

The Role of Food Banks on a UK Right to Food

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The proliferation of food banks in the UK has spurred various reports and investigations into the causes of food poverty and food insecurity in Britain, linked to critiques of the coalition and majority Conservative governments' austerity policies. This Article uniquely focuses on the need for this debate to move towards a UK right to food, due to the useful legal tools available, as opposed to the vaguer frameworks of food security and food poverty. The author provides a critical analysis of the negative role food banks themselves are playing on the potential for a UK right to food, with some comparative analysis to long-term food aid in other developed countries. The author proposes greater advocacy and campaign work by food banks for a long-term right to food in Britain, alongside necessarily short-term, emergency-only food aid.

I. INTRODUCTION

Charitable provision of food aid in the United Kingdom (UK) has risen dramatically in recent years, with food banks now well established across the country. The role of charities in providing basic necessities has been criticised as concealing the government's socio-economic obligations; one food bank even shut down so as to not be complicit in government cuts to local authorities' emergency funds.¹ This Article shall explore the role of food banks in relation to the right to food (RTF) in the UK; how food aid might undermine government obligations, and the requirement of a stronger advocacy approach for a UK RTF.

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¹ Jonathan Owen, 'Busy Nottingham Food Bank to Close in Protest at Harsh Council Cuts' (*The Independent*, 26 November 2014)

<<http://www.independent.co.uk/news/uk/politics/busy-nottingham-food-bank-to-close-in-protest-at-harsh-council-cuts-9885641.html>> accessed 26 February 2015.

1.1 Background: The Emergence of UK Food Banks

There is general consensus in the literature that the existence of food banks and food aid in the UK has increased exponentially since the 2008 financial crisis and post-2010 coalition government,² linked by reputable sources to austerity measures, welfare reforms, central and local government funding cuts and low wages.³ Whilst the UK Conservative Party originally commended food banks as the “‘big society’ at work’,⁴ they have become ‘increasingly defensive about the impact of their own policies’⁵ and controversially suggested that food banks ‘generate a supply-led demand’.⁶ This contradicts available research,⁷ including the report commissioned by the Department for Environment, Food and Rural Affairs (DEFRA), which found no evidence that supply of food aid increases demand.⁸ The UK is increasingly witnessing an institutionalisation of food banks, akin to the USA,⁹ Canada¹⁰ and Australia.¹¹ The role of the British welfare state has been gradually eroded since 1980s Thatcherism and according to Lansley and Mack, there is consensus among the current Conservative Party government and the Labour Party opposition for a ‘leaner state’.¹² This is substantiated by recent Labour guarantees that ‘Labour would be tougher than

² Graham Riches and Tiina Silvasti (eds), *First World Hunger Revisited: Food Charity or the Right to Food?* (2nd edn, Palgrave Macmillan 2014) 4; Elizabeth Dowler, ‘Food Banks and Food Justice in “Austerity Britain”’ in Graham Riches and Tiina Silvasti (eds), *First World Hunger Revisited: Food Charity or the Right to Food?* (2nd edn, Palgrave Macmillan 2014) 160; Stewart Lansley and Joanna Mack, *Breadline Britain: The Rise of Mass Poverty* (Oneworld Publications 2015) 213; Just Fair, ‘Going Hungry? The Human Right to Food in the UK’ (Just Fair 2014) 4.

³ Lansley and Mack (n 2) 213; Dowler (n 2) 161–2; Just Fair (n 2); Rachel Loopstra and others, ‘Austerity, Sanctions, and the Rise of Food Banks in the UK’ (2015) 350 *BMJ* h1775.

⁴ Lansley and Mack (n 2) 209.

⁵ *ibid.*

⁶ Dowler (n 2) 169.

⁷ Hannah Lambie-Mumford and others, ‘Household Food Security in the UK: A Review of Food Aid’ (Food Ethics Council and The University of Warwick 2014) 5.

⁸ *ibid.*

⁹ Janet Poppendieck, ‘Food Assistance, Hunger and the End of Welfare in the USA’ in Riches and Silvasti (n 2) 181–190.

¹⁰ Graham Riches and Valerie Tarasuk, ‘Canada: Thirty Years of Food Charity and Public Policy Neglect’ in Riches and Silvasti (n 2).

¹¹ Sue Booth, ‘Food Banks in Australia: Discouraging the Right to Food’ in Riches and Silvasti (n 2).

¹² Lansley and Mack (n 2) 214, 217.

the Conservatives on cutting the benefits bill',¹³ despite pledging welfare reforms to reduce food bank usage.¹⁴

Food aid in the UK comes in a variety of forms; including breakfast clubs and other school-based support¹⁵ and there have been limited alternatives proposed, such as a renewal of the 'self-supporting' wartime 'communal kitchens'.¹⁶ The scope of this Article, however, is limited to the particular phenomenon of food banks due to the prevalence of this model. For this Article, the definition in the DEFRA-commissioned report is employed: 'projects which provide parcels of food stuffs for people to take away and prepare and eat at home'.¹⁷ The FareShare food waste model is considered to a limited extent in the context of institutionalisation of food banks.¹⁸

1.2 Proposal: The Need for Food Bank Advocacy

There have been many reports on food banks over the past few years by the third sector,¹⁹ an all-party Parliamentary inquiry,²⁰ DEFRA,²¹ Greater London Assembly,²² and Scottish Parliament,²³ which consider causes of food aid and sometimes criticise food banks' inadequacies and unintentional concealment of

¹³ Amelia Gentleman, 'Labour Vows to Reduce Reliance on Food Banks if it Comes to Power' (*The Guardian*, 17 March 2015) <<http://www.theguardian.com/society/2015/mar/17/labour-vows-to-reduce-reliance-on-food-banks-if-it-comes-to-power>> accessed 19 March 2015.

