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**The Human Right to Adequate Food:
Seeking domestic compliance with Canada's
international obligations.**
New possibilities for food security and social policy

Paper presentation
by

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**The human right to adequate food: seeking domestic compliance with Canada's international obligations
New possibilities for food security and social policy**

1. Why the right to food

2. The right to food: International framework

3. Is there a right to food in Canada?

4. Domestic compliance: new possibilities for the role of social policy

References and websites

1. Why the right to food

➤ **Prevalence of food insecurity across Canada**

- 3.7 million Canadians (14.7% of population aged 12 or over) experienced food insecurity in 2000/01. Canadian Community Health Survey Considered food insecure if for lack of money they
 - had not eaten the quality or variety of food they wanted (12%)
 - or, had worried about not having enough to eat (11%)
 - or, had actually not had enough to eat (7%)
- More than 40% of people in low income (less than \$20,000 p.a.) or lower middle income households (3-4 family members) reported food insecurity. 28% of these households had not had enough to eat in the past year.
- Prevalence of household food insecurity, by province of territory - NB (96,000) & NF (15%); AB, SK, NS, BC (578,000) (17%); YK (21%); NWT (28%); NVT (56%).
- 840,000 dependent on charitable food banks in 2004 of which 47% reported difficulty in meeting demand (CAFB, 2004)

*Canadian Community Health Services (2005)

**Prevalence likely an underestimate as CCHS Survey does not cover the homeless, Aboriginal people living on reserves, Canadian Forces bases, some remote areas.

Why the right to food? cont'd

- Failure of Canadian state to 'protect the rights of the vulnerable and redundant: neglect of international human rights and domestic policy obligations; welfare reform - CAP to CHST; commodification of welfare; loss of entitlement and benefits outside the labour market; breakdown of social safety net
- Reliance on charity as evidenced by the institutionalisation of food banks, emergency food aid): part of the problem not part of the solution; unable to meet demand; letting governments off the hook; resurgence of residualism - burden falls on individuals, families, women
- Domestically social policy needs to reclaim its historical rights discourse to offset current reliance on labour market strategies and benevolence as the key responses to meeting human need - including hunger.
- Right to food important aspect of global human rights discourse (civil and political; economic, social and cultural) as central challenge to neo-liberalism, transnational corporate power and market failures
- Right to food informs and provides framework for national action plan on food security

2. The right to food: international framework

➤ International instruments and commitments

- Universal Declaration of Human Rights (1948)
- UN Covenant on Economic, Social and Cultural Rights (1966), ratified by Canada (1976)
- Rome Declaration on World Food Security and World Food Summit Plan of Action (1996):
 - “To reduce the number of undernourished people to half their present level no later than 2015 and as agreed by the Millenium Summit to “half the population of people who suffer from hunger’ by the same year.”
 - “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:
- World Food Summit five years later (2002): invitation to UN to develop Voluntary Guidelines respecting the right to food

The right to food: international framework, cont'd

- **Voluntary Guidelines approved by UN Economic & Social Council (2004)**

“to provide practical guidance to States in their implementation of the progressive realization of the right to food in the context of a national food security, in order to achieve the goals of the Plan of Action of the World Food Summit.”

- new tool to assist civil society to hold governments accountable
- encourage justiciability by recommending incorporation of the right to food into national legislation or constitutions
- recognise international dimensions of UN obligations and relationships between trade, development assistance, food security and safety nets.

