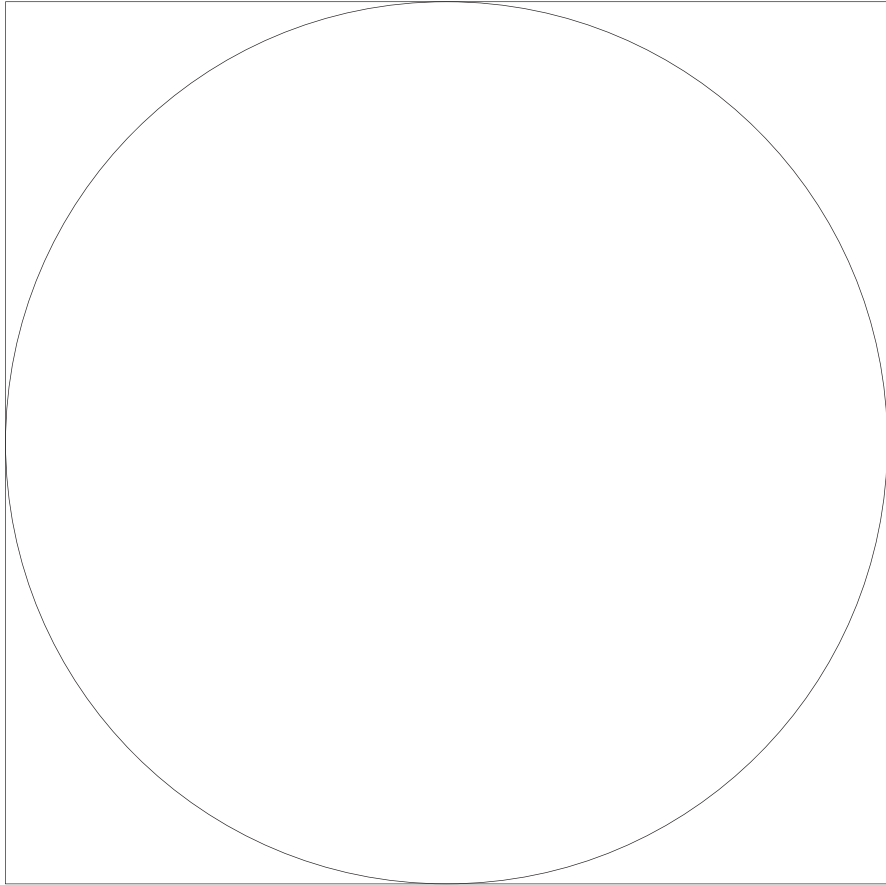


GUIDE ON LEGISLATING FOR THE RIGHT TO FOOD






The companion CD includes a **Legal Database** and
a **PDF Version** of the Guide



GUIDE ON LEGISLATING FOR THE RIGHT TO FOOD

This Guide was authored by Dubravka Bojic Bultrini, under the technical supervision of Margret Vidar and with the valuable contribution of Lidija Knuth. Significant inputs were provided by Isabella Rae.

A large, decorative graphic element consisting of two overlapping, wavy bands. The top band is light grey and the bottom band is dark red. They curve across the lower half of the page.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
Rome, 2009

The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

ISBN 978-92-5-106256-2

All rights reserved. Reproduction and dissemination of material in this information product for educational or other non-commercial purposes are authorized without any prior written permission from the copyright holders provided the source is fully acknowledged. Reproduction of material in this information product for resale or other commercial purposes is prohibited without written permission of the copyright holders. Applications for such permission should be addressed to:

Chief

Electronic Publishing Policy and Support Branch

Communication Division

FAO

Viale delle Terme di Caracalla, 00153 Rome, Italy

or by e-mail to:

copyright@fao.org

© FAO 2009

Contents

<i>Foreword</i>	viii
<i>Acknowledgements</i>	x
<i>Acronyms and abbreviations</i>	xii
INTRODUCTION AND PURPOSE OF THIS GUIDE	1
PART ONE – BACKGROUND: THE RIGHT TO FOOD IN INTERNATIONAL LAW	7
PART TWO – CONSTITUTIONAL RECOGNITION	31
PART THREE – FRAMEWORK LAW	51
PART FOUR – SECTORAL COMPATIBILITY REVIEW	183
CONCLUSION	270
<i>Annex. Checklist for framework law on the right to food</i>	273
<i>References</i>	277

