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The right to food

**Report submitted by the Special Rapporteur on the right to food, Jean Ziegler,
in accordance with Commission on Human Rights resolution 2002/25**

Executive summary

The Special Rapporteur submits this report to the Commission on Human Rights in accordance with its resolution 2002/25.

At the time of writing this report, the Special Rapporteur is gravely concerned by the suffering and hunger of 38 million people across Africa, principally in southern Africa and in Ethiopia and Eritrea. He is also extremely concerned that in The State of Food Insecurity in the World 2002 the Food and Agriculture Organization of the United Nations (FAO) highlights the fact that progress in reducing world hunger has virtually come to a halt. The number of undernourished people around the world has increased to 840 million. Over 2 billion people worldwide suffer from “hidden hunger”, or micronutrient deficiencies, meaning, for instance, that children fail to grow and develop normally, their bodies are stunted and sometimes deformed, as are their intellectual capacities and immune systems. Every day, every seven seconds, another child under the age of 10 dies from hunger or hunger-related diseases.

In this report, the Special Rapporteur reports on his activities to promote greater awareness and implementation of the right to food, including his official missions. His report on the situation of the right to food in Brazil is submitted to the Commission as an addendum to this report. This report then focuses on two key initiatives being taken at the international level: the development of international “voluntary guidelines” on the right to food, under the auspices of FAO, and the production of a new General Comment No. 15 on the right to water by the Committee on Economic, Social and Cultural Rights. In fulfilling his mandate, which includes water as a fundamental element of nourishment, the Special Rapporteur calls attention to this new development, and then discusses concrete examples of how food and water are inextricably linked in practice. The Special Rapporteur believes that these two groundbreaking developments will strengthen the understanding of the right to food around the world and, with hope, engage Governments in taking real action to eradicate hunger.

In a third section of the report, the Special Rapporteur describes the process in place for receiving and responding to allegations of violations of the right to food around the world. The aim of receiving and responding to allegations is to reduce the impunity that surrounds violations of the right to food around the world.

Finally the Special Rapporteur ends with conclusions and recommendations.

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Introduction

1. In accordance with his mandate,¹ the Special Rapporteur has previously submitted two general reports to the Commission (E/CN.4/2001/53 and E/CN.4/2002/58). He has also submitted a country report on Niger to the Commission (E/CN.4/2002/58/Add.1), and now submits a country report on Brazil as an addendum to the present report. A report on Bangladesh will be submitted in early 2003. The Special Rapporteur has also submitted general reports to the General Assembly (A/56/210 and A/57/356). In its last resolution on the right to food, resolution 2002/25, the Commission requested the Special Rapporteur to contribute to the review of the implementation of the 1996 Rome Declaration on World Food Security and Plan of Action at the 2002 World Food Summit: five years later.
2. The Special Rapporteur therefore reports here on his activities over the last year. In the fulfilment of his mandate, activities have included two country missions in 2002: Brazil (1-21 March 2002) and Bangladesh (24 October-4 November 2002). The mission report on Brazil looks at the many positive initiatives that Brazil has taken with respect to the right to food, but also records the continuing problems of poverty and malnutrition in the country. The report on Bangladesh offers some very different perspectives. The Special Rapporteur would like to thank both Governments which warmly received the Special Rapporteur and his team and ensured that his missions were open and fruitful.
3. As requested by the Commission, the Special Rapporteur actively contributed to, and attended, the World Food Summit: five years later held in Rome in June 2002. He submitted a series of recommendations to the Office of the High Commissioner for Human Rights (OHCHR) and the Food and Agriculture Organization of the United Nations (FAO). He also contributed as a keynote speaker to the important side-event on the right to food organized by FAO, which discussed the initiative to elaborate voluntary guidelines on the right to food (see section I of this report). The Special Rapporteur also attended the parallel NGO meeting "Forum for Food Sovereignty", and was received by the Italian Senate in a meeting sponsored by the Inter-Parliamentary Union to raise awareness of the right to food amongst parliamentarians from all around the world.
4. Prior to the World Food Summit: five years later, the Special Rapporteur and his team also worked with different Governments and NGOs to prepare for the Summit. This work included participation at the conference "The right to adequate food: focus on national implementation" sponsored by the Government of Norway in April 2002 and the international workshop "Policies against hunger" held in May 2002 in Berlin, sponsored by the Government of Germany and the co-organizing Governments of Chile, India, Italy, Norway and South Africa. This workshop brought together Ministers of Agriculture and 200 participants from both governmental and non-governmental sectors from more than 70 countries. The Special Rapporteur and his team also had the opportunity to engage in discussions on the right to food with government representatives of Switzerland.
5. Following the Summit, the Special Rapporteur and his team have continued to cooperate with Governments, NGOs, United Nations agencies and treaty bodies to prepare for the establishment of voluntary guidelines on the right to food. This has included meetings with OHCHR and with members of the Committee on Economic, Social and Cultural Rights.

Activities have also included participation at a meeting to raise awareness of the right to food amongst French NGOs in Paris in October 2002, and at the first international NGO working meeting to prepare proposals for the guidelines, held in Mulheim, Germany, in November 2002 and sponsored by FIAN (Foodfirst Information and Action Network). Over the coming year, the Special Rapporteur will also actively contribute proposals to the meetings of the Intergovernmental Working Group established to elaborate the voluntary guidelines.

6. His report to the General Assembly reviewed the outcomes of the World Food Summit: five years later. The Special Rapporteur was encouraged by the small but path-breaking decision in the Declaration to establish a set of voluntary guidelines on the right to food. It also addressed the question of agrarian reform and the right to food, and showed that truly transformative agrarian reform can have a substantial impact on reducing poverty and hunger of landless peoples.

7. In its resolution 57/227 on the right to food, the General Assembly commended the Special Rapporteur for his work and expressed its appreciation for his contribution to the World Food Summit: five years later. The Assembly also welcomed the decision of the FAO Council to establish an Intergovernmental Working Group to elaborate a set of voluntary guidelines on the right to adequate food, and stressed that FAO will work with the Special Rapporteur.

