

ADOPTING A HUMAN RIGHTS APPROACH TO FOOD POLICY IN AN ERA OF GLOBAL FINANCIAL CRISIS

JACKBETH K MAPULANGA-HULSTON*

ABSTRACT

The recent global financial crisis has affected and is affecting virtually all sectors of society in both developing and developed countries. This article examines the impact the crisis has had on the right to food and attempts to show that efforts to enhance this right, amidst the financial crisis, should be wary of including or adopting measures that have not been successful in bringing about the required food access and production. The article argues for the adoption of a rights-based approach to food as a basis for policy and practice. This approach is viewed as one that encompasses a wide range of issues and calls for a coordinated effort from the wider community which is required to enhance food availability, access and production.

I INTRODUCTION

Due to the onset and impact of the global financial crisis, the world has witnessed unstable and fragile markets and collapses of major financial and banking institutions. This crisis is affecting virtually all sectors of society, and being a global crisis, it has not been restricted to particular borders, countries or geographical regions and its impact will be felt from the most developed countries to the least developed ones. According to the senior vice president and chief economist of the World Bank, this crisis will have a 'negative shock' on emerging markets, will substantially reduce exports, and will result in the decline of gross domestic product (GDP) growth in developing countries.¹ The International Monetary Fund (IMF) also reports that the global economy is in 'the midst of a deep downturn'.² The impact on national economies is therefore going to be quite substantial as trade, investments and growth are set to stagnate and/or decline.

It is estimated that the economic crisis will trap about 53 million more people in poverty in developing countries.³ With the adverse impact that the crisis is bound to have particularly on poor and developing countries, it is evident that the enjoyment of most human rights, more especially economic,

* LLB (Unza), AHCZ, MIL (Lund), PhD (Bond). Dr Mapulanga-Hulston is a Research Assistant and Tutor at Southern Cross University, Part of this article is taken from Dr Mapulanga-Hulston's PhD thesis.

1 JY Lin 'Impact of the Financial Crisis on Developing Countries' *The Sunday Times* (2008) <<http://sundaytimes.lk/081116/FinancialTimes/ft325.html>>.

2 IMF 'The Implications of the Global Financial Crisis for Low Income Countries' (2009) <<http://www.imf.org/external/pubs/ft/books/2009/globalfin/globalfin.pdf>>.

3 World Bank 'Crisis Hitting Poor Hard in Developing World, World Bank says' (12 February 2009) <<http://go.worldbank.org/PGNOX87VO0>>. In its State of the Food Insecurity in the World 2002 report, the Food and Agricultural Organization (FAO) estimated that for the years 1998 to 2000, 840 million people were undernourished and most of these were from developing countries.

social and cultural rights, is going to be adversely affected. Economic, social and cultural rights are a set of rights that are connected with a broad range of complex issues, such as health, employment and income, food supply, economic development and globalisation.⁴

The right to food is one right that will be heavily impacted by the current global crisis. While governments around the world aim to eradicate hunger and ensure people have adequate food, those in developing countries have been struggling to meet this objective. Many people living in low-income countries continue to suffer from imbalanced diets and diseases resulting from lack of adequate food. As Florencio notes:

Despite very substantial advances in science and technology and the oft-repeated fact that the world as a whole produces enough food for everyone, the reality is that food does not reach many millions of people who lack access to available food or the means for food production.⁵

Ensuring that everyone has adequate food is a difficult task especially when the world has been experiencing a food crisis in recent years with an 83 per cent increase in global food prices between 2005 and 2008.⁶ However, this is a task that must be addressed if people are to be rescued from ill health, starvation and death, further aggravated by the current global crisis. The objective of this article is to highlight the fact that the current global crisis has created the perfect time and opportunity to replace and/or change inappropriate and/or ineffective policies with ones that are more productive, progressive and reflect current needs. A human rights approach to food policy is one such approach. As the Special Rapporteur on the Right to Food has stated, there is a need:

to build a system which ensures a sufficient degree of resilience in the face of the increasing volatility of international markets of agricultural primary commodities, and which maintains such volatility within acceptable margins.⁷

Human rights-based approaches to social policy have become increasingly important in legal discourse. While some have viewed the adoption of a human rights-based approach as being highly challenging or even ineffectual,⁸ there has been growing interest in human rights standards as a basis for policy

4 For an in-depth study of the nature and scope of these rights, refer to JK Mapulanga-Hulston 'Examining the Justiciability of Economic, Social and Cultural Rights' (2002) 6(4) *Int J Human Rights* 29–48.

5 CA Florencio 'Rights-based Food and Nutrition Perspective: 21st Century Challenge for Dietetics' (2001) 14 *J Hum Nutr Dietetics* 169, 171.

6 A Mittal *The 2008 Food Price Crisis: Rethinking Food Security Policies* (2009).

7 Report of the Special Rapporteur on the Right to Food, Olivier De Schutter 'Building Resilience: A Human Rights Framework for World Food and Nutrition Security' A/HRC/9/23 (8 September 2008).

8 See K De Feyter *Human Rights: Social Justice in the Age of the Market* (2005); B Kneen 'The Tyranny of Rights' *The Forum on Privatization and the Public Domain* (2006) <<http://www.forumonpublicdomain.ca/node/84>>; P Uvin 'On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise' *PRAXIS The Fletcher J of Development Studies* (2002) XVII–2002.

and practice.⁹ It is noted that a distinction is sometimes made between a 'human rights approach' and a 'rights-based approach'. Piron explains that the former is seen as being linked more explicitly to the international human rights framework and is described by some as 'legalistic', while the latter is seen as emphasising the importance of 'empowerment' of poor and marginalised groups to claim their rights, and may make more of an inspirational use of human rights language.¹⁰ In this article, the two terms will be used interchangeably to refer to the approach which views international human rights and the empowerment of citizens as being crucial to the formulation of national policies.

The article will proceed by examining the scope, content and international protection of the right to food. Since the discussion will be primarily focused on the impact of the financial crisis on poor and developing countries, some analysis will be made of the macro-economic policies and programmes the majority of developing countries have been implementing since the 1980s. This is because it is necessary to understand the long-term factors that have placed these countries in a vulnerable position to respond adequately to various crises that may arise in relation to the provision of food, such as the current financial crisis. With that background, the article aims to show that efforts to enhance people's right to food amidst the current global financial crisis should be wary of including or adopting measures which have not been successful in bringing about the required food access and production in developing countries. While there may be various solutions to addressing the issue of people's enjoyment of their right to food during the current crisis, this article will make an argument for the adoption of a rights-based approach to food policy.

II THE SCOPE OF THE RIGHT TO FOOD

Like most economic, social and cultural rights, the right to food has been a subject of controversy in international law. While the emphasis on food has evolved from one that was primarily viewed as a basic need to one that is a human right, the right to food is still not easily defined nor is its scope readily understood.¹¹ While this right may have been recognised either directly or indirectly in some countries, debate continues as to whether or not this right

9 See for example, HO Sano 'Development and Human Rights: The Necessary, but Partial integration of Human Rights and Development' (2000) 22 *Human Rights Quarterly* (2000) 734–52; C Johnson & T Forsyth 'In the Eyes of the State: Negotiating a "Rights-Based Approach" to Forest Conservation in Thailand' (2002) 30 *World Development* (2002) 1591–605; A Cornwall & C Nyamu-Musembi 'Putting the "Rights-Based Approach" to Development into Perspective' (2004) 25 *Third World Quarterly* 1415–37; I Macpherson 'The The Rights-Based Approach to Adult Education: Implications for NGO-Government Partnerships in Southern Tanzania' (2009) 39 *Compare: A J of Comparative & Int Education* 263–79; H Hintjens 'CEDAW and the Human Rights-based Approach to Programming' (2008) 39 *Development and Change* 1181–92; L Hallgath & D Tarantola 'A Rights-based Approach to the Assessment of Global Health Initiatives' (2008) *Australian J Human Rights* 157–80.