Tables

Table 1. <i>Main coordinating decision-making body and its location within governmental administrations – examples from state practice in the field of food and nutrition security</i>	141
Table 2. <i>Vertical coordination of food and nutrition security – examples from state practice</i>	147
Table 3. <i>Assessing a legal provision with respect to elements of the right to food</i>	193
Table 4. <i>Assessing legislation against human rights principles</i>	194

Figures

Figure 1. <i>Two-part model of coordination</i>	140
Figure 2. <i>Three-part model of coordination</i>	161
Figure 3. <i>Assessing provisions limiting the right to food</i>	196

Boxes

Box 1. <i>Binding and non-binding international instruments</i>	10
Box 2. <i>Right to Food Guidelines</i>	12
Box 3. <i>International Covenant on Economic, Social and Cultural Rights</i>	13
Box 4. <i>Food security and the human right to food</i>	16
Box 5. <i>Convention on the Elimination of All Forms of Discrimination against Women</i>	22
Box 6. <i>Special measures and promotion of equality in international human rights treaties</i>	23
Box 7. <i>Discrimination and the role of stereotypes, prejudices and cultural practices</i>	24
Box 8. <i>Direct recognition of the right to food – examples from state practice</i>	35
Box 9. <i>Right to food as part of the right to an adequate standard of living/quality of life – examples from state practice</i>	36
Box 10. <i>Right to food as part of the right to a minimum wage – examples from state practice</i>	37
Box 11. <i>Right to food as part of the right to development – examples from state practice</i>	37
Box 12. <i>Human rights and the Constitutional Court – example from South Africa</i>	38
Box 13. <i>Recognition as a directive principle of state policy – examples from state practice</i>	40
Box 14. <i>Using directive principles of state policy to interpret the right to life – example from India</i>	41
Box 15. <i>Implicit recognition – examples from state practice</i>	45
Box 16. <i>Narrow interpretation of state obligations – example from Canada</i>	47
Box 17. <i>Organizing a participatory drafting process – examples from state practice</i>	61
Box 18. <i>Objective of a framework law – examples from state practice</i>	67
Box 19. <i>Specific objectives of the framework law – examples from state practice</i>	68
Box 20. <i>Definition of “food” at the national level – examples from state practice</i>	72
Box 21. <i>Vulnerability – examples from state practice</i>	75
Box 22. <i>Public authority – examples from state practice</i>	78
Box 23. <i>Principles – examples from state practice</i>	79
Box 24. <i>Principle of participation – examples from state practice</i>	80
Box 25. <i>Principle of accountability – examples from state practice</i>	80
Box 26. <i>Principle of non-discrimination – examples from state practice</i>	81
Box 27. <i>Principle of transparency – examples from state practice</i>	81
Box 28. <i>Principle of respect for human dignity – examples from state practice</i>	82

Box 29. <i>Establishing the right to food and defining its content – examples from state practice</i>	85
Box 30. <i>Prohibition of discrimination – examples from state practice</i>	93
Box 31. <i>Special measures for discriminated groups – example from India</i>	95
Box 32. <i>Legal provisions on general governmental obligations under the right to food – example from Brazil</i>	97
Box 33. <i>Legal provisions on state obligations under the right to food – examples from state practice</i>	97
Box 34. <i>Obligation to facilitate – examples from state practice</i>	103
Box 35. <i>Providing right to food to children – example from India</i>	104
Box 36. <i>Decentralizing implementation of food entitlements – examples from state practice</i>	106
Box 37. <i>Defining minimum food basket – example from Belarus</i>	109
Box 38. <i>Selecting beneficiaries for social programmes – examples from state practice</i>	110
Box 39. <i>Ensuring accountability of bodies delivering food entitlements – examples from state practice</i>	112
Box 40. <i>Support measures for the most vulnerable – examples from state practice</i>	114
Box 41. <i>Obligation to prioritize the most vulnerable – examples from state practice</i>	116
Box 42. <i>Undertaking impact assessments – examples from other fields</i>	118
Box 43. <i>Impact assessment – example from Uganda</i>	121
Box 44. <i>Relevance of information for the realization of the right to food – example from India</i>	122
Box 45. <i>Education on the right to food – examples from state practice</i>	126
Box 46. <i>Food security reserves – examples from state practice</i>	129
Box 47. <i>Developing and reviewing emergency management legislation – example from Solomon Islands</i>	131
Box 48. <i>Promoting international cooperation – example from Brazil</i>	134
Box 49. <i>Models of national food and nutrition security organization and coordination – examples from state practice</i>	136
Box 50. <i>Composition of the national coordinating bodies on food and nutrition security – examples from state practice</i>	145
Box 51. <i>Role of civil society organizations in monitoring – examples from Brazil</i>	151
Box 52. <i>Role of human rights institutions – examples from state practice</i>	154
Box 53. <i>Civil society representation in national coordinating bodies – examples from state practice</i>	160
Box 54. <i>Selecting civil society representatives – examples from state practice</i>	162
Box 55. <i>Administrative remedies for enforcing the right to food – examples from state practice</i>	166

