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TO IMPROVE THE LIVES AND OPPORTUNITIES OF PEOPLE LIVING IN POVERTY

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Eradicating extreme hunger ranks as one of the most urgent—and most daunting—challenges of the twenty-first century. That persistent hunger represents a failure of political will rather than inadequate food production is now widely recognized; during the 1980s economist Amartya Sen used rigorous case studies to demonstrate that the root cause of famine is not food scarcity but poor distribution and institutionalized inequality. Sen’s work introduced a concept that incorporates this political element—“food security”—but the definitional shift alone has not been enough to resolve the problem.

The U.S. government defines food insecurity as “limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.” Food insecurity is chronic in the United States: 17.2 million households were food-insecure in 2010. Further, food insecurity falls hardest along familiar lines of poverty, family structure, gender, and race, being higher than average in households with incomes near or below the federal poverty line (33.8 percent higher) and households with children headed by single women (35.1 percent higher) or single men (25.4 percent higher) and in black (25.1 percent higher) and Hispanic (26.2 percent higher) households. These numbers have barely budged since the U.S. gov-

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1 See, e.g., United Nations Development Programme, Eradicate Extreme Hunger and Poverty (2012), http://on.un.org/LCuAvV.


5 Id. For additional empirical evidence on U.S. food disparities, see Nicole I. Larson et al., Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S., 36 AMERICAN JOURNAL OF PREVENTIVE MEDICINE 74 (2009) (“Residents of low-income, minority, and rural neighborhoods are most often affected by poor access to supermarkets and healthy food. In contrast, the availability of fast-food restaurants and energy-dense foods has been found to be greater in lower-income and minority neighborhoods.”).
The Right to Food in International Law

A well-developed body of international law articulates the right to food and elaborates on the contents of the right.9 The right to food was first identified in the Universal Declaration of Human Rights in Article 25, which states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food ....”10 To articulate rights to adequate food and to be free from hunger, Article 11 of the International Convention on Economic, Social, and Cultural Rights codifies the right expressed in the Universal Declaration to a standard of living adequate for health and well-being, including food.11 The Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities also recognize the right to food.12

The Committee on Economic, Social, and Cultural Rights, the body responsible for monitoring progress in implementation of the International Covenant on Economic, Social, and Cultural Rights, has identified adequacy, availability, and accessibility, both physical and economic, as the three dimensions of the right to food.13 Adequacy refers to quality and quantity sufficient to satisfy dietary needs and has recently been

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interpreted to recognize obesity caused by overnutrition. Adequacy also encompasses both present and future and so includes issues of sustainability. The United Nations Special Rapporteur on the Right to Food defines the right to include “sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.” In sum, the international right to food is significantly more complex than simply a right to be free from starvation; rather, it fully acknowledges the multifaceted problem of food insecurity.

U.S. Government and the Right to Food

The U.S. government’s position on the right to food tracks the government’s more general posture of U.S. exceptionalism in international law. In international forums, the United States historically rejected the concept of a right to food and for years objected to any international document formally recognizing the right. As recently as 2008, when the United Nations General Assembly voted on a resolution on the right to food, the United States was the sole dissenting voice.

Yet, while the United States was refuting the right to food in international forums, domestically it was incorporating human rights language into national plans on food security. In 1999 the United States developed an Action Plan on Food Security for both domestic and foreign aid food programs. This plan, developed in response to the 1996 World Food Summit, has been extended domestically through the Healthy People 2010 and 2020 programs. While it has critics, the plan does state explicitly that the United States “fully subscribes” to the Universal Declaration of Human Rights, including its provision on the right to food.

The United States finally reconciled its internal and external food policies in 2011. Shortly before the Human Rights Council adopted a resolution affirming the right to food, the U.S. government stated that it “is pleased to be able to join consensus on this resolution,” recognizing the right to food as established in the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. Nevertheless, the United States did limit its definition of the right to food, claiming that the U.N. resolution included a “large number of extraneous and inappropriate topics which do little to protect

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15See Special Rapporteur on the Right to Food, supra note 14.


17Greene, supra note 9, at 382 (“[i]ndeed, the vehemence of the United States in rejecting a right to food has been such that, even if the right is now crystallized in customary international law, the United States may be exempt as a persistent objector”).


20Id. at 1; Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, Healthy People 2020 (Nov. 2010), http://1.usa.gov/NAEBt.


or contribute to the progressive realization of the right to food.”23 In 2012 the United States clarified that, by joining the consensus on Human Rights Council resolution 19/7 on the right to food, the United States “does not recognize any change in the current state of conventional or customary international law regarding rights related to food” and that the United States does not “treat the right to food as an enforceable obligation.”24

Applying a Human Rights–Based Approach

The United States’ ambivalent position notwithstanding, a human rights–based approach to food security can be applied to governments on many levels.