10 L-H Piron *Learning from the UK Department for Int Development's Rights-based Approach to Development Assistance* (2003) 7.

11 Florencio (note 5 above) 175.

should be treated as a human right or a mere social goal of governments. A few countries have enshrined this right or aspects of it in their national constitutions.¹² A notable case is Norway, which has made comprehensive provision for the legislative protection and enjoyment of the right to food.

The scope of the right to food is difficult to determine because it consists of various aspects such as the right to be free from hunger, the right of access to safe drinking water and other resources. It also includes elements of the right to health. As Anderson notes, most economic, social and cultural rights that underpin socio-economic expectations can be met through the food system, or are adversely affected by food system practices.¹³ The right to food implies that societies must have adequate food and includes adequacy of food supply. According to the United Nations (UN) Committee on Economic, Social and Cultural Rights,¹⁴ the concept of adequacy is significant in relation to the right to food because it brings out a number of factors which must be considered when addressing the appropriateness of particular foods or diets. Further, the notion of sustainability, which is intrinsically linked to the notion of adequate food, is also significant and incorporates the notion of long-term availability and accessibility.¹⁵

The Committee on Economic Social and Cultural Rights states that the core content of the right to adequate food implies:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.¹⁶

The right to food therefore comprises three major elements. Firstly, the types of foodstuffs commonly available should be culturally acceptable. This means food must fit the prevailing food or dietary culture. Secondly, the overall supply should cover overall nutritional needs in terms of quantity and quality. Lastly, the food supply should be safe and of good quality.¹⁷ Dietary needs imply a diet which:

contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.¹⁸

12 These include Bangladesh, Brazil, Colombia, the Congo, Cuba, Ecuador, Ethiopia, Guatemala, Haiti, India, Islamic Republic of Iran, Malawi, Nicaragua, Nigeria, Paraguay, Pakistan, South Africa, Sri Lanka, Uganda, Ukraine.

13 MD Anderson 'Rights-based Food Systems and the Goals of Food Systems Reform' (2008) 25 *Agri Hum Val* 593, 595.

14 This Committee was established to promote and protect economic, social and cultural rights in accordance with the International Covenant on Economic, Social and Cultural Rights.

15 General Comment 12 (1999) 'The Right to Adequate Food (Art 11)' E/C12/1999/5.

16 *Ibid.*

17 A Eide 'The Right to an Adequate Standard of Living Including the Right to Food' in A Eide et al (eds) *Economic, Social and Cultural Rights* (1995) 89, 90. See also PV Esterik 'Right to Food; Right to Feed; Right to be Fed. The Intersection of Women's Rights and the Right to Food' (1999) 16 *Agri Hum Val* 226.

18 General Comment 12 (note 15 above).

The Committee on Economic, Social and Cultural Rights has gone further to state that the right to food implies that food should be free from adverse substances such as toxins and other contaminants. Further, that food accessibility includes economic accessibility and physical accessibility. The former applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Physical accessibility on the other hand, implies that adequate food must be accessible to everyone, including the disabled, the sick, the young and the old.¹⁹

Importantly, the right to food is realised when ‘every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or the means for its procurement’. The Committee further maintained that this right should not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients.²⁰

Food is a question of rights, namely the right to have access to the means of production and distribution of food. The right to food therefore needs to be viewed not only in relation to the scarcity of food but also as a result of people being deprived of food-producing resources. Therefore, in terms of conditions and mechanisms for securing food access, national economic and social policies will have a major bearing on food supply and consumption. To promote the right to food, it is important that people’s dietary and nutritional needs are not undermined or neglected. This is because ‘food and the security of its supply are preconditions for nutritional well-being’.²¹

The international protection of the right to food

The right to food has been safeguarded in a number of international documents. The international community saw the provision of food to all people as part of reaching the social, economic and human development objectives governments agreed upon when ratifying international instruments. Article 25 of the Universal Declaration of Human Rights (UDHR) states that food is part of everyone’s right to a standard of living, which is needed for health and general well-being. The International Covenant on Economic, Social and Cultural Rights (ICESCR) strengthens this provision in its art 11 and provides for member states to recognise the right of everyone to an adequate standard of living including adequate food.²² This is viewed as the fundamental right of everyone to be free from hunger. Further, members are to undertake

19 Ibid.

20 Ibid.

21 Florencio (note 5 above) 171.

22 The FAO had a decisive influence in the drafting of art 11(2). It was the express suggestion of the then FAO director-general, when addressing the Third Committee of the General Assembly in 1963, that the limited reference in art 25 of the Universal Declaration to the right of food was significantly expanded upon in the Covenant. P Alston ‘The United Nations’ Specialized Agencies and Implementation of the International Covenant on Economic, Social and Cultural Rights’ (1979) 18 *Col J Transnational L* 79, 89.

individually and through international co-operation measures and specific programmes needed to:

- (a) 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) take 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.²³

Food is an obvious physiological need and ensuring an adequate diet for a population is one of the most important goals of any society. This is reflected in the guidelines on reporting on art 11 of the ICESCR, which guarantees the right to food. The guidelines ask for information about malnutrition and hunger statistics, and request that these be broken down for different vulnerable groups, in order to establish the extent to which the right to food may be in jeopardy.²⁴

The right to food has been included in major international instruments, thus giving it further legal protection. For instance, the Convention on the Rights of the Child stipulates that States Parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods.²⁵ The United Nations Commission for Human Rights considered the special needs associated with the realisation of the right to food. Its Sub-Commission on the Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur to report on the implementation of the right to food in 2000.²⁶ This initiative later resulted in the adoption of General Comment 12 on the Right to Adequate Food by the Committee on Economic, Social and Cultural Rights in 1999.²⁷

The preparation of General Comment 12 came about as a result of the request of member states during the 1996 World Food Summit for a better definition of the rights relating to food as well as a request to the Committee to give particular attention to the Summit Plan of Action in monitoring the implementation of the specific measures provided for in art 11 of the ICESCR.²⁸ As such, General Comment 12 has been described as the ‘most authoritative document formulated to date regarding the right to food’.²⁹ The General Comment also

23 Article 11(2) of the ICESCR.

24 UN Centre for Human Rights *Manual for Human Rights Reporting* (1991); General Comment 12 (note 15 above). See also SI Skogly *The Human Rights Obligations of the World Bank and the International Monetary Fund* (2001) 157.

25 Refer to arts 24 & 27 of the Convention on the Rights of the Child. At the World Food Summit held in November 1996, the Heads of State and Government reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger. See also A Eide ‘The Human Right to Adequate Food and Freedom From Hunger’ <<http://www.fao.org/docrep/w9990e/w9990e03.html>>.

26 Special Rapporteur on the right to food, established by Comm Res 2000/10 (17 April 2000) E/CN.4/RES/2000/10.

27 General Comment 12 (note 15 above).

28 *Ibid.*

29 Florencio (note 5 above) 176.

recommends the adoption of national strategies that are grounded in human rights.