8. During the year, the Special Rapporteur and his team also contributed comments to the drafting of a new general comment on the right to water by the Committee on Economic, Social and Cultural Rights. The Special Rapporteur welcomes the adoption of General Comment No. 15 on the right to water (E/C.12/2002/11), to which he devotes a chapter of this report. Activities also included participation at the Social Forum organized by the Sub-Commission on the Promotion and Protection of Human Rights in August 2002. The Special Rapporteur also contributed comments to the Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies. The Special Rapporteur welcomes these guidelines and strongly advocates the incorporation of human rights into Poverty Reduction Strategy Papers.

9. In order to generate greater understanding of the right to food, and of economic, social and cultural rights in general, the Special Rapporteur has developed with his team a university course entitled "The theory and practice of defending economic, social and cultural rights". The week-long intensive course will be held in March 2003 at the Graduate Institute of Development Studies in Geneva, and will be aimed at teaching post-graduate students and members of international and non-governmental organizations. Outstanding leaders in the human rights academic field will be invited to the seminar to present on their key fields of expertise, including Dr. Giorgio Malinverni, Professor of Constitutional Law at the University of Geneva, and Dr. Georges Abi-Saab and Dr. Andrew Clapham, Professors of International Law at the Graduate Institute of International Studies in Geneva.

10. In maintaining liaison with universities and academic circles, the Special Rapporteur also addressed a meeting held by Action contre La Faim in Paris in October 2002. In December 2002, he addressed the Students League of Nations at the Palais des Nations in Geneva and the Forum of Intellectuals at UNESCO in Paris.

11. During the year, working relationships have also been intensified with United Nations organizations, other international bodies and non-governmental organizations. These include OHCHR, FAO, the World Food Programme (WFP), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (OCHA), and the International Committee of the Red Cross (ICRC) and the Inter-Parliamentary Union (IPU). In addition, the Special Rapporteur benefited from the collaboration of the Special Rapporteur on adequate housing and the Special Rapporteur on torture. He has also maintained contact with the Committee on Economic, Social and Cultural Rights and supported their new initiatives, notably to develop an interpretation of the right to water. In addition, he has benefited from the collaboration of numerous NGOs and other organizations including: FIAN (Germany), the International Federation for Human Rights Leagues, Action contre La Faim (France), the World Alliance for Nutrition and Human Rights, Antenna (Switzerland), the International Project on the Right to Food in Development (Norway), International Service for Human Rights (Switzerland), the International Jacques Maritain Institute (Italy), Amnesty International and the Centre for Economic and Social Rights (United States).

12. The Special Rapporteur wishes to refer to some exchanges that have taken place following his response to a journalist's question on 15 October 2002.

13. On this matter the Special Rapporteur wishes to clarify his position of principle as follows:

The Special Rapporteur is aware that food aid is provided by Governments with the best of intentions and out of a spirit of humanitarian solidarity;

The Special Rapporteur is aware that there are differences of views on the health aspects of genetically modified foods.

14. The Special Rapporteur believes that there is a duty of care in dealing with this issue and considers that further dialogue would be important, respectful of all positions.

15. At the time of writing this report, the Special Rapporteur is gravely concerned at the suffering and hunger of 38 million people across Africa, principally in southern Africa and Ethiopia and Eritrea. He is also extremely concerned that in The State of Food Insecurity in the World 2002 FAO highlights that progress in reducing world hunger has virtually come to a halt. However, there are exceptions: China and Ghana, for instance, have made impressive progress in assuring food security to their people. FAO report estimates that the number of undernourished people around the world has increased to 840 million: 799 million in developing countries, 30 million in countries in transition and 11 million in industrialized countries. Every seven seconds a child under the age of 10 dies, directly or indirectly, of hunger somewhere in the world.² More than 2 billion people worldwide suffer from "hidden hunger", or micronutrient malnutrition, which has effects that are not always visible; micronutrient deficiencies mean that children fail to grow and develop normally, their bodies are stunted and sometimes deformed, but so are their intellectual capacities and their immune systems, condemning them to a marginal existence. Hunger also has effects through the generations, as undernourished mothers give birth to children that will never fully develop.

16. Hunger, like poverty, is still a predominantly rural problem. Of the 1.2 billion people who suffer from extreme poverty in the world today, 75 per cent live and work in rural areas.³ This is a paradox in a world that, according to FAO, already produces more than enough food to feed the world. The rural poor suffer from hunger because they lack access to resources such as land, do not hold secure tenure, are bound by unjust sharecropping contracts, or have properties that are so small that they cannot grow enough food to feed themselves. It is clear that reducing hunger does not mean increasing the production of food in rich countries, but rather in finding ways of increasing access to resources for the poor in the poorest countries.

17. Persistent hunger is neither inevitable, nor acceptable. Hunger is not a question of fate; it is manmade. It is the result either of inaction, or of negative actions that violate the right to food. It is therefore time to take action. It is time to recognize the right to food as a human right and to realize the right to food across the world. The human right to food entails an obligation to ensure that each and every human being on this planet should be free from hunger. The right to food is defined in the authoritative legal interpretation of General Comment No. 12 of the Committee on Economic, Social and Cultural Rights, as follows:

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”⁴

18. The right to food does not mean handing out free food to everyone. Rather, the right to food means that Governments must respect, protect and fulfil the right to food, as clarified in General Comment No. 12. The obligation to respect means that Governments must not violate the right to food (e.g. evict people from their land, destroy crops). The obligation to protect means that Governments must protect their citizens against violations by other actors (e.g. by instituting regulations on food safety). The third obligation to fulfil the right to food means that the Government must first facilitate the right to food by providing an enabling environment for people to feed themselves (e.g. engage in land reform, stimulate employment), and secondly the Government must be the provider of last resort in cases where people cannot feed themselves for reasons beyond their control (e.g. social safety net programmes, food stamps, food in prison).

