

FOOD IS IT A FUNDAMENTAL HUMAN RIGHT?

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ABSTRACT

The answer to the question posed in the title of this paper is certainly affirmative. In fact, "eating bread or do not eat is not a matter of taste, whim or luxury it is a necessity of all ages and of all ages" (Ferdinando GALIANI 1770). In this regard, the right to food is explicitly presented in several legal instruments as internationally addressing all states of the world or regional vocation, is still in categorical regulations.

However, this vital law finds little application in some areas and not even face the facts in other regions, particularly in developing countries. It is even absent in some legal basis and even considered a need energy and not as a fundamental human right.

KEYWORDS: Food, Right to Food, Human Rights, International, Level Regional, Scale Energy Categorical, Need Regulations

INTRODUCTION

The eradication of hunger is a fundamental right which appeared six decades it is a right that belongs on Economic, Social and Cultural Rights ("second generation" rights). Many have paid particular attention to this right as it is closely linked to the "right to life" and because "no law has no meaning or value when hunger strikes... In addition, without proper nutrition, value of the rights is greatly diminished... malnutrition slows growth mortgage mental and physical development and limit the possibilities for action" (Gorovitz SAMUEL 1977). In a chronological consistency, we find several legal instruments that explicitly address the right to subsistence to varying degrees either internationally addressing all states of the world or regional vocation specifying the peculiarities of certain groups states or even national level.

The Legal Basis of the Right to Food a Universal Vocation

On 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights. This statement has acquired a central place in human rights and remains the founder of humanity and human rights document because it is an inspiration for every human being to exercise his rights. She stated in Article 25 that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food clothing, housing and medical care as well as 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 will." So human rights are greatly interdependent and interrelated that the enjoyment of the right to food should be integral and inseparable with the other rights proclaimed food must therefore safeguard the health and well-being of every human being.

The right to food is certainly a vital right of every individual. It is expressly mentioned either at the end of the UDHR or in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which was developed in 1966.

This article provides that: "States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food clothing and housing as well as improved constant conditions of its existence. The States Parties will take appropriate steps to ensure the realization of this right recognizing to this effect the essential importance of international cooperation based on free consent.

States Parties to the present Covenant recognizing the fundamental right of everyone to be free from hunger shall take, individually and through international cooperation the necessary measures, including specific programs:

- To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating the principles of nutrition and by developing or reforming agrarian systems in such a way as to ensure the most efficient development and utilization of natural resources;
- To ensure an equitable distribution of world food supplies in relation to need given the problems both importing and exporting countries food."

The adjective "sufficient" which describes the food in the first paragraph of this article certainly refers to the amount which must always be accompanied by the quality to achieve "well-being" and to improve "the lives" of any individual.

According to this article as well as Article 25 of the UDHR the right to food is for "everyone" the individual is the primary beneficiary of this right ("the right of everyone" "the fundamental right of everyone") which affirms the universality of this law is considered not only as an individual right but also as a collective right because it is explicitly addressed the "family" as well.

By immersing themselves in more sentences of Article 11 of the Covenant we can see that the right to food is also intended but implicitly the State because when "States Parties" recognize the right to be free from hunger "through international cooperation" this creates some States may exercise the right to food when "international cooperation" has an obligation to act and intervene to "the distribution of world food supplies" or "fair." The equal sharing of resources between surplus and deficit countries return to a law other than the right to food country: it is "the right of access." Potential beneficiaries of this right are generally developing countries because the international community will give these countries their right to food by providing "an equitable distribution of world food supplies."

The first article of the ICCPR also states that "in no case may a people be deprived of its own means of subsistence" this formal prohibition can not be emphasized on the importance and specificity of this law and its great contribution to the welfare of the people.

The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights then, are the main universal and general texts which guarantee the right to subsistence. There are also some legal basis to protect this right, but at the level of groups of States.

The Legal Instruments of the Right to Food at the Regional Level

The right to food has been recognized not only at international level but also at regional level. Indeed, the American Rights and Duties of Man 1948 Declaration proclaimed in Article 11 that "everyone has the right to have his health is preserved through sanitary and social measures as regards food, clothing, housing and medical care, to the extent permitted by public resources and those of the community." This statement has highlighted the link between health and diet. In fact, the right to health can not be accomplished with the realization of the right to food which affirms the importance of the interdependence of human rights. The same statement also establishes a link with the available resources so that distribution is equitable for all citizens.

Similarly, the San Salvador Protocol adopted in 1988 stated in Article 12 that "everyone has the right to adequate nutrition which guarantees the possibility to reach their full physical and full emotional and intellectual development" and that "in order to ensure the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food. To this end, they undertake to encourage greater international cooperation in support of national policies on this issue."

Categorical Regulations of the Right to Food

Items already mentioned legal texts are addressed to "any person". Nevertheless, "if in principle the right to adequate food is no exceptions this is not true for its effective implementation" (Assia Alaoui BENSALAH - 1989) it is for this reason that there are other regulations that are aimed at specific categories of human beings or age or under some incapacity, or other category... to guarantee certain exceptional circumstances the right to food as all other individuals.

Indeed, the Third Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War devoted several articles dealing with the right to food in particular Article 26 which provides that: "The basic daily food rations shall be sufficient in quantity quality and variety to keep prisoners of war in good health and prevent weight loss or deficiency disorders. It will also consider the habitual diet of the prisoners."

When the Fourth Geneva Convention, it also dealt with this law in its articles, not to protect the prisoners of war, but rather to defend the rights of civilians in time of war. This Convention provides in Article 55 that "the extent of its resources, the Occupying Power has the duty of ensuring the supply of the population with food and medical products and it will include the necessary foodstuffs medical supplies and articles if the resources of the occupied territory are inadequate."

