

CHAPTER ONE

THE HUMAN RIGHT TO FOOD AND WATER

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ABSTRACT:

Eradicating hunger is still the biggest challenge of the international community. Hunger is a violation of the right to food, also in relation to the right to water. Any strategy or policy of eradicating hunger and fulfill the right to food and water should respect the fundamental normative content and addressing certain recommendations that emerge from the supervisory bodies of the UN. Food and water are primarily human rights.

KEY WORDS:

Hunger, right to food, right to water.

■ INTRODUCTION

Food and water are essential goods, a necessity for people's lives. There are not like any another commodity, although they are traded, subject to speculation and can be a source of income⁽¹⁾.

The right to food is widely recognised in different international treaties and a correct understanding of this and the main violation thereof - hunger - means taking into account its interdependence with the human right to water, since water shortage is one of the main causes for food shortages and malnutrition. The importance of the latter, despite there being questions surrounding the legal frameworks and obligations of countries, is not doubted as a guarantee for human life and, of course, a country's survival. Access to water is necessarily a part of the measures to fight hunger, so much so that one cannot guarantee the human right to food without also ensuring the human right to water.

Nonetheless, the regulatory progress consolidating not only the recognition of both rights but also their correct interpretation show a major contrast to actual practice. Scientific knowledge and economic resources currently available also contrast with reality since they would fully tackle the collective challenges surrounding both the food and water access issue.

Nevertheless, eradicating hunger continues to be the greatest challenge for the international community, much more important, although not stated, than overcoming the economic crisis, the financial crisis or the fight against terrorism. It is true that current challenges are linked to one another in a globalised and interdependent society, but figures on global hunger are more than clear. According to the most recent estimates released by the FAO, there were 852 million people suffering from hunger in 2008, two billion suffering malnutrition and around 6 million children who die every year through malnutrition and related diseases that could be avoided⁽²⁾. Most of these people live in Asia but it is sub-Saharan Africa that has the highest concentration between the number of victims and population; of these, most live in rural areas. The number of people suffering food insecurity currently sits at 1 billion.

Hunger is therefore one of the cruellest faces of poverty and, as stated by the former United Nations Special Rapporteur on the right to food, it is «asilent

⁽¹⁾ The terms global public goods are used to refer to food and water. See for example Ausin, T., «El derecho a comer: los alimentos como bien público global», *ARBOR Ciencia, Pensamiento y Cultura*, CLXXXVI, 745, September-October, 2010, pp. 1-12.

⁽²⁾ See, *The State of Food Insecurity in the World 2009: Economic Crises: Impacts and Lessons Learned*, FAO, Rome, 2009. There are no statistics for the last three years 2009, 2010 or 2011 since the FAO is reviewing its methodology for measuring hunger and undernourishment on request from the Committee on World Food Security (CFS).

tragedy [that] occurs daily in a world overflowing with riches»⁽³⁾. Its causes are not to be found in the lack of production capacity or in the higher global population. In fact, the FAO and subsequent United Nations Special Rapporteurs on the right to food have stated that agricultural production capacity is globally sufficient to meet current and future demand, and that the causes behind hunger are not due to the higher population⁽⁴⁾ but mainly to the chronic, long-term lack of access victims have to adequate food. Access that in recent years has been made especially difficult in the context of the food crisis due to volatile global food prices and speculation⁽⁵⁾. In this sense, hunger is not due to a lack of resources but to unfair distribution and the lack of real political will to tackle it.

The right to food and the fight against hunger are two sides of the same coin⁽⁶⁾ and currently comprise a legal obligation, legally binding for all countries that have signed the International Covenant on Economic, Social and Cultural Rights (hereinafter, ICESCR), including Spain and a further 159 countries to date⁽⁷⁾. In addition, many writers maintain that the right to food is not only a contractual obligation but also a general international right since there is an extended practice and an *opinio iuris* of countries that allows for its customary nature to be argued. In this sense, for example, the 1974 Declaration on the Eradication of Hunger and Malnutrition is a case in point of this conviction of countries. It stated, in the 1970s, that:

«Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. Society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective. Accordingly, the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help.»

A political dimension should also be added to this legal perspective, clearly including ethical and moral senses. Eradicating hunger is therefore also a

⁽³⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2001/53, p. 3.

⁽⁴⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2001/53, p. 3.

⁽⁵⁾ The FAO recognises this itself in its report on the state of food insecurity in the world from 2011, completely dedicated to food prices and their effects on world food security. See, *The State of Food Insecurity in the World 2011: How does international price volatility affect domestic economies and food security?*, FAO, Rome, 2011, pp.1-62. The briefing note by the Special Rapporteur on the right to food can also be consulted: «*Food Commodities Speculation and Food Price Crises*», 2010; as well as some doctrinal opinions, MARTÍN LÓPEZ, M.A. «El sometimiento de la especulación al derecho a la alimentación», *Revista Electrónica de Estudios Internacionales*, n° 22, 2011, pp. 1-23.

⁽⁶⁾ AÑÓN ROIG, M.J., «El derecho a no padecer hambre y el derecho a la alimentación adecuada, dos caras de una misma moneda», *Cursos de derechos humanos de Donostia-San Sebastian*, Vol. 3, 2002, pp. 285-318.

⁽⁷⁾ Ratification list as of 25th January 2012. This can be consulted on the website of the United Nations High Commissioner for Human Rights, Treaties Section.

political commitment and has been shown as such at different Global Summits on Food organised by the FAO. Here, countries have reaffirmed time and again their commitment to the right to food which has finally become a global objective.

In this way, the legal and political dimensions are both necessary and complementary when analysing an issue that still has a difficult outlook. Forecasts on the progress and achievements⁽⁸⁾ in reducing hunger show very unequal results since, whilst in general terms global hunger is said to have decreased since 1990, there are entire regions still suffering serious situations. In this sense, whilst progress in countries such as China is clear with up to 50% fewer people suffering starvation, in other countries not only has hunger not decreased but indeed the situation has got worse, mainly due to ongoing armed conflicts⁽⁹⁾. For example, according to the IFPRI⁽¹⁰⁾, countries such as Burundi, Chad or the D.R. of the Congo are in an alarming food emergency situation. In turn, United Nations annual assessment reports on the Millennium Development Goals state that in 2011 the share of people around the world suffering from hunger stood still at 16%; this despite lower poverty levels around the globe. This means that the general reduction in the number of poor people has not brought along with it a subsequent proportional decline in the number of starving people.

In this context, the outlook for eradicating hunger is negative and there is wide scepticism on achieving it. In fact, the recent food crisis has led to a superhuman effort in reduction and, as could only be the case, this has had a clear impact on moving forward with this target.

If we add the general international economic crisis to this context, the outlook is undoubtedly pessimistic. Indeed, the diagnosis in the second partial assessment in 2010 was as follows: «in around two-thirds of the time planned to achieve the Millennium Development Goals, a third of the goals have been achieved. It seems unlikely that in a third of the time, the outstanding two-thirds of the goals are achieved»⁽¹¹⁾. In turn, the UN annual assessment report for 2011 also recognises with regard to hunger that «it will be difficult to achieve the goal to reduce the amount of people suffering from hunger in many developing regions», and especially signals and points out sub-Saharan Africa.

⁽⁸⁾ Official MDG website, their progress and outlook at: <http://mdgs.un.org/unsd/mdg/Home.aspx>.

⁽⁹⁾ The report *Crop Prospects and Food Situation* published by the FAO in February 2009 identifies a total of 32 countries in a food crisis situation requiring external aid and the reason for the insecurity and hunger in 17 of these 32 countries is armed conflict.

⁽¹⁰⁾ International Food Policy Research Institute, *The Challenge of Hunger: Taming Price Spikes and Excessive Food Price Volatility* Global Hunger Index, Dublin, 2011, pp. 1-60.

⁽¹¹⁾ *Millennium Development Goals. 2010 Report, Conclusions*, UN.

In short, hunger continues to be one of the international community's most important challenges and is a violation of the right to food, also in relation to the right to water which will be looked at below.

This chapter firstly aims to define the right to food from a legal standpoint and its link to the human right to water, looking at the main international instruments with special focus on the International Covenant on Economic, Social and Cultural Rights. Secondly, some of the problem areas linked to eradicating hunger and protecting the right to food are looked at, placing special emphasis on Spain and its challenges and specificities. Finally, the article ends with a synopsis and outlook where key ideas and strategies for the future are laid out.

■ **NORMATIVE CONTENT OF THE RIGHT TO FOOD AND WATER**

■ **The Human Right to Food**

The right to food⁽¹²⁾ is set out in several international treaties and instruments, specifically in the area of human rights but also in international humanitarian law⁽¹³⁾.

At times, this recognition is made implicitly or indirectly as an integral part and prior condition to other human rights, such as the right to life or the right to an adequate standard of living⁽¹⁴⁾. In others, it is explicitly stated as in the Covenant on Economic, Social and Cultural Rights. Article 11 states:

⁽¹²⁾ For an analysis from different perspectives on the right to food, see AA.VV., *Seguridad Alimentaria y Políticas de Lucha contra el Hambre*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2006, pp. 1-332; and also AA.VV., *Derecho a la alimentación y Soberanía Alimentaria*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2008, pp. 1-450.