I. INTERNATIONAL GUIDELINES ON THE RIGHT TO FOOD

19. In the struggle to recognize and realize the right to food across the world, one new initiative stands out as fundamentally important. This is the new and valuable international initiative to establish voluntary guidelines on the right to food which has recently been started under the auspices of FAO. As reported by the Special Rapporteur in his review of the outcome of the World Food Summit+5 (A/57/356), one encouraging development to come out of the Summit was the decision by Governments to establish voluntary guidelines. This could be an encouraging step forward and provide small seeds of hope in the fight against hunger. The Special Rapporteur hopes that the process of drawing up the guidelines will provide the impetus for all Governments, and other actors, to recognize the right to food as a proper human right and to engage in a practical debate on the best ways of realizing the right to food.

20. This section describes the process and outlines some potential ideas for the contents of the guidelines. The final Declaration of the World Food Summit+5 recognizes the “the right of

everyone to have access to safe and nutritious food”.⁵ We should recall here that the right to food means the right to have physical and economic access to adequate food, as per General Comment No. 12.⁶ In the Declaration, in paragraph 10, Governments also call for the elaboration of a set of voluntary guidelines to be drawn up by an “Intergovernmental Working Group”.⁷

21. The Intergovernmental Working Group will elaborate the guidelines over the next two years, in a participatory process.⁸ Although Governments will be responsible for drawing up the guidelines, other stakeholders, including “relevant international and regional institutions, as well as non-governmental organizations, civil society groups, parliamentarians, academic institutions and foundations and the private sector” will be invited to participate.⁹ This means that other organizations, including NGOs, can submit position papers and participate in the meetings.¹⁰ The first NGO working meeting on the guidelines, hosted by the NGO FIAN, held in Germany in November 2002, began the process of drawing up a joint NGO contribution. The Special Rapporteur urges the Intergovernmental Working Group to listen to the voices of civil society.

22. The Special Rapporteur also urges the Intergovernmental Working Group to draw on the experiences of the United Nations human rights bodies. The FAO secretariat, which will service the Working Group, has been mandated to work closely with all the “relevant United Nations bodies, in particular the United Nations High Commissioner for Human Rights, the Committee on Economic, Social and Cultural Rights and the Special Rapporteur”.¹¹ The Special Rapporteur welcomes this decision and has accepted an invitation from FAO to contribute to the elaboration of these guidelines over the next two years.¹² The first official international meeting to discuss the guidelines is scheduled for March/April 2003. This meeting will consider proposals and elements for the contents of the guidelines.

23. So what should the guidelines include? The guidelines should be a simple, clear and practical document, outlining what the right to food means and giving examples of how to implement it. They should repeat, and illustrate in practical ways, the existing authoritative interpretation of the right to food, General Comment No. 12. The guidelines can therefore be based on General Comment No. 12 in terms of both structure and content, but should give concrete examples.

24. The fundamental importance of the guidelines will lie in bringing together the concepts of food security and the right to food. Food security is an extremely important concept, but it can also be strengthened by the obligations entailed by the right to food. The right to food includes all the elements of food security - availability, access and utilization - but also goes further than this, by making food security a human rights obligation, not simply a preference or policy choice, or just an aspirational goal. The right to food implies that action is taken progressively by the Government to ensure that hunger and malnutrition are, progressively, eradicated. The human rights approach means that progress should be monitored and Governments held accountable if they do not take adequate action. The right to food is subject to the principle of progressive realization and is limited by the availability of resources, but Governments are still obliged to begin immediately taking steps towards the realization of the right to food. As the Special Rapporteur pointed out in his last report, the obligations to respect

and protect the right to food, the obligation of non-discrimination and the obligation to provide a basic minimum subsistence are immediately effective, since they are not subject to progressive realization.¹³

25. In his last report to the General Assembly (A/57/356), the Special Rapporteur outlined the following basic elements that should be included in the guidelines, based on the suggestions made by the participants at the side-event on the right to food organized by FAO at the World Food Summit:¹⁴

1. Reaffirmation of existing legal obligations
 - Emphasizing General Comment No. 12
2. International obligations of States
 - Obligations at the national level
 - “Extranational” obligations of States towards citizens of other countries
3. Practical guidelines for national implementation
 - Establishment of framework law on the right to food
 - National strategy to implement the right to food
 - Examples of good practices
 - Benchmarks and indicators
 - National monitoring mechanisms
 - Remedies and accountability
4. International obligations and responsibilities of other actors
 - International organizations
 - Private actors
 - Non-governmental organizations
5. International monitoring mechanisms
 - Mechanism of Committee on Food Security to monitor compliance

- Make use of existing monitoring mechanisms (Committee on Economic, Social and Cultural Rights, etc.).

26. The primary obligation to realize the right to food rests with national Governments. The key focus of the guidelines should therefore be national obligations to respect, protect and fulfil the right to food of its own citizens. The first step should be to set up a national strategy for the implementation of the right to food. This would imply a comprehensive review of existing government policies and legislation with respect to the protection of the right to food, before producing an overall policy and framework legislation to ensure comprehensive protection. Examples of good practice and illustrations of the different State obligations to respect, protect and fulfil the right to food could be included in the guidelines to guide the development of a national strategy. A gender-based perspective should also be incorporated into any national strategy. Special attention should be paid to ensuring that national strategies include policies and resources to cope with natural and other disasters, to guard against famine.