¹⁴ Patrick Butler, 'Labour Pledges to End Dependency on Food Banks with Welfare Reforms' (*The Guardian*, 25 March 2015) <<http://www.theguardian.com/politics/2015/mar/25/labour-promises-end-food-bank-dependency-welfare-reforms>> accessed 26 March 2015.

¹⁵ Health and Environment Committee, 'A Zero Hunger City: Tackling Food Poverty in London' (Greater London Authority 2013) 20–24; Lambie-Mumford and others (n 7) 45.

¹⁶ Bryce Evans, 'Here's a Better Alternative to Food Banks – Subsidised National Kitchens' (*The Conversation*, 24 February 2015) <<http://theconversation.com/heres-a-better-alternative-to-food-banks-subsidised-national-kitchens-37928>> accessed 26 February 2015.

¹⁷ Lambie-Mumford and others (n 7) 19; Cecilia Rocha, 'A Right to Food Approach: Public Food Banks in Brazil' in Riches and Silvasti (n 2).

¹⁸ At Section 4.4.

¹⁹ For example: Just Fair (n 2); Jane Perry and others, 'Emergency Use Only: Understanding and Reducing the Use of Food Banks in the UK' (Child Poverty Action Group (CPAG), The Church of England, Oxfam GB and the Trussell Trust 2014); Niall Cooper, Sarah Purcell and Ruth Jackson, 'Below the Breadline: The Relentless Rise of Food Poverty in Britain' (Church Action on Poverty, Oxfam and The Trussell Trust 2014).

²⁰ All-Party Parliamentary Group on Hunger and Food Poverty, 'Feeding Britain: A Strategy for Zero Hunger in England, Wales, Scotland and Northern Ireland' (The Children's Society 2014)

²¹ Lambie-Mumford and others (n 7).

²² Health and Environment Committee (n 15).

²³ Welfare Reform Committee, *Food Banks and Welfare Reform (second report)* (Scottish Parliament 2014, Session 4, SP Paper 537).

gaps in State provision.²⁴ I intend this Article to contribute to existing literature by focusing on the oft-neglected approaches: a RTF framework²⁵ and attention to the more beneficial role that food banks and charities may play on the right to food through advocacy. I shall invoke many of the existing criticisms around the normalisation of food banks and instead support their existence on a temporary basis with greater emphasis required on emergency-only use and exit strategies, alongside RTF advocacy.

There are two potential criticisms of this approach that warrant immediate consideration. Firstly, criticism of charitable provision as altogether undesirable to those who believe that charity can hinder long-term change²⁶ and to disability rights activists who call for 'rights not charity'.²⁷ To an extent, my proposal acknowledges both critiques. I adopt a RTF framework, and whilst I do not propose the end of these charities, I recognise that food banks can conceal State inadequacies and thus recommend food aid as temporary, accompanied by advocacy. Secondly, this approach could be criticised for focusing on rights. Scholars such as David Kennedy warn of the harm of a rights-focus;²⁸ cultural relativists dismiss human rights as illegitimate Western liberal ideals;²⁹ and theorists such as Scheingold may accuse this Article of overestimating law and the 'myth of rights', although I support Scheingold's emphasis on social mobilisation.³⁰ Stephen Hopgood dismisses the entire rights endeavour as not "'fit for purpose'".³¹ Despite these critiques, a specific RTF approach is advocated for by academics in a number of jurisdictions facing

²⁴ Olivier De Schutter, 'Food Banks Can Only Plug the Holes in Social Safety Nets' (*The Guardian*, 27 February 2013) <<http://www.theguardian.com/commentisfree/2013/feb/27/food-banks-social-safety-nets>> accessed 6 March 2015; Riches and Silvasti (n 2); Lansley and Mack (n 2) 213.

²⁵ Which is adopted by Just Fair (n 2).

²⁶ Traditionally expressed by Oscar Wilde, *The Soul of Man under Socialism* (first published 1891, The Floating Press 2009).

²⁷ Ian Parker, 'Spitting on Charity' (*The Independent*, 9 April 1995)

<<http://www.independent.co.uk/arts-entertainment/spitting-on-charity-1614885.html>> accessed 27 March 2015; Lawrence Mute, 'A Question of Rights, Not Charity' (*Open Society Foundations*, 6 February 2013) <<http://www.opensocietyfoundations.org/voices/question-rights-not-charity>> accessed 27 March 2015.

²⁸ David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2004).

²⁹ Makau W Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42(1) *Harvard International Law Journal* 201.

³⁰ Stuart A Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (2nd edn, University of Michigan Press 2004).

³¹ Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2013) 2.

similar food bank institutionalisation.³² This Article's approach is based on the unfortunate reality that the UK is not fulfilling its international RTF obligations and as a result, many are going hungry.³³ It proposes that food banks need to put greater emphasis on the temporary nature of food aid alongside increased advocacy strategies towards a long-term goal of an adequate RTF. The inadequacies of constitutional rights guarantees alone in Brazil and South Africa³⁴ demonstrate the need for advocacy towards not only a legal RTF framework but also genuine application of a RTF.

1.3 Outline

It is necessary to analyse RTF in the UK at the outset, as a specific right and within the broader context of collective social, economic, and cultural rights. We can then consider if the UK is adequately fulfilling that right or breaching its obligations and if there are remedies available. The crux of this Article is a critical analysis of the role of food banks in the UK, leading to the proposal that food banks may be able to play a more beneficial role for a UK RTF by engaging in greater advocacy.

II. UK RIGHT TO FOOD OBLIGATIONS

Just Fair concludes that 'the UK has violated the human right to food and breached international law',³⁵ calling upon 'the Government to take immediate action to ensure that the [sic] no one in the UK is denied their most basic right to sufficient and adequate food'.³⁶ To critically analyse this conclusion, it is necessary to consider the extent of a UK RTF; the government's obligations and remedies for breach. Interestingly, the Just Fair report is one of the only recent publications on food poverty in the UK explicitly framed in RTF terms.³⁷ A RTF framework is important as it clearly affirms that food accessibility and availability is a right, which the State has obligations to respect, protect, and fulfil; rather than framing food aid as a charitable gift. For this reason, the focus

³² Booth (n 11); Riches and Tarasuk (n 10); Tiina Silvasti and Jouko Karjalainen, 'Hunger in a Nordic Welfare State: Finland' in Riches and Silvasti (n 2); Poppendieck (n 9).