⁽¹³⁾ International Humanitarian Law (IHL) establishes a ban on making civilians suffer starvation as a war tactic in both international and domestic conflicts, as well as a ban on attacking, destroying or put out of action necessary goods for the survival of the civil population including crops, food and reserves of drinking water. See Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, article 54 and Additional Protocol II relating to the Protection of Victims of Non-international Armed Conflicts, article 14. The protection of certain groups is also set out such as prisoners of war who have the right to daily food and water rations or pregnant women and children with their specific food needs, see III Geneva Convention relating to the Treatment of Prisoners of War, Art. 20, 23, 46, 89 and 127.

⁽¹⁴⁾ In this way, for example, according to article 25 of the Universal Declaration of Human Rights (1948), «everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...». Or, according to article 27 of the Convention of the Rights of the Child, all children shall have the right «to a standard of living adequate for the child's physical, mental, spiritual, moral and social development».

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*

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

General Comment 12 on the right to food of 1999⁽¹⁵⁾ states that:

«it 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.»

The content on the right to food comprises several elements. Firstly, accessibility understood from a dual perspective: economic and physical. By *economic accessibility* it is understood that «personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised»⁽¹⁶⁾, in other words, that food prices should be reasonable and affordable and not place the enjoyment of other basic rights in jeopardy. By *physical accessibility* it is understood that «adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill»⁽¹⁷⁾.

Accessibility undoubtedly includes the existence of a second element, the prior availability of food, understood as «the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning

⁽¹⁵⁾ General Comment No. 12 on the right to adequate food (Art. 11), Committee on Economic, Social and Cultural Rights, E/C.12/1999/5, 12th May 1999.

⁽¹⁶⁾ General Comment No. 12 on the right to adequate food (Art. 11), Committee on Economic, Social and Cultural Rights, E/C.12/1999/5, 12th May 1999.

⁽¹⁷⁾ *Ibid*, para.

distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand»⁽¹⁸⁾.

A third element to the right to food is acceptability. This element comprises three aspects. Firstly, it means an individual should have the sufficient quality and quality of foods as per their circumstances and food needs, thus taking into account the age of the individuals throughout their life, their health, gender, occupation, etc. Secondly, acceptability comprises quality which alludes to the innocuousness of the foodstuffs, i.e. it should not be harmful but safe for human consumption. Lastly, acceptability comprises the cultural dimension to food since it should be appropriate for a specific culture. This means that it «implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies»⁽¹⁹⁾, values from a religious or cultural viewpoint.

■ The Human Right to Water

In turn, as has been stated, the correct interpretation of the right to food also requires its interdependence with other rights to be considered, specifically the human right to water⁽²⁰⁾. This right is not expressly regulated in international treaties although it is implicitly recognised.

The United Nations High Commissioner has rightly stated⁽²¹⁾ that the right to water prioritises water use for agriculture where necessary to prevent hunger, in line with General Comment 15 from the Committee on Economic, Social and Cultural Rights which states that, with regard to other uses, necessary water resources should be prioritised in order to avoid starvation.

Said Comment on the human right to water sets out that it is «The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses»⁽²²⁾. This interpretation from 2002 is extremely important since the Committee believes that this right, despite not being explicitly recognised in the Covenant, is part of articles 11 and 12, i.e. of the right of everyone to enjoy an appropriate standard of living and right to health. In this sense, the Committee introduces the right to water in a wide-

⁽¹⁸⁾ *Ibid*, para.

⁽¹⁹⁾ General Comment No. 12 on the right to adequate food (Art. 11), Committee on Economic, Social and Cultural Rights, E/C.12/1999/5, 12th May 1999, para. 11.

⁽²⁰⁾ The right to water and the right to food are closely linked like all fundamental human rights, only that here the interdependence is evident and necessary. Any policy aimed at strengthening the right to food must conserve water and vice versa.

⁽²¹⁾ Fact Sheet No. 35, *The Right to Water*, Office of the United Nations High Commissioner, 2011, p. 13.

⁽²²⁾ *Substantive issues that arise in applying the International Covenant on Economic, Social and Cultural Rights- General Comment No. 15 (2002) «The Right to Water»*, E/C.12/2002/11, 20th January 2003.

reaching international treaty by both potential State Parties, which may be all, and by the content, and does so by interpreting the scope of articles 11 and 12.

The right to water is understood as drinking water and, in addition, the Committee states that it is necessary for the realisation of other rights such as that to food since water is required to produce food. Nonetheless, as stated, although access to water for personal and domestic uses is prioritised, the necessary water resources must also be prioritised so as to avoid starvation and disease. For this reason it is essential to guarantee sustainable access to water resources for agricultural purposes in order to exercise the right to adequate food, ensuring that all farmers, especially the poorest, may enjoy fair access to water and its management systems (points 6 and 7).

Beyond this conventional protection and interpretation on the right to water through the ICESCR, the inclusion of its analysis has been key in the area of protection mechanisms of the United Nations Human Rights Council. This, according to A. Salado, has meant this right «has started its course for regulatory recognition as a universal individual right»⁽²³⁾. There can be no doubt about this since the United Nations General Assembly finally recognised on 28th July 2010 «the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights»⁽²⁴⁾. Furthermore, in our opinion, said recognition transforms an emerging human right into a consolidated right⁽²⁵⁾.

The use of essential to describe all rights could also place it in a special category of regulations in international law known as *ius cogens* or peremptory norm where access to water would comprise a pre-requisite for any policy whose purpose was to eradicate hunger. The issue of prioritisation of water uses could be controversial from this stance of regulatory hierarchy: many farm and manufacturing businesses depend largely on water - who should have priority access? Furthermore, human consumption would have to be guaranteed a priori to protect life, following the thesis set out in General Comment 15 or in the Report from the United Nations High Commissioner in 2011, amongst others, where the right to water is understood as having to prioritise personal and domestic use as well as any action aimed at avoiding starvation. From this standpoint, water would first have to be allocated to agricultural uses ensuring nutrition for individuals⁽²⁶⁾.

⁽²³⁾ SALADO, A. «Derechos económicos, sociales y culturales. Derecho a un nivel de vida adecuado», *Los derechos humanos aquí y ahora, 60 años después de la Declaración Universal de los Derechos Humanos*, Ministry of Foreign Affairs and Cooperation, Madrid, 2008, p. 67.

⁽²⁴⁾ *The Human Right to Water and Sanitation*, A/RES/64/292, 3rd August 2010.

⁽²⁵⁾ For more details see the group work: Guarantee access to water for all and the Right to Water, *6th World Water Forum*, Marseilles, 12th-17th March de 2012, available at <http://www.worldwaterforum6.org/en/>.

⁽²⁶⁾ *The right to water...op. cit.* p. 13.

Another aspect to bear in mind in water prioritisation and uses is equity. The 2007 High Commissioner's Report states that access to water must be fair, i.e. in the same conditions and without any discrimination, having to prioritise the most disadvantaged groups⁽²⁷⁾ in line with the interpretation set out in General Comment 15. In turn, the voluntary guidelines supporting the progressive realisation of the right to adequate food approved by the FAO Council in 2004 elaborate on this in the same manner.

■ State Obligations

The legal nature of economic, social and cultural rights and their protection⁽²⁸⁾ has been questioned for decades on the basis of a relative and reprehensible distinction between civil and political rights and the doctrine of generations which has established their main differences⁽²⁹⁾. It is true that they exist and, from an historical and legal recognition standpoint, there are nuances, but it is no less true that all human rights are interdependent and indivisible and there is no hierarchy amongst them, as has been stated and consolidated in many resolutions and treaties adopted and ratified by countries from the international community⁽³⁰⁾.

In addition, the current debate on the enforceability of economic, social and cultural rights⁽³¹⁾ and the dichotomy between civil and political rights seems to have been overcome since the Protocol to the Covenant on Economic, Social and Cultural Rights of 2008 has been a major achievement for those who defend the legal value of these rights by allowing their enforceability via individual complaints.

- *Regarding the right to food*

in human rights theory, States are mainly those subject to obligations, as per international law with the ability to be bound via ratification of treaties. Their obligations linked to the right to food are respect, protection and compliance⁽³²⁾. The gradual and progressive nature is recognised as are certain

⁽²⁷⁾ *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, A/HRC/6/3, 16th August 2007.*

⁽²⁸⁾ CANÇADO TRINDADE, A.A., «La protección internacional de los derechos económicos, sociales y culturales», Serie: *Estudios de Derechos Humanos*, Vol. I, 1994, pp. 1-16.

⁽²⁹⁾ SAURA, J., «La exigibilidad jurídica de los derechos humanos: especial referencia a los derechos económicos, sociales y culturales (DESC)», *El tiempo de los derechos*, nº 2, 2011, pp. 1-16.