27. The Special Rapporteur emphasizes that the primary obligation to meet the right to food rests with national Governments. National Governments therefore also identify problems and the obstacles to the realization of the right to food in their countries, and take action to address them. For example, a key obstacle to the right to food can be corruption of Government, which diverts essential resources away from social spending. Another obstacle might be the use of food as a political weapon or a means of ensuring political and economic control over resources. A good national strategy would therefore include measures for taking action to combat such problems and should include mechanisms for redress and accountability. The measures to combat corruption outlined in NEPAD, the New Partnership for Africa's Development, could serve as a valuable example.¹⁵

28. Although the key focus of the guidelines should be on national obligations, the guidelines should also go beyond the national level to include the obligations of States towards the citizens of other countries, which could be called the "extranational obligations". Of all human rights, the commitment of States to cooperate is expressed most strongly in the commitment to the right to food, recognizing the need for international cooperation as provided in article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights.¹⁶ The Committee on Economic, Social and Cultural Rights states that international cooperation for the realization of economic, social and cultural rights is an obligation of all States, in accordance also with Articles 55 and 56 of the Charter of the United Nations and well-established principles of international law.¹⁷ The Committee has further clarified in General Comment No. 12 that "States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."¹⁸

29. It is certainly clear that in an increasingly globalized world, the actions of one Government can often have repercussions (positive and negative) on the right to food of people in another country (e.g. in the case of agricultural trade). Governments should therefore have a responsibility to ensure that national policies do not have negative effects on the right to food of people in other countries. In the context of extranational obligations, to *respect* the right to food means that States must not take actions that negatively impact on the right to food of people in another country, (e.g. refrain from food embargoes, or from using food as an instrument of

political and economic pressure, or ensuring that their trade relations do not violate the right to food of people in other countries). The obligation to *protect* implies that States have a duty to regulate their companies and corporations that operate in other countries to prevent violations. The obligation to *facilitate* access to food requires the State to build a social and international order in which the right to food can be fully realized.¹⁹ States should also take account of their “extranational obligations” in their deliberations in multilateral organizations, including the IMF, World Bank and the World Trade Organization (WTO).

30. Therefore, Governments should also have the obligation to refrain from taking action that negatively affects the right to food in other countries. The Committee on Economic, Social and Cultural Rights has stated, for example, that international obligations under the right to food mean that States “should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure.”²⁰ In the 1993 Vienna Declaration and Programme of Action, States reaffirmed that “food should not be used as a tool for political pressure”.²¹ The long-standing unilateral embargo against Cuba could be seen as a violation of this obligation. Although Cuba has been allowed to import some food from the United States since the disaster of Hurricane Michelle in November 2001, the embargo is nonetheless creating severe problems for the import of adequate foodstuffs to feed Cuba’s population. This is the opinion of the General Assembly which, on 12 November 2002, for the eleventh year in a row, condemned the unilateral sanctions of the United States against Cuba and reiterating that these constitute a violation of the Charter of the United Nations and international law. The Special Rapporteur has been invited to make an official visit to Cuba to verify the impact of the embargo on the right to food.

31. The obligations in the guidelines should also be extended to include international organizations and private actors, including transnational and other corporations. International multilateral organizations, such as the World Bank and IMF, should be bound to respect human rights obligations in their policies, first by virtue of the fact that many of their States members are parties to the International Covenant on Economic, Social and Cultural Rights, and second by virtue of the fact that they are subjects of international law and therefore have to respect the Universal Declaration of Human Rights, which explicitly recognized the right to food in article 25.²² In other words, as the policies of the World Bank and IMF are made by States members, those States which are party to the Covenant should take account of their obligations in their deliberations on IMF and World Bank policy. By extension, this means that the policies and programmes of IMF and the World Bank should take the right to food into account. The Special Rapporteur recognizes the significant advances made by the World Bank under the leadership of Mr. Wolfensohn, including the publication of the report Development and Human Rights: The Role of the World Bank, in which the Bank states that creating the conditions for the attainment of human rights is a central and irreducible goal of development.²³

32. In terms of transnational corporations, under the right to food, Governments have a clear duty to regulate the activities of corporations (in their own countries and in other countries) through the obligation to protect the right to food. However, it is increasingly important also to find ways of ensuring that transnational corporations accept themselves to abide by human rights standards. In the world today, where States are no longer always the most powerful actors and where the budgets of many multinational companies greatly exceed those of many countries, it is

time to see new duty-bearers, including private corporations, as subjects of international human rights law. As part of this process, the guidelines should enunciate a set of principles to ensure that corporations and private actors respect the right to food. The guidelines could draw from similar processes already under way, specifically the initiative of the Sub-Commission to set up the “Norms of Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights”.²⁴ The Special Rapporteur recognizes the advances already made by the corporations that have signed up to the United Nations Global Compact, committing themselves to respecting human rights, as well as labour and environmental standards.²⁵

33. The guidelines should also cover the broad spectrum of issues that the right to food implies. They should make reference to the protections of the right to food under international humanitarian law, as well as human rights law. As pointed out in his previous reports (A/56/210 and E/CN.4/2002/58), international humanitarian law contains many provisions that protect the right to food. These include the prohibition of starvation as a method of warfare, the prohibition of displacement, numerous rules providing for protection and relief assistance to vulnerable groups, particularly women and children, as well as principles governing humanitarian assistance. Links could also therefore be made to other existing instruments, including the 1999 Food Aid Convention and the Sphere Project guidelines.

34. The guidelines should cover the importance of nutrition and water as key elements that constitute the right to food. The definition of the right to food in General Comment No. 12 suggests that the right to food must be understood broadly to include nutrition and food safety issues. Indeed, it is impossible to deny the link between food and nutrition, given that in today’s world “hidden hunger”, or micronutrient malnutrition, is as significant as protein-energy malnutrition. Given its close link with the definition of food security, the right to food should not only include availability and access as key elements of the definition, but also the “utilization” of food as a third key element. “Utilization” means the proper biological use of food, which requires a diet adequate in energy and nutrients, as well as safe drinking water and adequate sanitation. This also implies knowledge of the basic principles of nutrition and proper childcare, as well as of safe food storage and processing techniques.²⁶ This means that parallel measures in health care, sanitation and drinking water are elements that must be included in the right to food. As these are already elements widely included in the broad definition of “food security”, this should not be perceived as a problem in terms of broad understanding of the right to food.

35. The key element of water must also be a fundamental element of the right to food. It is impossible to discuss nutrition and food security without including safe drinking water. Safe drinking water is essential to adequate nutrition. Another element of the right to food must be water used for irrigation purposes, given that this is essential for food production and for ensuring food availability, particularly in countries where the poor depend primarily on their own production. These fundamental links between water and the right to food are the main subject of the next chapter.