The child also needs special protection because of his physical and mental immaturity. It is in this context that the Declaration of the Rights of the Child proclaimed in 1959 in principle 4 that "the child has the right to adequate nutrition, housing, recreation and adequate medical care" to ensure healthy development and protect its good magnification "adequate" food. The child is also defended by the African Charter on the Rights and Welfare of the Child in protecting the right to food should be ensured not only his parents, but also by the States Parties to the Charter because they must "assist parents and others responsible for the child and, in case of need provide material assistance and support programs, particularly with regard to nutrition..." (Article 20).

Similarly, the legal incapacity limits the freedom of prisoners even to enjoy one of their most fundamental rights which is why the Standard Minimum Rules for the Treatment of Prisoners adopted in 1977 states in the first paragraph

Article 20 that "every prisoner shall be the administration at the usual hours with food of good quality and well prepared and served with sufficient nutrition to maintain health and strength."

The Protocol of San Salvador adopted in 1988 has also specified where States parties should provide adequate protection for certain age "classes... and in particular to:... ensure adequate nutrition for children both during the lactation and during school age..." (Article 15) and "to provide appropriate facilities and food and specialized medical care for elderly people who need it and who are not able to get them on their own..." (Article 17).

The Absence of the Right to Food of Some Legal Basis

"Some tend to give priority to a particular right to give prominence to political rights over economic rights" (Assia Alaoui BENSALAH - 1989) which is why some legal texts do not specifically mention the right to power this right is even absent from some statements, charters or constitutions.

Indeed, the European Social Charter opened in 1961 has not declared a specific manner the right to food, it implicitly reported this right in Article 11 which deals with the right to health protection which provides that "the Parties undertake to take appropriate measures... in particular to eliminate as far as possible the causes of ill-health...".

The African Charter on Human and People's Rights the amazing thing is that the food is listed as an obligation and not a right "the individual has a duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family to respect his parents at all times to feed them, and assist them in case of need" (Article 29). This Charter has neglected the right to food since it has not listed among the human rights and peoples, it can be induced either implicitly the right to health mentioned in Article 16 which states that "Everyone has the right to the highest attainable standard of physical and mental health... and that States parties shall take the necessary measures to protect the health of their people..." or the right to dignity because "everyone has the right to respect for the inherent dignity of the human person" (Article 5), or the right to existence of peoples (Article 20).

It is really surprising that the African Charter forgot to focus on the right to food while a large proportion of its population fighting famine.

Certainly "the solemn utterance of such a right in a continent struggling in often dramatic food problems can be have had little practical implications. But the absence of its formulation even in its minimal form - the right to be free from hunger and malnutrition has a symbolic value and reflects the absence of a coherent African Food Project" (Assia BENSALAH - Alaoui 1989).

Similarly, the Tunisian constitution in 2014 has not proclaimed in articles the right to food despite its interdependence with other human rights despite its immense importance especially in the post-revolutionary period of the outbreak and instability of food prices dominate. Faced with this political silence on the right to food, we tried to attend a presidential conference on "food sovereignty" February 9, 2013 to contact the President of the Tunisian Republic Mr. Moncef MARZOUKI and men policies to raise awareness of the importance of including the right to food in the new Tunisian constitution. However, the conference was canceled due to the assassination of Chokri BELAID February 6, 2013.

These texts, which are not conducive to food security, have not granted the right to food a major concern it deserves since they have not even announced it right in their articles in an explicit way.

The Conflict between the "Right to Food" and "Energy Need"

"The calculations proposed by the Joint FAO WHO Special / WHO Expert Committee reveal, for developing countries lower energy requirements" than those of developed countries, "because the man and woman reference weigh respectively 53 and 46 kg (instead of 65 and 55). Their calorie requirements drop to 2,440 kcal for men and 1840 kcal for women (instead of 3000 and 2200 for industrialized countries)" (Assia Alaoui BENSALAH - 1989). The question that arises in this regard is it rational to define the needs for the poor instead of rights? The answer is probably negative. In fact, we must value the right to food as this right can never be regarded as a right to food intake.

It makes sense that the right to food is a human right to food security "quantitative" and "qualitative" while respecting all aspects of the latter; such as availability access, food use, and stability of the access.

In the logic of these ideas the Special UN Rapporteur on the Right to Food, De Schutter (2011) says that "the right to adequate food can not be interpreted in a narrow or restrictive sense which equates it with a calorie, protein and other specific nutrients. The right to adequate food must be made gradually. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural disasters or other ". This thought is based on the definition of food security given by the World Food Summit in 1996 the definition that gave the right to food a more meaningful and operational content.

CONCLUSIONS

In short, the right to food is the right of every individual to have physical and economic access at all times to quantitatively and qualitatively adequate feeding.

The right to food, considered a fundamental human right an important concern in the legal sphere. Indeed it is recognized in international law in specific instruments. It is also recognized regionally and even nationally.

However, despite the guidelines adopted for the application of this law since 2004 by 187 members of the General Council of FAO the right finds little application in some regions and not confronted with the same facts in of other regions.

In fact, "in 2012 African countries particularly those in southern regions Eastern Central and Western is ranked second in the Index of hunger in the world, most of the continent recording degrees of famine serious or alarming" (UNDP et al 2013). Therefore the issue here is not normative and positive in fact States should provide both nationally and internationally not only enough food for each individual, but also stable access to this food. Similarly, the food will satisfy all physiological needs of every human being by providing a state of nutritional well -being.

All States shall then not only mention the right to food in their legal basis, but also apply a practical and operational.

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