The right to food: international framework, cont'd

➤ **Canada's International Commitments and domestic obligations**

Instrument	Drafted	Legal Status	States' Support	Canada's Position	Content
Universal Declaration on Human Rights	1948	Non-binding declaration of the UN GA	48 for, 0 against and 8 abstentions	Voted for adoption	Sets out the ensemble of human rights to be protected internationally
Geneva Conventions and Additional Protocols	1949	International multilateral treaties	Depends on specific treaty	Most are binding on Canada	Establishes rights and obligations for states to respect and protect food rights during conflict
Covenant on Economic, Social and Cultural Rights (CESCR)	1966	International multilateral treaty	141	Binding on Canada since 1976	Establishes state obligations to protect economic and social rights including the right to be free from hunger and to an adequate standard of living, including food particularly in Art. 11
Food Aid Conventions	1967	International multilateral treaties renewed periodically	Originally 18 under the 1967 agreement, now over 20	Binding on Canada since 1967	Establishes state obligations to provide a minimum amount of international food aid
Covenant on the Rights of the Child (CRC)	1989	International multilateral treaty	194	Binding on Canada since 1992	Establishes immediate rights and obligations for states for rights for children including nutrition (Art. 24, 27)
Rome Declaration and Plan of Action	1996	World Food Summit	187	Non-binding	Seeks clarification of the content of the right to food and suggests international bodies complete the task
General Comment 12 of the Committee on ESCR	1999	Decision of the Committee on ESCR – strong, legal language	Implicitly 141, but instrument is that of the Committee, not the states	Not officially binding but serves as a interpretation of Article 11 of the CESCR	Establishes the precise content and implementation of the right to adequate food

The right to food: international framework, cont'd

➤ UN Definition

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

(General Comment 12: Committee on Economic, Social & Cultural Rights)

➤ Obligations of ratification

“The right to food does not mean handing out free food to everyone. Rather, the right to food means that Governments must respect, protect and fulfil the right to food, as clarified in General Comment No. 12”

- **Obligation to respect:** governments must not violate the right to food (e.g. evict people from their land, destroy crops).
- **Obligation to protect** governments must protect their citizens against violations by other actors (e.g. by instituting regulations on food safety).
- **Obligation to fulfil:** governments must first facilitate the right to food by:
 - providing an enabling environment for people to feed themselves (e.g. engage in land reform, stimulate employment), and
 - act as the provider of last resort in cases where people cannot feed themselves for reasons beyond their control (e.g. social safety net programmes, food stamps, food in prison).

From: United Nations Economic and Social Council. January 2003. *Economic, Social and Cultural Rights: The Right to Food*, Article #18

➤ **Human Rights Principles**

- **Universality / non-discrimination**
 - Requires attention to vulnerable & marginalized groups

- **Indivisibility / interdependence**
 - There is no hierarchy of rights

- **Justiciability / accountability**
 - Everyone has the right to an effective remedy when their rights have been violated

➤ **A Human Rights Framework strengthens Food Security¹**

- Governments are legally bound to comply with obligations outlined in human rights treaties;
- Human rights offer dignity to marginalized groups who claim rights rather than receiving charity;
- Human rights are governed by a comprehensive monitoring system within the United Nations.

¹c. Samdup, *Rights and Democracy* Montreal, 2004

3. *Is there a right to food in Canada?*

Yes and no.

➤ **Canada's food security:**

- lies in its ability to produce and supply sufficient food (including imports) to feed its population; a well developed food regulation and safety system; and access to food, including nutritious foods, being assured for the large majority of its population.

➤ **Evidence of the right to food:**

- finds direct and indirect expression in Canada's constitution, international legal commitments, domestic law and national, provincial and local plans and administrations:
- Canada's ratification (1976) of the *International Covenant on Social Economic and Cultural Rights* and more recently the *Convention on the Rights of the Child* (1992) commits it to 'respect, protect and fulfil' the right to food.
- While the right to food is not explicitly written into existing statutes, bits and pieces of the right can be found in federal and provincial laws and policies regarding agriculture, food safety, nutrition and health and the welfare state. Notably, in 2002, Quebec has passed an *Act to Combat Poverty and Social Exclusion*.
- The Federal Government has stated internationally that the *Charter of Rights and Freedoms* (1982), as interpreted by the Supreme Court of Canada does protect internationally recognized economic, social and cultural rights. The Supreme Court has recognized the rights of Aboriginal peoples to traditional food gathering.
- *Canada's Action Plan for Food Security* (1998) recognises the right to food as a developing concept.
- Actions by civil society including charitable food banks, alternative community food projects, the development of local, provincial and national food security movements and food policy councils indicate increasing concern about the right to food.

