

DIALOGUE ON THE INTEGRATION OF A HUMAN RIGHTS PERSPECTIVE INTO THE RESPONSE TO RISING FOOD PRICES

MEETING REPORT: THE EXPERT CONSULTATION ON THE
HUMAN RIGHTS PERSPECTIVE ON RISING FOOD PRICES



DIVISION OF
POLICY AND PRACTICE
NOVEMBER 2008

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Dialogue on the Integration of a Human Rights Perspective Into the Response to Rising Food Prices

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**Gender, Rights and Civic Engagement Section, Division of Policy and Practice
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This is a meeting report. It has been prepared to facilitate the exchange of knowledge and to stimulate discussion.

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1. Background and Purpose of the Expert Consultation

The impacts of rising food prices, notably on the poor, have been widely reported by the United Nations, Bretton Woods institutions, international non-governmental organizations and the media. National, regional and international policy discourse and action have focused on a rapid response to the humanitarian, macroeconomic and trade aspects. There has also been a concurrent and ongoing discussion on the human rights perspective to the issue, founded on established thinking on the right to food. Law, jurisprudence and general thinking on the right to food can be drawn from international and regional human rights treaties; domestic legislation in many countries; the work and practice of the High Commissioner for Human Rights; UN human rights mechanisms, such as the Committee on Economic, Social and Cultural Rights and the Human Rights Council; and non-governmental organizations, both those focused specifically on the right to food and food security, and organizations that have a broader focus on poverty reduction or specific disadvantaged and vulnerable groups.

Olivier De Schutter, the UN Special Rapporteur on the Right to Food, is among the leading proponents of the human rights-based perspective on rising food prices and has discussed in detail the underlying causes of the crisis, the obligations of States, the role and responsibility of corporations, and the operational aspects of the right to food and the right to freedom from hunger. He has also made clear his view that the human rights perspective adds value at the operational level. This perspective was to some degree included in the July 2008 Comprehensive Framework for Action (CFA) of the UN Secretary-General's High Level Task Force on the Global Food Crisis.

To date, consideration of the operational response to rising food prices and the human rights perspective have rarely intersected. The right to food for every man, woman, girl and boy has not informed discussion. This has reduced the opportunity to leverage the added value of a human rights perspective. It has also been the basis for a number of critiques of actual and proposed international action, particularly from civil society organizations that are operating from the human rights perspective. At the same time, proponents of the human rights perspective have not always been successful in articulating their standpoint in terms that facilitate incorporation of these principles into operational frameworks.

To strengthen linkages between the human rights perspective and the operational response of a range of partners – most notably within the context of the CFA – UNICEF and the Office of the High Commissioner for Human Rights convened a consultation to bring together participants with expertise in both human rights and other areas to:

- Deepen the move towards a more comprehensive analysis of the underlying causes of the global food crisis by using a human rights 'lens'.
- Determine the implications of the right to food on policy options available to governments and the international community in responding to the crisis.
- Elaborate on how best to integrate the human rights-based approach and gender equality in the ongoing intergovernmental and inter-agency processes in pursuit of the most effective response.

- Establish new alliances that will contribute to a coordinated and coherent response to the emerging global food crisis.

The expert consultation was held in New York, 28–29 August 2008, and hosted by UNICEF. The meeting was attended by 36 participants, including representatives of ActionAid, Columbia University, the Food and Agriculture Organization of the United Nations (FAO), FoodFirst Information and Action Network (FIAN), International Monetary Fund (IMF), Office for the Coordination of Humanitarian Affairs (OCHA), Office of the High Commissioner for Human Rights (OHCHR), Partners In Health, the Robert F. Kennedy Memorial Center for Human Rights, Save the Children, United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), UNICEF, the World Bank and the World Food Programme.

The meeting was chaired by UNICEF, OHCHR and Mr. De Schutter. The agenda is included in Annex I, and the list of participants in Annex II.