⁽³⁰⁾ Vienna Declaration and Programme of Action, A/CONF.157/23, 12th July 1993, The Millennium Declaration, A/RES/55/2, 13th September 2000; 2005 World Summit Outcome, A/RES/60/1, 24th October 2005.

⁽³¹⁾ See, ABRAMOVICH, V. & COURTIS, C., *Los derechos sociales como derechos exigibles*, Ed. Trotta, Madrid, 2002, pp. 1-254.

⁽³²⁾ On the content and international obligations of the human right to food, see Fact Sheet No. 34 *The Right to Adequate Food*, Office of the United Nations High Commissioner for Human Rights in collaboration with the FAO, June 2010, pp.1-59; MARTÍN LÓPEZ, M.A., «Reflexiones sobre

elements and dimensions of immediate effect. For the purposes of exposition and greater clarity, the general contents, progressive and immediate nature of the obligations arising from the right to food should be differentiated.

1. General obligations

The different United Nations treaty bodies have coherently interpreted that all human rights impose a series of general obligations regardless of their theoretical classification. Namely, these obligations are respect, protect and facilitation and are applied to different rights at different levels, seeking out a fair balance between more or less public intervention.

- a) *Respecting the right to food.* The obligation to respect means that States must not interfere in the enjoyment of the right to food or to limit it. In this way, they must not adopt any measure that comprises or results in impeding access to food, such as suspending programmes or legislation. The obligation to respect is practised in relation to the State's public institutions or bodies themselves.
- b) *Protecting the right to food.* The obligation to protect requires States to stop human rights abuses by third parties. This means that States must stop companies or individuals from depriving people of access to adequate food, ensuring, for example, that third parties do not contaminate water or land or that foodstuffs and their delivery to distribution sites comply with quality and guarantee requirements if they come from third party agents.
- c) *Facilitating the right to food.* The obligation to facilitate the right to food means that States must take steps to carry out and facilitate its enjoyment. This means that States must be proactive and adopt positive measures to facilitate the right to food and make it effective. Logic dictates that the right to food and the fight against hunger require specific public policies and State investments to guarantee people's access to necessary foodstuffs. The private sector also plays an essential role in this area which, as any other, has become part of market and business logic and, from a positive perspective, also replace in many instances or, better said, arrive where the authorities at times are unable to reach. Even though, as stated, it is the State's obligation to guarantee third parties do not impede access or make exercising this right difficult.

el contenido del derecho a la alimentación», in AA.VV., *Seguridad alimentaria y políticas de lucha contra el hambre: seminario internacional sobre seguridad alimentaria y lucha contra el hambre*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2006, pp. 131-138; VILLAN, C., «Obligaciones derivadas del derecho a la alimentación en el derecho internacional», in AA.VV., *Derecho a la alimentación y Soberanía Alimentaria*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2008, pp. 45-77, and by the same author, «Contenido y alcance del derecho a la alimentación en el derecho internacional» in *El derecho a la equidad: ética y mundialización*, Coord. by Terre des Hommes, 1997, pp. 197-228.

The measures to which these obligations refer have an immediate nature in some instances whilst, in others, they respect the principle of progressiveness.

2. Gradual and progressive obligations

In effect, the ICESCR sets out in article 2.1 the progressive realisation of the rights recognised so that States have a margin to act when making them effective to the maximum of their available resources. It expressly states in said article that

«Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures».

Based on this provision, and in comparison with the Covenant on Civil and Political Rights which sets out immediate obligations of result, it is understood that the ICESCR fundamentally establishes performance obligations, i.e. the State parties to the treaty do not have to guarantee a specific result but must perform in a specific way until the progressive effective realisation of the rights is achieved.

In this sense, the principle of progressiveness is applied to the rights recognised in the ICESCR and based on this, the States shall carry out and assume their obligations gradually. In the face of doubts that an incorrect interpretation of this brings about, the Committee on Economic, Social and Cultural Rights rightly clarified, in its General Comment 3 of 1990 on the nature of the obligations of the State parties in the Covenant, that this should not lead to misunderstandings regarding the content and nature of the obligations⁽³³⁾.

⁽³³⁾ The comment states: «The concept of *progressive realization* constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available

It is recognised and permitted that States may have economic determinants, limited resources that may mean a delay in fully complying with the obligations relating to the right to food. However, this may not lead to excessive delay, nor mean that the States do not have to do anything until they have sufficient resources. On the contrary, the principle of progressiveness applied to the right to food means that States must demonstrate they are doing everything possible, available resources permitting, to achieve full realisation of this right to respect, protect and comply with it, especially guaranteeing an essential minimum level so that people do not suffer from starvation.

3. Immediate obligations

Gradual realisation should, therefore, be compatible with certain immediate obligations that the Committee has repeated and set out both in said General Comment 3 and Comment 12 on the right to food. In this way, the principle of progressiveness is limited by some obligations that do not allow the determinant «to the maximum of its available resources», namely:

- a) The obligation to «take steps» shortly after the entry into effect of the Covenant (article 2(1))⁽³⁴⁾. Thus, it is a question of ensuring that the time intended to guarantee the right to food is reasonable and that steps intended for the full realisation of the right are taken in the process. Some examples are analysing and assessing hunger in a country based on reliable data and statistics; passing laws or programmes.
- b) The obligation to guarantee the exercise of the protected rights «without discrimination»⁽³⁵⁾, this being understood as a distinction, exclusion or restriction made based on different reasons that may be racial, linguistic, age-related or any other type that may aim to make equal exercise of the right to food and access to it difficult.
- c) The «immediate» applicability of certain provisions by legal bodies and others in internal legal regulations (articles 3, 7(a) (i); 8, 10(3), 13 (2) (a), (3) and (4); and 15(3))⁽³⁶⁾.
- d) The general obligation to constantly seek the realisation of the rights established without delay⁽³⁷⁾, i.e. the States should not allow the guaranteed or existing level of the right to food to be subject to regressive measures, unless there are reasons to justify this in each specific context.
- e) «Minimum obligations» in relation to all rights established and, in the event of non-compliance, the obligation to prove that «the maximum of its available resources» (at domestic level as well as via international cooperation and assistance) was used or so attempted for the realisation of

resources», in General Comment 3 on the nature of States parties obligations (Article 11[2]) of the International Covenant on Economic, Social and Cultural Rights), 1990, para. 9.

⁽³⁴⁾ General Comment 3, *Op.Cit.* para. 2 and 3.

⁽³⁵⁾ *Ibid.*, para. 1.

⁽³⁶⁾ *Ibid.*, para. 5.

⁽³⁷⁾ General Comment 3, *Op.Cit.* para. 9.

the rights established (articles 11, 15, 22 and 23 of the Covenant)⁽³⁸⁾. This ensures that all rights have their protection with an essential, minimum level and there are no major inequalities in progressing in all of them. These basic minimum obligations mean in the area of the right to food guaranteeing at least what is basic and essential to protect the populace from starvation. Specifically, General Comment 12 explains in this sense that the Covenant is violated when a State fails to guarantee a minimum level that protects against hunger⁽³⁹⁾.

- f) The gradual nature of the social rights linked to the economic resources of the States means meeting these rights is vulnerable during global economic crises like the one we have been experiencing since 2008. In this context of economic cuts and recession, the obligation to protect the most vulnerable members and sectors of society exists through specific programmes (General Comment 3 of 1990)⁽⁴⁰⁾.

Both General Comment 3 and 12 distinguish, by setting out which actions or omissions constitute a violation of the rights recognised in the ICESCR, between a State's inability and a lack of will; in this way, States are called upon to show that they have used all available resources, including asking for international help.

- *Regarding the Human Right to Water*

As with the right to food, the same outline of obligations is followed in the area of the human right to water and the same logic and interpretation applies for the principle of progressiveness and progressive and immediate obligations. Bearing in mind the considerations set out in the paragraph above, there are some specificities which seem appropriate for the human right to water.

Specifically, and in the area of international obligations, the Committee on Economic, Social and Cultural Rights's statement for States to cooperate is natural, either by ceasing to use measures impeding another State to be able to guarantee the right to water or avoiding practices being performed in their territory that place others' access to water resources in danger. This is a very basic collaboration method based on the principle of not harming the natural resources of other countries through our own actions. As General Comment 15 sets out, this general environment principle links with the statements in the Convention on the Law of the Non-navigational Uses of International Watercourses of 1997. Although not having come into effect, it sets out fundamental obligations for the protection of shared water resources which must naturally be compatible with the right to water; for example, the obligation to not cause sensitive damage, to cooperate or to use shared water equitably

⁽³⁸⁾ *Ibid*, para. 9 and 13.

⁽³⁹⁾ General Comment 12, Op.Cit., para. 17.

⁽⁴⁰⁾ *Ibid*, para. 12.

and reasonably so that the populations depending on the watercourse in each State are taken into account.