The Committee on Economic, Social and Cultural Rights also states that violations of the right to food can occur through the direct action or inaction of states. This would include, for instance, failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of a state to take into account its international legal obligations regarding the right to food when entering into agreements with other states or with international organisations.³⁰ International organisations and other non-state private entities also have a legal obligation not to interfere with the progressive realisation of human rights and are expected to respect and protect the human right to food.³¹ According to Narula, the effective implementation of the right to food is undermined by the state-centric focus and jurisdictional constraints of international human rights law and argues for transnational corporations (TNCs) and International Financial Institutions (IFIs) like the IMF to be made accountable for violations of the right to food.³²

Nelson and Dorsey state that international human rights treaties require that the international community, including other governments and agencies, shares responsibility for the attainment of rights in national contexts.³³ While the right to food has been protected at the international level, there is still need for the further and continued elucidation and guidance relating to the nature and content of the right to food to allow for its implementation, monitoring and evaluation.

III IMPACT OF MACRO-ECONOMIC POLICIES ON FOOD SECURITY AND FOOD AVAILABILITY

With the onset of the global financial crisis, it is evident that while international legal provisions are available in promoting and protecting people's right to food, in reality this crisis will further add to the food insecurity that was already prevalent in most poor and developing countries. Part of the reason for the prevailing food insecurity in these countries is thought to be the implementation of macro-economic policies and programmes promoted by institutions such as the IMF and the World Bank since the 1980s. It is therefore important that these policies be addressed and their impact on food security shown as this will give a better understanding of the current food crisis and how best to

30 General Comment 12 (note 15 above).

31 See Human Rights Council Resolution 7/1 (27 March 2008) para 13. See also WB Eide 'The Importance of Economic and Social Rights in the Age of Economic Globalization' in WB Eide & U Kracht (eds) *Food and Human Rights in Development, Volume I: Legal and institutional Dimensions and Selected Topics* (2005) 3–40; General Comment 12 (note 15 above).

32 S Narula 'The Right to Food: Holding Global Actors Accountable Under International Law' (2006) 44 *Columbia J of Transnational L* 691–800.

33 PJ Nelson & E Dorsey 'At the Nexus of Human Rights and Development: New Methods and Strategies of Global NGOs' (2003) 31 *World Development* 2014.

mitigate the effects of the financial crisis. An appreciation of the already dire situation is needed in order to work out effective courses of action.

The FAO defines the term ‘food security’ as ‘a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life’.³⁴ The term ‘food security’ thus includes ‘the related concepts of access, sufficiency, security (or vulnerability), and sustainability’.³⁵ Whatever the definition of food security, the bottom line is that it is about taking a certain course of action and making the appropriate policy considerations.

Food security is one of the most complex political and economic problems facing most countries, particularly developing countries. The contention is that for this reason, it needs to be approached from an interdisciplinary perspective and not only from the perspective of neo-classical economics.³⁶ Adopting human rights-based approaches to food will require policies to be designed and implemented which will enhance and promote food security and also promote the availability and production of food.

Governments everywhere usually intervene in food markets, especially when they are triggered by the instability inherent in food production and prices. However, in developing countries, this has proven to be a difficult task. This is because the design and analysis of macro-economic and adjustment programmes which the majority of these countries have been implementing since the 1980s restrain their adjusting governments from intervening in food markets. These programmes or structural adjustment programmes (SAPs) were ‘designed to enable developing countries to change the structure of their economies in order to meet long term needs of efficient utilisation of factors of production to ensure sustained growth’.³⁷ Due to the fact these programmes require governments to remove food subsidies, institute higher consumer prices and make drastic changes in wage levels, this has partly led to the neglect of aspects of food security that are equally essential for providing local people with basic food needs.

The Bretton Woods institutions such as the IMF and the World Bank have always promoted the liberal view which holds that markets will develop efficient productive systems and governments are expected not to intervene in the process. In the case of food security, markets are expected to encourage food movement into deficit areas. The problem with this school of thought is that people cannot depend on the markets to supply them with their basic food needs. Because they are market-oriented, the policy reforms advocated under macro-economic and adjustment programmes stress a reduced role for

34 FAO *The State of Food Insecurity in the World* (2001). See also World Bank *Poverty and Hunger: Issues and Options for Food Security in Developing Countries* (1986).

35 DG Maxwell ‘Measuring Food Insecurity: the Frequency and Severity of “Coping Strategies”’, (1996) 21 *Food Policy* 291–303.

36 Esterik (note 17 above) 225.

37 B Milward ‘What is Structural Adjustment’ in G Mohan et al *Structural Adjustment: Theory, Practice and Impacts* (2000) 24, 25.

the state. This reduced role as well as reduced state expenditure encourages removing food subsidies, particularly on staple food crops like maize. With regard to the removal of food subsidies, consideration must be given to the broader issue of poverty and the constraints that the poor face in acquiring the purchasing power to demand and purchase, through market mechanisms, a calorie-sufficient diet. The removal of food subsidies, for example, represents a decreased input, which has the effect of increasing the cost of household food needs. Singh notes:

It is a great hypocrisy that while farmers in the EU and the USA are still receiving large subsidies even for not producing any crop or producing maize for biofuels, the IMF and World Bank are prescribing the withdrawal of subsidies and liberalisation of markets for agricultural inputs for farmers in poorer countries.³⁸

The extent to which macro-economic policies and programmes influence the availability of food depends on a number of variables. It would be assumed that in countries where large segments of the population live in rural areas, the impact may be less severe. However, price increases of agricultural products have adversely affected the rural poor who are net purchasers of food. Therefore, for smaller rural producers, price increases have led to growing food insecurity. On the other hand, for countries with significant urban populations, the impact is quite profound, as there is a greater dependency on purchasing food. As such, the removal of food subsidies negatively affects both sectors of the population.³⁹

In such a climate, household members respond by reducing consumption and changing dietary methods while seeking additional income.⁴⁰ In many cases, the nutritional status of significant sectors of the population,⁴¹ particularly the poorer sectors, is affected. Food *in*security then arises which is brought on by the growing inequality in the distribution of resources, such as income, which affects both the national and household levels.⁴² Devaluations demanded by macro-economic policies contribute to the growing food insecurity in developing countries because lowering the international value of a country's currency means the reduction or removal of cheaper imported food.⁴³ Therefore, as Young writes:

38 S Singh 'Global Food Crisis: Magnitude, Causes and Policy Measures' (2009) 36 *Int J of Social Economics* 23–36.

39 Skogly (note 24 above) 157–60.

40 P Lundy 'Limitations of Quantitative Research in the Study of Structural Adjustment' (1996) 42 *Social Science and Medicine* 313, 318.

41 Refer also to P Pinstrup-Andersen 'The Impact of Macro-economic Adjustment: Food Security and Nutrition' in S Commander (ed) *Structural Adjustment and Agriculture: Theory and Practice in Africa and Latin America* (1989) 91–102.

42 A World Bank policy study, which analysed data from 29 countries, showed that food security, as measured by the energy content of the national diet, increased as the price of food decreased when income was constant. World Bank *Poverty and Hunger: Issues and Options for Food Security in Developing Countries* (1986). See also P Lawrence (ed) *World Recession and the Food Crisis in Africa* (1986) 129–39.

43 H Stein 'Globalisation, Adjustment and the Structural Transformation of African Economies?: The Role of International Financial Institutions' *CSGR Working Paper 23/99* (1999) 5.

