

PART TWO

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PART TWO

CONSTITUTIONAL RECOGNITION

Whereas the ICESCR refers to “legislative measures” in general to implement human rights recognized therein, the Right to Food Guidelines mention “state constitutions” specifically.⁵⁵ Constitutions usually contain a declaration of fundamental human rights that are indispensable for guiding and limiting government action and inaction. The superiority of a constitution implies that every law in a country must conform to the constitutional provisions and, in cases of conflict, the constitutional norm will always prevail. Thus, the inclusion of the human right to food in the national constitution gives the strongest possible basis for the right. Constitutional recognition of the right to food also provides a safeguard against the withdrawal of this fundamental right for reasons of political expediency; in most countries, in comparison to ordinary legislation, modifying the constitution requires special procedures, which ensures greater permanency.⁵⁶

The judiciary interprets the legality and legitimacy of governmental action or inaction in relation to fundamental rights.⁵⁷ Many constitutions – in particular those recently adopted or amended – provide for the right to claim protection of guaranteed rights through judicial proceedings, including in the form of individual

55 States are invited to “include provisions in their domestic law, which may include their *constitutions, bills of rights or legislation*, to directly implement the progressive realization of the right to adequate food” (Guideline 7.2, emphasis added).

56 See Liebenberg S. 2001.

57 See Steiner & Alston, 2000, p. 990.

constitutional complaints before constitutional courts.⁵⁸ A great number of constitutions also establish or provide for the establishment of independent institutions, such as national human rights commissions or ombudspersons that are charged with the monitoring and enforcement of guaranteed human rights and freedoms.

Many national constitutions do take account of the right to food or some of its aspects. Recognition of the right usually falls in three possible categories: (i) explicit recognition, as a human right in itself or as part of another, broader human right; (ii) recognition as a directive principle of state policy; and (iii) implicit recognition, through broad interpretation of other human rights.

58 For example, Latin American countries provide for the institution of “*amparo*” or similar remedies, meaning that every person may apply to the organs of the judiciary including the Constitutional Court, and request the adoption of urgent measures to halt, prevent the commission of or immediately remedy the consequences of an unlawful act by a public authority violating any of the constitutional rights and which may cause imminent, serious and irreparable harm (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Venezuela [Bolivarian Republic of]). In Colombia the *Acción de Tutela*, in Chile the *Acción de Protección* and in Brazil the *Acção de Segurança* have also the same function as the *Acción de Amparo*. Some of the constitutional clauses of *amparo* only provide the justiciability to fundamental rights, while others such as the Guatemalan, Ecuadorian or Venezuelan constitution include also the justiciability of human rights recognized in international law treaties. A similar mechanism exists in some other states (Belarus, Bulgaria, Eritrea, Mozambique, Uzbekistan). Equally, constitutions in the majority of Central and Eastern European states, some African and Asian states provide for individual constitutional complaints, meaning that any person has the right to apply directly to the Constitutional or Supreme Court in case of an alleged violation of one of the constitutionally guaranteed rights and freedoms (Azerbaijan, Benin, Croatia, India, Nepal, Slovenia, South Africa). In Nepal, Pakistan and the Turks and Caicos Islands there is also a possibility of public interest litigation allowing direct access to justice for the protection of guaranteed rights. In India, this possibility has been developed through judicial practice.

2.1 EXPLICIT RECOGNITION

Direct recognition of the right to food as an individual human right for all persons⁵⁹ or for specific categories of population such as children⁶⁰ is rarely seen in state constitutions, although there are some examples. A few of them are given in Box 8.

BOX 8. Direct recognition of the right to food – examples from state practice

... for all

Bolivia

Article 16. Every person has the right to water and food. The State has the obligation to guarantee food security for all through a healthy, adequate and sufficient food.⁶¹

Ecuador

Article 13. The Right to Food includes the free and permanent access to sufficient innocuous and nourishing food for a healthy and quality feeding, in accordance with the culture, traditions and customs of the peoples. The Ecuadorian State will recognize and guarantee the right to food sovereignty.



59 Bolivia (Art. 16), Guyana (Art. 40), Haiti (Art. 22), South Africa (Art. 27.1). The Constitution of Nicaragua (Art. 63) provides for the right of every person to be free from hunger.

