RECUR

MAIN REFERENCE WEBSITES

www.ohchr.org
www.righttofood.org
www.righttofoodindia.org
www.fao.org
www.cidh.oas.org
www.africa-union.org
www.achpr.org
www.coe.int
<http://europa.eu.int>
www.viacampesina.org
www.fian.org
www.ibfan.org
www.cohre.org
www.droitshumains.org

INSTANCES TO WHICH ONE MAY RECUR

At the international level

Mr. Jean Ziegler, Special Rapporteur of the Commission of Human Rights on the right to food (to file complaints and request information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland
Fax: +4122 9179006
E-mail: urgent-action@ohchr.org Web: www.righttofood.org

Committee on Economic, Social and Cultural Rights, CESCR (to request information)

Office of the High Commissioner for Human Rights
Mr. Alexandre Tikhonov, Secretary
Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland
Tel.: (41 22) 9179321 Fax: (41 22) 9179046/9179022
E-mail: atikhonov@ohchr.org

Committee on the Elimination of Discrimination Against Women, CEDAW (to file complaints and request information)

United Nations
2 UN Plaza, DC2-12th Floor, New York, NY, 10017, USA
Fax: +1212 9633463
E-mail: daw@un.org Web: <http://www.un.org/womenwatch/daw>

international level. With this in mind, this brochure can be said to have a double purpose:

- to contribute to a clarification of the available information about the right to food;
- to set out the monitoring and enforcement mechanisms, on the national, regional and international level, to which victims can have recourse when their right to food is violated.

The majority of social movements, groups, and non-governmental organizations committed to the defense of the rights of the oppressed master neither the theory of the international instruments nor the workings of their practical application at the national level. It is hoped that this document will provide a tool for these movements so that, in their continuing struggles, they may demand recognition and realization of the right to food.

- The first part of the brochure deals with the definition and the substance of the right to food.
- The second part deals with pertinent international and regional texts.
- The third discusses governments' obligations and practices.
- The fourth covers practical aspects of realizing this right and the mechanisms for monitoring and redress available at the national, regional and international level to protect those persons or groups of persons who are most vulnerable and whose right to food has been violated.

I. DEFINITION AND SUBSTANCE OF THE RIGHT TO FOOD

1. Special Rapporteur on the Right to Food

For the United Nations Special Rapporteur on the Right to Food, Mr. Jean Ziegler, the right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to food that is quantitatively and qualitatively adequate, corresponds to the cultural traditions of the people to which the consumer belongs, and that ensures a physical and mental life, both individual and collective, that is fulfilling and dignified, free of fear.⁴

The right to food includes the right to be helped if one cannot take care of oneself, but it is, above all, *“the right to be able to feed oneself in dignity”*⁵. It also includes access to resources and to the means to ensure and produce one’s own subsistence: access to land, to security and to prosperity; access to water and to seeds, to credit, to technology and to local and regional markets, including (and especially) for groups that are vulnerable and subject to discrimination; access to traditional fishing areas for fishing communities that depend on such areas for their subsistence; access to a level of income sufficient to enable one to live in dignity, including for rural and industrial workers, as well as access to social security and to social assistance for the most deprived.

2. The Committee on Economic, Social and Cultural Rights

According to the United Nations Committee on Economic, Social and Cultural Rights (cf. chapter IV.3), the main U.N. body concerned with overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights:

⁴ Cf. United Nations Document E/CN.4/2001/53, par. 14 : <http://daccessdds.un.org/doc/UNDOC/GEN/G01/110/35/PDF/G0111035.pdf?OpenElement>

⁵ This is the position that Mr. Jean Ziegler, Special Rapporteur on the Right to food, defended before the General Assembly in November 2004, A/59/385, Paragraph 5: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/525/17/PDF/N0452517.pdf?OpenElement>

SOUTH AFRICA

Section 27 (Health care, food, water and social security)

“1) Everyone has the right to have access to: a) health care services, including reproductive health care; b) sufficient food and water; and c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

2)The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights...”

Section 28(Children)

“1) Every child has the right to: a) a name and a nationality from birth; b) family care or parental care, or to appropriate alternative care when removed from the family environment; c) basic nutrition, shelter, basic health care services and social services...”

SRI LANKA

Article 27

“The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include... the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing...”

UGANDA

Article 14 (General social and economic objectives)

“The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that... all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, decent shelter, adequate clothing, food, security and pension and retirements benefits.”

UKRAINE

Article 48

“Everyone has the right to a standard of living sufficient for himself or herself, and his or her family that includes adequate nutrition, clothing and housing.”

“b) The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals: ...Nutrition: To achieve adequate nutrition for all in order to promote good health and self-sufficiency.”

NICARAGUA

Article 63

“It is the right of Nicaraguans to be protected against hunger. The State shall promote programmes which assure adequate availability and equitable distribution of food.”

NIGERIA

Article 16

“The State shall assure, within the context of the ideals and objectives for which provisions are made in this constitution,... that suitable and adequate shelter, suitable and adequate food, reasonable living wages, are provided for all citizens.”

PAKISTAN

Article 38

“d) The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief.”

PARAGUAY

Article 53 (Children)

“Every parent has the right and obligation to care for, to feed, to educate, and to support his children while they are minors. The laws will punish those parents who fail to comply with their duty to provide their children with food...”

Article 54 (Protection of Minors)

“The family, society and the State have the obligation to guarantee to the child the right to a harmonious and complete development, as well as the full exercise of his rights by protecting him against abandonment, undernourishment, violence, abuses, illicit commerce and exploitation.”
[translated by CETIM]

“the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights⁶. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.”⁷

The Committee further asserts:

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement⁸.”

The right to food thus has two essential components: the **availability** of food and **access** to it.

First, a culturally acceptable diet, sufficient in both quantity and quality to satisfy the nutritional needs of the individual, must be **available** to each person. In other words, each person should be able to obtain it either directly from the land or other natural resources or from distribution systems that purvey the food to those who require it.

Second, every person must have access, physically and economically, to food. **Physically** means that every person, including those physically vulnerable such as infants and young children, the aged, the handicapped, the sick in terminal phases of their illnesses and the infirm suffering from persistent medical problems, must have access to an adequate diet. **Economically** means that the spending of a person, of a household or of a community to ensure an adequate diet should not jeopardize the enjoyment of other human rights, such as the right to health, the right to adequate housing, the right to education, etc.

⁶ The International Bill of Human Rights consists of the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* and its two optional protocols.

⁷ *General Comment 12, The Right to Adequate Food (Art. 11)*, Paragraph 4, adopted 12 May 1999:
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)

⁸ *Idem*, Paragraph 6.

The right to food is *universal* – it applies to everybody. However, in practice, it protects first and foremost the most vulnerable individuals and groups in society, among whom are those suffering from discrimination, women and children, landless rural workers, indigenous peoples and tribes, slum dwellers, the unemployed and others.

The Right to Water

In the world today, 1.4 billion persons do not have access to a sufficient quantity of drinking water and close to 4 billion are without suitable sanitary conditions. The defense of the right to water and the demand that it be respected, as in the case of the right to food, are thus urgent matters.

The right to water has been **recognized** as a human right – both implicitly and explicitly – in numerous international and regional instruments such as the **Universal Declaration of Human Rights**, the **International Covenant on Economic, Social, and Cultural Rights**, the **Convention on the Elimination of All Forms of Discrimination against Women**, the **Convention on the Rights of the Child**.

In its *General Comment 15*, adopted in November 2002, the Committee on Economic, Social and Cultural Rights presented clarifications on the substance of the right to water and defined it as the right to

“sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.

The Special Rapporteur on the Right to Water of the Sub-commission for the Promotion and the Protection Human Rights, in accord with the Committee on Economic, Social and Cultural Rights, has stated:

“The right to drinking water and to adequate sanitation is an integral part of internationally recognized human rights and can be considered an essential element for the implementation of several other human rights (right to life, right to food, right to health, right to adequate housing...)”.

Article 99 (Feeding and nutrition)

“The State will see to it that the food and the nutrition of the population meet the minimum health requirements. The specialized actions among themselves or with international organizations dedicated to public health to achieve an effective national food delivery system.”

HAITI

Article 22

“The State recognizes the right of every citizen to decent housing, education, food and social security.”

INDIA

Article 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health)

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.”

ISLAMIC REPUBLIC OF IRAN

Article 5 (State Goals)

“...The planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all.”

Article 43 (Principles)

“The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria: 1. The provision of basic necessities for all citizens: housing, food, clothing hygiene, medical treatment, education, and the necessary facilities for the establishment of a family.”

MALAWI

Article 13

"1. The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services."

CUBA

Article 9b) (The Socialist State)

"...as the power of the people and for the people, guarantees:... That no child be left without schooling, food and clothing."

ECUADOR

Article 23.20

"...The right to a standard of living that ensures the necessary health, food, clothing, housing, medical care and social services."

Article 42

"The State shall guarantee the right to health, its promotion and its protection by ensuring food security..." [translated by CETIM]

Article 43

"The State shall support culture through its support of health and life, by emphasizing the dietary education and nutrition of mothers and children." [translated by CETIM]

Article 49

"Children and adolescents... The State shall ensure and guarantee their right... to health in all respects and to food." [translated by CETIM]

Article 50

"The State shall adopt measures that offer to children and adolescents the following guarantees: 1. For children of less than six years of age, particular attention must be paid to ensure nutrition, health, education and daily care." [translated by CETIM]

ETHIOPIA

Article 90 (Social objectives)

"To the extent the country's resources permit, policies shall aim to provide all Ethiopians with access to public health and education, clean water, housing, food and social security."

