

Special Issue - Food Justice and Food Sovereignty in the context of the Right to Food

**TWENTY-FIVE YEARS OF THE UNITED NATIONS GENERAL COMMENT
NUMBER 12 ON THE HUMAN RIGHT TO ADEQUATE FOOD – MALNUTRITION
CONTINUES TO SURGE**

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ABSTRACT

The human right to adequate food is one of the most fundamental human rights crucial for the sustenance of the planet, and the prosperity of all people. It is firmly established in international human rights instruments and is clarified in the United Nations' General Comment 12 (GC 12). However, deep vulnerabilities and deprivation of the right to adequate food in the form of hunger, food insecurity and malnutrition have persisted in many parts of the world. The climate-induced disasters also continues to devastate many communities, thereby depriving them of their rights including adequate food. This commentary provides a broader perspective on the 25 years of the GC 12 to stimulate further debate and actions to entrench human rights, especially the right to adequate food, at the centre of the food systems transformation and overall sustainable development agenda. This year 2024, marks 25 years of the Global Compact 12 on the human right to adequate food. While it is an important opportunity to celebrate this great achievement of engraining this right into the wider sphere of global reference at the United Nations level, the domestication in countries into actions that concretely address the problem of hunger and malnutrition has been slow in many countries. The world is now faced with the grim realities of starving populations arising from unnecessary and unjust wars, and food continues to be used as a weapon of war against international law and human imagination. Worse still, in the current environment of climate change and its adverse effects on food systems, SDG2 (Zero hunger by 2030), seems unrealistic. Finally, it is no longer a question of providing carbohydrates, as the need to address quality, safety, nutrition and cultural acceptability is ever so pressing. Going forward, there is a need to accelerate advocacy efforts, research and policy formulation that fully operationalise GC 12 in country-level food systems and nutrition interventions. Realization of the right to adequate food benchmarks in GC 12 should certainly be the penultimate of such interventions as strategic food reserves, poverty and hunger reduction programmes, humanitarian disaster preparedness, contingency funding, social protection and child care among others.

INTRODUCTION

Food is a basic requirement for survival and a national strategic and security resource [1]. Relatedly, the human right to adequate food is one of the most fundamental human rights crucial for the sustenance of the planet, and the prosperity of all people [2]. This right is firmly established in international human rights instruments; in particular, Article 25 of the Universal Declaration of Human Rights (UDHR) of 1948 [3]; Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICECR) of 1966/1977 [4]; and Articles 24 and 27 of the Convention on the Rights of the Children (CRC) of 1989 [5]. In May 1999, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) clarified the normative content of the right to adequate food in General Comment Number 12 (GC 12). It is realized when every man, woman and child, alone or in the community with others, have physical and economic access at all times to adequate food or means for its procurement. This right goes beyond the mere provision of relief food but provides State obligations to respect, protect and fulfil the right to adequate food [6]. In November 2004, the Council of World Food Security adopted Voluntary Guidelines (VGs) to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security [7].

The human right to adequate food has the potential to profoundly influence every aspect of human existence [8]. Transforming food systems is now an acknowledged game-changer to accelerate the realization of sustainable development in all its forms across the world, central to achieving the 17 Sustainable Development Goals (SDGs) [9]. Through a rights-based approach, the transformation of food systems becomes more inclusive and comes with multiple benefits that include the empowerment of vulnerable groups such as women and smallholder farmers out of poverty and related inequalities. It has the potential to improve food supply and distribution, reduce stress on the environment, improve consumer behaviour patterns with minimum food loss and waste, and improve resilience to risks that disrupt the economy [10]. When food systems function well, they have the power to unite families, communities and nations. When they fail, the resulting disorder threatens education, health, peace, and security [11]. This commentary provides a perspective on 25 years of the GC 12 to juxtapose its influence in food systems transformation and the wider sustainable development agenda. It hopes to stimulate further debate and actions to entrench human rights, especially the right to adequate food, at the centre of the food systems transformation and overall sustainable development agenda.