60 Brazil (Art. 227), Colombia (Art. 44), Cuba (Art. 9), Guatemala (Art. 51), Honduras (Art. 123), Panama (Art. 52), Paraguay (Art. 54), and more specifically, indigenous children: Costa Rica (Art. 82), Mexico (Art. 4) and South Africa (Art. 28(1.c)) and prisoners and detainees: South Africa (Art. 35.2.e).

61 The new, revised Constitution of Bolivia has been recently adopted and entered into force in February 2009.

Box 8. Direct recognition of the right to food – examples from state practice (cont.)**South Africa**

Article 27.1. Everyone has the right to have access to [...] b. sufficient food and water; and c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. 2. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

... for children**Colombia**

Article 44. Children have fundamental rights to: life, integrity, health and social security, adequate food.

More often, constitutional provisions referring to the right to food take other forms with clauses elaborating, for example:

- ◆ A human right to an adequate standard of living or quality of life, with food as one of its components (see Box 9).⁶²

BOX 9. Right to food as part of the right to an adequate standard of living/quality of life – examples from state practice**Belarus**

Article 21.2. Every individual shall exercise the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions.

Republic of Moldova

Article 47.1 The State is obliged to take action aimed at ensuring that every person has a decent standard of living, whereby good health and welfare based on available food, clothing, shelter, medical care, and social services are secured for that person and his/her family.

62 The Congo (Art. 34.1), the Republic of Moldova (Art. 47.1), Ukraine (Art. 48).

- ◆ *A right to a minimum wage*, capable of satisfying basic living needs notably food (see Box 10).⁶³

BOX 10. Right to food as part of the right to a minimum wage – examples from state practice

Brazil

Article 7. The following are rights of urban and rural workers, among others, that aim to improve their social conditions: ...

IV – nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power.

- ◆ *A right to development*, including access to food (see box 11).

BOX 11. Right to food as part of the right to development – examples from state practice

Malawi

Article 30.2. The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.

As mentioned earlier, the legal consequence of the superiority of the constitution in the hierarchy of national legal norms is that all legislative or sublegislative norms have to conform to it; in the case of a clear-cut conflict between a constitutional provision and a law, the constitutional provision will prevail. Direct recognition of the right to food in the substantive part of the constitution has a far-reaching effect on all state institutions (administrative authorities, legislature and judiciary).

63 Brazil (Art. 7), Suriname (Art. 24).

Administration of public services and treatment of the most vulnerable members of society can be held to higher standards by permitting relatively powerless people to hold government to account for the actions that infringed their right to food and to seek an appropriate remedy through judicial action. An example of a judicial case before the Constitutional Court of South Africa, where the court addressed the question of whether the measures taken by the state could be considered as conforming to the obligation of the state to realize the right to adequate housing guaranteed under the state constitution is given in Box 12.

BOX 12. Human rights and the Constitutional Court – example from South Africa

The applicant, Ms Grootboom, a member of a large group of 390 adults and 510 children, lived in appalling circumstances in an informal settlement. The land area was privately owned and earmarked for construction of low-cost housing for the poor as part of a government housing programme. The state evicted the community with no provision for alternative accommodation and thus left them without shelter. She filed a lawsuit to enforce their right to adequate housing, protected by the South African Constitution before the Cape High Court, which ordered the Government to provide them with basic housing.

Upon appeal, the Constitutional Court considered in its decision that measures aimed to promote cheap housing (and in that sense to realize the right to housing) violated the constitutional right to housing of people who had illegally occupied an area of land and who were forcibly evicted from it in order to implement the housing programme. Although these people had no legal claim on the land, the housing programme failed to consider their immediate and “desperate” need for shelter.⁶⁴

In another recent case, Mr Khoza and a number of other persons, who were permanent residents in South Africa, complained against legislative provisions, which limited entitlement to social grants for the aged to South African citizens, thus preventing children of non-South African citizens in the same position to obtain childcare grants available to South African children (regardless of the citizenship status of the children themselves). The Constitutional Court held that the exclusion of permanent residents who were not South African citizens from social welfare benefits was an unreasonable and unjustifiable interference with the constitutional right to social security guaranteed to “everyone” under Section 27 of the Constitution.



⁶⁴ *Government of South Africa vs. Grootboom*, CCT38/00, Judgment of 21 September 2000, para. 23.

Box 12. Human rights and the Constitutional Court – example from South Africa (cont.)