National Advocacy. One of the world’s most coordinated and effective national advocacy campaigns is in India, where the Right to Food Campaign is an informal network of organizations collaborating to advance the right.45 Arguing that the state is obligated to realize the right to food, the network focuses on holding the government accountable and educating rights-holders about their rights and extends its advocacy to employment, homelessness, and land rights, seeing these rights as interdependent with the right to food. The campaign, which initially came together around ongoing litigation to establish the right to food under India’s constitutional right to life, has an impressive history of success in both litigation and legislation.26 The group’s initial case has spawned forty-four “interim orders” including the renowned order to establish a right to school lunches in India.47 The network publishes its materials online to “document the campaign and to share resources for campaign activities” with the hope that activists and rights-holders will utilize the interim orders to advocate the right to food and bring attention to any violations.28

Some of the elements necessary for a parallel campaign in the United States are already present. Despite the absence of a federal constitutional right to live, the federal government has incorporated human rights language into the standards embedded in the nation’s domestic food programs. The U.S. Department of Agriculture’s Food and Nutrition Service, of which programs such as Supplemental Nutrition Assistance Program (SNAP) and Supplemental Nutrition Program for Women, Infants, and Children (WIC) are a part, defines food security in terms parallel to human rights law:

Food security for a household means access by all members at all times to enough food for an active, healthy life. Food security includes at a minimum:

The ready availability of nutritionally adequate and safe foods. Assured ability to acquire acceptable foods in socially acceptable ways (that is, without resorting to emergency food supplies, scavenging, stealing, or other coping strategies).29

23Id.


27The Supreme Court of India issues interim orders, which are enforceable immediately, remain applicable for the duration of the case, and are likely to be incorporated into a final judgment. The interim orders are available at Right to Food Campaign, Legal Action: Supreme Court Orders (Feb. 28, 2011), http://bit.ly/MxXpT.

28Right to Food Campaign, supra note 25.

A Human Rights–Based Approach to Food Security

Such linkages between domestic and international standards give U.S. activists advocacy opportunities to work with treaty bodies and U.N. experts and to use international standards to critique domestic practices.

Subnational Advocacy. A human rights–based approach can be effective at the local level as a framework for food-focused programming and advocacy. As in national–level advocacy, local actors may use a human rights action plan or framework to give coherence to food advocacy and programs and to establish mechanisms of government responsibility and accountability.

Eugene, Oregon, has taken on just such a campaign, initiating a food security plan as part of its commitment to implement international human rights principles in all of its operations.30 In 2009 the city committed to “[u]ndertake a scoping and resource plan for the development of a food security plan.”31 Now, several years later, Eugene has a Food Security and Resource Plan with a goal to “promote and enable a secure local food system.”32 The plan defines food security in terms parallel to international human rights law, including ensuring access to affordable, nutritious, and culturally appropriate fresh food. The report recognizes that food security is a “broad topic” with a “diverse and wide range of stakeholders” but also notes that “the level of local knowledge concerning our food system will increase as the City continues to work in collaboration with local stakeholders to advance programs and resources to strengthen the local food system.”33

Future Advocacy Opportunities. The right-to-food framework is useful for advocacy because it takes on structural issues in both food systems and food assistance programs, recognizes disparities and inequities, and develops state obligations; the framework thus directly challenges the entrenched political priorities that Amartya Sen identified as perpetuating hunger. While many advocacy groups confront food security issues from food sovereignty or charity perspectives, the right–to–food framework can deal with governance issues and ensure effectiveness and sustainability of progress in policy work.34 The right to food is a legal construct that can be used to “ensure access by the most vulnerable people”—using, that is, “the power of law to strengthen the means of implementation … by clarifying the rights of and obligations of right holders and duty bearers.”35

Human rights–focused advocacy for the right to food can occur in many ways. Advocacy groups and civil society can lobby local, state, and federal governments to continue incorporating human rights definitions, principles, and indicators into policy and to accept accountability for implementing these principles and indicators. The commitment by Eugene, Oregon, is an example of the collaborative effort by community stakeholders and local government using a human rights framework to move toward food security in the context of a local food system.

Domestic food security advocates can also utilize U.N. mechanisms to hold the government accountable. Food advocates may file complaints of human rights violations with the United Nations Special Rapporteur on the Right to Food.36 This mechanism is underutilized by U.S. civil society; according to the special rapporteur’s re-
cords, the last complaint filed on an issue in the United States was in 2006. However, interest in these mechanisms is growing, and in May 2012 the Special Rapporteur joined with the National Family Farm Coalition and the U.S. Food Sovereignty Alliance in briefing congressional staff members on right-to-food issues. The Universal Periodic Review and other treaty monitors also give advocates the opportunity to shine an international spotlight on violations of the right to food. Many civil society groups have used these mechanisms to ensure that the U.S. government faces questioning on the realization of social and economic rights in the United States.

The right-to-food paradigm has the potential to be a valuable advocacy tool for legal aid lawyers in the United States. The parallel between U.S. domestic program definitions and indicators, and international human rights legal norms, together with the government’s recent recognition of a right to food, makes the human rights framework an attractive advocacy tool. Domestic food advocates can incorporate human rights principles into their advocacy or programmatic work and can use the U.N. mechanisms of individual complaints or the Universal Periodic Review to raise human rights claims in the international arena to hold the government accountable for its food security obligations. Civil society can also urge local, state, and federal government bodies to incorporate human rights principles and frameworks into policy formation. Using this array of approaches, a wider adoption of a right-to-food perspective has great potential to decrease the number of food insecure in the United States.

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37For a copy of the complaint, see Special Rapporteur on the Right to Food, Communications Sent to Governments and Other Actors and Replies Received ¶ 67, U.N. Doc. A/HRC/4/30/Add.1 (May 18, 2007) (by Jean Ziegler).


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