2. Topics of Discussion

2.1. Topic 1: Identifying a more complete analysis of the underlying causes of the global food crisis

Mr. De Schutter started the meeting with a presentation on the food crisis from a human rights perspective. He noted that there is sufficient consensus on the causes of the surge in food prices, including: the poor harvests of 2005 and 2006; the increased price of oil; European Union and United States policy for promotion of biofuel; growing demand for food; and limited increase in supply due to a decrease in productivity. He also observed that the surge in prices has not translated into higher farm gate prices for the benefit of smallholder farmers.

Among the risks associated with inappropriate responses to the crisis, he identified:

- Lack of attention to the broader underlying context of declining rural economies as a result of an exclusive focus on the level of food prices.
- Failing to target the benefits of increased food production to reach those who need it most.
- Ignoring the social and environmental dimensions of the crisis.

Six key benefits of a human rights-based approach identified by Mr. De Schutter are: (1) improved accountability; (2) strengthened coordination and linkages between different but related aspects of food security; (3) clearer definitions of roles and accountabilities; (4) an emphasis on participation and consultation; (5) attention to non-discrimination; and (6) the application of human rights and law-based monitoring systems. As a reflection of the interrelated and interdependent nature of factors necessary to secure the right to food, he emphasized, a human rights approach requires the development of institutional mechanisms to improve the accountability of governments and agencies and to enhance coordination between the branches of government responsible for social welfare. This approach also requires the development of national strategies that define the obligations of different actors in the response to rising food

prices. In addition, these strategies should encourage the participation of those affected and promote the development of robust monitoring and surveillance systems, with a focus on such issues as land tenure and women's rights.

Mr. De Schutter noted the importance of establishing monitoring and surveillance systems at two levels: (a) national, through mapping of needs and monitoring of policies that advance human rights; and (b) international, where the obligation of States to respect the right to food should be monitored and their extraterritorial obligations, their obligation to act through international cooperation and the duties of international organizations would be routinely considered. He also proposed the development of an international food reserve, a global reinsurance fund, and an equitable trading system for supporting States in their management of global shocks.

During the discussion that followed Mr. De Schutter's presentation, participants agreed with the proposition that this is not a new crisis. The description of the situation as a 'crisis' may even be inappropriate because this is a particular stage in a long-running and systemic problem. Although its description as a crisis has merit in terms of mobilizing political action at this point in time – a level of attention which, one participant noted, is unlikely to continue given other competing concerns, such as climate change – it also serves to obscure some of the underlying causes, which need to be recognized and incorporated into any successful response.

The key, it was argued, is to recognize this not as a new problem but as a spike in attention to an existing problem. This recognition could be the basis for seeing the current situation as an opportunity to address that existing problem, as opposed to an issue requiring a short-term response. It also makes clear that there cannot be a return to the status quo ante and that simply seeking to increase production cannot provide a solution. It was noted, for example, that the amount of additional arable land available to exploit is running out. In addition, there is a need to reconcile natural systems with human systems. Misunderstanding the nature of these underlying issues and conceiving of the current situation as a new crisis risks mistaking the causes of the current situation for solutions.

With regard to the underlying causes and context, several participants emphasized the importance of focusing on such issues as population growth, climate change and uncertainty around trade negotiations, as well as understanding the historical antecedents of the current situation, such as the dismantling of social protection systems under the 'Washington Consensus'. Others suggested that the breadth of the impacts of the current situation needs to be better appreciated – including the impacts on international organizations that are mandated to assist countries that lack the capacity to feed their population, balance of payment impacts, and distortions resulting from export restrictions implemented as a response to food shortages in food-producing countries (it was noted that this was apparent in General Assembly discussions on the Comprehensive Framework for Action, where many Member States displayed mistrust of the international system by seeking to achieve national self-sufficiency in food).

These impacts are also related to other contemporary problems, themselves interrelated, most notably energy and climate change. Fossil fuels will eventually run out and biofuels will necessarily be employed. Official development assistance at current levels is a small fraction of the amount of money required to support global food security. Solutions will need to be based in directing and enabling the private sector, particularly small-scale agriculture.

It was noted that the required level of analysis must ensure adequate depth, in terms of identifying root causes, as well as breadth, in terms of looking at the relationships between families' capacities to feed themselves and other rights, such as those to an adequate standard of living, health, education and information.