In turn, General Comment 15 sets out that water «should never be used as an instrument of political and economic pressure». This ban has certain effects on the international stage. The draft articles on international responsibility establish that counter-measures are not allowed (which are defined as pressure steps aimed at the offender State assuming the commitments it has ceased fulfilling) affecting obligations established for the protection of fundamental human rights or other standards arising from mandatory regulations. Therefore, it is compatible with the establishment of responsibility so that a counter-measure comprising the diversion of a watercourse shared amongst several countries that led to a population on any of the river banks not having a water supply would be a measure in contravention of international law, both from the standpoint of the human right to water and that of international responsibility.

Finally, in relation to the right to food, General Comment 15 states in a separate section what it considers to be the minimum content for the right to water with which States must comply and, furthermore, do so immediately. Specifically, they must guarantee access to the minimum amount of water required for the population's personal and domestic use and to prevent disease; ensure that drinking water is received by all, especially the most vulnerable groups; that distribution is carried out equitably, meaning States must pass national plans guaranteeing it; supervise compliance with this right and approve preventive measures to control diseases via adequate sanitation systems. Specifically, Spain as a Party to the ICESCR must therefore comply with these obligations.

Having looked at the legal system of the human right to food and water, it is advisable to now look into some of the current challenges on a global level and in Spain regarding compliance and respect.

■ CHALLENGES SURROUNDING THE HUMAN RIGHT TO FOOD AND WATER

■ From the International Community Perspective

- *Eradicating Hunger*

As stated in the introduction, the most important challenge regarding food is reducing hunger around the world since not only are figures alarming (around 1 billion people) but they discouragingly show the paradox of how such a widely established and recognised right by States is so widely violated. This contrast between the legal framework and reality shows that the realisation of the right

to food and the right to water requires additional pushes and real efforts by all States. It is in this context where the international community needs to set down initiatives to eradicate hunger such as the Millennium Development Goals (MDG) and the reduction target for 2015.

Indeed, the *Declaration* and the *Action Plan* adopted at the World Summit in 2006 set out for the first time the political target of cutting malnutrition around the globe in half. The challenge was then included in the MDGs which, as we know, arise from the Millennium Declaration approved at the World Summit General Assembly in the year 2000. Said resolution, on the one hand, reaffirmed the values and principles contained in the Charter of the United Nations and, on the other, set out an arrangement of all the agreements established at the many global summits organised by the United Nations and specifically focused on social development.

Specifically, 8 goals were set, all linked and broken down into 18 targets and 48 technical indicators, attainable in the maximum term running to 2015: 1) eradicating extreme poverty and hunger; 2) achieve universal primary education; 3) promote gender equality and empower women; 4) reduce child mortality; 5) improve maternal health; 6) combat HIV/AIDS, malaria and other diseases; 7) ensure environmental sustainability; 8) develop a global partnership for development⁽⁴¹⁾. The eradication of poverty is specifically broken down into two targets, the second of which is particularly interesting as it states the eradication of hunger as a global political goal: halve the proportion of people who suffer from hunger.

The contents of this goal take 1990 as the reference year and 2015 as the time target. As the Declaration states, it comprises halving the percentage of those suffering from hunger. It should be highlighted that this quantitative target is less ambitious than that set out at the World Food Summit in Rome in 1996 since it aims to half the percentage of those suffering from hunger and not, as was the case in Rome, the total number of people. In figures, the Rome Summit commitment meant a reduction to 412 million people. However, in figures MDG 1 means a reduction to 585 million.

⁽⁴¹⁾ The importance thereof resides in that for the first time they represent an effort for universal political commitment as well as a rationalisation of the challenges and goals set out at the summits held over recent decades. Even so, there are many criticisms from them being simple instruments perpetuating the neoliberal system, with its international institutions, to them taking unrealisable figures as a premise, amongst others detailed by Professor Pérez de Armiño in an interesting article on the issue. See, PEREZ DE ARMIÑO, «Los Objetivos de Desarrollo del Milenio. Una visión crítica de sus implicaciones para la lucha contra el hambre y para el derecho a la alimentación» in AA.VV., *Derecho a la alimentación y Soberanía Alimentaria*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, pp. 163-199.

- *The special rapporteur agenda for the right to food*

With this being the main challenge and priority for States, the United Nations protection system has also pointed out other problem areas linked to eradicating hunger. Specifically, Human Rights Council special rapporteurs⁽⁴²⁾ - also known as special procedures and defined as a heterogeneous set of independent experts, rapporteurs, working groups or special representatives⁽⁴³⁾ - have carried out an essential task when examining and publically informing on other situations and challenges linked to the right to food and water.

The mandate on the right to food dates to the year 2000 in the framework of the former Human Rights Commission which named a first special rapporteur, initially for three years and subsequently renewed until present⁽⁴⁴⁾. The first special rapporteur reports covered, as is logical, introductory issues relating to the content of the right to food, its history and regulatory protection⁽⁴⁵⁾, as well as other issues such as the justiciability and enforceability of the right to food and its progressiveness, recognising at the time in 2002 its problems and deficiencies as, at the time, the Committee on Economic, Social and Cultural Rights had no chance of receiving or responding to individual complaints⁽⁴⁶⁾. A vacuum, however, that the rapporteur replaced via the creation of a complaints mechanism for the right to food where they could be sent and which still exists today⁽⁴⁷⁾.

After these three initial reports centring on the nature and concept of the right to food, Professor Ziegler looked more deeply into different pending topics and issues. Indeed, the rapporteur had identified in the second report some specific areas that affected and affect, either directly or with a clear impact

⁽⁴²⁾ There are many guarantee mechanisms in the universal human rights protection system that can be systematised according to whether they are conventional (set out in the main international conventions and overseen by treaty bodies) or non-conventional mechanisms in the sense that they are not set out in any treaty but arise from international practice carried out by bodies created by virtue of the Charter of the United Nations. These especially include those established at the heart of the Human Rights Council which replaced, in 2006, the former Commission.

⁽⁴³⁾ GIFRA, J., «La reforma de los procedimientos especiales del Consejo de Derechos Humanos: ¿una mejora de los mecanismos extra convencionales?», *Anuario de Derechos Humanos Nueva Época*, Vol. 10, 2009, pp. 223-261.

⁽⁴⁴⁾ The first rapporteur was Professor Jean Ziegler who held the post from 2000 to 2008. The updated Human Rights Council, via resolution 6/2 of 27th September 2007, updated the initial mandate and named a new rapporteur, Olivier de Schutter, who currently holds the post.

⁽⁴⁵⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/56/210, 23rd July 2001 and E/CN.4/2001/53, 7th February 2001.

⁽⁴⁶⁾ The creation of the Working Group for the production of an Optional Protocol to the ICESCR occurred in 2003.

⁽⁴⁷⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2002/58, 10th January 2002.

on the right to food⁽⁴⁸⁾ and which were covered more widely in subsequent reports. For example, access to land and credit. Based on the reality that hunger is mainly a problem in rural areas and that these are mostly home to populations with no access to land, whether through corruption or because there is no ordered census system for property ownership, farming permits or because there is a high concentration of farmland ownership not in the hands of those who work the land. The rapporteur put forward the need to tackle a fair transparent agrarian reform process that was redistributive and guaranteed land access as one of the main elements to eradicate hunger around the world. Several reports were dedicated to this, specifically that of 2002 which, in short, defined land access and agrarian reform as essential elements to the right to food and suggested paying more attention to the concept of food sovereignty and the demands of small-scale farmers without land, based on the reforms already promoted and carried out in several countries that had effectively led to improving the situation of many people⁽⁴⁹⁾.

Many other topics should be added to this issue, including gender and food or the role of multinational corporations⁽⁵⁰⁾, the relationship between the right to food and the right to water⁽⁵¹⁾, the fish trade and fishing industry⁽⁵²⁾, food security and sovereignty⁽⁵³⁾, States' extraterritorial responsibilities⁽⁵⁴⁾, the right of indigenous communities to food and the responsibility of international organisations regarding the right to food⁽⁵⁵⁾. With regard to the latter, the former rapporteur set out, at the time, an open complaint against the economic development models promoted by the World Bank, the International Monetary Fund and the World Trade Organisation as he saw them as placing the right to food of small-scale farmers at risk.

Another highlight on the long list of topics assessed by the former rapporteur is the impact of globalisation on the right to food⁽⁵⁶⁾, children's right to

⁽⁴⁸⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2001/53, 9th February 2001, para. 68.

⁽⁴⁹⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/57/356, 27th August 2002.

⁽⁵⁰⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/58/330, 28th August 2003.

⁽⁵¹⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2003/54, 10th January 2003.

⁽⁵²⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/59/385, 27th September 2004.

⁽⁵³⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2004/10, 9th February 2004.

⁽⁵⁴⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2005/47, 24th January 2005.

⁽⁵⁵⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/60/350, 12th September 2005.

⁽⁵⁶⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2006/44, 16th March 2006.

food⁽⁵⁷⁾, the impact of biofuels on the right to food⁽⁵⁸⁾, refugees and the right to food⁽⁵⁹⁾.