GUATEMALA

Article 51 (Protection of Minors and the Elderly)

"The State will protect the physical, mental and moral health of Minors and the Elderly. It will guarantee them their right to food, public health, education, security and social insurance."

According to the Human Rights Commission's Special Rapporteur on the Right to Food, "the term food covers not only solid food but also the nutritional aspects of drinking water".

Must one repeat that numerous countries have included the right to food and sometimes even explicitly the right to drinking water in their legislation? According to an inquiry by the Judicial Office of the FAO, based on 69 national reports submitted between 1993 and 2003, "it is possible or probably possible to go to court in 54 countries to demand the right to food".

- For further information on the right to water:

- *General Comment N° 15* of the Committee on Economic, Social and Cultural Rights adopted at the Committee's 29th session, 11-29 November 2002, "The Right to Water, Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights", United Nations Document E/C.12/2002/11:

<http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument>

- Final Report of the Special Rapporteur of Sub-Commission on the Promotion and Protection of Human Rights, "Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation", United Nations Document E/CN.4/Sub.2/2004/20:

http://ap.ohchr.org/documents/alldocs.aspx?doc_id=9700

- Report of the Special Rapporteur on the Right to Food, United Nations Document E/CN.4/2005/47:

<http://www.ohchr.org/english/issues/food/annual.htm>

- Special Alternative World Water Forum, Bulletin N° 22, CETIM, March 2005:

[http://www.cetim.ch/en/publications_bull.php?currentyear=&pid=Stefano Burchi and Kerstin Mechlem, Ground Water in International Law: Compilation of Treaties and Other Legal Instruments, FAO Legislative Study 86:](http://www.cetim.ch/en/publications_bull.php?currentyear=&pid=Stefano+Burchi+and+Kerstin+Mechlem,+Ground+Water+in+International+Law:+Compilation+of+Treaties+and+Other+Legal+Instruments,+FAO+Legislative+Study+86)
<ftp://ftp.fao.org/docrep/fao/008/y5739e/y5739e00.pdf>

II. PERTINENT INTERNATIONAL AND REGIONAL TEXTS

The right to food has been recognized in numerous texts at the international, regional and national level. At the international level, the two main ones are the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. At the regional level, there are the 1981 African Charter on Human and Peoples' Rights and the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador". Finally, at the national level, national constitutions either recognize explicitly the right to food or acknowledge other basic rights that include the right to food, such as the right to life.

1. At the International Level⁹

The Universal Declaration of Human Rights (1948)

The right to food was recognized for the first time at the international level in the 1948 *Universal Declaration of Human Rights*. In this document (Article 25, Paragraph 1), the countries of the world proclaimed:

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

The importance of the Universal declaration of Human Rights lies in its being accepted today by *all countries*.

⁹ Regarding the right to food at the international and regional levels, see *Extracts from International and Regional Instruments and Declarations, and Other Authoritative Texts Addressing the Right to Food*, FAO Legislative Study 68, 1999: <http://www.fao.org/Legal/legstud/l68-e.pdf>

Annex 7:

RECOGNITION OF THE RIGHT TO FOOD IN NATIONAL CONSTITUTIONS

Cf. FAO, « *The right to food in national constitutions* » in FAO, *Right to food, in theory and practice*, 2000.

http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/W9990E/W9990E00.htm

BANGLADESH

Article 15 (Provision of basic necessities)

"It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement of the material and cultural standard of living of the people, with a view to securing to its citizens... the provision of the basic necessities of life, including food, clothing, shelter..."

BOLIVIE

Article 8

"Every person has the following fundamental obligations: e) help, nourish and educate his minor children as well as protect and aid his parents when they are faced with sickness, poverty or hardship." [translated by CETIM]

BRAZIL

Article 227 (Right to food for children and teenagers)

"It is the duty of the family, of society, and of the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression."

COLOMBIA

Article 44

"The following are basic rights for children... a balanced diet..."

CONGO

Article 34 (Health, Aged, Handicapped)

Annex 6:

LIST OF STATES PARTIES TO THE EUROPEAN SOCIAL CHARTER

(ratification by 27 states out of 46 in the region)

State	Signature	Ratification	State	Signature	Ratification
Albania			Liechtenstein	9 Oct 1991	
Andorra			Lithuania		
Armenia			Luxembourg	18 Oct 1961	10 Oct 1991
Austria	22 Jul 1963	29 Oct 1969	Macedonia	5 May 1998	31 Mar 2005
Azerbaijan			Malta	26 May 1988	4 Oct 1988
Belgium	18 Oct 1961	16 Oct 1990	Moldova		
Bosnia-Herzegovina			Monaco		
Bulgaria			Netherlands	18 Oct 1961	22 Apr 1980
Croatia	8 Mar 1999	26 Feb 2003	Norway	18 Oct 1961	26 Oct 1962
Cyprus	22 May 1967	7 Mar 1968	Poland	26 Nov 1991	25 Jun 1997
Czech Republic	27 May 1992	3 Nov 1999	Portugal	1 Jun 1982	30 Sep 1991
Denmark	18 Oct 1961	3 Mar 1965	Romania	4 Oct 1994	
Estonia			Russia		
Finland	9 Feb 1990	29 Apr 1991	San Marino		
France	18 Oct 1961	9 Mar 1973	Serbia-Montenegro		
Georgia			Slovakia	27 May 1992	22 Jun 1998
Germany	18 Oct 1961	27 Jan 1965	Slovenia	11 Oct 1997	
Greece	18 Oct 1961	6 Jun 1984	Spain	27 Apr 1978	6 May 1980
Hungary	13 Dec 1991	8 Jul 1999	Sweden	18 Oct 1961	17 Dec 1962
Iceland	15 Jan 1976	15 Jan 1976	Switzerland	6 May 1976	
Ireland	18 Oct 1961	7 Oct 1964	Turkey	18 Oct 1961	24 Nov 1989
Italy	18 Oct 1961	22 Oct 1965	Ukraine	2 May 1996	
Latvia	29 May 1997	31 Jan 2002	United Kingdom	18 Oct 1961	11 Jul 1962

The International Covenant on Economic, Social and Cultural Rights (1966)

In 1966, almost twenty years after the Universal Declaration of Human Rights, the *International Covenant on Economic, Social and Cultural Rights* was adopted¹⁰. In this treaty, governments recognized several economic, social and cultural human rights, among which the right to food, the right to health, the right to education, the right to adequate housing and the right to work. In Article 11, governments committed themselves to taking all measures necessary to ensure:

“the right of everyone to an adequate standard of living for himself and his family, including adequate food... and to the continuous improvement of living conditions”.

Also recognized was:

“the fundamental right of everyone to be free from hunger”.

The International Covenant on Economic, Social and Political Rights is a treaty, legally **binding** for the 151 countries that have ratified it.

The right to food, recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, applies to everybody, **without** exception.

In order to protect particularly vulnerable groups, such as women, children, indigenous peoples and tribes, refugees, stateless persons, other international treaties have been agreed by the governments of the world. The right to food has thus been recognized for women in the *Convention on the Elimination of All Forms of Discrimination against Women* (Articles 12 and 14); for children in the *Convention of the Rights of the Child* (Articles 24 and 27); for refugees in the *Convention Relating to the Status of Refugees* (Articles 20 and 23); for stateless persons in the *Convention Relating to the Status of Stateless Persons* (Articles 20 and 23); and for indigenous peoples and tribes in the *Indigenous and Tribal Peoples Convention* (mainly Articles 14 to 19).

All the abovementioned treaties are **binding** for the countries that have ratified them¹¹.

¹⁰ It entered into force on 3 January 1976 and has been ratified by 151 countries to date [see the list of states parties in Annex 2].

2. At the Regional Level

The right to food has been recognized to varying degrees in the Americas, in Africa and in Europe. In Asia, there is no regional text for the protection of human rights.

On the American continent:

*The Protocol of San Salvador (1988)*¹²

The *Protocol of San Salvador* completes the 1969 American Convention on Human Rights and is the only text at the regional level that explicitly recognizes the right to food. Article 12 states that:

“Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.”

In the same Article, in order to ensure the enjoyment of this right and to eradicate malnutrition, the ratifying countries commit themselves to improving methods of food production as well as supply and distribution systems and to encouraging broader international cooperation in support of national policies in this area.

Nineteen countries have signed the Protocol of San Salvador, but for the time being it is binding for only the 13 countries that have ratified it: Argentina, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, San Salvador, Surinam and Uruguay [see Annex 3].

On the African continent:

The African Charter on Human and Peoples’ Rights (1981) and the African Charter on the Rights and Welfare of the Child (1990)

In Africa, the right to food is protected by two texts: the 1981 African Charter on Human and Peoples’ Rights and the 1990 African Charter on the Rights and Welfare of the Child.