This was linked to the guarantee of equality in Section 9 of the Constitution. Noting that permanent residents were in a position largely analogous to South African citizens, and that extension of benefits to them would not have a significant budgetary impact, the Court considered that a limitation on their rights that affected their dignity and equality in material respects could not be justified.⁶⁵ The Legal Resources Centre, which was responsible for bringing the case, estimated that the judgment would impact on at least 250 000 people in South Africa. The judgment has largely been given effect by the state; the legislation at issue in *Khoza* has since been repealed and replaced by the Social Assistance Act of 2004.

Source: International Network for Economic Social and Cultural Rights (ESCR-net), available at: www.escr-net.org/caselaw/

Provided that public officials and national courts are knowledgeable of the constitutional provisions and apply them in their work, direct recognition of the right to food in the substantive part of the constitution will ensure (at least in theory) that the right to food is taken into account in all areas of state activity affecting the enjoyment of this fundamental human right.

65 *Khosa and Others vs. Minister of Social Development*, CCT 53/03, Judgment of 1 October 2004.

2.2

RECOGNITION AS A DIRECTIVE PRINCIPLE OF STATE POLICY

Many countries that do not recognize the right to food explicitly in their substantive provisions or bills of rights nonetheless refer to food or food security or to raising the level of nutrition and standard of living in the provisions that set out the objectives or directive principles of state policy⁶⁶ (see Box 13). Directive principles are statements of principle. They often represent the values a society aspires to although at the time of drafting they may not reflect a broad societal reality. Most often, these constitutional provisions guide governmental action, in particular in the socio-economic field.

BOX 13. Recognition as a directive principle of state policy – examples from state practice

Nigeria

16. (2) The State shall direct its policy towards ensuring:

/.../

(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.



66 Bangladesh (Arts 15 and 18), Ethiopia (Art. 90), India (Art. 47), Iran (Arts 3.12 and 43), Malawi (Art. 13.10), Nepal (Art. 33.h), Nigeria (Art. 16.2d), Pakistan (Art. 38), Panama (Art. 110.1), Sierra Leone (Art. 8.3a), Sri Lanka (Art. 22, 27.c), Uganda (Art. 14.2).

BOX 13. Recognition as a directive principle of state policy – examples from state practice (cont.)

Sri Lanka

Article 27.1 The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include –

(a) the full realization of the fundamental rights and freedoms of all persons;

...

(c) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities ..

The use of directive principles varies from country to country. In Germany, the so-called “basic institutional principles” have been used to interpret the bill of rights and to limit certain rights in order to achieve the objectives of a “social state”.⁶⁷ The German Federal Constitutional Court and Federal Administrative Courts have interpreted the “social state clause” in order to recognize a right to a social minimum, and a correlative state duty to provide it, that includes food-related obligations.⁶⁸ Similarly, in India, although the directive principles began as unenforceable guidelines, an active Supreme Court has transformed them into strong constitutional provisions and tools to achieve socio-economic goals. In a number of cases, the Supreme Court of India interpreted the right to life to include the right to food based on the constitutional provisions on directive principles of the state policy. Box 14 gives a short overview of some of them.

BOX 14. Using directive principles of state policy to interpret the right to life – example from India

Following starvation deaths that occurred in the State of Rajasthan, in 2001, the People’s Union for Civil Liberties (PUCL) introduced a petition before the Supreme Court



67 The German Constitutional Court has ruled that the purpose of the “social” clause is to enable the state to take steps to protect the weak and infirm (BVerfGE 5, 10), to enable and encourage the state to implement measures aimed at combating unemployment, to provide social benefits to the population and to address social inequalities in general (BVerfGE 1).

68 See Courtis, 2007.

BOX 14. Using directive principles of state policy to interpret the right to life – example from India (cont.)

claiming the enforcement of various food schemes and the Famine Code (permitting the release of grain stocks in times of famine). They grounded their arguments on the right to food, deriving it from the constitutionally guaranteed right to life.

