

## **Briefing: the right to food**

### **1. Introduction**

Austerity measures, welfare reform, low wages and insecure working conditions have pushed more and more people into food insecurity in the UK. This is having a huge impact on the lives of children and young people.

This briefing traces the evolution of the right to food and discusses the key elements relevant to this right— including the obligations of States. It then discusses the UK's legal requirements under international human rights law, with reference to the Concluding Observations of the United Nations Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their relevance to Scotland.

### **2. Evolution of the right to food**

The right to food can be traced back to centuries of social struggle and is grounded in a legal and moral obligation of the State to provide **access** to food. It is recognised in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, is enshrined in Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICECSR)<sup>1</sup> and is outlined in ICESCR General Comment 12 (1999).

#### **2.1 Definition of a right to food**

##### ***World Food Summit (1996)***

In 1996, the World Food Summit, organised by the Food and Agriculture Organisation (FAO), produced *the Draft Code of Conduct on the Right to Food*. Article 4 of this draft code provided a draft definition of the right to food, which

---

<sup>1</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

highlighted the need for “*physical and economic access at all times to adequate food, using a resource base appropriate for its procurement in ways consistent with human dignity*”.

### **Committee on Economic, Social and Cultural Rights/General Comment 12**

In response to the draft code, the Committee on Economic, Social and Cultural Rights (the body which monitors ICESCR implementation) issued General Comment No. 12 (1999). This takes the FAO definition further.

*“The right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realised progressively.” (para 6)*

Similarly, the UN Special Rapporteur on the Right to Food<sup>2</sup> defined the right to food as “*the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life, free of fear*”<sup>3</sup>.

### **3. The key elements to a right to food**

General Comment 12 (ICESCR) outlines the key elements to a right to food. These elements are **adequacy** and **sustainability** of food **availability** and **access**:

- I. The exact meaning of **adequacy** depends on prevailing economic, social, cultural, climatic, ecological and other conditions.
- II. **Sustainability** is linked to the notion of adequate food or food insecurity, and implies that food should be accessible for present and future generations.
- III. The **availability** of food refers to its provision in a quantity and quality which is sufficient to satisfy the dietary needs of individuals ( a mix of nutrients for

---

<sup>2</sup> Special Rapporteurs are mandated by the [UN Human Rights Council](#) to report and advise on human rights from a thematic or country-specific perspective

<sup>3</sup> <http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>

physical and mental growth), free from adverse substances (food safety and protective measures to prevent contamination of foodstuffs) and acceptable within a given culture (. taking into account perceived non-nutrient based values attached to food and food consumption.) Availability also refers to the possibilities either for feeding oneself directly from productive land or for good distribution processing and market systems.

- IV. **Access** encompasses both economic and physical accessibility. Economic accessibility means that food should be affordable without having to compromise other basic needs, such as heating. This can be assured through social security benefits that are sufficient to meet the costs of nutritious food and other basic needs. **Physical accessibility** means that food is accessible to all— especially those who are vulnerable, such as children or older people.

#### **4. Obligations of States**

State obligations cover progressive duties, that is, duties to be realised over time and immediate duties. The right to food also imposes three levels of protection on the State— to respect, protect and fulfil.

##### **4.1 Progressive duties**

###### ***Progressive realisation***

The principal obligation States have is to take steps to ***achieve progressively*** the full realisation of the right to adequate food. This obligation is reflected in Article 2 (1) of the ICESCR. The idea of progressive realisation recognises that not all States can realise all economic, social and cultural rights immediately. However, they must do so as expeditiously as possible.

###### ***The maximum of their available resources***

States must take necessary steps to provide the ***maximum of their available resources*** to realise the right to food. This refers to real resources available to a State, not just budgetary allocations.

##### **4.2 Immediate duties**

**Article 2 (1)** also imposes immediate duties on States, namely non-discrimination, non-regression and guaranteeing the minimum core content of the

right to food. Discrimination in access to food constitutes a violation of the right to food. **Article 2 (2). Non-discrimination** is not only about abolishing laws and policies which appear discriminatory, but also about responding to the needs of different groups— for example, the dietary needs of specific populations – such as children or pregnant mothers – so that their level of assistance ensures their access to adequate food.

States are also prohibited to take *retrogressive measures*, that is deliberate measures which result in the deterioration of current level of fulfilment of the right to food.

Every State has a **minimum core obligation** to ensure the right to food. If a State argues that resource constraints make it impossible to provide access to food for those who cannot do so themselves, it must show that all efforts have been made to use all the resources at their disposal to satisfy the minimum obligations. Moreover, steps cannot allow regressive steps, for example, withdrawing social security benefits which guarantee basic living essentials.