Participants emphasized the human rights-based approach's focus on the most vulnerable, including, in this instance, smallholder farmers and poor families. The situation of these vulnerable groups, and the consequences of policies and practice with regard to land ownership and sale, must be considered as the most vulnerable are often living with the least security of tenure for the land they live and farm on. It was also clear that increased food prices are not benefiting small-scale agricultural producers. And some of the proposed responses could be detrimental to small-scale agriculture because they encourage dependence on expensive inputs that are protected by intellectual property rights. Although food prices may need to stay high to incentivize increased production, the challenge is to make sure that the poor, including women and small-scale farmers, are the primary beneficiaries of increased prices in a way that they are not at present, when many are subject to unfair labour conditions.

Some participants argued that the approach thus far has been overly focused on a humanitarian response to the food crisis, and that this is a short-sighted and limited approach that at best would achieve a temporary, unsustainable improvement. At worst, they stated, this disproportionate focus would exacerbate the underlying problem through inappropriate distortions of mechanisms that would, in the longer term, need to deliver food security for all. They suggested that a human rights-based approach is essential for policy development because it supports recognition of the underlying causes of the crisis; promotes accountability of governments and other actors; focuses on food insecurity arising from discrimination, marginalization and social exclusion; and facilitates dialogue on the national and international levels, which in turn helps in the development of agreed objectives and broader consensus.

Others noted that on a practical level, attention to rising food prices is already waning, and that sometimes the added complexity introduced by the type of analysis demanded by a human rights approach could work against maintaining that attention. The recognition of interlinkages, for example, is indeed valid. But it could, at a certain point, be achieved at a cost, making it very difficult to develop the clear situation analyses that are essential for achieving political momentum. In addition, international mechanisms that should support a focus on the right to food, such as the Committee on Economic, Social and Cultural Rights, often lack the support and capacity to genuinely enforce governmental accountability.

Some participants stressed that a human rights-based approach helps ensure the participation of those most affected by the crisis. To date there is little evidence that marginalized or vulnerable groups have any significant say in the way their situation is being addressed. At the same time, a recognition of the importance of participation does not address the genuine challenge of achieving such participation in a meaningful way. Participants gave both positive and negative examples of experience in seeking the involvement of civil society or indigenous groups at the country level; for example, there is good practice to draw upon of participation in development of national plans for HIV and AIDS, but the investment and attention required are significant.

The human rights perspective also focuses attention on the roles and responsibilities of other actors, such as agribusiness and the World Trade Organization. A careful consideration of roles is necessary to address the questions of who development actors and partners are seeking to serve and who is actually being served by various policy options. There were concerns, for example, that in some countries the response has been heavily influenced by a desire to avoid political unrest, resulting in an overemphasis on support to urban areas at the expense of rural areas.

Participants, in general, agreed that the issues accentuated by a human rights-based perspective are valid, important and add value to an analysis of the issues. In addition, ignoring human rights factors could undermine effective response to the issue of rising food prices and the shared objective of achieving long-term food security. Viewing food as a right, rather than a commodity, is necessary. This is an area where further work could be done, adding to the overall quality of the international response.

At the same time, it was noted, the complex analysis a human rights perspective requires is difficult both in practical and political terms. In practical terms, it is a significant investment of time and energy and demands vastly improved data and statistics, particularly with regard to disaggregation. In political terms, comprehensiveness should not come at the cost of communicability: If a human rights perspective demands such intensive, complex, comprehensive and detailed analysis, could promoting the right to food get in the way of feeding the hungry? This is a challenge for standard development contexts. It is even more so for emergency-affected countries and fragile states.

2.2. Topic 2: Implications of the right to food on policy options available to governments and the international community in responding to the crisis

Participants began by noting that while a human rights approach to analysis is relatively clear, and the principles arising from human rights are explicit and broadly agreed, the precise policy prescriptions that could be derived from it remain unclear in many areas, including the right to food. It appears that the challenge of operationalizing a human rights-based approach to achieving global food security, as with other areas, remains. In practice, is it genuinely understood how to move from the principle to policy, and if not, what is the added value of the human rights-based approach, beyond the analytical? It is possible to argue that a human rights-based approach provides a process rather than specific prescriptions and that human rights should not be understood as instructions for action in all contexts. But what does this imply for the application of human rights to policy development?