Over seven years, various interim orders were made by the court; through its orders, the Supreme Court interpreted the constitutional right to life in light of the directive principles and the state's duty to raise the level of nutrition and the standard of living of its people. Finding that the prevention of hunger and starvation "is one of the prime responsibilities of the Government – whether Central or the State", the Supreme Court ordered the central and several state governments to take a number of measures regarding the realization of the right to food. The Court ordered, among others, that: the Famine Code be implemented for three months; grain allocation for the food for work scheme be doubled and financial support for schemes be increased; ration shop licensees must stay open and provide the grain to families below the poverty line at the set price; publicity be given to the rights of families below the poverty line to grain; all individuals without means of support (older persons, widows, disabled adults) are to be granted an *Antyodaya Anna Yojana* ration card for free grain; state governments should introduce one hot meal in schools; and has suggested modifications to the National Maternity Benefits Schemes. The court issued further orders in 2006, 2007 and January 2008.⁶⁹

In another case, *Jain vs. State of Karnataka*, the Court further held that the "right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition ...".⁷⁰ In yet another case, the court reasserted its view that the right to life implies the right to food, water, decent environment, education, medical health and shelter. According to the Court: "These are basic human rights known to any civilised society. All civil, political, social and cultural rights cannot be exercised without these basic human rights."⁷¹

In contrast, there has been very limited judicial reference to the directive principles in Ireland. The Irish Human Rights Commission has stated that "the neglect of these provisions, even to the extent of not using Article 45 on Directive Principles on Social Policy in interpreting other human rights has meant that this part of the constitution has not been able to adapt and evolve over the intervening decades".⁷²

69 See Writ Petition (Civil) No. 196 of 2001; the full text of all interim orders issued by the Supreme Court in this case can be found at the Web site of the Right to Food Campaign India (www.righttofoodindia.org).

70 See *Jain vs. State of Karnataka*, AIR (1992) S.C.C. 1858.

71 See *Chamelli Singh & Ors. State of U.P. & Anr.*, (1996) 2 S.C.C. 549.

72 See Irish Human Rights Commission. 2005, p. 77.

The effects of incorporating the right to food or aspects of it into constitutional provisions on principles of state policy (in contrast to including it into a section on fundamental rights) thus may depend on the readiness of judges to construct more general rights by relying on them. The government position towards economic and social rights in general may also play a role here; where they are viewed as aspirational goals, their position is weak. Where they are viewed as enforceable individual rights and where the overall environment is supportive of human rights claims, courts may take a more active role.

2.3

IMPLICIT RECOGNITION THROUGH BROAD INTERPRETATION OF OTHER HUMAN RIGHTS

There are many countries whose constitutions do not refer to “food” or “nutrition” explicitly, but which guarantee other human rights in which the right to food is partly or fully implicit.⁷³ These include the right to an adequate or decent standard of living⁷⁴ or to well-being;⁷⁵ the right to a means necessary to live a dignified life;⁷⁶ the right to be provided with a standard of living not below the subsistence level;⁷⁷ and the right to a minimum wage ensuring existence compatible with human dignity.⁷⁸ This can also be said in the case of the right to social security, assistance for the destitute or special assistance and protection of (orphaned) children;⁷⁹ aid for (working) mothers

73 In addition, some countries with no written constitution (such as Australia, Israel, New Zealand and the United Kingdom) recognize some of these economic and social rights (such as the right to a minimum wage and to social security benefits) through specific national legislation and case law.

74 Armenia (Art. 34), Bolivia (Art. 158), Cambodia (Art. 63), Costa Rica (Art. 50), Czech Republic (Art. 30), Ethiopia (Art. 89), Guatemala (Art. 119), Pakistan (Art. 38a), Romania (Art. 47(1)), Turkey (Art. 61 – right is limited to widows, orphans of those killed in war, disabled and war veterans).

75 Azerbaijan (Art. 16), El Salvador (Art. 1), Equatorial Guinea (item 25), Eritrea (Art. 21.7), Guinea (Art. 15), Peru (Art. 2).

76 Belgium (Art. 23), Cyprus (Art. 9), El Salvador (Art. 101), Finland (Art. 19), Ghana (Art. 36), Switzerland (Art. 12), Thailand (Art. 79), Venezuela (Bolivarian Republic of) (Art. 299).

77 Georgia (Art. 32), Germany (arts 1, 20, 28), Kyrgyzstan (Art. 27), Netherlands (Art. 20(1)).

78 Andorra (Art. 29), Argentina (Art. 14bis 1)), Belarus (Art. 42), Bolivia (Art. 7.e), Costa Rica (Art. 57), Croatia (Art. 55), Cuba (Art. 9), Ecuador (Art. 35), El Salvador (Art. 70.2), Honduras (Art. 128.5), Italy (Art. 36), Lesotho (Art. 30), Madagascar (Art. 29), Mexico (Art. 123), Nigeria (Art. 16d), Paraguay (Art. 92), Peru (Art. 24), Portugal (Art. 59), Romania (Art. 43), Slovakia (Art. 35), Spain (Art. 35), Venezuela (Bolivarian Republic of) (Art. 91).