### **4.3 Respect, Protect, Fulfil**

Like other human rights, the right to adequate food imposes three levels of protection: the obligations to respect, protect and to fulfil. The obligation to respect means that States must not take actions that result in preventing access to food, while the obligation to protect requires measures by States that to ensure that non-State actors do not deprive people of adequate food. For example, a State should protect children from pernicious advertising which promotes unhealthy food. The obligation to fulfil requires States to proactively engage in activities which promote access to food. They must also facilitate access to food and, should people be unable to enjoy their right to food, the State must provide for it directly (for example through food assistance for the most deprived.)

## **5. The UK's legal requirements under international law**

The UK has signed and ratified numerous international treaties which recognise the right to food. These include the United Nations Convention on the Rights of the Child (UNCRC), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities

(UNCRPD). The UK is also party to the International Covenant on Economic Social and Cultural Rights (ICESCR). The UK is also party to the EU Charter of Fundamental Rights, although the future relationship is uncertain. This briefing considers two treaties: the UNCRC and the ICESCR.

### **5.1 The UN Convention on the Rights of the Child (UNCRC)**

A number of UNCRC rights are directly relevant to a right to food:

**Article 6** of the UNCRC calls on States to ensure to the maximum extent possible the survival and development of the child.

**Article 26 (1)** calls on States to recognise a child's right to benefit from social security, including social insurance, and to take the necessary measures to achieve the full realisation of this right in accordance with their national law.

**Article 27 (1)** calls on States to recognise a child's right to a standard of living adequate for their physical, mental, spiritual, moral and social development. **Article 27 (3)** requires States to take appropriate measures to assist parents and others responsible for the child to implement this right and to – in case of need – provide material assistance and support programmes, **particularly with regard to nutrition, clothing and housing.**

In May 2016, the four UK Children's Commissioners submitted their joint report to the Committee on the Rights of the Child (the body which monitors UNCRC implementation). They drew attention to the UK State Party's response to the global downturn, including the State's imposition of austerity measures and changes to its welfare system. The Committee said that these measures had failed to protect the most disadvantaged children, preventing the realisation of their rights under Articles 26 and 27. Reductions to household income for poorer children due to tax, transfer and social security benefits changes had also led to food and fuel poverty and sharp increase in the use of crisis food bank provision by families.

In their Concluding Observations (the recommendations to the State Party), the Committee devoted a section to nutrition<sup>4</sup>. It was critical of the UK, expressing

---

<sup>4</sup> [Committee on the Rights of the Child Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland.](#)

concern around the high prevalence of children who were overweight or obese and the lack of comprehensive data on child food security, whilst also noting that research indicates that some available programmes, such as free school meal programmes, may not be effectively responding to child hunger. It also highlighted the ‘extremely low rate of breastfeeding, the fact that only 1% of women maintained exclusive breastfeeding for six months in 2010 and the inadequate regulation of marketing of breast-milk substitutes’.

The Committee called on the UK to systematically collect data on food security and nutrition for children – including those relevant to breastfeeding and overweight and obese children – to help identify the root causes of child food insecurity and malnutrition. It called for regular monitoring to assess the effectiveness of policies and programmes on child food security and nutrition, including school meal programmes, food banks, and programmes for infants and young children. It also called on the UK to promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health, including obesity, certain non-communicable diseases and mental health, and to fully implement the International Code of Marketing of Breast-milk Substitutes. (para 83)

Other recommendations focused on the high rate of child poverty and its disproportionate exhibition among children with disabilities, children living in a family or household with person(s) with disability, households with many children and children in ethnic minority groups.

## **5.2 The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

**Article 11(1)** of the ICESCR recognises the right of everyone to an adequate standard of living – including adequate food, clothing and housing – and to the continuous improvement of living conditions. **Article 11(2)** guarantees the right of everyone to be free from hunger and obliges State Parties to take steps in this regard, including the improvement of methods of distribution of food and dissemination of knowledge concerning the principles of nutrition. As with the UNCRC, the UK has ratified – and is therefore legally bound by – the ICESCR, including the articles concerning the right to adequate food.

The UK was also examined this year by the Committee on Economic, Social and Cultural Rights<sup>5</sup> and the Children and Young People's Commissioner Scotland submitted his report to the Committee in July 2016.

### ***Children and Young People's Commissioner Scotland***

In his report to the Committee, the Commissioner criticised the UK for failing to ratify the Optional Protocol to the ICESCR (2009), which allows individual complaints to be made to the CESCR.