The ... policies of structural adjustment that were initiated by the Bretton Woods institutions for developing countries, have diminished the responsiveness of states in matters of distribution, thus reducing in turn the attractiveness of a normative paradigm so clearly dependent on the state.⁴⁴

While the future of food availability in developing countries is quite unclear with distinct variations from one country to another, in most of these countries, the agricultural sector is central to the economy. As such, development programmes and policies cannot be accomplished without having a major impact on the availability and production of food. The tendency of macro-economic policies and programmes to concentrate on the production of crops for export, as opposed to the production of food crops was meant to enable the earning of foreign exchange through trade. However, this led to the breakdown of traditional farming patterns as agricultural production shifted from food production for domestic consumption to cash crop production. Countries that used to be self-sufficient in food ended up importing large amounts of food, partly as a result of these production shifts.⁴⁵ Export crop concentration thus led to a significant decrease of per capita output of staple food and increases the reliance on food imports. The end result was the rise in the cost of food, leading to an increase in malnutrition.⁴⁶ For instance, partly due to the advice of the IMF in 2002, Malawi sold its country's Strategic Grain Reserve and reduced the country stock from 165,000MT to 60,000MT. This resulted in Malawi experiencing one of the worst famines that led to hunger-related deaths.⁴⁷

Thus, the neo-liberal promotion of export crops has had a significant impact on food supply in developing countries as it ultimately affected consumption and nutrition. Where improvements have been experienced in food output in these countries, some writers have maintained that this had been by accident of nature and *not* by the design of SAP policy reform.⁴⁸ Although there are other factors⁴⁹ that affect food supply and production, evidence from various studies suggest that in the past couple of decades, macro-economic policies and programmes have been a major contributory factor to the current food

44 KG Young 'Freedom, Want, and Economic and Social Rights: Frame and Law' (2009) 24 *Md J Int L* 182–208.

45 See D Barkin, RL Batt & BR DeWalt *Food Crops vs. Feed Crops: Global Substitution of Grains in Production* (1990); Skogly (note 24 above) 158.

46 'Malnutrition' is widely accepted to be the consequence of people's inability to afford food that is available.

47 Action Aid *State of Disaster: Causes, Consequences and Policy Lessons from Malawi* (2002). Dorward & Kydd argue that the Malawi food crisis showed the failures of development policies over the last 40 years. A Dorward & J Kydd 'The Malawi 2002 Food Crisis: The Rural Development Challenge' (2004) 42 *The J of Modern African Studies* 343–61.

48 BK Campbell & J Loxley 'Introduction' in BK Campbell & J Loxley (eds) *Structural Adjustment in Africa* (1989) 4, 5.

49 For example, severe climatic conditions, like droughts and floods.

crisis in developing countries.⁵⁰ According to Khor, due to these policies, Africa has ‘experienced wholesale alteration of beneficial agricultural advice because of wrong-headed stipulations’.⁵¹

Due to the impact that macro-economic policies have on human rights, and in particular, the right to food, the Committee on Economic, Social and Cultural Rights stressed that:

The international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis. Care should be taken, in line with the Committee’s general comment No. 2, paragraph 9, in any structural adjustment programme to ensure that the right to food is protected.⁵²

The concern is that people in developing and low-income countries have been facing challenges in enjoying their right to food. This is due to a number of reasons,⁵³ including the implementation of these macro-economic programmes and policies which appear to make access to food even more of a struggle for the average person. Since there is a great possibility of the struggle for food becoming worse with the current financial crisis, states must now be serious about designing, adopting and implementing policies that can enhance and not violate people’s right to adequate food.

In response to the food price crisis, the UN secretary general Ban Ki-Moon established in April 2008, a High Level Task Force (HLTF) on the global food security crisis. Composed of heads of UN agencies, funds and programmes and Bretton Woods institutions, including the IMF and the World Bank, the primary objective of the HLTF is to promote a comprehensive and unified response to the challenge of achieving global food security. While the HLTF has produced a Comprehensive Framework for Action (CFA), some writers are of the view that there is a lack of leadership and co-ordination in its implementation.⁵⁴ Further, that while the CFA aims to provide guidance to governments in promoting the regular assessment of food and nutrition insecurity, this has not been couched in human rights terms but has been formulated as a tool to guide policy-making at the national level. As such, ‘the dimension of account-

50 Various studies have been made. See for example P Pinstrup-Andersen ‘The Impact of Macro-economic Adjustment: Food Security and Nutrition’ in S Commander (ed) *Structural Adjustment and Agriculture: Theory and Practice in Africa and Latin America* (1989) 91–102; WHO/World Food Programme *Structural Adjustment, Health, Nutrition and Food Aid in the African Region* (1988); Pinstrup-Andersen (note 41 above); J Govereh & TS Jayne ‘Effects of Cash Crop Production on Food Crop Productivity in Zimbabwe: Synergies or Trade-offs?’ (1999) *International Development Working Paper 74*; D Muntamba, cited in W Bello et al *Dark Victory: The United States and the Global Poverty* (1999) 55; J Beghin, J-C Bureau & SJ Park ‘Food Security and Agricultural Protection in South Korea’ (2003) 85 *Amer J Agr Econ* 618, 630.

51 Martin Khor *The Impact of Trade Liberalisation on Agriculture in Developing Countries – The Experience of Ghana* (2008).

52 General Comment 12 (note 15 above).

53 It is a notorious fact that these countries have widespread problems that include debt, poverty, drought, disease and economic and political instability.

54 Mittal (note 6 above) 16.

ability remains absent, and the establishment of recourse mechanisms for the victims of violations of the right to food is not recommended'.⁵⁵

Importantly, the World Bank and the IMF continue to recommend market-based responses to market failures and to advocate for global food markets to deal with the crisis.⁵⁶ Mittal notes that based on its 2008 World Development Report, the World Bank fails to 'critically reform the model of agricultural development it has promoted over the past thirty years'.⁵⁷ The IMF has also recently stated that it is committed to helping low-income countries hit by high food prices take appropriate policy action while providing financial assistance to some of the worst affected nations.⁵⁸ However, it has been pointed out that 'restrictive IMF conditions and policy advice, which have already been problematic in times of economic growth and increasing aid flows, would be reckless in times of crises'.⁵⁹ This is because:

Despite changes in rhetoric, IMF policy advice and conditions are still having the same detrimental effects on social protection, decent work and poverty in countries forced to take out loans due to the financial crisis, a new report released today shows.⁶⁰

It remains to be seen what solution or impact the HLTF will have on improving food security since the major players involved have been promoting macro-economic policies which have had, and continue to have, adverse effects on people's enjoyment of their right to food. With such a record, it is imperative that policies that have not worked in developing countries be abandoned and new strategies formulated. The central thrust of this article is that a different approach needs to be taken in addressing food policy, particularly when the current financial crisis has added to an already existent food crisis. The central issue is that the financial crisis as it relates to food, calls for more than economic assumptions and predictions. As the Special Rapporteur on the right to food has stated:

if a response to the current crisis is sought exclusively in a rise in the overall production of agricultural commodities in order to address the imbalance between the supply and the demand for food as a source of tension on the global commodities markets, it will largely miss its target. This is not only because tackling food insecurity and increasing agricultural investment do not explicitly tackle malnutrition, which affects 2 billion people in the world who suffer from micronutrient deficiency.⁶¹

55 Report of the Special Rapporteur on the Right to Food, O De Schutter 'Building Resilience: A Human Rights Framework for World Food and Nutrition Security' A/HRC/9/23 (8 September 2008).

56 M Plant *Food Security and the Increase in Global Food Prices* (2008).

57 Mittal (note 6 above).

58 IMF 'IMF Helping Countries Respond to Food Crisis' paper presented at Food Security Conference (2008) <http://www.imf.org/external/pubs/ft/survey/so/2008/NEW060308A.htm>.