³³ Just Fair (n 2).

³⁴ Although Brazil's 'Zero Hunger strategy' has been commended. Tiina Silvasti and Graham Riches, 'Hunger and Food Charity in Rich Societies: What Hope for the Right to Food?' in Riches and Silvasti (n 2) 195. Sheryl L Hendriks and Angela McIntyre, 'Between Markets and Masses: Food Assistance and Food Banks in South Africa' in Riches and Silvasti (n 2). On Brazil see: Rocha (n 17).

³⁵ Just Fair (n 2) 4.

³⁶ *ibid.*

³⁷ 'The framing of food poverty in terms of justice and rights is not new in the UK but also not widely explored'. Dowler (n 2) 172.

of this Article is on the right to food, not food security, food poverty, or food sovereignty,³⁸ though at times these other terms are necessary to engage with the literature. Whilst the various frameworks overlap, the importance of RTF lies in its legal basis as one that establishes State obligations.³⁹

The right to food is established under international human rights law, ratified by the UK in Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights⁴⁰ (ICESCR): 'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food ...' The Committee on Economic, Social and Cultural Rights (CESCR) expanded on the right to food in 1999 General Comment 12, importantly correlating RTF as 'indivisibly linked' with other economic, social and cultural, as well as civil and political rights.⁴¹ Thus, RTF fulfilment links to the rights to health; life; water; housing; education; work and social security; information and freedom of association; freedom from torture, cruel, inhuman or degrading treatment; and freedom from child labour.⁴² The engagement of various rights means that 'food security is an issue of relevance across Government Departments'.⁴³

³⁸ 'Food security': 'when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life'. Food security includes physical and economic access to food, as with the RTF. World Health Organization, 'Food Security' (*World Health Organization*) <<http://www.who.int/trade/glossary/story028/en/>> accessed 21 March 2015; Food and Agriculture Organization of the United Nations (FAO), 'Food Security' (FAO, 2006) <<http://www.fao.org/forestry/13128-0e6f36f27e0091055bec28e830f46b3.pdf>> accessed 21 March 2015.

'Food poverty': 'the inability to afford, or to have access to, food to make up a healthy diet'. Department of Health, 'Choosing a Better Diet: A Food and Health Action Plan' (Department of Health 2005) 7; London Assembly, 'Food Poverty in London' (*London Assembly*) 1 <http://www.london.gov.uk/sites/default/files/Food%20poverty_Call%20for%20views%20and%20information_0.pdf> accessed 21 March 2015.

'Food sovereignty' is a 'concept according to which peoples define their own food and own model of food production...' OHCHR and FAO, 'The Right to Adequate Food' (United Nations 2010) Fact Sheet number 34 4.

³⁹ OHCHR and FAO (n 38) 4.

⁴⁰ International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

⁴¹ CESCR, 'General Comment 12: The Right to Adequate Food (Art.11)' (12 May 1999) E/C.12/1999/5 (General Comment 12) [4].

⁴² OHCHR and FAO (n 38) 5-6.

⁴³ Lambie-Mumford and others (n 7) 22.

The CESCR acknowledged RTF issues are not unique to developing countries,⁴⁴ defining 'the core content of the right to adequate food':⁴⁵

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.⁴⁶

As discussed in detail below,⁴⁷ it is clear that food aid provided by food banks in the UK is not necessarily adequate, available, and nutritionally sufficient and food banks are inherently non-sustainable or physically and economically accessible.⁴⁸

The UK's ICESCR rights obligations must be 'progressively realised'.⁴⁹ Whilst this allows some flexibility for implementation, the CESCR has been clear in General Comment 3 that States have 'an obligation to move as expeditiously and effectively as possible towards that goal'.⁵⁰ The Committee categorises ICESCR rights as having 'minimum core obligation[s]':

... [A] State party in which any significant number of individuals is deprived of essential foodstuffs ... is, prima facie, failing to discharge its obligations under the Covenant.⁵¹

Whilst this minimum core takes into account the limited resources of individual States, the Committee has stressed that limited resources, including as a result of financial crisis and austerity measures (as in the UK), do not nullify the State's obligations.⁵²

In addition to these general obligations for States to progressively realise ICESCR rights, the CESCR specifically elucidated State Parties' obligations to

⁴⁴ General Comment 12 (n 41) [5].

⁴⁵ *ibid* [8].

⁴⁶ *ibid* [8].

⁴⁷ In Sections 3.1 and 4.

⁴⁸ General Comment 12 (n 41) [13].

⁴⁹ ICESCR, Art.2(1); CESCR, 'General Comment No.3: The Nature of States Parties' Obligations (Art.2, para.1)' E/1991/23 (General Comment 3).

⁵⁰ General Comment 3 (n 49) [9].

⁵¹ *ibid* [10].

⁵² *ibid* [12].

'respect, to protect and to fulfil' the right to food in General Comment 12.⁵³ In the context of resource constraints:

... [T]he State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.⁵⁴

The CESCR acknowledged a 'margin of discretion' in how States approach implementation of the right to food,⁵⁵ but nevertheless emphasised the requirement that 'each State party take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food'.⁵⁶ Finally, if State obligations are breached, 'a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels'.⁵⁷

III. IS THE UK VIOLATING THE RIGHT TO FOOD?

The UK is subject to RTF obligations under the ICESCR; however, the government uses its dualist legal system to prevent the justiciability of the right to food in the UK.⁵⁸ The Committee has criticised this approach:

Affirming the principle of the interdependence and indivisibility of all human rights, and that all economic, social and cultural rights are justiciable, the Committee ... strongly recommends that the State party re-examine the matter of incorporation of the [ICESCR] in domestic law.⁵⁹

⁵³ General Comment 12 (n 41) [15].