It was also argued that the language of human rights may not always be conducive to achieving the realization of those rights, particularly where it has been resisted as a constraint on governmental autonomy. Is a human rights-based approach necessarily the best means to achieve respect for, protection of and fulfilment of human rights? In addition, the principles of human rights law are frequently subordinate in practice to political reality.

In response, other participants argued that the limits in current applications of human rights principles do not undermine their validity; instead, they emphasize the importance of those principles. Recognition of the realities of political power should serve as a reminder of the

essential role human rights have in providing tools, however limited, to people without power. If a human rights perspective demonstrates, among other things, the power issues behind the current problems surrounding rising food prices, then its associated approaches and mechanisms are surely a primary tool for responding to them. There are indeed considerations of presentation and strategy with a human rights approach, as with any approach. This should not be mistaken for a limitation but rather appreciated as a set of concerns that must be taken into account in its application. These concerns might be approached through incentives, including incentives incorporated into the programmes of the international financial institutions, such as preferential engagement with countries that meet certain human rights criteria with regard to their national plans for addressing food security. However, it was stated that the Bretton Woods organizations, in particular the IMF, are not bound by the human rights standards of the United Nations, and this may work against such measures.

There are areas where the policy implications of a human rights-based perspective need to be better understood. Most notably, policy choices require prioritization, and the implications of a human rights perspective for such prioritization are unclear.

Participants then turned to specific implications of the right to food for available policy options, including the need to:

- Critically review existing laws and identify gaps with regard to the right to food as established in human rights law.
- Gather disaggregated data in order to identify the most vulnerable groups and ensure their participation in national and subnational action.
- Identify and respond to gaps in existing accountability mechanisms that seek to provide guarantees for the right to food that empower the poor in particular to take action where government action is inadequate.
- Capacitate existing human rights mechanisms to monitor the provision of food aid from a human rights perspective.
- Use agreed right-to-food guidelines as a basis for the development, monitoring and evaluation of the actions of governments, local actors and the international community.
- Adhere to the principle of ‘do no harm’ and ensure that measures intended to address food security do not result in violations of human rights (for example, expansion of arable land that results in enforced displacement).
- Support the establishment of social protection measures that also guarantee certain minima with regard to the right to food and other related and instrumental rights for enjoyment of this right.

Applying these considerations to the Comprehensive Framework for Action – taking into account that the flexibility of the CFA in terms of ways in which it can be applied at the field level offers a number of entry points and opportunities – and building upon the existing references to human rights in the document, it was noted that there are areas where it might be complemented by additional considerations and support, including:

- Giving additional attention to gender and, potentially, the closer engagement of women-focused organizations in the future development and implementation of the CFA at the international and national levels.
- Better engaging a wider range of stakeholders at the international level, but more importantly at the national level, in application of the CFA to national contexts.
- Putting in place mechanisms that specifically engage civil society actors in the monitoring of the framework.
- Considering the human rights implications of the CFA's provisions in such areas as trade liberalization and the conditional nature of cash transfers.
- Addressing issues of land access.
- Identifying human rights benchmarks and indicators.

At the same time, the significant challenge of finding ways to present human rights as a concern for agribusiness was acknowledged and noted as an area for urgent attention in the future. Given the inevitable centrality of the private sector in long-term solutions to global food security, a failure to engage this sector in addressing the human rights imperatives would increasingly represent a failure to include the human rights perspective overall.

2.3. Topic 3: Integrating the human rights-based approach into the ongoing intergovernmental and inter-agency processes in the pursuit of the most effective response

Turning specifically to the ways in which a human rights perspective might be better incorporated into intergovernmental and inter-agency processes, participants identified the following:

- Encourage and support UN Country Teams to strengthen the capacity of governments to mainstream human rights into their policy and planning processes.
- Support improved data, including with appropriate disaggregation to allow a better appreciation of the different situations of different groups, and use it as a basis for a common and collectively acknowledged human rights-based analysis of the current food price situation, drawing upon the work of the Special Rapporteur and other relevant international human rights mechanisms and institutions.
- Support adoption of the proposed Optional Protocol to the International Covenant on Economic, Social and Cultural Rights for individual and group complaints as an additional accountability mechanism.
- Better employ and capacitate existing human rights mechanisms, such as the treaty bodies that monitor the implementation of UN-sponsored and regional human rights treaties and the Universal Periodic Review of the Human Rights Council, to contribute to the overall response to the challenge of rising food prices.
- Draw upon the expertise and mandate of the Office of the High Commissioner for Human Rights in the United Nations High Level Task Force on the Global Food Crisis.