The *African Charter on Human and Peoples’ Rights* does not explicitly recognize the right to food; however, several other rights, such

¹¹ The list of these countries is available at <http://www.ohchr.org/english/countries/ratification/index.htm>

¹² Cf. <http://www.cidh.org/Basicos/basic5.htm>

Annex 5:

LIST OF STATES PARTIES TO THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ratification by 35 states with out of 53 in the region)

State	Signature	Ratification/Accession	State	Signature	Ratification/Accession
Algeria	21 May 1999	08 Jul 2003	Libya	09 Jun 1998	23 Sep 2000
Angola	.	11 Apr 1992	Madagascar	27 Feb 1992	.
Benin	27 Feb 1992	17 Apr 1997	Malawi	13 Jul 1999	16 Sep 1999
Botswana	10 Jul 2001	10 Jul 2001	Mali	28 Feb 1996	03 Jun 1998
Burkina Faso	27 Feb 1992	08 Jun 1992	Mozambique	.	15 Jul 1998
Burundi	.	28 Jun 2004	Mauritania	.	.
Cameroon	16 Sep 1992	05 Sep 1997	Mauritius	07 Nov 1991	14 Feb 1992
Central African Rep.	04 Feb 2003	.	Namibia	13 Jul 1999	23 Jul 2004
Cape Verde	27 Feb 1992	20 Jul 1993	Niger	13 Jul 1999	11 Dec 1999
Chad	.	30 Mar 2000	Nigeria	13 Jul 1999	23 Jul 2001
Côte d'Ivoire	27 Feb 2004	.	Rwanda	02 Oct 1991	11 May 2001
Comoros	26 Feb 2004	18 Mar 2004	South Africa	10 Oct 1997	07 Jan 2000
Congo	28 Feb 1992	.	Sahrawi Arab Dem. Rep	23 Oct 1992	.
Djibouti	28 Feb 1992	.	Sao Tome & Principe	.	.
Dem. Rep. Of Congo	.	.	Senegal	18 May 1992	29 Sep 1998
Egypt	30 Jun 1999	09 May 2001	Seychelles	.	13 Feb 1992
Equatorial Guinea	.	20 Dec 2002	Sierra Leone	14 Apr 1992	13 May 2002
Eritrea	.	22 Dec 1999	Somalia	01 Jun 1991	.
Ethiopia	.	02 Oct 2002	Sudan	.	.
Gabon	27 Feb 1992	.	Swaziland	29 Jun 1992	.
Gambia	.	14 Dec 2000	Tanzania	23 Oct 1998	16 Mar 2003
Ghana	18 Aug 1997	.	Togo	27 Feb 1992	05 May 1998
Guinea	22 May 1998	27 May 1999	Tunisia	16 Jun 1995	.
Guinea-Bissau	.	.	Uganda	26 Feb 1992	17 Aug 1994
Kenya	.	25 Jul 2000	Zambia	28 Feb 1992	.
Lesotho	.	27 Sep 1999	Zimbabwe	.	19 Jan 1995
Liberia	14 May 1992	.			

Annex 4:

LIST OF STATES PARTIES TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS
(ratification by 53 states out of 53 in the region)

State	Signature	Ratification/Accession	State	Signature	Ratification/Accession
Algeria	10 Apr 1986	01 Mar 1987	Libya	30 May 1985	19 Jul 1986
Angola	.	02 Mar 1990	Madagascar	.	09 Mar 1992
Benin	.	20 Jan 1986	Malawi	.	17 Nov 1989
Botswana	.	17 Jul 1986	Mali	13 Nov 1981	21 Dec 1981
Burkina Faso	05 Mar 1984	06 Jul 1984	Mozambique	.	22 Feb 1989
Burundi	.	28 Jul 1989	Mauritania	25 Feb 1982	14 Jun 1986
Cameroon	23 Jul 1987	20 Jun 1989	Mauritius	27 Feb 1992	19 Jun 1992
Central African Rep	.	26 Apr 1986	Namibia	.	30 Jul 1992
Cape Verde	31 Mar 1986	02 Jun 1987	Niger	09 Jul 1986	15 Jul 1986
Chad	29 May 1986	09 Oct 1986	Nigeria	31 Aug 1982	22 Jun 1983
Côte d'Ivoire	.	06 Jan 1992	Rwanda	11 Nov 1981	15 Jul 1983
Comoros	.	01 Jun 1986	South Africa	09 Jul 1996	09 Jul 1996
Congo	27 Nov 1981	09 Dec 1982	Sahrawi Arab Dem. Rep.	10 Apr 1986	02 May 1986
Djibouti	.	11 Nov 1991	Sao Tome & Principe	.	23 May 1986
Dem. Rep. Of Congo	.	20 Jul 1987	Senegal	23 Sep 1981	13 Aug 1982
Egypt	16 Nov 1981	20 Mar 1984	Seychelles	.	13 Apr 1992
Equatorial Guinea	.	07 Apr 1986	Sierra Leone	27 Aug 1981	21 Sep 1983
Eritrea	.	14 Jan 1999	Somalia	26 Feb 1982	31 Jul 1985
Ethiopia	.	15 Jun 1998	Sudan	03 Sep 1982	18 Feb 1986
Gabon	26 Feb 1982	20 Feb 1986	Swaziland	20 Dec 1991	15 Sep 1995
Gambia	11 Feb 1983	08 Jun 1983	Tanzania	31 May 1982	18 Feb 1984
Ghana	.	24 Jan 1989	Togo	26 Feb 1982	05 Nov 1982
Guinea	09 Dec 1981	16 Feb 1982	Tunisia	.	16 Mar 1983
Guinea-Bissau	.	04 Dec 1985	Uganda	.	10 May 1986
Kenya	.	23 Jan 1992	Zambia	17 Jan 1983	10 Jan 1984
Lesotho	07 Mar 1984	10 Feb 1992	Zimbabwe	20 Feb 1986	12 Jun 1986
Liberia	.	04 Aug 1982			

as the right to health are recognized (Article 16) and can be interpreted as protecting the right to food. The African Charter also stipulates (Article 60) that African governments should implement the right to food recognized by these governments on the international level, such as by their accepting the International Covenant on Economic, Social and Cultural Rights. All countries that have accepted the African Charter and the International Covenant thus have the obligation to take measures to fulfill the right of their peoples to food and should prove that they have done so before the compliance monitoring bodies that have been set up throughout Africa [see the fourth part of this brochure].

The African Charter is binding for the 53 member states of the African Union that have ratified it [see the list of these countries in Annex 4].

The *African Charter on the Rights and Welfare of the Child*, for its part, is more explicit. The countries that have ratified it, by recognizing the child's right to health, have effectively committed themselves "to ensure the provision of adequate food and safe drinking water" (Article 14). They are also committed to taking, in accordance with the means at their disposal, all appropriate measures to assist parents or other persons responsible for the child and to providing, if need be, programs of material assistance and support, notably as regards nutrition (Article 20).

Implementation of the African Charter on the Rights and Welfare of the Child is binding on the 35 countries of the African Union that have ratified it [see the list in Annex 5].

***On the European continent:
The European Social Charter (1961)***¹³

The *European Social Charter* does not specifically recognize the right to food, for the European countries that drafted it considered that there was no need to protect this right as long as the right to work, the right to social security and the right to social welfare were guaranteed. The protection of the right to food in Europe is thus only partial. By ratifying the European Social Charter, the countries committed themselves to recognizing “the right of workers to a remuneration such as will give them and their families a decent standard of living” (Part II, Article 4.1); the right “to establish or maintain a system of social security” (Article 12); and “the right to social and medical assistance” (Article 13), including for the mother and the child (Article 17) and for migrant workers and their families (Article 19).

The European Social Charter today is binding on the 26 countries that have ratified it [see the list in Annex 6].

Annex 3:

**LIST OF STATES PARTIES TO THE SAN SALVADOR
PROTOCOL
(ratification by 13 states out of 34 in the region)**

State	Signature	Ratification/ Accession	State	Signature	Ratification/ Accession
Antigua & Barbuda	.	.	Guyana	.	.
Argentina	17 Nov 1988	30 Jun 2003	Haiti	17 Nov 1988	.
Bahamas	.	.	Honduras	.	.
Barbados	.	.	Jamaica	.	.
Belize	.	.	Mexico	17 Nov 1988	08 Mar 1996
Bolivia	17 Nov 1988	.	Nicaragua	17 Nov 1988	.
Brazil	.	08 Aug 1996	Panama	17 Nov 1988	28 Oct 1992
Canada	.	.	Paraguay	08/26/96	28 May 1997
Chile	05 Jun 2001	.	Peru	17 Nov 1988	17 May 1995
Colombia	.	22 Oct 1997	St. Kitts & Nevis	.	.
Costa Rica	17 Nov 1988	29 Sep 1999	St. Lucia	.	.
Dominica	.	.	St. Vincent & Grenadines	.	.
Dominican Rep.	17 Nov 1988	.	Suriname	.	28 Feb 1990
Ecuador	17 Nov 1988	10 Feb 1993	Trinidad & Tobago	.	.
El Salvador	17 Nov 1988	04 May 1995	United States	.	.
Grenada	.	.	Uruguay	17 Nov 1988	21 Nov 1995
Guatemala	17 Nov 1988	30 May 2000	Venezuela	27 Jan 1089	.

¹³ The 1961 *European Social Charter* was revised as of 3 May 1996 and entered into force on 1 July 1999. The new version guarantees the rights recognized by the Revised Charter, the rights guaranteed by the additional protocol of 1998 and a series of new rights. Intended to gradually replace the *European Social Charter* of 1961, the revised version has been ratified by 21 countries.

