Solutions outside the Box: can we Finally Implement the Human Right to Food

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1. Introduction

People become very excited about the human right to food, and rightly so. It is not just that we see all around us the evidence of our collective failure to respect, protect and fulfil this basic right. It is also that the question of how to implement the right to food has provided a popular test-bed for attempts to concretise the economic rights laid down in the Covenant of 1966: if the effort put in here pays off, the way will be clear to implement other economic, social and cultural rights.

The effort has certainly been substantial (Messer 1995, WANAHR 1996, Bart Eide et al. (eds) 1996, ECOSOC 1998). Has it paid off? To an outside observer, the glass appears both half full and half empty.

The glass is half full in the sense that recent international conferences have given impetus to the idea of a right to food, and follow-up actions have moved things forward. The World Food Summit provided a focus in 1996, reaffirming 'the right to adequate food and the fundamental right of everyone to be free from hunger', and committing signatories to the Plan of Action

> 'to clarify the content of the right to adequate food and . . . to give particular attention to implementation and full and progressive realisation of this right as a means of achieving food security for all.' (FAO 1996: para 61)

Since 1996, initiatives have included the development of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Künnerman 1997), the preparation of a draft International Code of Conduct on the Human Right to Adequate Food (FIAN 1997), and a Consultation on the Right to Adequate Food, hosted by the Office of the High Commissioner for Human Rights, in December 1997 (ECOSOC 1998). The Code of Conduct will be considered at a further meeting of UNHCHR in 1999.

The glass is half empty in the sense that stumbling blocks remain, particularly around issues of accountability for the fulfilment of the right to food, and about who will pay. Human rights specialists distinguish between 'subjects', or claim holders, and 'objects', or duty bearers (ECOSOC 1998:26): the question remains how to make the duty bearers accountable for fulfilling the minimum, or 'core content' of approved rights, especially when resources are limited (Maastricht Article 9). Thus, we may well argue that 'the state remains ultimately responsible for guaranteeing the realisation of (the right to food)' (Maastricht Article 2), but what happens if the state has no money?

In my own previous foray into this debate (Maxwell 1996, 1997), I have tried to fill the glass by proposing a 'charter' for food security, which lays down justiciable standards which duty bearers are required to meet; and by proposing a burden-sharing arrangement between rich and poor countries. I am tempted to dust down these proposals, but will resist. Instead, I propose to look 'outside the box', and see whether we can find a way to increase accountability for meeting the right to food. Actually, I can't resist reproducing my proposed charter: it is in appendix 1.

2. Ideas from outside the box

If our objectives are to define and uphold standards, clarify accountability, or set new institutions in place to deal with back-sliding, then, quite clearly, we are not alone. These themes are at the heart of current development debates; and, indeed, of policy debates in the North. There are four main lessons we can learn.

(a)International targets concentrate the mind - but need local specificity

The right to food debate suffered in its early years from a lack of specificity. Was it a matter of calorie intake, or anthropometric outcome? In either case, to what standard? And who would set the standard? These debates are now less prominent, largely because standards have been set at international conferences. Thus, the World Summit for Children (1990), and the International Conference on Nutrition (1992) set a variety of food and nutrition targets (Figure 1), the World Food Summit (1996) adopted a simple hunger target of halving hunger by 2015, and the OECD built food security into its over-arching target of reducing poverty by half by 2015.

There is a lot to be said for targets in a human rights context: they provide political impetus; encourage more generous funding; provide a framework for monitoring; and help to mobilise and maintain public support. No doubt, targets can help to concretise

human rights commitments.

At the same time, we should treat international targets with a certain scepticism. As I have argued elsewhere (Maxwell forthcoming), international targets can over-simplify and over-generalise complex problems. They can distort public expenditure priorities. They can impose significant costs for monitoring. And they can undermine political momentum if they are not met.

Food provides a case in point. Leave aside the problem that the target of the World Food Summit (reduce the *absolute number* of hungry people by half by 2015) is not consistent with the OECD international development target (reduce the *proportion* of poor people by half by 2015), there are real problems with using a single, simple target to try and capture the great heterogeneity of individual nutrition requirements. These, we know, vary with age, gender, size, and environmental conditions, but also with activity pattern and level. Pacey and Payne conclude that

> 'any views of desirable or optimal food intakes for human individuals or groups can only be value judgements' (Pacey and Payne 1985:70-71)

