

# **Critical Report n° 3**

## **Issue: Right to Food**

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Europe - Third World Centre  
Rue J.-C. Amat 6  
CH - 1202 Geneva  
Tel.: +41 (0)22 731 59 63 - Fax: +41 (0)22 731 91 52  
Email: [cetim@bluewin.ch](mailto:cetim@bluewin.ch) - Website: [www.cetim.ch](http://www.cetim.ch)

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## **THE GLOBAL FOOD CRISIS AND THE RIGHT TO FOOD**

**Christophe Golay**

Adviser to the United Nations Special Rapporteur on the Right to Food  
(October 2001 to April 2008)

### **INTRODUCTION**

The problem of access to food today is acute. Since the food crisis exploded in Spring 2008, all States, all UN agencies and most social movements have issued declarations on the causes of the crisis and on solutions to resolve it. Paradoxically, efforts to end hunger and malnutrition, based on the right to food, and promoted by States, the FAO and civil society since 1996, seem to be losing ground just at the point where they might be most useful. This is the point of departure of this critical report which aims to put the food crisis in context – structural hunger – and to place the approach based on the right to food at the centre of reflections on the current crisis and on possible ways to overcome chronic hunger and malnutrition.

In 2005, CETIM published a brochure on the right to food<sup>1</sup> which began with following observation: millions of people are victims of violations of their right to food, on a daily basis, but none of them ever bring a complaint nor see themselves as victims of the violation of the most fundamental human rights, with a right to compensation. To remedy this situation, the brochure had two main objectives: to contribute to the diffusion of information on the right to food, to victims, social movements and States; to describe available mechanisms of redress in case of violations, usable by victims to obtain compensation. This analysis remains valid today.

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<sup>1</sup> C. Golay, M. Özden, *The Right to Food*, CETIM, Geneva, 2005,

Since 2004, when the CETIM brochure was produced, there have been important developments in the promotion and protection of the right to food. In November 2004, guidelines on the right to food were unanimously adopted by States, with the explicit aim of providing practical guidelines to overcome hunger.<sup>2</sup> These guidelines were implemented by several states between 2005 and 2008. Today, they should be central to the response to the global food crisis. More recently, in May 2008, a new UN Special Rapporteur on the right to food was appointed to succeed Jean Ziegler.<sup>3</sup> The new Rapporteur, Olivier De Schutter, has been asked by the Human Rights Council to present recommendations on the best way to respond to the food crisis.<sup>4</sup> His analyses and recommendations, based on the right to food are extremely pertinent. However, they have not been followed with any effect, because States and the UN have chosen to favour other approaches, which might even worsen the food crisis instead of alleviating it.

The analyses and recommendations of the Special Rapporteur on the right to food, along with the guidelines adopted by States in 2004, are presented in this critical report, in order to strengthen the links between the struggle to overcome hunger, the responses to the food crisis and the approach based on the right to food. This report is in three parts: Part I, the global food crisis, in the context of structural hunger; Part II, the responses of States and the UN to the food crisis; and Part III, the need to stress the promotion and protection of the right to food in order to respond effectively to the global food crisis and to structural hunger.

## **I. THE FOOD CRISIS IN SPRING 2008**

The world food crisis which exploded in Spring 2008 resulted from price increases in food commodities on the international market, in particular wheat, rice, soya and maize, which brought about an increase in the cost of food imports and the part of household budgets devoted to food. The food crisis therefore, had at least three main causes: increases in food prices, dependence of countries of the South on food imports, and the extreme poverty of families living in these countries, which even before the crisis in Spring, devoted on average 60%-80% of their income to the purchase of food.

### **1. The figures on price increases and malnutrition in the world**

According to FAO<sup>5</sup> and World Bank<sup>6</sup> studies, the price of food commodities increased by 40% between March 2007 and March 2008, by 56% between January

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<sup>2</sup> Guidelines on the right to food were adopted unanimously by the FAO Council in November 2004. FAO Council report, 127<sup>th</sup> session, 22-27 November 2004, FAO Document: CL 127/REP, appendice D. The guidelines were then published by the FAO: Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, 2005. They are available on the website of FAO: [www.fao.org/righttofood](http://www.fao.org/righttofood) and in the annexes.

<sup>3</sup> O. De Schutter replaced J. Ziegler as Special Rapporteur on the right to food on 1 May 2008. Cf. Human Rights Council, The Right to Food, UN symbol: A/HRC/RES/7/14, 27 March 2008.

<sup>4</sup> O. De Schutter, Background Note: Analysis of the World Food Crisis by the U.N. Special Rapporteur on the Right to Food, 2 May 2008. It is available online at: <http://www2.ohchr.org/english/issues/food/docs/SRRTFnotefoodcrisis.pdf>. Human Rights Council, Report of the Special Rapporteur on the right to food, O. De Schutter, Building resilience: a human rights framework for world food and nutrition security, A/HRC/9/23, 8 September 2008.

<sup>5</sup> FAO, Crop Prospects and Food Situation, 2008.