⁵⁴ *ibid* [17].

⁵⁵ *ibid* [21].

⁵⁶ *ibid* [21].

⁵⁷ *ibid* [32].

⁵⁸ International law, which is not customary, needs to be incorporated into domestic UK law. Eileen Denza, 'The Relationship Between International and National Law' in Malcolm Evans (ed), *International Law* (3rd edn, OUP 2010). CESCR, 'Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: United Kingdom of Great Britain and Northern Ireland' (12 June 2009) E/C.12/GBR/CO/5 [13]; Geraldine Van Bueren, 'Should We Have an Enforceable Right to Food? - Professor Geraldine Van Bueren Q.C.' (*UK Human Rights Blog*, 2013) <<http://ukhumanrightsblog.com/2013/10/18/should-we-have-an-enforceable-right-to-food-professor-geraldine-van-bueren/>> accessed 20 February 2015.

⁵⁹ CESCR, 'Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: United Kingdom of Great Britain and Northern Ireland' (5 June 2002) E/C.12/1/Add.79 [24].

The Committee reiterates its recommendation that, irrespective of the system through which international law is incorporated in the domestic legal order ... following ratification of an international instrument, the State party is under a legal obligation to comply with it and give it full effect in its domestic legal order.⁶⁰

The very fact that the UK has not legislated for RTF in accordance with the Covenant contradicts the principle that 'States should consider the adoption of a *framework law* as a major instrument in the implementation of the national strategy concerning the right to food'.⁶¹ The UK has 'no such rights-based food strategy currently'.⁶² However, there is no applicable enforcement mechanism for the ICESCR's principle framed in merely advisory terms. Therefore, the RTF cannot be enforced in UK courts, notwithstanding UK's international obligation to give effect to the RTF under the ICESCR in collaboration with other human rights.

This analysis allows us to affirm Just Fair's conclusion: the UK government is not fulfilling its right to food obligations under the ICESCR.⁶³ Unfortunately, without justiciability before UK courts, or UK ratification of the Optional Protocol⁶⁴ to permit individual complaints to the CESCR, there is currently no direct redress mechanism for individuals or groups who allege that their right to food has been violated.⁶⁵ The UK is not fulfilling the CESCR's requirement that 'victim[s] of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels'.⁶⁶ Unfortunately, the weak wording of this provision and the lack of an enforcement mechanism means that there is no direct legal action that can be taken to address the UK's inaction, which is why this Article emphasises the need for advocacy and social mobilisation through food banks for a RTF.

⁶⁰ CESCR, 'Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: United Kingdom of Great Britain and Northern Ireland' (n 58) [13].

⁶¹ General Comment 12 (n 41) [29].

⁶² Just Fair (n 2) 21.

⁶³ *ibid* 4.

⁶⁴ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted by the General Assembly 5 March 2009) A/RES/63/117.

⁶⁵ This also means that individuals cannot submit individual communications to the CESCR regarding any ICESCR violations, though victims of certain other social, economic, and cultural rights violations may have redress mechanisms available nationally if this right has been implemented in national law as justiciable; for example, the right to education.

⁶⁶ General Comment 12 (n 41) [32].

3.1 Could Food Banks Fulfil the Right to Food?

Food banks cannot fulfil the right to adequate food where the State fails, because they are inherently unable to guarantee adequate availability of food and users require food aid for the very reason that they lack access to food. Many of the practical inadequacies of food aid shall be discussed below,⁶⁷ but it is relevant to note that RTF obligations enunciated in ICESCR Article 11 and General Comment 12 are primarily State parties' responsibilities. Whilst there is acknowledgement in General Comment 12 that 'local communities, non-governmental organizations, civil society organizations, as well as the private business sector – have responsibilities in the realization of the right to adequate food', it is State parties who are 'ultimately accountable for compliance'.⁶⁸ As the UK has failed to implement a national legislative framework for the RTF, food banks have stepped in to provide food aid, but not to RTF standards. In the next Section, this Article considers the role of food banks' food aid on RTF, and whether they may be masking the government's failure to fulfil its obligations.

IV. THE ROLE OF FOOD AID ON THE RIGHT TO FOOD

The most obvious role of food banks is their provision of food aid. Whilst there is no doubt that food banks and their volunteers have good intentions, there are some important criticisms of their provision of food on RTF that must be analysed. Firstly, the food provided by food banks is not necessarily within the RTF definition of 'available'. Secondly, and of immediate relevance to this Article, food banks may potentially mask the State's RTF failures, facilitating government cuts and policies that erode economic, social, and cultural rights. To ensure that short-term food aid benefits are not undermined by unintended consequences on RTF, food banks must ensure that they provide emergency food only, implement exit strategies, and undertake advocacy for the RTF alongside food provision.

4.1 Availability: Indaequate Food?

The 'availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals'⁶⁹ is a tenet of the RTF and links to food security, which is achieved 'when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life'.⁷⁰ Riches and Silvasti apply the food

⁶⁷ In Section 4.1.

⁶⁸ General Comment 12 (n 41) [20].

⁶⁹ *ibid* [8].