Box 56. <i>Judicial remedies for the right to food violations – example from Honduras</i>	169
Box 57. <i>Indian Supreme Court interim orders in PUCL vs. Union of India and Others and their significance for the realization of the right to food in India</i>	169
Box 58. <i>National human rights institutions with quasi-judicial competence – examples from state practice</i>	171
Box 59. <i>Quasi-judicial recourse for the protection of the right to food – examples from state practice</i>	173
Box 60. <i>Provisions on implementation of framework legislation – example from state practice</i>	175
Box 61. <i>Legal provisions on reporting – examples from state practice</i>	176
Box 62. <i>Financial provisions – examples from state practice</i>	178
Box 63. <i>Access to land and international instruments</i>	199
Box 64. <i>Characteristics of land rights – examples from state practice</i>	202
Box 65. <i>Securing women’s land rights – example from United Republic of Tanzania</i>	204
Box 66. <i>Dealing with the interface between statutory law and customary law – example from South Africa</i>	206
Box 67. <i>Acquisition of land rights and land administration – example from state practice</i>	208
Box 68. <i>Expropriation and compensatory measures - example from South Africa</i>	210
Box 69. <i>Right to water in international law</i>	213
Box 70. <i>Access to a minimum supply of water – examples from state practice</i>	215
Box 71. <i>International fisheries instruments</i>	219
Box 72. <i>International legal instruments dealing with plant genetic resources</i>	227
Box 73. <i>Implementation of farmers’ rights – examples from state practice</i>	231
Box 74. <i>Seed laws – example from India</i>	232
Box 75. <i>Domestic support measures – example from state practice</i>	238
Box 76. <i>The human right to work and international labour standards</i>	242
Box 77. <i>Minimum wage in national legislation</i>	244
Box 78. <i>Public employment guarantees and food for work programmes – examples from state practice</i>	248
Box 79. <i>Human right to social security</i>	250
Box 80. <i>Providing a legal framework for food safety nets in Argentina</i>	252
Box 81. <i>International food standards</i>	257
Box 82. <i>Trade-offs linked to high food safety standards – examples from state practice</i>	259
Box 83. <i>Regulating trans fats in food products – examples from state practice</i>	262
Box 84. <i>Regulating food labelling and nutrition and health claims – international and regional standards</i>	265
Box 85. <i>Legislation on marketing and advertising to children</i>	266
Box 86. <i>“Sydney Principles” on marketing to children</i>	267
Box 87. <i>International Code of Marketing of Breast-milk Substitutes</i>	268

Foreword

The right to food has been established and endorsed with greater urgency than most other human rights. In 1948, when the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, it was given formal recognition as a human right (Article 25.1). Since then, the right to food, or some aspects of it, has been incorporated into a variety of binding and non-binding international human rights instruments. Among them, the International Covenant on Economic, Social and Cultural Rights (the Covenant) is the instrument that deals most comprehensively with this fundamental human right.

The right to food is legally binding on the 160 States Parties to the Covenant, Article 2 of which obliges State Parties to take steps, in particular legislative measures, for the progressive realization of the rights contained in the Covenant.

The right to adequate food and the fundamental right to be free from hunger were reaffirmed by the 1996 World Food Summit, which also called for better ways of implementing the rights related to food and encouraged all States to ratify the Covenant.