The new rapporteur appointed in 2008 has sustained some continuity with the work of his predecessor, even if the start of his mandate was marked by the food crisis; this led to the first report being concerned with the right to food, speculation and the global food price crisis⁽⁶⁰⁾. Nonetheless, this has not stopped him from looking further into some of the topics already pointed out by Professor Ziegler, such as the impact of international regulations on trade and the responsibility of the WTO regarding the right to food⁽⁶¹⁾. The current rapporteur has also looked into different issues such as the rights to land, to tenure and the concentration of ownership as a current challenge. In fact, since 2006 the trend has pointed to a phenomenon of large-scale purchasing or leasing of land which, as is logical, creates problems and abuses, especially for poor farmers in many countries affected by hunger⁽⁶²⁾.

⁽⁵⁷⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/HRC/4/30, 19th January 2007.

⁽⁵⁸⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/62/289, 22nd August 2007.

⁽⁵⁹⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, A/HRC/7/5, 10th January 2008.

⁽⁶⁰⁾ Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/HRC/9/23, 8th September 2008.

⁽⁶¹⁾ In this regard, a whole report was dedicated to the link between agreements reached within the framework of this organisation, specifically the Agriculture Agreement and the obligation of WTO members to respect the human right to adequate food. It states that if world trade must contribute to the realisation of the right to food, it may not treat agricultural products as any other basic commodity but rather deal with its specificities and allow developing nations to protect their products and farmers from the competition of farmers in industrialised nations. See, Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/HRC/10/5/Add.2, 4th February 2009.

⁽⁶²⁾ This is what some critics have called land grabbing. Calculations show that between 15 and 20 million hectares of agricultural land in developing nations have been subject to transactions or negotiations with foreign investors from 2006 to 2009. In this vein, the current rapporteur has presented a set of minimum principles and measures that should be taken into account so as to respect human rights in the buy-sell context and commercial transactions in agricultural land. These principles are aimed at both the recipient States and at investors and their main aim is «to ensure that negotiations leading to land acquisitions and leases comply with a number of procedural requirements, including the informed participation of local communities. They also seek to ensure adequate benefit-sharing, and a proviso that under no circumstances should such transactions be allowed to trump the human rights obligations of States». Some of these principles are the participation of local communities in negotiations, free, prior and informed consent of affected communities, the regulation and exceptions in forced evictions, that income from the investment agreement benefits the local population, that they contribute to job creation, amongst other recommendations presented clearly in the Appendix to said report. It should be stated that this topic continues to incite concern, especially over the pressure placed on vulnerable groups such as indigenous communities, small-scale farmers and special groups such as shepherds, small-scale cattle-raisers and fishermen/women. A new report dedicated to the topic of land access from 2010 is proof of this. See the Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/HRC/13/33/Add.2, 28th December 2009 and Report A/65/281, 11th August 2010.

In turn, the current rapporteur has not only continued some topics already looked at by Professor Ziegler but has also looked at and incorporated new elements for study and analysis⁽⁶³⁾ such as seed policy and the need to improve agricultural biodiversity and promote innovation⁽⁶⁴⁾, or the role of commodities buyers, food production companies and retailers, i.e. agro-food and the right to food⁽⁶⁵⁾, as well as newer issues such as those in the last two reports. On the one hand, agroecology and its advantages as a farming system and highly sustainable and productive production⁽⁶⁶⁾. On the other, an analysis of how to improve the method by which farmers access markets and the development of small-scale local and regional markets⁽⁶⁷⁾.

Finally, and so as to properly understand the importance of all these reports and the problem areas highlighted, two considerations should be underlined. Firstly, all the reports here from the two special rapporteurs should be assessed and understood as a whole, not separately, since on the one hand, and as has been shown, a type of thematic continuity runs through them and, on the other, they all comprise a type of *corpus* built upon year after year in a coherent way so as to look at the progress and difficulties regarding the right to food.

Secondly, it should be stated that the United Nations special rapporteurs do not interpret the legal content of the standards set out in the Covenants, nor do they extend or narrow the obligations set out or the interpretation thereof. Nevertheless, the conceptual progress and provided practices in the area of the right to food are highly valuable for the realisation and attainment of this right, and also to provide answers to the main problems they have to face and which do not always find an appropriate answer in international regulations, e.g. the food crisis and price speculation and volatility, land grabbing, amongst other issues which, thanks to the work of the rapporteurs, are incorporated into States' agenda and human rights protection institutions.

⁽⁶³⁾ The work areas, all information, as well as the agenda and contributions from the rapporteur at international conferences and country missions can be consulted on the official website: <http://www.srfood.org>.

⁽⁶⁴⁾ Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/64/170, 23rd July 2009.

⁽⁶⁵⁾ Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/HRC/13/33, 22nd December 2009.

⁽⁶⁶⁾ On this topic, the rapporteur, on the one hand, justifies agroecology in conceptual and applicability terms with the right to food and, on the other, defines the public policies and priorities and changes to be taken into account for adoption as a new system, see Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/HRC/16/49, 20th December 2010.

⁽⁶⁷⁾ Report by the Special Rapporteur on the right to food, Mr. Olivier de Schutter, A/66/262, 29th August 2011.

■ Specific Challenges for Spain

As is to be imagined, all these global issues and challenges do not apply equally to all countries as each has its particular features. In this vein, it is appropriate now to focus on the specificities in Spain.

In general, the amount of human rights treaties passed by Spain is in line and coherent with what is to be expected in a European geopolitical context, i.e. a member of the European Union and Council of Europe. Spain has therefore ratified the main regional agreements, the European Convention on Human Rights of 1950 and the Charter of Fundamental Rights of the European Union, appended to the Treaty of Lisbon, in force since 2009 as a legally binding text.

In addition, Spain is also part of most universal human rights treaties⁽⁶⁸⁾, e.g. the Covenant on Economic, Social and Cultural Rights since 1976 and, at present, holds the position of Member State of the United Nations Human Rights Council. It was also the first European country to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which recognises the Committee's authority to receive individual notifications and complaints⁽⁶⁹⁾.

From a regulatory recognition standpoint, the Spanish Constitution does not set out explicitly protection for the right to food or the human right to water, but these do derive from the right to life and physical integrity recognised in article 15 which states: «*Every person has the right to life and physical and moral integrity...*». The fundamental rights set out in the Constitution should be interpreted in light of the Universal Declaration of Human Rights and of international treaties and agreements. Article 45.2 of the Constitution states that «public authorities shall ensure the rational use of all natural resources with the aim of protecting and improving quality-of-life and defending and restoring the environment, based on essential collective solidarity».

In turn, in Spain, some competences in the areas relating to economic, social and cultural rights are decentralised from the National Government to the 17 Autonomous Regions. As a Member State of the European Union, Spain also shares certain areas of responsibility. The Treaty of Lisbon offers, for the first time, a systematisation of the responsibilities of the European Union and the Member States, differentiating between exclusive, share and coordinated responsibilities, providing the principles of proportionality and subsidiarity with a clearer content whilst allowing, in relation to this, *ex ante* political oversight by national parliaments. It is in this way, for example, that some areas such as agriculture and fishing that have a close link to the right to food

⁽⁶⁸⁾ With some exceptions such as the International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁽⁶⁹⁾ The Covenant was ready to sign in 2009 and is awaiting its entry into force when it attains the necessary number of ratifications.

are the shared responsibility of the European Union and Member States; the well-known common agricultural policy is run in this way. Further, there is an action programme in the area of water dating back to the 1970s and which has seen wider developments with the establishment of a sustainable water policy, specified in different legislative measures such as Directive 2000/60/CE of the European Parliament and the Council.

In this way, the areas related to the human right to food and water can be found in some decentralised areas, whether at regional or local level or shared with the European Union. This demonstrates the particular complexity of Spain where it is clear that exercising responsibilities in the area of economic, social and cultural rights, and closely linked issues, does not always fall to a single administration. Despite this, the State is obliged to respect, protect and realise human rights at local, regional and national level without discrimination, as well as at the international level. In this sense, the particularity lies in pointing out that Spain as a guarantor of the protection of the human right to food and water is a complex example and, despite this, must assume responsibility at the international level by virtue of the treaties it ratifies as well as its membership of international organisations such as the European Union. On the one hand, this responsibility is passed on to its decentralised regional and local authorities and, on the other, extends beyond its borders and means extraterritorial responsibilities may be demanded. In this light, the challenges and difficulties are clear.

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In this context, it seems appropriate to focus on three issues and set out, firstly, the official version presented by Spain itself regarding compliance with the right to food and water before the bodies of international oversight, specifically, the United Nations Committee on Economic, Social and Cultural Rights. Secondly, some considerations should be stated regarding the decentralised institutions and, lastly, mention should be made of Spain's extraterritorial responsibilities.