II. WATER AND THE RIGHT TO FOOD

A. General Comment No. 15 on the right to water

36. Another new and very important development occurring at the international level has been a new breakthrough in the legal protection of the right to water. This is the development of a new General Comment No. 15 on the right to water, which will greatly improve the legal framework protecting the right to water by providing the authoritative legal interpretation of the Committee on Economic, Social and Cultural Rights. The Special Rapporteur believes that he has the responsibility to raise awareness of this new development, as water forms part of his mandate on the right to food. The Commission on Human Rights extended the mandate of the Special Rapporteur on the right to food to cover the issue of drinking water: “to pay attention to the issue of drinking water, taking into account the interdependence of this issue and the right to food”.²⁷

37. In his message on World Food Day, 16 October 2002, the Secretary-General said:

“We must develop new and innovative approaches in water development and management if we are to feed the more than 800 million hungry people in the world, and ensure safe drinking water for more than 1.1 billion people who have currently no access to it.”²⁸

38. So far, the Special Rapporteur has addressed the question of drinking water in a preliminary fashion in his last report to the General Assembly (A/57/210) in which he highlighted that more than a billion people around the world still do not have access to clean drinking water, and the risks of water-borne diseases and the increasing scarcity of fresh water. In the present report, he explores new developments in the legal protection of the right to water and, secondly, explores the complex interdependence of food and water, based on concrete examples in the countries that he has visited during his missions. This highlights both the importance of including water as an element of the right to food, as well as institutionalizing the right to water as a separate human right.

39. The Special Rapporteur welcomes the initiative of the Committee on Economic, Social and Cultural Rights to establish a new General Comment on the right to water. This General Comment adds a contribution to the interpretation of the legal protection of the right to water, which is already recognized in international human rights law, and also in international humanitarian law and international watercourses law (the law governing the sharing of water between countries). The General Comment clarifies that: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”²⁹

40. It also clarifies that the right to water does not mean that free water should be given to everyone. Rather, it implies the obligations to respect, protect and fulfil the right to water. These are defined in the new General Comment as follows: the obligation to *respect* requires that States parties refrain from interfering, directly or indirectly, with the enjoyment of the right to water. The obligation to *protect* requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. The obligation to *fulfil* is

disaggregated into the obligations to *facilitate*, *promote* and *provide*. The obligation to *facilitate* requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to *promote* obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to *fulfil (provide)* the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. The General Comment also goes further to define in greater detail what these obligations to respect, protect and fulfil the right to water mean in practice.³⁰

41. The General Comment highlights that water is essential for life and emphasizes the fundamental importance of access to “sufficient, safe, and acceptable” drinking water. In recognizing the importance of drinking water to nutrition, the General Comment also highlights how the right to water is inextricably related to the right to food and requires that: “Priority should ... be given the water resources required to prevent starvation and disease.”³¹

42. The Special Rapporteur welcomes the fact that the Committee has recognized that access to water for the irrigation of food crops must form a key part of the right to food, particularly for subsistence farming and vulnerable peoples. As I. Serageldin, formerly of the World Bank, has argued “In the near future, availability of water rather than land will be the main constraint to agricultural production in many areas.”³² The General Comment reads:

“The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment No. 12). Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1 (2) of the Covenant, which provides that a ‘people may not be deprived of its means of subsistence’, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.”³³

43. The General Comment also makes clear reference to three sources of international law that give legal protection to the right to water: the relevant international human rights instruments, the relevant provisions in international humanitarian law and those in international watercourses law. For example, many international human rights treaties make reference to the importance of the protection of access to water and the right to water is increasingly recognized in regional and national legislation as a justiciable right.³⁴ Under international humanitarian law, similar rules and principles apply to the right to water as to the right to food,³⁵ which is important because, as ICRC points out, the destruction of water resources and distribution points during armed conflict often kills more people than actual weapons.³⁶ International watercourses law clarifies that in the event of conflicts over the resources of international rivers, human needs must be prioritized, which means that “special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation”.³⁷ This is essential as the planet’s 250 rivers that cross international boundaries provide water for over 40 per cent of the world’s population and some are becoming a serious source of conflict.

B. Linkages between the right to water and the right to food: concrete examples

Niger

44. Niger is a vast and landlocked country of the Sahel, inhabited by some of the greatest civilizations of humanity - the Songhai, the Djerma, the Hausa, the Tuareg, the Peul, etc. Most of its 1.2 million km² of land is desert or semi-arid and only 3 per cent is cultivable. Despite its earlier riches based on the dominance of trans-Saharan trade, today Niger is the second poorest country in the world.³⁸ Food insecurity, hunger and malnutrition are widely prevalent and this is largely as a result of the lack of access to water in rural areas.³⁹ With frequent drought and an arid climate, one of the obstacles to realizing the right to food in Niger has been the lack of access to water resources, both for irrigation and for drinking. The people of Niger, the majority of whom are peasant farmers or pastoralists living in rural areas, survive on millet crops which can only be produced during the rainy season, and do not last through the dry season. Yet, if existing water resources were better harnessed, the people of Niger would be able to produce food, both millet and fruit and vegetables, which would have a huge impact on hunger and malnutrition in the country. Although Niger is an arid country, it does have significant water resources, including the Niger River, over 1,000 temporary lakes and accessible groundwater. The Government of Niger has made important efforts to develop irrigation and dry season cultivation. However, there have not been enough resources to invest broadly in small-scale irrigation - even though this would fundamentally improve food security for the poorest. There are some impressive efforts at promoting small-scale irrigation and providing wells in some villages, but these efforts should be extended if food security is really to be achieved (although all the risks of different methods of water harvesting must also be analysed, given potential dangers - see the case of Bangladesh below).