Figure 1: Food Security Goals for the year 2000

Nutrition Goals of the World Summit for Children (1990)	Goals of the International Conference on Nutrition (1992)
• Reduction in severe, as well as moderate malnutrition among children under 5 by half of 1990 levels. • Reduction of the rate of low birth weight (2.5kg or less) to less than 10 per cent. • Reduction of iron deficiency anaemia in women by one-third of the 1990 levels. • Virtual elimination of iodine deficiency disorders. • Virtual elimination of vitamin A deficiency and its consequences, including blindness. • Empowerment of all women to breast-feed their children exclusively for four to six months and to continue breast-feeding, with complementary food, well into the second year. • Growth promotion and its regular monitoring to be institutionalised in all countries by the end of the 1990s. • Dissemination of knowledge and supporting services to increase food production to ensure household food security.	1. To eliminate: • Famine and famine-related deaths; • Starvation and nutritional deficiency diseases in communities affected by natural and man-made disasters; and • Iodine and vitamin A deficiencies. 2. To reduce substantially: • Starvation and widespread chronic hunger; • Undernutrition, especially among children, women, and the aged; • Other important micronutrient deficiencies, including iron; • Diet-related communicable and non-communicable diseases; and • Inadequate sanitation and poor hygiene, including unsafe drinking water.

Source: UNICEF 1991, FAO 1992

Furthermore, international targets may not be much help when it comes to policy. National planning and resource allocation need to recognise the richness, diversity and complexity of real world situations, and build on the knowledge, insights and ideas of poor people themselves. We know from work on food security that interventions must respect the complexity of individual and household livelihood strategies.

The solution may be to opt for subsidiarity in setting targets, i.e. to keep international targets universal, unambiguous and simple, and devolve the main responsibility for definition and action to local level. This is not just a question of writing national action plans to implement international targets: in a locally-driven, process approach, there is no guarantee that particular targets set internationally will feature at all.

(b)Social rights require public service accountability - and that means an enforcer

There is a clear role for the state and other external agencies in implementing food and nutrition targets, whether set internationally or locally. This is not to say that the agencies have sole or even main responsibility, but they certainly have a facilitating role, alongside people themselves, and will usually accept a role as providers of last resort.

One way to hold agencies accountable for performance is to develop standards against which they can be judged. This, for example, is the premise of the Sphere Project, designed to lay down minimum standards in humanitarian response (Sphere 1998). Apart from a statement of general principles, presented as a Humanitarian Charter, the Sphere project lays down technical standards in a variety of fields. One chapter is devoted to nutrition, and covers such topics as assessment, response strategy, monitoring and evaluation, nutrient needs, food safety, participation, public health, management, and other topics. In each case, the standards specify 'the minimum acceptable levels to be attained in each area', 'key indicators' to show whether the standard has been attained, and guidance notes on the above.

In other contexts, the setting of standards is part of a wider process of public service reform. Thus, the Sphere approach will be familiar to those concerned with improving accountability and performance in the public sector, in both North and South. Usually, however, the agenda is broader than simply setting standards. One recent review begins by noting that

> 'the languages of . . . commercial modes of quality management, . . . service contracts and agreements, and assessment of outcomes, permeate the present rhetoric of planning, management and delivery of British social services' (Shaw 1997:1)

The debate here mirrors that we have already reviewed about the difficulty of setting objective standards and measuring performance. Beyond that, it is concerned with increasing accountability. In this debate, accountability is introduced by setting performance standards, monitoring progress against them, and providing recourse when standards are not met. Thus, in the UK Citizens' Charter, introduced in 1991, key principles include:

> 'Standards should be set and published, with performance measured against them;

> Full and accurate information on public services should be readily available

> Value for money in services should be pursued, together with independent validation of performance against standards

> Mistakes and failures should be put right with an apology, a full explanation, and a swift and effective remedy' (cited in Bynoe 1996:ii)

It is not always clear whether the performance standards set through initiatives like the Citizens' Charter amount to social 'rights' for the users of public services; nor is it clear that satisfactory sanctions exist for non-compliance (Bynoe ibid). Nevertheless, a charter approach does offer the opportunity for greater accountability. That is why I used it in thinking about nutrition rights prior to the World Food Summit.

If we look outside the box, we can again find useful lessons about enforcement. Thus, specialists in the human right to food have developed a code of conduct, the primary purpose of which is to lay down standards for meeting the human right to food. But, as an instrument of public policy, codes of conduct have become popular in many other fields. We might cite the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, approved in 1995, and now adopted by over 100 organisations. There are many other examples, for example in the business world, on tropical forestry, or child labour, or the clothing industry (Tapper 1997). Codes of Conduct are used for campaigning, for programme planning, for monitoring, and for (self-)regulation.