- Disseminate and promote consideration of the Special Rapporteur's report to the Human Rights Council at the international and national levels.
- Build on the agreement established at the International Conference on Agrarian Reform and Rural Development (held in Porto Alegre, Brazil in March 2006).

3. Agreed Action Points and Conclusion

The Expert Consultation on the Human Rights Perspective on Rising Food Prices resulted in six agreed action points:

1. Promote the use of the FAO's 'Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food' in the development of national food security strategies.
2. Develop and/or adapt monitoring tools on economic, social and cultural rights to monitor the realization of the right to food within the framework of the CFA at both the global and national levels, for example, the monitoring tool jointly developed by FIAN and the Committee on Economic, Social and Cultural Rights, linked to the International Covenant on Economic, Social and Cultural Rights.
3. Promote the conduct of human rights impact assessments prior to the adoption of development policies, programmes and projects that could have an impact on the right to food.
4. Use the ideas generated by the consultation to inform inter-agency and other forums about the human rights perspective on the global food crisis.
5. Undertake additional research on the human rights perspective on the food crisis and other related crises, such as climate change, and develop appropriate advocacy strategies.
6. Create a web page, which could serve as a depository of the consultation's materials.

The meeting was concluded by Elizabeth Gibbons, Associate Director, Policy and Practice, UNICEF. She commended the group on the discussion and encouraged the experts present to reach out to the widest possible range of networks and actors working on the issue to familiarize them with the ideas and issues discussed at the meeting. The cross-fertilization of ideas and approaches facilitated by the consultation demonstrated: (1) that the human rights perspective and the operational/technical response to rising food prices combined could result in a powerful outcome for poor families and (2) that there remain many areas where more clarity is needed, and these areas might benefit from research.

The discussion needed to continue, and it was hoped that the consultation would be the beginning of a conversation and not the end. UNICEF would bring the content of the discussion to the attention of its internal task force on the issue, with a view to it being communicated to the High Level Task Force.

Mr. De Schutter thanked the participants and reiterated that their work would inform his report to the ninth session of the Human Rights Council in September 2008.

Annex I: Agenda for the Expert Consultation on the Human Rights Perspective on Rising Food Prices, 28–29 August 2008, UNICEF House, New York

August 28, Maurice Pate Conference Room (13th Floor)

- 9:30–9:45 **Introduction** and brief opening session (Elizabeth Gibbons, UNICEF)
- 9:45–10:00 **Overview** of the selected thematic areas (Olivier De Schutter, United Nations Special Rapporteur on the Right to Food)
- 10:00–11:15 **Topic 1: Identifying a more complete analysis of the underlying causes of the global food crisis** (Moderator: Ngonlardje Mbaidjol, OHCHR)
- What are the underlying causes and threats of the food price situation? How can these be understood through the human rights and gender equality perspectives?
 - Which are the policies that have most negatively impacted on the realization of the right to food?
 - What are the differential impacts of the food price situation on marginalized and vulnerable groups, especially women?
 - To what extent is the crisis a manifestation of existing patterns of marginalization?
 - How do the current responses impact on deeply rooted discriminatory patterns in societies?
 - What are the ramifications for particularly vulnerable groups, such as children, women, and ethnic or religious minorities, including small-scale women farmers? What are some of the coping strategies utilized by these groups?
- 11:15–11:30 Coffee Break
- 11:30–12:45 Topic 1 Continued
- 12:45–1:00 Topic 1 Wrap-up (Moderator: Ngonlardje Mbaidjol, OHCHR)
- 1:00–2:30 Lunch
- 2:30–3:45 **Topic 2: Implications of the right to food on policy options available to governments and the international community in responding to the crisis** (Moderator: Karen Hansen-Kuhn, ActionAid)
- What is the minimum response that human rights standards require of (a) national governments and (b) the international community? Are these requirements realistic?
 - How can national ownership be sustained?
 - What are the different responsibilities of governments, local authorities, the private sector and international actors? How do international human rights obligations, trade obligations and obligations stipulated in agreements for the provision of humanitarian and development aid relate to one another?