59 EURODAD 'Bail-Out or Blow-Out? IMF Policy Advice and Conditions for Low-Income Countries at a time of Crisis' (2009).

60 EURODAD 'Doing a Decent Job? New Report on the IMF shows a Leopard cannot Change its Spots' (2009); see also Dorward & Kydd (note 47 above) 343–61.

61 De Schutter (note 55 above).

IV THE GLOBAL FINANCIAL CRISIS AND THE IMPACT ON PEOPLE'S RIGHT TO FOOD

As already stated, the global financial crisis has come at a time when there was already a global food crisis, which was caused by, among others, soaring oil prices,⁶² the diversion of food crops such as maize to making biofuels,⁶³ climate change,⁶⁴ and the rising global population. According to the FAO, the global financial and economic crisis has pushed an additional 100 million people into hunger in 2009 as the number of undernourished people in the developing world has increased from 848 million to 1,020 million from 2003–05 to 2009. For instance, in September 2009, domestic staple foods in developing countries cost on average 20 per cent more in real terms than two years earlier.⁶⁵

Due to the global financial crisis, foreign direct investment (FDI) and other capital flows have declined, demand for exports has fallen sharply, remittance flows have slowed and are expected to fall in most low-income countries.⁶⁶ Poor and vulnerable people are experiencing the negative impact of the financial crisis as a result of declining wages and household incomes, job losses, and credit cuts. Countries with high levels of hunger are most vulnerable to the global downturn. This is because the financial crisis has increased 'uncertainty about the levels of future aid and funds for social protection, which are essential for avoiding hunger and starvation among the most vulnerable'.⁶⁷

While it is generally acknowledged that significant investment in agriculture is required to eliminate poverty and achieve food security in developing countries, the current crisis will impede this due to the contraction of export markets, development aid and other investments. There is an obvious link between food and the financial crisis in that the latter has severe implications for food security.⁶⁸ For instance, the International Food Policy Research Institute (IFPRI) estimates that recession and reduced investment in agriculture could push 16 million more children into malnutrition in 2020.⁶⁹ There

62 J Ghosh 'The Global Food Crisis' (2008) 212 *Third World Resurgence* 4–7.

63 See A Eide *The Right to Food and the Impact of Liquid Biofuels (Agrofuels)* (2008); C de Fraiture, M Giordano & Y Liao 'Biofuels and Implications for Agricultural Water Use: Blue Impacts of Green Energy' (2008) 10 *Water Policy* 67–81; D Tenenbaum 'Food vs Fuel: Diversion of Crops Could Cause More Hunger' (2008) 116 *Environ Health Perspect* A254–A257; D Mitchell 'A Note on Rising Food Prices' *Policy Research Working Paper* 4682 (2008).

64 FAO *Crop Prospects and Food Situation* (2008).

65 FAO *Food Security and the Financial Crisis* (2009). See also FAO of the United Nations 'More People than ever are Victims of Hunger' (2009) <http://www.fao.org/fileadmin/user_upload/newsroom/docs/Press%20release%20june-en.pdf>.

66 H Bredekamp 'Implication of the Financial Crisis and Food Price Risks on Low-income Countries' speech given at the World Bank–Civil Society Roundtable on the Global Food and Financial Crises (10 September 2009).

67 Global Hunger Index *The Challenge of Hunger: Focus on Financial Crisis and Gender Inequality* (2009).

68 T Benson, N Minot, J Pender, M Robles & J von Braun *Global Food Crises: Monitoring and Assessing Impact to Inform Policy Responses* (2008); D Heady *From Food/Fuel Crisis to Global Recession: What Another Perfect Storm could mean for the World's Poor* (2009).

69 J von Braun *Food and Financial Crises: Implications for Agriculture and the Poor* (2008).

is thus an urgency to tackle the problem of food security in an era of tough financial and economic times.

Studies have shown that in the past 12 to 15 months, global food prices have risen dramatically and that worldwide food reserves are at their lowest in 35 years and that as such, food prices are likely to stay high in the foreseeable future.⁷⁰ To understand the impact of the global financial crisis at the local level in the world's least developed countries, the World Food Programme (WFP) conducted case studies in a number of countries, including Armenia, Bangladesh, Ghana, Ethiopia, Nicaragua, Tajikistan and Zambia. The study found that the countries that are more vulnerable are the ones whose economies are linked with others, and they have high levels of remittances, trade, tourism, FDI and official development assistance (ODA).⁷¹

According to Shattuck, while government involvement is required, an intervention that addresses the root causes of both the food and financial crisis is necessary. This is because both the food and financial crises are 'rooted in similar policies that have fed on each other for years. Both crises find their origins in the failings of free market fundamentalism'.⁷² There have been talks, recommendations and debates about how best to respond to the effects of these crises. Some writers are of the opinion that a solution to the current food crisis would be for the FAO to establish a global fund which would be contributed to by all nations that can be accessed by net food importing countries in hard times.⁷³ Others propose that food aid through the WFP is the solution to the crisis,⁷⁴ while suggestions have been made on the establishment of a global reinsurance fund to help poor countries against sudden shocks.⁷⁵

The international community needs to take appropriate and effective measures to cushion the effects and impact of the financial crisis and ensure that people can still enjoy their basic rights such as the right to food. This will ensure the prevention of a catastrophe culminating in hunger, malnutrition and death from starvation due to people being food insecure. In order to have any legitimacy, the right to food must therefore have national, regional and international institutions that have been bestowed legitimate authority to decide when nations' policies unreasonably deny people their rights.⁷⁶

As stated earlier, this article aims to highlight the fact that the current global crisis requires an approach that is appropriate, progressive and reflects current needs in order to meet people's food needs. Such an approach will consider

70 Singh (note 38 above); M Ivanic & W Martin *Implications of Higher Global Food Prices for Poverty in Low-income Countries* (2008).

71 J Kanyangwa Luma & I Sanogo *The Global Financial and Economic Crisis and Food Insecurity at the Local Level* (2009).

72 A Shattuck *The Financial Crisis and the Food Crisis: Two Sides of the Same Coin* (2008).

73 Singh (note 38 above).

74 *The Economist* 'The Silent Tsunami' (19–25 April 2008).

75 SG Reddy 'Safety Nets for the Poor: A Missing International Dimension?' in GA Cornia (ed) *Poor Poor Macroeconomics* (2006) 160.