State	Signature	Ratification, Accession (a), Succession (d)	State	Signature	Ratification, Accession (a), Succession (d)
Liberia	18 Apr 1967	22 Sep 2004	Sao Tome and Principe	31 Oct 1995	.
Libya	.	15 May 1970 a	Senegal	6 Jul 1970	13 Feb 1978
Liechtenstein	.	10 Dec 1998 a	Serbia and Montenegro	.	12 Mar 2001 d
Lithuania	.	20 Nov 1991 a	Seychelles	.	5 May 1992 a
Luxembourg	26 Nov 1974	18 Aug 1983	Sierra Leone	.	23 Aug 1996 a
Macedonia	.	18 Jan 1994 d	Slovakia	.	28 May 1993 d
Madagascar	14 Apr 1970	22 Sep 1971	Slovenia	.	6 Jul 1992 d
Malawi	.	22 Dec 1993 a	Solomon Islands	.	17 Mar 1982 d
Mali	.	16 Jul 1974 a	Somalia	.	24 Jan 1990 a
Malta	22 Oct 1968	13 Sep 1990	South Africa	3 Oct 1994	.
Mauritania	.	17 Nov 2004 a	Spain	28 Sep 1976	27 Apr 1977
Mauritius	.	12 Dec 1973 a	Sri Lanka	.	11 Jun 1980 a
Mexico	.	23 Mar 1981 a	Sudan	.	18 Mar 1986 a
Monaco	26 Jun 1997	28 Aug 1997	Suriname	.	28 Dec 1976 a
Mongolia	5 Jun 1968	18 Nov 1974	Swaziland	.	26 Mar 2004 a
Morocco	19 Jan 1977	3 May 1979	Sweden	29 Sep 1967	6 Dec 1971
Namibia	.	28 Nov 1994 a	Switzerland	.	18 Jun 1992 a
Nepal	.	14 May 1991 a	Syrian Arab R.	.	21 Apr 1969 a
Netherlands	25 Jun 1969	11 Dec 1978	Tajikistan	.	4 Jan 1999 a
New Zealand	12 Nov 1968	28 Dec 1978	Thailand	.	5 Sep 1999 a
Nicaragua	.	12 Mar 1980 a	Timor-Leste	.	16 Apr 2003 a
Niger	.	7 Mar 1986 a	Togo	.	24 May 1984 a
Nigeria	.	29 Jul 1993 a	Trinidad and Tobago	.	8 Dec 1978 a
Norway	20 Mar 1968	13 Sep 1972	Tunisia	30 Apr 1968	18 Mar 1969
Pakistan	3 Nov 2004	.	Turkey	15 Aug 2000	23 Sep 2003
Panama	27 Jul 1976	8 Mar 1977	Turkmenistan	.	1 May 1997 a
Paraguay	.	10 Jun 1992 a	Uganda	.	21 Jan 1987 a
Peru	11 Aug 1977	28 Apr 1978	Ukraine	20 Mar 1968	12 Nov 1973
Philippines	19 Dec 1966	7 Jun 1974	United Kingdom	16 Sep 1968	20 May 1976
Poland	2 Mar 1967	18 Mar 1977	United R. of Tanzania	.	11 Jun 1976 a
Portugal	7 Oct 1976	31 Jul 1978	United States	5 Oct 1977	.
Republic of Korea	.	10 Apr 1990 a	Uruguay	21 Feb 1967	1 Apr 1970
Rep. of Moldova	.	26 Jan 1993 a	Uzbekistan	.	28 Sep 1995 a
Romania	27 Jun 1968	9 Dec 1974	Venezuela	24 Jun 1969	10 May 1978
Russian Federation	18 Mar 1968	16 Oct 1973	Viet Nam	.	24 Sep 1982 a
Rwanda	.	16 Apr 1975 a	Yemen	.	9 Feb 1987 a
St Vincent and the G.	.	9 Nov 1981 a	Zambia	.	10 Apr 1984 a
San Marino	.	18 Oct 1985 a	Zimbabwe	.	13 May 1991 a

III. GOVERNMENTS'S OBLIGATIONS AND PRACTICES

1. Governments' Obligations

As a human right, the right to food is *not* a political option that governments can choose or reject. Its acknowledgement thus translates into obligations for governments.

The corresponding obligations of governments have been defined by the monitoring bodies at the international and regional levels (Committee on Economic, Social and Cultural Rights¹⁴ and the African Commission on Human and Peoples' Rights¹⁵) and by the countries themselves that must implement the right to food at the national level [see below and Chapter IV.1].

Governments have the obligation to respect, to protect and to fulfill the right to food, to wit to facilitate this right as well as to make possible full enjoyment of it.¹⁶

They must *respect* the right to food. For example, they must not drive small farmers or indigenous peoples from their lands; they must not pollute the water these people use to irrigate their fields; they must not pursue economic policies that will lead to the loss of huge numbers of jobs or of purchasing power without offering viable alternatives to those who would thus otherwise no longer have access to an adequate diet.

Further, the rights of indigenous populations and of minorities to land must be acknowledged and respected.

¹⁴ Committee on Economic, Social and Cultural Rights (12 May 1999), *General Comment 12, The Right to Adequate Food (Article 11)*, Paragraph 15: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?/Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?/Opendocument)

¹⁵ In the case of the Ogoni people against the government of Nigeria. African Commission on Human And Peoples' Rights, 155/96, *The Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria* (2001): <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>

¹⁶ Committee on Economic, Social and Cultural Rights (12 May 1999), *General Comment 12, The Right to Adequate Food (Article 11)*, Paragraph 15: <http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument>

Governments must *protect* the right to food, preventing a third party or a transnational corporation from damaging the resources that enable a person or a group of persons to have access to food.

Consequently, the land rights of small farmers and of indigenous peoples must be protected, a minimum wage must be guaranteed, including by private enterprises, and women must not be subject to discrimination in employment or property rights.

Governments must *fulfill* the right to food of the 852 million people who are underfed, meaning they must *facilitate* and *provide* access to food.

The respect of these obligations requires first and necessarily that governments identify those whose rights are at risk of being violated or are being violated outright. The purpose of the obligation to facilitate the right to food is to enable these persons to have unimpeded access, through their own efforts, to an adequate diet. Concretely, governments are under obligation to take measures, according to the socio-economic, historical and geographic situation of the country. Among these are: helping small farmers increase their crop yield; facilitating access to credit for the poorest; propagating the principles of nutritional education that would enable the poorest to use best whatever resources they may dispose of (for example supporting breast feeding); undertaking land reform to redistribute inequitably owned land; facilitating the creation of jobs guaranteeing a decent standard of living; building roads to facilitate the transporting of goods and access to local markets; improving irrigation; supporting the family-based economy.

Finally, governments are obliged to fulfill the right to food of those who, alone, have *no* chance at all of having an adequate diet. In other words, governments must supply them with direct aid. This aid can be in the form of food for those who have no access to agricultural production or in the form of financial aid for those who can obtain food at local markets. This is imperative both in *ordinary* situations and in *emergencies*.

In ordinary situations, governments should help, notably through social welfare, the aged, the disadvantaged and the marginalized, whose numbers are increasing with growing urbanization and the weakening of the family ties characterizing traditional agricultural societies. They should also ensure that prisoners are properly fed as well as the children of the poor, for example through free school lunches.

Annex 2:

LIST OF STATES PARTIES TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
(ratification by 151 States)

State	Signature	Ratification, Accession (a), Succession (d)	State	Signature	Ratification, Accession (a), Succession (d)
Afghanistan	.	24 Jan 1983 a	Dominican Republic	.	4 Jan 1978 a
Albania	.	4 Oct 1991 a	Ecuador	29 Sep 1967	6 Mar 1969
Algeria	10 Dec 1968	12 Sep 1989	Egypt	4 Aug 1967	14 Jan 1982
Angola	.	10 Jan 1992 a	El Salvador	21 Sep 1967	30 Nov 1979
Argentina	19 Feb 1968	8 Aug 1986	Equatorial Guinea	.	25 Sep 1987 a
Armenia	.	13 Sep 1993 a	Eritrea	.	17 Apr 2001 a
Australia	18 Dec 1972	10 Dec 1975	Estonia	.	21 Oct 1991 a
Austria	10 Dec 1973	10 Sep 1978	Ethiopia	.	11 Jun 1993 a
Azerbaijan	.	13 Aug 1992 a	Finland	11 Oct 1967	19 Aug 1975
Bangladesh	.	5 Oct 1998 a	France	.	4 Nov 1980 a
Barbados	.	5 Jan 1973 a	Gabon	.	21 Jan 1983 a
Belarus	19 Mar 1968	12 Nov 1973	Gambia	.	29 Dec 1978 a
Belgium	10 Dec 1968	21 Apr 1983	Georgia	.	3 May 1994 a
Belize	6 Sep 2000	.	Germany	9 Oct 1968	17 Dec 1973
Benin	.	12 Mar 1992 a	Ghana	7 Sep 2000	7 Sep 2000
Bolivia	.	12 Aug 1982 a	Greece	.	16 May 1985 a
Bosnia and Herzeg.	.	1 Sep 1993 d	Grenada	.	6 Sep 1991 a
Brazil	.	24 Jan 1992 a	Guatemala	.	19 May 1988 a
Bulgaria	8 Oct 1968	21 Sep 1970	Guinea	28 Feb 1967	24 Jan 1978
Burkina Faso	.	4 Jan 1999 a	Guinea-Bissau	.	2 Jul 1992 a
Burundi	.	9 May 1990 a	Guyana	22 Aug 1968	15 Feb 1977
Cambodia	17 Oct 1980	26 May 1992 a	Honduras	19 Dec 1966	17 Feb 1981
Cameroon	.	27 Jun 1984 a	Hungary	25 Mar 1969	17 Jan 1974
Canada	.	19 May 1976 a	Iceland	30 Dec 1968	22 Aug 1979
Cape Verde	.	6 Aug 1993 a	India	.	10 Apr 1979 a
Central African R.	.	8 May 1981 a	Iran	4 Apr 1968	24 Jun 1975
Chad	.	9 Jun 1995 a	Iraq	18 Feb 1969	25 Jan 1971
Chile	16 Sep 1969	10 Feb 1972	Ireland	1 Oct 1973	8 Dec 1989
China	27 Oct 1997	27 Mar 2001	Israel	19 Dec 1966	3 Oct 1991
Colombia	21 Dec 1966	29 Oct 1969	Italy	18 Jan 1967	15 Sep 1978
Congo	.	5 Oct 1983 a	Jamaica	19 Dec 1966	3 Oct 1975
Costa Rica	19 Dec 1966	29 Nov 1968	Japan	30 May 1978	21 Jun 1979
Côte d'Ivoire	.	26 Mar 1992 a	Jordan	30 Jun 1972	28 May 1975
Croatia	.	12 Oct 1992 d	Kazakhstan	2 Dec 2003	.
Cyprus	9 Jan 1967	2 Apr 1969	Kenya	.	1 May 1972 a
Czech Republic	.	22 Feb 1993 d	Kuwait	.	21 May 1996 a
D. P. R. of Korea	.	14 Sep 1981 a	Kyrgyzstan	.	7 Oct 1994 a
D. R. of the Congo	.	1 Nov 1976 a	Lao P's. D. R.	7 Dec 2000	.
Denmark	20 Mar 1968	6 Jan 1972	Latvia	.	14 Apr 1992 a
Djibouti	.	5 Nov 2002 a	Lebanon	.	3 Nov 1972 a
Dominica	.	17 Jun 1993 a	Lesotho	.	9 Sep 1992 a

secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations (...) (para. 17).

Violations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include inter alia (...) failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations (para. 19).

Redress for Violations of the Right to Food

Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition (...) (para. 32).

Judges and other members of the legal profession are invited to pay greater attention to violations of the right to food in the exercise of their functions (para. 34).

International Obligations and Humanitarian Assistance in Case of Natural Disasters

(...) States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food (...) (para. 36).

States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons (...) (para. 38).

Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population (para. 39).

Prohibition of Embargoes on Food

States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights (para. 37).

In emergency situations (such as natural disasters or armed conflict), governments should supply food aid as fast as possible to vulnerable persons. This can be accomplished by governments in affected areas acting on their own or with the help of other governments in affected areas or with the help of other governments farther away, or with the help of specialized U.N. agencies, or national and international NGOs.

Facilitating and fulfilling the right to food can involve the mobilization of substantial resources. In recognizing the right to food, governments commit themselves to using to the maximum their available resources and, if need be, to requesting aid from the resources of other governments and from the U.N. to fulfill the right to food.

2. Governments' Practices (Current Situation)

Those states parties to the International Covenant on Economic, Social and Cultural Rights are under obligation to incorporate the right to food into their *national legislation*. At present, the right to food is recognized, on the national level, in various forms:

- i. by the incorporation in national legislation of international or regional texts recognizing the right to food, such as the International Covenant on Economic, Social and Cultural Rights or the Protocol of San Salvador;
- ii. by asserting it in the constitution as a basic human right;
- iii. by its inclusion in the constitution as a principle, as a goal or as an essential social or political objective of the country expressed as access to food, as opposed to the right to food;
- iv. as an integral part of the other basic rights guaranteed by the constitution, for example the right to life;
- v. by guaranteeing, in the constitution, elements of the right to food such as access to land, access to water, the guarantee of a livable minimum wage or of social security.

Numerous laws guarantee populations' access to food, equitable distribution of resources (including land and water), the right to use them and to own them, a minimum wage, access to fishing areas, organization of food aid, etc. These laws are essential to the right to food. They can be just, complete, equitable and non-discriminatory, in which case, if they are not respected, they can be invoked in a court of law, before an impartial and effective judge. But they cannot be invoked if they are

unjust, incomplete or discriminatory or if the appropriate judicial instance is biased, incompetent or dilatory.

This section deals primarily with the recognition of the right to food in various national constitutions, for, in most countries, the national constitution is the highest law of the land. Obviously, if the right to food is recognized in the constitution, it can be invoked in an attempt to change an unjust law or to enforce a law protecting that right.

Acknowledgement of the Right to Food as a Basic Right

In a considerable number of countries the right to food is acknowledged in the constitution as a basic right. In this regard, one might cite Congo, Finland, Haiti, Nicaragua, Russia, Uganda, Ukraine and South Africa [see Annex 7]. Some countries, such as Brazil, Colombia, Cuba, Ecuador, Guatemala and Paraguay, recognize the right to food of certain groups within their population that are particularly vulnerable: children, adolescents or the aged [see Annex 7].

The best example of the recognition of the right to food as a basic right is the constitution of South Africa, which, in Chapter 2, *Bill of Rights*, Section 27, Paragraph 1, provides that:

“Everyone has the right to have access to

a. health care services, including reproductive health care;

b. sufficient food and water; and

c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.”

Further, Section 28, Paragraph 1, of the *Bill of Rights* states that:

“Every child has the right to basic nutrition, shelter, basic health care services and social services.”

The South African Constitution also stipulates that the government has the obligation to respect, to protect and to fulfill the rights in the *Bill of Rights* and that this obligation applies to all the branches of the government – executive, legislative, and judicial – and to all levels of government – local, provincial and national (Sections 7 and 8).

Such an recognition of the right to food and of the corresponding obligations of the government is important for it enables one to bring a case before a court of law at the local or national level for a violation of the right to food [see the fourth part of this brochure].

While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society – individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector – have responsibilities in the realization of the right to adequate food (...) (para. 20).

Obligations of States in Case of Third Party Intervention (the Private Business Sector and International Organizations)

As part of their obligations to protect people's resource base for food, states parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food (para. 27).

The international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis. Care should be taken, in line with the Committee's General Comment No. 2, paragraph 9, in any structural adjustment programme to ensure that the right to food is protected (para. 41).

Implementation at the National Level

(...) Every State will have a margin of discretion in choosing its own approaches, but the Covenant clearly requires that each State party take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food (...) (para. 21).

The strategy should address critical issues and measures in regard to *all* aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security. Care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels (para. 25).

States parties shall develop and maintain mechanisms to monitor progress towards the realization of the right to adequate food for all, to identify the factors and difficulties affecting the degree of implementation of their obligations, and to facilitate the adoption of corrective legislation and administrative measures, including measures to implement their obligations under articles 2.1 and 23 of the Covenant (para. 31).

Violation of the Covenant, specifically the Right to Food

Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. (...) Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable by themselves to

V. ANNEXES

Annex 1:

EXTRACTS OF THE GENERAL COMMENT N°12 ON THE RIGHT TO ADEQUATE FOOD

The Committee on Economic, Social and Cultural Rights, in its General Comment N°12, elaborated on the scope of the right to food (Chapter II of this brochure); obligations of the states parties to the Covenant; obligations at the international level; actions to be taken to achieve the realization of this right; violations of the Covenant; ways of seeking redress for any violation of the right to food. Below are some selected extracts⁴³.

The Committee claims from the outset that fundamentally, the roots of the hunger and malnutrition problem are not due to a lack of food but to a lack of access to available food by large segments of the world's population, mainly because of poverty (para. 5).

Obligations of States

(...) Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger (para. 14).

The right to adequate food, like any other human right, imposes three types or levels of obligations on states parties: the obligations to respect, to protect and to fulfill. In turn, the obligation to fulfill 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 persons of their access to adequate food.

The obligation to **fulfill** (facilitate) means the State must pro-actively 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 **fulfill** that right directly (provide food). This obligation also applies to victims of natural or other disasters (para. 15).

⁴³ Subtitles and emphasis added by CETIM.

Access to Food and the Right to Food

In most countries, the right to food is not recognized as a basic right, but access to food is written into the constitution as a principle, a goal or an essential social or political objective. This is the case, for example, in Bangladesh, the Dominican Republic, Ecuador, Ethiopia, Guatemala, India, Malawi, Nigeria, Pakistan, Iran and Sri Lanka [see Annex 7], whereas, with the exception of Pakistan, all the above-mentioned countries – and many others – have ratified the International Covenant on Economic, Social and Cultural Rights and have, for this reason, the obligation to write into their national legislation the right to food and to take appropriate measures to ensure its fulfillment.

In these countries, the government, as the agent of a state party to the Covenant, has the duty to improve, through its policies and programs, the population's access to food, including access by the poorest. However, these countries fail in their duty when they do not enshrine economic, social and cultural rights – including the right to food – in their national legislation. In these conditions, recourse to mechanisms of judicial oversight at the national level demanding that the right to food be respected is virtually impossible. The only thing to do then is to conduct campaigns pressuring these governments to respect their international commitments and enact national legislation guaranteeing the rights stipulated in the Covenant. In the meantime, another approach is to explore whether the right to food has been recognized in other ways, for example through the recognition of other basic rights, such as the right to life, or through the explicit acknowledgement in national law of the validity of international treaties [see below].

Acknowledgement of Other Basic Rights – Such as the Right to Life – that would Include the Right to Food

In most countries, the right to life is recognized in the constitution as a basic right. It is thus possible that this right might be broadly interpreted by judicial oversight bodies to include the right to food. This is what is recommended by the U.N. Human Rights Committee, which is entrusted with monitoring observance, on the international level, of civil and political rights, which include the right to life. For the

Committee, governments should broadly interpret the right to life and include in it the struggle for the elimination of malnutrition¹⁷.