⁷⁰ World Health Organization (n 38); FAO, 'Food Security' (n 38).

security definition to developed countries to conclude that '[f]ood banks, soup kitchens and breadlines are not socially accepted ways to acquire food for oneself or for the family ...'⁷¹ and the DEFRA-commissioned report found that food aid does not improve food security.⁷² Similarly, food banks do not satisfy the right to food because the quantity and quality of food parcels is not necessarily nutritionally adequate and available.⁷³ Food banks are only able to distribute non-perishable foodstuffs, are reliant on ad hoc donations as to what food is available, and there is a lack of choice.⁷⁴ Riches and Silvasti also report that '[m]any food banks run out of food and turn clients away ...'⁷⁵ Furthermore, the distribution of food by charities depends on 'vague criteria decided by the charity agencies or even individual voluntary workers',⁷⁶ who do not conceive food as a universal human right. Former United Nations Special Rapporteur on the Right to Food, Olivier De Schutter,⁷⁷ emphasised the link between State RTF obligations, social security levels and a living wage.⁷⁸ The Special Rapporteur also criticised the UK specifically:

For developed countries ... resources are evidently more plentiful – and the failure to eradicate poverty is that much less excusable ... [food banks] are charity-based, not rights-based, and they should not be seen as a substitute for the robust social safety nets to which each individual has a right.⁷⁹

Thus, food banks cannot satisfy the availability requirement of the RTF; 'only the state is able to guarantee funds and resources and to ensure that these are, permanently and without stigmatization, available for all'.⁸⁰

⁷¹ Riches and Silvasti (n 2) 6.

⁷² Lambie-Mumford and others (n 7) viii.

⁷³ Steven Morris, 'Long-Term Food Bank Users Risk Nutritional Problems' (*The Guardian*, 18 March 2015) <<http://www.theguardian.com/society/2015/mar/18/long-term-food-bank-users-nutritional-problems-balanced-diet>> accessed 20 March 2015.

⁷⁴ Silvasti and Riches (n 34) 203. Lack of choice links into the issue of food sovereignty, which is outside the scope of this essay. On food sovereignty see: La Via Campesina, 'Food Sovereignty and Trade' (*La Via Campesina*) <<http://viacampesina.org/en/index.php/main-issues-mainmenu-27/food-sovereignty-and-trade-mainmenu-38>> accessed 21 March 2015; and La Via Campesina, '2013 Annual Report' (La Via Campesina 2014).

⁷⁵ Riches and Silvasti (n 2) 10.

⁷⁶ Silvasti and Riches (n 34) 203.

⁷⁷ Hereafter 'Special Rapporteur'.

⁷⁸ UNHRC 'Report of the Special Rapporteur Olivier De Schutter on the Right to Food: Mission to Canada' (2012) A/HRC/22/50/Add.1.

⁷⁹ De Schutter (n 24).

⁸⁰ Silvasti and Riches (n 34) 204.

4.2 Accessibility: Concealing State Inadequacies?

While food banks can prevent these people hitting rock bottom, they can never be more than a stop-gap, and can only offer basic subsistence from day to day – not a route out of poverty. They cannot therefore be used as a substitute for real measures to address underlying poverty and inequality and the food insecurity they generate. Instead, social protection systems – including unemployment and child benefits – must be set at levels that take into account the real cost of living and ensure adequate food for all, without compromising on other essentials. And governments should not be allowed to escape their obligations because private charities make up for their failures.⁸¹

The role of food banks has been criticised as concealing State inadequacies and ‘de-politicizing’ hunger.⁸² We can interpret this as failing the RTF requirement of accessibility: food banks are unable to affect economic accessibility to food, and certain groups have difficulty physically accessing food banks, such as the elderly.⁸³ Ensuring economic accessibility is the role of the State, through regulation of the minimum wage, employment law, and social security (welfare benefits). The existence of food banks on the scale that they are currently required in the UK is evidence of the State failing to ensure economic accessibility to food. Food banks can demonstrate how and where a system is broken,⁸⁴ but also conceal the political nature of hunger and government’s obligations ‘because private charities make up for their failures’.⁸⁵ Food banks do not fulfil the adequate right to food, but as they satiate hunger to a limited extent, this conceals the ‘underlying problems’⁸⁶ of inadequate social, economic and cultural rights, which the State is legally obliged to fulfil. It is of concern that ‘[f]ood banks are just one area where charities have been stepping in’,⁸⁷ because even when charities perform successfully, they ‘risk giving a green light to government to outsource even more of the task of poverty relief, forcing the welfare system into an increasingly residual mould’,⁸⁸ whilst they ‘can never do more than patch up a system frayed by slump, austerity, and the steady transfer of economic and social risks from business and state to the

⁸¹ De Schutter (n 24).

⁸² Riches and Silvasti (n 2).

⁸³ Health and Environment Committee (n 15) 6; Lambie-Mumford and others (n 7) 50.

⁸⁴ De Schutter (n 24).

⁸⁵ *ibid.*

⁸⁶ Lansley and Mack (n 2) 213.

⁸⁷ *ibid* 209.

⁸⁸ *ibid* 226.

individual'.⁸⁹ Food banks are not 'socially or politically sustainable'.⁹⁰ Instead, the UK requires 'a coherent anti-poverty strategy ... based more closely on universal and inclusive principles of social protection'.⁹¹ Food banks should be wary of allowing 'governments ... to turn a blind eye despite the fact that [States] have ratified the right to food'.⁹² Charitable food provision should not be a 'component of food security, but [recognised] as part of the problem in addressing domestic hunger and food poverty'.⁹³

4.3 'Emergency use only'

Many of the critiques of food banks propose recommendations for government action because the State is failing in its ICESCR RTF obligations. Additionally, it is proposed that food banks may themselves be able to play a more beneficial role and remedy some of the unintended consequences of their activities. Food banks should exist as temporary measures, ensuring that they do not become embedded in the British society. To achieve this, this Article recommends that food banks provide emergency-only food, implement effective exit strategies and pertinently engage in advocacy work to lobby the government into action on the protection and fulfilment of RTF and linked socio-economic rights. This fits with the FAO 2005 Voluntary Guidelines⁹⁴ requiring that '[f]ood aid should be provided with a clear exit strategy and avoid the creation of dependency',⁹⁵ and the Rome Declaration understanding that food aid should not be long-term.⁹⁶

Some food banks already endeavour to function for 'emergency use only',⁹⁷ but in many cases their temporary nature needs to be more firmly entrenched in governing documents with thought-out exit strategies and public portrayal of this temporary existence. For example, the Trussell Trust limits clients to three vouchers over a six month period for three days' worth of emergency food,⁹⁸

⁸⁹ *ibid.*

⁹⁰ *ibid* 229.