76 W Hauter 'The Limits of International Human Rights Law and the Role of Food Sovereignty in Protecting People from further Trade Liberalization under the Doha Round Negotiations' (2007) 40 *Vand J Transnational L* 1071–98, 1088.

the fact that the global financial crisis will have varying effects across and within countries. It is therefore necessary that the international community and governments in particular, devise policies and strategies aimed at mitigating the impact of the crisis. Effective and appropriate interventions must be sought and implemented, with particular regard for the poor and vulnerable. Local remedies/solutions must be explored and the various stakeholders must make an input in the policy-making process to meet food requirements and protect people's basic right to food. Importantly, as stated by the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), it must be acknowledged that market forces alone cannot deliver food security to the poor and that a radical change to agriculture policy and practice is needed. The IAASTD advocates for the paradigm of food security to embody policies that invigorate the food agricultural sector, and 'consider them in a broader development framework and link them to variables such as food trade, energy security, and climate change'.⁷⁷

V ADOPTING A RIGHTS-BASED APPROACH TO FOOD POLICY

Esterik notes that of all human rights abuses, the denial of food as a human right hits closest to home.⁷⁸ Thus, lack of access to food is just as important to consider as levels of resources when designing financial rescue packages and national food policies. It has been pointed out that 'solutions to food poverty go beyond welfare transfers or health services to include issues of basic human rights, sustainable development, health inequalities and social inclusion'.⁷⁹ This is because there are various factors that determine the extent of well-being for the individual. Aspects such as the nutritional and health status and education of a community can substantially shape the future productivity of any national economy. Thus, the right to food is exercised, not only by eating specific types of food, but also by having and doing whatever is required to provide food, including the implementation of appropriate national policies and development programmes. The way in which the right to food is exercised will vary from country to country and depend on different levels of development.⁸⁰

The Committee on Economic, Social and Cultural Rights has encouraged the adoption of a national strategy to food policy which ensures food and nutrition security and is based on human rights principles that define the objectives and the formulation of policies and corresponding benchmarks.⁸¹ Food security analysis is imperative as it offers considerable latitude on which outcomes may be desirable to anticipate and while addressing shocks

77 South Centre *Food and Energy Crisis: Time to Rethink Development Policy* (2008).

78 Esterik (note 17 above) 230.

79 E Dowler, S Turner & S Dobson *Poverty Bites: Food, Health and Poor Families* (2001).

80 Refer generally to J O'Manique 'Human Rights and Development' (1992) 14 *Human Rights Quarterly* 78–103.

81 General Comment 12 (note 15 above).

or threats and their impact. It also examines how people can be grouped into appropriate and useful units of analysis.⁸²

It has been stated that there are many factors and policies that can affect the enjoyment of the right to food, including the availability of land, credit, employment and the general purchasing power. Currently, high consumer prices, the lack of food subsidies and declines in income and wages are putting the right to food at risk. This is because food represents about 60 to 80 per cent of consumer spending in poor countries in comparison to 10 to 20 per cent in rich countries.⁸³ The extent of the impact of other factors on food availability and food security is also important as this ultimately determines their impact on the right to food. Ely Yamin adds:

redressing or fulfilling the economic and social rights of people ... requires not only the numerator (e.g., the number of malnourished citizens), but also of the denominator (e.g., the maximum resources of the state to alleviate hunger). Without some universal proxy measure, such a denominator potentially requires complex and country-specific evaluations of, *inter alia*, percentages of government expenditures and cross-financing subsidies dedicated to food programs. The numerator alone tells us little about the responsibility of the state in those obvious capability failures or how to make comparisons among states.⁸⁴

Human rights law does not require that all segments of society necessarily experience an improved standard of living. It does, however, identify minimum standards for the treatment of individuals and sets conditions below which any policies or programmes are not justifiable. Human rights standards thus offer a planning tool and suggest ways in which such policies can be implemented.⁸⁵ According to some writers, this trend and its growing prominence 'should spark critical inquiry to evaluate its significance and value, and to maximize its contribution to the well-being of poor people and communities'.⁸⁶

According to Haddad and Oshaug, there has been an increased recognition of the importance of the human rights approach for designing policies and interventions that promote food and nutrition security.⁸⁷ This increased attention is linked with a trend in development circles to discuss and explore rights-based approaches to social development and poverty reduction.⁸⁸ Thus, a human rights approach:

emphasizes and amplifies the concern on the process of development. Assessment of the fulfilment of human rights would focus not only on what progress has been made on the goals

82 M Dilley & TE Boudreau 'Coming to Terms with Vulnerability: A Critique of the Food Security Definition' (2001) 26 *Food Policy* 229–47.

83 United Nations Conference on Trade and Development *The Least Developed Countries Report* (2008); Skogly (note 24 above) 157.

84 AE Yamin 'Reflections on Defining, Understanding, and Measuring Poverty in Terms of Violations of Economic and Social Rights Under International Law' (1997) IV(2) *Georgetown J on Fighting Poverty* 296.

85 SI Skogly 'Structural Adjustment and Development: Human Rights – An Agenda for Change' (1993) 15(4) *Human Rights Quarterly* 752.

86 Nelson & Dorsey (note 33 above) 2022.

87 L Haddad & A Oshaug 'How does the Human Rights Perspective help to Shape the Food and Nutrition Policy Research Agenda?' (1998) 23 *Food Policy* 329.

88 K Mechlem 'Food Security and the Rights to Food in the Discourse of the United Nations' (2004) 10 *European LJ* 643, 645.

that were set but also on the extent to which the gains are protected against potential threats. In relation to progress, the focus of monitoring in a rights based approach is not the number who have their needs met, but the number whose needs have not been met, and therefore whose rights may have been violated.⁸⁹

While one study found that a human rights discourse was ill-suited to achieve the fundamental structural change to the operation of the international economic system as a particular structural factor which contributed to world hunger,⁹⁰ the present study however contends that a human rights approach can be used to uphold the right to food in an era of global financial turmoil as it encompasses a wide range of considerations and requires the input of various stakeholders and the local community on how best to mitigate the effects of a crisis. While the right to food has been developed substantially, more needs to be done about its implementation.⁹¹ A human rights approach is the best way to go about implementing this right as it would involve the establishment of appropriate institutional mechanisms that would:

(a) identify, at the earliest stage possible, emerging threats to the right to adequate food, by adequate monitoring systems; (b) assess the impact of new legislative initiatives or policies on the right to adequate food; (c) improve coordination between relevant ministries and between the national and subnational levels of government, taking into account the impact on the right to adequate food, in its nutritional dimensions, of measures taken in the areas of health, education, access to water and sanitation, and information; (d) improve accountability, with a clear allocation of responsibilities, and the setting of precise time frames for the realization of the dimensions of the right to food that require progressive implementation; and (e) ensure the adequate participation, particularly of the most food-insecure segments of the population.⁹²

Food policy offers substantial challenges to governments and policy-makers as it reaches across numerous policy areas.⁹³ Advantages to adopting a rights-based approach to food policy include the recognition of individuals as subjects who possess human rights, the promotion of state compliance with international standards, the utilisation of more issues rather than relying solely on statistics and other quantitative measurements and the participation by citizens and the wider community in the process.

(a) Recognition of individuals as human beings with rights

The importance of having a rights-based approach to food policy is that such a strategy views individuals as subjects and not simply as objects and passive recipients of goods and services, but as rights-holders with corresponding claims and available remedies.⁹⁴ Narula points out that while an economic

89 Florencio (note 5 above) 179.

90 J Mowbray 'The Right to Food and the International Economic System: An Assessment of the Rights-based Approach to the Problem of World Hunger' (2007) 20 *Leiden J of Int L* 545–69.

91 Hauter (note 76 above) 1072.

92 De Schutter (note 55 above).

93 D Barling, T Lang & M Caraher 'Joined-up Food Policy? The Trials of Governance, Public Policy and the Food System' (2002) 36 *Social Policy & Administration* 556–674.