45. Safe drinking water is an essential part of healthy nourishment. Yet in more urbanized areas of Niger where running drinking water is available, there remain some dangers given the occasional lack of strict regulation of the safety of drinking water. The Special Rapporteur's attention was drawn to the case of the tragic poisoning by tap water of hundreds of children in Tibiri, 720 km from Niamey. It has been documented that, as a result of poisoning, 425 children have contracted skeletal fluorosis, a disease which causes terrible deformities of the bones and leaves children paralysed. They are disabled for life and every movement is painful. This is owing to extremely high levels of fluoride in the water provided by the national water company, the Société nigérienne des eaux (SNE), since 1984. The water is said to contain 4.77-6.6 milligrams of fluoride per litre, far over the maximum of 1.5 milligrams per litre recommended by WHO. The Niger Association for the Defence of Human Rights, with the International Federation of Human Rights Leagues, has produced an impressive report and proposes to seek justice and compensation for the children from the SNE.⁴⁰ The Association has also said that it will be pursuing an investigation into this case.

Bangladesh

46. Bangladesh is an extremely fertile country located on the vast alluvial delta at the meeting point of the three greatest rivers of Asia. Its 144,000 km² are home to 134 million people, more than 47 million (35 per cent) of whom are undernourished.⁴¹ Food

insecurity and malnutrition in Bangladesh are largely due to poverty and lack of access to resources. However, food security is improving, as, given the energetic efforts of government authorities, Bangladesh has become self-sufficient in food (cereal) production since 1996. Considerable progress has also been made in improving access to water across Bangladesh, thanks to the efforts of the Government, United Nations agencies and civil society. Millions of small-scale tubewells have been sunk in Bangladeshi villages which have provided access to water for many millions of people, for both drinking water and irrigation. This has brought with it some great advances: using drinking water from groundwater, rather than surface ponds, has radically reduced the prevalence of waterborne disease, including diarrhoea, which was one of the major causes of premature death, especially of small children and babies. Increased availability of water for irrigation purposes has improved food security by enabling agriculture outside of the rainy season and significantly improving productivity.

47. However, at the same time, a tragic new problem has arisen. Unforeseen in the development of tubewells was the terrible problem of arsenic contamination of the groundwater. The water of many of Bangladesh's village tubewells has been examined and identified as being contaminated by arsenic. Thousands of people have begun to suffer the effects of arsenic poisoning, which is a dreadful, hidden disease that poisons the body over 5-10 years, eventually destroying internal bodily organs and evolving into cancer. The arsenic is believed to be naturally occurring in rock, washed down in the great rivers from the Himalayas and other watersheds into the flat delta which is Bangladesh, and the concentration of arsenic is high compared to other regions. Although responsibility for this tragedy is difficult to establish because the risks were unknown before, the key requirement now is to take urgent action to mitigate the effects. This must include, as an initial and immediate measure, reducing the dependence on groundwater used for drinking water by, for example, building small family cisterns that collect rainwater for drinking. Taking remedial action will be possible, given that Bangladesh enjoys high rainfall and has abundant access to surface water, however, it will require immediate and strong political will on the part of the Government. The Government of Bangladesh is fully aware of this problem and, in partnership with other actors, is taking decisive and strong action.

48. Another concern that must urgently be addressed, and which demonstrates again the clear linkages between food and water, is the growing concern about the possible uptake of arsenic into the food chain. It has been demonstrated in a few studies that there is a risk that if crops, especially fruit and vegetables, are irrigated using arsenic-contaminated water, the arsenic may become present in the food produced.⁴² More broad-based and comprehensive studies will be needed to establish if this is the case.

49. Another important issue in Bangladesh is the sharing of the water of the great rivers of Asia that flow through it. Although Bangladesh often suffers from floods, as the rivers coming down from India, Nepal and Bhutan overflow with the meltwaters of the Himalayas, it is also a country that is also dependent on vast water resources, particularly for food crops. It is imperative that upper riverine countries therefore reach agreements with Bangladesh over the fair sharing of water resources, acknowledging the effects of dams on the lower riverine nation of Bangladesh and according priority to drinking water and water required for food production.⁴³

Brazil

50. Brazil is one of the most dynamic, complex and vibrant democracies on earth. Today it has the tenth largest economy in the world and is one of the world's largest food exporters. Yet, according to the Government, of a total population of 168 million people, 22 million people continue to live below the extreme poverty line, which means that they cannot buy enough food to eat each day.⁴⁴ The newly elected President, H.E. Luiz Ignacio Lula da Silva, declared that the fight against hunger will be the first priority of his presidency. Food insecurity is largely due to poverty and lack of access to, and control over, resources.⁴⁵ Whilst in Brazil, the attention of the Special Rapporteur was particularly drawn to the case of the semi-arid region of Juazeiro in the State of Bahia. In this arid region, food security is also threatened by the lack of access to water, given that poor families can only rely on rainfall for four months of the year. Important initiatives have been started by Church and civil society organizations to build 1 million small sustainable family water storage cisterns that would transform the living conditions for families living in this arid region; this shows what can be done to improve the realization of the right to food and water. These cisterns can collect 17,000 litres of water during the four months of rain, enabling families to have access to their own water, which is treated with chlorine, for the remaining eight months of the year.

51. However, during his mission, the Special Rapporteur was concerned at reports that some local political and economic elites, including some municipal authorities, had attempted to prohibit or obstruct civil society efforts to construct water cisterns. This seems to have arisen because of the efforts of powerful actors to limit and control access to water in order to secure their own power. Relations of clientelism have long dominated this region of Brazil, with powerful actors controlling access to water, which is brought in periodically by trucks, in exchange for loyalty and votes from the poor. The Special Rapporteur highlights in this case the need to break patterns of dependency and clientelism that can limit access to water. The instrumentalization of water, and food, as a means of maintaining power and control over poor populations must urgently be challenged. The federal government authorities in Brazil have taken strong action to address clientelism and to increase the control of local populations over their own resources.

III. ALLEGATIONS OF VIOLATIONS OF THE RIGHT TO FOOD

52. In the mandate given by the Commission on Human Rights, the Special Rapporteur is requested inter alia, to seek, receive and respond to information on all aspects of the realization of the right to food, including the urgent necessity of eradicating hunger.