79 For example, Republic of Moldova (Art. 50(2)), Spain (Art. 39(2)).

before and after childbirth, for the disabled and for the elderly. Some constitutions even stipulate special protection in the case of loss of the family breadwinner.⁸⁰

Thus, the absence of direct recognition of the right to food in a state constitution does not mean that the right to food is not protected *at all* in the country. Depending on a country's legal tradition, other human rights can be interpreted as including the right to food. A combination of other constitutional provisions together with general state policy commitments or directive principles may be used to advance the implementation of this right. For instance, there may be state policies on the promotion of well-being, the right to work and the right to social security (in cases of unemployment or an inability to work) that can be relied upon. As previously mentioned, in India, the fundamental right to life has been expanded by the courts with reference to directive principles. This creates a dynamic relationship between the Fundamental Rights and Directive Principles of the Constitution, and an avenue to enforce the latter as individual rights (see Box 14 above). In other cases, courts can expansively interpret civil (and not just economic and social) rights, some of which are widely guaranteed under domestic law, such as the right to life, the right not to be subjected to cruel or degrading treatment and the right to human dignity, even without referring to directive principles of state policy. Some examples of such an expansive interpretation are given in Box 15.

BOX 15. Implicit recognition – examples from state practice

Right to life

In the case of *G vs. An Bord Uchtála* before the **Irish** courts, justices referred to the right to life as necessarily implying “the right to be born, the right to preserve and defend, and to have preserved and defended, that life and the right to maintain that life at a proper human standard in matters of food, clothing and habitation.”⁸¹

Prohibition of degrading or inhuman treatment

According to one **US** federal appellate court, food provided to prisoners that is “inadequate in amount, spoiled or nutritionally inadequate violates the Eighth Amendment to the Constitution that prohibits cruel and unusual punishment.”⁸²

80 For example, Kazakhstan (Art. 28(1)), Russian Federation (Art. 39(1)), Slovakia (Art. 39(1)).

81 See Irish Human Rights Commission. 2005, p. 107.

82 See *Antonelli vs. Sheahan*, 81 F.3d 1422, 1432 (7th Cir. 1996) concerning alleged provision of “rancid food” and “nutritionally deficient diet”; *Strope vs. Sebelius*, US Court of Appeals, 06-3144 (D.C. No. 05-CV-3284-SAC) (10th Cir. 2006) concerning alleged retaliation of prison officials against inmate complaining about the quality and adequacy of the food. See also *Cooper vs. Sheriff, Lubbock County*, 929 F.2d 1078, 1083 (5th Cir. 1991) concerning alleged refusal of officials to feed inmates for 12 consecutive days.

BOX 15. Implicit recognition – examples from state practice (cont.)

In a recent criminal case involving a person whose prison rations were reduced as a form of punishment for escaping from custody, the High Court of **Fiji** referred to Article 11.1 of the ICESCR and considered that such treatment amounts to degrading and inhuman treatment prohibited by the Constitution. The Court wrote that “[a]ny reduction in rations ... was not conforming to the Republic of Fiji undertaking to provide its people with adequate food.... To reduce prison rations as a form of punishment ... contravenes section 25(1) of the Constitution as amounting to degrading and inhumane treatment”.⁸³

In Europe, in a recent ruling concerning access of asylum seekers to welfare benefits, the House of Lords of the **United Kingdom** considered that legislation conditioning asylum seekers’ access to basic amenities such as food and shelter on their having made an asylum claim as soon as reasonably practicable after entering the United Kingdom could amount to “inhuman and degrading treatment” prohibited under Article 3 of the European Convention on Human Rights.⁸⁴

The experience of a number of countries has shown that governments can indeed be held to account for ensuring the effective exercise of the right to food under constitutional provisions on other human rights.

However, the extent to which indirect invocation of other human rights (civil and political rights or other economic and social rights) can lead to effective protection of the right to food at the national level will ultimately depend on judicial interpretation of the state constitution and whether a given human right (e.g. the right to life) will be broadly interpreted so as to also include the right to food. This may not always be the case (see Box 16) and it may not always cover all dimensions of the right to food.