94 *Ibid* 179.

approach emphasises averages and not individuals, a rights-based approach is premised on the notion that each and every individual can lay claim to basic rights and basic services.⁹⁵ This is because human rights are based on the principle of human dignity and ‘require *a priori* value commitments’.⁹⁶ The Committee on Economic, Social and Cultural Rights affirmed that:

the right to adequate food is indivisibly linked to the inherent dignity of the human person and ... It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.⁹⁷

A rights-based approach therefore constitutes a shift from basic needs to rights, from beneficiaries to claimants.⁹⁸ Individuals have the power to seek remedies and compensation for any violations of their rights, which may take the form of ‘restitution, compensation, satisfaction or guarantees of non-repetition’.⁹⁹ A human rights approach thus ‘requires that the debates begin from the absolute obligation to protect and fulfil every individual’s rights’.¹⁰⁰

Since human rights are about beneficiaries and claimants, it then implies that there will be corresponding duties or obligations. A human rights system has the rights holder on the one hand, and the one who is under a duty or obligation to provide that right on the other. The state or government is normally the one that has the legal obligation to provide human rights and can and should be held accountable for any actions or inaction taken to effect rights. There are consequences or implications if such obligations are breached. As legal providers of human rights, states then have a duty to respect, protect and provide these rights when designing national food policies or strategies dealing with threats to food security.

(b) Encompassing a wider range of considerations

A human rights approach to food policy is a ‘wider, more encompassing, and distinct objective in itself’ as it is based on goals which are ‘existing, comparatively specific and continuously becoming more precise’ as opposed to vague and replaceable policy goals.¹⁰¹ Writers like Eide maintain that the ‘rationale for human beings to be well fed should not be perceived and advocated on economic terms alone’.¹⁰² As Florencio notes:

The use of the human rights approach to adequate food necessarily implies a re-examination and fundamental changes in the way we think about hunger and malnutrition and their

95 Narula (note 32 above) 702.

96 Mechlem (note 88 above) 643. See also, P Alston ‘What’s in a Name: Does it Really matter if Development Policies refer to Goals, Ideals or Human Rights?’ in H Helmich & E Borghes (eds) *Human Rights in Development Co-operation SIM Special No 22* (1998) 104.

97 General Comment 12 (note 15 above).

98 Mechlem (note 88 above) 646.

99 General Comment 12 (note 15 above).

100 Nelson & Dorsey (note 33 above) 2014.

101 Mechlem (note 88 above) 648.

102 A Eide ‘The Right to Adequate Food and to be Free from Hunger: Updated Study on the Right to Food The Realization of Economic’ *Social and Cultural Rights* (1999).

causes; the manner of shaping and reshaping policies; the context and processes of planning, monitoring and evaluating programmes; and the substance and method of research and education in food and nutrition.¹⁰³

In this way, a human rights approach should not be seen as the mere interpretation of human rights but should be viewed as a comprehensive implementation of human rights – one which tackles difficult issues of underlying beliefs, legitimacy of action, practice of power, and lines of accountability.¹⁰⁴ Such an approach does not replace development efforts since national strategies should be all inclusive and require ‘full compliance with the principles of accountability, people’s participation, decentralization, legislative capacity and the independence of the judiciary’.¹⁰⁵ In a study that examined Canada’s commitments to the right to food, Canadian policies, case law and social trends were among the many factors taken into account in assessing Canada’s performance with respect to the right to food. The study provided recommendations for ‘policy changes that could deal with complex issues of state accountability, social safety nets and vulnerable populations, and joined-up policy frameworks that could help realise the right to adequate food’.¹⁰⁶

It would be advisable for states for instance, to employ Guideline 13 of the Right to Food which advises the utilisation of a food security and mapping mechanism to identify food insecure individuals and groups. Assessments in this regard would then be able to help improve the law-making and policy-making processes. Guideline 17 of the Right to Food further elaborates on the set of recommendations related to conducting impact assessments, developing monitoring purposes, impact and outcome indicators, and prioritising the monitoring of the food security situation of vulnerable groups and their nutritional status.¹⁰⁷ With the current financial crisis, states must adopt a framework that ensures the legal enforceability of the right to food and the deterrent of any discrimination in access to food or means for its procurement by any individuals or groups.

In an era of global financial crisis, a human rights approach would take into account a varied array of factors as well as the inclusion of social safety nets, whether this is in the form of government subsidies or international aid. As noted by Ravallion, the current financial crisis will have a lasting impact on the nutrition of poor families and it is imperative that key design features for safety net programmes are identified to help compensate for the likely welfare losses.¹⁰⁸ Thus measures such as the establishment of grain reserves or grain banks would ensure that local communities are supported in times of financial crises. Thus, as Young states:

103 Florencio (note 5 above) 169.

104 Mechlem (note 88 above) 646.

105 Florencio (note 5 above) 178.

106 K Rideout et al ‘Bringing Home the Right to Food in Canada: Challenges and Possibilities for Achieving Food Security’ (2007) 10(6) *Public Health Nutrition* 566–73.

107 General Comment 12 (note 15 above).

108 M Ravallion ‘Bailing Out the World’s Poorest’ (2009) 52 *Challenge* 55–80.

Applying the frame of rights to a challenge such as hunger may foreground the more structural causes of the problem (or, in normative terms, an injustice), and different objects of recourse or remedy.¹⁰⁹

(c) Compliance with international standards

Adopting a human rights approach to food policy is in line with state responsibility which has also been summarised as having a duty to avoid depriving, to protect from depriving, and to aid the deprived.¹¹⁰ It is also an indication that the state concerned has respect for international standards and its corresponding obligations. The failure to acknowledge a widely accepted right can undermine a government's legitimacy by making clear to its citizens and the rest of the world that it does not act in the interests of its people.¹¹¹

A rights-based approach demonstrates that 'states have international obligations that set requirements for both the outcome and the process of development'.¹¹² According to Alston and Quinn, states should comply with a process requirement to meet their obligations as that reflects the importance of the relevant rights.¹¹³ A rights-based approach requires states to be explicit on principles and to recognise all policies, programmes, laws, and other actions on their national and international human rights commitments. In this way, it can be seen that there is a clear international standard against which action can be measured.¹¹⁴ It has been proposed that in order for states to be assisted in this regard, the FAO Right to Food Unit be strengthened so as to make its work on the right to food less dependent on the discretion of voluntary donor contributions.¹¹⁵

In determining which actions or omissions of the state amount to a violation of the right to food, it is important to distinguish the inability from the unwillingness of a State Party to comply with its legal obligations. International human rights law requires that every effort be made to utilise all available resources that the state has at its disposal to meet the minimum obligations.¹¹⁶ Robertson, while discussing nutrition and human rights suggested that there are five types of resources, namely, financial, human, natural, technological and informational.¹¹⁷

Utilising all these various types of available resources would show the level of respect that a state has for human rights as it is required under international law to demonstrate that every effort has been made to use all available resources at its disposal to satisfy the minimum obligations. In a global financial downturn, it will be quite critical that states utilise all available resources

109 Young (note 44 above).

110 P Alston & K Tomasevski (eds) *The Right to Food* (1984) 37.

111 Anderson (note 13 above) 594.

112 Mechlem (note 88 above) 646.

113 P Alston & G Quin 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly* 180–1.

114 Mechlem (note 88 above) 646.

115 De Schutter (note 55 above).

116 Florencio (note 5 above) 178.

117 RE Robertson 'Nutrition, Human Rights and Resources' (1996) 21 *Food Policy* 55–71.

to ensure that people have access to food and food-producing resources. This includes concerted and co-ordinated action being implemented by the international community and not just by states unilaterally. As the Special Rapporteur stated:

States acting unilaterally may find it difficult to effectively tackle the impact of speculation on the prices on international markets, for instance by improving the regulation of investment funds or by taxing such movement of funds.¹¹⁸