53. In accordance with this mandate, the Special Rapporteur has set up, with the aid of OHCHR, an official system for receiving and responding to allegations with respect to violations of the right to food. Once he receives allegations of violations in different countries, he writes to the relevant Governments to ask them to verify the allegations and to take action where necessary to ensure redress and accountability. He reminds them of their obligations under international law and the right to food and asks them to respond to him to document action taken. However, the following States have not responded to his appeals and therefore he repeats the allegations here for their response.

Zimbabwe

54. On 11 July 2002, the Special Rapporteur wrote to the Government of Zimbabwe concerning the famine in the country and allegations of violations of the right to food. Despite the famine, the Special Rapporteur had received allegations from non-governmental and international organizations that government actions were contributing to the deterioration of the food situation, notably alleging that in some regions food relief was being distributed in priority to government supporters. The Special Rapporteur requested the Government to provide further information on these allegations. He reminded the Government of the obligation to respect the right to food and emphasized the principle that food should never be used as an instrument of political or economic pressure.

Myanmar

55. On 4 October 2002, the Special Rapporteur wrote, in a joint letter with the Special Rapporteur on the situation of human rights in Myanmar, to the Government of Myanmar. Allegations were received from non-governmental organizations concerning violations of the right to food. These related to actions that inhibit access to food, including forced relocation of civilian populations, restrictions on freedom of movement, and the persistence of the use of forced labour despite important efforts by the Government to adopt legislation to ban this practice. Allegations also related to reports of the theft and destruction of crops, food stores and livestock by the military. Farmers are also compelled to sell their rice stocks to the Government at levels well below the market price. The Special Rapporteur reminded the Government of its obligations to respect and protect the right to food.

Occupied Palestinian territories

56. On 20 August 2002, the Special Rapporteur wrote to the Government of Israel regarding reports of rapidly increasing malnutrition levels in the occupied Palestinian territories as a result of possible violations of the right to food in the territories. A joint submission from Palestinian, Israeli and international non-governmental organizations documented evidence of the deteriorating nutritional status, particularly of Palestinian children. A recent assessment for the United States Agency for International Development by Care International indicates an increase in the number of malnourished children with 22.5 per cent of children under 5 suffering from acute (9.3 per cent) or chronic (13.2 per cent) malnutrition.⁴⁶ A recent resolution by the World Health Assembly also records the deterioration in health conditions (WHA55.2). Allegations relate to the escalation in closure, curfew and siege policies by the Israeli occupying authorities since September 2000, and invasions and reoccupation of the Palestinian areas since March/April 2002. These policies have been instituted in response to Palestinian attacks on Israeli soldiers, settlers and civilians. However, it is alleged that these policies have resulted in widespread violation of the Palestinian population's right to food and water. Restrictions of movement are alleged to directly deny access to food, water and work, causing growing malnutrition and poverty. Instances of deliberate destruction of food and water sources necessary for the survival of the civilian population, including the destruction of agricultural land and crops, roof water tanks, groundwater wells and irrigation networks are also reported, and allegations also suggest that closure and siege policies have obstructed the delivery of food aid and emergency assistance. The Special Rapporteur also received, on 29 November 2002, an

updated urgent appeal from the same coalition of Israeli, Palestinian and international NGOs, which records a further deterioration of the situation. The Special Rapporteur reminded the Government of Israel of the obligations to respect the right to food under international human rights and humanitarian law.

IV. CONCLUSIONS AND RECOMMENDATIONS

57. In his address to the General Assembly on 4 November 2002, the High Commissioner for Human Rights spoke of the power of the rules and principles of the human rights and international law:

“The very power of these rules lies in the fact that they protect even the most vulnerable, and bind even the most powerful. No one stands so high as to be above the reach of their authority. No one falls so low as to be below the guard of their protection.

“Thus, the basic rules in defence of all our rights address every State and every political movement, every regular army and every armed irregular, every public institution and every private corporation, every group and every individual.”⁴⁷

58. The strength of international law is that it provides standards and demands accountability. These standards and levels of accountability must also be applied in the case of hunger and malnutrition. Persistent hunger in today’s world is neither inevitable nor acceptable. Hunger is not a question of fate; it is manmade. It is the result either of inaction, or of negative actions that violate the right to food. It is therefore time to take action. It is time to recognize the right to food as a human right and to eradicate hunger.

59. At the World Food Summit+5, it became clear that so far little action has been taken to meet the 1996 goal to halve the number of victims of hunger by 2015. However, one small step forward at the Summit was the Government recognition of the “right to food” and the decision to start a process of discussion of voluntary guidelines on the right to food. The right to food is a concept adds to the concept of “food security” because it makes addressing hunger and malnutrition a legal obligation, not simply a policy choice or preference. The Special Rapporteur recommends that the discussions to develop the international voluntary guidelines on the right to food be used as a forum to engage in a practical debate on the best ways of realizing the right to food.

60. The second important recent development occurring at the international level has been a new breakthrough in the legal protection of the right to water. The new General Comment No. 15 of the Committee on Economic, Social and Cultural Rights represents a significant advance in defining the content of the right to water and the obligations that this entails. The Special Rapporteur welcomes the recognition in the General Comment that both drinking water and the water used for irrigation by vulnerable people who only have access to the food they grow themselves must be key elements of the right to food.