⁹¹ *ibid.*

⁹² Riches and Silvasti (n 2) 10.

⁹³ *ibid* 12.

⁹⁴ FAO, 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security' (Adopted by the 127th Session of the FAO Council November 2004, FAO 2005).

⁹⁵ *ibid* 27.

⁹⁶ Rome Declaration on World Food Security and the World Food Summit Plan of Action (Rome Declaration), FAO 'Report of the World Food Summit' (Rome, 13-17 November 1996, FAO) [5]; Olivier De Schutter and Kaitlin Y Cordes (eds), *Accounting for Hunger: The Right to Food in the Era of Globalisation* (Hart Publishing 2011) 245.

⁹⁷ Perry and others (n 19).

⁹⁸ *ibid* 15.

'signpost[s] people to agencies able to solve the longer-term problem' and 'has advised [Trussell Trust] food banks against entering into contractual service level agreements with local authorities'.⁹⁹ However, there are reports of practices undermining this official approach: discretionary food parcels without vouchers,¹⁰⁰ and 'extra support on a discretionary basis in certain circumstances'.¹⁰¹ Whilst it is entirely understandable that food banks may feel compelled to provide more than emergency-only assistance, it is imperative for a UK RTF that food banks 'retain a role only as providers of emergency food aid';¹⁰² 'food banks should not and cannot be expected to fill what appears to be a gap in state provision'.¹⁰³

Despite the Trussell Trust's apparent awareness of the potentially damaging effects of institutionalising food banks, civil society and Parliament generally do not seem to have grasped this problem. In fact, the All-Party Parliamentary Inquiry into Hunger recommended incorporating food banks into a 'national network' to address hunger,¹⁰⁴ which was strongly criticised by Graham Riches for increasingly embedding food banks and not addressing the problem from a right to food perspective.¹⁰⁵ Whilst this Article agrees with Riches' critique, it is relevant to note that the All-Party Parliamentary Inquiry reluctantly reached this conclusion, as they 'do not believe food banks should take the place of statutory welfare provision'.¹⁰⁶ Alternatively, this Article suggests it is necessary that food banks have exit strategies in place to reaffirm their existence as temporary and to allow them to close down once the underlying problems have been addressed, or if their negative consequences outweigh their benefits. One food bank in Nottingham demonstrated the capacity to end food aid provision when their role was considered more damaging than beneficial, 'legitimising council spending cuts'.¹⁰⁷ It is unclear whether other food banks, especially as they become increasingly institutionalised, would be able or willing to take similar action. Food banks must publicly promote themselves as temporary, for emergency use, and have exit strategies, to be seen as short-term help whilst advocating for a long-term RTF.

⁹⁹ Trussell Trust, 'A Response to Inaccurate and Misleading Reports about the Trussell Trust' (*Trussell Trust*) <<http://www.trusselltrust.org/rumour-response>> accessed 20 February 2015.

¹⁰⁰ Lansley and Mack (n 2) 226.

¹⁰¹ Health and Environment Committee (n 15) 18.

¹⁰² *ibid* 19.

¹⁰³ *ibid* 18.

¹⁰⁴ All-Party Parliamentary Group on Hunger and Food Poverty (n 20) 46.

¹⁰⁵ Graham Riches, 'Food Banks Don't Solve Food Poverty. The UK Must Not Institutionalise Them' (*The Guardian*, 8 December 2014) <<http://www.theguardian.com/commentisfree/2014/dec/08/food-banks-poverty-uk-canada-right-to-food>> accessed 22 February 2015.

¹⁰⁶ All-Party Parliamentary Group on Hunger and Food Poverty (n 20) 20.

¹⁰⁷ Owen (n 1).

4.4 Institutionalisation and Food Waste for the Food Poor

Evidence that food banks are being institutionalised in the UK includes the parliamentary inquiry proposing food banks as part of a national strategy,¹⁰⁸ councils utilising food banks instead of emergency funding,¹⁰⁹ and links with the Global Foodbanking Network (GFN) and European Federation of Food Banks (EFFB).¹¹⁰ FareShare is the only UK member of GFN and EFFB,¹¹¹ distributing otherwise waste food donated by supermarkets to charities and organisations where meals can be prepared for clients to eat on the premises.¹¹² This model raises diverse concerns from Trussell Trust-style food banks collecting donations of in-date non-perishable food and distributing it in food parcels to be prepared in people's homes.¹¹³ Silvasti and Riches raise concerns with the FareShare model, questioning 'who is really benefitting from corporatized food charity, and in practice how effective is this food charity model?'¹¹⁴ '[H]ow appropriate is it that globalized corporate food charity seeks to twin the issues of hunger and food waste?'¹¹⁵ They are critical of corporate supermarkets' motives in donating food, as they receive benefits such as 'tax deductibility of donations as well as possibilities to reduce costs for storage, transport and landfill charges'.¹¹⁶ The DEFRA-commissioned inquiry acknowledged similar concerns that 'the joint intertwining of interests of those providing food aid and the corporate sector can lead to entrenching the provision and normalising the system as a solution'.¹¹⁷

¹⁰⁸ All-Party Parliamentary Group on Hunger and Food Poverty (n 20).

¹⁰⁹ Owen (n 1).

¹¹⁰ Silvasti and Riches (n 34) 197.