83 See *Rarasea vs. The State*, Criminal Appeal No. HAA0027.2000 of 12 May 2000.

84 See *Regina vs. Secretary of State for the Home Department ex parte Adam, Regina vs. Secretary of State for the Home Department ex parte Limbuela, and Regina vs. Secretary of State for the Home Department ex parte Tesema* (conjoined appeals), House of Lords, [2005] UKHL 66.

Box 16. Narrow interpretation of state obligations – example from Canada

Ms Gosselin petitioned the Supreme Court of **Canada** claiming that the Quebec Regulation Respecting Social Aid that reduced welfare payments for able-bodied adult recipients under 30 under certain conditions was violating her constitutional right to life and the security of the person. In a long-awaited decision, the Supreme Court was unwilling to accept that the deprivation of assistance necessary for basic requirements of security and dignity violated the right to life guaranteed by the Canadian Charter of Rights and Freedoms. The Chief Justice concluded that the relevant constitutional provision cannot be held as the “basis for a positive state obligation to guarantee adequate living standards”, going on to state that “the courts cannot substitute their judgment in social and economic matters for that of legislative bodies”. However, an almost unanimous court (8 out of 9) left open the possibility that in another case “a positive obligation to sustain life, liberty or security of person may be made out in special circumstances”.⁸⁵

85 *Gosselin vs. Québec (Attorney General)*, [2002] 4 S.C.R. 429. For more information on this case see Schafer, C. 2003.

2.4 RECOMMENDATIONS

The effects of the constitutional guarantee of the right to food in a particular country will depend on a number of factors: (i) how the right is phrased; (ii) how the right is described and recognized; (iii) how aware state authorities and courts are of the right; and finally (iv) how eager they are to enforce the right.

While constitutional principles on state policy or the protection of the right to food through broad interpretation of other human rights can be employed to strengthen its implementation at the national level, this does not guarantee that this fundamental human right will be taken into account by state authorities in their work and actions. From an individual's viewpoint, the possibility of obtaining protection and redress against infringements of his or her right to food will depend on the willingness of national judges to enforce this human right and also the individual's ability to approach governmental bodies at different levels to obtain administrative redress of such rights, armed with a constitutional and/or legislative norm. A factor that can contribute to the more open attitudes of judges is the level of detail with which a given human right was described. In some state constitutions those rights considered particularly important are drafted in a more detailed way.⁸⁶

86 Portugal has a constitution with rather detailed provisions on economic, social and cultural rights: for example, Article 63 on social rights and duties states "1. Everyone is entitled to social security. 2. It is the duty of the State to organise, co-ordinate and subsidise a unified and decentralised social security system, with the participation of the trade unions and other associations representing workers and associations representing other beneficiaries. 3. The social security system provides protection for citizens in sickness or old age or when disabled, widowed, orphaned or unemployed, and in all other situations in which the means of subsistence or the capacity to work have been lost or impaired. 4. All periods in work, no matter in which sectors of activity this work was performed, are taken into account in calculating the amount of old age and disability pensions, as determined by law. 5. The State shall support and supervise, as laid down by law, the activity and functioning of private institutions of social solidarity and other non-profit institutions of recognized public interest that pursue the objectives of social security contained in this Article /.../" (see COE. 2004).

A direct and clear constitutional recognition of the right to food would act as a yardstick against which to measure the action or inaction by government actors. It could thus facilitate the accountability of public authorities in matters that are fundamental to the lives of most citizens, and it would avoid the uncertainty of relying on judicial decision-making and have the most practical effect in protecting the rights of the people who are most marginalized and deprived in an unequal society. It would also provide a safeguard against the withdrawal of the right. Specifically incorporating the right to food into the main text of the constitution in an unequivocal form (“every person has the right to ...”) would have the advantage of clearly setting the right as being fundamental and thus act “as a final shield for the citizen against the influence of strong groups within the political system”.⁸⁷

An explicit recognition of the right to food would also provide the clear legal basis for adopting a framework law on the right to food. In a multisectoral field such as food, effective exercise of human rights would be facilitated if clear competences and implementation responsibilities, as well as specific financial resources, were allocated through law.

87 See Irish Human Rights Commission. 2005, Chapter 4.3.1.