61. **The Special Rapporteur recommends that:**

(a) **The voluntary guidelines on the right to food be developed to strengthen the implementation of the right to food. The guidelines should be based on, and not undermine, the authoritative legal interpretation of the right to food, General Comment No. 12. They should outline the obligations of States at national and extranational levels, and the obligations of non-State actors. The guidelines should include the wide range of issues implied by the right to food, including adequate nutrition, access to water, gender and emergency famine response policies, and should also outline the obligations in situations of armed conflict by referring to the principles of international humanitarian law. Mechanisms for monitoring, accountability and appropriate remedy for violations of the right to food should also be included. The guidelines should be elaborated in a participatory process with the vital participation of the United Nations human rights bodies as well as NGOs;**

(b) **General Comment No. 15 on the right to water should be widely disseminated and debated to improve understanding of the right to water and the obligations that this entails to respect, protect and fulfil (facilitate and provide) the right to water. The close links between the right to food and the right to water should also be recognized, given that violations of the right to food are very often linked to problems in relation to the lack of access to water, or control over water supplies;**

(c) **Tolerance of violations of the right to food should be ended. Governments should take conscious actions to fulfil their obligations under the International Covenant on Economic, Social and Cultural Rights, including to ensure that they respect, protect and fulfil the human right to food, as defined under General Comment No. 12 on the right to food of the Committee on Economic, Social and Cultural Rights. The Special Rapporteur urges Governments to respond to the allegations that he has received;**

(d) **Urgent action should be taken by Governments to meet the commitment made at the 1996 World Food Summit to halve the number of victims of hunger by 2015. We know that one child under the age of 10 dies every seven seconds of hunger and hunger-related disease. Time is not an abstract entity. Time is human life;**

(e) **Finally, Governments should enshrine the right to food in a national law to meet their international obligations, develop a national strategy to realize the right to food, and take all necessary actions, including ensuring good governance and macroeconomic stability, to help combat hunger and malnutrition on their national territory. As Rousseau said, “*Entre le faible et le fort, c’est la liberté qui opprime et c’est la loi qui libère*”.⁴⁸ Freedom from hunger will come through the implementation of the right to food under national and international law.**

Notes

- ¹ Commission resolution 2000/10.
- ² World Food Programme, *World Hunger Map*, WFP, Geneva, 2001.
- ³ International Fund for Agricultural Development, *Rural Poverty Report 2001: The Challenge of Ending Rural Poverty*, Oxford University Press, New York, 2001.
- ⁴ General Comment No. 12 (E/C.12/1999/5), para. 6.
- ⁵ See the Declaration at <http://www.fao.org/DOCREP/MEETING/005/Y7106E/Y7106E09.htm#TopOfPage>.
- ⁶ General Comment No. 12, op. cit.
- ⁷ The proposal to develop these guidelines came out of a compromise at the 2002 World Food Summit: five years later to develop a code of conduct on the right to food.
- ⁸ See Food and Agriculture Organization of the United Nations, Council Decision, Draft Report of the Hundred and Twenty-third Session, Rome, 28 October-2 November 2002.
- ⁹ Ibid.
- ¹⁰ NGOs can contact FIAN (Foodfirst and Information Network) for more information.
- ¹¹ FAO, op. cit.
- ¹² Letter to the Special Rapporteur from Hartwig de Haen, Under-Director-General, Economic and Social Department, and Giuliano Pucci, Legal Counsellor of FAO, 27 June 2002.
- ¹³ See E/CN.4/2002/58.
- ¹⁴ Based on Michael Windfuhr's proposals for the content of a proposed code of conduct.
- ¹⁵ See Government of Canada at <http://www.g8.gc.ca/kananaskis/afraction-en.asp>.
- ¹⁶ See text of article 2, paragraphs 1 and 11 of the Covenant.
- ¹⁷ General Comment No. 3, paragraph 14, in HRI/GEN/1/Rev.5.
- ¹⁸ General Comments No. 12, para. 36 and No. 15, paras. 30-36.
- ¹⁹ Universal Declaration of Human Rights, art. 28.
- ²⁰ General Comment No. 12, para. 37.

- ²¹ Vienna Declaration and Programme of Action (A/CONF.157/23), Part I, para. 31.
- ²² See also the preamble to the Universal Declaration of Human Rights.
- ²³ World Bank Group, *Development and Human Rights: The Role of the World Bank*, 1998.
- ²⁴ E/CN.4/Sub.2/2003/WG.2/WP.1.
- ²⁵ See the list of companies at <http://65.214.34.30/un/gc/unweb.nsf/content/actors.html>.
- ²⁶ See for example, USAID definition at http://www.usaid.gov/pubs/ads/pps/foodsec/fs_foodsec.html.
- ²⁷ Commission resolution 2001/25, para. 9.
- ²⁸ Message on World Food Day 2002.
- ²⁹ General Comment No. 15 (E/C.12/2002/11), para. 2.
- ³⁰ *Ibid.*, paras. 20-29.
- ³¹ *Ibid.*, para. 6.
- ³² I. Serageldin, “Comment résoudre la crise de l’eau”, *Notre Planète*, vol. 8, No. 3, 1996, p. 4.
- ³³ General Comment No. 15, para. 7.
- ³⁴ For example, a Supreme Court decision in India indicates “the right to access to drinking water is fundamental to life and there is a duty on the State under article 21 to provide clean drinking water to its citizens”. 2000 SOL Case No. 673. See also arrêt No. 36/98 of 1 April 1998 of the Belgian Court of Arbitration.
- ³⁵ See General Comment No. 15, paragraphs 21-22 and E/CN.4/2002/58.
- ³⁶ ICRC, *Water in armed conflict*. ICRC Publications, November 1994.
- ³⁷ Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (1997), General Assembly document A/51/869 and Corr.1 (11 April 1997).
- ³⁸ UNDP, *Human Development Report 2002*.
- ³⁹ See E/CN.4/2002/58/Add.1.
- ⁴⁰ FIDH, *Right to Water in Niger*, 2002, at www.fidh.org.

⁴¹ UNDP, op. cit.

⁴² See E/CN.4/2003/54/Add.2.

⁴³ Ibid.

⁴⁴ *A Segurança Alimentar e Nutricional e o Direito Humano a Alimentação no Brasil: Documento elaborado para a visita ao Brasil do Relator Especial da Comissão de Direitos Humanos da Organização das Nações Unidas sobre Direito a Alimentação.*

⁴⁵ See E/CN.4/2003/54/Add.1.

⁴⁶ www.usaid.gov/wbg/report_1htm.

⁴⁷ Address by Sergio Vieira de Mello, United Nations High Commissioner for Human Rights, to the United Nations General Assembly, New York, 4 November 2002.

⁴⁸ Jean-Jacques Rousseau, *The Social Contract*, 1762.