He also drew on evidence in the UK Children's Commissioners' submission to the Committee on the Rights of the Child Committee – namely the UK 's regressive measures in response to the global economic downturn. These austerity measures had had a deep impact on child poverty, the best interests of children had not been central to the development of these policies, and their views had not been sought around them. The reductions to household income for poorer children had led to food and fuel poverty, and an increase in crisis food bank provision. Such regressive measures had prevented children from realising their rights, including the right to adequate food (Article 11). The Commissioner's view was that this had resulted in a violation of ICESCR rights.

He also noted that the right to food was a major issue in Scotland and that – despite the welcome introduction of free school lunches for children in the first three years of primary school in Scotland – food poverty was and is a serious problem for children. Low wages and welfare reform had exposed more and more people to food insecurity. Research on intra-household distribution had found that parents were being pushed into poverty to provide for their children, taking measures such as skimping on food so that others had enough to eat.<sup>6</sup>

The Commissioner's submission also highlighted the All-Party Inquiry into Hunger in the UK, which had heard about the reliance of people on low incomes on charitable food banks. The inquiry found that the rising costs of housing, food and fuel had

---

<sup>5</sup> [Committee on Economic, Social and Cultural Rights, including observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland.](#)

<sup>6</sup> [Re-defining poverty will not help poor children](#), by Gill Martin. Published on 10th Feb 2016.

impacted on the ability of households to buy and cook food<sup>7</sup>. The submission also made the point that a third of people depending on food banks were children, and that diet-related health inequalities greatly impact on child attainment and long-term quality of life. The number of children accessing food banks in Scotland has risen from 1,861 (April 2011 - March 2012) to 36,114 (April 2014-March 2015)<sup>8</sup>. The Scottish Parliament Welfare Reform Committee also believes there is a direct correlation between welfare reform and increased use of food banks.<sup>9</sup>

The Commissioner recommended that the UK Government and devolved Governments tackle child poverty as a matter of urgency, calling for sufficient resources to tackle child poverty and stop the predicted rise by 2020. He called for an assessment of all new policies on families on low incomes and for measures to be put in place to prevent them from having a detrimental impact. His view was that eliminating child poverty should be a national priority, and that a plan should be developed, funded and implemented to reduce the number of children in poverty year on year for the next five years. This should include helping parents earn a decent income, strengthening universal credit, reducing demand for food banks and protecting families from rising living costs.

The Commissioner asked the Scottish Government to provide sufficient resources to progress, monitor and evaluate Scotland's child poverty strategy, and to report annually on progress and for local authorities to produce child poverty strategies and to integrate these with local service planning and budgets. Progress at local level should be supported and driven by actions, timescales and systems of accountability that are effectively supported, monitored and evaluated.

The Commissioner took the opportunity to call for the incorporation of the UNCRC and ICESCR into domestic law. Referring to the UK Supreme Court decision in *SG v Secretary of State for Work and Pensions* [2015] UKSC 16, he noted that while the Court found that the imposition of a 'cap' on the amount of benefits payable to families without consideration of the best interests of children was contrary to Article 3 of the UNCRC, it was not unlawful in domestic law: there was no legal remedy for

---

<sup>7</sup> <https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>

<sup>8</sup> [Save the Children \(2014\) A Fair Start for Every Child in Scotland.](#)

<sup>9</sup> Scottish Parliament (2014). [Welfare Reform Committee, second report 2013: Foodbanks and welfare reform.](#)

this finding of a UNCRC violation by the UK's highest court. The case had to be argued on the grounds of discrimination against women as there was no specific protection for children's rights or economic and social rights in this context in UK law. For him, this highlighted the need for legislative incorporation of the two treaties<sup>10</sup>.

### ***ICESCR Concluding Observations***

It was unsurprising that the ICESCR Committee was critical in its Concluding Observations, particularly around changes in entitlements to – and cuts in – social benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016, and the adverse impact of these changes and cuts on the enjoyment of the rights to social security and to an adequate standard of living by disadvantaged and marginalised individuals and groups, including women, children, persons with disabilities, low-income families and families with two or more children.

The Committee also raised concerns about the extensive use of sanctions in relation to social security benefits and the absence of due process and access to justice for those affected. It called on the State to review the entitlement conditions and reverse the cuts in social security benefits introduced by the two Welfare Acts, restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food. It also called for the use of sanctions in relation to social security benefits to be reviewed.

The Committee also noted that certain groups of the population are more affected by, or at an increased risk of, poverty, highlighting children and young people amongst others. It recommended that the State Party take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty.

---

<sup>10</sup> The Scotland Act 1998 permits the Scottish Government to incorporate human rights treaties in devolved matters and there is also an increase in devolved powers following the Scotland. Act 2016 e.g. in respect of welfare, employment support and the power to set rates of income tax.