¹¹¹ European Federation of Food Banks, 'Countries: United Kingdom' (*European Federation of Food Banks*) <<http://www.eurofoodbank.eu/countries/72-united-kingdom>> accessed 8 March 2015; The Global FoodBanking Network, 'Food Banks Around the World' (*The Global FoodBanking Network*) <<http://www.foodbanking.org/food-banking/global-food-bank-community/>> accessed 8 March 2015; FareShare, 'FareShare: Fighting Hunger, Tackling Food Waste' (*FareShare*) <<http://www.fareshare.org.uk/>> accessed 8 March 2015.

¹¹² FareShare (n 112); Other local organisations, and the charity Kids Company, engage in similar food aid provision through meals eaten in their premises. Jay Rayner, 'How Kids Company Feeds Britain's Hungry Children' (*The Guardian*, 15 February 2015) <<http://www.theguardian.com/society/2015/feb/15/how-kids-company-feeds-britains-hungry-children>> accessed 20 February 2015.

¹¹³ Lambie-Mumford and others (n 7) 19.

¹¹⁴ Silvasti and Riches (n 34) 197.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ Lambie-Mumford and others (n 7) 57.

Furthermore, conflating the separate issues of food waste and food poverty ignores the conception of a right to adequate food. It also reiterates the ‘social construction of hunger as a matter for charity’,¹¹⁸ with an aura of ‘public legitimacy promoted by positive mass media attention’.¹¹⁹ Dowler issues similar criticism:

The challenge in the increasing institutionalization of charitable responses, particularly in the linking of ‘food waste’ as a solution to ‘food poverty’, is that the fundamental issues become de-politicized, and solutions are located in the responsible use of resources at local levels, enabling both the state to retreat from responsibilities and food businesses to gain from improving corporate social responsibility (CSR) and reduced landfill taxes.¹²⁰

The DEFRA-commissioned inquiry also reported on problems that institutionalisation can ‘normalis[e] informal provision of food as a sufficient – and indeed, only – response to the problems’¹²¹ and that the involvement of the corporate sector ‘may contribute to entrenching a “hand-out” response to meeting immediate needs, which fail to address root causes of household food insecurity’.¹²² The coalition government, under which the need for food banks had multiplied, deflected the issue as ‘surplus food is going to waste’.¹²³ It is concerning that a State failing in its RTF obligations uses the conflation of food waste and hunger to excuse its inadequacies. Food banks need to resist institutionalisation and reconstruct food aid as emergency-only whilst advocating for a UK RTF.

V. THE ROLE OF FOOD BANKS IN ADVOCATING FOR THE RIGHT TO FOOD

This Article proposes that food banks are ideally positioned to advocate for the right to food in the UK, as they identify areas of food poverty¹²⁴ and are uniquely able to collect statistics.¹²⁵ Some food banks already engage in campaign work, examples being the reports published by the Trussell Trust and

¹¹⁸ Silvasti and Riches (n 34) 202.

¹¹⁹ *ibid* 203.

¹²⁰ Dowler (n 2) 173.

¹²¹ Lambie-Mumford and others (n 7) 60.

¹²² *ibid* 61.

¹²³ Patrick Wintour and Patrick Butler, ‘Tories Seek to Avert Rift with Church of England over Food Bank Report’ (*The Guardian*, 8 December 2014) <<http://www.theguardian.com/uk-news/2014/dec/08/tories-avert-rift-church-food-bank-report>> accessed 20 February 2015.

¹²⁴ De Schutter (n 24).

¹²⁵ There are ‘no official statistics’. Dowler (n 2) 166; Lambie-Mumford and others (n 7) vi.

other charities.¹²⁶ However, the role of food banks in advocating specifically for a UK RTF has been rather muted. This Article will analyse reasons for limited public campaigning and propose that food banks could and should increase advocacy on a UK RTF. For the purposes of this Article, a broad understanding of ‘advocacy’ is adopted; it may include legal advocacy through the courts, data collection and report publishing, public demonstrations, awareness-raising and social mobilising activities. The key point is that advocacy must promote a UK RTF, which could result in legal reform and a rights-based food strategy, as suggested by the ICESCR,¹²⁷ and genuine RTF implementation.

5.1 Restrictions on Food Bank Advocacy

Some food banks and charities have spoken out about food poverty and the rise of food aid in the UK, though very infrequently in RTF language. However, the former Conservative-led coalition government had made its view explicitly clear that charities should ‘stick to knitting’, providing food parcels and not legal and political advocacy.¹²⁸ This government message, which included threats to funding, forced some food banks to step back into the role of food aid and reduced advocacy. For example, the Secretary of State for Work and Pensions, Iain Duncan Smith MP, severely criticised the Trussell Trust’s advocacy as ‘scaremongering’.¹²⁹ His senior aide was additionally accused of threatening to close the Trussell Trust for its “‘politicisation of poverty’”.¹³⁰ These threats from senior government officials worryingly resulted in the Trussell Trust chair Chris Mould ‘admitt[ing] that the charity had decided to become less vocal about food poverty in the wake of the incident’.¹³¹ Perhaps Chris Mould felt restricted by funding needs not to agitate donors and government.¹³² Although ‘the Trussell Trust does not receive any government funding’,¹³³ their food banks may be ‘subsidised’ by local councils,¹³⁴ or there may be concerns that the government’s response may be off-putting to

¹²⁶ For example: Perry and others (n 19); Cooper, Purcell and Jackson (n 19); Just Fair (n 2).

¹²⁷ General Comment 12 (n 41) [29].

¹²⁸ Lansley and Mack (n 2) 222.

¹²⁹ *ibid* 210.

¹³⁰ Jonathan Owen, Oliver Wright and Charlie Cooper, ‘Exclusive: Food Bank Charity ‘Was Threatened with Closure by Iain Duncan Smith’s Aide’ (The Independent, 13 June 2014) <<http://www.independent.co.uk/news/uk/politics/exclusive-food-bank-charity-was-threatened-with-closure-by-ministers-aide-9533456.html>> accessed 12 March 2015.

¹³¹ *ibid*.