HIGHLIGHTS IN THE DRIVE TOWARDS THE UNITED NATIONS GENERAL COMMENT 12

The normative content of the human right to adequate food evolved with contributions from several institutions and processes. In historical literature, one can get a sense of feeling that philosophers like Hippocrates, Socrates, Galen, Aristotle, John Locke and others, mentioned the importance of food in their writings and teachings [12]. Food was also at the centre of development of culture and religion based on the literature around Christianity, Islam and Hinduism among others [13]. In 1941, the right to adequate food received more acclaim in the famous 4 Freedoms speech by the United States President Franklin Delano Roosevelt, who proclaimed freedom from want as a core tenet of universal freedom, urging that: "Necessitous man is never free" [14]. His vision was endorsed by many world leaders in the so-called Atlantic Charter of August 1941 and the Declaration of the United Nations on January 1, 1942. In his 1944 State of the Union Address, Roosevelt advocated for the adoption of an 'Economic Bill of Rights', arguing that true individual freedom cannot exist without economic security. He argued that men in economic need were not free men. People who are hungry and out of a job, he said, are the stuff of which dictatorships are made. Subsequently, petitions in support of President Roosevelt led to the coining of the right to adequate food in the Universal Declaration of Human Rights (UDHR) adopted in 1945; one of the most important Declarations ever adopted by the United Nations. In Article 25, the Universal Declaration says that:

"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"

Subsequently, the UN debates of the 1960s led to the splitting of the UDHR. After 18 years of negotiations, the two main Covenants on human rights were adopted by the General Assembly in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two covenants which were drafted in 1966 entered into force in 1976. In Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states recognise the right of everyone to an adequate standard of living including adequate food. State parties also recognise the fundamental right to be free from hunger and commit to taking measures individually and through international cooperation, including specific programmes to combat hunger [15].

In the 1980s, a major contribution came from Asbjorn Eide, a member of United Nations Commission on Human Rights whose report on the right to food as a human right brought fourth several clarifications on the provisions of the right to adequate food. He proposed the 3-tier typology of State Party obligations of Respect, Protect and Fulfil (facilitate and provide) the human right to adequate food. The obligation to Respect requires that States recognise and promote the right to adequate food; the obligation to Protect requires that States refrain from interference with the right to adequate food and the protection of rights holders from 3rd parties who might or are intending to interfere with the enjoyment of the right to adequate food; the obligation to Fulfil requires States to facilitate the right through administrative, budgetary, policy and legislative processes, or provide direct food or means for its procurement as a last resort [16]. The World Food Summit (WFS) of 1996 provided an important milestone that shaped the right to adequate food. It emerged at a time of great momentum around ending the indignity of hunger and malnutrition. As an outcome of the Summit, the universally agreed definition of food security was adopted:

“The situation when all people at all times have adequate physical and economic access to safe, sufficient and nutritious food to meet the dietary and food preference requirements for an active and healthy life”.

Furthermore, the Summit invited the Office of the High Commissioner on Human Rights (OHCHR) to clarify the normative content of the human right to adequate food to guide countries in the implementation of this right in the context of national food security. The consultations of the OHCHR on the normative content of the human right to adequate food were overshadowed by the Code on the Human Right to Adequate Food developed at a meeting of Non-Governmental Organisations (NGOs) in Caracas Venezuela in 1996. The meeting was organised by mainly three institutions: the World Alliance on Nutrition and Human Rights based in Oslo Norway; the International Jacques Maritain Institute based in France, and the Foodfirst Information Action Network (FIAN) based in Germany. The Code adopted by NGOs in Caracus strongly influenced the content adopted in the United Nations General Comment Number 12 of May 1999 and subsequently the Voluntary Guidelines to Support the Implementation of the Human Right to Adequate Food in the Context of National Food Security (VGs), adopted in November 2004 by the Council of World Food Security of the Food and Agriculture Organisation of the United Nations (FAO) [17].