In point of fact, such an interpretation of the right to life is facilitated when access to food is recognized in the constitution as a principle, a goal or an essential social or political objective of the government [see below]. In India, for example, the right to life has been interpreted very broadly by the Supreme Court since the nineteen eighties. It includes notably the protection of the right to health, of the right to water, of the right to adequate housing and of the right to the environment¹⁸. Since 2001, it also includes the right to food¹⁹.

The right to food can also be protected through other basic rights, such as the right to human dignity. This is the case in Switzerland, where the Federal Tribunal (the highest judicial instance in the country) has ruled that every person who is not able to support himself has the right to be aided and assisted and to receive those means indispensable to a dignified human existence²⁰. Since this ruling by federal judges, the right to minimal conditions of existence, including food, clothing and shelter, has been recognized in the new Swiss national constitution [cf. Chapter IV.1].

Acknowledgement of International or Regional Texts in National Legislation

In a great number of countries, the international or regional treaties that recognize the right to food, such as the International Covenant on Economic, Social and Cultural Rights or the Protocol of San Salvador, have become part of national legislation.

The International Covenant on Economic, Social and Cultural Rights is thus a part of the national legislation in at least 77 countries²¹.

¹⁷ Human Rights Committee (30 April 1982): *General Comment 6, The Right to Life (Article 6)*, Paragraph 5:
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument)

¹⁸ See the case study of the FAO on the right to food In India:
http://www.fao.org/righttofood/common/ecg/51629_fr_Template_case_study_India.pdf

¹⁹ Indian Supreme Court, Civil Original Jurisdiction, *Writ Petition No. 196 (2001)*. Cf. the website of the Indian campaign for the right to food: www.righttofoodindia.org

²⁰ Swiss Federal Tribunal, ATF 121 I 367, 371, 373 V.=JT 1996 389. Following this ruling, this right was recognized in Article 12 of the new national constitution.

²¹ Albania, Algeria, Angola, Armenia, Austria, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, CapeVerde Islands, the Central African

CONCLUSION

As the information contained in this brochure demonstrates, the right to food is a human right recognized at the national, regional and international levels. As such, it must be respected and fulfilled. However, in practice, not only is this right not respected, it is frequently violated. If history has taught us that rights can be secured only through struggle, it also teaches us that achieving the fulfillment of those rights also requires struggle. We hope that this brochure will be useful for the social movements, the NGOs and the citizens who mobilize to make this right recognized and fulfilled.

Call for criticism and commentary

In order to improve the brochures yet to come in this series, all criticism and commentary on this brochure are most welcome. Readers are requested to address them to the CETIM.

approached by any person or organization and decide to act if he judges that the right to food is threatened. The urgent communications usually remain confidential, but if there is no answer, the Special Rapporteur can publicly denounce the government in question, as he has done, for example, before the media, in the case of China's deporting "hunger refugees" back to North Korea⁴².

⁴² Cf. www.righttofood.org

In these countries, the International Covenant can be cited in a court of law as a basis for demanding the realization of right to food, as in Argentina.

Acknowledgement of Certain Elements of the Right to Food, Such as Access to Land, Access to Water, the Guarantee of a Livable Minimum Wage or Social Security

In all countries, certain elements of the right to food are at a minimum recognized in the constitution, such as the right to land, the right to water, the right to a livable minimum wage, the right to social security or the right to social welfare²².

In countries where the right to food is not recognized at all in the constitution, neither as a basic right nor as an essential objective, nor as an element of some other basic right, nor through the acknowledgement at the national level of international and regional treaties, these last mentioned elements can be used to demand the realization of the right to food.

Republic, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of Congo, Djibouti, Egypt, the Former Yugoslav Republic of Macedonia, Ecuador, Estonia, Ethiopia, Finland, France, Gabon, Germany, Georgia, Ghana, Greece, Guatemala, Guinea, Honduras, Kyrgyzstan, Latvia, Lithuania, Madagascar, Malawi, Mali, Mongolia, Namibia, the Netherlands, Nicaragua, Niger, Norway, Paraguay, Peru, the Philippine Islands, Poland, Portugal, the Republic of Korea, Moldova, Rumania, Russia, Rwanda, San Salvador, Senegal, Serbia-Montenegro, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Surinam, Switzerland, Tajikistan, Chad, Timor-Leste, Togo, Turkey, Ukraine and Venezuela. Cf. FAO, *Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Food in the Context of National Food Security*, IGWG RTFG1/INF/2: <http://www.fao.org/DOCREP/MEETING/006/Y8909E.HTM>

²² Ibid.

IV. THE RIGHT TO FOOD IN PRACTICE AND THE MONITORING MECHANISMS AVAILABLE AT THE NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

If a country does not honor one of its obligations to respect, to protect or to fulfill the right to food, all those who are victims of this failure should be able to accede to a judicial oversight body to demand their rights. All victims of violations of the right to food have the right to adequate redress – reparation, compensation and/or the guarantee that it will not happen again²³.

A person or group arbitrarily expelled from land that is a source of food or denied access to a traditional fishing area, a person or a group whose irrigation water has been polluted by the government or by a corporation, a person or group left without the means of acquiring adequate food and without local, national or international aid, should be able to file a complaint and obtain redress for violation of the right to food.

In fact, the means of demanding fulfillment of the right to food and the chances of obtaining redress depend mostly on the information and the mechanisms available at the national, regional and international level.

Whereas in the first part of this brochure, the recognition of the right to food was presented working from the international level on down to the national level (in conformity with the historical evolution of the acknowledgement of the right to food), in this fourth part, the monitoring and enforcement mechanisms available will be presented beginning at the national level and working up to the international level. It goes without saying that, for a person or a group of persons victim of violations of the right to food, the first mechanisms to be used are those available at the national level. A person or a group that has lost access to food, or that is getting no government aid, should first approach the local authorities and request their aid. If this is impossible or if this does nothing to improve the situation, this person or this group can try

²³ Committee on Economic, Social and Cultural Rights (12 May 1999), *General Comment 12, The Right to Adequate Food (Article 11)*: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)
Opendocument

As a monitoring procedure, it has much to recommend itself, for it is easily accessible (even by e-mail or by post; see Annex 8)⁴¹.

The themes that the Special Rapporteur deals with in his reports are highly varied. For example, he has examined the possibility of bringing questions regarding the right to food before the courts; the links between the struggle for the right to food and the struggle for food sovereignty; links between the struggle for the right to food and the resistance of traditional fishermen to the generalized spread of intensive and industrial level fishing; links between the right to food and the inequalities engendered by the liberalization of trade; links between the right to food and access to justice; links between the right to food and the imperative need for agricultural reform; links between the right to food and access to water, in particular for women; links between the right to food and the pressing need to control the activities of transnational corporations; links between the right to food and international humanitarian law protecting vulnerable populations during times of armed conflict.

The Special Rapporteur has visited Niger, Brazil, Bangladesh, the Occupied Palestinian Territories, Ethiopia, Mongolia and Guatemala. During his visits, he has met with people from numerous social movements, both in capital cities and out in the countryside, and subsequently he has submitted mission reports on the respect of the right to food in each of the countries visited. The reports contain numerous recommendations addressed to the governments of the countries in question. The Special Rapporteur has thus recommended to the Brazilian government that it unconditionally accelerate agrarian reform; to the Bangladeshi government that it end de facto discrimination against women, particularly regarding access to land; to the Ethiopian government that it immediately favor food aid over aid to development. His recommendations are submitted to the Commission on Human Rights and can be a worthwhile tool for local social movements that have met with the Special Rapporteur, for they correspond to these movements' own demands.

Finally, the Special Rapporteur sends urgent communications to governments in specific cases of violations of the right to food. In most cases, this is done on the basis of information that he receives from NGOs in consultative status with the United Nations, but he can be

⁴¹ www.righttofood.org

concerning violations of rights, can take the floor, can be present at the discussions between the country's delegation and the members of the Committee and can ensure the follow up to the recommendations of the Committee at the national level by putting pressure on the government to transform these recommendations into a concrete improvement of the oppressed populations of the country.

Currently, individuals and groups who reckon that their rights have not been respected, in violation of the provisions of the Covenant, do not have the possibility of submitting formal cases to the Committee. The lack of a procedure allowing this limits considerably the Committee's capacity to create jurisprudence and, of course, limits seriously the opportunities the victims of these violations have to obtain redress at the international level.

The Commission on Human Rights has recently set up "*an open-ended working group of the Commission with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights*"³⁹.

The United Nations Special Rapporteur on the Right to Food

The post of *Special Rapporteur on the right to food* was created by the United Nations Commission on Human Rights⁴⁰. Mr. Jean Ziegler, Professor of Sociology at the University of Geneva (Switzerland), was named to this post in 2000 for a three-year term, which was renewed for three more years in April 2003. In order to promote the right to food, the Special Rapporteur has three procedures at his disposal: 1. the submission to the General Assembly and to the Commission on Human Rights of general and thematic reports on the right to food; 2. the conducting of inquiries in the field with a view to monitoring the respect of right to food in the countries in question; 3. the transmission of urgent communications to governments in specific cases of violation of the right to food. When using these three procedures, the Special Rapporteur relies on the work of NGOs and other civil society organizations.