(d) Democratic participation in food choices and policy

According to Anderson, amongst the core criteria of any rights-based approach to food policy is that there is the democratic participation in the food system of choices affecting more than one sector, there must be a meaningful political voice and ability to participate in decision-making and that such an approach has the absence of human exploitation, resource exploitation, and that there is a fair and transparent access to the food system.¹¹⁹ Even during a global financial crisis, states are still expected to meet their obligations under international law. A rights-based approach promotes social development because people are encouraged to contribute to and participate in a process that affects them and to which they are legally entitled.¹²⁰ The advantage of the democratic participation of citizens is emphasised as thus:

Broad public participation allows vital concerns such as public health, access for people who cannot afford to buy food, ability to exercise choice over food production methods and technologies, and environmental quality to be debated and for results to become part of public food policy. In the absence of participation by citizens and residents beyond a passive consumer role, economic factors drive food system choices and these qualities tend to be externalized. This is one drawback to market-based solutions to food system problems (another important drawback being exclusion of all people who cannot afford to participate in the market).¹²¹

States are therefore encouraged to devise ‘appropriate institutional mechanisms to secure a representative process towards the formulation of a strategy, drawing on all available domestic expertise relevant to food and nutrition’.¹²² Due to the inclusion and involvement of the community, there would be a better understanding of the eventual policy choices to be made about food. This would result in food sovereignty, which has been described as:

the right of peoples to define their own food and agricultural policies, to protect and regulate domestic agricultural production and trade in order to achieve sustainable development, and to determining the extent to which they want to be self-reliant in food production.¹²³

118 De Schutter (note 55 above).

119 Anderson (note 13 above) 593.

120 J Pettit & J Wheeler ‘Developing Rights? Relating Discourse to Context and Practice’ (2005) 36(1) *IDS Bulletin* 1–8.

121 Anderson (note 13 above) 601.

122 General Comment 12 (note 15 above).

123 Hauter (note 76 above).

The FAO has stressed the importance of democratic participation and emphasised that states have to ‘empower individuals and civil society to make demands on their governments ... and ensure the accountability and transparency of governments and state decision-making processes’.¹²⁴ According to Lang, this ability to be involved in making choices about food production and food consumption is based on open access to information and can be referred to as ‘food democracy’.¹²⁵ Importantly, the adoption of a human rights-based approach not only promotes democratic participation of citizen, but it also empowers them and gives them the capacity to guard against any violation of their right to food.

Haddad and Oshaug have summarised other advantages of adopting a human rights strategy as:

- providing food and nutrition policy-makers with increased leverage in the battle to prioritise food and nutrition issues higher in public spending allocations;
- leading to a greater appreciation of the integrated nature of approaches to overcoming food insecurity and malnutrition;
- resulting in a better synergism between process oriented and outcome oriented development approaches;
- unlocking existing resources for the fight against malnutrition; and
- providing minimum moral standards and targets for humanitarian relief.¹²⁶

While some advantages of having a rights-based approach have been enumerated, the overriding goal, as maintained by Greedy and Ensor is that:

rights become embedded in everyday political and social expectations, so that the collective vision of how one should be treated and what one deserves, simply by being human, is transformed and steadily co-created to improve human potential for self-realization.¹²⁷

In the case of the right to food, this would imply that states take the necessary steps to ensure that there is local participation in the decisions about food and food-related policy and that all available resources are utilised to cushion the impact the global financial crisis. Most importantly, it also implies that not only are human rights or legal considerations taken into account but a wide range of considerations and stakeholders are involved in the process.

124 FAO ‘Final Report of the Chair. Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security’ <<http://www.fao.org/docrep/meeting/008/J3345e/j3345e01.htm>>.

125 T Lang ‘Towards a Food Democracy’ in S Griffiths & J Wallace (eds) *Consuming Passions: Cooking and Eating in the Age of Anxiety* (1998) 13–24.

126 Haddad & Oshaug (note 87 above) 329.

127 P Greedy & J Ensor (eds) *Reinventing Development? Translating Rights-based Approaches from Theory into Practice* (2005) quoted in Anderson (note 13 above) 594.

VI IMPLEMENTING THE RIGHT TO FOOD AND MOVING FORWARD IN AN ERA OF GLOBAL FINANCIAL CRISIS

The right to food is a basic element in people's need to survive and to promote their general welfare and should not be viewed or treated as a privilege. Most developing countries are unable to provide the infrastructure or the agricultural policies needed to boost food production. They lack adequate policies aimed at strengthening the food sector to compete against the export crop sector. Nonetheless, all countries have an obligation to give urgent attention to any activities that violate or create obstacles to the enjoyment of the right to food. This is required even during periods of economic and financial recession such as the current global crisis. As the Committee on Economic, Social and Cultural Rights states:

Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.¹²⁸

To enhance people's right to food, policies which include an emphasis on regional self-sufficiency would need to be taken into account. Governments will need to examine how best to mitigate the effects of adjustment on food access, availability and production in light of the current financial crisis. Such an assessment would need to be preceded by empirical analyses of issues such as what the effects of changes in food prices are, how nutritional levels are likely to be affected by the crisis and the extent or likelihood of a decline in food access and availability. Specifically, whether the removal of food subsidies leads to a decline in the health and nutritional status of local populations and how this can be mitigated. While there has been progress in reducing malnutrition and diseases such as kwashiorkor are a thing of the past, world leaders need to be aware that without effective food policies and safety nets cushioning people from the impact of the financial crisis, there could be a backward turn to the progress made in the fight against malnutrition.

Much research still needs to be conducted on the right to adequate food. Factors to be deliberated and examined at length include:

- stock-taking and analysis of national plans of action for food and nutrition using a rights-based framework;
- processes for creating partnerships and networks around the right to food perspective;
- assessing present state of knowledge and competence on right to adequate food among the actors in a human rights system and determining ways of upgrading the same;
- identifying, constraining and enhancing factors for the building of sensitivity to food rights-related issues; and

128 General Comment 12 (note 15 above).

- developing appropriate indicators of both outcomes and processes and the subsequent reporting/feed back mechanisms.¹²⁹

States must as a matter of urgency, undertake a systematic assessment of available resources and devise a set of desired goals and objectives to ensure that the adverse impact of the financial crisis on people's right to food is minimised as much as possible. A system which measures or monitors state compliance with the right to food will need to be put in place with the state utilising all available resources to ensure that people have the minimum requirements to enjoy their human right to food. For policy-makers to be able to make use of a human rights approach to food policy, it is necessary that they and all other key stakeholders in the process are educated and made aware of their human rights obligations and duties.

VII CONCLUSION

All states, particularly poor and developing ones, need to urgently address issues of food access, food availability, food production and indeed people's right to adequate food. There must be some institutional change in the policy-making process regarding the way in which these issues have been addressed to date. It is hoped that the current global financial crisis can provoke or lead to some policy change in the system of governance at the local, national, regional and international levels.

Seeking solutions to the crisis through the adoption of a rights-based approach will no doubt present some challenges, especially to national governments that have not been in the habit of interpreting and designing national policies from a human rights point of view. However, there is no better time than now to address the issue of adopting an approach which has the potential to be productive and progressive as well as having the ability to respond to the current crisis in helping to protect people's right to food.

A human rights approach to food policy should not be viewed as a simplistic or theoretical exercise but as a method that encompasses a wide range of issues and one that calls for a co-ordinated effort from not only the legal profession but also the wider community. The invaluable input from human rights activists and scholars, development planners, nutritionists, dieticians, social workers, economists and so on would be crucial to the process. Due to the fact that appropriate indicators would be formulated to help the policy process and the adoption of a comprehensive national framework, a human rights approach to food policy can add a fresh and all-inclusive perspective which addresses people as subjects possessing rights for which they can seek remedial action.

129 Florencio (note 5 above) 180.