➤ Weakened commitment and disconnects:

- these include the failure of the federal and provincial governments fully to comply with their international obligations to ‘respect, protect and fulfil’ the right to food; the limits of current decisions by the courts respecting the justiciability of the right and a lack of federal and provincial accountability and coordination in terms of developing a national food policy.
- In terms of international obligations, Canada’s eroded social safety net and inadequate welfare benefits fail to ensure the right to food of vulnerable peoples including social assistance beneficiaries, single mothers and their children and Aboriginal peoples. The institutionalisation of charitable food banks since 1981 has enabled governments to neglect their obligations to provide adequate income support necessary for the purchase of nutritious foods.
- Regarding justiciability there is a disconnect between the dicta of the Federal government, the Supreme Court and the lower courts in Canada in terms of the legal protection of the right to food, particularly in the case of vulnerable Canadians. While the Federal government has explicitly acknowledged that the *Canadian Charter of Rights and Freedoms* (1982) has been interpreted by the Supreme Court to protect economic and social rights, the protection appears very weak (Gosselin case, 2002). In addition justiciability is slow, costly and difficult to implement.
- From the perspective of accountability and coordination food policy making in Canada is fragmented. Despite the declaration of *Canada’s Action Plan for Food Security* (1998) Canada lacks a coherent national food policy. The *Action Plan* is without the legal framework necessary to achieve its stated goals.
- While civil society plays important public education, advocacy and accountability roles, it is underfunded.
- An important emerging issue is that Canada is enmeshed in an unsustainable agricultural system that may become less productive. Ecological sustainability is likely hampered by the increasingly aggressive focus on the entanglement of the agri-business sector in global trade. The combination of these two factors may act in the long run to weaken domestic autonomy (food sovereignty) in developing food and nutrition policy directed at the optimal nourishment of the population.

4. Domestic compliance: Food and human rights: new possibilities for the role of social policy in advancing food security and re-engaging public debate about collective social welfare

- Growing dependence on and public and state acceptance of food charity requires clarification of the role of the right to food in UN Conventions – international and domestic obligations; implications of UN Voluntary Guidelines;
- Rethinking the dictum that the best social policy is a job: reversal of the erosion of Canadian welfare state and strengthening of universal programs and social safety nets (targets, benchmarks, accountability) - social transfers
- Advancing justiciability of the right to food – current limits of justiciability underline strong need for efficient, affordable timely and accountable mechanisms for claiming the right to food: expand Charter protection through Court Challenges programs; framework legislation for national action plan; expand Human Rights codes to include protection of economic and social rights
- Social policy's role in addressing fragmented food policy and developing natural 'joined up' food and nutrition policy and active plan (targets, benchmarks, accountability) directed at optimal nourishment of the population
- Reclaiming the social rights of citizenships respecting basic human needs and material justice: strengthening role of civil society - integrative social policy role, locally, globally

***The Right to Food - competing perspectives:
political, moral and legal***

*Today's society, unlike yesterday's is capable of feeding its poor.
To do otherwise is an error of government'.*

Fernand Braudel, World Press Review, 1985.

*A serious commitment to charity and beneficent action requires
commitment to material justice and so to political change.
Practical reasoning about hunger has an audience only when it
reaches those with the power to bring about that change.*

Onora O'Neill, Faces of Hunger, Allen and Unwin, 1986.

*Hungry Canadians, searching for their legal entitlement to food,
find in the law bits and pieces of the right, not a full course meal.*

Robert Robertson, 'The Right to Food: Canada's Broken Covenant'
in Canadian Human Rights Yearbook, 1989-1990.

- How satisfied are we with food benevolence as the new social safety net? Does it respect human dignity? How effective is it? Does it achieve food security?
- How desirable, feasible and likely of success are right to food approaches, including justiciability?
- If we place the right to food at the centre of social policy, what are the implications for the role of the state and civil society in combatting domestic hunger/food poverty?

References

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www.righttofood.org

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www.fao.org/Legal/rtf

The UN Food & Agriculture Organization, Legal Office

www.fian.org

Fian International

www.escr-net.org

Centre for Economic, Social & Cultural Rights

www.ohchr.org

Office of the High Commissioner for Human Rights