- *The last periodic review before the committee on economic, social and cultural rights of 31st january 2011*

Within the framework of its international obligations and, specifically, the Covenant on Economic Social and Cultural Rights, Spain must present periodic monitoring reports to the Committee. Although this chapter does not aim to analyse the series of periodic reviews presented by Spain, it would seem appropriate to look at the contents of the last review⁽⁷⁰⁾ as a source of true official information on the current status of respect and compliance with the rights set out in the Covenant, specifically food and water.

⁽⁷⁰⁾ *Fifth periodic report submitted by Spain in accordance with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/ESP/5, 31st January 2011.*

The report was debated during the sessions held in Geneva between 30th April and 18th May 2012 and, despite the comments or conclusions still not being available when this article was written⁽⁷¹⁾, the official report can be consulted, as can the list of issues the Committee expects to be extended before the appearance of the Spanish delegation in the planned sessions⁽⁷²⁾, as well as the parallel reports presented by civil society institutions and the Ombudsman which were used to expand and correctly understand other dimensions and issues which are either omitted in official reports or are not dealt with thoroughly enough⁽⁷³⁾.

Spain adopts a position in relation to compliance with and respect for the right to food within the framework of development cooperation, i.e. a State that through its official development policy contributes to the progress of the right to food and the fight against global hunger. As a promoter State internationally of initiatives to promote the right to food, the efforts of the Spanish government in its strategy on the eradication of hunger should surely be highlighted, set out in its International Cooperation Plan 2009-2012⁽⁷⁴⁾. This recognises the importance of food and nutritional security and also underlines in the specific context of the global food crisis that Official Spanish Cooperation has increased its funding, providing 286 million euro for agriculture, nutrition and food security in other countries. It has also committed a further 200 million per year to fight hunger over the next 5 years⁽⁷⁵⁾.

In turn, with regard to the human right to water, Spain has been one of the promoter countries for recognition of the right to access to drinking water and sanitation at the United Nations General Assembly, as well as one of the promoters for establishing a thematic remit for this right, now adopted by the special rapporteur Catarina de Albuquerque. Further, the aforementioned III Spanish Cooperation Master Plan 2009-2012 includes the right to water and sanitation as one of its sector priorities.

It is officially recognised, however, that in a country such as Spain «water is a scarce resource, hit by serious water imbalances due to uneven distribution»

⁽⁷¹⁾ The final version of this chapter was finished on 15th June 2012.

⁽⁷²⁾ E/C.12/ESP/Q/5, 2nd September 2011.

⁽⁷³⁾ For example, *List of Issues in response to the Fifth Periodic Report of Spain Prepared for the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights*, The Center for Economic and Social Rights and Observatorio de los Derechos Económicos, Sociales y Culturales, 1st April 2011; *Contribution from Spain's Ombudsman's Office for the review of the Fifth Periodic Report of Spain before the Committee of Economic, Social and Cultural Rights*, 14th March 2012, pp. 1-16; ; *Joint Submission to the Committee on Economic, Social and Cultural Rights Review of Spain's 5th Periodic Report*, 48th Session of the CESCR, presented by 19 organisations, May 2012, pp.1-50.

⁽⁷⁴⁾ *Plan Director de la Cooperación Española 2009-2012*, Ministry of Foreign Affairs.

⁽⁷⁵⁾ *Fifth periodic report submitted by Spain in accordance with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/ESP/5, 31st January 2011, para. 538 to 550.

and, therefore, appropriate water policy planning is a need and a political priority⁽⁷⁶⁾.

Despite Spain not positioning itself as part of the logic of a country whose population suffers general starvation or a lack of access to drinking water in its report to the Committee, this does not mean that there are not people who do go hungry or people who live in extreme poverty and social exclusion - phenomena which generally, without the need for explanation, could represent, at times, violations of the right to food or access to drinking water. Indeed, many sectors of civil society have stated just this.

As a brief review of the situation in Spain,⁽⁷⁷⁾ and taking into account the current economic crisis, estimates for 2010 show 11,675,000 people in danger of poverty, according to Eurostat, i.e. a quarter of the population (25%), an increase of over a million people in comparison to the previous year. In a European context, over 115 million people were at risk of poverty in 2010 in the European Union, 40 million in a serious situation of material deprivation, 1.8 million of whom are in Spain⁽⁷⁸⁾.

The figures for 2011 set out in the Caritas and Foessa Foundation Report *Exclusión y desarrollo social. Análisis y perspectivas* (Social Exclusion and Development: Analysis and Outlooks) also show increasing poverty in its most serious guises as a key feature. The percentage of households in Spain not receiving any income either from work or from unemployment benefits or Social Security now sits at 3.3% - in absolute terms, this represents 580,000 households. As the report states, this indicator is representative of the existence of extreme poverty which signifies serious privation of basic goods such as, logically, food and water⁽⁷⁹⁾.

⁽⁷⁶⁾ At present, resolving these possible imbalances and guaranteeing access to drinking water for the entire population is set out in the National Hydrology Plan, which includes harmonic and coordinated use of all water resources. In turn, law no. 11/2005 of 11th June has established a new legislative water policy, substituting the surplus basic income transfer system to deficit basins and partially modified by the previous law no. 10/2001 whereby the National Hydrology Plan was approved. The current law is based on Directive 2000/60/CE of the European Parliament and Council of 23rd October 2000 which establishes a community framework in the area of water policy. The political realisation of this legislative framework is found in the Water Management and Usage Activities Programme (AGUA) whose main aims are to 1) increase available water for the entire population via re-using treated water and desalinated sea water, 2) improve consumer efficiency, via the optimisation of irrigation and improved urban supply, and 3) improve available water quality through the treatment and restoration of watercourses and continental water bodies. See, the Fifth periodic report submitted by Spain in accordance with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/ESP/5, 31st January 2011, para. 538 to 550.

⁽⁷⁷⁾ Caritas and Fundación Foessa: *Informe anual sobre la Exclusión y desarrollo social. Análisis y perspectivas 2012*, Madrid, pp. 1-73.

⁽⁷⁸⁾ *Ibid.*, p. 32.

⁽⁷⁹⁾ Caritas and Fundación Foessa: *Informe anual sobre la Exclusión y desarrollo social. Análisis y perspectivas 2012*, Madrid, pp. 10-14.

The fact that these figures are not shown in Spain's fifth periodic report does not mean there is no concern nor public policies on the issue, as certainly there are. The figures perhaps demonstrate that the policies are not adequately responding to the crisis situation or the pointed growth trend in the number of people in situations of extreme privation. In this sense, it should be highlighted that the Committee on Economic, Social and Cultural Rights already requested Spain provide, in its 2011 periodic review, «disaggregated and comparative data on the number of people living in poverty and on progress made in reducing the incidence of poverty» and recommended redoubling the «efforts to combat poverty and social exclusion and to develop a mechanism for measuring the poverty level»⁽⁸⁰⁾ since this is a clear obstacle for enjoying human rights and, at the same time, the absence of data (or scant amount) on this reality makes effective realisation difficult for many affected rights.

- *The role of decentralised institutions*

A second challenge or factor to focus on in Spain is the role of the Autonomous Regions since, as has been stated, some areas relating to economic, social and cultural rights are decentralised.

Both international treaties and the mechanisms set out by the United Nations focus on the State in this area, the main entity charged with their protection, without going into the political structure of each. The particularity with regard to other international safeguard systems lies in pointing out that the State, as a guarantor of the protection of human rights and specifically the human right to food and water, is not only considered an impermeable unit but also covers its decentralised regional or local institutions. The respect for the equality of States in international legal regulations and the subsequent logic thereto, the obligation of not interfering in the domestic issues of countries, is a customary standard. In turn, the Charter of the United Nations lays down the principle that the Organisation is not authorised to intervene in issues which are essentially the domestic jurisdiction of States. In this way, it is not customary that in the guarantee system for the right to water and food much stress is placed on the obligation of protection covering any political/administrative organisation that comes under the sphere reserved for the State.

Specifically, General Comment 15 sets out the obligation to coordinate between national ministries and regional and local authorities with the aim of harmonising policies on water; and in the case that said responsibility is assigned to decentralised institutions, the State shall be the maximum responsible body for compliance with the International Covenant on Economic, Social and Cultural Rights. This is compatible with instituting international responsibility where any act carried out by decentralised institutions and public bodies,

⁽⁸⁰⁾ *Concluding observations of the Committee on Economic, Social and Cultural Rights, regarding the report presented by Spain in 2004. E/C.12/1/Add.99, 7th June 2004, para. 37.*

amongst others, is attributed to the State in terms of responsibility. Nonetheless, said General Comment goes further in directly setting out that regional and local authorities are also involved. Why, then, is there an insistence on the obligation to protect being directed to all country institutions and levels? We see two possible relevant reasons. On the one hand, international regulations are gradually entering in the sphere reserved for the State, attempting to increase the protection level for human rights. On the other, we could perhaps interpret that the guarantees on the specific right to water must be higher since it is a universal good. This would justify an increase in the duty bearers internationally.