An interesting question is how charters or codes of conduct are enforced or policed. In the case of the Red Cross/Red Crescent code, the proposal has been to create an ombudsman. The ombudsman model is familiar from public administration, and from industries such as insurance or mortgage lending. In these cases, the role of the ombudsman is to be reactive, to investigate complaints from members of the public, and where necessary, to order compensation. In the case of the humanitarian ombudsman, a more modest approach is being recommended. The proposal is for the ombudsman to be proactive, engaging with recipients or beneficiaries in order to help identify problems; and then to facilitate a dialogue, rather than impose a solution.

Whether the ombudsman for humanitarian relief is successfully introduced remains to be seen. However, the general point, that a code of conduct requires more than publicity to be successful, is surely worth considering in the human rights field. It is not just an advocacy tool.

(c) Empowering beneficiaries means giving them 'voice' - and probably also exit strategies

Most initiatives to do with human rights underline the importance of empowering the so-called 'subjects': indeed, participation is itself, at some level, a human right (Häusermann 1998).

In the public service debate more widely, a distinction is drawn between the 'exit option', and giving service consumers 'voice'. Thus:

'the market model, in theory at least, gives individuals the power of exit - dissatisfied customers can take their business elsewhere. The democratic process, again in theory at least, relies on individuals or groups having the power of voice - dissatisfied customers obtain a response by taking political action' (Burns, Hambledon and Hoggett 1994:31, cited in Shaw ibid)

The exit option is not so far widely developed in either North or South. Certainly, poor people dependent on income transfers are rarely able to shop around for services (though food stamps, which can be cashed at a variety of private sector outlets, provide an interesting parallel to the proposed use of vouchers for public services - for example, nursery schools).

Ways of providing 'voice' are more highly developed, for example through the use of participatory methods in poverty assessments or project planning (Chambers 1997). In debates about the Citizens' Charter in the UK, a complaint has been that service users are treated too narrowly as consumers, when a broader perspective of users as citizens would be more appropriate. Thus, an alternative approach recommends six principles for the development of a social rights approach. These are:

> 'To guarantee fair treatment to those seeking or using public services.
>
> To meet the public's informed expectations of entitlement.
>
> To ensure that services are responsive to users and to encourage greater public involvement in planning services and holding them accountable.
>
> To render public service organisations more open in their dealings with users and with the public.
>
> To improve public accountability by making audit and inspection more effective.
>
> To stress to citizens and users their respective responsibilities and the value of a cooperative approach' (Bynoe ibid: v)

It will be interesting to see how far these principles are consistent with the codes of conduct being proposed to implement the right to food. Participation is not much discussed in the Maastricht Guidelines, or in the report of the UNHCHR meeting of 1997. On the other hand, the Red Cross/Red Crescent Code of Conduct specifies ten guiding principles, including the following:

> '5. we shall respect culture and custom.
>
> 6. We shall attempt to build disaster preparedness on local capacities.
>
> 7. Ways shall be found to involve programme beneficiaries in the management of relief aid.
>
> 9. We hold ourselves accountable both to those we seek to assist and those from whom we accept resources.'

(d)Partnership can help with burden-sharing - but requires reciprocal accountability

'Partnership' is a key idea in current development discourse. It implies greater ownership of development strategy by recipient countries, but also promises a greater commitment by donor countries to the agreed strategic framework. In the words of the recent UK White Paper on aid and development:

> 'Genuine partnerships between poorer countries and the donor community are needed if poverty is to be addressed effectively and in a coherent way. The establishment of such partnerships moves beyond the old conditionalities of development assistance and will require political commitment to poverty elimination on both sides. We hope that developing countries will be ready to set out their strategies . . . We, together with the rest of the international community, must be ready to respond accordingly and to commit resources over extended periods.' (UK 1997)

This looks promising in terms of implementing a human rights agenda. An agreed action plan becomes a blue-print for partnership, with responsibility for implementation shared between the partners.

The sting is in the last sentence, which raises questions about the form of commitment that developed countries must make, in other words about the nature of reciprocal accountability. If the commitment is genuinely to be more than one based on conditionality, then some kind of contract is implied, in which each side accepts performance standards, in which there is an agreed procedure for performance review, and in which sanctions apply if performance falls below standard.

Very few donor partnership agreements have met these criteria in the past. A possible exception is the Lome Convention, at least in its early years, which was based on a notion of contractuality, albeit without independent review procedures or sanctions. Various fora were established to monitor the Conventions, and, importantly for our purposes, the amount of aid provided through the European Development Fund was fixed at the beginning of each Convention.

Genuine reciprocity is not easy, and the tendency is to fall back into a position of asymmetric accountability in which the powerful partner rules. Thus, the pure contractuality of Lome has been eroded over successive Conventions, mainly through the introduction of political and macro-economic conditionality imposed on developing countries. Unfortunately, however, conditionality has not been strengthened on the other side, for example with respect to the quantity or quality of aid available from the European Union.