³⁹ *Commission on Human Rights resolution 2003/18* : [http://www.unhcr.ch/huridoca/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.18.En?Opendocument](http://www.unhcr.ch/huridoca/huridoca.nsf/(Symbol)/E.CN.4.RES.2003.18.En?Opendocument)

For further information, see, among other sources, the CETIM information bulletin No 20: <http://www.cetim.ch/en/documents/bul20eng.pdf>

⁴⁰ All reports of the Special Rapporteur on the Right to Food are available at: <http://www.ohchr.org/english/issues/food/>

the mechanisms available at the national level, then at the regional and international levels. This can be done individually or with the support of a social movement or an organization specialized in the protection of human rights.

At the national level, just as at the regional and international level, there are two sorts of enforcement mechanisms that can be used: judicial – a local or national judge who can hand down rulings that will be binding on those wielding political power – and, barring that, extra-judicial mechanisms, which can make recommendations or negotiate with those in power for reparation or compensation.

This part of the brochure is intended to present these two sorts of enforcement mechanisms that might be available at the national, regional and international levels.

1. Enforcement Mechanisms Available at the National Level

Judicial Mechanisms

In theory, in countries where the right to food is recognized as a basic constitutional right or as an element of another basic right recognized in the constitution [see Part I], it is possible to assert the right to food before a court of law at the local or national level.

In practice, ignorance of human rights by local judges makes it difficult to make effective use of this possibility at the local level. If a local judge does not grant redress, the case may be brought before a judge at the national level. This is possible in a great number of countries on a constitutional basis. In such situations, the respect, protection or fulfillment of the right to food must be demanded directly of judges at the national level. This has happened, for example, in India, in South Africa and in Switzerland.

South Africa

The right to food is recognized as a basic right in the South African Constitution. This recognition allows victims of violations of the right to food to bring a case directly to the regional constitutional courts (these High Courts sit in each of the provinces). If the victims do not obtain reparation or compensation in case of violation, they can appeal to the National Constitutional Court, which will issue a final ruling. Until now, demands for redress for violations of economic and social rights in South Africa have centered primarily on the right to adequate

housing, the right to water and the right to health. In one case, in 2000, a municipality of the Western Cape province was obliged to supply decent living conditions and drinking water to communities living in deplorable conditions²⁴. In another case, in 2002, the national government was forced to produce and distribute to all HIV positive women a medicine preventing the transmission of HIV/AIDS from the mother to the child²⁵. The right to food has been used only recently in South Africa, to wit, by fishing communities that were denied access to traditional fishing areas by the enactment of a new national law on fishing. Supported by human rights protection organizations, they took the case to the High Court of the province of Cape Town, claiming violation of their right to food. Now, they are awaiting the decision of the judges.

India

In India, a case can be brought directly to the Supreme Court when there has been a violation of a basic human right recognized in the constitution. The right to life is one of these basic rights recognized by the Indian constitution, and it has been broadly interpreted in this country to include the right to food. Thus, in India, it is possible to go directly to the Supreme Court in case of a violation of the right to food, which happened in 2001. An NGO working for the protection of human rights (the Union for Civil Liberties), active in the state of Rajasthan, filed a complaint with this court in the name of several communities whose people were dying of hunger while, several kilometers away, the food stocks of the Food Corporation of India (the public agency in charge of food distribution) were being eaten by rats. The Indian Supreme Court judges went to the site in person and subsequently handed down several rulings in favor of the communities in question, all in the name of the right to food. They ordered, among other things, a reform of food stocks management, the supplying of school lunches and food allowances for the poorest. These decisions are binding in all the states

²⁴ South African Constitutional Court (2000), *The Government of the Republic of South Africa, the Premier of the Province of the Western Cape, Cape Metropolitan Council, Oostenberg Municipality v. Irene Grootboom and Others*, Case CCT 11/00:

<http://www.communitylawcentre.org.za/children/cases/grootboom1.pdf>

²⁵ South African Constitutional Court (2000), *Minister of Health and Others v. Treatment Action Campaign and Others*, Case CCT 8/02: http://www.lrc.org.za/Judgements/judgements_constitutional.asp

The Committee on Economic, Social and Cultural Rights³⁷

Created in 1985 by the Economic and Social Council (ECOSOC), the *Committee on Economic, Social and Cultural Rights* is responsible for monitoring compliance by the states parties to the International Covenant on Economic, Social and Cultural Rights.

The Committee comprises 18 members, who are acknowledged experts in the area of human rights and who carry out their mandate as individuals and not as government representatives. They are elected for a four-year term, which is renewable.

A country ratifying the Covenant assumes the solemn responsibility of carrying out all the obligations imposed by the Covenant and of ensuring, in good faith, that its national legislation is in conformity with its international obligations. Consequently, by ratifying human rights instruments, countries become accountable to the international community, to other countries that have ratified the same agreements as well as to their citizens and all those residing on their territory.

In keeping with Articles 16 and 17 of the Covenant, states parties to it commit themselves to submitting to the Committee – within two years of its entry into force and, afterwards, every five years – a periodic report explaining the legislative, judicial, political and other measures they have taken to ensure the enjoyment of the rights set forth in the Covenant. They are also requested to furnish detailed information concerning the extent to which these measures have been put into practice and the difficulties they have encountered in doing so.

After completing an analysis of a report in the presence of a delegation from a state party to the Covenant, the Committee finishes the examination by formulating “conclusions” that constitute the judgment of the Committee regarding the observance by the state party to the Covenant³⁸.

Throughout the whole process, from the presentation of the report to the recommendations, the role of civil society organizations is crucial. These organizations can present alternative reports to the Committee

³⁷ For detailed information, see the Committee’s web site: <http://www.ohchr.org/english/bodies/cescr/>

³⁸ All reports of States parties, the substance of the discussion and all the recommendations of Committee on Economic, Social and Cultural Rights are available to the public: <http://www.unhcr.ch/tbs/doc.nsf>

The European Social Rights Committee

The *European Social Rights Committee* monitors observance of the European Social Charter. All states parties to the European Social Charter must submit reports to the Committee concerning the measures that they have taken to fulfill the economic and social rights of their populations. Since the 1965 adoption of the Additional Protocol to the European Social Charter, groups of NGOs and trade unions can also file collective claims for violation of the rights recognized in the Charter. But no individual claim is allowed, and [see the second part of this brochure] no collective claim can be brought before the Committee for violations of the right to food. Ten collective cases concerning violations of social rights have been brought before the Committee since 1998. None of them concerned the right to food.

3. Monitoring and Enforcement Mechanisms at the International Level

There are no judicial mechanisms at the international level to protect the right to food. The United Nations Committee on Economic, Social and Cultural Rights, in charge of monitoring the respect, protection and fulfillment of the right to food recognized by the countries that have ratified the International Covenant on Economic, Social and Cultural Rights, still does not have an optional protocol allowing it to hear cases concerning violations of any of these rights, including the right to food. However, this Committee can send recommendations to the country concerned when the country's periodic report is dealt with [see below]. There is, moreover, a United Nations Special Rapporteur on the Right to Food, who is responsible for submitting reports to the Human Rights Commission and to the General Assembly on the fulfillment and violations of the right to food throughout the world. He can conduct inquiries in the field and refer matters concerning violations of the right to food to the governments in question [see below].

of India, and the Indian government must observe them, while being monitored by national and international organizations.²⁶

In another case, the same court ruled against intensive shrimp raising because of its highly negative effects on the means of subsistence of traditional fishermen and local farmers, causing a loss of access to drinking water for the local population²⁷.

These two cases are representatives of what has been possible to do in India, on the basis of the right to food protected through the right to life in the constitution.

An example of the struggle carried on by Indian NGOs

The first national campaign for the right to food in India was launched to seek redress for violation of this right, in an attempt to force those wielding political power to fulfill their obligation to implement enjoyment of the entire Indian population's right to food. During this campaign, the Indian social movements – mainly development organizations and organizations for the protection of human rights – discovered a major ally in the Indian Supreme Court, the country's highest judicial instance. The Court's judges, after personally going out into the field to assess the matter *in situ*, declared the Indian government guilty of violation of the right to food and ordered the setting up, as soon as possible and at all levels, of aid programs for the poorest*.

Indian social movements were thus able to use a *mechanism of judicial redress* to hold the government accountable for violations of the right to food. The outcome of this case is entirely in keeping with the obligations of any government, and those in power are obliged to implement the decisions of the judges. Social movements demanding the fulfillment of the right to food thus have a very real possibility of seeing their demands transformed into a concrete improvement of the lives of those whom they are defending.

*The Indian campaign on the right to food created a website: www.righttofoodindia.org

²⁶ Cf. the internet site of right to food campaign organized by Indian NGOs: <http://www.righttofoodindia.org/>

²⁷ Indian Supreme Court: *S. Jagannath v. Union of India*, WP 561/1994 (1996.12.11) (*Aquaculture case*). <http://www.elaw.org/resources/text.asp?ID=1055&lang=es>

Switzerland

In Switzerland, the right to food is protected through the protection of human dignity, which is recognized as a basic right, even though this right was not explicitly recognized in the Constitution when it was first invoked. In 1966, three brothers, stateless refugees of Czech origin, who were in Switzerland without food or money, went to the Swiss Federal Tribunal (the highest judicial instance in the country) to protest the violation of their right to aid, including food aid. They were unable to work for lack of work permits and were unable to leave the country for lack of identity papers. They had requested aid from the regional authorities (the canton of Berne), but this aid had been refused. They then went to the Federal Tribunal, which recognized, for the first time, the right to minimal conditions of existence, including “*the guarantee of all elementary human needs such as food, clothing or shelter*” in order to prevent “*a condition of begging unworthy of the human condition*”²⁸. The court ruled that every person present on Swiss territory has this right, which is now recognized as a basic right in Article 12 of the new constitution²⁹:

“Anyone in a situation of distress and unable to support himself has the right to be aided and assisted and to receive the means indispensable to a dignified existence worthy of a human being”. Thus, any victim of a violation of the right to food can invoke this explicitly before the Federal Tribunal and obtain reparation and compensation.