¹³² *ibid*.

¹³³ Trussell Trust (n 100).

¹³⁴ ‘Councils Spending £3m on Food Poverty and Food Banks’ (BBC News, 3 March 2014) <<http://www.bbc.co.uk/news/uk-26369558>> accessed 22 March 2015; ‘Funding for Food Banks’ (Public Sector Executive, 15 April 2014) <<http://www.publicsectorexecutive.com/Poverty-and-inequality/funding-for-food-banks>> accessed 22 March 2015.

'individual donors, independent grant making bodies and businesses'.¹³⁵ Lansley and Mack conclude that the increased role of charities can involve 'clear conflicts ... Charities which provide services with state funding *and* engage in lobbying, risk losing financial help ...'¹³⁶ The government's response gives weight to the critique that 'charities are encouraged to step in – and help provided they don't ask too many uncomfortable questions of government at the same time ... The big society, it seems, comes with strings attached, a duty of acquiescence'.¹³⁷ This uncooperative approach also caused the Conservative-led coalition government to clash with the Church of England's advocacy.¹³⁸

The coalition government's criticism of charity advocacy may raise freedom of expression concerns, furthered by new limitations on charitable spending before elections,¹³⁹ and Oxfam's 2014 referral to the Charity Commission for its advocacy on food.¹⁴⁰ Charity campaigning is not permitted by UK charity law if it is 'party political' and threatens the perception of a charity as independent.¹⁴¹ This does not prohibit advocacy on a UK RTF, and in the circumstances the Charity Commission recognised that Oxfam 'had no intention to act in a party political way ... [but] should have done more to avoid any misperception of political bias ...'¹⁴² However, the threat of referral to the Charity Commission and government reprisals for charitable advocacy may warn some food aid providers off engaging in advocacy work.

¹³⁵ Trussell Trust (n 100).

¹³⁶ Lansley and Mack (n 2) 224.

¹³⁷ *ibid* 225.

¹³⁸ Lansley and Mack (n 2) 223; Wintour and Butler (n 124). Examples of Church-linked reports: Cooper, Purcell and Jackson (n 19); Church Action on Poverty, 'Britain Isn't Eating - the Message Will Hit the Road' (*Church Action on Poverty*) <<http://www.church-poverty.org.uk/news/britainisnteating>> accessed 12 March 2015; All-Party Parliamentary Group on Hunger and Food Poverty (n 20).

¹³⁹ Regulated by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. See also Rowena Mason, 'Lobbying Bill Passes Through House of Lords' (*The Guardian*, 28 January 2014) <<http://www.theguardian.com/politics/2014/jan/28/lobbying-bill-passes-house-lords>> accessed 10 April 2015.

¹⁴⁰ Lansley and Mack (n 2) 211; Charity Commission, 'Operational Case Report: Oxfam (202918)' (Charity Commission 2014).

¹⁴¹ *ibid*; Charity Commission, 'Speaking Out: Guidance on Campaigning and Political Activity by Charities' (Charity Commission 2008). Under the Charities Act 2011, s 2–3, a charity must have purely charitable purposes; this does not include political purposes.

¹⁴² Charity Commission, 'Operational Case Report' (n 141).

5.2 Food Banks could and should do more RTF Advocacy

This Article maintains that despite the issues identified that may restrict food banks' capacity and willingness to engage in advocacy for a UK RTF, food banks could and should play a greater role in RTF advocacy. The DEFRA-commissioned report surmised from international evidence that, despite problems in food banks' food aid provision, 'civil society, which is where most food aid providers are located, can have an important and constructive role to play in terms of advocacy and lobbying ...'¹⁴³ Similarly, in 2014 Dowler identified potential for UK charities to advocate for 'people's voices to be heard', whilst reserving concern that the coalition government was not open to 'engagement'.¹⁴⁴ Dowler's critique continues to apply to the current majority Conservative government. Importantly, the State needs 'political will to adopt the ICESCR into domestic law',¹⁴⁵ which could be advocated for by food banks. The potential restrictions on food bank advocacy are not severe enough that they prohibit mobilisation. Governmental criticism may threaten funds, but food banks ought not to sacrifice long-term RTF goals for short-term food aid donations; as the impacts of unintended consequences of food aid can be damaging. Whilst some food banks already engage in advocacy, as well as charities campaigning on food poverty in the UK, food banks could do more to campaign specifically on the RTF. A rights-based approach outlines clear State obligations and a focus for a UK RTF.

VI. CONCLUSION

In post 2007-recession Britain, food banks have proliferated to provide food aid to the increasingly hungry society. Whilst it is undeniable that the obligations to protect, respect, and fulfil the right to food rest with the State, it is food banks that have been attempting to ease the damaging consequences of an absent UK RTF. Unfortunately, the well-meaning third sector has unintentionally contributed to the concealment and mitigation of State inadequacies, whilst being unable to provide an adequate RTF that is both available and accessible. To counter these unintended consequences, food banks must ensure that they perform and promote themselves as having a role that is emergency-only; prepare genuine exit strategies; and advocate for a long-term RTF. The UK government has ratified the RTF and its correlative social, economic and cultural rights in the ICESCR, but has failed to implement RTF obligations and a rights-based food strategy. This lack of implementation of international

¹⁴³ Lambie-Mumford and others (n 7) xi.

¹⁴⁴ Dowler (n 2) 175.

¹⁴⁵ Silvasti and Riches (n 34) 205.

human rights law is an example of the problems with a rights framework,¹⁴⁶ but nevertheless, it is asserted that the current debate framed around food poverty and food insecurity lacks clearly defined legal obligations that society can demand from the State. Food banks need to better engage in RTF advocacy and social mobilisation to play a more valuable role in developing a UK RTF.

¹⁴⁶ Emilie M Hafner-Burton and Kiyoteru Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (2005) 110(5) *American Journal of Sociology* 1373.

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