- What is the State's policy response towards providing a social protection system and other forms of safety nets?
- What are the necessary remedies at the national and international levels for policy failure?
- Is the right to food justiciable? How can the United Nations contribute to improved accountability and reduce the adverse effect of the food crisis in the political, humanitarian, socio-economic and environmental settings?

3:45–4:00 Coffee Break

4:00–5:15 Topic 2 Continued

5:15–5:30 Topic 2 Wrap-up (Moderator: Karen Hansen-Kuhn, ActionAid)

August 29, Maurice Pate Conference Room (13th Floor)

9:30–9:45 **Wrap-up of previous day's discussion** (Elizabeth Gibbons, UNICEF)

9:30–10:45 **Topic 3: Integrating the human rights-based approach into the ongoing intergovernmental and inter-agency processes in the pursuit of the most effective response** (Moderator: Elizabeth Gibbons, UNICEF)

- What have been the main obstacles to consideration of the right to food and a human rights perspective in mainstream policy analysis and responses to the global food situation?
- What are the modalities of international cooperation on the food crisis?
- What are the key messages and approaches for policymakers?
- What role is given to the most affected, especially children and women, in the formulation, implementation, and monitoring and evaluation of policies and measures to address the food price situation?
- How can this role become institutionalized and strengthened? What are the perspectives from civil society actors?

10:45–11:00 Coffee Break

11:00–12:15 Topic 3 Continued

12:15–12:30 Topic 3 Wrap-up (Elizabeth Gibbons, UNICEF)

12:30–1:00 **Conclusion** (Elizabeth Gibbons, UNICEF)

Annex II: List of participants for the Expert Consultation on the Human Rights Perspective on Rising Food Prices, 28–29 August 2008, New York

| | Organization | Name of participant |
|-----|--|----------------------------|
| 1. | ActionAid | Karen Hansen-Kuhn |
| 2. | Columbia University | Sanjay Reddy |
| 3. | FAO | Javier Molina |
| 4. | FIAN | Flavio Luiz Schiek Valente |
| 5. | IMF | Louis Dicks-Mireaux |
| 6. | OCHA | Hans Strohmeyer |
| 7. | OCHA | Kirsten Gelsdorf |
| 8. | OCHA | Melanie Mason |
| 9. | OHCHR | Ngonlardje Mbaidjol |
| 10. | OHCHR | Craig Mokhiber |
| 11. | OHCHR | Asako Hattori |
| 12. | OHCHR | Danila Boneva |
| 13. | Partners In Health | Donna Barry |
| 14. | Partners In Health | Joia Mukherjee |
| 15. | Robert F. Kennedy Memorial Center for Human Rights | Marselha G. Margerin |
| 16. | Save the Children | Delphine Valette |
| 17. | UN Special Rapporteur on the Right to Food | Olivier De Schutter |
| 18. | UNDP | Shantanu Mukherjee |
| 19. | UNDP | Anna Falth |
| 20. | UNDP | Rania El Azem |
| 21. | UNDP | Julia Kercher |
| 22. | UNDP | Daniela Gregr |
| 23. | UNFPA | Henia Dakkak |
| 24. | UNICEF | Elizabeth Gibbons |
| 25. | UNICEF | Daniel Seymour |
| 26. | UNICEF | Jean-Luc Bories |
| 27. | UNICEF | George Laryea-Adjei |
| 30. | UNICEF | Michele Ferez |
| 31. | UNICEF | Roma Bhattacharjea |
| 32. | UNICEF | Ravi Karkara |
| 35. | World Bank | Edward Cameron |
| 36. | World Food Programme | Masood Hyder |

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