The World Food Summit: five years later established the mandate of an Intergovernmental Working Group to draft a set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. The Guidelines were then adopted by consensus by the FAO Council in 2004. These Guidelines recommend constitutional and legislative action as well as coordinated institutional frameworks to address the cross-sectoral dimensions of the right to food.

The Food and Agriculture Organization of the United Nations (FAO) has been providing support to countries wishing to adopt a human rights-based approach to food security since 2006. Legislative action is one essential part of such a human rights approach. Indeed, a number of countries have recently revised their constitutions or adopted new framework laws to give effect to the right to food. However, the body of knowledge and experiences in this field are limited.

*FAO is proud to launch the **Guide on Legislating for the Right to Food**, which provides detailed guidance to legislative drafters and reviewers on legislative provisions and institutional coordination. While the present Guide addresses primarily States Parties to the Covenant, it provides equally valid guidance to non-Parties seeking to implement this fundamental human right. Following a brief explanation of the right to food in international law, the Guide discusses three main levels of legislative incorporation of this human right at the national level, i.e. constitutional recognition, framework law on the right to food and a compatibility review of relevant national legislation.*

This publication comes at an opportune moment – many countries are currently seeking ways to reform their constitutions and adopt new laws in order to strengthen the right to food. To assist them in this process, the Guide provides detailed information and examples from other countries. In addition to the Guide itself, the companion CD-ROM contains the full text of all national legislation referred to. No doubt there will be updates to this Guide in the future as new lessons are learned from the number of countries that are increasingly engaging in right to food legislative processes.



Hafez Ghanem

*Assistant Director-General
Economic and Social
Development Department*



Giuliano Pucci

*Assistant Director-General
Legal Counsel*

Acknowledgements

Members of the Right to Food Unit at FAO have made comments and provided important inputs on drafts: Barbara Ekwall, Luisa Cruz, Cecilia Luna Lopez and Frank Mischler. Other colleagues at FAO also reviewed various drafts and made suggestions for improvements: Janice Albert, Ezzeddine Boutrif, Renata Clarke, Tom Heilandt, Jeronimas Maskeliunas, Kazuaki Miyagishima and Ellen Mühlhoff from the Nutrition and Consumer Protection Division; Richard China and Laura Sciannimonaco from the Emergency Operations and Rehabilitation Division; Benjamin Davis and Aira Htenas from the Agricultural Development Economics Division; Olivier Dubois from the Environment, Climate Change and Bioenergy Division; Ambra Gobena, Victor Mosoti, Anniken Skonhoff and Jessica Vapnek from the Legal Office; Ali-Arslan Gürkan from the Trade and Markets Division; Dan Leskien and Alvaro Toledo from the Secretariat of the Commission on Genetic Resources for Food and Agriculture; Yianna Lambrou from the Gender, Equity and Rural Employment Division; Shakeel Bhatti and Kent Nnadozie from the Plant Production and Protection Division.

FAO wishes to acknowledge the following individuals and institutions who contributed with their comments and inputs on different drafts: Josefina Fernández Bajas, Theo van Banning, Vincent Calderhead, Fons Coomans, Lorenzo Cotula of the International Institute for Environment and Development; Christian Courtis of the International Commission of Jurists; Federica Donati and Asako Hattori of the Office of the High Commissioner for Human Rights; Christophe Golay, Otto Hospes, Florie Huck of the Comisión Andina de Juristas; Sibonile Khoza, Gabriele Köhler, Kerstin Mechlem, Bernd van der Meulen, Karuna Nundy, Martin Oelz of the International Labour Organization; Ana Flávia Rocha of the Ação Brasileira Pela Nutrição e Direitos Humanos; Andrew M. Rosemarine, Aruna Sharma of the Indian National Human Rights Commission; Sigrun Skogly, Abdoulaye Soma, Ana-María Suárez-Franco of the FoodFirst Information and Action Network and Mariana Stirbu of the United Nations Children's Fund South Asia Regional Office.