The Norwegian Scholar Asbjorn Eide, his spouse Wenche Berth Eide and colleagues especially Arne Oshaug (RIP), played a significant role in influencing the content and direction of the human right to adequate food. Through their research in Africa and Asia, nutritionists Wenche Berth Eide and Arne Oshaug, combined efforts

with the Lawyer Asbjorn Eide to coin the right to adequate food obligations and intervention matrixes. Their academic outputs, teaching, advocacy and diplomatic contributions as representatives of Norway in international forums strongly influenced the development of the human right to adequate food in professional development, research and international law among others. They also supported several academia and professionals in Africa and other parts of the world to advance the right to adequate food in the wider context of nutrition, human rights and governance.

The understanding of the nature and level of States Parties' obligations on the right to food adopted in GC 12 by the CESCR (1999), owes much of its impetus to the 'Eide typology' of the State's obligations of respect, protect and fulfil. It was born out of a seminal presentation by Asbjørn Eide on Food as a Human Right, at Gran, Norway in 1981. It generated debates and subsequently a thematic study by the same scholar in 1989 on the recommendation of the United Nations Economic and Social Council (ECOSOC) further elaborated on the levels of State Party obligations 199 and how they are legally binding on all States Parties to the ICESCR. We, the authors of this commentary, also immensely benefited from their contribution for which we are highly indebted.

THE NORMATIVE CONTENT OF THE HUMAN RIGHT TO ADEQUATE FOOD

General Comment (GC 12) by the Committee on Economic, Social, and Cultural Rights of the United Nations (CESCR) provides the legal and normative definition of the human right to adequate food. Accordingly, it specifies that *"the human right to adequate food is realized when every man, woman and child, alone or in the community with others, have physical and economic access at all times to adequate food or means for its procurement"*. In GC 12, adequate food is defined in terms of availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture. The normative content also encompasses the notions of accessibility and sustainability. Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level that does not compromise or threaten the attainment and satisfaction of other basic needs, while sustainability incorporates long-term availability and accessibility; food available and accessible at all times. The GC 12 also specifies the States Party obligations (respect, protect, and fulfil) and violations of the human right to adequate food under paragraphs 14-20. Implementation requirements at national levels are highlighted in paragraphs 21-30, monitoring of the human right to adequate food in paragraph 31, and remedies and accountability mechanisms for the human right to adequate food in paragraphs 32-35. International obligations for States,

organisations, and the United Nations agencies are also stipulated under paragraph 36.

OUTLOOK ON THE STATUS OF THE RIGHT TO ADEQUATE FOOD AND MALNUTRITION

The global food outlook is one of demand and supply uncertainties with fast-expanding food markets, skyrocketing food prices, and a surge in food import bills across continents. Given the fragility of food systems, the double burden of malnutrition continues to surge. The most recent State of Food Insecurity and Nutrition (SOFIN) report of 2023 estimated that between 690 and 783 million people in the world faced hunger in 2022. Moreover, one-third of food in the world is lost along the food value chain. The proportion of the population facing hunger is much larger in Africa compared to other regions of the world; an estimated 269 million people are undernourished – nearly 20 percent compared with 8.5 percent in Asia, 6.5 percent in Latin America and the Caribbean, and 7.0 percent in Oceania. Malnutrition in all its forms continues to persist and surge in several countries. Across the world, by 2022 it was estimated 148.1 million children under five years of age (22.3 percent) were stunted, 45 million (6.8 percent) were wasted, and 37 million (5.6 percent) were overweight [18].

Increasingly, unhealthy food environments, sub-optimal diets, inadequate consumer protection and poor consumer behaviour and choices among others, are driving the surge in non-communicable diseases (NCDs) especially the four of the world's top ten leading risk factors causing death: high blood pressure, high blood glucose, cancer, overweight and obesity [19]. About 8 million deaths annually are attributable to an unhealthy diet that exposes to excess consumption of food high in sodium and other salts, sugars and fats, particularly saturated and trans fats, and inadequate consumption of whole grains, pulses, vegetables and fruits [20]. Together, these risks contribute to around one-third of all deaths [21]. Linked to the unhealthy diet issue is the challenge of food safety and quality assurance. Despite no specific globally agreed targets on food safety for 2030, estimates in 2018 indicated an additional global burden of more than 1 million foodborne illnesses, over 56,000 related deaths and more than 9 million Disability Adjusted Life Years (DALYs) from contamination of food [22]. As the world population heads towards 9 billion by 2050, consumption patterns are already at above 1.5 times the planet's replenishing capacity. In effect, the current food systems are unsustainable as climate change further increases risks in global food production. Meanwhile, by 2022, an estimated 3 billion people lacked access to a healthy diet globally despite one-third of the world's food being lost along the food value chain. Given the unsustainable consumption patterns, more than 1 billion people in the world are living with obesity

and this condition among adults has more than doubled since 1990, and quadrupled among children and adolescents [23].

On the African continent, estimates indicated that in 2020 up to 281.6 million Africans (21%) were undernourished with Eastern Africa contributing 125.1 million (28.1%). In effect, malnutrition costs African countries between 3 and 16% of GDP annually (24). This situation complicates the path towards the African Union target of reducing stunting to less than 10% on the continent by 2025.

FOOD AS WEAPON OF WAR UNDERMINING GLOBAL SOLIDARITY ON HUMAN RIGHTS

The issue of using food as a weapon of warfare is now commonplace in many conflicts across the globe [25]. Overall, this crime against humanity is often perpetrated when actors in war and conflict withhold or prevent food from reaching the population on either side of the conflict. Beyond deliberate control of food supplies, conflicts and wars also disrupt the seasonal pattern of growing crops, displace farming populations, destroy food and farmland infrastructure, as well as prevent the transport of food within the area of conflict, among others. Moreover, wars and conflict come with economic costs by impoverishing citizens and local governments to the extent that they are unable to purchase or distribute much-needed food supplies to affected populations [26].

By this year 2024, several conflicts were ravaging and depriving millions of people of their right to adequate food. In particular, the war between Russia and Ukraine, the Israel-Palestine conflict, and internal wars in Yemen, Iraq, Syria, Afghanistan, Ethiopia, the Sudan, Libya, Mali, the Central African Republic, Somalia and the Democratic Republic of Congo among others, continue to displace and deprive millions of people of their right to adequate food [27]. Millions of people are now facing starvation and nutrition-related diseases and mortality arising from wars and conflicts [28].

CONCLUSION AND RECOMMENDATIONS FOR DEVELOPMENT

Achieving an ideal right to adequate food situation requires a progressively sustained multi-stakeholder intervention and the capacity for continuous preparedness to deal with the dynamics of society and the threats to human life and existence. Despite 25 years of General Comment 12 (GC 12) on the human right to adequate food, there is a continuous violation by omission and commission of this right in various countries and continents. In Africa, despite the African Union Summit Declarations on Agriculture, Food Security and Nutrition, the continent continues to suffer undesirable levels of hunger and malnutrition with widespread deprivation of food and nutrition.

Much more remains to be done on how GC 12 and the Right to Food Guidelines (VGs) can be used as practical tools in the process of countries progressively realizing the human right to adequate food for all in Africa and other parts of the world within the current momentum of food systems transformation. More awareness raising and capacity building is, therefore, necessary, but insufficient. Global actors must ably perform their duties and fulfil their roles in ending hunger and malnutrition as a core obligation and not an act of benevolence. Despite the existing opportunities in the form of relevant institutional, legislative and policy frameworks, effective implementation requires well-coordinated multi-stakeholder investments, monitoring and surveillance mechanisms in parts of the world where hunger and malnutrition have persisted.

In Africa, the environment is challenged by high rates of poverty, and vulnerability ranging from landlessness and the ravaging effects of diseases including HIV/AIDS, to discrimination and internal displacement due to conflicts and civil strife in different parts of the continent affected by conflicts. Dedicated funding and investments towards the progressive realization of the human right to adequate food is crucial to enable inclusivity in ending the indignity of hunger and malnutrition on the continent. Unless duty bearers recognise the need to take forward, in concrete terms, GC 12 and its provisions, countries will continue to be perceived as promoting the human right to adequate food rhetorically. Moreover, the absolute minimum of freedom from hunger remains elusive for several people in a world where one-third of food is being lost at the table.

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