The first reason can also be seen in the Special Rapporteur's Report on the right to water in 2011, stating that responsibilities in the water sector are split between ministries, different administration levels, including municipalities and regions. It therefore requires optimum coordination to overcome fragmentation. Vertical collaboration: State-decentralised institutions or horizontal, amongst the latter, is a further confirmation of the State's obligation to comply with its international obligations - something difficult to achieve unless all of them work together. The rapporteur goes even further in the report, requesting local institutions play a role from the start of planning as they are going to be in charge of managing any plan. In a certain sense, a strict regulatory framework, whatever it may be, is surpassed to focus on the common good to protect⁽⁸¹⁾. Performance of the planning and management of the right to water is essential at all administration levels, seeking complementarity instead of confrontation. In other words, this is what the European Union Committee of the Regions has defined as multi-level governance⁽⁸²⁾. Indeed, this ever more intense concentration inside State borders can be seen in the European Union where, even based on non-interference in domestic issues, penetration occurs with the Treaty of the European Union alluding to regional and local autonomy⁽⁸³⁾ and a *de facto* demand for decentralised institutions to also comply with the obligations arising from international treaties.

The second reason is also pointed out in the High Commissioner's Report of 2007 which, despite taking up again the principle of the State's unity of action and from this all obligations deriving to comply with fair access to water and the right to food, clearly states that, in addition to States' obligations regarding human rights arising from the ratification of international treaties or from customary international law, other actors such as transnational corporations, private companies, international organisations and individuals also play a role regarding

⁽⁸¹⁾ Report by the Special Rapporteur on the human right to drinking water and sanitation, Ms. Catarina de Albuquerque, A/HRC/18/33, 4th July 2011, pp. 12-13.

⁽⁸²⁾ European Union Committee of the Regions, *White Book on Multi-level Governance*, CDR 89/2009, 17th and 18th June 2009, p. 5.

⁽⁸³⁾ BELTRÁN GARCÍA, S., «La inclusión de los principios de autonomía regional y local en el Tratado de Lisboa», in *La incidencia del Tratado de Lisboa en el ejercicio de las competencias autonómicas*, IEA, Barcelona, 2010, pp. 93-128.

the respect and promotion thereof. In short, protection is sought that brings together the maximum number of guarantees and duty holders to perform it.

- *Extraterritorial responsibilities and coherence with government policies regarding the right to food*

Following our assessment of the specific challenges in Spain, we now focus on a third aspect linked to the area of extraterritorial responsibilities arising from the ratification of international treaties, as well as the drafting and interpretation of constitutional provisions.

The drafting of the aforementioned article 15 and the legal comprehension of the right holder («all») involves a double focus. Within its borders, the State must guarantee the right to life and food of its own nationals, but also of any person, Spanish or not, who is in the national territory in application of the jurisdiction criteria, overcoming the strict link to nationality. In this way, the State is obliged to promote and eliminate obstacles to the respect, protection and guarantee of this right to any person in its territory and not necessarily a national. This interpretation of the protection offered by article 15 is justified in light of international treaties and the Universal Declaration of Human Rights of 1948 which transcends Spanish geographical territory and imposes certain obligations on the State beyond its borders.

The extraterritorial application of human rights covenants recognises, as a starting point, that the fundamental responsibility of a State is to guarantee the rights, first and foremost, within its national territory, applying a wide criteria which is that already mentioned for jurisdiction. Nevertheless, it is also understood that a State protects its citizens when they are abroad and suffer human rights violations, being able to exercise, where it deems appropriate, diplomatic protection. In turn, the State assumes responsibility where one of its institutions carries out any action contrary to the right protected and the latter is attributed to it. This extraterritorial nature to the Covenant on Economic, Social and Cultural Rights is also part of the authorised interpretation made by the Committee in General Comment 12:

«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»⁽⁸⁴⁾.

The Committee thus introduces the area of extraterritorial responsibility comprising international cooperation and assistance between States, which should lead to the protection and enjoyment of the right to food. In this vein, the former special rapporteur, Jean Ziegler, dedicating a full report to this issue, also argues that «in the current climate of globalization and strong

⁽⁸⁴⁾ See, General Comment 12, *Op.Cit.*, para. 36.

international interdependence, the national Government is not always able to protect its citizens from the impacts of decisions taken in other countries. All countries should therefore ensure that their policies do not contribute to human rights violations in other countries»⁽⁸⁵⁾. This means, «in a globalized and interdependent world, decisions taken in one country can have very far-reaching effects on other countries»⁽⁸⁶⁾.

Taking this line of thought to the specific area of the right to food, he sustains that «there are many policies and actions of Governments that have negative impacts on the right to food for people living in other countries»⁽⁸⁷⁾. This means that «to fully comply with their obligations under the right to food, States must respect, protect and support the fulfilment of the right to food of people living in other territories» and they have the obligation to guarantee «that their policies and practices do not lead to violations of the right to food in other countries»⁽⁸⁸⁾.

In this way, the special rapporteur promotes a comprehensive view of the State's responsibility which may, with its acts and decisions, as well as its policies and strategies, have negative effects on the right to food. It therefore goes beyond the area of state institutions in other countries to which a specific act would be attributable or the protection of its citizens overseas, and includes a much wider outline of extraterritorial responsibility.

It is argued that this may involve a somewhat exaggerated vision of extraterritorial obligations since it is difficult to predict or avoid the consequences that a specific public policy could have on human rights in other countries. Indeed, the rapporteur's argument clearly highlights a delicate topic - international trade in agricultural produce. This illustrative example is given stating that «it is widely recognized that subsidies to farmers in developed countries can have negative impacts on farmers and the right to food in developing countries if food products are *dumped* on developing countries»⁽⁸⁹⁾, and here he alludes, without explicitly stating it, to the European Union Common Agriculture Policy and to all member States and, therefore, to Spain as well as the WTO.

It thus seems to include the lack of coherence in government policies in the area of extraterritorial responsibility in human rights treaties and, specifically, the right to food since, from this perspective, a government, such as in Spain, may protect and guarantee this right within its borders and even offer assistance for agricultural development outside them providing, as it does, large financial

⁽⁸⁵⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2005/47, 10th January 2005, para. 39.

⁽⁸⁶⁾ *Ibid*, para. 40.

⁽⁸⁷⁾ *Ibid*, para. 40.

⁽⁸⁸⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2005/47, 10th January 2005, para. 48.

⁽⁸⁹⁾ *Ibid*, para. 39.

sums to eradicate hunger and for food security in other countries. Nonetheless, at the same time it may be implementing trade policies which have negative effects for human rights and the right to food in other countries.

This is stated by the special rapporteur: «development policies and programmes are not always well coordinated with trade policies programmes agreed to within the framework of WTO, IMF and the World Bank, which means well-intentioned development policies are often undermined. For example, developed countries might offer development assistance for agricultural development, whilst at the same time, they subsidize their agriculture and sell products at below the cost of production, in ways that can limit the possibilities for agriculture development in developing countries. In the same way, developed countries sometimes provide food aid in ways that undermine local food security, through destroying local production in developing countries»⁽⁹⁰⁾.

The dilemmas and repercussions of development cooperation policies on other countries are not new. Neither is the problem area relating to the lack of coherence of public policies in general. It is true, however, that at a time of special momentum to eradicate global hunger, greater focus on this should be expected. It is not a question of being able to predict the effects of specific policies, or lesser issues, but rather of clear contradictions. Indeed, it is surprising to find Robert Zoellick, Chairman of the World Bank, follow the same critical vein surrounding the incoherence of States and the negative impacts of public policies on other countries. At a conference held at the George Washington University in 2011, he stated that «the language of development has been the language of old hierarchy. Old World. Old Order. And not without a whiff of hypocrisy. (...) When countries with large fiscal deficits preach fiscal discipline to poor countries – what are they really saying? «Do what I say, not what I do.» When countries pay homage to free trade but hold back developing countries with barriers, what are they really saying? «Do what I say, not what I do»⁽⁹¹⁾.

Perhaps, as the Chairman of the World Bank himself states, if the contradictions are so clear «the old ways can and must change». The change of the stated incoherence can be considered based on two proposals: the voluntary guidelines promoted by the FAO and the adoption of a focus on rights in public policies, as the last section of this article proposes.

Undoubtedly, a major step forward in developing policy coherence around the right to food was the adoption in 2004 of a voluntary guidelines instrument within the framework of the FAO⁽⁹²⁾.

⁽⁹⁰⁾ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, E/CN.4/2005/47, 10th January 2005, para. 40.

⁽⁹¹⁾ ZOELLICK, R., *Beyond Aid*, George Washington University, 14th September 2011, p. 3.

⁽⁹²⁾ VIDAR, M. «The right to food guidelines» in AA.VV., *Derecho a la alimentación y Soberanía Alimentaria*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2008, pp. 77-91.