FAO also wishes to acknowledge the following individuals who participated in workshops or other discussions about the Guide: Satish B. Anginotri, Guillermo Arana, Miriam Villamil Balestro, Radha Holla Bhar, Kiran Bhatti, Nathan Byamukama, Vincent Calderhead, M.C. Liza Covantes Torres, Aquiles Dávalos, Sanjay Dubey, Daisy Eresu, Carmelo Gallardo, Luis García, Miguel García, Colin Gonsalves, Ivan Guilén, Arun Gupta, Florie Huck, Bayardo Izaba Solís, Cameroon Jacobs, Pablo Jácome, A.K. Jain, Rajiv Jainswal, Roselyn Karugonjo, Anita Kaul, Joseph Kayuza, Sibonile Khoza, Diogenes Lucio, Tania Malepín, Marcelino Martínez, Gary Mathieu, Kerstin Mechlem, Jose Maria Medina, Santosh Mehrotra, Sarah Mitanda, Luis Enrique Monterroso, Maura Morales, Lucy Morren, Tom Mugisa, Benard Mujuni, Edson Musopole, Anganile Willie Mwenifumbo, Joseph Nsereko, Joel Aliro Omara, Shruti Pandey,

Biraj Patnaik, Reina Esther Pineda, Mangala Rai, Amrita Rangasami, Ashok Rao, Ana Flávia Rocha, Iskra Rodriguez, Fernando Rosero, Georgina Ruiz, Bhagwan Sahai, Julio Sánchez, Lazaro dos Santos, Naresh C. Saxena, Jules Seitz, Aruna Sharma, Kumar Sharma, Alok Shukla, Chrispine Gwalawala Sibande, Paul Simo, Devika Singh, Akhila Sivadas, Shantha Sniga, Mario Solís, Xanthis Suárez, T. Sundaraman, Gerald Tushabe, Eduardo Vallecillo, Jessica Vapnek, Ervin Vargas, Kaba. R. Venugopal, José Luis Vivero, Yada Hashim Williams, Lourdes Xitumul and Dora Zeledón.

Special thanks go to Jessica Vapnek of the FAO Legal Office for extensive and substantive editorial contributions.

The Right to Food Production team ensured the formatting and layout of the publication: Mauricio Rosales, Tomaso Lezzi and Gabriele Zanolli.

Barbara Ekwall, Coordinator of the Right to Food Unit, had the overall responsibility for the preparation of the present Guide.

Acronyms and abbreviations

AoA	Agreement on Agriculture
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CGIAR	Consultative Group on International Agricultural Research
CRC	Convention on the Rights of the Child
CONASAN	Consejo Nacional de Seguridad Alimentaria y Nutricional (National Food and Nutrition Security Council) (Ecuador, Guatemala)
CONASSAN	Comisión Nacional de Soberanía y Seguridad Alimentaria y Nutricional (National Commission on Food and Nutritional Sovereignty and Security) (Nicaragua)
CONSEA	Conselho Nacional de Seguridad Alimentar e Nutricional (National Council on Food and Nutrition Security) (Brazil)
CSO	Civil society organizations
EEZ	Exclusive economic zone
ESCR	Economic, social and cultural rights
FAO	Food and Agriculture Organization of the United Nations
FIAN	FoodFirst Information and Action Network
FIVIMS	Food Insecurity and Vulnerability Information Mapping Systems
GC	General Comment
GRFA	Genetic resources for food and agriculture
HRC	Human Rights Committee
IAIA	International Association for Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IPRs	Intellectual property rights
ILO	International Labour Organization

ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OIE	World Organization for Animal Health
MCS	Monitoring, control and surveillance
PBR	Plant breeders' rights
PCM	Presidency of the Council of Ministers (Peru)
PGRFA	Plant genetic resources for food and agriculture
Right to Food Guidelines	Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
SESAN	Secretaría de Seguridad Alimentaria y Nutricional (Food and Nutrition Security Secretariat) (Guatemala)
SINASSAN	Sistema Nacional de Soberanía y Seguridad Alimentaria y Nutricional (National System on Food and Nutritional Sovereignty and Security) (Nicaragua)
SISAN	Sistema Nacional de Segurança Alimentaria e Nutricional (Brazil) Sistema Nacional de Seguridad Alimentaria y Nutricional (Guatemala) (National Food and Nutritional Security System)
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
STE	State trading enterprise
TAC	Total allowable catch
TBT Agreement	Agreement on Technical Barriers to Trade
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UNCLOS	United Nations Convention on the Law of the Sea
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization