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The Human Right to Food

Introduction

The idea of universal human rights is a powerful one. It says that every person, whoever they are, wherever they are born and regardless of their social status, is entitled to the enjoyment of certain inalienable basic rights. The respect, protection and fulfillment of these rights, according to human rights law, constitute the fundamental basis of a dignified and flourishing existence, both for the individual, and for society as a whole.

These fundamental rights, which include adequate housing and adequate food, were for the first time enshrined in the historic Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris on the 10th of December, 1948. Australia, partially due to the efforts of Dr Herbert Evatt, was one of eight nations involved in drafting the UDHR.

The UDHR is *not* legally binding, but it sets out basic norms and standards to which all countries are expected to adhere and by reference to which their citizens can hold them to account. The UDHR has been followed by several international legal instruments that *are* legally binding; such as the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), and the 1990 Convention on the Rights of the Child. In both of these legal frameworks adequate food is explicitly named as a human right. Article 11 of the ICESCR states that:

“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.”

In the modern global economy such rights are often seen as barriers to trade and the assumption is that the food industry will provide affordable and adequate food. The role of the food industry is to maximize profit and provide a service to customers, and herein lies the distinction, the rights of consumers versus the rights of citizens.

The Role of Nation States

According to international law, all State parties to the ICESCR have the obligation to ‘respect, protect and fulfill’ the basic rights which it establishes. While securing the full enjoyment of the universal right to food is understood to take place over time (‘progressive realization’), Art.11(2) says that everyone within a State’s territory must be free from hunger *now*, and that a State violates this obligation unless it has insufficient resources to fulfill its duties.

The duty to *respect* the right to food is essentially a negative obligation: States must not do anything that would prevent citizens and residents from accessing food. For example, deliberate starvation through blockades in a time of war - as is tragically occurring in Syria right now. But equally ignoring the needs of marginalized and hidden groups can be seen to violate this obligation.

The duty to *protect* the right to food means that States must take measures to prevent third parties, which can include private businesses, from doing anything that would deprive individuals from accessing affordable, adequate and appropriate food on an on-going basis. This could include the development of a 'food desert' through so-called 'land-banking' whereby households are excluded from access to healthy food outlets or governments setting income or welfare standards so low that individuals and families cannot access a healthy diet.

Finally, the duty to *fulfill* is a positive obligation, which requires states to 'establish political, economic and social systems that provide access to the guaranteed right for all members of society.' (Committee on Economic, Social and Cultural Rights). This could include ensuring the affordability and safety of culturally appropriate staple foods, the protection of land and resources for food production and the provision of emergency relief for people in crisis. Here the commitments under ICN and ICN2 for the development of comprehensive food policies which link health and ecological-sustainability would seem to be key.

The United Nations Special Rapporteur on the Right to Food has mapped out best practice for all countries on the legal and institutional steps to fully implement the right to food. The key steps are as follows:

- incorporating the right to food in national constitutions;
- passing enabling domestic legislation: a 'national Right to Food framework law';
- developing participatory 'national strategies based upon the right to food', such as national agriculture, food security and nutrition strategies;
- designing and resourcing appropriate institutions and implementing actions of a participatory nature;
- monitoring the implementation of the national strategies; and
- enforcing the right to food through judicial means where necessary

As of 2012, 24 countries had explicitly incorporated the right to food in their Constitutions, and another 41 recognised the right to food implicitly as part of broader human rights guarantees. A further 19 had adopted or were drafting a framework law to implement the Constitutional right to food; several had adopted national food and nutrition strategies, and established institutions charged with their oversight. In India the right to food was

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enforce through the courts which assumed a case law approach in 2001. A human rights body - the Rajasthan branch of the People's Union for Civil Liberties - petitioned the Supreme Court of India arguing that the large stocks of grains accumulated over the years be utilised to feed impoverished people in the state. The court case triggered debates on the right to food as a legal entitlement rather than merely as a moral obligation in the Indian policy sphere.

Human Rights in Australia

Australia is not amongst any of these countries. Australia, at the Federal level, does not have a Constitutional Bill of Rights, or a Human Rights Act, remember it was not until 1967 (?) that Aboriginal people gained citizenship. Philosophically and politically, while Australian governments are in principle committed to legal protection for civil and political rights, such as freedom of speech and assembly, the general view regarding economic and social rights, such as the right to food and housing, is that they should be satisfied by individuals selling their labour in the marketplace, and buying access to food and housing - essentially a neoliberal model of rights and obligations. In other words, basic necessities such as food and housing are regarded as commodities, and access to them can be achieved by a successfully performing economy. This takes no account of the extent of poverty and inequality in Australian society where in a recent OECD report Australia was among a small group of developed nations where the gap between the rich and the poor had increased.

So although Australia has signed and ratified the ICESCR, and is therefore bound to uphold the human rights it establishes, because we have domestic implementing legislation, there is no legal recourse in Australia for alleging a violation of the right to food. And while there was relatively little food insecurity or homelessness in Australia during the 'golden era' of post-war growth from 1950-1975, times have changed drastically; and increasing numbers of Australians are living precariously, either in or on the edge of both food insecurity and homelessness. Additionally evidence is pointing to a new group of food insecure the working poor, those who are massively over mortgaged and who survive from pay check to pay check, with little resilience to financial shocks. From international research we know that such groups cut down on healthy food in the family budget as it can be squeezed, unlike other fixed items of household expenditure.

In a wealthy country like Australia, this situation has structural roots in the ongoing dismantling of the welfare safety net, the increase in low-paid and precarious employment, and the associated steep rise in income poverty and income inequality. Fundamentally, as Silvasti and Riches conclude following their survey of the alarming rise in food insecurity in rich countries in the past 30 years: "...an end to hunger requires living wages, adequate benefits and full employment". The same applies of course to housing and all the other basic human rights that are part of the right of a decent quality of

life.

Australia's most recent report to the UN on the implementation of economic, social and cultural rights (Commonwealth of Australia 2006) describes the following:

During 1999-2000, the Australian Government took a lead role in developing a ten-year agenda for action in public health nutrition, titled Eat Well Australia. Priority nutrition areas identified include: prevention of overweight and obesity; increasing the consumption of fruits and vegetables; promotion of optimal nutrition for women, infants and children; and improving nutrition for vulnerable groups.

These general statements fail to truly acknowledging how many people's right to food has not been respected, protected or fulfilled. Non-government organisations have provided shadow reports to the UN detailing Australia's government's failure to tackle food insecurity and fulfil basic food rights (Booth, 2015). The above represents a health education approach to what is fundamentally are structural problems within the food system. So agriculture, production, marketing and retailing are missing from the above mix. A truly comprehensive food policy would address the concerns and rights of farmers as the primary producers of the nation's food supply and contribute to their health (suicide among small famrers is twice the national average) and ensure that the food produced was linked to a nutrition strategy.

Improving Rights

As a State party to the ICESCR, Australian governments at all levels - but the Federal government most of all - have a duty to do all in their power to ensure that everyone in this country has affordable access to adequate amounts of healthy and culturally appropriate food. As a rich country that exports two-thirds of the food we produce, and will spend \$1 trillion on military forces over the next two decades, the notion that we 'don't have the financial means' to eradicate hunger and homelessness is absurd. Arguments abound over waste food and the way that this can be used to feed 'the poor', but within a rights framework this ignores the issues of adequate, appropriate and healthy food. The provision of food through charity and left-overs from a dysfunctional food system are not the answers to addressing the right to food.

How we raise taxes, and how we spend them, how we offer relief are questions of political will and the resulting solutions, say a great deal about the nature of our basic values, the level of understanding about the real and devastating consequences of inequality in Australia, and our level of compassion as a people. For food seeing viewing food relief within a lens of charity provision does not address the rights and dignity that citizens deserve in accessing food.

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The good news is that many conscientious individuals, organisations and institutions do take our obligations seriously, and are seeking to improve human rights in Australia. SO RELATE TO FOOD

At the local governmental level, many local Councils are taking the lead by the participatory development and implementation of holistic and integrated food system policies and strategies. Many of these explicitly acknowledge the human right to adequate food, and the Council's responsibility to do what it can to guarantee this right. These policies and strategies build on years of grassroots and organizational work, which is now leading to the participatory development of multi-functional food hubs and community food centres, which can transform the model of food charity to one of empowerment and focus on systemic causes of disadvantage.

National networks such as the Right to Food Coalition and Sustain: The Australian Food Network, are bringing together research and practice partnerships to shine attention on this issue in a sustained way. Non-government organisations, including the Council to Homeless Persons, have persistently raised awareness about social and health issues in Australia, urged for accountability and brokered partnerships for improved services for vulnerable Australians. At an advocacy level there is strength in numbers and all these organisations can through collective lobbying and showing what can be achieved bring about the desired changes. This must continue and the right to food framework - including shadow reporting to the UN - may offer an under-utilized opportunity to tackle homelessness and food insecurity. In doing this it is important to provide a voice and platform for marginalised and hidden groups it is not enough for advocates to talk on behalf of these groups, such an approach is reminiscent of earlier debates on literacy where being poor was defined as *'being unable to read or write and having other write on your behalf'*.

The human right to food, and the precedents for its successful implementation in dozens of countries around the world, is a powerful means by which to achieve the goal of a truly fair and just Australia, in which everyone is well housed and everyone enjoys nourishing food, every day. It's up to us to make this a reality. WHAT ABOUT A CALL TO ACTION SO CASE LAW OR USING THE LAW OR THE POWER OF THE NETWORK TO LOBBY FOR CHANGE

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