These guidelines aim to help States and other involved members to progressively attain the right to food nationally and they include all State obligation levels, as well as the aspects of the fight against hunger. As M. Vidar states, they go some way to providing clarity on the complexity⁽⁹³⁾ since they do not introduce new content but systematise all related issues which are structured in the document in three parts⁽⁹⁴⁾. Fundamentally, the FAO Voluntary Guidelines contain and systematise both the regulatory and political aspects of the right to food and their main potential lies in the introduction of practical measures that are understandable for actors who have to implement the right to food in line with the strategies defined at the World Food Summit and the regulatory provisions. Consequently, the idea is to provide greater clarity and coherence albeit without granting them a binding legal standing so that States and international organisations have the obligation to take them into account but without any penalty due to possible non-compliance. This provides flexibility and encourages States to gradually introduce these guidelines in their legislation and provide coherence to their policies.

In short, throughout this work the main challenges surrounding the right to food and water have been set out, the eradication of hunger, both at a global level and at a specific level for Spain with its own circumstances and complexity. In effect, the figures on global hunger continue to be alarming despite global progress and commitments and, paradoxically, whilst advances have been made in legal and political recognition of the right to food and its close link to the right to water, the greatest global food crisis seen in the last few decades has occurred. This again confirms that the challenges remain valid and that political commitments should be firmer and more coherent.

■ STRATEGIC APPROACHES FOR EFFECTIVE PROTECTION OF THE HUMAN RIGHT TO FOOD AND WATER

It is in this context where some key future proposals are put forward and summarised.

■ A Human Rights Focus in Public Policies

Many institutions⁽⁹⁵⁾ call for and recommend the adoption of a human rights focus in public policies linked to the right to water and food so as to avoid some of the incoherences and contradictions set out in this article.

⁽⁹³⁾ *Ibid.*, p. 79.

⁽⁹⁴⁾ The first introductory section includes the main international instruments on the protection of the right to food from the prism of human rights. The second section covers related and strictly linked issues such as the environment, aid, national strategies regarding the regulatory framework, policies and their adaptation taking into account the specificities of each State. The third section talks about the international dimension of the right to food, including actions and commitments adopted by the international community.

⁽⁹⁵⁾ See the following reports for examples: KIRKEMANN, J. & MARTIN, T.: *Applying a rights-based approach. An inspirational guide for civil society*, The Danish Institute for Human Rights,

This focus aims to outline the global framework where any public policy involving human rights is to be carried out⁽⁹⁶⁾. It aims for all policies and plans to take the duties and obligations set out in international law in the specific area involved as a starting point. The adoption of this approach introduces two highly useful aspects: firstly, it helps to define more clearly State obligations regarding the main human rights principles involved in a strategy or policy.

Secondly, this approach changes the logic that has guided the production of public policies for decades, understood as more or less discretionary services, that States carry out to meet the needs of their citizens. However, it introduces a fundamental change of outlook since public policies on the right to food (and the eradication of hunger) should not only be drafted from the confirmation of those in need being able to be helped or not in the context of a temporary political commitment, but rather from the perspective that these individuals have rights, today and beyond 2015. In some way, this human rights approach in public policies tempers the importance of political discourse since food and the eradication of hunger is not only a voluntary commitment but a full legal obligation⁽⁹⁷⁾. This means that, beyond 2015, States shall continue to put the same energy and commitment into reducing the number of people suffering

2007, pp. 1-47; *A Human Rights' Based Approach to Development, New perspectives by taking cultural rights into account?*, Synthesis Documents, Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg, 23rd May 2011, pp. 1-7; *UNESCO Strategy on Human Rights*, adopted by the 32nd session of the General Conference of UNESCO, 16th October 2003, resolution 32 C/27; *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation*, Office of the United Nations High Commissioner for Human Rights, 2006, pp. 1- 50.

⁽⁹⁶⁾ MEDINA REY, J.M., «La lucha contra el hambre desde el enfoque de los derechos económicos, sociales y culturales», in AA.VV., *Seguridad alimentaria y políticas de lucha contra el hambre: seminario internacional sobre seguridad alimentaria y lucha contra el hambre*, Chair of Studies in Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2006, pp. 139-155.

⁽⁹⁷⁾ This does not intend, not by far, to deny the importance of the political efforts and encouragement, such as the Millennium Development Goals or the Voluntary Guidelines of the FAO. In fact, regarding the MDGs, some state that the political, technical and quantitative dimension is its main advantage, since a temporary global-scope hunger reduction goal has never been set, based on supervising indicators taking into account global figures. See, MEDINA REY, J.M., «La lucha contra el hambre desde el enfoque de los derechos económicos, sociales y culturales», in AA.VV., *Seguridad alimentaria y políticas de lucha contra el hambre: seminario internacional sobre seguridad alimentaria y lucha contra el hambre*, Chair of Studies on Hunger and Poverty, Servicio Publicaciones de la Universidad de Córdoba and Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2006, pp. 139-155.

However, reiterating this recognition and without undermining the success it signifies, we should qualify that the attainment of this goal cannot be realised outside the definition of the rights already set out in the International Human Rights Covenants. It is true that human rights need precision and to be set as global targets, but this should not confuse or forget their nature. This means that, beyond 2015, States shall continue to put the same energy and commitment into reducing the number of people suffering from hunger amongst its citizens since, above all else, it is a legal obligation and hunger is the main violation and in compliance.

from hunger amongst their citizens since, above all else, it is a legal obligation and hunger is the main violation and in compliance.

■ An *ius Cogens* Approach (a value for the International Community as a Whole)

A second proposal linked to the above is to re-establish the status of water and food as a public good. As gathered from General Comment 15, the final recipient of the right to water transcends the individual and covers humanity; it states that water is a «public good fundamental for life» and that States should «facilitate realization of the right to water in other countries». In this way, the right to food and access to drinking water should be included in the category of mandatory regulations of international law and their respect enforced as a human right.

This position carries specific legal consequences, especially in the priorities for water access and food distribution:

- Water for human consumption is a top priority as is having enough water so that farming is able to fight hunger.
- With regard to the doubt over which products to grow, countries should choose those that ensure the population's basic needs.

■ Final Summary

In short and by way of conclusion, any strategy or policy to eradicate hunger and comply with the right to food and water should respect, on the one hand, its fundamental regulatory content and, on the other, respond to certain recommendations that arise from the United Nations supervisory bodies.

- Food and water are, above all else, human rights. States therefore are legally required to provide everybody, regardless of their nationality, with food that is sufficient, available and appropriate for their needs and circumstances, as well as access to clean drinking water. (*Universal Declaration of Human Rights, Art. 11 of the International Covenant on Economic, Social and Cultural Rights, article 11, General Comment 12 on the right to food, General Comment 15 on the right to water.*)
- In order to meet the requirements and needs of the right, any public policy or global strategy on food and water should not only aim to reduce the amount of people but also guarantee that people have food that is available (sufficient resources), accessible (financially and physically) and adequate (quantity and quality), and access to drinking water. In turn, the real needs of each individual should be taken into account, respecting their circumstances and cultural identity. (*General Comment 12 on the right to food.*)
- Public authorities have three fundamental obligations regarding the right to water and food, and these should be priorities for public policies: respect,

protect and realise. Progressiveness is admitted in full compliance with the right to food and water but public systems should take the necessary steps to ensure that the term in which they intend to guarantee is reasonable and they should guarantee without discrimination and show they are making the maximum use of their available resources. With immediate effect, public authorities should guarantee at least what is basic and essential to protect the people from starvation and guarantee access to drinking water. (*Art. 11 of the International Covenant on Economic, Social and Cultural Rights, General Comment 12 on the right to food, General Comment 15 on the right to water.*)

- An explanatory guide could be useful in Spain on the use of the Optional Protocol to the Covenant by individuals since with its coming into effect, the possibility of individual complaints is to be enacted. We believe efforts should be concentrated on this option, especially taking into account that Spain has already ratified the Protocol.
- In the order of priorities for water and agricultural uses, it should firstly be highlighted that the entire population must receive enough for domestic use. Even so, in coming years and faced with a possible drought, this could be violated. The Human Development Report of 2007 sustains that climate change will lead to greater inequality regarding access to water and drought will extend to areas that until present were watered by rain. Taking this possible scenario into account and due to the precautionary approach, States should guarantee in future policies that in their territory everyone, as a minimum, is able to access water for human consumption above other considerations and the competences of the State and its decentralised institutions.
- In addition, there are well-known differences between different territories in Spain today. The imperative nature of protecting the right to water requires equal fair treatment of the issue. Since the Autonomous Regions and local institutions have responsibilities in this area, work should be carried out with them in putting together future plans.
- There needs to be effective coordination across all administrative levels with responsibilities regarding the right to water, including Autonomous Regions and local authorities. In line with the widest interpretation of State set out in international treaties and United Nations protection mechanisms on the right to water, it is not possible for the State to comply with its international obligations if there is no effective coordination. It is not only a problem of applying and carrying out the regulations of international law in domestic State legislation but also it is necessary for actors involved to show that their implementation work responds to the commitments arising from the treaties and that efforts are not wasted on the way. If this last *efficiency unity* requisite is missing, the international obligations cannot be fulfilled completely.

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