<sup>6</sup> World Bank, Hausse des prix alimentaires, options de politiques gouvernementales et action de la Banque mondiale, April 2008.

2007 and June 2008, by 83% between February 2005 and February 2008 and by 130% between January 2002 and June 2008. The increase in price, therefore, has been structural over the last five years. It has affected in particular, wheat, the price of which has increased by 181% on the international market between February 2005 and February 2008.

As noted by the UN Special Rapporteur on the right to food, O. De Schutter, this situation is exceptional historically: "During the first three months of 2008, international nominal prices of all major food commodities reached their highest levels in nearly 50 years, while prices in real terms were the highest in nearly 30 years, and social unrest developed in more than 40 countries as a result."<sup>7</sup>

Price increases in food products have brought about a significant rise in the *food bill*, ie the cost of imported food, affecting in particular those countries which depend on these imports to guarantee the right to food for their population. For the 40 worst affected countries, all of which depend on imports for at least 40% of their food needs, the food bill increased by 37% between 2006 and 2007 and by 56% between 2007 and 2008. For Africa, it increased by 74% between 2007 and 2008.<sup>8</sup>

The price increases also had disastrous consequences for *household food capacity* affecting, in particular, poor families in cities of the South, which consume mostly imported products and which devote 60% to 80% of their income to food. This percentage increased again in 2007 and 2008, bringing about drastic reductions in other expenses – notably health and education – and food riots in the cities of around forty countries in Spring 2008. These riots were often violent and they resulted in political turmoil in several countries. In Haiti for example, they forced the Prime Minister to resign.

The food crisis of Spring 2008 has had an even more dramatic result: an unprecedented increase in the number of malnourished people in the world. At the World Food Summit of 1996, States committed to reduce the number of malnourished people from 816 millions in 1996 to 408 millions by 2015.<sup>9</sup> But the figures on hunger and malnutrition continued to increase substantially each year, reaching 854 million in 2006.<sup>10</sup> This situation was unacceptable even then. But it has worsened dramatically in 2008. On 16 October 2008, the Director-General of the Food and Agriculture Organization (FAO) announced on World Food Day that 923 million people were malnourished in the world.<sup>11</sup> This new reality, which represents an increase of nearly 70 million malnourished people in one year, reduces the hope of achieving the objectives of the World Food Summit and the Millennium Development Goals by 2015, to zero.<sup>12</sup>

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<sup>7</sup> General Assembly, The right to food, Report of the Special Rapporteur on the right to food, A/63/278, August 2008, par. 4.

<sup>8</sup> FAO, Crop Prospects and Food Situation, 2008.

<sup>9</sup> FAO, Rome Declaration on World Food Security and World Food Summit Plan of Action, see par. 2 of the Rome Declaration and par. 7 of the Plan of Action.

<sup>10</sup> FAO, Food insecurity on the world 2006, 2006, p. 8.

<sup>11</sup> Declaration by Jacques Diouf, Rome, 16 October 2008.

<sup>12</sup> In the Millennium Declaration of the United Nations, States are committed to reduce by half the proportion of undernourished people by 2015. General Assembly, Millennium Declaration, A/RES/55/2, 13 September 2000. According to this commitment, the number of malnourished people should be 591 millions in 2015. This commitment and the commitment made at the World Food Summit were reaffirmed by States at the High Level Conference on Global Food Security held in Rome 3-5 June 2008.

## 2. The causes of price increases in food commodities

Important discussions on the causes of price increases in food commodities, have evolved in parallel with publications on the subject, by international organizations or experts such as Jacques Berthelot. One of the first reasons advanced was the increase in demand by the middle classes of the emerging economies, in particular China and India – in meat and milk products. Nine kilos of wheat are required to produce a kilo of meat and 4 kilos of wheat for a litre of milk. The increase in this demand automatically results in an increase in demand for cereals. But this increase is a structural trend, which cannot explain the sudden surge in food prices between 2007 et 2008.<sup>13</sup>

A second cause which is advanced is linked to the decrease in supply of cereals, due to *climate change*, which resulted in drought for several years in Australia and several African countries, repeated flooding in Asia, and cyclones in Latin America and in the Caribbean. This cause, which is also structural in nature, needs to be put in perspective, as 2007 was a very good year for world cereal production.<sup>14</sup>

Three other causes have had a much greater influence on price increases in food commodities at the end of 2007 and the beginning of 2008: production of agrofuels, speculation, and petrol price increases.

Despite the fact that 2007 was a very good year for global cereal production, the level of food stocks was exceptionally low at the end of 2007. This paradox can be explained in part by the major cause of increase in food prices : *the production of agrofuels*. According to a report by the World Bank which remained secret for a long time, the increase in production of agrofuels is responsible for 70%-75% of the increase in food prices between 2002 et 2008, mainly because it resulted in a decrease in the supply of food commodities and the substitution of food crops by crops for the production of agrofuels, in particular maize.<sup>15</sup>

The very low level of stocks at the end of 2007, linked to the *subprimes* crisis in the USA, resulted in the second major cause of the increase in food prices: *speculation* on cereal prices, which made them rise even higher on international markets. According to the World Bank, nearly 30% of the increase in prices in food commodities is due to speculation.<sup>16</sup>

Finally, the increase in food prices is also due to increases in the price of petrol,<sup>17</sup> which reached a peak of US\$120-150 per barrel between April and July 2008. Food and petrol prices always follow similar trends because food production and transport require large quantities of energy.

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<sup>13</sup> Jacques Berthelot, *Sorting the truth out from the lies about the explosion of world agricultural prices*, May 2008. Former professor, ENSAT. Since his retirement in 2000, J. Berthelot has analysed agricultural policy and trade negotiations in relation to farmers' organizations and NGOs. These are available on the website of Solidarité: <http://solidarite.asso.fr>.

<sup>14</sup> J. Berthelot, op. cit.,

<sup>15</sup> Donald Mitchell, A Note on Rising Food Prices, World Bank Policy Research Working Paper, July 2008.

<sup>16</sup> Communication from the World Bank, 14 April 2008.

<sup>17</sup> J. Berthelot, op. cit.

### 3. Causes of the food crisis and hunger in the world

Price increases were only one cause of the food crisis of 2008. If the most affected countries were not dependent on food imports to guarantee population food needs, they could have substituted food imports with local products, which would have been sold in the cities at affordable prices. But this substitution was made impossible by the imposition of structural adjustment programmes since the 1970s by the International Monetary Fund (IMF) and the World Bank (WB), which forced countries of the South to liberalize their agricultural sector, eliminate subsidies to small farmers and promote export crops as a source of foreign currency to pay off the debt.

The withdrawal of states from rural development, under the influence of the international financial institutions, has been one of the root causes of the food crisis. The other root cause is the poverty of populations living in cities of the South, which obliged them to spend practically all their income on food, when prices increased. In most countries of the North, price increases had far less impact on the capacity of households to purchase food.

In order to understand the real causes of the food crisis and to respond appropriately, it is critical to understand the causes of structural hunger.

U. Jonsson and UNICEF (United Nations Fund for Children) proposed a useful distinction between three kinds of causes: *immediate*, physiological causes, *underlying* causes, at the household level, and basic causes, at the level of society.<sup>18</sup>

*Immediate causes are lack of sufficient or adequate food absorbed by a person and his/her compromised resistance to illness.* These causes simply refer to the fact that the person does not have access to adequate food and that his/her health is affected. These are *physiological causes*; they are the same for any person suffering from hunger, under-nutrition and malnutrition.

*Underlying causes* are much more complex

It was believed for a long time that the main cause of hunger was lack of *available* food. A. Sen was one of the first people to show that there could be famines when there was no decrease in food availability, in regions where certain populations did not have access to food, even if this remained available.<sup>19</sup>

A. Sen's analysis, based on studies of the major famines of the 20th century, notable in India, Bangladesh and Ethiopia, also applies to the underlying causes of chronic under-nutrition. In most countries, in the West but also in Latin America, Asia and Africa, adequate food is very often available in sufficient quantities for the population, but millions of families, suffering exclusion and discrimination, have no

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<sup>18</sup> U. Jonsson, "The Socio-economic Causes of Hunger" in A. Eide, W. Barth Eide, S. Goonatilake, S. Gussow, J. Omawale (eds), *Food as a Human Right*, Singapore, United Nations University, 1988, pp. 28-35. UNICEF, *La situation des enfants dans le monde 1998. Regard sur la nutrition*, Genève, 1998, pp. 25-37. See also UN Millennium Project, Task Force on Hunger, *Halving hunger: it can be done*, 2005, p. 67.

<sup>19</sup> A. Sen, *Poverty and Famines. An Essay on Entitlement and Deprivation*, New York, Clarendon Press, Oxford University Press, 1981. A. Sen, "Food Security and Entitlement" in *Politica internazionale*, No. 3/4, May-August 2001, pp. 19-25.

access to it.<sup>20</sup> A. Eide<sup>21</sup>, J. Ziegler<sup>22</sup>, O. De Schutter<sup>23</sup> and the Committee on Economic, Social and Cultural Rights, have adopted this analysis:

*“Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia because of poverty, by large segments of the world’s population.”<sup>24</sup>*

Of 854 million people suffering chronic under-nutrition in 2007, 50% lived in small hold farming households, 20% were landless rural families, 10% families of pastoral nomads, fishermen or people dependent on the forest for subsistence, and 20%, lived in urban poverty.<sup>25</sup> These people were still undernourished in 2008, because they have no right of access to productive assets or resources – land, water, seeds, fishing or forest rights – or to an income or social assistance which would allow them to live in dignity.

The *fundamental causes* of hunger, under- and malnutrition are those with roots in societal structures. They can be historical, political, economic, cultural or even ecological.<sup>26</sup> These explain why the most vulnerable groups of society do not enjoy rights over productive resources which would allow them to live in dignity.

Contrary to common belief, these fundamental causes cannot be attributed to *war* and *natural disasters*. Of course, armed conflict and natural disasters (mainly drought and flooding) substantially limit access to food. But they concern only 10% of the people suffering from hunger and undernutrition.<sup>27</sup> In fact, most researchers agree that the major, fundamental causes of hunger and undernutrition are *political and economic exclusion, social injustice, and discrimination*.<sup>28</sup>

Josué de Castro has summarized this well:

*“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...”<sup>29</sup>*

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<sup>20</sup> See for example the missions reports of J. Ziegler from Brazil, India and Bangladesh. All these reports are available on [www.righttofood.org](http://www.righttofood.org).

<sup>21</sup> A. Eide, *The Right to Adequate Food as a Human Right*. Geneva and New York: United Nations Center for Human Rights, Study Series n°1, 1989, par. 33, 160.

<sup>22</sup> Commission on Human Rights, *The right to food*. Report of the Special Rapporteur on the right to food, J. Ziegler, E/CN.4/2005/47, February 2005, par. 6.

<sup>23</sup> Human Rights Council, *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Building resilience: a human rights framework for world food and nutrition security*, A/HRC/9/23, 8 September 2008, par. 2-11.

<sup>24</sup> Committee on Economic, Social and Cultural Rights, *General Comment 12. The right to adequate food (art.11)*, E/C.12/1999/5, 12 mai 1999, par. 5.

<sup>25</sup> UN Millennium Project, *Task Force on Hunger, Halving hunger: it can be done*, pp. 3-4.

<sup>26</sup> U. Jonsson, “The Socio-economic Causes of Hunger”, pp. 29-33.

<sup>27</sup> UN Millennium Project, *op cit.*, pp. 3-4.

<sup>28</sup> S. Brunel, *La Faim dans le monde. Comprendre pour agir*, PUF, 1999, p. 11.

<sup>29</sup> FAO, *Right to Food Case Study: Brazil, IGWG RTFG /INF 4/APP.1*, 2004, p. 9. J. de Castro, former President of FAO’s Executive Committee from 1952 to 1956, was one of the first to show that hunger and undernutrition were not due to climate problems but to political, economic and social problems. Also J. De Castro, *Géopolitique de la faim*, Les Éditions ouvrières, Paris, 1952.

This exclusion is often explained in terms of unequal power relations which systematically disadvantage the most vulnerable groups of society. As S. Brunel has noted:

*“From the beginning of time, in the history of humankind, minorities (political, ethnic or religious) have always been the first to suffer from hunger, in the same way that all populations, victims of a status considered inferior, find themselves placed on the bottom rung of the social ladder”.*<sup>30</sup>

These marginalized or discriminated groups include poor rural families of countries of the South and families living in extreme poverty in cities, indigenous and tribal people in Latin America, Asia and Africa,<sup>31</sup> the Dalits in India and Nepal,<sup>32</sup> stateless people, refugees and displaced people on all continents.<sup>33</sup> Women are also the first victims of exclusion in access to productive resources, in particular land, and access to work. They are often victims of multiples discriminations<sup>34</sup> and they represent 70% of under-nourished people in the world.<sup>35</sup>

If States and the United Nations want to address the causes of the recent food crisis and those of structural hunger, they must oppose the marginalization of farming families of countries of the South. By allowing them to produce their own food, by guaranteeing access to productive resources (land, water, seeds mainly but also fishing and forest rights) they will increase local and national production, which will simultaneously decrease their dependence on food imports. In parallel, States and the UN should allow poor populations in cities to improve their access to a sufficient income, and therefore to food.

## **II. RESPONSES TO THE FOOD CRISIS**

The Special Rapporteur on the right to food, O. De Schutter, presented the reactions of States and the UN to the food crisis in his report to the Human Rights Council in September 2008.<sup>36</sup> He distinguished three phases: a first phase of measures taken individually, in an uncoordinated way; a second phase of coordination, which included international consultations and conferences; and a third phase of discussion of a new international food order. We categorize the first phase as immediate responses (1) and the two other phases as structural phases, because these last two are closely linked. (2) In the discussion of a new international food order, obligations in relation to the right to food, which we present in Part III of this report, should be central.

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<sup>30</sup> S. Brunel, *op. cit.*, translated by CETIM, p. 11.

<sup>31</sup> For more concrete examples, read the reports of J. Ziegler on Guatemala, Bolivia and India on the site [www.righttofood.org](http://www.righttofood.org).

<sup>32</sup> Commission on Human Rights, The right to food. Report of the Special Rapporteur on the right to food, J. Ziegler. Additif: Mission in India E/CN.4/2006/44/Add.2, 20 March 2006, par. 11, 43. CESCR, Concluding Observations: Nepal, E/C.12/NPL/CO/2, 16 January 2008, par. 22.

<sup>33</sup> S. Brunel, *op. cit.*, p. 12.

<sup>34</sup> For example, because they are both women and indigenous.

<sup>35</sup> FAO, Women and the Right to Food. International Law and State Practice, 2008. FAO, Gender and Law – Women’s Rights in Agriculture, FAO Legislative Study No. 76, 2002.

<sup>36</sup> Human Rights Council, Report of the Special Rapporteur on the right to food, O. De Schutter, Building resilience..., *op. cit.*, par. 9-19, see Annexes.

## 1. Immediate reactions of States and international agencies

From the start of the food crisis, States which had the means to do so, adopted various measures to improve access to food for their populations, mainly urban populations. In response to food riots, some governments subsidized basic food-stuffs, such as bread in Egypt. Others reduced tariffs on importations of food products or on the contrary, adopted measures to restrict export of their own production. China, Cambodia, Vietnam, India and Pakistan drastically limited their rice exports to the rest of the world, to give priority to their own populations.

Beyond the absence of coordination between States which adopted these measures, it is important to note that not all governments had the means to adopt such measures to protect their populations. The poorest countries, like Haiti, suffered most heavily from the price increases and from food riots of their population, without being able to respond effectively.

United Nations agencies responded rapidly to the food crisis. The World Food Programme (WFP) launched an urgent appeal to raise US\$500 million to compensate for the increase in food prices. The fact that food prices had increased by 40% in one year had immediate implications for the WFP: either it must reduce its beneficiaries by 40% or it must raise more money. As the months went by, the sums requested by the WFP became larger and larger, the extra funds arriving little by little.

FAO was one of the first organizations to anticipate price increases. From 2007, at the start of the food crisis, Jacques Diouf, Director-General, launched the idea of an initiative aiming to tackle the surge in food prices, for which he requested more than US\$1 million. The aim of this initiative was to raise funds to allow the poorest farmers to purchase inputs and agricultural equipment to increase their subsistence production. This was, therefore, an excellent initiative.

The international financial institutions also responded to the food crisis, without however, questioning the policies they had themselves been promoting for three decades - which are among the root causes of the crisis. From the beginning of the crisis, the World Bank declared that it was making agriculture a priority, doubling the volume of its lending to the agricultural sector of Africa, from US\$400 million today to US\$800 million in 2009. The IMF, through its Director-General, Dominique Strauss-Kahn, proposed a moratorium on production of biofuels which compete with agricultural production.<sup>37</sup>

To coordinate the responses of the international organizations to the world food crisis, the UN Secretary-General set up a high-level task force on the crisis.<sup>38</sup> This task force comprised leaders of UN agencies, international financial institutions and the World Trade Organization, whose director, Pascal Lamy, was one of the few to continue promoting the free market as an immediate and structural solution to

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<sup>37</sup> A moratorium on agrofuels which compete with food production was first proposed by J. Ziegler in the report he presented to the United Nations General Assembly in October 2007. Cf. General Assembly, *The right to food: Report of the Special Rapporteur on the right to food*, A/62/289, 22 August 2007, par. 19-44. Several experts including A. Eide, have supported the moratorium. Cf. EIDE, A, *The Right to Food and the Impact of Liquid Biofuels (Agrofuels)*, FAO Right to Food Studies, 2008.

<sup>38</sup> Cf. the website of the United Nations task force: <http://www.un.org/french/issues/food/taskforce>.

the food crisis and hunger in the world. The Secretary- General's team comprises therefore, leaders with very different, sometimes contradictory, agricultural policies. The schizophrenia of the international agencies making up this task force,<sup>39</sup> some promoting total exchange liberalization and others, the protection of the most segments of the population, is one of the major problems of the institutional response to the crisis. The other major problem is the non-participation of civil society and, as we shall see, the non-participation of UN bodies responsible for the Right to Food.

## **2. Structural responses of States and international agencies**

From the start of the food crisis, many States declared that they were going to reinvest massively in the development of national agriculture, putting emphasis on subsidies to poor farmers. This response, which follows from analysis of the causes of the crisis, appeared in the structural responses of the UN to the food crisis. At the end of April 2008, in a speech delivered in Geneva, the UN Secretary-General recognized past mistakes and promised to prioritize measures to assist poor farmers as the main solution to structural hunger and the food crisis.

On the second day of his mandate - 2 May 2008 – the new UN Special Rapporteur on the Right to Food, requested that the HRC hold a special session on the food crisis and on the violations of the Right to Food which might follow.<sup>40</sup> States accepted the idea and the *first thematic special session* in the history of the Human Rights Council was held on 22 May, on the question of the negative effect on the realization of the right to food of the food crisis resulting, among other things, from the surge in food prices. The resolution, which was adopted unanimously by the HRC on 22 May 2008, on “The negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by the soaring food prices, is exemplary.<sup>41</sup> It begins by recalling the Right to Food and related State obligations. It underlines the obligation of states to guarantee the right of their population to food, in particular most vulnerable groups, notably by increasing local production, whilst the international community called for strengthening of national efforts to support subsistence production.

In a very interesting passage, the Human Rights Council calls “States, individually and through international cooperation and assistance, relevant multilateral institutions and other relevant stakeholders, to take all necessary measures to ensure the realization of the right to food as an essential human rights objective, *and to consider reviewing any policy or measure which could have a negative impact on the realization of the right to food*, particularly the right of everyone to be free from hunger, before instituting such a policy or measure”.<sup>42</sup> According to this commendable approach, the production of agrofuels, speculation and liberalization of agriculture should be reviewed in terms of their impact on the right to food.

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<sup>39</sup> See J. Ziegler, “Schizophrénie des Nations Unies” in *Le Monde diplomatique*, November 2001.

<sup>40</sup> O. De Schutter, Background Note: Analysis of the World Food Crisis by the U.N. Special Rapporteur on the Right to Food, 2 May 2008, p. 14.

<sup>41</sup> Human Rights Council, The negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by the soaring food prices, A/HRC/S-7/1, 22 May 2008, and also in Report of the seventh special session of the Council, A/HRC/S-7/2, 17 July 2008, pp. 3-5.

<sup>42</sup> *Ibid.*, par. 3.

The resolution of the Human Rights Council ends with the decision to send the UN High Commissioner for Human Rights and the Special Rapporteur on the Right to Food to the Conference organized by FAO in Rome in June 2008. The aim for the Human Rights Council is to ensure that the Right to Food occupies a central place in the discussions in Rome. This initiative resulted in total failure.

From 3 to 5 June 2008, FAO organized the high level Conference on world food security and the challenge of climate change and bioenergies. Many heads of states and governments met for three days to discuss possible approaches to combat the food crisis and hunger in the world, with the aim of achieving the first Millennium Development Goal. But the Final Declaration of the Conference,<sup>43</sup> is poor: the right to food is not even mentioned and many policies leading to its violation are promoted by States. Even if the Declaration insists with justification on the need to increase local production and agricultural support at national level, States presented the continuation of trade in agriculture and partnerships with multinational companies as structural solutions to the food crisis. There is nothing on protection of the rights of farmers or the need to evaluate the impact of current policies on the right to food.

The gap between the approaches promoted at these two international meetings, held two weeks apart, at the Human Rights Council and the FAO, is striking. It illustrates the schizophrenia of States and international agencies, which resulted from lobbying by multinational corporations, in Rome. It appears that government leaders on official mission, protect the interests of economic elites of their country rather than the interests of hundreds of millions of people – excluded from all political influence. In such situations, any normative approach to the fight against hunger is impossible. The right to food however, requires, respect for fundamental principles, which are binding on States which have accepted them voluntarily and have ratified international treaties the protection of human rights. States and international agencies must bear in mind these principles if they wish to respond in a credible way to the current food crisis and to structural hunger.<sup>44</sup>

### **III. OBLIGATIONS RELATING TO THE RIGHT TO FOOD AND GUIDELINES ADOPTED BY STATES IN 2004**

The right to food is a fundamental human right, recognized at international level, which implies related legal obligations on the State to respect, protect and fulfil the right to food.<sup>45</sup> This right has been recognized by States within the framework of the international system of human rights protection, before being reaffirmed in the Declaration and Action Plan of the World Food Summit in 1996.<sup>46</sup> In 2002, when States and the FAO noted that figures on hunger continued to increase, despite the

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<sup>43</sup> FAO, Declaration of the High-Level Conference on World Food Security: the Challenges of Climate Change and Bioenergy, 5 June 2008, par. 1.

<sup>44</sup> See the press release of the international peasant movement La Vía Campesina, "FAO: more free trade, more hunger", 17 June 2008.

<sup>45</sup> C. Golay, M. Özden, *The right to food*, CETIM, Geneva, 2005. Cf. Also C. Golay, *Droit à l'alimentation et accès à la justice*, Thesis presented to the Graduate Institute of International and Development Studies, for a doctorate in international law, IHEID, 2009.

<sup>46</sup> FAO, Rome Declaration on World Food Security and World Food Summit Plan of Action (13-17 November 1996), par. 1 of the Rome Declaration et par. 13 et 61 of the Plan of Action.

commitments made in 1996, they decided to change the paradigm and replace the approach based on *food security* to an approach based on the *right to food*.<sup>47</sup> This decision was translated into guidance on the right to food between 2002 and 2004, in order to provide practical advice to States on the best way to achieve the 1996 objectives.<sup>48</sup>

The guidance on the right to food was adopted unanimously by the Council and by FAO in November 2004. This was the first attempt made by governments to interpret an economic, social and cultural right into principles for action and to recommend concrete measures to ensure its implementation.<sup>49</sup> It was accepted by all States and represents an immediately usable, practical tool in the fight against hunger and undernutrition. This guidance, like the right to food, defined by the international system of human rights protection, obliges States to respect certain fundamental principles in their responses to the food crisis and to structural hunger. The principles are as follows: responsibility and accountability, participation, human dignity, non-discrimination, empowerment of right holders and access to justice in case of violations. We conclude this report with an explanation of the principles underlying the fight against hunger and the food crisis.

### **1. Institutional responsibility and accountability**

States and international agencies must assume their joint responsibilities in the fight against the food crisis and structural. But that is not all. They must also be accountable when the objectives are not achieved. This is an objective in relation to the International Covenant on Economic, Social and Cultural Rights of 1966, ratified by 159 States, but not in relation to the Millennium Development Goals.

Individually, States are all obliged to respect, protect and fulfil the right to food. They must officially assume their responsibility to fight hunger and to adopt an adequate legal and institutional framework.<sup>50</sup> Even if it has not managed to implement the necessary structural reforms, in particular agrarian reform, and even if it is one of the main promoters of agrofuels, Brazil provides an example of implementation of a legal and institutional framework in line with this obligation. In January 2002, the Brazilian government adopted a national policy of food and nutrition security, introducing structural measures and a national programme of food security – the zero hunger programme – based on social assistance.<sup>51</sup> A National Council of Food and Nutrition Security was set up to develop and guarantee the implementation of these measures in September 2006. The Brazilian Congress passed a law creating the national system of food and nutrition security, which sanctioned the system put in place by the government and recognized the right to food and related obligations of the State.<sup>52</sup>

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<sup>47</sup> FAO, World Food Summit Declaration: five years later (10-13 juin 2002), par. 3. Cf. W. Barth Eide, “From Food Security to the Right to Food” in W. Barth Eide, U. Kracht (eds), *Food and Human Rights in Development. Legal and Institutional Dimensions and Selected Topics*, Intersentia, 2005, pp. 67-97.

<sup>48</sup> FAO, World Food Summit Declaration: five years later, op. cit., par. 10.

<sup>49</sup> J. Diouf, “Foreword” in FAO, Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, p. iii.

<sup>50</sup> FAO, op. cit., Directives 3.1 and 3.8.

<sup>51</sup> F.L. Schieck Valente, “Understanding Human Rights Approaches to Food and Nutritional Security in Brazil” in *Lessons Learned Revisited*, pp. 261-297.

<sup>52</sup> Law 11.346 adopted on 15 September 2006.

States must also create or reinforce national institutions for human rights protection – National Commission or Office of Ombudsman – to include promotion and protection of the right to food within its mandate. Guatemala for example adopted a law on food and nutrition security in 2005 which recognizes the right to food and the related obligations of States and includes control mechanisms.<sup>53</sup> The law provides a specific mandate to the national mediator, to make recommendation on the best way to respect, protect and fulfil the right to food.<sup>54</sup>

## **2. Participation of civil society and the most vulnerable groups**

Participation is a fundamental principle of the rights-based approach. By organizing a meeting with no meaningful participation of civil society, in Rome in June 2008, and failing to integrate civil society in the UN Secretary General’s task force, States and international agencies gravely violated this fundamental principle. The demands of civil society, which organized a parallel conference in Rome in June and adopted a final declaration entitled *The world doesn’t need more of the same medicine*, should be taken into account in responses to the food crisis.<sup>55</sup>

At national level, participation of civil society and the most vulnerable groups in decision making on policies and programmes to address hunger is an essential component to the approach based on the right to food. Brazil provides an interesting example, since the National Council on Food and Nutrition Security was created as a forum for discussion between government and civil society, reporting directly to the President, with the aim of coordinating the policies of various governmental institutions and the efforts of civil society and representatives of the most vulnerable groups.<sup>56</sup>

## **3. Protection of human dignity as an end in itself and as a means**

The main objective of human rights is to guarantee the protection of human dignity in all its dimensions. In relation to the right to food, this means that responses to the food crisis and to structural hunger must aim to guarantee the right to all people to provide food for themselves through their own means, in dignity. There is no question therefore, of continuing to promote liberalization of agrofuels without taking into account their impact on access to food of the most vulnerable segments of the population. On the contrary, there must be guarantees that any policy and decision has as its aim and result the protection of human dignity. There is no question either of establishing the poor in a situation of dependence vis-à-vis food aid, without development policies to improve their situation.

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<sup>53</sup> Law relating to the establishment of a national system of food and nutritional security, Decree No. 32-2005.

<sup>54</sup> Article 15.j, of the law.

<sup>55</sup> This final declaration by NGOs is available only in English and Spanish. It can be downloaded from following site: <http://www.fian.org/resources/documents/others/the-world-doesnt-need-more-of-the-same-medicine/pdf>.

<sup>56</sup> The National Council on Food and Nutrition Security comprises 17 Brazilian governments – notably Ministers of social development and the fight against hunger, agriculture, fishing and provision, agricultural development, education, environment, planning, health and work, and specialised secretariats – notably of farmers’ organizations, agricultural workers, minorities, churches, universities, human rights organizations and the food industry – and 16 observers – notably representatives of municipalities, of the FAO, UNICEF, ILO, PNUD, the World Bank, as well as the National Rapporteur on Human Rights related to food, water and agriculture. Cf. C. Golay, “Questions juridiques et institutionnelles” in FAO, *Le droit à l’alimentation. Mise en pratique*, FAO, 2006, Fiche 3.

Guidelines on the right to food insist on the obligation of states to respect, protect and guarantee access to productive resources for most vulnerable populations, in particular farming families in countries of the South in order to achieve the right to food. As stated above, in order to address root causes of the food crisis and structural hunger, access for all, to an adequate supply of food or to the means to procure it, must be guaranteed.<sup>57</sup>

#### **4. Non-discrimination and priority for the most vulnerable**

The principle of non-discrimination is fundamental in international human rights law. It obliges States to take legal measures to guarantee non-discrimination in law - *de jure* - and positive measures to guarantee non-discrimination in practice - *de facto*. In all responses to the world food crisis, the priority must be to protect the most vulnerable groups such as poor families in rural and urban areas of countries of the South, and marginalized groups and individuals, such as indigenous or tribal populations, women, migrants, refugees and displaced persons.

In the response to the food crisis, this principle obliges States and international agencies to start by identifying individuals and groups who are the most vulnerable, marginalized or discriminated, in order to formulate policies in their favour. It is not a question of aiming for economic growth without considering assistance to the most vulnerable, or of increasing food production without asking who will produce it, who will have access to it and whom it will benefit.

#### **5. Empowerment of right holders and guaranteeing access to justice in case of violations**

Finally, an adequate legal framework is required for the victims of violations of the right to food. This is the only way to guarantee that programmes and policies to fight hunger will be maintained, beyond the political choices of governments. In India for example, food distribution programmes were in disarray and might even have been eliminated when the Supreme Court recognized the right to food, of people dying of hunger in the State of Rajasthan.<sup>58</sup> The Supreme Court then issued several provisional orders, which addressed all the State Governments of India and insisted that they implement food distribution programmes for the poorest. In particular, the Supreme Court ordered governments to identify people with rights to food rations, by virtue of various existing assistance programmes and it ordered the immediate concrete application of these.<sup>59</sup> When the programmes designed by regional governments failed to meet needs, the Supreme Court ordered improvements. For example, it ordered improvements in the school meal programme in order to guarantee one hot meal per day for all children in school instead of one cold meal.<sup>60</sup> It also insisted that tribal populations, among the most vulnerable, be included in a food distribution programme - something which had not been foreseen.<sup>61</sup>

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<sup>57</sup> CESCR, General Comment 12: *The right to food (art.11)*, E/C.12/1999/5, 12 May 1999, par. 6.

<sup>58</sup> India, Supreme Court, *People's Union for Civil Liberties Vs. Union of India & Ors.*

<sup>59</sup> For example, in its decisions of 28 November 2001, the Supreme Court ordered the implementation of several programmes of assistance, notably for people living below the poverty line, children, old people and pregnant women. India, Supreme Court, *People's Union for Civil Liberties Vs. Union of India & Ors.*, Order of 28 November 2001.

<sup>60</sup> India, Supreme Court, *People's Union for Civil Liberties Vs. Union of India & Ors.*, Order of 28 November 2001.

<sup>61</sup> India, Supreme Court, *People's Union for Civil Liberties Vs. Union of India & Ors.*, Order of 2 May 2003.

In 2005, a law on the right to information was passed which completed human rights protection in India guaranteeing transparent access to programmes, policies and budgets of Indian governments. This law was passed thanks to an Indian civil society campaign to guarantee the right to food and access to information for all.<sup>62</sup> Through this campaign, Indian non-governmental organizations reached millions of people, reinforcing their capacity to claim their rights. The empowerment of right holders, with other principles required in an approach based on the right to food, is the only possible way for efforts on the part of States, international agencies and civil society to succeed in the fight against the current food crisis and in the long term, against structural hunger.

## **ANNEXES**

1. *Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security*, FAO Council, November 2004
2. *Background Note: Analysis of the World Food Crisis by the U.N. Special Rapporteur on the Right to Food*, Special Rapporteur on the right to food. O. De Schutter, 2 May 2008
3. *Resolution A/HRC/RES/7/14 on the right to food adopted by the Human Rights Council on 22 May 2008*, Cf. *Human Rights Council Report, 7<sup>th</sup> special session, A/HRC/S-7/2*, 17 July 2008
4. *FAO, Declaration of the high-level conference on world food security: the challenges of climate change and bioenergy* (5 June 2008)
5. *Final joint NGO Declaration addressed to Governments on World Food Crisis, "The world doesn't need more of the same medicine"* (June 2008)
6. *Report of the Special Rapporteur on the Right to Food, O. De Schutter, on the global food crisis. A/HRC/9/23, Building resilience: a human rights framework for world food and nutrition security*, 8 September 2008
7. *J. Berthelot, "Sorting the truth out from the lies about the explosion of world agricultural prices"*, October 2008
8. *The right to food*, CETIM, 2005
9. *General Comment 12. The right to adequate food*, CODESC, E/C.12/1999/5, 12 May 1999

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**N.B. The Annexes allocated in separate files.**

<sup>62</sup> For information on this campaign, see [www.righttofoodindia.org](http://www.righttofoodindia.org).