The lesson we can learn from this is that genuine partnership needs a commitment of trusty and mutual understanding, but is also likely to benefit from procedures and rules which protect both sides. Interesting questions arise about how to review partnership agreements, and how to enforce compliance.

3. Conclusion

I have argued that implementation of the right to food is handicapped by lack of clarity on two key issues: accountability and the allocation of costs. I have suggested that we might find help by looking outside the immediate fields of either nutrition or human rights law-making; and I have turned over five stones in search of answers. These five stones are (a) the debate about international development targets; (b) the debate about partnership in development; (c) the argument about accountabiity in public services, particularly the UK citizens' charter: (d) the use of codes of conduct in other fields; and (e) the idea of an ombudsman for humanitarian relief. I recognise that I have done no more than scratch the surface underneath my stones; but I have nevertheless reached four conclusions.

The four conclusions are:

i. International targets concentrate the mind, and can provide poitical impetus to programmes directed at realising the right to food. However, international targets are necessarily simple and universal, and can over-simplify complex problems. They should be implemented following the principle of subsidiarity, devolving detailed analysis and planning to local level, thereby capturing the richness and diversity of local narratives.

ii. The implementation of social rights, and particularly of entitlement programmes, necessarily involves outside agencies, usually the state, if only as provider of last resort. To make outside agencies accountable, current conventional wisdom suggests that it is necessary to specify performance standards, and to monitor progress against standards. Further, there needs to be a procedure for recourse when the administration fails. This is often in the hands of an ombudsman.

iii. Citizens need to be given 'voice' in designing and monitoring service delivery programmes. In the narrow sense, this means treating beneficiaries like customers, with rights and choices. In a wider sense, service provision is an issue for wider political debate.

iv. Finally, the current vocabulary of partnership offers a template for burden-sharing between rich and poor countries - provided that accountability is genuinely symmetrical. In practical terms, this means rich and poor countries entering into some kind of contract, with agreed procedures for monitoring perormance and dealing with default.

The agenda contained in these conclusions - decentralised planning, public service reform, partnership between government and aid agencies - is certainly not original. That is exactly the point: if we look outside the box, the solutions we need are staring us in the face. If that is the case, then implementing the right to food on a pilot basis should not be problematic.

There will, of course, be difficult cases. The right to food is most blatantly violated in war situations. Public service reform is hardly top of the warlords' to-do list in post-modern conflict. Even in these situations, however, we can find cause for optimism. The Red Cross/Red Crescent code, and the Sphere project, are intended to impose minimum standards in precisely these kinds of cases. They provide another reason for the human rights community to look outside the box.

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Appendix 1

A Charter for Food Security

The world needs to produce more food, to feed a growing population...

> 1. Farmers need fair prices. All farmers are guaranteed at least 80 per cent of the international price for the products they sell, adjusted for transport and processing costs. If the private sector can't do this, the state will intervene.
>
> 2. Farmers need inputs. All farmers are guaranteed access to agricultural inputs, on time, at competitive prices. Again, if the private sector can't cope, the state will act.
>
> 3. Farmers need to be able to market their produce. The state will ensure that 80 per cent of farmers are less than five miles from a publicly-maintained all-weather road, wherever it is economically and socially desirable to do so.
>
> 4. Farmers need new and environmentally sustainable technology. All farmers will be supplied with information about new technologies that will profitably and sustainably increase income by at least 5 per cent per year.

But in addition, poor people must be able to obtain food...

> 5. Poor people need a livelihood. Every adult is guaranteed a minimum income, in cash or kind, sufficient to guarantee subsistence, in good years and bad. Where self-provisioning and the market fail, the state will set up employment schemes or otherwise provide income transfers.
>
> 6. People need access to shops. Every food consumer will have access to shops selling safe food at competitive prices, in all seasons and all years. If necessary, the state will stock these shops.
>
> 7. Refugees and the victims of war need special measures. Every refugee is guaranteed a minimum diet adequate in quantity and quality.

Mothers and children must be protected,

> 8. Mothers and children must be protected against malnutrition. Every woman of child-bearing age and every child is guaranteed a yearly health and nutrition check by a qualified health worker.
>
> 9. Every pregnant woman showing nutritional deficiency, and every child exhibiting growth faltering, is guaranteed participation in a health and nutrition programme.

And democratic rights must be safeguarded.

10. Achieving food security is a political and not just a technical matter. People have the right to be consulted in a democratic process about matters which affect their right to food.