Finally, in those countries where international and regional treaties are recognized as a part of national law [see the second part of this brochure], it is possible to invoke them explicitly before local or national courts in case of a violation of the right to food. However, in many countries, this possibility is unavailable both to judges and to those wielding political power³⁰. On the other hand, it exists, for example, in Argentina, where the judges of the Federal Appeals Court have recog-

²⁸ Swiss Federal Tribunal, references ATF 121 I367, 371, 373 V.=JT 1996 389. See A. Auer, G. Malinverni and M. Hottelier, *Droit constitutionnel suisse*, Staempfli, Berne, 2000, pp. 685-690.

²⁹ Adopted 18 April 1999.

³⁰ See C. Golay, « Accès à la justice et droit à l'alimentation. Le Pacte international relatif aux droits économiques, sociaux et culturels devant les juridictions nationales » in M. Borghi et L. Postiglione Blommestein (eds), *Le droit à l'alimentation et l'accès à la justice*, Editions Universitaires Fribourg, Fribourg, 2005.

The Inter-American Human Rights Commission

The *Inter-American Human Rights Commission* monitors countries' observance of the American Convention on Human Rights and the Protocol of San Salvador.

All states parties to the Convention or to the Protocol must submit reports to the Commission on the measures that they have taken to fulfill the human rights of their populations. But the Inter-American Commission may not hear individual or collective cases regarding violations of the right to food, for the countries of the American continent have not seen fit to provide for this possibility. Only civil and political rights protected by the American Human Rights Convention can be invoked before the Commission (and before the Inter-American Human Rights Court), not the right to food protected by the Protocol of San Salvador.

The only way for victims of violations of the right to food to obtain a hearing before the Inter-American Commission is to use civil and political rights to have their right to food respected. This is what happened in 1990, when a petition presented to the Commission in the name of the indigenous people Huaorani, living in the Oriente region in Ecuador, asserted that the activities of the Ecuadorian national oil company, Petro-Ecuador, and Texaco were contaminating their drinking water supply as well as the lands they cultivated to feed themselves. In November 1994, following the publication of a report by the Center for Economic and Social Rights (United States)³⁵, the Inter-American Commission undertook a trip to Ecuador. In its final report, presented in 1997, it concluded that access to information, participation in the decision-making and right to judicial redress (hence civil and political rights) had not been guaranteed to the Huaorani people, and that the oil companies' activities in Ecuador were not sufficiently regulated to protect the indigenous peoples³⁶. Texaco, like Shell in Nigeria, ended up leaving Ecuador.

³⁵ Center for Economic and Social Rights, “Rights Violations in the Ecuadorian Amazon: the Human Consequences of Oil Development”, March 1994: <http://www.cesr.org/ecuador>

³⁶ Inter-American Human Rights Commission, *Report on the situation of Human Rights In Ecuador*, OEA/Ser.L/V/11.96, doc 10 Rev. 1, 24 April 1997: <http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuador.htm>

recommendations are put into practice. But its great strengths are that the Commission is relatively easy of access by individuals and by NGOs and that its mandate includes the protection of all human rights.

In one case, in 2001, two NGOs submitted a complaint to the African Commission on Human and Peoples' Rights for a violation of the right to food in Nigeria. These two NGOs, the Nigerian Social and Economic Rights Action Center and the American Center for Economic and Social Rights, complained to the African Commission in order to defend a people, the Ogoni, from the national oil company and from the transnational corporation Shell. The two oil companies, with the complicity of the Nigerian government, were destroying with impunity the lands and water resources of the Ogoni people. In this case, and for the first time, the African Commission concluded that the government of Nigeria was under obligation to recognize and protect the right to food of the Ogoni people, including protecting that right from violation by national and transnational companies. For the Commission:

*"...the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.... The government has destroyed food sources through its security forces and State Oil Company; has allowed private oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government..., hence, is in violation of the right to food of the Ogonis."*³⁴

This case, followed closely by numerous national and international NGOs as well as by a major media campaign, obliged Shell to leave Nigeria, which shows that the monitoring bodies for the right to food can have a significant influence on specific cases of violations of the right to food.

³⁴ African Commission on Human and Peoples' Rights, 155/96 *The Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria* (2001): <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>

nized that the victims of the violation of the rights recognized in the International Covenant on Economic, Social and Cultural Rights (in the case under consideration, the right to health) can invoke this right explicitly before a local or national judge³¹.

In most cases, regional and international treaties for protecting human rights, such as the right to food, recognized in the national constitution can also be cited before the extra-judicial monitoring bodies available at the local and national levels.

Extra-Judicial Monitoring Bodies

The two main extra-judicial monitoring bodies at the national level are national human rights protection commissions and ombudsmen's offices. These two bodies together form what is called "national institutions for the protection of human rights", and they exist in some 100 countries.

To be exact, most of the national human rights institutions are controlled by those who wield political power, and their decisions have the status of recommendations. Also, the mandate of these institutions is often limited to civil and political rights recognized in the national constitution.

In spite of this, and in the absence of judicial instances, these extra-judicial bodies available at the local and national level can play a role in the protection of human rights in general and in the protection of the right to food in particular. In those countries where they exist, the victims of violations of the right to food can recur to them by means of a simple letter or by presenting their case orally.

For example, in Niger, Uganda, Mongolia or Honduras, national human rights commissions receive complaints concerning violations of the right to food, conduct investigations, then make recommendations to those with political power. In Guatemala, as in practically all Latin American countries and many European countries, an ombudsman (*Defensor del Pueblo*) receives complaints for violations of the right to food and negotiates reparation or compensation with the government.

³¹ Argentina, Federal Appeals Court (1998), *Viceconte vs Ministry of Health and Social Welfare*. See also the Center on Housing Rights and Evictions (COHRE, 2003), *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies Featuring 21 Case Studies*. COHRE, Geneva, P. 60: <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>

In South Africa, the investigative powers of the national human rights commission are significant, and its decisions, even if they are not judicially binding for those with political power, have a considerable influence on the local, regional and national authorities.

In this respect, an initiative of Brazilian civil society is noteworthy, for it has resulted in the creation of an extra-judicial monitoring body: the National Special Rapporteurs for Human Rights³². One of these special Rapporteurs, Mr. Flavio Valente, is the National Special Rapporteur for the Right to Food. His mandate is very similar to that of the United Nations Special Rapporteur for the Right to Food [see above]. He carries out his field missions in the various states of Brazil and can receive individual or collective complaints from the entire national territory for violations of the right to food. After examining the complaints, he can refer the case to those with political power and request reparation or compensation for the victims.

2. Regional Enforcement Bodies

There is only one judicial regional enforcement body available in case of violation of the right to food: the African Court for Human and Peoples' Rights³³. All the other monitoring and enforcement bodies to which one can recur in case of a violation of the right to food are semi-judicial.

The African Court on Human and Peoples' Rights

The *African Court on Human and Peoples' Rights* is, at the regional level, the most recently created body for human rights protection. Created in 1998 when the African countries adopted the Protocol to the African Charter on Human and Peoples' Rights, it created, as its name implies, an African Court on Human and Peoples' Rights. This protocol entered into force in January 2004.

³² See <http://www.forum.direitos.org.br>

³³ The European Human Rights Court and the Inter-American Human Rights Court, which are also judicial bodies, can judge only cases dealing with violations of civil and political rights.

The African Court has not yet heard any cases, but its role in the protection of the right to food on the African continent may turn out to be very significant. As mentioned above, the right to food is recognized in the African Charter [see the second part of this brochure]. The victims of violations of the right to food will thus be able to file complaints with it and request reparation and compensation. In order to do this, it is, however, necessary for the guilty country to have ratified the Protocol to the African Charter [see the list of these countries in Annex 4]. The Protocol attaches a second condition to this recourse: the victims of violations of the right to food must have already exhausted all domestic instances for redress, to wit, they must have tried to assert their right, without success, before all domestic judicial bodies with jurisdiction over questions arising from the right to food [see above]. In most countries, since these judicial bodies are either non-existent or ineffective, the victims can recur directly to the African Court on Human and Peoples' Rights.

It is still too early to say if this body will be of significant help to the victims of violations of the right to food, but the experience of the African Commission on Human and Peoples' Rights gives a glimmer of hope to the extent that, in the future, the Court follows the orientations of the Commission [see below].

The African Commission on Human and Peoples' Rights

The *African Commission on Human and Peoples' Rights* monitors observance of the African treaties protecting human rights, among which are the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. All the countries that have ratified these treaties [see Annexes 4 and 5] must submit periodic reports to the Commission regarding the measures that they have taken to implement the right to food of their populations.

The African Commission can also hear cases brought by individuals and NGOs regarding violations of any of the rights protected by the African Charter on Human and Peoples' Rights, which includes the right to food [see the second part of this brochure]. Regarding violations of the right to food, the African Commission drafts a report and sends recommendations to the country in question. However, as is the case with all other such bodies at the international level, the great weakness of this body is that it has no enforcement powers to ensure that its